

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	
)	Chapter 11
SORRENTO THERAPEUTICS INC., <i>et al.</i> ¹)	Case No. 23-90085 (DRJ)
)	
Debtors.)	(Jointly Administered)
)	

**DEBTORS' EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL
ORDERS (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN SENIOR SECURED
SUPERPRIORITY POSTPETITION FINANCING AND (B) USE CASH COLLATERAL,
(II) GRANTING LIENS AND PROVIDING CLAIMS WITH SUPERPRIORITY
ADMINISTRATIVE EXPENSE STATUS, (III) MODIFYING THE AUTOMATIC STAY,
(IV) SCHEDULING A FINAL HEARING, AND (V) GRANTING RELATED RELIEF**

Emergency relief has been requested. Relief is requested not later than 1:15 p.m. (prevailing Central Time) on February 21, 2023.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on February 21, 2023, at 1:15 p.m. (prevailing Central Time) in Courtroom 400, 4th floor, 515 Rusk Street, Houston, Texas 77002. Participation at the hearing will only be permitted by an audio and video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at (832) 917-1510. Once connected, you will be asked to enter the conference room number. Judge Jones's conference room number is 205691. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Jones' homepage. The meeting code is "JudgeJones". Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the "Electronic Appearance" link on Judge Jones's homepage. Select the case name, complete the required fields and click "Submit" to complete your appearance.

¹ The Debtor entities in these chapter 11 cases, along with the last four digits of each Debtor entity's federal tax identification number, are: Sorrento Therapeutics, Inc. (4842) and Scintilla Pharmaceuticals, Inc. (7956). The Debtors' service address is: 4955 Directors Place, San Diego, CA 92121.

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) state as follows in support of this motion (this “Motion”):²

Preliminary Statement³

1. As set forth in greater detail in the First Day Declaration, the Debtors are a cutting-edge clinical stage and commercial biopharmaceutical public company that—through the efforts of their nearly 540 employees—develops and acquires proprietary therapeutic drugs to meet significant unmet medical needs. Prior to commencing these chapter 11 cases, the Debtors had a healthy balance sheet, with no funded debt and minimal encumbered assets (other than assets secured by equipment liens and the like). But the Debtors faced a short-term liquidity crunch, as they had insufficient cash or other short-term assets to satisfy certain obligations, including approximately \$60 million in trade payables and \$50 million of a \$175 million litigation judgment (the remaining \$125 million of that judgment was stayed prior to these chapter 11 cases). As a result, the Debtors sought chapter 11 relief to obtain some breathing room, protect its business, and maximize value for stakeholders.

2. The DIP Facility (as defined below) proposed in this Motion will help the Debtors do just that. It will help the Debtors preserve and stabilize operations—including the payment of payroll to ensure the Debtors’ workforce continues without disruption. Further, it will help the Debtors continue their efforts to obtain a value-maximizing result in these chapter 11 cases, including through potential mediation with the Nant Parties (as defined in the First Day

² To support the relief requested herein, the Debtors will present the testimony of their Chief Restructuring Officer (Mr. Mo Meghji) at the hearing on this Motion.

³ On February 13, 2023 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Additional facts and circumstances supporting this Motion are set forth in *Declaration of Mohsin Meghji, Chief Restructuring Officer of the Debtors, in Support of Chapter 11 Petitions* filed on the Petition Date (the “First Day Declaration”).

Declaration), the potential obtainment of exit financing, the potential consummation of asset sales, and the hopeful confirmation of a chapter 11 plan that pays creditors in full and reinstates equity.

3. Absent access to the DIP Facility, however, the Debtors will have no liquidity to continue operations and will be forced to liquidate. Thus, the Debtors believe that entering into the DIP Facility is the only viable path forward, in the best interests of the Debtors' estates and all stakeholders, and a sound exercise of the Debtors' business judgment. Despite the expediency of the process, the DIP Facility is the product of an extensive marketing process and good-faith, arms'-length negotiations and provides the Debtors with \$30 million on an interim basis, up to \$75 million in the aggregate, and the flexibility to sell assets not exceeding a fair market value of \$20 million, subject to certain conditions and provisions in the DIP Term Sheet.

Relief Requested

4. The Debtors seek entry of an interim order, substantially in the form of the proposed interim order filed with this Motion (the "Interim Order") and a final order (the "Final Order," and, together with the Interim Order, the "DIP Orders");⁴

- (a) authorizing the Debtors to obtain postpetition financing on a superpriority senior secured basis (the "DIP Facility", and the loans made, advanced or deemed advanced thereunder, the "DIP Loans") in the form of a multiple draw term loan facility in an aggregate principal amount of up to \$75 million, pursuant to which
 - (i) an aggregate principal amount of \$30 million shall be borrowed in a single borrowing on the Closing Date (as defined in the DIP Term Sheet), and
 - (ii) following entry of the Final Order, the remaining aggregate principal amount

⁴ To the extent of any conflict between the descriptions and definitions in this Motion and the DIP Orders, DIP Term Sheet, or DIP Loan Documents, then the DIP Orders, DIP Term Sheet, or DIP Loan Documents, as applicable, will control.

under the DIP Facility shall be available, in one or more borrowings in accordance with and subject to the terms and conditions (including, without limitation, any conditions precedent to each of the DIP Borrowings) set forth in (x) that certain *Debtor-In-Possession Term Loan Facility Summary of Terms and Conditions*, substantially in the form attached to the Interim Order as **Exhibit 1** (as may be amended, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms hereof and thereof, the “DIP Term Sheet”) (together with all other agreements, guarantees, pledge, collateral and security agreements, deeds, charges, control agreements, instruments, certificates, notes, any separate fee letter agreements between any of the Debtors, on the one hand, and the DIP Lender, on the other hand, and other documents executed, filed and/or delivered in connection therewith, each as amended, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms hereof and thereof, the “DIP Loan Documents”), by and among the Debtors as borrowers (the “DIP Borrowers”), the Guarantors (as defined in the DIP Term Sheet, together with the DIP Borrowers, the “DIP Loan Parties”), JMB Capital Partners Lending, LLC, as the lender (together with its successors and permitted assigns, the “DIP Lender”), and (y) the Interim Order;

- (b) authorizing the DIP Loan Parties to (i) execute, deliver, and perform under the DIP Term Sheet and each of the DIP Loan Documents, (ii) incur all loans, advances, extensions of credit, financial accommodations, indemnification and reimbursement obligations and other obligations, and pay all principal, interest, premiums, fees, costs, expenses, charges and all other amounts payable under the

DIP Loan Documents, including without limitation, all DIP Obligations (as defined in the DIP Term Sheet), and (iii) perform such other and further acts as may be necessary, required or desirable to implement and effectuate the terms of the Interim Order, the DIP Loan Documents and the transactions contemplated hereunder and thereunder;

- (c) authorizing the DIP Borrowers to incur, and the DIP Guarantors to jointly and severally guarantee, all DIP Obligations, in accordance with the Interim Order and the DIP Loan Documents;
- (d) granting to the DIP Lender the DIP Liens (as defined below) on all DIP Collateral (as defined below), as set forth in the Interim Order, subject to the Carve Out and any Prior Permitted Liens (each as defined in the Interim Order) subject to the relative priorities set forth in the Interim Order;
- (e) granting to the DIP Lender allowed super-priority administrative expense claims against each of the Debtors, on a joint and several basis, in respect of all DIP Obligations, subject in each case to the Carve Out, as set forth in the Interim Order;
- (f) authorizing the Debtors to use the proceeds of the DIP Facility and the DIP Collateral, including Cash Collateral (as defined in the Interim Order), solely in accordance with the terms and conditions set forth in the Interim Order and the DIP Loan Documents, including the Approved Budget (as defined below), subject to any variances expressly permitted in the Interim Order and under the DIP Term Sheet;

- (g) subject to and effective upon entry of the Final Order, approving the Debtors' waiver of the right to surcharge the DIP Collateral pursuant to section 506(c) of the Bankruptcy Code or otherwise;
- (h) subject to and effective upon entry of the Final Order, approving the Debtors' waiver of the equitable doctrine of "marshaling" and other similar doctrines with respect to the DIP Collateral;
- (i) modifying or vacating the automatic stay imposed by sections 105(a) and 362 of the Bankruptcy Code or otherwise, to the extent necessary, required or desirable to implement and effectuate the terms and provisions of the Interim Order and the DIP Loan Documents, as set forth herein, waiving any applicable stay (including under Bankruptcy Rule 6004) with respect to the effectiveness and enforceability of the Interim Order, providing for the immediate effectiveness of the Interim Order, and granting related relief; and
- (j) scheduling a final hearing (the "Final Hearing") on the Motion to consider entry of the Final Order authorizing the relief requested in the Motion on a final basis, which order shall be in form and substance and on terms and conditions acceptable in all respects to the DIP Lender.

Jurisdiction and Venue

5. The United States Bankruptcy Court for the Southern District of Texas (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157 (b). The Debtors confirm their consent to the entry of a final order by the Court.

6. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

7. The bases for the relief requested herein are sections 102(1), 105, 361, 362, 363, 364, 503, 506, and 507 of the Bankruptcy Code, rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 4002-1 and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Local Rules”).

Summary of DIP Facility⁵

Bankruptcy Rule	Summary of Material Terms
Parties to the DIP Term Sheet	<p>Borrowers: Sorrento Therapeutics, Inc. and Scintilla Pharmaceuticals, Inc. (the Debtors).</p> <p>Guarantors: Each of Sorrento Therapeutics, Inc.’s existing and future, direct and indirect domestic or foreign subsidiaries that become debtors and debtors-in-possession in these chapter 11 cases.</p> <p>DIP Lender: JMB Capital Partners Lending, LLC and/or its designees or its assignees.</p> <p>See DIP Term Sheet, §§ 1–3.</p>
Term	<p>All DIP Obligations (as defined in the DIP Term Sheet) shall be due and payable in full in cash (or such other form of consideration as the DIP Lender and the Borrowers may mutually agree) on the earliest of:</p> <ol style="list-style-type: none"> i. July 31, 2023; ii. the effective date of any chapter 11 plan of reorganization with respect to the Borrowers or any other Debtor; iii. the consummation of any sale or other disposition of all or substantially all of the assets of the Debtors pursuant to section 363 of the Bankruptcy Code; iv. the date of the acceleration of the DIP Loans and the termination of the DIP Commitments in accordance with the DIP Documents; v. dismissal of the Chapter 11 Cases or conversion of the Chapter 11 Cases into cases under chapter 7 of the Bankruptcy Code; and vi. 45 days after the date on which a motion to approve the DIP Facility is filed (or such later date as agreed to by the DIP Lender), unless the Final Order has been entered by the Bankruptcy Court on or prior to such date. <p>See DIP Term Sheet, § 7.</p>

⁵ This summary provides the straightforward reference to the material terms of the proposed DIP Facility, as intended by Bankruptcy Rule 4001 and the Complex Case Procedures.

Bankruptcy Rule	Summary of Material Terms
Commitment	<p>A non-amortizing super-priority senior secured term loan facility in an aggregate principal amount not to exceed \$75,000,000 consisting of up to \$75,000,000 in term loan commitments.</p> <p><i>See</i> DIP Term Sheet, § 4.</p>
Conditions of Borrowing	<p>The DIP Term Sheet includes standard and customary conditions of borrowing.</p> <p><i>See</i> DIP Term Sheet, §§ 15, 16.</p>
Interest Rates	<p>The DIP Loans shall bear interest at a per annum rate equal to 14% payable in cash on the first day of each month in arrears (the “<u>Non-Default Interest</u>”).</p> <p>Notwithstanding the foregoing, after the occurrence and during the continuance of an Event of Default, the DIP Loans shall bear interest at an additional per annum rate of 3%, in each case payable in cash, plus the Non-Default Interest, on the first day of each month.</p> <p><i>See</i> DIP Term Sheet, § 8.</p>
Use of DIP Facility and Cash Collateral	<p>The proceeds of the DIP Facility shall be used only for the following purposes and, excluding payments pursuant to clauses (ii), (iii), and (iv) below, subject to the Budget and 20% permitted variances as set forth below:</p> <ul style="list-style-type: none"> i. working capital and other general corporate purposes of the Borrowers and the Guarantors and certain subsidiaries; ii. professional fees and expenses of administering the Chapter 11 Cases, to the extent the Bankruptcy Court authorizes payment (including fees incurred prior to the Closing Date); iii. fees and expenses payable under the DIP Facility, including, without limitation, the Commitment Fee, the Funding Fee, the Exit Fee and legal expenses of the DIP Lender; and iv. interest and other amounts payable under the DIP Facility. <p><i>See</i> DIP Term Sheet, § 10.</p>
Entities with Interests in Cash Collateral	<p>No parties have an interest in the Cash Collateral (other than the DIP Lender with respect to postpetition Cash Collateral).</p>
Fees	<p><i>Commitment Fee.</i> The Borrowers shall pay to the DIP Lender a commitment fee equal to 2.5% of the total amount of the DIP Commitments. The Commitment Fee shall be fully earned, non-refundable upon entry of the Interim Order, and shall be payable out of the proceeds of the Initial Draw.</p> <p><i>Funding Fee.</i> The Borrowers shall pay to the DIP Lender a funding fee equal to 2.5% of the amount of each Draw, which shall be fully earned, non-refundable, and payable at the time of such Draw.</p>

Bankruptcy Rule	Summary of Material Terms
	<p>Exit Fee. Upon repayment or satisfaction of the DIP Loans in whole or in part the Borrowers shall pay to the DIP Lender an exit fee equal to the sum of (i) 7% of the amount of Initial Draw, which shall be fully earned and non-refundable upon the Bankruptcy Court’s entry of the Interim Order, and (ii) 7% of the amount of the DIP Commitments less the amount of the Initial Draw, which shall be fully earned and nonrefundable upon the Bankruptcy Court’s entry of the Final Order. The Exit Fee shall be due and payable upon the DIP Termination Date regardless of the amount of Other Draws made under the DIP Facility, <u>provided, however</u>, if the DIP Termination Date has occurred solely as a result of the occurrence and continuation of an Event of Default under the DIP Documents, then the Exit Fee shall not be payable until the DIP Obligations have been accelerated by the DIP Lender.</p> <p>The Commitment Fee, the Exit Fee, and the Funding Fee shall be approved by the Bankruptcy Court as part of the Interim Order and the Final Order, respectively. If such premiums are not approved by the Bankruptcy Court, this Term Sheet shall automatically terminate and be of no further force and effect.</p> <p><i>See</i> DIP Term Sheet, § 9.</p>
Budget	<p>The use of cash and proceeds from the DIP Facility is subject to the Debtors’ postpetition budget under the DIP Facility, attached to the Interim Order as <u>Exhibit 2</u>.</p> <p><i>See</i> Interim Order, <u>Exhibit 2</u>.</p>
Reporting Information / Variance Covenants	<p>The Budget shall be updated and provided to the DIP Lender on the fourth Wednesday following the prior Budget’s approval and every fourth Wednesday thereafter, or more frequently at the reasonable discretion of both the Borrowers and DIP Lender, with such updated Budget extending the term thereof and the DIP Lender, in its reasonable discretion, shall have the right to approve any such updates (or any amendments) by providing the Borrowers specific notice thereof within 5 business days after the delivery by the Borrowers of any such update or amendment (“<u>Updated Budget</u>”) and, (ii) to the extent the DIP Lender provides written notice rejecting the updates (or any amendments), the then existing Budget shall continue to constitute the applicable Budget until such time as an update or amendment is approved by the DIP Lender. In the event the DIP Lender does not provide written notice of its rejection of the proposed updates within such five day period, the Updated Budget shall become effective as the Budget.</p> <p>On a weekly basis thereafter, the Borrowers shall deliver to the DIP Lender a variance report for the four-week period ending the prior Friday comparing the difference/variance, expressed as a percentage (each, a “<u>Budget Variance</u>”), between: (x) total receipts for such period to total receipts for such period as set forth in the Budget on a cumulative 4 week rolling basis; (y) total disbursements (excluding professional fees) for such period to total disbursements (excluding professional fees) for such period as set forth in the Budget on a cumulative 4 week rolling basis (each a “<u>Measuring Period</u>”) and explaining in reasonable detail all material variances, it being understood that any variance solely with respect to net operating disbursements that exceeds 20% shall be material and shall constitute an Event of Default under the DIP Documents (each such report, a “<u>Variance Report</u>,” which shall be in a form satisfactory to the DIP Lender).</p> <p>For purposes of each Measuring Period, the Borrowers shall calculate: the numerical difference between “net operating disbursements” plus “net capital expenditures” (such terms reflecting those line items illustrated in the Budget) for such period to “net</p>

Bankruptcy Rule	Summary of Material Terms
	<p>operating disbursements” plus “net capital expenditures” for such period as set forth in the Budget on a cumulative 4 week rolling basis, and to the extent the difference is a positive number, the percentage such difference is of the cumulative budgeted amount for disbursements for such period (the “<u>Disbursements and Capital Expenditure Variance</u>”). For purposes herein, a “Permitted Variance” shall be limited to not greater than 20% for budget variances with respect to the Disbursements and Capital Expenditure Variance, each as set forth in the applicable Variance Report.</p> <p><i>See</i> DIP Term Sheet, § 21.</p>
Chapter 11 Milestones	<p>The only milestones are the entry of the Interim Order on or before February 24, 2023 and the entry of the Final Order on or before the date that is 45 days after the date hereof.</p> <p><i>See</i> DIP Term Sheet, §§ 7, 15, 16, 25.</p>
Liens and Priorities	<p>Subject to the “Carve Out”:</p> <ul style="list-style-type: none"> i. <i>First Priority Liens on Unencumbered Property.</i> Pursuant to section 364(c)(2) of the Bankruptcy Code, the DIP Liens shall be valid, binding, continuing, enforceable, non-avoidable, fully and automatically perfected first priority liens and security interests in all DIP Collateral that is not subject to any liens and security interests that were valid, non-avoidable and properly perfected as of the Petition Date (or that were properly perfected subsequent to the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code) (such liens, “<u>Prior Permitted Liens</u>”), including, subject to entry of the Final Order, all Avoidance Actions and Avoidance Action Proceeds (collectively, the “<u>Unencumbered Assets</u>”), which DIP Liens shall be junior and subordinated only to the Carve Out. ii. <i>Liens Junior to Certain Other Liens.</i> Pursuant to section 364(c)(3) of the Bankruptcy Code, the DIP Liens shall be valid, binding, continuing, enforceable, non-avoidable, fully and automatically perfected liens and security interests in all DIP Collateral (other than the DIP Collateral described in paragraph 6(b)(i) of the Interim Order, as to which DIP Liens are described in such paragraph), which DIP Liens shall be subject only to the (1) Carve Out and (2) Prior Permitted Liens. <p><i>See</i> Interim Order, ¶ 6.</p>
Carve Out	<p>The Interim Order provides a “Carve Out” of certain statutory fees and allowed professional fees of the Debtors.</p> <p><i>See</i> Interim Order, ¶ 20.</p>
Challenge Period	Not applicable.
Adequate Protection	Not applicable.

Bankruptcy Rule	Summary of Material Terms
Events of Default	<p>The DIP Term Sheet contains events of default that are usual and customary for debtor-in-possession financings, including the failure to obtain entry of the Final Order on or before the date that is 45 days after the date hereof.</p> <p><i>See</i> DIP Term Sheet, § 25.</p>
Waiver/Modification of the Automatic Stay	<p><i>Exercise of Remedies.</i> The DIP Loan Parties shall immediately provide notice to counsel to the DIP Lender and the Official Committee of the occurrence of any DIP Termination Event. Upon the occurrence of a DIP Termination Event, without further application to or order from the Court, the automatic stay provisions of Section 362 of the Bankruptcy Code shall be vacated and modified to the extent necessary to permit the DIP Lender to take any of the following actions, at the same or different time:</p> <ol style="list-style-type: none"> i. deliver a written notice (which may be via electronic mail) to lead restructuring counsel for the Debtors, the U.S. Trustee and lead restructuring counsel for the Official Committee (the “<u>Remedies Notice</u>”) declaring the occurrence of a DIP Termination Event (such date, the “<u>DIP Termination Declaration Date</u>”) and/or deliver a Carve Out Notice (as defined below), ii. declare the termination, reduction or restriction of the commitments under the DIP Facility (to the extent any such commitment remains), iii. declare all DIP Obligations to be immediately due and payable, without presentment, demand or protest or other notice of any kind, all of which are expressly waived by the DIP Loan Parties, iv. declare the termination of the DIP Facility and the DIP Loan Documents as to any further liability or obligation thereunder, but without affecting the DIP Liens, the DIP Superpriority Claims or the DIP Obligations, v. declare the reduction or restriction on the DIP Facility or the DIP Loan Documents, and vi. declare the termination, restriction or revocation of the ability of the Debtors to use Cash Collateral (subject to the Debtors’ rights under the Remedies Notice Period in paragraph 18(c) of the Interim Order); <p><i>provided, however,</i> that following the occurrence of a DIP Termination Event, prior to the exercise or enforcement of any rights against DIP Collateral (including the sweeping of all cash or other amounts contained in any accounts controlled by the DIP Lender or the charging of interest at the default rate set forth in the DIP Term Sheet), the DIP Lender shall be required to file a motion with the Court on five (5) Business Days’ notice (subject to the Court’s availability) seeking an emergency hearing (the “<u>Stay Relief Hearing</u>”), and the DIP Loan Parties and the Official Committee shall not object to the shortened notice with respect to such Stay Relief Hearing. The Court may fashion any appropriate remedy at a Stay Relief Hearing, which may include, <i>inter alia</i>, the exercise of any and all rights or remedies available to the DIP Lender under the Interim Order, the DIP Loan Documents or applicable law against the DIP Collateral, <i>provided</i> that the rights of the Debtors to contest such relief are expressly preserved.</p> <p><i>Remedies Notice Period.</i> During the period from and after the Termination Declaration Date through the date of the Stay Relief Hearing (the “<u>Remedies Notice Period</u>”), the Debtors shall be permitted to use Cash Collateral solely to fund (i) payroll and other</p>

Bankruptcy Rule	Summary of Material Terms
	<p>critical operating expenses included in (and subject to) the Approved Budget that are critically necessary to keep the Debtors' businesses operating or that have been consented to by the DIP Lender, and (ii) the Professional Fees Escrow Amount; <i>provided, however</i>, that any fees or expenses incurred by the DIP Loan Parties or the Official Committee during the Remedies Notice Period shall permanently reduce the Carve Out Amount (as defined below); <i>provided, further</i>, that the Debtors may seek an emergency hearing with the Court during the Remedies Notice Period. For the avoidance of doubt, during the Remedies Notice Period, the DIP Lender shall not be obligated to provide any DIP Loans or advance any credit at any time from and after the occurrence of a DIP Termination Event.</p> <p><i>See</i> Interim Order, ¶ 18.</p>
Indemnification	<p>The DIP Lender (and its affiliates and respective officers, directors, employees, advisors and agents) (each such person, an "<u>Indemnitee</u>") will have no liability for, and will be indemnified and held harmless against, any losses, claims, damages, liabilities or expenses incurred in respect of the financing contemplated hereby or the use or the proposed use of proceeds thereof, except to the extent they are found by a final, non-appealable judgment of a court of competent jurisdiction to arise from the fraud, gross negligence, bad faith or willful misconduct of the relevant indemnified person (or any of its affiliates or any of its or its respective officers, directors, employees, advisors or agents). Such indemnity shall not be available (a) to the extent arising from a material breach of any obligation of such Indemnitee under the DIP Loan Documents, (b) to the extent arising out of any loss, claim, damage, liability or expense that does not involve an act or omission of the Debtor and that is brought by an Indemnitee against another Indemnitee, or (c) to the extent determined by a final, non-appealable judgment of a court of competent jurisdiction to have arisen from the fraud, gross negligence, bad faith or willful misconduct of the relevant indemnified person.</p> <p><i>See</i> Interim Order, ¶ 2(d), DIP Term Sheet ¶ 26.</p>

Statement of Significant Provisions

8. The DIP Term Sheet and Interim Order contain provisions identified in section C, paragraph 8 of the *Procedures for Complex Cases in the Southern District of Texas* (the "Complex Case Procedures") as "Significant Provisions"⁶ as summarized below:⁷

⁶ Significant Provisions refer to those provisions that contain: (a) sale or plan confirmation milestones; (b) cross-collateralization; (c) roll ups; (d) liens on avoidance actions or proceeds of avoidance actions; (e) default provisions and remedies; (f) releases of claims against lenders or others; (g) limitations on fees for advisors to official committees; (h) non-consensual priming liens; or (i) any other provision that limits the ability of estate fiduciaries to fulfill their duties under the Bankruptcy Code and applicable law.

⁷ To the extent of any conflict between the descriptions and definitions in this Motion and the DIP Orders, DIP

- (a) **Milestones.** The DIP Term Sheet imposes certain milestones to obtain entry of the Interim Order (no later than February 24, 2023) and entry of the Final Order (no later than 45 days after the date hereof), which are subject to this Court's availability. See DIP Term Sheet, §§ 7, 15, 16, 25. The DIP Term Sheet and Interim Order do not impose any other milestones.
- (b) **No Cross-Collateralization.** The DIP Term Sheet and Interim Order do not authorize, and the DIP Facility does not provide for, any cross-collateralization.
- (c) **No Roll-Up Loans.** The DIP Term Sheet and Interim Order do not authorize, and the DIP Facility does not provide for, any "roll-up" of prepetition debt (the DIP Lender does not have any prepetition claims).
- (d) **Liens on Proceeds of Avoidance Actions.** The Final Order, but not the Interim Order, would grant the DIP Lender liens on proceeds of any actions under sections 544, 545, 547, 548 and 550 of the Bankruptcy Code. Interim Order, ¶ 6(b); DIP Term Sheet, § 12.
- (e) **Default Provisions and Remedies.** The DIP Term Sheet provides for the customary events of default and remedies available to DIP lenders as set forth in the DIP Term Sheet sections titled "Remedies" and "Events of Default." DIP Term Sheet, §§ 14, 25.
- (f) **Releases of Claims.** The DIP Term Sheet (§ 27) and Interim Order (¶ 30) provide for a general and customary release in favor of the DIP Lender.
- (g) **Limitations on the Use of DIP Proceeds Other than General "Carve Outs" To Pay Approved Fees and Expenses of Advisors to Official Committees or Future Trustees.** The DIP Term Sheet sets forth the allowed uses for Cash Collateral and the DIP Facility. The Debtors shall be entitled to use Cash Collateral and the DIP Facility in accordance with the Approved Budget (subject to the Permitted Variances) and DIP Term Sheet. The DIP Term Sheet provides for customary restrictions on use of the DIP Facility and Cash Collateral, as set forth in the DIP Term Sheet (§ 10) and Interim Order (¶ 21).
- (h) **Priming Liens.** The DIP Term Sheet and Interim Order do not grant, and the DIP Facility does not provide, the DIP Lender with any priming liens and security interests in DIP Collateral.
- (i) **Limitation on the Ability of Estate Fiduciaries to Fulfill Their Duties.** The Final Order, but not the Interim Order, provides for a waiver of a section 506(c) surcharge and marshalling. The DIP Term Sheet and DIP

Term Sheet, or DIP Loan Documents, then the DIP Orders, DIP Term Sheet, or DIP Loan Documents, as applicable, will control.

Orders impose certain limitations on the use of the DIP Facility and Cash Collateral to, among other things, investigate or finance the prosecution of claims and causes of action against the DIP Lender. DIP Term Sheet, § 10; Interim Order, ¶¶ 21, 22, 23.

9. The Significant Provisions in the DIP Term Sheet and DIP Orders are appropriate and necessary to permit the Debtors' access to the DIP Facility. The terms and conditions of each of these Significant Provisions are the result of good-faith, arm's-length negotiations between the Debtors and the DIP Lender. The DIP Lender is unwilling to provide a DIP Facility absent the inclusion of these provisions and no other existing party has presented a better DIP financing proposal. The Debtors have the ability to continue a marketing process to obtain better financing during the period between entry of the Interim Order and Final Order. Granting the relief requested pursuant to the Interim Order is critical to the continued operations of the Debtors' businesses (including the continued employment of the Debtors' workforce) and maintaining their going concern value. The Significant Provisions are appropriate and necessary under the facts and circumstances of these Chapter 11 Cases and should be approved.

The Debtors' Immediate Need for Postpetition Financing

10. The Debtors have an immediate and critical need to obtain the financing pursuant to the DIP Facility in order to, among other things, (i) pay the fees, costs and expenses incurred in connection with these Chapter 11 Cases, (ii) fund any obligations in connection with the Carve-Out, (iii) permit the orderly continuation of the operation of their businesses, (iv) maintain business relationships with customers, vendors and suppliers, (v) make payroll, and (vi) satisfy other working capital and operational needs. The incurrence of new debt under the DIP Term Sheet is necessary and vital to the preservation and maintenance of the going concern value of the Debtors. Immediate and irreparable harm will be caused to the Debtors and their estates if immediate financing is not obtained. The DIP Facility is the most favorable financing option available for

funding as of the Petition Date, and, therefore the terms of the proposed financing are in the best interest of the Debtors' estates, reflect the Debtors' exercise of prudent business judgment, and are supported by reasonably equivalent value and fair consideration.

Budget

11. The Debtors and DIP Lender have agreed on a 13-week budget (the "Approved Budget"), which is attached to the Interim Order as **Exhibit 2**. The budget will be updated at least once every four weeks (each, a "Proposed Budget"). If a Proposed Budget is in form and substance satisfactory to the DIP Lender, it shall become the "Approved Budget" for purposes of the Interim Order once approved by the DIP Lender. Compliance with the Approved Budget will be measured every week, as further described in section 21 of the DIP Term Sheet.

Basis for Relief

A. The Debtors Should Be Authorized to Obtain Postpetition Financing Under Section 364(c) of the Bankruptcy Code on a Senior Secured and Superpriority Basis.

12. It is essential that the Debtors obtain access to sufficient postpetition financing to avoid immediate and irreparable harm to their businesses. The preservation of estate assets and the Debtors' continuing viability and its ability to maximize value for stakeholders depends heavily upon the expeditious approval of the relief requested.

13. Section 364 of the Bankruptcy Code distinguishes among (a) obtaining unsecured credit in the ordinary course of business, (b) obtaining unsecured credit out of the ordinary course of business, and (c) obtaining credit with specialized priority or with security. If a debtor in possession cannot obtain postpetition credit on an unsecured basis pursuant to section 364(b) of the Bankruptcy Code, a court may authorize a debtor under section 364(c) to obtain credit or to incur debt, the repayment of which is entitled to superpriority administrative expense status, or is

secured by a senior lien on unencumbered property, or a junior lien on encumbered property, or a combination of the foregoing.

14. The Debtors propose to obtain financing under the DIP Facility, in part, by providing superpriority claims and senior liens pursuant to section 364(c) of the Bankruptcy Code, subject only to the Carve Out and the Prior Permitted Liens, each as defined in the DIP Term Sheet. The Debtors propose to provide first priority liens on substantially all of the Debtor' unencumbered assets (excluding the "Excluded Assets," as defined in the DIP Term Sheet) and second priority liens on assets encumbered by Prior Permitted Liens (as defined in the Interim Order), all as set forth in greater detail in paragraph 6 of the Interim Order (such collateral, the "DIP Collateral," and such liens, the "DIP Liens").

15. In the event that a debtor demonstrates that it is unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code, section 364(c) provides that a court:

may authorize the obtaining of credit or the incurring of debt
(1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of [the Bankruptcy Code];
(2) secured by a lien on property of the estate that is not otherwise subject to a lien; or (3) secured by a junior lien on property of the estate that is subject to a lien.

16. Courts have articulated a three-part test to determine whether a debtor is entitled to financing pursuant to section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

- (1) the debtor is unable to obtain unsecured credit under section 364(b) of the Bankruptcy Code (*i.e.*, by allowing a lender only an administrative claim);
- (2) the credit transaction is necessary to preserve the assets of the estate; and
- (3) the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and proposed lenders.

See In re Ames Dep't Stores, 115 B.R. 34, 37–40 (Bankr. S.D.N.Y. 1990).

1. The Debtors Are Unable to Obtain Unsecured Financing.

17. To show that the credit required is not obtainable on an unsecured basis, a debtor need only demonstrate “by a good faith effort that credit was not available without” the protections of sections 364(c) of the Bankruptcy Code. *In re Snowshoe Co., Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986). Despite an extensive marketing, the Debtors have not been able to obtain unsecured credit or a DIP Facility on better terms than those reflected in the DIP Term Sheet, and there are no better offers available to the Debtors or before the Court at this time.

2. The DIP Facility is Necessary to Preserve and Protect the Debtors’ Assets.

18. The DIP Facility will provide the Debtors with necessary and immediate access to the liquidity needed to avoid an immediate liquidation. The DIP Facility (including immediate access on an interim basis) will enable the Debtors to preserve more value as a going concern for the benefit of its estates, rather than a piecemeal liquidation. Additionally, the DIP Facility will signal to the Debtors’ employees and vendors that operations can and will continue in the ordinary course during these chapter 11 cases, which will help mitigate the uncertainty and disruptions these chapter 11 cases may otherwise cause. Thus, the DIP Facility is necessary to preserve and protect the assets of the Debtors’ estates.

3. The Terms are Fair, Reasonable, and Appropriate under the Circumstances.

19. In considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances and disparate bargaining power of both the debtors and the potential lender. *See In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003). The terms of the DIP Term Sheet and the proposed Interim Order were negotiated in good faith and at arm’s-length between the Debtors and the DIP Lender and their respective advisors. Thus, the fees and charges to be paid to the DIP Lender, as expressly provided in the DIP Term Sheet, are reasonable and appropriate under the circumstances. Such fees are

often permitted where the associated financing is, in the Debtors' business judgment, beneficial to the Debtors' estate. *See In re Aleris Int'l Inc.*, No. 09-10478 (Bankr. D. Del. Mar. 18, 2009).

B. Entering into the DIP Facility and Paying the Interest, Fees, and Charges Thereunder Is an Exercise of the Debtors' Sound Business Judgment.

20. The Court should authorize the Debtors, in the exercise of their sound business judgment, to enter into the DIP Term Sheet, obtain access to the DIP Facility on the terms set forth in the DIP Term Sheet, and pay the interest, fees, and charges thereunder. Courts grant considerable deference to a debtors' business judgment in obtaining postpetition secured credit, so long as the agreement to obtain such credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code. *See, e.g., In re N. Bay Gen. Hosp., Inc.*, No. 08-20368 (Bankr. S.D. Tex. July 11, 2008) (order approving postpetition financing on an interim basis as exercise of Debtor's business judgment).

21. Specifically, to determine whether a debtor has met this business judgment standard, a court need only "examine whether a reasonable business person would make a similar decision under similar circumstances." *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006). Further, in considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003).

22. The Debtors' decision to move forward with the DIP Facility is a sound exercise of their business judgment. The Debtors and their advisors determined that the Debtors require postpetition financing given their immediate liquidity constraints, which would cause the Debtors to liquidate if financing was not obtained. The Debtors negotiated the DIP Term Sheet with the DIP Lender in good faith, at arm's length, and with the assistance of its advisors, and the Debtors believe that they have obtained the best financing available at this time under the circumstances.

The Debtors believe the terms of the DIP Facility are fair and reasonable under the circumstances. The Court should thus authorize the Debtors' entry into the DIP Term Sheet as a reasonable exercise of the Debtors' business judgment.

C. The Debtors Should Be Authorized to Use Cash Collateral.

23. Under section 363(c)(2) of the Bankruptcy Code, a debtor may not use cash collateral (as defined in section 363 of the Bankruptcy Code) unless "(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section." 11 U.S.C. § 363(c)(2). Here, the DIP Lender has consented to the use of cash collateral, subject to the terms of the DIP Loan Documents and Interim Order. In addition, the Debtors' use of cash collateral is in the best interests of the Debtors' estates and a sound exercise of their business judgment for the reasons explained throughout this Motion. Accordingly, the Debtors' use of cash collateral should be approved, subject to the terms of the DIP Loan Documents and Interim Order.

D. The Scope of the Carve Out is Appropriate.

24. The DIP Lender's DIP Liens and the DIP Superpriority Claims shall be subject and subordinate to payment of the Carve Out. The Carve Out shall be senior to all claims and liens over all assets of the Debtors, including any DIP Collateral, as set forth in the Interim Order. Without the Carve Out, the Debtors and other parties in interest may be deprived of certain rights and powers because the services for which professionals may be paid in these chapter 11 cases would be restricted. *See In re Ames Dep't Stores*, 115 B.R. at 40 (observing that courts insist on carve outs for professionals representing parties in interest because "[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced."). The Carve Out does not directly or indirectly deprive the Debtors' estates or other parties in interest of possible rights and powers. Additionally, the Carve Out protects against administrative insolvency during

the course of the chapter 11 cases by ensuring that assets remain for the payment of the Clerk of the Court, U.S. Trustee fees, and professional fees of the Debtors and any statutory committee appointed under section 1102 of the Bankruptcy Code in these chapter 11 cases.

E. The DIP Lender Should Be Afforded Good-Faith Protection Under Section 364(e) of the Bankruptcy Code.

25. Section 364(e) of the Bankruptcy Code protects a good-faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Section 364(e) of the Bankruptcy Code provides that:

The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

11 U.S.C. § 364(e).

26. The DIP Facility is the result of the Debtors' reasonable and informed determination that the DIP Lender offered the most favorable terms on which to obtain vital postpetition financing, extensive arm's-length, good-faith negotiations between the Debtors and the DIP Lender, and several proposals and counterproposals. The terms and conditions of the DIP Facility are appropriate under the circumstances, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code in accordance with the DIP Term Sheet. The Court should find that the obligations arising under the DIP Facility and other financial accommodations made to the Debtors have been extended by the DIP Lender in "good faith" within the meaning of section 364(e) of the Bankruptcy Code, and therefore the DIP Lender is entitled to all of the protections afforded thereby.

F. The Automatic Stay Should Be Modified on a Limited Basis.

27. The Interim Order provides that the automatic stay provisions of section 362 of the Bankruptcy Code will be modified to allow the Debtors and the DIP Lender to commit all acts and take all actions necessary to implement the DIP Facility and all acts, actions, and transfers contemplated therein. The DIP Term Sheet provides that the DIP Lender may seek an emergency hearing with respect to the DIP Lender's right to exercise its rights and remedies under the DIP Term Sheet during the five business days immediately following the date the DIP Lender delivers the Termination Notice (as defined in the DIP Term Sheet). Stay modifications of this kind are ordinary and standard features of debtor-in-possession financing arrangements, and, in the Debtors' business judgment, are reasonable and fair under the circumstances of these chapter 11 cases.

G. Failure to Obtain Immediate Interim Access to the DIP Facility Would Cause Immediate and Irreparable Harm.

28. Bankruptcy Rules 4001(b) and 4001(c) provide that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the Court may conduct a preliminary, expedited hearing on the motion and authorize the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a debtors' estate.

29. The Debtors request that the Court hold and conduct a hearing to consider entry of the Interim Order authorizing the Debtors to access the DIP Facility on an interim basis pending the Final Hearing. The Debtors require access to the DIP Facility prior to the Final Hearing and entry of the Final Order to continue operating, pay its administrative expenses, and to implement the relief requested in the Debtors' other "first day" motions. This relief will enable the Debtors

to preserve and maximize value and, therefore, avoid immediate and irreparable harm and prejudice to its estate and all parties in interest, pending the Final Hearing.

Request for Final Hearing

30. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Court set a date for the Final Hearing that is as soon as practicable (and not later than March 29, 2023) and fix the time and date prior to the Final Hearing for parties to file objections to this Motion.

Emergency Consideration

31. The Debtors request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first 21 days after the commencement of a chapter 11 case “to the extent that relief is necessary to avoid immediate and irreparable harm.” An immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors’ operations and cause irreparable harm. The failure to receive the requested relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture. The Debtors have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and request that the Court approve the relief requested in this Motion on an emergency basis.

Waiver of Bankruptcy Rules 6004(a) and 6004(h)

32. The Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Reservation of Rights

33. Nothing contained herein is intended or should be construed as: (a) an admission as to the validity or priority of any claim or lien against the Debtor; (b) a waiver of the Debtors' rights to subsequently dispute such claim or lien on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or the Interim Order; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law.

Notice

34. The Debtors will provide notice of this Motion to the following parties or their respective counsel: (a) the U.S. Trustee for the Southern District of Texas; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the proposed DIP Lender; (d) the Office of the United States Attorney for the Southern District of Texas; (f) the state attorneys general for states in which the Debtors conduct business; (g) the Internal Revenue Service; (h) the Securities and Exchange Commission; (i) the Environmental Protection Agency; (j) other governmental agencies having a regulatory or statutory interest in these cases; and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, no other or further notice need be given.

The Debtors request the Court enter the Interim Order and Final Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: February 20, 2023

/s/ Kristhy M. Peguero

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Proposed Counsel to the Debtors

Certificate of Accuracy

I certify that the foregoing statements are true and accurate to the best of my knowledge. This statement is being made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ Kristhy M. Peguero

Kristhy M. Peguero

Certificate of Service

I certify that, on February 20, 2023, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Kristhy M. Peguero

Kristhy M. Peguero

- (a) authorizing the Debtors to obtain postpetition financing on a superpriority senior secured basis (the “DIP Facility”, and the loans made, advanced or deemed advanced thereunder, the “DIP Loans”) in the form of (i) a multiple draw term loan facility in an aggregate principal amount of up to \$75 million (the “DIP Facility”), pursuant to which (i) an aggregate principal amount of \$30 million shall be borrowed (the “Interim DIP Borrowing”) in a single borrowing on the Closing Date (as defined in the DIP Term Sheet), and (ii) following entry of the Final Order (as defined below), the remaining aggregate principal amount under the DIP Facility shall be available, in one or more borrowings (each such borrowing, including the Interim DIP Borrowing, a “DIP Borrowing”, and, collectively, the “DIP Borrowings”) in accordance with and subject to the terms and conditions (including, without limitation, any conditions precedent to each of the DIP Borrowings) set forth in (x) that certain *Debtor-In-Possession Term Loan Facility Summary of Terms and Conditions*, substantially in the form attached to this Interim Order as **Exhibit 1** (as may be amended, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms hereof and thereof), the “DIP Term Sheet”, and, together with all other agreements, guarantees, pledge, collateral and security agreements, deeds, charges, control agreements, instruments, certificates, notes, any separate fee letter agreements between any of the Debtors, on the one hand, and the DIP Lender, on the other hand, and other documents executed, filed and/or delivered in connection therewith, (each as amended, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms hereof and thereof, together with the DIP Term Sheet, collectively, the “DIP Loan Documents”), by and among the Debtors, as borrowers (the “DIP Borrowers”), each of the Guarantors (as defined in the DIP Term Sheet) (collectively, the “DIP Guarantors”, and together with the DIP Borrowers, the “DIP Loan Parties”), JMB Capital Partners Lending, LLC, as the lender (together with its successors and permitted assigns, the “DIP Lender”), and (y) this Interim Order;
- (b) authorizing the DIP Loan Parties to (i) execute, deliver, and perform under the DIP Term Sheet and each of the DIP Loan Documents, (ii) incur all loans, advances, extensions of credit, financial accommodations, indemnification and reimbursement obligations and other obligations, and pay all principal, interest, premiums, fees, costs, expenses, charges and all other amounts payable under the DIP Loan Documents, including without limitation, all DIP Obligations (as defined in the DIP Term Sheet), and (iii) perform such other and further acts as may be necessary, required or desirable to implement and effectuate the terms of this Interim Order, the DIP Loan Documents and the transactions contemplated hereunder and thereunder;
- (c) authorizing the DIP Borrowers to incur, and the DIP Guarantors to jointly and severally guarantee, all DIP Obligations, in accordance with this Interim Order and the DIP Loan Documents;

- (d) granting to the DIP Lender the DIP Liens (as defined below) in all DIP Collateral (as defined in the DIP Term Sheet), as set forth in this Interim Order, subject to the Carve Out and any Prior Permitted Liens (as defined below) subject to the relative priorities set forth in this Interim Order;
- (e) granting to the DIP Lender allowed super-priority administrative expense claims against each of the Debtors, on a joint and several basis, in respect of all DIP Obligations, subject in each case to the Carve Out, as set forth in this Interim Order;
- (f) authorizing the Debtors to use the proceeds of the DIP Facility and the DIP Collateral, including cash collateral, as defined in section 363(a) of the Bankruptcy Code (“Cash Collateral”), solely in accordance with the terms and conditions set forth in this Interim Order and the DIP Loan Documents, including the Approved Budget (as defined below), subject to any variances expressly permitted herein and under the DIP Term Sheet;
- (g) subject to and effective upon entry of a final order (the “Final Order”), approving the Debtors’ waiver of the right to surcharge the DIP Collateral pursuant to section 506(c) of the Bankruptcy Code or otherwise;
- (h) subject to and effective upon entry of the Final Order, approving the Debtors’ waiver of the equitable doctrine of “marshaling” and other similar doctrines with respect to the DIP Collateral;
- (i) modifying or vacating the automatic stay imposed by sections 105(a) and 362 of the Bankruptcy Code or otherwise, to the extent necessary, required or desirable to implement and effectuate the terms and provisions of this Interim Order and the DIP Loan Documents, as set forth herein, waiving any applicable stay (including under Bankruptcy Rule 6004) with respect to the effectiveness and enforceability of this Interim Order, providing for the immediate effectiveness of this Interim Order, and granting related relief; and
- (j) scheduling a final hearing (the “Final Hearing”) on the Motion to consider entry of a Final Order authorizing the relief requested in the Motion on a final basis, which order shall be in form and substance and on terms and conditions acceptable in all respects to the DIP Lender.

The Court, having considered the Motion, the DIP Loan Documents, the exhibits attached thereto, the evidence submitted and arguments proffered or adduced at the interim hearing held before this Court on February 21, 2023 (the “Interim Hearing”), and upon the record of the Chapter 11 Cases; and due and proper notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 4001 and 9014 and all applicable Local Bankruptcy Rules; and it appearing that

no other or further notice need be provided; and all objections, if any, to the relief requested in the Motion having been withdrawn, resolved, or overruled by the Court; the Court having determined that the legal and factual bases set forth in the Motion and at the Interim Hearing established just cause for the relief granted herein; and it appearing to the Court that granting the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, and otherwise is fair and reasonable and in the best interests of the Debtors, their estates, their creditors, and all other parties in interest, represents a sound exercise of the Debtors' business judgment, is necessary for the continued operation of the Debtors' businesses and is necessary to preserve and maximize the value of the Debtors and their estates; and the Debtors having provided notice of the Motion as set forth in the Motion; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:³

A. *Petition Date.* On February 13, 2023 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court commencing these Chapter 11 Cases.

B. *Debtors in Possession.* The Debtors continue to manage and operate their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in any of the Chapter 11 Cases.

³ The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

C. *Committee Formation.* As of the date hereof, the Office of the United States Trustee (the “U.S. Trustee”) has not appointed an official statutory committee of unsecured creditors in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (to the extent appointed in the Chapter 11 Cases, the “Official Committee”).

D. *Jurisdiction and Venue.* This Court has jurisdiction over the Chapter 11 Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. § 1334. This Court’s consideration of the Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b). Venue for these Chapter 11 Cases and the proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The predicates for the relief set forth herein are sections 105, 361, 362, 363, 364, 503, 506, 507 and 552 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004, and 9014, and Local Bankruptcy Rule 4001-2.

E. *Findings Regarding Corporate Authority.* Each of the DIP Loan Parties has all requisite power and authority to execute and deliver the DIP Loan Documents to which it is a party and to perform its obligations thereunder.

F. *Findings Regarding DIP Facility and Use of Cash Collateral.*

(a) *Good Cause.* Good and sufficient cause has been shown for the entry of this Interim Order and for the Debtors to obtain postpetition financing pursuant to the terms hereof and the DIP Loan Documents.

(b) *Need for Postpetition Financing and Use of Cash Collateral.* The Debtors have an immediate and critical need to obtain the DIP Facility and use Cash Collateral in order to, among other things, (i) permit the orderly continuation and operation of their businesses, (ii) maintain business relationships with customers, vendors and suppliers, (iii) make payroll, (iv) make capital expenditures, (v) pay the expenses of the Chapter 11 Cases, (vi) satisfy working

capital and operational needs of the Debtors, and (v) for general corporate purposes, in each case, in accordance with and subject to the terms and conditions of this Interim Order and the DIP Loan Documents, including the Approved Budget (subject to Permitted Variances, as defined in the DIP Term Sheet). The Debtors require immediate access to sufficient working capital and liquidity through the incurrence of loans and other financial accommodations under the DIP Facility in order to preserve, maintain and maximize the Debtors' going concern value and to facilitate an orderly and successful reorganization of the Debtors. Without access to the DIP Facility and the authorized use of Cash Collateral upon the terms set forth herein, the Debtors and their estates will be immediately and irreparably harmed.

(c) *No Credit Available on More Favorable Terms.* The Debtors are unable to obtain financing or other financial accommodations on more favorable terms from sources other than the DIP Lender. The Debtors are unable to obtain adequate unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code. The Debtors are also unable to obtain adequate secured credit allowable under section 364(c)(1) of the Bankruptcy Code without granting to the DIP Lender the rights, benefits, remedies and protections set forth herein and the DIP Loan Documents, including the DIP Liens in all DIP Collateral and the DIP Superpriority Claims upon the terms set forth herein.

(d) *Use of Proceeds of DIP Facility and Cash Collateral.* As a condition to providing the DIP Facility (including Cash Collateral), the DIP Lender requires, and the Debtors have agreed, that all proceeds of the DIP Loans and all Cash Collateral shall be used and/or applied solely for the purposes expressly permitted in, and in a manner consistent with, the Approved Budget (subject to Permitted Variances) including (i) to pay the costs of administration of the Chapter 11 Cases, (ii) for general corporate and working capital purposes, and (iii) to pay

professional fees and expenses in accordance with this Interim Order, in each case, subject to the terms and conditions of this Interim Order and the DIP Loan Documents.

(e) *Approved Budget and Variance.* The Debtors have prepared and delivered to the DIP Lender the initial itemized cash flow forecast set forth on **Exhibit 2** attached hereto, which has been approved by the DIP Lender (the “Initial Budget”, as amended, supplemented or updated by the Debtors, and approved by the DIP Lender, from time to time in accordance with the terms of this Interim Order and the DIP Term Sheet, the “Approved Budget”), reflecting, on a line item, cumulative and aggregate basis, the Debtors’ projected cash receipts expected to be collected, and necessary disbursements and expenditures expected to be incurred or made, by the Debtors for each calendar week during the period from the calendar week ending on February 24, 2023 through and including the end of the thirteenth (13th) calendar week thereafter, (ii) the sum of weekly unused availability under the DIP Facility, plus restricted and unrestricted balances of cash on hand, (iii) the weekly outstanding principal balance of amounts outstanding under the DIP Facility, and (iv) a professional fee accrual budget with respect to the anticipated professional fees and expenses to be incurred by each of the Professional Persons (as defined below) during such period. The Initial Budget is an integral part of this Interim Order, and the DIP Lender are relying, in part, upon the Debtors’ agreement to comply with the Approved Budget (subject to Permitted Variances) in determining to enter into the DIP Facility and to allow the Debtors’ use of proceeds of the DIP Facility and Cash Collateral in accordance with the terms of this Interim Order and the DIP Loan Documents.

(f) *Section 506(c) and Marshalling Waivers.* As a material inducement to the DIP Lender’s to provide the DIP Facility, and in consideration of (i) the DIP Lender’s agreement to subordinate their DIP Liens to the Carve Out, and (ii) the DIP Lender’s agreement to pay the

expenses of the administration of these cases, subject to the Approved Budget (subject to Permitted Variances), subject to and effective upon entry of the Final Order, and in accordance with the terms of the Final Order and the DIP Loan Documents, (i) the DIP Loan Parties waive their right to surcharge any costs or expenses incurred in connection with the preservation, protection or enhancement of, or realization by the DIP Lender or the DIP Collateral, whether pursuant to section 506(c) of the Bankruptcy Code or otherwise and (ii) the DIP Lender shall not be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the DIP Collateral.

(g) *Good Faith.* The terms of the DIP Facility and the DIP Loan Documents, and the terms upon which the Debtors may use Cash Collateral pursuant to the terms of this Interim Order and the DIP Loan Documents, were negotiated in good faith and at arm’s length among the DIP Loan Parties and the DIP Lender, and their respective representatives, and all of the DIP Loan Parties’ obligations and indebtedness arising under, in respect of, or in connection with, the DIP Facility, the DIP Loan Documents and this Interim Order, including, without limitation, all loans, advances, extensions of credit and other financial accommodations made to and guarantees issued by the DIP Loan Parties pursuant to the DIP Loan Documents, shall each be deemed to have been extended by the DIP Lender and each of their respective affiliates, in good faith, as that term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections offered by sections 364(e) of the Bankruptcy Code, and each of the claims, liens and security interests, rights, remedies, benefits and protections granted to the DIP Lender (and its successors and assigns) pursuant to this Interim Order and the DIP Loan Documents (including, without limitation, the DIP Liens, the DIP Superpriority Claims, and the DIP Obligations) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed, or modified, on appeal or otherwise.

(h) *Proper Exercise of Business Judgment.* Based on the Motion, the record presented to the Court at the Interim Hearing and in the Chapter 11 Cases, the terms of the DIP Facility and the DIP Loan Documents, and the terms upon which the Debtors may use Cash Collateral pursuant to the terms of this Interim Order and the DIP Loan Documents (i) were negotiated in good faith and at arm's length among the DIP Loan Parties and the DIP Lender, (ii) are fair, reasonable, and the best available to the Debtors under the circumstances, (iii) reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and (iv) are supported by reasonably equivalent value and fair consideration.

(i) *Notice.* Proper, timely, sufficient and appropriate notice of the Motion and the Interim Hearing has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules, and no other or further notice of the Motion, the Interim Hearing or the entry of this Interim Order shall be required.

(j) *Immediate Entry; Relief Essential.* The Debtors have requested, and the Court hereby finds that sufficient cause exists for, the immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the Local Bankruptcy Rules. Unless the relief set forth in this Interim Order is granted, the Debtors' estates will be immediately and irreparably harmed. Consummation of the DIP Facility upon the terms set forth in this Interim Order and the DIP Loan Documents are necessary to preserve and maximize the value of the Debtors, are in the best interests of the Debtors and their estates, and are consistent with the Debtors' exercise of their fiduciary duties.

NOW THEREFORE, based upon the foregoing findings and conclusions, the Motion, the evidence adduced at the Interim Hearing and the record before the Court, and after due consideration, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. *Motion Granted.* The DIP Facility and the use of Cash Collateral is hereby authorized and approved, in each case, on an interim basis and upon the terms and conditions set forth in this Interim Order and the DIP Loan Documents. Any objections to any of the relief set forth in this Interim Order that have not been withdrawn, waived, or settled, and all reservations of rights or other statements inconsistent with this Interim Order, are hereby denied and overruled. This Interim Order shall become effective and enforceable immediately upon its entry.

2. *Authorization of DIP Facility and DIP Loan Documents.*

(a) *Authorization of DIP Loan Documents.* The DIP Loan Parties are hereby authorized to (i) execute, deliver, enter into and perform all of their obligations, and to pay all fees, costs, expenses, indemnities and other amounts contemplated, under the DIP Loan Documents and this Interim Order, and (ii) perform all acts, to make, execute, deliver, enter into and perform under any and all other agreements, instruments, certificates, and other documents (including, without limitation, the execution and/or recordation of any collateral, pledge and security documents, deeds of trust, control agreements, financing statements, or other documents), and to perform all such other and further acts, that may be necessary, required or desirable for the DIP Loan Parties to perform their obligations under the DIP Facility, the DIP Loan Documents and this Interim Order and to implement the transactions contemplated thereunder and hereunder. All provisions of the DIP Loan Documents are incorporated herein and approved, whether explicitly referenced or not.

(b) *Authorization to Borrow.* The DIP Borrowers are hereby authorized to borrow, and the DIP Guarantors are hereby authorized to jointly and severally guarantee the payment in full in cash of such borrowing with respect to, the principal amount of \$30 million (plus applicable interest (including interest and other amounts payable-in-kind), premiums,

payments, fees (including professional fees and expenses), costs, expenses, charges and other amounts to the extent payable under this Interim Order and the DIP Loan Documents in connection with such borrowing), under the DIP Facility, subject to the terms and conditions (including any conditions precedent to such borrowing) set forth in the DIP Loan Documents and this Interim Order. The Debtors are hereby authorized to use the proceeds of the DIP Facility and all Cash Collateral solely in the manner and for the purposes expressly permitted in the Approved Budget (subject to Permitted Variances), the DIP Loan Documents and this Interim Order.

(c) *DIP Fees and Expenses; Indemnification.* The DIP Loan Parties are authorized and directed to pay any and all (i) fees, premiums or other payments payable under the DIP Loan Documents including, without limitation, the Commitment Fee, the Funding Fee, and the Exit Fee (each as defined in the DIP Term Sheet), and other payments, fees or amounts provided therein, (ii) amounts due (or that may become due) to the DIP Lender in respect of the indemnification obligations under this Interim Order and the DIP Loan Documents, and (iii) any other amounts payable in connection with the DIP Facility, including without limitation, the payment of all reasonable, documented out of pocket costs, expenses and disbursements of the DIP Lender, including, without limitation, the reasonable and documented fees and expenses of (A) Lowenstein Sandler LLP and (B) any other professionals that may be retained by the DIP Lender, with the consent of the DIP Borrowers, such consent not to be unreasonably withheld or delayed, which consent of the DIP Borrowers shall not be required after the occurrence of a DIP Termination Event (as defined in the DIP Term Sheet) (collectively, the “DIP Professional Fees and Expenses”), whether or not the transactions contemplated herein or in the DIP Loan Documents are consummated.

(d) *Indemnification.* The DIP Lender (and its affiliates and respective officers, directors, employees, advisors and agents) (each such person, an “Indemnitee”) will have no liability for, and will be indemnified and held harmless against, any losses, claims, damages, liabilities or expenses incurred in respect of the financing contemplated hereby or the use or the proposed use of proceeds thereof, except to the extent they are found by a final, non-appealable judgment of a court of competent jurisdiction to arise from the fraud, gross negligence, bad faith or willful misconduct of the relevant indemnified person (or any of its affiliates or any of its or its respective officers, directors, employees, advisors or agents). Such indemnity shall not be available (a) to the extent arising from a material breach of any obligation of such Indemnitee under the DIP Loan Documents, (b) to the extent arising out of any loss, claim, damage, liability or expense that does not involve an act or omission of the Debtor and that is brought by an Indemnitee against another Indemnitee, or (c) to the extent determined by a final, non-appealable judgment of a court of competent jurisdiction to have arisen from the fraud, gross negligence, bad faith or willful misconduct of the relevant indemnified person.

(e) *Modification of DIP Loan Documents.* The DIP Loan Parties are hereby authorized to execute, deliver and perform under one or more amendments, waivers, consents, or other modifications to and under the DIP Loan Documents, in each case, in accordance with the provisions of the DIP Term Sheet governing amendments thereto, each without further application to or order of the Court; *provided, however,* that any amendment to the DIP Term Sheet shall require, at a minimum, the prior written consent of the DIP Lender; *provided, further, however,* that any amendment that (a) shortens the maturity of the extensions of credit thereunder, (b) increases the aggregate commitments thereunder, or (c) increases the rate of interest payable with respect thereto (each, a “Material DIP Amendment”), shall be provided (which may be by

electronic mail) to the U.S. Trustee and lead restructuring counsel to the Official Committee and filed with the Court no later than three (3) Business Days prior to the anticipated date of effectiveness of any such Material DIP Amendment, and if no objection to the Material DIP Amendment is made by the U.S. Trustee or the Official Committee within such three (3) Business Day period, then, without further application to or order of the Court, such Material DIP Amendment shall automatically be deemed approved and effective; *provided further, however*, if an objection is made by the U.S. Trustee or the Official Committee within such three (3) Business Day period, then such Material DIP Amendment shall be subject to a hearing and approval of the Court.

(f) *Perfection in Cash.* Subject to the Carve Out, and subject to the Remedies procedures outlined in paragraph 18 of this Interim Order, all financial institutions with which the DIP Loan Parties maintain accounts containing any of the DIP Loan Parties' cash or Cash Collateral are authorized and directed to comply with any request of the DIP Lender to turn over to the DIP Lender all cash or Cash Collateral therein without offset or deduction of any kind. The DIP Lender shall be entitled to all of the rights and benefits of all deposit account control agreements, blocked account control agreements, securities account control agreements, and similar agreements to which any of the DIP Loan Parties may be a party, without the need to enter into any such agreements. Notwithstanding (and without limiting) the foregoing, the DIP Loan Parties are authorized to enter into, and cause the financial institutions servicing or maintaining the DIP Loan Parties' deposit accounts (or other accounts) to enter into, such deposit account control agreements and other collateral agreements with the DIP Lender and such financial institutions as the DIP Lender may reasonably request.

3. *DIP Obligations.*

(a) Upon execution and delivery of the DIP Loan Documents, the DIP Loan Documents shall constitute valid, binding, enforceable, and non-avoidable obligations of each of the DIP Loan Parties, and shall be fully enforceable against each of the DIP Loan Parties, their estates, and any successors thereto, including, without limitation, any estate representative or trustee appointed in any of the Chapter 11 Cases or in any case under Chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases, or in any other proceedings superseding or relating to any of the foregoing, and/or upon the dismissal of any of the Chapter 11 Cases or any such successor cases (collectively, the “Successor Cases”), in each case, in accordance with the terms of the DIP Loan Documents and this Interim Order.

(b) Upon execution and delivery of the DIP Loan Documents, the DIP Loan Parties shall be jointly and severally liable for all DIP Obligations, including, without limitation, all loans, advances, indebtedness, obligations, extensions of credit, financial accommodations, principal, interest, payments, premiums or similar amounts, fees, costs, expenses, charges, indemnification and reimbursement obligations (whether contingent or absolute), and all other amounts, whenever the same shall become due and payable, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, to the DIP Lender under the DIP Loan Documents or this Interim Order. The DIP Obligations shall be due and payable, without notice or demand, and the use of Cash Collateral shall automatically cease, on the DIP Termination Declaration Date (as defined below) (subject to the Remedies procedures outlined in paragraph 18 hereof).

(c) All obligations incurred, payments made, and transfers or grants of liens and security interests set forth in this Interim Order and the DIP Loan Documents by the DIP Loan Parties are granted to or for the benefit of the DIP Loan Parties for fair consideration and reasonably equivalent value and are granted contemporaneously with the making of the loans and commitments and other financial accommodations secured thereby. No obligation, payment, transfer, or grant of liens or security interests under this Interim Order or the DIP Loan Documents to the DIP Lender shall be limited, stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law, or subject to any challenge, objection, defense or claim, including, without limitation, avoidance (whether under Chapter 5 of the Bankruptcy Code or under applicable law (including any applicable state law Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law)), reduction, setoff, offset, recoupment, recharacterization, subordination (whether equitable, contractual or otherwise), reclassification, disgorgement, disallowance, impairment, marshalling, surcharge, recovery or other cause of action of any kind or nature whatsoever, whether arising under the Bankruptcy Code, applicable non-bankruptcy law or otherwise (subject, solely in the case of the DIP Professional Fees and Expenses (as defined below), only to the Remedies procedures set forth in paragraph 10 of this Interim Order).

4. *No Obligation to Extend Credit/Loan Cap.* The DIP Lender shall have no obligation to make any loan or advance available under the DIP Loan Documents unless all of the conditions precedent to the making of such loan or advance by the DIP Lender have been satisfied in full (or waived) in accordance with the terms of the DIP Loan Documents and this Interim Order. Notwithstanding anything contained in this Interim Order or the DIP Loan Documents to the contrary, in no event shall the aggregate principal amount of the DIP Loans advanced under the

DIP Facility pursuant to the DIP Term Sheet at any time (after giving effect to all DIP Borrowings previously made or requested) exceed the DIP Commitments (as defined in the DIP Term Sheet), which, subject to paragraph 2(e) above, shall in no event exceed \$75,000,000 in principal amount.

5. *No Duty to Monitor Compliance.* The DIP Lender shall not have any obligation or responsibility to monitor the Debtors' use of DIP Collateral or Cash Collateral, and the DIP Lender may rely upon the Debtors' representations that the use of DIP Collateral and Cash Collateral complies with and is in accordance with the requirements of this Interim Order and the DIP Loan Documents.

6. *DIP Liens.*

(a) As security for the prompt and complete payment and performance of all DIP Obligations when due (whether upon stated maturity, prepayment, acceleration, declaration or otherwise), effective and perfected as of the entry of this Interim Order, and without the necessity of the execution, recordation or filing by any of the DIP Loan Parties or the DIP Lender of any pledge, collateral or security documents, mortgages, deeds of trust, financing statements, notations of certificates of title, or any similar document or instrument, or the taking of any other action (including, without limitation, entering into any control agreements or taking any other action to take possession or control of any DIP Collateral), the DIP Lender is hereby granted valid, binding, enforceable, non-avoidable, and automatically and properly perfected liens and security interests (collectively, the "DIP Liens") in all DIP Collateral, in each case, subject and subordinate to the Carve Out and the Prior Permitted Liens, and subject to the relative priorities set forth in this Interim Order.

(b) The term "DIP Collateral" means, subject to the Carve Out, each DIP Loan Party's right, title and interest in, to and under all the Debtor Loan Parties' assets, including, but

not limited to the following, in each case, whether now owned or existing or hereafter acquired, created or arising and wherever located: all assets and property of such DIP Loan Party and its estate, real or personal, tangible or intangible, now owned or hereafter acquired, whether arising before or after the Petition Date, including, without limitation, all contracts, contract rights, licenses, general intangibles, instruments, equipment, accounts, documents, goods, inventory, fixtures, documents, cash, cash equivalents, chattel paper, letters of credit and letter of credit rights, investment property, commercial tort claims, arbitration awards, money, insurance, receivables, receivables records, deposit accounts, collateral support, supporting obligations and instruments, fixtures, all interests in leaseholds and real properties, all patents, copyrights, trademarks, all trade names and other intellectual property (whether such intellectual property is registered in the United States or in any foreign jurisdiction), including, without limitation, all including, without limitation the property listed in Schedule A of the DIP Term Sheet together with all books and records relating to the foregoing, all proceeds, products, accessions, rents and profits of or in respect of any of the foregoing (as such terms are defined in the Uniform Commercial Code as in effect from time to time in the State of New York) and, subject to the entry of a Final Order, proceeds of any actions under sections 544, 545, 547, 548 and 550 of the Bankruptcy Code, other than, in each case “Excluded Assets” as defined on Schedule A of the DIP Term Sheet.

(c) The DIP Liens shall be subject to the following priorities (subject in each case to the Carve Out):

(i) *First Priority Liens on Unencumbered Property.* Pursuant to section 364(c)(2) of the Bankruptcy Code, the DIP Liens shall be valid, binding, continuing, enforceable, non-avoidable, fully and automatically perfected first priority liens and security interests in all DIP Collateral that is not subject to any liens and security interests that were valid, non-avoidable and properly perfected as of the Petition Date (or that were properly perfected subsequent to the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code) (such liens, “Prior Permitted Liens”), including, subject to entry of the Final Order, all Avoidance Actions and Avoidance Action Proceeds (collectively,

the “Unencumbered Assets”), which DIP Liens shall be junior and subordinated only to the Carve Out.

(ii) *Liens Junior to Certain Other Liens.* Pursuant to section 364(c)(3) of the Bankruptcy Code, the DIP Liens shall be valid, binding, continuing, enforceable, non-avoidable, fully and automatically perfected liens and security interests in all DIP Collateral (other than the DIP Collateral described in paragraph 6(b)(i) hereof, as to which DIP Liens are described in such paragraph), which DIP Liens shall be subject only to the (1) Carve Out and (2) Prior Permitted Liens.

(d) To the maximum extent permitted by the Bankruptcy Code, any provision of any lease, loan document, easement, use agreement, proffer, covenant, license, contract, organizational document or other agreement that requires the consent or approval of one or more landlords, licensors or other parties, or requires the payment of any fees or obligations to any governmental entity, non-governmental entity or any other person or entity, in order for any Debtor to pledge, grant, mortgage, sell, assign, or otherwise transfer any interest therein (including any fee or leasehold interest), any proceeds thereof or other DIP Collateral, shall be deemed inconsistent with the provisions of the Bankruptcy Code and shall have no force or effect with respect to the granting of the DIP Liens in any such interest therein or other DIP Collateral, or in the proceeds of any assignment and/or sale thereof by any Debtor in favor of the DIP Lender in accordance with the DIP Loan Documents and this Interim Order.

7. *DIP Superpriority Claims.* Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority administrative expense claims against each of the Debtors, with priority over any and all other claims against the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, any and all other administrative expense claims of the kind specified in or ordered pursuant to sections 105, 326, 327, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 or 1114 of the Bankruptcy Code, or any other provision of the Bankruptcy Code whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment

(the “DIP Superpriority Claims”), subject only to the Carve Out. The DIP Superpriority Claims shall, for purposes of section 1129(a)(9)(A) of the Bankruptcy Code, be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code. The DIP Superpriority Claims shall be payable by each of the Debtors, on a joint and several basis, and shall have recourse to all DIP Collateral, subject only to the Carve-Out. The DIP Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code, including in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

8. *Use of DIP Collateral and Cash Collateral.*

(a) The Debtors are hereby authorized to use the proceeds of DIP Loans and all Cash Collateral solely to the extent expressly permitted under the Approved Budget (subject to Permitted Variances) and subject to the terms and conditions set forth in the DIP Loan Documents and this Interim Order.

(b) Without the prior written consent of the DIP Lender, the DIP Loan Parties shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral (or enter into any binding agreement to do so), except as may be expressly permitted by the DIP Loan Documents and this Interim Order. All collection and proceeds of DIP Collateral, whether from ordinary course collections, asset sales, debt or equity issuances, insurance recoveries, condemnation, or otherwise, will be deposited and applied as required by this Interim Order and the DIP Loan Documents. The Debtors shall not transfer any cash, assets, properties or other DIP Collateral to any non-Debtor affiliate of the Debtors without the prior written consent of the DIP Lender, in their discretion, except to the extent provided for in the Approved Budget.

(c) Except as may be provided in the DIP Loan Documents, the Debtors are authorized and directed, upon the closing of a sale of any of the DIP Collateral, to immediately pay all proceeds of any such sale to the DIP Lender to satisfy the DIP Obligations in accordance with this Interim Order and the DIP Loan Documents until Paid in Full,⁴ and any order approving the sale of such DIP Collateral shall provide that the sale is conditioned upon the payment of such DIP Obligations (except to the extent otherwise agreed in writing by the DIP Lender).

(d) *Debtors' Retention of Operating Receipts.* The Debtors may retain any operating receipts in an amount up to \$2,000,000 generated by the Debtors in the ordinary course of their businesses.

9. [Reserved.]

10. *Fees and Expenses; Payments.*

(a) The payment of all DIP Professional Fees and Expenses hereunder shall not be subject to further application to or approval of the Court, and shall not be subject to allowance or review by the Court or subject to the U.S. Trustee's fee guidelines, and no attorney or advisor to the DIP Lender shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court; *provided, however*, that any time such professionals seek payment of fees and expenses from the Debtors from and after entry of the this Interim Order, but prior to the effective date of any confirmed chapter 11 plan, each such professional shall provide summary copies of its invoices (which shall not be required to contain time entries and which may be redacted or modified to the extent necessary to delete any information subject to the

⁴ For purposes hereof, the term "Paid in Full" or "Payment in Full" means, with respect to the DIP Obligations, the irrevocable and indefeasible payment in full in cash of all DIP Obligations, other than contingent indemnification and expense reimbursement obligations for which no claim or demand has been asserted, and all commitments thereunder shall have irrevocably, permanently and finally expired or shall have been terminated, cancelled and discharged.

attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of their invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work product doctrine) to lead restructuring counsel to the Debtors, the U.S. Trustee, and lead restructuring counsel to the Official Committee (collectively, the “Review Parties”); *provided, however*, that the U.S. Trustee and the Official Committee reserve their rights to reasonably request additional detail regarding the services rendered and expenses incurred by such professionals. Any objections raised by any Review Party with respect to such invoices must be in writing and state with particularity the grounds therefor and must be submitted to the affected professional within ten (10) calendar days after delivery of such invoices to the Review Parties (such ten (10) day calendar period, the “Review Period”). If no written objection is received prior to the expiration of the Review Period from the Review Parties, the Debtors shall pay such invoices within three (3) Business Days following the expiration of the Review Period. If an objection is received within the Review Period from the Review Parties, the Debtors shall promptly pay the undisputed amount of the invoice within three (3) Business Days, and the disputed portion of such invoice shall not be paid until such dispute is resolved by agreement between the affected professional and the objecting party or by order of this Court. Any hearing to consider such an objection to the payment of any fees, costs or expenses set forth in a professional fee invoice hereunder shall be limited to the reasonableness of the fees, costs and expenses that are the subject of such objection.

(b) Notwithstanding anything contained in this paragraph 10 to the contrary, the DIP Loan Parties are authorized and directed to pay the following: (i) upon the Initial Draw (as defined in the DIP Term Sheet), the DIP Loan Parties shall pay in full in cash all DIP Professional Fees and Expenses arising through and including the Initial Draw, without the need

for any professional engaged by or on behalf of the DIP Lender to first deliver a copy of its invoice to any of the Review Parties (other than the DIP Loan Parties), and (ii) following the Initial Draw, the DIP Loan Parties shall pay in full in cash all DIP Professional Fees and Expenses incurred after the Initial Draw in accordance with and subject to the procedures set forth above in this paragraph 10(a) of this Interim Order.

(c) Notwithstanding anything contained in this Interim Order to the contrary, any and all payments, premiums, fees, costs, expenses and other amounts paid at any time by any of the DIP Loan Parties to the DIP Lender pursuant to the requirements of this Interim Order or the DIP Loan Documents shall be non-refundable and irrevocable, are hereby approved, and shall not be subject to any challenge, objection, defense, claim or cause of action of any kind or nature whatsoever, including, without limitation, avoidance (whether under Chapter 5 of the Bankruptcy Code or under applicable law (including any applicable state law Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law)), reduction, setoff, offset, recoupment, recharacterization, subordination (whether equitable, contractual, or otherwise), reclassification, disgorgement, disallowance, impairment, marshaling, surcharge or recovery or any other cause of action, whether arising under the Bankruptcy Code, applicable non-bankruptcy law or otherwise, by any person or entity (subject, solely in the case of the DIP Professional Fees and Expenses, to paragraphs 10(a) and (b) of this Interim Order).

11. *Reservation of Rights.* Except as otherwise expressly provided herein or in the DIP Loan Documents, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) the rights of the DIP Lender to seek any other or supplemental relief in respect of the DIP Loan Parties, (b) the rights of the DIP Lender, the Bankruptcy Code, or applicable non-bankruptcy law, including, without limitation, the right to

request modification of the automatic stay of section 362 of the Bankruptcy Code, or (c) any other rights, claims, or privileges (whether legal, equitable or otherwise) of the DIP Lender.

12. *Modification of Automatic Stay.* The automatic stay imposed by section 362(a) of the Bankruptcy Code is hereby vacated and modified, without application to or further order of this Court, to permit: (a) the DIP Loan Parties to grant the DIP Liens and the DIP Superpriority Claims, and to perform such acts as the DIP Lender may request to assure the perfection and priority of the DIP Liens, (b) the DIP Loan Parties to incur all liabilities and obligations to the DIP Lender as contemplated under this Interim Order and the DIP Loan Documents, (c) the DIP Loan Parties to pay all amounts required hereunder and under the DIP Loan Documents, (d) the DIP Lender to retain and apply payments made in accordance with the terms of this Interim Order and the DIP Loan Documents, (e) subject to the Remedies procedures outlined in paragraph 18 of this Interim Order, the DIP Lender to exercise, upon the occurrence of any DIP Termination Event, all rights and remedies provided for in this Interim Order, the DIP Loan Documents, or applicable law, (f) the DIP Loan Parties to perform under this Interim Order and the DIP Loan Documents, and to take any and all other actions that may be necessary, required or desirable for the performance by the DIP Loan Parties under this Interim Order and the DIP Loan Documents and the implementation of the transactions contemplated hereunder and thereunder, and (g) the implementation of all of the terms, rights, benefits, privileges, remedies, and provisions of this Interim Order and the DIP Loan Documents.

13. *Perfection of DIP Liens.*

(a) This Interim Order shall be sufficient and conclusive evidence of the attachment, validity, perfection, and priority of all liens and security interests granted hereunder and under the DIP Loan Documents, including, without limitation, the DIP Liens, without the

necessity of the execution, recordation or filing of any pledge, collateral or security agreements, mortgages, deeds of trust, lockbox or control agreements, financing statements, notations of certificates of title for titled goods, or any other document or instrument, or the taking of any other action (including, without limitation, entering into any deposit account control agreement or other act to take possession or control of any DIP Collateral), to attach, validate, perfect or prioritize such liens and security interests, or to entitle the DIP Lender to the priorities granted herein (other than, to the extent applicable, any such filings required under applicable non-U.S. law to attach, validate, perfect or prioritize such liens).

(b) Without in any way limiting the automatically effective perfection of the liens and security interests granted under this Interim Order and the DIP Loan Documents, the DIP Lender is hereby authorized, but not required, as they in their sole discretion may determine for any reason, to execute, file and record (and to execute in the name of the DIP Loan Parties, as their true and lawful attorneys, with full power of submission, to the maximum extent permitted under applicable law) financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, or take possession or control over cash or securities, or to amend or modify security documents, or to subordinate existing liens and any other similar action or action in connection therewith or take any other action in order to validate, perfect, preserve and enforce the liens and security interests granted to them hereunder or under the DIP Loan Documents or to otherwise evidence such liens and security interests in all DIP Collateral (each, a "Perfection Action"); *provided, however*, that, whether or not the DIP Lender determines, in its sole discretion, to take any Perfection Action with respect to any liens or security interests granted hereunder, such liens and security interests shall nonetheless be deemed valid, perfected, allowed, enforceable, non-avoidable as of the entry of this Interim Order. Upon the request of the

DIP Lender, the DIP Loan Parties, without any further consent of any party, are authorized and directed to take, execute, deliver and file such instruments (in each case, without representation or warranty of any kind) to enable the DIP Lender to further validate, perfect, preserve and enforce the DIP Liens. All such documents will be deemed to have been recorded and filed as of the Petition Date.

(c) A certified copy of this Interim Order may, as the DIP Lender may determine in its discretion, be filed with or recorded in filing or recording offices in addition to or in lieu of any financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized and directed to accept such certified copy of this Interim Order for filing and/or recording, as applicable. The automatic stay of section 362(a) of the Bankruptcy Code shall be modified to the extent necessary to permit the DIP Lender to take all actions, as applicable, referenced in this paragraph 13.

14. *Maintenance of DIP Collateral.* Until such time as all DIP Obligations are Paid in Full (or as otherwise agreed in writing by the DIP Lender), the DIP Loan Parties shall continue to maintain all property, operational, and other insurance as required and as specified in the DIP Loan Documents. Upon the entry of this Interim Order, the DIP Lender shall automatically be deemed to be named as additional insured and lender loss payee under each insurance policy maintained by the DIP Loan Parties (including all property damage and business interruption insurance policies of the DIP Loan Parties, whether expired, currently in place, or to be put in place in the future), and shall act in that capacity and distribute any proceeds recovered or received in respect of any such insurance policies in accordance with the terms of this Interim Order and the DIP Loan Documents.

15. *Payments Held in Trust.* Except as expressly permitted in this Interim Order or the DIP Loan Documents, including in respect of the Carve Out, in the event that any person or entity receives any payment on account of a security interest in the DIP Collateral or receives any DIP Collateral or any proceeds of DIP Collateral prior to Payment in Full of all DIP Obligations under the DIP Loan Documents, and termination of the DIP Facility in accordance with the DIP Term Sheet, such person or entity shall be deemed to have received, and shall hold, any such payment or proceeds of DIP Collateral and shall immediately turn over such proceeds to the DIP Lender, for application in accordance with the DIP Credit Agreement and this Interim Order.

16. *Cash Management.* Until such time as all DIP Obligations are Paid in Full, the DIP Loan Parties shall maintain the cash management system in accordance with the applicable “first day” order. The DIP Loan Parties shall not open any new deposit or securities account that is not subject to the liens and security interests of the DIP Lender (in which case they shall be subject to the lien priorities and other provisions set forth in this Interim Order).

17. *Reporting.* Without limiting the requirements contained herein or in the DIP Loan Documents, the DIP Loan Parties and their representatives shall (a) provide the DIP Lender (and its advisors) with (i) all reports, documents, and information required to be delivered under the DIP Loan Documents (contemporaneously when the same is required to be delivered thereunder), and (ii) reasonable access, upon reasonable notice and during regular business hours, to the DIP Loan Parties’ books and records, assets and properties, for purposes of monitoring the DIP Loan Parties’ businesses and operations and the value of the DIP Collateral, and (b) cooperate and consult with, and provide reasonable information reasonably requested by the DIP Lender (and its advisors) concerning the DIP Loan Parties’ businesses, financial condition, properties, business operations and assets, and the DIP Loan Parties hereby authorize their representatives to cooperate

and consult with, and promptly provide to the such parties (in each case, together with their respective advisors) such information.

18. *DIP Termination Event; Exercise of Remedies.*

(a) *DIP Termination Events.* A “DIP Termination Event” shall exist upon occurrence of any of the events listed in Section 7 of the DIP Term Sheet that triggers the DIP Termination Date (as defined in the DIP Term Sheet).

(b) *Exercise of Remedies.* The DIP Loan Parties shall immediately provide notice to counsel to the DIP Lender and the Official Committee of the occurrence of any DIP Termination Event. Upon the occurrence of a DIP Termination Event, without further application to or order from the Court, the automatic stay provisions of Section 362 of the Bankruptcy Code shall be vacated and modified to the extent necessary to permit the DIP Lender to take any of the following actions, at the same or different time: (i) deliver a written notice (which may be via electronic mail) to lead restructuring counsel for the Debtors, the U.S. Trustee and lead restructuring counsel for the Official Committee (the “Remedies Notice”)⁵ declaring the occurrence of a DIP Termination Event (such date, the “DIP Termination Declaration Date”) and/or deliver a Carve Out Notice (as defined below), (ii) declare the termination, reduction or restriction of the commitments under the DIP Facility (to the extent any such commitment remains), (iii) declare all DIP Obligations to be immediately due and payable, without presentment, demand or protest or other notice of any kind, all of which are expressly waived by the DIP Loan Parties, (iv) declare the termination of the DIP Facility and the DIP Loan Documents as to any further liability or obligation thereunder, but without affecting the DIP Liens, the DIP Superpriority Claims or the DIP Obligations, (v) declare the reduction or restriction on the DIP

⁵ For the avoidance of doubt, the Carve Out Notice and the Remedies Notice may be included in the same notice.

Facility or the DIP Loan Documents, and (vi) declare the termination, restriction or revocation of the ability of the Debtors to use Cash Collateral (subject to the Debtors' rights under the Remedies Notice Period in paragraph 18(c)); *provided, however*, that following the occurrence of a DIP Termination Event, prior to the exercise or enforcement of any rights against DIP Collateral (including the sweeping of all cash or other amounts contained in any accounts controlled by the DIP Lender or the charging of interest at the default rate set forth in the DIP Term Sheet), the DIP Lender shall be required to file a motion with the Court on five (5) Business Days' notice (subject to the Court's availability) seeking an emergency hearing (the "Stay Relief Hearing"), and the DIP Loan Parties and the Official Committee shall not object to the shortened notice with respect to such Stay Relief Hearing. The Court may fashion any appropriate remedy at a Stay Relief Hearing, which may include, *inter alia*, the exercise of any and all rights or remedies available to the DIP Lender under this Interim Order, the DIP Loan Documents or applicable law against the DIP Collateral, *provided* that the rights of the Debtors to contest such relief are expressly preserved.

(c) *Remedies Notice Period.* During the period from and after the Termination Declaration Date through the date of the Stay Relief Hearing (the "Remedies Notice Period"), the Debtors shall be permitted to use Cash Collateral solely to fund (i) payroll and other critical operating expenses included in (and subject to) the Approved Budget that are critically necessary to keep the Debtors' businesses operating or that have been consented to by the DIP Lender, and (ii) the Professional Fees Escrow Amount; *provided, however*, that any fees or expenses incurred by the DIP Loan Parties or the Official Committee during the Remedies Notice Period shall permanently reduce the Carve Out Amount (as defined below); *provided, further*, that the Debtors may seek an emergency hearing with the Court during the Remedies Notice Period. For the avoidance of doubt, during the Remedies Notice Period, the DIP Lender shall not be obligated to

provide any DIP Loans or advance any credit at any time from and after the occurrence of a DIP Termination Event.

(d) *Leased Premises.* Following a DIP Termination Event (subject to the terms of paragraph 18 herein), the DIP Lender shall be entitled to enter upon any leased premises in accordance with (i) a separate agreement with the landlord by and between the DIP Lender and the applicable landlord, (ii) consent of the landlord, (iii) upon entry of an order of this Court, upon notice to the landlord and a hearing, or (iv) in accordance with the rights of the DIP Lender under applicable non-bankruptcy law.

(e) *Cooperation.* The DIP Loan Parties shall cooperate with the DIP Lender in its efforts to enforce its liens and security interests in the DIP Collateral (without limiting in any way the Debtors' rights under the Remedies procedures set forth in this paragraph 18) the DIP Loan Parties shall not take or direct any entity to take any action designed or intended to hinder or restrict in any respect such party from enforcing its rights or remedies in the DIP Collateral.

19. *No Waiver by Failure to Seek Relief.* The rights and remedies of the DIP Lender specified herein are cumulative and not exclusive of any rights or remedies that the DIP Lender may have under this Interim Order, the DIP Loan Documents, applicable law, or otherwise. The failure or delay on the part of any of the DIP Lender to seek relief or otherwise exercise its rights and remedies under this Interim Order, the DIP Loan Documents, or applicable law, as the case may be, shall not constitute a waiver of any of its respective rights hereunder, thereunder or otherwise. Except as expressly set forth herein, none of the rights or remedies of the DIP Lender under this Interim Order or the DIP Loan Documents shall be deemed to have been amended, modified, suspended, or waived unless such amendment, modification, suspension, or waiver is

express, in writing and signed by DIP Lender. No consents required hereunder by the DIP Lender shall be implied by any inaction or acquiescence by the DIP Lender.

20. *Carve Out.*

(a) *Priority of Carve Out.* The DIP Liens and the DIP Superpriority Claims shall be subject and subordinate to payment of the Carve Out. The Carve Out shall be senior to all claims and liens over all assets of the Debtors, including any DIP Collateral, as set forth in this Interim Order.

(b) *Carve Out.* The term “Carve Out” shall mean the sum of (i) all fees required to be paid to the Clerk of the Court and to the United States Trustee under 28 U.S.C. § 1930(a), together with any interest thereon pursuant to 31 U.S.C. § 3717 (“Statutory Fees”), which shall not be subject to the Approved Budget; (ii) Court-allowed fees and expenses of a trustee appointed under section 726(b) of the Bankruptcy Code in an amount not to exceed \$50,000, (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (the “Allowed Professional Fees”) incurred by persons or firms retained by the Debtor pursuant to sections 327, 328, or 363 of the Bankruptcy Code (the “Debtor Professionals”) or the Official Committee, if any, pursuant to sections 328 or 1103 of the Bankruptcy Code (the “Committee Professionals” and, together with the Debtor Professionals, the “Professional Persons”), at any time before or on the first calendar day following delivery by the DIP Lender of a Carve Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice (the “Pre-Trigger Date Fees”), subject to the Approved Budget and any limits by this Interim Order, provided that Professional Persons may carry forward budgeted but unused disbursements set forth in the Approved Budget for any week for use in any subsequent week; and (iv) Allowed Professional Fees of Professional Persons in an aggregate

amount not to exceed \$3,000,000 incurred after the first calendar day following delivery by the DIP Lender of the Carve Out Trigger Notice (the “Trigger Date”), to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “Post-Carve Out Trigger Notice Cap” or the “Carve Out Cap”); *provided, however*, that for the purposes of the foregoing, any plan success fee shall not be included in the Post Carve-Out Trigger Notice Cap and shall be paid, to the extent allowed, pursuant to any confirmed plan in these Chapter 11 Cases; *provided, further*, that nothing herein shall be construed to impair the ability of the DIP Lender to object to the fees, expenses, reimbursement or compensation described in clauses (iii) or (iv) above, on any grounds. In the event that Allowed Professional Fees exceed or are expected to exceed the amounts provided in the Approved Budget, the parties will negotiate in good faith (but without further obligation) regarding a proposed amendment to the Approved Budget to address such additional Allowed Professional Fees. For purposes of the foregoing, “Carve Out Trigger Notice” shall mean a written notice delivered by email (or other electronic means) by the DIP Lender or its counsel to the Debtors, their lead restructuring counsel, the Office of the U.S. Trustee, and counsel to the Official Committee (if any), which notice may be delivered following the occurrence and during the continuation of an Event of Default and acceleration of the DIP Loans, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

(c) *Carve Out Trigger Notice Reserve.* The Debtors shall deposit the Pre-Trigger Date Fees in a segregated account in trust to pay such then unpaid Allowed Professional Fees (the “Carve Out Trigger Notice Reserve”) prior to any and all other claims. The Carve Out Trigger Notice Reserve shall be funded on a weekly basis, and shall contain an amount equal to the amount of fees reflected in the Approved Budget for Professional Persons from the Closing Date through the weekly date of funding.

(d) *Carve Out Draw.* Subject to exhaustion of the DIP Commitments, the Debtor shall be permitted to draw on the DIP Facility in the amount of the Carve Out less the Carve Out Trigger Notice Reserve, notwithstanding any default, Event of Default, or the occurrence of a Trigger Date. Any Carve Out Trigger Notice shall be deemed a consent by the DIP Lender to the Debtor depositing Cash Collateral or DIP Facility proceeds into the Carve Out Trigger Notice Reserve in an amount equal to the sum of the Post-Carve Out Trigger Notice Cap and any budgeted Carve Trigger Date Fees reflected in the Approved Budget through the date of the Carve Out Trigger Notice that have not been deposited in the Carve Out Trigger Notice Reserve.

(e) *Payment of Allowed Professional Fees Prior to the Trigger Date.* Any payment or reimbursement made prior to the occurrence of the Trigger Date in respect of any Allowed Professional Fees shall not reduce the Carve Out.

(f) *No Direct Obligation to Pay Professional Fees; No Waiver of Right to Object to Fees.* The DIP Lender shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any of the Professional Persons incurred in connection with the Chapter 11 Cases or any Successor Cases under any chapter of the Bankruptcy Code. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Lender in any way to pay compensation to, or to reimburse expenses of, any of the Professional Persons, or to guarantee that the Debtors or their estates has sufficient funds to pay such compensation or reimbursement. Notwithstanding any provision in this paragraph to the contrary, no portion of the Carve Out, any Cash Collateral, any DIP Collateral or any proceeds of the DIP Facility (including any disbursements set forth in the Approved Budget or obligations benefitting from the Carve Out) shall be utilized for the payment of professional fees and disbursements to the extent restricted under paragraph 21 herein. Nothing herein shall be construed as consent to the allowance of any

fees and/or expenses of Professional Persons of any of the Debtors, the Official Committee, any other official or unofficial committee in these Chapter 11 Cases or any Successor Cases, or of any other person or entity, or shall affect the right of the DIP Lender to object to the allowance and payment of any such fees and expenses.

21. *Limitations on Use of DIP Collateral, Cash Collateral, Carve Out or Other Funds.*

Notwithstanding anything contained in this Interim Order or any other order of the Court to the contrary, no DIP Collateral, DIP Loans, Cash Collateral, proceeds of any of the foregoing, or any portion of the Carve Out may be used (including to pay professional fees) by any of the DIP Loan Parties, the Official Committee, any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases or any Successor Cases, or any other party-in-interest (including without limitation any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors in the Chapter 11 Cases or any Successor Cases), directly or indirectly, to:

(a) investigate (including by way of examinations or discovery proceedings, whether formal or informal), prepare, initiate, commence, support or prosecute (or finance the preparation, initiation, commencement, support or prosecution of) any claim, counterclaim, cross-claim, cause of action, suit, arbitration, application, motion, contested matter, objection, defense, adversary proceeding, litigation or other proceeding of any kind or nature (whether for monetary, injunctive, affirmative relief or otherwise) (i) against the DIP Lender or their respective representatives (each in their capacities as such), (ii) objecting to, challenging, contesting, or raising any defense to, the amount, validity, enforceability, perfection, priority, extent or scope of the claims, liens and security interests granted under this Interim Order or the DIP Loan Documents, (iii) asserting avoidance (whether under Chapter 5 of the Bankruptcy Code or under applicable law (including any applicable state law Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law)), any so-called “lender liability” claims, or any other any claim or cause of action seeking reduction, setoff, offset, recoupment, recharacterization, subordination (whether equitable, contractual or otherwise), reclassification, disgorgement, disallowance, impairment, marshalling, surcharging or recovery, in each case, with respect to the DIP Liens, the DIP Obligations, the DIP Loan Documents, or the DIP Collateral, (vi) any claim or cause of action of any kind or nature whatsoever, whether arising under the Bankruptcy Code or applicable non-bankruptcy law, against the DIP Lender or their respective representatives;

(b) object to or seek to impair, modify or interfere with any of the rights, remedies, priorities, privileges, protections or benefits granted to the DIP Lender under this Interim Order or the DIP Loan Documents; *provided* that, for the avoidance of doubt, this provision shall not apply to an objection filed in the Court to the relief sought at the Final Hearing;

(c) object to or seek to prevent, hinder, interfere with or otherwise delay any of the DIP Lender's assertion, enforcement, exercise of remedies or realization upon any DIP Collateral in accordance with this Interim Order or the DIP Loan Documents (other than to contest whether a DIP Termination Event has occurred);

(d) request authorization from the Court to obtain postpetition financing (whether equity or debt) or other financial accommodations pursuant to sections 364(c) or (d) of the Bankruptcy Code or otherwise, unless such financing is sufficient to cause the Payment in Full of all DIP Obligations contemporaneously with the consummation of such financing (or as otherwise agreed in writing by the DIP Lender);

(e) request authorization from the Court to obtain superpriority claims or liens or security interests (other than liens or security interests expressly permitted under this Interim Order) in any portion of the DIP Collateral that are senior to or *pari passu* with the DIP Liens or the DIP Superpriority Claims unless all DIP Obligations have been Paid in Full (or as otherwise agreed in writing by the DIP Lender); or

(f) use, request authorization to use, Cash Collateral or sell or otherwise dispose of DIP Collateral (without the prior written consent of the DIP Lender) other than as expressly permitted in this Interim Order and in the DIP Loan Documents.

22. *Limitation on Charging Expenses.* Subject to and effective upon entry of the Final Order, except to the extent of the Carve Out, no costs or expenses of administration of the Chapter 11 Cases or any Successor Cases (or any future proceedings that may result therefrom) at any time, including, without limitation, any costs and expenses incurred in connection with the preservation, protection, or enhancement of realization by the DIP Lender upon the DIP Collateral shall be charged against or recovered from the DIP Collateral, whether pursuant to section 506(c) of the Bankruptcy Code or other similar legal or equitable doctrine or otherwise, without the prior written consent of the DIP Lender with respect to the DIP Collateral, in its sole discretion, and no such consent shall be implied, directly or indirectly, from anything contained in this Interim Order (including, without limitation, consent to the Carve Out or the approval of any budget hereunder) or from any other action, inaction, or acquiescence by the DIP Lender to any charge, lien,

assessment or claim against the DIP Lender to the DIP Collateral, whether under section 506(c) of the Bankruptcy Code or otherwise.

23. *No Marshalling.* Subject to and effective upon entry of the Final Order, in no event shall the DIP Lender be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the DIP Collateral or the DIP Obligations and all proceeds of DIP Collateral shall be received and applied in accordance with this Interim Order and the DIP Loan Documents.

24. *Right to Credit Bid.* The DIP Lender or its designee (in each case, acting at the instruction of the DIP Lender), shall have the unqualified right to credit bid for all or any portion of DIP Collateral in accordance with the DIP Loan Documents up to the full amount of any DIP Obligations with respect to the sale of any of the DIP Loan Parties’ assets, whether in a sale under or pursuant to section 363 of the Bankruptcy Code, a Chapter 11 plan subject to confirmation under section 1129(b)(2)(A) of the Bankruptcy Code, a sale or disposition by a chapter 7 trustee for any of the Debtors under section 725 of the Bankruptcy Code, or otherwise. The DIP Lender shall have the absolute right to assign, transfer, sell, or otherwise dispose of its respective rights to credit bid (subject to this Interim Order) to any acquisition vehicle formed in connection with such bid or other designee.

25. *Binding Effect; Successors and Assigns.* Immediately upon entry of this Interim Order, the DIP Loan Documents and this Interim Order, including all findings and conclusions of law herein, shall be binding upon all parties-in-interest in the Chapter 11 Cases and any Successor Cases, including without limitation, the DIP Lender, the Official Committee or any other statutory or non-statutory committee appointed or formed in the Chapter 11 Cases and any Successor Cases, and their respective successors and assigns (including any chapter 11 trustee or chapter 7 trustee or examiner appointed or elected in the Chapter 11 Cases or any Successor Cases, an examiner

appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors), and shall inure to the benefit of each of the Debtors and the DIP Lender, and their respective successors and assigns; *provided, however*, that, for the avoidance of doubt, the DIP Lender shall have no obligation to make any loan, permit the use of DIP Collateral (including Cash Collateral) or extend any financing to any chapter 11 trustee or chapter 7 trustee or similar responsible person appointed for the estate of any Debtor in the Chapter 11 Cases or any Successor Cases.

26. *No Modification of Interim Order.*

(a) The DIP Loan Parties irrevocably waive the right to seek, and shall not seek or consent to, directly or indirectly, without the prior written consent of the DIP Lender (unless and until the DIP Obligations have been Paid in Full), (A) any modification, stay, vacatur or amendment to this Interim Order, (B) the allowance of any claim against any Debtor in the Chapter 11 Cases or any Successor Cases equal or superior to the DIP Superpriority Claims (other than the Carve Out), (C) the grant of any lien or security interest on any DIP Collateral with priority equal to or superior to the DIP Liens, except as expressly permitted hereunder or under the DIP Loan Documents, or (D) the entry of any order authorizing the use of DIP Collateral (including Cash Collateral) that is inconsistent with this Interim Order (except in connection with a request for approval of financing sufficient to cause the Payment in Full of all DIP Obligations contemporaneously with the consummation of such financing).

(b) Without limiting the provisions of the immediately preceding paragraph, if at any time prior to the Payment in Full of all DIP Obligations, either the DIP Loan Parties, the DIP Loan Parties' estates, any chapter 11 trustee, chapter 7 trustee or examiner with enlarged

powers, or any responsible officer subsequently appointed in any of the Chapter 11 Cases or any Successor Cases, shall obtain credit or incur debt pursuant to sections 364(b), (c), or (d) of the Bankruptcy Code in violation of this Interim Order or the DIP Loan Documents, then, unless otherwise agreed in writing by the DIP Lender, all of the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Lender.

27. *Preservation of Rights Granted Under Interim Order.*

(a) *Senior to Other Liens.* Other than the Carve Out and Prior Permitted Liens, no claim (including any intercompany claim) or lien having a priority superior to or *pari passu* with those granted by the Interim Order to the DIP Lender shall be permitted while any of the DIP Obligations remain outstanding, and, except as otherwise expressly provided in this Interim Order, (i) the DIP Superpriority Claims shall not be subject or junior to any intercompany or affiliate claims of the Debtors; and (ii) the DIP Liens shall not be: (A) subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code; (B) subordinated to or made *pari passu* with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise; (C) unless the DIP Obligations have been Paid in Full, subordinated to or made *pari passu* with any liens arising after the Petition Date, including any liens or security interests granted in favor of any federal, state, municipal, or other governmental unit (including any regulatory body), commission, board or court for any liability of the Debtors; or (D) subject or junior to any intercompany or affiliate liens or security interests of the Debtors.

(b) *Payment in Full.* Until Payment in Full of all DIP Obligations, none of the DIP Loan Parties shall propose or support any chapter 11 plan or sale of all or substantially all of the DIP Loan Parties' equity or assets, or any order confirming such plan or approving such sale,

that is not conditioned upon the Payment in Full (unless otherwise agreed in writing by the DIP Lender) of all DIP Obligations on or prior to the earlier to occur of the effective date of such chapter 11 plan or sale.

(c) *Dismissal/Conversion.* Notwithstanding any order that may be entered dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code or converting any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code: (A) all of the claims, liens and security interests, rights, priorities, privileges, remedies, benefits and protections granted to the DIP Lender hereunder and under the DIP Loan Documents (including, without limitation, the DIP Superpriority Claims and the DIP Liens), shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all DIP Obligations shall have been Paid in Full, and all such claims, liens and security interests, rights, priorities, privileges, remedies, benefits and protections shall, notwithstanding such dismissal or conversion, remain unaffected and shall remain binding on all parties in interest (and any such order shall, in accordance with sections 105 and 349 of the Bankruptcy Code, so provide), and (B) this Court shall retain jurisdiction, notwithstanding such dismissal or conversion, for the purposes of enforcing all such claims, liens and security interests, rights, priorities, privileges, remedies, benefits and protections granted to the DIP Lender hereunder and under the DIP Loan Documents.

(d) *Reversal/Modification.* Based on the findings set forth in this Interim Order and the record presented during the Interim Hearing and the Chapter 11 Cases, and in accordance with section 364(e) of the Bankruptcy Code, in the event that any or all of the provisions of this Interim Order or the DIP Loan Documents are hereafter reversed, modified, vacated or stayed by a subsequent judgment or order of this Court or any other court, any such reversal, stay, modification or vacatur shall not affect (i) the validity or enforceability of advances previously

made hereunder or under the DIP Loan Documents by the DIP Lender to the Debtors, (ii) the validity or enforceability of any obligation, indebtedness or liability incurred under this Interim Order or the DIP Loan Documents (including, without limitation, the DIP Obligations) by the DIP Loan Parties to the DIP Lender, (iii) the validity, enforceability, or perfection of any of the claims, liens, security interests, rights, privileges or benefits granted hereunder or under the DIP Loan Documents to the DIP Lender, or (iv) the payment of any fees, costs, expenses or other amounts to the DIP Lender under this Interim Order and the DIP Loan Documents, in each case, prior to the actual receipt of written notice by any DIP Lender of the effective date of such reversal, stay, modification, or vacatur. Notwithstanding any such reversal, stay, modification or vacatur, the claims, liens, security interests, rights, privileges, remedies and benefits set forth in the Interim Order shall be governed in all respects by the original provisions of this Interim Order and the DIP Loan Documents.

(e) *Survival.* Except as expressly provided in this Interim Order, until all of the DIP Obligations have been Paid in Full (unless the DIP Lender has otherwise agreed), all claims, liens and security interests, rights, priorities, privileges, remedies, benefits, and protections granted to the DIP Lender under this Interim Order and the DIP Loan Documents shall survive and shall not be modified, impaired, or discharged by: (i) the entry of an order confirming any chapter 11 plan in any of the Chapter 11 Cases (and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors hereby waive any discharge as to any remaining DIP Obligations), (ii) the entry of an order converting any or all of the Chapter 11 Cases to a case (or cases) under chapter 7 of the Bankruptcy Code, dismissing any or all of the Chapter 11 Cases or terminating the joint administration of the Chapter 11 Cases or by any other act or omission, or (iii) the entry of an order

approving the sale or disposition of any DIP Collateral (except to the extent expressly permitted in the DIP Loan Documents).

28. *Proof of Claim.* The DIP Lender shall not be required to file proofs of claim in any of the Chapter 11 Cases or any of the Successor Cases in order to assert claims for payment of the DIP Obligations. The Debtors' acknowledgments and the provisions of this Interim Order, together with the evidence accompanying the Motion and presented at the Interim Hearing, are deemed sufficient to and do constitute timely filed proofs of claim in respect of such claims arising under the DIP Obligations against each of the applicable Debtors. Any order entered by the Court establishing a bar date in any of the Chapter 11 Cases or any Successor Chapter 11 Cases shall not apply to the DIP Lender or the DIP Obligations.

29. *Limitation of Liability.*

(a) Nothing in this Interim Order, the DIP Loan Documents, or any documents related thereto shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Lender of any liability for any claim arising from, in connection with or related to the prepetition or postpetition activities of the DIP Loan Parties or their respective affiliates (as defined in section 101(2) of the Bankruptcy Code) in the operation of their businesses, their restructuring efforts or the administration of these Chapter 11 Cases.

(b) In determining to make any loan or extension of credit under the DIP Loan Documents, or permit the use of Cash Collateral, or in exercising any rights or remedies under this Interim Order, the DIP Loan Documents, the DIP Lender shall not (i) have any liability to any third party or be deemed to be in control of the operations of any of the DIP Loan Parties, (ii) owe any fiduciary duty to any of the DIP Loan Parties, their respective creditors, shareholders or estates, or (iii) be deemed to be acting as a "Responsible Person" or "Owner" or "Operator" with respect

to the operation or management of any of the DIP Loan Parties (as such terms or any similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42, U.S. §§ 9601 *et seq.*, as amended, or any other federal or state statute, including the Internal Revenue Code).

(c) The DIP Lender shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the DIP Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency, or other person, and all risk of loss, damage, or destruction of the DIP Collateral shall be borne solely by the DIP Loan Parties.

30. *Release of DIP Lender.* Effective as of entry of the Interim Order, each of the DIP Loan Parties and its estate, on its own behalf and on behalf of its predecessors, successors and assigns, hereby absolutely, unconditionally and irrevocably releases and forever discharges and acquits the DIP Lender and each of its representatives (in their capacities as such) from any and all obligations and liabilities to the DIP Loan Parties (and their successors and assigns) and from any and all claims, counterclaims, cross-claims, demands, defenses, objections, challenges, offsets or setoff, debts, accounts, contracts, liabilities, remedies, suits, controversies, actions, causes of action, losses, damages, indemnities, reimbursement obligations, attorneys' fees, costs, expenses or judgments, of every kind or nature whatsoever, whether matured or unmatured, known or unknown, asserted or unasserted, suspected or unsuspected, foreseen or unforeseen, accrued or unaccrued, liquidated or unliquidated, fixed or contingent, pending or threatened, arising in law or equity, upon contract or tort, under the Bankruptcy Code, any state or federal common law, statute, rule, regulation or otherwise, including, without limitation, any claim or cause of action seeking (i) any so-called lender liability, (ii) any and all claims arising under the Bankruptcy Code, whether

under Chapter 5 of the Bankruptcy Code or under applicable law (including any applicable state law Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law)), or otherwise, (iii) reduction, recoupment, recharacterization, subordination (whether equitable, contractual or otherwise), reclassification, disgorgement, disallowance, impairment, marshalling, surcharge or recovery, in each case, that may be asserted by any of the DIP Loan Parties, their respective estates, predecessors, successors and assigns, in each case, against any of the DIP Lender or their respective representatives (in their capacities as such) for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time prior to the date of this Interim Order, in connection with, arising under or related to this Interim Order, the DIP Facility, the DIP Liens, the DIP Obligations, the DIP Collateral, the transactions contemplated thereunder or hereunder, or the negotiation thereof or hereof, including, without limitation, any claim or cause action with respect to the validity, enforceability, priority, scope, extent or perfection of the DIP Liens, the DIP Obligations or the DIP Loan Documents.

31. *Payments Free and Clear.* Any and all payments or proceeds required to be remitted to the DIP Lender pursuant to the DIP Loan Documents, this Interim Order, the Final Order (if and when entered) or any subsequent order of this Court shall be irrevocable (subject, solely in the case of the DIP Professional Fees, only to the procedures set forth in paragraph 10 of this Interim Order), and shall be received free and clear of any claim, charge, assessment or other liability, including without limitation, any claim or charge arising out of or based on, directly or indirectly, section 506(c) of the Bankruptcy Code (whether asserted or assessed by, through or on behalf of the DIP Loan Parties) or otherwise.

32. *Joint and Several Liability.* Nothing in this Interim Order shall be construed to constitute or authorize a substantive consolidation of any of the DIP Loan Parties' estates, it being understood, however, that the DIP Loan Parties shall be jointly and severally liable for all obligations (including all DIP Obligations) under this Interim Order and the DIP Loan Documents.

33. *Third-Party Beneficiary.* Except as expressly set forth herein, no rights are created hereunder for the benefit of any third party, any creditor, equity holders, or any direct, indirect or incidental beneficiary.

34. *Interim Order Controls.* Until such time as an amended interim order (if any) or Final Order shall have been entered, in the event of any conflict or inconsistency between or among the terms or provisions of this Interim Order and any of the DIP Loan Documents, unless such term or provision in this Interim Order is phrased in terms of "defined in" or "as set forth in" the DIP Term Sheet or DIP Loan Documents, or in the event of any conflict or inconsistency between the terms of this Interim Order and any other order of the Court, the terms and provisions of this Interim Order shall govern and control.

35. *Effectiveness.* This Interim Order shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9014, any Local Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

36. *Bankruptcy Rules.* The requirements of Bankruptcy Rules 4001, 6003, and 6004, in each case to the extent applicable, are satisfied by the contents of the Motion.

37. *Headings.* Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Interim Order. When used in this Interim Order, the word “including” shall not imply limitation.

38. *Necessary Action.* The DIP Loan Parties and the DIP Lender are authorized to take any and all such actions as are necessary, required or appropriate to implement and effectuate the terms of this Interim Order, the DIP Loan Documents, and the transactions contemplated hereunder and thereunder.

39. *Retention of Jurisdiction.* The Court retains jurisdiction to hear, determine and enforce the terms of any and all matters arising from or related to the DIP Facility, the DIP Loan Documents and this Interim Order, and the Court’s jurisdiction shall survive confirmation and consummation of any Chapter 11 plan for any of the Debtors notwithstanding the terms or provisions of any such Chapter 11 plan or any order confirming any such Chapter 11 plan.

40. *Final Hearing.* The Final Hearing shall be held on March __, 2023, at __:00 __.m. (prevailing Central Time), and any objections to the final relief sought in the Motion shall be filed with the Court no later than March __, 2023 at 4:00 p.m. (prevailing Central Time).

Dated: _____, 2023
Houston, Texas

UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

DIP Term Sheet

February 19, 2023

Sorrento Therapeutics, Inc.
\$75,000,000
Debtor-in-Possession Term Loan Facility
Summary of Terms and Conditions

This term sheet (together with the exhibits and schedules hereto, the “Term Sheet”) sets forth a summary of the terms and conditions with respect to the DIP Facility (as defined below) from and after, and subject to, the entry of the Interim Order (as defined below). This Term Sheet shall be a binding agreement from and after, and subject to, the entry of the Interim Order with respect to the DIP Loans (as defined below) but does not purport to summarize all of the terms, conditions, representations and other provisions with respect to the DIP Facility, which will be set forth in the DIP Documents (as defined below). The obligation of the DIP Lender (as defined below) to provide financing pursuant to this Term Sheet is conditioned upon the execution and delivery of signature pages to this Term Sheet by each of the parties hereto and shall be subject to the conditions precedent and other terms and conditions set forth herein. In the event of any conflict between this Term Sheet and the terms of the Interim Order or the Final Order (as defined below), the terms of the Interim Order or the Final Order (as applicable) shall govern.

The statements contained in this Term Sheet and all discussions between and among the parties in connection herewith constitute privileged communications that shall not be disclosed or introduced pursuant to Federal Rule of Evidence 408 and/or other applicable law, unless otherwise required by judicial order or applicable law. All assumptions, principles and numbers are based upon and subject to continuing due diligence and are subject to change as the parties’ positions develop further.

1.	<i>Borrowers:</i>	<ul style="list-style-type: none"> • Sorrento Therapeutics, Inc. and Scintilla Pharmaceuticals, Inc. (each a “Borrower” and collectively, the “Borrowers”), as debtors and debtors-in-possession in Case No. 23-90085 (DRJ) (Jointly Administered) (the “Chapter 11 Cases” (the Borrowers shall be referred to herein under the Chapter 11 Cases, each as a “Debtor” and collectively, the “Debtors”) under chapter 11 of title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”) commenced in the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”) on February 13, 2023 (the “Petition Date”).
2.	<i>Guarantors:</i>	<ul style="list-style-type: none"> • Each of Sorrento Therapeutics, Inc.’s existing and future, direct and indirect domestic or foreign subsidiaries that become debtors and debtors-in-possession in the Chapter 11 Cases (collectively, the “Guarantors” and together with the Borrowers, each a “Loan Party” and collectively, the “Loan Parties”). As of the date of the Interim Order, the only two Loan Parties shall be the Borrowers. • The DIP Obligations (as defined below) of the Borrowers shall be unconditionally guaranteed, on a joint and several basis, by the Guarantors.
3.	<i>DIP Lender:</i>	<ul style="list-style-type: none"> • JMB Capital Partners Lending, LLC and/or its designees or its assignees

4.	<i>Type and Amount of the DIP Facility:</i>	<ul style="list-style-type: none"> • A non-amortizing super-priority senior secured term loan facility in an aggregate principal amount not to exceed \$75,000,000 consisting of up to \$75,000,000 in term loan commitments (the “DIP Facility”; the definitive documentation evidencing the DIP Facility, the “DIP Documents”; the DIP Lender’s commitments under the DIP Facility, the “DIP Commitments”; and the loans under the DIP Facility, the “DIP Loans”). • The borrowing of DIP Loans shall permanently decrease the DIP Commitments, and DIP Loans repaid may not be reborrowed. • Loan proceeds to be funded into newly established funding accounts, including a carve-out account each to be initially maintained at Bank of America and subject to a control agreement in favor of the DIP Lender to be entered into within 10 Business Days of the entry of the Interim Order, subject to a 30 day cure period if the Loan Parties are using commercially reasonable efforts to obtain a satisfactory control agreement.
5.	<i>Initial Availability:</i>	<ul style="list-style-type: none"> • Upon the Bankruptcy Court’s entry of the Interim Order (as defined below), and satisfaction of all applicable conditions precedent described herein, the Borrowers shall be entitled to make a single draw of the DIP Loans in the amount of \$30,000,000 immediately upon entry of the Interim Order (the “Initial Draw”) (the date of such Initial Draw shall be referred to herein as the “Closing Date”). The closing of definitive DIP Documents (as hereafter defined) shall occur as soon after the Initial Draw as possible.
6.	<i>Full Availability:</i>	<ul style="list-style-type: none"> • Upon the Bankruptcy Court’s entry of the Final Order (as defined below), and satisfaction of all applicable conditions precedent described herein, the full remaining amount of the DIP Facility shall be available to the Debtors, subject to compliance with the terms, conditions and covenants described in the DIP Documents, in additional draws (each an “Other Draw” and collectively, the “Other Draws,” and together with the Initial Draw, and each Other Draw, each a “Draw” and collectively, the “Draws”), each in an amount not less than \$5,000,000 upon five (5) business days’ written notice, up to the aggregate amount of the undrawn DIP Commitments at any time prior to five (5) days before the DIP Termination Date (as defined below).
7.	<i>Maturity and Termination</i>	<ul style="list-style-type: none"> • All DIP Obligations (as defined below) shall be due and payable in full in cash (or such other form of consideration as the DIP Lender and the Borrowers may mutually agree) on the earliest of: <ul style="list-style-type: none"> i. July 31, 2023; ii. the effective date of any chapter 11 plan of reorganization with respect to the Borrowers or any other Debtor (a “Plan”); iii. the consummation of any sale or other disposition of all or substantially all of the assets of the Debtors pursuant to section 363 of the Bankruptcy Code;

		<ul style="list-style-type: none"> iv. the date of the acceleration of the DIP Loans and the termination of the DIP Commitments in accordance with the DIP Documents; v. dismissal of the Chapter 11 Cases or conversion of the Chapter 11 Cases into cases under chapter 7 of the Bankruptcy Code; and vi. 45 days after the date on which a motion to approve the DIP Facility is filed (or such later date as agreed to by the DIP Lender), unless the Final Order (as defined below) has been entered by the Bankruptcy Court on or prior to such date (such earliest date, the “DIP Termination Date”). <ul style="list-style-type: none"> • The occurrence of the DIP Termination Date shall terminate the ability of the Borrowers to borrow the Other Draws and shall terminate any further obligation the DIP Lender has to make any DIP Loans under the DIP Documents.
8.	<i>Interest Rate:</i>	<ul style="list-style-type: none"> • The DIP Loans shall bear interest at a per annum rate equal to 14% payable in cash on the first day of each month in arrears (the “Non-Default Interest”). • Notwithstanding the foregoing, after the occurrence and during the continuance of an Event of Default (as defined below), the DIP Loans shall bear interest at an additional per annum rate of 3%, in each case payable in cash, plus the Non-Default Interest, on the first day of each month.
9.	<i>Commitment, Exit & Funding Fee:</i>	<ul style="list-style-type: none"> • The Borrowers shall pay to the DIP Lender a commitment fee equal to 2.5% of the total amount of the DIP Commitments (the “Commitment Fee”). The Commitment Fee shall be fully earned, non-refundable upon entry of the Interim Order, and shall be payable out of the proceeds of the Initial Draw. • The Borrowers shall pay to the DIP Lender a funding fee equal to 2.5% of the amount of each Draw, which shall be fully earned, non-refundable, and payable at the time of such Draw (the “Funding Fee”). • Upon repayment or satisfaction of the DIP Loans in whole or in part the Borrowers shall pay to the DIP Lender an exit fee equal to the sum of (i) 7% of the amount of Initial Draw, which shall be fully earned and non-refundable upon the Bankruptcy Court’s entry of the Interim Order, and (ii) 7% of the amount of the DIP Commitments less the amount of the Initial Draw, which shall be fully earned and nonrefundable upon the Bankruptcy Court’s entry of the Final Order (the “Exit Fee”). The Exit Fee shall be due and payable upon the DIP Termination Date regardless of the amount of Other Draws made under the DIP Facility, <u>provided, however</u>, if the DIP Termination Date has occurred solely as a result of the occurrence and continuation of an Event of Default under the DIP Documents, then the Exit Fee shall not be payable until the DIP Obligations have been accelerated by the DIP Lender.

		<ul style="list-style-type: none"> • The Commitment Fee, the Exit Fee, and the Funding Fee shall be approved by the Bankruptcy Court as part of the Interim Order and the Final Order, respectively. If such premiums are not approved by the Bankruptcy Court, this Term Sheet shall automatically terminate and be of no further force and effect.
10.	<i>Use of Proceeds:</i>	<ul style="list-style-type: none"> • The proceeds of the DIP Facility shall be used only for the following purposes and, excluding payments pursuant to clauses (ii), (iii), and (iv) below, subject to the Budget and 20% permitted variances as set forth below: <ul style="list-style-type: none"> i. working capital and other general corporate purposes of the Borrowers and the Guarantors and certain subsidiaries; ii. professional fees and expenses of administering the Chapter 11 Cases, to the extent the Bankruptcy Court authorizes payment (including fees incurred prior to the Closing Date); iii. fees and expenses payable under the DIP Facility, including, without limitation, the Commitment Fee, the Funding Fee the Exit Fee and legal expenses of the DIP Lender; and iv. interest and other amounts payable under the DIP Facility. • Notwithstanding any other provision of this Term Sheet, from and after the Closing Date, no DIP Loans or DIP Collateral (as defined below), or any portion of the Carve-Out may be used directly or indirectly by any Debtor, any Guarantor, any official committee appointed in the Chapter 11 Cases, or any trustee appointed in the Chapter 11 Cases or any successor cases, including any chapter 7 cases, or any other person, party or entity: <ul style="list-style-type: none"> i. in connection with the investigation, initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation <ul style="list-style-type: none"> a. against the DIP Lender, or its respective predecessors-in-interest, agents, affiliates, representatives, attorneys, or advisors, or any action purporting to do the foregoing in respect of the DIP Obligations, DIP Liens (as defined below), DIP Claims (as defined below), or b. challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset to, the DIP Obligations and/or the liens, claims, rights, or security interests granted under the Orders, the DIP Documents, including, in each case, without limitation, for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise;

		<ul style="list-style-type: none"> ii. to prevent, hinder, or otherwise delay the DIP Lender’s enforcement or realization on the DIP Obligations, DIP Collateral, and the liens, claims and rights granted to such parties under the Interim Order or the Final Order, as applicable, each in accordance with the DIP Documents and the Interim Order or the Final Order, as applicable; provided, however, this shall not apply to objections to the Final Order; iii. to seek to modify any of the rights and remedies granted to the DIP Lender under the Orders (other than with the consents contemplated thereunder), or the DIP Documents, as applicable; or iv. to apply to the Bankruptcy Court for authority to approve superpriority claims or grant liens (other than the liens permitted pursuant to the DIP Documents) or security interests in the DIP Collateral or any portion thereof that are senior to, or on parity with, the DIP Liens, DIP Claims, unless permitted under the DIP Documents or unless all DIP Obligations, and claims granted to the DIP Lender under the Interim Order or the Final Order, as applicable, have been refinanced or paid in full in cash or otherwise agreed to in writing by the DIP Lender. v. Reserved.
11.	<i>Voluntary Prepayments:</i>	<ul style="list-style-type: none"> • Voluntary prepayments of the DIP Loans shall be permitted at any time, subject to (i) payment of the Exit Fee due thereon, which shall be due and payable on the date of such voluntary prepayment; and (ii) in minimum amounts of at least \$5,000,000 of principal.
12.	<i>Security:</i>	<ul style="list-style-type: none"> • As security for the DIP Obligations, subject to the Carve Out, each Loan Party shall grant to the DIP Lender a security interest in and continuing lien on all of such Loan Party’s right, title and interest in, to and under all the Loan Parties’ assets, including, but not limited to the following, in each case, whether now owned or existing or hereafter acquired, created or arising and wherever located: all assets and property of such Loan Party and its estate, real or personal, tangible or intangible, now owned or hereafter acquired, whether arising before or after the Petition Date, including, without limitation, all contracts, contract rights, licenses, general intangibles, instruments, equipment, accounts, documents, goods, inventory, fixtures, documents, cash, cash equivalents, chattel paper, letters of credit and letter of credit rights, investment property, commercial tort claims, arbitration awards, money, insurance, receivables, receivables records, deposit accounts, collateral support, supporting obligations and instruments, fixtures, all interests in leaseholds and real properties, all patents, copyrights, trademarks, all trade names and other intellectual property (whether such intellectual property is registered in the United States or in any foreign jurisdiction), including, without limitation, all including, without limitation the property listed in <u>Schedule A</u> together with all books and records relating to the foregoing, all proceeds, products, accessions, rents and profits of

		<p>or in respect of any of the foregoing (as such terms are defined in the Uniform Commercial Code as in effect from time to time in the State of New York) and subject to the entry of a Final Order proceeds of any actions under sections 544, 545, 547, 548 and 550 of the Bankruptcy Code, other than, in each case “Excluded Assets” as defined on <u>Schedule A</u> (collectively, the “DIP Collateral”).</p> <ul style="list-style-type: none"> • Negative pledge on all assets of the Loan Parties subject to permitted liens to be agreed upon. • In addition to appropriate orders of the Bankruptcy Court granting and perfecting such liens, the Loan Parties shall take all other commercially reasonable steps (including the execution and filing of UCC financing statements) requested by DIP Lender with respect to such security interests and liens.
13.	<i>Priority and Security:</i>	<ul style="list-style-type: none"> • Subject to the Carve-Out, all obligations of the Loan Parties under the DIP Documents, including, without limitation, all principal, accrued interest, costs, fees and premiums provided for therein, and all obligations of the Loan Parties under the DIP Facility (the “DIP Obligations”) shall be entitled to super priority claim status pursuant to section 364(c)(1) of the Bankruptcy Code, with priority over any and all administrative expense claims and unsecured claims, of any kind or nature whatsoever, now existing or hereafter arising under the Bankruptcy Code (the “DIP Claims”). • Subject to the Carve-Out and any equipment liens which were validly perfected as of the Petition Date, all DIP Obligations in respect of the DIP Facility shall be: <ul style="list-style-type: none"> i. pursuant to Section 364(c)(1) of the Bankruptcy Code, be entitled to superpriority claim status in the Chapter 11 Cases (which claims shall be payable from and have recourse to all DIP Collateral); and ii. secured, pursuant to Section 364(c)(2) of the Bankruptcy Code, by a valid, enforceable, fully perfected and automatic first-priority lien on the DIP Collateral. • The liens securing the DIP Facility (the “DIP Liens”) shall mean the liens described above and in the priority set forth in the Interim Order and Final Order. The DIP Liens described herein shall, to the fullest extent permitted by applicable law, be effected and perfected upon entry of the Interim Order and without the necessity of the execution of mortgages, landlord agreements, security agreements, pledge agreements, control agreements, financing statements or other agreements. • DIP Collateral shall also include litigation claim, judgements and any arbitration awards as more fully described on <u>Schedule B</u> and any such awards hereafter granted or arising at any time before the DIP Obligations are indefeasibly paid in full and the DIP Commitments are terminated.

14.	Remedies	<ul style="list-style-type: none"> • All remedies customarily available including (in the Chapter 11 Cases) without limitation those remedies customarily available to senior secured, administrative expense claim of a debtor-in-possession lender, including, without limitation: <ol style="list-style-type: none"> i. declare that the DIP Commitments are terminated, whereupon the DIP Commitments shall be terminated; ii. declare the unpaid amount of the DIP Obligations to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Loan Parties; or iii. take any other action or exercise any other right or remedy (including, without limitation, with respect to the liens in favor of the DIP Lender permitted under the DIP Documents, or by applicable law. <p>Any exercise of remedies by the DIP Lender shall be subject in all respects to the terms of the DIP Order.</p>
15.	Conditions Precedent to Initial Draw	<ul style="list-style-type: none"> • entry of the Interim Order on or before February 24, 2023, which order shall not be stayed or subject to appeal; • delivery of the Initial Budget acceptable to the DIP Lender in its reasonable discretion; • all out-of-pocket costs, fees and expenses required to be paid to the DIP Lender pursuant to this Term Sheet, the DIP Documents or the Interim Order shall have been paid; • the representations and warranties of the Loan Parties under the DIP Documents shall be true and correct in all material respects (or in the case of representations and warranties with a “materiality” qualifier, true and correct in all respects); • no Material Adverse Effect (as defined below) shall have occurred and be continuing; and • the Borrowers shall have delivered to the DIP Lender a customary borrowing notice.
16.	Conditions Precedent to Full Availability of DIP Loans	<ul style="list-style-type: none"> • The DIP Documents shall contain conditions precedent as are usual and customary in loan documents for similar debtor-in possession financings and other conditions precedent deemed by the DIP Lender appropriate to the specific transaction, including, without limitation: <ol style="list-style-type: none"> i. execution and delivery of a credit agreement (the “DIP Credit Agreement”) and other DIP Documents evidencing the DIP Facility, in each case, which shall be in form and substance substantially consistent with this Term Sheet and otherwise in form and substance acceptable to the DIP Lender and the Borrowers and the Guarantors; ii. Interim Order shall not be stayed or subject to appeal;

		<ul style="list-style-type: none"> iii. delivery of any Budget subsequent to the Initial Budget, acceptable to the DIP Lender in its reasonable discretion; vii. no trustee, examiner, or receiver shall have been appointed or designated with respect to the Loan Parties' business, properties or assets and no motion shall be pending seeking similar relief or any other relief, which, if granted, would result in a person other than the Loan Parties exercising control over their assets; viii. the representations and warranties of the Loan Parties under the DIP Documents shall be true and correct in all material respects (or in the case of representations and warranties with a "materiality" qualifier, true and correct in all respects); x. the Borrowers shall have delivered to the DIP Lender a customary borrowing notice; xi. not later than 45 days following the date on which a motion to approve the DIP Facility is filed, the Final Order as to the DIP Facility shall have been entered by the Bankruptcy Court, which Final Order shall be in the form of the Interim Order with such changes as are customary for a final order or otherwise are acceptable to the DIP Lender; xii. the Final Order shall be in full force and effect, and shall not (in whole or in part) have been reversed, modified, amended, stayed, vacated, appealed, or subject to a stay pending appeal; xiii. the Debtors shall be in compliance in all respects with the Final Order and the Loan Parties shall be in compliance in all respects with the DIP Documents; xiv. no default or event of default shall have occurred and be continuing under the DIP Documents; xv. accuracy of representations and warranties in the DIP Documents in all material respects (or in the case of representations and warranties with a "materiality" qualifier, true and correct in all respects); xvi. no order has been entered reversing, amending, staying, vacating, terminating or otherwise modifying in any manner adverse to the DIP Lender the Interim Order or the Final Order, as applicable; xvii. delivery of a notice of borrowing; xviii. since the Petition Date, there shall not have occurred or there shall not exist any event, condition, circumstance or contingency that, individually, or in the aggregate, (a) has had or could reasonably be expected to have a material adverse effect on the business, operations, properties, assets, performance or financial condition of the Loan Parties and their subsidiaries, taken as a whole, (b) has resulted in, or could reasonably be expected to result in, a
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		<p>material adverse effect on the validity or enforceability of, or the rights, remedies or benefits available to the DIP Lender, or (c) has had or could reasonably be expected to have, a material adverse effect on the ability of the Loan Parties to perform their obligations under any DIP Document (and of the foregoing being a “Material Adverse Effect”);</p> <p>xix. DIP Lender shall have received such fixture filings, financing statements, security documents other documentation necessary for the DIP Lender to perfect its lien and security interest in the DIP Collateral and all insurance policies maintained by Loan Parties shall name DIP Lender as additional insured and lender/mortgagee loss payee, as applicable; and</p> <p>iv. all costs, fees, expenses (including, without limitation, legal fees and expenses) set forth in the DIP Documents or otherwise to be paid to the DIP Lender shall have been paid.</p>
17.	Documentation	<ul style="list-style-type: none"> Definitive financing documentation (including the Orders) with respect to the DIP Loans shall be reasonably satisfactory to DIP Lender and (the “DIP Documents”).
18.	Representations and Warranties:	<ul style="list-style-type: none"> The DIP Documents shall contain representations and warranties with respect to the Loan Parties as are usual and customary in loan documents for similar debtor-in-possession financings and as acceptable to the DIP Lender and Borrowers, including without limitation, due organization and authorization, enforceability, financial condition, no material adverse changes, title to properties, liens, litigation, payment of taxes, compliance with laws and regulations, employee benefit liabilities, environmental liabilities, perfection and priority of liens securing the DIP Facility and a representation that the Securities are owned exclusively by the Loan Parties and no other person (including an affiliate or subsidiary who is not a Loan Party) has any interest, lien or security interest in the Securities other than customary involuntary permitted liens to be agreed upon by the Loan Parties and the DIP Lender.
19.	Affirmative Covenants:	<ul style="list-style-type: none"> The DIP Documents shall contain affirmative covenants as are usual and customary with respect to the Loan Parties in loan documents for similar debtor-in-possession financings and as are acceptable to the DIP Lender and the Borrowers, including, without limitation, the requirement that the Securities be held at the accounts in effect as of the Closing Date and shall not be transferred from such account(s) without prior notice and consent of the DIP Lender.
20.	Negative Covenants:	<ul style="list-style-type: none"> The DIP Documents shall contain negative covenants with respect to the Loan Parties as are usual and customary in loan documents for debtor-in-possession financings and as are acceptable to the DIP Lender and the Borrowers; <u>provided</u> that the DIP Documents will permit: (i) so long as no Default or Event of Default has occurred and is continuing or would occur after giving effect to any proposed sale, the sale of DIP Collateral

		<p>(not to exceed a fair market value of \$20 million) after June 15, 2023 if the Debtors have filed a Plan that is acceptable to the DIP Lender (or otherwise provides for the payment in full in cash of the DIP Obligations in a manner satisfactory to the DIP Lender) in its sole discretion and the proceeds thereof are used solely to fund working capital of Borrowers in accordance with the Budget, (ii) the ability to reject or modify contracts, and (iii) post-petition employment arrangements subject to maximum thresholds agreed upon by the DIP Lender and the Borrowers.</p>
<p>21.</p>	<p><i>DIP Budget/ Variance Reporting:</i></p>	<ul style="list-style-type: none"> • The DIP Lender shall receive an extended weekly budget commencing with the week during which the Interim Order is entered, containing line items of sufficient detail to reflect the consolidated operating cash flow of the Debtors through projected emergence (the “Initial Budget”) (the Initial Budget, as modified from time to time in accordance herewith, shall be the “Budget”). • The Budget shall be updated and provided to the DIP Lender on the fourth Wednesday following the prior Budget’s approval and every fourth Wednesday thereafter, or more frequently at the reasonable discretion of both the Borrowers and DIP Lender, with such updated Budget extending the term thereof and the DIP Lender, in its reasonable discretion, shall have the right to approve any such updates (or any amendments) by providing the Borrowers specific notice thereof within 5 business days after the delivery by the Borrowers of any such update or amendment (“Updated Budget”) and, (ii) to the extent the DIP Lender provides written notice rejecting the updates (or any amendments), the then existing Budget shall continue to constitute the applicable Budget until such time as an update or amendment is approved by the DIP Lender. In the event the DIP Lender does not provide written notice of its rejection of the proposed updates within such five day period, the Updated Budget shall become effective as the Budget. • On a weekly basis thereafter, the Borrowers shall deliver to the DIP Lender a variance report for the four-week period ending the prior Friday comparing the difference/variance, expressed as a percentage (each, a “Budget Variance”), between: (x) total receipts for such period to total receipts for such period as set forth in the Budget on a cumulative 4 week rolling basis; (y) total disbursements (excluding professional fees) for such period to total disbursements (excluding professional fees) for such period as set forth in the Budget on a cumulative 4 week rolling basis (each a “Measuring Period”) and explaining in reasonable detail all material variances, it being understood that any variance solely with respect to net operating disbursements that exceeds 20% shall be material and shall constitute an Event of Default under the DIP Documents (each such report, a “Variance Report,” which shall be in a form satisfactory to the DIP Lender). • For purposes of each Measuring Period, the Borrowers shall calculate: the numerical difference between “net operating disbursements” plus “net capital expenditures” (such terms reflecting those line items illustrated in the Budget) for such period to “net operating

		disbursements” plus “net capital expenditures” for such period as set forth in the Budget on a cumulative 4 week rolling basis, and to the extent the difference is a positive number, the percentage such difference is of the cumulative budgeted amount for disbursements for such period (the “ Disbursements and Capital Expenditure Variance ”). For purposes herein, a “ Permitted Variance ” shall be limited to not greater than 20% for budget variances with respect to the Disbursements and Capital Expenditure Variance, each as set forth in the applicable Variance Report.
22.	<i>Interim Order:</i>	<ul style="list-style-type: none"> • The interim order approving the DIP Facility, which shall be in form and substance reasonably acceptable to the DIP Lender (the “Interim Order”), shall, among other things, authorize and approve: <ul style="list-style-type: none"> i. the Interim Draw; ii. the making of the DIP Loans; iii. the granting of the superpriority claims and liens against the Debtors and their assets in accordance with this Term Sheet and the DIP Documents with respect to the DIP Collateral; iv. the payment of all fees and expenses (including the fees and expenses of outside counsel and financial advisors) required to be paid to the DIP Lender as described herein under the heading “<i>Indemnification and Reimbursement of Expenses</i>” by the Debtors; and v. the payment of the Commitment Fee, the Exit Fee and the Funding Fee, which Commitment Fee, Exit Fee and Funding Fee payments shall not be subject to reduction, setoff or recoupment for any reason, and shall be fully earned upon entry of the Interim Order, in each case only to the extent such fee is earned (in accordance with the DIP Documents) upon entry of the Interim Order.
23.	<i>Final Order:</i>	<ul style="list-style-type: none"> • The final order approving the DIP Facility, which shall be substantially in the same form as the Interim Order (with such modifications as are necessary to convert the Interim Order into a final order) and otherwise in form and substance acceptable to the DIP Lender (the “Final Order” and together with the Interim Order, the “Orders”), shall, among other things, authorize and approve the DIP Facility on a final basis, and the total amount of the DIP Commitments.
24.	<i>Carve outs:</i>	<ul style="list-style-type: none"> • The liens and security interests in the DIP Collateral, and the superpriority administrative claims shall be subject to the Carve-Out, which shall be defined in the Interim Order.
25.	<i>Events of Default:</i>	<ul style="list-style-type: none"> • The DIP Documents shall contain events of default (collectively, “Events of Default”) consistent with this Term Sheet and customary for debtor-in-possession financing facilities of this type, including, without limitation: <ul style="list-style-type: none"> i. Payment, non-compliance with covenants set forth in the DIP Documents, judgements in excess of specified


		<p>amounts, impairment of security interest in the DIP Collateral and other customary defaults, including the loss of the chief restructuring officer (unless a replacement reasonably acceptable to the DIP Lender is appointed within 7 days) and a final non-appealable order vacating the arbitration award in the Nant Litigation as more fully described on <u>Schedule B</u> hereto;</p> <ul style="list-style-type: none"> ii. the entry of the Final Order shall have not occurred within 45 days after the date on which a motion to approve the DIP Facility is filed; iii. the dismissal of any of the Chapter 11 Cases or the conversion of any of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code; iv. non-compliance, subject to any applicable grace and/or cure periods, by any Loan Party or any of its subsidiaries with the terms of the Interim Order or the Final Order; v. the entry of an order staying, reversing, vacating or otherwise modifying the Interim Order or the Final Order, in each case without the prior written consent of the DIP Lender; vi. the entry of an order appointing a trustee, responsible officer, or an examiner having expanded powers (beyond those set forth under Sections 1106(a)(3) and (4) of the Bankruptcy Code) under Bankruptcy Code section 1104 (other than a fee examiner) in the Chapter 11 Cases, or the Bankruptcy Court shall have entered an order providing for such appointment, in each case without the prior written consent of the DIP Lender in its sole discretion; vii. the entry of an order in any of the Chapter 11 Cases granting relief from any stay or proceeding (including, without limitation, the automatic stay) so as to allow a third party to proceed with foreclosure against any material assets of the Loan Parties to which the fair market value of which exceeds \$30,000,000; viii. the entry of an order (a) surcharging any of the DIP Collateral under Sections 105, 506(c), or any other section of the Bankruptcy Code, (b) allowing any administrative expense claim having priority over or ranking in parity with the DIP Claims or the rights of the DIP Lender, or (c) resulting in the marshaling of any DIP Collateral. ix. any action by any Debtor to (a) challenge the rights and remedies of the DIP Lender under the DIP Facility in any of the Chapter 11 Cases or acting in a manner inconsistent with the DIP Documents or (b) avoid or require disgorgement by the DIP Lender of any amounts received in respect of the obligations under the DIP Facility;
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		<p>x. entry of an order without the express written consent of the DIP Lender obtaining additional financing from a party other than the DIP Lender under Section 364(d) of the Bankruptcy Code except if such financing contemplates payment in full of the DIP Facility;</p> <p>xi. the making of any material payments in respect of prepetition obligations other than (a) as permitted by the Interim Order or the Final Order, (b) as permitted by any “first day” or “second day” orders reasonably satisfactory to the DIP Lender, (c) as permitted by any other order of the Bankruptcy Court reasonably satisfactory to the DIP Lender, (d) as permitted under the DIP Documents, or (e) as otherwise agreed to by the DIP Lender;</p> <p>xii. entry of an order by the Bankruptcy Court terminating or modifying the exclusive right of any Debtor to file a chapter 11 plan pursuant to section 1121 of the Bankruptcy Code, without the prior written consent of the DIP Lender;</p> <p>xiii. the Debtors shall seek to, or support any other person’s motion to, (a) disallow in whole or in part the DIP Obligations, (b) challenge the validity and enforceability of the DIP Liens, (c) contest any material provision of any DIP Document; and</p> <p>xiv. any Debtor shall fail to execute and deliver to the DIP Lender any agreement, financing statement, trademark filing, copyright filing, notices of lien or similar instruments or other documents that the DIP Lender may reasonably request from time to time to more fully evidence, confirm, validate, perfect, preserve and enforce the DIP Liens created in favor of the DIP Lender (provided that mortgages shall not be required), subject to the time periods set forth in this Term Sheet.</p>
26.	<i>Indemnification and Reimbursement of Expenses:</i>	<ul style="list-style-type: none"> • The DIP Documents shall contain customary indemnification provisions for the benefit of the DIP Lender, and its related parties, including, without limitation, indemnification against losses, claims, damages, liabilities or expenses incurred in respect of the financing contemplated by the DIP Documents or the use or the proposed use of proceeds thereof. • Subject to the DIP Documents, all out-of-pocket accrued and unpaid fees, costs, disbursements, and expenses of (i) the DIP Lender, including the fees and expenses of Lowenstein Sandler LLP, as counsel to the DIP Lender, and as necessary, other local counsel in their capacity as counsel to the DIP Lender, incurred in connection with the DIP Facility and the Chapter 11 Cases shall be paid on a current basis.
27.	<i>Release:</i>	<ul style="list-style-type: none"> • The Orders shall include a customary release of the DIP Lender, with respect to any and all claims and causes of action arising from or related to the DIP Facility.

28.	<i>Waivers:</i>	<ul style="list-style-type: none"> • The Orders shall include terms and conditions customary for final DIP financing orders and shall be acceptable to the DIP Lender, including, without limitation, waiver of the automatic stay, credit-bidding rights, “no marshaling” provisions, and waivers of the imposition of costs pursuant to Section 506(c) of the Bankruptcy code and the “equities of the case” exception in Section 552(b) of the Bankruptcy Code, in each case, to the extent applicable.
29.	<i>Governing Law:</i>	<ul style="list-style-type: none"> • New York (and to the extent applicable, the Bankruptcy Code).

IN WITNESS WHEREOF, the parties hereto have caused this Term Sheet to be executed as of the date first set forth above.

SORRENTO THERAPEUTICS, INC., as a Borrower
SCINTILLA PHARMACEUTICALS, INC., as a Borrower

By: 

Name: Henry Ji
Title: Chief Executive Officer

JMB CAPITAL PARTNERS LENDING, LLC

By: 

Name: Vikas Tandon
Title: Chief Investment Officer

SCHEDULE A

- a) 59,726,590 shares of common stock of Scilex Holding Company;
- b) 29,057,097 Shares of Series A Preferred Equity of Scilex Holding Company;
- c) 4,490,617 common stock warrants of Scilex Holding Company;
- d) 32% equity interest in ImmuneOncia Joint Venture;
- e) 20,422,124 shares of common stock in Celularity Inc.;
- f) 7,777,864 shares of Series B Preferred Equity of Aardvark Therapeutics;
- g) 10,000,000 shares of Series A Preferred Equity in Elsie Biotechnologies;
- h) All of the outstanding equity interests of Scintilla Pharmaceuticals, Inc. and any other wholly owned subsidiary of a Loan Party that becomes a debtor in possession under the Chapter 11 Cases;
(the foregoing in clauses (a) through (h) shall be referred to herein as the “**Securities**”); and
- i) All litigation and arbitration claims and awards and all publicly filed commercial tort claims to be granted to DIP Lender as collateral security as more fully described in Schedule B attached hereto together with all other commercial tort claims held by DIP Lender.

“**Excluded Assets**” “shall mean, with respect to any Loan Party, (a) Excluded Accounts and (b) the capital stock held by any Loan Party in (i) any foreign subsidiary that is not a direct subsidiary of a Loan Party and (ii) any direct subsidiary of any Loan Party that is a foreign subsidiary or a subsidiary of a foreign subsidiary, except for (A) sixty-five percent (65.0%) of the issued and outstanding capital stock in any such subsidiary entitled to vote (within the meaning of Treasury Regulations Section 1.956-2(c)(2)) and (B) one hundred percent (100.0%) of the issued and outstanding capital stock in any such subsidiary not entitled to vote (within the meaning of Treasury Regulations Section 1.956-2(c)(2)).

“**Excluded Accounts**” shall mean: (a) deposit and/or securities accounts, the balance of which consists exclusively of (i) withheld income taxes and federal, state or local employment taxes, in such amounts as are required, in the reasonable judgment of the Borrowers, to be paid to the IRS or state or local government agencies within the following two (2) months, with respect to employees of any of the Loan Parties, or (ii) amounts required to be paid over to an employee benefit plan pursuant to DOL Reg. §-2510.3-102 on behalf of, or for the benefit of, employees of one (1) or more Loan Parties; and (b) all tax accounts (including, without limitation, sales tax accounts), accounts used solely for payroll, accounts maintained solely in trust for the benefit of third parties and fiduciary purposes, escrow accounts, zero balance or swept accounts, and employee benefit accounts (including 401(k) accounts and pension fund accounts), in each case of this clause (b), so long as such account is used solely for such purpose.

SCHEDULE B

Publicly Filed Litigation/Arbitration Including Commercial Tort Claims

1. *Sorrento Therapeutics, Inc. v. NantPhama, LLC*, Case No. 23STCP00295 (LA Superior Court filed Feb 2, 2023).
2. *Sorrento Therapeutics, Inc. v. NantCell, Inc., et. al*, Case No. 19STCV11328 (filed April 3, 2019)
3. *Immunotherapy NANTibody, LLC, et al. v. Sorrento Therapeutics, Inc., et. al*, Case No. 19STCV18304 (filed May 24, 2019).
4. *Sorrento Therapeutics, Inc. v. Patrick Soon-Shiong*, Case No. 20STCV08789 (filed March 3, 2020)
5. *Sorrento Therapeutics, Inc. v. NantPharma, LLC*, Case No. 23STCP00295 (LA Superior Court filed Feb 2, 2023)
6. *Sorrento Therapeutics, Inc., et al. v. Miao, et al.*, Case No. 37-2018-00032934 (filed July 2, 2018 S.D. Superior Court)
7. *Sorrento Therapeutics, Inc., et al. v. Li, et al.*, Case No. 37-2021-00026791 (filed June 21, 2021 S.D. Superior Court)
8. *Sorrento Therapeutics, Inc., et al. v. Li, et al.*, CAUSE NO: FSD 183 OF 2022 (CRJ) (Grand Court of the Cayman Islands)
9. *Sorrento Therapeutics, Inc. v. CBC Group Investment Mgm't, HKIAC/A21102* (Hong Kong International Arbitration Centre)
10. *Sorrento Therapeutics, Inc. v. Deverra Therapeutics, Inc. et al.*, Case No. 37-2022-00034031-CU-BC-CTL (San Diego Superior Court)

Exhibit 2
Initial Budget

Sorrento Therapeutics

13-Week Cash Flow Budget

<i>Months Elapsed</i>	<i>0.2</i>	<i>0.4</i>	<i>0.6</i>	<i>0.9</i>	<i>1.1</i>	<i>1.3</i>	<i>1.6</i>	<i>1.8</i>	<i>2.0</i>	<i>2.3</i>	<i>2.5</i>	<i>2.7</i>	<i>3.0</i>
Week #	1	2	3	4	5	6	7	8	9	10	11	12	13
Week Ending	2/18	2/25	3/4	3/11	3/18	3/25	4/1	4/8	4/15	4/22	4/29	5/6	5/13
<i>(\$ in millions)</i>													
Cash Receipts													
Operating Receipts	-	-	-	-	-	-	-	-	-	-	-	-	-
Non-Operating Receipts	-	-	-	-	-	-	-	-	-	-	-	-	-
DIP Funding	-	30.0	-	-	-	-	10.0	-	10.0	-	10.0	-	10.0
Total Cash Receipts	-	\$30.0	-	-	-	-	\$10.0	-	\$10.0	-	\$10.0	-	\$10.0
Cash Disbursements													
Operating Disbursements													
Payroll, Taxes, and Medical	(\$3.6)	-	(\$3.6)	-	(\$3.6)	-	(\$3.6)	-	(\$3.6)	-	(\$2.7)	-	(\$2.7)
Rent / Operating Leases	-	-	(1.6)	-	-	-	(1.6)	-	-	-	-	(1.6)	-
Licensing , Taxes, and Insurance	-	(0.6)	(0.0)	(0.0)	(0.0)	(0.6)	(0.5)	(0.0)	(0.0)	(0.0)	(0.6)	(0.0)	(0.0)
SG&A Other	-	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)
Total Operating Disbursements	(\$3.6)	(\$0.8)	(\$5.4)	(\$0.2)	(\$3.8)	(\$0.8)	(\$5.9)	(\$0.2)	(\$3.8)	(\$0.2)	(\$3.5)	(\$1.8)	(\$2.9)
Non-Operating Disbursements													
Professional Fees	(\$1.4)	(\$2.1)	(\$1.9)	(\$1.4)	(\$2.8)	(\$2.1)	(\$3.2)	(\$1.9)	(\$1.4)	(\$1.4)	(\$2.1)	(\$2.2)	(\$0.7)
DIP Interest and Fees	-	(2.6)	(0.1)	-	-	-	(0.6)	-	(0.3)	-	(0.3)	(0.7)	(0.3)
Critical Vendor Payments	-	(2.0)	-	-	-	-	-	-	-	-	-	-	-
Contingency	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)
Total Non-Operating Disbursements	(\$1.6)	(\$6.9)	(\$2.2)	(\$1.6)	(\$3.0)	(\$2.3)	(\$4.0)	(\$2.1)	(\$1.9)	(\$1.6)	(\$2.5)	(\$3.1)	(\$1.2)
Total Disbursements	(\$5.2)	(\$7.7)	(\$7.6)	(\$1.8)	(\$6.8)	(\$3.1)	(\$9.9)	(\$2.3)	(\$5.7)	(\$1.8)	(\$6.0)	(\$4.8)	(\$4.1)
Cash Roll-Forward													
Net Cash Flow	(\$5.2)	\$22.3	(\$7.6)	(\$1.8)	(\$6.8)	(\$3.1)	\$0.1	(\$2.3)	\$4.3	(\$1.8)	\$4.0	(\$4.8)	\$5.9
Beginning Cash	\$7.2	\$2.0	\$24.3	\$16.7	\$14.9	\$8.0	\$5.0	\$5.1	\$2.8	\$7.1	\$5.3	\$9.3	\$4.5
Net Cash Flow	(5.2)	22.3	(7.6)	(1.8)	(6.8)	(3.1)	0.1	(2.3)	4.3	(1.8)	4.0	(4.8)	5.9
Ending Cash	\$2.0	\$24.3	\$16.7	\$14.9	\$8.0	\$5.0	\$5.1	\$2.8	\$7.1	\$5.3	\$9.3	\$4.5	\$10.5