

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 101796 / December 3, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22336

In the Matter of

TONY TONTAT,

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Tony Tontat (“Tontat” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. This matter involves a violation of the federal securities laws by Tony Tontat, the former Chief Financial Officer ("CFO") of Kiromic BioPharma, Inc. ("Kiromic"). Kiromic is a Houston-based biotherapeutics company that develops cell therapies to fight cancer. In anticipation of funding clinical trials for its two investigational new drug ("IND") candidates, Kiromic raised \$40 million in a follow-on public offering in early July 2021. Two weeks before the public offering, in June 2021, the U.S. Food and Drug Administration ("FDA") informed Kiromic that it was placing the company's INDs on clinical hold—an order to delay a proposed clinical investigation. Kiromic omitted the June 2021 FDA clinical-hold communications from its SEC filings, including its Form S-1 and its final prospectus related to the July 2021 public offering, investor roadshow presentations, and due diligence calls. After the public offering, in mid-July 2021, Tontat reviewed detailed letters from the FDA outlining the basis for the clinical holds. Kiromic failed to disclose the FDA clinical-hold communications in its Form 10-Q filed on August 13, 2021, which rendered the statements therein misleading. Tontat signed and certified the Form 10-Q despite its omissions.

Respondent

2. **Tontat**, age 56, splits his residence between Florida and France. Tontat was Kiromic's CFO from October 2019 to September 2021. He also served on the company's Board of Directors from January 2020 to September 2021. Tontat resigned as Kiromic's CFO on September 29, 2021.

Other Relevant Entity

3. **Kiromic BioPharma, Inc.** is a Delaware corporation formed in 2016 with its principal place of business in Houston, Texas. It is a clinical-stage, fully integrated biotherapeutics company that develops and commercializes cell therapies that focus on immuno-oncology. Kiromic's stock previously traded on the Nasdaq Stock Market exchange and now trades on the OTCQB Venture Market under the ticker symbol "KRBP." Kiromic is required to file periodic reports, including quarterly reports on Form 10-Q, with the Commission under Section 13(a) of the Exchange Act and related rules thereunder.

Facts

4. Kiromic develops cell therapies for treating cancer patients. In May 2021, Kiromic submitted IND applications to the FDA for its cancer product candidates—the ALEXIS PRO and ALEXIS ISO ("ALEXIS INDs"). On June 16 and 17, 2021, the FDA informed Kiromic that it had placed the ALEXIS INDs on clinical hold. "A clinical hold is an order issued by FDA to the [IND] sponsor to delay a proposed clinical investigation." 21 C.F.R. § 312.42(a). The FDA also informed

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Kiromic that it would receive a detailed letter in mid-July 2021 explaining the FDA's basis for the clinical holds.

5. On June 22, 2021, Kiromic held a board meeting where all participants, including Tontat, attended virtually. At that meeting, Kiromic's then-Chief Executive Officer ("CEO") mentioned, among other things, that the ALEXIS INDs were "administratively on hold" and that the FDA would send Kiromic a letter in mid-July 2021 with "secondary review questions." Tontat, as well as other participants at the meeting, did not leave the meeting with the understanding that the FDA had already placed the ALEXIS INDs on clinical hold.

6. On July 2, 2021, Kiromic conducted a follow-on public offering, selling \$40 million in common stock. However, Kiromic did not disclose the FDA clinical-hold communications in its June 25, 2021 Form S-1, its June 29, 2021 final prospectus, or in calls with investors, analysts, or roadshow presentations leading up to the public offering in which Tontat participated, including where he made statements and answered questions about the timing and status of the FDA's review of the INDs.

7. On July 13, 2021, Kiromic received the detailed FDA clinical-hold letters for the ALEXIS INDs that explained the FDA's decision for issuing the June 16 and 17, 2021 clinical holds. Tontat received and reviewed those letters the same day. The next day, on July 14, 2021, Tontat advised Kiromic's CEO and then-Chief Strategy Officer that the letters were "material information" and recommended that Kiromic disclose the clinical holds. On July 16, 2021, Kiromic issued a press release stating that the "FDA returned with comments" regarding the ALEXIS INDs but that Kiromic still expected to meet its third quarter 2021 clinical trials timeline.

8. On August 13, 2021, Kiromic filed its Form 10-Q for the period ended June 30, 2021, but did not disclose the FDA's July 2021 clinical-hold letters or the FDA's prior June 2021 clinical-hold communications. Regarding the ALEXIS INDs, Kiromic's Form 10-Q stated, "[t]hese product candidates are in the pre-initial new drug ("IND") stages of the US Food and Drug Administration (the "FDA") clinical trial process. We are currently going through the IND enabling trials process and we expect that first in human dosing in Phase I of clinical trials will commence in the first quarter of 2022." Under the heading "Recent Developments" in the Form 10-Q, Kiromic discussed the submission of the INDs to the FDA in May 2021, but omitted the FDA's June 2021 clinical-hold communications and the detailed FDA clinical-hold letters of July 13, 2021. Despite acknowledging that the FDA communications were material and warranted disclosure, Tontat, as Kiromic's CFO, certified Kiromic's Form 10-Q even though it omitted the FDA clinical-hold communications.

Violations

9. As a result of the conduct described above, Tontat caused Kiromic's violations of Section 13(a) of the Exchange Act and Rule 13a-13 thereunder, which require reporting companies to file with the Commission complete and accurate quarterly reports. Tontat caused Kiromic's violations of Exchange Act Rule 12b-20, which requires an issuer to include in a statement or report filed with the Commission such further material information as may be necessary to make the required

statements in the filing, in the light of the circumstances under which they are made, not misleading.

10. Rule 13a-14 of the Exchange Act provides, in pertinent part, that each periodic report must include certifications signed by the issuer's principal executive and principal financial officers which include, among other things, a representation that based on the certifier's knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by the report. Tontat signed the certification in the Form 10-Q for the period ended June 30, 2021 in violation of Rule 13a-14. For the reasons set forth above, the certification was inaccurate.

Undertakings

11. Tontat shall continue to cooperate fully with the Commission with respect to this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party and subject to compliance with applicable law. Tontat agrees that such cooperation shall include, but is not limited to:

In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, and for those stated purposes only, Respondent (i) agrees to appear and be interviewed by Commission staff at such times and places, including remotely if feasible, as the staff requests upon reasonable notice; (ii) will accept service by mail of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints Respondent's undersigned attorney as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Respondent's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over Respondent in any United States District Court for purposes of enforcing any such subpoena.

In determining whether to accept the Offer, the Commission has considered these undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Tontat's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Tontat cease and desist from committing or causing any violations and any future violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-13, and 13a-14 thereunder.

B. Tontat shall pay a civil money penalty in the amount of \$20,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payments shall be made in the following installments: \$5,000 within 10 days of entry of this Order; \$5,000 within 90 days of entry of this Order; \$5,000 within 180 days of entry of this Order; \$5,000 within 240 days of entry of this Order; and remaining amount outstanding within 364 days of entry of this Order. Payments shall be applied first to post order interest, which accrues pursuant to 31 U.S.C. § 3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Tontat as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to: B. David Fraser, Associate Director, Division of Enforcement, Securities and Exchange Commission, 801 Cherry Street, Suite 1900, Fort Worth, Texas 76102.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he

shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of their payment of a civil penalty in this action (“Penalty Offset”). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission’s counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a “Related Investor Action” means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

D. Respondent acknowledges that the Commission is not imposing a civil penalty in excess of \$20,000 based in part upon his cooperation in a Commission investigation and related enforcement action. If at any time following the entry of the Order, the Division of Enforcement (“Division”) obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission, or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay an additional civil penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary