

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
(EASTERN DIVISION)

In re: )  
 )  
INSPIRATION ) Case No. 12-18687-WCH  
BIOPHARMACEUTICALS, INC., ) Chapter 11  
 )  
Debtor. )

**STIPULATION AND ORDER UNDER 11 U.S.C. §§ 105, 361, 362, 363(c), AND 363(e)  
AND BANKRUPTCY RULES 2002, 4001, 6003, 6004 AND 9014 AUTHORIZING THE  
DEBTOR TO USE CASH COLLATERAL AND APPROVING  
THE WATERFALL DISTRIBUTION**

Inspiration Biopharmaceuticals, Inc., as debtor and debtor-in-possession (the “Debtor”),  
the Official Committee of Unsecured Creditors (the “Committee”), and Ipsen Pharma, S.A.S.  
("Ipsen") stipulate and agree as follows:

**RECITALS**

WHEREAS, on December 19, 2012, the Court entered the Final Order (I) Authorizing  
the Debtor to (A) Obtain Postpetition Senior Secured Super-Priority Financing Pursuant to 11  
U.S.C. §§ 361, 362, 363(c), 363(e), 364(c), 364(d)(1) and 364(e) and (B) Utilize Cash Collateral  
of Certain Prepetition Secured Parties, (II) Granting Adequate Protection to Certain Prepetition  
Secured Parties and (III) Granting Related Relief (Docket No. 228) (as amended, the "Final DIP  
Order"), thereby authorizing and approving the post-petition financing provided by Ipsen to the  
Debtor in the maximum amount of \$23,642,474 (the “DIP Financing”);

WHEREAS, the Final DIP Order also confirmed the Court's findings contained in the  
prior interim version of the Final DIP Order (Docket No. 51) that, among other things, Ipsen is

owed \$203 million on account of the Prepetition Obligations,<sup>1</sup> and that the Prepetition Obligations are secured by valid, binding, enforceable and perfected first-priority liens and security interests in and upon substantially all of the Debtor's assets, including all of the prepetition collateral and cash collateral;

WHEREAS, on January 25, 2013, the Court entered the Order Authorizing And Approving Sale Of Assets Transferred Pursuant To Asset Purchase Agreement Free And Clear Of Liens, Claims, Interests, And Encumbrances Pursuant To Section 363 Of The Bankruptcy Code And Authorizing And Approving The Assumption And Assignment And Sale Of Certain Executory Contracts In Connection With Such Sale And Related Relief [Docket No. 288] (the "OBI-1 Sale Order") authorizing the sale of the Inspiration Transferred Assets (as defined therein) in conjunction with the sale by Ipsen of the Ipsen Transferred Assets (as defined therein, and, together, the "OBI-1 Assets") to Baxter Healthcare Corporation, Baxter International, Inc. and Baxter Healthcare S.A. (collectively, "Baxter");

WHEREAS, on February 14, 2013, the Court entered the Order Authorizing And Approving Sale Of Assets Transferred Pursuant To Asset Purchase Agreement Free And Clear Of Liens, Claims, Interests, And Encumbrances Pursuant To Section 363 Of The Bankruptcy Code And Authorizing And Approving The Assumption And Assignment And Sale Of Certain Executory Contracts In Connection With Such Sale And Related Relief (Docket No. 333) (the "FIX Sale Order" and, together with the OBI-1 Sale Order, the "Sale Orders") authorizing the sale of the Debtor Assets (as defined therein) in conjunction with the sale by Ipsen of the Ipsen

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<sup>1</sup> Capitalized terms used herein but not otherwise defined shall have the same meaning ascribed to such terms in the Final DIP Order.

Transferred Assets (as defined therein, and, together, the "FIX Assets") to Cangene Corporation ("Cangene");

WHEREAS, the Sale Orders each provide in Paragraph GG that, pursuant to the interim and final orders approving the DIP Financing (Docket Nos. 51 and 228), Ipsen has validly perfected, first-priority security interests in substantially all of the Debtor Assets, is entitled to all of the proceeds from the sale of the OBI-1 Assets and FIX Assets, and that Ipsen has agreed that consideration otherwise payable to the Debtor and Ipsen pursuant to the terms of the agreements of sale shall be distributed in accordance with the Waterfall (as such term is defined in the Sale Orders);

WHEREAS, the sale of the FIX Assets to Cangene closed on February 15, 2013 and the sale of the OBI-1 Assets to Baxter closed on March 20, 2013, and the proceeds of such sales (the "Sales Proceeds") were deposited in the Debtor's account maintained at J.P. Morgan Chase Bank, N.A., account number xxxxxx0953;

WHEREAS, on March 29, 2013, the Debtor and Ipsen, after consultation with the Committee, made certain distributions under the Waterfall with respect to the Sales Proceeds as set forth on Exhibit "A" attached hereto;

WHEREAS, the amount of \$9,337,243 was retained by the Debtor to satisfy the Priority 1 Claims under the Waterfall as detailed on Exhibit A, after payment of amounts due to Biomeasure, Inc., Ipsen's affiliate, for employee retention payments and postpetition amounts owing. This amount, in addition to the following amounts, constitute cash collateral (the "Cash Collateral") of Ipsen:

- (i) cash on hand, consisting of proceeds of monies borrowed by the Debtor pursuant to the DIP Financing, and certain monies received and to be

received from Baxter and Cangene to reimburse the Debtor or pay for expenses incurred or to be incurred, which shall be used to pay the expenses for the period March 21, 2013 through June 28, 2013 as set forth on the budget appended as Exhibit "B" hereto (the "Budget");

- (ii) funds set aside at closing to pay senior secured claims (other than Ipsen) and cure costs associated with the sales, and the costs of a Sellers Representative (the "Sales Order Payments"); and
- (iii) the Reserve Amount (defined below).

WHEREAS, because the Sales Proceeds are not sufficient to satisfy all distributions owed pursuant to Priorities 1, 2 and 3 of the Waterfall, Ipsen has agreed to defer amounts to which it is entitled to receive pursuant to Priority 3 of the Waterfall in order to allow the Debtor's estate to receive the \$2,750,000 payment (the "Estate Distribution") to be made to it pursuant to Priority 3 of the Waterfall; provided that the amount due to Ipsen pursuant to Priority 3 to the extent not already satisfied shall be paid upon receipt of additional proceeds to be received as a result of the sale of the OBI-1 Assets and the FIX Assets to Baxter and Cangene, respectively (as to any such proceeds, the "Asset Sale Proceeds"), as set forth in the Waterfall;

WHEREAS, the Waterfall provides that all fees and expenses of Ipsen incurred in connection with the Asset Sale and the DIP Loan (the "Ipsen Professional Fees") are to be reimbursable to Ipsen as Priority 2 distributions;

WHEREAS, Ipsen asserts that it has incurred the sum of \$5,201,474 in Ipsen Professional Fees through March 20, 2013, as detailed in Exhibit "C" attached hereto;

WHEREAS, on March 29, 2013, the following amounts were paid to Ipsen pursuant to Priorities 2 and 3 of the Waterfall: (a) the amount of \$18,766,476, representing the principal and

interest owed to Ipsen under the DIP Financing, and (b) the amount of \$4,161,179, representing a portion of the Ipsen Professional Fees that Ipsen asserts are reimbursable expenses pursuant to Priority 2 of the Waterfall;

WHEREAS, under Priority 3 of the Waterfall, Ipsen is entitled to receive: (a) an amount equal to fifty percent (50%) of the amount to which it is entitled under Priority 2 of the Waterfall, and (b) the amount of \$375,000 for additional prepetition advances made by Ipsen;

WHEREAS, because of the Debtor's retention of the Reserve Amount, Ipsen's voluntary deferral with respect to the Estate Distribution, and/or the lack of sufficient Sale Proceeds to pay all amounts included in Priorities 1, 2, and 3, Ipsen has received only the sum of \$9,483,936 with respect to Priority 3 distributions;

WHEREAS, the Shareholder Representative (as such term is defined in the Shareholder Representative Protocol [docket no. 1952-2, exhibit "F"]) has filed a preliminary objection with respect to the Ipsen Professional Fees, and the parties have been in discussions about a potential consensual resolution relating to such Professional Fees;

WHEREAS, pending either agreement with the Shareholders Representative or Order by this Court, the Debtor has reserved (i) the amount of \$1,040,295, or 20% of the Ipsen Professional Fees from the amount of the Ipsen Professional Fees that have been paid in Priority 2 of the Waterfall; and (ii) \$436,187, the amount that would have otherwise been paid to Ipsen under Priority 3 of the Waterfall on account of the Ipsen Professional Fees, for a total amount reserved of \$1,476,482 (the "Reserve Amount"); and

WHEREAS, the Debtor, Ipsen, the Committee and the Shareholder Representative have reached an agreement regarding the distribution of Sale Proceeds heretofore made and the amount of the Ipsen Professional Fees;

WHEREAS, the parties hereto agree that this Stipulation is in the best interest of the estate and will further the ability of the Debtor to successfully conclude this Chapter 11 case.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth herein, and other good and valuable consideration the receipt and legal adequacy of which are hereby acknowledged by both Parties, the Parties hereby agree as follows:

1. Recitals. The Recitals set forth above are incorporated herein.
2. Cash Collateral. Ipsen has consented to the Debtor's use of the Cash Collateral, subject to the terms and conditions set forth in this Order and the Court's approval of this Stipulation and Order. The Estate Distribution and amounts paid to the Debtor's estate in Priority 6 (when later made) do not constitute Cash Collateral.
3. Deposit; Permitted Use. The Cash Collateral shall be used to fund the Priority 1 Claims, the Budget, and the Sales Order Payments. Any Cash Collateral not required to be used for its designated purpose shall be otherwise distributed in accordance with the Waterfall. No other use of Cash Collateral is permitted absent Ipsen's express prior consent or further order of the Court.
4. Covenants. As a condition to its continued use of Cash Collateral, the Debtor shall comply with the following covenants:
  - a. The Debtor shall not take any of the actions set forth in sections 5.1.2, 5.1.5 - 5.1.9, 5.1.11 - 5.1.13, 5.1.15 - 5.1.19, and 5.1.27 - 5.1.31 of that certain Amended and Restated Senior Secured Super-Priority Debtor-in-Possession Loan Promissory Note dated January 30, 2013 (the "DIP Financing Note"); and
  - b. The Debtor shall comply with the terms and conditions contained in sections 5.2.2, 5.2.3, 5.2.4, 5.2.11, 5.2.12, and 5.2.14 of the DIP Financing Note.

5. Reporting Obligations.

- a. On the last business day of each calendar week, the Debtor shall deliver to Ipsen (i) a comparison of the current week's opening cash position against the opening cash position for such week reported in the immediately preceding Budget, (ii) a comparison of the immediately preceding week's actual cash receipts and disbursements against the cash receipts and disbursements that were projected for such week in the immediately preceding Budget and (iii) a brief but meaningful commentary for each material line item deviation (both favorable and unfavorable) when comparing actual expenditures to the estimated expenditures set forth in the Budget with respect to the immediately preceding week; and
- b. The Debtor shall deliver to Ipsen an updated Budget on each of the above due dates and covering the period March 21, 2013 through June 28, 2013 (the "Specified Period").

6. Termination. The Debtor's authority to use Cash Collateral shall automatically terminate without notice, subject to the Debtor's right to seek emergency determination for continued authority to Use Cash Collateral, upon the earlier of the expiration of the Specified Period, if no order is entered approving the Stipulation and agreements contained herein, and the occurrence of any of the following:

- a. the Debtor's use of Cash Collateral other than as authorized hereunder;
- b. the Debtor shall fail to perform or observe any of the obligations under the DIP Financing Note set forth in paragraph 4 above and such failure shall remain unremedied for the period equal to the earlier of (i) five (5) calendar days after the Debtor has received written notice of such failure, and (ii) five (5) calendar days after the Debtor has obtained knowledge of the occurrence thereof;
- c. the net aggregate unfavorable variances for any month under the Budget, as reported in accordance with Section 5, are in excess of ten (10)% for any category of expenses unless otherwise agreed by Ipsen, in its sole discretion, after discussions with the Debtor and taking into account the Debtor's plans to mitigate such unfavorable variances;
- d. the occurrence of any of the following in the Chapter 11 Case:

- i. the modification of an order of the Bankruptcy Court in a manner materially adverse to Ipsen;
- ii. the filing of a motion, pleading or proceeding by the Debtor that could reasonably be expected to result in a material impairment of the rights, remedies or interests of Ipsen or a determination by a court with respect to any motion, pleading or proceeding brought by another party which results in any such material impairment;
- iii. the entry of an order in the Chapter 11 Case avoiding, requiring disgorgement of, or subordinating any payment made to Ipsen or Biomeasure, Inc;
- iv. the entry of an order in the Chapter 11 Case confirming a plan or plans of reorganization that, unless otherwise approved by Ipsen, is adverse to Ipsen's interests;
- v. the exclusive right of the Debtor to file, or solicit acceptances to, a plan of reorganization under Section 1121 of the Bankruptcy Code is terminated or expires;
- vi. the commencement of a suit or action against Ipsen by the Debtor that asserts or seeks by or on behalf of the Debtor any legal or equitable remedy that would have the effect of subordinating any obligations to Ipsen to any other claim, or would otherwise have a material adverse effect on the rights and remedies of Ipsen;
- vii. the Debtor's chapter 11 case being dismissed or converted to a chapter 7 case, or the appointment of a chapter 11 trustee with plenary powers, a responsible officer, or an examiner with powers beyond those set forth in Bankruptcy Code §§ 1106(a)(3) and (4); and/or
- viii. the entry of an order reversing, amending, supplementing, staying, vacating or otherwise modifying this Order without Ipsen's prior consent.

All Cash Collateral remaining upon any such termination shall be paid by the Debtor first to accrued and unpaid expenses in the Budget and the Sales Order Payments and then, to the extent of any remaining funds, in accordance with the Waterfall.

7. Ipsen Professional Fees.

- a. The amount of the Ipsen Professional Fees shall be allowed in the amount of \$4,501,474 (the "Compromise Amount"). Subject to Ipsen's receipt of payment of the Compromise Amount, not subject to later disgorgement, (i) no additional fees and expenses (whether originally claimed as Ipsen Professional Fees or otherwise) shall be reimbursable to Ipsen and/or its subsidiaries from proceeds to be distributed pursuant to the Waterfall and (ii) Ipsen shall not be entitled to recover any of the Ipsen Professional Fees from the bankruptcy estate (whether in the Compromise Amount or as originally claimed).
- b. Based upon the allowance of the Ipsen Professional Fees as set forth in the previous subsection, the amount of \$340,295 shall be paid from the Reserve Amount in full satisfaction of the Ipsen Professional Fees. The balance of the Reserve Amount of \$1,136,187 shall be paid to Ipsen on account of its right to payment under Priority 3 of the Waterfall. After application of the Reserve Amount as set forth above, the amount of \$1,388,851 will remain due and owing to Ipsen as a Priority 3 distribution pursuant to the Waterfall. Ipsen shall pay the sum of \$200,000 to the Shareholder's Representative for its fees and expense and such payment shall be in full satisfaction of any and all obligations of Ipsen to distribute Sale Proceeds to the Shareholder's Representative in payment of its fees and expenses, including any requirement set forth in Priority 6(a) of the Waterfall.

8. Priority 3 Distributions. Notwithstanding anything herein to the contrary, all amounts required to be distributed to Ipsen pursuant to Priority 3 of the Waterfall that were not paid by the Sales Proceeds shall be paid from the next receipt of Asset Sale Proceeds prior to any other distributions.

9. Agreement Regarding Distributions. In consideration of the agreements amongst the parties hereto including Ipsen's voluntary deferral of amounts otherwise due to it under

Priority 3 of the Waterfall, the Debtor, Ipsen, the Committee and the Shareholder Representative agree to the amounts and recipients of the distributions shown on Exhibit “D” hereto.<sup>2</sup>

10. Waivers. No expense of administration shall be charged against or recovered from the Cash Collateral or Sales Proceeds pursuant to Bankruptcy Code § 506(c) without Ipsen's prior written consent.

11. Modification of Automatic Stay. The automatic stay under Bankruptcy Code § 362(a) is hereby modified as necessary to effectuate this Order.

12. Immediate Effect of Order. Immediately upon entry by the Court (notwithstanding any applicable law or rule to the contrary), the terms and provisions of this Order shall become valid and binding upon and inure to the benefit of the Debtor, Ipsen, all other creditors of the Debtor, the Committee, and all other parties in interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in the Case or upon dismissal of the Case. In the event of any inconsistency between the provisions of this Order and any other order, the provisions of this Order shall govern and control.

13. Jurisdiction. The Court has core jurisdiction over the Case, this Stipulation and Order, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

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<sup>2</sup> Exhibit “D” reflects the distributions made or reserved for in Exhibit “A” and the modifications to the distribution scheme to reflect the agreement on the Ipsen Professional Fees as set forth herein.

Dated: Boston, Massachusetts  
June 5, 2013

MURPHY & KING,  
PROFESSIONAL CORPORATION

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(Shareholder Representative)

SO ORDERED this \_\_\_\_\_ day of June, 2013.

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William C. Hillman  
United States Bankruptcy Judge

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