

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

In re:

PERNIX SLEEP, INC., *et al.*¹

Debtors.

Chapter 11

Case No. 19-10323 (CSS)

Jointly Administered

Ref. No. 26

**ORDER (I) APPROVING SALE PROCEDURES FOR SALE OF
DEBTORS' ASSETS, (II) APPROVING STALKING HORSE BID
PROTECTIONS, (III) SCHEDULING AUCTION FOR, AND HEARING TO APPROVE,
SALE OF DEBTORS' ASSETS, (IV) APPROVING FORM AND MANNER OF
NOTICES OF SALE, AUCTION AND SALE HEARING, (V) APPROVING
ASSUMPTION AND ASSIGNMENT PROCEDURES AND
(VI) GRANTING RELATED RELIEF**

Upon the motion (the "Sale Motion")² of Pernix Sleep, Inc. and its affiliates that are debtors in possession in the above captioned chapter 11 cases (each, a "Debtor" and together, the "Debtors") for entry of an order, pursuant to sections 105(a), 363, 365, 503 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004 and 6006 and 9014 and Local Bankruptcy Rules 2002-1, 6004-1 and 9006-1, (i) authorizing and approving the Sale Procedures, substantially in the form attached hereto as Exhibit 1, in connection with the sale of the Assets, (ii) approving the Expense Reimbursement Amount for the Stalking Horse Bidder in accordance with the terms and conditions set forth in the Stalking Horse Agreement and the Sale Procedures, (iii) scheduling the Auction and the Sale Hearing to consider approval of the proposed Sale, (iv)

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, where applicable, are: Pernix Therapeutics Holdings, Inc. (4736), Pernix Therapeutics, LLC (1128), Pernix Manufacturing, LLC (1236), Pernix Sleep, Inc. (1599), Cypress Pharmaceuticals, Inc. (1860), Hawthorn Pharmaceuticals, Inc. (2769), Macoven Pharmaceuticals, L.L.C. (4549), Gaine, Inc. (3864), Respicopea, Inc. (1303), Pernix Ireland Limited (3106PH), Pernix Ireland Pain Designated Activity Company (0190LH), Pernix Holdco 1, LLC, Pernix Holdco 2, LLC, Pernix Holdco 3, LLC. The Debtors' corporate headquarters and mailing address is 10 North Park Place, Suite 201, Morristown, NJ 07960.

² Each capitalized term used herein but not otherwise defined herein shall have the meaning ascribed to it in the Sale Motion.

authorizing and approving the Noticing Procedures and (v) approving the Assumption and Assignment Procedures, in each case, as more fully described in the Sale Motion; and the Court having reviewed and considered the Sale Motion, the Sedor Declaration and the Erickson Declaration; and the Court having held a hearing on the Sale Motion (the “Sale Procedures Hearing”); and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, and to the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. The Court has jurisdiction to consider the Sale Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M), and (O). Venue of the Chapter 11 Cases and the Sale Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

C. The Debtors’ proposed notice of the Sale Motion, the Sale Procedures, the Sale Procedures Hearing and the proposed entry of this Order is (i) appropriate and reasonably calculated to provide all interested parties with timely and proper notice, (ii) in compliance with all applicable requirements of the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules and (iii) adequate and sufficient under the circumstances of the Chapter 11

Cases, and no other or further notice is required. A reasonable opportunity to object or be heard regarding the relief requested in the Sale Motion (including, without limitation, with respect to the Sale Procedures and Expense Reimbursement Amount) has been afforded to all interested persons and entities, including, but not limited to, the Notice Parties.

D. The Sale Procedures in the form attached hereto as Exhibit 1 are fair, reasonable and appropriate, are designed to maximize creditor recoveries from a sale of the Assets and permit the Debtors to comply with their obligations under the DIP Credit Agreement and DIP Orders (as each is defined in the DIP Motion).

E. The Sale Procedures and the Stalking Horse Agreement were each negotiated in good faith and at arm's length among the Debtors and the Stalking Horse Bidder. The Stalking Horse Agreement represents the highest or otherwise best offer that the Debtors have received to date to purchase the Transferred Assets. The selection of the Stalking Horse Bidder was fair and appropriate under the circumstances and in the best interests of the Debtors' estates.

F. The Debtors have demonstrated a compelling and sound business justification for the Court to enter this Order and thereby: (i) approve of the Sale Procedures as contemplated by the Stalking Horse Agreement, (ii) authorize the Expense Reimbursement Amount, under the terms and conditions set forth in the Stalking Horse Agreement and the Sale Procedures, (iii) set the dates of the Bid Deadline, Auction (if needed), Sale Hearing and other deadlines set forth in the Sale Procedures, (iv) approve the Noticing Procedures and the forms of notice and (v) approve the Assumption and Assignment Procedures and the forms of relevant notice. Such compelling and sound business justification, which was set forth in the Sale Motion, the Sedor Declaration, the Erickson Declaration and on the record at the Sale Procedures Hearing, are

incorporated herein by reference and, among other things, form the basis for the findings of fact and conclusions of law set forth herein.

G. The Expense Reimbursement Amount, as approved by this Order, is fair and reasonable and provides a benefit to the Debtors' estates and stakeholders.

H. If triggered in accordance with the terms of the Stalking Horse Agreement, the payment of the Expense Reimbursement Amount, under this Order and upon the conditions set forth in the Stalking Horse Agreement and the Sale Procedures, is (i) an actual and necessary cost of preserving the Debtors' estates, within the meaning of sections 503(b) and 507(a) of the Bankruptcy Code, (ii) reasonably tailored to encourage, rather than hamper, bidding for the Assets, by providing a baseline of value, increasing the likelihood of competitive bidding at the Auction, and facilitating participation of other bidders in the sale process, thereby increasing the likelihood that the Debtors will receive the best possible price and terms for the Assets, (iii) of substantial benefit to the Debtors' estates and stakeholders and all parties in interest herein, (iv) reasonable and appropriate, (v) a material inducement for, and conditions necessary to, ensure that the Stalking Horse Bidder will continue to pursue its proposed agreement to purchase the Transferred Assets and (vi) reasonable in relation to the Stalking Horse Bidder's efforts and to the magnitude of the Sale and the Stalking Horse Bidder's lost opportunities resulting from the time spent pursuing such transaction. Without the Expense Reimbursement Amount, the Stalking Horse Bidder is unwilling to remain obligated to consummate the Sale or otherwise be bound under the Stalking Horse Agreement (including the obligation to maintain its committed offer while such offer is subject to higher or better offers as contemplated by the Sale Procedures).

I. The Stalking Horse Bidder is a third-party purchaser and none of its affiliates, subsidiaries, officers, directors, members, partners or principals, or any of their respective representatives, successors or assigns is an “insider” of any of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code.

J. The legal and factual bases set forth in the Sale Motion establish just cause for the relief granted herein. Entry of this Order is in the best interests of the Debtors and their estates, creditors, interest holders and all other parties in interest herein.

K. The Bidding Procedures comply with the requirements of Local Rule 6004-(1)(c).

L. The form and manner of notice to be delivered pursuant to the Noticing Procedures and the Assumption and Assignment Procedures (including the Sale Notice attached hereto as Exhibit 2 and the Potential Assumption and Assignment Notice attached hereto as Exhibit 3) are reasonably calculated to provide each Contract Counterparty to the Transferred Contracts with proper notice of the potential assumption and assignment of such Transferred Contracts by the Successful Bidder(s) (including the Stalking Horse Bidder) or any of their known proposed assignees (if different from the Successful Bidder) and the requirement that each such Contract Counterparty assert any objection to the proposed Cure Claims prior to the Assumption and Assignment Objection Deadline or otherwise be barred from asserting claims arising from events occurring following assumption and assignment of such Transferred Contracts.

ORDERED, ADJUDGED AND DECREED THAT:

1. The relief requested in the Sale Motion is hereby granted as set forth herein.
2. All objections to the Sale Motion solely as it relates to the relief requested therein that have not been adjourned, withdrawn or resolved are overruled in all respects on the merits.

3. The Sale Procedures, in substantially the form attached hereto as Exhibit 1, are approved and fully incorporated into this Order and the Debtors are authorized, but not directed, to act in accordance therewith. The failure to specifically include a reference to any particular provision of the Sale Procedures in this Order shall not diminish or impair the effectiveness of such provision.

4. The Stalking Horse Bidder is deemed a Qualified Bidder for all purposes, and the Stalking Horse Bid as set forth in the Stalking Horse Agreement is deemed a Qualified Bid. In the event that no other Qualified Bids are submitted, the Stalking Horse Bidder shall be deemed the Successful Bidder.

5. Subject to final Court approval at the Sale Hearing, the Debtors are authorized to enter into the Stalking Horse Agreement with the Stalking Horse Bidder

6. Bid Deadline. As further described in the Sale Procedures, the Bid Deadline shall be at **5:00 p.m.³ on April 5, 2019**.

7. Auction. In the event the Debtors receive, on or before the Bid Deadline, one or more Qualified Bids in addition to the Stalking Horse Bid, an Auction shall be conducted at the offices of Davis Polk & Wardwell LLP, 450 Lexington Ave., New York, New York 10017 at **10:00 a.m. on April 11, 2019**, or such later time on such day or such other place as the Debtors shall notify all Qualified Bidders (including the Stalking Horse Bidder). The Debtors are authorized to conduct the Auction in accordance with the Sale Procedures.

8. The schedule of events set forth below relating to the Sale Procedures is hereby approved in its entirety:

³ All times set forth herein are prevailing Eastern Time.

April 5, 2019, at 5:00 p.m.	Bid Deadline
April 8, 2019, at 4:00 p.m.	Sale Objection Deadline
April 8, 2019, at 4:00 p.m.	Cure Objection Deadline/Adequate Assurance Objection Deadline for Stalking Horse Bidder
April 9, 2019, at 12:00 p.m.	Deadline for Debtors to notify Potential Bidders of their status as Qualified Bidders
April 11, 2019, at 10:00 a.m.	Auction to be held at offices of Davis Polk (if necessary)
Prior to or at Sale Hearing	Adequate Assurance Objection Deadline if Stalking Horse Bidder is not Successful Bidder
April 15, 2019, at 9:30 a.m. at 2:00 p.m.	Sale Hearing

9. If no Qualified Bids with respect to the Assets other than the Stalking Horse Bid are received on or before the Bid Deadline, the Debtors shall not conduct the Auction with respect to the Assets, and instead shall seek approval of the sale of the Transferred Assets pursuant to the Stalking Horse Agreement at the Sale Hearing. If the Auction is not conducted, the Debtors will file with the Court, serve on the Sale Notice Parties and cause to be published on the Case Information Website a notice (i) indicating that the Auction for the Transferred Assets has been cancelled, (ii) indicating that the Stalking Horse Bidder is the Successful Bidder with respect to the Transferred Assets, (iii) listing the Executory Contracts designated as Transferred Contracts by the Stalking Horse Bidder and (iv) setting forth the date and time of the Sale Hearing.

10. The Noticing Procedures as set forth in this Order and the Sale Motion, including the form of Sale Notice attached hereto as Exhibit 2, is hereby approved.

11. Within one Business Day after entry of this Order, or as soon as reasonably practicable thereafter, the Debtors shall serve the Sale Notice by first-class mail upon the Sale Notice Parties. On or about the same date, the Debtors will publish the Sale Notice on the Case Information Website.

12. Service of the Sale Notice on the Sale Notice Parties in the manner described in the Order constitutes good and sufficient notice of the Auction and the Sale Hearing. No other or further notice is required.

13. Sale Objections. Objections to the relief sought in the Sale Order must be (a) be in writing, (b) state, with specificity, the legal and factual bases thereof, (c) be filed with the Court by no later than **4:00 p.m. on April 8, 2019** and (d) be served on (i) proposed counsel for the Debtors, (y) Davis Polk & Wardwell LLP, 450 Lexington Ave., New York, New York 10017, Attn: Marshall S. Huebner (marshall.huebner@davispolk.com), Eli J. Vonnegut (eli.vonnegut@davispolk.com) and Christopher S. Robertson (christopher.robertson@davispolk.com) and (z) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn: Adam G. Landis (landis@lrclaw.com) and Kerri K. Mumford (mumford@lrclaw.com), (ii) counsel to the Stalking Horse Bidder, Skadden, Arps, Slate, Meagher & Flom LLP, 4 Times Sq., New York, NY 10036, Attn: Lisa Laukitis (lisa.laukitis@skadden.com) and Evan A. Hill (evan.hill@skadden.com), (iii) counsel to the Committee, (y) Akin Gump Strauss Hauer & Feld LLP, Bank of America Tower, 1 Bryant Park, New York, NY 10036, Attn: Arik Preis (apreis@akingump.com) and Gary A. Ritacco (gritacco@akingump.com) and (z) Potter Anderson & Corroon LLP, 1313 N. Market St., Sixth Floor, P.O. Box 951, Wilmington, DE 19801, Attn: Jeremy W. Ryan (jryan@potteranderson.com) and R. Stephen McNeill (rmcneill@potteranderson.com); and (iv) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware, 19801, Attn.: Benjamin A. Hackman, Esq. (Benjamin.a.hackman@doj.gov) (collectively, the "Objection Notice Parties").

14. Sale Hearing. The Sale Hearing shall be held in the United States Bankruptcy Court for the District of Delaware, Courtroom 6, 824 North Market Street, 5th Floor, Wilmington, Delaware 19801, on **April 15, 2019 at 9:30 a.m.**; provided, however, that the Sale Hearing may be adjourned (with the reasonable consent of the Stalking Horse Bidder if the Stalking Horse Bidder is the Successful Bidder), from time to time, without further notice to creditors or parties in interest other than by filing a notice on the Court's docket.

15. Stalking Horse Protections. Pursuant to sections 105, 363, 364, 503 and 507 of the Bankruptcy Code, the Debtors are hereby authorized and directed to pay the Expense Reimbursement Amount to the Stalking Horse Bidder in accordance with the terms of the Stalking Horse Agreement without further order of this Court. The dollar amount of the Expense Reimbursement Amount (as defined in the Stalking Horse Agreement) is hereby approved. The Expense Reimbursement Amount shall be allowed as an administrative expense claim in the Chapter 11 Cases under section 364(c)(1) of the Bankruptcy Code. The Stalking Horse Bidder shall be entitled to receive the Expense Reimbursement Amount in accordance with the terms and conditions of the Stalking Horse Agreement and the Sale Procedures. The Debtors' obligation to pay the Expense Reimbursement Amount shall be the joint and several obligations of the Debtors and shall survive termination of the Stalking Horse Agreement, dismissal or conversion of any of the Chapter 11 Cases, and confirmation of any plan of reorganization or liquidation.

16. Credit Bidding. Unless the Court orders otherwise, the Stalking Horse Bidder shall have the right to credit bid any portion and up to the entire amount of its outstanding secured claims, including without limitation, on account of its secured claims under the DIP Facility, Prepetition DDTL Term Facility or pursuant to the Prepetition Treximet Notes.

Notwithstanding anything to the contrary in this Order or the Sale Procedures, every dollar of a credit bid shall be treated the same as a dollar from a cash bid, and a cash bid shall not be deemed higher or otherwise better solely for the reason that it is a cash bid and not a credit bid.

17. Assumption and Assignment Procedures. The assumption and assignment procedures set forth in the Sale Motion and as modified by this Order (the “Assumption and Assignment Procedures”) are hereby approved.

18. Within one Business Day of entry of this Order, or as soon as a reasonably practicable thereafter, the Debtors shall file with the Court, and cause to be published on the Case Information Website, the Potential Assumption and Assignment Notice and the Executory Contract List, each of which shall be in form and substance acceptable to the Stalking Horse Bidder. The Potential Assumption and Assignment Notice shall (a) identify the potential Transferred Contracts, (b) list the Debtors’ good faith calculation of the Cure Claims with respect to such contracts, (c) expressly state that assumption or assignment of an Assumed Contract is not guaranteed and is subject to Court approval, (d) prominently display the deadline to file an Assumption and Assignment Objection and (e) prominently display the date, time and location of the Sale Hearing.

19. Simultaneously with the filing of the initial Executory Contract List with the Court, the Debtors shall also serve the Potential Assumption and Assignment Notice and the Executory Contract List on each relevant Contract Counterparty and all other parties requesting notice pursuant to Bankruptcy Rule 2002, via first class mail or electronic mail. The Stalking Horse Bidder shall promptly provide Adequate Assurance Information to any Contract Counterparty that requests it from the contacts provided on the Potential Assumption and Assignment Notice.

20. Objection Deadlines. Any Contract Counterparty may file an objection to the calculation of Cure Claims with respect to the Contract Counterparty's Executory Contracts, or to the assumption and assignment to the Stalking Horse Bidder of the Contract Counterparty's Executory Contracts, including with respect to adequate assurance of future performance of the Stalking Horse Bidder (any such objection, an "Assumption and Assignment Objection"). All Assumption and Assignment Objections filed by Contract Counterparties listed on the initial proposed Executory Contract List filed with the Court pursuant to paragraph 18 hereof must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules and Local Bankruptcy Rules, (c) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Claims the Contract Counterparty believes is required to cure defaults under the relevant Assumed Contract, (d) be filed by no later than **April 8, 2019, at 4:00 p.m.** (the "Assumption and Assignment Objection Deadline") and (e) be served on Objection Notice Parties.

21. Resolution of Assumption and Assignment Objections. If a Contract Counterparty files a timely Assumption and Assignment Objection by the Assumption and Assignment Objection Deadline and such objection is not resolved among the parties prior to the Sale Hearing, the Court will hear and determine such objection at the Sale Hearing.

22. Failure To File Timely Assumption and Assignment Objection. If a Contract Counterparty fails to file with the Court and serve on the Objection Notice Parties a timely Assumption and Assignment Objection, the Contract Counterparty shall be forever barred from asserting any such objection with regard to the assumption or assignment of its Assumed Contract, and notwithstanding anything to the contrary in the Assumed Contract, or any other document, the Cure Claims set forth in the Potential Assumption and Assignment Notice or the Supplemental Assumption and Assignment Notice shall be controlling and will be the only

amount necessary to cure outstanding defaults under the applicable Assumed Contract under section 365(b) of the Bankruptcy Code arising out of or related to any events occurring prior to the closing of the Sale, whether known or unknown, due or to become due, accrued, absolute, contingent or otherwise, and the Contract Counterparty shall be forever barred from asserting any additional cure or other amounts with respect to such Assumed Contract against the Debtors, the Successful Bidder or the property of any of them.

23. The Stalking Horse Bidder may modify the Executory Contract List and list of Transferred Contracts in accordance with the Stalking Horse Agreement and the Assumption and Assignment Procedures described in the Sale Motion and in this Order.

24. At any time at least three (3) Business Days before the date of the Auction (the "Pre-Auction Designation Date"), the Stalking Horse Bidder may designate in writing any Executory Contract as a Transferred Contract.

25. The Stalking Horse Bidder and/or the Successful Bidder(s) shall continue to be entitled to designate in writing any Executory Contract as a Transferred Contract following the Pre-Auction Designation Date; provided, that, unless otherwise agreed to in writing by and among the Debtors, the Successful Bidder(s) and the applicable counterparty, the Successful Bidder(s) shall pay all Cure Claims associated with the assumption of any such Transferred Contract, which payment shall be made at the Closing Date or, if later, on the effective date of the assumption and assignment of a Transferred Contract as set forth in a Supplemental Assumption and Assignment Notice (as defined below) (or, in either case, as soon as reasonably practicable thereafter) and, in the case of any Disputed Cure Claim, pursuant to an order of the Court.

26. In the event that an Executory Contract is not listed on the initially-filed Executory Contract List and is subsequently designated as a Transferred Contract, is designated a Transferred Contract pursuant to paragraph 25 hereof, or if the previously-stated Cure Claims in the initial Potential Assumption and Assignment Notice are modified, in each case in accordance with the Stalking Horse Agreement and the Assumption and Assignment Procedures, the Debtors shall promptly (x) serve a supplemental assumption and assignment notice (each, a “Supplemental Assumption and Assignment Notice”) by first class mail or electronic mail on the applicable Contract Counterparties setting forth the Debtors’ intention to assume and assign such Executory Contracts to the Successful Bidder (which notice shall include the applicable proposed Cure Claims) and (y) file with the Court, and cause to be published on the Case Information Website, the Supplemental Assumption and Assignment Notice. Each Supplemental Assumption and Assignment Notice will include the same information with respect to the applicable Assumed Contract as is required to be included in the Potential Assumption and Assignment Notice.

27. Any Contract Counterparty to an Executory Contract listed on a Supplemental Assumption and Assignment Notice may object to the proposed assumption or assignment of such Executory Contract, the Debtors’ proposed Cure Claims, if any, or the ability of the Stalking Horse Bidder or Successful Bidder to provide adequate assurance of future performance (a “Supplemental Assumption and Assignment Objection”). All Supplemental Assumption and Assignment Objections must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules and Local Bankruptcy Rules, (c) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Claims the Contract Counterparty believes is required to cure defaults under the relevant Assumed Contract, (d) be filed by no later than

fourteen (14) days from the date of service of such Supplemental Assumption and Assignment Notice and (e) be served on the Objection Notice Parties.

28. Resolution of Supplemental Assumption and Assignment Objections. If a Contract Counterparty files a timely Supplemental Assumption and Assignment Objection at least two Business Days prior to the Sale Hearing, the Court will hear and determine such objection at the Sale Hearing. If a Contract Counterparty files a timely Supplemental Assumption and Assignment Objection after two Business Days prior to the Sale Hearing, the Court will hear and determine such objection on an expedited basis, and if reasonably practicable no later than the closing of the Sale. If such objection has not been resolved prior to the closing of the Sale (whether by an order of the Court or by agreement with the Contract Counterparty), the Successful Bidder(s) shall pay as soon as reasonably practicable after the Closing Date any Disputed Cure Claim pursuant to an Order of the Bankruptcy Court or mutual agreement between the Debtors, the Successful Bidder(s) and the Contract Counterparty.

29. Promptly following the selection of the Successful Bid(s) and Alternate Bid(s), the Debtors shall file the Notice of Auction Results with the Court (which shall include the list of assumed Executory Contracts submitted with the Successful Bidder(s) Qualified Bid), cause the Notice of Auction Results to be published on the Case Information Website and serve the Notice of Auction Results and, if the Successful Bidder is not the Stalking Horse Bidder, Adequate Assurance Information for the Successful Bidder on (i) each Contract Counterparty for a contract designated by the Successful Bidder for assumption and assignment, and (ii) each Contract Counterparty to any known Contract that may later be designated by the Successful Bidder for assumption and assignment, in each case by overnight mail or electronic mail. Objections of any Contract Counterparty related solely to the adequate assurance of future performance provided

by the Successful Bidder, if the Successful Bidder is not the Stalking Horse Bidder, must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules and Local Bankruptcy Rules, (c) state, with specificity, the legal and factual bases thereof, (d) be filed prior to or at than the Sale Hearing⁴ and (e) be served on the Objection Notice Parties.

30. The Contract Counterparties shall not use any Adequate Assurance Information for any purpose other than to (i) evaluate whether adequate assurance requirements under Bankruptcy Code section 365(f)(2)(B) and, if applicable, Bankruptcy Code section 365(b)(3), have been satisfied, and (ii) to support any objection to adequate assurance filed by the Contract Counterparty. The Debtors shall provide Adequate Assurance Information to applicable Contract Counterparties on a public basis with any confidential information redacted. The Contract Counterparties wishing to receive confidential Adequate Assurance Information shall enter into a nondisclosure agreement in form and substance acceptable to (x) the Debtors and (y) the Stalking Horse Bidder or Successful Bidder(s), as applicable.

31. For the avoidance of doubt and notwithstanding anything herein to the contrary, except as expressly set forth herein, nothing in this Sale Procedures Order, the Sale Procedures or the Sale Motion shall, or shall be construed to, in any way amend, impair, prejudice, alter or otherwise modify the terms of the Stalking Horse Agreement or the Stalking Horse Bidder's rights thereunder, and the Stalking Horse Agreement shall remain in full force and effect unless terminated in accordance with its terms.

32. The Debtors are authorized to take all such actions as are necessary or appropriate to implement the terms of this Order.

⁴ If the Stalking Horse Bidder is the Successful Bidder, objections to adequate assurance must be filed by the deadlines set forth in paragraphs 20 or 27 hereof, as applicable.

33. Compliance with the notice provisions set forth herein shall constitute sufficient notice of the Debtors' proposed sale of the Debtors' assets free and clear of liens, claims, interests and encumbrances, pursuant to Bankruptcy Code section 363(f) and otherwise, and except as set forth in this Order, no other or further notice of the sale shall be required to be provided by the Debtors.

34. The Sale Hearing may be continued, from time to time, without further notice to creditors or parties in interest other than by announcement of said continuance before the Court on the date scheduled for such hearing or in the hearing agenda for such hearing.

35. Except for the Stalking Horse Bidder, no other party submitting an offer or bid for the Assets shall be entitled to any expense reimbursement, break-up, termination or similar fee or payment.

36. Notwithstanding anything in this Order to the contrary, unless Cigna (as defined in the Objection of Cigna Entities to the Sale Motion [D.I. 103] (the "Cigna Objection")) and the Debtors agree otherwise, Debtors shall provide to Cigna, through its counsel of record, no later than five (5) business days prior to the Sale Hearing: (i) written notice of the Debtors' irrevocable decision as to whether or not it proposes to assume and assign any or all the Cigna Contracts (as defined in the Cigna Objection) as part of the Sale; (ii) the identity of the proposed assignee; and (iii) adequate assurance information for the proposed assignee, including a good faith estimate as to the number of employees of the Debtors who will become employees of the assignee.

37. Except as otherwise provided in the Stalking Horse Agreement, this Order or the Sale Procedures, the Debtors further reserve the right as they may reasonably determine to be in the best interests of their estates (in consultation with the Committee) to: (a) determine which

bidders are Qualified Bidders; (b) determine which bid are Qualified Bids; (c) determine which Qualified Bid is the highest or otherwise best proposal and which is the next highest or otherwise best proposal; (d) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Sale Procedures or the Bankruptcy Code, or (iii) contrary to the best interests of the Debtors and their estates; (d) impose additional terms and conditions with respect to all potential bidders; (e) extend the deadlines set forth herein; and/or (f) continue or cancel the Auction and/or Sale Hearing in open court without further notice.

38. All persons or entities that participate in the bidding process or the Auction shall be deemed to have knowingly and voluntarily submitted to the exclusive jurisdiction of this Court with respect to all matters related to the terms and conditions of the Transferred Assets, the Auction and any transaction contemplated herein.

39. This Order shall be binding on the Debtors, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the estates of the Debtors.

40. Any Bankruptcy Rule (including, but not limited to, Bankruptcy Rule 6004(h), 6006(d), 7062 or 9014) or Local Bankruptcy Rule that might otherwise delay the effectiveness of this Order is hereby waived, and the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

41. For the reasons set forth in the Sale Motion, Bankruptcy Rule 6003 is satisfied.

42. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

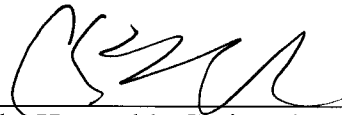
43. Proper, timely, adequate and sufficient notice of the Sale Motion has been provided in accordance with and satisfaction of the Bankruptcy Code, the Bankruptcy Rules and

the Local Bankruptcy Rules and no other or further notice of the Sale Motion or the entry of this Order shall be required.

44. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby modified with respect to the Debtors to the extent necessary, without further order of the Court, to allow the Stalking Horse Bidder to deliver any notice provided for in the Stalking Horse Agreement, including, without limitation, a notice terminating the Stalking Horse Agreement.

45. The Court shall retain jurisdiction over any matters related to or arising from the implementation or interpretation of this Order. All matters arising from or related to the implementation of this Order may be brought before the Court as a contested matter, without the necessity of commencing an adversary proceeding. To the extent any provisions of this Order shall be inconsistent with the Sale Motion or the Sale Procedures, the terms of this Order shall control.

Dated: March 22, 2019
Wilmington, Delaware



The Honorable Christopher S. Sontchi
Chief United States Bankruptcy Judge

Exhibit 1

Proposed Sale Procedures

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

In re:

PERNIX SLEEP, INC., *et al.*¹

Debtors.

Chapter 11

Case No. 19-10323 (CSS)

Jointly Administered

SALE PROCEDURES

Pernix Sleep, Inc. and its affiliates that are debtors and debtors in possession (collectively, the “Debtors”) in the jointly administered chapter 11 cases (collectively, the “Chapter 11 Cases”) currently pending in the United States Bankruptcy Court for the District of Delaware (the “Court”) have entered into that certain stalking horse Asset Purchase Agreement, dated February 18, 2019 (as amended, modified or supplemented, the “Stalking Horse Agreement”) ² with Phoenix Top Holdings LLC (the “Stalking Horse Bidder”).

Pursuant to the Stalking Horse Agreement, and subject to the terms and conditions thereof, the Stalking Horse Bidder has agreed to acquire the Transferred Assets from the Debtors and to assume certain of the Debtors’ liabilities. In order for the Debtors to attain the highest or otherwise best offer for their assets, and to maximize the value of their estates, on **[March 22], 2019**, the Court entered the *Order (i) Approving Sale Procedures for Sale of Debtors’ Assets, (ii) Approving Stalking Horse Bid Protections, (iii) Scheduling Auction for, and Hearing To Approve Sale of Debtors’ Assets, (iv) Approving Form and Manner of Notices of Sale, Auction and Sale Hearing, (v) Approving Assumption and Assignment Procedures and (vi) Granting Related Relief*, [D.I. ___] (the “Sale Procedures Order”) pursuant to which the Court, among other things, approved these Sale Procedures (these “Sale Procedures”) to be employed to solicit and evaluate bids for the purchase of all or substantially all of the Debtors’ assets (or one or more classes of assets as set forth herein), including (i) the Transferred Assets and (ii) any portion of the Debtors’ assets that are not Transferred Assets (the “Other Assets”) ((i) and (ii) together, the “Assets”). A bid may be structured as either (1) an offer to purchase all of the Transferred Assets (together with any or

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, where applicable, are: Pernix Therapeutics Holdings, Inc. (4736), Pernix Therapeutics, LLC (1128), Pernix Manufacturing, LLC (1236), Pernix Sleep, Inc. (1599), Cypress Pharmaceuticals, Inc. (1860), Hawthorn Pharmaceuticals, Inc. (2769), Macoven Pharmaceuticals, L.L.C. (4549), Gaine, Inc. (3864), Respicopea, Inc. (1303), Pernix Ireland Limited (3106PH), Pernix Ireland Pain Designated Activity Company (0190LH), Pernix Holdco 1, LLC (N/A), Pernix Holdco 2, LLC (N/A), Pernix Holdco 3, LLC (N/A). The Debtors’ corporate headquarters and mailing address is 10 North Park Place, Suite 201, Morristown, NJ 07960.

² A copy of the Stalking Horse Agreement is available free of charge on the Debtors’ case management website, located at <https://cases.primeclerk.com/pernix>. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Stalking Horse Agreement.

all of the Other Assets) (a “Full Bid”)³ or (2) an offer to purchase one or more (but not all) of any of the following classes of assets (such offer, a “Partial Bid”):

- (a) All (but not less than all) of the Debtors’ rights, title and interests in, to and under all property consisting of, relating to, or developed or used in connection with Zohydro, including all intellectual property, contractual rights, inventory, accounts receivable, and other working capital assets relating to Zohydro (the “Zohydro Assets”). The Zohydro Assets that constitute inventory, accounts receivable, and other working capital assets net of related Product Working Capital Liabilities are referred to herein as, collectively, the “Zohydro W/C Assets.” The Zohydro Assets other than the Zohydro W/C Assets are referred to herein as, collectively, the “Zohydro IP Assets.”
- (b) All (but not less than all) of the Debtors’ rights, title and interests in, to and under all property consisting of, relating to, or developed or used in connection with:
 - a. Silenor, including all intellectual property, contractual rights, inventory, accounts receivable, and other working capital assets relating to Silenor (the “Silenor Assets”). The Silenor Assets that constitute inventory, accounts receivable, and other working capital assets net of related Product Working Capital Liabilities are referred to herein as, collectively, the “Silenor W/C Assets.” The Silenor Assets other than the Silenor W/C Assets are referred to herein as, collectively, the “Silenor IP Assets,” and
 - b. the products listed on Schedule G-1 to the Prepetition Delayed Draw Term Loan Agreement and any other generics assets owned by the Sellers (the “Generics Assets”). The Generics Assets that constitute inventory, accounts receivable, and other working capital assets net of related Product Working Capital Liabilities are referred to herein as, collectively, the “Generics W/C Assets.” The Generics Assets other than the Generics W/C Assets are referred to herein as, collectively, the “Generics IP Assets.”
- (c) All (but not less than all) of the Debtors’ rights, title and interests in, to and under all property consisting of, relating to, or developed or used in connection with Treximet, including all intellectual property and contractual rights, inventory, accounts receivable, and other working capital assets relating to Treximet (the “Treximet Assets”). The Treximet Assets that constitute inventory, accounts receivable, and other working capital assets net of related Product Working Capital Liabilities assumed are referred to herein as, collectively, the “Treximet W/C Assets” and, together with the Zohydro W/C Assets, the Silenor W/C Assets, and the Generics W/C Assets, the “W/C Assets.” The Treximet Assets other than the Treximet W/C Assets are referred to herein as, collectively, the “Treximet IP Assets.”

³ A Full Bid is not required to include a bid for the Services Agreement (as defined below).

- (d) All (but not less than all) of the Debtors' rights, title and interests in, to and under all property consisting of or relating to any equity or debt securities issued by, or obligations of, Nalpropion Pharmaceuticals, Inc., in each case which are owned by Pernix Ireland Pain Designated Activity Company (the "Nalpropion Assets"); *provided*, that, for the avoidance of doubt, the Nalpropion Assets shall not include (i) that certain Services Agreement, dated as of July 27, 2018, between Nalpropion and Pernix Therapeutics, LLC (as amended from time to time, the "Services Agreement") or (ii) the Transitional Distribution Services Agreement, dated as of July 27, 2018, between Nalpropion and Pernix Therapeutics, LLC.
- (e) The Debtors' rights, title and interests in, to and under any or all of the Other Assets.

Any interested bidder should contact, as soon as practicable:

Guggenheim Securities, LLC⁴
330 Madison Avenue
New York, NY 10017
Attn: Peter Schwaikert, Stuart Erickson
Peter.Schwaikert@guggenheimpartners.com
Stuart.Erickson@guggenheimpartners.com
(tel.) 212-381-4134
(tel.) 212-518-9005

These Sale Procedures describe, among other things, (i) the Assets offered for sale, (ii) the manner in which bidders and bids may become Qualified Bidders and Qualified Bids (each as defined below), respectively, (iii) the procedures for conduct of the Auction (as defined below), if necessary, (iv) the procedures for selection of the Successful Bidder(s) and Alternate Bidder(s) (each as defined below) and (v) the procedures for approval of the sale of the Assets to the Successful Bidder(s) by the Court.

1. Participation Requirements

(a) Interested Parties

Unless otherwise ordered by the Court for cause shown, to participate in the bidding process described herein (the "Bidding Process"), each interested person or entity (each an "Interested Party") must deliver the following documents (the "Preliminary Bid Documents") (unless previously delivered) to Guggenheim Securities, if determined to be necessary by the Debtors in their discretion following reasonable consultation with the Official Committee of Unsecured Creditors (the "Committee") (such discretion, the "Permitted Discretion"):

- i. an executed confidentiality agreement in form and substance acceptable to the Debtors;

⁴ Guggenheim Securities, LLC, in its capacity as investment banker the Debtors, is referred to herein as "Guggenheim Securities."

- ii. a statement and other factual support demonstrating, to the Debtors' satisfaction, that the Interested Party has a *bona fide* interest in purchasing any or all of the Assets; and
- iii. if practicable, a description of the nature and extent of any due diligence the Interested Party wishes to conduct and the date in advance of the Bid Deadline (as defined below) by which such due diligence will be completed; and
- iv. sufficient information to allow the Debtors, in their Permitted Discretion, to determine that the Interested Party has the financial wherewithal and any required internal corporate, legal or other authorizations to close the sale transaction,⁵ including, but not limited to, current audited financial statements of the Interested Party (or such other form of financial disclosure acceptable to the Debtors in their Permitted Discretion) or, if the Interested Party is an entity formed for the purpose of acquiring any or all of the Assets, (A) current audited financial statements of the equity holder(s) (the "Sponsor(s)") of the Interested Party (or such other form of financial disclosure acceptable to the Debtors in their Permitted Discretion), (B) a written commitment acceptable to the Debtors in their Permitted Discretion that the Sponsor(s) are responsible for the Interested Party's obligations in connection with the Bidding Process and (C) copies of any documents evidencing any financing commitments necessary to consummate the transaction.

If the Debtors determine in their Permitted Discretion after receipt of the Preliminary Bid Documents that an Interested Party's desire to become a Potential Bidder is solely on account of a *bona fide* interest in purchasing any or all of the Assets, such Interested Party will be deemed a "Potential Bidder" and the Debtors will deliver to such Potential Bidder (a) an electronic copy of the Stalking Horse Agreement and (b) access to the Debtors' confidential electronic data room concerning the Assets (the "Data Room"), which access may be limited by the Debtors in their Permitted Discretion.

(b) Due Diligence

Until the Bid Deadline, in addition to granting access to the Data Room, the Debtors will provide Potential Bidders with reasonable due diligence access and additional

⁵ This information may include, but is not limited to, current audited financial statements of the Interested Party (or such other form of financial disclosure acceptable to the Debtors in their Permitted Discretion) or, if the Interested Party is an entity formed for the purpose of acquiring any or all of the Assets, (A) current audited financial statements of the equity holder(s) (the "Sponsor(s)") of the Interested Party (or such other form of financial disclosure acceptable to the Debtors in their Permitted Discretion), (B) a written commitment acceptable to the Debtors in their Permitted Discretion that the Sponsor(s) are responsible for the Interested Party's obligations in connection with the Bidding Process and (C) copies of any documents evidencing any financing commitments necessary to consummate the transaction.

information, as may be requested by a Potential Bidder. If any Potential Bidder is (or is affiliated with) a competitor of the Debtors, the Debtors may withhold any information or due diligence access from such Potential Bidder that the Debtors determine is sensitive, proprietary or otherwise not appropriate for disclosure.

All due diligence requests shall be directed to Guggenheim Securities. Only Potential Bidders will be eligible to receive due diligence information from the Debtors. To the extent additional due diligence is made available to Potential Bidders that was not previously made available to the Stalking Horse Bidder, it shall also be made available to the Stalking Horse Bidder no later than two (2) Business Days after the date the Debtors make such information available to any Potential Bidder, and in no event later than one (1) Business Day prior to the Auction.

Each Potential Bidder will comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors regarding such Potential Bidder and its contemplated transaction. Failure by a Potential Bidder to comply with requests for additional information and due diligence access may be a basis for the Debtors to determine, in their Permitted Discretion, that a bid made by such Qualified Bidder is not a Qualified Bid. Unless otherwise determined by the Debtors in their Permitted Discretion, in consultation with the Committee, the availability of due diligence to a Potential Bidder will cease immediately if (i) the Potential Bidder does not become, or the Debtors determine in their Permitted Discretion that the Potential Bidder is not likely to become, a Qualified Bidder, (ii) the Potential Bidder violates the terms of its confidentiality agreement, (iii) the Debtors become aware that the information set forth on the Preliminary Bid Documents is inaccurate or misleading or of any other reason to doubt such Potential Bidder's ability to close its contemplated transaction, or (iv) the Bidding Process is terminated in accordance with its terms. After the Bid Deadline (as defined below), the Debtors shall have no obligation to furnish any additional due diligence to any Potential Bidder.

2. Qualified Bids

Each offer, solicitation or proposal by a Potential Bidder must satisfy each of the following conditions to be deemed a "Qualified Bid," and for the Potential Bidder to be deemed a "Qualified Bidder," unless any such conditions that are not satisfied are waived by the Debtors in their Permitted Discretion:

(a) Bid Deadline

A Potential Bidder who desires to be deemed a Qualified Bidder must deliver the Required Bid Documents (as defined below) via email (in .pdf or similar format) so as to be *actually received* on or before **5:00 p.m. (prevailing Eastern Time) on April 5, 2019** (the "Bid Deadline") to the following parties (the "Debtors Notice Parties"):

- i. The Debtors, Pernix Therapeutics Holdings, Inc., 10 North Park Place, Suite 201, Morristown, New Jersey 07960, Attn: John A. Sedor (jsedor@pernixtx.com) and Kenneth R. Piña (kpina@pernixtx.com);

- ii. Financial advisors to the Debtors, Guggenheim Securities, LLC, 330 Madison Avenue, New York, NY 10017, Attn: Peter Schwaikert (Peter.Schwaikert@guggenheimpartners.com), Stuart Erickson (Stuart.Erickson@guggenheimpartners.com) and Zachary Yost (Zachary.Yost@guggenheimpartners.com);
- iii. Counsel to the Debtors, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Elliot Moskowitz (Elliot.moskowitz@davispolk.com), Eli J. Vonnegut (eli.vonnegut@davispolk.com) and Christopher S. Robertson (christopher.robertson@davispolk.com); and
- iv. Co-counsel to the Debtors, Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19899, Attn: Adam G. Landis (landis@lrclaw.com) and Kerri K. Mumford (mumford@lrclaw.com).

The Debtors, in their Permitted Discretion and without the need for further Court approval, may extend the Bid Deadline by a reasonable period of time once or successively if the Debtors believe (in their Permitted Discretion) that such extension would further the goal of attaining the highest or otherwise best offer for the Debtors' assets. The Debtors shall promptly notify all Potential Bidders of any such extension. Any such extension shall be without prejudice to the Stalking Horse Bidder's and the Debtors' rights and obligations under Section 5.8 of the Stalking Horse Agreement.

(b) Bid Requirements

All bids must include the following items (collectively, the "Required Bid Documents"):

- i. Irrevocable. Each bid must be accompanied by an executed letter stating that the bidder's offer is irrevocable until consummation of a transaction involving the Assets identified in such bid and that such bidder agrees to serve as an Alternate Bidder (as defined herein) in accordance with these Sale Procedures.
- ii. Executed Agreement. Each bid must be set forth in a duly authorized and executed purchase agreement, which purchase agreement must be based on the form of the Stalking Horse Agreement (unless such bid is a Partial Bid), including, among other things, the purchase price for the Assets identified in such Bid, together with all exhibits and schedules, in each case marked to show any amendments and modifications to the Stalking Horse Agreement and the proposed Sale Order.
- iii. Financial Wherewithal. Each Potential Bidder must provide written evidence acceptable to the Debtors (in their Permitted Discretion) demonstrating financial wherewithal, operational ability and corporate authorization to consummate the proposed

transaction.

- iv. Committed Financing. Each Potential Bidder must provide written evidence of a firm commitment for financing to consummate the proposed transaction, or other evidence of ability to consummate the proposed transaction without financing, that is satisfactory to the Debtors (in their Permitted Discretion).

A bid will be considered only if the bid:

- i. identifies the legal name of the purchaser (including any Sponsor(s), if the purchaser is an entity formed for the purpose of consummating the proposed transaction);
- ii. if a Partial Bid, identifies the Assets subject to the Bid;
- iii. is not materially more burdensome, less favorable or more conditional than the terms of the Stalking Horse Agreement, as determined by the Debtors in their Permitted Discretion;
- iv. if a Full Bid, such Bid provides for aggregate net consideration to the Debtors' estates (including cash, credit bid, and liability assumption and other than any consideration provided in respect of Other Assets) at Closing in an amount at least equal to the sum of (x) the aggregate net consideration for the sale, assignment, transfer, conveyance and delivery of the Transferred Assets to the Buyer, including the assumption of the Assumed Liabilities as set forth in Section 2.7 of the Stalking Horse Agreement *plus* (y) \$250,000 (the "Minimum Full Bid");⁶
- v. if for the Silenor IP Assets and the Generics IP Assets (whether a Partial Bid or a Full Bid), such bid provides aggregate consideration for such assets of more than \$15 million;
- vi. identifies all executory contracts and unexpired leases of which the Potential Bidder seeks assignment from the Debtors, if any;
- vii. is not conditioned on (i) obtaining financing or (ii) the outcome of unperformed due diligence;
- viii. is not conditioned on the receipt of any third party approvals or consents (excluding required Court approval and required governmental, licensing or regulatory approval or consent, if any), including without limitation board of director approval, other than (i) third party approvals or consents that are expressly contemplated by the Stalking Horse Agreement or (ii) other

⁶ For purposes of determining the Minimum Full Bid, the Debtors shall provide each Potential Bidder and the Stalking Horse Bidder with a best estimate of the amount of such aggregate consideration, taking into account an estimate of each component of the Purchase Price provided by Section 2.7 of the Stalking Horse Agreement, the later of (i) five Business Days prior to the Bid Deadline and (ii) the date that the Debtors deem, in their Permitted Discretion, a bid to be a Qualified Bid.

approvals or consents not materially more burdensome, less favorable or more conditional than the terms of the Stalking Horse Agreement, as determined by the Debtors in their Permitted Discretion;

- ix. with respect to any governmental, licensing or regulatory approvals or consents, includes a description of all such approvals or consents that are required to consummate the proposed transaction (including any antitrust approval or clearance related to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended), together with evidence satisfactory to the Debtors in their Permitted Discretion of the ability of the Bidder to obtain such approvals or consents in a timely manner, as well as a description of any material contingencies or other conditions that will be imposed upon, or that will otherwise apply to, the obtainment or effectiveness of any such approvals or consents;
- x. is accompanied by a cash deposit by wire transfer to an escrow agent selected by the Debtors (the "Deposit Agent") in an amount equal to 10% of the cash purchase price set forth in connection with such Bid (any such deposit, a "Good Faith Deposit"); *provided, however*, that no Good Faith Deposit shall be required by the Stalking Horse Bidder in light of its funding of the DIP financing and commitment to credit bid such claims;
- xi. provides for a commitment to close as soon as practicable, but in no event later than the Closing Date pursuant to Section 2.9 of the Stalking Horse Agreement;
- xii. sets forth the representatives that are authorized to appear and act on behalf of the bidder in connection with the proposed transaction;
- xiii. fully discloses the identity of each entity that will be bidding for the Debtors' assets or otherwise financing (including through the issuance of debt in connection with such Bid) such Bid, and a summary of any such financing;
- xiv. indicates that the bidder will not seek any transaction or break-up fee, expense reimbursement or similar type of payment and that it waives any substantial contribution administrative expense claims under section 503(b) of the Bankruptcy Code related to bidding for the Assets;
- xv. if the bid contemplates the assumption and assignment of any contracts or leases, includes evidence of the bidder's ability to comply with section 365 of the Bankruptcy Code (to the extent applicable), including providing adequate assurance of such bidder's ability to perform in the future the contracts and leases proposed in its bid to be assumed by the Debtors and assigned

to the bidder, in a form that will permit the Debtors to disseminate immediately such evidence to the non-Debtor counterparties to such contracts and leases (the “Adequate Assurance Information”);

- xvi. if the bid includes a bid for the Treximet Assets, the purchase agreement submitted by the bidder provides for the indemnity, Treximet Letter of Credit, reimbursement, remittance and other protections for the benefit of the Stalking Horse Bidder as set forth in Section 5.15(a) of the Stalking Horse Agreement (the “Treximet Stalking Horse Protections”);
- xvii. includes a commitment to maintain customary product liability insurance coverage in respect of all the Transferred Assets, consistent with the Debtors’ past practices, for not less than seven (7) years following the Closing Date;
- xviii. constitutes a good faith, *bona fide* offer to effectuate the proposed transaction; and
- xix. is received on or before the Bid Deadline (as such deadline may be extended in accordance with these Sale Procedures).

(c) Non-Conforming Bids

The Debtors shall have the right, in their Permitted Discretion, to deem a bid a Qualified Bid even if such bid does not conform to one or more of the requirements above or does not include one or more Required Bid Documents; provided, that in no event shall the Debtors deem a bid to be a Qualified Bid if such bid includes a bid for the Treximet Assets and the purchase agreement submitted therewith does not contain the Treximet Stalking Horse Protections. If the Debtors receive a bid prior to the Bid Deadline that is not a Qualified Bid, the Debtors may, in their Permitted Discretion, provide the bidder with the opportunity to remedy any deficiencies following the Bid Deadline but not later than one Business Day prior to the Auction. If any bid is determined by the Debtors not to be a Qualified Bid, and the applicable bidder fails to remedy such bid in accordance with these Sale Procedures, the Debtors shall promptly instruct the Deposit Agent to return such bidder’s Good Faith Deposit. Notwithstanding that the Stalking Horse Bidder shall not be required to provide a Good Faith Deposit or to serve as the Alternate Bidder, the Stalking Horse Bidder shall be deemed a Qualified Bidder and the Stalking Horse Agreement shall be deemed a Qualified Bid for all purposes in connection with these Sale Procedures (including with respect to any Partial Bid), and the Stalking Horse Bidder shall, without any further action, be entitled to participate in any Auction (including with respect to any Partial Bid).

(d) Potential Bidder Representations

By submission of its bid, each Qualified Bidder shall be deemed to acknowledge and represent that it (i) has had an opportunity to conduct any and all due diligence regarding the Assets that are the subject of the Auction prior to making any such bids, (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the

assets in making its bid and (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any information provided in connection therewith, except as expressly stated in these Sale Procedures or, as to the Successful Bidder(s), the asset purchase agreement(s) with such Successful Bidder(s). Without the written consent of the Debtors, in their Permitted Discretion, a Qualified Bidder may not amend, modify or withdraw its Qualified Bid, except for proposed amendments to increase the amount or otherwise improve the terms of its Qualified Bid, during the period that such Qualified Bid is required to remain irrevocable. For the avoidance of doubt, nothing in these Sale Procedures shall in any way limit or impair the Stalking Horse Bidder's ability to exercise any termination rights it may have under the Stalking Horse Agreement.

(e) Distribution and Evaluation of Qualified Bids

All Qualified Bids will be considered by the Debtors; bids other than Qualified Bids will not be considered. The Debtors may in their Permitted Discretion evaluate bids on any grounds, including, but not limited to:

- i. the amount of the purchase price, including non-cash consideration, set forth in the Bid;
- ii. the value to be provided to the Debtors under the Bid, including the net economic effect upon the Debtors' estates;
- iii. any benefit to the Debtors' bankruptcy estates from any assumption of liabilities or waiver of liabilities, including the release or replacement of letters of credit;
- iv. the transaction structure and execution risk, including conditions to and certainty of closing; termination provisions; availability of financing and financial wherewithal to meet all commitments; and required governmental or other approvals;
- v. the anticipated timing to closing (in comparison to the anticipated timing to closing of the Stalking Horse Agreement) and whether such timing is consistent with the Debtors' adherence to the Approved Budget;
- vi. the impact on employees and employee claims against the Debtors;
- vii. the presence of any governmental, licensing, regulatory or other approvals or consents in a bid, and the anticipated timing or likelihood of obtaining such approvals or consents;
- viii. the impact on trade and other creditors; and
- ix. any other factors the Debtors may reasonably deem relevant consistent with their fiduciary duties.

For the avoidance of doubt, the presence of any governmental, licensing, regulatory or other approvals or consents in a bid, and the anticipated timing or likelihood of obtaining such approvals or consents, may be grounds for the Debtors, in their Permitted Discretion, to determine that such bid (i) is not a Qualified Bid or (ii) is not higher or otherwise better than any other Qualified Bid.

(f) Credit Bids

Any Qualified Bidder (including the Stalking Horse Bidder as contemplated under the Stalking Horse Agreement (or, if applicable, the DIP Agent, or the Administrative Agent under the Prepetition DDTL Agreement or U.S. Bank, National Association, as trustee and collateral agent under the Treximet Indenture) who has a valid and perfected lien on any assets of the Debtors' estates and the right under applicable nonbankruptcy law to credit bid claims secured by such liens shall have the right to credit bid any portion and up to the entire amount of their outstanding secured claims pursuant to section 363(k) of the Bankruptcy Code only with respect to the collateral by which such Qualified Bidder's claim is secured.

For purposes of evaluating competing bids, every dollar of a credit bid shall be treated the same as a dollar from a cash bid, and a credit bid shall not be considered inferior to a comparable cash bid because it is a credit bid. The fact that a bid is composed of a credit bid (whether in whole or in part) shall not be a factor considered by the Debtors in their determination of the highest or otherwise best bid for such asset.

3. Expense Reimbursement Amount

Recognizing the Stalking Horse Bidder's expenditure of time, energy and resources in connection with the proposed transaction set forth in the Stalking Horse Agreement, and the benefit that those efforts provided to all Interested Parties, the Debtors have agreed that, if the Stalking Horse Bidder is not the Successful Bidder, the Debtors will, in certain circumstances, pay to the Stalking Horse Bidder an Expense Reimbursement Amount. The payment of the Expense Reimbursement Amount will be governed by the provisions of the Stalking Horse Agreement and the Sale Procedures Order. The maximum amount of the Expense Reimbursement Amount payable pursuant to the Stalking Horse Agreement shall not exceed 1.5% of the Purchase Price.

4. Auction

Scheduled Time and Date of the Auction. One or more auctions for the Assets (the "Auction") may be held in accordance with these Sale Procedures and upon notice to all Qualified Bidders that have submitted Qualified Bids. The Auction, if held, is scheduled to be conducted at the offices of Davis Polk & Wardwell LLP, 450 Lexington Ave., New York, New York 10017 **on April 11, 2019 at 10:00 a.m. (prevailing Eastern Time)**, or such later time or other location as designated by the Debtors in a notice filed on the docket of the Court and published on the Debtors' case information website (located at <https://cases.primeclerk.com/pernix>) (the "Case Information Website").

The Debtors shall only conduct the Auction in any or all of the following events:
(a) the Debtors timely receive one or more Qualified Bids (in addition to the Stalking Horse

Agreement) that is a Full Bid, (b) the Debtors timely receive one or more Qualified Bids for the Treximet Assets or any Other Assets; or (c) the Debtors timely receive one or more Qualified Bids for any of the Zohydro Assets, the Silenor Assets and the Generics Assets, or the Nalpropion Assets, and the sum of the highest value (taking into account the total amount of consideration being offered by such bids, including, among other things, the purchase price and any assumed liabilities) offered for each such Transferred Asset is at least equal to the amount of the Minimum Full Bid. Any Auction relating to the Zohydro Assets, the Silenor Assets and the Generics Assets and the Nalpropion Assets shall be conducted prior to any Auction with respect to any Full Bids.

With respect to the Transferred Assets, if no Qualified Bid (other than the Stalking Horse Bid) is received by the Bid Deadline, the Debtors will not conduct the Auction for the Transferred Assets and instead will file with the Court, serve on the Sale Notice Parties (as defined in the Sale Procedures Order) and cause to be published on the Case Information Website a notice (i) indicating that the Auction for the Transferred Assets has been cancelled, (ii) indicating that the Stalking Horse Bidder is the Successful Bidder with respect to the Transferred Assets and (iii) setting forth the date and time of the applicable Sale Hearing.

At the conclusion of any Auction for the Zohydro Assets, the Silenor Assets and the Generics Assets, and the Nalpropion Assets (if any), the collective bid composed of each Successful Bid for the applicable assets (the "Highest Collective Partial Bid") shall be treated as a Full Bid. The Stalking Horse Bidder and any other Qualified Bidder that submitted a Full Bid shall have the right to increase its bid so as to match or exceed the amount of the Highest Collective Partial Bid, including by making a collective bid with one or more Qualified Bids from Qualified Bidders that are not included in the Highest Collective Partial Bid after the conclusion of any Auction for the Zohydro Assets, the Silenor Assets and the Generics Assets, and the Nalpropion Assets (if any).

If the Stalking Horse Bidder or any other Qualified Bidders that submitted a Full Bid matches the Highest Collective Partial Bid, then the Debtors shall conduct an Auction for the Transferred Assets with such Qualified Bidders (including the Highest Collective Partial Bid). At the conclusion of the Auction for the Transferred Assets, if the bid submitted by the Stalking Horse Bidder or any other Qualified Bidders that submitted a Full Bid is equal to the amount of the Highest Collective Partial Bid, then such bid submitted by the Stalking Horse Bidder or any other Qualified Bidders that submitted a Full Bid may, in the Debtors' Permitted Discretion consistent with the Debtors' evaluation of Qualified Bids as set forth herein, be determined to be the Successful Bid.

If (i) one or more Partial Bid(s) (x) is the Successful Bid (as defined below) for any of the Treximet Assets, the Zohydro Assets, the Silenor Assets and/or the Generics Assets but (y) does not contemplate the assumption by the buyer of one or more contracts under which some or all of the Product Working Capital Liabilities relating to such Transferred Assets arise (the Successful Bidder in respect of any Successful Bid described in this clause (i) a "Non Assuming Buyer"), and (ii) one or more Successful Bid(s) for other assets contemplate(s) the assumption of such contract(s) (a Successful Bidder in respect of any Successful Bid described in this clause (ii) an "Assuming Buyer"), then each Non Assuming Buyer shall indemnify the applicable Assuming Buyer(s) for any Product Working Capital

Liabilities related to the Transferred Assets acquired by such Non Assuming Buyer, the effectiveness of which agreement(s) shall be a condition to the closing of the transaction contemplated by such Successful Bid.

(a) Participants and Attendees

Principals, representatives or agents of the Debtors, the Stalking Horse Bidder, the Committee, and any Qualified Bidder that has submitted a Qualified Bid (and the legal and financial advisors to each of the foregoing) will be entitled to attend the Auction. Any other creditor of the Debtors will be permitted to attend the Auction upon advance notice by such creditor of at least two Business Days to the Debtors Notice Parties. Only the Stalking Horse Bidder and other Qualified Bidders will be entitled to make any subsequent bids at the Auction. Each Qualified Bidder participating in the Auction must confirm that it (a) has not engaged in any collusion with respect to the bidding or the sale of any of the Assets as described herein, (b) has reviewed, understands and accepts these Sale Procedures, (c) has consented to the jurisdiction of the Court and (d) intends to consummate its Qualified Bid if it is selected as the Successful Bid. Each Qualified Bidder participating in the Auction shall appear in person at the Auction or through a duly authorized representative.

(b) Auction Procedures

At least two Business Days prior to the Auction, the Debtors will (a) notify each Qualified Bidder, including the Stalking Horse Bidder, that has timely submitted a Qualified Bid that its bid is a Qualified Bid and (b) provide all Qualified Bidders, including the Stalking Horse Bidder, and the Committee with (i) copies of the Qualified Bid or combination of Qualified Bids that the Debtors believe is the highest or otherwise best offer for each Bid Asset (the "Starting Bid(s)"), (ii) an explanation of how the Debtors value the Starting Bid(s) and (iii) a list identifying all of the Qualified Bidders and their respective Qualified Bids. Pursuant to and subject to the conditions set forth in Section 5.8(f) of the Stalking Horse Agreement, the Stalking Horse Bidder is entitled to copies of all Qualified Bids.

The Debtors, in their Permitted Discretion, may employ and announce at the Auction additional procedural rules for conducting such auction (*e.g.*, the amount of time allotted to submit Subsequent Bids (as defined below)); *provided*, that such rules are (a) not inconsistent with the Sale Procedures Order, the Bankruptcy Code or any order of the Court entered in connection herewith and (b) disclosed to all Qualified Bidders.

Bidding at the Auction will begin with the Starting Bid(s) and continue, in one or more rounds of bidding in the presence of all parties at the Auction, so long as during each round at least one subsequent bid (a "Subsequent Bid") is submitted by a Qualified Bidder that (a) improves upon such Qualified Bidder's immediately prior Qualified Bid and (b) the Debtors determine (in their Permitted Discretion) that such Subsequent Bid is (i) for the first round, a higher or otherwise better offer than the Starting Bid and (ii) for subsequent rounds, a higher or otherwise better offer than the Leading Bid (as defined below), in each case taking into account other Qualified Bids for other Assets. The Debtors, in their Permitted Discretion, may determine appropriate minimum bid increments or requirements for each round of bidding.

After the first round of bidding and between each subsequent round of bidding, the Debtors will determine, in their Permitted Discretion, and announce the bid or bids that they believe to be the highest or otherwise best offer or combination of offers (the "Leading Bid"). A round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge and written confirmation of the Leading Bid.

Notwithstanding anything herein to the contrary, any Subsequent Bid by the Stalking Horse Bidder to the bid embodied in the Stalking Horse Agreement, in any and all rounds of bidding, will be deemed to include a credit in the full amount of the Expense Reimbursement Amount.

For the purpose of evaluating Subsequent Bids, the Debtors may require, in their Permitted Discretion, a Qualified Bidder (other than the Stalking Horse Bidder) submitting a Subsequent Bid to submit, as part of its Subsequent Bid, additional evidence (in the form of financial disclosure or credit-quality support information or enhancement acceptable to the Debtors in their Permitted Discretion) demonstrating such Qualified Bidder's ability to close the proposed transaction.

The Debtors shall maintain a transcript of all bids made and announced at the Auction, including the Starting Bid(s), all Subsequent Bid(s), the Leading Bid(s), the Alternate Bid(s) (as defined below) and the Successful Bid(s).

5. Selection of Successful Bid(s)

Prior to the conclusion of the Auction, the Debtors shall (in each case in their Permitted Discretion) (a) review and evaluate each bid made at the Auction on the basis of financial and contractual terms and other factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the sale transaction, (b) determine and identify the highest or otherwise best offer or collection of offers (the "Successful Bid(s)"), (c) determine and identify the next highest or otherwise best offer or collection of offers (the "Alternate Bid(s)") and (d) notify all Qualified Bidders participating in the Auction, prior to its adjournment, of the identity of the party or parties that submitted the Successful Bid(s) (the "Successful Bidder(s)"), the amount and other material terms of the Successful Bid(s), the identity of the party or parties that submitted the Alternate Bid(s) (the "Alternate Bidder(s)") and the amount and other material terms of the Alternate Bid(s). No additional bids may be considered after the Auction is closed. Within two Business Days after the completion of the Auction (or as soon as reasonably practicable thereafter), the Successful Bidder(s) and the applicable Debtors shall complete and execute all agreements, instruments and other documents necessary to consummate the applicable sale transaction(s) (subject to entry of the Sale Order) or otherwise contemplated by the applicable Successful Bid(s). Promptly following the selection of the Successful Bid(s) and Alternate Bid(s), the Debtors shall file a notice of the Successful Bid(s) and Alternate Bid(s) with the Court and cause such notice to be published on the Case Information Website, which shall constitute definitive proof that the Debtors have closed the Auction.

6. The Sale Hearing

The hearing to consider the proposed Sale Order (the “Sale Hearing”) shall be held on **April 15, 2019 at 9:30 a.m.** (prevailing Eastern Time) before the Honorable Chief Judge Christopher S. Sontchi in the United States Bankruptcy Court for the District of Delaware, 824 N. Market St., Wilmington, Delaware 19801.

The Sale Hearing may be adjourned by the Debtors (with the reasonable consent of the Stalking Horse Bidder if the Stalking Horse Bidder is a Successful Bidder) by an announcement of the adjourned date at a hearing before the Court or by filing a notice on the Court’s docket. At the Sale Hearing, the Debtors will seek the Court’s approval of the Successful Bid(s) and, in their Permitted Discretion, the Alternate Bid(s).

The Debtors’ presentation to the Court of the Successful Bid(s) and Alternate Bid(s) will not constitute the Debtors’ acceptance of such bid(s), which acceptance will only occur upon approval of such bid(s) by the Court. Following the Court’s entry of the Sale Order approving such bid(s), the Debtors and the Successful Bidder(s) shall proceed to consummate the transaction(s) contemplated by the Successful Bid(s), in all cases within the milestones set in the DIP Order. If the Debtors and the Successful Bidder(s) fail to consummate the proposed transaction(s), then the Debtors shall file a notice with the Court advising of such failure. Upon the filing of such notice with the Court, the Alternate Bid(s) will be deemed to be the Successful Bid(s) and the Debtors will be authorized but not directed, in their Permitted Discretion, to effectuate the transaction(s) with the Alternate Bidder(s) subject to the terms of the Alternate Bid(s) of such Alternate Bidder(s) without further order of the Court. If such failure to consummate the sale is the result of a breach by the Successful Bidder(s) (such bidder(s), the “Breaching Bidder(s)”) of its (their) purchase agreement(s), the Debtors reserve the right to seek all available remedies from the Breaching Bidder(s), subject to the terms of the applicable purchase agreement.

For the avoidance of doubt and notwithstanding anything herein to the contrary, nothing in these Sale Procedures shall, or shall be construed to, in any way amend, impair, prejudice, alter or otherwise modify the terms of (a) the Stalking Horse Agreement or the Stalking Horse Bidder’s rights thereunder, and the Stalking Horse Agreement shall remain in full force and effect unless terminated in accordance with its terms, or (b) any DIP Loan Document (as defined in the DIP Order) or the rights of the DIP Agent or any DIP Lender thereunder. The Stalking Horse Bidder and each DIP Lender shall have standing to appear and be heard on all issues related to the Auction, the sale of the Assets and related matters, including the right to object to the sale of the Assets or any portion thereof (including the conduct of the Auction and interpretation of these Sale Procedures).

7. Return of Good Faith Deposit

The Good Faith Deposits of all Qualified Bidders will be held in escrow by the Deposit Agent and will not become property of the Debtors’ bankruptcy estates unless released from escrow pursuant to the terms of the applicable escrow agreement or pursuant to further order of the Court. The Deposit Agent will retain the Good Faith Deposits of the Successful Bidder(s) and the Alternate Bidder(s) until the closing of the transaction(s) contemplated by the Successful Bid(s) or the Alternate Bid(s), as applicable, in accordance

with Section 6 above, except as otherwise ordered by the Court. The Good Faith Deposits (and all interest accrued thereon) of the other Qualified Bidders will be returned within four Business Days after the entry of the Sale Order. At the closing of the transaction contemplated by the Successful Bid(s), the Successful Bidder(s) will receive a credit in the amount of its Good Faith Deposit (plus all interest accrued thereon). All remaining Good Faith Deposits (and all interest accrued thereon) held by the Deposit Agent will be released by the Deposit Agent four Business Days after the closing of the transaction(s) contemplated by the Successful Bid(s); *provided*, the Deposit Agent will retain the Good Faith Deposit of a Breaching Bidder pending a ruling by the Court as to the amount of damages owed, if any, by such Breaching Bidder to the Debtors.

8. As Is, Where Is

The sale of the Assets shall be on an “as is, where is” basis and without representations or warranties of any kind, nature or description by the Debtors, their agents or their estates, except as provided in any agreement with respect to the sale or sales approved by the Court (including the Stalking Horse Agreement).

9. Free and Clear of Any and All Interests

Except as otherwise provided in the Stalking Horse Agreement or another Successful Bidder(s)’s purchase agreement, all of the Debtors’ right, title and interest in and to the Assets subject thereto shall be sold free and clear of any pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon (collectively, the “Interests”) to the maximum extent permitted by section 363 of the Bankruptcy Code, with such Interests to attach to the net proceeds of the sale of the Assets with the same validity and priority as such Interests (including, for the avoidance of doubt, the DIP Liens and DIP Superpriority Claims, as defined in the DIP Order, of the DIP Agent and DIP Lenders) applied against the Assets, without modification of the DIP Lenders’ right to be repaid in cash from such proceeds pursuant to the DIP Order and other DIP Loan Documents.

10. Reservation of Rights of the Debtors

Except as otherwise provided in these Sale Procedures or the Sale Procedures Order, the Debtors reserve the right, in their Permitted Discretion, to:

- (a) determine which Interested Party is a Potential Bidder;
- (b) determine which bidder is a Qualified Bidder;
- (c) determine which bid is a Qualified Bid;
- (d) determine which Qualified Bid is a Starting Bid;
- (e) determine which Qualified Bid is the highest or otherwise best offer for the Assets and which is the next highest or otherwise best offer;

- (f) reject any bid (other than the Stalking Horse Agreement) that the Debtors deem to be (a) inadequate or insufficient, (b) not in conformity with the requirements of these Sale Procedures or the requirements of the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules or (c) contrary to the best interests of the Debtors and their estates;
- (g) impose additional terms and conditions with respect to all Potential Bidders (other than the Stalking Horse Bidder);
- (h) cancel the Auction;
- (i) extend the deadlines set forth herein (without prejudice to the milestones set forth in the Stalking Horse Agreement); and
- (j) modify these Sale Procedures and implement additional procedural rules that the Debtors determine will better promote the goals of the Bidding Process and discharge the Debtors' fiduciary duties.

For the avoidance of doubt, except as expressly provided herein, the Debtors shall not amend, waive, or otherwise modify any part of these Sale Procedures without the prior written consent of the Committee and the Stalking Horse Bidder, in each case which consent shall not be unreasonably withheld, conditioned or delayed.

Nothing in these Sale Procedures shall require the Debtors' board of directors to take any action, or to refrain from taking any action, with respect to these Sale Procedures, to the extent that the Debtors' board of directors determines, or based on the advice of counsel, that taking such action, or refraining from taking such action, as applicable, is required to comply with applicable law or its fiduciary duties under applicable law.

Exhibit 2

Form of Sale Notice

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

In re:

PERNIX SLEEP, INC., *et al.*¹

Debtors.

Chapter 11

Case No. 19-10323 (CSS)

Jointly Administered

NOTICE OF SALE, SALE PROCEDURES, AUCTION AND SALE HEARING

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the “Debtors”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the “Court”) on February 18, 2019 (the “Petition Date”).

PLEASE TAKE FURTHER NOTICE that, on February 19, 2019, the Debtors filed a motion (the “Sale Motion”)² with the Court seeking entry of orders, among other things, approving (a) procedures for the solicitation of bids in connection with the proposed sale of substantially all of the Debtors’ assets to Phoenix Top Holdings LLC (the “Stalking Horse Bidder”) for \$75.6 million plus the assumption of certain liabilities (the “Sale”), subject to the submission of higher or otherwise better offers in an auction process (the “Auction”), (b) the form and manner of notice related to the Sale and (c) procedures for the assumption and assignment of contracts and leases in connection with the Sale.

PLEASE TAKE FURTHER NOTICE that, on March [22], 2019, the Court entered an order (the “Sale Procedures Order”) approving, among other things, the Sale Procedures, which establish the key dates and times related to the Sale and the Auction. All interested bidders should carefully read the Sale Procedures Order and the Sale Procedures in their entirety.³

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, where applicable, are: Pernix Therapeutics Holdings, Inc. (4736), Pernix Therapeutics, LLC (1128), Pernix Manufacturing, LLC (1236), Pernix Sleep, Inc. (1599), Cypress Pharmaceuticals, Inc. (1860), Hawthorn Pharmaceuticals, Inc. (2769), Macoven Pharmaceuticals, L.L.C. (4549), Gaine, Inc. (3864), Respicopea, Inc. (1303), Pernix Ireland Limited (3106PH), Pernix Ireland Pain Designated Activity Company (0190LH), Pernix Holdco 1, LLC, Pernix Holdco 2, LLC, Pernix Holdco 3, LLC. The Debtors’ corporate headquarters and mailing address is 10 North Park Place, Suite 201, Morristown, NJ 07960.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Sale Motion.

³ To the extent of any inconsistencies between the Sale Procedures and the summary descriptions of the Sale Procedures in this notice, the terms of the Sale Procedures shall control in all respects.

Contact Persons for Parties Interest in Submitting a Bid

The Sale Procedures set forth the requirements for submitting a Qualified Bid, and any person interest in making an offer to purchase the Assets must comply strictly with the Sale Procedures. Only Qualified Bids will be considered by the Debtors, in accordance with the Sale Procedures.

Any interested bidder should contact, as soon as practicable:

Guggenheim Securities, LLC⁴
330 Madison Avenue
New York, NY 10017
Attn: Peter Schwaikert, Stuart Erickson
Peter.Schwaikert@guggenheimpartners.com
Stuart.Erickson@guggenheimpartners.com
(tel.) 212-381-4134
(tel.) 212-518-9005

Obtaining Additional Information

Copies of the Sale Motion, the Sale Procedures and the Sale Procedures Order, as well as all related exhibits, including the Stalking Horse Agreement and all other documents filed with the Court, are available free of charge on the Debtors' case information website, located at <https://cases.primeclerk.com/pernix>.

Important Dates and Deadlines⁵

1. **Bid Deadline.** The deadline to submit a Qualified Bid is **April 5, 2019 at 5:00 p.m. (prevailing Eastern Time)**.
2. **Auction.** In the event that the Debtors timely receive a Qualified Bid in addition to the Qualified Bid of the Stalking Horse Bidder and subject to the satisfaction of any further conditions set forth in the Sale Procedures, the Debtors intend to conduct an Auction for the Assets. The Auction, if one is held, will commence on **April 11, 2019 at 10:00 a.m. (prevailing Eastern Time)** at the offices of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017.
3. **Sale Objection Deadline.** The deadline to file an objection with the Court to the Sale Order, and all objections relating to the Stalking Horse Bidder or the Sale (collectively, the "Sale Objections") is **April 8, 2019 at 4:00 pm. (prevailing Eastern Time)** (the "Sale Objection Deadline").

⁴ Guggenheim Securities, LLC, in its capacity as investment banker the Debtors, is referred to herein as "Guggenheim Securities."

⁵ The following dates and deadlines may be extended by the Debtors or the Court pursuant to the terms of the Sale Procedures and the Sale Procedures Order.

4. **Sale Hearing.** A hearing (the “Sale Hearing”) to consider the proposed Sale will be held before the Court on **April 15, 2019 at 9:30 a.m.** (prevailing Eastern Time), or such other date as determined by the Court, at 824 North Market Street, Wilmington, Delaware 19801.

Filing Objections

Sale Objections, if any, must (a) be in writing, (b) state, with specificity, the legal and factual bases thereof, (c) be filed with the Court by no later than **the Sale Objection Deadline** and (d) be served on (i) counsel for the Debtors, (y) Davis Polk & Wardwell LLP, 450 Lexington Ave., New York, New York 10017, Attn: Elliot Moskowitz (Elliot.moskowitz@davispolk.com), Eli J. Vonnegut (eli.vonnegut@davispolk.com) and Christopher S. Robertson (christopher.robertson@davispolk.com) and (z) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn: Adam G. Landis (landis@lrclaw.com) and Kerri K. Mumford (mumford@lrclaw.com), (ii) counsel to the Stalking Horse Bidder, Skadden, Arps, Slate, Meagher & Flom LLP, 4 Times Sq., New York, NY 10036, Attn: Lisa Laukitis (lisa.laukitis@skadden.com) and Evan A. Hill (evan.hill@skadden.com), (iii) counsel to the Committee, (y) Akin Gump Strauss Hauer & Feld LLP, Bank of America Tower, 1 Bryant Park, New York, NY 10036, Attn: Arik Preis (apreis@akingump.com) and Gary A. Ritacco (gritacco@akingump.com) and (z) Potter Anderson & Corroon LLP, 1313 N. Market St., Sixth Floor, P.O. Box 951, Wilmington, DE 19801, Attn: Jeremy W. Ryan (jryan@potteranderson.com) and R. Stephen McNeill (rmcneill@potteranderson.com); and (iv) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware, 19801, Attn: Benjamin A. Hackman, Esq. (Benjamin.a.hackman@doj.gov).

CONSEQUENCES OF FAILING TO TIMELY ASSERT AN OBJECTION

Any party or entity who fails to timely make an objection to the Sale on or before the Sale Objection Deadline in accordance with the Sale Procedures Order and this Notice shall be forever barred from asserting any objection to the Sale, including with respect to the transfer of the assets free and clear of all liens, claims, encumbrances and other interests.

NO SUCCESSOR LIABILITY

The Debtors are is a specialty pharmaceutical company whose primary sales channel is through wholesalers, who sell the Debtors’ products to retail drug stores, mass merchandisers and grocery store pharmacies in the U.S., who, in turn, sell the medications to customers. The Debtors also sell products to members of group purchasing organizations, and certain customers also purchase the Debtors’ products directly through the Pernix Prescriptions Direct program, which provides the Debtors’ products to commercially insured customers through mail-order pharmacies at discounted rates. For more information on the Debtors’ business or their products, refer to the Sedor Declaration.

Upon Court approval, the Sale will be free and clear of, among other things, any claim arising from any conduct of the Debtors prior to the closing of the Sale, whether known or unknown, whether due or to become due, whether accrued, absolute, contingent or otherwise, so long as such claim arises out of or relates to events occurring prior to the closing of the

Sale. Accordingly, as a result of the Sale, the Stalking Horse Bidder will not be a successor to any of the Debtors by reason of any theory of law or equity, and the Stalking Horse Bidder will have no liability, except as expressly provided in the Stalking Horse Agreement, for any liens, claims, encumbrances and other interests against or in any of the Debtors under any theory of law, including successor liability theories.

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Dated: March __, 2019
Wilmington, Delaware

LANDIS RATH & COBB LLP

Adam G. Landis (No. 3407)
Kerri K. Mumford (No. 4186)
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-and-

DAVIS POLK & WARDWELL LLP

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Eli J. Vonnegut (admitted *pro hac vice*)
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eli.vonnegut@davispolk.com
christopher.robertson@davispolk.com

Counsel to the Debtors and Debtors in Possession

Exhibit 3

Form of Potential Assumption and Assignment Notice

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

In re:

PERNIX SLEEP, INC., *et al.*¹

Debtors.

Chapter 11

Case No. 19-10323 (CSS)

Jointly Administered

**NOTICE OF ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS OR
UNEXPIRED LEASES AND CURE AMOUNT**

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the “Debtors”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Court”) on February 18, 2019 (the “Petition Date”).

PLEASE TAKE FURTHER NOTICE that, on February 19, 2019 the Debtors filed a motion (the “Sale Motion”)² with the Court seeking entry of orders, among other things, approving (a) procedures for the solicitation of bids in connection with the proposed sale of substantially all of the Debtors’ assets to Phoenix Top Holdings LLC (the “Stalking Horse Bidder”) for \$75.6 million plus the assumption of certain liabilities (the “Sale”), subject to the submission of higher or otherwise better offers in an auction process (the “Auction”), (b) the form and manner of notice related to the Sale and (c) procedures for the assumption and assignment of contracts and leases in connection with the Sale (the “Assumption and Assignment Procedures”).

PLEASE TAKE FURTHER NOTICE that, on March [22], 2019, the Court entered an order (the “Sale Procedures Order”) approving, among other things, the Sale Procedures, which establish the key dates and times related to the Sale and the Auction, and the Assumption and Assignment Procedures.

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, where applicable, are: Pernix Therapeutics Holdings, Inc. (4736), Pernix Therapeutics, LLC (1128), Pernix Manufacturing, LLC (1236), Pernix Sleep, Inc. (1599), Cypress Pharmaceuticals, Inc. (1860), Hawthorn Pharmaceuticals, Inc. (2769), Macoven Pharmaceuticals, L.L.C. (4549), Gaine, Inc. (3864), Respicopea, Inc. (1303), Pernix Ireland Limited (3106PH), Pernix Ireland Pain Designated Activity Company (0190LH), Pernix Holdco 1, LLC, Pernix Holdco 2, LLC, Pernix Holdco 3, LLC. The Debtors’ corporate headquarters and mailing address is 10 North Park Place, Suite 201, Morristown, NJ 07960.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Sale Motion.

PLEASE TAKE FURTHER NOTICE that, upon the closing of the Sale, the Debtors intend to assume and assign to the Stalking Horse Bidder or any other Successful Bidder(s) the Transferred Contracts. A schedule listing the potential Transferred Contracts (the “Executory Contract List”) is attached hereto and may also be accessed free of charge on the Debtors’ case information website, located at <https://cases.primeclerk.com/pernix>. In addition, the “Cure Claims,” if any, necessary for the assumption and assignment of the Transferred Contracts are set forth on the Executory Contract List. *Each Cure Claim listed on the Executory Contract List represents all liabilities of any nature that the Debtors believe they have arising under an Assumed Contract prior to the closing of the Sale, whether known or unknown, whether due or to become due, whether accrued, absolute, contingent or otherwise, so long as such liabilities arise out of or relate to events occurring prior to the closing of the Sale. If you believe your Cure Claim is listed with an incorrect amount on the Executory Contract List, you must object in accordance with the procedures described in this Notice.*

YOU ARE RECEIVING THIS NOTICE BECAUSE YOU HAVE BEEN IDENTIFIED AS A CONTRACT COUNTERPARTY TO A POTENTIAL ASSUMED CONTRACT. Subject to the terms of the Assumption and Assignment Procedures and the Stalking Horse Agreement, the Debtors or the Stalking Horse Bidder may, at any time prior to the closing of the Sale, (a) designate a Contract on the attached Executory Contract List as an Assumed Contract or as a Contract that will not be assumed and assigned to the Stalking Horse Bidder (an “Excluded Contract”), (b) add a Contract to the Executory Contract List or (c) modify the previously-stated Cure Claims associated with any Proposed Assumed Contract. The Assumption and Assignment Procedures further provide that any Contract Counterparty whose Contract is added to the Executory Contract List after the date hereof, or whose previously-stated Cure Claim is modified, will in each case receive notice thereof and an opportunity to file a Supplemental Assumption and Assignment Objection. **The assumption and assignment of the Contracts on the Executory Contract List is not guaranteed and is subject to approval by the Court and the Debtors’ or the Stalking Horse Bidder’s right to not designate a Contract on the Executory Contract List as an Assumed Contract.**

Obtaining Additional Information

Copies of the Sale Motion, the Sale Procedures and the Sale Procedures Order, as well as all related exhibits, including the Stalking Horse Agreement and all other documents filed with the Court, are available free of charge on the Debtors’ case information website, located at <https://cases.primeclerk.com/pernix>.

Upon request by a counterparty under any Contract, counsel to the Stalking Horse Bidder shall provide, by electronic mail, the Adequate Assurance Information (as defined in the Sale Procedures). The contact information for counsel to the Stalking Horse Bidder is: Skadden, Arps, Slate, Meagher & Flom LLP, 4 Times Sq., New York, NY 10036, Attn: Lisa Laukitis (lisa.laukitis@skadden.com) and Evan A. Hill (evan.hill@skadden.com).

Important Dates and Deadlines³

1. **Auction.** In the event that the Debtors timely receive a Qualified Bid in addition to the Qualified Bid of the Stalking Horse Bidder and subject to the satisfaction of any further conditions set forth in the Sale Procedures, the Debtors intend to conduct an Auction for the Assets. The Auction, if one is held, will commence on **April 11, 2019 at 10:00 a.m. (prevailing Eastern Time)** at the offices of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017.
2. **Sale Objection Deadline.** The deadline to file an objection with the Court to the Sale Order, and all objections relating to the Stalking Horse Bidder or the conduct of the Sale (collectively, the "Sale Objections") is **April 8, 2019 at 4:00 pm.** (prevailing Eastern Time) (the "Sale Objection Deadline").
3. **Sale Hearing.** A hearing (the "Sale Hearing") to consider the proposed Sale will be held before the Court on **April 15, 2019 at 9:30 a.m.** (prevailing Eastern Time), or such other date as determined by the Court, at 824 North Market Street, Wilmington, Delaware 19801.

Filing Assumption and Assignment Objections

Pursuant to the Assumption and Assignment Procedures, objections to the proposed assumption and assignment of an Assumed Contract (an "Assumption and Assignment Objection"), including any objection relating to the Cure Claim or adequate assurance of the Stalking Horse future ability to perform, must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules and Local Bankruptcy Rules, (c) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Claim that the Contract Counterparty believes is required to cure defaults under the relevant Assumed Contract, (d) be filed by no later than (x) **April 8, 2019, at 4:00 p.m. (prevailing Eastern Time)** or (y) **for those Contract Counterparties that receive a Supplemental Assumption and Assignment Notice, fourteen (14) days after service of such Supplemental Assumption and Assignment Notice** and (e) be served on (i) counsel for the Debtors, (y) Davis Polk & Wardwell LLP, 450 Lexington Ave., New York, New York 10017, Attn: Elliot Moskowitz (Elliot.moskowitz@davispolk.com), Eli J. Vonnegut (eli.vonnegut@davispolk.com) and Christopher S. Robertson (christopher.robertson@davispolk.com) and (z) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn: Adam G. Landis (landis@lrclaw.com) and Kerri K. Mumford (mumford@lrclaw.com), (ii) counsel to the Stalking Horse Bidder, Skadden, Arps, Slate, Meagher & Flom LLP, 4 Times Sq., New York, NY 10036, Attn: Lisa Laukitis (lisa.laukitis@skadden.com) and Evan A. Hill (evan.hill@skadden.com), (iii) counsel to the Committee, (y) Akin Gump Strauss Hauer & Feld LLP, Bank of America Tower, 1 Bryant Park, New York, NY 10036, Attn: Arik Preis (apreis@akingump.com) and Gary A. Ritacco (gritacco@akingump.com) and (z) Potter Anderson & Corroon LLP, 1313 N. Market St., Sixth Floor, P.O. Box 951, Wilmington, DE 19801, Attn: Jeremy W. Ryan (jryan@potteranderson.com) and R. Stephen McNeill (rmcneill@potteranderson.com); and (iv)

³ The following dates and deadlines may be extended by the Debtors or the Court pursuant to the terms of the Sale Procedures and the Sale Procedures Order.

the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware, 19801, Attn: Benjamin A. Hackman, Esq. (Benjamin.a.hackman@doj.gov) (the “Objection Notice Parties”).

Sale Objections, if any, must (a) be in writing, (b) state, with specificity, the legal and factual bases thereof, (c) be filed with the Court by no later than **the Sale Objection Deadline** and (d) be served on the Objection Notice Parties.

CONSEQUENCES OF FAILING TO TIMELY ASSERT AN OBJECTION

Any Contract Counterparty to an Assumed Contract who fails to timely make an objection to the proposed assumption and assignment of such contract or lease on or before the Assumption and Assignment Objection Deadline in accordance with the Assumption and Assignment Procedures, the Sale Procedures Order and this Notice shall be deemed to have consented to the Cure Claims set forth in the Potential Assumption and Assignment Notice or Supplemental Assumption and Assignment Notice and forever barred from asserting any objection or claims against the Debtors, the Stalking Horse Bidder, or any other Successful Bidder(s), or the property of any such parties, relating to the assumption and assignment of such contract or lease, including asserting additional Cure Claims with respect to such contract or lease. Notwithstanding anything to the contrary in such contract or lease, or any other document, the Cure Claims set forth in the Potential Assumption and Assignment Notice or Supplemental Assumption and Assignment Notice shall be controlling and will be the only amount necessary to cure outstanding defaults under the applicable Assumed Contract under section 365(b) of the Bankruptcy Code arising out of or related to any events occurring prior to the closing of the Sale, whether known or unknown, whether due or to become due, whether accrued, absolute, contingent or otherwise.

Any party or entity who fails to timely make an objection to the Sale on or before the Sale Objection Deadline in accordance with the Sale Procedures Order shall be forever barred from asserting any objection to the Sale, including with respect to the transfer of the assets free and clear of all liens, claims, encumbrances and other interests.

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Dated: March __, 2019
Wilmington, Delaware

LANDIS RATH & COBB LLP

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