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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

GLENN PARR, Plaintiff, v. FORTY SEVEN, INC., KRISTINE M. BALL, JEFFREY W. BIRD, IAN T. CLARK, DENNIS J. HENNER, RAVINDRA MAJETI, MARK MCCAMISH and IRVING L. WEISSMAN, Defendants.	Case No._____ **COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS** JURY TRIAL DEMANDED

Plaintiff Glenn Parr ("Plaintiff"), upon information and belief, including an examination and inquiry conducted by and through his counsel, except as to those allegations pertaining to Plaintiff, which are alleged upon personal belief, alleges the following for his Complaint:

NATURE OF THE ACTION

1. Plaintiff brings this action against Forty Seven, Inc. ("Forty Seven" or the "Company") and the members of its Board of Directors (the "Board" or the "Individual Defendants") for their

violations of Sections 14(e) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§ 78n(e), 78t(a), arising out of their attempt to sell the Company to Gilead Sciences, Inc. ("Gilead") via a tender offer (the "Offer") (the "Proposed Transaction").

2. On March 2, 2020, the Company announced it had entered into an Agreement and Plan of Merger (the "Merger Agreement") pursuant to which Forty Seven stockholders will receive $95.50 in cash for each share of Forty Seven common stock held.

3. On March 10, 2020, Forty Seven filed a Schedule 14D-9 Solicitation/Recommendation Statement (the "14D-9") with the SEC. The 14D-9 is materially deficient and misleading because, *inter alia*, it fails to disclose material information regarding: (i) Forty Seven management's financial projections, relied upon by the Company's financial advisor, Centerview Partners LLC ("Centerview"), in its financial analyses; (ii) the data and inputs underlying the financial valuation analyses that support the fairness opinion provided by Centerview; and (iii) Company insiders' potential conflicts of interest. Accordingly, without additional information the 14D-9 is materially misleading in violation of federal securities laws.

4. The expiration of the Offer is forthcoming. Under the Merger Agreement, following successful completion of the Offer, the Proposed Transaction will be consummated. For these reasons and as set forth in detail herein, Plaintiff seeks to enjoin the expiration of the Offer unless and until the material information discussed below is disclosed to the holders of the Company common stock, or, in the event the Proposed Transaction is consummated, to recover damages resulting from the defendants' violations of the Exchange Act.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the claims asserted herein for violations of Sections 14(e) and 20(a) of the Exchange Act pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. § 1331 (federal question jurisdiction).

6. This Court has jurisdiction over the defendants because each defendant is either a corporation that conducts business in and maintains operations within this District, or is an individual with sufficient minimum contacts with this District so as to make the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Plaintiff's claims arose in this District, where a substantial portion of the actionable conduct took place, where most of the documents are electronically stored, and where the evidence exists. Forty Seven is incorporated in Delaware and is headquartered in this District. Moreover, each of the Individual Defendants, as Company officers or directors, either resides in this District or has extensive contacts within this District.

PARTIES

8. Plaintiff is, and has been at all times relevant hereto, a continuous stockholder of Forty Seven.

9. Defendant Forty Seven is a Delaware corporation with its principal executive offices located at 1490 O'Brien Drive, Suite A, Menlo Park, CA 94025. Forty Seven's common stock is traded on the NASDAQ Global Select Market under the ticker symbol "FTSV."

10. Defendant Kristine M. Ball ("Ball") has served as a director of the Company since February 2018.

11. Defendant Jeffrey W. Bird ("Bird") has served as a director of the Company since June 2015.

12. Defendant Ian T. Clark ("Clark") has served as a director of the Company since April 2018.

13. Defendant Dennis J. Henner ("Henner") has served as a director of the Company since November 2015.

14. Defendant Ravindra Majeti ("Majeti") is a co-founder of Forty Seven and has served as a director of the Company since May 2015.

15. Defendant Mark McCamish ("McCamish") has served as President, Chief Executive Officer and a director of the Company since May 2017.

16. Defendant Irving L. Weissman ("Weissman") is a co-founder of Forty Seven and has served as a director of the Company since May 2015.

17. Defendants identified in paragraphs 10 to 16 are collectively referred to herein as the "Board" or the "Individual Defendants."

18. Relevant non-party Gilead is a research-based biopharmaceutical company that discovers, develops and commercializes innovative medicines in areas of unmet medical need. Gilead's common stock is traded on the NASDAQ Global Select Market under the ticker symbol "GILD."

SUBSTANTIVE ALLEGATIONS

Background of the Company and Proposed Transaction

19. Forty Seven, headquartered in Menlo Park, California, is a clinical-stage immuno-oncology company focused on developing novel therapies to activate macrophages in the fight against cancer. Forty Seven was founded in 2014 by leading scientists at Stanford University who uncovered the fundamental role of CD47 in cancer evasion. The Company believes its lead product candidate, magrolimab (formerly known as 5F9), can transform the treatment of cancer. Magrolimab has demonstrated promising activity in multiple Phase 1b/2 clinical trials in which the Company has treated over 400 cancer patients with solid or hematologic tumors. The Company is also preparing to advance two additional investigational compounds in clinical testing: FSI-174, an anti-cKIT antibody, is being developed alone or in combination with magrolimab as a novel, all-antibody conditioning regimen to address the limits of current stem cell transplantation conditioning regimens;

and FSI-189, an anti- SIRPα antibody, is being developed for the treatment of cancer and certain non-oncology conditions, including transplantation conditioning.

20. Additionally, on March 11, 2020, the Company and Rocket Pharmaceuticals, Inc. ("Rocket") announced that they had entered into a research collaboration to pursue clinical proof-of-concept for Forty Seven's novel antibody-based conditioning regimen, FSI-174 (anti-cKIT antibody) plus magrolimab (anti-CD47 antibody), with Rocket's *ex vivo* lentiviral vector hematopoietic stem cell ("LVV HSC") gene therapy, RP-L102. The initial collaboration will evaluate this treatment regimen in Fanconi Anemia ("FA"), a genetic disease that affects patients' capacity to produce blood cells and is associated with an increased risk of leukemia and other neoplasms. RP-L102, Rocket's gene therapy approach for FA, involves treatment with patients' own gene-corrected blood forming stem cells (hematopoietic stem cells, or HSCs).

21. On March 1, 2020, Forty Seven and Gilead issued a joint press release announcing the Proposed Transaction. The press release states, in relevant part:

> Foster City, Calif. and Menlo Park, Calif. — March 2, 2020 — Gilead Sciences, Inc. (Nasdaq: GILD) and Forty Seven, Inc. (Nasdaq: FTSV) announced today that the companies have entered into a definitive agreement pursuant to which Gilead will acquire Forty Seven for $95.50 per share in cash. The transaction, which values Forty Seven at approximately $4.9 billion, was unanimously approved by both the Gilead and Forty Seven Boards of Directors and is anticipated to close during the second quarter of 2020, subject to regulatory approvals and other customary closing conditions.
>
> Through the addition of Forty Seven's investigational lead product candidate, magrolimab, the acquisition will strengthen Gilead's immuno-oncology research and development portfolio. Magrolimab is a monoclonal antibody in clinical development for the treatment of several cancers for which new, transformative medicines are urgently needed, including myelodysplastic syndrome (MDS), acute myeloid leukemia (AML) and diffuse large B-cell lymphoma (DLBCL). The investigational therapy targets CD47, a "do not eat me" signal that allows cancer cells to avoid destruction thereby permitting the patient's own innate immune system to engulf and eradicate those cancer cells. Forty Seven presented promising results of a Phase 1b study of magrolimab in patients with MDS and AML at the American Society of Hematology meeting in December 2019. Magrolimab has the potential to be a first-in-class therapy.

"This agreement builds on Gilead's presence in immuno-oncology and adds significant potential to our clinical pipeline," said Daniel O'Day, Chairman and Chief Executive Officer of Gilead Sciences. "Magrolimab complements our existing work in hematology, adding a non-cell therapy program that complements Kite's pipeline of cell therapies for hematological cancers. With a profile that lends itself to combination therapies, magrolimab could potentially have transformative benefits for a range of tumor types. We are looking forward to working with the highly experienced team at Forty Seven to help patients with some of the most challenging forms of cancer."

"This is an exciting day for patients who may one day benefit from future anti-CD47 therapies and other immuno-oncology treatments based on our research and an exciting time for Forty Seven as this allows us to achieve our vision of helping patients defeat their cancer," commented Mark McCamish, MD, PhD, President and Chief Executive Officer of Forty Seven. "We are pleased to join Gilead and believe that by combining our scientific expertise with Gilead's strength in developing treatments that modify the immune system, we will be able to more rapidly advance our therapies."

Magrolimab

Forty Seven is initially studying magrolimab in patients with MDS and AML. Additional studies are ongoing in non-Hodgkin lymphoma (NHL) and solid tumors. Magrolimab has been granted Fast Track designation by the U.S. Food and Drug Administration (FDA) for the treatment of MDS and AML, and for the treatment of relapsed or refractory DLBCL and follicular lymphoma, two forms of B-cell NHL. Magrolimab has also been granted Orphan Drug designation by the FDA for the treatment of MDS and AML and by the European Medicines Agency for the treatment of AML.

More than 400 patients have received the compound to date through clinical trials.

Ongoing Phase 1b Clinical Trial

In December 2019, Forty Seven presented promising results of a Phase 1b trial evaluating magrolimab in combination with azacitidine in untreated patients with higher risk MDS and untreated patients with AML, who are ineligible for induction chemotherapy. This has led to the initiation of a potential registrational cohort in MDS. All patients received a 1 mg/kg priming dose of magrolimab, coupled with intrapatient dose escalation to mitigate on-target anemia. Patients were then treated with full doses of azacitidine and magrolimab maintenance doses of 30 mg/kg weekly.

As of the data cutoff of November 18, 2019, 62 patients had been treated with the combination in the Phase 1b portion of the trial, including 35 patients with MDS and 27 patients with AML.

Clinical Activity Data

As of the data cutoff, 46 patients were evaluable for response assessment, including 24 patients with untreated higher-risk MDS and 22 patients with untreated AML, who were ineligible for induction chemotherapy.

- In higher-risk MDS, the overall response rate (ORR) was 92 percent, with 12 patients (50 percent) achieving a complete response (CR), eight patients (33 percent) achieving a marrow CR and two patients (8 percent) achieving hematologic improvement. Two patients (8 percent) had stable disease.
- In untreated AML, the ORR was 64 percent, with nine patients (41 percent) achieving a CR, three patients (14 percent) achieving a CR with complete blood count recovery (CRi) and one patient (5 percent) achieving a morphologic leukemia-free state (MLFS). Seven patients (32 percent) had stable disease and one patient (5 percent) had progressive disease.
- The median time to response among MDS and AML patients treated with the combination was 1.9 months.
- Median duration of response and median overall survival have not been reached for either MDS or AML patients, with a median follow-up of 6.4 months (range 2.0 to 14.4 months) for MDS and 8.8 months (range 1.9 to 16.9 months) for AML.

Safety Data

As of the data cutoff, the combination of magrolimab and azacitidine was well-tolerated, with no evidence of increased toxicities compared to azacitidine alone. Adverse events (AEs) were consistent with prior clinical experience. No deaths were observed in the first 60 days on combination treatment and only one patient out of 62 (1.6 percent) discontinued treatment due to a treatment-related AE.

Additional Programs

Beyond magrolimab, Forty Seven is preparing to advance two additional investigational compounds into clinical testing. FSI-174, an anti-cKIT antibody, is being developed in combination with magrolimab as a novel, all-antibody conditioning regimen to address the limitations of current stem cell transplantation conditioning regimens. FSI-189, an anti-SIRPα antibody, is being developed for the treatment of cancer, as well as certain non-oncology settings, including transplantation conditioning.

Terms of the Transaction

Under the terms of the merger agreement, a wholly-owned subsidiary of Gilead will promptly commence a tender offer to acquire all of the outstanding shares of Forty Seven's common stock at a price of $95.50 per share in cash. Following successful completion of the tender offer, Gilead will acquire all remaining shares not tendered in the offer through a second step merger at the same price as in the tender offer.

Consummation of the tender offer is subject to a minimum tender of at least a majority of outstanding Forty Seven shares plus Forty Seven shares underlying vested options, the expiration or termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act and other customary conditions.

> Gilead plans to pay all cash consideration for the transaction. The tender offer is not subject to a financing condition.

The 14D-9 Misleads Forty Seven Stockholders by Omitting Material Information

28. On March 10, 2020, the Company filed the materially misleading and incomplete 14D-9 with the SEC. Designed to convince the Company's stockholders to tender their shares in the Offer, the 14D-9 is rendered misleading by the omission of critical information concerning: (i) Forty Seven management's financial projections, relied upon by the Company's financial advisor Centerview in its financial analyses; (ii) the data and inputs underlying the financial valuation analyses that support the fairness opinion provided by Centerview; and (iii) Company insiders' potential conflicts of interest.

Material Omissions Concerning Forty Seven's Financial Projections

29. The 14D-9 omits material information regarding the Company's financial projections.

30. For example, the 14D-9 sets forth:

> The Projections were created by the Company's management based on their assumptions about the Company's future business, ***including applying a risk adjusted probability of success with respect to developing and commercializing (i) magrolimab and other licensed antibodies under the terms of the license and collaboration agreement with Ono Pharmaceutical Co., Ltd, (ii) magrolimab for each of the indications currently being investigated by the Company and (iii) the Company's current pipeline of other drug candidates in the early stages of research and development for the indications currently being investigated by the Company***. The assumptions included in the Projections also reflect expected research and development, sales and marketing and general administrative expenses, and certain risk-based adjustments based management's subjective judgment. The Projections further reflect numerous estimates and assumptions made by the Company's management with respect to general economic, competitive, regulatory, reimbursement and other market and financial conditions and other future events, all of which are difficult to predict and many of which are beyond the Company's control.

14D-9 at 26 (emphasis added). The 14D-9 fails to disclose management's estimate of the risk adjusted probability of success with respect to developing and commercializing (i) magrolimab and other licensed antibodies under the terms of the license and collaboration agreement with Ono

Pharmaceutical Co., Ltd; (ii) magrolimab for each of the indications currently being investigated by the Company; and (iii) the Company's current pipeline of other drug candidates in the early stages of research and development for the indications currently being investigated by the Company.

31. The 14D-9 also fails to disclose: (i) the un-risked projections; (ii) the Company's non-cash compensation based expense over the projection period that was treated as a cash expense in the calculation of the Company's unlevered free cash flows; and (iii) a breakdown of the specific revenues and unlevered free cash flow from (a) magrolimab and other licensed antibodies under the terms of the license and collaboration agreement with Ono Pharmaceutical Co., Ltd, (b) magrolimab for each of the indications currently being investigated by the Company, and (c) the Company's current pipeline of other drug candidates in the early stages of research and development for the indications currently being investigated by the Company.

32. The omission of this information renders certain portions of the 14D-9 materially misleading, including, inter alia, the following section of the 14D-9: "Management Projections."

Material Omissions Concerning Centerview's Financial Analyses

33. The 14D-9 describes Centerview's fairness opinion and the various valuation analyses performed in support of its opinion. However, the description of Centerview's fairness opinion and analyses fails to include key inputs and assumptions underlying these analyses. Without this information, as described below, Forty Seven's public stockholders are unable to fully understand these analyses and, thus, are unable to determine what weight, if any, to place on Centerview's fairness opinion in determining whether to tender their shares in the Proposed Transaction or seek appraisal.

34. With respect to Centerview's *Discounted Cash Flow Analysis*, the 14D-9 fails to disclose: (i) quantification of the individual inputs and assumptions underlying the discount rate range of 12.0% to 14.0%; (ii) the basis for assuming that unlevered free cash flows would decline in

perpetuity after December 31, 2035 at a rate of free cash flow decline of 60% year over year; and (iii) the fully diluted shares outstanding of Forty Seven (using the treasury method and taking into account outstanding in-the-money options) as of March 1, 2020.

35. The omission of this information renders certain portions of the 14D-9 materially misleading, including, inter alia, the following section of the 14D-9: "Opinion of the Company's Financial Advisor."

Material Omissions Concerning Company Insiders' Potential Conflicts of Interest

36. The 14D-9 fails to disclose material information concerning the potential conflicts of interest faced by Company insiders.

37. For example, the 14D-9 sets forth:

> It is possible that Continuing Employees, including executive officers, will enter into new compensation arrangements with Gilead or the Surviving Corporation. Such arrangements may include agreements regarding future terms of employment, the right to receive equity or equity-based awards of Gilead and/or to receive retention bonus awards. Any such arrangements are currently expected to be entered into after the completion of the Offer and will not become effective until after the Merger is completed, if at all. There can be no assurance that the applicable parties will reach an agreement on any terms, or at all and neither the Offer nor the Merger is conditioned upon any executive officer or director of the Company entering into any such agreement, arrangement or understanding.

Id. at 10. The 14D-9 fails, however, to disclose the specific details of all employment and retention-related discussions and negotiations that occurred between Gilead and Forty Seven executive officers and directors, including who participated in all such communications, when they occurred and their content. The 14D-9 further fails to disclose whether any of Gilead's proposals or indications of interest mentioned management retention, consulting arrangements, cash, stock and co-investment opportunities, or equity participation in the combined company.

38. Communications regarding post-transaction employment and merger-related benefits during the negotiation of the underlying transaction must be disclosed to stockholders. This

information is necessary for stockholders to understand potential conflicts of interest of management and the Board, as that information provides illumination concerning motivations that would prevent fiduciaries from acting solely in the best interests of the Company's stockholders.

39. The omission of this information renders certain portions of the 14D-9 materially misleading, including, inter alia, the following sections of the 14D-9: "Background of the Offer and Merger" and "Future Arrangements."

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

CLAIMS FOR RELIEF

COUNT I

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

41. Plaintiff repeats all previous allegations as if set forth in full.

42. Defendants violated Section 14(e) of the Exchange Act by issuing the 14D-9 in which they made untrue statements of material facts or failed to state all material facts necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, or engaged in deceptive or manipulative acts or practices, in connection with the Offer commenced in conjunction with the Proposed Transaction.

43. Defendants knew that Plaintiff would rely upon their statements in the 14D-9 in determining whether to tender his shares pursuant to the Offer commenced in conjunction with the Proposed Transaction.

44. As a direct and proximate result of these defendants' unlawful course of conduct in violation of Section 14(e) of the Exchange Act, absent injunctive relief from the Court, Plaintiff has

sustained and will continue to sustain irreparable injury by being denied the opportunity to make an informed decision in deciding whether or not to tender his shares.

COUNT II

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

45. Plaintiff repeats all previous allegations as if set forth in full.

46. The Individual Defendants acted as controlling persons of Forty Seven within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers or directors of Forty Seven and participation in or awareness of the Company's operations or intimate knowledge of the false statements contained in the 14D-9 filed with the SEC, 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 which Plaintiff contends are false and misleading.

47. Each of the Individual Defendants was provided with or had unlimited access to copies of the 14D-9 and other statements alleged by Plaintiff to be misleading prior to or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

48. 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 or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same. The 14D-9 at issue contains the unanimous recommendation of each of the Individual Defendants to approve the Proposed Transaction. They were, thus, directly involved in the making of this document.

49. In addition, as the 14D-9 sets forth at length, and as described herein, the Individual Defendants were each involved in negotiating, reviewing, and approving the Proposed Transaction. The 14D-9 purports to describe the various issues and information that they reviewed and considered — descriptions which had input from the Individual Defendants.

50. By virtue of the foregoing, the Individual Defendants have violated section 20(a) of the Exchange Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment and preliminary and permanent relief, including injunctive relief, in his favor on behalf of Forty Seven, and against defendants, as follows:

A. Preliminarily and permanently enjoining defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Proposed Transaction;

B. In the event defendants consummate the Proposed Transaction, rescinding it and setting it aside or awarding rescissory damages to Plaintiff;

C. Directing the Individual Defendants to disseminate a 14D-9 that does not contain any untrue statements of material fact and that states all material facts required in it or necessary to make the statements contained therein not misleading;

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

E. Granting such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all claims and issues so triable.

Dated: March 26, 2020

WEISSLAW LLP

By: */s/ Joel E. Elkins*

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