

Raptor Pharmaceutical Corp  
Form SC 14D9  
September 26, 2016  
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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**

**SCHEDULE 14D-9**

**(Rule 14d-101)**

**Solicitation/Recommendation Statement**

**Under Section 14(d)(4) of the Securities Exchange Act of 1934**

**RAPTOR PHARMACEUTICAL CORP.**

**(Name of Subject Company)**

**RAPTOR PHARMACEUTICAL CORP.**

**(Name of Person Filing Statement)**

**Common Stock, par value \$0.001 per share**

**(Title of Class of Securities)**

**75382F106**

**(CUSIP Number of Class of Securities)**

**Julie Anne Smith**

**President and Chief Executive Officer**

**Raptor Pharmaceutical Corp.**

**7 Hamilton Landing, Suite 100**

**Novato, California 94949**

**(415) 408-6200**

**(Name, address and telephone number of person authorized to receive notices and communications**

**on behalf of the persons filing statement)**

*With copies to:*

**Charles K. Ruck**

**Kathleen M. Wells**

**Latham & Watkins LLP**

**140 Scott Drive**

**Menlo Park, California 94025**

**(650) 328-4600**

.. Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

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**ITEM 1. SUBJECT COMPANY INFORMATION.**

**Name and Address.**

The name of the subject company is Raptor Pharmaceutical Corp., a Delaware corporation ( *Raptor* ). The address of Raptor's principal executive office is 7 Hamilton Landing, Suite 100, Novato, California 94949. The telephone number of Raptor's principal executive office is (415) 408-6200.

**Securities.**

The title of the class of equity securities to which this Solicitation/Recommendation Statement on Schedule 14D-9 (together with any exhibits and annexes attached hereto, this *Schedule 14D-9* ) relates is Raptor's common stock, par value \$0.001 per share ( *Common Stock* ). As of September 21, 2016, there were (i) 85,734,327 shares of Common Stock (the *Shares* ) issued and outstanding, (ii) 8,921,475 Shares issuable upon the exercise of outstanding options, (iii) 786,654 Shares issuable upon the vesting of outstanding restricted stock units and (iv) 3,428,571 Shares issuable upon conversion of Raptor's outstanding 8.0% Convertible Senior Notes due 2019 (the *Convertible Notes* ). In addition, Raptor anticipates that 95,804 Shares will be issued pursuant to Raptor's 2013 Employee Stock Purchase Plan as of October 7, 2016, the anticipated last date of the final offering period.

**ITEM 2. IDENTITY AND BACKGROUND OF FILING PERSON.**

**Name and Address.**

The name, business address and business telephone number of Raptor, which is both the person filing this Schedule 14D-9 and the subject company, are set forth in Item 1 above under the heading *Name and Address*.

**Tender Offer.**

This Schedule 14D-9 relates to the tender offer by Misneach Corporation, a Delaware corporation ( *Merger Sub* ) and an indirect wholly owned subsidiary of Horizon Pharma plc, a public limited company organized under the laws of Ireland ( *Parent* or *Horizon Pharma* ), to purchase all of the issued and outstanding Shares at a purchase price of \$9.00 per Share (the *Offer Price* ), net to the holder thereof, in cash, without interest thereon (less any applicable withholding taxes), upon the terms and subject to the conditions set forth in the Offer to Purchase, dated September 26, 2016 (as amended or supplemented from time to time, the *Offer to Purchase* ), and in the related Letter of Transmittal (as amended or supplemented from time to time, the *Letter of Transmittal*, which, together with the Offer to Purchase, constitute the *Offer* ). The Offer is described in a Tender Offer Statement on Schedule TO (as amended or supplemented from time to time, the *Schedule TO* ) filed by Parent and Merger Sub with the United States Securities and Exchange Commission (the *SEC* ) on September 26, 2016. The Offer to Purchase and Letter of Transmittal are filed as Exhibits (a)(1) and (a)(2), respectively, to this Schedule 14D-9 and are incorporated herein by reference.

The Offer is being made pursuant to an Agreement and Plan of Merger, dated as of September 12, 2016, by and among Parent, Merger Sub and Raptor (as it may be amended or modified from time to time, the *Merger Agreement* ). The Merger Agreement provides, among other things, that as soon as practicable following the time Merger Sub accepts, for the first time, for payment Shares validly tendered and not validly withdrawn pursuant to the Offer (the *Acceptance Time* ) and subject to the satisfaction or waiver of the other conditions set forth in the Merger Agreement, Merger Sub will be merged with and into Raptor (the *Merger* ), with Raptor continuing as the surviving corporation (the *Surviving Corporation* ) and an indirect wholly owned subsidiary of Parent. The Merger will be effected under Section 251(h) of the General Corporation Law of the State of Delaware (as amended, the *DGCL* ), which permits

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completion of the Merger upon the acquisition by Merger Sub in the Offer of at least such percentage of Raptor's stock as would be required to adopt the Merger Agreement at a meeting of Raptor's stockholders. Accordingly, if, following the Offer, a number of Shares (not including any Shares tendered pursuant to guaranteed delivery procedures for which the underlying Shares have

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not been delivered) have been tendered such that Merger Sub holds a majority of the Shares, the Merger Agreement contemplates that the parties will cause the closing of the Merger as soon as practicable without a vote of Raptor's stockholders in accordance with Section 251(h) of the DGCL.

The obligation of Merger Sub to purchase Shares validly tendered (and not validly withdrawn) pursuant to the Offer is subject to the satisfaction or waiver of a number of conditions set forth in the Merger Agreement and described in more detail in the Offer to Purchase, including, among other things, (i) that there shall have been validly tendered and not validly withdrawn prior to the Expiration Time (as defined below) that number of Shares that, together with the Shares then owned by Parent, Merger Sub and their respective controlled affiliates (if any), represents one more than 50% of the sum of (x) all then outstanding Shares (not including Shares tendered pursuant to guaranteed delivery procedures for which the underlying Shares have not been delivered) plus (y) the aggregate number of Shares issuable to holders of options to purchase Shares (the **Company Options**) from which Raptor has received valid notices of exercise (including payment of any applicable exercise price in accordance with the terms of Raptor's stock plans and applicable award agreement) prior to the expiration of the Offer (and as to which Shares have not yet been issued to such exercising holders of Company Options), plus (z) the aggregate number of Shares issuable to holders of Convertible Notes from which Raptor has received valid notices of conversion to Shares in accordance with the Convertible Notes prior to the expiration of the Offer (and as to which Shares have not yet been issued to such exercising holders of Convertible Notes); (ii) subject to certain materiality exceptions, the truth and accuracy of certain representations and warranties of Raptor contained in the Merger Agreement; (iii) the expiration or termination of any applicable waiting period (and extensions thereof) relating to the Offer under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the **HSR Act**); (iv) completion of the ten consecutive business day marketing period as defined in the Merger Agreement; (v) the absence of a material adverse effect on Raptor and (vi) certain other customary conditions.

At the effective time of the Merger (the **Effective Time**), by virtue of the Merger and without any action on the part of the holders of any Shares, each Share that is outstanding immediately prior to the Effective Time (but excluding any Shares (i) owned by Parent, Merger Sub or Raptor or any direct or indirect wholly owned subsidiary of Parent, Merger Sub or Raptor, (ii) irrevocably accepted for purchase pursuant to the Offer or (iii) held by stockholders who are entitled to demand and who shall have properly and validly perfected their appraisal rights under the DGCL) will be automatically converted into the right to receive an amount in cash equal to the Offer Price (the **Merger Consideration**), without interest thereon (less any required withholding taxes), upon the surrender of the certificate representing such Share.

Each Company Option that is outstanding as of immediately prior to the Effective Time will accelerate and become fully vested and exercisable immediately prior to the Effective Time. Effective as of the Effective Time, by virtue of the Merger and without any action on the part of the holders thereof, each Company Option that is then outstanding and unexercised will be canceled and terminated as of the Effective Time, and each holder of each such Company Option with an exercise price per Share that is less than the Offer Price will be paid an amount in cash (without interest), if any, equal to the product obtained by multiplying (x) the aggregate number of Shares underlying such Company Option immediately prior to the Effective Time, by (y) the amount by which the Offer Price exceeds the per share exercise price of such Company Option, less any applicable withholding taxes (the **Option Consideration**); provided, if it is reasonably determined that such Company Options cannot be automatically canceled and converted into the right to receive the Option Consideration in accordance with the terms of the applicable Raptor equity plan and other terms of such Company Options, including those set forth in any separate agreement between Raptor and the holder(s) of such Company Options, the holder(s) of such Company Options shall be required, prior to receiving the Option Consideration payable in respect of such Company Options under the Merger Agreement, to deliver to the Surviving Corporation an option cancellation agreement in a form reasonably satisfactory to the Surviving Corporation in respect of such Company Options. Each Company Option that has an exercise price per Share that is

equal to or greater than the Offer Price will be canceled at the Effective Time and terminated without any cash payment or other consideration being made to such optionholder.

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Each restricted stock unit award (each, a *Company RSU Award* ) that is outstanding as of immediately prior to the Effective Time will become fully vested immediately prior to the Effective Time. In lieu of an issuance of Shares in settlement of such vested Company RSU Awards, as of the Effective Time, by virtue of the Merger and without any action on the part of the holders thereof, each Company RSU Award will be canceled and terminated and converted into the right to receive an amount in cash (without interest) equal to the product obtained by multiplying (x) the aggregate number of Shares underlying such Company RSU Award immediately prior to the Effective Time, by (y) the Offer Price, less any applicable withholding taxes.

Merger Sub commenced (within the meaning of Rule 14d-2 promulgated under the Securities Exchange Act of 1934, as amended (the *Exchange Act* )) the Offer on September 26, 2016. Subject to the terms and on the conditions set forth in the Merger Agreement and the Offer, the Offer is scheduled to expire at midnight, New York time, at the end of the day on October 24, 2016 (the *Expiration Time*, unless Merger Sub extends the Offer pursuant to and in accordance with the terms of the Merger Agreement, in which event the *Expiration Time* will mean the latest time and date at which the Offer, as so extended, will expire. The date on which the Expiration Time occurs is referred to herein as the *Expiration Date* ). October 24, 2016 is the twentieth business day (for this purpose calculated in accordance with Rules 14d-1(g)(3) and 14d-2 promulgated under the Exchange Act) following commencement of the Offer.

The foregoing summary of the Offer, the Merger and the Merger Agreement do not purport to be complete, and each is qualified in its entirety by the descriptions contained in the Offer to Purchase, the Letter of Transmittal and the Merger Agreement, which are filed as Exhibits (a)(1), (a)(2) and (e)(1), respectively, to this Schedule 14D-9 and are incorporated herein by reference.

The Offer to Purchase states that Parent's principal executive office is located at Connaught House, 1st Floor, 1 Burlington Road, Dublin 4, D04 C5Y6, Ireland and that its telephone number at this location is +011.353.1.772.2100. The Offer to Purchase states that Merger Sub's principal executive office is located at 150 South Saunders Road, Lake Forest, IL 60045 and that its telephone number at this location is (224) 383-3000.

Raptor has filed this Schedule 14D-9, and Parent and Merger Sub have filed the Schedule TO, Offer to Purchase, Letter of Transmittal and related documents, with the SEC, and these documents are available free of charge at the website maintained by the SEC at [www.sec.gov](http://www.sec.gov). Upon filing this Schedule 14D-9 with the SEC, Raptor will make this Schedule 14D-9 available free of charge on its website at <http://ir.raptorpharma.com/sec.cfm>.

### **ITEM 3. PAST CONTACTS, TRANSACTIONS, NEGOTIATIONS AND AGREEMENTS.**

Except as described in this Schedule 14D-9, or as otherwise incorporated herein by reference, to the knowledge of Raptor, as of the date of this Schedule 14D-9, there are no material agreements, arrangements or understandings, nor any actual or potential conflict of interest between Raptor or its affiliates, on the one hand, and (i) Raptor or its executive officers, directors or affiliates or (ii) Parent, Merger Sub or their respective executive officers, directors or affiliates, on the other hand.

#### **Arrangements with Merger Sub and Parent.**

##### ***Merger Agreement***

The summary of the Merger Agreement contained in Section 11 of the Offer to Purchase under the heading *The Merger Agreement* and the descriptions of the terms and conditions of the Offer contained in the Offer to Purchase are incorporated herein by reference. The summary of the Merger Agreement does not purport to be complete and is



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qualified in its entirety by reference to the Merger Agreement, which is filed as Exhibit (e)(1) to this Schedule 14D-9 and is incorporated herein by reference.

The Merger Agreement has been included to provide investors and stockholders with information regarding its terms and is not intended to provide any factual information about Raptor, Parent or Merger Sub. The

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representations, warranties and covenants contained in the Merger Agreement were made solely for the purposes of the Merger Agreement and as of specific dates; were solely for the benefit of the parties to the Merger Agreement; are not intended as statements of fact to be relied upon by Raptor's stockholders or other security holders, but rather as a way of allocating the risk between the parties to the Merger Agreement in the event the statements therein prove to be inaccurate; have been modified or qualified by certain confidential disclosures that were made between the parties in connection with the negotiation of the Merger Agreement, which disclosures are not reflected in the Merger Agreement itself; may no longer be true as of a given date; and may apply standards of materiality in a way that is different from what may be viewed as material by Raptor's stockholders or other security holders. Raptor's stockholders or other security holders are not third-party beneficiaries under the Merger Agreement (except with respect to, (i) from and after the Acceptance Time, the right of holders of Shares accepted for payment in the Offer to receive the Offer Price in accordance with the Offer and (ii) from and after the Effective Time, the right of holders of Shares and other securities of Raptor to receive an amount in cash equal to the Merger Consideration) and such stockholders or other security holders should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or circumstances of Raptor, Parent or Merger Sub. Moreover, information concerning the subject matter of the representations and warranties may have changed after the date of the Merger Agreement, which subsequent information may or may not be fully reflected in Raptor's or Parent's public disclosures.

***Confidentiality Agreements***

On June 6, 2016, Raptor and Parent entered into a confidentiality agreement (the ***Confidentiality Agreement***), pursuant to which, among other things, Parent agreed, subject to certain exceptions, to keep confidential certain non-public information relating to Raptor in connection with a possible transaction with Raptor. The Confidentiality Agreement also includes a one-year standstill provision that terminates in the event that Raptor enters into a definitive agreement to effectuate certain transactions. The summary of the Confidentiality Agreement contained in Section 11 of the Offer to Purchase under the heading ***Confidentiality Agreement*** is incorporated herein by reference. The foregoing summary of the Confidentiality Agreement does not purport to be complete and is qualified in its entirety by reference to the Confidentiality Agreement, which is filed as Exhibit (e)(5) to this Schedule 14D-9 and is incorporated herein by reference.

***Tender and Support Agreements***

In connection with the Merger Agreement, Parent and Merger Sub entered into tender and support agreements (the ***Tender and Support Agreements***) with each member of Raptor's Board of Directors (the ***Raptor Board***) and each of Raptor's executive officers (collectively, the ***Committed Stockholders***) pursuant to which the Committed Stockholders agreed to tender all Shares owned by such Committed Stockholders, promptly, and in any event no later than ten business days following the commencement of the Offer, and not to transfer or cause or permit any transfer of their Shares other than in connection with certain limited exceptions. The Tender and Support Agreements will terminate and will have no further force or effect on the earlier of (i) the date upon which the Merger Agreement is validly terminated or (ii) the date upon which the Merger becomes effective. The summary of the Tender and Support Agreements contained in Section 11 of the Offer to Purchase under the heading ***Tender and Support Agreements*** is incorporated herein by reference. The foregoing summary of the Tender and Support Agreements does not purport to be complete and is qualified in its entirety by reference to the Tender and Support Agreements, the form of which is filed as Exhibit (e)(6) to this Schedule 14D-9 and is incorporated herein by reference.

***Debt Commitment Letter***

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In connection with the execution and delivery of the Merger Agreement, Horizon Pharma, Inc., an indirect wholly owned subsidiary of Parent ( *HPI* ), has entered into an amended and restated debt commitment letter (the *Debt Commitment Letter* ) with Bank of America, N.A., JPMorgan Chase Bank, N.A., Jefferies Finance LLC, Citigroup Global Markets, Inc., Cowen and Company, LLC and Cowen Structured Holdings, Inc.

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(collectively the *Debt Commitment Parties* ) pursuant to which the Debt Commitment Parties have provided \$675.0 million in debt commitments. The foregoing summary of the Debt Commitment Letter does not purport to be complete and is qualified in its entirety by reference to the Debt Commitment Letter, a copy of which is filed as Exhibit (e)(7) to this Schedule 14D-9 and is incorporated herein by reference.

**Arrangements with Current Executive Officers and Directors of Raptor.**

Certain of Raptor's executive officers and members of the Raptor Board may have or be deemed to have interests in the Offer and the Merger and the other transactions contemplated by the Merger Agreement that may be different from, or in addition to, those of Raptor's stockholders generally. Those interests may create potential or actual conflicts of interests. The Raptor Board was aware of those interests and considered them, among other matters, in evaluating and negotiating the Merger Agreement and in reaching its decision to approve the Merger Agreement and the transactions contemplated thereby. As described in more detail below, those interests include:

the full vesting acceleration of Company Options currently held by any executive officer or director, with such vesting acceleration effective as of immediately prior to the Effective Time and the cancellation of all Company Options currently held by any executive officer or director that remain outstanding and unexercised as of the Effective Time and conversion of such Company Options into the right to receive a cash payment equal to the product obtained by multiplying (i) the total number of Shares subject to such Company Option immediately prior to the Effective Time and (ii) the excess, if any, of (x) the Offer Price over (y) the exercise price payable per Share under such Company Option;

the full vesting acceleration of Company RSU Awards currently held by any executive officer or director outstanding as of the Effective Time, and the cancellation of all such Company RSU Awards outstanding as of the Effective Time and conversion of such Company RSU Awards into the right to receive a cash payment equal to the product obtained by multiplying (i) the total number of Shares otherwise issuable with regard to such Company RSU Awards immediately prior to the Effective Time and (ii) the Offer Price;

the receipt of certain payments and benefits under the executive officers' individual employment agreements and change in control severance benefits agreements upon certain types of terminations of employment that occur before or following the Effective Time;

the receipt of certain retention bonus payments under certain executive officers' individual retention bonus agreements;

the receipt of certain transaction bonus payments to be allocated to the executive officers under a retention bonus pool prior to the Effective Time; and

the entitlement to indemnification benefits in favor of directors and officers of Company.

For further information with respect to the arrangements between Raptor and its named executive officers, see the information included in Item 8 under the heading *Named Executive Officer Golden Parachute Compensation* (which

is hereby incorporated into this Item 3 by reference).

***Consideration for Shares***

If Raptor's directors and executive officers who own Shares tender their Shares for purchase pursuant to the Offer, they will receive the same Offer Price on the same terms and conditions as the other stockholders of Raptor who tender Shares. If Raptor's executive officers and directors do not tender the Shares they own in the Offer, upon consummation of the Merger, such Shares will represent the right to receive the Merger Consideration on the same terms and conditions as the other stockholders of Raptor.

As of September 21, 2016, Raptor's directors and executive officers beneficially owned in the aggregate 840,952 Shares, which excludes any Shares issuable upon exercise or settlement of Company ESPP Rights (as defined below), Company Options and Company RSU Awards held by such individuals. If the directors and executive

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officers were to tender all of such Shares pursuant to the Offer and those Shares were accepted for purchase and purchased by Merger Sub, the directors and executive officers would receive an aggregate of \$7,568,568 in cash, without interest and less any applicable withholding taxes. For a description of the treatment of Company Options and Company RSU Awards held by Raptor's directors and executive officers, see below under the heading *Effect of the Merger on Stock Awards*. For a description of Company ESPP Rights held by the executive officers of Raptor, see below under the heading *Effect of the Merger on Employee Stock Purchase Plan*.

The following table sets forth, as of September 21, 2016, the cash consideration that each executive officer and director of Raptor would be entitled to receive in respect of outstanding Shares beneficially owned by him or her (excluding Shares underlying Company ESPP Rights, Company Options and Company RSU Awards), assuming such individual were to tender all of his or her outstanding Shares pursuant to the Offer and those Shares were accepted for purchase and purchased by Merger Sub.

Name	Number of Shares Beneficially Owned	Consideration Payable in Respect of Shares
<b>Executive Officers</b>		
Ashley C. Gould	9,286	\$ 83,574
David A. Happel	8,934	\$ 80,406
Krishna R. Polu, M.D.		\$
Julie Anne Smith	43,961	\$ 395,649
Michael P. Smith		\$
<b>Non-Employee Directors</b>		
Raymond W. Anderson	6,695	\$ 60,255
Suzanne L. Bruhn, Ph.D.	48,437	\$ 435,933
Richard L. Franklin, M.D., Ph.D.	6,695	\$ 60,255
Georges Gemayel, Ph.D.	2,092	\$ 18,828
Llew Keltner, M.D., Ph.D.	6,695	\$ 60,255
Gregg Lapointe	2,092	\$ 18,828
Christopher M. Starr, Ph.D.	706,065	\$ 6,354,585

***Effect of the Merger on Stock Awards***

*Stock Options.* Pursuant to the Merger Agreement, each Company Option that is outstanding as of immediately prior to the Effective Time will accelerate and become fully vested and exercisable immediately prior to the Effective Time. Effective as of the Effective Time, by virtue of the Merger and without any action on the part of the holders thereof, each Company Option that is then outstanding and unexercised will be canceled and terminated as of the Effective Time, and each holder of each such Company Option with an exercise price per Share that is less than the Offer Price will be paid an amount in cash (without interest), if any, equal to the Option Consideration; provided, if it is reasonably determined that such Company Options cannot be automatically canceled and converted into the right to receive the Option Consideration in accordance with the terms of the applicable Raptor equity plan and other terms of such Company Options, including those set forth in any separate agreement between Raptor and the holder(s) of such Company Options, the holder(s) of such Company Options shall be required, prior to receiving the Option Consideration payable in respect of such Company Options under the Merger Agreement, to deliver to the Surviving Corporation an option cancellation agreement in a form reasonably satisfactory to the Surviving Corporation in respect of such Company Options. Each Company Option that has an exercise price per Share that is equal to or

greater than the Offer Price will be canceled at the Effective Time and terminated without any cash payment or other consideration being made to such optionholder.

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As of September 21, 2016, Raptor's directors and executive officers held Company Options to purchase an aggregate of 4,109,527 Shares, of which Company Options with respect to an aggregate of 2,420,124 Shares had exercise prices below the Offer Price of \$9.00. The table below sets forth, for each of Raptor's executive officers and directors, information regarding Company Options having an exercise price per share less than \$9.00 per Share held by each such executive officer or director as of September 21, 2016.

<b>Name</b>	<b>Number of Shares Subject to Company Options Held</b>	<b>Weighted Average Exercise Price per Company Option</b>	<b>Total Consideration for Company Options</b>
<b>Executive Officers</b>			
Ashley C. Gould	44,054	\$ 3.74	\$ 231,724
David A. Happel	93,784	\$ 3.74	\$ 493,304
Krishna R. Polu, M.D.	89,152	\$ 3.74	\$ 468,940
Julie Anne Smith	567,645	\$ 5.50	\$ 1,984,926
Michael P. Smith	84,751	\$ 3.74	\$ 445,790
<b>Non-Employee Directors</b>			
Raymond W. Anderson	290,000	\$ 4.48	\$ 1,312,200
Suzanne L. Bruhn, Ph.D.	120,680	\$ 5.22	\$ 455,987
Richard L. Franklin, M.D., Ph.D.	260,000	\$ 4.65	\$ 1,131,300
Georges Gemayel, Ph.D.	7,915	\$ 5.22	\$ 29,919
Llew Keltner, M.D., Ph.D.	244,164	\$ 4.72	\$ 1,044,835
Gregg Lapointe	7,915	\$ 5.22	\$ 29,919
Christopher M. Starr, Ph.D.	610,064	\$ 5.22	\$ 2,306,948

*Restricted Stock Units.* Pursuant to the Merger Agreement, each Company RSU Award that is outstanding as of immediately prior to the Effective Time will become fully vested immediately prior to the Effective Time. In lieu of an issuance of Shares in settlement of such vested Company RSU Awards, as of the Effective Time, by virtue of the Merger and without any action on the part of the holders thereof, each Company RSU Award will be canceled and terminated and converted into the right to receive an amount in cash (without interest) equal to the product obtained by multiplying (x) the aggregate number of Shares underlying such Company RSU Award immediately prior to the Effective Time, by (y) the Offer Price, less any applicable withholding taxes.



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As of September 21, 2016, Raptor's directors and executive officers held Company RSU Awards covering an aggregate of 234,506 Shares. The table below sets forth information regarding Company RSU Awards held by each of Raptor's executive officers and directors as of September 21, 2016.

<b>Name</b>	<b>Number of Company RSU Awards Held</b>	<b>Total Consideration for Company RSU Awards</b>
<b>Executive Officers</b>		
Ashley C. Gould	36,690	\$ 330,210
David A. Happel	28,939	\$ 260,451
Krishna R. Polu, M.D.	23,781	\$ 214,029
Julie Anne Smith	64,179	\$ 577,611
Michael P. Smith	22,607	\$ 203,463
<b>Non-Employee Directors</b>		
Raymond W. Anderson	8,330	\$ 74,970
Suzanne L. Bruhn, Ph.D.	8,330	\$ 74,970
Richard L. Franklin, M.D., Ph.D.	8,330	\$ 74,970
Georges Gemayel, Ph.D.	8,330	\$ 74,970
Llew Keltner, M.D., Ph.D.	8,330	\$ 74,970
Gregg Lapointe	8,330	\$ 74,970
Christopher M. Starr, Ph.D.	8,330	\$ 74,970

***Effect of the Merger on Employee Stock Purchase Plan***

Pursuant to the Merger Agreement, Raptor shall take such actions as may be necessary to (i) operate Raptor's 2013 Employee Stock Purchase Plan (the **Company ESPP**) in accordance with its terms as in effect on the date of the Merger Agreement from the period of time commencing on the date of the Merger Agreement and ending on the Effective Time, (ii) cause any offering period that would otherwise be underway as of the Effective Time under the Company ESPP in accordance with its terms on the date of the Merger Agreement to be the final offering period under the Company ESPP and such offering period shall be terminated no later than the last payroll period that ends at least three Business Days prior to the Effective Time (the **Final Exercise Date**), (iii) make any pro-rata adjustments that may be necessary to reflect the shortened offering period (or similar period), but otherwise treat such shortened offering period (or similar period) as a fully effective and completed offering period for all purposes under the Company ESPP, (iv) cause each participant's share purchase rights under the Company ESPP (the **Company ESPP Rights**) to be exercised as of the Final Exercise Date and (v) terminate the Company ESPP as of the Effective Time. On the Final Exercise Date, the funds credited as of such date under the Company ESPP within the associated accumulated payroll withholding account for each participant under the Company ESPP shall be used to purchase Company Shares in accordance with the terms of the Company ESPP, and each share purchased thereunder immediately prior to the Effective Time will be canceled at the Effective Time and converted into the right to receive the Offer Price.

No non-employee directors participate in the Company ESPP. Raptor anticipates that Julie Anne Smith will receive 1,798 Shares upon exercise of Company ESPP Rights in connection with the final offering period of the Company ESPP. No other executive officers will participate in the final offering period of the Company ESPP.

***Continuing Employees***

Under the Merger Agreement, Parent has agreed that each employee of Raptor and any of its subsidiaries who, as of the closing of the Merger, continues to be employed with Raptor or any of its subsidiaries (each a ***Continuing Employee***), which may include Raptor's executive officers, will, for a period of twelve (12) months following the Effective Time, receive (i) a base salary or wage rate, as applicable, and annual cash bonus opportunity that is not less favorable than the base salary or wage rate (as applicable) and annual bonus opportunity provided to

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such Continuing Employee immediately prior to the Effective Time, (ii) cash and COBRA premium severance benefits that are at least as favorable as the cash and COBRA premium severance benefits provided to such Continuing Employee immediately prior to the Effective Time and (iii) other welfare benefits (excluding any equity-based or equity-related compensation and any benefits provided pursuant to any defined benefit pension plans) that are, taken as a whole, at least as favorable in the aggregate as selected in Parent's sole discretion to either (A) those generally made available to similarly situated employees of the Parent or its subsidiaries under its welfare benefit plans and programs or (B) to the compensation and benefits provided to such Continuing Employee immediately prior to the Effective Time.

The Merger Agreement further provides that to the extent that an employee benefit plan or other compensation or severance arrangement of the Surviving Corporation or any of its subsidiaries (together, the *Company Plans*), or any employee benefit plan or other compensation or severance arrangement of Parent, is made available to any Continuing Employee on or following the Effective Time, the Surviving Corporation will (and Parent will cause the Surviving Corporation to) cause to be granted to such Continuing Employee credit for all service with Raptor and its subsidiaries prior to the Effective Time solely for purposes of eligibility to participate, vesting and entitlement to benefits where length of service is relevant (provided that such service need not be credited to the extent that it would result in duplication of coverage or benefits).

The Merger Agreement further provides that Parent will (or will cause the Surviving Corporation to) use commercially reasonable efforts to ensure that (i) each Continuing Employee will be immediately eligible to participate, without any waiting time, in any and all employee benefit plans sponsored by the Surviving Corporation and its subsidiaries (other than the Company Plans) (collectively, the *New Plans*) to the extent coverage under any such New Plan replaces coverage under a comparable plan in which such Continuing Employee participated immediately prior to the Effective Time (such plans, collectively, the *Old Plans*), (ii) for purposes of each New Plan providing medical, dental, pharmaceutical, vision and disability benefits to any Continuing Employee, all waiting periods, evidence of insurability requirements and actively-at-work or similar requirements of such New Plan will be waived for such Continuing Employee and his or her covered dependents and any eligible expenses incurred by such Continuing Employee and his or her covered dependents during any unfinished portion of the plan year of the Old Plan ending on the date such Continuing Employee's participation in the corresponding New Plan begins will be given full credit under such New Plan for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such Continuing Employee and his or her covered dependents for the applicable plan year as if such amounts had been paid in accordance with such New Plan and (iii) the accounts of such Continuing Employees under any New Plan that is a flexible spending plan are credited with any unused balance in the account of such Continuing Employee under the applicable Company Plan.

***Retention and Bonus Payments***

Raptor has entered into letter agreements with each executive management team level employee providing for retention payments payable on the earliest to occur of (i) the executive officer's continued service to Raptor through May 17, 2017, (ii) the executive officer's dismissal or discharge by Raptor other than for Cause or resignation by the executive officer from Raptor for Good Reason (each as defined therein) prior to that date or (iii) the consummation of a Change in Control of Raptor prior to that date (as defined therein). In the event the executive officer ceases employment in connection with the events under (ii) or (iii) above, the retention payments are contingent on executing a general release of claims that becomes effective and irrevocable within 60 days following the termination events. The table below sets forth the retention payments for each executive officer.

Parent has also agreed to an allocation of transaction bonuses to Company employees by the Compensation Committee that may be earned based upon criteria to be determined by the Compensation Committee. In determining

the allocation of such transaction bonuses, consideration will be given by the Compensation Committee to the amount of any disallowed corporate tax deduction under Section 280G of the Code, so that the

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aggregate amount of such transaction bonuses, plus the amount of any disallowed corporate tax deductions under Section 280G of the Code resulting from any compensatory payments made in connection with the Merger, including any such transaction bonuses, will not exceed approximately \$5.94 million in the aggregate. The Compensation Committee has not allocated any transaction bonuses at this time, but intends that no more than \$2 million out of the transaction bonus pool will be allocated to any individual. Therefore a maximum of \$2 million has been attributed to each executive officer in the table below. The Compensation Committee also intends that the amount of transaction bonus that certain executive officers, including Ms. Smith, will receive will be sufficiently large to approximate the estimated amount that they would receive pursuant to a full or partial golden parachute Section 4999 excise tax gross-up payment.

In addition, the Compensation Committee of the Raptor Board generally approved the payment of 2016 target bonuses to all employees on the Closing, subject to continued employment through such date.

### *Severance and Change in Control Benefits*

Raptor previously entered into an amended and restated executive employment agreement with Ms. Smith and change in control severance agreements with each other executive officer that provide for certain severance and change in control payments and benefits upon certain terminations which are described below (such termination, a ***Qualifying Termination*** ). Pursuant to the terms of the Merger Agreement, Parent will (or will cause the Surviving Corporation to) assume and honor all of Raptor's benefit plans that provide for severance and change in control obligations in accordance with their terms as in effect immediately prior to the date of the Merger Agreement, including such agreements with Raptor's executive officers.

Under the change in control severance agreements (the ***CIC Agreements*** ) of each of Messrs. David Happel and Michael Smith, Dr. Krishna Polu and Ms. Ashley Gould, in the event the executive officer is terminated without Cause or resigns as a result of Good Reason within 18 months following a Change in Control (each as defined in each CIC Agreement), each executive officer would become entitled to the following, subject to the executive officer executing a general release of claims that becomes effective and irrevocable within 60 days following termination:

a single lump sum cash payment equal to the sum of 18 months base salary plus the executive officer's target annual bonus (assuming achievement of performance goals at 100% of target);

if the executive officer elects to receive continued healthcare coverage under COBRA, direct payment or reimbursement of health plan coverage for the executive officer and his or her covered dependents under COBRA until the earlier of 18 months or the date the executive and his or her covered dependents become eligible for healthcare coverage under another employer's plan; provided, that at Raptor's election, it may provide the executive officer with a monthly cash payment equal to the amount Raptor would have paid until the earlier of 27 months or the date the executive and his or her covered dependents become eligible for healthcare coverage under another employer's plan; and

fully accelerated vesting and immediate exercisability of each outstanding equity award, including Company Options and Company RSU Awards, held by the executive officer, which shall with respect to the Company Options remain exercisable until the earlier of the original expiration date for such Company Option or the

18-month anniversary of the termination date.

Under Ms. Julie Anne Smith's amended and restated executive employment agreement, if she is terminated without Cause or resigns as a result of Good Reason within 12 months following a Change in Control (each as defined in her employment agreement), she would become entitled to the following, subject to Ms. Smith executing a general release of claims that becomes effective and irrevocable within 60 days following termination:

a single lump sum cash payment equal to twice the sum of her base salary and target annual cash bonus;

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if she elects to receive continued healthcare coverage under COBRA, direct payment or reimbursement of health plan coverage for Ms. Smith and her covered dependents under COBRA until the earlier of 24 months or the date Ms. Smith and her covered dependents become eligible for healthcare coverage under another employer's plan; and

fully accelerated vesting and immediate exercisability of each outstanding equity award, including Company Options and Company RSU Awards, held by Ms. Smith, which shall with respect to the Company Options remain exercisable until the earlier of the original expiration date of such equity award or the second anniversary of her termination.

If the Offer is completed in accordance with the terms of the Merger Agreement, the consummation of the Offer will constitute a Change in Control under the terms of the CIC Agreements and Ms. Smith's amended and restated employment agreement. The table below describes the estimated potential payments to each of Raptor's executive officers in the event a Qualifying Termination occurs within 12 months following the Effective Time (in the case of Ms. Smith) or within 18 months following the Effective Time (in the case of Messrs. Happel and Smith, Dr. Polu and Ms. Gould), except for the value of accelerated vesting of each such executive officer's Company Options and Company RSU Awards as those amounts are disclosed in the tables above. The amounts shown reflect only the additional payments or benefits that the individual would have received upon the occurrence of a Qualifying Termination; they do not include the value of payments or benefits that would have been earned absent the Qualifying Termination. For purposes of calculating the potential payments set forth in the table below, we have assumed that the initial expiration date of the Offer and the date of Qualifying Termination were October 24, 2016 and that the Compensation Committee will determine that the criteria for earning a transaction bonus will include a termination without cause following the Effective Time and thus potentially payable as severance benefits. The amounts shown in the table are estimates only, as the actual amounts that may be paid upon an individual's termination of employment can only be determined at the actual time of such termination.

Name	Cash Severance Payment <sup>(1)</sup>	COBRA Premiums <sup>(2)</sup>	Cash Bonus Payment <sup>(3)</sup>	Retention Payment <sup>(4)</sup>	Transaction Bonus Payment <sup>(5)</sup>
Ashley C. Gould	\$ 760,000	\$ 78,023	\$ 160,000	\$ 200,000	\$ 2,000,000
David A. Happel	\$ 745,632	\$ 78,023	\$ 156,975	\$ 196,219	\$ 2,000,000
Krishna R. Polu, M.D.	\$ 760,760	\$ 78,023	\$ 160,160	\$ 200,200	\$ 2,000,000
Julie Anne Smith	\$ 1,824,000	\$ 69,354	\$ 342,000	\$ 285,000	\$ 2,000,000
Michael P. Smith	\$ 713,545	\$ 78,023	\$ 150,220	\$ 150,220	\$ 2,000,000

- (1) The amount set forth represents a cash severance payment payable in a lump sum as follows: (i) in the case of Ms. Smith, twice the sum of her base salary and target annual cash bonus; and (ii) in the case of each other executive officer, 18 months base salary plus the executive officer's target annual bonus.
- (2) The amount set forth represents the cost of continued COBRA benefits for the executive officer and any qualified beneficiary based on the incremental cost of Raptor's contribution as of September 1, 2016 to provide this coverage. In the case of Ms. Smith, COBRA benefits are payable until up to 24 months. With respect to each other executive officer, at Raptor's election, it may provide the executive officer with a monthly cash payment equal to the amount Raptor would have paid for COBRA benefits for up to 27 months.
- (3) The amount set forth represents a cash payment equal to the executive officer's 2016 annual target bonus payable in a lump sum contingent on continued employment through the Closing.

- (4) The amount set forth represents retention payments payable on the Closing, contingent on continued employment through the Closing, or if earlier, a termination without Cause or for Good Reason.
- (5) As described above, Parent has agreed to an aggregate transaction bonus pool for Company employees so that the aggregate amount of such transaction bonuses, plus the amount of any disallowed corporate tax deductions under Section 280G of the Code resulting from any compensatory payments made in connection with the Merger, including any such transaction bonuses, will not exceed approximately \$5.94 million in the aggregate. The Compensation Committee has not allocated any transaction bonuses at this time but intends that no more than \$2 million out of the transaction bonus pool will be allocated to any individual.



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### ***Transaction Committee***

In connection with the Merger, the Raptor Board approved the payment of a cash retainer payment of \$75,000 to each of Suzanne L. Bruhn and Richard L. Franklin with respect to their services on the Committee (as defined below). The payment was made following review of market data regarding fees paid to non-employee directors serving on transaction committees in similar transactions.

### ***Executive Officer and Director Arrangements Following the Merger***

While, as of the date of this Schedule 14D-9, none of Raptor's current directors or executive officers have entered into any employment, equity contribution or other agreement, arrangement or understanding with Parent or its affiliates regarding continued service with Parent or its affiliates after the Effective Time, it is possible that Parent or its affiliates may enter into service, employment or other arrangements with Raptor's directors or executive officers in the future.

### ***Director and Officer Indemnification and Insurance***

Raptor has entered into indemnity agreements ( ***Indemnity Agreements*** ) with each of its directors and executive officers. The Indemnity Agreements provide, among other things, that Raptor will hold harmless and indemnify the director or executive officer party thereto (the ***Indemnitee*** ) (i) to the fullest extent authorized or permitted by the provisions of Raptor's bylaws and the law and (ii) subject to certain exclusions, against expenses that the Indemnitee becomes legally obligated to pay because of any claim or claims made against or by the Indemnitee in connection with threatened, pending or completed actions, suits or proceedings, to which the Indemnitee is, was or at any time becomes a party or a participant, or is threatened to be made a party, by reason of the fact that the Indemnitee is, was or at any time becomes a director, officer, employee or other agent of Raptor, or is or was serving or at any time serves at Raptor's request as a director, officer, employee or other agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, including any of Raptor's subsidiaries.

In addition, the Indemnity Agreements also establish the processes and procedures for indemnification claims, advancement of expenses and costs and other determinations with respect to indemnification. The contractual rights to indemnification provided by these indemnity agreements are subject to the limitations and conditions specified in such agreements. The Indemnity Agreements are not exclusive of any other rights to indemnification or advancement of expenses to which the Indemnitee may be entitled, including pursuant to Raptor's certificate of incorporation or bylaws.

The foregoing summary of the Indemnity Agreements is qualified in its entirety by reference to the Indemnity Agreements, the form of which is filed as Exhibit (e)(8) hereto, and is incorporated herein by reference.

The Merger Agreement provides for certain indemnification and insurance rights in favor of Raptor's current and former directors, officers and employees (including any person who becomes a director, officer or employee of Raptor or any of its subsidiaries prior to the Effective Time). Specifically, the Surviving Corporation and its subsidiaries as of the Effective Time have agreed to (and Parent has agreed to cause the Surviving Corporation and such subsidiaries to) honor and fulfill in all respects the obligations of Raptor and its subsidiaries under (i) the indemnification agreements between Raptor or any of its subsidiaries and any of their respective current or former directors, officers or employees, and any person who becomes a director or officer prior to the Effective Time (the ***Indemnified Persons*** ) and (ii) the indemnification, expense advancement and exculpation provisions in the certificate of incorporation or bylaws or comparable organizational documents of Raptor or its subsidiaries in effect on the date of the Merger Agreement. In addition, for a period of six years from the Effective Time, the Surviving Corporation and its subsidiaries will (and

Parent will cause the Surviving Corporation and its subsidiaries to ensure that the certificates of incorporation and bylaws (and other similar organizational documents) of the Surviving Corporation and its subsidiaries contain provisions with respect to indemnification,

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expense advancement and exculpation that are no less favorable than the indemnification, expense advancement and exculpation provisions in the certificates of incorporation and bylaws (and other similar organizational documents) of Raptor and its subsidiaries in effect as of the date of the Merger Agreement, and during such six-year period, such provisions shall not be repealed, amended or otherwise modified in any manner adverse to the indemnified parties except as required by applicable law.

In addition, for a period of six years from the Effective Time, to the fullest extent permitted by applicable law, the Surviving Corporation and its subsidiaries will indemnify and hold harmless each Indemnified Person from and against any costs, fees and expenses (including reasonable attorneys' fees and investigation expenses), judgments, fines, losses, claims, damages, liabilities and amounts paid in settlement of or in connection with any threatened or actual action, suit, claim, proceeding, investigation, arbitration or inquiry, whether civil, criminal, administrative or investigative (each an ***Indemnified Proceeding***), to the extent such Indemnified Proceeding arises out of or pertains directly to any action or omission or alleged action or omission in such Indemnified Person's capacity as a director or officer (including as a fiduciary with respect to an employee benefit plan) of Raptor or any of its subsidiaries or by reason of the fact that such Indemnified Person is or was serving at the request of Raptor or its subsidiaries as a director or officer (including as a fiduciary with respect to an employee benefit plan) of another person at or prior to the Effective Time, including any claim with respect to the transactions contemplated by the Merger Agreement. In addition, during such six-year period, to the fullest extent permitted by applicable law, the Surviving Corporation and its subsidiaries will (and Parent will cause the Surviving Corporation and its subsidiaries to) advance all costs, fees and expenses (including reasonable attorneys' fees and investigation expenses) incurred by an Indemnified Person in connection with an Indemnified Proceeding upon receipt of an undertaking by the Indemnified Person to repay such advances if it is ultimately decided that the Indemnified Person is not entitled to indemnification under the Merger Agreement.

During the period commencing at the Acceptance Time and ending on the date that is six years from the Effective Time, Raptor and the Surviving Corporation have agreed to (and Parent has agreed to cause the Surviving Corporation to) maintain in effect directors' and officers' liability insurance in respect of acts or omissions occurring prior to or at the Effective Time, covering each person covered by Raptor's directors' and officers' liability insurance in force on the date of the Merger Agreement ( ***Current Company D&O Insurance*** ), on terms with respect to the coverage and amounts that are no less favorable than those of the Current Company D&O Insurance. However, Parent and the Surviving Corporation will not be obligated to pay an annual premium for such directors' and officers' insurance in excess of 300% of the annual amount paid by Raptor (the ***Maximum Annual Premium*** ) for coverage during the then current coverage period as of the date of the Merger Agreement. Notwithstanding the foregoing, prior to the Effective Time, Raptor may purchase a six-year tail prepaid policy on the Current Company D&O Insurance at a cost not to exceed the Maximum Annual Premium. In the event that Raptor elects to purchase such a tail policy prior to the Effective Time, the Surviving Corporation will (and Parent will cause the Surviving Corporation to) maintain such tail policy in full force and effect and continue to honor their respective obligations thereunder, in lieu of the obligations of Parent and the Surviving Corporation under the first sentence of this paragraph for so long as such tail policy is in full force and effect.

**ITEM 4. THE SOLICITATION OR RECOMMENDATION.  
Recommendation of the Raptor Board.**

At a meeting of the Raptor Board held on September 11, 2016, the Raptor Board unanimously (i) determined that the Merger Agreement and the transactions contemplated thereby, including the Offer and the Merger, were fair to and in the best interests of Raptor and its stockholders; (ii) approved and declared it advisable that Raptor enter into the

Merger Agreement; (iii) approved and declared advisable the Merger Agreement, the performance by Raptor of its covenants and agreements contained in the Merger Agreement and the consummation of the Offer and the Merger upon the terms and subject to the conditions contained in the Merger Agreement; (iv) agreed that the Merger will be effected under Section 251(h) of the DGCL; (v) resolved, upon the terms and subject to the

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conditions set forth in the Merger Agreement, to recommend that Raptor's stockholders accept the Offer and tender their Shares to Merger Sub pursuant to the Offer; and (vi) authorized and approved the execution, delivery and performance of the Merger Agreement by Raptor.

**Accordingly, and for the other reasons described in more detail below, the Raptor Board hereby recommends that Raptor's stockholders accept the Offer and tender their Shares to Merger Sub pursuant to the Offer.**

A copy of the letter to Raptor's stockholders communicating the Raptor Board's recommendation is filed as Exhibit (a)(17) to this Schedule 14D-9 and is incorporated herein by reference.

## **Background and Reasons for the Recommendation of the Raptor Board.**

### ***Background of the Offer***

The Raptor Board and Raptor's senior management regularly review and assess Raptor's long-term strategic plan with the goal of maximizing stockholder value. As part of this ongoing process and in light of the economic and regulatory landscape and trends in the pharmaceutical industry and other developments specific to Raptor's business, the Raptor Board and senior management have periodically evaluated potential strategic alternatives relating to Raptor's business and engaged in discussions with third parties concerning potential strategic transactions, including a sale of the company and collaboration and licensing arrangements with respect to its products, product candidates and technology.

### ***Decline in Stock Price and Stockholder Pressure to Improve Stock Price Performance***

Raptor has a single product approved for sale in the United States marketed under the product name PROCYSBI® (investigationally named RP103) for the treatment of nephropathic cystinosis in children and adults. Raptor's second commercial drug product, QUINSAIR (investigationally named MP-376), is approved for sale in the European Economic Area and Canada, and was acquired by Raptor in October 2015. On September 14, 2015, Raptor announced that it would not advance its program for the treatment of pediatric non-alcoholic steatohepatitis (NASH) with RP103 after topline results of its Phase 2b trial failed to show statistically significant efficacy as measured by the trial's primary endpoints. On the next trading day following the announcement, the closing price of Raptor's Common Stock on The NASDAQ Global Market ( *NASDAQ* ) fell to \$7.52 per share, as compared to \$12.03 per share closing price on the prior trading day. On December 10, 2015, Raptor announced 36-month efficacy results from a Phase 2/3 clinical trial evaluating RP103 for the potential treatment of Huntington's Disease and that Raptor would advance the program into a pivotal study based on favorable treatment effects, notwithstanding that efficacy results from the Phase 2/3 clinical trial, as measured by the trial's primary endpoints, were not statistically significant. The closing price of Raptor's Common Stock on December 11, 2015 was \$4.54 per share, down from \$5.56 per share on the prior trading day. On February 25, 2016, Raptor announced that it was prioritizing between its clinical programs and would be exploring non-dilutive funding and partnering options to fund the Huntington's Disease program.

In the first quarter of 2016, Raptor began facing substantial pressure from its stockholder base to improve its stock price performance. The Raptor Board and management had increased interactions with large stockholders, and received a letter on March 25, 2016 from Sarissa Capital Domestic Fund LP ( *Sarissa* ), which owned approximately three percent of Raptor's Common Stock, notifying Raptor of Sarissa's intention to nominate certain persons to the Raptor Board.

### ***Unsolicited Expressions of Interest from Third Parties***

Following the significant drop in the trading price of shares of its Common Stock, Raptor received unsolicited verbal and written expressions of interest regarding potential strategic transactions from three different parties in the first quarter of 2016.

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Julie Anne Smith, the President and Chief Executive Officer of Raptor, and Michael Smith, the Chief Financial Officer of Raptor, met with representatives of a European biopharmaceutical company ( *Company A* ) at an industry conference on January 13, 2016 and discussed potential strategic opportunities between the two companies. This initial discussion centered around potential opportunities for Company A to acquire rights to Raptor's products in Europe.

On January 28, 2016, senior executives of a publicly traded biotechnology company in the United States ( *Company B* ) contacted Ms. Smith and certain other members of the senior management team of Raptor to discuss a potential merger in a stock-for-stock transaction (the *Potential Stock Transaction* ) between the two parties. In early February, Raptor entered into a confidentiality agreement with Company B, which included a customary two-year standstill provision (including a provision prohibiting Company B from making any request that Raptor waive the standstill restrictions, known as a "don't ask/don't waive" provision).

On February 8-9, 2016, the Raptor Board held in-person meetings, with management and repre