

Office of the United States Trustee  
District of Delaware  
844 King Street, Suite 2207  
Wilmington, DE 19801  
Tel. No. (302) 573-6491  
Fax No. (302) 573-6497

IN RE:

Chapter 11

Pernix Sleep, Inc.,  
Pernix Therapeutics Holdings, Inc., *et al.*  
Debtors.

Case No. 19-10323 (CSS)

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**Notice of Formation Meeting for Official Committee of Unsecured Creditors**

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The above-named debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Section 1102(b) of the Bankruptcy Code authorizes the United States Trustee to appoint an official committee of Unsecured Creditors (“Committee”), and the debtor's petition or other sources of information indicate that you may be eligible for appointment to the Committee in this case. The Committee represents the interests, and acts on behalf, of all unsecured creditors. Members of the Committee are generally selected from the list of the twenty largest unsecured creditors.

This is to notify you that the United States Trustee will hold a meeting to form a Committee on **Friday, March 1, 2019 @ 10:00 a.m.** at the following location:

**Delaware State Bar Association  
405 King Street, 2<sup>nd</sup> Floor  
Wilmington, DE 19801**

A representative of the debtor will attend the meeting to provide information regarding the status of the case.

**If you wish to be considered for membership on the Committee**, please complete the enclosed Questionnaire and return it to the Office of the United States Trustee via fax **no later than Wednesday, February 27, 2019 @ 4:00 p.m.** Return of the questionnaire, however, does not guarantee appointment to the Committee, only that you will be considered. If you do not wish to serve on the Committee, you do not need to return the form or attend the meeting.

If you wish to be considered for Committee membership but are unable to attend, you should immediately notify the Office of the United States Trustee. If you do not attend the meeting and do not affirmatively indicate your willingness to serve, you will not be considered. If you send an individual to represent you at the meeting, that representative must present your written proxy authorizing him or her to act on your behalf.

The United States Trustee urges you to consider serving on the Committee. Under the Bankruptcy Code, the Committee has the right to demand that the debtor consult with the Committee before making major decisions or changes, to request the appointment of a trustee or examiner, to participate in the formation of a plan of reorganization, and in some cases, to propose its own plan of reorganization. If appropriate, the Committee may request that the Bankruptcy Court convert a chapter 11 case to one under chapter 7, at which time the debtor’s operations would cease and its assets would be liquidated. The Committee is authorized to select and employ an attorney and other necessary professionals, subject to

court approval. Fees of professionals employed by the Committee may be paid from available assets, if any, of the bankruptcy estate after court approval. Further, Committee members' actual expenses may be reimbursed from estate assets. The Committee performs a vital role in chapter 11 reorganizations, and we hope that you will choose to participate.

ANDREW R. VARA  
ACTING UNITED STATES TRUSTEE

/s/ Benjamin Hackman for  
T. PATRICK TINKER  
ASSISTANT UNITED STATES TRUSTEE

Dated: February 21, 2019

cc: Debtors' Proposed Counsel: Kerri Mumford, Esq., Phone: 302-467-4400, Fax: 302-467-4450

## **Official Committee of Unsecured Creditors' Committee Information Sheet**

**Purpose of Unsecured Creditors' Committees.** To increase participation in the chapter 11 proceeding, section 1102 of the Bankruptcy Code requires that the United States Trustee appoint a committee of unsecured creditors (the "Committee") as soon as practicable after the order for relief has been entered. The Committee ordinarily consists of the persons, willing to serve, who hold the seven (7) largest unsecured claims of the kinds represented on such committee. The debtor has filed a list indicating that your claim may be among the largest unsecured claims against the debtor, and for that reason, you may be eligible to serve on the Committee.

**Powers and Duties of Unsecured Creditors' Committees.** Members of the Committee are fiduciaries who represent all unsecured creditors as a group without regard to the types of claims which individual unsecured creditors hold against the debtor. Section 1103 of the Bankruptcy Code provides that the Committee may consult with the debtor, investigate the debtor and its business operations and participate in the formulation of a plan of reorganization. The Committee may also perform such other services as are in the interests of the unsecured creditors which it represents. Moreover, Federal Rule of Bankruptcy Procedure 2019, as amended, requires each member of an official committee to file a verified statement disclosing its name, its address, and the nature and amount of each "disclosable economic interest"<sup>1</sup> held in relation to the debtor on the date the committee was formed. Rule 2019 also requires the committee to file a verified supplemental statement updating the earlier information (if information previously disclosed has materially changed) when taking a position before the court or soliciting votes on a plan.

**Employment of Professionals.** Section 1103 of the Bankruptcy Code provides that the Committee may, subject to the bankruptcy court's approval, employ one or more attorneys, accountants or other professionals to represent or perform services for the Committee. The decision to employ particular professionals should occur at a scheduled meeting of the Committee where a majority of the Committee is present. All professionals retained by the Committee may be compensated from assets of the debtor's estate pursuant to section 330 of the Bankruptcy Code. Applications for the payment of professional fees may be monitored by the Office of the United States Trustee and are subject to the Court's approval. However, the Committee should carefully review all applications and not rely on the Court or the United States Trustee to discover and object to unreasonable or unnecessary professional fees or costs.

**Other Matters.** The Committee should elect a chairperson and may adopt bylaws. As a party in interest, the Committee may be heard on any issue in the bankruptcy proceeding. Federal Bankruptcy Rule 2002(i) requires that the Committee (or its authorized agent) receive all notices concerning motions and hearings in the bankruptcy proceeding.

**In the event you are appointed to an official committee of creditors, the United States Trustee may require periodic certifications of your claims while the bankruptcy case is pending. Creditors wishing to serve as fiduciaries on any official committee are advised that they may not purchase, sell or otherwise trade in or transfer claims against the Debtor while they are committee members absent an order of the Court. By submitting the enclosed Questionnaire and accepting membership on an official committee of creditors, you agree to this prohibition. The United States Trustee reserves the right to take appropriate action, including removing a creditor from any committee, if the information provided in the Questionnaire is inaccurate, if the foregoing prohibition is violated, or for any other reason the United States Trustee believes is proper in the exercise of her discretion. You are hereby notified that the United States Trustee may share this information with the Securities and Exchange Commission if deemed appropriate.**

**Privacy Act Statement.** 11 U.S.C. § 1102 authorizes the collection of this information. The information will be used by the United States Trustee to determine your qualifications for appointment to the Committee. Disclosure of this

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<sup>1</sup> "Disclosable economic interest" means any claim, interest, pledge, lien, option, participation, derivative instrument, or any other right or derivative right granting the holder an economic interest that is affected by the value, acquisition, or disposition of a claim or interest.

information may be to a bankruptcy trustee or examiner when the information is needed to perform the trustee's or examiner's duties, or to the appropriate federal, state, local, regulatory, tribal, or foreign law enforcement agency when the information indicates a violation or potential violation of law. Other disclosures may be made for routine purposes. For a discussion of the types of routine disclosures that may be made, you may consult the Executive Office for United States Trustee's systems of records notice, UST-001, "Bankruptcy Case Files and Associated Records." See 71 Fed. Reg. 59,818 et seq. (Oct. 11, 2006). A copy of the notice may be obtained at the following link: [http://www.justice.gov/ust/eo/rules\\_regulations/index.htm](http://www.justice.gov/ust/eo/rules_regulations/index.htm) Your disclosure of information is voluntary; however, failure to provide the requested information may result in the rejection of your application to be appointed to the Committee.

Should you have any additional questions concerning the Committee or your membership on the Committee, please contact the Office of the United States Trustee.



H. Would your schedule permit you to actively participate on the committee by attending weekly meetings (either by telephone or in person)? Yes ( ) No ( )

I. Representations:

1. Are you or the company you represent in any way: "affiliated" with any of the debtors within the meaning of Section 101(2) of the Bankruptcy Code, or a shareholder of, or related to, the debtor(s)? Yes ( ) No ( ) If a shareholder, state the number of shares: \_\_\_\_\_
2. Do you, or the company you represent, engage in a business which directly or indirectly competes with any of the businesses of the debtor(s)? Yes ( ) No ( )
3. Have you ever been or are you an officer, director, agent, representative or employee of the debtor(s)? Yes ( ) No ( ) Does your claim arise from this relationship? Yes ( ) No ( )
4. State when you acquired the claim, the amount paid, and the face amount of the claim: \_\_\_\_\_  
\_\_\_\_\_
5. Have you or your attorney entered into a settlement agreement with the debtor regarding resolution of your claim? Yes ( ) No ( )
6. Do you have a claim against any entity affiliated with the debtor? Yes ( ) No ( )  
State the name of the entity and the nature and amount of the claims: \_\_\_\_\_  
\_\_\_\_\_
7. Do you or any affiliated entities have any other claims against, or debt or equity securities of, the debtor(s)? Yes ( ) No ( )
8. Do you or any affiliated entities have any financial arrangement that may affect the value of your claim(s) against or interest(s) in the debtor(s) (e.g. personal guarantees, credit insurance, etc.)? Yes ( ) No ( )
9. If you have given a proxy to a third party either to represent you at the creditors' committee formation meeting, or in connection with your claim, please attach a copy of the written proxy. If a professional person has arranged for someone to hold a proxy on your behalf, please identify that individual:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**You may attach a written statement to explain or supplement any responses.**

**Creditors wishing to serve as fiduciaries on an official committee are advised that they may not purchase, sell or otherwise trade in or transfer claims against the debtor while they are committee members absent an order of the court on application of the creditor.**

Please be advised that once a committee is formed, the United States Trustee will file a notice of appointment in the court record that contains contact information for any creditor appointed, including the creditor's name, address, and telephone number.

**Privacy Act Statement.** 11 U.S.C. § 1102 authorizes the collection of this information. The information will be used by the United States Trustee to determine your qualifications for appointment to the Committee. Disclosure of this information may be to a bankruptcy trustee or examiner when the information is needed to perform the trustee's or examiner's duties, or to the appropriate federal, state, local, regulatory, tribal, or foreign law enforcement agency when the information indicates a violation or potential violation of law. Other disclosures may be made for routine purposes. For a discussion of the types of routine disclosures that may be made, you may consult the Executive Office for United States Trustee's systems of records notice, UST-001, "Bankruptcy Case Files and Associated Records." See 71 Fed. Reg. 59,818 et seq. (Oct. 11, 2006). A copy of the notice may be obtained at the following link: [http://www.justice.gov/ust/eo/rules\\_regulations/index.htm](http://www.justice.gov/ust/eo/rules_regulations/index.htm) Your disclosure of information is voluntary; however, failure to provide the requested information may result in the rejection of your application to be appointed to the Committee.

I hereby certify that, to the best of my knowledge and belief, the answers to this Questionnaire are true and correct. By executing this Questionnaire, I also agree to the restrictions and conditions set forth in the preceding paragraphs and in the Committee Information Sheet, and I agree to provide periodic certifications upon request of the United States Trustee.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

*Note: This is not a proof of claim form. Proof of claim forms are filed with the Clerk of the Bankruptcy Court, not with the United States Trustee.*