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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

MERRY AXELROD, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

KITE PHARMA, INC., ARIE
BELLDEGRUN, DAVID BONDERMAN,
FARAH CHAMPSI, IAN CLARK, ROY
DOUMANI, FRANZ HUMER, JOSHUA
A. KAZAM, RAN NUSSBAUM, JON
PEACOCK, STEVEN B. RUCHEFSKY,
OWEN N. WITTE, GILEAD SCIENCES,
INC., and DODGE MERGER SUB, INC.,

Defendants.

Case No. 2:17-cv-6684

CLASS ACTION

**CLASS ACTION COMPLAINT FOR
VIOLATION OF SECTIONS 14(d)(4),
14(e), AND 20(a) OF THE
SECURITIES EXCHANGE ACT OF
1934**

JURY TRIAL DEMANDED

Plaintiff Merry Axelrod (“Plaintiff”), by her attorneys, alleges upon information
and belief, except for her own acts, which are alleged on knowledge, as follows:

INTRODUCTION

1. Plaintiff brings this action on behalf of herself and the public stockholders
of Kite Pharma, Inc. (“Kite” or the “Company”) against Kite and members of its Board
of Directors (collectively, the “Board” or the “Individual Defendants,” as further defined
below, and together with the Company “Defendants”) for violations of Section 14(d)(4),
15 U.S.C. § 78n(d)(4), of the Securities and Exchange Act of 1934 (the “Exchange Act”),
U.S. Securities and Exchange Commission (the “SEC”) Rule 14d-9 promulgated

1 thereunder, 17 C.F.R. § 240, 14d-9, and 14(e) and 20(a) of the Exchange Act, 15 U.S.C.
2 §§ 78n(e), 78t(a). Specifically, Defendants solicit the tendering of stockholder shares in
3 connection with the sale of the Company to Gilead Sciences, Inc. (“Gilead” or “Parent”),
4 through a recommendation statement that omits material facts necessary to make the
5 statements therein not false or misleading. Unless these disclosure deficiencies are
6 cured, the Company’s stockholders will be forced to decide whether to tender their
7 shares based upon a materially incomplete and misleading Recommendation Statement
8 (defined below).

9 2. On August 28, 2017, Kite issued a press release announcing that they had
10 entered into an Agreement and Plan of Merger dated August 27, 2017 (the “Merger
11 Agreement”), by which Gilead’s wholly-owned subsidiary, Dodgers Merger Sub, Inc.
12 (“Purchaser”), would commence a tender offer (the “Tender Offer”) to acquire all of the
13 outstanding shares of Kite common stock for \$180.00 per share in cash (the “Offer
14 Consideration”). The Tender Offer, commenced September 5, 2017, is set to expire one
15 minute after 11:59 p.m. Eastern Time, on October 2, 2017. The proposed merger
16 transaction between Kite and Gilead (the “Proposed Transaction”) has a total value of
17 approximately \$11.9 billion.

18 3. In connection with the commencement of the Tender Offer, on
19 September 5, 2017, the Company filed a recommendation statement on a Schedule 14D-
20 9 (the “Recommendation Statement”) with the SEC. The Recommendation Statement
21 is materially incomplete and misleading because, *inter alia*, it fails to disclose material
22 information about the facts and circumstances that led up to the Proposed Transaction.
23 Without all material information, Kite stockholders cannot make a properly informed
24 decision regarding whether to tender their shares. The failure to adequately disclose
25 such material information constitutes a violation of Sections 14(d)(4), 14(e), and 20(a)
26 of the Exchange Act as stockholders need such information in order to make a fully-
27 informed decision regarding whether to tender their shares in connection with the
28 Proposed Transaction.

1 4. For these reasons, and as set forth in greater detail *infra*, the Individual
2 Defendants have violated the federal securities laws and regulations promulgated
3 thereunder. Accordingly, Plaintiff seeks to enjoin the close of the Tender Offer or, in
4 the event the Tender Offer closes without corrective disclosures being made, recover
5 damages resulting from the Defendants' violations of these laws. Judicial intervention
6 is warranted here to rectify existing and future irreparable harm to the Company's
7 stockholders.

8 **JURISDICTION AND VENUE**

9 5. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal
10 question jurisdiction) and Section 27 of the Exchange Act (15 U.S.C. § 78aa) because
11 Plaintiff alleges violations of Sections 14(d), 14(e), and 20(a) of the Exchange Act and
12 SEC Rule 14d-9.

13 6. The Court has personal jurisdiction over each of the Defendants because
14 each either conducts business in and maintains operations in this District or is an
15 individual who either is present in this District for jurisdictional purposes or has
16 sufficient minimum contacts with this District as to render the exercise of jurisdiction by
17 this Court permissible under traditional notions of fair play and substantial justice.

18 7. Venue is proper in this District under Section 27 of the Exchange Act,
19 15 U.S.C. § 78aa, as well as under 28 U.S.C. § 1391, because: (a) Kite maintains its
20 headquarters in this District; (b) the conduct at issue took place and had an effect in this
21 District; (c) a substantial portion of the corporate transactions and wrongs complained
22 of herein occurred here; and (d) Defendants have received substantial compensation and
23 other transfers of money here by doing business here and engaging in activities having
24 an effect in this District.

25 **PARTIES**

26 8. Plaintiff is, and has been at all relevant times, the owner of shares of
27 ordinary stock of Kite.

1 9. Kite is a corporation organized and existing under the laws of the State of
2 Delaware. It maintains its principle executive offices at 2225 Colorado Avenue, Santa
3 Monica, California 90404. Kite’s common stock trades on NASDAQ under the ticker
4 symbol “KITE.”

5 10. Defendant Arie Beldegrun (“Beldegrun”) is the founder of Kite, has
6 served as Chairman of the Board since 2009, and has served as President and Chief
7 Executive Officer (“CEO”) of the Company since March 2014.

8 11. Defendant David Bonderman (“Bonderman”) has served as a director of the
9 Company since February 2011.

10 12. Defendant Farah Champsi (“Champsi”) has served as a director of the
11 Company since May 2013.

12 13. Defendant Ian Clark (“Clark”) has served as a director of the Company
13 since January 2017.

14 14. Defendant Roy Doumani (“Doumani”) has served as a director of the
15 Company since May 2011.

16 15. Defendant Franz Humer (“Humer”) has served as a director of the Company
17 since September 2015.

18 16. Defendant Joshua A. Kazam (“Kazam”) has served as a director of the
19 Company since June 2009.

20 17. Defendant Ran Nussbaum (“Nussbaum”) has served as a director of the
21 Company since May 2013.

22 18. Defendant Jon Peacock (“Peacock”) has served as a director of the
23 Company since March 2014.

24 19. Defendant Steven B. Ruchefsky (“Ruchefsky”) has served as a director of
25 the Company since February 2011.

26 20. Defendant Owen N. Witte (“Witte”) has served as a director of the
27 Company since March 2017.
28

1 21. Defendants Beldegrun, Bonderman, Champsi, Clark, Doumani, Humer,
2 Kazam, Nussbaum, Peacock, Ruchefsky, and Witte are collectively referred to as
3 “Individual Defendants” and/or the “Board.”

4 22. Defendant Gilead, a necessary party named for relief purposes, is a
5 company organized and existing under the laws of Delaware.

6 23. Defendant Purchaser, a necessary party named for relief purposes, is a
7 Delaware corporation and wholly-owned subsidiary of Gilead.

8 **CLASS ACTION ALLEGATIONS**

9 24. Plaintiff brings this action individually and as a class action on behalf of all
10 holders of Kite common stock who are being, and will be, harmed by Defendants’
11 actions described herein (the “Class”). Excluded from the Class are Defendants herein
12 and any person, firm, trust, corporation, or other entity related to, controlled by, or
13 affiliated with, any Defendant, including the immediate family members of the
14 Individual Defendants.

15 25. This action is properly maintainable as a class action under the Federal Rule
16 of Civil Procedure 23.

17 26. The Class is so numerous that joinder of all members is impracticable.
18 According to the Recommendation Statement, as of August 31, 2017, Kite had
19 57,410,242 shares of common stock outstanding. While the exact number of Class
20 members is presently unknown to Plaintiff and can only be ascertained through
21 discovery, Plaintiff believes that there are thousands of members in this Class. All
22 members of the Class may be identified from records maintained by Kite or its transfer
23 agent and may be notified of the pendency of this action by mail, using forms of notice
24 similar to that customarily used in securities class actions.

25 27. There are questions of law and fact which are common to the Class and
26 which predominate over questions affecting any individual Class member. The common
27 questions include, *inter alia*, the following: (i) whether Defendants recommended
28 stockholders tender their shares pursuant to the Proposed Transaction through a

1 materially false or misleading Recommendation Statement in violation of federal
2 securities laws; (ii) whether Plaintiff and other Class members will suffer irreparable
3 harm if the securities laws violations are not remedied before the expiration of the Tender
4 Offer; and (iii) whether the Class is entitled to injunctive relief as a result of Defendants'
5 wrongful conduct.

6 28. Plaintiff's claims are typical of the claims of the other members of the Class
7 and Plaintiff does not have any interests adverse to the Class. Plaintiff and the other
8 members of the Class have sustained damages as a result of Defendants' wrongful
9 conduct as alleged herein.

10 29. Plaintiff will fairly and adequately protect the interests of the Class and has
11 retained competent counsel experienced in litigation of this nature.

12 30. The prosecution of separate actions by individual members of the Class
13 creates a risk of inconsistent or varying adjudications with respect to individual members
14 of the Class, which could establish incompatible standards of conduct for Defendants.

15 31. Plaintiff anticipates that there will be no difficulty in the management of
16 this litigation. A class action is superior to other available methods for the fair and
17 efficient adjudication of this controversy.

18 32. Defendants have acted on grounds generally applicable to the Class with
19 respect to the matters complained of herein, thereby making appropriate the relief sought
20 herein with respect to the Class as a whole.

21 33. Accordingly, Plaintiff seeks injunctive and other equitable relief on behalf
22 of herself and the Class to prevent the irreparable injury that the Company's stockholders
23 will continue to suffer absent judicial intervention.

24 **FURTHER SUBSTANTIVE ALLEGATIONS**

25 ***Company Background***

26 34. Kite is a leading developer of engineered cell therapies, which aim to fight
27 cancer using a patient's own immune cells. The Company's most advanced therapy
28 candidate, axicabtagene ciloleucel (axi-cel), is currently under priority review by the

1 U.S. Food and Drug Administration and the therapy candidate is expected to be the first
2 to market as a treatment for refractory aggressive non-Hodgkin lymphoma.

3 ***The Sale Process***

4 35. In January 2017, Kite management met with more than 20 biotechnology
5 and pharmaceutical companies while attending an industry conference to discuss the
6 Company's business and potential opportunities for collaboration. While attending this
7 conference, Andrew Dickinson ("Dickinson"), Senior Vice President, Corporate
8 Development of Gilead, met with Helen Kim ("Kim"), Kite's Executive Vice President
9 ("EVP") of Business Development, for an informal discussion regarding the oncology
10 field and Kite's general business.

11 36. Shortly after this conference, Dickinson reached out to Kim and they
12 decided to put in place a confidentiality agreement in order to facilitate further
13 discussions and potential business transactions. Kite and Gilead then entered into a
14 confidentiality agreement, dated February 10, 2017.

15 37. On March 14, 2017, the Board met and discussed potential financing or
16 investments related to Kite's axi-cel product in the event it would be approved and also
17 received presentations on internal financial forecasts from members of Company
18 management.

19 38. In March, April, and May of 2017, certain members of Company
20 management met with Gilead to discuss updates on clinical studies of axi-cel and related
21 topics.

22 39. After three meetings between Kite management and Gilead management,
23 in late May 2017, John F. Milligan ("Milligan"), President and CEO of Gilead, contacted
24 Defendant Beldegrun, to discuss the meetings between the management teams and
25 request a meeting between the two executives.

26 40. On June 12, 2017, Defendant Beldegrun met with Milligan and Kevin
27 Young ("Young"), Chief Operating Officer of Gilead, to discuss the prior meetings
28 between the management teams.

1 41. On June 30, 2017, Defendant Beldegrun and Company management met
2 with Milligan and Alessandro Riva, Gilead's Senior Vice President, Oncology
3 Therapeutics.

4 42. On July 6, 2017, Defendant Beldegrun reached out to Centerview Partners
5 LLC ("Centerview"), a financial advisor that Company management had frequent
6 contact with, to discuss some of the interactions Kite had with Gilead.

7 43. On July 7, 2017, Defendant Beldegrun spoke with Milligan about another
8 potential in-person meeting.

9 44. On July 10, 2017, Company management met with Centerview and began
10 working on financial analyses relating to a potential transaction with Gilead.

11 45. On July 13, 2017, Dr. David Chang ("Chang"), EVP, Research and
12 Development and Chief Medical Officer of Kite, met with Milligan and representatives
13 of Gilead to discuss the status of axi-cel and Kite's business.

14 46. On July 16, 2017, Milligan and Young reached out to Defendant Beldegrun
15 to inform him of Gilead's intention to submit an offer to acquire Kite for \$127 per share
16 in cash. Later that day, Kite received a letter from Gilead confirming its interest in
17 acquiring Kite for \$127 per share (the "July 16 Proposal").

18 47. On July 17, 2017, Defendant Beldegrun contacted Sullivan & Cromwell
19 LLP ("Sullivan & Cromwell") and engaged it as counsel in connection with the
20 contemplated transaction.

21 48. Also on July 17, 2017, the Board met to discuss the July 16 Proposal and
22 determined not to pursue a transaction and to instead focus on preparing axi-cel for
23 approval and commercial launch. The Board further determined that Gilead's offer was
24 not attractive enough for them to change their view on the matter and instructed
25 Defendant Beldegrun to inform Gilead as such. During this meeting, Defendant
26 Beldegrun informed the Board that Kite had begun working with Centerview related to
27 a transaction with Gilead, subject to a determination by the Board to engage Centerview
28 as its financial advisor. During this meeting, the Board also determined to create the

1 Strategic Transaction Committee (the “Transaction Committee”) to oversee responses to
2 any further offers and submit recommendations to the Board on such. The Board
3 appointed Defendant Humer, Defendant Bonderman, Defendant Clark, and Defendant
4 Peacock as members of the Transaction Committee.

5 49. On July 19, 2017, Defendant Beldegrun spoke with Milligan and informed
6 him that Kite was not for sale and that the July 16 Proposal was not sufficient to continue
7 discussions regarding a potential acquisition of Kite.

8 50. On July 25, 2017, Milligan reached out to Defendant Beldegrun and they
9 agreed to meet on July 28, 2017.

10 51. On July 28, 2017, Defendant Beldegrun met with Milligan and John C.
11 Martin (“Martin”), Gilead’s Executive Chairman of the Board. During this meeting,
12 Defendant Beldegrun discussed Kite’s business and at the end of the meeting Milligan
13 and Martin informed Defendant Beldegrun that Gilead would be willing to increase its
14 offer to \$160 per share in cash. Defendant Beldegrun again expressed disappointment
15 with the offer price but agreed to facilitate a meeting between Company management
16 and Gilead’s management team to further demonstrate why Kite would not be willing to
17 engage in a transaction at that price level.

18 52. Later that same day, Kite received a letter from Gilead confirming the
19 increased offer price of \$160 per share (the “July 28 Proposal”).

20 53. On July 29, 2017, the Board met and Defendant Beldegrun provided an
21 update on his discussions with Milligan and Martin and the July 28 Proposal. The Board
22 discussed financial forecasts for the Company on a standalone basis (the “Standalone
23 Forecasts”) as well as adjusted forecasts (the “Adjusted Forecasts”) which were
24 developed to share with Gilead.

25 54. On August 1, 2017, Defendant Beldegrun met with Milligan and other
26 representatives of Gilead to discuss Kite’s business model, axi-cel, and the next
27 generation of products Kite had been working on. Following this meeting, Defendant
28 Beldegrun and Milligan met separately to discuss the July 28 Proposal and Defendant

1 Beldegrun again expressed his disappointment with the level of the offer. Milligan
2 responded that it would be difficult for him to request an increase from Gilead's board
3 of directors (the "Gilead Board").

4 55. On August 2, 2017, Milligan emailed Defendant Beldegrun to thank him
5 for the meeting.

6 56. On August 3, 2017, the Transaction Committee met with Centerview and
7 Sullivan & Cromwell to discuss the August 1st meeting and the Standalone Forecasts.

8 57. On August 4, 2017, the Board met with Sullivan & Cromwell and
9 Centerview and received an update on discussions with Gilead as well as the discussions
10 which occurred during the Transaction Committee meeting. The Board then further
11 discussed the Standalone Forecasts. Following this meeting, the Transaction Committee
12 met and discussed how best to respond to Milligan's email, potentially spinning off a
13 segment of the Company relating to research on T-cell receptors targeting neoantigens
14 and selling the rest to Gilead, and the assumptions made in preparing the Standalone
15 Forecasts.

16 58. On August 7, 2017, Milligan reached out to Defendant Beldegrun and
17 stated he would like to continue discussions. Milligan indicated that Gilead might be
18 able to increase its offer, but did not indicate by how much. Defendant Beldegrun
19 agreed to arrange a meeting between Gilead's management and Company management
20 on August 11, 2017.

21 59. On August 9, 2017, the Transaction Committee met with Sullivan &
22 Cromwell and Centerview to conduct an in-depth review of the Standalone Forecasts
23 and the latest discussions with Gilead. The Transaction Committee then determined that
24 if a compelling price could be reached, a sale of Kite might provide significant value to
25 Kite's stockholders and eliminate risks associated with continuing Kite's current
26 business plan, including as it relates to the approval and commercial launch of axi-cel.
27 The Transaction Committee also discussed how Gilead was the most likely purchaser to
28 be able to afford an acquisition of Kite given its cash on hand, significant interest in

1 developing an oncology business, and its desire to complete the transaction prior to the
2 commercial launch of axi-cel. The Transaction Committee then determined that
3 Defendant Beldegrun was in the best position to negotiate with Gilead.

4 60. On August 11, 2017, Gilead management and Company management met
5 to discuss Gilead's assumptions underlying its financial modeling for Kite.

6 61. On August 12, 2017, the Board met with Sullivan & Cromwell and
7 Centerview to discuss the status of negotiations with Gilead, and the Board authorized
8 Defendant Beldegrun to continue discussions with Gilead so long as its next offer was
9 sufficiently compelling. The Board also discussed previous meetings that the Company
10 had with other market participants and whether it might be useful to reach out to different
11 biopharmaceutical companies to see if there were others interested in a potential
12 acquisition of Kite. However, the Board determined that doing so would unnecessarily
13 distract Company management while they continued running Kite's business. During
14 this meeting, a member of the Transaction Committee also informed the Board that the
15 Transaction Committee had engaged Centerview as its advisor and the Board authorized
16 Defendant Beldegrun to execute and deliver an engagement letter with Centerview.

17 62. On August 16, 2017, Defendant Beldegrun met with Milligan to discuss
18 the next steps and they agreed that the next meeting should include Martin.

19 63. On August 18, 2017, Defendant Beldegrun met with Milligan and Martin.
20 Milligan and Martin informed Defendant Beldegrun that Gilead was prepared to raise
21 its offer to \$176 per share and that Gilead would be prepared to move quickly. Defendant
22 Beldegrun responded that he believed Kite's early stage pipeline had significant
23 potential value and that Gilead should increase its offer to \$180 per share. Milligan
24 indicated that he would be willing to recommend that offer price to the Gilead Board.
25 Martin and Milligan then informed Defendant Beldegrun that they would submit a
26 formal offer letter with the \$180 per share price and a draft Merger Agreement that same
27 evening.
28

1 64. Later that evening, Kite received confirmation from Gilead in writing of the
2 increased offer for \$180 per share (the “August 18 Proposal”) and a draft Merger
3 Agreement was sent to Defendant Beldegrun.

4 65. On August 19, 2017, the Transaction Committee met with Sullivan &
5 Cromwell and Centerview to discuss the August 18 Proposal. Defendant Beldegrun
6 informed the Transaction Committee of his communications with Milligan and Martin
7 and stated that Gilead was unwilling to discuss a potential spin-off of a separate entity
8 that would focus on early-stage research of T cell receptors targeting neoantigens.
9 During this meeting, the Transaction Committee also reviewed the terms of the draft
10 Merger Agreement with Sullivan & Cromwell.

11 66. On August 20, 2017, the Board met with Sullivan & Cromwell and
12 Centerview and received an update on negotiations with Gilead. The Board
13 unanimously recommended that Company management continue and complete
14 negotiations with Gilead. Following this meeting, Defendant Beldegrun called Milligan
15 to inform him that Kite was interested in continuing to provide disclosures to, and have
16 additional discussions with, Gilead.

17 67. Also on August 20, 2017, Kite provided Gilead with access to a data room
18 for Gilead to perform its confirmatory due diligence investigation of the Company.
19 Gilead continued to perform due diligence on Kite up until the execution of the Merger
20 Agreement.

21 68. On August 22, 2017, Sullivan & Cromwell delivered comments on the draft
22 Merger Agreement to Gilead’s outside counsel, Skadden, Arps, Slate, Meagher & Flom
23 LLP (“Skadden Arps”) and the two firms discussed the terms of the transaction over the
24 next several days.

25 69. On August 24, 2017, Defendant Beldegrun and Milligan spoke and
26 discussed strategies concerning the retention of Kite employees after the closing of the
27 transaction.

28

1 70. On August 26, 2017, the Transaction Committee met with Sullivan &
2 Cromwell and Centerview to discuss the draft Merger Agreement. The final negotiations
3 on the transaction were completed overnight on August 26, 2017.

4 71. On August 27, 2017, Defendant Beldegrun received a call from Milligan
5 during which Milligan informed him that the Gilead Board approved entering into the
6 Merger Agreement. Shortly thereafter, the Board met with Sullivan & Cromwell and
7 Centerview and Centerview reviewed its financial analysis of the \$180.00 per share offer
8 price and rendered its oral opinion. Following additional consideration of the Merger
9 Agreement the Board unanimously approved the Merger Agreement and resolved to
10 recommend that Kite stockholders tender their shares in support of the Proposed
11 Transaction.

12 72. Following the Board meeting, Kite, Gilead, and Purchaser executed the
13 Merger Agreement.

14 73. Before the opening of the NASDAQ Stock Market on August 28, 2017,
15 Kite and Gilead issues a joint press release announcing the execution of the Merger
16 Agreement, which stated the following relevant information:

17 FOSTER CITY, Calif. & SANTA MONICA, Calif.--(BUSINESS
18 WIRE)--Gilead Sciences, Inc. (Nasdaq: GILD) and Kite Pharma, Inc.
19 (Nasdaq: KITE) announced today that the companies have entered into a
20 definitive agreement pursuant to which Gilead will acquire Kite for
21 \$180.00 per share in cash. The transaction, which values Kite at
22 approximately \$11.9 billion, was unanimously approved by both the
Gilead and Kite Boards of Directors and is anticipated to close in the
fourth quarter of 2017. The transaction will provide opportunities for
diversification of revenues, and is expected to be neutral to earnings by
year three and accretive thereafter.

23 Kite is an industry leader in the emerging field of cell therapy, which uses
24 a patient's own immune cells to fight cancer. The company has
25 developed engineered cell therapies that express either a chimeric antigen
26 receptor (CAR) or an engineered T cell receptor (TCR), depending on
27 the type of cancer. Kite's most advanced therapy candidate, axicabtagene
28 ciloleucel (axi-cel), is a CAR T therapy currently under priority review
by the U.S. Food and Drug Administration (FDA). It is expected to be
the first to market as a treatment for refractory aggressive non-Hodgkin
lymphoma, which includes diffuse large B-cell lymphoma (DLBCL),
transformed follicular lymphoma (TFL) and primary mediastinal B-cell
lymphoma (PMBCL). The FDA has set a target action date of November
29, 2017 under the Prescription Drug User Fee Act (PDUFA). A

1 marketing authorization application (MAA) has also been filed for axi-
2 cel for the treatment of relapsed/refractory DLBCL, TFL and PMBCL
3 with the European Medicines Agency (EMA), representing the first
4 submission in Europe for a CAR T therapy. Approval in Europe is
5 expected in 2018. Kite has additional candidates in clinical trials in both
6 hematologic cancers and solid tumors, including KITE-585, a CAR T
7 therapy candidate that targets BCMA expressed in multiple myeloma.

8 “The acquisition of Kite establishes Gilead as a leader in cellular therapy
9 and provides a foundation from which to drive continued innovation for
10 people with advanced cancers,” said John F. Milligan, PhD, Gilead’s
11 President and Chief Executive Officer. “The field of cell therapy has
12 advanced very quickly, to the point where the science and technology
13 have opened a clear path toward a potential cure for patients. We are
14 greatly impressed with the Kite team and what they have accomplished,
15 and share their belief that cell therapy will be the cornerstone of treating
16 cancer. Our similar cultures and histories of driving rapid innovation in
17 order to bring more effective and safer products to as many patients as
18 possible make this an excellent strategic fit.”

19 Research and development as well as the commercialization operations
20 for Kite will remain based in Santa Monica, California, with product
21 manufacturing remaining in El Segundo, California.

22 “From the release of our pivotal data for axi-cel, to our potential approval
23 by the FDA, this is a year of milestones. Each and every accomplishment
24 is a reflection of the talent that is unique to Kite. We are excited that
25 Gilead, one of the most innovative companies in the industry, recognized
26 this value and shares our passion for developing cutting-edge and
27 potentially curative therapies for patients,” said Arie Belldgrun, MD,
28 FACS, Chairman, President and Chief Executive Officer of Kite. “CAR
T has the potential to become one of the most powerful anti-cancer agents
for hematologic cancers. With Gilead’s expertise and support, we hope
to fulfill that potential by rapidly accelerating our robust pipeline and
next-generation research and manufacturing technologies for the benefit
of patients around the world.”

19 ***The Recommendation Statement Misleads Kite Stockholders by Omitting Material*** 20 ***Information***

21 74. On September 5, 2017, Kite filed a materially misleading Recommendation
22 Statement with the SEC which was designed to convince stockholders to tender their
23 shares to Gilead. The Recommendation Statement is rendered misleading by the
24 omission of critical information concerning potential conflicts of interest faced by Kite
25 senior management when leading the search for strategic alternatives that ultimately
26 resulted in the execution of the Merger Agreement, Centerview’s financial analysis
27 conducted in reaching its fairness opinion, and Kite’s financial projections. As such, the
28 Recommendation Statement, which recommends that the Company’s stockholders

1 tender their shares in support of the Proposed Transaction, misrepresents and/or omits
2 material information in violation of Sections 14(d)(4), 14(e), and 20(a) of the Exchange
3 Act.

4 ***Potential Conflicts Facing Company Management and Directors***

5 75. The Recommendation Statement contains material misrepresentations and
6 omissions regarding employment negotiations taking place during the period in which
7 the Proposed Transaction was being negotiated.

8 76. The Recommendation Statement states that over several days in late
9 August 2017, Sullivan & Cromwell, Skadden Arps, Gilead, and Kite negotiated various
10 terms, including “provisions relating to employees” and that on August 24, 2017,
11 Defendant Beldegrun spoke with Milligan and Gilead’s Executive Vice President,
12 Human Resources, Katie L. Watson about “strategies with respect to retention of
13 employees.” However, the Recommendation Statement fails to disclose the timing of
14 any indications by Gilead that it intended to retain Kite management. More specifically,
15 the Recommendation Statement fails to disclose when or how Gilead and Kite negotiated
16 the decision to retain management such as: Chang; Timothy L. Moore, Executive Vice
17 President, Technical Operations; Shawn Tomasello, Chief Commercial Officer; and
18 Jeffrey Wiezorek, Senior Vice President, Clinical Development. Such absence is
19 notably apparent because elsewhere the Recommendation Statement explicitly states
20 that “Gilead has separately agreed to establish individual retention plans for each of
21 Dr. Chang, Mr. Moore, Ms. Tomasello and Dr. Wiezorek.” While the Recommendation
22 Statement clarifies that the terms of these agreements have not yet been established, it
23 fails to disclose how and when such agreements were reached in the first place.

24 77. While formal agreements on the issue may not have been reached, it is clear
25 that some communication on the issue took place and the Recommendation Statement
26 fails to disclose such communications. Any communications—even one-sided written
27 indications in proposals or other written communications—concerning post-merger
28 employment between Gilead or its affiliates and any Kite officers, directors, or

1 employees, during the sales process, would be material to a stockholder's decision as to
2 whether to tender their shares. Such communications give rise to substantial undisclosed
3 conflicts of interests.

4 78. Thus, the Recommendation Statement materially misleads Kite
5 stockholders by omitting material facts concerning the timing and nature of
6 communications between Gilead and the Board or any Kite senior management
7 regarding post-transaction retention of Kite's management and/or directors. Kite
8 stockholders are currently led to believe that the sales process was free from such
9 conflicts of interest, and that no negotiations regarding management retention occurred.
10 The omitted information relating to the timing, content, and parties involved in these
11 communications concerning the post-transaction retention of Kite's management and/or
12 directors would significantly alter the total mix of information that Defendants have
13 disclosed to solicit stockholder support of the Proposed Transaction. The conflicts of
14 interests created and fostered by such communications would affect the stockholders'
15 perception and analysis of the entire process and the ultimate fairness of the Proposed
16 Transaction. Thus the statements in the Recommendation Statement, relating to Kite's
17 senior management and/or director's post-transaction retention, are rendered materially
18 misleading by these omissions.

19 ***Centerview's Financial Analysis***

20 79. The Recommendation Statement describes Centerview's fairness opinion
21 and the various valuation analyses it performed in support of its opinion. However, the
22 description of Centerview's fairness opinion and analyses fails to include key inputs and
23 assumptions underlying these analyses. Without this information, as described below,
24 Kite's public stockholders are unable to fully understand these analyses and, thus, are
25 unable to determine what weight, if any, to place on Centerview's fairness opinion in
26 determining whether or not to tender their shares. This omitted information, if disclosed,
27 would significantly alter the total mix of information available to Kite's stockholders.
28

1 80. With respect to Centerview's *Discounted Cash Flow Analysis*, the
2 Recommendation Statement fails to disclose: (i) the items Centerview adjusted for in
3 conducting its analysis, including: (a) capital expenditures, (b) depreciation and
4 amortization, (c) changes in net working capital, (d) R&D and milestone expenses
5 associated with early-stage platform programs, (e) platform value related to the
6 Company's neoantigen platform and allogeneic platform, and (f) future net operating
7 losses; (ii) the inputs and assumptions underlying the range of discount rates of 10.0%
8 to 12.0%; and (iii) Centerview's basis for assuming that after December 31, 2032,
9 unlevered free cash flows would decline in perpetuity at a rate of free cash flow decline
10 of 50.0% year-over-year.

11 81. With respect to Centerview's *Selected Public Company Analysis*, the
12 Recommendation Statement omits the individual multiples and financial metrics for the
13 companies observed by Centerview in its analysis.

14 82. With respect to Centerview's *Selected Precedent Transactions Analysis*,
15 the Recommendation Statement omits the individual multiples for each of the
16 comparable transactions. The disclosure of such multiples is necessary because they are
17 a crucial element of these analyses, as the analysis is based on comparison and relative
18 value. Without such disclosure, stockholders are unable to determine whether the range
19 of multiples selected by Centerview reflects appropriately comparable transactions to
20 the Proposed Transaction.

21 83. Failure to disclose the foregoing information renders the statements in the
22 Recommendation Statement made by Centerview pertaining to the fairness of the
23 Proposed Transaction misleading. Without such information, the Company's
24 stockholders are being misled as to the reliability of and basis for Centerview's fairness
25 opinion.
26
27
28

1 ***Misleading Statements and Omissions Regarding the Company's Financial***
2 ***Projections***

3 84. The Recommendation Statement fails to disclose material information
4 concerning the Company's financial projections which were utilized by Centerview in
5 performing the analyses underpinning its fairness opinion.

6 85. With respect to the *Adjusted Forecasts*, the Recommendation Statement
7 states that the "Adjusted Forecasts include long-term projections of total net product
8 revenue in the United States and European Union," however the Recommendation
9 Statement discloses only one category of projections, "Total U.S. and E.U. net product
10 revenue." Given that Gilead based much of its initial pursuit of Kite on the Adjusted
11 Forecasts, any additional projected metrics, if calculated, are material to stockholders.
12 Alternatively, if this were the only metric calculated for the Adjusted Forecasts, the
13 Recommendation Statement should clarify its description of the Adjusted Forecasts.

14 86. With respect to the *Standalone Forecasts*, the Recommendation Statement
15 discloses a non-GAAP accounting metrics for projected financial information over the
16 years 2017E to 2032E: Total EBIT. However, providing this non-GAAP metric without
17 disclosing all line item metrics used to calculate it, or otherwise reconciling the non-
18 GAAP projection to the most comparable GAAP equivalent, makes the provided
19 disclosures materially incomplete and misleading.

20 87. Additionally, the Recommendation Statement discloses the value of the
21 Company's unlevered free cash flows ("UFCF") and defines the non-GAAP metric as
22 earnings before interest, taxes, depreciation and amortization, less capital expenditures,
23 less changes in net working capital and less tax expense, but fails to provide the value of
24 the underlying line items: (i) capital expenditures; (ii) changes in net working capital;
25 (iii) depreciation and amortization; (iv) taxes; (v) tax expense; (vi) earnings; and
26 (vii) interest. The Recommendation Statement also fails to reconcile UFCF to its most
27 comparable GAAP equivalent.

28

1 88. Non-GAAP measures have no universally understood definition and vary
2 widely between companies depending on the needs of management in promoting their
3 own effect on Company performance. Without these measures, cherry-picking the
4 disclosed projections materially misleads Kite stockholders and renders Centerview's
5 financial analysis materially incomplete and misleading.

6 89. Because of the non-standardized and potentially manipulative nature of
7 non-GAAP measures, when a company discloses information in a recommendation
8 statement that includes non-GAAP financial measures, the Company must also disclose
9 comparable GAAP measures and a quantitative reconciliation of forward-looking
10 information pursuant to Regulation G. 17 C.F.R. § 244.100.

11 90. Indeed, the SEC has repeatedly emphasized that disclosure of non-GAAP
12 projections can be inherently misleading, and has therefore heightened its scrutiny of the
13 use of such projections.¹ In fact, on May 17, 2016, the SEC's Division of Corporation
14 Finance released new and updated Compliance and Disclosure Interpretations
15 ("C&DIs") on the use of non-GAAP financial metrics that demonstrate the SEC is
16 indeed tightening policy.² One of the new C&DIs regarding forward-looking
17 information, such as financial projections, explicitly requires companies to provide *any*
18 reconciling metrics that are available without unreasonable efforts.

19 91. Thus, the above-referenced line-item projections that have been omitted
20 from the Recommendation Statement are precisely the types of "reconciling metrics"
21 that the SEC has recently indicated should be disclosed to render non-GAAP financial
22 projections not misleading to shareholders.

23
24 ¹ See, e.g., Nicolas Grabar and Sandra Flow, *Non-GAAP Financial Measures: The*
25 *SEC's Evolving Views*, Harvard Law School Forum on Corporate Governance and
26 Financial Regulation (June 24, 2016), [https://corpgov.law.harvard.edu/2016/06/24/non-](https://corpgov.law.harvard.edu/2016/06/24/non-gaap-financial-measures-the-secs-evolving-views/)
27 [gaap-financial-measures-the-secs-evolving-views/](https://corpgov.law.harvard.edu/2016/06/24/non-gaap-financial-measures-the-secs-evolving-views/); Gretchen Morgenson, *Fantasy Math*
28 *Is Helping Companies Spin Losses Into Profits*, N.Y. Times, Apr. 22, 2016,
[http://www.nytimes.com/2016/04/24/business/fantasy-math-is-helping-companies-](http://www.nytimes.com/2016/04/24/business/fantasy-math-is-helping-companies-spin-losses-into-profits.html?_r=0)
[spin-losses-into-profits.html?_r=0](http://www.nytimes.com/2016/04/24/business/fantasy-math-is-helping-companies-spin-losses-into-profits.html?_r=0).

² *Non-GAAP Financial Measures, Compliance & Disclosure Interpretations*, SEC
(May 17, 2016), <https://www.sec.gov/divisions/corpfin/guidance/nongaapinterp.htm>.

1 92. Defendants' failure to provide Kite's stockholders with the foregoing
2 material information renders the financial projections and analyses depicted in the
3 Recommendation Statement materially incomplete and misleading, and constitutes a
4 violation of Sections 14(d), 14(e), and 20(a) of the Exchange Act, and Rule 14d-9
5 promulgated thereunder.

6 93. Accordingly, Plaintiff seeks injunctive and other equitable relief to prevent
7 the irreparable injury that Company stockholders will continue to suffer absent judicial
8 intervention.

9 **CLAIMS FOR RELIEF**

10 **COUNT I**

11 **Claims Against All Defendants for**
12 **Violations of Section 14(e) of the Exchange Act**

13 94. Plaintiff repeats and re-alleges the preceding allegations as if fully set forth
14 herein.

15 95. Section 14(e) of the Exchange Act provides that it is unlawful "for any
16 person to make any untrue statement of a material fact or omit to state any material fact
17 necessary in order to make the statements made, in the light of the circumstances under
18 which they are made, not misleading" 15 U.S.C. § 78n(e).

19 96. As discussed above, Kite filed and delivered the Recommendation
20 Statement to its stockholders, which Defendants knew or recklessly disregarded
21 contained material omissions and misstatements as set forth above.

22 97. Defendants violated Section 14(e) of the Exchange Act by issuing the
23 Recommendation Statement in which they made untrue statements of material facts or
24 failed to state all material facts necessary in order to make the statements made, in light
25 of the circumstances under which they were made, not misleading, in connection with
26 the Tender Offer commenced in conjunction with the Proposed Transaction. Defendants
27 knew or recklessly disregarded that the Recommendation Statement failed to disclose
28

1 material facts necessary in order to make the statements made, in light of the
2 circumstances under which they were made, not misleading.

3 98. The Recommendation Statement was prepared, reviewed, and/or
4 disseminated by Defendants. It misrepresented and/or omitted material facts, including
5 material information about the intrinsic value of the Company and potential conflicts of
6 interest faced by certain Individual Defendants.

7 99. Defendants have caused the Recommendation Statement to be issued with
8 the intention of soliciting stockholder support of the Proposed Transaction.

9 100. In so doing, Defendants made untrue statements of material facts and
10 omitted material facts necessary to make the statements that were made not misleading
11 in violation of Section 14(e) of the Exchange Act. By virtue of their positions within the
12 Company and/or roles in the process and in the preparation of the Recommendation
13 Statement, Defendants were aware of this information and their obligation to disclose
14 this information in the Recommendation Statement.

15 101. The omissions and incomplete and misleading statements in the
16 Recommendation Statement are material in that a reasonable stockholder would consider
17 them important in deciding whether to tender their shares. In addition, a reasonable
18 investor would view the information identified above which has been omitted from the
19 Recommendation Statement as altering the “total mix” of information made available to
20 stockholders.

21 102. Defendants knowingly or with deliberate recklessness omitted the material
22 information identified above from the Recommendation Statement, causing certain
23 statements therein to be materially incomplete and therefore misleading. Indeed, while
24 Defendants undoubtedly had access to and/or reviewed the omitted material information
25 in connection with supporting the Proposed Transaction, they caused it to be omitted
26 from the Recommendation Statement, rendering certain portions of the
27 Recommendation Statement materially incomplete and misleading.

28

1 103. The misrepresentations and omissions in the Recommendation Statement
2 are material to Plaintiff, and Plaintiff and the Class will be deprived of their entitlement
3 to make a fully informed decision if such misrepresentations and omissions are not
4 corrected prior to the expiration of the Tender Offer.

5 **COUNT II**

6 **Claims Against All Defendants for Violations of Section 14(d)(4) of the**
7 **Exchange Act and SEC Rule 14d-9 (17 C.F.R. § 240.14d-9)**

8 104. Plaintiff repeats and re-alleges the preceding allegations as if fully set forth
9 herein.

10 105. Defendants have caused the Recommendation Statement to be issued with
11 the intention of soliciting stockholder support of the Proposed Transaction.

12 106. Section 14(d)(4) of the Exchange Act and SEC Rule 14d-9 promulgated
13 thereunder require full and complete disclosure in connection with tender offers.

14 107. The Recommendation Statement violates Section 14(d)(4) and Rule 14d-9
15 because it omits material facts, including those set forth above, which renders the
16 Recommendation Statement false and/or misleading.

17 108. Defendants knowingly or with deliberate recklessness omitted the material
18 information identified above from the Recommendation Statement, causing certain
19 statements therein to be materially incomplete and therefore misleading. Indeed, while
20 Defendants undoubtedly had access to and/or reviewed the omitted material information
21 in connection with approving the Proposed Transaction, they allowed it to be omitted
22 from the Recommendation Statement, rendering certain portions of the
23 Recommendation Statement materially incomplete and misleading.

24 109. The misrepresentations and omissions in the Recommendation Statement
25 are material to Plaintiff, and Plaintiff and the Class will be deprived of their entitlement
26 to make a fully informed decision if such misrepresentations and omissions are not
27 corrected prior to the expiration of the tender offer.

28

COUNT III

**Claim for Violation of Section 20(a) of the Exchange Act
Against the Individual Defendants**

110. Plaintiff repeats and re-alleges the preceding allegations as if fully set forth herein.

111. The Individual Defendants acted as controlling persons of Kite within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers and/or directors of Kite and participation in and/or awareness of the Company's operations and/or intimate knowledge of the false statements contained in the Recommendation Statement, they had the power to influence and control and did influence and control, directly or indirectly, the decision making of the Company, including the content and dissemination of the various statements that Plaintiff contends are false and misleading.

112. Each of the Individual Defendants was provided with or had unlimited access to copies of the Recommendation Statement alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause them to be corrected.

113. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and therefore, is presumed to have had the power to control and influence the particular transactions giving rise to the violations as alleged herein, and exercised the same. The Recommendation Statement contains the unanimous recommendation of the Individual Defendants to support the Proposed Transaction. They were thus directly involved in the making of the Recommendation Statement.

114. By virtue of the foregoing, the Individual Defendants violated Section 20(a) of the Exchange Act.

115. As set forth above, the Individual Defendants had the ability to exercise control over and did control a person or persons who have each violated Section 14(d)

1 of the Exchange Act and Rule 14d-9, by their acts and omissions as alleged herein. By
2 virtue of their positions as controlling persons, these defendants are liable pursuant to
3 Section 20(a) of the Exchange Act. As a direct and proximate result of the Individual
4 Defendants' conduct, Plaintiff and the Class are threatened with irreparable harm.

5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, Plaintiff prays for judgment and relief as follows:

7 A. Declaring that this action is properly maintainable as a class action and
8 certifying Plaintiff as the Class representative and her counsel as Class counsel;

9 B. Declaring that the Recommendation Statement is materially false or
10 misleading;

11 C. Preliminarily and permanently enjoining Defendants and all persons acting
12 in concert with them from proceeding with, consummating, or closing the Proposed
13 Transaction;

14 C. In the event Defendants consummate the Proposed Transaction, rescinding
15 it and setting it aside or awarding Plaintiff and the Class rescissory damages;

16 D. Directing the Individual Defendants to disseminate a Recommendation
17 Statement that does not contain any untrue statements of material fact and that states all
18 material facts required in it or necessary to make the statements contained therein not
19 misleading;

20 E. Declaring that Defendants violated Sections 14(d)(4), 14(e), and/or 20(a)
21 of the Exchange Act, as well as Rule 14d-9 promulgated thereunder;

22 F. Awarding Plaintiff the costs of this action, including reasonable allowance
23 for Plaintiff's attorneys' and experts' fees; and

24 G. Granting such other and further relief as this Court may deem just and
25 proper.

JURY DEMAND

Plaintiff respectfully requests a trial by jury on all issues so triable.

Dated: September 11, 2017

LEVI & KORSINSKY, LLP

By: /s/Rosemary M. Rivas
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Counsel for Plaintiff Merry Axelrod

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CERTIFICATION OF PLAINTIFF PURSUANT TO FEDERAL SECURITIES LAWS

I, Merry Axelrod, declare as to the claims asserted under the federal securities laws, as follows:

1. I have reviewed the Complaint and authorized its filing.
2. I did not purchase the securities that are the subject of this Complaint at the direction of Plaintiffs' counsel or in order to participate in this litigation.
3. I am willing to serve as a representative party on behalf of the Class, including providing testimony at deposition and trial, if necessary.
4. I currently hold shares of Kite Pharma, Inc. My purchase history is as follows:

Purchase Date	Stock Symbol	Shares Transacted	Price Per Share
4/8/17	KITE	3	82.38
5/4/17	KITE	12	83.978

5. During the three years prior to the date of this Certification, I have not participated nor have I sought to participate, as a representative in any class action suit in the United States District Courts under the federal securities laws.

6. I have not received, been promised or offered, and will not accept, any form of compensation, directly or indirectly, for prosecuting or serving as a representative party in this class action, except for: (i) such damages or other relief as the Court may award to me as my pro rata share of any recovery or judgment; (ii) such reasonable fees, costs or other payments as the Court expressly approves to be paid to or on behalf of me; or (iii) reimbursement, paid by my attorneys, of actual or reasonable out-of-pocket expenditures incurred directly in connection with the prosecution of this action.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed this September 8, 2017, at LAKE FOREST, CA.

Name: Merry Axelrod

Signed: 

IP: 72.52.130.243

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Kite Pharma, Gilead Sciences Face Securities Suit Over Potential Merger](#)
