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

RETROPHIN, INC., Plaintiff, – against – TIMOTHY PIEROTTI, Defendant.	Index No. 651104/2013 **COMPLAINT**

Plaintiff, Retrophin, Inc. ("Plaintiff"), by its attorneys Katten Muchin Rosenman LLP, as and for its Complaint against defendant, Timothy Pierotti ("Defendant"), alleges as follows.

Nature of the Action

1. This is an action where Plaintiff—a groundbreaking biotech startup specializing in the discovery and development of treatments for rare and life-threatening diseases—seeks to recover 350,000 shares of its common stock that was taken by Defendant. In or about December 2012, Plaintiff facilitated Defendant's acquisition of these shares of common stock at a deeply discounted price ($0.001 per share, as compared to the current market price which has ranged between $8.00 and $8.80 per share) based on Defendant's express promise to work to build and develop Plaintiff, including, *inter alia*, identifying revenue-generating acquisition targets for Plaintiff.

2. However, once Defendant obtained his shares of Plaintiff's stock, Defendant abruptly reneged on his promise to Plaintiff by, *inter alia*, terminating his affiliation with Plaintiff and absconding with the stock, thus realizing an extraordinary windfall insofar as the

shares are now worth at least $3,000,000, which is at least 7,000 times more than what Defendant paid for them, *i.e.*, $400.

3. Further, upon information and belief, Defendant never intended to fulfill his promise to work to build and develop Plaintiff. Rather, Defendant merely induced Plaintiff's reliance upon his promise to provide future services in order to obtain Plaintiff's stock and reap the ample benefit of selling the stock at a substantial profit. Moreover, upon information and belief, Defendant has been using Plaintiff's stock as collateral in an attempt to misappropriate a corporate opportunity from Plaintiff, *i.e.*, to acquire a company that Defendant and a current employee of Plaintiff identified, analyzed and commenced acquisition discussions with in mid-2012 using Plaintiff's confidential and proprietary information.

4. Accordingly, judgment should be entered against Plaintiff for unjust enrichment, promissory estoppel, as well as breach of contract, misappropriation and for preliminary injunctive relief.

The Parties

5. Plaintiff is a biotechnology company organized and existing under the laws of Delaware with its principal place of business located at 777 Third Avenue, 22nd Floor, New York, NY 10017.

6. Upon information and belief, Defendant is an individual who resides in Summit, New Jersey.

Jurisdiction and Venue

7. Venue is proper pursuant to CPLR § 503 because Plaintiff does business in New York County.

Factual Background

8. Defendant commenced employment with MSMB Healthcare Management LLC ("MSMB") as Portfolio Manager pursuant to a Portfolio Management Agreement, dated as of August 9, 2011 (the "Management Agreement"). MSMB was the investment manager of MSMB Consumer Fund, LP, a Delaware limited partnership (the "Fund"), and in such capacity made all investment and trading decisions on behalf of the Fund.

9. Under the Management Agreement, Defendant agreed to provide portfolio management services to MSMB regarding the Fund. Defendant's compensation included a monthly base salary, plus a bonus which was a percentage of management fees and performance-based profits of MSMB

10. During the time that Defendant served as Portfolio Manager of MSMB, his performance was unremarkable and the Fund realized nominal returns on his investment and trading decisions.

11. Based on Defendant's lackluster performance as Portfolio Manager, in or about June 2012, Martin Shkreli, the Chief Executive Officer of MSMB and other affiliated entities (the "MSMB Companies") (Mr. Shkreli is currently the CEO of Plaintiff), asked Defendant to focus on identifying medical device opportunities for the MSMB Companies and their affiliates, including Retrophin LLC, a biotech startup that Mr. Shkreli had founded the prior year.

12. Mr. Shkreli had experienced a turning point in his life in early 2011 after being profoundly moved by the plight of a 15 year-old boy who had succumbed to myotubular myopathy, a rare, severe type of muscular dystrophy. Given the rarity of this disease and the relative paucity of patients suffering from it (as compared to muscular dystrophy), there were no drugs, no less a drug company, devoted to treating this disease. Accordingly, in February 2011,

Mr. Shkreli founded Retrophin LLC, a privately-held biotechnology company, to develop treatments for myotubular myopathy, Duchenne muscular dystrophy, spinal muscular atrophy and cystic fibrosis.

13. In or about May, 2012, Retrophin LLC completed its first significant round of funding, *i.e.*, its Series A round, raising $4 million led by MSMB Capital Management, a hedge fund affiliate of the MSMB Companies, along with participation by private investors.

14. Mr. Shkreli's commitment to investing in life-saving medicines for debilitating diseases such as myotubular myopathy and muscular dystrophy led him to decide, in 2012, to wind down his hedge fund business, *i.e.*, the MSMB Companies, and to devote his time and attention solely to the development and expansion of Retrophin.

15. Mr. Shkreli communicated to all of his employees at the MSMB Companies, including Defendant, that he intended to wind down the MSMB Companies and to devote all of his time to Retrophin LLC, with the ultimate goal of taking Retrophin public.

16. Mr. Shkreli's request that Defendant seek out medical device opportunities constituted Mr. Shkreli's good faith attempt, despite Defendant's unimpressive performance as a Portfolio Manager for MSMB, to afford Defendant a meaningful opportunity to participate in, and to make a contribution to, the biotechnology platform Mr. Shkreli had laid with Retrophin LLC.

17. Commencing in July 2012 and continuing throughout the summer and early fall, Defendant repeatedly told Mr. Shkreli's then-partner at MSMB (who is now an employee of Plaintiff) that, as compensation for Defendant's contemplated business development services, he wanted a stake in Retrophin, in the form of equity or shares of common stock.

18. In or about August 2012, Defendant and Mr. Shkreli's then-partner at MSMB identified Garreco, Inc. ("Garreco"), an Arkansas based company that manufactures dental supplies, as a possible acquisition target.

19. Following the identification of Garreco as a potential acquisition target, Defendant and Mr. Shkreli's then-partner at MSMB undertook a search for equity financing in connection with such contemplated acquisition.

20. Upon information and belief, Defendant's search for equity financing for the potential Garreco acquisition was in furtherance of his own stratagem to misappropriate this potential acquisition for his own use and benefit and/or for the benefit of a third-party subsequent employer.

21. Mindful of Mr. Shkreli's plan to take Retrophin public, upon information and belief, Defendant sought to acquire shares of Plaintiff's stock and began requesting the same in or about July 2012 so that he could use this stock as collateral for financing the Garreco acquisition for either himself or one of Plaintiff's competitors.

22. In a September 26, 2012 e-mail, Defendant telegraphed to a potential equity investor his intention to misappropriate the Garreco opportunity for himself, stating:

> . . . Garreco means more to me than MSMB because I am very dubious that MSMB will come up with the equity. That's why I could see a deal being perhaps led by you guys and I would be in the mix helping to raise money, structure the deal, and eventually help run and grow the asset.

23. In or about September 2012, Retrophin LLC statutorily converted into Plaintiff.

24. Because of the considerable funding needed to continue drug trials for the treatment of muscular dystrophy, in or about July 2012, Plaintiff commenced a substantial round of equity financing for Plaintiff, *i.e.*, seeking private investments into public equity (a/k/a "PIPE").

25. In or about October 2012, Mr. Shkreli told Defendant that, as part of the winding down of the MSMB Companies, his employment with MSMB would be terminated. Given the uncertainty of Defendant's role with Plaintiff going forward, it was agreed that Plaintiff also would be a party to the Termination Agreement and that a subsequent employment agreement between Plaintiff and Defendant would be executed once Mr. Shkreli and Defendant had agreed upon the parameters of the latter's role with Plaintiff.

26. Plaintiff and MSMB, as employer, and Defendant, as employee, entered into a Termination of Employment and Release Agreement (the "Termination Agreement"), a copy of which is attached hereto as **Exhibit A**, in which Defendant's employment with Plaintiff and MSMB was terminated as of November 12, 2012, the effective date of the Agreement. In the Termination Agreement, among other things, Defendant fully released all claims against MSMB and Retrophin, in consideration for a severance payment in the amount of $20,000 (the "Severance Payment").

27. Additionally, Defendant agreed not to "use, publish disseminate or disclose" MSMB's or Plaintiff's "Confidential Information" "which [he] may have acquired or developed" during the course of his employment "to any subsequent employer or business for which [he was] employed or engaged to perform services." (*See* Ex. A at ¶4(a).)

28. In the Termination Agreement, "Confidential Information" is defined to include "any information which MSMB or [Plaintiff], or any of their respective affiliates, considers to be confidential or proprietary including, without limitation, their investment strategies and methods; . . . past and present portfolio composition; marketing presentations and materials. . . ." (*See* Ex. A at ¶4(c).)

29. All information regarding Garreco, including, without limitation, financial models, due diligence and other proprietary analytical data created in connection with the potential acquisition of Garreco, constitutes Confidential Information under the Termination Agreement.

30. All information regarding Garreco, including, without limitation, financial models, due diligence and other proprietary analytical data created in connection with the potential acquisition of Garreco, constitutes a trade secret of Plaintiff's, *i.e.*, a compilation of information used by Plaintiff to afford it an opportunity to obtain an advantage over competitors who do not use such information.

31. In the weeks following the execution of the Termination Agreement, Mr. Shkreli and Defendant agreed that, based on Defendant's involvement in identifying and analyzing Garreco as a potential acquisition target, Defendant would continue to provide business development services to Plaintiff, including the identification of other biotechnology, medical device and pharmaceutical companies to partner with Plaintiff.

32. Further, it was anticipated that Plaintiff and Defendant would enter into a new employment agreement memorializing Defendant's business development role and duties for Plaintiff.

33. Based on promises made by Defendant and others to render future services to Plaintiff, in December 2012, Mr. Shkreli facilitated for Defendant and others, the opportunity to purchase from a shareholder of Plaintiff's former parent company, Desert Gateway, Inc. ("DGI"), a significant number of shares of Plaintiff's common stock at the deeply discounted rate of $0.001 per share.

34. In December 2012, Mr. Shkreli told Defendant and others, that he was making this extraordinary stock opportunity available to them to incentivize them to work diligently and in good faith to ensure the development and growth of Plaintiff. Upon being afforded this stock opportunity, Defendant assured Mr. Shkreli that he would work to ensure Plaintiff's development and growth by performing business development, and other, future services for Plaintiff.

35. Upon information and belief, at the time Defendant assured Mr. Shkreli that he would perform future services for Plaintiff, he had no intention of doing so. Rather, Defendant sought to acquire Plaintiff's publicly-traded stock for his own use and benefit, including, among other things, to sell the stock at a substantial profit, and to use the stock as collateral to finance the acquisition of Garreco for his own benefit, or for the benefit of a third party subsequent employer.

36. In or about December 2012, Plaintiff went public through a reverse-merger in which shareholders of Plaintiff received approximately 68.9% of DGI's outstanding common stock and thereafter became a subsidiary of DGI, in order to trade over-the-counter under the symbol (OTCBB: RTRX).

37. On or about December 11, 2012, Defendant entered into a Purchase Agreement with a shareholder of DGI for the purchase of 400,000 shares of Plaintiff's common stock at the deeply discounted price of $0.001 per share, *i.e.*, $400 in total.

38. On or about December 15, 2012, stock certificates for 350,000 shares of Plaintiff were transferred to Defendant. The remaining 50,000 shares are being held in escrow.

39. Shortly after receiving the share certificates, Defendant absconded with them, stopped showing up for work at Plaintiff's offices, and renounced his obligation to perform any future services for Plaintiff.

40. Upon information and belief, Defendant has sold some of the shares of Plaintiff's stock that he received in December 2012 and reaped a substantial profit therefrom, despite renouncing his commitment to perform business development services for Plaintiff.

41. Plaintiff has made due demand for the return of these shares or the cash equivalent thereof, but Defendant has refused to return them.

42. During the first two weeks of May 2013, RTRX was trading at $8.00 and $8.80 per share, *i.e.*, at least 7,000 times the purchase price paid by Defendant for these shares, and Plaintiff's shares cumulatively are worth at least $3,000,000.

43. Further, Plaintiff has demanded that Defendant cease and desist from his use and misappropriation of Plaintiff's Confidential Information and trade secrets, including, without limitation, financial models, due diligence and other proprietary analytical data regarding Garreco and the potential acquisition thereof. Defendant has not responded to Plaintiff's cease and desist demand.

AS AND FOR A FIRST CAUSE OF ACTION
(Unjust Enrichment)

44. Plaintiff repeats and realleges paragraphs 1 through 43 as if fully set forth herein.

45. Plaintiff conferred a benefit upon Defendant by facilitating the latter's acquisition of 350,000 shares of Plaintiff's stock at the deeply discounted price of $0.001 per share based on Defendant's assurance to Plaintiff that Defendant would work to ensure the development and growth of Plaintiff by performing business development and other future services for Plaintiff.

46. Defendant voluntarily accepted and retained the benefit of 350,000 shares of Plaintiff's stock.

47. Because Defendant has refused to provide *any* services to Plaintiff and, upon information and belief, has sold some of his shares of Plaintiff's stock at a substantial profit and

is using the stock as collateral in an attempt to misappropriate for his personal benefit the sole corporate opportunity that he participated in identifying for Plaintiff, the circumstances are such that it would be inequitable and unconscionable to allow Defendant to retain the benefit of the 350,000 shares of Plaintiff's stock, which shares currently are worth at least $3,000,000.

48. As a direct and proximate result of the above-described conduct, Plaintiff has been damaged and Defendant has been unjustly enriched by more than $3,000,000, the exact amount of which will be determined at trial.

AS AND FOR A SECOND CAUSE OF ACTION
(Promissory Estoppel)

49. Plaintiff repeats and realleges paragraphs 1 through 48 as if fully set forth herein.

50. In or about December 2012, Defendant made a clear and unambiguous statement and promise to Plaintiff that based on Plaintiff's facilitation of Defendant's acquisition of Plaintiff's stock at a deeply discounted price, Defendant would render future services to Plaintiff, including, *inter alia*, identifying revenue-generating acquisition targets for Plaintiff, such as Garreco.

51. It was reasonably foreseeable that Plaintiff would rely on Defendant's unequivocal statement, Defendant intended Plaintiff to rely thereupon, and Plaintiff reasonably did so. Rather than honoring his commitment to Plaintiff, Defendant ceased performing *any* services for Plaintiff upon his receipt of share certificates for 350,000 shares of Plaintiff's common stock.

52. Had Plaintiff known that Defendant was going to renege on his commitment to work with Plaintiff to build and develop its business base, and, instead, intended to sell the shares for his personal benefit and to use the shares as leverage to misappropriate Plaintiff's (and

MSMB's) corporate opportunity to acquire Garreco, Plaintiff never would have facilitated this stock opportunity for Defendant.

53. Defendant's retention of 350,000 shares of Plaintiff's stock, now worth at least $3,000,000, or his retention of the proceeds from the sale of any of these shares, would inflict unconscionable injury on Plaintiff resulting from its justifiable reliance on Defendant's promise to render future services to Plaintiff.

54. As a proximate result of Plaintiff's reasonable reliance upon Plaintiff's promise, Plaintiff has suffered substantial damages in an amount no less than $3,000,000, the exact amount to be determined at trial.

AS AND FOR A THIRD CAUSE OF ACTION
(Breach of Contract)

55. Plaintiff repeats and realleges paragraphs 1 through 54 as if fully set forth herein.

56. Defendant's use of Plaintiff's Confidential Information, including Plaintiff's use of financial models, due diligence and other proprietary analytical data created in connection with the potential acquisition of Garreco, constitutes a breach of the confidentiality provision of the Termination Agreement. (*See* Ex. A at ¶ 4.)

57. Plaintiff has fully complied with all of its obligations under the Termination Agreement, including, *inter alia*, its remittance of the Severance Payment to Plaintiff.

58. Defendant has not responded to Plaintiff's demand that Defendant cease and desist from his use of Plaintiff's Confidential Information and, upon information and belief, Defendant continues to use that Confidential Information in an attempt to acquire Garreco for his own benefit.

59. By virtue of Defendant's breach of the Termination Agreement, Defendant is required to remit the Severance Payment to Defendant. (*See* Ex. A ¶ 6.)

60. Further, as a direct and proximate result of Defendant's breach of the Termination Agreement, Plaintiff has incurred substantial damages, the exact amount to be determined at trial.

AS AND FOR A FOURTH CAUSE OF ACTION
(Common Law Misappropriation)

61. Plaintiff repeats and realleges paragraphs 1 through 60 as if fully set forth herein.

62. The financial models, due diligence and other proprietary analytical data created in connection with the potential acquisition of Garreco constitutes a trade secret of Plaintiff insofar as these materials are a compilation of information used by Plaintiff to afford it an opportunity to obtain an advantage over competitors who do not use such information.

63. Defendant has misappropriated Plaintiff's trade secrets, including its Confidential Information created in connection with the potential acquisition of Garreco, for Plaintiff's own use and benefit, in violation of the confidentiality provision in the Termination Agreement (*see* Ex. A ¶4(a)), as well as in violation of Plaintiff's rights under New York common law.

64. Defendants' misappropriation of Plaintiff's trade secrets, including its Confidential Information created in connection with the contemplated acquisition of Garreco, was willful and intentional.

65. By virtue of Defendant's misappropriation of Plaintiff's trade secrets, Plaintiff has suffered monetary damages, the exact amount to be determined at trial.

AS AND FOR A FIFTH CAUSE OF ACTION
(Preliminary Injunction)

66. Plaintiff repeats and realleges paragraphs 1 through 65 as if fully set forth herein.

67. The Termination Agreement affords Plaintiff the right to "obtain a temporary or permanent injunction against [Defendant] by an court of competent jurisdiction (without the

requirement to post a bond) prohibiting [Defendant] from violating this Agreement." (Ex. A ¶ 6.)

68. Defendant's misappropriation of Plaintiff's Confidential Information created in connection with the contemplated acquisition of Garreco, for Plaintiff's own use and benefit, constitutes a breach of the confidentiality provision in the Termination Agreement.

69. If Defendant succeeds in acquiring Garreco for his own benefit or for the benefit of any third party employer, such acquisition will cause irreparable injury to Plaintiff. As such, injunctive relief is necessary to avert such irreparable injury.

70. By virtue of the foregoing, Plaintiff is entitled to a preliminary injunction enjoining and restraining Defendant from using Plaintiff's Confidential Information created in connection with the contemplated acquisition of Garreco.

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

(a) On the First Cause of Action for unjust enrichment, in an amount no less than $3,000,000, the exact amount to be determined at trial;

(b) On the Second Cause of Action for promissory estoppel, in an amount no less than $3,000,000, the exact amount to be determined at trial;

(c) On the Third Cause of Action for breach of contract, the exact amount of monetary damages to be determined at trial;

(d) On the Fourth Cause of Action for common law misappropriation, the exact amount of monetary damages to be determined at trial;

(e) On the Fifth Cause of Action for injunctive relief, enjoining and restraining Defendant from using Plaintiff's Confidential Information created in connection with the contemplated acquisition of Garreco;

(f) Interest as permitted by law; and

(g) Such other relief as this Court deems just and proper.

Dated: New York, New York
May 15, 2013

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