Honorable Mike K. Nakagawa
United States Bankruptcy Judge

Entered on Docket
March 17, 2021

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

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In re:	)	Case No.: 19-13366-MKN
	)	Chapter 11
ISLET SCIENCES, INC., a Nevada corporation, fdba ONE E-COMMERCE CORPORATION, fdba ARIANNE CO.,	)	Date: February 17, 2021
	)	Time: 9:30 a.m.
Debtor.	)	

ORDER ON MOTION FOR THE ENTRY OF AN ORDER: (i) APPROVING THE DISCLOSURE STATEMENT; (ii) APPROVING THE FORM OF BALLOTS AND PROPOSED SOLICITATION AND TABULATION PROCEDURES; (iii) FIXING THE VOTING DEADLINE WITH RESPECT TO THE DEBTOR'S CHAPTER 11 PLAN; (iv) PRESCRIBING THE FORM AND MANNER OF NOTICE THEREOF; (v) FIXING THE LAST DATE FOR FILING OBJECTIONS TO THE CHAPTER 11 PLAN; (vi); SCHEDULING A HEARING TO CONSIDER CONFIRMATION OF THE CHAPTER 11 PLAN; AND (vii) APPOINTING SCHWARTZ LAW, PLLC AS SOLICITATION AND TABULATION AGENT[1]

On February 17, 2021, the court heard the Motion for the Entry of an Order: (i) Approving the Disclosure Statement; (ii) Approving the Form of Ballots and Proposed Solicitation and Tabulation Procedures; (iii) Fixing the Voting Deadline With Respect to the Debtor's Chapter 11 Plan; (iv) Prescribing the Form and Manner of Notice Thereof; (v) Fixing the Last Date for Filing Objections to the Chapter 11 Plan; (vi) Scheduling a Hearing to Consider

[1] In this Order, all references to "ECF No." are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the court. All references to "Section" are to provisions of the Bankruptcy Code, 11 U.S.C. §§101, et seq. All references to "FRBP" are to the Federal Rules of Bankruptcy Procedure. All references to "FRE" are to the Federal Rules of Evidence.

Confirmation of the Chapter 11 Plan; and (vii) Appointing Schwartz Law, PLLC as Solicitation and Tabulation Agent ("Motion"). The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

BACKGROUND

On May 29, 2019, an involuntary Chapter 7 petition ("Involuntary Petition") was filed against Islet Sciences, Inc., a Nevada corporation ("Debtor"). (ECF No. 1). The Involuntary Petition was filed by six separate creditors: James Green, Kevin M. Long, VACO Raleigh, LLC, William Wilkison, Brighthaven Ventures LLC, Steve Delmar, and Apex Biostatistics, Inc. (collectively, "Petitioning Creditors"). All of the Petitioning Creditors hold unsecured claims against the Debtor which allegedly are not contingent as to liability nor subject to bona fide dispute as to liability or amount. See Exhibit "2" to Involuntary Petition at ¶¶ 11 and 12.

On July 19, 2019, Debtor filed a motion to convert the proceeding to one under Chapter 11 ("Conversion Motion"), along with a declaration of John F. Steel, IV ("Steel Declaration").[2] (ECF Nos. 9 and 10).

On July 19, 2019, Debtor filed a motion for authority to obtain post-petitioning credit from Western States Funding, LLC ("WSF") as Chapter 11 debtor in possession ("DIP Financing"). (ECF No. 11).[3]

On July 28, 2019, Petitioning Creditors filed a motion for an order directing expedited discovery. (ECF No. 45).

On July 30, 2019, Debtor filed a motion for a protective order. (ECF No. 50).

On August 7, 2019, an expedited hearing was held on various motions.

[2] According to the Steel Declaration, the declarant ("Steel") is the Debtor's chief executive officer ("CEO").

[3] A copy of a Revolving Line of Credit Promissory Note in the amount of $1 million was filed thereafter on July 25, 2019. See Exhibit "A" to Supplement to Debtor's Motion for Entry of Interim and Final Orders (A) Authorizing the Debtor to Obtain Financing, etc. (ECF No. 40). Paragraph 5 of the note provides for the conversion of debt to equity through issuance of securities under a confirmed Chapter 11 plan of reorganization.

On August 15, 2019, an order was entered with respect to the requested protective order. (ECF No. 78).

On September 10, 2019, Debtor filed a motion seeking to file under seal a copy of an agreement with Curiam Investments 2 LLC ("Curiam") to provide post-petition financing of certain litigation ("Litigation Funding"). (ECF No. 94). The motion was supported by the Declaration of Francisco A. Villegas, Esq. ("Villegas Declaration"). (ECF No. 95).

On September 18, 2019, an order was entered granting the Conversion Motion. (ECF No. 116).

On September 18, 2019, an order was entered authorizing Debtor to employ and retain Brownstein Hyatt Farber Schreck, LLP, as counsel for the Debtor. (ECF No. 119).

On September 18, 2019, a notice of Chapter 11 bankruptcy case was entered ("Bankruptcy Notice") that was served on the creditor matrix[4] previously filed in the case. (ECF No. 127). The Bankruptcy Notice established a deadline of January 22, 2020 for non-governmental creditors to file proofs of claim and a deadline of March 16, 2020, for governmental creditors to file proofs of claim.

On September 23, 2019, an order was entered approving a stipulation between the Debtor and the Petitioning Creditors regarding confidential information ("Protective Order"). (ECF No. 134). The order provides for certain documents to be exchanged confidentially, disclosed under restrictive terms if necessary, and to be filed with the court under seal upon proper request.

On September 24, 2019, an order was entered granting the Debtor's request to file the Litigation Funding document under seal. (ECF No. 136).

On October 1, 2019, an order was entered granting Debtor's request to approve DIP Financing. (ECF No. 148). That order approved a $1 million credit facility from WSF, with the repayment obligation accorded superpriority administrative expense status. The promissory note also permitted the Debtor to elect to convert the debt to equity through confirmation of a Chapter 11 plan of reorganization.

[4] On September 16, 2019, Debtor filed a verification of creditor matrix that lists the names and addresses of the creditors in the case. (ECF No. 113).

On October 8, 2019, an order was entered granting in part Debtor's motion to quash Petitioning Creditors' access to copies of the post-petition Litigation Funding agreement. (ECF No. 153).

On October 14, 2019, Debtor filed an amended voluntary Chapter 11 petition setting forth its existing name, and adding "FDBA One E-Commerce Corporation" and "FDBA Arianne Co." (ECF No. 155).

On October 14, 2019, Debtor filed its schedules of assets and liabilities ("Schedules") along with its statement of financial affairs ("SOFA"). (ECF No. 156). According to its Schedule "D," Debtor has one creditor, Curiam, holding a claim in the amount of $100,000, that is secured by property that is not identified in the schedule.[5] No other secured creditors are listed on Schedule "D." According to its Schedule "E/F," Debtor has no priority unsecured creditors and forty non-priority unsecured creditors. Out of forty non-priority unsecured claims, six of them are the Petitioning Creditors and all of them are designated as disputed. The remaining thirty-four non-priority unsecured creditors have claims that are not disputed, contingent, or unliquidated.[6] Attached to the Schedules and SOFA is a thirty-page List of Equity Security Holders whose holdings range from a low of 4 shares to a high of 22,453,400 shares.

On October 17, 2019, an order was entered granting interim and final approval of funding and security agreements between the Debtor and Curiam. (ECF No. 160). The order approved a $3.5 million Litigation Funding credit facility to permit the Debtor to pursue the USDC Action. Draws on the Litigation Funding are secured by a first priority security interest in the net proceeds of the USDC Action.

On October 17, 2019, an order was entered authorizing Debtor to employ and retain Armstrong Teasdale LLP, as special litigation counsel for the Debtor. On September 10, 2020,

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[5] Debtor apparently had entered into a Litigation Funding agreement with Curiam in November 2018, i.e., prior to the filing of the Involuntary Petition. See Villegas Declaration at ¶ 4. Presumably, that agreement provided security for the claim of Curiam appearing in Schedule "D." In other words, Curiam is scheduled as having a prepetition secured claim

[6] As a result, those thirty-four unsecured creditors are not required to file proofs of claim in this Chapter 11 proceeding. See FED.R.BANKR.P. 3003(b)(1).

an amended order was entered to employ and retain Armstrong Teasdale LLP, as special litigation counsel for the Debtor. (ECF Nos. 162 and 336).

On October 22, 2019, separate orders were entered authorizing Debtor to employ special litigation counsel as well as two certified public accountants. (ECF Nos. 167, 168, and 169).

On November 13, 2019, an order was entered approving a stipulation terminating the automatic stay to permit the specific defendants to file and prosecute certain counterclaims in the USDC Action.[7] (ECF No. 182).

On November 26, 2019, an official committee of unsecured creditors ("UCC") was appointed by the Office of the United States Trustee ("UST"). (ECF No. 184).[8] Members of the UCC consisted of Brighthaven Ventures LLC, Spring Point Project, and William Wilkison.

On December 18, 2019, Debtor filed a motion seeking to disband the UCC. (ECF No. 205).

On January 7, 2020, Debtor filed a motion for authority to employ and retain Portage Point Partners, LLC ("Portage Point"), as its financial advisor for the purpose of performing a valuation analysis of the Debtor. (ECF No. 214).

On January 21, 2020, the UST filed an amended notice of appointment for the UCC. (ECF No. 228). Members of the UCC now consists of Brighthaven Ventures LLC, Spring Point Project, William Wilkison, PCG Advisory, Inc., and COVA Capital Partners, LLC.

On January 21, 2020, James Green filed a proof of claim ("Green POC") attesting that he is owed the general unsecured amount of $754,271.20, pursuant to a civil judgment. A copy of a Final Judgment is attached to the POC that was entered by the General Court of Justice Superior Court Division, County of Wake, State of North Carolina ("NC State Court"). The Final

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[7] On October 25, 2019, a stipulation was filed between the Debtor and certain of the Petitioning Creditors (ECF No. 175) describing the USDC Action as having been commenced by the Debtor in the Southern District of New York in January 2019 against James Green, William Wilkison, Brighthaven Ventures, LLC, and Avolynt, Inc. ("Litigation Creditors"), and subsequently transferred to the Eastern District of North Carolina ("North Carolina Federal Court").

[8] Although there appear to be more than 300 equity security holders of the Debtor, no committee of equity security holders has been formed in the case.

Judgment is captioned as Islet Sciences, Inc., plaintiff, v. Brighthaven Ventures, LLC, James Green, William Wilkison, defendants, denominated Case No. 15 CVS 16388 ("NC State Court Judgment").[9]

On January 21, 2020, William Wilkison filed a separate proof of claim ("Wilkison POC") attesting that he is owed $758,607.51 pursuant to a civil judgment. A copy of the same NC State Court Judgment is attached in support of the Wilkison POC.

On January 21, 2020, Brighthaven Ventures LLC filed a separate proof of claim ("Brighthaven POC") attesting that it is owed $442,342.63 based on certain unliquidated counterclaims it has filed in the USDC Action.[10]

On January 24, 2020, an order was entered approving a stipulation by the Debtor, UCC, and UST to withdraw the motion to disband the UCC. (ECF No. 232).

On February 14, 2020, an order was entered extending the plan exclusivity period under Section 1121(b). (ECF No. 242).

On February 19, 2020, an order was entered approving Debtor's employment and retention of Portage Point as its financial advisor. (ECF No. 244).

On April 16, 2020, an order was entered authorizing Debtor to employ and retain Schwartz Law, PLLC, as counsel for the Debtor. (ECF No. 271).

On June 11, 2020, an order was entered further extending the plan exclusivity period. (ECF No. 284).

On October 13, 2020, an order was entered further extending the plan exclusivity period. (ECF No. 354).

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[9] The NC State Court Judgment recites that on April 2, 2019, Steel had consented to entry of a judgment against him in the amount of $45,850,000.00, based on a claim for tortious interference with contract.

[10] For some reason, a copy of the NC State Court Judgment does not appear to be attached to the Brighthaven POC, but that judgment does indicate that Brighthaven Ventures, LLC was awarded $443,342.63, separate and apart from the amounts awarded to creditors James Green and William Wilkison.

On November 25, 2020, Debtor filed a fourth motion seeking to extend the plan exclusive filing period to December 30, 2020 and the plan exclusive solicitation period to March 8, 2021. (ECF No. 358).

On December 3, 2020, Debtor filed a motion to amend the DIP Financing to increase the facility with WSF from $1 million to $2 million, including the superpriority administrative expense status. It also included the provision allowing the Debtor to elect to convert the resulting debt to equity in a proposed Chapter 11 plan. (ECF Nos. 361 and 363).[11]

On December 23, 2020, Debtor filed a disclosure statement for plan of reorganization ("Disclosure Statement"). (ECF No. 377).

On December 23, 2020, Debtor filed a plan of reorganization under Chapter 11 ("Plan"). (ECF No. 378).

On December 23, 2020, Debtor filed a motion for approval of the Disclosure Statement, for approval of form of ballots, noticing procedures, and related matters. (ECF No. 379).

On December 30, 2020, an order was entered granting Debtor's fourth motion to further extend the plan exclusivity periods. (ECF No. 385).

On January 7, 2021, an order was entered approving the Debtor's amended DIP Financing from WSF. (ECF No. 387).[12]

On February 3, 2021, an objection to Disclosure Statement approval was filed by the UCC ("UCC Objection"). (ECF No. 399).

On February 3, 2021, an objection to Disclosure Statement approval, as well as plan confirmation procedures, was filed by Avolynt, Inc., Brighthaven Ventures LLC, Steve Delmar, James Green, and William Wilkison, accompanied by the declarations of Mark M. Weisenmiller ("Weisenmiller Declaration") and James Green ("Green Declaration"). (ECF Nos. 401, 402, and

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[11] Debtor's motion to amend the DIP Financing is supported by another declaration from Steel, to which is attached an Amended Revolving Line of Credit Promissory Note. Paragraph 5 of that amended note provides for the conversion of debt to equity through issuance of securities under a confirmed Chapter 11 plan of reorganization.

[12] No objection to the amended DIP Financing was filed or presented.

403). Additionally, these five creditors filed a separate "Motion Pursuant to Fed.R.Bankr.P. 3013 Determining Classification and Impairment of Claims" ("3013 Motion"). (ECF No. 404).[13]

On February 4, 2021, an order was entered shortening time so that the 3013 Motion could be heard contemporaneously with approval of the Disclosure Statement. (ECF No. 409).

On February 5, 2021, an amended order was entered granting a prior request by the same five creditors to seal and redact certain portions of an exhibit attached to the Weisenmiller Declaration. (ECF No. 410).

On February 11, 2021, Debtor filed an opposition to the 3013 Motion, a reply to the UCC Objection ("UCC Reply"), and a separate reply to the other objection ("Debtor Reply"). (ECF Nos. 411, 412, and 413). Along with these documents, Debtor filed another "Disclosure Statement for the Plan of Reorganization [etc.]" as well as another "Plan of Reorganization [etc.]" that appear to contain amendments to the original documents without being identified as amended documents.[14] (ECF Nos. 414 and 415).[15]

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[13] FRBP 3013 provides, in pertinent part: "For the purposes of the plan and its acceptance, the court may, on motion after hearing on notice as the court may direct, determine classes of creditors and equity security holders pursuant to §§1122…of the Code." The 3013 Motion brought by the Creditor Group seeks a number of legal determinations in advance of confirmation of the proposed Plan: (1) that Curiam is an administrative claimant improperly placed into separate Class 1; (2) that Curiam's claim in Class 1 is not an impaired class entitled to vote to accept or reject the proposed Plan; (3) that placing the Petitioning Creditors into unsecured Class 2 separate from other unsecured creditors in Class 3 constitutes improper "gerrymandering" of classes to achieve plan confirmation; and (4) that the proposed Plan is unconfirmable because the resulting misclassifications violated Sections 1122, 1123 and 1124, and therefore do not meet the plan confirmation requirement of Section 1129(a)(1).

[14] For ease of reference, this Order will refer to these two documents as the "Revised Disclosure Statement" and the "Revised Plan." In these documents, there is a new group labeled as the "Litigation Creditors" consisting of Avolynt, Inc., Brighthaven Ventures, LLC, James Green, and William Wilkison. See Revised Disclosure Statement at Art. III, § D, ¶ 1 (ECF No. 414, page 16 of 55); Revised Plan at Art. I, § A, ¶ 67 (ECF No. 415, page 8 of 34). See also note 7, supra. For some reason, this group does not include Steve Delmar.

[15] These latter documents, as well as the original Disclosure Statement and Plan, are signed by Steel as CEO of the Debtor.

On February 16, 2021, Debtor filed an "errata" that provides the final three pages that was missing from its Debtor Reply. (ECF No. 416).

On February 16, 2021, the Litigation Creditors filed a reply in support of its 3013 Motion. (ECF No. 419).[16]

LEGAL STANDARD

Section 1125 requires the disclosure statement to provide "adequate information" to the creditors in order for them to make an "informed judgement about the plan." 11 U.S.C. § 1125(a)(1).[17] The adequacy of disclosure statement information has been evaluated using numerous factors, including the present condition of the Debtor while in Chapter 11, the classes and claims within the reorganization plan, the estimated administrative expenses (including attorneys' fees), financial information and projections relevant to the decision to accept or reject the Debtor's plan, and information relevant to the risks posed to creditors under the Debtor's plan. See In re Reilly, 71 B.R. 132, 134-35 (Bankr. D. Mont. 1987). See generally 7 COLLIER ON BANKRUPTCY, ¶ 1125.02[2] (Richard Levin & Henry J. Sommer eds., 16th ed.). Even if a disclosure statement previously has been approved, the adequacy of disclosure may be revisited at plan confirmation. See Official Comm. of Unsecured Creditors v. Michelson (In re Michelson), 141 B.R. 715 (Bankr. E.D. Cal. 1992). As the Michelson court observed:

> Compliance with the disclosure and solicitation requirements is the paradigmatic example of what the Congress had in mind when it enacted section 1129(a)(2). According to both the House and Senate Reports, that section "requires that the proponent of the plan comply

[16] The 3013 Motion is the subject of a separate order entered contemporaneously herewith.

[17] In full, Section 1125(a)(1) states: "'adequate information' means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information."

> with the applicable provisions of title 11, such as section 1125 regarding disclosure." H.R.Rep. No. 595, 95th Cong., 1st Sess. 412 (1977); S.Rep. No. 989, 95th Cong., 2d Sess. 126 (1978); 1978 U.S.Code Cong. & Ad.News 5787 at 5912, 6368.
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> Reassessing the adequacy of disclosure from the vantage of the confirmation hearing is an efficient safeguard of the integrity of the reorganization process. When the adequacy of information is initially determined during the presolicitation phase, the court is acting in a context in which information may be sketchy and preliminary. The court does not conduct an independent investigation and relies upon its reading of the document for apparent completeness and intelligibility, as well as objections raised by parties in interest.

141 B.R. at 719. See, e.g., In re Samuel, 2018 WL 4739937, at *9 (Bankr. E.D. Cal. Sep. 27, 2018) (re-examining adequacy of disclosure at plan confirmation).

The plan proponent has the burden to show that its proposed disclosure statement contains adequate information. See Michelson, 141 B.R. at 719. "[T]he determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court." Computer Task Group, Inc. v. Brotby (In re Brotby), 303 B.R. 177, 193 (B.A.P. 9th Cir. 2003) (quotations and citations omitted).

DISCUSSION

The court having reviewed the Disclosure Statement as well as the written and oral arguments presented, approves the Revised Disclosure Statement subject to the clarifications and additional information discussed below.

A. The UCC.

The UCC argues that the Disclosure Statement does not contain adequate information as to the Debtor's proposed valuation as a reorganized entity, the basis for and amount for the treatment of Curiam's secured claim, and the technological and financial feasibility of future operations. The UCC further maintains that the Plan, as described in the Disclosure Statement, is unconfirmable on its face.

B. The Litigation Creditors.

The Litigation Creditors also maintains that information is insufficient to determine the Debtor's proposed valuation or the feasibility of the proposed Plan. It also argues that the Disclosure Statement does not contain adequate information to conduct a liquidation analysis, to evaluate certain release and exculpation provisions, or to explain certain classifications used in the Plan. Like the UCC, the Litigation Creditors suggest that the Plan is unconfirmable on its face.

C. The Debtor's Response.

Although the UCC and the Litigation Creditors expressly argue that their disclosure objections prevent the Revised Plan from being confirmed, Debtor's primary response is that the objections are exactly that: plan confirmation objections. For that reason, the Revised Disclosure Statement provides some of the additional information requested, but not all. At the disclosure statement approval hearing, each side parroted their written positions to like effect.

D. Disclosure Statement Approval.

While Debtor's response is both linear and circular, it does reflect the reality that adequacy of disclosure can be revisited at plan confirmation. The risk of inadequate disclosure squarely falls upon the Debtor as plan proponent. Moreover, it also reflects the allocation of the burdens at plan confirmation: as the plan proponent, Debtor must prove by a preponderance of the evidence that all applicable requirements of Section 1129(a) and Section 1129(b) are met. The UCC and Litigation Creditors do not have that burden, but do have the opportunity to present evidence – percipient, expert, and documentary – to rebut, contradict, or even bolster the evidence offered by the Debtor. Likewise, parties in interest other than the UCC and Litigation Creditors, e.g., the Petitioning Creditors, are free to object to plan confirmation on any of the grounds relevant under Section 1129, including classification, good faith, valuation, best interests, feasibility, and fair and equitable treatment of dissenting classes. Moreover, and not surprisingly, at least some of the main protagonists have an extensive litigation history that presages any contested plan confirmation hearing. Like any contested matter, discovery is available with respect to plan confirmation.

In this instance, all of the Petitioning Creditors assert that their claims are unsecured. As of the hearing on the Revised Disclosure Statement, fourteen proofs of claim had been filed before the January 22, 2020 deadline, and one non-governmental proof of claim after the deadline. All of the fifteen proofs of claim are for unsecured amounts[18] and only one of them asserts priority unsecured status. On the Debtor's Schedules, only Curiam was listed as having a claim in the amount of $100,000 secured by property of the estate. As of the hearing, there appears to be no dispute that Curiam is the only creditor holding a secured claim against property of the Debtor and that the collateral consists of a portion of the net recovery, if any, from the USDC Action.

Moreover, in this instance, the proposed Revised Plan consists of only four classes, with Curiam and the Litigation Creditors as two of them, and the Petitioning Creditors apparently falling into a separate third class of non-priority unsecured claims. The fourth and final class consists of the Debtor's equity security holders. Whether all four classes are impaired for voting purposes is not necessary to decide at this stage: the risk of having no accepting impaired class falls primarily on the Debtor. Because only impaired classes are entitled to vote under Section 1126(f), Debtor proposes to solicit acceptance from all four classes. Because only ballots actually cast in an impaired class will determine class acceptance under Section 1126(c), it is premature to determine whether the Debtor will need to seek cramdown under Section 1129(b). Given these realities of the solicitation and acceptance process, the court has reviewed the

[18] Out of the fifteen proofs of claim, four were filed by Steve Delmar, James Green, William Wilkison, and Brighthaven Ventures LLC. Out of the six non-priority unsecured claims designated in the Schedules as disputed, no proofs of claim were filed on behalf of Kevin M. Long or VACCO Raleigh LLC. In other words, two of the six Petitioning Creditors have not provided additional prima facie evidence of the validity or amount of their claims. Included among the other eleven proofs of claim, four were from persons or entities that were not included in Debtor's Schedule "E/F" – Typenex Co-Investments, LLC ($251,373.32), Stephen H. Cohen ($25,000), Avolynt, Inc. (unknown); and Kolesar & Leatham, Chtd. ($11,910.50). There is another proof of claim where the claimant is identified as Islet Sciences, but it appears to have been filed on behalf of PCG Advisory Group ($188,000) that was included in Debtor's Schedule "E/F." That proof of claim appears to be a duplicate of the separate proof of claim otherwise filed by PCG Advisory Group. Based on the Schedules and the proofs of claim on file, it appears that the Debtor has approximately forty-two unsecured creditors that must be addressed by the proposed Revised Plan.

Revised Disclosure Statement. The sole inquiry is whether any additional information is necessary to enable a hypothetical reasonable investor in a particular class to make an informed judgment about the proposed plan of reorganization?

In this case, proposed Class One consists only of Curiam which is the source of both preconfirmation and postconfirmation Litigation Funding. Curiam is secured by an interest in the USDC Action, is the only secured creditor in the case, and has not objected to the adequacy of disclosure. Class Two consists only of the unsecured Litigation Creditors that will receive an interest in the reorganized debtor entity in an amount determined primarily by the outcome of the USDC Action. For the Litigation Creditors, the dollar value of their distribution will be determined by the projected value of their interest in the reorganized debtor entity. As they are parties to the USDC Action itself, and have access to the confidential valuation information relevant to plan confirmation, their disclosure concerns are muted at best.

Class Three consists of all other nonpriority unsecured creditors who will receive an interest in the reorganized debtor entity equal to the cash value of their claims. Like the Litigation Creditors in Class Two, the monetary value of the distribution to unsecured creditors in Class Three will be determined by the projected value of their interests in the reorganized debtor entity.[19] Like the Litigation Creditors in Class Two, the nonpriority unsecured creditors in Class Three may access the valuation prepared for the Debtor by its investment advisor, Portage Point,[20] by complying with the confidentiality and nondisclosure provisions of the Protective Order previously entered in the case. See Revised Disclosure Statement at Art. II, § B, ¶ 3 n.58 (ECF No. 414, page 13 of 55). Of course, nothing prevents the nonpriority unsecured

[19] Class Three apparently includes the Petitioning Creditors that are not included among the Litigation Creditors.

[20] Debtor describes the "raw value" of its biotechnology asset as being based on eventually licensing its medical therapy and diagnostic test to major third-party enterprises that would bring those products to the market. Based on the licensing value of the products, Debtor's investment advisor apparently concluded that the therapy has a value of $61,772,000 and the test has a value of $380,626,000. See Revised Disclosure Statement at Art. II, § B, ¶ 3 (ECF No. 414, page 13 of 55).

creditors in Class Three, perhaps assisted by the UCC, from seeking an independent valuation of the reorganized debtor.

Class Four consists only of the existing equity interests in the Debtor who will receive the interests in the reorganized debtor that are not distributed to the unsecured creditors in Class Two and Class Three. The monetary value of the interest retained by equity security holders in Class Four will be determined by the projected value of the remaining interest in the reorganized debtor entity. Like the Litigation Creditors in Class 2 and the nonpriority unsecured creditors in Class 3, the value of the interest retained by the equity security holders in Class 4 will be predicated largely on the valuation evidence offered by the Debtor, and any contrary evidence offered by other parties in interest. Nothing prevents the equity holders in Class Four from seeking an independent valuation of the reorganized debtor.

Unfortunately, the Revised Disclosure Statement is unclear as to the interest that will be retained in the reorganized debtor entity. As previously mentioned, under the amended DIP Financing agreement, the debt owed to WSF may be converted to equity under any confirmed Chapter 11 plan of reorganization. Based on the conversion provision, Debtor indicates that "WSF may own up to 35% of the equity in the Reoroganized (sic) Debtor." Revised Disclosure Statement, Art. II, § A, ¶ 4 (ECF No. 414, page 13 of 55) (emphasis added). In disclosing its reorganization strategy of exchanging debt for equity, Debtor then indicates that "As set forth above, the Debtor intents (sic) to: issue shares of the New Equity to WSF in accordance with the lender's DIP Facility, as amended, which result in WSF owning approximately 11% of the Reorganized Debtor." Id., Art. II, § C (ECF No. 414, page 14 of 55) (emphasis added). In summarizing the plan and treatment of claims and equity interests, Debtor then indicates, *inter alia*, that "In light of the valuation of the Debtor's estate, the Equity Interest Holders shall receive their pro-rata share of the New Equity, but will be diluted by approximately 35% by the issuance of equity to the Holders of Claims in Classes 2 and 3, and the claims of WSF. It is anticipated the current Holders of Equity shall be diluted from 100% to 65% ownership of the Debtor of (sic) the Reorganized Debtor is successful in the North Carolina Litigation." Id., Art. III, § D, ¶ 3 (ECF No. 414 page 18 of 55) (emphasis added). This inconsistency in the Revised

Disclosure Statement is made worse by the treatment of equity interests provided in the proposed plan: "In full and final satisfaction, settlement, release, and discharge of, and in exchange for each of the Equity Interests, on the Effective Date, the Holders thereof shall receive their Pro Rata value of 87% of shares of the New Equity Interests after the satisfaction of the Allowed Claims in Classes 2 and 3, in proportion to each Holder's Equity Interest ownership on the Record Date." Revised Plan, Arti. III, § B, ¶ 4(b) (ECF No. 415, page 15 of 34) (emphasis added). Irrespective of the projected value of the reorganized debtor entity after plan confirmation, these discrepancies in the Revised Disclosure Statement and the Revised Plan would be material to whether equity security holders will support the proponent of any proposed Chapter 11 plan of reorganization.[21]

Beyond rectifying this discrepancy, the court concludes that additional disclosure is necessary with respect to the Debtor's proposed new management as well as the current CEO, Steel. Section 1129(a)(5) is its own disclosure requirement for confirming a Chapter 11 plan. A plan proponent must disclose of the identity and affiliations of any individual proposed to serve as a director or officer of any successor to the debtor, see 11 U.S.C. §1129(a)(5)(A)(i), as well as any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation. See id. at §1129(a)(5)(B). In describing the new corporate existence and management of the reorganized debtor, Debtor discloses that a new board of directors will be formed, "including" four specifically named individuals.[22] See Revised Disclosure Statement at Art. III, § E, ¶ 3 (ECF No. 414, pages 19-20 of 55).[23] The background and resumes of the individuals is not provided, but are available on request. Steel will remain with the reorganized

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[21] This discrepancy also may impact how creditors in Class 2 and Class 3 assess the value of any interest they receive in the reorganized debtor entity.

[22] "Including" is not a term of limitation. Section 1129(a)(5) specifically requires disclosure of the identity and affiliations of any and all individuals, not just some, who will participate in post-confirmation management of a Chapter 11 debtor's successor.

[23] The proposed plan of reorganization refers to a "placeholder" for such information to be provided, presumably through the proposed Revised Disclosure Statement. See Revised Plan at Art. V, § J (ECF No. 415, page 19 of 34). In other words, the proposed plan provides no additional information for the solicitation process.

debtor for an unspecified period of time so that the reorganized debtor can transition to the new board of directors. In a footnote, Debtor describes Steel's connections to certain litigation involving the Debtor, including a $45 million judgment against him in favor of Brighthaven Ventures, LLC for tortious interference with contract, and potential claims by the Debtor against Steel arising out of his conduct in pre-bankruptcy litigation. Id., page 20 of 55 n.64. The footnote also discloses that Steel apparently is the subject to causes of action in the USDC Action alleging malicious prosecution, abuse of process, and unfair and deceptive trade practices. Because the background and resumes of the proposed new board members is not provided, the court has no means of determining the adequacy of the disclosure, particularly the affiliations of the proposed members. Likewise, there is no information provided as to the compensation, if any, to be paid to Steel while he assists in the transition to the new board, nor the duration of the transition period. Likewise, Steel's affiliation, if any, to members of the new board is not disclosed to the parties in interest who would vote on the proposed plan. Finally, while the events leading to the $45 million judgment against Steel is otherwise disclosed, see Revised Disclosure Statement at Art. I, § C (ECF No. 414, pages 9-10 of 55), the alleged basis for potential claims by the estate against Steel should be disclosed.

Based on the foregoing, the court will approve the Debtor's disclosures as reflected in the Revised Disclosure Statement, subject to: (1) clarification of the percentage interests in the reorganized debtor that will be held by Classes 2, 3, and 4; (2) identification of all members of the proposed new board of directors, including their background, qualifications, affiliations and proposed compensation, if any; and (3) identification of the alleged factual basis for the potential claims by the Debtor against Steel arising out of the pre-bankruptcy litigation otherwise disclosed in this proceeding. Debtor shall submit a revised disclosure statement, marked as the Second Amended Disclosure Statement, along with a conforming Second Amended Plan of Reorganization, **no later than March 31, 2021.** No other disclosure revisions will be permitted without prior leave of court. No objections to the revised disclosure statement will be permitted. If the court is satisfied, Debtor's counsel will be directed to submit an order approving the

revised disclosure statement as well as the other relief requested by the instant Motion and setting a status hearing to select a date for plan confirmation.

Approval of the revised disclosure statement, if at all, shall be without prejudice to any disclosure or plan objections that may be raised in opposition to confirmation of the Chapter 11 plan of reorganization proposed by the Debtor.

IT IS THEREFORE ORDERED that the Motion for the Entry of an Order: (i) Approving the Disclosure Statement; (ii) Approving the Form of Ballots and Proposed Solicitation and Tabulation Procedures; (iii) Fixing the Voting Deadline With Respect to the Debtor's Chapter 11 Plan; (iv) Prescribing the Form and Manner of Notice Thereof; (v) Fixing the Last Date for Filing Objections to the Chapter 11 Plan; (vi) Scheduling a Hearing to Consider Confirmation of the Chapter 11 Plan; and (vii) Appointing Schwartz Law, PLLC as Solicitation and Tabulation Agent, Docket No. 379, be, and the same hereby is, **GRANTED AS PROVIDED ABOVE**.

IT IS FURTHER ORDERED that Debtor shall file a second amended disclosure statement and conforming second amended Chapter 11 plan of reorganization, **no later than March 31, 2021.** Thereafter, the court will notify counsel whether an order may be submitted approving the revised disclosure statement, approving the ballot format, solicitation, tabulation and related matters, and setting a status conference to select a date for plan confirmation.

Copies sent via BNC to all parties

Copies sent via BNC to:
ISLET SCIENCES, INC.
ATTN: OFFICER OR MANAGING AGENT
2360 CORPORATE CIRCLE, SUITE 400
HENDERSON, NV 89074-7722

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