

Fill in this information to identify the case:

Debtor 1 SiO2 Medical Products, Inc.

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: United States Bankruptcy Court -
District of Delaware

Case number 23-10366

RECEIVED
5/25/2023 3:12:34 PM (Eastern Time)
US BANKRUPTCY COURT-DRC
Claim No. ECN-83

Official Form 410

Proof of Claim

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense, other than a claim arising under section 503(b)(9) of the Bankruptcy Code. Make a request for an administrative expense claim (other than 503(b)(9) claims) according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>Klinge Biopharma GmbH</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	☒ No ☐ Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent? Steven J. Reisman c/o Klinge Biopharma GmbH Katten Muchin Rosenman LLP 50 Rockefeller Plaza New York NY 10020 2129408800 sreisman@katten.com	Where should payments to the creditor be sent? (if different) Klinge Biopharma GmbH 9 Bergfeldstrasse Holzkirchen BV 83607 Germany
Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____		
4. Does this claim amend one already filed?	☒ No ☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	☒ No ☐ Yes. Who made the earlier filing? _____	

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? ☒ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ \$14,404,026.69. Does this amount include interest or other charges?
☐ No
☒ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
 Limit disclosing information that is entitled to privacy, such as health care information.
Secured Equipment Note

9. Is all or part of the claim secured? ☐ No
☒ Yes. The claim is secured by a lien on property.
Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
☐ Motor vehicle
☒ Other. Describe: Equipment
Basis for perfection: UCC Financing Statement
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ Unknown / unliquidated
Amount of the claim that is secured: \$ \$14,404,026.69
Amount of the claim that is unsecured: \$ \$0.00 (The sum of the secured and unsecured amounts should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ \$14,404,026.69
Annual Interest Rate (when case was filed) 10.00%
☒ Fixed
☐ Variable

10. Is this claim based on a lease? ☒ No
☐ Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? ☒ No
☐ Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

☒ No

☐ Yes. Check all that apply:

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

☐ Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

☐ Wages, salaries, or commissions (up to \$15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

☐ Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.

Amount entitled to priority

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

* Amounts are subject to adjustment on 04/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim entitled to priority under 11 U.S.C. § 503(b)(9)?

☒ No

☐ Yes.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☒ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 5/25/2023
MM / DD / YYYY

/s/ Thomas Maier and Wolfgang Essler

Signature

Print the name of the person who is completing and signing this claim:

Thomas Maier and Wolfgang Essler
Klinge Biopharma GmbH
9 Bergfeldstrasse
Holzkirchen BV 83607
Germany

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

In re:	)	
	)	Chapter 11
	)	
SIO2 MEDICAL PRODUCTS, INC. <i>et al.</i> , ¹	)	Case No. 23-10366 (JTD)
	)	
Debtors.	)	Jointly Administered
	)	
	)	

**ADDENDUM TO PROOFS OF CLAIM OF ATHOS KG AND CERTAIN OF ITS
AFFILIATES REGARDING CLAIMS AGAINST SIO2 MEDICAL PRODUCTS, INC.
AND ITS DEBTOR AFFILIATES**

ATHOS KG and certain of its affiliates (collectively, “ATHOS”), by and through their undersigned counsel, hereby submit this addendum (the “Addendum”) to their proofs of claim (together with any and all attachments and documents submitted in connection therewith, the “Proofs of Claim”) against SiO2 Medical Products, Inc. (“SiO2” and together with its affiliated debtors in the above-captioned cases, the “Debtors”) in the Chapter 11 Cases (defined below). In support of their Proofs of Claim, ATHOS respectfully states as follows:

BACKGROUND

1. Commencement of the Chapter 11 Cases. On March 29, 2023 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (as amended, the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), thereby commencing the above-captioned Chapter 11 cases (collectively, the “Chapter 11 Cases”). The Chapter 11 Cases are being jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: SiO2 Medical Products, Inc. (8467); Advanced Bioscience Labware, Inc. (1229); and Advanced Bioscience Consumables, Inc. (2510). The location of the Debtors’ principal place of business and service address in these chapter 11 cases is 2250 Riley Street, Auburn, Alabama 36832.

Bankruptcy Procedure. The Debtors continue to operate their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. Bar Date Order. On April 24, 2023, the Bankruptcy Court entered its *Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment Under Section 503(B)(9), (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date, (III) Approving the Form of and Manner for Filing Proofs of Claim, Including Section 503(B)(9) Requests, and (IV) Approving Form and Manner of Notice Thereof* [Docket No. 192] (the “Bar Date Order”). The Bar Date Order, among other things, sets a general bar date of the later of (i) 11:59 p.m. prevailing Eastern Time on the date that is thirty days from entry of the Bar Date Order or (ii) 11:59 p.m. prevailing Eastern Time on the date that is thirty days from the date on which the Debtors file the Schedules (as defined in the Bar Date Order) (the “Bar Date”).

3. Necessity for Addendum to Proofs of Claim. This Addendum supplements the Proofs of Claim by describing in detail ATHOS’ claims against SiO2 (collectively, the “Claims”).

4. Supporting Documents. The Debtors have, or should have, copies of the relevant documentation supporting the Proofs of Claim. If the Debtors or their counsel in these Chapter 11 Cases so request, additional documentation supporting the Proofs of Claim may be made available for review and copying, subject to any applicable privileges and/or measures to ensure confidentiality that may be appropriate.

THE CLAIMS

5. ATHOS affiliates possess the following Claims against SiO2:

- a. Salzufer Second Lien Term Loan. On December 7, 2022, the Debtors and Salzufer Holding Inc. (“Salzufer”) entered into that certain Second Lien Credit Agreement and Guaranty (the “Second Lien Credit Agreement”) pursuant to which Salzufer loaned \$35 million to SiO2. As of the Petition Date, no less than \$36,507,829.08 was outstanding under the Second Lien

Credit Agreement, comprised of: (i) principal in the amount of \$35,000,000; (ii) interest in the amount of \$1,269,333.33; and (iii) attorneys' fees and expenses in the amount of \$238,495.75, plus certain fees, expenses and other amounts (including attorneys' fees and costs) that may become due hereafter pursuant to the Second Lien Credit Agreement..

- b. Klinge Secured Note. On January 17, 2020, SiO2 issued that certain Secured Promissory Note to Klinge Biopharma GmbH in the principal amount of \$14.0 million (the "Klinge Secured Note"). Pursuant to that certain Security Agreement dated as of January 17, 2020, SiO2 pledged certain collateral to secure its obligations owed under the Klinge Secured Note. As of the Petition Date, no less than \$14,404,026.69 was outstanding under the Klinge Note.
- c. 2018 Patiro Promissory Notes. In 2018, SiO2 issued certain unsecured Subordinated Convertible Promissory Notes (collectively, the "2018 Patiro Promissory Notes") to Patiro Holdings AG ("Patiro"). As of the Petition Date, no less than \$38,159,786.97 was outstanding under the 2018 Patiro Promissory Notes.
- d. 2019 Patiro Promissory Note. On September 24, 2019, SiO2 issued that certain unsecured Subordinated Convertible Promissory Note in the amount of \$15,600,000 (the "2019 Patiro Promissory Note") to Patiro. As of the Petition Date, no less than \$21,392,846.40 was outstanding under the 2019 Patiro Promissory Note.
- e. Santo Promissory Note. On May 9, 2022, SiO2 issued that certain Unsecured Subordinated Promissory Note to Santo Holding (Deutschland) GmbH in the amount of \$10,000,000 (the "Santo Promissory Note"). As of the Petition Date, no less than \$10,977,777.78 was outstanding under the Santo Promissory Note.
- f. Klinge Indemnification Claim. In 2014, SiO2 and Midas Pharma GmbH ("Midas") entered into a Commercial Agency Agreement pursuant to which SiO2 appointed Midas as its exclusive commercial agent to market the sale and use of certain SiO2 products in Europe. In June 2018, Klinge Pharma GmbH ("Klinge") entered into an agreement (the "2018 Agreement") pursuant to which Midas' rights and obligations under the Commercial Agency Agreement were transferred to Klinge. As consideration for obtaining rights under the Commercial Agency Agreement, Klinge agreed to make two payments to Midas (the "Installment Payments"). On October 11, 2021, SiO2 and Klinge entered into an agreement (the "2021 Agreement") pursuant to which Klinge's existing and future rights under the 2018 Agreement were transferred to SiO2. Pursuant to the 2021 Agreement, SiO2 agreed to indemnify Klinge against all claims asserted by Midas resulting from the 2018 Agreement.

On April 30, 2023, Klinge made an Installment Payment of \$2,500,000 to Midas on behalf of SiO2 for which Klinge is entitled to indemnification.

6. No Judgment. Upon information and belief, no judgment has been rendered on the Claims.

7. No Setoffs, Recoupment or Counterclaims. No portion of the Claims is subject to any setoffs, recoupment, defenses or counterclaims by any of the Debtors.

8. Reservation of Setoff Rights against the Debtors. Pursuant to Article VIII(H) of the *Joint Chapter 11 Plan of Reorganization of SiO2 Medical Products, Inc. and its Debtor Affiliates* [Docket No. 280] (as may be amended from time to time, the “Plan”), and notwithstanding section 524(a) of the Bankruptcy Code, ATHOS and each of its affiliates hereby expressly preserve any right of setoff, subrogation, or recoupment of any kind against any obligation due from ATHOS or its affiliates or against the property of ATHOS or its affiliates to any Debtor on account of or in connection with or with respect to any claim, interest, Cause of Action (as defined in the Plan), or liability.

9. Proofs of Claim Timely. These Proofs of Claim are timely submitted by ATHOS in accordance with the Bar Date Order.

RESERVATION OF RIGHTS AND MISCELLANEOUS

10. Right to Amend. ATHOS expressly reserves the right to amend or supplement the Proofs of Claim to correct, clarify, explain, expand, supplement, or add to any portion of the Claims asserted herein, or otherwise, to both increase the amount of such Claims and to provide additional information and documentation as is necessary or appropriate to pursue the Claims and such additional claims as are, or may be, held by ATHOS, including, without limitation, the right to amend the Proofs of Claim in the event an objection is made against the Proofs of Claim or a claim is asserted against ATHOS. Moreover, ATHOS specifically reserves the right to

conduct discovery with respect to this matter in accordance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

11. No Admission. Nothing contained in the Proofs of Claim shall be deemed an admission of fact or law by ATHOS. ATHOS expressly reserves the right to withdraw the Proofs of Claim as if it had never been filed.

12. Additional Proofs of Claim. ATHOS expressly reserves the right to file any separate or additional proofs of claim with respect to the Claims, or any portion thereof, set forth herein or otherwise (which proofs of claim, if so filed, shall not be deemed to supersede the Proofs of Claim unless specifically so stating), or to file additional proofs of claim in respect of any other claim against, or liability of, the Debtors, or for any other reason, including, without limitation, claims for indemnification or contribution under applicable law.

13. Additional Reservations. In addition, the filing of the Proofs of Claim is not intended, and shall not be deemed or construed as: (a) consent by ATHOS to the jurisdiction of the Bankruptcy Court or any other court for any purpose; (b) a waiver or release of any right of ATHOS to have all disputes with any or all of the Debtors resolved as may be provided in contracts and agreements executed between the Debtors and ATHOS, notwithstanding whether or not such matters are designated as “core proceedings” pursuant to 28 U.S.C. § 157(b)(2); (c) consent by ATHOS to a trial in the Bankruptcy Court or in any other court of any proceeding as to any and all matters so triable herein or in any case, controversy, or proceeding related hereto, pursuant to 28 U.S.C. § 157 or otherwise; (d) a waiver or release of the right of ATHOS to have any and all final orders in any and all non-core matters or proceedings entered only after *de novo* review by the United States District Court; (e) a waiver or release of any right which ATHOS may have to a jury trial; (f) a waiver of the right to move to withdraw the reference in respect of

the subject matter of the Proofs of Claim, any objection thereto or other proceeding that may be commenced in the Chapter 11 Cases against or otherwise involving ATHOS; or (g) an election of remedies.

14. ATHOS does not waive, and hereby expressly reserves, ATHOS' rights to pursue claims, including, but not limited to, the Claims described herein, against the Debtors based upon any and all alternative legal theories.

15. Furthermore, the above shall not be construed as an appointment of any person or entity as an authorized agent of ATHOS, either expressly or impliedly, for purposes of receiving service of process pursuant to Rule 4 of the Federal Rules of Civil Procedure or other applicable law.

DISCLOSURE

16. To the best of ATHOS' knowledge, information, and belief, no judgment has been rendered on the Claims, no payments have been made on the Claims, and ATHOS has not assigned any portion of the Claims.

17. Notices Regarding Proofs of Claim. All notices and correspondence with respect to these Proofs of Claim (and, if filed, any objections thereto) must be sent to ATHOS' counsel at the addresses below:

Steven J. Reisman
Shaya Rochester
Katten Muchin Rosenman LLP
50 Rockefeller Plaza
New York, NY 10020-1605
Telephone: (212) 940-8700
Facsimile: (212) 940-8776
Email: sreisman@katten.com
srochester@katten.com

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