

Antipodean Dom. Partners, L.P. v Clovis Oncology, Inc.
2018 NY Slip Op 31823(U)
July 25, 2018
Supreme Court, New York County
Docket Number: 655908/2016
Judge: Andrea Masley
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NYSCEF DOC. NO. 170

RECEIVED NYSCEF: 07/30/2018

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Andrea Masley
JSC

PART 48

ANTIPODEAN DOMESTIC PARTNERS, L.P.,

Plaintiff,

INDEX NO. 655908/2016

-against-

MOTION DATE: _____

MOTION SEQ. NO. 006

CLOVIS ONCOLOGY, INC.; PATRICK J. MAHAFFY;
ERLE T. MAST; ANDREW ALLEN; ANNA SUSSMAN;
J.P. MORGAN SECURITIES LLC; CREDIT SUISSE
SECURITIES (USA) LLC; STIFEL, NICOLAUS & COMPANY,
INC.; and MIZUHO SECURITIES USA INC.,

Defendants.

The following papers, numbered 1 were read on this motion to compel production of transcripts of interviews conducted by the SEC.

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that motion 006 is granted.

In connection with a pending SEC investigation into the Offering, the SEC interviewed eight Clovis employees. According to Clovis's 8-K, the SEC's action concerns "the Company's regulatory update announcement in November 2015 that the FDA requested additional clinical data on the efficacy and safety of rociletinib." (NYSCEF Doc. No. 161, Clovis Oncology, Inc., SEC Form 8-K, April 10, 2018). Clovis does not dispute the relevance of those SEC interviews to this action. (See e.g. In re Legato Sys., Inc. 204 FRD 167, 168 (ND Cal 2001). Nor could it. (See *Allen v Crowell-Collier Pub. Co*, 21 NY2d 403, 406 [1968] [the legal standard for discovery relevance is "any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity."]). Rather, Clovis argues against disclosure based on confidentiality; that the request is overbroad; and the request impermissibly piggy-backs on the SEC investigation.

The court rejects Clovis's confidentiality argument for the same reasons as stated in the decision on motion sequence number 005 granting plaintiff's motion to compel production of documents produced to the SEC.

Further, the request is not overbroad, as this case and the SEC investigation, concerning the safety and efficacy of rociletinib, appear to overlap and may even be identical. Plaintiff asserts that defendants made false statements about the safety and

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

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efficacy of rociletinib, a "breakthrough" lung cancer drug, enticing plaintiff and others to purchase Clovis stock at artificially inflated prices.

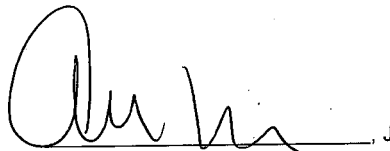
Likewise, the court rejects Clovis's objection to piggybacking on a government investigation. Such a request is not only responsible and common, but efficient. (See *Youngers v Virtus Inv. Partners Inc.*, 2017 US Dist. Lexis 198944, *12 [SD NY 2017]). For example, if it reduces depositions, then it is more efficient.

Accordingly, it is

ORDERED that Antipodean's motion to compel is granted and Clovis shall produce the transcripts within 10 days of service of this order with notice of entry.

Dated:

7/25/18



J.S.C.

HON. ANDREA MASLEY

Check one:

☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION

MOTION IS:

☒ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER

Check if appropriate:

☐ SETTLE ORDER ☐ SUBMIT ORDER ☐ DO NOT POST

☐ FIDUCIARY APPOINTMENT ☐ REFERENCE