

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): October 20, 2020

GI DYNAMICS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

000-55195
(Commission
File Number)

84-1621425
(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 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Appointment of New Director

Effective as of October 20, 2020, the Board of Directors (the “Board”) of GI Dynamics, Inc. (the “Company”) increased the size of the Board to three members and elected Ginger Glaser to fill that newly-created vacancy and serve as a member of the Board and all committees thereof. Ms. Glaser will hold office until the 2020 Annual Meeting of Stockholders and thereafter until her successor is duly elected and qualified in accordance with the Company’s bylaws or her earlier resignation, removal or death.

Ms. Glaser will be compensated for her service on the Board pursuant to the terms and conditions of a board member agreement (the “Board Member Agreement”). Pursuant to the Board Member Agreement, the Company agreed to grant Ms. Glaser non-qualified stock options to purchase shares of the Company’s common stock in an amount equal to 0.5% of the Company’s issued and outstanding common stock, at an exercise price equal to the fair market value per share as of the grant date, which will vest 25% on the first anniversary of the grant date with the remainder vesting 1/36th in equal monthly installments over the 36 months following the first anniversary, subject to Ms. Glaser’s continued service on the Board. In the event of a change of control of the Company (as defined in the award documents), the stock options shall become vested in full.

In addition, Ms. Glaser will enter into the Company’s standard indemnification agreement, a form of which is attached as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

On October 21, 2020, the Company also entered into a Consulting Agreement (the “Consulting Agreement”) with Ms. Glaser, pursuant to which Ms. Glaser agreed to provide certain consulting services (the “Services”) to the Company as directed by the Company’s Chief Executive Officer, Chief Operating Officer and Chairperson of the Board. The Company will pay Ms. Glaser \$125 per hour as consideration for the Services, which exclude any work performed by Ms. Glaser in her capacity as a director of the Company.

The Consulting Agreement has an initial term of one year from its effective date, after which it automatically renews for an additional one year period, unless earlier terminated in accordance with its terms. Either party may terminate the Consulting Agreement at any time upon 30 days’ prior written notice; provided; however, that the Company may terminate the Consulting Agreement immediately for Cause (as defined in the Consulting Agreement). Upon termination by either party, Ms. Glaser will be entitled to be paid for any portion of the Services performed prior to such termination.

Except as set forth above, there was no understanding or arrangement between Ms. Glaser and any other person pursuant to which Ms. Glaser was elected as a director. There are no related party transactions involving the Company that are required to be disclosed pursuant to Item 404(a) of Regulation S-K related to Ms. Glaser.

The foregoing descriptions of the Board Member Agreement and the Consulting Agreement do not purport to be complete descriptions of the rights and obligations of the parties thereunder and are qualified in their entirety by reference to the Board Member Agreement and the Consulting Agreement, copies of which are attached hereto as Exhibits 10.2 and 10.3, respectively, and are incorporated herein by reference.

Board Member and Chairperson Agreement

On October 21, 2020, the Company agreed to compensate Mark D. Lerdal for his services as a member of the Board and as the Chairperson of the Board, pursuant to the terms and conditions of a board member and chairperson agreement (the “Chairperson Agreement”). Pursuant to the Chairperson Agreement, Mr. Lerdal will receive an annual retainer of \$75,000, payable to him in calendar quarterly installments. In addition, the Company will grant Mr. Lerdal non-qualified stock options to purchase shares of the Company’s common stock in an amount equal to 0.5% of the Company’s issued and outstanding common stock, at an exercise price equal to the fair market value per share as of the grant date, which will vest 25% on the first anniversary of the grant date with the remainder vesting 1/36th in equal monthly installments over the 36 months following the first anniversary, subject to Mr. Lerdal’s continued service as a member of the Board. In the event of a change of control of the Company (as defined in the award documents), the stock options shall become vested in full.

The foregoing description of the Chairperson 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 Chairperson Agreement, a copy of which is attached hereto as Exhibit 10.4 and is incorporated herein by reference.

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, 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 (the "SEC").

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+	Form of Indemnification Agreement (incorporated by reference to Exhibit 10.6 to the Company's Current Report on Form 8-K filed with the SEC on September 10, 2020).
10.2+	Board Member Agreement, dated as of October 20, 2020, between GI Dynamics, Inc. and Ginger Glaser.
10.3+	Consulting Agreement, dated as of October 21, 2020, between GI Dynamics, Inc. and Ginger Glaser.
10.4+	Board Member and Chairperson Agreement, dated as of October 21, 2020, between GI Dynamics, Inc. and Mark D. Lerdal.

+ Indicates a management contract or compensatory plan.

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.

Dated: October 26, 2020

GI DYNAMICS, INC.

/s/ Charles Carter

Charles Carter

Chief Financial Officer



October 19, 2020

Re: Board Member Agreement

Dear Ginger,

GI Dynamics, Inc. (the "Company") is pleased to invite you to serve as a member of the Company's board of directors (the "Board"). If you accept this invitation, your membership on the Board will commence upon your formal election to the Board, which the Company expects to occur as soon as practicable following your acceptance. The initial board vote and approval will be followed by the traditional vote of all shareholders at the next Annual General Meeting or an interim meeting should one be scheduled.

You are being invited to join the Board because of your reputation and experience in areas that relate to the Company's business and strategy. The Company expects that, as a member of the Board, you will contribute to the success of the Company by participating in meetings of the Board and providing the Company with advice and guidance consistent with your role as a member of the Board. Board meetings are generally expected to occur up to 4-5 times a year on a primarily quarterly basis. Board meetings alternate between in-person and telephonic. Committee meetings largely occur on a telephonic basis.

The Company will reimburse you for the reasonable out-of-pocket expenses incurred in attending meetings of the Board and of any committee on which you may serve upon submission by you of reasonable supporting documentation.

Following your appointment by the Board as a Director of the Company and approval by the Board, you will be issued an option to purchase a number of shares of the Company's common stock equal to 0.5% of such common stock that issued and outstanding as of the date hereof. These option shares shall vest over a 4 year period, with 25% vesting on the first anniversary of the date of grant and the remaining option shares vesting in equal monthly installments in the 36 months thereafter (subject to your continued service to the Company as a Director). All options shall be exercisable at a price per share equal to the fair market value of the Company's common stock on the date of grant of the option (as determined by the Board in accordance with Section 409A of the Internal Revenue Code of 1986, as amended). The options that you receive hereunder shall be subject to the terms of a non-qualified stock option agreement to be executed by you and the Company. In the event that the Company is subject to a change in control, the option shares shall immediately vest and shall be fully exercisable.



The Company has adopted provisions in its Certificate of Incorporation and Bylaws to indemnify directors. You and the Company will also enter into an Indemnification Agreement in customary form which will set forth the terms and conditions of the Company's obligations to indemnify you. For the avoidance of doubt, for the duration of your service as a director of the Company, and thereafter for so long as you shall be subject to any pending or possible liability or expense for which indemnification may be provided in accordance with the Company's customary indemnification agreement to be entered into between you and the Company, the Company shall use commercially reasonable efforts (taking into account the scope and amount of coverage available relative to the cost thereof) to cause to be maintained in effect policies of directors' and officers' liability insurance providing coverage for directors and/or officers of the Company that is at least substantially comparable in scope and amount to that provided by the Company's current policies of directors' and officers' liability insurance.

As a member of the Board, you agree to hold in confidence and trust and to act in a fiduciary manner with respect to all confidential information provided to you by the Company or other members of the Board. You acknowledge that the Company and the Board reserves the right to withhold any information and to exclude you from any portion of a Board meeting if such information or attendance could reasonably be expected to result in a conflict of interest with your duties to a third party or adversely affect the attorney-client privilege between the Company and its counsel.

Nothing in this invitation or the stock option or indemnification agreements should be construed to interfere with or otherwise restrict in any way the rights of the Company and the Company's stockholders to remove any individual from the Board at any time in accordance with the provisions of applicable law.

We hope that you find the foregoing terms acceptable. You may indicate your agreement with these terms and accept this invitation by signing and dating this letter in the space provided below and returning it to me.

If you would like to set up a call so I can answer any questions you might have, I am available in the coming days at your convenience. If you would like to speak live, please call me at (415) 264-5096 or e-mail me at lerdalmark@gmail.com.



We look forward to working with you.

Very truly yours,

/s/ Mark Lerdal

Mark Lerdal

Director of GI Dynamics, Inc.

Agreed to and Accepted:

/s/Ginger Glaser

Ginger Glaser

Dated: 10/20/2020

GI DYNAMICS, INC.

CONSULTING AGREEMENT

This Consulting Agreement (this "Agreement"), dated as of October 21, 2020 (the "Effective Date"), by and between GI Dynamics, Inc., a Delaware corporation (the "Company"), and Ginger Glaser ("Consultant").

1. **Consulting Relationship.** During the term of this Agreement, Consultant will provide consulting services to the Company as described on **Exhibit A** hereto (the "Services"). Consultant represents that Consultant is duly licensed (as applicable) and has the qualifications, the experience and the ability to properly perform the Services. Consultant shall use Consultant's best efforts to perform the Services such that the results are satisfactory to the Company.

2. **Fees.** Subject to Section 4 below, as consideration for the Services to be provided by Consultant and other obligations, the Company shall pay to Consultant the amounts specified in **Exhibit B** hereto at the times specified therein.

3. **Expenses.** Consultant shall not be authorized to incur on behalf of the Company any expenses and will be responsible for all expenses incurred while performing the Services except (i) as expressly specified in **Exhibit C** hereto (which shall be none unless specified thereon) or (ii) as otherwise agreed to in advance by the Company's Chief Executive Officer, Chief Operating Officer or Chairperson of the board of directors, which consent shall be evidenced in writing for any expenses in excess of \$500. As a condition to receipt of reimbursement, Consultant shall be required to submit to the Company reasonable evidence that the amount involved was both reasonable and necessary to the Services provided under this Agreement.

4. **Term and Termination.** Consultant shall serve as a consultant to the Company commencing as of the Effective Date. The initial term of this Agreement shall be one (1) year from the Effective Date (the "Initial Term") and shall automatically renew thereafter for one (1) additional one (1) year term (the "Renewal Term," and together with the Initial Term, the "Term"), unless earlier terminated as provided herein. Notwithstanding the foregoing, either party may terminate this Agreement at any time upon thirty (30) days' prior written notice; provided; however, that the Company may terminate this Agreement immediately for "Cause." In the event of termination in accordance with this paragraph by Consultant or by the Company, then Consultant shall only be paid for any portion of the Services that have been performed prior to such termination.

As used herein, for "Cause" means a termination of Consultant's engagement by the Company due to (A) Consultant's continued (after the cure period set forth below) gross negligence and/or misconduct (including but not limited to dishonesty, fraud, deceit, or material incidents of insubordination), (B) the conviction (by trial, upon a plea or otherwise) of Consultant of, or the admission of guilt by Consultant of, a felony or a crime involving moral turpitude or any other act of dishonesty, fraud or deceit or is punishable by imprisonment of thirty (30) days or more, provided, however, that nothing in this Agreement shall obligate the Company to pay any compensation during any period that Consultant is unable to perform her duties hereunder due to any incarceration, (C) a breach of fiduciary duty to the Company, (D) a breach of this Agreement or the Confidentiality Agreement (as defined below) that adversely affects the Company; provided that the Company may not terminate Consultant's engagement pursuant to clause (A), unless, as to matters that are capable of cure within the Term, the Company has given Consultant written notice of such matters in specific detail and of its intention to so terminate Consultant if such matter is not remedied within ten (10) days after written notice thereof from the Company.

5. **Independent Contractor.** Consultant's relationship with the Company will be that of an independent contractor and not that of an employee.

6. **Method of Provision of Services.** Consultant shall be solely responsible for determining the method, details and means of performing the Services. Consultant may, at Consultant's own expense and only after obtaining the prior written consent of the Company, employ or engage the services of such employees, subcontractors, partners or agents, as Consultant deems necessary to perform the Services (collectively, the "Assistants"), subject to the Company's prior written consent. The Assistants are not and shall not be employees of the Company, and Consultant shall be wholly responsible for the professional performance of the Services by the Assistants such that the results are satisfactory to the Company. Consultant shall expressly advise the Assistants of the terms of this Agreement, and shall require each Assistant to execute and deliver to the Company a Confidential Information and Invention Assignment Agreement substantially in the form attached to this Agreement as Exhibit D hereto (the "Confidentiality Agreement").

(a) **No Authority to Bind Company.** Consultant acknowledges and agrees that Consultant and its Assistants have no authority to enter into contracts that bind the Company or create obligations on the part of the Company without the prior written authorization of the Company.

(b) **No Benefits.** Consultant acknowledges and agrees that Consultant and its Assistants shall not be eligible for any Company employee benefits and, to the extent Consultant otherwise would be eligible for any Company employee benefits but for the express terms of this Agreement, Consultant (on behalf of itself and its employees) hereby expressly declines to participate in such Company employee benefits.

(c) **Taxes; Indemnification.** Consultant shall have full responsibility for all applicable taxes for all compensation paid to Consultant or its Assistants under this Agreement, including any withholding requirements that apply to any such taxes, and for compliance with all applicable labor and employment requirements with respect to Consultant's self-employment, sole proprietorship or other form of business organization, and with respect to the Assistants, including state worker's compensation insurance coverage requirements and any U.S. immigration visa requirements. Consultant agrees to indemnify, defend and hold the Company harmless from any liability for, or assessment of, any claims, penalties or interest with respect to such taxes, labor or employment requirements, including any liability for, or assessment of, taxes imposed on the Company by the relevant taxing authorities with respect to any compensation paid to Consultant or its Assistants.

7. **Supervision of Consultant's Services.** All of the services to be performed by Consultant, including but not limited to the Services, will be as agreed between Consultant and the Company's Chief Executive Officer. Consultant will be required to report to the Chief Executive Officer concerning the Services performed under this Agreement. The nature and frequency of these reports will be left to the discretion of the Chief Executive Officer.

8. **Consulting or Other Services for Competitors.** Consultant represents and warrants that Consultant does not presently perform or intend to perform, during the Term, consulting or other services for, or engage in or intend to engage in an employment relationship with, medical device companies whose businesses or proposed businesses in any way involve products or services which would be competitive with the Company's products or services, or those products or services proposed or in development by the Company during the Term (except for those companies, if any, listed on Exhibit E hereto). If, however, Consultant decides to do so, Consultant agrees that, in advance of accepting such work, Consultant will promptly notify the Company in writing, specifying the organization with which Consultant proposes to consult, provide services, or become employed by and to provide information sufficient to allow the Company to determine if such work would conflict with the terms of this Agreement, including the terms of the Confidentiality Agreement, the interests of the Company or further services which the Company might request of Consultant. If the Company determines that such work conflicts with the terms of this Agreement, the Company reserves the right to terminate this Agreement immediately. In no event shall any of the Services be performed for the Company at the facilities of a third party or using the resources of a third party.

9. **Confidentiality Agreement.** Consultant shall sign, or has signed, a Confidentiality Agreement in the form set forth as **Exhibit D** hereto, on or before the date Consultant begins providing the Services.

10. **Conflicts with this Agreement.** Consultant represents and warrants that neither Consultant nor any of the Assistants is under any pre-existing obligation in conflict or in any way inconsistent with the provisions of this Agreement. Consultant represents and warrants that Consultant's performance of all the terms of this Agreement will not breach any agreement to keep in confidence proprietary information acquired by Consultant in confidence or in trust prior to commencement of this Agreement. Consultant warrants that Consultant has the right to disclose and/or use all ideas, processes, techniques and other information, if any, which Consultant has gained from third parties, and which Consultant discloses to the Company or uses in the course of performance of this Agreement, without liability to such third parties. Notwithstanding the foregoing, Consultant agrees that Consultant shall not bundle with or incorporate into any deliveries provided to the Company herewith any third party products, ideas, processes, or other techniques, without the express, written prior approval of the Company. Consultant represents and warrants that Consultant has not granted and will not grant any rights or licenses to any intellectual property or technology that would conflict with Consultant's obligations under this Agreement. Consultant will not knowingly infringe upon any copyright, patent, trade secret or other property right of any former client, employer or third party in the performance of the Services.

11. **Miscellaneous.**

(a) **Governing Law.** The validity, interpretation, construction and performance of this Agreement, and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the state of Delaware, without giving effect to principles of conflicts of law.

(b) **Entire Agreement.** This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and supersedes all prior or contemporaneous discussions, understandings and agreements, whether oral or written, between them relating to the subject matter hereof.

(c) **Amendments and Waivers.** No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by the parties to this Agreement. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance.

(d) **Successors and Assigns.** Except as otherwise provided in this Agreement, this Agreement, and the rights and obligations of the parties hereunder, will be binding upon and inure to the benefit of their respective successors, assigns, heirs, executors, administrators and legal representatives. The Company may assign any of its rights and obligations under this Agreement. No other party to this Agreement may assign, whether voluntarily or by operation of law, any of its rights and obligations under this Agreement, except with the prior written consent of the Company.

(e) **Notices.** Any notice, demand or request required or permitted to be given under this Agreement shall be in writing and shall be deemed sufficient when delivered personally or by overnight courier or sent by email, or 48 hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, addressed to the party to be notified at such party's address as set forth on the signature page, as subsequently modified by written notice, or if no address is specified on the signature page, at the most recent address set forth in the Company's books and records.

(f) **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

(g) **Construction.** This Agreement is the result of negotiations between and has been reviewed by each of the parties hereto and their respective counsel, if any; accordingly, this Agreement shall be deemed to be the product of all of the parties hereto, and no ambiguity shall be construed in favor of or against any one of the parties hereto.

(h) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and all of which together shall constitute one and the same agreement. Execution of a facsimile or scanned copy will have the same force and effect as execution of an original, and a facsimile or scanned signature will be deemed an original and valid signature.

(i) **Electronic Delivery.** The Company may, in its sole discretion, decide to deliver any documents related to this Agreement or any notices required by applicable law or the Company's Certificate of Incorporation or Bylaws by email or any other electronic means. Consultant hereby consents to (i) conduct business electronically (ii) receive such documents and notices by such electronic delivery and (iii) sign documents electronically and agrees to participate through an on-line or electronic system established and maintained by the Company or a third party designated by the Company.

(j) **Advice of Counsel.** EACH PARTY ACKNOWLEDGES THAT, IN EXECUTING THIS AGREEMENT, SUCH PARTY HAS HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL, AND HAS READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT. THIS AGREEMENT SHALL NOT BE CONSTRUED AGAINST ANY PARTY BY REASON OF THE DRAFTING OR PREPARATION HEREOF.

[Signature Page Follows]

The parties have executed this Agreement effective as of the Effective Date.

THE COMPANY:

GI DYNAMICS, INC.

By: /s/ Scott Schorer

(Signature)

Name: Scott Schorer

Title: Chief Executive Officer

AGREED TO AND ACCEPTED:

CONSULTANT:

GINGER GLASER

/s/ Ginger Glaser

(Signature)

EXHIBIT A

DESCRIPTION OF CONSULTING SERVICES

Consultant shall perform such consulting services as directed by the Company's Chief Executive Officer, Chief Operating Officer or Chairperson of the board of directors, subject to the terms and conditions of this Agreement:

For the avoidance of doubt, the Services shall not include any work performed in Consultant's capacity as a director of the Company.

EXHIBIT B

COMPENSATION

As consideration for Services rendered by Consultant under this Agreement as set forth on **Exhibit A**, the Company shall pay Consultant \$125 per hour during the Term, payable monthly and subject to the requirements set forth in this Agreement.

GI DYNAMICS, INC. – EXHIBIT B TO CONSULTING AGREEMENT

EXHIBIT C

ALLOWABLE EXPENSES

None.

GI DYNAMICS, INC. – EXHIBIT C TO CONSULTING AGREEMENT

EXHIBIT D

CONFIDENTIALITY AGREEMENT

[See Attached]

GI DYNAMICS, INC. – EXHIBIT D TO CONSULTING AGREEMENT

EXHIBIT E

LIST OF COMPANIES EXCLUDED UNDER SECTION 8

None.

Except as indicated above on this exhibit, Consultant has no engagements or employment to disclose pursuant to Section 8 of this Agreement.

___ Additional Sheets Attached

Signature of Consultant: _____

Print Name of Consultant: _____

Date: _____

GI DYNAMICS, INC. – EXHIBIT E TO CONSULTING AGREEMENT



October 20, 2020

Re: Board Member and Chairperson Agreement

Dear Mark,

GI Dynamics, Inc. (the "Company") is pleased to confirm the terms of your appointment as a member of the Company's board of directors (the "Board") and as Chairperson of the Board.

The Company recognizes your reputation and experience in areas that relate to the Company's business and strategy, and expects that, as a member and Chairperson of the Board, you will contribute to the success of the Company by participating in and leading meetings of the Board and providing the Company with advice and guidance consistent with your roles as a member and Chairperson of the Board. Board meetings are generally expected to occur up to 4-5 times a year on a primarily quarterly basis. Board meetings alternate between in-person and telephonic. Committee meetings largely occur on a telephonic basis.

In exchange for your service as a member of the Board and as Chairperson, you will receive an annual retainer of \$75,000, payable in arrears in calendar quarterly installments of \$18,750; such payment for the third quarter of 2020 will be pro-rated based on the date of your appointment as a member of the Board (i.e., August 10, 2020).

The Company will reimburse you for the reasonable out-of-pocket expenses incurred in attending meetings of the Board and of any committee on which you may serve upon submission by you of reasonable supporting documentation.

You will be issued an option to purchase a number of shares of the Company's common stock equal to 0.5% of such common stock that issued and outstanding as of the date hereof. These option shares shall vest over a 4 year period, with 25% vesting on the first anniversary of the date of grant and the remaining option shares vesting in equal monthly installments in the 36 months thereafter (subject to your continued service to the Company as a member of the Board). All options shall be exercisable at a price per share equal to the fair market value of the Company's common stock on the date of grant of the option (as determined by the Board in accordance with Section 409A of the Internal Revenue Code of 1986, as amended). The options that you receive hereunder shall be subject to the terms of a non-qualified stock option agreement to be executed by you and the Company. In the event that the Company is subject to a change in control, the option shares shall immediately vest and shall be fully exercisable.



The Company has adopted provisions in its Certificate of Incorporation and Bylaws to indemnify directors. You and the Company have previously entered into an Indemnification Agreement, which sets forth the terms and conditions of the Company's obligations to indemnify you. For the avoidance of doubt, for the duration of your service as a director of the Company, and thereafter for so long as you shall be subject to any pending or possible liability or expense for which indemnification may be provided in accordance with the Indemnification Agreement between you and the Company, the Company will use commercially reasonable efforts (taking into account the scope and amount of coverage available relative to the cost thereof) to cause to be maintained in effect policies of directors' and officers' liability insurance providing coverage for directors and/or officers of the Company that is at least substantially comparable in scope and amount to that provided by the Company's current policies of directors' and officers' liability insurance.

As a member and Chairperson of the Board, you agree to hold in confidence and trust and to act in a fiduciary manner with respect to all confidential information provided to you by the Company or other members of the Board. You acknowledge that the Company and the Board reserves the right to withhold any information and to exclude you from any portion of a Board meeting if such information or attendance could reasonably be expected to result in a conflict of interest with your duties to a third party or adversely affect the attorney-client privilege between the Company and its counsel.

Nothing in this letter or the stock option or Indemnification Agreement should be construed to interfere with or otherwise restrict in any way the rights of the Company and the Company's stockholders to remove any individual from the Board at any time in accordance with the provisions of applicable law.

We hope that you find the foregoing terms acceptable. You may indicate your agreement and acceptance with these terms by signing and dating this letter in the space provided below and returning it to the Company.



We look forward to continuing to work with you.

Very truly yours,

/s/ Ginger Glaser

Ginger Glaser
Director

Agreed to and Accepted:

/s/ Mark Lerdal

Mark D. Lerdal

Dated: 10/21/2020