PUMA BIOTECHNOLOGY, INC.
Form DFAN14A
November 03, 2015

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

(Rule 14a 101)

INFORMATION REQUIRED IN CONSENT STATEMENT

SCHEDULE 14A INFORMATION

Consent Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934

Filed by the Registrant ¨ Filed by a Party other than the Registrant x

Check the appropriate box:

¨ Preliminary Consent Statement

¨ **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**

¨ Definitive Consent Statement

¨ Definitive Additional Materials

x Soliciting Material Under Rule 14a-12

PUMA BIOTECHNOLOGY, INC.

(Name of Registrant as Specified in Its Charter)

FREDRIC N. ESHELMAN, PHARM.D.

JAMES M. DALY

SETH A. RUDNICK, M.D.

KENNETH B. LEE, JR.

(Name of Persons(s) Filing Consent Statement, if Other Than the Registrant)

Payment of Filing Fee (Check the appropriate box):

x No fee required.

¨ Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

¨ Fee paid previously with preliminary materials:

¨ Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the form or schedule and the date of its filing.

(1) Amount previously paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

Dr. Fredric N. Eshelman Issues Statement Regarding Puma Biotechnology, Inc.

NEW YORK - Dr. Fredric N. Eshelman today issued the following statement regarding Puma Biotechnology, Inc. (the Company) in response to the Company s statements in its November 2, 2015 Form 8-K:

As disclosed in Dr. Eshelman s preliminary consent statement dated October 28, 2015, Dr. Eshelman in July requested from the Company certain board minutes and related board materials pursuant to Delaware General Corporation Law Section 220 to evaluate his continued investment in the Company. The Company has repeatedly rejected those requests for materials. A copy of those requests, and copies of related correspondence between counsel, are attached hereto.

Dr. Eshelman has made a personal investment in the Company worth millions of dollars. His level of ownership more than satisfies the requirements of Delaware law to demand an inspection of Company records and gives him a significant stake in the future governance and operations of the Company.

The materials attached show that the Company s statements in its November 2, 2015 Form 8-K mischaracterize the tenor and substance of those communications and seek to create a false impression that Dr. Eshelman is unwilling to engage with Company management. In fact, Dr. Eshelman has been stonewalled by a management team that has denied him the basic transparency and accountability that Delaware law requires. Management s suggestion of a potential willingness to meet at some unspecified date and location, communicated by e-mail through company counsel on August 28, 2015, more than six weeks after Dr. Eshelman s initial request for copies of board minutes, ignored Dr. Eshelman s repeated requests under Delaware law. There was no reason to pursue a meeting before the requested materials were provided.

During the summer, in one of several discussions between counsel to Dr. Eshelman and company counsel relating to the demand for board materials under Delaware law, counsel to Dr. Eshelman mistakenly overstated his ownership level. Because Delaware law permits any shareholder regardless of ownership level to make such demands for corporate records, counsel to Dr. Eshelman saw no need to immediately correct the earlier statement. The filings last week by Dr. Eshelman with the SEC contained a complete and accurate description of Dr. Eshelman s beneficial ownership.

The Company s statement on Monday underscores the concerns that led Dr. Eshelman to make a demand under Delaware law for board minutes in the first place and confirms the need to adopt the proposals set forth in the preliminary consent statement in order to ensure transparency and accountability for all of the Company s shareholders. Dr. Eshelman believes that management should not waste Company resources resisting an effort to expand the board and add four highly qualified individuals. Despite the Company s professed interest in engagement, the Company

has not yet responded to Dr. Eshelman s offer, communicated through counsel October 29, to make the nominees available to meet with the Company s board and to work with the board collaboratively to implement the board expansion that Dr. Eshelman is proposing.

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THIS COMMUNICATION IS NOT A PROXY STATEMENT OR A CONSENT STATEMENT, NOR IS IT A SOLICITATION OF ANY PROXY OR CONSENT. ANY SUCH SOLICITATION WILL BE MADE ONLY BY A WRITTEN DEFINITIVE CONSENT SOLICITATION STATEMENT (THE DEFINITIVE CONSENT STATEMENT), DULY FILED WITH THE SEC. DR. ESHELMAN AND THE NOMINEES HAVE FILED A PRELIMINARY CONSENT STATEMENT (THE PRELIMINARY CONSENT STATEMENT) WITH THE SEC. PLEASE READ THE PRELIMINARY CONSENT STATEMENT CAREFULLY BECAUSE IT CONTAINS IMPORTANT INFORMATION ABOUT THE IDENTITY OF THE PARTICIPANTS, INCLUDING, BUT NOT LIMITED TO, DR. ESHELMAN, THE PROPOSALS HE IS ASKING THE STOCKHOLDERS TO APPROVE, THE NOMINEES THAT HE IS PROPOSING TO BE ELECTED TO SERVE ON THE COMPANY S BOARD OF DIRECTORS AND THEIR RESPECTIVE HOLDINGS (SECURITIES OR OTHERWISE, DIRECT OR INDIRECT) IN THE COMPANY. YOU MAY OBTAIN A FREE COPY OF THE PRELIMINARY CONSENT STATEMENT AND, WHEN AVAILABLE, THE DEFINITIVE CONSENT STATEMENT, AT THE SEC S WEBSITE (WWW.SEC.GOV) OR BY DIRECTING A REQUEST TO OKAPI PARTNERS LLC AT THE INVESTOR INQUIRIES CONTACT ABOVE.

Certain Information Regarding Forward-Looking Statements

This communication includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, regarding, among other things, Dr. Eshelman s plans to distribute a definitive consent statement. Such forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date thereof. We undertake no obligation to publicly release the result of any revisions to these forward-looking statements that may be made to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events.