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Natalie M. Cox

Honorable Natalie M. Cox
United States Bankruptcy Judge



Entered on Docket
March 02, 2023

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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA**

In re:) Case No.: 22-14422-nmc
)
MUSCLEPHARM CORPORATION,) Chapter 11
)
)
Debtor.) Hearing Date: February 21, 2023
) Hearing Time: 9:30 a.m.
)
_____)

**AMENDED ORDER ESTABLISHING NOTIFICATION
PROCEDURES AND APPROVING RESTRICTIONS ON
CERTAIN TRANSFERS OF INTERESTS IN THE DEBTOR’S ESTATE**

MusclePharm Corporation, the debtor and debtor-in-possession (the “Debtor”) filed the *Debtor’s Motion Pursuant to 11 U.S.C. §§ 362 & 105(a) for Entry of an Order Establishing Notification and Hearing Procedures and Approving Restrictions on Certain Transfers of Interests in the Debtor’s Estate* [ECF No. 215] (the “Motion”),¹ which came on for hearing before the above-captioned Court on February 21, 2023, at 9:30 a.m. All appearances were duly noted on the record of the hearing on the Motion.

¹ Any capitalized term not expressly defined herein shall have the meaning ascribed to that term in the Motion.

1 The Court, having reviewed the Motion and other pleadings and papers in the Court’s file;
2 and it appearing that proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b); and it
3 appearing that this Court has exclusive jurisdiction over the subject matter of the Motion pursuant
4 to 28 U.S.C. § 1334(e)(2); and it appearing that venue is proper pursuant to 28 U.S.C. §§ 1408 and
5 1409; and this Court having found that it may enter a final order consistent with Article III of the
6 United States Constitution; and it appearing that proper and adequate notice of the Motion has been
7 given and that no other or further notice is necessary; and all parties appearing having an
8 opportunity to be heard; and the Court having found and determined that Debtor’s net operating
9 loss carryforwards (“NOLs”) and certain tax attributes (together with the NOLs, the “**Tax**
10 **Attributes**”) are property of Debtor’s estate and are protected by Section 362(a) of the Bankruptcy
11 Code; and the Court having found and determined that unrestricted trading in equity interests in
12 Debtor before its emergence from Chapter 11 could severely limit Debtor’s ability to use the Tax
13 Attributes for purposes of the Internal Revenue Code of 1986, as amended (the “**Tax Code**”), as
14 set forth in the Motion; and the Court having found and determined that the Procedures (as
15 hereinafter defined) are necessary are proper to preserve the Tax Attributes and are therefore in the
16 best interests of Debtor, its estate, and its creditors; and the Court having found and determined that
17 the relief requested in the Motion is authorized under Sections 105(a) and 362 of the Bankruptcy
18 Code; and this Court having determined that the relief sought in the Motion is in the best interests
19 of Debtor, its creditors, and all parties in interest; and this Court having determined that the legal
20 and factual basis set forth in the Motion establish just cause for the relief granted herein; and upon
21 all of the proceedings had before this Court and after due deliberation and sufficient cause appearing
22 therefor, it is

23 **ORDERED** that the Motion is **GRANTED** in its entirety; and it is further

24 **ORDERED** that effective as of the Petition Date the following procedures and restrictions
25 are imposed and approved:

26 a. **Notice of Substantial Equityholder Status.** Any person who is or becomes a Tax
27 Owner as of the Petition Date of at least 1,631,573 shares of Stock, which represent approximately
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1 4.75 percent of the issued and outstanding Stock (a “**Substantial Equityholder**”), must on or
2 before the later of: (a) fifteen (15) days after the Court’s entry of an order approving these
3 Procedures or (b) ten (10) days after that Person becomes a Substantial Equityholder, serve on
4 Debtor, the attorneys for Debtor, counsel for the Debtor’s prepetition lender and counsel for the
5 postpetition lender (the “**DIP Lender**”), if applicable, and the attorneys for the Committee a notice
6 (the “**Substantial Equityholder Notice**”) containing the Tax Ownership information substantially
7 in the form of **Exhibit A** annexed to **Exhibit 2** to the Motion.

8 b. **Restrictions and Procedures for Trading in Stock.** Any Person that, after the
9 Petition Date,

- 10 i. is not a Substantial Equityholder and wishes to purchase or otherwise
11 acquire Tax Ownership of an amount of Stock that would cause the Person
12 to become a Substantial Equityholder;
13 ii. is a Substantial Equityholder and wishes to purchase or otherwise acquire
14 Tax Ownership of any additional Stock; or
15 iii. is a Substantial Equityholder and wishes to sell or otherwise dispose of
16 Tax Ownership of any Stock,

17 must, prior to the consummation of any such transaction, file with the Court (at the holder’s
18 election, in a redacted form that does not include such holder’s taxpayer identification number and
19 the aggregate number of shares of Stock that such holder beneficially owns), and serve on Debtor,
20 the attorneys for Debtor and the attorneys for the Committee an unredacted notice in the form
21 attached as **Exhibit B** to **Exhibit 2** concurrently filed with the Motion, in the case of a proposed
22 acquisition of Stock, or **Exhibit C** to **Exhibit 2** concurrently filed with the Motion, in the case of a
23 proposed disposition of Stock, including the case of a 50 percent shareholder who intends to claim
24 a worthlessness deduction with respect to such Stock (either such notice, a “**Proposed Stock**
25 **Transaction Notice**”). The Debtor shall consult with counsel to the Committee prior to responding
26 to any Proposed Stock Transaction Notice. If written approval of the proposed transaction is filed
27 with the Court by the Debtor within fifteen (15) calendar days following the receipt of a Proposed
28 Stock Transaction Notice, then the transaction may proceed. If written approval of the proposed
transaction is not filed by the Debtor with the Court within such period, then the transaction may
not be consummated unless approved by a final and nonappealable order of the Court. Further

1 transactions within the scope of this Section (b) must be the subject of additional notices as set forth
2 herein with additional waiting periods.

3 c. **Confidentiality.** The Debtor, its counsel, and counsel to the Committee shall keep
4 all information provided in all notices delivered pursuant to the Trading Order strictly confidential
5 and shall not disclose the contents thereof to any person (including any DIP Lender, if applicable,
6 and any member of any Committee), except (i) to the extent necessary to respond to a petition or
7 objection filed with the Court, (ii) to the extent otherwise required by law, or (iii) to the extent that
8 the information contained therein is already public; *provided, however*, that Debtor may disclose
9 the contents thereof to its professional financial advisers, who shall keep all such notices strictly
10 confidential and shall not disclose the contents thereof to any other person subject to further Court
11 order. To the extent confidential information is necessary to respond to a petition or objection filed
12 with the Court, such confidential information shall be filed under seal or in redacted form.

13 d. **Sanctions for Noncompliance.** Acquisitions and dispositions of Tax Ownership of
14 Stock in violation of the restrictions and procedures set forth in Section (b) shall be void *ab initio*,
15 and the sanction for violating Section (b) shall be reversal of the noncompliant transaction or such
16 other (or additional) measures as the Court may consider appropriate.

17 e. **Discretionary Waiver by Debtor.** The Debtor, with the consent of the Committee
18 or pursuant to an order of the Court, may waive any sanctions, remedies, or notification procedures
19 imposed by the Trading Order; *provided, however*, that any such waiver shall be filed with the
20 Court.

21 f. **Notice Procedures.** Within three (3) business days of the entry of the Trading
22 Order, the Debtor shall (i) submit a publication notice of the entry of the Trading Order
23 (substantially in the form attached to the Motion as **Exhibit 3**) for posting on the Bloomberg
24 newswire service; (ii) post such notice together with a copy of the Trading Order on Debtor's case
25 information website (<https://cases.stretto.com/musclepharm>); and (iii) serve a notice of the entry of
26 the Trading Order on (1) the Office of the United States Trustee for the District of Nevada; (2) any
27 identified equity holder of MusclePharm Corporation; (3) those parties listed on the list of creditors
28 holding the twenty (20) largest unsecured claims against the Debtor (on a consolidated basis), as

1 identified in its Chapter 11 petition; (4) the Internal Revenue Service; and (5) the Office of the
2 United States Attorney for the District of Nevada. Upon receipt of such notice, counsel to the
3 Committee shall send such notice to its respective committee members.

4 Upon receipt of such notice of Trading Order, any Agent of a beneficial holder of the Stock
5 will be required, within five (5) business days of receipt of such notice and on at least a quarterly
6 basis thereafter, to send the notice of Trading Order to all beneficial holders of the Stock on whose
7 behalf such Agent holds the Stock. To the extent such beneficial holder is also an Agent, such
8 Agent must, in turn, promptly provide the notice of Trading Order to any holder for whose account
9 such holder holds the Stock, and so on down the chain of ownership.

10 **g. Continued Compliance with Other Applicable Laws and Rules.** The
11 requirements set forth in this Order are in addition to the requirements of Bankruptcy Rule 3001(e)
12 and applicable securities, corporate, and other laws, and do not excuse compliance therewith.

13 **h. Definitions.**

14 For purposes of this Motion:

15 • “**Agent**” means a broker, account manager, agent, custodian,
16 nominee, prime broker, clearinghouse or trustee (including a Trustee but not
including a trustee qualified under section 401(a) of the Tax Code).

17 • “**Person**” means a person or Entity (as such term is defined in
18 Treasury regulations section 1.382-3(a)).

19 • “**Tax Ownership**” means beneficial ownership of Stock as
20 determined in accordance with applicable rules under section 382 and, to the extent
21 provided in those rules shall include, but not be limited to, direct and indirect
22 ownership (*e.g.*, a holding company would be considered to have Tax Ownership of
23 all shares owned or acquired by its 100 percent owned subsidiaries), ownership by
24 members of a person’s family and persons acting in concert and, in certain cases,
25 the creation or issuance of an option (in any form). Any variation of the term Tax
Ownership shall have the same meaning, and an “option” to acquire stock shall
include any contingent purchase, warrant, convertible debt, put, stock subject to risk
of forfeiture, contract to acquire stock or similar interest, regardless of whether it is
contingent or otherwise not currently exercisable.

26 **ORDERED** that notwithstanding the applicability of Bankruptcy Rule 6003 and the
27 possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be
28 immediately effective and enforceable upon its entry; and it is further

1 **ORDERED** that, the relief provided in this Order is in addition to, and not in lieu of, any
2 and all other rights and remedies available to the Debtor; and it is further

3 **ORDERED** that this Court shall retain jurisdiction to hear and determine all matters arising
4 from the implementation of this Order.

5 **IT IS SO ORDERED.**

6 Prepared and Submitted By:

7 SCHWARTZ LAW, PLLC

8 By: /s/ Gabrielle A. Hamm

9 Samuel A. Schwartz, Esq.

10 Gabrielle A. Hamm, Esq.

11 Nevada Bar No. 11588

12 601 E. Bridger Avenue

13 Las Vegas, NV 89101

14 *Attorneys for the Debtor*

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LR 9021 CERTIFICATION

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court’s ruling and that (check one):

- The court has waived the requirement set forth in LR 9021(b)(1).
- No party appeared at the hearing or filed an objection to the motion.
- I have delivered a copy of this proposed order to all counsel and any unrepresented parties who appeared at the hearing, except those as to whom review was waived on the record at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

Jared A. Day, Esq. **Waived Signature**
Counsel for the Office of the U.S. Trustee

Jason H. Rosell, Esq. **Waived Signature**
Matthew C. Zirzow, Esq.
Counsel to the Official Committee of Unsecured Creditors

Mark M. Weisenmiller, Esq. **Approved/Disapproved**
Counsel for Empery Tax Efficient, L.P.

Dawn M. Cica, Esq. **Waived Signature**
Counsel for Ryan Drexler

I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of this order.

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