

NUPATHE INC.  
Form SC 14D9  
January 23, 2014

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

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**SCHEDULE 14D-9**

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Solicitation/Recommendation Statement under Section 14(d)(4)  
of the Securities Exchange Act of 1934

**NuPathe Inc.**

(Name of Subject Company)

**NuPathe Inc.**

(Names of Persons Filing Statement)

**Common Stock, par value \$0.001 per share**

(Title of Class of Securities)

**67059M100**

(CUSIP Number of Class of Securities)

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**Michael F. Marino, Esq.**  
**Senior Vice President, General Counsel and Secretary**  
**NuPathe Inc.**  
**7 Great Valley Parkway, Suite 300**  
**Malvern, Pennsylvania 19355**  
**(610) 232-0800**

(Name, address and telephone numbers of person authorized to receive notices and communications on behalf of the persons filing statement)

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**With copies to:**

**Michael N. Peterson, Esq.  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, Pennsylvania 19103  
(215) 963-5000**

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Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

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Cash consideration payable at the Effective Time in respect to unvested options is as follows: Mr. Yetter \$8,910; Mr. Cola \$8,910; Mr. Datin \$8,910; Mr. Federici \$8,910; Mr. Kollender \$8,910; Mr. Roche \$8,910; and Mr. Sisko \$,8910. Potential consideration payable in respect of unvested options upon payment of CCCPs is as



























































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potential infringements of patents of third parties by the Company and its products;

the effect on the Company's business of competitive products or alternative technologies;

the Company's need for additional funds to finance development and commercialization efforts;

the potential costs of patent, products liability or other litigation;

future equity compensation expenses;

international economic, political and other risks that could negatively affect the Company's results of operations or financial position;

changes in accounting rules;

the costs of negotiating and consummating the Offer and the Merger; and

the other factors set forth from time to time in the Company's SEC filings including the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2012, and described under the sections entitled "Risk Factors" and "Cautionary Statement Regarding Forward-Looking Statements" therein.

The assumptions and estimates underlying the Company financial forecasts, all of which are difficult to predict and many of which are beyond the control of Company, may not be realized. There can be no assurance that the underlying assumptions will prove to be accurate or that the forecasted results will be realized, and actual results likely will differ, and may differ materially, from those reflected in the Company financial forecasts, whether or not the Offer or the Merger is completed.

In addition to the assumptions described in the preceding paragraph, the non-probability adjusted forecast for ZECUITY sales in the "Parent Forecast" assumed a 100% probability that Parent would market ZECUITY in accordance with the assumptions upon which the forecast was based. Parent may not market ZECUITY in a manner that is consistent with the assumptions underlying management's forecast. In particular, Parent may decide:

to deploy funds and other resources differently than that which was assumed by management;

that clinical or pre-clinical products in its portfolio should take priority over Parent's plans for ZECUITY;

to acquire another product/products that take priority over Parent's plans for ZECUITY;

that any serious adverse events that may be reported by patients purchasing commercial product change the value proposition of ZECUITY; or

that the commercial manufacture of the product is too costly.

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Additionally, the Parent could undergo a change of control and be acquired by a third party with a different view of the commercial opportunity for ZECURITY and suspend or significantly reduce or alter the marketing efforts for ZECURITY that Parent had undertaken prior to such acquisition.

The Company financial forecasts were not developed with a view toward public disclosure or with a view toward complying with the guidelines established by the American Institute of Certified Public Accountants for preparation and presentation of prospective financial data, published guidelines of the SEC regarding forward-looking statements or GAAP. The Company financial forecasts are forward-looking statements.

All of the Company financial forecasts summarized in this section were prepared by and are the responsibility of the management of the Company. Neither KPMG LLP, the Company's independent registered public accounting firm, nor any other independent registered public accounting firm provided any assistance in preparing the Company financial forecasts and has not examined, compiled or





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In arriving at its opinion, MTS assumed and relied upon, without assuming liability or responsibility for independent verification, the accuracy and completeness of all of the financial, legal, regulatory, tax,







































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<b>Exhibit No.</b>	<b>Description</b>
(e)(20)	First Amendment to Amended and Restated Employment Agreement between the Company and Michael Marino, dated August 8, 2013, (incorporated by reference to the Company's Quarterly Report on Form 10-Q filed on August 9, 2013).
(e)(21)	Amended and Restated Employment Agreement between the Company and Gerald McLaughlin, dated July 25, 2012 ((incorporated by reference to the Company's Current Report on Form 8-K filed on July 30, 2012).
(e)(22)	First Amendment to Amended and Restated Employment Agreement between the Company and Gerald McLaughlin, dated August 8, 2013, (incorporated by reference to the Company's Quarterly Report on Form 10-Q filed on August 9, 2013).
(e)(23)	Amended and Restated Employment Agreement between the Company and Keith Goldan, dated July 25, 2012 ((incorporated by reference to the Company's Current Report on Form 8-K filed on July 30, 2012).
(e)(24)	First Amendment to Amended and Restated Employment Agreement between the Company and Keith Goldan, dated August 8, 2013, (incorporated by reference to the Company's Quarterly Report on Form 10-Q filed on August 9, 2013).
(e)(25)	Form of Director Indemnification Agreement (incorporated by reference to the Company's Form S-1/A filed on July 9, 2010).
(e)(26)	Form of Warrant to Purchase Shares of Common Stock, dated October 23, 2012 (incorporated by reference to the Company's Form 8-K filed on September 26, 2012).

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**SIGNATURE**

After due inquiry and to the best of its knowledge and belief, the undersigned certifies that the information set forth in this Statement is true, complete and correct.

NUPATHE INC.

By: /s/ ARMANDO ANIDO

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Name: Armando Anido  
Title: *Chief Executive Officer*

Dated: January 23, 2014



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- (iv) reviewed certain publicly available financial analyses and forecasts relating to the Company prepared by equity analysts who report on the Company;
- (v) reviewed certain internal financial analyses and forecasts prepared by and provided to us by the management of the Company relating to its business (the "Company Projections");
- (vi) discussed with Company management the Company's projected payment dates of the Contingent Cash Consideration Payments (the "Projected Contingent Cash Consideration Payment Dates");
- (vii) conducted discussions with members of senior management and representatives of the Company concerning the matters described in clauses (iii)-(vi) above, the other strategic alternatives considered or pursued by the Company since 2009, the likelihood of the Company being able to enter into partnership arrangements or obtain financing to the extent necessary to finance the Company's strategic plan, and certain other matters we believed necessary or appropriate to our inquiry;
- (viii) compared the financial and operating performance of the Company with publicly available information concerning other publicly-traded companies and reviewed the current and historical market prices of the Company Common Stock and certain publicly traded securities of such other companies, in each case, that we deemed relevant;
- (ix) reviewed and analyzed the proposed financial terms of the Transaction as compared to the financial terms of certain selected business combinations and the consideration paid in such transactions that we deemed relevant;
- (x) reviewed and analyzed, based on the Company Projections, the cash flows generated by the Company to determine the present value of the Company's discounted cash flows; and
- (xi) performed such other financial studies, analyses and investigations and considered such other information as we deemed appropriate for the purposes of this opinion.

In arriving at the opinion set forth below, we have assumed and relied upon, without assuming liability or responsibility for independent verification, the accuracy and completeness of all of the financial, legal, regulatory, tax, accounting and other information that was publicly available or was provided to, discussed with or reviewed by us. We are not legal, regulatory, tax or financial reporting experts and have relied, with your consent, on the assessments made by advisors to the Company with respect to such issues. We have not conducted any independent verification of the Company Projections or the Projected Contingent Cash Consideration Payment Dates. Without limiting the generality of the foregoing, with respect to the Company Projections and the Projected Contingent Cash Consideration Payment Dates, we have assumed, with your consent, and based upon discussions with the Company's management, that they have been reasonably prepared in good faith, that the Company Projections are the best currently available estimates and judgments of the management of the Company of the future results of operations and financial performance of the Company and that the Projected Contingent Cash Consideration Payment Dates are the best currently available estimates and judgments of the management of the Company of the timing of payment of the Contingent Cash Consideration Payments. We express no view as to the Company Projections or the Projected Contingent Cash Consideration Payment Dates or the assumptions on which they are based.

In arriving at the opinion set forth below, we have made no analysis of, and express no opinion as to, the adequacy of the reserves of the Company and have relied upon information supplied to us by the Company as to such adequacy. In addition, we have not made any independent evaluations or appraisals of the assets or liabilities (including any contingent derivatives or off-balance-sheet assets or liabilities) of the Company or Parent or any of their respective subsidiaries, and we have not been furnished with any such evaluations or appraisals, nor have we evaluated the solvency of the Company,



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any purpose whatsoever without our prior written consent, except that a copy of this opinion may be included in its entirety in any filing the Company is required to make with the SEC in connection with the Transaction if such inclusion is required by applicable law. This opinion does not constitute a recommendation to the Board of Directors or any stockholder of the Company as to how to vote on or to take any other action in connection with the Transaction, including, without limitation, whether any stockholder should tender his, her or its shares in connection with the Offer.

As part of our investment banking services, we are regularly engaged in the valuation of businesses and securities in connection with mergers and acquisitions, and for other purposes. We have acted as the Company's financial advisor in connection with the Transaction and will receive a fee for our services, a significant portion of which is contingent upon consummation of the Transaction. In addition, the Company has agreed to reimburse our expenses and indemnify us for certain liabilities that may arise out of our engagement. We will also receive an additional fee for rendering this opinion. We may also seek to provide such services to the Company and Parent in the future and expect to receive fees for the rendering of these services.

This opinion was reviewed and approved by a fairness committee of MTS Securities, LLC.

Based upon and subject to the foregoing, it is our opinion as of the date hereof that the Merger Consideration to be received by the holders of Company Common Stock (other than Parent, Merger Sub, and their respective affiliates) pursuant to the Transaction is fair, from a financial point of view, to such holders.

Very truly yours,

/s/ MTS SECURITIES, LLC

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an appraisal and an acceptance of the merger or consolidation, either within 60 days after the effective date of the merger or consolidation as provided in subsection (e) of this section or thereafter with the written approval of the corporation, then the right of such stockholder to an appraisal shall cease. Notwithstanding the foregoing, no appraisal proceeding in the Court of Chancery shall be dismissed as to any stockholder without the approval of the Court, and such approval may be conditioned upon such terms as the Court deems just; provided, however that this provision shall not affect the right of any stockholder who has not commenced an appraisal proceeding or joined that proceeding as a named party to withdraw such stockholder's demand for appraisal and to accept the terms offered upon the merger or consolidation within 60 days after the effective date of the merger or consolidation, as set forth in subsection (e) of this section.

(l) The shares of the surviving or resulting corporation to which the shares of such objecting stockholders would have been converted had they assented to the merger or consolidation shall have the status of authorized and unissued shares of the surviving or resulting corporation.

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