**THE UNITED STATES BANKRUPTCY COURT**
**MIDDLE DISTRICT OF NORTH CAROLINA**
**WINSTON-SALEM DIVISION**

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| **In re:** | ) | **Chapter 11** |
| | ) | |
| **Product Quest Manufacturing, LLC, *et al.*,**[1] | ) | **Case No. 18- 50946** |
| | ) | **(Jointly Administered)** |
| | ) | |
| **Debtors.** | ) | |
| | ) | |

**DEBTORS' MOTION FOR ENTRY OF ORDERS (A) AUTHORIZING AND SCHEDULING AN AUCTION FOR THE SALE OF CERTAIN ASSETS, (B) APPROVING BIDDING PROCEDURES, (C) APPROVING THE FORM AND MANNER OF CERTAIN NOTICES, (D) SETTING A DATE FOR THE SALE HEARING, (E) APPROVING THE SALE OF THE DEBTORS' ASSETS TO THE HIGHEST OR BEST BIDDER(S), AND (F) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the "Debtors") file this motion (the "Motion")[2] seeking entry of (i) an Order approving the proposed Bidding Procedures, and (ii) entry of an Order after further notice and hearing approving the sale and transferring liens to proceeds. In support of this Motion, the Debtors respectfully show the Court as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this proceeding is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. On September

[1] The Debtors in these cases are: (i) Ei LLC (Case No. 18-50945); (ii) Product Quest Manufacturing, LLC (Case No. 18-50946); (iii) Scherer Labs International, LLC (Case No. 18-50948); (iv) Product Quest Logistics, LLC (Case No. 18-50950); (v) JBTRS, L.L.C. (Case No. 18-50951); and (vi) PQ Real Estate LLC (Case No. 18-50952). The Debtors' service address is: 2865 N. Cannon Blvd., Kannapolis, North Carolina 28083.

[2] Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Bidding Procedures (defined below).

13, 2018, this Court entered an Order determining that the Debtors' cases should be jointly administered pursuant to Bankruptcy Rule 1015(b).

2. The predicates for the relief requested herein are sections 105 and, 363 and 365 of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), Rules 2002, 6004, 6006 and 9006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

**BACKGROUND**

3. On September 7, 2018 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Middle District of North Carolina (the "Court"). The Debtors have continued in possession of their properties and have continued to manage their properties as debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No request has been made for the appointment of a trustee or examiner, and no official committee has yet been established in these cases.

4. The factual background relating to the Debtors' commencement of these cases is set forth in detail in the *Declaration of Michael J. Musso in Support of First Day Motions and Applications* (Doc. 13, the "First Day Declaration") filed on the Petition Date and incorporated herein by reference.

5. The Debtors retained Conway MacKenzie Management Services, LLC ("Conway") to provide an interim Chief Executive Officer who reports directly to the Board of Managers, and, as necessary, other temporary personnel who report directly to the Chief Executive Officer.

6. On September 7, 2018, the Debtors filed an Emergency Motion for entry of orders authorizing the use of cash collateral (Doc. 12, the "Cash Collateral Motion"), and after notice

and hearing on September 13, 2018, the Court authorized the use of cash collateral by entry of an interim order on September 18, 2018 (Doc. 79, as amended, supplemented, modified or replaced from time to time, including pursuant to a final order, the "Cash Collateral Order"), and the factual findings and conclusions set forth in the Cash Collateral Order are incorporated herein by reference. As set forth in the Cash Collateral Order, substantially all the Debtors' assets are subject to liens or security interests securing a claim in excess of $153 million.[3]

7. The Debtors have determined, due to the challenges facing the Debtors and in the exercise of their business judgment, that it would not be in the best interest of the Debtors' estates to attempt to restart operations and restructure the existing secured and unsecured indebtedness, and that a sale of the Debtors' assets would likely result in the best recovery for all creditors.

## RELIEF REQUESTED

8. The Debtors intend to sell certain assets (as described in the Bidding Procedures, the "Sale Assets") without the retention of an investment banker. In that regard, Conway has already received numerous inquiries from potential strategic buyers and liquidators, obtained non-disclosure agreements prior to releasing any information, responded to questions about existing assets, and scheduled appointments for interested parties to visit the facility. In conjunction with the proposed Bidding Procedures, Conway will continue these services, so that potential bidders can conduct their due diligence, and with the assistance of Debtors' counsel receive and evaluate bids at an auction pursuant to the proposed Bidding Procedures. Qualifying Bids will be "tested" in the marketplace by the sale and bidding process described below to ensure that the estates realize the maximum value for the Sale Assets.

[3] Madison Capital Funding LLC, as agent (in such capacity, "Agent") for the Lenders, has filed a proof of claim in the amount of not less than $153,652,695.61.

9. By this Motion, the Debtors request that the Court:

a. Conduct an initial hearing on this Motion (the "Bidding Procedures Hearing") to be scheduled on an expedited basis as the Court permits.

b. Following the Bidding Procedures Hearing, enter an order substantially in the form attached hereto as Exhibit A (the "Bidding Procedures Order") approving the proposed bidding procedures substantially in the form attached hereto as Exhibit B (the "Bidding Procedures"), which, among other things:

i. Establishes the requirements for Qualifying Bids.

ii. Establishes a deadline for submission of Qualifying Bids.

iii. Approves the bidding procedures related to the conduct of the Auction.

iv. Approves the form and manner of notices of the proposed sale of the Sale Assets, the Auction, any proposed assumption and assignment of executory contracts or unexpired leases and any cure costs associated therewith, and the Sale Hearing, substantially in the form attached hereto as Exhibit C (the "Sale Notice") and Exhibit D (the "Assignment Notice").[4]

v. Authorizes and schedules an Auction at which the Debtors will solicit the highest or best bids for the Sale Assets.

vi. Authorizes and sets the time, date and place of a later hearing (the "Sale Hearing") to consider the sale of some or all of the Sale Assets, including any proposed assumption and assignment of executory contracts and unexpired leases and proposed cure costs related thereto.

[4] By separate motion, the Debtors will seek authority to assume and assign, certain executory contracts and unexpired leases in conjunction with the proposed auction.

vii. Establishes deadlines for objections to any of the foregoing.

10. The Debtors further request that, following the Sale Hearing, the Court enter an order (the "Sale Order"), which, among other things:

a. Authorizes and approves the sale by the Debtors of the Sale Assets to the Prevailing Bidder(s) and, under certain circumstances to the Back-up Bidder(s).

b. Authorizes and approves the assumption and assignment of those executory contracts and unexpired leases, if any, which are designated for assumption and assignment by the purchaser(s) of any of the Sale Assets.

c. Subject to consummation of the sale and payment in full of all consideration under the applicable asset purchase agreement(s), transfers any and all claims, liens, encumbrances and interests in the Sale Assets to the proceeds of sale, with the same validity and priority as such claims, liens, encumbrances and interest applied against the Sale Assets immediately prior to the consummation of the sale, except as otherwise specifically provided in the applicable asset purchase agreement and consented to by Agent.

d. Grants such other and further relief as the Court deems just and proper.

11. To streamline the auction process, the Debtors believe that it is important that bidders use a common asset purchase agreement template (the "Form APA") to be prepared by counsel for the Debtors and provided to potential bidders.

12. The Debtors intend to give notice of this Motion, the Bidding Procedures, the Bidding Procedures Hearing, the Auction, the Assignment Notice and the Sale Hearing as follows:

a. Serve a copy of this Motion on the parties on the Master Service List established in these cases.

b. Within three business days after entry of the Bidding Procedures Order, serve copies of the Bidding Procedures Order, the Bidding Procedures and the Sale Notice on (i) the parties on the Master Service List, (ii) all other known creditors and other parties in interest, and (iii) all parties known by the Debtors to assert a lien or security interest in the Sale Assets (the persons listed in clauses (i) through (iii) are referred to collectively as the "Notice Parties"). Although not required by the Bankruptcy Code or Rules, the Debtors will also provide copies of the Bidding Procedures Order, the Bidding Procedures and the Sale Notice to any parties who previously have expressed serious interest in acquiring all or a material portion of the Sale Assets.

c. Serve a copy of the Assignment Notice at least ten days prior to the Sale Hearing to the parties on the Master Service List and all non-debtor parties to the Debtors' executory contracts and unexpired leases whose contracts or leases are designated to be assumed and assigned at and in conjunction with the closing of approved sales.

13. The Debtors submit that the foregoing is sufficient notice of the Bidding Procedures, the Auction, the Assignment Notice, deadlines for objections, the Sale Hearing, the proposed sale by the Debtors of the Sale Assets, and any proposed assumption and assignment of executory contracts and unexpired leases which are designated for assumption and assignment by purchaser(s) of any of the Sale Assets.

14. By this Motion, the Debtors intend to liquidate the Sale Assets in order to monetize such assets and remit the proceeds to Agent for application to the Prepetition Debt (as defined in the Cash Collateral Order) in accordance with the terms of the Cash Collateral Order

and as provided in the Sale Order. The Debtors strongly believe that, in furtherance of this goal, they can and will do all that is reasonably possible to secure the highest or best possible offer for the Sale Assets under the circumstances. For all of the foregoing reasons, the relief requested in this Motion is a product of sound business judgment and is in the best interests of the Debtors, their creditors, employees, estates and other stakeholders, and should be granted.

15. Accordingly, the Debtors submit that the proposed Bidding Procedures, and any sale presented in accordance therewith, is warranted and appropriate under the terms and provisions of Section 363(b) of the Bankruptcy Code.

16. Further, the proposed Bidding Procedures have been designed to create a fair, open and level playing field. Accordingly, the Debtors request that the parties submitting Prevailing Bid(s) or Back-up Bid(s) be determined to have acted in good faith and be entitled to the protections of a good faith purchaser under Section 363(m) of the Bankruptcy Code.

**SALE FREE AND CLEAR OF LIENS**

17. The Debtors request that, subject to consummation of the sale and payment in full of all consideration under the applicable asset purchase agreement(s), the sale and transfer of the Sale Assets be approved free and clear of all liens (as such term is defined in the Bankruptcy Code), other than those specifically assumed by the party submitting the Prevailing Bid(s), and that such liens attach to the proceeds of sale, with the same validity and priority as such liens applied against the Sale Assets immediately prior to the consummation of the sale, except as otherwise specifically provided applicable asset purchase agreement and consented to by Agent. Such relief is consistent with the provisions of Section 363(f) of the Bankruptcy Code in these cases.

18. In this instance, the Debtors believe that Madison Capital Funding LLC, as Agent for the Lenders is the only party holding or asserting a lien upon or security interest in the Sale Assets, and the Debtors anticipate that the Agent will consent to the transaction presented for approval at the Sale Hearing, so long as (x) Agent retains the right to credit bid at the Auction as provided in Section 363(k) of the Bankruptcy Code and the Cash Collateral Order, (y) upon the consummation of the sale and payment in full of all consideration under the applicable asset purchase agreement(s), the liens and security interests of Agent attach to the proceeds of the sale with the same validity and priority as such liens and security interests applied against the Sale Assets immediately prior to the consummation of the sale and (z) the proceeds of the sale are remitted to Agent for application to the Prepetition Debt in accordance with the Cash Collateral Order.

## EXECUTORY CONTRACTS AND UNEXPIRED LEASES

19. The Bidding Procedures contemplate the possible assumption of certain executory contracts and unexpired leases and the assignment of these contracts and leases to the Prevailing Bidders or Back-up Bidders at and in conjunction with closing, in the event assumption and assignment of such contracts and leases is specified by such Bidders in their respective bids.

20. By separate motion, the Debtors will seek authority to assume and assign, or to reject, certain executory contracts and unexpired leases in conjunction with the Auction. The Debtors will also request that the Sale Order include provisions (i) authorizing the Debtors to assume and assign the Assumed Contracts pursuant to Section 365 of the Bankruptcy Code, (ii) fixing the cure amounts identified in the Cure Notice as the exact amounts that must be paid to the non-debtor parties to the Assumed Contracts (the "Cure Costs"), (iii) authorizing and

directing the Debtors to pay the Cure Costs at the closing, and (iv) deeming the parties to the Assumed Contracts adequately assured of future performance.

WHEREFORE, the Debtors respectfully request that this Court:

1. Enter the Bid Procedures Order approving the Bidding Procedures and approving the form and manner of the notices of (i) the proposed sale, auction and approval hearing and (ii) assumption and assignment of the Debtors' executory contracts and unexpired leases and proposed cure costs related thereto, which order shall be substantially in the form and substance of Exhibit A attached hereto or otherwise satisfactory to Debtors and Agent.

2. Following the sale approval hearing, enter the Sale Order approving the sale of the Sale Assets, approving the assumption and assignment of the Debtors' executory contracts and unexpired leases to the extent so requested, and, subject to consummation of the sale and payment in full of all consideration under the applicable asset purchase agreement(s), transferring all liens on such assets to the proceeds of sale with the same validity and priority as such liens applied against the Sale Assets immediately prior to the consummation of the sale, which order shall (x) provide that the proceeds of the sale are remitted to Agent for application to the Prepetition Debt in accordance with the Cash Collateral Order, (y) be subject to (and will not modify or otherwise affect) any of the terms of the Cash Collateral Order and (z) otherwise be in form and substance satisfactory to the Debtors and Agent.

3. Grant the Debtors such other relief as the Court may deem necessary and proper.

[signature on following page]

Dated: September 24, 2018

Respectfully submitted,

NORTHEN BLUE LLP

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EXHIBIT A

**THE UNITED STATES BANKRUPTCY COURT**
**MIDDLE DISTRICT OF NORTH CAROLINA**
**WINSTON-SALEM DIVISION**

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|---|---|---|
| **In re:** | ) | **Chapter 11** |
| | ) | |
| **Product Quest Manufacturing, LLC, *et al.*,**[1] | ) | **Case No. 18- 50946** |
| | ) | **(Jointly Administered)** |
| | ) | |
| **Debtors.** | ) | |
| | ) | |

**ORDER (A) AUTHORIZING AND SCHEDULING AN AUCTION FOR THE SALE OF CERTAIN ASSETS, (B) APPROVING BIDDING PROCEDURES, (C) APPROVING THE FORM AND MANNER OF CERTAIN NOTICES, AND (D) SETTING A DATE FOR THE SALE HEARING**

THIS MATTER came before the Court after due notice and hearing on October 11, 2018 for purposes of an interim order establishing bidding procedures and other relief in connection with the Debtors' Motion For Entry Of Orders (A) Authorizing And Scheduling An Auction For The Sale Of Certain Assets, (B) Approving Bidding Procedures, (C) Approving The Form And Manner Of Certain Notices, (D) Setting A Date For The Sale Hearing, (E) Approving The Sale Of The Debtors' Assets To The Highest Or Best Bidder(S), And (F) Granting Related Relief (the "Sale Motion") filed by Product Quest Manufacturing, LLC, et al (collectively, the "Debtors"), pursuant to §§ 105, 363 and 365 of the Bankruptcy Code and Rules 2002, 6004, 6006 and 9006 of the Federal Rules of Bankruptcy Procedure.

Upon consideration of the Sale Motion and the evidence submitted in support thereof, and it appearing that this Court has jurisdiction to consider the Sale Motion; that the relief requested in the Sale Motion is in the best interests of the Debtors, their respective estates, and all parties in interest; that adequate notice of the Sale Motion has

[1] The Debtors in these cases are: (i) Ei LLC (Case No. 18-50945); (ii) Product Quest Manufacturing, LLC (Case No. 18-50946); (iii) Scherer Labs International, LLC (Case No. 18-50948); (iv) Product Quest Logistics, LLC (Case No. 18-50950); (v) JBTRS, L.L.C. (Case No. 18-50951); and (vi) PQ Real Estate LLC (Case No. 18-50952). The Debtors' service address is: 2865 N. Cannon Blvd., Kannapolis, North Carolina 28083.

been given; that exigent circumstances exist to justify a sale of the Debtors' assets pursuant to Section 363 of the Bankruptcy Code, rather than pursuant to a confirmed chapter 11 plan under Section 1129 of the Bankruptcy Code, and that the sale is within the reasonable business judgment of the Debtor and is in the best interest of the estate, subject to exposing the Sale Assets to bids and after further hearing to confirm the proposed sale; and sufficient cause appearing therefore:

**IT IS HEREBY ORDERED THAT**:

1. The "Bidding Procedures" attached as Exhibit A are hereby approved by this Court and incorporated by reference as if set forth fully herein. The Bidding Procedures shall govern any Auction conducted in connection with the Sale. The failure specifically to include any particular provisions of the Bidding Procedures in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of this Court that the Bidding Procedures are authorized and approved in their entirety.

2. The notice contemplated by the Sale Motion is adequate and sufficient notice of the proposed sale of the Sale Assets, the Auction, any proposed assumption and assignment of executory contracts or unexpired leases and any cure costs associated therewith and the Sale Hearing, and no additional notice need be given. Without limiting the generality of the foregoing, the Court specifically approves the "Sale Notice" attached as Exhibit B and the "Assignment Notice" attached as Exhibit C.

3. The final hearing (the "Sale Approval Hearing") to consider the sale of some or all of the Sale Assets, including any proposed assumption and assignment of executory contracts and unexpired leases and proposed cure costs related thereto shall be held at ____ on **November __, 2018**, in the U.S. Bankruptcy Courtroom, 226 S. Liberty Street, Winston-Salem, North Carolina 27101.

4. Within three business days after entry of this Order (the "Bidding Procedures Order"), the Debtors shall serve copies of the Bidding Procedures Order, the Bidding Procedures and the Sale Notice on (i) the parties on the Master Service List, (ii) all other known creditors and other parties in interest, and (iii) all parties known by the Debtors to assert a lien or security interest in the Sale Assets (the persons listed in clauses (i) through (iii) are referred to collectively as the "Notice Parties").

5. In addition, although not required by the Bankruptcy Code or Rules, the Debtors shall also provide copies of the Bidding Procedures Order, the Bidding Procedures and the Sale Notice to any parties who previously have expressed serious interest in acquiring all or a material portion of the Sale Assets.

6. At least ten days prior to the Sale Hearing, the Debtors shall serve a copy of the Assignment Notice to the parties on the Master Service List and all non-debtor parties to the Debtors' executory contracts and unexpired leases whose contracts or leases are designated to be assumed and assigned at and in conjunction with the closing of approved sales.

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EXHIBIT B

**THE UNITED STATES BANKRUPTCY COURT**
**MIDDLE DISTRICT OF NORTH CAROLINA**
**WINSTON-SALEM DIVISION**

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|---|---|---|
| **In re:** | ) | **Chapter 11** |
| | ) | |
| **Product Quest Manufacturing, LLC, *et al.*,**[1] | ) | **Case No. 18- 50946** |
| | ) | **(Jointly Administered)** |
| | ) | |
| **Debtors.** | ) | |
| | ) | |

**BIDDING PROCEDURES**

The following procedures (the "Bidding Procedures") have been approved and authorized by order (the "Bidding Procedures Order") of the United States Bankruptcy Court for the Middle District of North Carolina (the "Bankruptcy Court") in the Chapter 11 case of Product Quest Manufacturing, LLC, et al (the "Debtors"), which have been administratively consolidated as Case No. 18-50946 (the "Bankruptcy Case"). These procedures shall govern the proposed sale (the "Sale"), including any auction (the "Auction") conducted in connection therewith, of certain assets of the Debtors' bankruptcy estates pursuant to the Debtors' motion for an order authorizing the Sale and granting related relief (the "Sale Motion")[2].

**1. Sale Assets.** The assets to be sold pursuant to these Bidding Procedures (the "Sale Assets") shall consist of the Debtors' real property (land, buildings and permanent fixtures), machinery and equipment, office furniture and equipment, vehicles, and customer lists and related data, unless sold, assigned, transferred, or otherwise administered in the Bankruptcy Case prior to the Auction; provided however, the Sale Assets do not include the Excluded Assets (as defined below) unless Debtors and Agent otherwise agree in writing. The Sale Assets may be sold in one or more separate "Lots" as determined by the Debtors and Agent in their sole discretion, in the configuration that would generate the highest gross sale price.

**2. Excluded Assets.** Specifically excluded from the Sale Assets are the following (collectively, the "Excluded Assets"):

a. Cash now or subsequently held in bank accounts by the Debtors on behalf of the bankruptcy estate.

[1] The Debtors in these cases are: (i) Ei LLC (Case No. 18-50945); (ii) Product Quest Manufacturing, LLC (Case No. 18-50946); (iii) Scherer Labs International, LLC (Case No. 18-50948); (iv) Product Quest Logistics, LLC (Case No. 18-50950); (v) JBTRS, L.L.C. (Case No. 18-50951); and (vi) PQ Real Estate LLC (Case No. 18-50952). The Debtors' service address is: 2865 N. Cannon Blvd., Kannapolis, North Carolina 28083.

[2] Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Sale Motion.

b. Accounts receivable, deposits, or other debts or obligations owed to the Debtors by or from any party, including any right of setoff, recoupment or reconciliation.

c. Minoxidil ANDA, Chiggerex brand and formulation, and library of sun-care formulas.

d. Inventory, including finished goods, work in process, raw materials, chemicals and packaging supplies.

e. Computer servers and storage devices.

f. Licenses and permits of any nature, other than executory contracts or unexpired leases which may be selected by a Prevailing Bidder or Back-up Bidder and which may be assigned and assumed pursuant to Section 365 of the Bankruptcy Code.

g. Any customer owned equipment or intellectual property on loan to the Debtors, and other tangible or intangible assets with are the property of a party other than the Debtors.

h. Unless otherwise agreed by the debtors, any identified reserve samples ("retains"), stability data or documentation, and GMP documentation.

i. The sale price to be delivered to the Debtors in connection with any approved sale.

j. The Debtors' books, business and financial records, including emails, correspondence, batch records, tech transfer records, and stability data as required by the FDA and/or EPA.

k. Insurance policies, any claims thereunder (whether asserted prior to or after the date of the Auction) and the proceeds thereof.

l. Any claims or causes of action which may be asserted by or on behalf of the Debtors against any party, including but not limited to claims or causes of action under Code §§ 544, 547, 548, 549, 550 and 553.

m. Any other assets that are expressly excluded by the Debtors from the Sale.

**3. <u>Sale Free and Clear of Liens</u>.** Subject to consummation of the sale and payment in full of all consideration under the applicable asset purchase agreement(s), the Sale Assets shall be sold, transferred and conveyed free and clear of all liens (as that term is defined in the Bankruptcy Code) to the fullest extent permitted under Section 363 of the Bankruptcy Code, with all liens transferred to proceeds of sale with the same validity and priority as such liens applied against the Sale Assets immediately prior to the consummation of the sale, pursuant to the Sale Order which shall provide that the proceeds of the sale are remitted to Agent for application to the Prepetition Debt in accordance with the Cash Collateral Order.

**4. Diligence by Prospective Bidders.** The Debtors shall give notice of the proposed Sale and these Bidding Procedures to prospective bidders, receive and consider unsolicited offers for the Sale Assets in consultation with Agent, provide information to any such prospective bidder, and allow any such prospective bidder to conduct due diligence (limited to review of materials in the data room established by the Debtors and a site inspection for physical review of the Sale Assets) in connection with consideration of a potential bid for the Sale Assets; provided, however, that any such prospective bidder desiring to conduct due diligence shall (a) demonstrate the financial ability, as determined by Debtors and Agent in their reasonable discretion, to consummate a transaction for the purchase of the Sale Assets, and (b) execute a confidentiality agreement in a form acceptable to Debtors and Agent in their reasonable discretion. The Debtors shall file with the Court, on or before the Bid Deadline (as defined below), a statement identifying any prospective bidder that is not allowed to conduct due diligence because of a determination by Debtors that said person does not have the financial ability to consummate the purchase.

**5. Bid Requirements.** Any entity that is interested in purchasing one or more Lots (a "Bidder") must submit to the Debtors a bid (an "Initial Bid") in conformance with this paragraph, in a manner such that the Initial Bid is received by Debtors no later than the Bid Deadline. The Debtors shall have reasonable discretion (in consultation with Agent) in determining whether an Initial Bid is a conforming bid in accordance with the requirements of this paragraph. Every such Initial Bid must:

a. Include an executed copy of a definitive Asset Purchase Agreement (the "Bidder's Agreement") specifying the assets to be purchased and liabilities to be assumed at closing as one or more of the Lots. The Bidder's Agreement shall not include any assets in addition to the Sale Assets unless otherwise agreed by Debtors and Agent in writing. The Bidder's Agreement shall be substantially in the same form as the Asset Purchase Agreement proposed by the Debtors (the "Form APA"), accompanied by a red-line document showing any and all differences between the Bidder's Agreement and the Form APA, and shall specify any executory contracts or unexpired leases which are to be assumed and assigned to the Bidder.

b. Provide for a fixed price (the "Sale Price"), subject to the ability to increase such price(s) at the Auction, payable in immediately available funds at closing.

c. Be a "firm offer" subject only to final approval of the Bankruptcy Court, and not subject to further due diligence or conditional upon obtaining financing, internal approvals or any third-party approvals.

d. Be accompanied by admissible evidence in the form of affidavits or declarations establishing the Bidder's good faith, within the meaning of section 363(m) of the Bankruptcy Code.

e. Be accompanied by (i) financial statements or admissible evidence in the form of affidavits or declarations establishing that the Bidder is ready, willing, authorized, capable, and qualified, financially, legally, and otherwise, of unconditionally performing all obligations under the Bidder's Agreement in the event that it submits the prevailing bid at the Sale Hearing, and (ii) evidence that it is duly authorized and entitled to engage in the transaction contemplated by the Initial Bid without the consent of any entity that has not been obtained, in each case, in form and substance satisfactory to Debtors and Agent.

f. Be accompanied by a deposit in an amount equal to five percent (5%) of the Sale Price (the "Deposit Amount") in the form of a wire transfer or cashier's check payable to the Debtors and to be held in a non-interest-bearing segregated account pending completion of the Auction, and subject to the provisions of set forth below.

g. Be accompanied by (i) a written acknowledgment and representation that the sale will be on an "as is," "where is" basis and that the Bidder had an opportunity to conduct, and is relying solely on, its own diligence in submitting its bid, (ii) a written acknowledgment and representation that such Bidder agrees to abide by and honor the terms of these Bidding Procedures and agrees not to submit a bid or seek to reopen the Auction after conclusion of the Auction, (iii) a commitment to consummate the sale on or before the date that is no later than 15 days after the Sale Hearing.

h. Notwithstanding the foregoing and subject to the Challenge Provisions as set forth in the Interim Cash Collateral Order, in connection with the sale or other disposition of all or any portion of the Aggregate Collateral and pursuant to Code § 363(k), Madison Capital Funding LLC in its capacity as Agent for the Lenders shall have the right to use the Prepetition Debt or any part thereof to credit bid with respect to any bulk or piecemeal sale of all or any portion of the Sale Assets.

**6. Bid Deadline.** Any Initial Bid must be delivered to the Debtors by 4:00 o'clock p.m. Eastern, on **October 26, 2018** (the "Bid Deadline").

**7. Non-Conforming Bids.** Any entity that fails to submit a timely, conforming Initial Bid, as set forth above, as determined by Debtors in their reasonable discretion, shall be disqualified from bidding for the Sale Assets at the Auction. At least five (5) days prior to the Auction Date, the Debtors shall file with the Court and serve upon such Bidder a statement explaining the grounds for disqualification ("Statement of Disqualification"). Any party in interest may contest the Debtors' determination as to whether an Initial Bid is conforming, but any such contest must be served upon the Debtors and filed with the Bankruptcy Court by the Objection Deadline.

**8. Auction Procedures.** In the event that one or more timely, conforming Initial Bids are submitted (each person who has submitted such a timely, conforming Initial Bid and Agent shall be referred to herein as a "Qualified Bidder"), the Debtors and their counsel shall conduct the Auction in which only Qualified Bidders may participate. The Auction shall be held on **November 5, 2018** (the "Auction Date"), commencing at 10:00 o'clock a.m. Eastern, at the Debtors' premises located at 2865 N. Cannon Blvd., Kannapolis, North Carolina 28083 (or such other location as may be determined by the Debtors and communicated to all Qualified Bidders at least two (2) business days before the Auction), and shall be governed by the following procedures:

a. All bidders shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court, to have consented to the Constitutional authority of the Bankruptcy Court to enter a final judgment, and to have waived any right to jury trial in connection with any disputes relating to the Auction and/or the sale of the Sale Assets.

b. Bidding will commence at an amount of the highest or otherwise best conforming Initial Bid submitted by a Qualified Bidder with respect to any given Lot, as determined by Debtors and Agent in their reasonable discretion. The Debtors will conduct the bidding process for each Lot sequentially or concurrently as they deem appropriate and in the best interests of the estates, in consultation with Agent.

c. Each subsequent bid by a Qualified Bidder shall be in increments that increase that aggregate consideration above the previous bid by such amount as may be determined by the Debtors and Agent in their sole discretion.

d. Each Qualified Bidder should be prepared to make its best and final offer at the Auction, and the Debtors reserve all rights to grant or deny any request for a continuance or recess of the Auction or the Sale Hearing, in consultation with Agent.

e. The Debtors (after consulting with Agent) may announce at the Auction any modifications of or additional procedural rules that are reasonable under the circumstances for conducting the Auction so long as such rules are not in contravention with the Bidding Procedures in any material respect.

f. Upon conclusion of the Auction, the Debtors shall designate the highest or otherwise best bidder as the prevailing bidder with respect to each Lot (the "Prevailing Bidder(s)") and the next highest or otherwise best bidder after the Prevailing Bidder (the "Back-up Bidder(s)").

g. The Debtors shall file a Report of Auction upon completion of the Auction, designating for each Lot the Prevailing Bidder and the Back-up Bidder, if applicable, setting forth in each instance the amount of the respective Bids.

**9. Back-up Bidder.** Any objection to the designation of the Back-up Bidder shall be raised at the Sale Hearing and decided by the Bankruptcy Court. If, for any reason, the Prevailing Bidder is unable or unwilling timely to perform its obligations under the Prevailing Bidder's definitive sale agreement and the Bidding Procedures, the Debtors, in the exercise of their business judgment, may sell the Sale Assets to the Back-up Bidder without further notice or a hearing. The Back-up Bidder's bid shall remain open and binding until the sale to the Prevailing Bidder closes or, if the Prevailing Bidder is unable or unwilling to close and the Debtors elects to sell to the Back-up Bidder, until the sale to the Back-up Bidder closes.

**10. Objection.** Any objection to the Sale Motion, a Statement of Disqualification, the Auction, the designation of the Prevailing Bidder or the Back-up Bidder, the proposed assumption and assignment of any executory contracts or unexpired leases, or entry of the Sale

Order (an "Objection") must be filed with the Bankruptcy Court and served upon (i) counsel for the Bankruptcy Administrator, (ii) counsel for the Debtors, (iii) counsel for Madison Capital Funding LLC, as Agent for the Lenders, (iv) counsel for any Committee appointed in the Bankruptcy Case, in a manner such that the Objection is filed and received by such parties and the Bankruptcy Court on or before **November 12, 2018** (the "Objection Deadline"). The Debtors and other parties in interest shall not be required to file responses to any Objection.

**11. Sale Approval Hearing.** The final hearing to approve the Prevailing Bidder and the Back-up Bidder for each Lot (the "Sale Approval Hearing") shall be held before the Bankruptcy Court at _____ a.m. Eastern time on **November __, 2018**, in the U.S. Bankruptcy Courtroom, 226 S. Liberty Street, Winston-Salem, North Carolina 27101. The Prevailing Bidder and the Back-up Bidder, if one is designated, shall appear at the Sale Approval Hearing, in person or through a duly authorized representative and not solely through counsel.

**12. Business Judgment.** The Debtors may, in consultation with Agent, recommend a sale of one or more Lots to any Qualified Bidder pursuant to a bid which the Debtors determine, exercising reasonable business judgment, to be in the best interests of the bankruptcy estate. The Debtors may, in consultation with Agent, reject, at any time before the entry of an order of the Bankruptcy Court approving a bid from a Qualified Bidder, any bid that is deemed inadequate or insufficient, not in substantial conformity with the Bankruptcy Code or these Bidding Procedures, or contrary to the best interests of the estate and its creditors. In exercising business judgment as to which bid constitutes the highest or otherwise best bid the Debtors may, in consultation with Agent, consider all factors which they may deem relevant, subject to the parties' right to object and raise any such issues with the Bankruptcy Court.

**13. Disposition of Deposits.** Promptly following the Bankruptcy Court's determination of the Prevailing Bidder for each Lot, the deposits submitted by any Bidders shall be refunded to each unsuccessful bidder other than the Back-up Bidder for each Lot, if any. The deposits of the Prevailing Bidder(s) and the Back-up Bidder(s) for each Lot shall be retained as earnest money to be used in the following ways:

a. The deposit of the Prevailing Bidder for each Lot shall either be (i) applied at closing as a credit toward the purchase price of the Prevailing Bidder or, if the purchase price is paid in full at closing, returned to the Prevailing Bidder, (ii) if the sale to the Prevailing Bidder shall fail to timely close by reason of a breach or default of the Prevailing Bidder, the deposit shall be retained by the Debtors as liquidated damages, or (iii) in the event that the sale to the Prevailing Bidder shall fail to timely close by reason of a breach or default of the Debtors, the deposit shall be returned to the Prevailing Bidder.

b. The deposit of the Back-up Bidder for each Lot shall either be (i) returned to the Back-up Bidder upon the closing of the transaction with the Prevailing Bidder, (ii) if the sale to the Prevailing Bidder shall fail to close for any reason, applied at closing as a credit toward the purchase price of the Back-up Bidder, (iii) if the sale to the Back-up Bidder shall fail to timely close by reason of a breach or default of the Back-up Bidder, retained by the Debtors as liquidated damages, or (iv) if the sale to the Back-up Bidder shall fail to timely close by reason of a breach or default of the Debtors, the deposit shall be returned to the Back-up Bidder.

**14.** **Closing Date**. The closing of the sale(s) of the Sale Assets must occur as soon as practicable but in any event within 3 days of the date on which the Sale Order becomes a final, non-appealable order (or such later date as Debtors and Agent may agree).

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EXHIBIT C

**THE UNITED STATES BANKRUPTCY COURT**
**MIDDLE DISTRICT OF NORTH CAROLINA**
**WINSTON-SALEM DIVISION**

| | | |
|---|---|---|
| **In re:** | ) | **Chapter 11** |
| | ) | |
| **Product Quest Manufacturing, LLC, *et al.*,**[1] | ) | **Case No. 18- 50946** |
| | ) | **(Jointly Administered)** |
| | ) | |
| **Debtors.** | ) | |
| | ) | |

**SALE NOTICE**

TAKE NOTICE that certain bidding procedures (the "Bidding Procedures") have been approved and authorized by order (the "Bidding Procedures Order") of the United States Bankruptcy Court for the Middle District of North Carolina (the "Bankruptcy Court") in the Chapter 11 case of Product Quest Manufacturing, LLC, et al (the "Debtors"), which have been administratively consolidated as Case No. 18-50946 (the "Bankruptcy Case").

The Bidding Procedures govern the proposed sale (the "Sale"), including any auction (the "Auction") conducted in connection therewith, of certain assets of the Debtors' bankruptcy estates pursuant to the Debtors' motion for an order authorizing the Sale and granting related relief (the "Sale Motion"). A copy of the Bidding Procedures Order, the Bidding Procedures and the Form APA may be obtained on written request to the Debtors or their counsel.

**Bid Deadline.** Any Initial Bid must be delivered to the Debtors by 4:00 o'clock p.m. Eastern, on **October 26, 2018** (the "Bid Deadline").

**Auction and Bidding Procedures.** In the event that one or more timely, conforming Initial Bids are submitted (each person who has submitted such a timely, conforming Initial Bid shall be referred to herein as a "Qualified Bidder"), the Debtors and their counsel shall conduct the Auction in which only Qualified Bidders may participate. The Auction shall be held on **November 5, 2018** (the "Auction Date"), commencing at 10:00 o'clock a.m. Eastern, at the Debtors' premises located at 2865 N. Cannon Blvd., Kannapolis, North Carolina 28083 (or such other location as may be determined by the Debtors and communicated to all Qualified Bidders at least two (2) business days before the Auction), and shall be governed by the Bidding Procedures.

**Objection.** Any objection to the Sale Motion, a Statement of Disqualification, the Auction, the designation of the Prevailing Bidder(s) or the Back-up Bidder(s), or entry of the Sale Order (an "Objection") must be filed with the Bankruptcy Court and served upon (i) counsel for the

[1] The Debtors in these cases are: (i) Ei LLC (Case No. 18-50945); (ii) Product Quest Manufacturing, LLC (Case No. 18-50946); (iii) Scherer Labs International, LLC (Case No. 18-50948); (iv) Product Quest Logistics, LLC (Case No. 18-50950); (v) JBTRS, L.L.C. (Case No. 18-50951); and (vi) PQ Real Estate LLC (Case No. 18-50952). The Debtors' service address is: 2865 N. Cannon Blvd., Kannapolis, North Carolina 28083.

Bankruptcy Administrator, (ii) counsel for the Debtors, (iii) counsel for Madison Capital Funding LLC, as Agent for the Lenders, (iv) counsel for any Committee appointed in the Bankruptcy Case, at the addresses set forth on the attached schedule and in a manner such that the Objection is filed and received by such parties and the Bankruptcy Court on or before **November 12, 2018** (the "Objection Deadline"). The Debtors and other parties in interest shall not be required to file responses to any Objection.

**Executory Contracts and Unexpired Leases.** The Bidding Procedures contemplate the possible assumption of certain executory contracts and unexpired leases and the assignment of these contracts and leases to the Prevailing Bidders or Back-up Bidders in the event assumption and assignment of such contracts and leases is specified by the such Bidders. The Debtors will file a separate motion in which the Debtors will seek authority to assume and assign, executory contracts and unexpired leases in conjunction with the proposed auction, and if so authorized the Debtors will serve a copy of the Assignment Notice, fixing the cure amounts identified therein as the exact amounts that must be paid to the non-debtor parties to the Assumed Contracts (the "Cure Costs"), to the parties on the Master Service List and all non-debtor parties to the Debtors' executory contracts and unexpired leases whose contracts or leases are designated to be assumed and assigned within five days after the Auction.

**Sale Approval Hearing.** The final hearing to approve the Prevailing Bidder and the Back-up Bidder for each Lot (the "Sale Approval Hearing") shall be held before the Bankruptcy Court at _______ a.m. Eastern time on **November ___, 2018**, in the U.S. Bankruptcy Courtroom, 226 S. Liberty Street, Winston-Salem, North Carolina 27101. The Prevailing Bidder(s) and the Back-up Bidder(s), if designated, shall appear at the Sale Approval Hearing, in person or through a duly authorized representative and not solely through counsel.

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EXHIBIT D

**THE UNITED STATES BANKRUPTCY COURT**
**MIDDLE DISTRICT OF NORTH CAROLINA**
**WINSTON-SALEM DIVISION**

| | | |
|---|---|---|
| **In re:** | ) | **Chapter 11** |
| | ) | |
| **Product Quest Manufacturing, LLC, *et al.*,**[1] | ) | **Case No. 18- 50946** |
| | ) | **(Jointly Administered)** |
| | ) | |
| **Debtors.** | ) | |
| | ) | |

**ASSIGNMENT NOTICE**

TAKE NOTICE that certain bidding procedures (the "Bidding Procedures") were approved and authorized by order (the "Bidding Procedures Order") of the United States Bankruptcy Court for the Middle District of North Carolina (the "Bankruptcy Court") in the Chapter 11 case of Product Quest Manufacturing, LLC, et al (the "Debtors"), which have been administratively consolidated as Case No. 18-50946 (the "Bankruptcy Case").

The Bidding Procedures govern the proposed sale (the "Sale"), including any auction (the "Auction") conducted in connection therewith, of certain assets of the Debtors' bankruptcy estates pursuant to the Debtors' motion for an order authorizing the Sale and granting related relief (the "Sale Motion").

The Bidding Procedures contemplate the possible assumption of certain executory contracts and unexpired leases and the assignment of these contracts and leases to the Prevailing Bidders or Back-up Bidders in the event assumption and assignment of such contracts and leases are specified by such Bidders in conjunction with their respective Bids.

By separate motion, the Debtors sought and obtained authority to assume and assign, or to reject, certain executory contracts and unexpired leases in conjunction with the Auction. The Debtors have also requested that the Sale Order include provisions (i) authorizing the Debtors to assume and assign those executory contracts and unexpired leases which were designated by the Prevailing Bidders or Back-up Bidders pursuant to Section 365 of the Bankruptcy Code (the "Assumed Contracts"), (ii) fixing the cure amounts identified in the Assignment Notice as the exact amounts that must be paid to the non-debtor parties to the Assumed Contracts (the "Cure Costs"), (iii) authorizing and directing the Debtors to pay the Cure Costs at the closing, and (iv) deeming the parties to the Assumed Contracts adequately assured of future performance.

[1] The Debtors in these cases are: (i) Ei LLC (Case No. 18-50945); (ii) Product Quest Manufacturing, LLC (Case No. 18-50946); (iii) Scherer Labs International, LLC (Case No. 18-50948); (iv) Product Quest Logistics, LLC (Case No. 18-50950); (v) JBTRS, L.L.C. (Case No. 18-50951); and (vi) PQ Real Estate LLC (Case No. 18-50952). The Debtors' service address is: 2865 N. Cannon Blvd., Kannapolis, North Carolina 28083.

At the Auction, the Prevailing Bidder(s) and the Back-up Bidder(s) designated certain Assumed Contracts as set forth on the attached Schedule, which identifies each such the contract or lease, the parties thereto, the name and contact information for the Bidder, and the Cure Costs, respectively.

Any objection to the assumption and assignment of an Assumed Contract, the amount(s) stated as Cure Costs, or the adequacy of assurance of future performance must be filed with the Bankruptcy Court and served upon (i) counsel for the Bankruptcy Administrator, (ii) counsel for the Debtors, (iii) counsel for Madison Capital Funding LLC, as Agent for the Lenders, (iv) counsel for any Committee appointed in the Bankruptcy Case, at the addresses set forth on the attached schedule and in a manner such that the Objection is filed and received by such parties and the Bankruptcy Court on or before **November 12, 2018** (the "Objection Deadline"). The Debtors and other parties in interest shall not be required to file responses to any Objection.

The final hearing to approve the Prevailing Bidder and the Back-up Bidder for each Lot, and in conjunction therewith the assumption and assignment of the Assumed Contracts (the "Sale Approval Hearing"), shall be held before the Bankruptcy Court at _______ a.m. Eastern time on **November ___, 2018**, in the U.S. Bankruptcy Courtroom, 226 S. Liberty Street, Winston-Salem, North Carolina 27101.

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