



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

In re:

COHERA MEDICAL, INC.,
a Delaware corporation,

Assignor,

To:

DSI ASSIGNMENTS, LLC,
A Delaware Limited Liability Company,

Assignee.

C.A. No. _____

VERIFIED PETITION FOR ASSIGNMENT FOR THE BENEFIT OF CREDITORS

DSI Assignments, LLC, solely in its capacity as Assignee for the Benefit of Creditors of Cohera Medical, Inc. (“Assignee”), petitions for an assignment for the benefit of creditors and states:

1. 10 *Del. C.* § 7381 confers jurisdiction on this Court in this case.
2. Cohera Medical, Inc. (“Assignor”) is a Delaware corporation.
3. Assignee is a Delaware corporation located at 333 South Grand Avenue, Suite 4070, Los Angeles, CA 90071. Assignee may be served in this Civil Action by and through its undersigned Delaware counsel.
4. On information and belief, Assignor is indebted to various persons, corporations, and other entities and unable to pay its debts in full.
5. A copy of the General Assignment dated October 2, 2018 is attached hereto as Exhibit A.

6. Assignee intends to comply with the Delaware Assignment for the Benefit of Creditors statutes, 10 *Del. C.* § 7381, *et seq.*

WHEREFORE, Assignee requests that the Court assert jurisdiction pursuant to 10 *Del. C.* § 7381.

Dated: October 4, 2018
Wilmington, Delaware

Respectfully submitted,

/s/ Stephen J. Astringer

POLSINELLI PC

Christopher A. Ward (Del. Bar No. 3877)

Stephen J. Astringer (Del. Bar No. 6375)

222 Delaware Avenue, Suite 1101

Wilmington, Delaware 19801

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sastringer@polsinelli.com

*Attorneys for DSI Assignments, LLC solely in
its capacity as Assignee for the Benefit of
Creditors of Cohera Medical, Inc.*



EXHIBIT A

GENERAL ASSIGNMENT FOR THE BENEFIT OF CREDITORS

THE GENERAL ASSIGNMENT FOR THE BENEFIT OF CREDITORS is made this 2nd day of October 2018, between and among COHERA MEDICAL, INC. ("Assignor"), a Delaware corporation located at ²²⁷277 Fayetteville Street, Raleigh, North Carolina 27601, Federal Tax Identification Number 201624818, and DSI ASSIGNMENTS, LLC, solely in its capacity as Assignee hereunder, located at 70 West Madison Street, Suite 2300, Chicago, IL 60602, hereinafter referred to as "Assignee."

WHEREAS, Assignor is indebted to various persons, corporations and other entities and is unable to pay its debts in full and is desirous of transferring its property to an assignee for the benefit of creditors so that the property so transferred may be expeditiously liquidated and the proceeds thereof be fairly distributed to its creditors without any preference or priority, except such priority as established and permitted by applicable law;

NOW, THEREFORE, in consideration of Assignor's existing indebtedness to its creditors, the covenants and agreements to be performed by Assignee and other consideration, receipt of which is hereby acknowledged, it is hereby AGREED:

1. TRANSFER OF ASSETS. Assignor hereby assigns, grants, conveys, transfers and sets over to Assignee all right, title and interest in personal property and assets, whatsoever and wheresoever situated, which are now, or have ever been, used in connection with the operation of Assignor's business, and which assets include, but are not limited to all personal property and any interest therein exempt from execution, including all machinery and equipment, stock of merchandise, store furniture and fixtures, book accounts, books, bills, accounts receivable, cash on hand, cash in bank, patents, copyrights, trademarks and trade names, URLs or related website rights, social media platforms, insurance policies, tax refunds, rebates, general intangibles, insurance refunds and claims, and choses in action that are legally assignable.

together with the proceeds of any non-assignable choses in action that may hereafter be recovered or received by the Assignor. Further, this general assignment specifically includes all claims for refunds or abatement of all excess taxes heretofore or hereafter assessed against or collected from Assignor by the United States or any of its departments or agencies, any state or local taxing authority and the Assignor agrees to sign and execute a power of attorney or other such document(s) as required to enable Assignee to file and prosecute, compromise and/or settle all such claims before the respective taxing authority. Assignor agrees to endorse any refund checks relating to the prior operations of said Assignor's business and to deliver such checks immediately to Assignee.

2. **LEASES AND LEASEHOLD INTERESTS.** This General Assignment includes all leases and leasehold interests in any assets of Assignor; however should the Assignee determine that said lease or leasehold interest is of no value to the estate, then said interest is thereby relinquished without further liability or obligation to the Assignee.

3. **UNION CONTRACTS.** Any contract or agreement between Assignor and any Labor or Trade Union remains in force as between the Assignor and the respective Union, however the Assignee is not bound to the terms of said contract unless the Assignee specifically so agrees in writing at the time of the acceptance of this general assignment.

4. **FORWARDING OF MAIL.** Assignor authorizes the forwarding of its mail by the U.S. Postal Service as directed by Assignee.

5. **POWERS AND DUTIES OF ASSIGNEE.** Assignee shall have all powers necessary to marshal and liquidate the estate including but not limited to:

- a. To collect any and all accounts receivable and obligations owing to Assignor and not otherwise sold by Assignee;

- b. To sell or otherwise dispose of all personal property of Assignor in such manner as Assignee deems best. Assignee shall have the power to execute any and all documents necessary to effectuate the sale of said property and to convey title to same.
- c. To sell or otherwise dispose of all tangible and intangible personal property of Assignor, including but not limited to all of the Assignor's machinery, equipment, inventory, service or trademarks, trade names, patents, franchises, causes or choses in action and general intangibles in such manner as Assignee deems best. Assignee shall have the power to execute any and all documents necessary to effectuate the sale of this property and to convey title to same. In this regard, Assignee shall have the power to employ an auctioneer to appraise said assets and to conduct any public sale of the assets and to advertise said sale in such manner as Assignee deems best. Assignee shall have the power to execute bills of sale and any other such documents necessary to convey right, title and interest in Assignor's property to any bona fide buyer.
- d. To employ attorneys, accountants and any other additional personnel to whatever extent may be necessary to administer the assets and claims of the assignment estate and to assist in the preparation and filing of any and all State, County or Federal Tax Returns as required.
- e. To settle any and all claims against or in favor of Assignor, with the full power to compromise, or, in the Assignee's sole discretion, to sue or be sued, and to prosecute or defend any claim or claims of any nature whatsoever existing in favor of Assignor.
- f. To open bank accounts in the name of the Assignee or its nominees or agents and to deposit assigned assets or the proceeds thereof in such bank accounts and to draw checks thereon and with the further power and authority to do such acts and execute such papers and documents in connection with this general assignment as Assignee may deem necessary or advisable.
- g. To conduct the business of the Assignor.
- h. To apply the net proceeds arising from the operation of and liquidation of Assignor's business and assets, in the following amounts as to amounts only and not time of distribution, as follows:
 - (1) FIRST, to deduct all sums which Assignee shall pay for the discharge of any indebtedness which under the law is entitled to priority of payment.
 - (2) SECOND, all costs and expenses incidental to the administration of the assignment estate, including the payment of a reasonable fee to the Assignee and the payment of reasonable compensation for the services of

attorneys for the Assignee, accountants to the Assignee, attorneys to the Assignor for services related to the making of and administration of the general assignment and any other professionals the Assignee deems necessary to properly administer the assignment estate, as well as the cost of defense and satisfaction of indemnification claims pursuant to Paragraph 7 below.

- (3) THIRD, all federal taxes of any nature whatsoever owing as of the date of this general assignment, or other such claim of any federal governmental agency as defined under 31 U.S.C. §3713, including but not limited to federal withholding taxes, federal unemployment taxes and any other federal income, excise, property and employment taxes.
- (4) FOURTH, all state, county and municipality taxes of any nature whatsoever owing as of the date of this general assignment, including but not limited to employment, property and income taxes.
- (5) FIFTH, with the exception of those classes set forth above, all distributions to other creditors shall be, within each class, pro-rata in accordance with the terms of each creditor's indebtedness, until all such debts are paid in full. No payment shall be made to any creditor whose claim is otherwise disputed until such time as that creditor's claim is resolved. The creditor's otherwise pro-rata share of such distribution shall be fully reserved for by the Assignee until such time as the dispute is resolved. Disputed claims shall include a dispute related to any avoidance action the Assignee may have under state law. The Assignee may make interim distributions whenever the Assignee has accumulated sufficient funds to enable it to make a reasonable distribution. No distribution shall be in an amount less than \$100,000 (in the aggregate) except the final distribution.
- (6) SIXTH, any monies (distributions) unclaimed by creditors ninety days after the final distribution to unsecured creditors (if any) or the termination of the administration of the estate created by this general assignment, shall be re-distributed to all known unsecured creditors, being those creditors who cashed their respective dividend checks from the assignment estate, so long as any such distribution exceeds one percent of each such creditor's allowed claim.
- (7) SEVENTH, the surplus, if any, of the assignment estate funds, when all debts of Assignor shall have been paid in full, shall be paid and transferred to the holders of the equity of Assignor, as per the Certificate of Incorporation of Assignor and the list of equity holders provided with the making of this general assignment.

- i. To do and perform any and all other acts necessary and proper for the liquidation or other disposition of the assets, including but not limited to abandonment, and the distribution of the proceeds derived therefrom to Assignor's creditors.

6. **RIGHTS OF CREDITORS.** All rights and remedies of the creditors against any surety or sureties for the Assignor are hereby expressly reserved and nothing herein shall prevent the creditors or any of them from suing any third parties or persons who may be liable to any of the creditors for all or any part of their claims against the Assignor, or from enforcing or otherwise obtaining the full benefit of any mortgage, charge, pledge, lien or other security which they now hold on any property, creditors or effects of the Assignor.

7. **LIABILITY OF ASSIGNEE; INDEMNIFICATION.** It is understood and agreed that neither the Assignee nor any of its employees, officers, agents or representatives will assume any personal liability or responsibility for any of its acts as Assignee herein, but its obligation shall be limited to the performance of the terms and conditions of the general assignment in good faith and in the exercise of its best business judgment. The Assignee shall be indemnified by the assignment estate for any claims brought by any party against the Assignee for any of its acts as Assignee except for the Assignee's gross negligence or willful misconduct.

8. **WARRANTIES OF ASSIGNOR.** Assignor hereby warrants as follows:

Assignor, through its officers and directors, shall perform any and all acts reasonably necessary and proper to assist the Assignee in its orderly liquidation of the Assignor's assets, the collection of any and all monies owing the Assignor and in the distribution of said monies and proceeds of asset sales to the Assignor's creditors; provided, however, the officers and directors of Assignor shall only provide such assistance to the Assignee to the extent, and on the condition that, they are reasonably compensated for such services.

9. **POWER OF ATTORNEY.** The Assignor, by this General Assignment hereby grants the Assignee a general power of attorney, which power of attorney specifically includes the right of the Assignee to prosecute any action in the name of the Assignor as Attorney in Fact. Further, on the date the General Assignment is accepted by the Assignee, the Assignee shall succeed to all of the rights and privileges of Assignor, including any attorney-client privilege, in respect to any potential or actual claims, cases, controversies, causes of action, etc. and shall be deemed to be a representative of the Assignor with respect to all such potential or actual claims, cases, controversies, causes of action, etc.

10. **ACCEPTANCE BY ASSIGNEE.** By execution of this general assignment, the Assignee does hereby accept the estate herein created and agrees to faithfully perform its duties according to the best of the Assignee's skill, knowledge and ability. It is understood that the Assignee shall receive reasonable compensation for its services in connection with this estate. Reasonable compensation is defined to mean a fee of \$90,000. Reasonable compensation does not replace or subsume the reimbursement of all the Assignee's expenses incurred as a result of the administration of the assignment estate from the proceeds generated therefrom.

- (6) SIXTH, any monies (distributions) unclaimed by creditors ninety days after the final distribution to unsecured creditors (if any) or the termination of the administration of the estate created by this general assignment, shall be re-distributed to all known unsecured creditors, being those creditors who cashed their respective dividend checks from the assignment estate, so long as any such distribution exceeds one percent of each such creditor's allowed claim.
- (7) SEVENTH, the surplus, if any, of the assignment estate funds, when all debts of Assignor shall have been paid in full, shall be paid and transferred to the holders of the equity of Assignor, as per the Certificate of Incorporation of Assignor and the list of equity holders provided with the making of this general assignment.

- 1. To do and perform any and all other acts necessary and proper for the liquidation or other disposition of the assets, including but not limited to abandonment, and the distribution of the proceeds derived therefrom to Assignor's creditors.

6. **RIGHTS OF CREDITORS.** All rights and remedies of the creditors against any surety or sureties for the Assignor are hereby expressly reserved and nothing herein shall prevent the creditors or any of them from suing any third parties or persons who may be liable to any of the creditors for all or any part of their claims against the Assignor, or from enforcing or otherwise obtaining the full benefit of any mortgage, charge, pledge, lien or other security which they now hold on any property, creditors or effects of the Assignor.

7. **LIABILITY OF ASSIGNEE; INDEMNIFICATION.** It is understood and agreed that neither the Assignee nor any of its employees, officers, agents or representatives will assume any personal liability or responsibility for any of its acts as Assignee herein, but its obligation shall be limited to the performance of the terms and conditions of the general assignment in good faith and in the exercise of its best business judgment. The Assignee shall be indemnified by the assignment estate for any claims brought by any party against the Assignee for any of its acts as Assignee except for the Assignee's gross negligence or willful misconduct.

8. **WARRANTIES OF ASSIGNOR.** Assignor hereby warrants as follows:
 Assignor, through its officers and directors, shall perform any and all acts reasonably necessary and proper to assist the Assignee in its orderly liquidation of the Assignor's assets, the collection of any and all monies owing the Assignor and in the distribution of said monies and proceeds of asset sales to the Assignor's creditors; provided, however, the officers and directors of Assignor shall only provide such assistance to the Assignee to the extent, and on the condition that, they are reasonably compensated for such services.


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IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written:
 Cohera Medical, Inc.

By: 

Patrick Daly
President and Chief Executive Officer



Attested to by: _____
Its Secretary

Assignee Acceptance by: _____

Geoffrey L. Berman, Senior Managing Director of Development Specialists, Inc., as sole and managing member of DSI Assignments, LLC, solely in its capacity as assignee for the benefit of creditors of Cohera Medical, Inc.

Date of Acceptance: _____


65312797.6

CONSENT TO ASSIGNMENT BY STOCKHOLDERS

We, the undersigned, being (i) the holders of a majority of the outstanding voting capital stock of Cohera Medical, Inc., a Delaware corporation ("Cohera Medical") voting together as one class, and (ii) the holders of a majority of outstanding shares of Series F Preferred Stock of Cohera Medical voting as a separate class, do hereby give our consent to the within assignment and transfer of the property of said corporation.

KKR CHROME INVESTORS L.P.

By: KKR Chrome Investors GP, LLC, its
General Partner

By: 

Print Name: ALI SATVAT

Title: VICE PRESIDENT

Date: 10/2/18

I consent to the matter above with respect to
the following number of shares I own:

Common Stock: _____

Series E-1 Stock: _____

Series E-2 Stock: _____

Series F Stock: All Shares



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

In re:

COHERA MEDICAL, INC.,
a Delaware corporation,

Assignor,

C.A. No. _____

To:

DSI ASSIGNMENTS, LLC,
A Delaware Limited Liability Company,

Assignee.

VERIFICATION TO PETITION

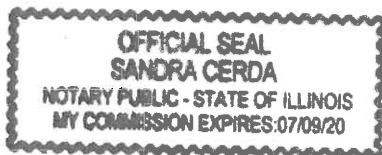
STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

I, Steve L. Victor a Senior Managing Director of Development Specialists, Inc., the sole and Managing Member of DSI Assignments, LLC, solely in its capacity as Assignee for the Benefit of Creditors of Cohera Medical, Inc., having been duly sworn, do hereby declare that I have reviewed the Verified Petition for Assignment for the Benefit of Creditors, and the statements set forth therein are true and correct to the best of my knowledge, information, and belief.

Steven L. Victor

SWORN TO AND SUBSCRIBED before me this 4th day of October, 2018.



Notary Public

EFiled: Oct 04 2018 05:26PM EDT
Transaction ID 62523910
Case No. 2018-0718-
SUPPLEMENTAL INFORMATION PURSUANT TO RULE 3(A)
OF THE RULES OF THE COURT OF CHANCERY



The information contained herein is for the use by the Court for statistical and administrative purposes only. Nothing stated herein shall be deemed an admission by or binding upon any party.

1. Caption of Case:

In re: COHERA MEDICAL, INC., a Delaware Corporation, Assignor

To: DSI ASSIGNMENTS, LLC, a Delaware Limited Liability Company, Assignee

2. Date Filed: 10/04/2018

3. Name and address of counsel for plaintiff(s): [Assignee]

Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801

Christopher A. Ward (Bar No. 3877)

Stephen J. Astringer (Bar No. 6375)

4. Short statement and nature of claim asserted:

Petition for Assignment for the Benefit of Creditors Under 10 Del. C. Section 7381

5. Substantive field of law involved (check one):

- | | | |
|--|---|--|
| <input type="checkbox"/> Administrative law | <input type="checkbox"/> Labor law | <input type="checkbox"/> Trusts, Wills and Estates |
| <input checked="" type="checkbox"/> Commercial law | <input type="checkbox"/> Real Property | <input type="checkbox"/> Consent trust petitions |
| <input type="checkbox"/> Constitutional law | <input type="checkbox"/> 348 Deed Restriction | <input type="checkbox"/> Partition |
| <input type="checkbox"/> Corporation law | <input type="checkbox"/> Zoning | <input type="checkbox"/> Rapid Arbitration (Rules 96,97) |
| <input type="checkbox"/> Trade secrets/trade mark/or other intellectual property | <input type="checkbox"/> Other | |

6. Related cases, including any Register of Wills matters (this requires copies of all documents in this matter to be filed with the Register of Wills):

N/A

7. Basis of court's jurisdiction (including the citation of any statute(s) conferring jurisdiction):

10 Del. C. Section 7381

8. If the complaint seeks preliminary equitable relief, state the specific preliminary relief sought.

N/A

9. If the complaint seeks a TRO, summary proceedings, a Preliminary Injunction, or Expedited Proceedings, check here . (If #9 is checked, a Motion to Expedite must accompany the transaction.)

10. If the complaint is one that in the opinion of counsel should not be assigned to a Master in the first instance, check here and attach a statement of good cause.



Signature of Attorney of Record & Bar ID