

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

-----X	:	Chapter 11
In re	:	
	:	
Laboratory Partners Inc., <i>et al.</i> ,	:	Case No. 13-12769 (PJW)
	:	
Debtors.	:	(Jointly Administered)
	:	
	:	Re: D.I. 153 and <u>399</u>
-----X		

**ORDER AMENDING FINAL ORDER PURSUANT TO 11 U.S.C.
§§ 105, 361, 362, 363, 364 AND 507 (1) APPROVING POSTPETITION FINANCING,
(2) AUTHORIZING USE OF CASH COLLATERAL, (3) GRANTING LIENS AND
PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS,
(4) GRANTING ADEQUATE PROTECTION, AND (5) MODIFYING AUTOMATIC STAY**

THIS MATTER having come before the Court upon the motion (the “Amendment Motion”) of the DIP Borrowers, each as a Debtor in the Cases pursuant to sections 105, 361, 362, 363, and 507 of the Bankruptcy Code, and Bankruptcy Rules 2002, 4001 and 9014, and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware seeking entry of entry of this First Amended Order (the “First Amended Order”) amending that certain *Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507 (1) Approving Postpetition Financing, (2) Authorizing Use of Cash Collateral, (3) Granting Liens and Providing Superpriority Administrative Expense Status, (4) Granting Adequate Protection, (5) Modifying the Automatic Stay* (the “Final Order”) (D.I. 153);¹ The Court having considered the Amendment Motion, the DIP Motion and related pleadings, the DIP Documents, and the evidence submitted or adduced and the arguments of counsel made at the hearings held on October 29, 2013 (the “Interim DIP Hearing”), the final hearing held on November 26, 2013 (the “Final DIP Hearing”), and the hearing on the Amendment Motion held

¹ Capitalized terms used herein shall have the meanings set forth in the Final Order.

on []; and the Court having entered on October 29, 2013 an interim order authorizing funding on an interim basis and granting adequate protection on account of the interests of certain holders of liens on the property of the estates on which liens are to be granted; and the Court having entered on November 26, 2013 a final order authorizing funding on a final basis and granting adequate protection on account of the interests of certain holders of liens on the property of the estates on which liens are to be granted, and adequate notice of the hearing on the Amendment Motion having been provided in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and 9014; and the hearing to consider the relief requested in the Amendment Motion having been held and concluded; and all objections, if any, to the entry of this First Amended Order having been withdrawn, resolved or overruled by the Court; and after due deliberation and consideration, and for good and sufficient cause appearing therefor;

This Court hereby finds and determines that:

- A. The Final Order was entered by this Court on November 26, 2013.
- B. Consistent with the terms of the Final Order, the DIP Lender has advanced US\$2,850,000.00 in principal amount under the DIP Agreement during these cases.
- C. On February 24, 2014, the Debtors closed the sale of certain portions of their business pursuant to a sale order entered by this Court on February 18, 2014 [D.I. 348] (the "Talon Sale").
- D. Pursuant to paragraph 36 of the Final Order, the Debtors are required to distribute Net Asset Sale Proceeds (as defined in the DIP Agreement) to the DIP Agent and the Prepetition Agent in accordance with a waterfall set forth in the DIP Agreement on the business day following receipt of any such funds.
- E. On February 28, 2014, the Debtors distributed to the DIP Agent \$2,871,058.33 in

respect of principal and interest owing under the DIP Agreement and paid certain fees and expenses then accrued and outstanding under the DIP Agreement.

F. On March 26, 2014, the Debtors distributed to the Prepetition Agent on behalf of the Prepetition Lenders \$3,000,000 for application in accordance with the Prepetition Credit Documents.

G. The Debtors, the Prepetition Agent and the Prepetition Lenders have agreed that the Debtors may (i) retain a portion of the Net Asset Sale Proceeds from the Talon Sale, and (ii) use such retained Net Asset Sale Proceeds and Cash Collateral in a manner consistent with the revised budget attached hereto as Exhibit A, as the same may be amended from time to time (the "Revised Budget").

H. The Debtors, with the consent of the Prepetition Agent and the Prepetition Lenders, have moved the Court to enter this First Amended Order (i) to effect certain modifications to the Final Order, and (ii) to confirm that the Final Order otherwise remains in full force and effect as it applies to the use of Cash Collateral.

I. Good Faith. Based on the record before the Court, the terms of the use of the Cash Collateral as provided in the Final Order as amended by this First Amended Order are fair, reasonable, are the best available under the circumstances, have been fully disclosed, reflect the Debtors' exercise of prudent business judgment consistent with their responsibilities under the Bankruptcy Code, have been negotiated at arms' length and in good faith and are in the best interests of the Debtors, the estates and creditors.

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Debtors are authorized to use Cash Collateral subject to the relevant terms of the Final Order, the Revised Budget, and the DIP Documents, and the modifications set forth below.

2. The Final Order remains in full force in effect as it applies to the Prepetition Obligations, the use of Cash Collateral and all related matters, subject to the following amendments:

- a) The Budget referenced in the Final Order shall be replaced with the Revised Budget attached hereto as Exhibit A.
- b) Exhibit H of the DIP Agreement, as applicable to the use of Cash Collateral under paragraph 24 of the Final Order, shall be replaced with Exhibit B hereto.
- c) The final sentence of paragraph 16 of the Final Order shall be replaced with the text set forth below:

“Except as otherwise provided in this paragraph 16, no waiver, modification, or amendment of any of the provisions of any DIP Document as they relate to the use of Cash Collateral shall be effective unless set forth in writing, signed on behalf of the Prepetition Agent, the Prepetition Lenders and the Debtors, and approved by the Court on notice.”

- d) Paragraph 23 of the Final Order shall be replaced, in its entirety, with the text below:

“On the Commitment Termination Date all DIP Obligations shall be immediately due and payable, and all commitments to extend credit will terminate.”

- e) The opening phrase of Paragraph 24 of the Final Order shall be

replaced with the text set forth below:

“The following shall constitute an event of default under this Final Order, unless expressly waived in writing by the Prepetition Agent or Prepetition Lenders (collectively, the “Events of Default”)

f) The affirmative covenant in Section 5.15(b) of the DIP Agreement (as referenced in section 8.1(c) of the DIP Agreement) shall be replaced with the text set forth below and shall be applicable for purposes of determining if an Event of Default has occurred:

Subject to the Talon Business having been sold and the potential sale of the LTC Business, the Credit Parties and their Subsidiaries shall continue to engage in the business of the same general types as now conducted by them.

g) Paragraph 29 of the Final Order shall be replaced, in its entirety, with the text set forth below:

“29) Carve Out.

- a) *Carve Out*. As used in this Final Order, the “Carve Out” shall encompass the following expenses: (a) fees pursuant to 28 U.S.C. § 1930 and any fees payable to the clerk of the Bankruptcy Court, (b) following the occurrence of a Triggering Event (as defined below) an aggregate amount incurred upon and after the occurrence of such Triggering Event not to exceed \$150,000 (the “Carve Out Amount”) for all allowed fees, and reimbursement for disbursements of, professionals retained by the Debtors and/or the Official Committee and any allowed expense reimbursement claims of members of the Official Committee (the “Professional Fee and Member Payments”), and (c) without reducing the Carve Out Amount, all Professional Fee and Member Payments allowed, or subsequently allowed, and payable under sections 330 and 331 of the Bankruptcy Code, to the extent incurred prior to such

Triggering Event (the "Pipeline Period") and consistent with the Budget. Immediately following the entry of this First Amended Order, the Carve Out Amount shall be funded with Net Asset Sale Proceeds from the Talon Sale into an escrow account held by counsel for the Debtors. In the event that the Carve Out Amount is not used by the conclusion of these cases, such funds shall be distributed to the Prepetition Agent on behalf of the Prepetition Lenders for application in accordance with the Prepetition Credit Documents. The Carve Out Amount shall be senior in priority to the Prepetition Facility Liens, the Credit Facility Adequate Protection Liens, and the Credit Facility Superpriority Claims. As used in this paragraph 29, the term "Triggering Event" shall mean the date the Prepetition Agent or the Prepetition Lenders provide to the Prepetition Borrowers, with a copy to the Prepetition Borrowers' counsel and the Official Committee's counsel, a notice of (i) an Event of Default and (ii) termination of the Pipeline Period for purposes of the Carve Out.

- b) *No Direct Obligation to Pay Professional Fees; No Waiver of Right to Object to Fees.* The Prepetition Agent and Prepetition Lenders shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any professionals retained by the Debtors, the Official Committee and/or any other statutory committee (if one is appointed) incurred in connection with the Cases or any Successor Cases. Nothing in the Final Order, this First Amended Order or otherwise shall be construed (i) to obligate the Prepetition Agent or Prepetition Lenders, in any way to pay compensation to or to reimburse expenses of any professionals retained by the Debtors, the Official Committee and/or any other statutory committee appointed, or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement; (ii) to increase the Carve Out Amount if Allowed Professional Fees incurred after a Triggering Event exceed the Carve Out Amount; (iii) as consent to the allowance of any professional fees or expenses of any professionals retained by the Debtors, the Official Committee and/or any other statutory committee appointed; or

(iv) to affect the right of the Prepetition Agent or Prepetition Lenders to object to the allowance and payment of such fees and expenses.”

3. The Debtors are authorized, in respect of the DIP Agreement, to enter into the pay-off confirmation letter attached hereto as Exhibit C (the “Payoff Letter”).

4. The releases contained in the Payoff Letter are approved.


5. Subject to the Payoff Letter, the Debtors’ obligations under the DIP Agreement are satisfied and released in full.

6. Consistent with the mutual agreement of the parties, no occurrences prior to entry of this First Amended Order shall be deemed an Event of Default in the use of Cash Collateral under Paragraph 24 of the Final Order, including without limitation: (i) the failure of the Debtors to pay to the DIP Agent and the Prepetition Agent the entirety of the Net Asset Sale Proceeds from the Talon Sale on the first business day following receipt of Net Asset Sale Proceeds, as required by the DIP Agreement, (ii) the failure of the Debtors to satisfy any Milestone set forth in Exhibit H of the DIP Agreement (as it existed prior to this First Amended Order), or (iii) the failure of the Debtors to remain in compliance with the Budget (as it existed prior to this First Amended Order and solely to the extent disclosed to the Prepetition Lenders prior to entry of this First Amended Order).

7. This First Amended Order shall be immediately effective.

8. This Court has and will retain jurisdiction to enforce the Final Order as amended by this First Amended Order.

Dated: April 8, 2014
Wilmington, DE


THE HONORABLE PETER J. WALSH
UNITED STATES BANKRUPTCY JUDGE