

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

HUMANIGEN, INC.,¹

Debtor.

Chapter 11

Case No. 24-10003 (BLS)

**DECLARATION OF CRAIG JALBERT IN SUPPORT OF CONFIRMATION
OF THE COMBINED CHAPTER 11 PLAN OF LIQUIDATION AND
DISCLOSURE STATEMENT FOR HUMANIGEN, INC.**

I, Craig Jalbert, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

1. I am a Principal of Verdolino & Lowey, P.C., a full-service accounting services firm located in Foxboro, Massachusetts. On February 20, 2024, I was appointed as an independent director of the above-captioned debtor and debtor in possession (the “Debtor”) in the above-captioned chapter 11 case (the “Chapter 11 Case”). As such, I am authorized by the Debtor to submit this declaration (this “Declaration”).

2. I submit this Declaration in support of confirmation of the *Combined Chapter 11 Plan of Liquidation and Disclosure Statement for Humanigen, Inc.* [Docket No. 252] (as amended, modified, or supplemented, the “Combined Plan and Disclosure Statement”).² Except as otherwise

¹ The Debtor’s mailing address in this chapter 11 case is Humanigen, Inc., c/o Verdolino & Lowey, P.C., 124 Washington Street, Suite 101, Foxboro, MA 02035 and the last four digits of the Debtor’s federal tax identification number are 7236.

² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Combined Plan and Disclosure Statement.

indicated, all facts set forth in this Declaration are based upon my personal knowledge, my review of the relevant documents and/or my opinion based upon my experiences, knowledge and information concerning the Debtor and provided to me by the Debtor's management team and/or professionals. If I were called upon to testify, I would testify competently to the facts set forth herein.

BACKGROUND

3. On January 3, 2024, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business as debtor and debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. On January 16, 2024, the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed the Official Committee of Unsecured Creditors (the "Committee") in this Chapter 11 Case. No request has been made for the appointment of a trustee or examiner in this Chapter 11 Case.

5. On February 17, 2024, the Court entered an order approving the sale of substantially all of the Debtor's assets to Taran Therapeutics, Inc. (the "Sale") [Docket No. 155].

6. The transaction contemplated under the Sale closed on February 20, 2024. *See Notice of Closing of Sale of Substantially All of the Debtor's Assets to Taran Therapeutics, Inc.* [Docket No. 176]. With the Sale closed, the Debtor seeks to wind up this Chapter 11 Case through a consensual plan confirmation process facilitated by the Combined Plan and Disclosure Statement.

7. On May 1, 2024, the Court entered the *Order (I) Granting Interim Approval of the Disclosures in the Combined Plan and Disclosure Statement; (II) Scheduling a Combined Confirmation Hearing and Setting Deadlines Related Thereto; (III) Approving Solicitation Packages and Procedures; (IV) Approving the Form of Ballots; and (V) Granting Related Relief* [Docket No. 250] (the “Solicitation Procedures Order”). Pursuant to the Solicitation Procedures Order, the Court, among other things, granted interim approval of the Combined Plan and Disclosure Statement for solicitation purposes only. In addition, a hearing to consider final approval of the adequacy of disclosures contained in, and confirmation of, the Combined Plan and Disclosure Statement is currently scheduled for June 18, 2024 (the “Confirmation Hearing”).

8. On May 1, 2024, the Debtor filed the solicitation version of the Combined Plan and Disclosure Statement. *See* Docket No. 252.

9. As set forth in that certain certificate of mailing [Docket No. 260] filed by the Debtor’s claims, noticing and balloting agent, Epiq Corporate Restructuring, LLC (“Epiq”), Epiq caused to be served on all Holders of Allowed Claims in Class 3 (the “Voting Class”) (i) the Combined Plan and Disclosure Statement, (ii) the Confirmation Hearing Notice, (iii) a form of Ballot, (iv) a letter from the Committee urging the Holders of General Unsecured Claims to vote to accept the Combined Plan and Disclosure Statement, and (v) a pre-addressed return envelope. Further, Epiq also caused the Confirmation Hearing Notice to be served on all other parties on the creditor matrix and all other parties in interest entitled to receive such notice pursuant to the Solicitation Procedures Order.

10. Only members of the Voting Class were entitled to vote on the Combined Plan and Disclosure Statement. As such, only members of Class 3 (General Unsecured Claims) were entitled to vote to accept or reject the Combined Plan and Disclosure Statement. Holders of Claims in Class 1 (Secured Claims) and Class 2 (Non-Tax Priority Claims) are unimpaired under the Combined Plan and Disclosure Statement and, consequently, are deemed to have accepted the Combined Plan and Disclosure Statement pursuant to the Bankruptcy Code. Holders of Claims and Interests in Class 4 (Subordinated Claims) and Class 5 (Existing Equity Interests) are not entitled to receive a Distribution or retain any property under the Combined Plan and Disclosure Statement and, consequently, are conclusively deemed to have rejected the Combined Plan and Disclosure Statement pursuant to the Bankruptcy Code.

11. Pursuant to the Solicitation Procedures Order, the deadline for the Holders of Claims in the Voting Class to cast their votes to accept or reject the Combined Plan and Disclosure Statement was June 6, 2024 at 4:00 p.m. (Eastern Time).

12. On June 7, 2024, the Debtor filed the *Declaration of Emily Young, on Behalf of Epiq Corporate Restructuring, LLC, Regarding Solicitation and Tabulation of Ballots Cast on the Combined Chapter 11 Plan and Disclosure Statement for Humanigen, Inc.* [Docket No. 288] (the “Voting Certification”) containing a tabulation of all Ballots received and demonstrating acceptance of the Combined Plan and Disclosure Statement by the Voting Class.

COMPLIANCE WITH THE BANKRUPTCY CODE

13. Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)). I believe that the Combined Plan and Disclosure Statement complies with the following requirements of the Bankruptcy Code:

a. Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)). Article V of the Combined Plan and Disclosure Statement designates five Classes of Claims and Equity Interests. I am familiar with the classification of Claims and Equity Interests in the Combined Plan and Disclosure Statement and believe that such classification system is based upon the legal nature and relative rights of such Claims and Equity Interests and is not proposed for any improper purposes. Each Class contains only Claims or Equity Interests that are substantially similar to other Claims and Equity Interests therein. Additionally, Article IV of the Combined Plan and Disclosure Statement designates (but does not classify) certain Claims under sections 507(a)(2) and 507(a)(8), including Administrative Expense Claims, Priority Tax Claims and Professional Fee Claims.

b. Specified Treatment of Unimpaired Claims (11 U.S.C. §§ 1123(a)(2), (3)). Article V of the Combined Plan and Disclosure Statement specifies whether each Class of Claims and Equity Interests is impaired or unimpaired under the Combined Plan and Disclosure Statement.

c. No Discrimination (11 U.S.C. § 1123(a)(4)). Pursuant to the Combined Plan and Disclosure Statement, the treatment of each Claim or Equity Interest in each particular Class is afforded the same treatment as each other Claim or Equity Interest in such Class, unless

the Holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such particular Claim or Equity Interest.

d. Implementation of the Combined Plan and Disclosure Statement (11 U. S.C. 1123(a)(5)). Article VII and various other provisions of the Combined Plan and Disclosure Statement provide an adequate and proper means for the implementation of the Combined Plan and Disclosure Statement. Specifically, Article VII of the Combined Plan and Disclosure Statement provides, among other things, (i) for the establishment of a Liquidating Trust, (ii) for the appointment and duties of a Liquidating Trustee, (iii) for the transfer of assets to the Liquidating Trust, (iv) an explanation of the funding of liabilities and Distributions, and (v) that the Debtor or the Liquidating Trustee, as applicable, are authorized to execute, deliver, file or record such contracts, instruments, releases, and other agreements or documents and to take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Combined Plan and Disclosure Statement.

e. Nonvoting Equity Securities (11 U.S.C. § 1123(a)(6)). The Combined Plan and Disclosure Statement is a liquidating plan that calls for the dissolution of the Debtor. Accordingly, section 1123(a)(6) of the Bankruptcy Code is not applicable.

f. Impairment of Classes (11 U.S.C. § 1123(b)(1)). Article VII of the Combined Plan and Disclosure Statement impairs or leaves unimpaired, as the case may be, each Class of Claims or Equity Interests under the Combined Plan and Disclosure Statement.

g. Treatment of Executory Contracts and Unexpired Leases (11 U.S.C. 1123(b)(2)). Pursuant to Article VIII.A. of the Combined Plan and Disclosure Statement, on the Effective Date, all Executory Contracts and Unexpired Leases not assumed, assigned, or rejected before the Effective Date, or subject to a pending motion to assume or reject as of the Effective Date, will be deemed rejected pursuant to sections 365 and 1123 of the Bankruptcy Code.

h. Section 1123(b)(6) of the Bankruptcy Code. Pursuant to section 1123(b)(6) of the Bankruptcy Code, the Combined Plan and Disclosure Statement may include any other appropriate provision that is not inconsistent with any applicable provisions of the Bankruptcy Code. Pursuant to this section, the Combined Plan and Disclosure Statement contains an exculpation provision (the "Exculpation Provision") which I believe is appropriate based on the limitation of liability provided in section 1125(e) of the Bankruptcy Code. The Exculpation Provision expressly and narrowly applies to the Exculpated Parties and only relates to prospective acts in connection with the Chapter 11 Case. Accordingly, I believe that the Exculpation Provision should be approved as appropriate under section 1125(e) of the Bankruptcy Code. For the avoidance of doubt, it is my understanding that, other than the Exculpation Provision described above, the Combined Plan and Disclosure Statement does not contain any releases for any parties.

i. Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)). To the best of my knowledge, the Debtor, as proponent of the Combined Plan and Disclosure Statement, acting through its respective agents, representatives and professionals, has complied with all applicable provisions of the Bankruptcy Code in proposing the Combined Plan and Disclosure Statement and

with the Solicitation Procedures Order in commencing and conducting the solicitation of acceptances or rejections of the Combined Plan and Disclosure Statement.

j. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). To the best of my knowledge, the Debtor, as proponent of the Combined Plan and Disclosure Statement, acting through its respective agents, representatives and professionals, has (i) proposed the Combined Plan and Disclosure Statement (a) in good faith, and (b) not by any means forbidden by law, and (ii) acted in good faith in the negotiation and formulation of the Combined Plan and Disclosure Statement.

k. Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). Any payment made or to be made by the Debtor, or by a person issuing securities or acquiring properties under the Combined Plan and Disclosure Statement, for services or for costs and expenses in or in connection with this Chapter 11 Case, or in connection with the Combined Plan and Disclosure Statement and incident to this Chapter 11 Case, has been approved by, or is subject to the approval of, the Court as reasonable.

l. Liquidating Trustee, Directors, Officers, and Insiders (11 U.S.C. 1129(a)(5)). The identity, affiliations, and compensation of the Liquidating Trustee proposed to serve after the Effective Date have been fully disclosed in the *Notice of Filing of Plan Supplement* [Docket No. 282].

m. No Rate Changes (11 U.S.C. § 1129(a)(6)). The Combined Plan and Disclosure Statement does not provide for rate changes subject to the jurisdiction of any governmental regulatory agency.

n. Best Interests of Creditors Test (11 U.S.C. § 1129(a)(7)). With respect to each impaired Class, each Holder of a Claim or Equity Interest either has accepted the Combined Plan and Disclosure Statement or will receive or retain under the Combined Plan and Disclosure Statement on account of such Claim or Equity Interest, property of a value, as of the Effective Date, that is not less than the amount that such Holder would have received or retained had the Debtor been liquidated under chapter 7 of the Bankruptcy Code on such date.

o. Treatment of Administrative and Tax Claims (11 U.S.C. § 1129(a)(9)). Pursuant to Article IV.B. of the Combined Plan and Disclosure Statement, except to the extent that a Holder of an Allowed Administrative Expense Claim agrees to a less favorable treatment or has been paid by the Debtor or Purchaser prior to the Effective Date, each Holder of an Allowed Administrative Expense Claim will be paid the full unpaid amount of such Allowed Administrative Expense Claim in cash from the Liquidating Trust Proceeds. Further, pursuant to Article IV.D. of the Combined Plan and Disclosure Statement, except to the extent the Debtor and/or Liquidating Trustee and the Holder of an Allowed Priority Tax Claim agree to a different and less favorable treatment, the Debtor or the Liquidating Trustee, as applicable, shall pay, in full satisfaction and release of such Claim, to each Holder of a Priority Tax Claim, cash in an amount equal to such Allowed Priority Tax Claim, on the later of (a) the Effective Date; and (b) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, or as soon thereafter as is reasonably practicable in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code.

p. Acceptance by Impaired Classes (11 U.S.C. § 1129(a)(10)). Holders of Claims that voted in the Voting Class (Class 3 – General Unsecured Claims) voted unanimously (*i.e.*, 100% in number and 100% in amount) to accept the Combined Plan and Disclosure Statement. Therefore, section 1129(a)(10) of the Bankruptcy Code is satisfied.

q. Feasibility (11 U.S.C. § 1129(a)(11)). The Combined Plan and Disclosure Statement itself calls for liquidation of the Debtor. Therefore, confirmation of the Combined Plan and Disclosure Statement is not likely to be followed by the need for further financial reorganization of the Debtor, thereby satisfying (or eliminating the need to consider) section 1129(a)(11) of the Bankruptcy Code.

r. Payment of Fees (11 U.S.C. § 1129(a)(12)). All fees under 28 U.S.C. § 1930 presented to date have been paid or provided for. Moreover, as set forth in Article IV.E. of the Combined Plan and Disclosure Statement, after the Effective Date, the Liquidating Trustee shall pay any and all Statutory Fees when due and payable. To the greatest degree possible, such payments shall be made from the Liquidating Trust Assets. After the Effective Date, the Liquidating Trustee shall file with the Bankruptcy Court quarterly reports when they become due.

s. Retiree Benefits (11 U.S.C. § 1129(a)(13)). The Debtor provides no “retiree benefits” as such term is defined in section 1114 of the Bankruptcy Code. Therefore, 11 U.S.C. § 1129(a)(13) is inapplicable.

t. Domestic Support Obligation (11 U.S.C. § 1129(a)(14)). As the Debtor is not required to pay any domestic support obligations, 11 U.S.C. § 1129(a)(14) is inapplicable.

u. Individual Debtor Requirements (11 U.S.C. § 1129(a)(15)). As the Debtor is not an individual, 11 U.S.C. § 1129(a)(15) is inapplicable.

v. Identification of Plan Proponents (Fed. R. Bankr. P. 3016(a)). As required by Bankruptcy Rule 3016(a), the Combined Plan and Disclosure Statement is dated and identifies the Debtor as the plan proponent of the Combined Plan and Disclosure Statement.

w. Fair and Equitable; No Unfair Discrimination (11 U.S.C. § 1129(b)). The Combined Plan and Disclosure Statement satisfies all of the applicable requirements of section 1129(a) of the Bankruptcy Code other than section 1129(a)(8). Class 3 (General Unsecured Claims), which is the only impaired Class that is entitled to vote on the Combined Plan and Disclosure Statement, has voted to accept the Combined Plan and Disclosure Statement. Class 4 (Subordinated Claims) and Class 5 (Existing Equity Interests) are not receiving a Distribution or retaining any property under the Combined Plan and Disclosure Statement, and, consequently, are deemed to have rejected the Combined Plan and Disclosure Statement. Pursuant to section 1129(b)(1) of the Bankruptcy Code, the Combined Plan and Disclosure Statement may still be confirmed, notwithstanding that not all impaired Classes have voted to accept the Combined Plan and Disclosure Statement, if the Combined Plan and Disclosure Statement is fair and equitable with respect to, and does not unfairly discriminate against, such Classes. Here, Subordinated Claims in Class 4 and Existing Equity Interests in Class 5 are deemed cancelled. Additionally, no Holders of Claims or Equity Interests that are subordinate to the Subordinated Claims in Class 4 or the Existing Equity Interests in Class 5 will receive a Distribution or retain any property under the Combined

Plan and Disclosure Statement. Accordingly, it is my understanding that the Combined Plan and Disclosure Statement is fair and equitable with respect to such Classes and does not unfairly discriminate against such Classes. Therefore, the Combined Plan and Disclosure Statement complies with section 1129(b) of the Bankruptcy Code and may be confirmed notwithstanding that Class 4 and Class 5 were deemed to have rejected the Combined Plan and Disclosure Statement.

x. Principal Purpose of Plan (11 U.S.C. § 1129(d)). The principal purpose of the Combined Plan and Disclosure Statement is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933.

y. Section 1129(c) — Only One Plan. Other than the Combined Plan and Disclosure Statement, no plan has been filed in this Chapter 11 Case and neither the Debtor nor any other party are presently seeking confirmation of any plan other than the Combined Plan and Disclosure Statement. Therefore, the Combined Plan and Disclosure Statement complies with section 1129(c) of the Bankruptcy Code.

14. Compliance with Bankruptcy Rule 3016(c). In accordance with Bankruptcy Rule 3016(c), the Combined Plan and Disclosure Statement describes in specific and conspicuous bold language all acts to be enjoined and identifies the entities that would be subject to the injunction to the extent required thereunder.

CONCLUSION

Based on the foregoing, I believe that the Combined Plan and Disclosure Statement satisfies the requirements of the Bankruptcy Code and should be confirmed.

Dated: June 12, 2024

/s/ Craig Jalbert _____

Name: Craig Jalbert

Title: Director, Humanigen, Inc.