
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): October 27, 2022

KIROMIC BIOPHARMA, INC.
(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation)	001-39619 (Commission File Number)	46-4762913 (IRS Employer Identification No.)
7707 Fannin Street, Suite 140 Houston, TX (Address of principal executive offices)		77054 (Zip Code)

Registrant's telephone number, including area code (832) 968-4888

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Trading Symbol(s)	Name of Each Exchange on Which Registered
Common Stock, par value \$0.001 par value pershare	KRBP	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01 Entry into a Material Definitive Agreement.

As previously reported, on October 10, 2022, Kiromic BioPharma, Inc. (the “Company”) and certain current and former officers and directors of the Company (together with the Company, the “Defendants”) entered into a Stipulation of Settlement and Mutual Release (the “Initial Settlement Agreement”) with entities related to Empery Asset Management, LP (the “Empery Entities”) and entered into an Initial Settlement Agreement with Sabby Volatility Warrant Master Fund Ltd. (“Sabby”, together with the Empery Entities, the “Plaintiffs”), respectively, in connection with a case filed by the Plaintiffs against the Defendants for alleged violations of Sections 11, 12, and 15 of the Securities Act of 1933, as amended (the “Securities Act”) in connection with the purchase of Company’s common stock through the Company’s public offering that closed on July 2, 2021. Pursuant to the Initial Settlement Agreements, the Plaintiffs and the Defendants agreed to dismiss the case with prejudice against all Defendants (including ThinkEquity, LLC) with no admission of liability (the “Settlement”). As part of the Settlement, the Company agreed to (a) make a \$75,000 cash payment to each of the Empery Entities and Sabby and (b) issue convertible notes (the “Settlement Notes”) in the aggregate principal amount of \$1,656,720 to each of the Empery Entities and Sabby. The Settlement Notes are convertible into shares of the Company’s common stock (the “Conversion Shares”) at an initial conversion price per share of \$0.3068 (the “Conversion Price”), subject to a beneficial ownership limitation equivalent to 9.99% (“Beneficial Ownership Limitation”).

Both Initial Settlement Agreements were conditioned upon the Company obtaining financing no later than October 18, 2022 for aggregate gross proceeds to the Company of not less than \$5 million (the “Conditional Financing”), after which within one business day the parties should promptly submit a joint motion seeking approval of the Initial Settlement Agreements under Section 3(a)(10) of the Securities Act (the “Joint Motion”) from the United States District Court for the Southern District of New York (the “Court”).

On October 27, 2022, the Defendants entered into an Amended Stipulation of Settlement and Mutual Release with the Empery Entities (the “Amended Empery Settlement Agreement”) and Sabby (together with the Amended Empery Settlement Agreement, the “Amended Settlement Agreements”), respectively. Both Amended Settlement Agreements removed the satisfaction of the Conditional Financing as a condition to the Settlement and provided that the parties shall file the Joint Motion no later than October 25, 2022. The Amended Empery Settlement Agreement shall become void if the Court does not approve the Joint Motion by November 15, 2022, subject to extension by the Empery Entities.

On November 2, 2022, the Court granted the Joint Motion, pursuant to which the Settlement Notes will be unrestricted and exempt from the registration requirements of the Securities Act, and the Conversion Shares, when issued upon conversion of the Settlement Notes in accordance with the terms set forth therein, will also be unrestricted and exempt from the registration requirements of the Securities Act.

The foregoing description of the Amended Settlement Agreements is qualified in its entirety by reference to the full text of such Amended Settlement Agreements, copies of which are attached hereto as exhibits 10.1 and 10.2, respectively, and incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities

Reference is made to the disclosure set forth under Item 1.01 above, which disclosure is incorporated herein by reference. The Settlement Notes, in aggregate, shall be convertible into a maximum of 10,800,000 shares of the Company’s common stock, subject to the adjustment of the Conversion Price and the Beneficial Ownership Limitation. The issuance of the Settlement Notes and the Conversion Shares will be under the exemption provided by Section 3(a)(10) of the Securities Act in accordance with the Joint Motion.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
10.1	<u>Amended Stipulation of Settlement and Mutual Release, dated October 27, 2022, by and among Kiromic Biopharma, Inc., Empery Asset Master, Ltd. and other parties</u>
10.2	<u>Amended Stipulation of Settlement and Mutual Release, dated October 27, 2022, by and among Kiromic Biopharma, Inc., Sabby Volatility Warrant Master Fund Ltd. and other parties</u>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: November 2, 2022

KIROMIC BIOPHARMA, INC.

By: /s/ Daniel Clark

Name: Daniel Clark

Title: Chief Financial Officer

AMENDED STIPULATION OF SETTLEMENT AND MUTUAL RELEASE

WHEREAS, on July 2, 2021, Empery Asset Master, Ltd., Empery Tax Efficient, LP, and Empery Tax Efficient III, LP (collectively, the “Empery Funds”) participated in a public offering by Kiromic Biopharma, Inc. (“Kiromic” or the “Company”) pursuant to which the Empery Funds purchased an aggregate of 1,000,000 shares of common stock, par value \$0.001 per share (“Common Stock”) of Kiromic for \$5 million (the “Offering”);

WHEREAS, on June 25, 2021, Kiromic filed a registration statement (the “Registration Statement”) with the Securities Exchange Commission in connection with the Offering, signed by Maurizio Chiriva-Inernati, Tony Tontat, Gianluca Rotino, Pietro Bersani, Americo Cicchetti, Michael Nagel, and Jerry Schneider (collectively, the “Individual Defendants,” and together with Kiromic and ThinkEquity (as defined below), the “Defendants”) (Defendants, together with the Empery Funds, the “Parties”);

WHEREAS, on June 29, 2021, Kiromic filed a final prospectus (the “Prospectus,” and together with the Registration Statement, the “Offering Documents”) with the Securities Exchange Commission in connection with the Offering;

WHEREAS, the Empery Funds claim that the Offering Documents contained untrue statements of material fact, omitted material facts, and failed to make adequate disclosures concerning the imposition of a hold by the Food and Drug Administration relating to certain clinical trials that Kiromic was conducting;

WHEREAS, on March 7, 2022, the Empery Funds filed an action against Kiromic and the Individual Defendants in the United States District Court for the Southern District of New York, entitled *Sabby Volatility Warrant Master Fund Ltd., et al. v. Kiromic Biopharma Inc, et al.*, Civil Action No. 1:22-cv-01927, alleging violations of Sections 11, 12(a)(2) and 15 of the Securities Act (the “Action”);

WHEREAS, on July 22, 2022, the Empery Funds amended their complaint against Kiromic (the “Amended Complaint”), to add, among other things, ThinkEquity LLC (“ThinkEquity”) as a defendant;

WHEREAS, the Defendants (with the exception of ThinkEquity) moved to dismiss the Amended Complaint on September 22, 2022, and ThinkEquity filed an answer on September 17, 2022;

WHEREAS, the Defendants deny the allegations in the Amended Complaint and maintain that the Offering Documents complied in all respects with the Securities Act of 1933, the rules and regulations thereunder, and all other applicable law;

WHEREAS, the Parties (with the exception of ThinkEquity) desire to fully settle and resolve all issues and claims that relate in any way to the allegations set forth in the Action without the admission of any fault or liability on the part of any of the Parties;

WHEREAS, the Parties entered into the initial Stipulation of Settlement and Mutual Release on October 9, 2022 (the “Initial Agreement”);

WHEREAS, prior to the execution of the Initial Agreement by all Parties, the Empery Funds voluntarily dismissed their claims against ThinkEquity without prejudice;

AND WHEREAS, the Parties, each acting on his or its own behalf and having been represented by counsel, have approved the Initial Agreement and the amended settlement terms described below (the “Amended Agreement”);

NOW, THEREFORE, in consideration of and in return for the promises and covenants undertaken by the Parties herein and the releases given herein, the adequacy of which consideration is acknowledged, the Parties agree as follows:

1. Settlement Consideration. No later than two business days following the approval of the Proposed Order (as defined in Section 3 below) by a court of competent jurisdiction Kiromic shall issue to the Empery Funds (a) convertible notes (the form of which is attached hereto as Exhibit A) (the “Settlement Notes”) in the aggregate principal amount of \$1,656,720 and (b) immediately available funds by wire transfer in the aggregate of \$75,000 (the “Settlement Payment,” and, together with the Settlement Notes, the “Settlement Consideration”). The percentage of each component of the Settlement Consideration shall be allocated to each of the Empery Funds pursuant to the table attached hereto as Exhibit B. The allocation in Exhibit B was exclusively determined by the Empery Funds; Defendants shall have no responsibility for or liability relating to the Exhibit B allocation. The Settlement Notes will be convertible into shares of Common Stock (the “Conversion Shares”) in accordance with their terms at an initial conversion price per share equal to the average of the closing price of the Common Stock reported on The Nasdaq Capital Market for the five (5) trading days prior to the entry of the Initial Agreement, and will provide that conversion of the Settlement Notes will be subject to the “Beneficial Ownership Limitation” set forth in each Settlement Note.

2. [Intentionally Omitted]

3. Timing. This Agreement shall have no force or effect, and shall be *void ab initio*, if a court of competent jurisdiction shall not have approved the Proposed Order (as defined below) on or prior to 5:00 p.m. (Eastern time) on (x) November 15, 2022, or (y) such later date if the Empery Funds deliver notice to Kiromic of an extension of such date. No later than 9:30 a.m. (Eastern Time) October 28, 2022, Kiromic shall issue a press release or filing of a Current Report on Form 8-K disclosing the material terms of the Financing (as defined below). Each of Kiromic and Empery Funds hereby acknowledges and agrees that following the issuance of such press release or Current Report on Form 8-K that no Empery Fund shall be in possession

of any material non-public information about Kiromic received from Kiromic, any of its subsidiaries or any of their respective officers, directors, employees, affiliates or agents. Kiromic understands and confirms that the Empery Funds will be relying on the foregoing covenant in effecting transactions in securities of Kiromic.

4. Joint 3(a)(10) Motion. The Parties agree that the Settlement Notes and the Conversion Shares shall be issued subject to an exemption pursuant to Section 3(a)(10) of the Securities Act of 1933. The Parties shall submit a proposed order approving issuance pursuant to Section 3(a)(10) of the Securities Act of 1933 in the form attached hereto as Exhibit C (the “Proposed Order”), together with any supporting documents, no later than October 25, 2022. At the same time, the Parties will also jointly seek expedited consideration of the Proposed Order, seeking that the court decide it on or before November 15, 2022 or as soon as possible thereafter.

5. Dismissal of the Action With Prejudice. No later than two (2) business days following the delivery of the Settlement Consideration in accordance with Section 1 of this Amended Agreement (the date on which such Settlement Consideration is delivered, the “Delivery Date”), the Empery Funds shall cause Defendants to be dismissed with prejudice from the Action by filing a fully executed stipulation and proposed order of dismissal in the form attached hereto as Exhibit D (the “Dismissal Stipulation”), provided that Defendants have executed and delivered to the Empery Funds a copy of the Dismissal Stipulation.

6. Release of the Defendants by Empery Funds. Upon receipt of the Settlement Consideration, the Empery Funds, on behalf of themselves, their members, managers, affiliates, agents, subsidiaries, investors, partners, directors, employees, attorneys, representatives, predecessors, successors and assigns, and the executors, administrators, associates, and related or affiliated persons or entities of each of the foregoing (collectively, the “Empery Funds Releasers”), being legally competent to contract, automatically, irrevocably, and fully and forever release and discharge the Defendants and their respective members, managers, affiliates, agents, subsidiaries, investors, partners, directors, employees, attorneys, representatives, predecessors, successors and assigns, and the executors, administrators, associates, and related or affiliated persons or entities of each of the foregoing (collectively, the “Released Defendants”) from any and all manner of actions, obligations, suits, proceedings, matters, disputes, claims or causes of action, harm, damages or injuries whatsoever (including without limitation arising out of a breach of any duty, law, or rule) known or unknown, suspected or unsuspected, contingent or non-contingent, alleged or not alleged, which now exist, heretofore have existed or come into existence in the future, upon any theory of law or equity, whenever or however arising (whether contractual, common law, statutory, federal, state, local, or otherwise, including but not limited to any claims for compensatory or punitive damages, or for attorneys' fees, costs or disbursements of any kind), relating to or arising out of the Offering Documents, the Empery Funds' trading in Kiromic securities, and/or the allegations in the Action (collectively, the “Released Claims”). Notwithstanding anything herein to the contrary, the Released Claims shall not include any suit, action, or proceeding to enforce the terms of this Amended Agreement.

7. Representations of Kiromic. Kiromic hereby represents and warrants to the Empery Funds that it consummated a financing (the "Financing") whereby it sold \$2 million aggregate principal amount of senior secured convertible notes to one or more investors for aggregate gross proceeds of \$2.0 million. The senior secured convertible notes are initially convertible into Common Stock at \$0.35 per share and were issued as "restricted securities" (as defined in Rule 144). The Financing does not constitute a Variable Rate Transaction. As used herein, "Variable Rate Transaction" means a transaction in which Kiromic issued or sold securities that are convertible into, or include the right to receive additional shares of, Common Stock either (A) at a conversion price or other price that is based upon and/or varies with the trading prices of or quotations for the shares of Common Stock at any time after the initial issuance of such debt, or (B) with a conversion price that is subject to being reset at some future date after the initial issuance of such debt or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Kiromic or the market for the Common Stock other than customary adjustments for corporate transactions, such as reverse stock splits and similar matters.

8. Release of the Empery Funds. Upon delivery of the Settlement Consideration, Defendants on their behalf and on behalf of their members, managers, affiliates, agents, subsidiaries, investors, partners, directors, employees, attorneys, representatives, predecessors, successors and assigns, and the executors, administrators, associates, and related or affiliated persons or entities of each of the foregoing (collectively, the "Defendant Releasers"), being legally competent to contract, automatically, irrevocably, and fully and forever release and discharge the Empery Funds and their respective members, managers, affiliates, agents, employees, subsidiaries, investors, partners, directors, attorneys, representatives, predecessors, successors and assigns, and the executors, administrators, associates, and related or affiliated persons or entities of each of the foregoing (collectively, the "Empery Funds Released Parties") from any and all manner of actions, obligations, suits, proceedings, matters, disputes, claims or causes of action, harm, damages or injuries whatsoever (including without limitation arising out of a breach of any duty, law, or rule), known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, heretofore have existed or come into existence in the future, upon any theory of law or equity, whenever or however arising (whether contractual, common law, statutory, federal, state, local, or otherwise, including but not limited to any claims for compensatory or punitive damages, or for attorneys' fees, costs or disbursements of any kind), relating to or arising out of the Released Claims. Notwithstanding anything herein to the contrary, the Released Claims shall not include any suit, action, or proceeding to enforce the terms of this Amended Agreement.

9. Covenant Not to Sue. Upon the payment and receipt of the Settlement Consideration, the Empery Funds and the Released Defendants irrevocably covenant and agree not to sue, or commence, or cause or encourage anyone else (directly or indirectly) to sue or commence, or threaten to sue or commence, any action, claim, cause of action, arbitration, or legal proceeding of any nature whatsoever, whether legal or equitable, based on any Released Claim. The preceding sentence shall not apply to any action to enforce this Amended Agreement

or any action filed by ThinkEquity for indemnity or contribution against Kiromic. The Empery Funds further agree that if a class action is certified (for settlement purposes or otherwise) in Karp v. Kiromic Biopharma, Inc., et al., Case No. 22-cv-6690-VM (United States District Court for the Southern District of New York) or Podmore v. Kiromic Biopharma, Inc., et al., Case No. 22-cv-8433-VM (United States District Court for the Southern District of New York), the Empery Funds will opt-out of the class and not submit any claim for recovery.

10. Confidentiality. The Parties agree that the terms and conditions of this Amended Agreement are confidential and they will not disclose the terms to any third parties except: (i) to their respective attorneys; (ii) as required by any court of competent jurisdiction or regulatory institution; (iii) as required by any city, state, or federal rule, regulation or law; (iv) to any accountants or tax preparation professionals and to the extent necessary to accurately file city, state and federal taxes; and (v) to any investor or potential investor that is obligated pursuant to a customary confidentiality agreement to keep the information confidential. Notwithstanding the foregoing, the Parties agree that to the extent an investor or potential investor of any Party specifically asks about the status, resolution, or outcome of the Action, the Party who receives any such inquiry may respond by indicating that the Parties have reached a settlement pursuant to which the Parties have amicably resolved any differences they may have had, have obtained the results they were seeking, and are satisfied with the terms. The Parties further agree that monetary damages alone are inadequate to compensate the other Parties for injury caused or threatened by a breach of the confidentiality restrictions set forth in this Paragraph and that preliminary and permanent injunctive relief restraining and prohibiting the violation of these confidentiality restrictions is a necessary and appropriate remedy in the event of such a breach. Notwithstanding the foregoing, the Parties are in no way prohibited from obtaining, in addition to injunctive relief, an award of monetary damages against any person or entity breaching this Paragraph. The Parties further agree that ThinkEquity may utilize information about the settlement, as necessary, in connection with any indemnity action that it asserts against Kiromic.

11. Binding Effect. This Amended Agreement binds and inures to the benefit of the Parties and their respective past and present agents, employees, family members (including current and former spouses), assigns, attorneys, representatives, officers, directors, shareholders, successors, assigns, transferees, insurers and sureties, and all of their subsidiaries, parents, predecessors, successors and affiliated companies.

12. No Admission. It is understood and agreed that this Amended Agreement is a compromise and settlement of the claims released herein, and it shall not be construed as an admission, concession, or indication of the validity of any claim, defense, liability, obligation, or wrongdoing.

13. Entire Agreement. This Amended Agreement contains the entire agreement among the Parties and shall not be modified in any way except in writing executed by the Party to be bound thereby. No statements, promises, or inducements by any of the signatories or any agent of any of the signatories shall be valid or binding unless they are

contained in this Amended Agreement. This Amended Agreement supersedes and replaces any and all alleged or actual prior agreements or understandings. Any antecedent or contemporaneous extrinsic representations and warranties made in the negotiation or preparation of the Amended Agreement are intended to be merged into this Amended Agreement and are of no further force or effect.

14. Construction. The language of all parts of this Amended Agreement shall in all cases be construed as a whole, according to their fair meaning, and not strictly for or against any of the Parties. This Amended Agreement was prepared jointly by the Parties, and no presumptions or rules of interpretation based upon the identity of the Party preparing or drafting the Amended Agreement, or any part thereof, shall be applicable or invoked.

15. Governing Law. As to Empery Funds and Kiromic only, this Amended Agreement shall be considered to have been negotiated, executed and delivered, and to be wholly performed in the State of New York, and the rights and obligations of the Parties to the Amended Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of New York without giving effect to that State's choice of law principles. Empery Funds and Kiromic agree that the exclusive jurisdiction for any legal proceeding arising out of or relating to this Amended Agreement shall be the United States District Court for the Southern District of New York, and Empery Funds and Kiromic hereby waive any challenge to personal jurisdiction or venue in that court.

16. Authority to Bind. To the extent any person or entity executes this Amended Agreement in a representative capacity for either Party, he or she hereby represents and warrants that he or she is authorized to enter into this Amended Agreement on behalf of that Party, that all necessary authorizations or other resolutions have been passed or obtained, and that this Amended Agreement shall be a legal, valid, and binding obligation on that Party.

17. Notices. As to Empery Funds and Kiromic only, any notices, consents, waivers or other communications required or permitted to be given under the terms of this Amended Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon delivery, when sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party), (iii) upon delivery, when sent by electronic mail (provided that the sending party does not receive an automated rejection notice); or (iv) one Business Day after deposit with an overnight courier service, in each case properly addressed to the party to receive the same. The addresses, facsimile numbers and e-mail addresses for such communications shall be:

If to the Empery Funds:

c/o Empery Asset Management, LP
1 Rockefeller Plaza, Suite 1205
New York, NY 10020
Attention: Ryan M. Lane

Telephone: +1(212) 608-3300
Email: notices@emperyam.com

With a copy (for informational purposes only) to:

Andrew Gladstein
Schulte Roth & Zabel LLP
919 Third Avenue
New York, New York 10022
Telephone: (212) 756-2000
Facsimile: (212) 593-5955
E-mail: andrew.gladstein@srz.com

If to Kiromic:

Kiromic Biopharma Inc.
Attention: Pietro Bersani, Chief Executive Officer
7707 Fannin, Suite 140
Houston, TX 77054
Telephone: (832) 968-4888
E-mail: pbersani@kiromic.com

With a copy (for informational purposes only) to:

Hogan Lovells US LLP
390 Madison Ave.
New York, NY 10017
Attention: William M. Regan, Esq.
Telephone: (212) 918-3000
E-Mail: William.Regan@hoganlovells.com

18. Severability. If any provision or provisions contained in this Amended Agreement shall contravene or be invalid under any applicable law, such contravention or invalidity shall not invalidate the whole Amended Agreement, but the Amended Agreement shall be construed as not containing the particular provision or provisions held to be invalid, and the rights and obligations of the Parties shall be construed and enforced accordingly.

19. Headings. The section headings contained in each section of this Amended Agreement are intended solely for convenience of reference and shall not limit or expand the express terms of this Amended Agreement or otherwise be used in its construction.

20. Counterpart Signature Pages. This Amended Agreement may be executed in one or more counterparts with facsimile, scanned or DocuSign signatures being deemed original, any of which need not contain the signatures of all Parties but all signed counterparts

taken together will constitute one and the same agreement, with the exception of Exhibit A, which must be executed with original, wet ink signatures.



IN WITNESS WHEREOF, the Parties have caused this Amended Agreement to be executed by themselves or their duly authorized representatives on the respective dates set forth below.

EMPERY ASSET MASTER, LTD.
By: Empery Asset Management, LP

By: _____
Name: Brett Director
Title: General Counsel
Date:

EMPERY TAX EFFICIENT, LP
By: Empery Asset Management, LP

By: _____
Name: Brett Director
Title: General Counsel
Date:

EMPERY TAX EFFICIENT III, LP
By: Empery Asset Management, LP

By: _____
Name: Brett Director
Title: General Counsel
Date:

KIROMIC BIOPHARMA, INC.

By: _____
Name: Pietro Bersani
Title: Chief Executive Officer
Date:

Americo Cicchetti

Name: Americo Cicchetti
Date:

Michael Nagel

Name: Michael Nagel

Date:

Jerry Schneider

Name: Jerry Schneider

Date:

Pietro Bersani

Name: Pietro Bersani

Date:

Gianluca Rotino

Name: Gianluca Rotino

Date:

Tony Tontat

Name: Tony Tontat

Date:

Maurizio Chiriva-Inernati

Name: Maurizio Chiriva-Inernati

Date:



AMENDED STIPULATION OF SETTLEMENT AND MUTUAL RELEASE

WHEREAS, on July 2, 2021, Sabby Volatility Warrant Master Fund Ltd. (“Sabby”) participated in a public offering by Kiromic Biopharma, Inc. (“Kiromic” or the “Company”) pursuant to which Sabby purchased an aggregate of 500,000 shares of common stock, par value \$0.001 per share (“Common Stock”) of Kiromic for \$2.5 million (the “Offering”);

WHEREAS, on June 25, 2021, Kiromic filed a registration statement (the “Registration Statement”) with the Securities Exchange Commission in connection with the Offering, signed by Maurizio Chiriva-Internati, Tony Tontat, Gianluca Rotino, Pietro Bersani, Americo Cicchetti, Michael Nagel, and Jerry Schneider (collectively, the “Individual Defendants,” and together with Kiromic and ThinkEquity (as defined below), the “Defendants”);

WHEREAS, on June 29, 2021, Kiromic filed a final prospectus (the “Prospectus,” and together with the Registration Statement, the “Offering Documents”) with the Securities Exchange Commission in connection with the Offering;

WHEREAS, Sabby claims that the Offering Documents contained untrue statements of material fact, omitted material facts, and failed to make adequate disclosures concerning the imposition of a hold by the Food and Drug Administration relating to certain clinical trials that Kiromic was conducting;

WHEREAS, on March 7, 2022, Sabby and its co-plaintiffs Empery Asset Master, Ltd, Empery Tax Efficient, LP and Empery Tax Efficient III, LP (collectively with Sabby, “Plaintiffs”) filed an action against Kiromic and the Individual Defendants in the United States District Court for the Southern District of New York, entitled *Sabby Volatility Warrant Master Fund Ltd. et al. v. Kiromic Biopharma, Inc., et al.*, Civil Action No. 1:22-cv-01927, alleging violations of Sections 11, 12(a)(2) and 15 of the Securities Act (the “Action”);

WHEREAS, on July 22, 2022, the Plaintiffs amended their complaint against Kiromic (the “Amended Complaint”), to add, among other things, ThinkEquity LLC (“ThinkEquity”) as a defendant;

WHEREAS, the Defendants (with the exception of ThinkEquity) moved to dismiss the Amended Complaint on September 22, 2022, and ThinkEquity filed an answer on September 17, 2022;

WHEREAS, the Defendants deny the allegations in the Amended Complaint and maintain that the Offering Documents complied in all respects with the Securities Act of 1933, the rules and regulations thereunder, and all other applicable law;

WHEREAS, the Plaintiffs and Defendants (the “Parties”) desire to fully settle and resolve all issues and claims that relate in any way to the allegations set forth in the Action without the admission of any fault or liability on the part of any of the Parties;

WHEREAS, the Parties entered into the initial Stipulation of Settlement and Mutual Release on October 9, 2022 (the “Initial Agreement”);

WHEREAS, prior to the execution of the Initial Agreement by all Parties, Sabby voluntarily dismissed their claims against ThinkEquity without prejudice;

AND WHEREAS, the Parties, each acting on his or its own behalf and having been represented by counsel, have approved the Initial Agreement and the amended settlement terms described below (the “Amended Agreement”);

NOW, THEREFORE, in consideration of and in return for the promises and covenants undertaken by the Parties herein and the releases given herein, the adequacy of which consideration is acknowledged, the Parties agree as follows:

1. Settlement Consideration. No later than two business days following the approval of the Proposed Order (as defined in Section 3 below) by a court of competent jurisdiction, Kiromic shall issue to Sabby (a) a convertible note (the form of which is attached hereto as Exhibit A) (the “Settlement Note”) in the aggregate principal amount of \$1,656,720 and (b) immediately available funds by wire transfer in the aggregate of \$75,000 (the “Settlement Payment,” and, together with the Settlement Note, the “Settlement Consideration”). The Settlement Note will be convertible into shares of Common Stock (the “Conversion Shares”) in accordance with its terms at an initial conversion price per share equal to the average of the closing price of the Common Stock reported on The Nasdaq Capital Market for the five (5) trading days prior to the entry of the Initial Agreement, and will provide that conversion of the Settlement Notes will be subject to the “Beneficial Ownership Limitation” set forth in each Settlement Note.

2. [Intentionally Omitted]

3. Joint 3(a)(10) Motion. The Parties (other than ThinkEquity) agree that the Settlement Notes and the Conversion Shares shall be issued subject to an exemption pursuant to Section 3(a)(10) of the Securities Act of 1933. The Parties shall submit a proposed order approving issuance pursuant to Section 3(a)(10) of the Securities Act of 1933 in the form attached hereto as Exhibit B (the “Proposed Order”), together with any supporting documents, no later than October 25, 2022. At the same time, the Parties will also jointly seek expedited consideration of the Proposed Order, seeking that the court decide it on or before November 15, 2022.

4. Dismissal of the Action With Prejudice. No later than two (2) business days following the delivery of the Settlement Consideration in accordance with Section 1 of this Amended Agreement (the date on which such Settlement Consideration is delivered, the “Delivery Date”), Sabby shall cause Defendants to be dismissed with prejudice from the Action by filing a fully executed stipulation and proposed order of dismissal in the form attached hereto as Exhibit C (the “Dismissal Stipulation”), provided that Defendants have executed and delivered to the Sabby a copy of the Dismissal Stipulation.

5. Release of the Defendants by Sabby. Upon receipt of the Settlement Consideration, Sabby, on behalf of itself, its members, managers, affiliates, agents, subsidiaries, investors, partners, directors, employees, attorneys, representatives, predecessors, successors and assigns, and the executors, administrators, associates, and related or affiliated persons or entities of each of the foregoing (collectively, the “Sabby Releasers”), being legally competent to contract, automatically, irrevocably, and fully and forever release and discharge the Defendants and their respective members, managers, affiliates, agents, subsidiaries, investors, partners, directors, employees, attorneys, representatives, predecessors, successors and assigns, and the executors, administrators, associates, and related or affiliated persons or entities of each of the foregoing (collectively, the “Released Defendants”) from any and all manner of actions, obligations, suits, proceedings, matters, disputes, claims or causes of action, harm, damages or injuries whatsoever (including without limitation arising out of a breach of any duty, law, or rule) known or unknown, suspected or unsuspected, contingent or non-contingent, alleged or not alleged, which now exist, heretofore have existed or come into existence in the future, upon any theory of law or equity, whenever or however arising (whether contractual, common law, statutory, federal, state, local, or otherwise, including but not limited to any claims for compensatory or punitive damages, or for attorneys' fees, costs or disbursements of any kind), relating to or arising out of the Offering Documents, Sabby's trading in Kiromic securities, and/or the allegations in the Action (collectively, the “Released Claims”). Notwithstanding anything herein to the contrary, the Released Claims shall not include any suit, action, or proceeding to enforce the terms of this Amended Agreement.

6. [Intentionally Omitted].

7. Release of Sabby. Upon delivery of the Settlement Consideration, Defendants on their behalf and on behalf of their members, managers, affiliates, agents, subsidiaries, investors, partners, directors, employees, attorneys, representatives, predecessors, successors and assigns, and the executors, administrators, associates, and related or affiliated persons or entities of each of the foregoing (collectively, the “Defendant Releasers”), being legally competent to contract, automatically, irrevocably, and fully and forever release and discharge Sabby and its respective members, managers, affiliates, agents, employees, subsidiaries, investors, partners, directors, attorneys, representatives, predecessors, successors and assigns, and the executors, administrators, associates, and related or affiliated persons or entities of each of the foregoing (collectively, the “Sabby Released Parties”) from any and all manner of actions, obligations, suits, proceedings, matters, disputes, claims or causes of action, harm, damages or injuries whatsoever (including without limitation arising out of a breach of any duty, law, or rule), known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, heretofore have existed or come into existence in the future, upon any theory of law or equity, whenever or however arising (whether contractual, common law, statutory, federal, state, local, or otherwise, including but not limited to any claims for compensatory or punitive damages, or for attorneys' fees, costs or disbursements of any kind), relating to or arising out of the Released Claims. Notwithstanding anything herein to the contrary, the Released Claims shall not include any suit, action, or proceeding to enforce the terms of this Amended Agreement.

8. Covenant Not to Sue. Upon the payment and receipt of the Settlement Consideration, Sabby and the Released Defendants irrevocably covenant and agree not to sue, or commence, or cause or encourage anyone else (directly or indirectly) to sue or commence, or threaten to sue or commence, any action, claim, cause of action, arbitration, or legal proceeding of any nature whatsoever, whether legal or equitable, based on any Released Claim. The preceding sentence shall not apply to any action to enforce this Amended Agreement or any action filed by ThinkEquity for indemnity or contribution against Kiromic. Sabby further agrees that if a class action is certified (for settlement purposes or otherwise) in *Karp v. Kiromic Biopharma, Inc., et al.*, Case No. 22-cv-6690-VM (United States District Court for the Southern District of New York) or *Podmore v. Kiromic Biopharma, Inc., et al.*, Case No. 22-cv-8433-VM (United States District Court for the Southern District of New York), Sabby will opt-out of the class and not submit any claim for recovery.

9. Confidentiality. The Parties agree that the terms and conditions of this Amended Agreement are confidential and they will not disclose the terms to any third parties except: (i) to their respective attorneys; (ii) as required by any court of competent jurisdiction or regulatory institution; (iii) as required by any city, state, or federal rule, regulation or law; (iv) to any accountants or tax preparation professionals and to the extent necessary to accurately file city, state and federal taxes; and (v) to any investor or potential investor that is obligated pursuant to a customary confidentiality agreement to keep the information confidential. Notwithstanding the foregoing, the Parties agree that to the extent an investor or potential investor of any Party specifically asks about the status, resolution, or outcome of the Action, the Party who receives any such inquiry may respond by indicating that the Parties have reached a settlement pursuant to which the Parties have amicably resolved any differences they may have had, have obtained the results they were seeking, and are satisfied with the terms. The Parties further agree that monetary damages alone are inadequate to compensate the other Parties for injury caused or threatened by a breach of the confidentiality restrictions set forth in this Paragraph and that preliminary and permanent injunctive relief restraining and prohibiting the violation of these confidentiality restrictions is a necessary and appropriate remedy in the event of such a breach. Notwithstanding the foregoing, the Parties are in no way prohibited from obtaining, in addition to injunctive relief, an award of monetary damages against any person or entity breaching this Paragraph. The Parties further agree that ThinkEquity may utilize information about the settlement, as necessary, in connection with any indemnity action that it asserts against Kiromic.

10. Binding Effect. This Amended Agreement binds and inures to the benefit of the Parties and their respective past and present agents, employees, family members (including current and former spouses), assigns, attorneys, representatives, officers, directors, shareholders, successors, assigns, transferees, insurers and sureties, and all of their subsidiaries, parents, predecessors, successors and affiliated companies.

11. No Admission. It is understood and agreed that this Amended Agreement is a compromise and settlement of the claims released herein, and it shall not be construed as an

admission, concession, or indication of the validity of any claim, defense, liability, obligation, or wrongdoing.

12. Entire Agreement. This Amended Agreement contains the entire agreement among the Parties and shall not be modified in any way except in writing executed by the Party to be bound thereby. No statements, promises, or inducements by any of the signatories or any agent of any of the signatories shall be valid or binding unless they are contained in this Amended Agreement. This Amended Agreement supersedes and replaces any and all alleged or actual prior agreements or understandings. Any antecedent or contemporaneous extrinsic representations and warranties made in the negotiation or preparation of the Amended Agreement are intended to be merged into this Agreement and are of no further force or effect.

13. Construction. The language of all parts of this Amended Agreement shall in all cases be construed as a whole, according to their fair meaning, and not strictly for or against any of the Parties. This Amended Agreement was prepared jointly by the Parties, and no presumptions or rules of interpretation based upon the identity of the Party preparing or drafting the Amended Agreement, or any part thereof, shall be applicable or invoked.

14. Governing Law. As to Sabby and Kiromic only, this Amended Agreement shall be considered to have been negotiated, executed and delivered, and to be wholly performed in the State of New York, and the rights and obligations of the Parties to the Amended Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of New York without giving effect to that State's choice of law principles. Sabby and Kiromic agree that the exclusive jurisdiction for any legal proceeding arising out of or relating to this Amended Agreement shall be the United States District Court for the Southern District of New York, and Sabby and Kiromic hereby waive any challenge to personal jurisdiction or venue in that court.

15. Authority to Bind. To the extent any person or entity executes this Amended Agreement in a representative capacity for either Party, he or she hereby represents and warrants that he or she is authorized to enter into this Amended Agreement on behalf of that Party, that all necessary authorizations or other resolutions have been passed or obtained, and that this Amended Agreement shall be a legal, valid, and binding obligation on that Party.

16. Notices. As to Sabby and Kiromic only, any notices, consents, waivers or other communications required or permitted to be given under the terms of this Amended Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon delivery, when sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party), (iii) upon delivery, when sent by electronic mail (provided that the sending party does not receive an automated rejection notice); or (iv) one Business Day after deposit with an overnight courier service, in each case properly addressed to the party to receive the same. The addresses, facsimile numbers and e-mail addresses for such communications shall be:

If to Sabby:

c/o Sabby Management, LLC
115 Hidden Hills Drive
Spicewood, Texas 78669
Attention: Robert Grundstein, General Counsel
Telephone: (646) 307-4500
Email: rgrundstein@sabbymanagement.com

With a copy (for informational purposes only) to:

Thomas Fleming
Olshan Frome Wolosky LLP
1325 Avenue of the Americas
New York, New York 10019
Telephone: (212) 451-2300
Facsimile: (212) 451-2222
E-mail: tfleming@olshanlaw.com

If to Kiromic:

Kiromic Biopharma Inc.
Attention: Pietro Bersani, Chief Executive Officer
7707 Fannin, Suite 140
Houston, TX 77054
Telephone: (832) 968-4888
E-mail: pbersani@kiromic.com

With a copy (for informational purposes only) to:

Hogan Lovells US LLP
390 Madison Ave.
New York, NY 10017
Attention: William M. Regan, Esq.
Telephone: (212) 918-3000
E-Mail: William.Regan@hoganlovells.com

17. Severability. If any provision or provisions contained in this Amended Agreement shall contravene or be invalid under any applicable law, such contravention or invalidity shall not invalidate the whole Amended Agreement, but the Amended Agreement shall be construed as not containing the particular provision or provisions held to be invalid, and the rights and obligations of the Parties shall be construed and enforced accordingly.

18. Headings. The section headings contained in each section of this Amended Agreement are intended solely for convenience of reference and shall not limit or expand the express terms of this Amended Agreement or otherwise be used in its construction.

19. Counterpart Signature Pages. This Amended Agreement may be executed in one or more counterparts with facsimile, scanned or DocuSign signatures being deemed original, any of which need not contain the signatures of all Parties but all signed counterparts taken together will constitute one and the same agreement, with the exception of Exhibit A, which must be executed with original, wet ink signatures.

IN WITNESS WHEREOF, the Parties have caused this Amended Agreement to be executed by themselves or their duly authorized representatives on the respective dates set forth below.

SABBY VOLATILITY WARRANT MASTER FUND LTD.

By: Sabby Management, LLC

By: _____

Name: Robert Grundstein

Title: General Counsel

Date:

KIROMIC BIOPHARMA, INC.

By: _____

Name: Pietro Bersani

Title: Chief Executive Officer

Date:

Americo Cicchetti

Name: Americo Cicchetti

Date:

Michael Nagel

Name: Michael Nagel

Date:

Jerry Schneider

Name: Jerry Schneider

Date:

Pietro Bersani

Name: Pietro Bersani

Date:

Gianluca Rotino

Name: Gianluca Rotino

Date:

Tony Tontat

Name: Tony Tontat

Date:

Maurizio Chiriva-Inernati

Name: Maurizio Chiriva-Inernati

Date:
