

Fill in this information to identify the case:

Debtor 1 American Aesthetic Equipment, LLC
Debtor 2 _____
(Spouse, if filing)
United States Bankruptcy Court for the: Eastern District of Michigan
Case number 19-42512

Official Form 410

Proof of Claim

04/19

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. Make such a request according to 11 U.S.C. § 603.

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>Cynosure, LLC</u> Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor <u>Cynosure, Inc.; Hologic</u>	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> 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? <u>Jaffe Raitt Heuer & Weiss, Attn: Paul R. Hage</u> Name <u>27777 Franklin, Suite 2500</u> Number Street <u>Southfield MI 48034</u> City State ZIP Code Contact phone <u>(248) 351-3000</u> Contact email <u>phage@jaffelaw.com</u>	Where should payments to the creditor be sent? (if different) <u>Sean Flanagan</u> Name <u>5 Carlisle Road</u> Number Street <u>Westford MA 01886</u> City State ZIP Code Contact phone <u>(978) 513-4677</u> Contact email <u>sean.flanagan@hologic.com</u>
Uniform claim identifier for electronic payments in chapter 13 (if you use one): -----		
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> 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?	<input checked="" type="checkbox"/> No <input type="checkbox"/> 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? \$ 4,079,684.66. 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.
See attached rider. Additional documents available upon request

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: _____
Basis for perfection: _____
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: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (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: \$ _____
Annual Interest Rate (when case was filed) _____%
 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 one:

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

Up to \$3,025* 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 \$13,650*) 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

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

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 07/01/2019
MM / DD / YYYY



Signature

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

Name Paul Robert Hage
First name Middle name Last name

Title Partner

Company Jaffe Raitt Heuer & Weiss, P.C.
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 27777 Franklin, Suite 2500
Number Street
Southfield MI 48034
City State ZIP Code

Contact phone (248) 351-3000 Email phage@jaffelaw.com

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

BODY CONTOUR VENTURES, LLC,¹

Debtor.

Case No. 19-42510-pjs

Chapter 11

Hon. Phillip J. Shefferly

RIDER TO PROOF OF CLAIM

Cynosure, LLC (“Cynosure”),² by its undersigned counsel, states as follows in support of its proof of claim in the above-captioned cases:

1. Cynosure and American Aesthetic Equipment, LLC (“AAE”) entered into that certain *Purchase Agreement* dated on or about November 17, 2016, as amended by that certain *First Amendment to Purchase Agreement* dated on or about May 22, 2017, that certain *Second Amendment to Purchase Agreement* dated on or

¹ Debtors cases are being jointly administered for procedural purposes only and include Debtors Body Contour Ventures, LLC, Case No. 19-42510, BCA Acquisitions, LLC, Case No. 19-42511, American Aesthetic Equipment, LLC, Case No. 19-42512, Knoxville Laser Spa LLC, Case No. 19-42513, LRX Alexandria, LLC, Case No. 19-42514, LRX Birmingham, LLC, Case No. 19-42515, LRX Charlotte, LLC, Case No. 19-42516, LRX Chicago, LLC, Case No. 19-42517, LRX Colorado Springs, LLC, Case No. 19-42518, LRX Dearborn, LLC, Case No. 19-42519, LRX East Lansing, LLC, 19-42520, LRX Grand Blanc, LLC, Case No. 19-42833, LRX Hoffman Estates, LLC, Case No. 19-42521, LRX Las Vegas Summerlin, LLC, Case No. 19-42522, LRX Mesa, LLC, Case No. 19-42523, LRX Naperville, LLC, Case No. 19-42524, LRX Novi, LLC, Case No. 19-42525, LRX Orland Park, LLC, Case No. 19-42526, LRX Plymouth-Canton, LLC, Case No. 42527, LRX Stone Oak, LLC, Case No. 19-42528, LRX Towson, LLC, Case No. 19-42530, LRX Troy, LLC, Case No. 19-42531, Premier Laser Spa of Greenville LLC, Case No. 19-42532, Premier Laser Spa of Indianapolis LLC, Case No. 19-42533, Premier Laser Spa of Louisville LLC, Case No. 19-42534, Premier Laser Spa of Pittsburgh LLC, Case No. 19-42535, Premier Laser Spa of St. Louis LLC, Case No. 19-42536, and Premier Laser Spa of Virginia LLC, Case No. 19-42537.

² Cynosure converted from a limited liability company to a corporation after the commencement of this bankruptcy case. As such, Cynosure is the successor to Cynosure, Inc.

about January 3, 2018 and that certain *Third Amendment to Purchase Agreement* dated on or about April 12, 2018 (collectively, the “Purchase Agreement”).

2. Pursuant to the Purchase Agreement, AAE purchased a total of 66 SculpSure non-invasive body contouring systems (collectively, the “SculpSure Systems”) from Cynosure. Cynosure designs, manufactures and sells the SculpSure Systems and related accessories, including separate patented applicator for contouring keys (the “PAC Keys”). The purchase price for each SculpSure System was approximately \$150,000, with payments to be made by AAE to Cynosure over a period of two years. *See* Purchase Agreement, ¶ 3.2. The Purchase Agreement also required the Debtors to purchase a set number of PAC Keys and pay for a comprehensive service plan with respect to the equipment. *Id.* at 3.3.

3. To secure payment of the amounts owed thereunder, the Purchase Agreement granted to Cynosure a purchase money security interest in all equipment purchased by the Debtors from Cynosure and all proceeds therefrom. *Id.* at ¶ 3.5. Cynosure timely filed UCC-1 financing statements thereby perfecting its security interest in the SculpSure Systems.

4. On or about February 12, 2019, AAE and Cynosure entered into the *Agreement Between Cynosure, Inc. and American Aesthetic Equipment, LLC (dba LightRx)* (the “Global Agreement”) wherein the parties agreed, among other things, that AAE would surrender certain SculpSure Systems to Cynosure in exchange for

a reduction of the indebtedness (\$55,000 for each SculpSure System, \$75,000 for each upgraded SculpSure System) owing to Cynosure pursuant to section 9-620 and 9-624 of the Uniform Commercial Code.

5. Contemporaneously, AAE and Cynosure entered into the *Surrender Agreement* (the “Surrender Agreement”), the purpose of which was to effectuate and memorialize the partial strict foreclosure contemplated in the Global Agreement. In the Surrender Agreement, AAE acknowledged that:

(i) as of the date of that agreement, the outstanding balance of the Purchase Price was \$8,852,947,

(ii) the Debtors had been, and continued to be, in default to Cynosure under the Purchase Agreement, and

(iii) Cynosure’s security interests and liens in the SculpSure Systems were valid, properly perfected, unavoidable and infeasible.

See Surrender Agreement, p. 1.

6. On the Petition Date, AAE retained title to 38 SculpSure Systems. Twenty-two of the SculpSure Systems were upgraded systems and, thus, had a fair market value of approximately \$75,000 each. The remaining 16 SculpSure Systems did not have the submental upgrade and had a fair market value of \$55,000 each.

7. Along with its bankruptcy petition, the Debtors filed a *Consolidated List of Creditors Who Have the 30 Largest Unsecured Claims and are Not Insiders*

[Doc. No. 4], which indicated that Cynosure had a non-contingent, liquidated and undisputed claim in the amount of \$6,704,684.66.

8. On March 18, 2019, the Debtors filed their sale motion seeking to sell substantially all of their assets, including the SculpSure Systems (the “Sale Motion”), to RVB Investment Group, LLC (“RVB”).

9. On May 17, 2019, Cynosure filed its *Objection to Sale Motion and Cure Notice* [Doc. No. 439] (the “Sale Objection”). In the Sale Objection, Cynosure objected to the proposed sale and argued, among other things, that the SculpSure Systems could not be sold free and clear of Cynosure’s security interest under section 363(f) of title 11 of the United States Code (the “Bankruptcy Code”) absent Cynosure’s consent, which consent was not obtained.

10. In lieu of litigating Cynosure’s objections to the Sale Motion, the Debtors and Cynosure reached a global resolution of their disputes, which resolution was memorialized in the *Order (I) Authorizing Debtors to Enter Into Agreement for Sale of Substantially All of the Debtors’ Assets With Successful Bidder; (II) Approving the Asset Purchase Agreement Between Debtors and RVB Investment Group, LLC; (III) Authorizing the Sale of Substantially All of the Debtors’ Assets Free and Clear of Liens, Claims, Interests and Encumbrances and Transferring Liens to Proceeds Thereof; (iv) Authorizing and Approving the Assumption and*

Assignment of Certain of the Debtors' Executory Contracts and Unexpired Leases; and (V) Granting Related Relief [Doc. No. 475] (the "Sale Order").

11. More specifically, per the Sale Order, the Cynosure Objection was resolved as follows:

a. The Debtors acknowledge that the 38 body contouring systems that were sold by Cynosure to American Aesthetic Equipment, LLC prior to the Petition Date and that remain in the Debtors' possession (the "SculpSure Systems") constitute the entirety of the Cynosure branded equipment remaining in their possession, and that the SculpSure Systems are subject to Cynosure's valid, properly perfected, purchase money security interest.

b. Notwithstanding any language to the contrary in the Sale Motion, the APA or this Sale Order, the SculpSure Systems shall not be Acquired Assets or Additional Assets sold to Buyer and any leases or contracts entered into between Cynosure and the Debtors shall not be assigned to Buyer as Assigned Contracts under this Sale Order.

c. Cynosure is hereby granted relief from the automatic stay set forth in section 362(a) of the Bankruptcy Code, and title to the SculpSure Systems is hereby transferred to Cynosure, without the need for any further documentation of any kind, pursuant to section 9-624 of the Uniform Commercial Code, MCL 440.9624. Cynosure shall be vested with all right, title and interest of the Debtors in and to the SculpSure Systems free and clear of all liens, claims and interests of or through the Debtors.

d. Cynosure retains the right to file an unsecured proof of claim against the Debtors' bankruptcy estates on account of amounts owed by the Debtors (the "Cynosure Indebtedness"). Pursuant to section 9-620 of the Uniform Commercial Code, MCL 440.9620, Cynosure shall accept full ownership of the SculpSure Systems in partial satisfaction of the Cynosure Indebtedness. Any proof of claim filed by Cynosure in these bankruptcy cases will reflect a reduction in the Cynosure Indebtedness as follows: (i) \$55,000 for each SculpSure

System, and (ii) \$75,000 for each SculpSure System with submental upgrade.

e. Effective upon the Closing, Cynosure shall lease to the Buyer 25 SculpSure Systems pursuant to, and subject to the terms of that certain *Equipment Lease Agreement* entered into between Cynosure and the Buyer. Approval of the Cynosure settlement as set forth in this paragraph is an express condition precedent to the validity of the *Equipment Lease Agreement*. Cynosure's rights with respect to the Buyer under the *Equipment Lease Agreement* shall not be subject to any release of claims in favor of the Buyer pursuant to this Sale Order.

f. The Debtors, on behalf of themselves and their estates, waive and release Cynosure and its affiliates from any and all claims or causes of action of any kind or nature, including any claims or causes of action under chapter 5 of the Bankruptcy Code, that could have been asserted against Cynosure or its affiliates, whether known or unknown, and whether arising prior to or after the Petition Date.

g. The Cynosure Objection shall be deemed withdrawn in its entirety.

See Sale Order, ¶ 31.

12. Subsequent to the partial strict foreclosure process conducted in accordance with subparagraphs (c) and (d) of paragraph 31 of the Sale Order, Cynosure's remaining unsecured claim is \$4,079,684.66, which amount reflects a \$2,625,000 reduction of Cynosure's claim as of the Petition Date. The claim amount is the balance that remains outstanding under the Purchase Agreement and the Global Agreement, which balance includes unpaid purchase price for the SculpSure Systems and amounts owed for services performed by Cynosure with respect to such equipment.

13. Additional documentation regarding Cynosure's claim and the calculation thereof is voluminous and, upon information and belief, is in the possession of the Debtors. Nevertheless, such documentation will be made available by Cynosure upon request.

14. The filing of this proof of claim shall not constitute a limitation, waiver or release of Cynosure's legal or equitable rights, claims, remedies or defenses against any person, entity or property. Cynosure expressly reserves its right to supplement and/or amend this proof of claim as and when necessary.

Respectfully submitted by,

JAFFE RAITT HEUER & WEISS, P.C.

By: /s/ Paul R. Hage
Paul R. Hage (P70460)
27777 Franklin Road, Suite 2500
Southfield, MI 48034
Phone: (248) 351-3000
phage@jaffelaw.com

Counsel to Cynosure, LLC

Dated: July 1, 2019

Eastern District of Michigan Claims Register

[19-42512-pjs American Aesthetic Equipment, LLC](#)

Judge: Phillip J Shefferly **Chapter:** 11
Office: Detroit **Last Date to file claims:** 07/01/2019
Trustee: **Last Date to file (Govt):** 09/30/2019

Creditor: (25783792) Cynosure 5 Carlisle Rd Westford, MA 01886	Claim No: 1 <i>Original Filed</i> Date: 07/01/2019 <i>Original Entered</i> Date: 07/01/2019	Status: Filed by: CR Entered by: Paul R. Hage Modified:
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Amount claimed: \$4079684.66

History:

[Details](#) [1-1](#) 07/01/2019 Claim #1 filed by Cynosure, Amount claimed: \$4079684.66 (Hage, Paul)

Description:

Remarks:

Claims Register Summary

Case Name: American Aesthetic Equipment, LLC
Case Number: 19-42512-pjs
Chapter: 11
Date Filed: 02/22/2019
Total Number Of Claims: 1

Total Amount Claimed*	\$4079684.66
Total Amount Allowed*	

*Includes general unsecured claims

The values are reflective of the data entered. Always refer to claim documents for actual amounts.

	Claimed	Allowed
Secured		
Priority		
Administrative		