



C L A R E L O C K E

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The Honorable Scott S. Harris  
Clerk of the Supreme Court of the United States  
One First Street, NE  
Washington, D.C. 20543

Re: *Fredric N. Eshelman v. Puma Biotechnology, Inc.*, No. 21A14  
Supplemental Information Regarding Pending Application for a Stay

Dear Mr. Harris:

I write on behalf of my client, Dr. Fredric N. Eshelman, to notify the Court of additional information relevant to Dr. Eshelman's Application to Stay the Fourth Circuit's Mandate, filed on August 3, 2021.

Late yesterday, we were alerted that Puma filed with the SEC a Current Report (Form 8-K)—an update that companies can file in between their regular required reports—on July 29, 2021. That filing occurred after Dr. Eshelman moved the Fourth Circuit to stay its mandate (and before Puma's response was due), but before his renewed Application to this Court.

Dr. Eshelman's prior filing stated that:

[Puma Biotechnologies Inc.] [h]as pledged "substantially all of [its] personal property other than [its] intellectual property" and "65% of [its] issued and outstanding capital stock of [its] subsidiaries Puma Biotechnology Ltd. and Puma Biotechnology B.V." to secure a \$100 million credit facility (at an "effective interest rate" of "12.75%") under which "[n]o additional money remains available to [it]."<sup>1</sup>

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<sup>1</sup> Application at 25 & n.24 (quoting Puma's Quarterly Report (Form 10-Q) (May 6, 2021)).



In its 8-K, Puma states that it has paid off its \$100 million outstanding to its original lender plus \$9.2 million in “accrued interest, applicable exit, prepayment[,] and legal fees”<sup>2</sup> *by taking out \$100 million in additional debt.*<sup>3</sup> While Puma’s original loan was secured by “substantially all of [Puma’s] personal property *other than [its] intellectual property*” its new debt is “secured by substantially all of [Puma’s] assets, *including its intellectual property*,”<sup>4</sup> meaning Puma no longer has any unencumbered assets that it could sell to pay a judgment. The agreement also restricts Puma’s ability to take on additional debt.<sup>5</sup>

Under the arrangement, Puma has the option of selling up to \$25 million in additional notes to obtain more cash if it fulfills “certain conditions,”<sup>6</sup> but Puma has encumbered all of its intellectual property to obtain that right—a bad sign for a pharmaceutical company. And Puma’s shell game, in which it takes on new debt to pay the old, is further reason for concern. At bottom, Puma’s recently filed 8-K confirms the deterioration of Puma’s financial condition and further demonstrates that Puma will not be able to pay Dr. Eshelman’s judgment if its supersedeas bond is released—thereby confirming that Dr. Eshelman will be irreparably harmed absent a stay.

I would appreciate it if you would circulate this letter to the Chief Justice, to whom Dr. Eshelman’s Application was directed.

Sincerely,

/s/ Elizabeth M. Locke, P.C.  
Elizabeth M. Locke, P.C.

cc: All Counsel of Record

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<sup>2</sup> Puma Biotechnologies Inc., Current Report (Form 8-K) (July 29, 2021), <https://www.sec.gov/ix?doc=/Archives/edgar/data/1401667/000119312521229184/d155853d8k.htm>. (“As described below, on July 23, 2021 ..., Puma Biotechnology, Inc. ... repaid the \$100 million outstanding under its prior credit facility, as well as all accrued interest, applicable exit, prepayment and legal fees owed to the lenders under the prior credit facility in an amount of approximately \$9.2 million, using cash on hand and \$100 million in new borrowings from the issuance of notes under the note purchase agreement .... entered into on the Effective Date.”).

<sup>3</sup> *Id.* (“On the Effective Date, the Company entered into the Note Purchase Agreement with [Athyrium] as administrative agent ... and the Company agreed to issue to such Purchasers, notes payable by the Company. On the Effective Date, the Company issued to the Purchasers notes in an aggregate principal amount for all such notes of \$100.0 million.”).

<sup>4</sup> *Id.* (“The obligations of the Company under the Note Purchase Agreement are secured by substantially all of the Company’s assets, including its intellectual property. The Company also pledged 65% of the issued and outstanding capital stock of its subsidiaries, Puma Biotechnology Ltd. and Puma Biotechnology B.V.”).

<sup>5</sup> *Id.* (“The negative covenants include, among others, restrictions on the Company’s transferring collateral, incurring additional indebtedness, engaging in mergers or acquisitions, paying dividends or making other distributions, making investments, creating liens, selling assets and suffering a change in control, in each case subject to certain exceptions.”).

<sup>6</sup> *Id.* (“Subject to satisfaction of certain conditions set forth in the Note Purchase Agreement, \$25.0 million in additional notes remains available to the Company under the Note Purchase Agreement.”).