

K2M GROUP HOLDINGS, INC.

FORM 8-K (Current report filing)

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant To Section 13 or 15(d) of the Securities Exchange Act of 1934
Date of Report (Date of the earliest event reported): October 6, 2017

K2M GROUP HOLDINGS, INC.
(Exact name of registrant as specified in its charter)



DELAWARE
(State of Incorporation)

001-36443
(Commission File No.)

27-2977810
(IRS Employer Identification No.)

600 Hope Parkway, SE
Leesburg, Virginia 20175
(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: **(703) 777-3155**

Not Applicable
(Former Name or Former Address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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 1.01 Entry into a Material Definitive Agreement

On October 6, 2017, K2M Group Holdings, Inc. (“K2M” or the “Company”) and certain of its subsidiaries entered into an amendment (the “Tenth Amendment”) to the Company’s senior secured credit facilities credit agreement, dated as of October 29, 2012 (as amended from time to time), by and among K2M Holdings, Inc. as the guarantor, K2M, Inc. and K2M UK Limited as the borrower, and Silicon Valley Bank and Comerica Bank as lenders. The Tenth Amendment extends the maturity date of the revolving credit facility from April 26, 2018 to April 26, 2019, among other changes.

The above summary is qualified in its entirety by reference to the full text of the Tenth Amendment, a copy of which is attached as Exhibit 10.1 to this Current Report on Form 8-K and incorporated by reference herein.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
10.1	Tenth Amendment dated October 6, 2017 to Credit Agreement dated October 29, 2012, by and among K2M Holdings, Inc., as the guarantor, K2M, Inc. and K2M UK Limited, as borrowers, and Silicon Valley Bank and Comerica Bank as lenders.

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 of the undersigned hereunto duly authorized.

K2M GROUP HOLDINGS, INC.

Date: October 12, 2017

By: /s/ Gregory S. Cole

Name: GREGORY S. COLE

Title: *Chief Financial Officer*

EXHIBIT INDEX

Exhibit No.

Description

10.1

Tenth Amendment dated October 6, 2017 to Credit Agreement dated October 29, 2012, by and among K2M Holdings, Inc., as the guarantor, K2M, Inc. and K2M UK Limited, as borrowers, and Silicon Valley Bank and Comerica Bank as lenders.

TENTH AMENDMENT TO CREDIT AGREEMENT

This Tenth Amendment to Credit Agreement (this “*Amendment*”) is entered into as of October 6, 2017, by and among **K2M HOLDINGS, INC.**, a Delaware corporation (“*Holdings*”), **K2M, INC.**, a Delaware corporation (the “*US Borrower*”) and **K2M UK LIMITED**, a company incorporated in England and Wales with company registration number 06950302 and with its registered office at Abbey House, Wellington Way, Broakland Business Park, Weybridge, Surrey KT13 0TT (the “*UK Borrower*”), and collectively, jointly and severally with the US Borrower, the “*Borrower*”), the several banks and other financial institutions or entities party hereto, **SILICON VALLEY BANK** (“*SVB*”), as the Issuing Lender and the Swingline Lender, and **Silicon Valley Bank**, as administrative agent and collateral agent for the lenders (in such capacity, the “*Administrative Agent*”).

WHEREAS, reference is hereby made to that certain Credit Agreement dated as of October 29, 2012 by and among Holdings, Borrower, the several banks and other financial institutions or entities from time to time parties thereto (each a “*Lender*” and, collectively, the “*Lenders*”) and the Administrative Agent (as amended, supplemented or otherwise modified from time to time, the “*Credit Agreement*”) (capitalized terms used but not otherwise defined herein shall have the same meaning as in the Credit Agreement);

WHEREAS, the parties hereto have agreed to modify and amend certain terms and conditions of the Credit Agreement, subject to the terms and conditions contained herein;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Amendment to Credit Agreement. The Credit Agreement is hereby amended by amending and restating the definition of “Revolving Termination Date” set forth in Section 1.1 thereof in its entirety as follows:

“*Revolving Termination Date*”: April 26, 2019.

2. Consent to Patent Assignment: Notwithstanding anything in the Credit Agreement or any other Loan Document to the contrary, the Administrative Agent and the Lenders hereby consent to the Disposition of the patents identified on Schedule I hereto (the “*Specified Patents*”). The foregoing consent (i) except as expressly set forth herein, shall in no way constitute a modification or waiver of the Administrative Agent’s or any Lender’s rights under the Credit Agreement or any other Loan Documents and (ii) relates solely to the Disposition of the Specified Patents and is not a consent to any related or other transaction. The Administrative Agent and the Lenders further acknowledge and agree that (i) the Lien in favor of the Administrative Agent encumbering the Specified Patents shall be released automatically upon the consummation of such Disposition, and (ii) in connection therewith, the Administrative Agent shall execute and deliver to the Borrower, in form and substance reasonably satisfactory to the Administrative Agent and at the Borrower’s sole cost and expense, (x) a partial release of Lien for filing with the United States Patent and Trademark Office, and (y) at the request of the Borrower, any other releases or other documents reasonably necessary or desirable for the release of the Lien on the Specified Patents.
3. Conditions Precedent to Effectiveness. This Amendment shall not be effective until each of the following conditions precedent has been fulfilled to the satisfaction of the Administrative Agent:
 - a. This Amendment shall have been duly executed and delivered by the respective parties hereto. The Administrative Agent shall have received a fully executed copy hereof.

- b. The Agent shall have received evidence acceptable to it that all action on the part of the Loan Parties necessary for the valid execution, delivery and performance by the Loan Parties of this Amendment shall have been duly and effectively taken.
 - c. All necessary consents and approvals to this Amendment shall have been obtained.
 - d. Prior to and immediately after giving effect to this Amendment, no Default or Event of Default shall have occurred and be continuing.
 - e. Prior to and immediately after giving effect to this Amendment, (i) each of the representations and warranties of the Loan Parties contained in the Credit Agreement, any other Loan Document or in any document or instrument delivered pursuant to or in connection with the Loan Documents or this Amendment, are true and correct on and as of the effective date of this Amendment (except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date), and (ii) no Default or Event of Default exists on the date hereof.
 - f. The Administrative Agent shall have received the amendment fee described in Section 4 below.
 - g. The Lenders and the Administrative Agent shall have received payment from the Borrower of all costs and expenses required to be paid pursuant to Section 5 of this Amendment.
 - h. The Administrative Agent shall have received such other documents, instruments and agreements as it may reasonably request, each in form and substance reasonably satisfactory to the Administrative Agent.
4. [Reserved].
5. Amendment Fee. Borrower hereby agrees to pay to the Administrative Agent, for the ratable benefit of the Lenders, an amendment fee in an amount equal to Fifty Five Thousand Dollars (\$55,000). Such fee shall be fully earned and due and payable in full upon the effective date of this Amendment and Borrower agrees that, once paid, such fee will not be refundable (in whole or in part) under any circumstances. Nothing herein shall derogate from any of Borrower's obligations to pay any other fees as and when due under the Credit Agreement, the Fee Letter or any other Loan Document.
6. Costs and Expenses. The Borrower shall pay to the Administrative Agent all reasonable costs, out-of-pocket expenses, and fees and charges of every kind incurred by the Administrative Agent in connection with the preparation, negotiation, execution and delivery of this Amendment and any documents and instruments relating hereto or thereto (which costs include, without limitation, the reasonable fees, charges and disbursements of counsel for the Administrative Agent).
7. Ratification of Loan Documents; Further Assurances.
- a. The Loan Parties hereby ratify, confirm and reaffirm each of the terms and conditions of the Loan Documents to which each is a party. The Loan Parties further acknowledge and agree that (i) except as specifically modified in this Amendment, all terms and conditions of the Loan Documents shall remain in full force and effect, and (ii) this Amendment constitutes a Loan Document.
 - b. The Loan Parties hereby ratify, confirm and reaffirm that all security interests and liens granted pursuant to the Loan Documents secure and shall continue to secure the payment and performance of all of the Obligations pursuant to the Loan Documents, whether now existing or hereafter arising.
 - c. The Loan Parties shall cooperate with the Administrative Agent and shall execute and deliver to the Administrative Agent such further instruments and documents as the Administrative Agent shall reasonably request to carry out to its satisfaction the transactions contemplated by this Amendment and the other Loan Documents.

8. Representations and Warranties. The Loan Parties hereby represent, warrant, and covenant to the Administrative Agent and the Lenders as follows:
- a. The Loan Parties hereby represent and warrant as of the date hereof that (i) each of the representations and warranties of the Loan Parties contained in the Credit Agreement, any other Loan Document or in any document or instrument delivered pursuant to or in connection with the Loan Documents or this Amendment, are true and correct on and as of the effective date of this Amendment (except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date), and (ii) no Default or Event of Default exists on the date hereof.
 - b. This Amendment is, and each other Loan Document to which it is or will be a party, when executed and delivered by each Loan Party that is a party thereto, will be the legally valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its respective terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally and equitable principals (whether enforcement is sought by proceedings in equity or at law).
 - c. The execution and delivery by each Loan Party of this Amendment and the performance by each Loan Party of its obligations under the Credit Agreement, as amended by this Amendment, and under the other Loan Documents (i) have been duly authorized by all necessary corporate action on the part of such Loan Party, (ii) will not violate any provisions of the certificate of incorporation or bylaws such Loan Party and (iii) will not constitute a violation by such Loan Party of any applicable material Requirement of Law.
 - d. Each Loan Party acknowledges that the Administrative Agent and the Lenders have acted in good faith and has conducted in a commercially reasonable manner its relationships with each Loan Party in connection with this Amendment and in connection with the other Loan Documents. Each Loan Party understands and acknowledges that the Administrative Agent and the Lenders are entering into this Amendment in reliance upon, and in partial consideration for, the above representations, warranties, and acknowledgements, and agrees that such reliance is reasonable and appropriate.
9. No Defenses. The Loan Parties hereby acknowledge and agree that the Loan Parties have no offsets, defenses, claims, or counterclaims against the Administrative Agent or the Lenders or any of their respective, officers, directors, employees, attorneys, representatives, successors or assigns, with respect to the Obligations, or otherwise, and that if any Loan Party now has, or ever did have, any offsets, defenses, claims, or counterclaims against the Administrative Agent or the Lenders or any of their respective, officers, directors, employees, attorneys, representatives, successors or assigns, whether known or unknown, at law or in equity, all of them are hereby expressly WAIVED and each Loan Party hereby RELEASES the Administrative Agent and the Lenders from any liability thereunder.
10. Continuing Validity. The Loan Parties understand and agree that in modifying the existing Obligations, the Administrative Agent and the Lenders are relying upon the Loan Parties representations, warranties, and agreements, as set forth in the Loan Documents. Except as expressly modified pursuant to this Amendment, the terms of the Loan Documents remain unchanged and in full force and effect. The Administrative Agent's and the Lenders' agreement to modifications to the existing Obligations pursuant to this Amendment in no way shall obligate the Administrative Agent or the Lenders to make any future modifications to the Obligations. It is the intention of the Administrative Agent, the Lenders, the Borrower and Holdings to retain all makers of the Loan Documents as liable parties, unless the party is expressly released by the Administrative Agent in writing. No maker will be released by virtue of this Amendment.

11. Governing Law/Submission To Jurisdiction; Waivers. Sections 10.13 and 10.14 of the Credit Agreement are hereby incorporated by reference in their entirety and shall apply to the terms of this Amendment.
12. Counterparts. This Amendment may be executed by one or more of the parties to this Amendment on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Amendment by facsimile or other electronic mail transmission shall be effective as delivery of a manually executed counterpart hereof (save in the case of UK Borrower where delivery of an executed copy of this Amendment by facsimile or other electronic mail transmission shall be effective as delivery of a manually executed version of this Amendment). A set of the copies of this Amendment signed by all the parties shall be lodged with the Borrower and the Administrative Agent.
13. Binding Effect. The terms and provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective representatives, permitted successors and assigns.
14. Severability. Any provision of this Amendment that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

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In Witness Whereof, the parties hereto have caused this Amendment to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

HOLDINGS :

K2M HOLDINGS, INC.

By: /s/ Gregory S. Cole

Name: Gregory S. Cole

Title: Treasurer and Chief Financial Officer

US BORROWER :

K2M, INC.

By: /s/ Greg Cole

Name: Greg Cole

Title: CFO and Treasurer

UK BORROWER :

K2M UK LIMITED

By: /s/ Gregory Cole

Name: Gregory Cole

Title: Director

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[Signature Page to Tenth Amendment]

ADMINISTRATIVE AGENT:

SILICON VALLEY BANK, as the Administrative Agent

By: /s/ Steve Lyons

Name: Steve Lyons

Title: Director

[Signature Page to Tenth Amendment]

LENDERS:

SILICON VALLEY BANK, as Issuing Lender, Swingline Lender, and as a Lender

By: /s/ Steve Lyons

Name: Steve Lyons

Title: Director

[Signature Page to Tenth Amendment]

COMERICA BANK, as a Lender

By: /s/ Walter Weston
Name: Walter Weston
Title: VP

[Signature Page to Tenth Amendment]

Schedule I
Specified Patents

Title	Patent/Serial Number	Jurisdiction	Owner
Expandable intervertebral implant	8,425,613	United States	K2M, Inc.
Spinal implants, spinal implant kits, and surgical methods	13/800,530	United States	K2M, Inc.
Spinal implants, spinal implant kits, and surgical methods	9,572,680	United States	K2M, Inc.