

**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 AN ORDER (I) APPROVING
TRANSACTION PROPOSAL AND (II) GRANTING RELATED RELIEF**

Emergency relief has been requested. Relief is requested not later than August 1, 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.

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 Transaction Proposal

1. The Debtors have received a \$200 million proposal (the “Proposal”) from Hundred Gain International Holding Ltd. (the “Bidder”)² for the Bidder to (a) acquire Sorrento Therapeutics, Inc.’s common shares (but not the preferred shares or warrants) of Scilex Holding Company (“Scilex”) (the “Acquired Assets,” and such sale, the “Stock Sale”) and (b) finance the Debtors’ post-emergence business (the “Exit Financing”). The Exit Financing is in the form of convertible debt, to be funded by the Bidder no later than September 19, 2023. A significant portion of the Acquired Assets will be returned to Sorrento if the Exit Financing is not timely consummated. The Proposal, which is binding upon approval from the Court, is designed to facilitate Sorrento’s emergence from bankruptcy as a public company.

2. The terms of the Proposal have been documented in a term sheet executed by Sorrento and the Bidder (the “Term Sheet”). The Debtors have shared the Term Sheet with their senior and junior postpetition financing facilities (the “DIP Lenders”), the official committee of unsecured creditors (the “Unsecured Creditors’ Committee”), the official committee of equity security holders (the “Equity Committee”), and the Office of the U.S. Trustee—all of whom are continuing to review its terms and reserve all rights. The Debtors are also negotiating a purchase agreement with the Bidder for the Stock Sale. The Debtors will file the Term Sheet and purchase agreement with the Court prior to the hearing on this Motion.

² To the knowledge of the Debtors, the Bidder has no affiliation with the Debtors, Scilex, or their respective insiders/affiliates.

Relief Requested

3. In connection therewith, the Debtors seek entry of an order, substantially in the form attached hereto (the “Order”), approving the Proposal and the transactions contemplated thereby.

4. The Debtors request emergency consideration of this Motion on July 31, 2023 or August 1, 2023. The Debtors’ senior postpetition financing facility (the “Senior DIP Facility,” and the lender thereunder, the “Senior DIP Lender”) matures on July 31, 2023; the Debtors have requested (but have not yet received) a one-week extension of the maturity date to August 4, 2023—which is the deadline for the Stock Sale to close (though the Debtors hope closing can occur earlier). Obtaining the Order on July 31, 2023 or promptly thereafter will allow the Debtors to close the Stock Sale and then use the sale proceeds to repay the Senior DIP Facility in cash on or shortly after the July 31, 2023 maturity date. If the Debtors are not able to repay the Senior DIP Facility by the maturity date, the lender could seek to exercise remedies, which could threaten the Debtors’ value-maximizing reorganization process. Additionally, the Exit Financing is part-and-parcel with the Stock Sale; they are integral parts of one deal and cannot be separated. Thus, the Debtors seek emergency approval of the Proposal as a whole.

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 matter is a core proceeding within the meaning of 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 are sections 105, 363, and 364 of title 11 of the United States Code (the “Bankruptcy Code”), rules 2002 and 6004 of the Federal Rules of

Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 4002-1(e) and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”).

Background

A. Chapter 11 Cases

8. On February 13, 2023, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. A detailed description of the Debtors, their businesses, and the facts and circumstances supporting the Debtors’ chapter 11 cases are set forth in greater detail in the *Declaration of Mohsin Meghji, Chief Restructuring Officer of the Debtors, in Support of Chapter 11 Petitions* [Docket No. 5]. On February 28, 2023, the U.S. Trustee appointed the Unsecured Creditors’ Committee, which was reconstituted on March 28, 2023 [Docket No. 313] and on June 7, 2023 [Docket No. 813]. On April 10, 2023, the U.S. Trustee appointed the Equity Committee, which was reconstituted on April 14, 2023 [Docket No. 448].

B. DIP Facilities

9. On March 30, 2023, the Court entered an order approving the \$75 million Senior DIP Facility on a final basis [Docket No. 324]. The Senior DIP Facility matures on July 31, 2023, but the liquidity provided by the DIP Facility was only intended to last until June 30, 2023. To obtain liquidity for the month of July 2023, the Debtors obtained \$20 million of junior postpetition financing from Scilex (the “Junior DIP Facility”), which the Court approved on an interim basis on July 5, 2023 [Docket No. 997].³ The Junior DIP Facility matures on September 30, 2023.

C. Bid Procedures Order

10. On April 14, 2023, the Court entered the *Order (I) Approving Bid Procedures, (II) Approving Assumption and Assignment Procedures, and (III) Granting Related Relief* [Docket

³ The Debtors filed a certificate of no objection with respect to final approval of the Junior DIP Facility on July 24, 2023 [Docket No. 1097].

No. 447] (the “Bid Procedures Order”), setting forth a clear and open process for the Debtors to solicit, evaluate, and eventually consummate potential financing and/or sale transaction(s) on an appropriate timeline.

11. In connection with the Bid Procedures Order, the Debtors filed and served the *Notice of Bid Procedures and Potential Sales* [Docket No. 453] on April 14, 2023 and published such notice in the *New York Times* on April 18, 2023. The Bid Procedures Order required that any objections to the potential free-and-clear sales of the Debtors’ assets be filed by May 5, 2023 (the “Sale Objection Deadline”). No objections were filed with respect to a potential sale of Sorrento’s stock in Scilex. The only objection filed was a reservation of rights by Fisher Scientific Company, LLC [Docket No. 575] with respect to (i) the potential assumption of their contract (which the Debtors are not seeking to do through the Order) and (ii) the preservation of their reclamation and related rights (which the Debtors have addressed through language in the Order).

12. The Bid Procedures Order also sets forth certain procedures for the assumption and assignment of executory contracts and unexpired leases, as well as related cure costs. In connection therewith, the Debtors filed the *Notice of (I) Potential Assumption and Assignment of Executory Contracts and Unexpired Leases and (II) Cure Amounts* [Docket No. 548] (the “Cure Notice”) on April 28, 2023. The Debtors received various formal and informal cure objections in response to the Cure Notice, which the Debtors are continuing to reconcile. For the avoidance of doubt, the Debtors are not seeking to assume or assign any executory contracts or unexpired leases through the Order, the Stock Sale, or the Exit Financing. To the extent the Debtors seek to assume or assign any executory contracts or unexpired leases (such as, in connection with a chapter 11 plan of reorganization), there will be separate notice thereof.

D. The Proposal

13. Under the Bid Procedures Order, final bids were due by June 29, 2023, but the Debtors continued to receive and review bids thereafter. Throughout the bidding process, the Debtors received, and continue to evaluate, a variety of bids—some for sales of discrete assets or business units, some for sales of securities of Scilex held by Sorrento, and some for financing transactions.

14. In mid-July 2023, the Debtors received the Proposal from the Bidder, which the Debtors and Bidder promptly began negotiating. The terms of the Proposal are generally summarized at the beginning of this Motion and will be greater detailed in the term sheet that will be filed with the Court prior to the hearing on this Motion. The Proposal is subject to the following proposed timeline:

| Date | Event |
|----------------------------------|---|
| No later than July 28, 2023 | Execution of definitive documentation for Stock Sale |
| No later than August 4, 2023 | Closing of the Stock Sale |
| No later than September 19, 2023 | Closing of the Exit Financing, with proceeds to be held in escrow |
| No later than September 30, 2023 | Effective date of chapter 11 plan; release of Exit Financing proceeds from escrow |

15. The terms of the Proposal were heavily negotiated across various iterations between the Debtors and the Bidder and their respective counsels. Among other things, the Bidder initially wanted to receive all of the Acquired Assets upon closing of the Stock Sale—without any restrictions on the shares. The Debtors successfully negotiated for only a portion of the Acquired Assets to be delivered without restrictions; the remaining portion will have a restrictive legend (the “Restrictive Legend”) (a) preventing the transfer of such shares until the Exit Financing has closed

(the “Conditional Shares”) and (b) providing for a return of such Conditional Shares to Sorrento if the Bidder has not closed the Exit Financing in full on or before the September 19, 2023 (which shares can then be used for alternative capital-raising transactions). Additionally, the Bidder wanted to fund the Exit Financing in multiple tranches—but the Debtors were able to successfully negotiate for the full amount to be funded in one tranche, no later than September 19, 2023. The Debtors then have until September 30, 2023 to consummate a chapter 11 plan, which the Debtors believe is achievable.

16. Because this proposed transaction (i) was better than other bids received to date, (ii) would address repayment of the Senior DIP Facility, and (iii) would provide significant exit financing for a chapter 11 plan, the Debtors determined that the Bidder’s proposal was the best transaction available at this time.

Basis for Relief

A. The Stock Sale and Exit Financing Are Fair, Value-Maximizing, and Consistent with the Debtors’ Business Judgment.

17. Section 363(b) of the Bankruptcy Code provides that “[t]he [debtor in possession], after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate” 11 U.S.C. § 363(b). Bankruptcy Rule 6004(f)(1) provides that any such non-ordinary-course sale “may be by private sale or public auction.” Fed. R. Bankr. P. 6004(f)(1); *see also In re Cypresswood Land Partners, I*, 409 B.R. 396, 436 (Bankr. S.D. Tex. 2009) (“there is no prohibition against a private sale. . . [and] there is no requirement that the sale be by public auction”). Section 364 of the Bankruptcy Code allows the debtor to obtain financing and incur credit. 11 U.S.C. § 364. And section 105(a) of the Bankruptcy Code empowers bankruptcy courts to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

18. To determine whether a debtor has met the business judgment standard in consummating such a non-ordinary-course transaction, 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). The debtor’s business judgment is entitled to substantial deference as long as the debtor articulates an adequate business justification. Further, in considering whether the terms are fair and reasonable, courts consider the terms in light of the relative circumstances of the debtor and the counterparty *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003).

19. Here, the Stock Sale and Exit Financing are fair, value-maximizing, and consistent with the Debtors’ business judgment. The Debtors conducted an extensive marketing process in accordance with the Court-established bid procedures, and the Debtors have not received any better bids to date. *See, e.g., In re Integrated Res., Inc.*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (bid procedures “are important tools to encourage bidding and to maximize the value of the debtor’s assets”). To date, that process has not resulted in any proposed transactions that would generate more value for the Debtors on the requisite timeline than the Proposal.

20. Critically, the Stock Sale will enable the Debtors to repay their Senior DIP Facility on or shortly after its July 31, 2023 maturity date. And the Exit Financing will provide the Debtors with exit financing to pay a significant amount of allowed claims in connection with a chapter 11 plan of reorganization. If the Debtors do not receive approval of the Proposal, the Debtors (i) most likely will be in default of the Senior DIP Facility and (ii) will need to evaluate other potential go-forward emergence solutions, which could result in a potential liquidation. Accordingly, the Proposal is fair, value-maximizing, and a sound exercise of the Debtors’ business judgment.

B. The Purchased Assets May Be Sold Free and Clear of Liens, Claims, Interests, and Encumbrances under Section 363(f) of the Bankruptcy Code.

21. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of all liens, claims, interests and encumbrances provided that one of the following conditions is met:

- a. applicable non-bankruptcy law permits sale of such property free and clear of such interests;
- b. such entity consents;
- c. such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- d. such interest is in bona fide dispute; or
- e. such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). This provision is supplemented by section 105(a), which provides that “[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” Because Bankruptcy Code section 363(f) is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Purchased Assets free and clear of the interests.

22. The Debtors believe that only the DIP Lenders have liens, claims, interests, or encumbrances on the Purchased Assets. Additionally, no party objected more broadly to the free-and-clear sale of the Debtors’ assets by the Sale Objection Deadline set forth in the Bid Procedures Order (which was intended to elicit any objections to the proposed sale process). In the event any other liens, claims, interests, or encumbrances are alleged to exist with respect to the Purchased Assets (other than any encumbrances arising under applicable securities laws), any such lien, claim, interest, or encumbrance would be disputed, and regardless would be adequately protected by either being paid in full at the time of closing or by having such lien attach to the net proceeds

of the Stock Sale in the same order of priority (with the same validity, force, and effect) that such creditor had immediately prior to consummation of the Stock Sale, subject to any claims and defenses the Debtors and their estates may possess with respect thereto. Accordingly, the Debtors request that the Court approve the Stock Sale free and clear of any liens, interests, claims, and encumbrances (other than any arising under applicable securities laws and the restrictions placed upon the Conditional Shares in connection with the Restrictive Legend).

C. The Bidder Should be Entitled to the Protections of Sections 363(m) and 364(e) of the Bankruptcy Code.

23. Section 363(m) of the Bankruptcy Code protects a good-faith purchaser's purchase even if the court's order approving the purchase is later reversed or modified. Under section 363(m), a good faith purchaser is one who purchases assets for value, in good faith, and without notice of adverse claims. *See TMT Procurement Corp. v. Vantage Drilling Co. (In re TMT Procurement Corp.)*, 764 F.3d 512, 521 (5th Cir. 2014). Similarly, 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. An appropriate characterization of good faith is a lack of "fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." *In re Bleaufontaine, Inc.*, 634 F.2d 1383, 1388 n.7 (5th Cir. 1981) (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)).

24. Here, the Proposal was negotiated at arm's length, in good faith, through an iterative negotiation and drafting process involving sophisticated parties with separate counsel, and after an extensive marketing process. Accordingly, the Debtors request that the Court find

that the Bidder is a “good faith” purchaser within the meaning of section 363(m) and a “good faith” lender within the meaning of section 364(f).

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

25. The Debtors request the Court enter an order providing that notice of the relief requested satisfies Bankruptcy Rule 6004(a) and the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h). For the reasons discussed above, given the short timeline and circumstances of these chapter 11 cases, the Debtors believe a waiver of the 14-day stay is prudent and necessary so that the Debtors can promptly consummate the Stock Sale and repay the Senior DIP Facility on or shortly after its July 31, 2023 maturity date.

Notice

26. 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 DIP Lenders; (c) the Unsecured Creditors’ Committee; (d) the Equity Committee; (e) the Bidder; and (f) 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 that the Court enter the Order granting the relief requested in this Motion and such other and further relief as is appropriate under the circumstances.

Dated: July 24, 2023

/s/ Kristhy M. Peguero

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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 Peguero

Kristhy Peguero

Certificate of Service

I certify that on July 24, 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 Peguero

Kristhy Peguero

**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) |
| |) | |
| |) | Re: Docket No. ____ |

**ORDER (I) APPROVING TRANSACTION
PROPOSAL AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), pursuant to sections 105, 363, and 364 of title 11 of the United States Code (the “Bankruptcy Code”), rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 4002-1(e) and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”), approving the Proposal and granting related relief, all as more fully set forth in the Motion; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court on _____, 2023:³

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.

² Capitalized terms used but not otherwise defined have the meanings ascribed to them in the Motion.

³ The findings and conclusions set forth in this Order 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.

ACCORDINGLY, THIS COURT FINDS THAT:

A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). This Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The Debtors' notice of the Motion and the Proposal and opportunity for a hearing thereon were appropriate and sufficient under the circumstances and no other notice need be provided.

C. The legal and factual bases set forth in support of the Motion establish just cause for the relief granted herein. The Debtors demonstrated a compelling and sound business justification for this Court to enter this Order. The terms of the Proposal (i) were negotiated by the Debtors and the Bidder at arm's length, in good faith, and without collusion or bad faith and (ii) are fair, reasonable, and appropriate under the circumstances. The consummation of the Proposal is an appropriate exercise of the Debtors' business judgment and is in the best interests of the Debtors, their estates, and their creditors.

D. The Bidder is a good-faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and a good-faith lender within the meaning of section 364(e) of the Bankruptcy Code and, accordingly, entitled to the protections thereunder. None of the Debtors, the Bidder, any other party in interest, or any of their respective representatives has engaged in any conduct that would cause or permit the Stock Sale or the Exit Financing to be avoidable or avoided, or for costs or damages to be imposed, under section 363(n) of the Bankruptcy Code.

E. The Proposal is not being entered into, and is not being consummated, for the purpose of hindering, delaying, or defrauding creditors of the Debtors under applicable law, and neither the Debtors nor the Bidder are consummating the Stock Sale or the Exit Financing with

any fraudulent or otherwise improper purpose. The consideration under the Proposal constitutes reasonably equivalent value, fair consideration, and fair value under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Voidable Transactions Act, the Uniform Fraudulent Conveyance Act, and any other applicable law.

F. The Debtors may sell the Purchased Assets free and clear of all liens, claims, interests, and encumbrances under section 363(f) (other than any encumbrances arising under applicable securities laws or in connection with the Restrictive Legend). The Proposal does not constitute a *de facto* plan of reorganization or liquidation.

G. Time is of the essence in consummating the Stock Sale. Notwithstanding anything in the Bankruptcy Rules to the contrary, there is no just reason for delay in the implementation of this Order.

H. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a).

ACCORDINGLY, THIS COURT ORDERS THAT:

1. *Objections Overruled.* Any and all objections to the relief granted herein that have not been withdrawn, waived, or settled, and all reservations of rights with respect to such relief, are overruled and denied on the merits with prejudice.

2. *Transactions Approved.* The Proposal, the Term Sheet, and any related definitive documentation are approved. The Debtors are authorized to consummate the Stock Sale and the Exit Financing in accordance with the Term Sheet, any related definitive documentation, and the terms of this Order. The Debtors and the Bidder are authorized to take all actions necessary to effectuate the relief granted in this Order, including but not limited to the execution of any additional or supplemental documents incident to the relief granted by this Order.

3. *Binding Effect.* This Order is binding in all respects upon the Debtors, their estates, all creditors, all holders of equity interests in the Debtors, all holders of any claim(s) (whether

known or unknown) against the Debtors, all holders of liens or interests (whether known or unknown) against, in or on all or any portion of the Purchased Assets, the Bidder, and all successors and assigns of the foregoing, including, without limitation, any trustee, if any, subsequently appointed in these chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code of these chapter 11 cases, or other plan fiduciaries, plan administrators, liquidating trustees, or other estate representatives appointed or elected in the Debtors' cases.

4. *Free and Clear.* Upon consummation of the Stock Sale, the Debtors' transfer of the Purchased Assets to the Bidder shall constitute a legal, valid, binding, and effective transfer free and clear of all claims, liens, interests, and encumbrances (other than any encumbrances arising under applicable securities laws or in connection with the Restrictive Legend). Any claims, liens, interests, and encumbrances on the Purchased Assets shall attach solely to the proceeds of the Stock Sale with the same validity, priority, force, and effect that they now have as against the Purchased Assets, subject to any claims and defenses the Debtors and their estates may possess with respect thereto.

5. *Return of Shares / Funds.* If the Bidder does not deposit the necessary funds in escrow on or before September 19, 2023 in connection with the Exit Financing, then Scilex is authorized and directed to cancel the certificates with respect to the Conditional Shares and re-issue such certificates or book-entry versions thereof (in each case, without the Restrictive Legend) in the name of Sorrento. In the event the Debtors' chapter 11 plan is not effective by September 30, 2023, any funds held in escrow on account of the Exit Financing shall be promptly returned to the Bidder (and in any event, within one business day thereafter).

6. *Senior DIP Lender.* Within one business day after the closing of the Stock Sale, the Debtors shall remit \$[XX] million to the Senior DIP Lender.⁴

7. *Injunction.* All entities are hereby forever prohibited and barred from taking any action that would adversely affect or interfere with the ability of the Debtors to consummate the Proposal.

8. *Good Faith.* The Bidder is a good-faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to, and is hereby granted, the full rights, benefits, privileges, and protections of section 363(m) of the Bankruptcy Code. The Bidder is a good-faith lender within the meaning of section 364(e) of the Bankruptcy Code and, as such, is entitled to, and is hereby granted, the full rights, benefits, privileges, and protections of section 364(e) of the Bankruptcy Code.

9. *Fisher Scientific.* This Order does not affect or impair any rights or remedies that Fisher Scientific and its divisions and subsidiaries (collectively, "Fisher") may have (a) in relation to any goods supplied to the Debtors in the ordinary course of business within forty-five days prior to the Petition Date, (b) to assert an administrative expense claim against the Debtors under any applicable provision of the Bankruptcy Code, or (c) in respect of any executory contracts between Fisher and the Debtors, if any. Any such rights and remedies, if any, are preserved and reserved; provided, however, that the rights of the Debtors and all other parties in interest to oppose and object to Fisher's assertion of any such rights or remedies, if any, and to seek any related relief, are preserved and reserved.

10. *Bulk Sales.* No bulk sales law or any similar law of any state or other jurisdiction applies in any way to the Transaction.

⁴ [NTD: Amount to be updated prior to the hearing.]

11. *Immediate Effect.* The terms and conditions of this Order are immediately effective and enforceable upon its entry.

12. *Jurisdiction.* The Bidder is deemed to have knowingly and voluntarily (a) consented to the entry of a final order by this Court in connection with the Motion to the extent that it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution, (b) consented to the personal jurisdiction of this Court, and (c) waived any right to jury trial in connection with any disputes relating to the any of the foregoing matters. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

13. *Order Governs.* To the extent there are inconsistencies between the terms of this Order (on the one hand) and the Motion, the Term Sheet, or any other documentation related to the Stock Sale or the Convertible Exit Financing (on the other hand), the terms of this Order shall govern. The provisions of this Order are non-severable and mutually dependent.

Dated: _____, 2023

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

Term Sheet

[to come]