

Davor Rukavina, Esq.  
Texas Bar No. 24030781  
Thomas D. Berghman, Esq.  
Texas Bar No. 24082683  
MUNSCH HARDT KOPF & HARR, P.C.  
500 N. Akard Street, Suite 3800  
Dallas, Texas 75201-6659  
Telephone: (214) 855-7500  
Facsimile: (214) 855-7584

PROPOSED ATTORNEYS FOR  
THE DEBTOR-IN-POSSESSION

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re: § Chapter 11  
GULFSTREAM DIAGNOSTICS, LLC, § Case No. 19-30159-sgj11  
Debtor. §  
§  
§  
§  
§

**DEBTOR’S EXPEDITED MOTION TO SELL PERSONAL PROPERTY  
FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES**

TO THE HONORABLE STACEY G.C. JERNIGAN, U.S. BANKRUPTCY JUDGE:

COMES NOW Gulfstream Diagnostics, LLC (the “Debtor”), the debtor-in-possession in the above-captioned bankruptcy case (the “Bankruptcy Case”), and files this its *Motion to Sell Personal Property Free and Clear of Liens, Claims, Interests and Encumbrances* (the “Motion”), and would respectfully show the Court as follows:

**I. SUMMARY**

1. The Debtor, not currently processing new blood and toxicology samples, intends to sell certain excess equipment, more particularly described in Exhibit “A” hereto (the “Equipment”). By this Motion, the Debtor seeks authority to sell the Equipment (the “Proposed Sale”) free and clear of all liens, claims, interests and encumbrances. By separate order, the Debtor has obtained approval to retain BidMed, LLC as its broker and auctioneer (“BidMed”).

2. BidMed has been approved to market and solicit sales of the Equipment, subject to court approval, and is operating pursuant to the below timeline (all dates in 2019):

- February 6 - Email blast announcement of auction
- February 8 – Registration opens for auction
- February 6 to February 20 – Biweekly marketing emails
- February 18 – Auction opens
- February 20 – Auction closes
- February 22 – Payment due from winning bidder
- February 28 – Deadline to remove equipment

3. The Debtor will file on the docket a notice of winning bidder as soon as it is made aware of the identity of the winning bidder(s), the precise Equipment to be sold, and the price for same.

4. Any sale will be without warranty, on a “where is, as is” basis, with no recourse. All liens, claims, interests and encumbrances will either be paid at the closing of the Proposed Sale, if agreed to by the Debtor and approved by the Court, or will attach to the proceeds of the Proposed Sale (the “Proceeds”) with the same validity, extent, and priority as otherwise exists.

## **II. JURISDICTION, VENUE, AND STATUTORY PREDICATE**

5. The Debtor filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code on January 16, 2019 (the “Petition Date”), thereby initiating this Bankruptcy Case and creating its bankruptcy estate (the “Estate”). The Debtor is the debtor-in-possession and no trustee or examiner has been appointed. No committee of unsecured creditors has been formed. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This Motion constitutes a “core” proceeding within the meaning of the provisions of 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicated for the relief

sought herein is § 363 of title 11 of the United States Code, § 101 et seq. (the “Bankruptcy Code”) and Rule 4006 of the Federal Rules of Bankruptcy Procedure.

### III. DISCUSSION

6. The paramount goal in any proposed transfer of property of the estate is to maximize the proceeds received by the estate. *See, e.g., Four B. Corp. v. Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997); *Official Committee of Subordinated Bondholders v. Integrated Resources, Inc.*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (“the objective of bankruptcy sales and the Debtor’s duty with respect to such sales is to obtain the highest price or overall greatest benefit possible for the estate”) (*quoting In re Atlanta Packaging Products, Inc.*, 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988)). As recognized by the Fifth Circuit, a Debtor is entitled to use business judgment in determining whether to sell assets. *See Institutional Creditors of Continental Air Lines Inc. v. Continental Air Lines Inc. (In re Continental Air Lines Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986).

7. Section 363(f) of the Bankruptcy Code authorizes the Debtor to sell property outside of the ordinary course of business “free and clear of any interest in such property of an entity other than the estate, only if –

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) 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;
- (4) such interest is in bona fide dispute; or
- (5) 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) (2015).

8. The Debtor may transfer property free and clear if any one of these five conditions is satisfied. *See Newport Acquisition Co. No. 1 L.L.C. v. Crossroads Capitals Partners L.L.C. (In re C-Power Prods. Inc.)*, 230 B.R. 800, 803 (Bankr. N.D. Tex. 1998) (Felsenthal, J.). *See also Futuresource LLC v. Reuters Ltd.*, 312 F.3d 281, 285 (7th Cir. 2002); *Citicorp Homeowners Servs. Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988). Here, the Debtor submits that clauses 1, 2, 3, and 4 exist.

9. The proposed Sale includes nine pieces of equipment: eight (8) Agilent machines and one (1) Nitrogen machine. Two of the Agilent machines and the Nitrogen machine are Debtor property and are subject to the liens of Bank of America (the “Bank”). The remaining six (6) Agilent machines are the property of a non-debtor subsidiary. These machines are being sold together because they are likely to obtain a higher price if sold as one lot.

10. Dallas County’s lien for 2018 appears to attach to all nine (9) machines. The Debtor and the non-debtor subsidiary intend to pay 2018 taxes in full at closing, including all applicable non-bankruptcy law interest.

11. For 2019 taxes, the Debtor intends to file a rendition regarding the 2019 appraisal, and reserving its rights to file a motion pursuant to 11 U.S.C. § 505 if needed. Accordingly, the Debtor and the non-debtor subsidiary will seek to hold in escrow sufficient funds to pay 2019 as estimated by Dallas County, subject to the outcome of the rendition (and subsequent § 505 motion practice if needed).

12. The Bank’s lien attaches only to two (2) of the Agilent machines and the Nitrogen machine. It is unknown whether the proceeds from these three pieces of equipment will be sufficient to put the Bank “in the money” after the payment of 2018 and 2019 taxes. If there are insufficient funds from these Debtor assets in excess of Dallas County’s 2018 and 2019 taxes, then § 363 does not apply to the Bank, as the Bank does not have an interest in that property. If

there are sufficient funds from these three Debtor assets so that the Bank's lien secures some value, then the Debtor intends to reach agreement with the Bank under 11 U.S.C. § 363(f)(2), or otherwise not proceed with the sale of Debtor property and proceed only with the sale of non-Debtor subsidiary property to which the Bank's lien does not apply, and in which event this Court's approval is not required.

13. Although it is at present unknown what the amount of the Proposed Sale proceeds will be, it is contemplated that the proceeds would be distributed as follows:

- 2018 County of Dallas: \$90,271.62
- Escrow for 2019 taxes to be disputed: (\$88,501.59)
- Bank of America/Debtor: split to be determined.

14. As explained above, with respect to Dallas County, the Debtor anticipates § 363(f)(3) will be satisfied.

15. With respect to the Bank, it is anticipated that if agreement is reached under § 363(f)(2), the proceeds from any Debtor-property and non-Debtor property will be shared in some ratio between the Bank and the Debtor respectively: to the Bank on behalf of its collateral and the non-Debtor subsidiary's guarantees of the Debtors' debt to the Bank, and to the Debtor in partial repayment by the non-Debtor subsidiary of its obligations to the Debtor and for obtaining a sale of the non-Debtor subsidiary Equipment without cost to the non-Debtor subsidiary.

#### **IV. PRAYER**

WHEREFORE, PREMISES CONSIDERED, the Debtor respectfully requests that the Court enter: (i) granting this Motion; (ii) approving the Proposed Sale free and clear of all liens, claims, interests and encumbrances, with all such liens, claims, interests and encumbrances attaching to the Proceeds and paid as provided for above or escrowed by the Debtor; (iii)

authorizing the distribution of the Proceeds as described herein; and (iv) granting the Debtor such other relief as may be appropriate.

RESPECTFULLY SUBMITTED this 14th day of February, 2019.

**MUNSCH HARDT KOPF & HARR, P.C.**

By: /s/ Thomas Berghman  
Davor Rukavina, Esq.  
Texas Bar No. 24030781  
Thomas D. Berghman, Esq.  
Texas Bar No. 24082683  
3800 Ross Tower  
500 N. Akard Street  
Dallas, Texas 75201  
Telephone: (214) 855-7500  
Facsimile: (214) 855-7584

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THE DEBTOR**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on this the 14th day of February, 2019, true and correct copies of this document were electronically served by the Court' ECF system on parties entitled to notice thereof and that, additionally, on the same date he caused true and correct copies of this document, without the exhibit thereto, to be served by U.S. first class mail, postage prepaid, on the parties listed on the attached Service List.

By: /s/ Thomas Berghman  
Thomas D. Berghman, Esq.

Exhibit A - Equipment List

Manufacturer	Item Description	Serial Number	Purch Date
Agilent	Agilent K6460 LC/MS	SG14467302	2/28/2015
Agilent	Agilent K6460 LC/MS	SG14317302	2/28/2015
Agilent	Agilent K6460 LC/MS	SG15077310	4/30/2015
Agilent	Agilent K6460 LC/MS	SG15117301	5/30/2015
Agilent	Agilent K6460 LC/MS	SG15477304	12/30/2015
Agilent	Agilent K6460 LC/MS	SG15127308	12/30/2015
Agilent	Agilent K6460 LC/MS	SG15207301	6/30/2016
Agilent	Agilent G6460 LC/MS	SG13137210	8/30/2016

Gulfstream Diagnostics	Peak Scientific	Nitrogen Generator - NM32LA - Quantum 795917	A14-12-466
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Label Matrix for local noticing

BidMed LLC

CMK2 North Central II, LLC

0539-3  
Case 19-30159-sgj11  
Northern District of Texas  
Dallas  
Thu Feb 14 12:39:20 CST 2019

1016 West Jackson Blvd.  
Chicago, IL 60607-2914

Saul Ewing Arnstein & Lehr LLP  
c/o Lucian B. Murley  
P.O. Box 1266  
Wilmington, DE 19899-1266

Dallas County  
Linbarger, Goggan, Blair & Sampson LLP  
c/o Laurie Spindler  
2777 N Stemmons Frwy, No 1000  
Dallas, TX 75201 United States 75207-2328

Lighthouse Lab Services  
c/o Brad Odell  
Mullin Hoard & Brown, LLP  
P.O. Box 2585  
Lubbock, TX 79408-2585

1100 Commerce Street  
Room 1254  
Dallas, TX 75242-1305

AT & T Mobility  
P. O. Box 6463  
Carol Stream, IL 60197-6463

Adobe  
345 Park Ave.  
San Jose, CA 95110-2704

Aerotek  
2600 N. Central Expwy.  
Richardson, TX 75080-2055

Air Power Sales & Service  
823 West Marshall Ave.  
Longview, TX 75601-6237

All Medical Personnel  
BARR Credit Services  
5151 E. Broadway Blvd., Ste 800  
Tucson, AZ 85711-3775

Alliantgroup, LP  
P. O. Box 4979  
Houston, TX 77210-4979

American Express  
P. O. Box 650448  
Dallas, TX 75265-0448

American Express National Bank  
c/o Becket and Lee LLP  
PO Box 3001  
Malvern PA 19355-0701

BANK OF AMERICA, N.A  
Keith M. Aurzada  
Bradley Purcell  
Bryan Cave Leighton Paisner LLP  
2200 Ross Avenue, Ste. 3300  
Dallas, TX 75201-7965

Bank of America  
Keith M. Aurzada  
Bryan Cave Leighton Paisner LLP  
2200 Ross Avenue, Suite 3300  
Dallas, Texas 75201-7965

Bank of America N.A.  
135 S. LaSalle St.  
Suite 1125  
Chicago, IL 60603-4177

Bio-Rad Laboratories, Inc.  
1000 Alfred Nobel Dr.  
Hercules, CA 94547-1811

BioChromato  
10060 Carroll Canyon Rd.  
Suite 100  
San Diego, CA 92131-1197

Block & Garden, LLP  
5949 Sherry Lane  
Suite 900  
Dallas, TX 75225-0016

By Referral Labels, Inc.  
10372 Ashton Avenue  
Los Angeles, CA 90024-5365

C2M Tech  
2315 Luna Road  
Suite 100  
Carrollton, TX 75006-6564

CMB Capital Holdings, LLC  
219 NE 22nd St.  
Delray Beach, FL 33444-4221

CMK2 North Central II, LLC  
9301 N. Central Expressway  
Suite 580  
Dallas, TX 75231-0829

CT Corporation  
P. O. Box 4349  
Carol Stream, IL 60197-4349

CapInvest Management LLC  
2621 Harrison St.  
Bellwood, IL 60104-2404

Capitol Scientific  
2500 Rutland Dr.  
Austin, TX 78758-5243

Cardinal Health  
P. O. Box 730112  
Dallas, TX 75373-0112

Caspian Industries, LLC  
12655 N. Central Expressway  
Suite No. 950  
Dallas, TX 75243-3811

Chase Medical Solutions  
109 Freedom Rider Trail  
Glen Mills, PA 19342-9526



ClickMD Patients, LLC  
3131 Timmons Ln. No. 3435  
Houston, TX 77027-6088

CompuGroup Medical US  
10715 Red Run Blvd.  
Suite 101  
Owings Mills, MD 21117-5143

Concur Technologies, Inc.  
62157 Collections Center Drive  
Chicago, IL 60693-0001

Connect Marketing & Consultation, LLC  
6362 Lindhurst Dr.  
Traverse City, MI 49685-7083

D & S Laboratory Solutions, LLC  
1803 Matilda St.  
Dallas, TX 75206-7271

DKBlnnovative  
Dept. 115  
P. O. Box 650444  
Dallas, TX 75265-0444

Dallas County  
c/o Linebarger Goggan Blair  
2777 N. Stemmons Frwy  
Dallas, TX 75207-2268

Dallas County Tax Office  
1201 Elm Street  
Suite 2600  
Dallas, TX 75270-2125

Dallas Logistics, LLC  
1420 Davey Road  
Woodridge, IL 60517-5069

Data Innovations, LLC  
P. O. Box 101978  
Atlanta, GA 30392-1978

David Light  
663 Clifden Drive  
Saint Charles, MO 63304-0510

David Shultz  
7231 Coronado Ave.  
Dallas, TX 75214-4212

Dr. William DePond  
55 SW 9th St.  
Suite 4303  
Miami, FL 33130-4516

Eagle Express  
P. O. Box 59972  
Dallas, TX 75229-1972

Elliot Sauter PLLC  
7557 Rambler Road  
Suite 970  
Dallas, TX 75231-2368

Experian Health  
P. O. Box 886133  
Los Angeles, CA 90088-6133

Experian Health, Inc.  
Joseph D. Frank  
c/o FrankGecker LLP  
1327 W. Washington Blvd., Suite 5G/H  
Chicago, IL 60607-1901

Eyster Consulting, Inc.  
5 Toxaway Lane  
Lake Toxaway, NC 28747-9678

FedEx  
3875 Airways Blvd.  
Memphis, TN 38116-5070

Frank G. Howard, Jr.  
4021 Bryn Mawr  
Dallas, TX 75225-7032

Genotox Laboratories, Ltd.  
2170 Woodward St.  
Suite 100  
Austin, TX 78744-1038

Guardian  
P. O. Box 677458  
Dallas, TX 75267-7458

Gulfstream Capital Group LLC  
9301 N. Central Expressway  
Tower II, Suite 335  
Dallas, TX 75231-0806

Gulfstream Diagnostics, LLC  
9301 N. Central Expressway  
Tower 2, Suite 335  
Dallas, TX 75231-5084

HMA Genetics, LLC  
1521 Alton Road No. 339-B  
Miami Beach, FL 33139-3301

HalfPenny  
960 Harvest Drive  
Building B, Ste. 200  
Blue Bell, PA 19422-1900

I3 Concepts  
P. O. Box 234  
Red Oak, TX 75154-0234

(p) IPFS CORPORATION  
30 MONTGOMERY STREET  
SUITE 1000  
JERSEY CITY NJ 07302-3865

Indigo BioAutomation, Inc.  
385 City Center Drive  
Suite 200  
Carmel, IN 46032

Interconnections, Inc.  
3021 S. Pine Street  
Guthrie, OK 73044-6408

JAB Industries, Inc.  
9998 Jamestown St.  
Ventura, CA 93004-3746

John Mark Stern  
Assistant Attorney General  
Bankruptcy & Collections Division MC 008  
P.O. Box 12548  
Austin, Texas 78711-2548

KIPU Systems  
55 Alhambra Plaza, 6th Floor  
Coral Gables, FL 33134-5254

Keumars Zafar  
1802 Huldy St.  
Houston, TX 77019-5725

Laboratory Broker, LLC  
9204 Eisenhower Dr.  
Apex, NC 27539-7721

Liaison Technologies, Inc.  
Dept. AT 952956  
Atlanta, GA 31192-2956

LinkedIn Corporation  
62228 Collections Center Drive  
Chicago, IL 60693-0622

Lipomed Inc.  
150 Cambridge Park Drive  
Suite 705  
Cambridge, MA 02140-2300

Logix Communications  
P. O. Box 3608  
Houston, TX 77253-3608

MDCarlyle Investments, LLC  
1845 John Bryant Dr.  
Conway, AR 72034-3373

Mangum Health, LLC  
118 Frederick St.  
Austin, TX 78704-7110

Mauros Services LLC  
2010 B Greenview Dr.  
Carrollton, TX 75010-4051

McGrath Medical Solutions, LLC  
2600 S. Rock Creek No. 16203  
Superior, CO 80027-4606

MedPro Disposal  
P. O. Box 5683  
Carol Stream, IL 60197-5683

Media Directions  
300 Knightsbridge Parkway  
Suite 115  
Lincolnshire, IL 60069-3619

Medworx Medical Developments, LLC  
719 Sawdust Rd.  
Suite 213  
The Woodlands, TX 77380-2947

Microsoft, Inc.  
1 Microsoft Way  
Redmond, WA 98052-8300

Millipore Sigma  
400 Summit Dr.  
Burlington, MA 01803-5258

Minuteman Press  
11411 N. Central Expressway  
Suite A  
Dallas, TX 75243-6606

Montgomery Coscia Greilich LLP  
2500 Dallas Parkway  
Ste. 300  
Plano, TX 75093-4872

Movestar Inc.  
P. O. Box 800908  
Dallas, TX 75380-0908

NIK Health Services, LLC  
820 Locust Road  
Wilmette, IL 60091-2267

NW Practice Management Services, LLC  
15511 NE 22nd Place W488  
Bellevue, WA 98007-3865

Omar Fustok  
1875 Post Oak Park  
Apt. No. 130  
Houston, TX 77027-3310

OrchestrateHR  
5050 Spring Valley Rd.  
Dallas, TX 75244-3995

Paypool LLC  
P. O. Box 34781  
Bethesda, MD 20827-0781

Pitney Bowes  
1 Elmcroft Rd.  
Stamford, CT 06926-0700

Practice Fusion  
731 Market Street  
Suite 400  
San Francisco, CA 94103-2009

Preferred Business Solutions  
1701 W. Walnut Hill Lane  
Irving, TX 75038-3217

Premier Health Diagnostics, LLC  
5209 Briarwood Ln.  
Fort Worth, TX 76112-2814

ProgRx, LLC  
2315 Manorwood  
Sugar Land, TX 77478-6024

Quantum Analytics  
3400 East Third Ave.  
Foster City, CA 94404-1101

Quest Diagnostics Clinical Laboratories  
P. O. Box 677960  
Dallas, TX 75267-7960

R & L Laboratory Services, LLC  
201 3rd Avenue North  
Amory, MS 38821-3413

Rackspace US  
P. O. Box 730759  
Dallas, TX 75373-0759

Sarma Collections, Inc.  
555 E. Ramsey  
San Antonio, TX 78216-4640

Siemens Healthcare Diagnostics  
115 Norwood Park South  
Norwood, MA 02062-4633

Staples  
7 Technology Circle  
Columbia, SC 29203-9591

Staples Advantage  
P. O. Box 70242  
Philadelphia, PA 19176-0242

State of California  
P. O. Box 942857  
Sacramento, CA 94257-0021

Steve Williams  
7393 Blairview  
Dallas, TX 75230-5416

TexMed Solutions, LLC  
18826 Canyon View Pass  
Helotes, TX 78023-2879

Texas Comptroller of Public Accounts  
John Stern  
P.O. Box 12548  
Austin, TX 78711-2548

Thompson & Knight LLP  
P. O. Box 660684  
Dallas, TX 75266-0684

Thomson Reuters -GRC Inc.  
P. O. Box 417175  
Boston, MA 02241-7175

Time Warner Cable  
P. O. Box 60074  
City of Industry, CA 91716-0074

TruNorth Enterprises, LLC  
1405 Chesterton Dr.  
Richardson, TX 75080-2804

UBEO of North Texas Inc.  
P. O. Box 41602  
Philadelphia, PA 19101-1602

UPS  
P. O. Box 7247-0244  
Philadelphia, PA 19176-0242

United States Trustee  
1100 Commerce Street  
Room 976  
Dallas, TX 75242-0996

Warren W Garden PC  
5949 Sherry Lane  
Suite 900  
Dallas, TX 75225-0016

Whitley Penn  
1400 West 7th Street  
Suite 400  
Fort Worth, TX 76102-2628

Willis of Texas, Inc.  
P. O. Box 731739  
Dallas, TX 75373-1739

Wrigley Medical Solutions, LLC  
15444 N. Greenway Hayden Loop  
Suite 201-E  
Scottsdale, AZ 85260-1235

eFAX  
6922 Hollywood Blvd.  
Ste. 900  
Los Angeles, CA 90028-6129

hcl.com  
P. O. Box 775793  
Chicago, IL 60677-5793

Davor Rukavina  
Munsch, Hardt, Kopf & Harr  
500 N. Akard Street, Ste 3800  
Dallas, TX 75201-6659

Fareed Iqbal Kaisani  
Munsch Hardt Kopf & Harr, P.C.  
500 N. Akard St., Ste. 3800  
Dallas, TX 75201-6659

Thomas Daniel Berghman  
Munsch Hardt Kopf & Harr PC  
500 N Akard Street, Suite 3800  
Dallas, TX 75201-6659