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Counsel for Debtor,
KINEMED, INC., a Delaware Corporation

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

In re KINEMED, INC., a Delaware corporation, Debtor. Federal Tax I.D. No.: 91-2104596	Case No. 16-41241-CN Chapter 11

DISCLOSURE STATEMENT FOR DEBTOR'S
FIRST AMENDED PLAN OF REORGANIZATION
(January, 18, 2018)

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KINEMED, INC., the debtor-in-possession herein (the "Debtor"), hereby presents this disclosure statement (the "Disclosure Statement") for the purpose of providing parties in interest with information pertinent to the *Debtor's First Amended Plan of Reorganization* (as it may be amended or modified hereafter, the "Plan") filed on January 18, 2018 by the Debtor.

ALL CREDITORS AND HOLDERS OF CLAIMS AGAINST, OR INTERESTS IN, THE DEBTOR ARE ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETIES. PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETIES BY REFERENCE TO THE PLAN, OTHER EXHIBITS ANNEXED HERETO, EXHIBITS TO THE PLAN AND OTHER DOCUMENTS REFERENCED AS FILED WITH THE BANKRUPTCY COURT PRIOR TO OR CONCURRENT WITH THE FILING OF THIS DISCLOSURE STATEMENT. ALL CREDITORS AND HOLDERS OF CLAIMS AND INTERESTS IN THE DEBTOR'S CASE SHOULD READ CAREFULLY AND CONSIDER FULLY THE "RISK FACTORS" SECTION HEREOF BEFORE VOTING FOR OR AGAINST THE PLAN.

THE DEBTOR BELIEVES THAT CONFIRMATION OF THE PLAN IS IN THE BEST INTERESTS OF THE ESTATE HEREIN AND ALL CREDITORS. THE BANKRUPTCY COURT HAS APPROVED THIS DISCLOSURE STATEMENT, WHICH APPROVAL DOES NOT CONSTITUTE A DETERMINATION OF THE MERITS OF THE PLAN DESCRIBED IN THIS DISCLOSURE STATEMENT. THE APPROVAL OF THIS DISCLOSURE STATEMENT MEANS THAT THE BANKRUPTCY COURT HAS FOUND THAT THIS DISCLOSURE STATEMENT CONTAINS ADEQUATE INFORMATION TO PERMIT CREDITORS AND HOLDERS OF CLAIMS AND INTERESTS IN THE DEBTOR'S ESTATE TO MAKE REASONABLY INFORMED DECISIONS IN EXERCISING THEIR RIGHT TO VOTE UPON THE PLAN.

THIS DISCLOSURE STATEMENT HAS NEITHER BEEN APPROVED NOR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE "SEC"), ANY STATE SECURITIES COMMISSION OR ANY OTHER REGULATORY AUTHORITY, NOR HAS THE SEC OR SUCH OTHER COMMISSION OR AUTHORITY PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN.

THE DEBTOR IS UNABLE TO WARRANT OR REPRESENT THAT ALL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT OR IN EXHIBITS ATTACHED HERETO IS WITHOUT ERROR, ALTHOUGH ALL REASONABLE EFFORTS UNDER THE CIRCUMSTANCES HAVE BEEN MADE TO BE ACCURATE. IN PARTICULAR, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE DEBTOR NOTES THAT THE ASSUMPTIONS AND PROJECTIONS REFERENCED HEREIN REGARDING FUTURE RESULTS, REVENUES AND INCOME OF THE DEBTOR'S ESTATE, AND THE TIMING AND FEASIBILITY OF DISTRIBUTIONS TO CREDITORS AND SHAREHOLDERS, ARE ONLY PREDICTIONS OF FUTURE EVENTS, AND THEREFORE THERE CAN BE NO ASSURANCES THAT THE ASSUMPTIONS WILL IN FACT MATERIALIZE OR THAT THE PROJECTED EVENTS WILL IN FACT

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OCCUR AS PREDICTED.

I. INTRODUCTION OF PLAN CONFIRMATION PROCESS

A. Filing of the Plan

The Debtor has filed the Plan and this Disclosure Statement with the Bankruptcy Court pursuant to the provisions of Section 1125 of the Bankruptcy Code, for distribution to holders of Claims[1] against, and Interests in, the assets of the Debtor, in connection with (i) the solicitation of acceptances of the Plan, and (ii) a hearing to consider confirmation of the Plan (the "Confirmation Hearing") to be scheduled by the Bankruptcy Court.

Attached as exhibits to this Disclosure Statement are copies of the following:

- The Plan (**Exhibit "A"**); and
- The Order of the Bankruptcy Court approving this Disclosure Statement and establishing voting and tabulation procedures (**Exhibit "B"**).

Also enclosed with this Disclosure Statement is a ballot (the "Ballot") for the acceptance or rejection of the Plan, for use by those holders of Claims and Interests that are entitled to vote to accept or reject the Plan.

After notice and a hearing, the Bankruptcy Court has approved this Disclosure Statement as containing adequate information of a kind and in sufficient detail to enable hypothetical, reasonable investors typical of the Debtor's creditors and interest holders to make an informed judgment whether to accept or reject the Plan. Each holder of a Claim or Interest that is entitled to vote to accept or reject the Plan should read this Disclosure Statement and the Plan in their entireties before voting on the Plan.

B. Right to Vote on the Plan

Pursuant to the provisions of the Bankruptcy Code, only holders of allowed claims and interests in classes that are impaired under the terms and provisions of a chapter 11 plan are entitled to vote to accept or reject that plan. Holders of Allowed Claims or Interests in classes of claims that are unimpaired under the terms and provisions of a chapter 11 plan are conclusively presumed to have accepted the Plan and therefore are not entitled to vote with respect to that plan. Under the

[1] All capitalized terms not otherwise defined herein are intended to have the meanings ascribed to them in the Plan.

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terms of the Plan, Allowed Claims within Class A will not be impaired, are conclusively presumed to have accepted the Plan, and therefore do not have the right to vote on the Plan. In addition, holders of Allowed Claims or Interests in classes of claims in which no distribution will be made are conclusively presumed to have rejected the Plan and therefore are not entitled to vote with respect to that plan. Allowed Interests within Class D will receive no distribution under the Plan, are conclusively presumed to have rejected the Plan, and therefore are not entitled to vote with respect to the Plan. Holders of Allowed Claims within Classes B and C are impaired and therefore are entitled to vote to accept or reject the Plan.

The Bankruptcy Code defines "acceptance" of a plan by a class of claims as acceptance by creditors in that class that hold at least two-thirds in dollar amount, and more than one-half in number, of claims within that class that cast ballots for acceptance or rejection of the plan. For a more complete description of the requirements for confirmation of the Plan, see Section V, "Confirmation and Consummation Procedure."

If a Class of Claims or Interests rejects the Plan or is deemed to reject the Plan, the Debtor has the right, and does intend, to request confirmation of the Plan pursuant to the "cram-down" provisions of Section 1129(b) of the Bankruptcy Code. Section 1129(b) permits the confirmation of a plan notwithstanding the non-acceptance of such plan by one or more impaired classes of claims or interests if the proponent thereof complies with the provisions of that section. Under that section, a plan may be confirmed by a bankruptcy court if it does not "discriminate unfairly" and is "fair and equitable" with respect to each non-accepting class. For a more detailed description of the requirements for confirmation of a nonconsensual plan, see Section V(C), "Nonconsensual Confirmation."

The Debtor believes that through the Plan, creditors will obtain a greater recovery upon their claims than the recovery that would be available if the assets of the Debtor were liquidated under chapter 7 of the Bankruptcy Code. Therefore, the Debtor believes that after carefully reviewing the Plan and this Disclosure Statement, including the Exhibits, each holder of an Allowed Claim that is entitled to vote with respect to the Plan should vote to accept the Plan.

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C. Voting Instructions

If you are entitled to vote to accept or reject the Plan, you should use the Ballot that is enclosed for the purpose of voting on the Plan. Your Ballot(s) must be returned, by facsimile or scan/email (if followed by delivery or mail of original), hand-delivery or U.S. mail to:

KINEMED, INC.'S PLAN OF REORGANIZATION
c/o Meyers Law Group, P.C.
Attn: Michele Thompson, Esq.
44 Montgomery Street, Suite 1010
San Francisco, CA 94104
Email: mthompson@mlg-pc.com
Telephone no. 415.362.7500
Facsimile no. 415.362.7515

DO NOT RETURN YOUR ORIGINAL NOTES OR SECURITIES WITH YOUR BALLOT. TO BE COUNTED, YOUR BALLOT INDICATING ACCEPTANCE OR REJECTION OF THE PLAN MUST BE **RECEIVED** NO LATER THAN MARCH 1, 2018.

If you are a creditor entitled to vote on the Plan and did not receive a Ballot, received a damaged Ballot or lost your Ballot, or if you have any questions concerning the Disclosure Statement, the Plan or the procedures for voting on the Plan, please call Michele Thompson, Esq., one of the Debtor's counsel, at (415) 362-7500, ext. 225.

D. Confirmation Hearing

Pursuant to Section 1128 of the Bankruptcy Code, the Confirmation Hearing will be commenced on March 22, 2018, at 10:00 a.m., before the Honorable Charles Novack, United States Bankruptcy Judge, at the United States Bankruptcy Court, Northern District of California, Oakland Division, 1300 Clay Street, Courtroom 215, Oakland California. The Bankruptcy Court has directed that objections, if any, to confirmation of the Plan be served and filed so that they are received on or before March 1, 2018. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for the announcement of the adjournment date made at the Confirmation Hearing or at any subsequent adjourned Confirmation Hearing.

II. INFORMATION REGARDING THE CHAPTER 11 ESTATE

The following information is provided in summary form with respect to the Debtor, its chapter 11 estate, and related topics:

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A. The Debtor Prepetition And Events Leading To Bankruptcy Filing

The Debtor, founded in 2001, is incorporated under the laws of the State of Delaware, and operated from its principal place of business located in Emeryville, California.

Prior to the Petition Date, the Debtor's most significant intellectual property interest was its proprietary interest in a dynamic proteomics biomarker platform technology (the "Dynamic Proteomics Platform"), designed to develop drugs more efficiently and with less risk. This Dynamic Proteomics Platform rapidly detects a medicine's target engagement (whether the drug hitting the right target), tracks disease progression (whether the drug is continuing to work), and provides data that is highly predictive of late-stage success. The Debtor's research is focused on muscle-wasting disease and fibrotic diseases. The Dynamic Proteomics Platform is broadly applicable to prescription and non-prescription medical diagnostics, and the pairing of drugs with diagnostic biomarker tests.

Biomarkers are measurable characteristics about the state of a living organism that are relevant to health and disease. The Debtor believes that biomarker tests that dynamically identify the cause of a disease and monitoring over time the activity of the biological processes of health and disease in an individual, can fundamentally change the management of disease. As a result, the biomarker tests have the potential to have a transformative effect on healthcare by providing information that can be used to make drug development more efficient, to increase markets and sales for medicines and other health-related products, and to guide actionable healthcare decisions by physicians and wellness decisions by consumers.

The technology developed by the Debtor is the first practically useful biomarkers technology that can be used directly in humans, with applications not only in drug discovery and development, but also in clinical diagnosis, personalized medicine and therapeutic monitoring, including over-the-counter wellness decisions.

Prepetition, the Debtor had an extensive record of collaborating with pharmaceutical companies and others to apply their biomarkers to drug development, and has operated several programs based on the Debtor's novel approaches to disease identification and treatment including: drug discovery and development; prescription and non-prescription diagnostic tests; diagnostic testing; and drug pairings across a wide range of disease states.

Through these types of programs, the Debtor and its co-development partners had worked to improve drug development efficiency, through research and development arrangements, milestone-based collaborations, and Center-of-Excellence programs administered by the U.S. Department of Health and Human Services.

The Dynamic Proteomics Platform, comprising 80 issued world-wide patents in 16 patent families, is based in part upon an exclusive license of patents obtained from the University of California at Berkeley.

In addition to its Dynamic Proteomics Platform, the Debtor owned or licensed its own proprietary molecules and drugs for development. Those molecules included rights as a licensee of a compound known as synthetic ghrelin ("Ghrelin"), through an exclusive license (the "BPF License") granted by a Japanese company known as Biopharma Forest, Inc. ("BPF"). Ghrelin is an appetite-stimulating agent and growth hormone for treating involuntary weight loss in Lou Gehrig's Disease ("ALS") and in the elderly, among other conditions. Ghrelin has been approved by the Federal Drug Administration ("FDA") for entry into Phase 2 clinical trials in ALS; and Nascopine, also for ALS, which was granted "orphan drug status" by the FDA (meaning, status granted to drugs for rare diseases that are entitled to market exclusivity and accelerated approval benefits) in December 2015.

In December 2014, the Debtor entered into a loan agreement (the "Loan Agreement") with Midcap Financial Trust, as successor agent to MidCap Funding V, LLC ("MidCap"), to advance funds of up to $8,000,000 (under specified, contingent circumstances), primarily to cover the costs of an anticipated initial public offering ("IPO"), after having failed in an earlier attempt at an IPO offering, and to fund ongoing costs of operations and an internal restructuring. The loan was secured by all of the Debtor's tangible and intangible personal property.

Debtor's earlier IPO attempt was cancelled in June 2014, due to potential IPO investors' responses that indicated that the Debtor needed to achieve stronger evidence of having its own drug assets to develop, and of having achieved downstream milestones from successfully advancing its partner's compounds, in order to complete a successful IPO. Funds advanced by MidCap were therefore used to fund continuing operations of the Debtor to secure its own compounds to advance, and to facilitate the marketing of the Dynamic Proteomics Platform to biopharmaceutical company

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partners, as described above.

Because the Debtor's operations continued to suffer losses through the end of 2015, and after deliberations with MidCap and others, the Debtor reduced its employee count in December 2015 from 50 to 24 personnel, and concentrated on compensated work in the areas of muscle and fibrotic diseases.

The Debtor was confronted with continuing, diminishing cash for operations and an inability to continue active work on existing contracts without additional funding. The Debtor therefore approached MidCap and requested additional funding for a short period in which to market the company further, but MidCap refused and the Debtor was unsuccessful in its efforts to sell its fee-for-service business, despite discussions with over 40 potential buyers. On March 28, 2016, MidCap declared a default under the Loan Agreement, based on MidCap's determination that the Debtor's ability to repay advances from MidCap had been materially impaired. Further, on April 12, 2016, MidCap served on the Debtor notice of an intended foreclosure sale of the Debtor's assets, scheduled for May 5, 2016. Consequently, as of April 15, 2016, the Debtor terminated all remaining employees, and paid to departing employees all owed wages and related benefits (other than certain bonuses owing to officers and directors).

Despite continued discussions between the Debtor and MidCap thereafter, no agreement could be reached to defer MidCap's noticed sale on a consensual basis, and therefore, on May 4, 2016, the Debtor filed its petition in order to prevent the foreclosure sale from proceeding.

B. Filing Chapter 11 Bankruptcy Petition

Since the commencement of the Chapter 11 Case, the Debtor, through its board of directors has managed the affairs of the Debtor. An immediate effect of the commencement of the Chapter 11 Case was the imposition of the automatic stay under Section 362(a) of the Bankruptcy Code, which, with limited exceptions, enjoins the commencement or continuation of all prepetition litigation, collection actions or foreclosures initiated against the Debtor. This injunction remains in effect unless and until modified or lifted by order of the Bankruptcy Court. The Debtor has used this respite to plan and negotiate a restructuring of its obligations, as described below.

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C. Postpetition Financing

The Debtor obtained postpetition financing (the "DIP Loan") from KineMed Dip Lenders, LLC (the "DIP Lender"), a California limited liability company composed of certain shareholders of the Debtor. All postpetition funds advanced by the DIP Lender to the Debtor were deposited in the Debtor's general operating account maintained at Wells Fargo Bank, N.A. According to the DIP Lender, the current balance owing under the DIP Loan is approximately $640,000, including accrued interest and attorney's fees.

D. Representation of the Debtor

Under applicable provisions of the Bankruptcy Code, the Debtor is entitled to retain needed professionals, subject to approval by the Bankruptcy Court. Those professionals' compensation and reimbursement of costs must be paid from funds of the Debtor's estate and are treated as administrative expenses, unless other arrangements are made with Bankruptcy Court approval. In the Chapter 11 Case to date, the following professionals have been retained by the Debtor:

- **General Bankruptcy Counsel.** The Debtor has retained the law firm of Meyers Law Group, P.C. ("MLG") as its general bankruptcy counsel. Such retention was approved by the Bankruptcy Court on June 15, 2016.
- **Special IP Counsel.** The Debtor has retained the law firm FisherBroyles, LLP ("FisherBroyles") as its special counsel with regard to intellectual property issues, as of May 10, 2016. Such retention was approved by the Bankruptcy Court on July 11, 2016.
- **Other Professionals.** The Debtor has retained two other professional firms, as described below:
  - Gordian Investments, LLC ("Gordian") as investment bankers to provide expert financial advice and representation in the marketing, sale and assignment of the Dynamic Proteomics Platform and related license; and
  - Bachecki, Crom & Co. LLP ("Bachecki Crom") as tax accountants for the Debtor, to advise and assist the Debtor in forming a plan for the Debtor's

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recapitalization as it emerges from bankruptcy, as well as assist in the preparation and filing of tax returns on behalf of the Debtor.

E. Claims Deadlines

The Bankruptcy Court established September 16, 2016 (the "Claims Bar Date") as the last date for filing nongovernmental claims in these cases.

F. Debtor's Management

The Debtor is managed by a Board of Directors (the "Board"), consisting of David M. Fineman, Elliott L. Fineman, and Dr. Marc Hellerstein. Mr. David Fineman is also the Chairman and Chief Executive Officer of the Debtor. The Board serves without compensation from the Debtor. Compensation owing to Mr. David Fineman as its chief executive officer has been deferred with Mr. Fineman's consent.

G. MidCap Settlement Agreement

As of October 24, 2016, the Debtor entered into a settlement agreement (the "MidCap Agreement") with MidCap. On December 2, 2016, the Court entered its order approving the MidCap Agreement, pursuant to the provisions of Bankruptcy Rule 9019.

Under the terms of the MidCap Agreement, MidCap agreed to accept the amount of $1,000,000 in full satisfaction of its secured claim of roughly $4,000,000. Of that amount, $500,000 was paid earlier to MidCap from the Debtor's cash collateral account. The remaining amount was paid to MidCap upon the closing of sale of the Dynamic Proteomics Platform, as described below. Accordingly, MidCap no longer holds any lien on any of the Debtor's assets.

H. Sale of the Platform and Platform License

On December 28, 2016, the Debtor filed its motion for approval of an asset purchase agreement (the "APA") for the sale of the Dynamic Proteomics Platform held by the Debtor through an exclusive license (the "Platform License") issued by the Regents of the University of California (the "Regents"), to GlaxoSmithKline Intellectual Property Development Limited, a corporation organized under the laws of England ("GSK"), and assumption, cure and assignment to GSK of the Platform License. GSK's purchase price was $1,000,000 (the "GSK Purchase Price"). The transaction included a limited sublicense of the Dynamic Proteomics Platform to be issued by GSK

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back to the Debtor.

On February 3, 2017, the Court entered its order approving the sale and assignment, and on May 2, 2017, the transaction was completed and closed. The proceeds were used to cure arrearages owing to the Regents, make the final $500,000 settlement payment to MidCap, satisfy other direct costs of sale, and accumulate remaining funds for the benefit of the estate.

I. Ghrelin License

On May 11, 2017, the Debtor filed its motion for approval of assumption and assignment of the Debtor's rights under the BPF License, together with related rights and interests, to Oxeia Biopharmaceuticals, Inc. a Delaware corporation ("Oxeia"), pursuant to a triparty agreement among the Debtor, Oxeia and BPF. The motion was heard and approved by the Court pursuant to its order entered on June 12, 2017. Under the approved agreement, Oxeia paid to the Debtor at least $350,000, and possibly an additional $125,000 upon subsequent purchase of certain batches of compounds from BPF or a manufacturer.

J. Section 363 Sales

To date, two additional motions under Section 363 of the Bankruptcy Code for sale of property of the Debtor have come before the Court:

On May 18, 2016, the Debtor filed its motion for an order approving the sale of the Debtor's ownership interest in certain isotopes, namely 2.3 kilograms of D-Glucose-13C6 to Sigma-Aldrich, Inc., for the purchase price of $125,000.00. The Court entered its order approving the sale of the isotopes on June 15, 2016. The proceeds from this sale were deposited in the Debtor's cash collateral account, and have since been paid over to MidCap as part of its settlement with MidCap.

On June 22, 2016, the Debtor filed its motion for an order approving of a sale agreement entered into by the Debtor and American Laboratory Trading, Inc., for the decontamination, removal and sale of laboratory equipment from the Debtor's prepetition business premises. The Court entered its order approving the sale on July 27, 2016. The proceeds from this sale were deposited in the Debtor's cash collateral account, and have since been paid over to MidCap as part of its settlement with MidCap.

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K. Relief From Automatic Stay

To date, four relief-from-stay matters have come before this Court, all on a consensual basis.

First, on May 31, 2016, the Court entered its order (docket no. 55) approving a *Stipulation for Relief from The Automatic Stay (WFB)*, allowing Wells Fargo Bank, N.A. to close a prepetition account, and after a sixty-day waiting period, to offset any prepetition amounts owing by the Debtor to the bank against the funds in the account, with the remaining funds being paid over to the Debtor. Those funds were deposited in the Debtor's cash collateral account.

Second, on June 17, 2016, the Debtor filed its *Notice Of Stipulation For Relief From The Automatic Stay (Emeryville Lease)* (docket no. 70), notifying parties in interest that the Debtor had entered into a stipulation with Emerystation Office II, LLC ("Emerystation"), as successor-in-interest to Emery Station Associates II, LLC, to allow cancellation of the Debtor's lease with Emerystation for office and laboratory space located at 5980 Horton Street, #470, Emeryville, California, and requiring the Debtor to vacate the premises. No responses or objections were filed in relation to the stipulation within the noticed period, and therefore, on July 8, 2016, the Debtor filed its *Request For Entry Of Order Approving Stipulation To Relief From The Automatic Stay (Emeryville Lease)*. The Court entered its order approving the stipulation on July 22, 2016.

Third, on June 21, 2016, creditor De Lage Laden Financial Services, Inc. filed its *Motion for Relief from The Automatic Stay [Personal Property]*, and the Debtor thereafter filed a statement of non-opposition. On July 7, 2016, at the hearing on the motion, the Court granted the relief sought therein, and on July 8, 2016, the Court entered its order approving the motion, permitting the creditor to foreclose upon and remove certain lab testing equipment upon which it holds a financing lien.

Fourth, on August 19, 2016, the Debtor filed its *Notice Of Stipulation For Relief From The Automatic Stay (NCS Lease)* (docket no. 111), notifying parties in interest that the Debtor had entered into a stipulation with NCS Moving Services ("NCS"), to allow cancellation of the Debtor's lease with NCS for storage space located at located at 1517-63rd Street, Emeryville, California. No responses or objections were filed in relation to the stipulation within the noticed period, and therefore, on September 12, 2016, the Debtor filed its *Request For Entry Of Order Approving Stipulation To Relief From The Automatic Stay (NCS Lease)*. The Court entered its order approving

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the stipulation on September 14, 2016.

L. Shareholder Lawsuits

On August 12, 2016, a complaint initiating a lawsuit entitled *Gold v. Fineman, et al.*, pending in the Superior Court of California, County of Los Angeles (case no. SC125963) (the "Gold Complaint"), was filed by Chad Gold, a shareholder of the Debtor, against David Fineman, the Debtor's chairman and chief executive. The Gold Complaint asserts claims for fraud based on alleged misrepresentations in the inducement to purchase shares of the Debtor, among other claims.

On February 24, 2017, a second shareholder complaint initiating a lawsuit entitled *Hafner v. Fineman, et al*. pending in the Superior Court of California, County of Alameda (case no. 17850662) (the "Hafner Complaint", collectively with the Gold Complaint, the "Shareholder Complaints") was filed by Daniel L. and Patrick J. Haffner, both prepetition shareholders, and members of the DIP Lender, against David Fineman, the Debtor's chairman and chief executive. The Hafner Complaint, filed by the same counsel as filed the Gold Complaint, alleges the same claims against Mr. Fineman.

The Debtor does not believe that there is any merit to the allegations made in the Shareholder Complaints. Mr. Fineman is represented by counsel approved by the Debtor's D&O insurance carrier, at no cost to the Debtor's estate, and Mr. Fineman has stated that he intends to defend against the Shareholder Complaints vigorously.

M. Executory Contracts And Unexpired Leases

To date, two executory agreements have been rejected by the Debtor, with approval of the non-debtor parties and of this Court.

On August 3, 2016, the Debtor entered into a stipulation to reject a license agreement with National Institutes of Health ("NIH"). The stipulation rejected the license and allowed NIH a reduced unsecured claim in the amount of $200,000. After a hearing of the motion, on September 14, 2016, the Court entered its order approving the stipulation.

Also on August 3, 2016, the Debtor entered into a stipulation with the Bill and Melinda Gates Foundation (the "Gates Foundation") authorizing the rejection of a grant agreement (the "Grant Agreement") entered into by the parties. The stipulation rejected the Grant Agreement and allowed the Gates Foundation a reduced unsecured claim in the amount of $220,000, and provided for the

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release of that claim in the event of plan confirmation. After a hearing of the motion, on September 14, 2016, the Court entered its order approving the stipulation.

N. Regents' Motion to Dismiss

On November 4, 2016, the Regents filed a *Motion For Order Dismissing Or Converting Chapter 11 Proceedings Under Bankruptcy Code § 1112(b)(1) & (2)* (docket no. 137), seeking dismissal or conversion of the Debtor's chapter 11 case. After discussions with the Debtor, however, the Regents decided to withdraw its motion. The motion was withdrawn by notice filed by the Regents on January 12, 2017.

III. ESTATE ASSETS AND LIABILITIES

At present, the Debtor's assets consist primarily of cash and intellectual property assets. As set forth in "Certain Risk Factors To Be Considered", see Section VII, the Debtor is unable to estimate the values of any of the retained assets or other assets, due to numerous contingencies to which they are integrally related.

The Debtor's assets consist of the following, in summary form:

- Cash in the approximate of amount of $630,000.
- Retained IP Contracts, consisting primarily of a sublicense of the Dynamic Proteomics Platform, issued by GSK to the Debtor as part of its purchase of the exclusive license from the Debtor.
- Retained IP Rights, consisting primarily of certain patents and patent applications related to the measurement of molecular flux rates using high-resolution mass spectrometry, certain of which is co-owned with Thermo-Fisher Scientific, Inc.
- Net operating losses of approximately $60,000,000 or more, a portion of which may be available to offset any future income for income tax liability purposes, if usable.

The Debtor's liabilities consist of the following, in summary form:

- Administrative Claims. The Debtor estimates that allowed and unpaid administrative expenses to be incurred through the Effective Date will total approximately $600,000 in the aggregate, including fees earned by the Debtor's professionals after the Petition Date, together with deferred compensation and cost reimbursements owing to Mr.

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Fineman for services after the Petition Date. The foregoing estimate of administrative expenses may be significantly greater, however, if confirmation of the Plan is heavily contested.

- Secured Claim. The DIP Lender holds a secured claim, secured by liens on all assets of the Debtor, for advances made to the Debtor during the course of the Chapter 11 Case. The DIP Lender asserts that the present balance, including accrued interest, attorneys' fees and other charges, is approximately $640,000. Subject to Plan confirmation, the Debtor reserves all rights to challenge the amount of the DIP Lender's secured claim.
- Priority Claims. The Debtor owes approximately $65,000 in Priority Claims, consisting primarily of compensation owing to former employees. Of that amount, approximately $25,000 of Priority Claims are owed to Mr. Fineman and Dr. Hellerstein, and will be waived under the terms of the Plan.
- Unsecured Claims. The Debtor estimates that the aggregate principal amount of allowable general unsecured claims is in the approximate principal amount of $3,500,000. Of that amount, approximately $1,000,000 of general unsecured claims are owed to Mr. Fineman and Dr. Hellerstein, and will be waived under the terms of the Plan.

IV. DESCRIPTION OF THE PLAN

The Plan represents the product of negotiations and agreement between the Debtor and the DIP Lender, which supports confirmation of the Plan. The Debtor believes that the terms of the Plan are in the best interests of all creditors of the Debtor. The following is a summary of the primary features of the Plan.

A. Reorganized Debtor

On the Effective Date of the Plan, the Debtor will become the Reorganized Debtor, vested with the following assets: Cash in the amount of $50,000; the Retained IP Contracts, the Retained IP Rights, and any income tax attributes, such as net operating losses, if usable and applicable. All prior shares of stock of the Debtor will be canceled and extinguished, and new shares of stock of the

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Reorganized Debtor (the "New Equity") will be issued as follows: (a) to David Fineman, in lieu of any cash distributions on his claims in excess of $650,000, 33.3% of the New Equity; (b) to Marc Hellerstein, in lieu of any cash distributions on his claims in excess of $300,000, 16.7% of the New Equity; (c) to MLG, in lieu of $100,000 of fees and costs earned and approved in the Chapter 11 Case, 10.0% of the New Equity; (c) to four members of the DIP Lender, in exchange for an approximate $325,000 reduction of the DIP Lender's secured claim, 35.0% of the New Equity; and (d) to a management incentive pool to be approved by the Reorganized Debtor's board of directors, 5.0% of the New Equity.

All other assets of the Debtor shall remain in the bankruptcy estate, to be administered by a Plan Agent. Those assets will include cash in the estimated, approximate amount of $550,000; nonrecourse, secured notes issued by Mr. Fineman and Dr. Hellerstein, in exchange for their shares of stock in the Reorganized Debtor, in an aggregate amount of $500,000; all contingent rights to receive additional payments from Oxeia with respect to the sale of the BPF License; and all claims or causes of action against third parties, as owned by the Debtor prior to the Effective Date (the Debtor is not aware of any such claims or causes of action).

The Plan Agent will administer the estate's assets, implement the Plan and make payments to creditors from those remaining assets of the bankruptcy estate as provided under the Plan, as funds therefor become available. In particular, as of the Effective Date, the Plan Agent will pay $315,000 to the DIP Lender, $75,000 to MLG, approximately $40,000 to holders of Priority Claims, and approximately $25,000 to holders of Administrative Expense Claims.

B. Treatment of Administrative Expense Costs

Costs incurred by the Debtor in the administration of the Chapter 11 Case, consisting primarily of fees and costs owed to counsel or other professionals, Administrative Expense Claims, including without limitation Professional Fees, incurred before the Effective Date, other than ordinary course expenses incurred by the Debtor, shall become Allowed Claims only if (a) a formal application, motion, request or proof therefor has been filed with the Court and served upon the Plan Agent, Reorganized Debtor and the United States Trustee, within forty-five (45) days following the Effective Date (the "Administrative Bar Date") or by such earlier deadline as may apply to such

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claim pursuant to an earlier order of the Court, and (b) such application, motion, request or proof has not been withdrawn, denied or dismissed.

The largest amount of Administrative Expense Claims consists of fees and costs owing to MLG, the Debtor's bankruptcy counsel, in the estimated, approximate amount of $500,000. Subject to confirmation of the Plan, MLG has agreed to defer payment of most of its fees in order to facilitate implementation of the Plan. In particular, MLG has agreed to accept (a) $75,000 of cash; (b) a secured, four-year note to be issued by the Reorganized Debtor, estimated to be in the approximate amount of $325,000 (subject to increase if services needed to confirm and effectuate the Plan are greater than presently anticipated); and (c) 10% of the new shares of stock of the Reorganized Debtor. In addition, Mr. Fineman has agreed to waive his Administrative Expense Claim, in an amount in excess of $100,000, upon Plan confirmation.

The remaining Administrative Expense Claims, in the estimated amount of $25,000, will be paid by the Plan Agent from estate funds, on the Effective Date, upon Court allowance of claims.

C. Priority Claims (Class A)

Priority Claims, consisting of wages and other benefits owed to employees as of the Petition Date, up to statutory limits, are estimated to be approximately $65,000. Of that amount, the approximate sum of $25,000 is owed to Mr. Fineman and Dr. Hellerstein and will be waived upon Plan confirmation. The remaining Priority Claims, in the estimated amount of $40,000, will be paid by the Plan Agent from estate funds, on the Effective Date, upon Court allowance of claims.

D. Secured Claim (Class B)

The core of the Plan, and the basis of the successful negotiations between the Debtor and the DIP Lender that has made the Plan possible, is the DIP Lender's agreement to accept less than full payment of its fully secured claim, together with a minority ownership of the new shares of stock of the Reorganized Debtor. In particular, the DIP Lender has agreed to accept $315,000 in cash (a reduction of more than $325,000 from the amount that the DIP Lender asserts as owing), plus 35% of the new equity in the Reorganized Debtor, in full satisfaction of the DIP Lender's secured claim. That cash amount will be paid by the Plan Agent from the estate's funds on the Effective Date of the Plan.

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E. General Unsecured Claims (Class C)

Holders of Allowed Claims within Class C will receive *pro rata* payments from the bankruptcy estate, administered by the Plan Agent, to the extent of available funds, after payment or reserve for costs of administering the estate. Possible sources of funds for such payments will include existing cash of the estate (net of administrative costs of Plan implementation, payment of the DIP Lender's reduced claim, and payment of Priority Claims and Administrative Expense Claims); a contingent $125,000 payment to be made by Oxeia pursuant to the sale of the BPF License, in the event that Oxeia chooses to purchase certain sample batches from the Ghrelin manufacturer; and the proceeds of nonrecourse four-year notes signed by Mr. Fineman and Dr. Hellerstein, due in four years, in the aggregate amount of $500,000 plus interest.

The Debtor estimates that if the payment is made by Oxeia, and if notes signed by Mr. Fineman and Dr. Hellerstein are paid when due, total funds available for payment to Class C creditors may be in the approximate amount of $650,000, resulting in an approximate 25% distribution on account of Allowed Claims within Class C. However, that estimate is dependent on many factors and uncertainties, and cannot be assured – see Section VI -- Certain Risk Factors to Be Considered below.

F. Interests in the Debtor (Class D)

All existing shares of stock of the Debtor will be deemed canceled and extinguished upon the Effective Date of the Plan. Unfortunately, there is not sufficient recognizable value of the estate's assets in order to provide any funds or other rights to existing shareholders, and therefore, no distribution will be made on account of existing equity in the Debtor.

G. Assumption And Rejection

Notwithstanding any other provision of the Plan, each of the Retained IP Contracts shall be deemed assumed as of the Effective Date. No Cure amount is owing under any Retained IP Contract, and therefore no Cure payment shall be made with respect to the assumption thereof.

Except as otherwise provided elsewhere in the Plan or by the terms of the Confirmation Order, as of the Effective Date, all other executory contracts shall be deemed rejected as of the Effective Date, except for any executory contract (i) which is listed on Schedule 6.2.1 of the Plan to be assumed, (ii) which has been assumed by the Debtor pursuant to an order of the Court granting a

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motion filed by the Debtor prior to the Effective Date, or (iii) which has been rejected pursuant to an order of the Bankruptcy Court or by applicable law prior to the Effective Date.

H. **Appointment Of A Plan Agent.**

On and after the Effective Date, a Plan Agent, selected by the Debtor and approved by the Court, will be appointed to administer the estate. The Plan Agent will commence services as of the Effective Date, and will continue to perform his duties until completion of the final distribution to be made in implementation of the Plan, or until removed pursuant to the terms of the Plan. The Plan Agent will be responsible for the implementation of the Plan to the extent expressly provided in the Plan, and will have certain duties, powers and authorities in order to do so, including the ability to make distributions to creditors from time to time and to manage the estate's funds in the interim. The Plan Agent also will be responsible for making expenditures on behalf of the estate, including paying the approved administrative expenses of Plan implementation. The Plan Agent will earn compensation pursuant to terms approved by the Court, and may retain counsel and other professionals, to be compensated from funds of the estate, as needed.

I. **New Equity of Reorganized Debtor.**

Under the terms of the Plan, all existing shares of stock of the Debtor will be extinguished, and new shares of stock of the Reorganized Debtor, the New Equity, will be issued as follows:

(a) to David Fineman, 33.3% of the New Equity, in exchange for waiver of his Class C claim of approximately $650,000 and execution of a $333,000 nonrecourse note;

(b) to Marc Hellerstein, 16.7% of the New Equity, in exchange for waiver of his Class C claim of approximately $300,000 and execution of a $167,000 nonrecourse note;

(c) to MLG, 10.0% of the New Equity, in exchange for a $100,000 reduction of its allowed fees and costs as the Debtor's bankruptcy counsel;

(d) to each of David Chester, Dan Haffner, Pat Haffner and Ken Boyd (members of the DIP Lender), 8.75% of the New Equity, in exchange for an approximate $325,000 reduction of secured debt owed to the DIP Lender; and

(e) to a management incentive pool to be approved by the Reorganized Debtor's board of directors, 5.0% of the New Equity.

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The conversion rate agreed to by the DIP Lender's members and by MLG would suggest an overall value of the New Equity of approximately $1,000,000. However, it is not possible to estimate the value of the Reorganized Debtor's assets, consisting primarily of intellectual property rights and contracts, and as a result, the overall value of the Reorganized Debtor is difficult to determine. On the one hand, the Debtor has spent tens of millions of dollars in developing its intellectual property rights, and in theory, much of that investment may be material to present value – it is possible that those interests may be worth tens of millions of dollars. On the other hand, despite considerable efforts, the Debtor has been unable to monetize that value, other than a sale of its flagship intellectual property, in the form of an exclusive license formerly held by the Debtor, for $1,000,000. The Debtor now holds only a non-exclusive sublicense to that technology, and the Debtor has not been able to monetize that remaining sublicense to date, whether by sale or investment, despite multiple efforts. Thus, notwithstanding the possibility of great value in the Reorganized Debtor and its New Equity, that value is speculative at best and fraught with considerable risk, as set forth in Section VI below, regarding risk factors.

The New Equity to be issued to Mr. Fineman and Dr. Hellerstein will be encumbered by nonrecourse, secured notes in the aggregate amount of $500,000 (roughly the value of their New Equity as measured by the conversion rate described above), and will be issued in exchange for those individuals' waiver of roughly $950,000 in claims. Those individuals will also waive priority and administrative expense claims. It is the Debtor's hope that the New Equity issued to those individuals will enable the Reorganized Debtor to retain most of its net operating losses after Plan confirmation. Those net operating losses, if retainable and valid, may also produce value to the Reorganized Debtor and its New Equity shareholders.

J. <u>Recommendation as to Plan</u>

THE DEBTOR BELIEVES THAT THE PLAN PROVIDES THE GREATEST AND EARLIEST POSSIBLE RECOVERIES TO HOLDERS OF ALL CLAIMS, AND THAT ACCEPTANCE OF THE PLAN IS IN THE BEST INTERESTS OF ALL HOLDERS OF CLAIMS. THE DEBTOR THEREFORE RECOMMENDS ACCEPTANCE OF THE PLAN BY PARTIES IN INTEREST.

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V. CONFIRMATION PROCEDURE

A. Solicitation of Votes

In accordance with the provisions of Sections 1126 and 1129 of the Bankruptcy Code, only the Claims in Classes B and C are impaired, and the holders of Claims in that Class are entitled to vote to accept or reject the Plan. The holders of Allowed Claims in Class A are unimpaired, and are conclusively presumed to have accepted the Plan and therefore are not entitled to vote, under Section 1126(f) of the Bankruptcy Code. The holders of Allowed Interests in Class D will receive no distributions under the Plan, and are conclusively presumed to have rejected the Plan and therefore are not entitled to vote, under Section 1126(g) of the Bankruptcy Code.

Class B contains only one creditor, and is entitled to vote to accept or reject the Plan. As to Class C creditors, entitled to vote to accept or reject the Plan, the Bankruptcy Code defines acceptance of a plan by a class of creditors as acceptance by holders of at least two-thirds in dollar amount, and one-half in number, of the claims of that class that have timely voted to accept or reject a plan. A vote may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that such acceptance or rejection was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

Any creditor in an impaired Class (i) whose Claim has been listed by the Debtor in its schedules filed with the Bankruptcy Court (provided that such Claim has not been scheduled as disputed, contingent or unliquidated) or (ii) who filed a proof of claim within any applicable period of limitations, or with leave of the Bankruptcy Court, which Claim is not the subject of an objection, is entitled to vote to accept or reject the Plan.

B. The Confirmation Hearing

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on confirmation of the Plan. The Confirmation Hearing with respect to the Plan will be conducted before the Honorable Charles Novack, United States Bankruptcy Judge, at the United States Bankruptcy Court, Northern District of California, Oakland Division, 1300 Clay Street, Courtroom 215, Oakland California, on a date and time set forth in documents accompanying this Disclosure Statement. The Confirmation Hearing may be continued from time to time by the

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Bankruptcy Court without further notice except for an announcement of the continued date made at the Confirmation Hearing.

Section 1128(b) provides that any party in interest may object to confirmation of a plan. Any objection to confirmation must be made in writing and filed with the Bankruptcy Court and served upon those parties identified for such service in other documents accompanying this Disclosure Statement. Objections to confirmation of the Plan are governed by Bankruptcy Rules 3017 and 9014. **UNLESS AN OBJECTION TO CONFIRMATION IS TIMELY SERVED AND FILED, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT.**

C. Confirmation

At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan only if all of the requirements of Section 1129 of the Bankruptcy Code are met. Among the requirements for confirmation of a plan are that the plan is (i) accepted by all impaired classes of claims or, if rejected by an impaired class, that the plan "does not discriminate unfairly" and is "fair and equitable" as to such class, (ii) feasible, and (iii) in the "best interests" of creditors which are impaired under the plan.

- **Acceptance:**

As stated, only holders of Allowed Claims within Classes B and C are entitled to vote to accept or reject the Plan. The Debtor reserves the right to seek nonconsensual confirmation of the Plan under Section 1129(b) of the Bankruptcy Code with respect to any Class of Claims that rejects or is deemed to reject the Plan.

- **Unfair Discrimination and Fair and Equitable Tests**

To obtain nonconsensual confirmation of the Plan, it must be demonstrated to the Bankruptcy Court that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to each impaired, non-accepting Class. The Bankruptcy Code provides a non-exclusive definition of the phrase "fair and equitable." The Bankruptcy Code establishes "cram down" tests for unsecured creditors and shareholders as follows:

a. Unsecured Creditors. Either (i) each impaired unsecured creditor receives or retains under the property of value equal to the amount of its allowed claim; or (ii) the holders of claims that are junior to the claims of the dissenting class will not receive or retain any

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property under the plan. Under the Plan, because Class D, the only class junior to Class C, will receive no distributions, the Debtor submits that the Plan is "fair and equitable" with respect to its treatment of Class C.

b. Shareholders. Either (i) each holder of an interest receives or retains under the property of value equal to any fixed liquidation preference or redemption amount; or (ii) the holders of any interests that are junior to the interests of the dissenting class will not receive or retain any property under the plan. Under the Plan, because there is no class that is junior to Class D, the Debtor submits that the Plan is "fair and equitable" with respect to its treatment of Class D.

The Debtor believes that the Plan and the treatment of all Classes of Claims and Interests under the Plan satisfy the foregoing requirements for nonconsensual confirmation of the Plan.

- **Feasibility**

The Bankruptcy Code requires that confirmation of a plan is not likely to be followed by liquidation or the need for further financial reorganization. Because the Plan provides for a conversion of debt to equity and requires no distributions to creditors in excess of actual cash proceeds, the Debtor submits that the Plan satisfies the requirement of feasibility.

- **Best Interests of Creditors**

With respect to each impaired Class of Claims, confirmation of the Plan requires that each holder of a Claim either (i) accept the Plan or (ii) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the amount such holder would receive or retain if the Debtor's assets were liquidated under chapter 7 of the Bankruptcy Code. To determine what holders of Claims of each impaired Class would receive if the Debtor's assets were liquidated under chapter 7, the Bankruptcy Court must determine the dollar amount that would be generated from that liquidation in the context of a chapter 7 liquidation case. The cash amount which would be available for satisfaction of unsecured claims would consist of the proceeds resulting from the disposition of the unencumbered assets of the estate, augmented by the unencumbered cash held by the chapter 7 trustee at the time of the commencement of the liquidation case. Such cash amount would be reduced

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by the amount of the costs and expenses of the liquidation and by such additional administrative and priority claims that may result from the use of chapter 7 for the purposes of liquidation.

The Debtor believes that the Plan will produce a greater chance for a partial recovery by general unsecured creditors than a chapter 7 liquidation of the Estate. Under the Plan, the Postconfirmation Estate will be funded by most of the estate's current cash funds, plus any funds received from either Oxeia, in the event that it purchases Ghrelin sample batches, or from Mr. Fineman's and Dr. Hellerstein's nonrecourse notes, in the event that those notes are paid in four years. The Debtor estimates that distributions on account of Allowed Claims within Class C may be between 10% and 25%, depending on the outcome of those contingent events.

In contrast to this, in the event of a chapter 7 liquidation, the Debtor believes that it is unlikely that any distribution at all would be made on account of Allowed Claims within Class C. First, the estate's existing cash would be significantly less than the sum required to satisfy the DIP Lender's secured claim, allowed Administrative Expense Claims and Priority Claims – existing cash is approximately $630,000, whereas those claims having seniority over Class C claims are in an estimated, aggregate amount in excess of $1,250,000. Second, chapter 7 trustee expenses would also need to be paid before any distribution could be made on account of general unsecured claims. Third, in the Debtor's opinion, there is little chance that the chapter 7 trustee would be able to realize any value from the estate's remaining assets, the Retained IP Rights or the Retained IP Contracts, inasmuch as the Debtor, with its greater expertise in its field, has been unable to monetize those assets despite repeated and exhaustive efforts. As a result, the estate would likely be administratively insolvent and unable to make any distributions upon general unsecured claims.

For this reason, the Debtor believes that the Plan will produce a better and quicker recovery for creditors than chapter 7 liquidation, and that the "best interests" test described above is therefore satisfied by the terms of the Plan.

D. Consummation

The Plan will be consummated following the Effective Date, which will be a date shortly following entry of the Confirmation Order, absent a stay of implementation.

E. Effect of Confirmation of the Plan

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Confirmation and effectuation of the Plan will bind the Debtor, all creditors and all other parties in interest to the provisions of the confirmed Plan, whether or not the claim of such creditor is impaired under the Plan and whether or not such creditor has accepted the Plan. Nothing contained in the Plan will limit the effect of Confirmation as described in Section 1141 of the Bankruptcy Code.

VI. CERTAIN RISK FACTORS TO BE CONSIDERED

HOLDERS OF CLAIMS AGAINST THE DEBTOR SHOULD READ AND CONSIDER CAREFULLY THE FACTORS SET FORTH BELOW, AS WELL AS THE OTHER INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT (AND THE DOCUMENTS DELIVERED TOGETHER HEREWITH AND/OR INCORPORATED BY REFERENCE HEREIN), PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN. THESE RISK FACTORS SHOULD NOT, HOWEVER, BE REGARDED AS CONSTITUTING THE ONLY RISKS INVOLVED IN CONNECTION WITH THE PLAN AND ITS IMPLEMENTATION.

A. Certain Bankruptcy Law Considerations

- **Risk of Non-Confirmation of the Plan**

Although the Debtor believes that the Plan will satisfy all requirements necessary for confirmation by the Bankruptcy Court, there can be no assurance that the Bankruptcy Court will reach the same conclusion. Moreover, there can be no assurance that modifications to the Plan will not be required for confirmation, or that such modifications would not necessitate the resolicitation of votes.

- **Non-Consensual Confirmation**

In the event one or more impaired Classes of Claims or Interests does not accept the Plan, the Bankruptcy Court may nevertheless confirm the Plan at the Debtor's request, if all other conditions for confirmation have been met and at least one impaired Class has accepted the Plan (such acceptance being determined without including the vote of any "insider" in such Class) and, as to each impaired Class that has not accepted the Plan, if the Bankruptcy Court determines that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to the rejecting impaired classes. The Debtor believes that the Plan satisfies those requirements.

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- **Tax Attributes of the Plan**

The Debtor will not seek a ruling from the Internal Revenue Service prior to the Effective Date with respect to any of the tax aspects of the Plan. EACH HOLDER OF A CLAIM IS STRONGLY URGED TO CONSULT WITH HIS TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN.

B. Certain Practical Considerations

- **Failure of Reorganized Debtor**

As can be seen from the discussions below of risk factors affecting the viability of the Reorganized Debtor and its revested assets, there is a significant prospect of failure of the Reorganized Debtor. Its revested assets are speculative in value and uncertain of usefulness. As a result, the Reorganized Debtor may not survive long enough, or successfully enough, to produce any value to its equity holders. More to the point for holders of Allowed Claims within Class C, the notes to be issued by Mr. Fineman and Dr. Hellerstein to the Plan Agent, from which the majority of distributions to Class C creditors is to be derived, may become worthless: If the Reorganized Debtor fails, it is unlikely that the note obligors will perform on those notes. Because the notes are nonrecourse, the Plan Agent will not be able to collect them from the obligors and will have only the collateral securing the notes to pursue. However, because that collateral will consist of stock in the Reorganized Debtor, a failure of the Reorganized Debtor itself will likely render that collateral worthless.

- **Failure of Oxeia to Purchase Sample Batches**

A portion of the funds anticipated to be distributed to Class C creditors consists of a contingent payment of $125,000 by Oxeia to the estate, in the event that it purchases sample batches from the Ghrelin manufacturer, pursuant to its contract with the Debtor. However, Oxeia may choose to forego such a purchase, in which event it will owe nothing to the bankruptcy estate, and that portion of funds will not be available to pay Class C creditors or to fund administrative expenses.

- **Failure To Obtain Additional Capital**

The Debtor has generated losses since inception and expects to incur additional losses for the foreseeable future. The Reorganized Debtor's ability to ultimately achieve profitability is dependent

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upon closing several collaborative agreements and the subsequent success of the collaboration agreements. Additional funding might be unavailable on commercially reasonable terms, if at all, and any additional debt or equity financing may have senior rights or a senior liquidation preference to the shares being offered, could be highly dilutive to investors, or could entail issuing securities with greater rights than the securities outstanding today or proposed in any future offering(s).

The Reorganized Debtor's ability to ever achieve a profitable level of operations will be dependent in large part on the success of the following: (i) the Reorganized Debtor's ability to enter into agreements with pharmaceutical and biotechnology partners to acquire compounds to de-risk and advance for later sale; (ii) its ability to generate revenue from the marketing and sales of either our technologies or drug candidates; (iii) its research and development efforts; (iv) its efforts, either directly or through a third party, to produce and market additional products and services, which are presently restricted under the GSK sublicense; and (v) to the extent applicable, its efforts to obtain regulatory approvals for products and/or assay tests. No assurance can be given that any of our product or service development efforts will result in the Reorganized Debtor achieving revenue or profitability, or, if achieved, that it will be maintained.

In addition, without additional capital, the Reorganized Debtor may not have funds necessary to pay ongoing fees and expenses required for corporate maintenance and corporate good standing.

- **Need For Third-Party Agreements To Generate Revenue**

The Reorganized Debtor's ability to secure third party collaboration agreements and to generate revenue, such as license fees and success milestones, from our assay technologies is uncertain and cannot be predicted. The potential collaborative partners could decide not to use its services, or that these services are worth less than what estimated and the potential collaborative partners could delay, cut-back or terminate research projects and adversely affect business. Those collaborative partners could also independently develop other technologies or compounds that compete with the Reorganized Debtor's assays or compounds. If any of these situations occurs, potential for revenue from services or drugs could be reduced or eliminated.

In addition, the Reorganized Debtor may be unable to control the amount of time and resources any collaboration partners or licensees devote to its product candidates, since they may

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choose to pursue alternative opportunities. In addition, the Reorganized Debtor may enter into agreements with foreign companies. If so, these agreements are subject to the risks inherent with the social, economic, political, environmental, legal, and other factors influencing the foreign jurisdictions.

- **Inability To Monetize The Debtor's Net Operating Loss Carryforward (NOL)**

Prepetition, the Debtor has accrued approximately $60 million or more in net operating losses. There is substantial uncertainty, and the Company offers no guarantee, as to its being able to monetize these losses going forward or if current tax regulations will remain in effect to enable the use of those NOLs in the future. The Debtor has not obtained any formal opinions, or any other conclusions upon which it or others can rely, as to the efficacy, amount or usefulness of the NOLs going forward, particularly in the event of a change in ownership structure. Moreover, the Reorganized Debtor may not have the financial resources or income to pursue any practical use of those NOLs.

- **Uncertainty Of Pipeline Drug Candidates**

The Reorganized Debtor's business plan includes using its technology to in-license and subsequently develop its own pipeline of investigational drugs. In order to in-license drug candidates from other companies, the Reorganized Debtor must convince other companies that the use of the Reorganized Debtor's technology can provide advantages over traditional methods of drug development and provide them with compensation they consider adequate for the drug candidates. Therefore, the Reorganized Debtor may never be able to successfully in-license any drug candidates. Even with an in-license of one or more drug candidates, the Reorganized Debtor may not be able to advance them to the next stage of development for any number of reasons, including failure of the Reorganized Debtor's technology, failure of the drug candidate to reach the desired endpoint and/or toxicity of the drug candidate. The inability to obtain a pipeline of drug candidates and successfully develop them would significantly impair the valuation for subsequent equity financings and could cause material harm to the Reorganized Debtor's financial condition and results of operations.

- **Uncertainty Of Monetizing GSK Sublicense**

The Dynamic Proteomics Platform sublicense provides use of the platform technology for the

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development and advancement of our proprietary compounds only, and does not allow the Reorganized Debtor to develop and sell commercial diagnostic applications of the platform technology as a service to others. It is unclear and unlikely whether the Reorganized Debtor will successfully reacquire this right from GSK. Moreover, the Reorganized Debtor may not be successful in finding another company that is interested in developing diagnostic assays that use the platform technology, which in either case would harm the Reorganized Debtor's financial position by not providing revenue which could otherwise help fund core business in drug advancement. In addition, should GSK revert its license back to U.C. Berkeley, U.C. Berkeley might then issue non-exclusive licenses to others, creating severe competition for the Reorganized Debtor.

- **FDA and Other Governmental Agency Regulation.**

Certain of business activities may involve oversight and regulation by various domestic and foreign governmental agencies, including the Food and Drug Administration (FDA), the regulatory authority charged with assessing and approving drugs to be marketed in the United States and with overseeing commercial diagnostic assays. Any required approvals may never be granted. Failure to comply with applicable statutes and government regulations will impact the initiatives described, could prohibit them from continuing and could subject the Reorganized Debtor to fines and penalties. Governmental regulations can impose not only delays in the implementation of the business plan but also additional expenses and costs beyond those currently being contemplated.

- **Dependence on Key Personnel.**

The Reorganized Debtor's business is dependent upon the active participation of David M. Fineman, Chairman of the Board and Chief Executive Officer; and the technical expertise of Marc Hellerstein M.D., Ph.D., Board Member, and consultants; and certain members of the Board of Directors and Advisory Board. The loss of services of any of such persons could significantly harm the Reorganized Debtor. In March 2018, Mr. Fineman will be 75 years of age. Going forward, he will not be devoting his full-time efforts toward the Reorganized Debtor and, in fact, will soon be retiring from active management and may only be participating as a board member going forward. The Reorganized Debtor may not succeed in finding an adequate replacement for Mr. Fineman.

Mr. Fineman is presently being sued for, among other allegations, fraud and failure to perform

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in a fiduciary manner by two of the investors is the Reorganized Debtor. Until this suit is resolved, it may preclude any pharmaceutical or biotech company, investor, or investment bank from considering or conducting business with the Reorganized Entity. Dr. Hellerstein's involvement and time-commitment in the Reorganized Debtor will be at his discretion, and both Mr. Fineman and Dr. Hellerstein may have outside business interests that may be competitive with the interests of the Reorganized Debtor.

- **Inadequate option pool to attract management talent going forward.**

The Reorganized Debtor's capital structure does not provide for an adequate option pool to acquire or retain management talent.

- **Competition**

The Reorganized Debtor's fields of business activity are characterized by intensive research and development efforts. A number of companies, research institutions, universities, and hospitals are working to develop products and services in the same fields. Some of these companies may have more capital resources than those of the Reorganized Debtor and could represent competition.

- **Exposure to Product Liability Claims.**

Marketing and selling the Reorganized Debtor's potential commercial products involves unavoidable risks. The use of our assays in clinical trials and the sale of products we may develop could lead to claims or lawsuits by consumers, regulatory agencies, biotechnology companies, pharmaceutical companies, or others using or selling the assays, product candidates, or products. The Reorganized Debtor may be unable to obtain or maintain adequate product liability insurance on acceptable terms, and even if we do, the policy limits may be insufficient to cover all potential claims or liabilities. Insufficient insurance to cover any damages resulting from a claim could seriously harm the Reorganized Debtor and result in significant loss to the stockholders. Nor will the Reorganized Debtor have adequate funds to pay the cost of directors and officers liability insurance.

- **Inability to Protect Patents and Other Intellectual Property Rights.**

The Reorganized Debtor's competitive advantage depends on our issued and pending patents. These patents include those developed and now applied for by the Reorganized Debtor, a joint patent application with Thermo Fisher, as well as those owned by the Regents and exclusively licensed to

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GSK and, in turn, sublicensed to the Reorganized Debtor. The Reorganized Debtor relies on a combination of patents, licenses, contracts, intellectual property laws, confidentiality agreements, and software security measures to protect our intellectual property and proprietary rights, and may be required to take action to protect such rights. Patents when issued or licensed to us may or may not provide protection against competitive products or otherwise be viable commercially. In the first quarter of 2018 fees will come due for patent applications owned by the Reorganized Debtor and the joint patent applications with Thermo Fisher Scientific, Inc. will come due. The Reorganized Debtor may not have adequate funds with which to continue to maintain those patent applications.

With respect to the patents licensed from GSK through the Regents, in the event of a failure to file, prosecute, or maintain any of these patents, the Reorganized Debtor's business could be materially harmed. The University of California and the Debtor have filed and intend to file additional patent applications relating to our technology, products, and processes. Any of these patents or patent applications may be challenged, invalidated, or circumvented by competitors. These patents also may fail to provide meaningful competitive advantages. All of the foregoing could entail a substantial cost to the Reorganized Debtor's and a diversion from the pursuit of the Reorganized Debtor's main business efforts. The Reorganized Debtor can offer no assurances about the degree of protection any patents will afford, whether patents will be issued, or whether we will be able to avoid violating or infringing upon patents issued to others. Successful protection of our intellectual property and proprietary rights is an important factor in the implementation of our business plan.

The Reorganized Debtor will also rely on trade secrets, know-how, continuing technological innovations, and licensing opportunities to develop and maintain competitive position. Others may independently develop substantially equivalent proprietary information or be issued patents that may prevent the sale or out-licensing of the Reorganized Debtor's products or know-how or may require licensing and the payment of significant fees or royalties by us to produce the Reorganized Debtor's products. Moreover, there can be no assurance that the Reorganized Debtor's technology does not infringe upon any valid claims of patents owned by others. In the event of patent infringement, the Reorganized Debtor might have to seek a license to use the patented technology. The Reorganized Debtor may be unable to obtain such a license on terms acceptable to the Reorganized Debtor's or at

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all. If a legal action were to be brought against the Reorganized Debtor or a licensor, the parties could incur substantial costs in defending the action, even if the action is not successful. Moreover, if the Reorganized Debtor does not prevail, the imposition of significant damages is possible.

- **Potential Loss of Intellectual Property Rights.**

Filing costs for the Debtor's intellectual property applications, due in March and April 2018, are estimated to be in an aggregate amount of approximately $45,000. If the Debtor is unable to pay those costs prior to the Effective Date, patent rights with respect to much of the Debtor's intellectual property may be lost or, alternatively, forfeited to GSK under the sale agreement between the Debtor and GSK reached during the Chapter 11 Case. If that occurs, much or all of the value of the Reorganized Debtor will be eliminated.

- **Absence of Laboratory Facilities.**

The Reorganized Debtor relies on others for laboratory work, including the Hellerstein Laboratory (the "Hellerstein Lab") at the University of California, Berkeley. Going forward, there is no guarantee that the Hellerstein Lab will be available. Moreover, there is no guarantee that the Reorganized Debtor will be able to find other laboratories to perform necessary work.

- **Use of Hazardous Materials, Compliance with Health, and Safety Laws.**

Laboratories that the Reorganized Debtor may associate with may be required to store, handle, use, and dispose of controlled hazardous and biological materials. If they fail to comply with applicable requirements with respect to these materials, these labs could be subject to substantial fines and other sanctions, causing delays in research, delays in generating revenue, and increased operating costs. Likewise, if regulated materials are improperly released by these labs, they could be held liable for substantial damages and costs, including cleanup costs and personal injury or property damages, which would likely cause delays in research, delays in generating revenue, loss of revenue, and increased operating costs.

- **Market, Transferability, and Liquidity of Investment.**

There is no market for the Reorganized Debtor's securities, including the securities being offered or other securities that may be offered going forward, which may include preferred stock, common stock, and warrants. The Reorganized Debtor has not agreed to purchase or otherwise

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acquire any securities or to assume the responsibility for locating prospective purchasers of securities held by investors. Investors may be unable to liquidate their investments when they wish to do so, if ever, or on acceptable terms. Moreover, even if a purchaser were or become available, the shares being offered may be "restricted securities" under the Securities Act of 1933, as amended, and may not be resold without registration thereunder and registration or qualification under applicable state securities laws or an available exemption. In the absence of an effective registration statement, the Reorganized Debtor may permit the transfer of the shares and warrants only when the holder's request for transfer is accompanied by an opinion of counsel reasonably satisfactory to the Reorganized Debtor that the proposed transfer is not required to be registered under the Securities Act or registered or qualified under any applicable state securities or "blue sky" laws.

- **Limited Funding**

Upon plan confirmation there will be little funds in the Reorganized Debtor, all of which will likely be spent on administrative requirements, such as legal, accounting and corporate fees. Funds will need to be raised going forward in order to pursue any business development activities. The three-year anti-dilution provisions of the Reorganized Debtor, absent an override approved by 67% of shares, may preclude the ability to raise funds. As a result, by necessity the Reorganized Debtor may be largely inactive going forward, for as much as three years or longer.

- **Control by Management.**

Together, Dr. Hellerstein and Mr. Fineman have the ability to vote approximately 50 percent of the outstanding voting securities. Therefore, Mr. Fineman and Dr. Hellerstein have significant influence in determining the outcome of issues to be voted on by its stockholders.

- **Contested Claims**

The Plan Agent is expected to object to the allowance of all Claims believed to be without merit, in whole or in part. Such objections, however, may not be upheld by the Court, in which event Allowed Claims may be in excess of the amounts estimated, and the ultimate distributions creditors could be less than expected.

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VII. CONCLUSION AND RECOMMENDATION

Based upon the foregoing, the Debtor believes that confirmation and implementation of the Plan is in the best interests of all creditors and shareholders, and should therefore be accepted by creditors entitled to vote on the Plan.

DATED: January 18, 2018

KINEMED, INC.

By: /s/ David M. Fineman
David M. Fineman, Chief Executive Officer

Approved and submitted by:
MEYERS LAW GROUP, P.C.

By: /s/ Merle C. Meyers
Merle C. Meyers, Esq.
Attorneys for Debtor

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EXHIBIT "A"

[Plan of Reorganization – to be added]

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EXHIBIT "B"

[Order Approving Disclosure Statement – to be added]