



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE PDL BIOPHARMA, INC.,)
) C.A. No. 2022- ____ - ____
Petitioner.)

**VERIFIED PETITION FOR
DETERMINATION PURSUANT TO 8 DEL. C. § 280(c)**

Petitioner PDL BioPharma, Inc. (the “Company” or “PDL”) hereby petitions the Court pursuant to 8 *Del. C.* § 280(c) for an Order determining the amount and form of security that will be reasonably likely to be sufficient to provide compensation for (i) claims that are the subject of a pending action, suit, or proceeding to which the Company is a party, (ii) claims of any claimant who has rejected the offer for security made by the Company, and (iii) claims that have not been made known to the Company or that have not yet arisen but that, based on facts known to the Company, are likely to arise or become known within five years after the date of dissolution of the Company. In support of this Petition, PDL alleges as follows:

1. PDL is a dissolved Delaware corporation that had its principal place of business in Reno, Nevada.
2. PDL was incorporated in Delaware on July 24, 1986, under the name Protein Design Labs, Inc. The Company’s name was changed to its present name, PDL BioPharma, Inc., in 2006.

3. Prior to dissolution, PDL was a public company that participated in the development of innovations in therapeutics and healthcare technologies. Among other efforts, PDL pioneered advancements in the humanization of monoclonal antibodies—a process that led to profound impacts on patients suffering from cancers and other debilitating diseases.

4. Historically, PDL generated a substantial portion of its revenues through license agreements related to patents regarding the humanization of antibodies (the “Queen et al. Patents”). Since 2012, PDL also invested in other revenue streams through various royalty monetizations and debt facilities. And, since 2016, PDL began to acquire and launch commercial-stage medical products.

5. PDL’s common stock, par value \$0.01 per share, formerly traded on the NASDAQ Global Select Market (“NASDAQ”) under the symbol “PDLI”.

6. Prior to dissolution, PDL operated in four segments: Medical Devices, Strategic Positions, Income Generating Assets, and Pharmaceutical.

7. The Medical Devices segment consisted of revenue from the sale and lease of the LENSAR® Laser System. The Strategic Positions segment consisted of the Company’s investment in Evofem Biosciences, Inc. (“Evofem”), which included shares of Evofem’s common stock and warrants to purchase additional shares. The Pharmaceutical segment consisted of revenue derived from branded prescription medicine products sold under the name Tekturna® and Tekturna HCT® in the

United States, Rasilez® and Rasilez HCT® in the rest of the world and revenue generated from the sale of an authorized generic form of Tekturna in the United States. And the Income Generating Assets segment consisted of a series of revenue streams from notes and other long-term receivables, royalty rights and hybrid notes or royalty receivables, equity investments, and royalties from the Queen et al. Patents.

8. In the second half of 2019, PDL determined to review strategic alternatives to its growth strategy, including a possible sale, liquidation, divestiture of assets, spin-off of operating entities, merger opportunities, or some combination of alternatives. Following a months-long review with financial and legal advisors, PDL disclosed its intent in December 2019 to put a hold on its growth strategy in order to pursue a formal process to unlock value for stockholders by monetizing the Company's assets and distributing the net proceeds.

9. Over the next two months, PDL's board of directors (the "Board"), together with its advisors and management, analyzed how to best realize value for PDL's stockholders through a monetization of the Company's assets.

10. In February 2020, as part of that process, the Board determined it advisable and in the best interests of the Company to voluntarily liquidate and dissolve the Company and distribute the remaining assets in accordance with 8 *Del. C. § 275* and other applicable provisions of the Delaware General Corporation Law

and Sections 331 and 336 of the Internal Revenue Code, as amended. Accordingly, on February 7, 2020, the Board adopted a resolution approving the dissolution of PDL, a plan of complete liquidation, and a Plan of Dissolution (the “Plan”) and resolved to present the dissolution and the Plan to the stockholders for approval at PDL’s Annual Meeting in accordance with 8 *Del. C.* § 275(a).

11. The Plan and the liquidation and dissolution pursuant thereto were put to a stockholder vote in accordance with 8 *Del. C.* § 275(a) and (b). On August 19, 2020, PDL’s stockholders overwhelmingly approved the liquidation and dissolution of the Company pursuant to the Plan (the “Dissolution”). A true and correct copy of the Plan that was approved by the Board and the stockholders is attached hereto as Exhibit 1. On November 5, 2020, the Board approved the filing of a certificate of dissolution with the Delaware Secretary of State (the “Secretary of State”) and took steps to begin proceeding with the dissolution.

12. On December 28, 2020, in connection with the Plan, PDL filed a Form 25 with the United States Securities and Exchange Commission (the “SEC”) to delist its common stock from the NASDAQ. On January 7, 2021, NASDAQ delisted PDL’s common stock from trading.

13. PDL filed a certificate of dissolution (the “Certificate of Dissolution”) pursuant to 8 *Del. C.* § 275(a), (b), and (d) on January 4, 2021 with the Secretary of State. A true and correct copy of the Certificate of Dissolution is attached hereto as

Exhibit 2. On that date, PDL closed its stock transfer books and discontinued recording transfers of its common stock, other than transfers by will, intestate succession, or operation of law.

14. On January 8, 2021, PDL filed a Form 15 with the SEC, notifying the SEC of the deregistration of PDL's common stock and the suspension of its duty to file reports under Section 13 and 15(d) of the Securities Exchange Act of 1934.

15. The Company opted to dissolve pursuant to the "long form" dissolution procedures listed in 8 *Del. C.* § 280. Pursuant to and in accordance with 8 *Del. C.* § 280, on January 15, 2021, the Company mailed a Notice of Dissolution of PDL BioPharma, Inc. (the "Dissolution Notice") to 361 potential creditors of PDL, requesting that the recipients present any claims within 60 days as directed therein and advising those parties that any claims against the Company not so presented would be barred under Delaware law. A true and correct copy of the form of Dissolution Notice is attached hereto as Exhibit 3.

16. Due to the Company's last registered agent in Delaware changing its address during 2020 from Kent County to New Castle County, the Company first published notice in Kent County when that notice should have been published in New Castle County. As a result, the Dissolution Notice was published on January 27 and February 3, 2021, which constitutes once a week for two consecutive weeks, in *The Dover Post*, a newspaper of general circulation in Kent County, Delaware. A

true and correct copy of the affidavit of publication is attached hereto as Exhibit 4. The Dissolution Notice was then published on September 24 and October 1, 2021, which constitutes once a week for two consecutive weeks, in *The News Journal*, a newspaper of general circulation in New Castle County, Delaware. A true and correct copy of the affidavit of publication is attached hereto as Exhibit 5.

17. At the time the Dissolution became effective, PDL had more than \$10,000,000 in total assets and, accordingly, the Dissolution Notice was published on January 22, 2021 in all editions of *USA Today*, a daily newspaper with a national circulation. A true and correct copy of the affidavit of publication is attached hereto as Exhibit 6.

18. The Dissolution Notice was also published between January 22 and January 29, 2021, which constitutes at least once a week for two consecutive weeks, in each regular and entire issue of the *Reno Gazette-Journal*, a newspaper of general circulation Reno, Washoe County, Nevada—the county in which the principal place of business of PDL was located. A true and correct copy of the affidavit of publication is attached hereto as Exhibit 7.

19. The claim period as set forth in the Dissolution Notice expired on March 15, 2021, which date is not less than the statutorily prescribed 60 days after the date the Dissolution Notice was mailed to potential claimants as described in paragraph 15 above. Additionally, the claim period as set forth in the Dissolution

Notice published in *The News Journal*, as described in paragraph 16, expired on December 1, 2021, which date is not less than the statutorily prescribed 60 days after the date the Dissolution Notice was mailed to potential claimants as described in paragraph 15 above. The potential claimants to whom PDL sent the Dissolution Notice and who did not respond and submit a claim by the deadline are set forth in Exhibit 8. Accordingly, in conjunction with determining the amounts that PDL is required to reserve pursuant to 8 *Del. C.* § 280(c), PDL requests that this Court enter an order providing that the claims of persons or entities listed in Exhibit 8 are barred pursuant to 8 *Del. C.* § 280(a)(2).

20. PDL received three claim letters in response to the Dissolution Notice and publications, each of which is described below:

a. *RDH Investments, LLC*. On or about January 29, 2021, PDL received a claim from RDH Investments, LLC (“RDH”) asserting a contractual claim relating to payment for the period of November 15, 2020 through December 31, 2022 under a Commercial Sublease Agreement (the “Sublease Agreement”), dated November 5, 2020, by and between RDH as the landlord and PDL as the tenant. A true and correct copy of the notice of claim is attached hereto as Exhibit 9. The Sublease Agreement memorialized a commercial lease that was scheduled to terminate on December 31, 2022. Under the Sublease Agreement, rent would be due in monthly installments totaling \$74,602.56 for the period of January 1, 2021

through December 31, 2022. On June 1, 2021, less than 90 days after receipt of the claim, PDL sent a letter to RDH that constituted an offer of security pursuant to 8 *Del. C.* § 280(b)(2) for \$52,227.56 to cover payments under the Sublease Agreement through its termination, less rent payments already made at the time of the offer of security. A true and correct copy of the offer of security is attached hereto as Exhibit 10. PDL is not aware of any action, suit, or proceeding initiated by RDH with respect to its purported claim. As of the date of this Petition, more than 120 days have elapsed since the Company delivered its offer of security.

b. *SWK Funding, LLC*. On or about March 12, 2021, PDL received a claim from SWK Funding, LLC (“SWK”) asserting a contingent contractual claim for indemnity relating to an Asset Purchase Agreement (the “APA”), dated August 28, 2020, by and between PDL, its subsidiary PDL Investment Holdings, LLC (“PDL Investment”), and SWK, and an Escrow Agreement (the “Escrow Agreement”), dated August 28, 2020, by and between PDL Investment, SWK, and Wilmington Trust, National Association (“Wilmington Trust”) as the escrow agent. Pursuant to the Escrow Agreement, SWK directed Wilmington Trust to retain the full amount of certain escrowed property as continued security for any unresolved claims. Pursuant to the APA, SWK purported to assert contingent claims for unspecified potential breaches of certain representations, warranties, and covenants that could give rise to indemnity obligations in the event that they matured. A true

and correct copy of the notice of claim is attached hereto as Exhibit 11. In resolution of SWK's claim, PDL and SWK agreed to enter into certain amendments to the Escrow Agreement and the APA (the "SWK Amendments"). On June 1, 2021, less than 90 days after receipt of the claim, PDL sent a letter to SWK memorializing the parties' agreement and offering PDL's entry into the SWK Amendments, and no further monetary payment or reserves, as an offer of security pursuant to 8 *Del. C.* § 280(b)(2). A true and correct copy of the offer of security is attached hereto as Exhibit 12. PDL is not aware of any action, suit, or proceeding initiated by SWK with respect to its purported claim. As of the date of this Petition, more than 120 days have elapsed since the Company delivered its offer of security.

c. *Assertio Therapeutics, Inc.* On or about March 5, 2021, PDL received a claim from Assertio Therapeutics, Inc. ("Assertio") and Depo DR Sub, LLC ("Depo DR," and with Assertio, the "Assertio Claimants") purporting to assert a claim or claims relating to a Royalty Purchase and Sale Agreement (the "Royalty Agreement"), dated October 18, 2013, by and between Depomed, Inc., Depo DR, and PDL, and as amended on August 2, 2018, by and between the Assertio Claimants and PDL Investment. Pursuant to the Royalty Agreement, the Assertio Claimants purported to assert claims for certain unspecified indemnification, costs and expenses, and other obligations. A true and correct copy of the notice of claim is attached hereto as Exhibit 13. On May 28, 2021, less than 90 days after receipt of

the claim, PDL sent a letter to the Assertio Claimants stating that the purported claims were deficient under 8 *Del. C.* § 280 for lack of sufficient information reasonably to inform the Company of their substance—including whether the Assertio Claimants intended to assert claims under 8 *Del. C.* § 280(a), 280(b), or otherwise. In the alternative, and to the extent that the Assertio Claimants had properly asserted any claims, PDL rejected them under 8 *Del. C.* § 280(a)(3). Consistent with 8 *Del. C.* § 280(a)(3), the letter stated that (i) any claim rejected therein will be barred if an action, suit, or proceeding with respect to the claim is not commenced within 120 days of the date of the rejection, and (ii) was accompanied by a copy of 8 *Del. C.* §§ 278-283. A true and correct copy of the letter is attached hereto as Exhibit 14. In resolution of any claim by the Assertio Claimants, PDL, PDL Holdings, the Assertio Claimants, and certain of the Assertio Claimants’ affiliates agreed to enter into a Confidential Settlement and Release Agreement, dated September 20, 2021 (the “Assertio Settlement and Release”), and a second amendment to the Royalty Agreement, dated September 20, 2021 (the “Assertio Amendment”). True and correct copies of the Assertio Settlement and Release and Assertio Amendment are attached hereto as Exhibit 15. Under the Assertio Settlement and Release, among other things, (i) PDL agreed to pay the Assertio Claimants \$150,000 on or before September 30, 2021 to resolve certain claims related to the Royalty Agreement, in particular related to the payment of patent

maintenance fees that the Assertio Claimants had failed to invoice to PDL over the term of the Agreement, and including the claims in the Assertio Claimants' notice of claim, and (ii) the parties agreed to enter into the Assertio Amendment. To the extent that the Assertio Claimants had stated claims under 8 *Del. C.* § 280(b), PDL's entry into the Assertio Settlement and Release and Assertio Amendment, including its payment of \$150,000, constituted an offer of security pursuant to 8 *Del. C.* § 280(b)(2). PDL is not aware of any action, suit, or proceeding initiated by the Assertio Claimants with respect to their purported claim. As of the date of this Petition, more than 120 days have elapsed since the Company delivered its offer of security.

21. As of the date of this Petition, there are zero actions, suits, or proceedings currently pending to which the Company or its wholly owned subsidiaries are parties.

22. As of the date of this Petition, PDL anticipates that, based on facts known to the Company, no additional claims are expected to arise or become known to the Company within five years from the date of Dissolution. The sole exception, which PDL includes for completeness, relates to existing tax assessments from the State of California Franchise Tax Board (the "FTB"). PDL has been under audit at FTB since 2012 related to its tax liabilities, which audit eventually covered tax years from 2009-2016. On August 17, 2021, the FTB withdrew its assessments for tax

years 2009-2012. The FTB has sent Notices of Proposed Assessments to PDL, assessing the Company for unpaid tax liability for the years 2013-2016. PDL continues to contest the assessments and is currently in administrative protest for each of the tax years at issue. While PDL has not received an updated assessment for the years 2013-2015 from the FTB yet, the Company requested that its tax advisor, KPMG LLP (“KPMG”) provide a conservative estimation of the current total assessment. This estimate assumes that the Company does not receive any reductions on its tax liabilities and pays all penalties, including interest through January 31, 2025, which itself is a conservative estimate of the length of time that PDL expects the administrative protests (including any appeals) to remain pending. KPMG’s conservative estimate of the amount currently assessed by FTB, as of January 31, 2022, is \$45,104,262, inclusive of all applicable penalties and interest through January 31, 2025. PDL believes that this conservative estimate is considerably in excess of what will be reasonably likely to provide sufficient security for the FTB tax assessments. Nonetheless, PDL intends to reserve the full \$45,104,262 estimated by KPMG to address any updated assessment by the FTB of PDL for the years 2013-2016.

23. Because PDL does not anticipate that it will have significant unknown future claims and its known potential future claims are attributable to identifiable persons, entities, or government agencies, PDL does not believe it necessary to

appoint a guardian *ad litem* for purposes of proceeding in this action under 8 *Del. C.* § 280(c)(3).

24. PDL no longer conducts the business for which it was organized, but rather operates solely for the purpose of prosecuting and defending suits, gradually settling and closing its business, conveying its property, discharging its liabilities, and distributing to its stockholders any remaining assets. These activities include managing and conducting sales or dispositions of remaining royalties assets, managing debt investments towards final payoffs, resolving outstanding asset management issues, filing tax returns and responding to tax authority audit and inspections, and performing other ministerial tasks attendant to winding up.

25. The aggregate amount, on an annual basis, of all distributions made by PDL to its stockholders in the year that PDL was dissolved and the three calendar years before then was as follows: (i) 2021: \$0; (ii) 2019: \$0; and (iii) 2018: \$0. In 2020, the Company distributed to its stockholders a total of 8,667,397 shares of LENSAR, Inc. and 13,333,334 shares of Evofem. The aggregate fair market value as reported on the Company's Form 8937 for the distributed LENSAR, Inc. shares was \$11.11 per share and for the Evofem shares was \$4.8698 per share. No distributions have been made to PDL's stockholders since PDL filed its Certificate of Dissolution.

26. As of September 30, 2021, PDL has total net assets in liquidation of \$409,824,000. Assets include \$157,201,000 of cash and cash equivalents, \$29,040,000 in receivables from asset sales, \$202,604,000 in royalty assets, \$88,489,000 in income tax receivables from the United States IRS, and \$2,295,000 in other assets.

27. The Company's liabilities, including the anticipated dissolution costs to be incurred throughout the dissolution period, are as follows: \$119,000 in accounts payable, \$54,902,266 in various potential tax liabilities (including the Company's disputed assessment at the FTB, detailed in paragraph 22), \$6,619,000 in employee compensation and benefit costs, \$3,549,000 in costs related to the sale, if any, of royalty assets, and \$23,467,000 in other accrued liquidation costs as of September 30, 2021. In addition, these estimated liabilities include PDL's total wind down costs, which may include, but are not limited to, the following:

- a. Legal fees and expenses incurred in connection with the Dissolution;
- b. Professional service fees, including tax consultants and our independent auditor;
- c. Salaries, retention bonuses, and benefits;
- d. travel expenses and other general and administrative expenses;
- e. Taxes, including payroll taxes;

- f. Fees for bookkeeping and file storage;
- g. Costs of telephone and internet services;
- h. Insurance;
- i. Director fees;
- j. Bank fees; and
- k. Distribution costs offset by interest income.

28. Although no additional known or unknown claims are expected, the PDL Board determined that it is appropriate and in the best interests of PDL and its residual claimants (including its stockholders) to reserve an additional \$4,500,000 for any possible costs and expenses related to claims that have not been made known to the Company or that have not arisen, but that, based upon facts known to the Company, may arise or become known within five years from the date of Dissolution.

29. PDL therefore petitions this Court, pursuant to 8 *Del. C.* § 280(c) to determine that: (i) PDL's total reserve of \$93,208,494 is sufficient, which is comprised of the following reserves which are also sufficient: (a) \$88,656,266 for currently estimated wind down costs and expenses as detailed in paragraph 27 above; (b) \$0 for prospective claimants with claims that are the subject of a pending action, suit, or proceeding to which the Company is a party as set forth in paragraph 21 above (because none are known to exist by the Company); (c) security of \$52,227.56

for RDH, which has been accepted by RDH as discussed in paragraph 20(a); (d) security of \$0 for SWK, which has been accepted by SWK as discussed in paragraph 20(b); (e) security of \$0 for the Assertio Claimants, with whom a settlement was achieved and which has been paid as discussed in paragraph 20(c) and (f) security of \$4,500,000 for claims that have not been made known to the Company or that have not arisen, but that, based upon facts known to the Company, may arise or become known within five years from the date of Dissolution; (ii) PDL is authorized to make such interim distributions as are appropriate, which amounts shall be determined by the Court; and (iii) at the end of the three-year period from the date of Dissolution, the Company shall be authorized to disburse any of its remaining assets (after payment to any creditors thereof that have by then asserted valid claims) to its stockholders or beneficiaries.

30. This Court has jurisdiction over this matter pursuant to 8 *Del. C.* § 283.

WHEREFORE, Petitioner respectfully requests that the Court:

- a. Find that PDL has complied with the procedures set forth in 8 *Del. C.* § 280;
- b. Find that PDL has provided adequate notice to potential claimants under 8 *Del. C.* § 280;
- c. Order that all claims from potential claimants who received actual notice of the Dissolution and did not respond in accordance with the requirements

of 8 *Del. C.* § 280(a), as listed in Exhibit 8, or that submitted a claim and did not institute a timely action, suit, or proceeding with respect to such claim in accordance with the requirements of 8 *Del. C.* § 280(a) are barred under 8 *Del. C.* § 280(a)(2) or (a)(4), as applicable;

d. Determine that the appointment of guardian *ad litem*, for purposes of proceeding in this action under 8 *Del. C.* § 280(c)(3), is not necessary;

e. Determine, pursuant to 8 *Del. C.* § 280(c), that \$93,208,494 constitutes sufficient total security for purposes of 8 *Del. C.* § 280(c), which is comprised of the following amounts, each of which constitutes sufficient security for its corresponding claim: (a) \$88,656,266 for currently estimated wind down costs and expenses as detailed in paragraph 27 above; (b) \$0 for prospective claimants with claims that are the subject of a pending action, suit, or proceeding to which the Company is a party as set forth in paragraph 21 above (because none are known to exist by the Company); (c) security of \$52,227.56 for RDH, which has been accepted by RDH as discussed in paragraph 20(a); (d) security of \$0 for SWK, which has been accepted by SWK as discussed in paragraph 20(b); (e) security of \$0 for the Assertio Claimants, with whom a settlement was achieved and which has been paid as discussed in paragraph 20(c); and (f) security of \$4,500,000 for claims that have not been made known to the Company or that have not arisen, but that, based upon facts

known to the Company, may arise or become known within five years from the date of Dissolution;

f. Determine that PDL's current estimate of approximately \$93,208,494 is sufficient to provide for any potential remaining expenses, including those wind-down costs described in paragraph 27 above, and that PDL is authorized to pay such expenses as they are incurred;

g. Determine that PDL is authorized to make such interim distributions as are appropriate, which amounts shall be determined by the Court, including a distribution of its remaining assets following the reservation of \$93,208,494, as detailed in paragraph 29(i);

h. Determine that at the end of the three-year period from the date of Dissolution of PDL, if all claims are resolved, PDL shall be authorized to disburse any of its remaining assets (after payment to any creditors thereof that have by then asserted valid claims) to its stockholders and beneficiaries; and

i. Take any other action or provide any other relief that is just and proper.

/s/ Kevin M. Gallagher

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Dated: February 10, 2022

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