

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, DC 20549

FORM 8-K

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

**May 12, 2023
Date of Report (date of earliest event reported)**

CUTERA®

Cutera, Inc.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

000-50644
(Commission File Number)

77-0492262
(I.R.S. Employer
Identification Number)

**3240 Bayshore Blvd.
Brisbane, California 94005**
(Address of principal executive offices)

(415) 657-5500
(Registrant's telephone number, including area code)

N/A
(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 (see General Instruction A.2. below):

- 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:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock (\$0.001 par value)	CUTR	The NASDAQ Stock Market, LLC

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.

Stuart Drummond Interim CFO Offer Letter

As previously reported on May 9, 2023, the board of directors (the “Board”) of Cutera, Inc. (the “Company”) appointed Stuart Drummond as Interim Chief Financial Officer (“CFO”) of the Company. Mr. Drummond’s start date as Interim CFO was May 5, 2023, and his employment will continue until Mr. Drummond’s employment is terminated by him or the Company. On May 12, 2023, the Company and Mr. Drummond executed an offer letter regarding his appointment as Interim CFO, a copy of which is attached hereto as Exhibit 10.1 (the “Offer Letter”). Per the terms of the Offer Letter, Mr. Drummond’s base salary will be \$300,000 per year, and Mr. Drummond will be eligible to receive an annual discretionary bonus of up to 40% of Mr. Drummond’s base salary.

Mr. Drummond’s Offer Letter also contemplates that Mr. Drummond will be eligible to receive a series of retention bonuses if Mr. Drummond remains an employee through the applicable retention dates. Mr. Drummond may earn (i) the first retention bonus of \$60,000 upon the appointment of a new CFO, (ii) the second retention bonus of \$40,000 on the six month anniversary of the appointment of a new CFO, and (iii) the third retention bonus of \$70,000 on the one year anniversary of the appointment of a new CFO. In each instance, the applicable retention bonus will be paid, less applicable withholdings, within ten business days following the applicable retention date.

Mr. Drummond’s Offer Letter also provides that Mr. Drummond will be eligible to participate in the Company’s Executive Change in Control and Severance Policy, as described below, at a Tier 3 level of severance benefits.

The foregoing description of the material terms of the Offer Letter does not purport to be complete and is qualified in its entirety by reference to the full text of the letter, a copy of which is attached hereto as Exhibit 10.1.

Michael Karavitis Retention Bonus Letter

On May 12, 2023, the Company and Mr. Karavitis executed a retention bonus letter, a copy of which is attached hereto as Exhibit 10.2 (the “Retention Bonus Letter”). Per the terms of the Retention Bonus Letter, Mr. Karavitis will be eligible to receive a series of retention bonuses if Mr. Karavitis remains an employee in good standing through the applicable retention dates. Mr. Karavitis may earn (i) the first retention bonus of \$56,250 on July 3, 2023, (ii) the second retention bonus of \$45,000 on October 3, 2023, (iii) the third retention bonus of \$56,250 on January 2, 2024, and (iv) the fourth retention bonus of \$67,500 on April 2, 2024. In each instance, the applicable retention bonus will be paid, less applicable withholdings, within ten business days following the applicable retention date.

The foregoing description of the material terms of the Retention Bonus Letter does not purport to be complete and is qualified in its entirety by reference to the full text of the letter, a copy of which is attached hereto as Exhibit 10.2.

Executive Change in Control and Severance Policy

On April 28, 2023, the Board approved a new Executive Change in Control and Severance Policy (the “Policy”), which provides a standardized approach for the receipt of change in control and severance payments and benefits by certain key employees (each an “Officer”) to be designated by the Compensation Committee of the Board or by the Company’s CEO. Each Officer’s severance benefits under the Policy will depend on the Officer’s tier of participation (“Tier”). Generally, the Policy is intended to replace the individual Change of Control and Severance Agreements which the Company had previously entered into with certain Officers. On May 12, 2023, each of Messrs. Drummond and Karavitis entered into participation agreements under the Policy providing for Tier 3 and Tier 2 level severance benefits (as described below), respectively.

Under the Policy, if, within the period 3 months prior to and 12 months following a “change of control” (such period, the “Change in Control Period”), the Company terminates the employment of the applicable Officer other than for “cause,” death or “disability,” or the Officer resigns for “good reason” (as such terms are defined in the Policy) and, within 60 days following the Officer’s termination, the Officer executes the Company’s then-standard separation agreement and release of claims that becomes effective and irrevocable (the “Release Requirement”), the Officer is entitled to receive from the Company (i) a lump sum severance payment equal to the payment of the Officer’s base salary (as in effect immediately prior to the qualifying termination, or if the qualifying termination is due to good reason based on a material reduction in base salary, then the Officer’s base salary in effect immediately prior to such reduction) for the number of months set forth below, (ii) payment of premiums to maintain group health insurance continuation benefits pursuant to “COBRA” for the Officer and the Officer’s dependents for up to the number of months set forth below, (iii) a lump sum payment equal to the percentage set forth below of the Officer’s target bonus in effect for the fiscal year in which termination occurs, and (iv) accelerated vesting as to 100% of the Officer’s outstanding unvested equity awards (if vesting depends on achievement of performance criteria, then, except for awards designated as “Aviclear” or “special” at the time of grant, which shall not accelerate, assuming performance criteria has been achieved at target levels).

- Severance Benefits within the Change in Control Period:
 - Salary Severance & COBRA Benefit:
 - Tier 1: 18 months
 - Tier 2: 12 months
 - Tier 3: 6 months
 - Tier 4: 3 months
 - Equity Benefit: 100%
 - Bonus Severance:
 - Tier 1: 150%
 - Tier 2: 100%
 - Tier 3: 50%
 - Tier 4: 25%

In addition, under the Policy, if, outside of a Change in Control Period, the Company terminates the employment of the applicable Officer other than for cause, death or disability, or the Officer resigns for good reason and, within 60 days following the Officer’s termination, the Officer satisfies the Release Requirement, the Officer is entitled to receive (i) a lump sum severance payment equal to the payment of the Officer’s base salary (as in effect immediately prior to the qualifying termination, or if the qualifying termination is due to good reason based on a material reduction in base salary, then the Officer’s base salary in effect immediately prior to such reduction) for the number of months set forth below, and (ii) payment of premiums to maintain group health insurance continuation benefits pursuant to “COBRA” for the Officer and the Officer’s dependents for up to the number of months set forth below.

- Severance Benefits outside of the Change in Control Period:
 - Salary Severance & COBRA Benefit:
 - Tier 1: 18 months
 - Tier 2: 12 months
 - Tier 3: 6 months
 - Tier 4: 3 months

Under the Policy, in the event any payment to the applicable Officer pursuant to the Policy would be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code, as amended, or the Code (as a result of a payment being classified as a parachute payment under Section 280G of the Code), the Officer will receive such payment as would entitle the Officer to receive the greatest after-tax benefit, even if it means that we pay the Officer a lower aggregate payment so as to minimize or eliminate the potential excise tax imposed by Section 4999 of the Code. The Policy does not require us to provide any tax gross-up payments to an Officer.

The foregoing description of the Policy is qualified in its entirety by reference to the Policy, which is attached hereto as Exhibit 10.3.

Item 9.01 Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
10.1	Interim CFO Offer Letter dated May 12, 2023 by and between Cutera, Inc. and Stuart Drummond.
10.2	Retention Bonus Letter dated May 12, 2023 by and between Cutera, Inc. and Michael Karavitis.
10.3	Executive Change in Control and Severance Policy.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

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, thereunto duly authorized.

Date: May 16, 2023

CUTERA, INC.

By: /s/ VIKRAM VARMA

Vikram Varma

Senior Vice President, General Counsel and
Compliance Officer



May 12, 2023

Stuart Drummond
(Address on file with the Company)

Dear Stuart,

We are pleased that you accepted the Interim CFO, effective May 5, 2023. We are confident in your capabilities and experiences to lead the Finance organization during this transition time.

To recognize this increase in responsibilities, we are making the following changes:

Compensation and Benefits

- A. **Salary.** Your annual salary will increase to three hundred thousand dollars (\$300,000), a \$20,000 increase from your current wages.
- a. **Company Bonus Plan:** You will continue to be eligible for a discretionary annual target bonus of up to forty percent (40%) of your Base Salary (the "Company Bonus Plan"), in accordance with the Company's Discretionary Management Bonus Plan.
- B. **Retention Bonus:** As a valued member of Cutera Inc. ("Cutera" or the "Company"), the Company has approved your eligibility to receive a bonus (the "Retention Bonus") in the amount of \$170,000 if you remain an employee of Cutera through each milestone date (the "Retention Milestone Date"). The Retention Bonus, to the extent earned, will be paid, less applicable withholdings, within ten (10) business days following each Retention Date.

As such, we are offering you a special cash retention bonuses paid as follows:

1. Appointment of a new CFO the company will pay you a one-time retention bonus of \$60,000.
2. Six (6) months after the appointment of a new CFO, the company will pay you a one-time retention bonus of \$40,000.
3. One (1) year after the appointment of a new CFO, the company will pay you a one-time retention bonus of \$70,000.

Change in Control & Severance.

- A. **Benefit Tier:** Your role is eligible for Tier 3 CIC & Severance benefits. Please refer to the policy for specific details about the plan.

We are confident that Cutera's future is very bright and will be delivered through the combination of talented employees and our rich and differentiated R&D pipeline. The Management Team, as supported by our Board of Directors, believes that we are most efficient and focused on the right things when our organization is fully aligned.

The terms and conditions of this letter reflect the entire agreement and understanding between you and the Company as to the subject matter herein and supersede all prior or contemporaneous agreements whether written or oral.

We ask that you please sign and date this letter where indicated below and return an executed copy to Roycie Eppler, CHRO.

Sincerely,

Cutera, Inc.

By: /s/ Sheila Hopkins

Sheila Hopkins
Interim CEO

Agreed to and accepted:

Stuart Drummond

Signature: /s/ Stuart Drummond

Date : May 12, 2023



Retention Bonus Letter

May 12, 2023
 Michael Karavitis
 (Address on file with the Company)

Dear Michael,

We are happy to inform you that as a valued member of Cutera, Inc. (“Cutera” or the “Company”), the Company has approved your eligibility to receive a bonus (the “Retention Bonus”) in the amount of **\$225,000** (two-hundred and twenty two thousand dollars) if you remain an employee of Cutera through each milestone date, are in good standing, not on a performance improvement plan or other disciplinary action. (the “Retention Milestone Date”). The Retention Bonus, to the extent earned, will be paid, less applicable withholdings, within ten (10) business days following each Retention Date.

As such, we are offering you a special cash retention bonuses paid on the following milestone dates:

- 1) July 3, 2023, the company will pay you a one-time retention bonus of \$56,250.
- 2) October 3, 2023, the company will pay you a one-time retention bonus of \$45,000.
- 3) January 2, 2024, the company will pay you a one-time retention bonus of \$56,250.
- 4) April 2, 2024, the company will pay you a one-time retention bonus of \$67,500.

We are confident that Cutera’s future is very bright and will be delivered through the combination of talented employees and our rich and differentiated R&D pipeline. The Management Team, as supported by our Board of Directors, believes that we are most efficient and focused on the right things when our organization is fully aligned.

By signing below, you accept the eligibility to receive the Retention Bonus as described in this letter. You also acknowledge and agree that you have had the opportunity to consult with your personal advisors regarding any tax or other consequences of your opportunity to receive the Retention Bonus.

Please note that nothing in this letter will change your status as an at-will employee of the Company. Only an agreement in writing signed by you and the Company can change your status as an at-will employee of the Company.

The terms and conditions of this letter reflect the entire agreement and understanding between you and the Company as to the subject matter herein and supersede all prior or contemporaneous agreements whether written or oral.

We ask that you please sign and date this letter where indicated below and return an executed copy to Roycie Eppler, CHRO.

Sincerely,

Cutera, Inc.

By: /s/ Sheila Hopkins
 Sheila Hopkins
 Interim CEO

Agreed to and accepted:

Michael Karavitis

Signature: /s/ Michael Karavitis

Date : May 12, 2023

CUTERA, INC.

EXECUTIVE CHANGE IN CONTROL AND SEVERANCE POLICY

(Effective as of May 12, 2023)

This Executive Change in Control and Severance Policy (the “**Policy**”) is designed to provide certain protections to a select group of key employees of Cutera, Inc. (“**Cutera**” or the “**Company**”) or any of its subsidiaries if their employment is involuntarily terminated under the circumstances described in this Policy. The Policy is designed to be an “employee welfare benefit plan” (as defined in Section 3(1) of the Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”)), and this document is both the formal plan document and the required summary plan description for the Policy.

1. **Eligible Employee:** An individual is only eligible for protection under this Policy if he or she is an Eligible Employee and complies with its terms. An “**Eligible Employee**” is an employee of the Company or any subsidiary of the Company who has (i) been designated by the Compensation Committee of the Board (the “**Compensation Committee**”) or by a committee of the Board consisting of the Company’s Chief Executive Officer in the capacity of a member of the Board (the “**CEO Committee**”) as eligible to participate in the Policy, whether individually or by position or category of position and (ii) executed a participation agreement in the form attached hereto as Exhibit A (a “**Participation Agreement**”).
2. **Policy Benefits:** An Eligible Employee will be eligible to receive the payments and benefits under this Policy upon his or her Qualified Termination, subject to the terms of the applicable Participation Agreement. All benefits under this Policy will be subject to the Eligible Employee’s compliance with the Release Requirement and any timing modifications required to avoid adverse taxation under Section 409A. For the avoidance of doubt, depending on an Eligible Employee’s applicable Tier and whether such Eligible Employee’s Qualified Termination is a Non-CIC Qualified Termination or a CIC Qualified Termination, not all of the payments and benefits described in this Policy may be available to such Eligible Employee.
3. **Salary Severance.** On a Qualified Termination, an Eligible Employee will be eligible to receive a lump-sum payment equal to the number of months of annualized Base Salary as set forth in the applicable Participation Agreement, payable on the first Company payroll date following the effective date of the Release (subject to any delay as provided in Section 9), less applicable withholdings.
4. **COBRA Benefit.** On an applicable Qualified Termination, if and to the extent provided for in the applicable Participation Agreement, if an Eligible Employee makes a valid election under COBRA to continue his or her health coverage, the Company will pay the cost of such continuation coverage for the Eligible Employee and any of the Eligible Employee’s eligible dependents that were covered under the Company’s health care plans immediately prior to the date of his or her eligible termination until the earliest of (i) the end of the period following the Qualified Termination set forth in the applicable Participation Agreement; (ii) the date upon which the Eligible Employee and/or the Eligible Employee’s eligible dependents become covered under similar plans or (iii) the date upon which the Eligible Employee ceases to be eligible for coverage under COBRA (such payments, the “**COBRA Premiums**”). However, if the Company determines in its sole discretion that it cannot pay the COBRA Premiums without potentially violating applicable law (including, without limitation, Section 2716 of the Public Health Service Act), the Company will in lieu thereof provide to the Eligible Employee a taxable lump-sum payment equal to the total amount of the COBRA premiums that the Executive would be required to pay to continue his or her group health

coverage in effect on the date of his or her Qualified Termination (which amount will be based on the premium rates applicable for the first month of COBRA coverage for the Eligible Employee and any of eligible dependents of the Eligible Employee) for the period of time set forth in the applicable Participation Agreement following the Qualified Termination (the “**COBRA Replacement Payment**”), payable on the first Company payroll date following the effective date of the Release (subject to any delay as provided in Section 9). The COBRA Replacement Payment (if any) will be made regardless of whether the Eligible Employee elects COBRA continuation coverage. For the avoidance of doubt, the COBRA Replacement Payment may be used for any purpose, including, but not limited to continuation coverage under COBRA, and will be subject to all applicable tax withholdings. Notwithstanding anything to the contrary under this Policy, if at any time the Company determines in its sole discretion that it cannot provide the COBRA Premiums or the COBRA Replacement Payment without violating applicable law (including, without limitation, Section 2716 of the Public Health Service Act), the Eligible Employee will not receive any further COBRA Premiums or the COBRA Replacement Payment.

5. **Equity Benefits:** On a CIC Qualified Termination, acceleration of vesting as to a percentage of the then-unvested shares or rights subject to all equity awards subject to time-based vesting conditions which have been granted to the Eligible Employee, as set forth in the applicable Participation Agreement. In the case of an equity award subject to performance-based vesting conditions other than awards designated as “Aviclear” or “special” at the time of grant, unless otherwise specified in the applicable equity award agreement governing such award, all performance goals and other vesting criteria will be deemed achieved at target. For the avoidance of doubt, in the event of the Eligible Employee’s Non-CIC Qualified Termination, any unvested portion of the Eligible Employee’s then-outstanding equity awards will remain outstanding until the earlier of (x) 3 months following the Non-CIC Qualified Termination (the “**Closing Deadline**”) or (y) the occurrence of a Change in Control, solely so that any benefits due on a CIC Qualified Termination can be provided if a Change in Control occurs within the 3-month period following the Non-CIC Qualified Termination (provided that in no event will the Executive’s stock options or similar equity awards remain outstanding beyond the equity award’s maximum term to expiration). If no Change in Control occurs within the 3-month period following a Non-CIC Qualified Termination, any unvested portion of the Eligible Employee’s equity awards automatically and permanently will be forfeited on the 3-month anniversary following the date of the Non-CIC Qualified Termination without having vested.
6. **Bonus Severance.** On a CIC Qualified Termination, an Eligible Employee will be eligible to receive a lump-sum payment equal to a percentage of the Eligible Employee’s target bonus as in effect for the fiscal year in which the Qualified Termination occurs, payable on the first Company payroll date following the effective date of the Release (subject to any delay as provided in Section 9), less applicable withholdings.
7. **Death of Eligible Employee:** If the Eligible Employee dies before all payments or benefits he or she is entitled to receive under this Policy and the applicable Participation Agreement have been paid, then (i) the COBRA Premiums to the Eligible Employee will immediately cease (and the COBRA Replacement Payment will not be paid to the Eligible Employee) and (ii) any such unpaid Salary Severance, Bonus Severance or Equity Benefits will be paid to his or her designated beneficiary, if living, or otherwise to his or her personal representative in a lump-sum payment as soon as possible following his or her death.
8. **Release:** The Eligible Employee’s receipt of any severance payments or benefits upon his or her Qualified Termination under this Policy is subject to the Eligible Employee signing and not revoking the Company’s then-standard separation agreement and release of claims (the “**Release**” and such requirement, the “**Release Requirement**”), which must become effective and irrevocable

no later than the 60th day following the Eligible Employee's Qualified Termination (the "**Release Deadline**"). If the Release does not become effective and irrevocable by the Release Deadline, the Eligible Employee will forfeit any right to severance payments or benefits under this Policy. In no event will severance payments or benefits under the Policy be paid or provided until the Release actually becomes effective and irrevocable. Notwithstanding any other payment schedule set forth in this Policy, none of the severance payments and benefits payable upon such Eligible Employee's Qualified Termination under this Policy will be paid or otherwise provided prior to the 60th day following the Eligible Employee's Qualified Termination. Except to the extent that payments are delayed under the paragraph below entitled "Section 409A," on the first regular payroll pay day following the 60th day following the Eligible Employee's Qualified Termination, the Company will pay or provide the Eligible Employee the severance payments and benefits that the Eligible Employee would otherwise have received under this Policy on or prior to such date, with the balance of such severance payments and benefits being paid or provided as originally scheduled.

9. **Section 409A:**

- a. For purposes of this Policy, no payment will be made to an Eligible Employee upon termination of his or her employment unless such termination constitutes a "separation from service" within the meaning of Code Section 409A and Section 1.409A-1(h) of the regulations promulgated thereunder.
- b. To the extent any payments to which an Eligible Employee becomes entitled under this Policy, or any agreement or plan referenced herein, in connection with his or her separation from service from the Company constitute deferred compensation subject to Section 409A of the Code (the "**Deferred Payments**"), such payments will be paid on, or in the case of installments, will not commence, until the 60th day following the Eligible Employee's separation from service, or if later, such time as required by Section 9.c. Except as required by 10.c., any installment payments that would have been made to an Eligible Employee during the 60 day period immediately following such Eligible Employee's separation from service but for the preceding sentence will be paid to Eligible Employee on or around the 60th day following Eligible Employee's separation from service and the remaining payments will be made as provided herein.
- c. If an Eligible Employee is deemed at the time of such separation from service to be a "specified employee" under Code Section 409A, then any Deferred Payment(s) shall not be made or commence until the earliest of (i) the expiration of the 6 month period measured from the date of his or her "separation from service" (as such term is at the time defined in Treasury Regulations under Code Section 409A) with the Company or (ii) the date of his or her death following such separation from service; provided, however, that such deferral shall only be effected to the extent required to avoid adverse tax treatment to the Eligible Employee, including (without limitation) the additional 20% tax for which the Eligible Employee would otherwise be liable under Code Section 409A(a)(1)(B) in the absence of such deferral. Upon the expiration of the applicable deferral period, any payments which would have otherwise been made during that period (whether in a single sum or in installments) in the absence of this paragraph shall be paid to the Eligible Employee or his or her beneficiary in one lump sum.
- d. The Company reserves the right to amend the Policy as it deems necessary or advisable, in its sole discretion and without the consent of any Eligible Employee or any other individual, to comply with any provision required to avoid the imposition of the additional tax imposed under Code Section 409A or to otherwise avoid income recognition under Code Section 409A prior to the actual payment of any benefits or imposition of any additional tax. Each payment and benefit payable hereunder is intended to constitute a separate payment for purposes of Section 1.409A-2(b)(2) of the Treasury Regulations. In no event will the Company reimburse an Eligible Employee for any taxes that may be imposed on the Eligible Employee as a result of Section 409A.

10. **Parachute Payments:**

- a. **Reduction of Severance Benefits.** Notwithstanding anything set forth herein to the contrary, if any payment or benefit that an Eligible Employee would receive from the Company or any other party whether in connection with the provisions herein or otherwise (the “**Payment**”) would (i) constitute a “parachute payment” within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the “**Code**”), and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the “**Excise Tax**”), then such Payment will be equal to the Best Results Amount. The “Best Results Amount” will be either (x) the full amount of such Payment or (y) such lesser amount as would result in no portion of the Payment being subject to the Excise Tax, whichever of the foregoing amounts, taking into account the applicable federal, state and local employment taxes, income taxes and the Excise Tax, results in the Eligible Employee’s receipt, on an after-tax basis, of the greater amount notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a reduction in payments or benefits constituting parachute payments is necessary so that the Payment equals the Best Results Amount, reduction will occur in the following order: reduction of cash payments; cancellation of awards granted “contingent on a change in ownership or control” (within the meaning of Code Section 280G); cancellation of accelerated vesting of stock awards; and reduction of employee benefits. In the event that acceleration of vesting of stock award compensation is to be reduced, such acceleration of vesting will be cancelled in the reverse order of the date of grant of the Eligible Employee’s equity awards.
- b. **Determination of Excise Tax Liability.** The Company will select a professional services firm to make all of the determinations required to be made under these paragraphs relating to parachute payments. The Company will request that firm provide detailed supporting calculations both to the Company and the Eligible Employee prior to the date on which the event that triggers the Payment occurs if administratively feasible, or subsequent to such date if events occur that result in parachute payments to the Eligible Employee at that time. For purposes of making the calculations required under these paragraphs relating to parachute payments, the firm may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith determinations concerning the application of the Code. The Company and the Eligible Employee will furnish to the firm such information and documents as the firm may reasonably request in order to make a determination under these paragraphs relating to parachute payments. The Company will bear all costs the firm may reasonably incur in connection with any calculations contemplated by these paragraphs relating to parachute payments. Any such determination by the firm will be binding upon the Company and the Eligible Employee, and the Company will have no liability to the Eligible Employee for the determinations of the firm.

11. **Administration:** The Policy will be administered by the Compensation Committee or its delegate (in each case, an “**Administrator**”). The Administrator will have full discretion to administer and interpret the Policy. Any decision made or other action taken by the Administrator with respect to the Policy and any interpretation by the Administrator of any term or condition of the Policy, or any related document, will be conclusive and binding on all persons and be given the maximum possible deference allowed by law. The Administrator is the “plan administrator” of the Policy for purposes of ERISA and will be subject to the fiduciary standards of ERISA when acting in such capacity.

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12. **Exclusive Benefits:** This Policy is intended to be the only agreement between the Eligible Employee and the Company regarding any change in control severance payments or benefits to be paid to the Eligible Employee on account of a termination of employment whether unrelated to, concurrent with, or following, a Change in Control. Accordingly, by executing a Participation Agreement, an Eligible Employee hereby forfeits and waives any rights to any severance or change in control benefits set forth in any employment agreement, offer letter, and/or equity award agreement, except as set forth in this Policy.
 13. **Tax Obligations:** All payments and benefits under this Policy will be paid less applicable withholding taxes. The Company is authorized to withhold from any payments or benefits all federal, state, local and/or foreign taxes required to be withheld therefrom and any other required payroll deductions. The Company will not pay any Eligible Employee's taxes arising from or relating to any payments or benefits under this Policy. The Eligible Employee will be solely responsible for the payment of all personal tax liability that is incurred as a result of the payments and benefits received under this Policy, and the Eligible Employee will not be reimbursed by the Company for any such payments.
 14. **Amendment or Termination:** The Board or the Compensation Committee may amend or terminate the Policy at any time without advance notice to any Eligible Employee or other individual and without regard to the effect of the amendment or termination on any Eligible Employee or on any other individual, except that any amendment or termination of the Policy that would reduce the benefits provided hereunder or impair an Eligible Employee's eligibility under the Policy will not be effective with respect to such Eligible Employee without such Eligible Employee's prior written consent. Any action in amending or terminating the Policy will be taken in a non-fiduciary capacity.
 15. **Claims Procedure:** Any Eligible Employee who believes he or she is entitled to any payment under the Policy may submit a claim in writing to the Administrator. If the claim is denied (in full or in part), the claimant will be provided a written notice explaining the specific reasons for the denial and referring to the provisions of the Policy on which the denial is based. The notice will also describe any additional information needed to support the claim and the Policy's procedures for appealing the denial. The denial notice will be provided within 90 days after the claim is received. If special circumstances require an extension of time (up to 90 days), written notice of the extension will be given within the initial 90 day period. This notice of extension will indicate the special circumstances requiring the extension of time and the date by which the Administrator expects to render its decision on the claim.
 16. **Appeal Procedure:** If the claimant's claim is denied, the claimant (or his or her authorized representative) may apply in writing to the Administrator for a review of the decision denying the claim. Review must be requested within 60 days following the date the claimant received the written notice of their claim denial or else the claimant loses the right to review. The claimant (or representative) then has the right to review and obtain copies of all documents and other information relevant to the claim, upon request and at no charge, and to submit issues and comments in writing. The Administrator will provide written notice of the decision on review within 60 days after it receives a review request. If additional time (up to 60 days) is needed to review the request, the claimant (or representative) will be given written notice of the reason for the delay. This notice of extension will indicate the special circumstances requiring the extension of time and the date by which the Administrator expects to render its decision. If the claim is denied (in full or in part), the claimant will be provided a written notice explaining the specific reasons for the denial and referring to the provisions of the Policy on which the denial is based. The notice will also include a statement that the claimant will be provided, upon request and free of charge, reasonable access to, and copies of, all documents and other information relevant to the claim and a statement regarding the claimant's right to bring an action under Section 502(a) of ERISA.

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17. **Successors:** Any successor to the Company of all or substantially all of the Company's business and/or assets (whether direct or indirect and whether by purchase, merger, consolidation, liquidation or other transaction) shall assume the obligations under the Policy and agree expressly to perform the obligations under the Policy in the same manner and to the same extent as the Company would be required to perform such obligations in the absence of a succession. For all purposes under the Policy, the term "Company" will include any successor to the Company's business and/or assets which becomes bound by the terms of the Policy by operation of law, or otherwise. Failure of the Company to obtain such assumption and agreement prior to the effectiveness of any such succession shall be a breach of this Policy and each Participation Agreement.
18. **Applicable Law:** The provisions of the Policy will be construed, administered, and enforced in accordance with ERISA and, to the extent applicable, the internal substantive laws of the state of California (but not its conflict of laws provisions).
19. **Definitions:** The following terms will have the following meanings for purposes of this Policy:
- a. **"Affiliate"** means the Company and any other parent or subsidiary corporation of the Company, as such terms are defined in Section 424(e) and (1) of the Code.
 - b. **"Base Salary"** means the Eligible Employee's annual base salary as in effect immediately prior to his or her Qualified Termination (or if the Qualified Termination is due to Good Reason based on a material reduction in base salary under Section 19.n.(ii), then the Eligible Employee's annual base salary in effect immediately prior to such reduction).
 - c. **"Board"** means the Board of Directors of the Company.
 - d. **"Bonus Severance"** means the severance payments set forth in Section 6.
 - e. **"Cause"** means:
 - i. Eligible Employee's willful failure to substantially perform Eligible Employee's duties with respect to the Company (subject to notice and a reasonable period to cure), other than a failure resulting from Eligible Employee's complete or partial incapacity due to physical or mental illness or impairment;
 - ii. Employee's willful act which constitutes gross misconduct and which is injurious to the Company;
 - iii. Eligible Employee's willful breach of a material provision of any material written agreement between Eligible Employee and the Company (subject to notice and reasonable period to cure);
 - iv. Eligible Employee's knowing, material and willful violation of a federal or state law or regulation applicable to the business of the Company or any Affiliate; or
 - v. Eligible Employee's conviction of, or plea of guilty or nolo contendere to, a felony, any crime involving fraud, embezzlement or any other act of moral turpitude, or any crime that results in, or is reasonably expected to result in, a material adverse effect on the business or reputation of the Company.

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- f. **“Change in Control”** means the occurrence of any of the following events:
- i. A change in the ownership of the Company which occurs on the date that any one person, or more than one person acting as a group (**“Person”**), acquires ownership of the stock of the Company that, together with the stock held by such Person, constitutes more than 50% of the total voting power of the stock of the Company, except that any change in the ownership of the stock of the Company as a result of a private financing of the Company that is approved by the Board will not be considered a Change in Control; or
 - ii. A change in the effective control of the Company which occurs on the date that a majority of members of the Board is replaced during any 12 month period by directors whose appointment or election is not endorsed by a majority of the members of the Board prior to the date of the appointment or election; or
 - iii. A change in the ownership of a substantial portion of the Company’s assets which occurs on the date that any Person acquires (or has acquired during the 12 month period ending on the date of the most recent acquisition by such person or persons) assets from the Company that have a total gross fair market value equal to or more than 50% of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions. For purposes of this subsection (iii), gross fair market value means the value of the assets of the Company, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets.

For these purposes, persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the Company.

Notwithstanding the foregoing, a transaction will not be deemed a Change in Control unless the transaction qualifies as a change in control event within the meaning of Section 409A.

- g. **“Change in Control Period”** means the period beginning 3 months prior to a Change in Control and ending 12 months following a Change in Control.
- h. **“CIC Qualified Termination”** means a termination of the Eligible Employee’s employment either (i) by the Company without Cause (excluding by reason of the Eligible Employee’s death or Disability) or (ii) by the Executive for Good Reason, in either case, during the Change in Control Period.
- i. **“COBRA”** means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.
- j. **“COBRA Benefit”** means the COBRA premium payments and COBRA Replacement Payments set forth in Section 4.
- k. **“Code”** means the Internal Revenue Code of 1986, as amended.

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- l. **“Disability”** will mean that Eligible Employee is unable to engage in any substantial gainful activity, and specifically, the essential functions of Eligible Employee’s position, with or without reasonable accommodation, by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months. Termination resulting from Disability may only be affected after at least 30 days’ written notice by the Company of its intention to terminate Eligible Employee’s employment. In the event that Eligible Employee resumes the performance of substantially all of his or her duties hereunder before the termination of his or her employment becomes effective, the notice of intent to terminate will automatically be deemed to have been revoked.
- m. **“Equity Benefits”** means the equity award acceleration benefits set forth in Section 5.
- n. **“Good Reason”** means Eligible Employee’s resignation within 90 days following the expiration of any Company cure period (discussed below) following the occurrence of one or more of the following, without Eligible Employee’s consent:
- i. A material reduction in Eligible Employee’s authority, duties, or responsibilities relative to duties, position or responsibilities in effect immediately prior to such reduction;
 - ii. A material reduction in Eligible Employee’s cash compensation as in effect immediately prior to such reduction;
 - iii. A material change in the geographic location at which Eligible Employee must perform services (in other words, the relocation of Employee to a facility that is more than 50 miles from Employee’s then-current location).
- Eligible Employee will not resign for Good Reason without first providing the Company with written notice within 90 days of the event that Employee believes constitutes “Good Reason” specifically identifying the acts or omissions constituting the grounds for Good Reason and a reasonable cure period of not less than 30 days following the date of such notice and such grounds for “Good Reason” have not been cured during such cure period.
- o. **“Non-CIC Qualified Termination”** means a termination of the Eligible Employee’s employment that would constitute a CIC Qualified Termination but for the fact that it occurs outside of the Change in Control Period.
- p. **“Qualified Termination”** means either a Non-CIC Qualified Termination or a CIC Qualified Termination.
- q. **“Salary Severance”** means the severance payments set forth in Section 3.
- r. **“Tier”** means the tier of severance benefits an Eligible Employee is entitled to receive under the Policy, depending on the rank of the Eligible Employee on the date the right to severance benefits under the Policy is triggered through an applicable Qualified Termination, as set forth below.
- i. **“Tier 1”** applies to the Company’s Chief Executive Officer.
 - ii. **“Tier 2”** applies to Company employees designated as “Tier 2” participants by the Board, the Compensation Committee or the CEO Committee.

- iii. **“Tier 3”** applies to Company employees designated as “Tier 3” participants by the Board, the Compensation Committee or the CEO Committee.
- iv. **“Tier 4”** applies to Company employees designated as “Tier 4” participants by the Board, the Compensation Committee or the CEO Committee.

20. **Additional Information:**

Plan Name: Cutera, Inc. Executive Change in Control and Severance Policy

Plan Sponsor: Cutera, Inc.
3240 Bayshore Blvd.,
Brisbane, California 94005

Identification Number: 5

Plan Year: Company’s Fiscal Year

Plan Administrator: Cutera, Inc.
Attention: Administrator of the Cutera, Inc. Executive Change in Control and Severance Policy
3240 Bayshore Blvd.,
Brisbane California 94005

Agent for Service of Legal Process: Cutera, Inc.
Attention: General Counsel
3240 Bayshore Blvd.,
Brisbane, California 94005
Service of process may also be made upon the Plan Administrator.

Type of Plan Severance Plan/Employee Welfare Benefit Plan

Plan Costs The cost of the Policy is paid by the Company.

21. **Statement of ERISA Rights:**

Eligible Employees have certain rights and protections under ERISA:

They may examine (without charge) all Policy documents, including any amendments and copies of all documents filed with the U.S. Department of Labor, such as the Policy’s annual report (Internal Revenue Service Form 5500). These documents are available for review in the Company’s Human Resources Department.

They may obtain copies of all Policy documents and other Policy information upon written request to the Plan Administrator. A reasonable charge may be made for such copies.

In addition to creating rights for Eligible Employees, ERISA imposes duties upon the people who are responsible for the operation of the Policy. The people who operate the Policy (called “fiduciaries”) have a duty to do so prudently and in the interests of Eligible Employees. No one, including the Company or any other person, may fire or otherwise discriminate against an Eligible Employee in any way to prevent them from obtaining a benefit under the Policy or exercising rights under ERISA. If an Eligible Employee’s claim for a severance benefit is denied, in whole or in part, they must receive a written explanation of the reason for the denial. An Eligible Employee has the right to have the denial of their claim reviewed. (The claim review procedure is explained above.)

Under ERISA, there are steps Eligible Employees can take to enforce the above rights. For instance, if an Eligible Employee requests materials and does not receive them within 30 days, they may file suit in a federal court. In such a case, the court may require the Administrator to provide the materials and to pay the Eligible Employee up to \$110 a day until they receive the materials, unless the materials were not sent because of reasons beyond the control of the Plan Administrator. If an Eligible Employee has a claim which is denied or ignored, in whole or in part, he or she may file suit in a state or federal court. If it should happen that an Eligible Employee is discriminated against for asserting their rights, he or she may seek assistance from the U.S. Department of Labor, or may file suit in a federal court.

In any case, the court will decide who will pay court costs and legal fees. If the Eligible Employee is successful, the court may order the person sued to pay these costs and fees. If the Eligible Employee loses, the court may order the Eligible Employee to pay these costs and fees, for example, if it finds that the claim is frivolous.

If an Eligible Employee has any questions regarding the Policy, please contact the Plan Administrator. If an Eligible Employee has any questions about this statement or about their rights under ERISA, they may contact the nearest area office of the Employee Benefits Security Administration (formerly the Pension and Welfare Benefits Administration), U.S. Department of Labor, listed in the telephone directory, or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W. Washington, D.C. 20210. An Eligible Employee may also obtain certain publications about their rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.

EXHIBIT A

Executive Change in Control and Severance Policy Participation Agreement

This Participation Agreement (“**Agreement**”) is made and entered into by and between [NAME] on the one hand, and Cutera, Inc. (the “**Company**”) on the other.

You have been designated as eligible to participate in the Company’s Executive Change in Control and Severance Policy (the “**Policy**”), a copy of which is attached hereto, pursuant to which you are eligible to receive the applicable Salary Severance, COBRA Benefits, Equity Benefits and Bonus Severance in the amounts set forth below upon the type of Qualified Termination set forth below, subject to the terms and conditions of the Policy. Capitalized terms used but not defined in this Agreement have the meanings given to them in the Policy.

- Non-CIC Qualified Termination:
 - Salary Severance: [Tier 1: 18 months][Tier 2: 12 months][Tier 3: 6 months] [Tier 4: 3 months]
 - COBRA Benefit: [Tier 1: 18 months][Tier 2: 12 months][Tier 3: 6 months] [Tier 4: 3 months]
 - Equity Benefits: None
 - Bonus Severance: None
- CIC Qualified Termination:
 - Salary Severance: [Tier 1: 18 months][Tier 2: 12 months][Tier 3: 6 months] [Tier 4: 3 months]
 - COBRA Benefit: [Tier 1: 18 months][Tier 2: 12 months][Tier 3: 6 months] [Tier 4: 3 months]
 - Equity Benefits: [ALL Tiers 1: 100%]
 - Bonus Severance: [Tier 1: 150% of applicable target bonus][Tier 2: 100% of applicable target bonus] [Tier 3: 50% of applicable target bonus] [Tier 4: 25% of applicable target bonus]

You agree that the Policy and the Agreement constitute the entire agreement of the parties hereto and supersede in their entirety all prior representations, understandings, undertakings or agreements (whether oral or written and whether expressed or implied) of the parties, and will specifically supersede any severance and/or change in control provisions of any offer letter, employment agreement, severance agreement or equity award agreement entered into between you and the Company.

This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

By its signature below, each of the parties signifies its acceptance of the terms of the Policy, in the case of the Company by its duly authorized officer effective as of the last date set forth below.

CUTERA, INC.

ELIGIBLE EMPLOYEE

By: _____

Signature: _____

Date: _____

Date: _____