

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

[Dex Liquidating Co. \(f/k/a Dextera Surgical Inc.\)](#),¹

Debtor.

Chapter 11

Case No. 17-12913 (KJC)

[Re: Docket No. 250](#)

**DISCLOSURE STATEMENT RELATING TO
DEBTOR'S FIRST AMENDED CHAPTER 11 PLAN OF LIQUIDATION**

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Dated: ~~April 18~~[August 27](#), 2018

THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED BY THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE (THE "BANKRUPTCY COURT") UNDER SECTION 1125(b) OF THE BANKRUPTCY CODE FOR USE IN THE SOLICITATION OF ACCEPTANCES OF THE PLAN DESCRIBED HEREIN. ACCORDINGLY, THE FILING AND DISTRIBUTION OF THIS

¹ The last four digits of the Debtor's federal tax identification number are 7832. The Debtor's address is ~~900~~ [Saginaw Drive](#) ~~7~~ [West 41st Avenue - # 245](#), ~~Redwood City~~ [San Mateo](#), CA ~~94063~~ [94403](#).

DISCLOSURE STATEMENT IS NOT INTENDED, AND SHOULD NOT BE CONSTRUED, AS A SOLICITATION OF ACCEPTANCES OF SUCH PLAN. THE INFORMATION CONTAINED HEREIN SHOULD NOT BE RELIED UPON FOR ANY PURPOSE BEFORE A DETERMINATION BY THE BANKRUPTCY COURT THAT THIS DISCLOSURE STATEMENT CONTAINS "ADEQUATE INFORMATION" WITHIN THE MEANING OF SECTION 1125(a) OF THE BANKRUPTCY CODE.

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I.

INTRODUCTION

All capitalized terms used in this disclosure statement (the “Disclosure Statement”) and not otherwise defined herein shall have the meanings ascribed thereto in the Debtor’s First Amended Chapter 11 Plan of Liquidation, dated ~~April 18~~August 27, 2018, attached hereto as Exhibit “A” (the “Plan”) (see Article I of the Plan entitled “Defined Terms and Rules of Interpretation”).

THIS DISCLOSURE STATEMENT CONTAINS IMPORTANT INFORMATION THAT MAY BEAR UPON YOUR DECISION TO ACCEPT OR REJECT THE PLAN. PLEASE READ THIS DOCUMENT WITH CARE.

PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN, THE EXHIBITS ANNEXED TO THE PLAN AND THIS DISCLOSURE STATEMENT. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF, AND THERE CAN BE NO ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN WILL BE CORRECT AT ANY TIME AFTER THE DATE HEREOF. IN THE EVENT OF ANY CONFLICT BETWEEN THE DESCRIPTIONS SET FORTH IN THIS DISCLOSURE STATEMENT AND THE TERMS OF THE PLAN, THE TERMS OF THE PLAN SHALL GOVERN.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3016(b) AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAW OR OTHER NON-BANKRUPTCY LAW. THIS DISCLOSURE STATEMENT HAS NEITHER BEEN APPROVED NOR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION, NOR HAS THE SECURITIES AND EXCHANGE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN. PERSONS OR ENTITIES TRADING IN OR OTHERWISE PURCHASING, SELLING OR TRANSFERRING CLAIMS OF, OR INTERESTS IN, THE DEBTOR SHOULD EVALUATE THIS DISCLOSURE STATEMENT AND THE PLAN IN LIGHT OF THE PURPOSE FOR WHICH THEY WERE PREPARED.

THE DISCLOSURE STATEMENT SHALL NOT BE CONSTRUED TO BE CONCLUSIVE ADVICE ON THE TAX, SECURITIES OR OTHER LEGAL EFFECTS OF THE PLAN AS TO HOLDERS OF CLAIMS AGAINST, AND INTERESTS IN, THE DEBTOR AND DEBTOR-IN-POSSESSION IN THIS CHAPTER 11 CASE. YOU ARE STRONGLY URGED TO CONSULT WITH YOUR FINANCIAL, LEGAL AND TAX ADVISORS TO FULLY UNDERSTAND THE PLAN AND DISCLOSURE STATEMENT.

THE DISCLOSURE STATEMENT MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE WHETHER TO VOTE IN FAVOR OF OR

AGAINST THE PLAN. CERTAIN OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS, BY ITS NATURE, FORWARD-LOOKING AND CONTAINS ESTIMATES, ASSUMPTIONS AND PROJECTIONS THAT MAY BE MATERIALLY DIFFERENT FROM ACTUAL FUTURE RESULTS. THERE CAN BE NO ASSURANCE THAT ANY FORECASTED OR PROJECTED RESULTS CONTAINED HEREIN WILL BE REALIZED, AND ACTUAL RESULTS MAY VARY FROM THOSE SHOWN, POSSIBLY BY MATERIAL AMOUNTS.

AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER ACTIONS OR THREATENED ACTIONS, IF ANY, THIS DISCLOSURE STATEMENT SHALL NOT BE CONSTRUED AS AN ADMISSION OR STIPULATION, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS.

THE DEBTOR BELIEVES THAT THE PLAN IS IN THE BEST INTERESTS OF, AND PROVIDES THE HIGHEST AND BEST RECOVERIES TO, HOLDERS OF ALL CLASSES OF CLAIMS AND INTERESTS. ALL HOLDERS OF INTERESTS ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN ARE URGED TO VOTE IN FAVOR OF THE PLAN. TO BE COUNTED, YOUR BALLOT MUST BE DULY COMPLETED, EXECUTED AND RECEIVED BY 5:00 P.M., EASTERN TIME, ON _____, 2018 (THE “VOTING DEADLINE”).

THE DEBTOR RESERVES THE RIGHT TO FURTHER AMEND THIS DISCLOSURE STATEMENT AND THE ATTACHED PLAN.

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II.

NOTICE TO HOLDERS OF CLAIMS AND INTERESTS

[Dex Liquidating Co. \(f/k/a Dextera Surgical, Inc.\)](#), the above-captioned debtor and debtor in possession (the “Debtor”), has prepared and filed the Debtor’s Plan. The Plan provides for the wind down and liquidation of the Debtor.

The purpose of this Disclosure Statement is to enable holders of Claims and Interests, who are entitled to vote on the Plan, to make an informed decision when exercising their right to accept or reject the Plan. As such, each Holder of an Interest entitled to vote to accept or reject the Plan should read this Disclosure Statement and the Plan in their entirety before voting. No solicitation of votes to accept or reject the Plan may be made except pursuant to this Disclosure Statement and section 1125 of the Bankruptcy Code. Moreover, except for the Debtor and certain of the Debtor’s Professionals, no person has been authorized to use or promulgate any information concerning the Debtor, its business or the Plan other than the information contained in this Disclosure Statement, and if given or made, such information may not be relied upon as having been authorized by the Bankruptcy Court.

III.

INSTRUCTIONS FOR VOTING

A. Voting Deadline

The Bankruptcy Court has fixed _____, 2018 as the Voting Deadline. Only holders of Claims or Interests on the Voting Deadline and certain other parties specified by the Bankruptcy Court are entitled to receive a copy of this Disclosure Statement and related materials.

Each Holder of an Interest entitled to vote, after carefully reviewing this Disclosure Statement, including the attached exhibits, should indicate their acceptance or rejection of the Plan by voting for or against the Plan on the enclosed Ballot and return the same to the address set forth on the Ballot in the enclosed, postage prepaid, return envelope so that it will be received by Omni Management Group (the “Voting Agent”) no later than _____ p.m. on the Voting Deadline. **BALLOTS SENT BY FACSIMILE TRANSMISSION OR ELECTRONIC MAIL ARE NOT ALLOWED AND WILL NOT BE COUNTED.**

DO NOT RETURN ANY OTHER DOCUMENTS WITH YOUR BALLOT.

You may be bound by the Plan if it is accepted by the requisite holders of Interests even if you do not vote to accept the Plan or if you are the holder of an Unimpaired Claim or Interest.

B. Further Information/Additional Copies

If you have any question about (1) the procedures for voting your Interest, (2) the packet of materials that you have received or (3) the amount of your Claim or Interest, or if you wish to obtain an additional copy of the Plan or this Disclosure Statement, please contact:

~~DEXTERA SURGICAL INC~~ DEX LIQUIDATING CO. BALLOT PROCESSING

c/o Omni Management Group
5955 De Soto Avenue, Suite 100
Woodland Hills, CA 91367
(844) 455-1260 (toll free, U.S. and CANADA)
(818) 906-8300 (all other international calls)

C. Objections to Confirmation/Confirmation Hearing

Pursuant to section 1128 of the Bankruptcy Code, the Bankruptcy Court has scheduled a Confirmation Hearing commencing on _____, **2018 at __:__ .m.**, prevailing Eastern Time, before the Honorable Kevin J. Carey, at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Courtroom 5, Wilmington, Delaware 19801. The Bankruptcy Court has directed that objections, if any, to confirmation of the Plan be filed and served on or before _____, **2018.**

THE DEBTOR SUPPORTS CONFIRMATION OF THE PLAN AND URGES ALL HOLDERS OF IMPAIRED INTERESTS THAT ARE ELIGIBLE TO VOTE TO ACCEPT THE PLAN.

IV.

EXPLANATION OF CHAPTER 11

A principal goal of a chapter 11 bankruptcy case is to reorganize a debtor's business, or liquidate a debtor's assets, for the benefit of creditors and parties in interest. The plan of reorganization or liquidation is the blueprint for accomplishing this goal, as it sets forth the means for satisfying the holders of claims against, and interests in, the debtor's estate. Upon confirmation of a plan, the plan becomes binding on the debtor and all of its creditors and equity holders, and the obligations owed by the debtor to such parties are compromised and exchanged for the obligations specified in the plan.

After a plan of reorganization or liquidation has been filed, the holders of impaired claims against, and interests in (if any), a debtor are permitted to vote to accept or reject the plan. Before soliciting acceptances of the proposed plan, however, section 1125 of the Bankruptcy Code requires the debtor to prepare a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment about the plan. **This Disclosure Statement is presented to holders of Claims against, and Interests in, the Debtor in order to satisfy the requirements of section 1125 of the Bankruptcy Code in connection with the Debtor's solicitation of votes on the Plan.**

A bankruptcy court may confirm a plan of reorganization or liquidation even though fewer than all the classes of impaired claims and equity interests accept such plan. For a plan to be confirmed despite its rejection by a class of impaired claims or equity interests, the plan must be accepted by at least one class of impaired claims (determined without counting the vote of insiders) and the proponent of the plan must show, among other things, that the plan does not

“discriminate unfairly” and the plan is “fair and equitable” with respect to each impaired class of claims or equity interests that has not accepted the plan. **For present purposes, the Plan has been structured so that it will satisfy the foregoing requirements as to any rejecting class of Interests and can therefore be confirmed, if necessary, over the objection of any classes of Interests.**

V.

BRIEF OVERVIEW OF THE PLAN

The Plan provides for the treatment of Claims against, and Interests in, the Debtor in In re Dex Liquidating Co. (f/k/a Dextera Surgical Inc.), Case No. 17-12913 (KJC). The following is a brief overview of the material provisions of the Plan and is qualified in its entirety by reference to the full text of the Plan. In summary, the Plan provides for, among other things the: (i) classification and treatment of unclassified and classified Claims and Interests; (ii) liquidation of the Debtor’s Remaining Assets; (iii) wind down of the Debtor’s Estate; and (iv) reconciliation of Claims and/or Interests.

A. Summary of Classifications Under the Plan

The following is a summary of the estimated Plan Distributions. It is qualified in its entirety by reference to the full text of the Plan, which is attached to this Disclosure Statement as Exhibit “A.” The Claim amounts and Estimated Recovery amounts set forth below reflect what the Debtor believes to be reasonable estimates of the likely resolution of outstanding disputed Claims and projected future costs and expenses. ~~The amounts utilized may differ from the outstanding filed Claim amounts~~ Although these estimates have been prepared in good faith, the Debtor does not warrant their accuracy and the actual allowed amount of Claims and actual distributions to holders of Interests may differ significantly from the amounts set forth below. Any creditor that filed a proof of claim in an amount, or with a priority, different from that set forth in the Debtor’s Schedules is subject to potential dispute regarding the appropriate amount and/or priority of such creditor’s Allowed Claim.

<i>Class</i>	<i>Class Name</i>	<i>Estimated Allowed Claim Amounts²</i>	<i>Estimated Recovery & Treatment</i>
n/a	Administrative Claims	FFB \$872,000	On, or as soon as reasonably practicable after the later of (i) the Effective Date, if the Administrative Claim is an Allowed Administrative Claim on the Effective Date, or (ii) the date such Administrative Claim becomes an Allowed Administrative Claim, a Holder of an Allowed Administrative Claim shall receive, in full satisfaction of such Allowed Administrative Claim, (a) Cash from the SAP Claims Reserve Account, equal to the amount of such Allowed Administrative Claim or (b) such other treatment as to which such Holder and the Debtor shall have agreed upon in writing. Notwithstanding the above or anything to the contrary contained in the Plan, any Administrative Claim of Aesculap arising from or related to the Aesculap APA, the Aesculap Escrow Agreement and/or any document executed in connection therewith, shall be payable solely from the Aesculap Escrow, to the extent provided

² ~~Amounts to be inserted prior to the hearing on this Disclosure Statement.~~

<i>Class</i>	<i>Class Name</i>	<i>Estimated Allowed Claim Amounts²</i>	<i>Estimated Recovery & Treatment</i>
			in, and subject to the terms of, the Aesculap APA and the Aesculap Escrow Agreement. Anticipated recovery: 100%
n/a	Professional Fee Claims	{FBD} \$661,000	On or as soon as reasonably practicable after the later of (i) the Effective Date or (ii) the date a Professional Fee Claim becomes an Allowed Professional Fee Claim, a Holder of an Allowed Professional Fee Claim shall receive, in full satisfaction of such Allowed Professional Fee Claim, Cash from the Professional Fee Claims Reserve equal to the unpaid portion of the Allowed Professional Fee Claim. Anticipated recovery: 100%
n/a	Priority Tax Claims	{FBD} \$172,000	Except to the extent that a Holder of an Allowed Priority Tax Claim has been paid prior to the Effective Date or agrees to a different treatment, each Holder of an Allowed Priority Tax Claim shall receive Cash from the SAP Claims Reserve Account, as applicable, in an amount equal to such Allowed Priority Tax Claim on, or as soon as reasonably practicable after the later of (i) the Effective Date, if the Priority Tax Claim is an Allowed Priority Tax Claim on the Effective Date, or (ii) the date such Claim becomes an Allowed Priority Tax Claim. Anticipated recovery: 100%
1	Priority Non-Tax Claims	{FBD} \$0.00	Except to the extent that a Holder of an Allowed Priority Non-Tax Claim against the Debtor has been paid prior to the Effective Date or agrees to a different treatment, on or as soon as reasonably practicable after the later of (i) the Effective Date, if the Priority Non-Tax Claim is an Allowed Priority Non-Tax claim on the Effective Date, or (ii) the date such Claim becomes an Allowed Priority Non-Tax Claim, the Debtor's Representative shall pay, from the SAP Claims Reserve Account, to each Holder of an Allowed Priority Non-Tax Claim, Cash in an amount equal to such Allowed Priority Non-Tax Claim. Anticipated recovery: 100%
2	Secured Claims	{FBD} \$0.00	Except to the extent that a Holder of an Allowed Class 2 Secured Claim against the Debtor has been paid prior to the Effective Date or agrees to a different treatment, on or as soon as is reasonably practicable after the later of (a) the Effective Date, if the Class 2 Secured Claim is an Allowed Class 2 Secured Claim on the Effective Date or (b) the date such Claim becomes an Allowed Secured Claim, the Debtor's Representative shall either: (i) pay from the SAP Claims Reserve Account, to each Holder of an Allowed Class 2 Secured Claim, Cash in an amount equal to such Allowed Class 2 Secured Claim; or (ii) release to such Holder the collateral securing such Allowed Class 2 Secured Claim. In either event, such payment or release of collateral shall be in full satisfaction of the applicable Allowed Class 2 Secured Claim. Notwithstanding the preceding, or anything in the Plan to the contrary, nothing contained in the Plan is intended to preclude or prevent payment to the Holder of an Allowed Class 2 Secured Claim of the proceeds of the sale of any asset in which such Holder has a Lien as and when such proceeds become available for distribution. Anticipated recovery: 100%
3	General Unsecured	{FBD} \$2,786,000²	Except to the extent that a Holder of an Allowed Class 3 General

² [The estimated Allowed General Unsecured Claims amount assumes Court approval of the Settlement Motion as defined and described in Section VII. K. of this Disclosure Statement.](#)

Class	Class Name	Estimated Allowed Claim Amounts*	Estimated Recovery & Treatment
	Claims		<p>Unsecured Claim against the Debtor has been paid prior to the Effective Date or agrees to a different treatment, on or as soon as is reasonably practicable after the later of (a) the Effective Date, if the Class 3 General Unsecured Claim is an Allowed Class 3 General Unsecured Claim on the Effective Date or (b) the date such Claim becomes an Allowed Class 3 General Unsecured Claim, the Debtor's Representative shall pay from the Distribution Account, to each Holder of an Allowed Class 3 General Unsecured Claim, Cash in an amount equal to such Allowed Class 3 General Unsecured Claim plus interest on such Allowed Class 3 General Unsecured Claim at the Federal Judgment Rate for the time period from the Petition Date to the date of payment. Such payment shall be in full satisfaction of the applicable Allowed 3 General Unsecured Claim.</p> <p>For the avoidance of doubt, (a) Fundamental Transaction Claims, (b) Warrant Claim and (c) Equity Holder Claims, shall be treated as Class 3 General Unsecured Claims, subject to the right of the Debtor and the Debtor's Representative to object to such Claims on any basis, assert that the value of such Claims (if any) is zero, seek the Disallowance of such Claims, seek the subordination of such Claims pursuant to section 510 of the Bankruptcy Code and/or seek to classify such Claims as equity securities in Classes 6, 7 or 8. If and to the extent Fundamental Transaction Claims, Warrant Claims and/or Equity Holder Claims are determined to be Allowed Class 3 General Unsecured Claims and are not subordinated, they shall receive the same treatment set forth above for Allowed Class 3 General Unsecured Claims.</p> <p>To the extent the Bankruptcy Court determines by Final Order that Fundamental Transaction Claims, Warrant Claims and/or Equity Holder Claims are Allowed, but that such Allowed Fundamental Transaction Claims, Warrant Claims and/or Allowed Equity Holder Claims are to be subordinated to Class 3 General Unsecured Creditors (but not subordinated to the same priority as Common Stock under the Plan), Allowed Fundamental Transaction Claims, Allowed Warrant Claims and/or Allowed Equity Holder Claims are to be paid Cash in an amount equal to their Allowed Fundamental Transaction Claims, Allowed Warrant Claims, as applicable, and/or Allowed Equity Holder Claims plus interest thereon at the Federal Judgment Rate for the time period from the Petition Date to the date of payment.</p> <p>To the extent the Bankruptcy Court determines by Final Order that Fundamental Transaction Claims, Warrant Claims and/or Allowed Equity Holder Claims are Allowed, but that such Allowed Fundamental Transaction Claims, Allowed Warrant Claims and/or Allowed Equity Holder Claims are Fully Subordinated, then such Holder of an Allowed Fully Subordinated Fundamental Transaction Claim, Allowed Fully Subordinated Warrant Claim and/or Allowed Fully Subordinated Equity Holder Claim shall, on the Shareholders Distribution Date, be entitled to that percentage of the Cash Available For Distribution equal to the amount of the Holder's Allowed Fully Subordinated Fundamental Transaction Claim, Allowed Fully Subordinated Warrant Claim and/or Allowed Fully Subordinated Equity Holder Claim divided by the sum of (a) the Amount of all Allowed Fully Subordinated Fundamental Transaction Claims, plus the Amount of all Allowed Fully Subordinated Warrant Claims, plus the Amount of all Allowed Fully Subordinated Equity Holder Claims and (b) Cash Available For Distribution; or such other portion of the Cash Available for Distribution as may be determined and/or approved by the Bankruptcy Court in the Confirmation Order.</p> <p><u>Anticipated recovery: 100%</u></p>

<i>Class</i>	<i>Class Name</i>	<i>Estimated Allowed Claim Amounts³</i>	<i>Estimated Recovery & Treatment</i>
4	Series B Convertible Preferred Stock	(\$0.009) N/A	<p>On the Effective Date, each share of outstanding Series B Convertible Preferred Stock shall be deemed, without any action by any Person, to be converted to shares of Class 5 Common Stock, by dividing \$1,000 by the conversion price of \$0.27 (i.e., so that each outstanding share of Series B Convertible Preferred Stock shall be deemed converted into 3,703 shares of Common Stock), or pursuant to such other conversion formula as the Bankruptcy Court may deem appropriate.</p> <p>Holders of Class 4 Series B Convertible Preferred Stock, as converted to shares of Common Stock in the manner set forth above, shall receive the treatment under the Plan afforded to Holders of Class 6-5 Common Stock.</p> <p>The anticipated recovery on account of Allowed Series B Convertible Preferred Stock is from _____ to _____ <u>\$0.009 to \$0.066</u> per share of Common Stock (i.e., once converted to Common Stock in accordance with the Plan).³</p>
5	Common Stock	N/A	<p>Each Holder of Class 5 Common Stock as of the Effective Date (including, for the avoidance of doubt, each Holder of Deemed Common Stock) shall, on the Shareholders Distribution Date, be entitled to that percentage of the Cash Available For Distribution that is determined by application of the following formula, or such other percentage of the Cash Available For Distribution as may be determined and/or approved by the Bankruptcy Court in the Confirmation Order:</p> <p style="padding-left: 40px;">(I) the Common Stock Holder's Proportionate Share times the Cash Available for Distribution divided by</p> <p style="padding-left: 40px;">(II) the sum of (y) the amount of all Allowed Fully Subordinated Fundamental Transaction Claims plus the amount of all Allowed Fully Subordinated Warrant Claims plus the Amount of all Allowed Fully Subordinated Equity Holder Claims and (z) Cash Available For Distribution.</p> <p>The term "Common Stock Holder's Proportionate Share" shall be the percentage obtained by dividing (i) the number of shares of Common Stock held by an applicable Holder of Common Stock by (ii) the Outstanding Shares.</p> <p>The anticipated recovery on account of Allowed Common Stock is from _____ to _____ <u>\$0.009 to \$0.066</u> per share of Common Stock.⁴</p>
6	Series 1 and 2 Warrants	N/A	<p>Except to the extent exercised in accordance with the terms of the Series 1 and 2 Warrants prior to the Effective Date, Class 6 Series 1 and 2 Warrants shall receive no distribution, and retain no property, under this Plan. All Series 1 and 2 Warrants existing as of the Effective Date shall be cancelled and terminated upon the occurrence of the Effective Date.</p> <p><u>Anticipated recovery: none</u></p>
7	Restricted Stock Units	N/A	<p>Except to the extent exercised in accordance with the terms of the Restricted Stock Units prior to the Effective Date, Class 7 Restricted Stock Units shall receive no distribution, and retain no</p>

³ ~~[Range of anticipated- The ultimate recovery to be inserted prior for Allowed Class 4 Interests will turn, in large part, upon the amount of funds released to the hearing on this Disclosure Statement.] Debtor from the Indemnification Escrow.~~

⁴ The ultimate recovery for Allowed Class 5 Interests will turn, in large part, upon the amount of funds released to the Debtor from the Indemnification Escrow.

<i>Class</i>	<i>Class Name</i>	<i>Estimated Allowed Claim Amounts*</i>	<i>Estimated Recovery & Treatment</i>
			property, under the Plan. All Restricted Stock Units existing as of the Effective Date shall be cancelled and terminated upon the occurrence of the Effective Date. Anticipated recovery: none
8	Employee Stock Options	N/A	Except to the extent exercised in accordance with the terms of the Employee Stock Options prior to the Effective Date, Class 8 Employee Stock Options shall receive no distribution, and retain no property, under the Plan. All Employee Stock Options existing as of the Effective Date shall be cancelled and terminated upon the occurrence of the Effective Date. Anticipated recovery: none

VI.

GENERAL INFORMATION

The Debtor is [Dex Liquidating Co. \(f/k/a Dextera Surgical Inc.\)](#).

A. Business of the Debtor

Founded in 1997 as Vascular Innovations, Inc., the Debtor changed its name in November 2001 to Cardica, Inc. ~~and~~, in June 2016 to Dextera Surgical Inc. ~~(sometimes herein, “Dextera”). Dextera~~ ~~and in April 2018 to Dex Liquidating Co.~~ The Debtor had its initial public offering in 2006 and its common stock is publicly traded and, prior to its bankruptcy filing, had been listed on the NASDAQ Capital Market (DXTR). Prior to the Court-approved sale of substantially all of its operating assets on January 24, 2018 (the “Sale”), ~~Dextera~~ the Debtor was an innovative medical device company that designed and manufactured proprietary stapling devices that enable the advancement of minimally invasive surgical procedures, as discussed more fully below.

On the Petition Date, ~~Dextera~~ the Debtor employed approximately 47 full-time employees and two part-time employees. ~~Dextera~~ The Debtor also had a wholly-owned German subsidiary, Dextera Surgical GmbH, located in Laichingen, Germany, which employed one employee and which was used in connection with product sales in Europe. Dextera Surgical GmbH has not filed for bankruptcy or insolvency protection under U.S. or German law.

As of September 30, 2017, ~~Dextera’s~~ the Debtor’s financial statements reflected assets with a book value totaling approximately \$6.53 million and liabilities totaling approximately \$14.821 million, and as of the Petition Date, ~~Dextera~~ the Debtor had Scheduled assets of approximately \$3,878,736.53, consisting of, *inter alia*, amounts held in bank accounts, inventory, raw materials, work in process, accounts receivable, tax refunds, tax credits, interests in net loss carryforwards, intellectual property, vehicles, equipment, office furniture, various licenses and interests in certain insurance policies and utility deposits. ~~Dextera’s~~ The Debtor’s liabilities were in the Scheduled amount of approximately \$5,055,898.15, and included various obligations, largely to unsecured creditors.

B. History of ~~Dextera~~-the Debtor and its Medical Innovations

With increasing demand for minimally invasive surgery, ~~Dextera~~-the Debtor designed a disruptive product in the MicroCutter 5/80™, the world's first and only five-millimeter surgical stapler that articulates to 80 degrees in each direction. As the smallest-profile articulating stapler available today, the MicroCutter 5/80 reduces the amount of dissection and tissue handling required to position the stapler in confined spaces, enabling access to difficult-to-reach anatomy. The cartridge-based device's small size and wide articulation range are designed to enhance the surgeon's access and visualization at the surgical site, and to mitigate limitations on the advancement of minimally invasive surgical approaches created by larger stapling devices.

~~Dextera Surgical~~-The Debtor also marketed the only automated anastomosis devices for coronary artery bypass graft surgery on the market today: the C-Port® Distal Anastomosis Systems and PAS-Port® Proximal Anastomosis System. These products, sold by ~~Dextera~~-the Debtor under the Cardica brand name, demonstrated long-term reliable clinical performance for more than a decade.

~~Dextera~~-The Debtor commercialized and developed the MicroCutter 5/80 Stapler based on proprietary "staple-on-a-strip" technology intended for use by thoracic, pediatric, bariatric, colorectal and general surgeons. This technology enabled ~~Dextera~~-the Debtor to develop products with innovative features such as consistent staple forms, significantly reduced tool shaft diameter and increased articulation. Together, these advances in stapler design enable surgeons to perform procedures on a broader array of patients and to develop procedural methods previously unattainable with existing products in the market.

The MicroCutter 5/80 is a cartridge-based stapler device with a 5 millimeter shaft diameter, 80 degrees of articulation in both directions, and a 30 millimeter staple line. It is cleared for specified indications for use in the United States, and in the European Union (EU), for a broader range of specified indications of use. ~~Dextera~~-The Debtor estimates that the commercially available MicroCutter 5/80, along with additional potential products, if developed, would be suited for use in approximately 1.4 million procedures annually in the United States, involving an estimate of over four million staple cartridge deployments, three million of which would likely be deployed in laparoscopic procedures.

In January 2016, ~~Dextera~~-the Debtor received 510(k) clearance from the U.S. Food and Drug Administration ("FDA"), to use the MicroCutter 5/80 with a white reload, to deploy staples for use in thin tissue, and in July 2016, received FDA 510(k) clearance to use the MicroCutter 5/80 with a blue reload, to deploy staples for use in medium thickness tissue, both for the transection and resection in open or minimally invasive urologic, thoracic, and pediatric surgical procedures. These clearances complemented the existing indications for use of the MicroCutter 5/80 in surgical procedures in the small and large intestine and in the appendix.

Following the 510(k) clearances, ~~Dextera~~-the Debtor conducted an evaluation of the MicroCutter 5/80, which deploys both blue and white cartridges, with selected centers of key opinion leaders in the U.S. and Europe. This was done through initial market preference testing to evaluate surgeons' preferences and to validate the MicroCutter's clinical benefits prior to broadening its commercial launch. ~~Dextera~~-The Debtor completed market testing of the

MicroCutter 5/80 with approximately 55 procedures and 200 staple cartridge deployments. In this market preference testing, the MicroCutter 5/80 demonstrated reliable and consistent hemostasis (stopping of the blood flow).

Following this successful evaluation of the MicroCutter 5/80, ~~Dextera~~-[the Debtor](#) expanded the commercial launch to a select group of customers in the U.S. and Europe. The Debtor conducted the MicroCutter-Assisted Thoracic Surgery Hemostasis, or MATCH, registry, a post-market surveillance registry, to evaluate the hemostasis and ease-of-use for the MicroCutter 5/80. This is an open-label, multi-center registry and ~~Dextera~~-[the Debtor](#) planned to enroll up to 120 patients requiring surgical stapling during a lobectomy (surgical removal of a lobe of an organ) or segmentectomy (surgical removal of a segment of a lung lobe) at leading centers in the U.S. and Europe. As of September 30, 2017, ~~Dextera~~-[the Debtor](#) had enrolled 107 patients in the MATCH registry.

In May 2017, ~~Dextera~~-[the Debtor](#) filed a 510(k) with the FDA seeking to expand the indications for use of the MicroCutter 5/80 to include surgery on solid organs, including liver, pancreas, kidney and spleen. ~~Dextera~~-[The Debtor](#) received clearance from the FDA for this 510(k) for open surgical procedures in August 2017.

C. Management

As of the Petition Date, the ownership and management of ~~Dextera~~-[the Debtor](#) consisted of the following:

CEO: Julian Nikolchev

Directors: Gregory Casciaro, Michael Bates, R. Michael Kleine, Samuel Navarro, Thomas A. Afzal

Vice Presidents: Gregory Watson; Liam Burns; Robert Newell IV

Chief Operating Officer: Thomas Palermo

Shareholders: The 48,206,226 shares in ~~Dextera~~-[the Debtor](#) are widely held.

D. Summary of Prepetition Indebtedness and Capital Structure

Prepetition CMI Indebtedness.

On September 2, 2011, ~~Dextera~~-[the Debtor](#) entered into a Secured Note Purchase Agreement (the "Note Purchase Agreement") with Century Medical, Inc. ("CMI"), a Japanese corporation that is a wholly owned subsidiary of Itochu Corp. CMI is the Debtor's distributor in Japan of the PAS Port Proximal Anastomosis System, and has distributed it since 2004. Pursuant to the Note Purchase Agreement, ~~Dextera~~-[the Debtor](#) issued to CMI a Secured Promissory Note (the "Note") in the original principal amount of \$4,000,000, with interest accruing at an annual rate of 5%, payable quarterly in arrears. Under the terms of the Note Purchase Agreement, as amended on September 14, 2017, quarterly principal payments of \$125,000, plus accrued

interest, are due under the Note on December 31, 2017, March 31, 2018, and June 30, 2018, with the remaining principal balance of \$3.5 million due on September 18, 2018.

To secure ~~Dextera's~~ the Debtor's obligations under the Note Purchase Agreement and the Note, ~~Dextera~~ the Debtor executed a Security Agreement dated as of September 2, 2011, granting CMI a security interest in substantially all of ~~Dextera's~~ the Debtor's personal property assets and proceeds thereof but, with respect to intellectual property, only in such intellectual property, licenses, and payment intangibles of ~~Dextera~~ the Debtor related to the PAS-Port™ product (collectively, the “CMI Collateral”). As such, CMI did not receive a security interest in ~~Dextera's~~ the Debtor's intellectual property, including patents, related to the C-Port system, the MicroCutter, or ~~Dextera's~~ the Debtor's other products. On December 9, 2011, CMI entered into a deposit account control agreement with Silicon Valley Bank, at which ~~Dextera~~ the Debtor maintained its bank accounts, and also entered into a collateral account agreement with Oppenheimer, at which ~~Dextera~~ the Debtor previously maintained a securities account.

On September 25, 2017, CMI filed a UCC-1 Financing Statement (“UCC-1”) with the Secretary of State for the State of Delaware with respect to the other personal property assets granted to CMI as collateral. CMI had not previously filed a UCC-1 Financing Statement.

As of the Petition Date, the outstanding principal the Debtor owed to CMI was \$3.875 million and accrued interest under the Note was approximately \$33,000 (the “CMI Indebtedness”).

Capital Structure.

As of the Petition Date, ~~Dextera~~ the Debtor was authorized to issue two classes of capital stock, designated as Common Stock and Series B Preferred Stock. As of October 31, 2017, there were 48,206,266 shares of Common Stock outstanding and 172 Series B Preferred shares outstanding. Each share of Series B Preferred was convertible into 3,704 common shares and, if all Series B Preferred shares were converted to Common Stock, then 637,088 additional shares of Common Stock would be outstanding. As of the Petition Date, there were also 1,735,267 stock options and restricted stock units outstanding with an average exercise price exceeding \$3.00 per share.

~~Dextera's~~ The Debtor's most recent public offering was completed on May 15, 2017, involving 8,000 shares of convertible Series B Preferred and related Series 1 and Series 2 Warrants at a price to the public of \$1,000 per share of convertible Series B Preferred for gross proceeds of \$8 million. Almost all of the 8,000 Series B Preferred shares were thereafter converted to Common Stock. ~~There are~~ As of the Petition Date there were 29,487,545 Series 1 Warrants outstanding with an expiration date of May 16, 2022 and 6,667,311 Series 2 Warrants outstanding with an expiration date of May 16, 2018. Both Series 1 and Series 2 Warrants have had an exercise price of \$0.27 per share.

The Series 1 and Series 2 Warrants provide for the right to be exercised for shares of Common Stock, including by net exercise in the event that a registration statement is not available for the issuance of shares of Common Stock in a cash exercise, and further provide for

certain alternative rights under specified circumstances in the event of a Fundamental Transaction, depending upon the nature of the Fundamental Transaction.

Trade Debt.

As of the Petition Date, based on its Schedules, ~~Dextera~~-the Debtor owed approximately \$61,018 in priority claims, largely for tax indebtedness, and \$1,119,880 in trade debt.

E. Events Leading to the Commencement of the Chapter 11 Cases

~~Dextera~~-The Debtor generated net revenue of approximately \$3.0 million for the fiscal year ended June 30, 2015, approximately \$4.1 million for the fiscal year ended June 30, 2016, and approximately \$3.4 million for the fiscal year ended June 30, 2017. For several years leading up to the Petition Date, ~~Dextera~~-the Debtor invested in obtaining regulatory clearances and product development, evaluation, and manufacturing, but experienced interruptions in the ability to produce both staplers and staple reload cartridges to meet growing customer demand. It also incurred substantial operating losses that significantly impacted liquidity. Beginning in the fourth quarter of 2016, the company started pursuing potential merger or acquisition partners, or potential major corporate partner investors.

F. Sale and Marketing Efforts

To preserve value and enable the Debtor to execute its business plan, ~~Dextera~~-the Debtor pursued potential merger or acquisition partners, or potential major investors, for approximately one year before filing its bankruptcy petition. Starting in the fourth quarter of 2016, CEO Julian Nikolchev and CFO Robert Newell exercised significant efforts with their investment bank to identify merger or acquisition partners or potential investors, including personally contacting a number of investors and companies active in the medical device industry and related fields, with the focus of finding a partner interested in merging with, acquiring, or investing in ~~Dextera~~-the Debtor.

In addition, on December 21, 2016, ~~Dextera~~-the Debtor engaged JMP Securities LLC (“JMP”) to solicit interest from third parties with respect to a possible merger, consolidation, tender or exchange offer, or sale or exclusive license of all or a majority of ~~Dextera’s~~-the Debtor’s assets or outstanding equity interests. JMP drafted marketing materials and contacted potentially interested parties (the “Prepetition Marketing Process”). In consultation with ~~Dextera’s~~-the Debtor’s management, JMP prepared a short “teaser” summarizing ~~Dextera’s~~-the Debtor’s business and the opportunity presented, public information books that included SEC filings, press releases, research reports, and corporate presentations, as well as a financial forecast model and other information. Based on prior industry relationships and additional research, JMP compiled a list of potential strategic and healthcare-focused financial buyers who might be interested in investing in or acquiring ~~Dextera~~-the Debtor. ~~Dextera~~-The Debtor also established a comprehensive online data room to facilitate due diligence requests from potential investors or buyers.

In early January 2017, JMP initiated the Prepetition Marketing Process, contacting and distributing the “teaser” to 49 potential investors or purchasers. Four parties that executed non-

disclosure agreements were given additional information and one was provided access to a confidential data room established by JMP, with various potentially interested parties conducting interviews with ~~Dextera~~ the Debtor management (collectively, “Diligence Information”). The Diligence Information provided prospective investors or buyers with detailed information on, among other topics, ~~Dextera’s~~ the Debtor’s business, strategy, growth opportunities, technology, legal and regulatory matters, and historical and projected financial performance.

As the Prepetition Marketing Process continued, a process letter was sent to 24 parties, at the time establishing a bid deadline of March 31, 2017. The deadline did not result in acceptable proposals so JMP continued to engage with potential parties during the rest of the spring and summer of 2017 to explore potential transactions. During early October, JMP made further contacts to 13 of the parties it had previously contacted. On October 11, 2017, one of those parties, Aesculap Inc. (“Aesculap”), submitted a term sheet for an out-of-court acquisition of substantially all of the assets of ~~Dextera~~ the Debtor. After further discussions between ~~Dextera~~ the Debtor and JMP, on the one hand, and Aesculap on the other hand, the parties determined that an asset sale in a chapter 11 bankruptcy case was required.

The parties next executed a non-binding term sheet for such an asset sale dated November 9, 2017, and thereafter negotiated the terms of an asset purchase agreement. That process was completed just prior to the Petition Date when, on December 11, 2017, the parties executed an asset purchase agreement (the “APA”).

In the APA, Aesculap (together with its permitted successors, designees and assigns) committed to acquire substantially all of the Debtor’s assets in a sale pursuant to section 363 of the Bankruptcy Code. The transaction was conditioned upon approval by the Court and was subject to higher or otherwise better competing offers, as described more fully below. In addition to entering into the APA, the Debtor entered into that certain Post-Petition Loan and Security Agreement (the “DIP Loan Agreement”), between the Debtor, as borrower, and Aesculap or its designee as lender (the “DIP Facility”), pursuant to which, among other things, Aesculap agreed to loan the Debtor up to \$1.5 million in debtor in possession financing under the DIP Facility, subject to the Court’s approval, to fund the Debtor’s Chapter 11 Case and sale process.

VII.

THE CHAPTER 11 CASE

A. Commencement of the Chapter 11 Case

On December 11, 2017 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). The resulting bankruptcy proceeding was assigned Case No. 17-12913(KJC) (the “Bankruptcy Case”).

B. Continuation of Business after the Petition Date

Subsequent to the Petition Date, the Debtor continued to operate its business and manage its property as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy

Code. During the period immediately following the Petition Date, the Debtor sought and obtained authority from the Bankruptcy Court with respect to a number of matters that were, in the Debtor's view, essential to the Debtor's orderly transition into chapter 11 and the stabilization of the Debtor's operations.

C. First Day Relief

On the Petition Date, the Debtor sought various types of "first day" relief intended to facilitate the transition of the Debtor's ordinary business operations into chapter 11. The Bankruptcy Court entered several "first day" orders, which authorized, among other things:

- the appointment of a claims and noticing agent, Rust Consulting/Omni Bankruptcy [D.I. 26, 58, 121];
- the establishment of procedures for requesting additional adequate assurance and prohibiting the Debtor's utility companies from altering, refusing or discontinuing service [D.I. 27];
- the maintenance, renewal, cancellation or replacement of existing insurance programs and the payment of all premiums, fees and insurance premium financing obligations [D.I. 28];
- the payment of accrued prepetition wages, salaries and benefits and the continuation of existing employee programs [D.I. 29];
- the Debtor's payment of certain prepetition claims of shippers and warehousemen and claims for goods shipped to the Debtor prepetition but delivered postpetition [D.I. 30]; and
- the maintenance of the Debtor's existing bank accounts and business forms and the operation of the Debtor's existing cash management system [D.I. 31].

D. The Cash Collateral Motion; The DIP Facility

In addition to the relief described above, the Debtor also filed the following: (a) a Motion to Approve Use of Cash Collateral and Providing Adequate Protection, Modifying the Automatic Stay, and Scheduling a Final Hearing Filed by Dextera Surgical Inc. (D.I. 9, the "Cash Collateral Motion") and (b) a Motion to Approve Debtor In Possession Financing Filed by Dextera Surgical Inc. (D.I. 10, the "DIP Facility Motion").

The Cash Collateral Motion sought authority to utilize cash collateral of CMI and to grant CMI adequate protection for such cash collateral use. Such proposed adequate protection included: (i) replacement liens on certain of the Debtor's assets and valid and first priority liens on present and after-acquired property of the Debtor. The DIP Facility Motion sought authority to obtain post-petition financing on an interim basis pursuant to the DIP Loan Agreement between Aesculap and the Debtor, and to grant a super-priority administrative claim for all financing provided for under the DIP Loan Agreement, pursuant to sections 346(c)(i) and 507(b)

of the Bankruptcy Code, but subject to agreed-upon “carve outs” for certain costs of administering the Debtor’s Bankruptcy Case.

The Cash Collateral Motion was approved on an interim basis on December 13, 2017 [D.I. 32]. A final order approving the motion (the “Final Cash Collateral Order”) was entered on January 5, 2018 [D.I. 112]. The DIP Facility Motion was approved on an interim basis on December 13, 2017 [D.I. 33]. A final order approving the motion (the “Final DIP Facility Order”) was entered on January 5, 2018 [D.I. 113]. Under the Final DIP Facility Order, the Debtor was authorized to borrow funds up to an aggregate principal amount of \$1.5 million to fund its working capital and capital expenditure needs during the Chapter 11 Case.

E. Representation of the Debtor

On January 3, 2018, the Debtor filed an application to retain Saul Ewing Arnstein & Lehr LLP as bankruptcy counsel [D.I. 93], an application to retain Cooley LLP as special corporate counsel [D.I. 91] and an application to retain JMP as the Debtor’s investment banker [D.I. 94]. By orders dated January 19, 2018, all of these applications were approved by the Bankruptcy Court [D.I. 142, 143, 144].

F. No Creditors’ Committee Formed

The United States Trustee’s office reported that there was insufficient response to the United States Trustee’s office solicitation for service on a committee, and therefore, no committee was appointed in the Bankruptcy Case [D.I. 67].

G. Schedules and Bar Date

On January 9, 2018, the Bankruptcy Court entered an order extending the deadline by which the Debtor was required to file its Schedules and Statements of Financial Affairs to January 16, 2018 [D.I. 120]. On January 16, 2018, the Debtor filed its Schedules and Statement of Financial Affairs [D.I. 134-135] and on January 23, 2018 amended certain schedules [D.I. 154]. Among other things, the Schedules set forth the Claims of known creditors against the Debtor as of the Petition Date, based upon the Debtor’s books and records.

By order entered February 14, 2018 [D.I. 181], the Bankruptcy Court established April 11, 2018 at 5:00 p.m. (prevailing Eastern Time) (the “General Bar Date”) as the deadline for filing non-governmental Proofs of Claim against the Debtor, including administrative expense requests pursuant to section 503(b)(9) of the Bankruptcy Code, and June 12, 2018 at 5:00 p.m. (prevailing Eastern Time) as the deadline for governmental units to file Proofs of Claim against the Debtor (the “Governmental Bar Date,” and together with the General Bar Date, the “Bar Dates”).

H. Sale of Substantially All of the Debtor’s Assets

As set forth above, on December 11, 2017, the Debtor entered into the Aesculap APA with Aesculap. Pursuant to the Aesculap APA, Aesculap (together with its permitted successors, designees and assigns) (the “Buyer”) agreed to acquire all of the Debtor’s properties and assets of every kind and description, wherever located, whether real, personal or mixed, tangible or

intangible, owned, leased, licensed, used or held for use in or relating to the Debtor's business, other than certain the excluded assets, for a purchase price of \$17,300,000 in cash, plus the assumption of certain liabilities. The Aesculap APA also provided for the Debtor to assume and assign certain designated contracts and leases to the Buyer.

Under the Aesculap APA, at closing of the Sale, \$2 million of the cash purchase price was to be deposited with an escrow agent (the "Aesculap Escrow"), which funds are to be available to the Buyer to satisfy any amounts owed under the Aesculap APA, including for indemnification claims made against the Debtor for breaches of representations, warranties, or other covenants of the Aesculap APA (collectively, "Indemnification Obligations"), for a period of two (2) years following the closing. The Indemnification Escrow is the Buyer's sole remedy on account of money damages for Indemnification Obligations, and any funds remaining in the Indemnification Escrow shall revert to the Debtor. Claims for Indemnification Obligations must be made against the Aesculap Escrow within the two-year period following the closing of the Aesculap APA.

On the Petition Date, the Debtor filed the *Debtor's Motion for Orders (A)(I) Authorizing and Approving Bidding Procedures, and Stalking Horse Payment; (II) Authorizing and Approving the Debtor's Entry Into the Stalking Horse APA; (III) Approving Notice Procedures; (IV) Scheduling an Auction and Sale Hearing; and (V) Approving Procedures for Assumption and Assignment of Executory Contracts and Unexpired Leases and Determining Cure Amounts and (B)(I) Authorizing the Sale of Substantially All of the Debtor's Assets Free and Clear of All Claims, Liens, Rights, Interests, and Encumbrances; (II) Approving the Stalking Horse APA; and (III) Authorizing the Debtor to Assume and Assign Certain Executory Contracts and Unexpired Leases* [D.I. 11] (the "Sale Motion").

The form of APA was approved by the Court on January 5, 2018 pursuant to the *Order (A) Approving Bidding Procedures and Sale Procedures; (B) Approving Form And Manner of Notices; (C) Approving Form of Asset Purchase Agreement, Including Stalking Horse Payment; (D) Scheduling Dates to Conduct Auction and Hearing to Consider Final Approval of Sale and Related Matters; (E) Approving Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (F) Granting Related Relief* [D.I. 111] (the "Bidding Procedures Order").

Pursuant to the Bidding Procedures Order, competing bids to purchase substantially all of the Debtor's assets were due January 19, 2018 (the "Bid Deadline"). Between the Petition Date and the Bid Deadline, JMP continued to market the Debtor's assets for sale. No other qualified bids were received by the deadline, and the Buyer was declared the successful bidder.

At a Sale hearing on January 24, 2018, the Court approved the Sale Motion and Sale and entered the *Order (WITH REVISIONS) (A) Approving Asset Purchase Agreement With Aesculap, Inc., (B) Authorizing Sale of Debtor's Assets Free and Clear of Interests; (C) Authorizing Assumption and Assignment of Certain of the Debtor's Executory Contracts; (D) Granting Related Relief* [D.I. 160] (the "Sale Order"). Aesculap and the Debtor subsequently amended the APA [D.I. 189].

Consistent with the Aesculap APA, Aesculap assigned its rights under the Aesculap APA to AesDex, LLC.

The closing of the Sale to AesDex, LLC pursuant to the Sale Order occurred on February 20, 2018 (the “Closing”). At the Closing, the Debtor received the net purchase price proceeds and the Aesculap Escrow was funded. Soon thereafter, the Debtor paid in full all obligations due CMI, including the CMI Indebtedness and all obligations due under the Final Cash Collateral Order. Similarly, the Debtor paid in full all obligations due Aesculap pursuant to the DIP Loan Agreement, the DIP Facility and the Final DIP Facility Order. Following the foregoing, and not including the funds deposited in the Indemnification Escrow, the Debtor was left with net proceeds of the Sale totaling approximately \$9,713,000.

I. Wind Down of Debtor; Reduction of Board and Remaining Officer

Following the Closing and the transfer of most of the remaining employees to the Buyer, the Debtor ceased operations and began the process of winding down its affairs. As a result of this nonoperating status, on February 23, 2018, the Debtor’s Board of Directors terminated the employment and executive officer status of each of the following executive officers, effective March 1, 2018: (a) Julian Nikolchev, Chief Executive Officer and President; (b) Thomas Palermo, Chief Operating Officer; (c) Liam J. Burns, Vice President, Worldwide Sales and Marketing; and (d) Gregory P. Watson, Vice President, Operations.

At the same time, the Debtor’s Board of Directors designated Robert Y. Newell, the Debtor’s Vice President, Finance and Chief Financial Officer, to be its principal executive officer. In addition, each of directors Thomas A. Afzal, Gregory D. Casciaro, R. Michael Kleine and Samuel E. Navarro resigned as directors of the Debtor, effective at the close of business on February 23, 2018. Michael Bates and Julian Nikolchev remain as the sole members of the Debtor’s Board of Directors to oversee the wind down of the company. The Board of Directors reduced the compensation of the remaining directors to \$7,500.00 per quarter.

By order dated April 5, 2018 [D.I. 228], the Court authorized the Debtor to, *inter alia*, retain Arch & Beam Global, LLC to provide interim management services and to designate Matthew English as the Debtor’s Chief Restructuring Officer *nunc pro tunc* to March 19, 2018. Effective on April 5, 2018, Robert Y. Newell’s employment with the Debtor was terminated.

J. Severance Motions

On January 26, 2018, the Debtor filed its *Motion to Authorize the Debtor to Pay Severance Benefits to Certain Non-Insider Employees* (D.I. 169, the “First Severance Motion”). Pursuant to the First Severance Motion, the Debtor sought authority to pay severance to nine employees terminated in a reduction in force on December 15, 2017. The Court granted the First Severance Motion on February 14, 2018, by entering the Order Authorizing Debtor to Pay Severance Benefits to certain Non-Insider Employees [D.I. 182] and the Debtor paid a total of \$84,224 in severance benefits to the nine employees.

In addition to the First Severance Motion, on March 16, 2018, the Debtor filed its *Motion for an Order Authorizing the Debtor to Pay Change in Control Severance Benefits to Certain*

Executives (D.I. 203, the “Executive Severance Benefits Motion”). Pursuant to the Executive Severance Benefits Motion, the Debtor sought authority to pay different severance benefits to certain director level and above executives pursuant to the “Cardica Inc. Change in Control Severance Benefit Plan,” which was adopted by the Debtor on February 11, 2009, as amended on April 2, 2013. The Court granted, in part, the Executive Severance Benefits Motion on April 10, 2018, by entering the *Order Authorizing Debtor to Pay Executives Severance Benefits to Certain Executives* [D.I. 236] and authorized the Debtor to pay a total of \$537,811 in severance benefits to nine employees. [This amount has been paid.](#)

K. Asserted Claims

Approximately ~~119~~ [132](#) proofs of claim have been filed with the Debtor’s Claims Agent. In addition, there are also approximately ~~—~~ [77](#) claims which were scheduled as non-contingent, liquidated and non-disputed for which no proof of claim was filed. These [asserted and scheduled](#) claims against the Debtor can be broken into the following categories:⁵

CLASS	CLASS TITLE	NO. CLAIMS ⁴	AMOUNT (\$)
n/a	Administrative Claims	N/A	N/A
n/a	Priority Tax Claims	13	\$575,833
1	Priority Non-Tax Claims	0	\$0
2	Secured Claims	3	\$3,882,807
3	General Unsecured Claims	198	\$4,854,384

[On May 11, 2018, the Debtor filed its *First Omnibus Objection to Claims \(Non-Substantive\) Pursuant to Section 502\(b\) of the Bankruptcy Code, Bankruptcy Rules 3001, 3003 and 3007, and Local Rule 3007-1* \[Docket No. 289\] \(the “First Claims Objection”\). By Order entered May 30, 2018 \[Docket No. 318\], the Bankruptcy Court sustained the First Claims Objection, and disallowed 73 asserted Equity Claims, on the grounds that they were equity interests rather than Claims and that they were supported by insufficient documentation.](#)

[On July 26, 2018, the Debtor filed its *Second Omnibus Objection to Claims \(Non-Substantive\) Pursuant to Section 502\(b\) of the Bankruptcy Code, Bankruptcy Rules 3001, 3003 and 3007, and Local Rule 3007-1* \[Docket No. 385\] \(the “Second Claims Objection”\), pursuant to which the Debtor sought the entry of an order disallowing 16 asserted Claims. By Order entered on August 21, 2018 \[Docket No. 414\], the Bankruptcy Court sustained the Second Claims Objection, and disallowed 16 Claims, on the basis that the Claims were either equity interests rather than Claims and/or that such Claims were untimely and/or that such Claims were supported by insufficient documentation.](#)

⁵ [Certain of the claims listed herein have subsequently been paid or disallowed, are the subject of pending objection\(s\) or may be subject to objection in the future. The Debtor reserves the right to object to any claim. Some filed claims asserted multiple categories of claim, so the “NO. CLAIMS” column is greater than the total number of claims filed or scheduled.](#)

⁴ ~~The total number of claims listed is greater than 119 because certain filed proofs of claim assert more than one claim. [Claim numbers and aggregate claim amounts will be provided prior to the hearing on this Disclosure Statement.]~~

The Debtor notes that Alpha Capital Anstalt (“Alpha”) and Sabby Healthcare Master Fund, Ltd. and Sabby Volatility Warrant Master Fund, Ltd. (the “Sabby Entities,” collectively with Alpha as, the “Warrant Holders”) asserted [certain Fundamental Transaction Claims and/or Warrant Claims and/or Equity Holder Claims](#) against the Debtor in the aggregate amount of \$2,861,000 (the “Disputed Warrant Claims”). No other holders of Series 1 and 2 Warrants purported to exercise their alleged rights under section 3(d) of the warrants and no other [Fundamental Transaction Claims](#) and/or Warrant Claims were timely filed against the Debtor.

The Debtor raised certain objections to the Disputed Warrant Claims. Specifically, and among other things, the Debtor (a) disputed that the Warrant Holders held Claims against the Debtor; (b) disputed the methodology used by the Warrant Holders to calculate the Disputed Warrant Claims; and (c) in the alternative, asserted that the Disputed Warrant Claims must be subordinated to the same level as the Debtor’s Common Stock pursuant to section 510(b) of the Bankruptcy Code.

By letter dated June 18, 2018, the Sabby Entities asserted unliquidated claims in an amount not less than \$2,148,171 against current and former officers and directors of the Debtor and stated that the letter was a written demand or notice under the Debtor’s applicable insurance policy or policies of its alleged claims. The Sabby Entities further asserted that their claims against the Debtor’s current and former officers and directors were due to the Debtor’s alleged failure to honor alleged agreements to pay the Sabby Entities the contractual value of the Sabby Entities’ claims prior to paying the holders of the Debtor’s common stock. The Sabby Entities contend that the Debtor’s officers and/or directors are conflicted, and asserts claims for alleged breach of fiduciary duties of loyalty, care, good faith and disclosure, as well as alleged waste and spoliation of corporate assets. By letter dated June 28, 2018, the Debtor denied the allegations set forth in the Sabby Entities’ letter, disputed the allegation that it has taken the position that it will not honor the Debtor’s agreements with the Sabby Entities, asserted that the Sabby Entities have no valid claim in the Debtor’s bankruptcy case (and that, even if the Sabby Entities have valid claims, the proof of claims submitted by the Sabby Entities are materially overstated) and reserved all rights against the Sabby Entities, including rights with respect to any violation of the automatic stay of section 362 of the Bankruptcy Code.

Alpha also raised questions regarding unspecified conduct of the Debtor’s officers and directors. Similarly, the Debtor responded to the questions raised by Alpha.

Following good faith and arm’s length settlement negotiations, the Debtor resolved all disputes and differences with the Warrant Holders. The Debtor’s resolution with the Warrant Holders is subject to Bankruptcy Court approval.

On August 27, 2018, the Debtor served and filed the *Motion of the Debtor for Entry of an Order Approving Stipulations by and among the Debtor and Alpha Capital Anstalt, Sabby Healthcare Master Fund, Ltd. and Sabby Volatility Warrant Master Fund, Ltd. Resolving Objections to Disputed Claims* (the “Settlement Motion”) [Docket No. 420]. If the Settlement Motion is approved, the Disputed Warrant Claims will be reduced and Allowed as General Unsecured Claims in the collective, total amount of \$850,000.

To determine the validity of the other Proofs of Claim submitted in the Chapter 11 Case, the Debtor and its Professionals will continue to review the Proofs of Claim, including any supporting documentation, and compare the Claims asserted with the Debtor's books and records. Based upon this review, the Debtor may file procedural and substantive objections to Claims both before and after the Effective Date. For present purposes, the Debtor has set forth in section V, above, a chart that contains estimates of the claims that the Debtor anticipates will be allowed. ~~Although these estimates have been prepared in good faith, the Debtor does not warrant their accuracy and the actual allowed amount of claims may differ significantly from the amounts set forth in Section V.~~

~~—The Debtor notes that certain Fundamental Transaction Claims and/or Warrant Claims and/or Equity Holder Claims have been asserted by Holders of Class 5 Series 1 and 2 Warrants. The aggregate amount of these asserted Claims is approximately \$2,861,000 and is included in the total amount of asserted Class 3 General Unsecured Claims in the chart above. The Debtor expects to object to the Allowance of the Fundamental Transaction Claims, seek to value such Claims at zero and/or seek to subordinate these Claims pursuant to section 510 of the Bankruptcy Code to the same priority as Class 6 Common Stock Interests.~~

L. Assets Available for Distribution to Creditors

As of the date of this Disclosure Statement, ~~Dextera's~~ the Debtor's remaining assets consist of (i) Cash, (ii) accounts receivable; and (iii) the Debtor's equity interest in Dextera Surgical GmbH. The Debtor also expects to receive funds from the Indemnification Escrow after the payment of Indemnification Obligations, if any.

By letter dated April 13, 2018, AesDex, LLC ("AesDex") notified the Debtor (the "AesDex Notice") of an alleged indemnification claim and notice of its intent to seek disbursement from the Indemnification Escrow related to "reports that certain products sold by [the Debtor] to customers prior to the Closing Date and/or purchased by [AesDex] from [the Debtor] pursuant to the [Aesculap APA] have malfunctioned and are defective," resulting in a voluntary ~~recall~~ removal.

By electronic mail dated August 11, 2018, AesDex notified the Debtor that, as of July, 2018, it had incurred alleged costs of approximately \$270,000 related to the product removal and anticipated unspecified, future costs.

The Debtor has reserved its rights with respect to the AesDex Notice and is in the process of investigating and assessing this matter.

The summary attached hereto as Exhibit "B" sets forth the Debtor's estimated assets and anticipated costs of implementing the Plan and administering the Chapter 11 Case. Although these estimates have been prepared in good faith, the Debtor does not warrant their accuracy.

M. Dextera Surgical GmbH

As set forth above, the Debtor has a wholly owned German subsidiary, Dextera Surgical GmbH. Neither Dextera Surgical GmbH nor its assets was purchased by Aesculap. In light of

the closing of the Aesculap APA, the Debtor no longer has a need for Dextera Surgical GmbH, beyond assisting the Debtor in collecting accounts receivable. Since the closing of the Aesculap APA, the Debtor, with the assistance of the sole Dextera Surgical GmbH employee, has taken steps to discontinue Dextera Surgical GmbH's operations. Specifically, the Debtor has collected foreign accounts receivable, evaluated and liquidated Dextera Surgical GmbH's limited remaining assets, facilitated the return of certain customer inventory and otherwise taken steps to avoid claims and costs that could be asserted against the Debtor if the affairs of Dextera Surgical GmbH were handled incorrectly and Dextera Surgical GmbH were to be placed into insolvency proceedings in Germany.

On July 25, 2018 the Debtor filed the *Motion of Debtor to Fund Wind Down of Non-Debtor Wholly-Owned German Subsidiary* [Docket No. 383], pursuant to which the Debtor sought, out of an abundance of caution, Bankruptcy Court approval to continue to fund the costs necessary to ensure that Dextera Surgical GmbH is wound down appropriately under German Law. By order dated August 16, 2018 [Docket No. 405] the Bankruptcy Court approved the foregoing motion. Pursuant to the Plan, and to the extent necessary, the Debtor will continue to fund these costs post-Effective Date in order to avoid claims and costs that could be asserted against the Debtor. As set forth in the motion, the Debtor expects such future costs to total less than \$65,000.

VIII.

THE CHAPTER 11 PLAN

A. Introduction

The following is a summary of certain terms and provisions of the Plan. This summary of the Plan is qualified in its entirety by reference to the full text of the Plan, which is attached to this Disclosure Statement as Exhibit "A."

B. Classification of Claims and Interests against the Debtor

The following is a classification of Claims and Interests under the Plan.

Unclassified Claims (not entitled to vote on the Plan)

Administrative Claims against the Debtor.

Priority Tax Claims against the Debtor.

1. Unimpaired Classes of Claims (deemed to have accepted the Plan and therefore not entitled to vote on the Plan)

Class 1: Priority Non-Tax Claims against the Debtor.

Class 2: Secured Claims against the Debtor.

Class 3: General Unsecured Claims against the Debtor.

2. Impaired Classes of Interests (entitled to Vote on the Plan)

Class 4: Series B Convertible Preferred Stock.

Class 5: Common Stock.

3. Impaired Classes of Interests (deemed to reject, and not entitled to vote on, the Plan)

Class 6: Series 1 and 2 Warrants

Class 7: Restricted Stock Units

Class 8: Employee Stock Options

As indicated above, Priority Non-Tax Claims, Secured Claims, Class 3 General Unsecured Claims are Unimpaired under the Plan and are therefore deemed to have accepted the Plan, and are not entitled to vote to accept or reject the Plan. All other classes of Interests are Impaired under the Plan. Classes 4 (Series B Convertible Preferred Stock) and 5 (Common Stock) are Impaired under the Plan and entitled to Vote. Classes 6 (Series 1 and 2 Warrants), 7 (Restricted Stock Units) and 8 (Employee Stock Options) are deemed to reject the Plan and are not entitled to vote on the Plan. If a dispute arises as to whether any Claim, or any Class of Claims, is Impaired under the Plan, the Plan provides that the Bankruptcy Court shall, after notice and a hearing, determine such dispute.

C. Treatment of Claims Against, and Interests in, the Debtor

The classes of Claims and Interests with respect to the Debtor are treated under the Plan as follows:

1. Unclassified Claims

(a) Administrative Claims and Professional Fee Claims

Except as otherwise provided ~~herein~~in the Plan, and subject to the requirements set forth ~~herein~~in the Plan, on, or as soon as reasonably practicable after the later of (i) the Effective Date, if the Administrative Claim is an Allowed Administrative Claim on the Effective Date, or (ii) the date such Administrative Claim becomes an Allowed Administrative Claim, a Holder of an Allowed Administrative Claim shall receive, ~~in full satisfaction of such Allowed Administrative Claim,~~ (a) Cash from the SAP Claims Reserve Account equal to the amount of such Allowed Administrative Claim or (b) such other treatment as to which such Holder and the Debtor shall have agreed upon in writing.

Notwithstanding the above or anything to the contrary contained ~~herein~~in the Plan, any Administrative Claim of Aesculap arising from or related to the Aesculap APA, the Aesculap Escrow Agreement and/or any document executed in connection therewith, shall be payable

solely from the Aesculap Escrow, to the extent provided in, and subject to the terms of, the Aesculap APA and the Aesculap Escrow Agreement.

On or as soon as reasonably practicable after the later of (i) the Effective Date or (ii) the date a Professional Fee Claim becomes an Allowed Professional Fee Claim, a Holder of an Allowed Professional Fee Claim shall receive, ~~in full satisfaction of such Allowed Professional Fee Claim,~~ Cash from the Professional Fee Claims Reserve equal to the unpaid portion of the Allowed Professional Fee Claim.

(b) Priority Tax Claims

Except to the extent that a Holder of an Allowed Priority Tax Claim has been paid prior to the Effective Date or agrees to a different treatment, each Holder of an Allowed Priority Tax Claim shall receive Cash from the SAP Claims Reserve Account in an amount equal to such Allowed Priority Tax Claim on, or as soon as reasonably practicable after the later of (i) the Effective Date, if the Priority Tax Claim is an Allowed Priority Tax Claim on the Effective Date, or (ii) the date such Claim becomes an Allowed Priority Tax Claim.

2. Unimpaired Claims

(a) Class 1: Priority Non-Tax Claims

Except to the extent that a Holder of an Allowed Priority Non-Tax Claim against the Debtor has been paid prior to the Effective Date or agrees to a different treatment, on or as soon as reasonably practicable after the later of (i) the Effective Date, if the Priority Non-Tax Claim is an Allowed Priority Non-Tax claim on the Effective Date, or (ii) the date such Claim becomes an Allowed Priority Non-Tax Claim, the Debtor's Representative shall pay, from the SAP Claims Reserve Account, to each Holder of an Allowed Priority Non-Tax Claim, Cash in an amount equal to such Allowed Priority Non-Tax Claim.

(b) Class 2: Secured Claims

Except to the extent that a Holder of an Allowed Class 2 Secured Claim against the Debtor has been paid prior to the Effective Date or agrees to a different treatment, on or as soon as is reasonably practicable after the later of (a) the Effective Date, if the Class 2 Secured Claim is an Allowed Class 2 Secured Claim on the Effective Date or (b) the date such Claim becomes an Allowed Secured Claim, the Debtor's Representative shall either: (i) pay from the SAP Claims Reserve Account, to each Holder of an Allowed Class 2 Secured Claim, Cash in an amount equal to such Allowed Class 2 Secured Claim; or (ii) release to such Holder the collateral securing such Allowed Class 2 Secured Claim. ~~In either event, such payment or release of collateral shall be in full satisfaction of the applicable Allowed Class 2 Secured Claim.~~ Notwithstanding the preceding, or anything in the Plan to the contrary, nothing contained ~~herein~~ the Plan is intended to preclude or prevent payment to the Holder of an Allowed Class 2 Secured Claim of the proceeds of the sale of any asset in which such Holder has a Lien as and when such proceeds become available for distribution.

(c) Class 3: General Unsecured Claims

Except to the extent that a Holder of an Allowed Class 3 General Unsecured Claim against the Debtor has been paid prior to the Effective Date or agrees to a different treatment, on or as soon as is reasonably practicable after the later of (a) the Effective Date, if the Class 3 General Unsecured Claim is an Allowed Class 3 General Unsecured Claim on the Effective Date or (b) the date such Claim becomes an Allowed Class 3 General Unsecured Claim, the Debtor's Representative shall pay from the Distribution Account, to each Holder of an Allowed Class 3 General Unsecured Claim, Cash in an amount equal to such Allowed Class 3 General Unsecured Claim plus interest on such Allowed Class 3 General Unsecured Claim at the Federal Judgment Rate for the time period from the Petition Date to the date of payment. ~~Such payment shall be in full satisfaction of the applicable Allowed 3 General Unsecured Claim.~~

For the avoidance of doubt, (a) Fundamental Transaction Claims⁶, (b) Warrant Claims and (c) Equity Holder Claims, shall be treated as Class 3 General Unsecured Claims, subject to the right of the Debtor and the Debtor's Representative to object to such Claims on any basis, assert that the value of such Claims (if any) is zero, seek the Disallowance of such Claims, seek the subordination of such Claims pursuant to section 510 of the Bankruptcy Code and/or seek to classify such Claims as equity securities in Classes 6, 7 or 8. If and to the extent Fundamental Transaction Claims, Warrant Claims and/or Equity Holder Claims are determined to be Allowed Class 3 General Unsecured Claims and are not subordinated, they shall receive the same treatment set forth above for Allowed Class 3 General Unsecured Claims.

To the extent the Bankruptcy Court determines by Final Order that Fundamental Transaction Claims, Warrant Claims and/or Equity Holder Claims are Allowed, but that such Allowed Fundamental Transaction Claims, Warrant Claims and/or Allowed Equity Holder Claims are to be subordinated to Class 3 General Unsecured Creditors (but not subordinated to the same priority as Common Stock under the Plan), Allowed Fundamental Transaction Claims, Allowed Warrant Claims and/or Allowed Equity Holder Claims are to be paid Cash in an amount equal to their Allowed Fundamental Transaction Claims, Allowed Warrant Claims and/or Allowed Equity Holder Claims, as applicable, plus interest thereon at the Federal Judgment Rate for the time period from the Petition Date to the date of payment.

To the extent the Bankruptcy Court determines by Final Order that Fundamental Transaction Claims, Warrant Claims and/or Allowed Equity Holder Claims are Allowed, but that such Allowed Fundamental Transaction Claims, Allowed Warrant Claims and/or Allowed Equity Holder Claims are to be subordinated to the same priority as Common Stock under the Plan (hereinafter, "Fully Subordinated"), then such Holder of an Allowed Fully Subordinated Fundamental Transaction Claim, Allowed Fully Subordinated Warrant Claim and/or Allowed Fully Subordinated Equity Holder Claim shall, on the Shareholders Distribution Date, be entitled to that percentage of the Cash Available For Distribution equal to the amount of the Holder's Allowed Fully Subordinated Fundamental Transaction Claim, Allowed Fully Subordinated Warrant Claim and/or Allowed Fully Subordinated Equity Holder Claim divided by the sum of

⁶ [The term "Fundamental Transaction" is defined in 3\(d\) of the Series 1 and 2 Warrants. A sample Series 1 and 2 Warrant is attached hereto as Exhibit "D".](#)

(a) the Amount of all Allowed Fully Subordinated Fundamental Transaction Claims, plus the Amount of all Allowed Fully Subordinated Warrant Claims, plus the Amount of all Allowed Fully Subordinated Equity Holder Claims and (b) Cash Available For Distribution; or such other portion of the Cash Available for Distribution as may be determined and/or approved by the Bankruptcy Court in the Confirmation Order.

3. Impaired Interests

(a) Class 4: Series B Convertible Preferred Stock

The terms of the Series B Convertible Preferred Stock provide for, upon any liquidation, dissolution, or winding up of the Debtor, pari passu distributions among the holders of shares of Common Stock and the shares of Series B Preferred Stock, pro rata based on the number of shares held by each holder, treating for this purpose all such shares of Series B Preferred Stock as if they had been converted to Common Stock pursuant to the formula set forth below, for their conversion into Common Stock. The Plan involves a liquidation and winding up of the Debtor and for its dissolution.

~~On~~ Accordingly, the Plan provides that, on the Effective Date, each share of outstanding Series B Convertible Preferred Stock shall be deemed, without any action by any Person, to be converted to shares of Class 5 Common Stock, by dividing \$1,000 by the conversion price of \$0.27 (*i.e.*, so that each outstanding share of Series B Convertible Preferred Stock shall be deemed converted into 3,703 shares of Common Stock), or pursuant to such other conversion formula as the Bankruptcy Court may deem appropriate.

Holders of Class 4 Series B Convertible Preferred Stock Interests, as converted to shares of Common Stock in the manner set forth above, shall receive the treatment under the Plan afforded to Holders of Class 5 Common Stock Interests.

(b) Class 5: Common Stock

Each Holder of Class 5 Common Stock as of the Effective Date (including, for the avoidance of doubt, each Holder of Deemed Common Stock) shall, on the Shareholders Distribution Date, be entitled to that percentage of the Cash Available For Distribution that is determined by application of the following formula, or such other percentage of the Cash Available For Distribution as may be determined and/or approved by the Bankruptcy Court in the Confirmation Order:

(I) the Common Stock Holder's Proportionate Share *times* the Cash Available for Distribution *divided by* (II) the sum of (y) the amount of all Allowed Fully Subordinated Fundamental Transaction Claims plus the amount of all Allowed Fully Subordinated Warrant Claims plus the amount of all Allowed Fully Subordinated Equity Holder Claims and (z) the amount of Cash Available For Distribution.

The term “Common Stock Holder’s Proportionate Share” shall be the percentage obtained by dividing (i) the number of shares of Common Stock held by an applicable Holder of Common Stock by (ii) the Outstanding Shares.

(c) Class 6: Series 1 and 2 Warrants

Except to the extent exercised in accordance with the terms of the Series 1 and 2 Warrants prior to the Confirmation Date, Class 6 Series 1 and 2 Warrants shall receive no distribution, and retain no property, under the Plan. All Series 1 and 2 Warrants existing as of the Confirmation Date shall be cancelled and terminated upon the occurrence of the Effective Date.

(d) Class 7: Restricted Stock Units

Except to the extent exercised in accordance with the terms of the Restricted Stock Units prior to the Confirmation Date, Class 7 Restricted Stock Units shall receive no distribution, and retain no property, under the Plan. All Restricted Stock Units existing as of the Confirmation Date shall be cancelled and terminated upon the occurrence of the Effective Date.

(e) Class 8: Employee Stock Options

Except to the extent exercised in accordance with the terms of the Employee Stock Options prior to the Confirmation Date, Class 8 Employee Stock Options shall receive no distribution, and retain no property, under the Plan. All Employee Stock Options existing as of the Confirmation Date shall be cancelled and terminated upon the occurrence of the Effective Date.

4. Special Provision Regarding Unimpaired Claims

The Plan provides that except as otherwise provided in the Plan, the Confirmation Order, any other order of the Bankruptcy Court or any document or agreement enforceable pursuant to the terms of the Plan, nothing shall affect the rights and defenses, both legal and equitable, of the Debtor with respect to any Unimpaired Claims, including, but not limited to, all rights with respect to legal and equitable defenses to setoffs or recoupments against Unimpaired Claims.

5. Allowed Claims/Interests

The Plan provides that notwithstanding any Plan provision to the contrary, the Plan Representative shall only make distributions to Holders of Allowed Claims and Interests. No Holder of a Disputed Claim or Interest will receive any distribution on account thereof until (and then only to the extent that) its Disputed Claim or Interest becomes an Allowed Claim or Interest. Any Holder of a Claim or Interest that becomes an Allowed Claim or Interest after the Effective Date will receive its distribution in accordance with the terms and provisions of the Plan.

D. Means for Implementation of the Plan

1. Implementing Actions

The Plan provides that unless otherwise provided therein, on the Effective Date or as soon thereafter as practicable, the following will occur in implementation of the Plan: (i) all actions, documents and agreements necessary to implement the Plan will have been effected or executed; (ii) the Debtor will have received all authorizations, consents, regulatory approvals, rulings, opinions or other documents, if any, that are determined by the Debtor to be necessary to implement the Plan; (iii) the Debtor's Representative will make all Distributions, if any, required to be made on the Effective Date pursuant to the Plan; and (iv) the Distribution Account, the Professional Fee Claims Reserve, the Post-Effective Date Reserve and the SAP Claims Reserve Account shall be established and funded in a manner consistent with Article V(K) of the Plan. All Cash in such accounts shall be deposited or invested in accordance with section 345 of the Bankruptcy Code and Local Rule 4001-3.

2. Appointment of Debtor's Representative

The Plan provides for the appointment of a Debtor's Representative, who shall be an officer of the Debtor who shall be selected by the Board to serve, in such capacity, as the Debtor's Representative. ~~The Debtor's Representative shall be identified in the Plan Supplement or in an exhibit/appendix to their Disclosure Statement~~ Except as otherwise set forth in the Confirmation Order, Matthew S. English, the Debtor's current Chief Restructuring Officer, shall serve as the Debtor's Representative under the Plan. The proposed terms of Mr. English's engagement as the Debtor's Representative are set forth in the engagement letter attached to the Plan as Exhibit "A". The appointment of the Debtor's Representative shall be approved in the Confirmation Order, and the Debtor's Representative's duties shall commence as of the Effective Date. The Debtor's Representative shall be the sole officer of the Debtor on and after the Effective Date, shall administer the Plan and shall serve as a representative of the Debtor's Estate under section 1123(b) of the Bankruptcy Code for the purpose of enforcing Causes of Action. The Debtor's Representative may, on behalf of the Debtor, retain professionals including without limitation professionals who were previously employed by the Debtor.

The Debtor's Representative shall serve in such capacity through the earlier of (i) the date the Debtor is dissolved and final tax returns are filed and (ii) the date such Debtor's Representative resigns, is terminated by the Board for cause or is otherwise unable to serve; provided, however, that, in the event that the Debtor's Representative resigns, is terminated or is otherwise unable to serve, the Board shall, within ten (10) days, appoint a successor to serve as the Debtor's Representative in accordance with the Plan.

3. Responsibilities of the Debtor's Representative

The Plan provides that, subject to the duties and powers of the Board as set forth in Article V(B)(e) of the Plan, the responsibilities of the Debtor's Representative shall include, but are not limited to, the following:

(i) implementing the Plan, including making the Distributions contemplated therein, and establishing the Shareholders Distribution Date;

(ii) receiving, managing, liquidating, administering, investing, supervising and protecting any Remaining Assets;

(iii) in accordance with the Debtor's Representative's business judgment, conducting an analysis of any and all Claims and prosecuting objections thereto, subordination actions with respect thereto, and/or settling or otherwise compromising such Claims, if necessary and appropriate, in accordance with Article VI(E) of the Plan;

(iv) maintaining and administering the reserves established pursuant to the Plan and increasing or decreasing the amount in one or more of any such reserves, in accordance with the business judgment of the Debtor's Representative;

(v) in accordance with the Debtor's Representative's business judgment, commencing, prosecuting, or settling claims and Causes of Action, enforcing contracts, and asserting claims, defenses, and offsets in accordance with the Plan and paying all associated costs;

(vi) recovering and compelling turnover of the Debtor's property;

(vii) paying all amounts payable from the Post-Effective Date Reserve;

(viii) subject to approval of the Board, liquidating and/or collecting the Remaining Assets;

(ix) subject to approval of the Board, taking all actions the Debtor's Representative deems necessary or appropriate, including without limitation providing funds from the Post-Effective Date Reserve, to liquidate and/or wind-down Dexter Surgical GmbH;

(x) ~~(viii)~~ abandoning any property that cannot be sold or otherwise disposed of for value and whose Distribution to holders of Allowed Claims or Interests would not be feasible or cost-effective in the Debtor's Representative's business judgment;

(xi) ~~(ix)~~ preparing and filing post-Effective Date operating reports;

(xii) ~~(x)~~ filing all tax returns for the Debtor and defending all audits and proceedings in connection with the Debtor's tax returns;

(xiii) ~~(xi)~~ paying or causing to be paid from the Post-Effective Date Reserve, any Taxes incurred after Effective Date;

(xiv) ~~(xii)~~ working with regulatory agencies to perform an orderly wind-down of the Debtor's business and taking any actions the Debtor's Representative deems necessary or appropriate to comply with state agency regulations;

(xv) ~~(xiii)~~ retaining and compensating such professionals as are necessary and appropriate in furtherance of the Debtor's Representative's obligations; and

(xvi) ~~(xiv)~~ taking such actions as are necessary and reasonable to carry out the purposes of the Plan, including effectuating the terms of the Plan, winding down the Debtor's business affairs, and seeking a final decree for the Chapter 11 Case.

4. Retention of Assets and Causes of Action

The Plan further provides that, on the Effective Date, any and all of the Debtor's assets shall be deemed retained by the Debtor. Pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and subject to the terms of the Plan, the Debtor's Representative shall have, on behalf of the Debtor, the sole right to commence, litigate and settle any Causes of Action, except as otherwise expressly provided in the Plan. The Debtor's Representative, on behalf of the Debtor, shall be entitled to enforce all defenses and counterclaims to all Claims asserted against the Debtor and its Estate, including setoff, recoupment and any rights under section 502(d) of the Bankruptcy Code, subject to any order(s) entered in the Chapter 11 Case.

5. Vesting of Debtor's Assets

In accordance with section 1141 of the Bankruptcy Code, the Plan further provides that Debtor's assets shall automatically vest in the Debtor free and clear of all Claims, Liens, and other interests, subject only to the terms and provisions of the Plan.

6. Board

The Plan provides that the Board shall have a minimum of one (1) member on and after the Effective Date, and shall have the responsibility to oversee and advise the Debtor's Representative with respect to the liquidation and distribution of the Debtor's assets in accordance with the Plan. A member of the Board shall recuse himself or herself from considering any matter in which he or she is not disinterested. ~~The Debtor shall file a notice identifying the members of the Board with the Plan Supplement or in an exhibit/appendix to this Disclosure Statement.~~—Vacancies on the Board shall be filled by a Person designated by the remaining member or members of the Board. A majority of the Board may remove or replace members of the Board for cause. Any successor appointed pursuant to this Section shall become fully vested with all of the rights, powers, duties and obligations of his or her predecessor. ~~The~~ Except as otherwise set forth in the Confirmation Order, Julian Nikolchev and Michael Bates shall serve as the members of the Board post-Effective Date and shall be compensated for serving on the Board ~~in the manner set forth in the Plan Supplement or in an exhibit/appendix to this Disclosure Statement~~ at a rate of \$7,500 per quarter. In addition, such members shall be reimbursed by the Debtor's Representative for documented reasonable out-of-pocket costs and

expenses from the Post-Effective Date Reserve. The rights, powers and duties of the Board shall be as follows:

(i) To terminate by supermajority vote the Debtor's Representative for cause, and upon such termination (or upon the resignation, death or incapacity of Debtor's Representative) appoint a successor Debtor's Representative in accordance with the terms of the Plan;

(ii) To approve any release or indemnity in favor of any third party granted or agreed to by the Debtor's Representative, other than as may be set forth in the Plan;

(iii) To authorize the Debtor's Representative to commence or continue to prosecute any Cause of Action;

(iv) To approve the settlement of any Cause of Action or dispute, for which the amount in controversy exceeds \$100,000;

(v) To approve the allowance of any Disputed Claim if the proposed Allowed Amount of such Claim exceeds \$50,000;

(vi) To approve the sale or other disposition of any Remaining Assets by the Debtor's Representative;

(vii) To approve actions deemed necessary or appropriate by the Debtor's Representative (including without limitation providing funds from the Post-Effective Reserve) to liquidate and/or wind-down Dextera Surgical GmbH.

(viii) ~~(vii)~~ To approve any budget in connection with the administration of the Plan and the winding down of the Debtor's affairs prepared by the Debtor's Representative at the request of the Board and to consult with the Debtor's Representative regarding any increase or decrease in the Professional Fee Reserve, the Post-Effective Date Reserve and/or the SAP Reserve Account;

(ix) ~~(viii)~~ To approve the Shareholders Distribution Date;

(x) ~~(ix)~~ To review and if appropriate object to fees and expenses of professionals retained by the Debtor's Representative in accordance with the terms of the Plan; and

(xi) ~~(x)~~ To consider and, if appropriate, approve any action proposed by the Debtor's Representatives that is not specifically authorized by the Plan that would have a material ~~effect~~ effect upon administration of the Estate, provided, however, nothing contained in the Plan shall be deemed to authorize the Debtor's Representative to take any action that is inconsistent with the terms of the Plan.

7. Insurance; Bond

The Plan further provides that the Debtor's Representative shall maintain insurance coverage with respect to the liabilities and obligations of the Debtor's Representative, the Debtor and the Board under the Plan (in the form of an errors and omissions policy or otherwise), the cost and expense of which shall be paid by the Debtor from the Post Effective Date Reserve. The Debtor's Representative shall serve with a bond, the terms of which shall be agreed to by the Board and filed with the Bankruptcy Court, and the cost and expense of which shall be paid by the Debtor from the Post-Effective Date Reserve. ~~The proposed amount of such bond shall be set forth in the Plan Supplement or in an exhibit/appendix to this Disclosure Statement.~~

8. Fiduciary Duties of the Debtor's Representative

The Plan provides that the Debtor's Representative shall act in a fiduciary capacity on behalf of the interests of all Allowed Holders of Claims and Interests that will receive Distributions pursuant to the terms of the Plan.

9. Liability of Debtor's Representative; Indemnification

The Plan provides that neither the Debtor, the Debtor's Representative, the Board, their respective members, designees or professionals, or any duly designated agent or representative of the Debtor's Representative or the Board, nor their respective employees, (collectively, the "Representative Parties") shall be liable for the act or omission of any other member, designee, agent, or representative of the Debtor's Representative or the Board, nor shall any of the Representative Parties be liable for any act or omission taken or omitted to be taken in its capacity as a Representative Party other than for specific acts or omissions resulting from such Representative Party's willful misconduct, gross negligence, or fraud. The Debtor's Representative shall be entitled to enjoy all of the rights, powers, immunities and privileges of a representative of the estate contemplated by Section 1123(b)(3)(B) of the Bankruptcy Code, and shall have those powers and duties set forth in Sections 323, 704(a) (1), 704(2), 704(4), 704(5), 704(7), 704(9), 704(a)(11), 1106(a)(6) and 1106(a)(7) of the Bankruptcy Code. The Debtor's Representative and the Board may, in connection with the performance of their functions, and in their sole and absolute discretion, consult with their attorneys, accountants, financial advisors and agents, ~~and shall not be liable (other than for willful misconduct, gross negligence or fraud) for any act taken, omitted to be taken, or suffered to be done in accordance with written advice or opinions rendered by such persons. The Debtor's Representative may consult with counsel or other professionals and any action taken, or omitted to be taken, by the Debtor's Representative on the advice of counsel or his or her other professionals, shall be deemed a defense to any allegation of fraud, gross negligence, or willful misconduct.~~ Notwithstanding such authority, neither the Debtor's Representative nor the Board shall be under any obligation to consult with their attorneys, accountants, financial advisors or agents, and their determination not to do so shall not result in the imposition of liability on the Debtor's Representative or Board or their respective members and/or designees, unless such determination is based on willful misconduct, gross negligence, or fraud as determined by a Final Order. Any action taken, or omitted to be taken, by the Debtor's Representative with the express approval of the Bankruptcy Court ~~or the Board~~ will conclusively be deemed not to constitute fraud, gross negligence, or willful misconduct, provided, however, that the Debtor's Representative shall not be obligated to comply with a direction of the Board, whether or not express, which would contravene the provisions of the Plan. The Debtor's Representative shall be entitled to all rights to

indemnification provided to all officers and/or directors under the Debtor's corporate charter and/or bylaws and to the maximum extent permitted under applicable law. In addition, the Debtor shall indemnify and hold harmless the Debtor's Representative, the Board and its members' designees and professionals, and all duly designated agents and representatives thereof (in their capacity as such), from and against and in respect of all liabilities, losses, damages, claims, costs and expenses (including reasonable attorneys' fees, disbursements, and related expenses) which such parties may incur or to which such parties may become subject in connection with any action, suit, proceeding or investigation brought by or threatened against such parties arising out of or due to their acts or omissions, or consequences of such acts or omissions, with respect to the implementation or administration of the Plan or the discharge of their duties under the Plan; provided, however, that no such indemnification will be made to such persons for actions or omissions as a result of willful misconduct, gross negligence, or fraud as determined by a Final Order. Persons dealing with the Debtor's Representative shall look only to the Debtor's assets to satisfy any liability incurred by the Debtor's Representative or the Board to such person in carrying out the terms of the Plan, and neither the Debtor's Representative nor the Board shall have any personal obligation to satisfy any such liability, except for any such liability caused by willful misconduct, gross negligence or fraud as determined by a Final Order.

E. Continued Corporate Existence

The Plan provides that, from and after the Effective Date, the Debtor shall continue in existence for the purpose of (i) winding up its affairs as expeditiously as reasonably possible, (ii) liquidating, by conversion to Cash or other methods, any Remaining Assets as expeditiously as reasonable possible, provided, however, that nothing contained in the Plan shall modify, limit or otherwise affect the Debtor's and Debtor's Representative's rights, remedies, defenses and claims under and with respect to the Aesculap APA and/or the Aesculap Escrow Agreement and nothing contained in the Plan shall obligate the Debtor or the Debtor's Representative to liquidate its rights and/or interest with respect to the Aesculap Escrow Agreement, (iii) enforcing and prosecuting those Causes of Action the Debtor's Representative believes in the exercise of his or her business judgment should be enforced or prosecuted, subject to Board approval when applicable, (iv) administering the Plan, (v) filing appropriate tax returns, and (vi) dissolution. Upon the Effective Date, all transactions and other actions provided for under the Plan shall be deemed to be authorized and approved by the Debtor without any requirement of further action by the Debtor, the Debtor's shareholders or the Debtor's board of directors.

The Plan provides that, as of the Effective Date, the Debtor's Representative shall be deemed to be the sole equity holder and the only duly authorized, board-appointed officer and director of the Debtor and all by-laws, articles or certificates of incorporation and related corporate documents of the Debtor shall be deemed to have been amended by the Plan to permit and authorize such sole appointment.

The Plan further provides that, after the Effective Date, the Debtor's Representative shall be authorized to take, in his or her sole discretion, all actions reasonably necessary to dissolve the Debtor under applicable law, and to pay all reasonable costs and expenses in connection with such dissolution, including the costs of preparing or filing any necessary paperwork or documentation. Notwithstanding any non-bankruptcy law to the contrary, the Debtor shall be

deemed dissolved for all purposes and the Estate shall not be liable for any state annual corporation excise or similar tax upon and after the filing of a certificate of dissolution or, at the Debtor's Representative's discretion, a copy of the Debtor's motion or application for entry of a final decree, with the Secretary of State for the State of Delaware.

The Plan further provides that, upon the entry of a Final Decree or other order of the Bankruptcy Court, the Debtor's Representative shall be authorized to discard or destroy any and all of the Debtor's books and records except to the extent that such books relate to open tax years, are necessary for the completion and filing of tax returns, the analysis or prosecution of Causes of Action, or are required to be retained pursuant to an agreement of sale approved by a Sale Order and any ancillary documents or agreements entered in connection therewith.

F. Cancellation of Interests

The Plan further provides that, upon the occurrence of the Effective Date, Class 4, 5, 6, 7, and 8 Interests shall be deemed cancelled and of no further force and effect, without any further act or action under any applicable agreement, law, regulation, order or rule. [The Plan further provides that, on or promptly after the Effective Date, the Debtor's Representative may file with the Securities and Exchange Commission a Form 15 for the purpose of terminating the registration of the Debtor's publicly traded securities.](#)

G. Exemption from Certain Transfer Taxes

Pursuant to section 1146(a) of the Bankruptcy Code, the Plan provides that any transfers from the Debtor to any other Person pursuant to the Plan shall not be subject to any stamp tax or similar tax, and the Confirmation Order shall direct the appropriate state and local governmental officials or agents to forgo the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

H. Remaining Assets

1. General Assets

Unless specifically excepted, the Plan provides that, on and after the Effective Date, without further approval of the Bankruptcy Court, the Debtor's Representative shall, subject to approval of the Board, liquidate and/or collect the remaining property of the Debtor (the "[Remaining Assets](#)") and in connection therewith may use, sell, assign, transfer, abandon or otherwise dispose of at a public or private sale any of the Remaining Assets for the purpose of liquidating or converting such assets to Cash; [provided, however, that nothing in the Plan restricts the right of the Debtor's Representative to seek Bankruptcy Court approval for the sale, assignment, transfer, or other disposal of the Remaining Assets. The Plan further provides that, for the avoidance of doubt, the Debtor's ownership interest in Dexter Surgical GmbH, a German subsidiary, shall be deemed a Remaining Asset. Without limitation of anything contained in Article V\(F\)\(1\) of the Plan, the Representative may, subject to approval of the Board, and without further approval of the Bankruptcy Court, take all actions the Debtor's Representative deems necessary or appropriate, including without limitation providing funds from the Post-Effective Date Reserve, to liquidate and/or wind-down Dexter Surgical GmbH.](#)

To the extent not previously authorized under a Sale Order and/or any other order(s) of the Bankruptcy Court, on and after the Effective Date, the Plan authorized and empowers the Debtor's Representative to fully perform under, consummate and implement any agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to consummate a sale, assignment, transfer, or other disposal of the Remaining Assets, and to take all further actions as may reasonably be requested by a purchaser or transferee for the purpose of selling, assigning, transferring, granting, conveying or conferring to a purchaser or transferee, or reducing to possession, any or all of the Remaining Assets free and clear of any and all Liens and encumbrances.

2. Aesculap APA and Aesculap Escrow Agreement

Pursuant to the Plan, the Debtor and the Debtor's Representative shall retain all rights, remedies, defenses and claims under and with respect to the Aesculap APA and the Aesculap Escrow Agreement. Any amounts payable to the Debtor under the Aesculap APA and/or the Aesculap Escrow Agreement, or in connection therewith, shall be deposited by the Debtor's Representative into the Post-Effective Date Reserve. The Plan further provides that, following the Effective Date, the Debtor and the Debtor's Representative shall be authorized, but not required, to negotiate, and if appropriate, provide consideration to Aesculap in exchange for the early termination of the Aesculap Escrow Agreement, without the need for further approval of the Bankruptcy Court.

~~I. Counterclaims~~

I. Causes of Action/Setoff and Recoupment

~~Pursuant to the Plan, Causes of Action shall not be subject to any affirmative counterclaims; provided, however, that~~ Causes of Action may be subject to set-off and recoupment rights ~~to the extent, if any, permitted by applicable law and to the extent consistent with any Order of the Bankruptcy Court and~~ and counterclaims; provided, however, that the recovery of any non-Debtor with respect to any such counterclaim shall be limited to the adjudicated amount of such Cause of Action unless the applicable non-Debtor filed a timely Proof of Claim regarding the subject of its counterclaim, in which event the non-Debtor's recovery, if any, on account of such counterclaim shall be subject to the terms of the Plan.

J. Post-Effective Date Costs

The Plan further provides that, from and after the Effective Date, the Debtor's Representative shall, without the necessity for any approval by the Bankruptcy Court, pay from the Post-Effective Date Reserve those fees and expenses incurred by the Debtor's Representative, the Board, and the Debtor, subsequent to the Effective Date in connection with the implementation and consummation of the Plan. All fees and expenses of the Debtor's Representative, the Debtor, the Board and the Claims Agent, and any of their respective agents and employees and retained professionals that are incurred subsequent to the Effective Date, shall be paid by the Debtor's Representative, subject to the right of the Debtor's Representative and the Board to object to the payment of such fees and expenses in accordance with Articles V(B)(b) and V(B)(e) of the Plan, as further set forth in the Plan.

K. Preservation of Causes of Action

In accordance with section 1123(b)(3) of the Bankruptcy Code, and except as otherwise provided in an order of the Bankruptcy Court, the Plan provides that the Debtor and the Debtor's Representative shall retain the Causes of Action, including but not limited to any Causes of Action identified on Exhibit "AB" to the Plan. Under the Plan, the Debtor's Representative may settle any Cause of Action without approval from the Bankruptcy Court, subject to the approval of the Board as set forth in Articles V(B)(b) and V(B)(e) of the Plan.

L. Effectuating Documents; Further Transactions

The Plan authorizes the Debtor and the Debtor's Representative to execute, deliver, file or record such contracts, instruments, releases, indentures and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

M. Reserves and Distribution Accounts**1. Funding of the Reserves**

(a) Professional Fee Claims Reserve. The Plan provides that, on or as soon as practicable after the Effective Date, the Debtor's Representative shall fund the Professional Fee Claims Reserve from Cash in the Debtor Cash Account, in the amount ~~set forth in the Plan Supplement, in an exhibit/appendix to this Disclosure Statement~~ of approximately \$661,000.00 or as otherwise provided in the Confirmation Order. There shall be deposited into the Professional Fee Claims Reserve an amount sufficient to permit full payment of all anticipated Allowed Professional Fee Claims.

The Debtor's Representative, after consultation with the Board, may at any time increase or decrease the amount of the Professional Fee Claims Reserve.

The Professional Fee Claims Reserve shall at all times be maintained as a segregated account.

Any Cash remaining in the Professional Fee Claims Reserve after payment of all Allowed Professional Fee Claims shall be transferred by the Debtor's Representative to the Post-Effective Date Reserve.

(b) Post-Effective Date Reserve. The Plan further provides that, on or as soon as practicable after the Effective Date, the Debtor's Representative shall fund the Post-Effective Date Reserve from Cash in the Debtor Cash Account, in the amount ~~set forth in the Plan Supplement, in an exhibit/appendix to this Disclosure Statement~~ of approximately \$1,627,00.00 or as otherwise provided in the Confirmation Order. There shall be deposited into the Post-Effective Date Reserve an amount sufficient to permit the consummation and implementation of the Plan and to pay the costs and expenses, including without limitation Taxes and amounts payable to professionals, incurred after the Effective Date by the Debtor's Representative, the Debtor and the Claims Agent. The Debtor's Representative, ~~in~~ after consultation with the Board, may at any time increase or decrease the amount of the Post-Effective Date Reserve.

The Post-Effective Date Reserve shall at all times be maintained by the Debtor's Representative in a segregated account. All Cash obtained by the Debtor after the Effective Date from whatever source, including without limitation from the Remaining Assets, shall be deposited by the Debtor's Representative into the Post-Effective Date Reserve.

Any Cash remaining in the Post-Effective Date Reserve after payment of, or other provision for, all costs and expenses, including without limitation, Taxes and amounts payable to professionals incurred after the Effective Date, shall be transferred by the Debtor's Representative to the Distribution Account.

(c) SAP Reserve Account. The Plan further provides that, on or as soon as practicable after the Effective Date, the Debtor's Representative shall establish the SAP Reserve Account and fund such account from Cash in the Debtor's Cash Account, in an amount equal to (A) the ~~Face Amount~~ amount of: (i) all Administrative Claims asserted against the Debtor; (ii) all Priority Tax Claims asserted against the Debtor, (iii) all Class 1 Priority Claims asserted against the Debtor, and (iv) all Class 2 Secured Claims asserted against the Debtor plus (B) the amount of Administrative Claims the Debtor's Representative anticipates will be filed prior to the Administrative Claims Bar Date. If and to the extent any such Administrative Claims, Priority Tax Claims, Class 1 Priority Claims and/or Class 2 Secured Claims become Disallowed, withdrawn, or reduced, the Debtor's Representative shall reduce the amount in the SAP Reserve Account in a corresponding amount and shall transfer such amount from the SAP Reserve Account to the Distribution Account. The Debtor's Representative, after consultation with the Board, also may at any time increase the amount of the SAP Reserve Account.

The SAP Reserve Account shall at all times be maintained as a segregated account.

2. Funding of the Distribution Account

(a) Debtor's Distribution Account. The Plan provides that, on or as soon as practicable after the Effective Date, the Debtor's Representative shall fund the Distribution Account with all Cash remaining in the Debtor's Cash Account after the funding of the Professional Fee Claims Reserve, the Post-Effective Date Reserve and the SAP Reserve Account, in accordance with the terms of the Plan. The Debtor's Distribution Account shall at all times be maintained as a segregated account.

(b) Notwithstanding the foregoing or anything else contained in the Plan, the Debtor's Representative may, after consultation with the Board, and from time to time and as the Debtor's Representative deems necessary and appropriate, transfer Cash in the Distribution Account to the Professional Fee Claims Reserve, to the SAP Reserve Account and/or to the Post-Effective Date Reserve in order to ensure that such Reserves contain sufficient Cash to pay all Allowed Professional Fee Claims (with respect to the Professional Fee Claims Reserve), all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Class 1 Priority Claims and all Allowed Class 2 Secured Claims (with respect to the SAP Reserve Account) and all costs and expenses, including without limitation Taxes and amounts payable to professionals, incurred after the Effective Date by the Debtor's Representative, the Debtor and the Claims Agent (with respect to the Post-Effective Date Reserve).

N. Distribution Provisions

1. Delivery of Distributions in General

The Plan provides that Distributions to Holders of Allowed Claims shall be made by the Debtor's Representative (a) at the addresses set forth on the Proofs of Claim filed by such Holders (or at the last known addresses of such Holders if no Proof of Claim is filed or if the Debtor have been notified of a change of address), (b) at the addresses set forth in any written notices of address changes delivered to the Debtor's Representative after the date of any related Proof of Claim, or (c) at the addresses reflected in the Schedules if no Proof of Claim has been filed and the Debtor's Representative or the Debtor have not received a written notice of a change of address.

In making Distributions under the Plan, the Debtor's Representative may rely upon the accuracy of the claims register maintained by the Claims Agent in the Chapter 11 Case and the Schedules, as may be modified by any Final Order of the Bankruptcy Court Allowing or Disallowing Claims in whole or in part.

2. Distributions to Holders of Allowed Interests

The Plan provides that Distributions to Holders of Interests shall be made by the Debtor's Representative in accordance with such procedures that the Debtor's Representative deems proper and appropriate and that are consistent with standard practice and applicable law regarding the payment of amounts to holders of publicly traded securities.

3. Undeliverable and Unclaimed Distributions

The Plan provides that any Holder of an Allowed Claim or Interest that does not assert a claim pursuant to the Plan for an undeliverable or unclaimed Distribution, including checks not returned as undeliverable but which remains unnegotiated, within ninety (90) days after the date on which the Distribution to it is made (a) shall be deemed to have forfeited its claim for such undeliverable or unclaimed Distribution; ~~(b) may, in the sole discretion of the Debtor's Representative, be barred from receiving further Distributions under the Plan on account of such Claim or Interest; and (c)~~ (b) shall be forever barred and enjoined from asserting any claim for an undeliverable or unclaimed Distribution against the Debtor's Representative, the Debtor and its Estate or the Board and their respective agents, attorneys, representatives, employees, members or independent contractors, and/or any of its and their property. In such cases, any Cash otherwise reserved for undeliverable or unclaimed Distributions shall be added to the funds in the Post-Effective Date Reserve, notwithstanding any federal or state escheat laws to the contrary, and shall be distributed in accordance with the terms of the Plan. Nothing contained in the Plan requires the Debtor, the Debtor's Representative, or his or her respective agents and professionals to attempt to locate any Holder of an Allowed Claim or Interest.

4. Means of Cash Payment

The Plan provides that cash payments made pursuant to the Plan will be in U.S. dollars and will be made at the option and in the sole discretion of the Debtor by (i) checks drawn on or (ii) wire transfers from a domestic bank selected by the Debtor. In the case of foreign creditors, Cash payments may be made, at the option of the Disbursing Agent, in such funds and by such means as are necessary or customary in a particular jurisdiction.

5. Withholding and Reporting Requirements

The Plan provides that:

In accordance with section 346 of the Bankruptcy Code and in connection with the Plan and all distributions thereunder, the Debtor and the Debtor's Representative must, to the extent applicable, comply with all withholding and reporting requirements imposed by any federal, state, provincial, local or foreign taxing authority. The Disbursing Agent will be authorized to take any and all actions necessary and appropriate to comply with such requirements.

All Distributions under the Plan shall be subject to withholding and reporting requirements. As a condition of making any Distribution under the Plan, the Debtor's Representative may require the Holder of an Allowed Claim and/or Interest to provide such Holder's taxpayer identification number and such other information, certification or forms, if and as required to comply with applicable tax reporting and withholding laws. If a Person shall fail to provide the Debtor's Representative with any requested tax-payer identification information within 60 days of the request, this failure shall be deemed a waiver of all Claims against and Equity Interests (including the right to any payment in accordance with the Plan), and the funds that would otherwise have been distributed to said Person shall revert and be distributed in accordance with the Plan to other Persons which have provided the requested tax-payer identification information, or to pay the post-Effective Date expenses of the Debtor, as

appropriate. Notwithstanding any other provision of the Plan, each entity receiving a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of tax obligations on account of any such Distribution.

6. Procedure for Treating and Resolving Disputed, Contingent and/or Unliquidated Claims

The Plan provides that:

Except as otherwise specifically provided in the Plan, after the Effective Date, the Debtor's Representative shall have the sole authority, subject to the rights and duties of the Board as set forth therein, (a) to file, withdraw, or litigate to judgment objections to Claims and subordination actions with respect to Claims, (b) to settle or compromise any Disputed Claim or any Claim subject to a subordination action without any further notice to or action, order, or approval by the Bankruptcy Court, and (c) to amend the Schedules in accordance with the Bankruptcy Code and the Local Rules.

Objection Deadline; Prosecution of Objections; Claim Estimation. Except as set forth in the Plan with respect to Professional Fee Claims and Administrative Claims, all objections to Claims must be filed on or before the Claims Objection Deadline (as such deadline may be extended). If an objection has not been filed by the Debtor's Representative with respect to a Proof of Claim or the Schedules have not been amended with respect to a Claim for which a Proof of Claim was not timely filed, by the Claims Objection Deadline, as the Claims Objection Deadline may be extended, the Claim to which the Proof of Claim or Scheduled Claim relates will be treated as an Allowed Claim if such Claim has not been Allowed earlier. The Debtor's Representative shall be the sole Person with the right and standing to object to Claims. The Debtor's Representative shall have the right to seek an order of the Bankruptcy Court estimating any contingent or unliquidated Claim.

Late Filed Claims. Pursuant to the Bar Date Orders, any Person that is required but fails to file a Claim or application with respect to a Claim before the applicable Bar Date in compliance with the procedures set forth in the applicable Bar Date Order shall not be treated as a creditor with respect to such Claim for purposes of voting on, and distribution under, the Plan. In the event a late Claim filed after the Effective Date is deemed timely filed, the Debtor's Representative shall have one hundred twenty (120) days from the date the Holder is permitted to file the Claim to file an Objection to such Claim.

No Distributions Pending Allowance. No payments or Distributions shall be made with respect to all of any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim. To the extent that a Claim is not a Disputed Claim but is held by a Holder that is or may be liable to the Debtor on account of a Cause of Action, the Debtor's Representative may withhold all Distributions to such Holder until such Claim and liability have been settled or withdrawn or have been determined by Final Order of the Bankruptcy Court or such other court having jurisdiction over the matter.

Distributions After Allowance. Distributions to each respective Holder on account of a Disputed Claim, to the extent that it ultimately becomes an Allowed Claim, shall be made in accordance with provisions of the Plan that govern Distributions to such Holders.

De Minimis Distributions. The Debtor's Representative shall have no obligation to make a Distribution on account of an Allowed Claim, Interest or otherwise if the amount to be distributed to the specific Holder of the Allowed Claim or Interest is less than \$10.00.

Fractional Dollars. Any other provision of the Plan notwithstanding, the Debtor's Representative shall not be required to make Distributions of fractions of dollars. Whenever any payment of a fraction of a dollar under the Plan would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down.

O. Distribution Record Date

Pursuant to the Plan, the Debtor and the Debtor's Representative shall have no obligation to recognize the transfer of or sale of any participation in any Claim or Interest that occurs after the close of business on the ~~Confirmation~~-Effective Date, and shall be entitled for all purposes regarding the Plan to recognize and distribute only to those Holders of Claims and Interests who are Holders of such Claims or Interest, or participants therein, as of the close of business on the ~~Confirmation~~-Effective Date. Without limiting the foregoing, the Debtor and the Debtor's Representative shall be entitled to recognize and deal for all purposes with only those record Holders of Claims stated on the official claims register as of the close of business on the ~~Confirmation~~-Effective Date and with only those record Holders of Interests who held such Interests as of the close of business on the ~~Confirmation Date~~-Effective Date.

P. De Minimis Fund Distribution

The Plan further provides that, in the event a final Distribution under the Plan is not, in the judgment and discretion of the Debtor's Representative, in consultation with the Board, economically warranted given the cost of making such Distribution relative to the benefits to the Holders of Interests, the Debtor's Representative may cause any amount that would have been subject to such Distribution to be paid to any charitable organization agreed to by the Debtor's Representative and the Board or determined by the Bankruptcy Court. Notwithstanding the foregoing, the amount to be paid to a charitable organization pursuant to this subsection shall not be in excess of \$7,500, without prior Bankruptcy Court approval.

Q. Treatment of Executory Contracts and Unexpired Leases

The Plan provides that:

Rejected Contracts and Leases. Except as otherwise provided in the Confirmation Order, the Plan, or in any other Plan Document, the Confirmation Order will constitute an order under section 365 of the Bankruptcy Code rejecting any pre-petition executory contract and unexpired lease to which the Debtor is a party, to the extent such contract or lease is an executory contract or unexpired lease, on and subject to the occurrence of the Effective Date, unless such contract or lease (a) previously shall have been assumed, assumed and assigned, or rejected by the Debtor,

(b) previously shall have expired or terminated pursuant to its own terms before the Effective Date, (c) is the subject of a pending motion to assume or reject on the Confirmation Date, or (d) is assumed pursuant to Section VII(C) of the Plan.

Bar to Rejection Damages. If the rejection of an executory contract or unexpired lease pursuant to the Plan gives rise to a Claim by the other party or parties to such contract or lease, such Claim will be forever barred and will not be enforceable against the Debtor or their respective successors, properties or Estates unless a Proof of Claim is filed and served on the Debtor and counsel for Debtor within thirty (30) days after service of a notice of the Effective Date or such other date as is prescribed by the Bankruptcy Court.

Assumed and Assigned Contracts and Leases. Except as otherwise provided in the Confirmation Order, the Confirmation Order will constitute an order under section 365 of the Bankruptcy Code assuming, as of the Effective Date, those executory contracts and unexpired leases, if any, listed on Exhibit "C" hereto. The cure amounts payable with respect to any such contracts are also listed on Exhibit "C" hereto.

Insurance Policies. Notwithstanding anything to the contrary contained in the Plan, all Insurance Policies shall remain in full force and effect unless otherwise validly terminated, and issuers of such Insurance Policies shall remain responsible for Claims, in accordance with the terms and provisions of such Insurance Policies. The Debtor does not consider Insurance Policies that have expired as of the Effective Date (whether or not entered into prior or subsequent to the Petition Date) to be executory contracts subject to assumption or rejection. However, the issuers of Insurance Policies shall be responsible for continuing coverage obligations thereunder, regardless of the payment status of any retrospective or other insurance premiums. Nothing in the Plan shall constitute or be deemed to be a waiver of any Cause of Action that the Debtor may hold against Persons, including, without limitation, any issuer under any Insurance Policy of the Debtor.

R. Allowance and Payment of Certain Administrative Claims

The Plan provides that:

Final Fee Applications. All Final Fee Applications must be filed no later than ~~sixty~~ ~~(60)forty-five (45)~~ days after the Effective Date. Objections, if any, to Final Fee Applications of such Professionals must be filed and served on the Debtor, its counsel, the requesting Professional and the United States Trustee no later than ~~forty-five (45)~~ ~~thirty (30)~~ days from the date on which each such Final Fee Application is served and filed. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior orders of the Bankruptcy Court, the Allowed amounts of such Professional Fee Claims shall be determined by the Bankruptcy Court. Allowed Professional Fee Claims shall be paid as set forth in Article III(A)(1) of the Plan.

Employment of Professionals after the Effective Date. From and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 of the Bankruptcy Code or any order previously entered by the Bankruptcy Court in seeking retention or compensation for services rendered or expenses incurred after such date will terminate.

Administrative Claim Bar Date. All requests for payment of an Administrative Claim arising on and subsequent to the Petition Date, other than Claims arising under 28 U.S.C. § 1930 and Administrative Claims described in section 503(b)(1)(B) or (C) of the Bankruptcy Code, must be filed with the Court and served on counsel for the Debtor's Representative no later than thirty (30) days from and after the Effective Date of the Plan (the "Administrative Claim Bar Date"). Unless the Debtor or any other party in interest objects within forty-five (45) days from and after the Administrative Claim Bar Date (the "Administrative Claim Objection Deadline"), such Administrative Claim shall be deemed allowed in the amount requested. In the event that the Debtor or any other party in interest objects to an Administrative Claim, the Bankruptcy Court shall determine the Allowed amount of such Administrative Claim, if any.

S. Conditions Precedent to Occurrence of the Effective Date

The Plan provides that:

Conditions Precedent to Effective Date. The following are conditions precedent to the occurrence of the Effective Date, each of which must be satisfied or waived by the Debtor in writing:

- a. The Confirmation Order must have been entered and become a Final Order and must provide that the Debtor and the Debtor's Representative are authorized and directed to take all actions necessary or appropriate to enter into, implement and consummate the contracts, instruments, releases, leases, indentures and other agreements or documents created in connection with the Plan or effectuate, advance or further the purposes thereof; and
- b. The Debtor shall have sufficient Cash available to fund the Professional Fee Claims Reserve, the Post-Effective Date Reserve, the SAP Reserve Account and to pay all anticipated Allowed General Unsecured Claims and post-Petition Date interest thereon at the Federal Judgment Rate, in accordance with the Plan.

Consequences of Non-Occurrence of Effective Date. In the event that the Effective Date does not occur, the Plan shall be null and void in all respects.

T. Binding Effect

The Plan provides that it shall be binding upon and inure to the benefit of the Debtor, all present and former Holders of Claims and Interests, and their respective successors and assigns.

U. No Discharge of the Debtor

The Plan provides that pursuant to section 1141(d)(3) of the Bankruptcy Code, Confirmation will not discharge Claims against the Debtor; provided, however, that, other than as provided in any agreement, no Holder of a Claim or Interest may, on account of such Claim or Interest, seek or receive any payment or other distribution from, or seek recourse against, the Debtor and/or its respective successors, assigns and/or property, including but not limited to the

Debtor's Representative, except as expressly provided in the Plan.

V. Releases by the Debtor

THE PLAN PROVIDES THAT, ON THE EFFECTIVE DATE, THE DEBTOR, ON BEHALF OF ITSELF AND ITS ESTATE, SHALL RELEASE UNCONDITIONALLY, AND HEREBY IS DEEMED TO FOREVER RELEASE UNCONDITIONALLY THE DEBTOR'S PAST AND PRESENT AGENTS, ADVISORS, ACCOUNTANTS, INVESTMENT BANKERS, CONSULTANTS, ATTORNEYS AND OTHER REPRESENTATIVES SOLELY IN THEIR RESPECTIVE CAPACITIES AS SUCH, FROM ANY AND ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, RIGHTS, CAUSES OF ACTION AND LIABILITIES WHATSOEVER (OTHER THAN THE RIGHT TO ENFORCE THE PERFORMANCE OF THEIR RESPECTIVE OBLIGATIONS, IF ANY, TO THE DEBTOR UNDER THE PLAN, AND THE CONTRACTS, INSTRUMENTS, RELEASES AND OTHER AGREEMENTS DELIVERED UNDER THE PLAN), WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, DIRECTLY OR DERIVATIVELY, THEN EXISTING OR THEREAFTER ARISING, IN LAW, EQUITY OR OTHERWISE THAT ARE BASED IN WHOLE OR IN PART ON ANY ACT OR OMISSION, TRANSACTION, EVENT OR OTHER OCCURRENCE TAKING PLACE ON OR PRIOR TO THE EFFECTIVE DATE IN ANY WAY RELATING TO THE DEBTOR, THE CHAPTER 11 CASE, THE PLAN OR THE DISCLOSURE STATEMENT; PROVIDED, HOWEVER, THAT NOTWITHSTANDING THE FOREGOING, NOTHING CONTAINED HEREIN IS INTENDED TO OR SHALL OPERATE AS A RELEASE OF ANY CLAIMS FOR WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, AS DETERMINED BY A FINAL ORDER OF A COURT OF COMPETENT JURISDICTION.

W. Injunction

The Plan provides that:

EXCEPT AS OTHERWISE PROVIDED IN THE PLAN, FROM AND AFTER THE EFFECTIVE DATE ALL PERSONS WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS AGAINST OR INTERESTS IN THE DEBTOR ARE PERMANENTLY ENJOINED FROM TAKING ANY OF THE FOLLOWING ACTIONS AGAINST THE DEBTOR OR ITS ESTATE, THE DEBTOR'S PROPERTY, THE DEBTOR'S REPRESENTATIVE AND/OR THE BOARD OR ANY OF ITS MEMBERS, ON ACCOUNT OF ANY SUCH CLAIMS OR INTERESTS: (A) ~~COMMENCING OR CONTINUING, IN ANY MANNER OR IN ANY PLACE, ANY ACTION OR OTHER PROCEEDING;~~ (B) ENFORCING, ATTACHING, COLLECTING OR RECOVERING IN ANY MANNER ANY JUDGMENT, AWARD, DECREE OR ORDER; (C) CREATING, PERFECTING OR ENFORCING ANY LIEN OR ENCUMBRANCE; (D) ASSERTING A SETOFF OR RIGHT OF SUBROGATION OF ANY KIND AGAINST ANY DEBT,

LIABILITY OR OBLIGATION DUE TO THE DEBTOR; ~~(E)~~D) COMMENCING OR CONTINUING, IN ANY MANNER OR IN ANY PLACE, ANY ACTION THAT DOES NOT COMPLY WITH OR IS INCONSISTENT WITH THE PROVISIONS OF THE PLAN; AND ~~(F)~~E) TAKING ANY ACTION WHICH INTERFERES WITH THE IMPLEMENTATION OR CONSUMMATION OF THE PLAN; PROVIDED, HOWEVER, THAT NOTHING CONTAINED IN THE PLAN SHALL PRECLUDE SUCH PERSONS FROM EXERCISING AND/OR ENFORCING THEIR RIGHTS PURSUANT TO AND CONSISTENT WITH THE TERMS OF THE PLAN, THE CONFIRMATION ORDER OR A SALE ORDER.

X. Term of Bankruptcy Injunction or Stays

The Plan provides that:

ALL INJUNCTIONS OR STAYS PROVIDED FOR IN THE CHAPTER 11 CASE UNDER SECTIONS 105 OR 362 OF THE BANKRUPTCY CODE OR OTHERWISE, AND IN EXISTENCE ON THE CONFIRMATION DATE, SHALL REMAIN IN FULL FORCE AND EFFECT.

Y. Levy, Garnishment and Attachment

The Plan provides that Distributions to the various Classes of Claims and Interests thereunder shall not be subject to levy, garnishment, attachment or like legal process by any Holder of Claim or Interest by reason of any subordination rights or otherwise, so that each Holder of Claim or Interest shall have and receive the benefit of the Distributions in the manner set forth in the Plan.

Z. Exculpation and Limitation of Liability

The Plan provides that

EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THE PLAN, THE DEBTOR, THE DEBTOR'S PAST AND PRESENT, PROFESSIONALS, DIRECTORS, OFFICERS, EMPLOYEES, ADVISORS, ATTORNEYS, REPRESENTATIVES, FINANCIAL ADVISORS, INVESTMENT BANKERS AND AGENTS AND ANY OF SUCH PARTIES' SUCCESSORS AND ASSIGNS, SHALL NOT BE LIABLE FOR ANY CLAIM, ACTION, PROCEEDING, CAUSE OF ACTION, SUIT, ACCOUNT, CONTROVERSY, AGREEMENT, PROMISE, RIGHT TO LEGAL REMEDIES, RIGHT TO EQUITABLE REMEDIES, RIGHT TO PAYMENT OR CLAIM (AS DEFINED IN SECTION 101(5) OF THE BANKRUPTCY CODE), WHETHER KNOWN, UNKNOWN, REDUCED TO JUDGMENT, NOT REDUCED TO JUDGMENT, LIQUIDATED, UNLIQUIDATED, FIXED, CONTINGENT, MATURED, UNMATURED, DISPUTED, UNDISPUTED, SECURED OR UNSECURED AND WHETHER ASSERTED OR ASSERTABLE DIRECTLY OR DERIVATIVELY, IN LAW, EQUITY OR OTHERWISE TO ONE ANOTHER OR TO ANY HOLDER OF A CLAIM OR INTEREST, OR ANY OTHER PARTY IN INTEREST, OR ANY OF

THEIR RESPECTIVE AGENTS, EMPLOYEES, REPRESENTATIVES, FINANCIAL ADVISORS, ATTORNEYS, OR ANY OF THEIR SUCCESSORS OR ASSIGNS, FOR ANY ACT OR OMISSION ORIGINATING OR OCCURRING ON OR AFTER THE PETITION DATE THROUGH AND INCLUDING THE EFFECTIVE DATE IN CONNECTION WITH, RELATING TO, OR ARISING OUT OF THE CHAPTER 11 CASE, NEGOTIATION AND FILING OF THE PLAN OR ANY PRIOR PLANS, FILING THE CHAPTER 11 CASE, THE PURSUIT OF CONFIRMATION OF THE PLAN OR ANY PRIOR PLANS, ANY SALE ORDER, THE CONSUMMATION OF THE PLAN, THE ADMINISTRATION OF THE PLAN OR THE PROPERTY TO BE LIQUIDATED AND/OR DISTRIBUTED UNDER THE PLAN, EXCEPT FOR WILLFUL MISCONDUCT, GROSS NEGLIGENCE OR FRAUD AS DETERMINED BY A FINAL ORDER OF A COURT OF COMPETENT JURISDICTION.

AA. Indemnification Obligations

The Plan provides that, except as otherwise provided in the Plan, any Sale Order, other order of the Bankruptcy Court, or any contract, instrument, release or other agreement or document entered into in connection with the Plan, any and all indemnification obligations that the Debtor has pursuant to a contract, instrument, agreement, certificate of incorporation, by-law, comparable organizational document or any other document or applicable law shall be deemed rejected (if and to the extent executory) as of the Effective Date.

BB. Good Faith

The Plan provides that Confirmation of the Plan shall constitute a finding by the Bankruptcy Court that: (i) the Plan has been proposed in good faith and in compliance with applicable provisions of the Bankruptcy Code; and (ii) the solicitation of acceptances or rejections of the Plan by all Persons has been in good faith and in compliance with applicable provisions of the Bankruptcy Code.

CC. Confirmation Order

The Plan provides that Confirmation of the Plan shall be deemed to ratify all transactions undertaken by the Debtor during the period commencing on the Petition Date and ending on the Effective Date, except for any acts constituting willful misconduct, intentional misconduct, gross negligence or fraud as determined by a Final Order of a court of competent jurisdiction.

IX.

CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES

The following discussion is a summary of certain United States federal income tax aspects of the Plan, for general information purposes only, and should not be relied upon for purposes of determining the specific tax consequences of the Plan with respect to a particular Holder of a Claim or Interest. This discussion does not purport to be a complete analysis or listing of all potential tax considerations. This discussion is based on existing provisions of the

Internal Revenue Code (the “IRC”), existing and proposed Treasury Regulations promulgated thereunder, and current administrative rulings and court decisions. Legislative, judicial, or administrative changes or interpretations enacted or promulgated after the date hereof could alter or modify the analyses set forth below with respect to the United States federal income tax consequences of the Plan. Any such changes or interpretations may be retroactive and could significantly affect the United States federal income tax consequences of the Plan.

No ruling has been requested or obtained from the IRS with respect to any tax aspects of the Plan and no opinion of counsel has been sought or obtained with respect thereto. No representations or assurances are being made to the Holders of Claims or Interests with respect to the United States federal income tax consequences described herein.

Each Holder of a Claim or Interest affected by the Plan is strongly urged to consult its tax advisor regarding the specific tax consequences of the transactions described herein and in the Plan.

A. General

The United States federal income tax consequences to Holders of Claims and Interests and the character and amount of income, gain or loss recognized as a consequence of the Plan and the distributions provided for thereby will depend upon, among other things, (1) the manner in which a Holder acquired a Claim or Interest; (2) the length of time the Claim or Interest has been held; (3) whether the Claim or Interest was acquired at a discount; (4) whether the Holder has taken a bad debt deduction with respect to the Claim (or any portion thereof) in the current or prior years; (5) whether the Holder has previously included in income accrued but unpaid interest with respect to the Claim; (6) the method of tax accounting of the Holder; (7) whether the Claim is an installment obligation for United States federal income tax purposes; and (8) whether the Claim constitutes a “security” for United States federal income tax purposes. Certain Holders of Claims (such as foreign persons, S corporations, regulated investment companies, insurance companies, financial institutions, small business investment companies, broker-dealers and tax-exempt organizations) and Interests may be subject to special rules not addressed herein. There also may be state, local, and/or foreign income or other tax considerations or United States federal estate and gift tax considerations applicable to Holders of Claims and Interests, which are not addressed herein. Each Holder of a Claim and Interest should consult its tax advisor for information that may be relevant to its particular situation and circumstances and for advice concerning the particular tax consequences to it of the transactions contemplated by the Plan.

B. Importance of Obtaining Professional Tax Assistance

THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN INCOME TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A CLAIM OR INTEREST HOLDER’S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, CLAIM AND INTEREST HOLDERS ARE URGED TO CONSULT THEIR TAX ADVISORS ABOUT THE

UNITED STATES FEDERAL, STATE AND LOCAL, AND APPLICABLE FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

X.

REQUIREMENTS FOR CONFIRMATION OF THE PLAN

The Bankruptcy Court may confirm the Plan only if it determines that the Plan complies with the technical requirements of chapter 11 of the Bankruptcy Code and the disclosures by the Debtor concerning the Plan have been adequate and have included information concerning all payments made or to be made in connection with the Plan and the Chapter 11 Case. In addition, the Bankruptcy Court must determine that the Plan has been proposed in good faith and not by any means forbidden by law and, under Bankruptcy Rule 3020(b)(2), it may do so without receiving evidence if no objection is timely filed.

In particular, the Bankruptcy Code requires the Bankruptcy Court to find, among other things, that (a) the Plan has been accepted by the requisite votes of the Classes of Impaired Claims and Interests, unless approval will be sought under section 1129(b) of the Bankruptcy Code, despite the dissent of one or more such Classes, (b) the Plan is “feasible,” which means that there is a reasonable probability that confirmation of the Plan will not be followed by liquidation or the need for further financial reorganization, and (c) the Plan is in the “best interests” of all holders of Claims and Interests, which means that such holders will receive at least as much under the Plan as they would receive in a liquidation under chapter 7 of the Bankruptcy Code. The Bankruptcy Court must find that all conditions mentioned above are met before it can confirm the Plan. Thus, even if all Classes of Impaired Interests accept the Plan by the requisite votes, the Bankruptcy Court must make an independent finding that the Plan conforms to the requirements of the Bankruptcy Code, that the Plan is feasible and that the Plan is in the best interests of the holders of Claims against, and Interests in, the Debtor.

A. Acceptance by Impaired Classes

Under section 1124 of the Bankruptcy Code, a class of claims or interests is deemed to be impaired under a plan unless (1) the plan leaves unaltered the legal, equitable and contractual rights to which such claim or interest entitles the holder thereof or (2) notwithstanding any legal right to an accelerated payment of such claim or interest, the plan cures all existing defaults (other than defaults resulting from the occurrence of events of bankruptcy) and reinstates the maturity of such claim or interest as it existed before the default.

In general, a holder of a claim or interest may vote to accept or to reject a plan if (1) the claim or interest is allowed, which means generally that no party in interest has objected to such claim or interest, and (2) the claim or interest is impaired by the plan. If the holder of an impaired claim or interest will not receive or retain any distribution under the plan in respect of such claim or interest, the Bankruptcy Code deems the holder to have rejected the plan. If the claim or interest is not impaired, the Bankruptcy Code deems the holder of such claim or interest to have accepted the plan, and the plan proponent need not solicit such holder’s vote.

A vote may be disregarded if the Bankruptcy Court determines, pursuant to section 1126(e) of the Bankruptcy Code, that it was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

Impaired Classes of Claims and Interests Entitled to Vote. Only the Holders of Interests in Classes 4 and 5 are entitled to vote to accept or reject the Plan.

Acceptance by an Impaired Class. In accordance with section 1126(c) of the Bankruptcy Code and except as provided in section 1126(e) of the Bankruptcy Code, an impaired class of claims shall have accepted the plan if the plan is accepted by the holders of at least two-thirds in dollar amount and more than one-half in number of the allowed claims of such class that have timely and properly voted to accept or reject the plan. In accordance with section 1126(d) of the Bankruptcy Code and except as provided in section 1126(e) of the Bankruptcy Code, an impaired class of interests shall have accepted the plan if the plan is accepted by the holders of at least two-thirds in amount of the allowed interests of such class that have timely and properly voted to accept or reject the Plan.

Presumed Acceptances by Unimpaired Classes. Classes 1, 2 and 3 are Unimpaired by the Plan. Under section 1126 of the Bankruptcy Code, such Holders are conclusively presumed to accept the Plan, and the votes of such Holders will not be solicited.

Impaired Equity Interests. With respect to Interests, in accordance with section 1126(g) of the Bankruptcy Code, Classes 6 and 7 and 8 are deemed to have rejected the Plan.

Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code. If any Impaired Class of Interests that is entitled to vote on the Plan rejects the Plan, the Debtor will (i) seek confirmation of the Plan from the Court by employing the “cram down” procedures set forth in section 1129(b) of the Bankruptcy Code and/or (ii) modify the Plan. The Debtor reserves the right to alter, amend or modify the Plan, including to amend or modify the exhibits thereto, to satisfy the requirements of section 1129(b) of the Bankruptcy Code. The Debtor reserves the right to revoke or withdraw the Plan, in whole or in part.

“Cram Down.” Under the “cram down” provisions of the Bankruptcy Code, the Debtor must demonstrate to the Bankruptcy Court that (i) the Plan does not discriminate unfairly with respect to each non-accepting Impaired Class, (ii) the Plan is fair and equitable with respect to each non-accepting Impaired Class, and (iii) at least one Impaired Class of Claims has accepted the Plan.

As used by the Bankruptcy Code, the phrases “discriminate unfairly” and “fair and equitable” have narrow and specific meanings unique to bankruptcy law. A plan does not discriminate unfairly if claims or interests in different classes but with similar priorities and characteristics receive or retain property of similar value under a plan. By establishing separate Classes for the holders of each type of Claim and by treating each holder of a Claim in each Class identically, the Plan has been structured so as to meet the “unfair discrimination” test of section 1129(b) of the Bankruptcy Code.

The Bankruptcy Code sets forth different standards for establishing that a plan is “fair and equitable” with respect to a dissenting class, depending on whether the class is comprised of

secured or unsecured claims or interests. In general, section 1129(b) of the Bankruptcy Code permits confirmation notwithstanding non-acceptance by an impaired class if that class and all junior classes are treated in accordance with the “absolute priority” rule, which requires that the dissenting class be paid in full before any junior class may receive anything under the plan.

B. Feasibility

In connection with confirmation of the Plan, the Bankruptcy Court will have to determine that the Plan is feasible pursuant to section 1129(a)(11) of the Bankruptcy Code, which means that the confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor. In the present case, because the Plan is a liquidating plan in which sufficient funds will be set aside to satisfy all Allowed Administrative Claims and other Claims that are required to be paid under the Plan, the Plan satisfies section 1129(a)(11) of the Bankruptcy Code.

C. Best Interests of Creditors; Liquidation under Chapter 7 of the Bankruptcy Code

Section 1129(a)(7) of the Bankruptcy Code provides that, with respect to impaired classes, each holder of a claim or interest of such class must receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount such holder would so receive or retain if the debtor liquidated under chapter 7 of title 11 on such date.

To estimate what holders of Allowed Claims and Interests would receive if the Debtor were hypothetically liquidated under chapter 7 of the Bankruptcy Code, the Bankruptcy Court must first determine the aggregate dollar amount that would be available if the Debtor’s Chapter 11 Case were converted to a chapter 7 case and the Debtor’s assets were liquidated by a chapter 7 trustee. The proceeds available for satisfaction of allowed claims and interests would consist of the Cash held by the Debtor, as well as any remaining assets reducible to Cash, at the time of the conversion to chapter 7. Any such Cash amount would then be reduced by the amount of any allowed secured claims, the costs and expenses of the chapter 7 case and additional allowed administrative claims, and other priority claims that may result from the use of chapter 7 for purposes of liquidation. The costs of liquidation under chapter 7 would include commissions payable to a trustee in bankruptcy, as well as fees that might be payable to his or her attorneys and to other professionals that such trustee may engage, plus any unpaid expenses incurred by the Debtor during the Chapter 11 Case that would be allowed in the chapter 7 case, such as compensation for the Debtor’s Professionals. These Claims would be paid in full out of the Debtor’s Cash before the balance of the Cash would be made available to Holders of General Unsecured Claims and Interests. In addition, other claims might arise upon conversion to a chapter 7 case that might dilute the Cash available to holders of allowed general unsecured claims and interests. Additional claims against the Debtor’s Estate might also arise as the result of the establishment of a new bar date for the filing of claims in the Debtor’s chapter 7 case. Although the Debtor believes that Allowed Claims likely would receive the same treatment in a chapter 7 case as proposed by the Plan – payment in full plus post-Petition Date interest at the Federal Judgment Rate – based on the foregoing, the Debtor believes that liquidation under chapter 7 could result in smaller distributions being made to Holders of Interests than those provided for under the Plan.

XI.

**ALTERNATIVES TO CONFIRMATION AND
CONSUMMATION OF THE PLAN**

The Debtor has evaluated alternatives to the Plan. After studying these alternatives, the Debtor has concluded that the Plan is the best alternative and will maximize recoveries of Holders of Claims and Interests. If the Plan is not confirmed, the Chapter 11 Case may be converted to a case under chapter 7 of the Bankruptcy Code. In that event, the Debtor would cease its liquidation and distribution efforts and a trustee would be appointed to liquidate and distribute the remaining assets of the Estate. As explained above, the Debtor believes that a liquidation under chapter 7 would likely result in a lower return to Holders of Allowed and Interests. It also would significantly delay distributions.

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XII.

RECOMMENDATION AND CONCLUSION

The Debtor believes that the Plan is in the best interest of all Holders of Claims and Interests and urge all Holders of Impaired Interests entitled to vote on the Plan to vote to accept the Plan and to evidence such acceptance by returning their Ballots in accordance with the instructions accompanying this Disclosure Statement. IN ORDER FOR YOUR VOTE TO BE COUNTED, YOUR BALLOT MUST BE PROPERLY COMPLETED AND RECEIVED BY THE VOTING AGENT NO LATER THAN THE VOTING DEADLINE.

Dated: ~~April 18~~August 27, 2018

Respectfully submitted,

Dex Liquidation Co. (f/k/a Dextera Surgical Inc.)

/s/ Matthew English

Matthew English, Chief Restructuring Officer

For the Debtor

List of Exhibits

Exhibit “A” – Debtor’s Chapter 11 Plan

Exhibit “B” – Estimated Assets and Anticipated Costs of Plan Implementation/Administration

Exhibit “C” – Assumed Executory Contracts/Unexpired Leases and Related Cure Amounts

[Exhibit “D” – Form of Series 1 and 2 Warrants](#)

Exhibit “A”

Debtor’s Chapter 11 Plan

Exhibit “B”

Estimated Assets and Anticipated Costs of Plan Implementation/Administration⁵

⁵ ~~_____ [To be provided prior to the hearing on this Disclosure Statement.]~~

Exhibit “C”

Assumed Executory Contracts/Unexpired Leases and Related Cure Amounts

{none}

Exhibit "D"

Form of Series 1 and 2 Warrants