

SO ORDERED.

SIGNED this 25th day of September, 2018.



Lena Mansori James
LENA MANSORI JAMES
UNITED STATES BANKRUPTCY JUDGE

THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

In re:) Chapter 11
)
Product Quest Manufacturing, LLC, *et al.*,¹) Case No. 18-50946
) (Jointly Administered)
)
Debtors.)
_____)

ORDER AUTHORIZING PROCEDURES (I) TO CONDUCT BULK SALES OF CERTAIN INVENTORY AND OTHER CUSTOMER-SPECIFIC ASSETS FREE AND CLEAR OF LIENS PURSUANT TO 11 U.S.C. § 363(f), (II) RESOLVE OUTSTANDING ACCOUNTS RECEIVABLE, AND (III) RETURN CUSTOMER-OWNED ASSETS

This matter came before the Court on September 21, 2018, to consider the *Emergency Motion for Order Authorizing Procedures (I) To Conduct Bulk Sales of Certain Inventory and Other Customer-Specific Assets Free and Clear of Liens Pursuant to 11 U.S.C. § 363(f), (II) Resolve Outstanding Accounts Receivable, and (III) Return Customer-Owned Assets* (the

¹ The Debtors in these cases, along with the associated case number, are: (i) Ei LLC (18-50945); (ii) Product Quest Manufacturing, LLC (18-50946); (iii) Scherer Labs International, LLC (18-50948); (iv) Product Quest Logistics, LLC (18-50950); (v) JBTRS, L.L.C. (18-50951); and (vi) PQ Real Estate LLC (18-50952). The Debtors' service address is: 2865 N. Cannon Blvd., Kannapolis, North Carolina 28083.

“Motion”), filed by the Debtors in the above-captioned case. All capitalized terms used but not defined herein shall have the meanings given to them in the Motion.

Based upon the Motion, the testimony of Michael J. Musso, the arguments of counsel at the hearing, and the entire official record in these cases, the Court hereby makes the following findings of fact and conclusions of law:

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this proceeding is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. On September 7, 2018 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Middle District of North Carolina (the “Court”). The Debtors have continued in possession of their properties and have continued to manage their properties as debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No request has been made for the appointment of a trustee or examiner, and no official committee has yet been established in these cases.

3. On September 13, 2018, this Court enter an Order determining that the Debtors’ cases should be jointly administered pursuant to Bankruptcy Rule 1015(b).

4. The Debtors’ inventory includes (i) raw materials, such as active chemical ingredients, inert ingredients, and other raw components, (ii) work in process that is primarily unpackaged bulk compounded product, and (iii) finished goods that are manufactured for specific customers, and thus of particular value to these customers. The termination of the Debtors’ operations and the filing of these bankruptcy cases has created supply-chain interruption for these customers. The value of the Debtors’ inventory, work in process, and finished goods will be maximized if they can be sold on an expedited basis to minimize the supply-chain interruption to

these customers. These assets are of immediate value to customers if they can purchase them quickly to facilitate the resumption of manufacturing process by a replacement vendor, and the value of the raw materials and work in process will be particularly diminished as time passes and customers obtain alternate sources of supply.

5. The Debtors maintain an identified reserve sample that is representative of each lot in each shipment of each active ingredient. Each reserve sample consists of a quantity necessary for all tests required to determine whether the product meets its established specifications. These samples are referred to as “retains” and may be of value to particular customers for quality and compliance purposes.

6. The Debtors own certain “stability documentation” that may be of value to particular customers. Product stability means the ability of the pharmaceutical dosage form to maintain the physical, chemical, therapeutic, and microbial properties during the time of storage and usage by the patient. It is measured by the rate of changes that take place in the pharmaceutical dosage forms. Stability data is documentation of the history of stability testing and results for a product.

7. The Debtors own “GMP documentation” that may be of value to particular customers. This documentation ensures the traceability of all development, manufacturing, and testing activities. Documentation provides the route for auditors to assess the overall quality of operations within a company and the final product. This documentation includes batch records, test methods, product specifications, product validations, and change controls.

8. Retains, stability documentation, and GMP documentation are believed to increase the value of work in process and finished goods.

9. The Debtors are also in possession of certain assets that are owned by its customers, and not property of their respective bankruptcy estates, including inventory and equipment.

10. Additionally, many of these customers have outstanding accounts payable owed to the Debtors.

11. Subject to the challenge rights of the Debtors and other parties-in-interest, as set forth in the interim and final cash collateral orders of this Court, the Debtors believe that the Agent (as that capitalized term is defined in such cash collateral orders), on behalf of the Lenders (as that capitalized term is defined in such cash collateral orders) holds a properly perfected security interest in the Debtors' inventory, accounts receivable, documents, general intangibles, intellectual property, and all books and records related to the foregoing.

12. After consultation with the Agent and Lenders, the Debtors prepared a spreadsheet (the "Transaction Parameters Spreadsheet") setting forth the maximum discounts from book value that they propose to accept with respect to (i) the sale of raw materials, work in process, finished goods, retains, stability documentation, and GMP documentation, and (ii) the collection of accounts receivable. This spreadsheet was provided to the Court for *in camera* review, and to the Agent, Lenders and the Bankruptcy Administrator.

13. The Debtors' Motion sought authority to sell their raw materials, work in process, finished goods, retains, stability documentation, and GMP documentation, free and clear of any and all liens, interests or encumbrances pursuant to 11 U.S.C. § 363(f), with such liens, interests or encumbrances being transferred to the proceeds of sale. This relief is authorized under 11 U.S.C. § 363(f)(2), since the Agent's written consent must be obtained prior to consummating any sale under this Order.

14. The Debtors' Motion further sought authority to settle accounts receivable, provided that such settlements fall within the range set forth in the Transaction Parameters Spreadsheet. This relief is authorized by Fed. R. Bank. P. 9019(b), which provides that "[a]fter a hearing on such notice as the court may direct, the court may fix a class or classes of controversies and authorize the trustee to compromise or settle controversies within such class or classes without further hearing or notice."

15. The relief granted in this Order is in the best interests of the estates and their creditors.

NOW, THEREFORE, the Court hereby ORDERS as follows:

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized to sell their raw materials, work in process, finished goods, retains, stability documentation, and GMP documentation, free and clear of any and all liens, interests or encumbrances pursuant to 11 U.S.C. § 363(f)(2), with such liens, interests or encumbrances being transferred to the proceeds of sale. Provided however, no such sale is authorized unless (i) it falls within the parameters set forth in the Transaction Parameters Spreadsheet, and (ii) the Agent has consented to the sale in writing.
3. The Debtors are authorized to settle outstanding accounts receivable. Provided however, no such settlement is authorized unless (i) it falls within the parameters set forth in the Transaction Parameters Spreadsheet, and (ii) the Agent has consented to the settlement in writing.
4. The Debtors are authorized to return, or make available for retrieval, assets that are owned by its current and/or former customers, provided that (i) no party has raised any dispute with the Debtors regarding ownership of such assets (which dispute the Debtors shall

promptly convey to the current and/or former customer asserting an interest in such assets), and (ii) the Agent, through one of its authorized representatives identified in Paragraph 6(b) of this Order, has consented to the return or retrieval of such assets in writing. Nothing in this Order shall be construed as determining the scope of the Debtors' property under 11 U.S.C. § 541. In the event a dispute arises between a customer and the Debtors regarding ownership of an asset, it shall be determined pursuant to further proceedings before this Court. For purposes of this paragraph a "writing" shall include, but not be limited to, any electronic communication including a communication sent by email.

5. Nothing in this Order shall authorize the Debtors to sell (i) the equipment, raw materials, drug substance (allantoin), drug products and documentation which Amicus Therapeutics Inc. ("Amicus") maintains is property owned by Amicus (collectively, the "Amicus Property"),(ii) the raw materials and packaging materials which Cutanea Life Sciences, Inc. ("Cutanea") maintains is property owned by Cutanea (collectively, the "Cutanea Property"), or (iii) any other property that any customer maintains to be property owned by the customer. Solely to the extent already segregated, the Debtors shall continue to segregate the Amicus Property and the Cutanea Property.

6. All settlements of accounts receivable and sales of any of the Debtors' raw materials, work in process, finished goods, retains, stability documentation, or GMP documentation to any purchaser of such property (a "Purchaser") shall be considered authorized by this Order if: (a) one of the following authorized representatives of the Debtors confirms or represents in writing to such Purchaser that such sale falls within the ranges set forth in the Transaction Parameters Spreadsheet approved by the Court: Michael Musso, John Cannon, Brian Mogensen, John Northen, Vicki Parrott, or JP Cournoyer; and (b) one of the following

authorized representatives of the Agent for the Lenders confirms or represents in writing to such Purchaser that the Agent consents to such sale to the Purchaser: Richard Stone, Dimitri Karcazes, or Prisca Kim. For purposes of this paragraph a “writing” shall include, but not be limited to, any electronic communication including a communication sent by email.

7. Any and all payments arising under or in connection with or authorized to be made by this Order, or otherwise relating to the relief requested in the Motion, shall be subject to the interim and final orders of this Court in these chapter 11 cases approving the Debtors’ use of cash collateral (including all budgets referenced therein).

8. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

9. To the extent the fourteen-day stay of Bankruptcy Rule 6004(h) may be construed to apply to the subject matter of this Order, such stay is hereby waived.

10. The Debtors are directed to serve a copy of this Order on parties as required by the Order Establishing Notice and Administrative Procedures (Docket #51) within three (3) days of the entry of this Order and to file a certificate of service with the Clerk of the Court.

[END OF DOCUMENT]