

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re: Chapter 11
ACCENTIA BIOPHARMACEUTICALS, Case No. 8:08-bk-17795-KRM
INC., et al.,
Debtors. (Jointly Administered)

AGREED ORDER AUTHORIZING THE CONTINUED USE
OF CASH COLLATERAL THROUGH AND INCLUDING MAY 13, 2009

THIS CASE came on for hearing before the Court on April 1, 2009, at 3:30 p.m. (the “Hearing”), upon the Debtors’ Emergency Motion for Entry of Interim and Final Orders Authorizing Use of Cash Collateral and Granting Replacement Liens Pursuant to 11 U.S.C. §§ 105(a), 361, 363, 541 and 552 and Bankruptcy Rule 4001 [Doc. No. 27] (the “Motion”).

On December 15, 2008, this Court entered its Agreed Final Order Authorizing the Debtors to Use Cash Collateral and to Grant Replacement Liens Pursuant to 11 U.S.C. §§ 105(a), 361, 363, 541 and 552 and Bankruptcy Rule 4001 [Doc. No. 108] (the “Final Cash Collateral Order”).¹ Pursuant to the Final Cash Collateral Order, the Debtors were authorized to use Cash Collateral (as defined in Section 363(a) of the Bankruptcy Code) from November 10, 2008 through and including January 7, 2009 in accordance with the terms and conditions contained therein, including operating budgets attached to the Final Cash Collateral Order agreed to by the Debtors, Valens and the Committee.

On February 3, 2009, this Court entered its Agreed Order Authorizing the Continued Use of Cash Collateral [Doc. No. 155] (the “February 3 Order”). Pursuant to the February 3 Order,

¹ Unless otherwise indicated, capitalized terms used herein shall have the meaning ascribed to such terms in the Final Cash Collateral Order.

the Debtors were authorized to use Cash Collateral from January 7, 2009 through and including February 11, 2009 in accordance with the terms and conditions contained therein, including operating budgets attached to the February 3 Order agreed to by the Debtors, Valens and the Committee.

On February 18, 2009, this Court entered its Agreed Order Authorizing the Continued Use of Cash Collateral [Doc. No. 180] (the “**February 18 Order**”). Pursuant to the February 18 Order, the Debtors were authorized to use Cash Collateral from February 11, 2009 through and including April 1, 2009 in accordance with the terms and conditions contained therein, including operating budgets attached to the February 18 Order agreed to by the Debtors, Valens and the Committee. The February 18 Order set a hearing for April 1, 2009 for the Court to consider the continued use of Cash Collateral by the Debtors and new operating budgets for the period following the week ending April 3, 2009.

The Court finds that due and sufficient notice of the Motion and the Hearing was provided to: (i) the Office of the United States Trustee for the Middle District of Florida, (ii) Valens and its counsel, (iii) the other Lenders, (iv) all other known secured creditors of each of the Debtors, (v) the Committee and its counsel, and (vi) certain other parties in interest. Such notice was adequate and appropriate in the current circumstances of these Chapter 11 cases as contemplated by the Federal Rules of Bankruptcy Procedure and the Local Rules of this Court, and any requests for other and further notice shall be and hereby are dispensed with and waived, and no other or further notice is necessary.

The Court considered the Motion, together with the record and the arguments of counsel at the Hearing, and it appearing that the continued use of Cash Collateral is in the best interests of the Debtors and their creditors and essential for the operation of the Debtors’ businesses and

that the relief granted herein is necessary and appropriate to grant adequate protection to the Lenders and to allow the Debtors to have sufficient funds to continue the operation of the Debtors' businesses and preserve the value of their assets, thereby avoiding immediate and irreparable harm to the Debtors, their estates and their creditors, and being otherwise duly advised in the premises and being further advised that the Debtors, Valens and the Committee agree to the form of this Order, and for the reasons announced on the record at the Hearing, it is

ORDERED:

1. The Motion is GRANTED to the extent set forth hereinbelow.
2. Subject to the terms of the Final Cash Collateral Order, the February 3 Order, the February 18 Order, and this Order, the Debtors are authorized to use Cash Collateral from April 1, 2009 and continuing through and including May 13, 2009 (the "**Expiration Date**") (April 1, 2009 through and including the Expiration Date is hereafter referred to as the "**Cash Collateral Period**"), only for the purposes and in the amounts set forth in the budgets attached hereto as Schedule 1 which have been consented to by Valens and the Committee (collectively, the "**Budget**"), to pay ordinary, necessary and reasonable operating expenses incurred by the Debtors in connection with the operation of their businesses, subject to the terms and conditions set forth herein. The Budget may be revised prior to the Expiration Date to provide for additional uses of Cash Collateral by stipulation of the Debtors, Valens and the Committee or upon further order of the Court upon notice and a hearing. Notwithstanding anything herein to the contrary, the Debtors shall not use Cash Collateral in an amount exceeding the expenses set forth in the Budget, except as follows:

- (a) particular expense items in the Budget may exceed the amount in the Budget by ten percent (10%) for any week during the Cash Collateral Period, so long as the aggregate of all expenses for such week do not exceed the amount in the Budget by five percent (5%) for any such week;

- (b) subject to further written agreement of Valens, any favorable variances in the Budget for any week during the Cash Collateral Period may be carried forward by the Debtors and applied in any subsequent week during the Cash Collateral Period; and
- (c) with respect to Biovest International, Inc. (“**Biovest**”), if collections from Biovest’s cell culture contracts increase by more than ten percent (10%) above those amounts listed in the Budget, then Biovest shall be entitled to spend any such percentage increase for the cost of additional raw materials related to the cell culture contracts not presently listed in the Budget.

3. This Order shall continue in effect through the Expiration Date pending any other subsequent order of this Court directed specifically to this Order. The Debtors shall not be authorized to use Cash Collateral after the Expiration Date without the consent of Valens or an order of the Court upon notice and a hearing.

4. A hearing on the continued use of Cash Collateral for the period following the Expiration Date shall be held on May 13, 2009, at 3:00 p.m. This Order shall constitute adequate and sufficient notice of the May 13, 2009 hearing.

5. By no later than May 8, 2009, the Debtors shall provide to the Office of the United States Trustee and counsel for Valens and the Committee operating budgets for Accentia and Biovest (consolidated with their respective subsidiaries) for the six week period following the week ending May 15, 2009 (the “**New Budgets**”).

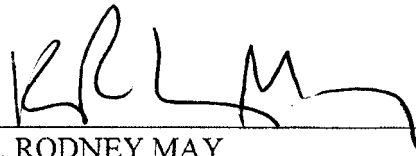
6. Objections to the New Budgets or the Debtors’ continued use of Cash Collateral for the period following the Expiration Date shall be in writing and shall be filed with the Clerk of the Bankruptcy Court **by no later than May 12, 2009**, and any objections by creditors or other parties in interest to the New Budgets or the Debtors’ continued use of Cash Collateral for the period following the Expiration Date shall be deemed waived unless filed by such date. This Order shall constitute adequate and sufficient notice of the May 12, 2009 objection deadline.

7. All monies escrowed or required to be escrowed for fees and expenses of counsel to the Committee pursuant to the Final Cash Collateral Order, the February 3 Order, and the February 18 Order shall be available to pay any and all Court-awarded fees and expenses of counsel to the Committee incurred at any time during these Chapter 11 cases.

8. Except as modified herein, the terms of the Final Cash Collateral Order, the February 3 Order, and the February 18 Order are incorporated herein.

9. Counsel for the Debtors is directed to serve a copy of this Order on the Lenders and all parties on the Master Service List for these cases within three (3) days after the entry of this Order and to thereafter file a certificate of service with the Clerk of the Court.

DONE AND ORDERED in Chambers at Tampa, Florida, on APR 08 2009.



K. RODNEY MAY
United States Bankruptcy Judge

Copies to:

Charles A. Postler, Esq.

SCHEDULE 1

Accentia Biopharmaceuticals, Inc. Projected Statements of Cash Collections and Usage

	<i>Week Ending:</i>				
	4/10/2009	4/17/2009	4/24/2009	5/1/2009	5/15/2009
<u>Revenues</u>					
Collections	218,000	100,000	100,000	100,000	100,000
Collegium settlement, net	-	-	50,000	-	-
<u>Expenses</u>					
<u>Analytica:</u>					
Payroll and payroll related including benefits	-	59,500	15,000	59,500	67,000
Rent	-	-	-	20,000	-
Office expenses (postage, printing, etc.) and other	1,000	1,000	1,000	1,000	1,000
Cost of sales (Contractors, databases)	35,000	14,000	34,000	14,000	14,000
Utilities (phone, internet, etc.)	1,000	500	500	500	500
Travel	1,000	1,000	1,000	1,000	1,000
Bank/payroll fees	300	150	300	-	-
Other	1,000	1,000	1,000	1,000	1,000
<u>Accentia:</u>					
Payroll and payroll related including benefits	-	40,000	12,000	40,000	40,000
Rent	12,000	-	-	-	12,000
Business insurance	10,813	30,000	-	25,000	-
Utilities (phone, internet, etc.)	1,000	3,000	2,000	-	3,000
Professional fees	5,333	2,000	2,000	5,333	2,000
Bank/payroll fees	420	700	420	-	700
Patents	-	20,036	-	7,526	-
Other	9,000	1,500	1,500	5,000	1,500
US Trustee fees	-	-	10,725	-	-
Net change in cash	140,134	(74,386)	68,555	(79,859)	28,780
Beginning cash balance	122,000	262,134	187,748	256,303	176,445
Ending cash balance	262,134	187,748	256,303	176,445	205,225

Biovest International Inc. & Subsidiaries
Projected Statements of Cash Collections and Usage

Week ending	10-Apr	17-Apr	24-Apr	1-May	8-May	15-May
Revenues						
Instrumentation & Cell Culture	60,000	70,000	60,000	20,000	25,000	25,000
Debtor in Possession Financing	-	-	-	-	-	-
Named Patient Program	-	-	20,000	-	-	-
Department of Defense Grant	-	-	-	-	-	-
Other	-	-	30,000	-	-	-
Expenses						
Biovest:						
Salaries & Wages	-	87,500	-	87,500	-	87,500
Inventory/Supplies	12,000	15,000	15,000	13,000	13,000	20,000
Professional Fees	8,840	-	-	3,817	-	30,000
Consulting Fees	15,000	55,000	7,000	-	15,000	-
Insurance	24,929	-	-	42,106	-	-
Rent	-	-	3,000	23,016	-	-
Utilities	1,000	-	6,000	-	1,000	-
FDA meeting RE: Accelerated approval	-	50,000	-	-	-	-
Facility upgrades/NPP	-	-	6,000	-	-	-
Interest on DIP Loan	-	-	-	8,333	-	-
U.S. Trustee's Office Fees	-	-	6,175	-	-	-
Other	9,000	9,000	9,000	9,000	9,000	9,000
Biovax:						
Salaries and Wages	-	-	-	-	-	-
Insurance	-	-	-	-	-	-
Biologics Storage	-	-	-	-	-	-
Other	-	-	-	-	-	-
AutovaxID:						
Salaries and Wages	-	-	-	-	-	-
Insurance	-	-	-	-	-	-
Rent	-	-	-	-	-	-
Utilities	-	-	-	-	-	-
Other	-	-	-	-	-	-
Net change in cash	(10,769)	(146,500)	57,825	(166,772)	(13,000)	(121,500)
Beginning cash balance	440,800	430,031	283,531	341,356	174,583	161,583
Ending cash balance	430,031	283,531	341,356	174,583	161,583	40,083