UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 OR 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): July 23, 2020

GI DYNAMICS, INC.
(Exact name of registrant as specified in its charter)

Delaware	000-55195	84-1621425
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

320 Congress Street
Boston, MA 02210
(Address of principal executive offices and zip code)

Registrant's telephone number, including area code: (781) 357-3300

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act: None.

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§ 240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Item 1.01 Entry into a Material Definitive Agreement.

Right to Shares and Waiver Agreement

On July 13, 2020, GI Dynamics, Inc. (the "Company") received a conversion notice from Crystal Amber Fund Limited, the Company's controlling stockholder ("Crystal Amber"), requesting the conversion of the entire outstanding amount of that certain Senior Secured Convertible Promissory Note, issued June 15, 2017, as amended (the "June 2017 Note"), which entitled Crystal Amber to receive 2,574,873,400 CHESS Depositary Interests ("CDIs"), representing 51,497,468 shares of the Company's common stock. The Company issued 1,920,085,200 CDIs, representing 38,401,704 shares of common stock to Crystal Amber; however, the Company is unable at this time to issue any additional shares of common stock because it does not have a sufficient number of authorized but unissued shares of common stock available for issuance. As a result, on July 24, 2020, the Company entered into a Right to Shares and Waiver Agreement (the "Right to Shares and Waiver Agreement") with Crystal Amber, pursuant to which the Company granted a right to Crystal Amber to receive 13,095,764 shares of the Company's common stock that remain issuable in connection with its conversion of the June 2017 Note (the "Right"). In exchange for the Right, the June 2017 Note was deemed to be fully satisfied and the related security interest in the Company's assets was automatically terminated.

The Right will be automatically exercised, without any action by any party, immediately effective as of the time each of the following conditions have been satisfied: (i) the Company has filed an amended and restated certification of incorporation with the Delaware Secretary of State in connection with the consummation of the Company's anticipated financing of up to $10 million in shares of the Company's preferred stock and (ii) the Company has been delisted from the Official List of the Australian Securities Exchange.

The foregoing description of the Right to Shares and Waiver Agreement does not purport to be a complete description of the rights and obligations of the parties thereunder and is qualified in its entirety by reference to the Right to Shares and Waiver Agreement, a copy of which is attached hereto as Exhibit 10.1 and is incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

The disclosure set forth under Item 1.01 of this Current Report on Form 8-K is incorporated into this Item 3.02 by reference. The Right and the securities issuable hereunder were offered and sold in a private placement under Section 4(a)(2) of the Securities Act of 1933, as amended

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

CEO Retention Bonus Agreement and Amendment

On July 23, 2020 (the "Effective Date"), the Company entered into a Retention Bonus Agreement and Amendment (the "Retention Agreement") with Scott Schorer, the Chief Executive Officer of the Company ("CEO"), which sets forth the terms of Mr. Schorer's continued services as the Company's CEO through at least December 31, 2020 (the "Retention Date"). The Retention Agreement will be effective through the Retention Date or the last date of Mr. Schorer's employment, if different, as set forth therein (the "Retention Period").

Pursuant to the terms and conditions of the Retention Agreement, Mr. Schorer will receive a one-time cash bonus of $609,557 (the "Retention Bonus"), subject to tax withholding under applicable law, which will be paid within seven days following the Effective Date. The Retention Bonus is in lieu of any other severance benefits that Mr. Schorer may be eligible to receive under Section 7 of Mr. Schorer's Amended and Restated Offer Letter Agreement with the Company, dated September 19, 2019 (the "Offer Letter").

The Retention Bonus is subject to forfeiture prior to the end of the Retention Period if the basis for the termination is for Cause by the Company or for any reason by Mr. Schorer that does not constitute Good Reason (as such terms are defined in the Offer Letter). Accordingly, in the event Mr. Schorer's employment is terminated prior to the end of the Retention Period by the Company for Cause or by Mr. Schorer for any reason other than Good Reason, then Mr. Schorer will be required to repay the Retention Bonus pursuant to the following schedule: (i) termination prior to July 31, 2020: 6/6 of Retention Bonus to be repaid (i.e., $609,447); (ii) termination between August 1, 2020 and August 31, 2020: 5/6 of Retention Bonus to be repaid (i.e., $507,964.17); (iii) termination between September 1, 2020 and September 30, 2020: 4/6 of Retention Bonus to be repaid (i.e., $406,371.33); (iv) termination between October 1, 2020 and October 31, 2020: 3/6 of Retention Bonus to be repaid (i.e., $304,778.50); (v) termination between November 1, 2020 and November 30, 2020: 2/6 of Retention Bonus to be repaid (i.e., $203,185.67); (vi) termination between December 1, 2020 and December 31, 2020: 1/6 of Retention Bonus to be repaid (i.e., $101,592.83); and (vii) termination after December 31, 2020: 0/6 of Retention Bonus to be repaid (i.e., $0.00). Any such amounts due to be repaid will be paid by Mr. Schorer to the Company within ten days following termination as described above.

Mr. Schorer will also be eligible to earn a milestone bonus in the aggregate amount of $100,000 (the "Milestone Bonus"), subject to tax withholding under applicable law, based on the achievement of one or both of the following milestones between the Effective Date and December 31, 2020 (the "Milestone Bonus Period"), subject to the apportionment as follows: (i) 75% of Milestone Bonus ($75,000): Receipt of European CE mark approval; and (ii) 25% of Milestone Bonus ($25,000): I-STEP approval (collectively, the "Milestones").

In the event Mr. Schorer's employment is terminated during the Milestone Bonus Period by the Company without Cause or by Mr. Schorer for Good Reason, and if following such termination the Company determines that either Milestone is achieved during the Milestone Bonus Period, then the Company will pay Mr. Schorer an amount equal to the applicable Milestone Bonus, pro-rated based on the period of Mr. Schorer's employment with the Company during the Milestone Bonus Period. Each portion of the Milestone Bonus, if earned, will be paid in lump sum within seven days after the determination by the Company's Board of Directors (the "Board") that the applicable Milestone has been met, but in no event later than January 31, 2020. In the event Mr. Schorer's employment is terminated during the Milestone Bonus Period by the Company for Cause or by Mr. Schorer other than for Good Reason, then Mr. Schorer will not be eligible for and will forfeit any portion of the Milestone Bonus. The Milestone Bonus is in lieu of any Performance Bonus (as defined in the Offer Letter) that Mr. Schorer may be eligible to earn or receive under the Offer Letter during the Milestone Bonus Period; provided, however, that if Mr. Schorer remains employed through the conclusion of the Milestone Bonus Period, Mr. Schorer will again become eligible to earn the Performance Bonus, on the terms and conditions described in the Offer Letter, for services performed following the conclusion of the Milestone Bonus Period.

During the Retention Period, Mr. Schorer's annual base salary will continue to be $450,000, subject to tax withholding under applicable law, to be paid each month in accordance with the Company's payroll policies, and subject to the annual review of the Company's Compensation Committee.

In the event Mr. Schorer's employment is terminated for any reason following the Effective Date, whether voluntarily or involuntarily, then Mr. Schorer will provide consulting services to the Company on a part-time basis averaging ten hours per month, subject to adjustment by the parties (the "Consulting Services"), for a period of six months following such termination (the "Consulting Term"), subject to earlier termination by mutual agreement of the parties. The Company will pay Mr. Schorer a fee of $325 per hour for the Consulting Services performed during the Consulting Term, payable within ten days following the conclusion of each month in which the Consulting Services are performed.

The foregoing description of the Retention Agreement does not purport to be a complete description of the rights and obligations of the parties thereunder and is qualified in its entirety by reference to the Retention Agreement, a copy of which is attached hereto as Exhibit 10.2 and is incorporated herein by reference.

Board Composition

As previously disclosed, the four current members of the Board advised the Company of their intention to resign as members of the Board after the Company was removed from the Official List of the Australian Securities Exchange, which occurred as of July 22, 2020 (Australian Eastern Standard Time).

On July 23, 2020, each member of the Board delivered a resignation letter informing the Company of their resignation as a member of the Board, including any committees thereof, effective as of 5:00 p.m. EDT on July 29, 2020; however, prior to such time, each Board member retracted their resignation and withdrew the corresponding resignation letter given that the Board believed that each member should continue to serve for proper corporate governance practices until the definitive documentation for the proposed $10 million Series A Preferred Stock financing is executed. The Company will provide further disclosure regarding the exact timing of each director's departure as such information becomes available.

Forward-Looking Statements

This Current Report on Form 8-K may contain forward-looking statements. These statements are based on management's current estimates and expectations of future events as of the date of the Current Report on Form 8-K. Furthermore, the estimates are subject to several risks and uncertainties that could cause actual results to differ materially and adversely from those indicated in or implied by such forward-looking statements.

These risks and uncertainties include, but are not limited to, risks associated with the Company's ability to raise additional capital through a bridge financing and a proposed financing of up to $10 million in preferred stock, or capital from other sources, the Company's ability to continue to operate as a going concern; the ability of the Company, its critical vendors, and key regulatory agencies to resume operational capabilities subsequent to the removal of COVID-19 pandemic restrictions; the Company's ability to conduct the planned pivotal trial of EndoBarrier in the United States ("STEP-1"); the Company's ability to execute STEP-1 under the FDA's Investigational Device Exemption; the Company's ability to enlist clinical trial sites and enroll patients in accordance with STEP-1; the risk that the FDA stops STEP-1 early as a result of the occurrence of certain safety events or does not approve an expansion of STEP-1; the Company's ability to enroll patients in accordance with I-STEP; the Company's ability to secure a CE Mark; obtaining and maintaining regulatory approvals required to market and sell the Company's products; the possibility that future clinical trials will not be successful or confirm earlier results; the timing and costs of clinical trials; the timing of regulatory submissions; the timing, receipt and maintenance of regulatory approvals; the timing and amount of other expenses; the timing and extent of third-party reimbursement; intellectual-property risk; risks related to excess inventory; risks related to assumptions regarding the size of the available market; the benefits of the Company's products; product pricing; timing of product launches; future financial results; and other factors, including those described in the Company's filings with the U.S. Securities and Exchange Commission.

Given these uncertainties, one should not place undue reliance on these forward-looking statements. The Company does not assume any obligation to publicly update or revise any forward-looking statements, whether as a result of new information or future events or otherwise, unless it is required to do so by law.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
10.1	Right to Shares and Waiver Agreement, dated as of July 24, 2020, by and between GI Dynamics, Inc. and Crystal Amber Fund Limited.
10.2†	Retention Bonus Agreement and Amendment, dated as of July 23, 2020, by and between GI Dynamics, Inc. and Scott Schorer.

† Management contract or compensatory plan or arrangement.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

GI DYNAMICS, INC.

Dated: July 29, 2020

/s/ Charles Carter

Charles Carter
Chief Financial Officer

Exhibit 10.1

RIGHT TO SHARES AND WAIVER AGREEMENT

This RIGHT TO SHARES AND WAIVER AGREEMENT, dated as of July 24, 2020 (this "Agreement") constitutes an agreement between GI Dynamics, Inc., a Delaware corporation (the "Company"), and Crystal Amber Fund Limited (the "Holder"). Capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Note (as defined below).

WHEREAS, pursuant to that certain Note Purchase Agreement, dated as of June 15, 2017 (as amended, the "Purchase Agreement"), between the Company and the Holder, the Company issued to the Holder a senior secured convertible promissory note in the aggregate principal amount of US$5,000,000 (as amended, the "Note," and, together with the Purchase Agreement, the "Note Documents");

WHEREAS, in connection with the issuance of the Note, the Company and the Holder also entered into that certain Security Agreement, dated as of June 15, 2017 (the "Security Agreement"), under which the Company granted a security interest to the Holder to secure the Company's obligations under the Note;

WHEREAS, by written notice to the Company on July 13, 2020, the Holder exercised its option under Section 2(b) of the Note (the "Conversion Option") to convert all of the Outstanding Amount into CHESS Depositary Interests of the Company ("CDIs"), with each CDI representing $1/50^{th}$ of a share of the Company's common stock, $0.01 par value per share ("Common Stock"), and is thereby entitled to receive 2,574,873,400 CDIs (the "Conversion CDIs"), representing 51,497,468 shares of Common Stock, upon such conversion of the Note (the "Conversion"); and

WHEREAS, in connection with the Holder's exercise of the Conversion Option, the Company has issued 1,920,085,200 Conversion CDIs, representing 38,401,704 shares of Common Stock, to the Holder in accordance with the terms of the Note Documents (the "CDI Issuance"), and in lieu of issuing the remaining 654,788,200 Conversion CDIs, representing 13,095,764 shares of Common Stock, the Company and the Holder have agreed to enter into this Agreement whereby the Company shall be obligated to issue and the Holder shall have the right to the issuance of 13,095,764 shares of Common Stock (the "Shares," and, such right of the Holder, the "Right"), subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and intending to be legally bound, the parties hereto agree as follows:

1. Grant of Right; Issuance of Shares.

1.1. Grant of Right in Lieu of CDIs. Upon the terms and subject to the conditions of this Agreement, and notwithstanding any provisions in the Note relating to the Conversion Option, including Section 2(b) thereof, the Company hereby grants the Right to the Holder in lieu of issuing the 654,788,200 Conversion CDIs, representing 13,095,764 shares of Common Stock, that remain issuable to the Holder in connection with the Conversion.

1.2. Effect of Grant of Right. Immediately upon the grant of the Right pursuant to Section 1.1 hereof:

1.2.1. The Holder shall surrender and deliver the Note to the Company for cancellation, and the CDI Issuance, together with the grant of the Right, shall be deemed the full and final consideration for the cancellation of such Note.

1.2.2. Notwithstanding anything to the contrary in contained in the Note or otherwise, the Company's obligations under the Note, including related contractual obligations, shall be deemed fully paid and satisfied and the Note shall automatically terminate and have no further force and effect.

1.2.3. The Security Agreement shall be terminated in its entirety without any further action on the part of the Company or the Holder. Notwithstanding anything to the contrary in the Security Agreement, all security interests and other liens granted to or held by the Holder in the Collateral (as defined in the Security Agreement) shall be terminated, released and discharged. The Holder shall take all steps reasonably requested by the Company as may be necessary to release all security interests and other liens granted to or held by the Holder in the Collateral and hereby authorizes the Company to file any necessary UCC-3 termination statements or other documents that may be necessary or appropriate to effectuate, evidence or reflect the termination, release and discharge of the security interests and liens created by the Security Agreement and any other documents relating to the Note.

1.3. Exercise of Right. The Right shall be automatically exercised, without any action by any party to this Agreement, immediately effective as of the time each of the following conditions have been satisfied: (i) the Company has filed its Restated Certificate (as defined below) with the Delaware Secretary of State in connection with the consummation of the Company's anticipated financing of up to $10 million in shares of the Company's preferred stock (the "Financing"), and (ii) the Company has been delisted from the Official List of the Australian Securities Exchange. Upon such exercise, the Company shall take all actions necessary to promptly issue the Shares to the Holder, and the Holder shall be deemed to have become a holder of record of such shares for all purposes, as of the date of their issuance.

1.4. Acknowledgments and Waiver.

1.4.1. The Holder hereby acknowledges and agrees that the Company's grant of the Right to the Holder in lieu of issuing the 654,788,200 Conversion CDIs, representing 13,095,764 shares of Common Stock, that remain issuable to the Holder in connection with the Conversion shall not be deemed to be or result in a breach of the Note Documents.

1.4.2. The Holder further acknowledges that the Company's authorized but unissued shares of Common Stock are not presently sufficient to allow the Company to issue the Shares. Accordingly, the Holder hereby waives its rights under the Note Documents to make any demand on the Company or otherwise seek any other remedies available to it for the Shares until such time as the Company, in connection with the consummation of the Financing, has filed its Second Amended and Restated Certificate of Incorporation ("Restated Certificate") to increase its authorized Common Stock to an amount that is sufficient to permit the issuance of the Shares.

1.5. Delivery of Shares. The Company shall issue the Shares in book entry form, registered in the name of the Holder, with notations regarding any applicable restrictions on transfers imposed under the Note Documents.

2. Certain Adjustments.

2.1. Stock Dividends and Splits. If the Company, at any time while the Right exists: (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of its Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock, (ii) subdivides outstanding shares of Common Stock into a larger number of shares, or (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares, then in each case the number of Shares issuable upon exercise of the Right shall be proportionately adjusted. Any adjustment made pursuant to this Section 2.1 shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution (provided that if the declaration of such dividend or distribution is rescinded or otherwise cancelled, then such adjustment shall be reversed upon notice to the Holder of the termination of such proposed declaration or distribution as to any unexercised portion of the Right at the time of such rescission or cancellation) and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

2.2. Restrictions. All contractual restrictions applicable to the shares of the Company's capital stock issuable upon conversion, as set forth in the Note Documents, shall be applicable to the Shares.

2.3. Fundamental Transaction. If, at any time while the Right remains outstanding, (i) the Company effects any merger or consolidation of the Company with or into another person pursuant to which the Common Stock is effectively converted and exchanged, the Company effects any sale of all or substantially all of its assets in one or a series of related transactions pursuant to which the Common Stock is effectively converted and exchanged, (ii) any tender offer or exchange offer (whether by the Company or another person) is completed pursuant to which at least a majority of the outstanding Common Stock is tendered and exchanged for other securities, cash or property or (iii) the Company effects any reclassification of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (other than as a result of a subdivision or combination of shares of Common Stock) (each a "Fundamental Transaction"), then, upon any subsequent exercise of the Right, the Holder shall have the right to receive, for each Share, the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of one share of Common Stock. Upon the occurrence of any such Fundamental Transaction, any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "Successor Entity") shall succeed to, and be substituted for the Company (so that from and after the date of such Fundamental Transaction, the provisions of this Agreement referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Agreement with the same effect as if such Successor Entity had been named as the Company herein.

3. Transfer of Right.

3.1. Transferability. Subject to compliance with any applicable securities laws, the Right and all rights hereunder are transferable, in whole or in part, upon written assignment substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer of this Agreement delivered to the principal office of the Company or its designated agent. Upon such assignment and, if required, such payment, the Company shall enter into a new agreement with the assignee or assignees, as applicable, and this Agreement shall promptly be cancelled. The Right, if properly assigned in accordance herewith, may be exercised by a new holder for the issue of Shares without having a new agreement executed.

3.2. Division of Rights. The Right may be divided or combined with other rights upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which such Rights are to be granted, signed by the Holder or its agent or attorney.

4. Miscellaneous.

4.1. Authorized Shares. The Company will take all such reasonable action as may be necessary to assure that such Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the trading market upon which the Common Stock may be listed. The Company covenants that: (i) it shall use its reasonable best efforts to fulfill the obligations listed in Section 1.3 of this Agreement as soon as reasonably practicable, and (ii) all Shares to be issued upon the exercise of the Right represented by this Agreement will, upon exercise of the automatic exercise of the Right pursuant to Section 1.3 of this Agreement, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Agreement, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of the Holder as set forth in this Agreement against impairment. Without limiting the generality of the foregoing, the Company will (i) not increase the par value of any Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Shares upon the exercise of the Right and (iii) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Agreement.

Before taking any action which would result in an adjustment in the number of Shares for which the Right provides for, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

4.2. Governing Law. The terms of this Agreement shall be construed in accordance with the laws of the State of New York, as applied to contracts entered into by New York residents within the State of New York, and to be performed entirely within the State of New York.

4.3. Exclusive Jurisdiction. All actions and proceedings arising out of, or relating to, this Agreement shall be heard and determined in any state or federal court sitting in the State of New York, County of New York. The undersigned, by execution and delivery of this Agreement, expressly and irrevocably (i) consent and submit to the personal jurisdiction of any of such courts in any such action or proceeding; and (ii) waive any claim or defense in any such action or proceeding based on any alleged lack of personal jurisdiction, improper venue or forum non conveniens or any similar basis.

4.4. Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies. Without limiting any other provision of this Agreement or the Note Documents, as applicable, if the Company willfully and knowingly fails to comply with any provision of this Agreement, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

4.5. Execution. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

COMPANY:

GI DYNAMICS, INC.

By: /s/ Scott Schorer
Name: Scott Schorer
Title: President

HOLDER:

CRYSTAL AMBER FUND LIMITED

By: /s/ Laurence McNairn
Name: Laurence McNairn
Title: Director

Executed by Crystal Amber Asset Management (Guernsey) Ltd as Investment Manager of Crystal Amber Fund Limited

[SIGNATURE PAGE TO RIGHT TO SHARES AND WAIVER AGREEMENT]

Exhibit 10.2

RETENTION BONUS AGREEMENT AND AMENDMENT

This Retention Bonus Agreement and Amendment (this "Agreement") is made and entered into on July 23, 2020 (the "Effective Date") between GI Dynamics, Inc. (the "Company") and Scott Schorer ("Employee").

WHEREAS, Employee occupies a key position with the Company, and in order to ensure the continued effective conduct of the Company's business, the Company desires to assure itself of the uninterrupted services of Employee; and

WHEREAS, the Company desires to offer Employee a retention bonus to incentivize Employee to remain employed with the Company.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby agree as follows:

1. Retention Bonus. In an effort to secure Employee's continued employment with the Company in a full-time capacity, and further subject to the terms and conditions described herein, the Company shall pay Employee $609,557.00, paid in one lump sum within seven (7) days following the Effective Date, less any and all applicable federal, state, local, foreign or other withholding taxes and all other authorized payroll deductions (the "Retention Bonus"). The Company and Employee expressly acknowledge and agree that the sole funding source of the Retention Bonus shall be the "Escrowed Funds," as such term is defined by that certain Escrow Agreement between the Company and Verdolino & Lowey, P.C. The Company and Employee further acknowledge and agree that they shall work in good faith and take all necessary and reasonable steps under such Escrow Agreement to facilitate the release of such Escrowed Funds for the Retention Bonus due to Employee hereunder.

   The Retention Bonus shall be in lieu of any Severance Benefits (described in Section 4 of this Agreement) that Employee may be eligible to receive under Section 7 of Employee's Amended and Restated Offer Letter Agreement dated September 19, 2019 (the "Offer Letter"), and Employee is knowingly and expressly waiving and releasing Employee's right to any such Severance Benefits.

   The Retention Bonus will be subject to forfeiture by the Employee during the time periods described below only if the basis for the termination is for Cause by the Company or for any reason by the Employee that does not constitute Good Reason. Accordingly, in the event that Employee's employment is terminated between the Effective Date and December 31, 2020 (the "Retention Bonus Period") by the Company for Cause or by Employee for any reason other than for Good Reason (as such terms are defined in the Offer Letter), then Employee shall be required to repay the Retention Bonus pursuant to the following schedule:

   (a) Prior to July 31, 2020: 6/6 of Retention Bonus to be repaid (i.e., $609,557.00).

(b) Termination between August 1, 2020 and August 31, 2020: 5/6 of Retention Bonus to be repaid (i.e., 507,964.17).

(c) Termination between September 1, 2020 and September 30, 2020: 4/6 of Retention Bonus to be repaid (i.e., 406,371.33).

(d) Termination between October 1, 2020 and October 31, 2020: 3/6 of Retention Bonus to be repaid (i.e., $304,778.50).

(e) Termination between November 1, 2020 and November 30, 2020: 2/6 of Retention Bonus to be repaid (i.e., $203,185.67).

(f) Termination between December 1, 2020 and December 31, 2020: 1/6 of Retention Bonus to be repaid (i.e., $101,592.83).

(g) Termination after December 31, 2020: 0/6 of Retention Bonus to be repaid (i.e., $0.00).

Any such amounts due to be repaid as described above shall be paid by Employee to the Company within ten (10) days following termination as described above.

In the event that Employee's employment is terminated for any reason after the conclusion of the Retention Bonus Period, or Employee's employment is terminated by the Company during the Retention Bonus Period for any reason other than Cause or is terminated by Employee during the Retention Bonus Period for Good Reason (as such terms are defined in Section 7 of the Offer Letter), then Employee shall not be required to repay any portion of the Retention Bonus to the Company.

2. Milestone Bonus. Employee also shall be eligible to earn a milestone bonus (the "Milestone Bonus") in the aggregate amount of $100,000.00, based on achievement of one or both of the milestones described below between the Effective Date and December 31, 2020 (the "Milestone Bonus Period"), subject to the apportionment described below:

(a) 75% of Milestone Bonus ($75,000.00): Receipt of European CE mark approval.

(b) 25% of Milestone Bonus ($25,000.00): I-STEP approval.

Each portion of the Milestone Bonus, if earned, shall be paid in lump sum within seven (7) days after the determination by the Company's Board of Directors (the "Board") that the applicable milestone has been met, less any and all applicable federal, state, local, foreign or other withholding taxes and all other authorized payroll deductions, but in no event later than January 31, 2021. For the avoidance of doubt, Employee may meet one, both, or neither milestone during the Milestone Bonus Period.

As described in Section 4 of this Agreement, the Milestone Bonus shall be in lieu of any Performance Bonus that Employee may be eligible to earn or receive under Section 4 of the Offer Letter during the Milestone Bonus Period, and Employee is knowingly and expressly waiving and releasing Employee's right to earn or receive any Performance Bonus during the Milestone Bonus Period. Notwithstanding the foregoing:

(i) In the event that Employee's employment is terminated during the Milestone Bonus Period by the Company without Cause or by Employee for Good Reason (as such terms are defined in Section 7 of the Offer Letter), and if following such termination the Company determines that either above-described milestone is achieved during the Milestone Bonus Period, then the Company shall pay Employee an amount equal to the applicable Milestone Bonus, pro-rated based on the period of Employee's employment with Company during the Milestone Bonus Period (by way of example, if Employee is terminated without Cause 2/3 through the Milestone Bonus Period, and if Company receives European CE mark approval during the Milestone Bonus Period following such termination date, then Employee shall be eligible to receive 2/3 of $75,000.00). Such pro-rata portion of the Milestone Bonus, if earned, shall be paid in lump sum within seven (7) days after the Board's determination that the applicable milestone has been met, less any and all applicable federal, state, local, foreign or other withholding taxes and all other authorized payroll deductions, but in no event later than January 31, 2021.

(ii) In the event that Employee's employment is terminated during the Milestone Bonus Period by the Company for Cause or by Employee other than for Good Reason (as such terms are defined in Section 7 of the Offer Letter), then Employee shall not be eligible for and shall forfeit any portion of the Milestone Bonus.

(iii) In the event that Employee remains employed through the conclusion of the Milestone Bonus Period, Employee shall again become eligible to earn the Performance Bonus, on the terms and conditions described in the Offer Letter and otherwise applicable to such Performance Bonus, for services performed following the conclusion of the Milestone Bonus Period.

3. Consulting Engagement.

(a) *Term*. Employee acknowledges and agrees that in the event that Employee's employment with the Company is terminated for any reason following the Effective Date, whether voluntarily or involuntarily, then Employee shall perform the Consulting Services (as such term is defined below) for a period of six (6) months following such date of termination (the "Consulting Term"), provided that the Company and Employee may earlier terminate the Consulting Term by mutual written agreement.

(b) *Services*. During the Consulting Term, Employee shall provide consulting services as requested by the Company (the "Consulting Services"). It is the parties' intention, and each party shall exercise commercially reasonable efforts to cause, the performance of the Consulting Services not to involve or expose Employee to material non-public information of the Company, including but not limited to quarterly revenue and earnings results, and therefore Employee will not be subject to any blackout periods under the Company's insider trading policy.

Notwithstanding the foregoing, Employee acknowledges and agrees that: (i) it ultimately is Employee's responsibility to comply with United States federal and state, Australian and any other applicable securities laws, including those relating to trading while in possession of material non-public information, (ii) the Company makes no representations or warranties with respect to such compliance, and (iii) if Employee becomes aware of any non-public information, the Company accepts no liability with respect to any losses Employee might incur as a result of Employee's inability to trade the Company's securities.

(c) *Schedule*. During the Consulting Term, Employee shall provide the Consulting Services on a part-time basis averaging ten (10) hours per month, provided that Employee and the Company may agree in writing to adjust such hours commitment. Employee shall provide the Consulting Services at the request of the Board, and Employee shall communicate with the Board regarding the status of the Consulting Services in-person or via telephone or email upon the Board's request.

(d) *Fee*. The Company shall pay Employee a fee of $325.00 per hour for Consulting Services performed during the Consulting Term (the "Consulting Fee"). The Consulting Fee shall be payable within ten (10) days following the conclusion of each month in which Consulting Services are performed, subject to submission of appropriate documentation describing the amount and nature of Consulting Services performed in such applicable month. Upon termination of the Consulting Term, Employee shall be entitled to no further payment or benefit other than the Consulting Fee that is due but unpaid for Consulting Services performed prior to the conclusion of the Consulting Term.

(e) *Independent Contractor Status*. During the Consulting Term, Employee shall act solely as an independent contractor hereunder and conduct Employee's operations as an independent contractor, and nothing in this Agreement shall be construed to render Employee as an employee of the Company during the Consulting Term. Employee shall not be considered an employee for purposes of any Company employment policy or any employment benefit plan, and shall not be entitled to any benefits under any such policy or benefit plan, during the Consulting Term. The Company has no right to control or direct the details, manner or means by which Employee performs the Consulting Services. Employee understands and recognizes that during the Consulting Term, Employee shall not be an agent of the Company or have authority to bind, represent or speak for the Company for any purpose. The Company shall record Consulting Fee payments to Employee on, and provide to Employee, an IRS Form 1099, and the Company shall not withhold any federal, state or local employment taxes on Employee's behalf. Employee agrees to pay all such taxes in a timely manner and as prescribed by law, and accepts exclusive liability for complying with all applicable state and federal laws governing self-employed individuals, including obligations such as payment of taxes, social security, disability and other contributions based on the Consulting Fee paid to Employee hereunder. The Company shall reimburse Employee for business related expenses incurred by Employee in providing the Consulting Services, pursuant to the terms and conditions of applicable Company policy.

(f) *Other Work*. Employee shall be free to provide consulting or employment services to entities or individuals other than the Company during the Consulting Term, provided that Employee meets Employee's service obligations to the Company as described herein, and further provided that Employee may not render services in a manner that violates any applicable agreements with the Company, including but not limited to Employee's Nondisclosure, Nonsolicitation and Noncompete Agreement dated March 23, 2016, which shall survive the signing of this Agreement and remain in effect pursuant to its terms.

4. Waiver and Release. Employee agrees and acknowledges that by signing this Agreement, and in exchange for the payments and other good and valuable consideration set forth herein, Employee is knowingly and expressly waiving and releasing Employee's right to receive:

(a) Any Performance Bonus described in Section 4 of the Offer Letter for work performed during any Retention Bonus Period or Milestone Bonus Period; and

(b) Any payments or benefits described in Section 7(b) of the Offer Letter (the "Severance Benefits"), and is further waiving and releasing Employee's right to assert any form of legal claim against the Company with respect to such Severance Benefits, whether seeking any form of relief, including equitable relief, recovery of damages, or recovery of any other form of monetary recovery related to such payments, including but not limited to any claim for breach of express or implied contract, promissory estoppel, unjust enrichment, breach of the covenant of good faith and fair dealing, or any claim to attorneys' fees under any applicable statute or common law theory of recovery related to the Severance Benefits. Provided, however, that nothing contained herein is intended to release the Company from its obligations under this Agreement or prevent Employee from asserting a legal claim to enforce the terms of this Agreement.

5. Nondisclosure, Nonsolicitation and Noncompete Agreement. Employee expressly reaffirms Employee's obligations under Employee's current Nondisclosure, Nonsolicitation and Noncompete Agreement dated March 23, 2016. Employee acknowledges and agrees that this Agreement shall not impact Employee's continuing obligations under Employee's Nondisclosure, Nonsolicitation and Noncompete Agreement, which shall remain in full force and effect according to its terms.

6. Amendment. Pursuant to Section 15 of the Offer Letter, Employee and the Company agree that the Offer Letter is amended as follows:

(a) Section 7(b) of the Offer Letter is superseded and replaced in its entirety by the following:

Termination Without Cause; Resignation for Good Reason; Death or Disability. If, at any time, the Company terminates Employee's employment without Cause or Employee resigns for Good Reason, subject to any restrictions contained in the Stock Exchange Listing Rules or other applicable laws, Employee will receive Employee's Base Salary accrued through Employee's last day of employment, any unused vacation (if applicable) accrued through Employee's last day of employment, and any properly incurred business expenses through Employee's last day of employment that remain unreimbursed. Under these circumstances, Employee will not be entitled to any other form of compensation from the Company, including any severance benefits, except any Retention Bonus or Milestone Bonus due under the July 23, 2020 Retention Bonus Agreement and Amendment between the Company and Employee.

(b) Section 7(c) of the Offer Letter is superseded and replaced in its entirety by the following:

[Deleted]

7. Other Rights and Agreements. This Agreement contains the entire understanding of the Company and Employee with respect to the subject matter hereof, and supersedes any other agreement or statement made to Employee (written or oral) in this regard. This Agreement does not create any employment rights not specifically set forth herein with respect to Employee. Employee's employment remains at-will and can be terminated by the Company at any time and for any reason, subject to the Offer Letter, as modified herein. The provisions of the Offer Letter and any agreements and/or agreement provisions specifically referenced as surviving therein, including those modified herein, shall remain in full force and effect pursuant to their terms.

8. Modification; Waiver. This Agreement may be modified or revised only by written agreement signed by an authorized officer of the Company and Employee. A waiver of any conditions or provisions of this Agreement in a given instance will not be deemed a waiver of such conditions or provisions at any other time in the future.

9. Binding Effect. This Agreement shall be binding on Employee and Employee's executor, administrator and heirs. Employee may not assign his obligations or payment rights under this Agreement. This Agreement may be transferred or assigned by the Company and shall be binding on the transferee or assignee. This Agreement shall automatically be transferred or assigned to and be binding upon any successor in interest to the Company, whether by merger, consolidation, sale of stock, sale of assets or otherwise.

10. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, without giving effect to the principles of conflict of laws thereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

SCOTT SCHORER

/s/ Scott Schorer
Signature

Date: July 23, 2020

GI DYNAMICS, INC.

By: /s/ Daniel Moore
Name: Daniel Moore
Title: Chairman
Date: July 23, 2020