

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

VALERITAS HOLDINGS, INC., *et al.*,¹
Debtors.

Chapter 11

Case No. 20-10290 (LSS)

Jointly Administered

Re: D.I. 127

**CERTIFICATION OF COUNSEL WITH RESPECT TO STIPULATION TO
RESOLVE ASSUMPTION AND CURE DISPUTE AND OTHER RELATED ISSUES**

I, Maris J. Kandestin, the undersigned counsel to the above-captioned debtors and debtors in possession (collectively, the “Debtors”), hereby certifies as follows:

1. On March 6, 2020, Debtors filed the *Notice of Proposed Assumption or Assumption and Assignment of Certain Executory Contracts* [Docket No. 127] (the “Cure Notice”), which lists, among others, that certain *License and Maintenance Agreement*, dated April 17, 2009, between QAD Inc. (“QAD”) and the Debtors

2. Based on continuing discussions between the Parties² regarding outstanding amounts stated on the Cure Notice and other related matters, QAD, Zealand Pharma A/S, and the Debtors have entered into the *Stipulation to Resolve Assumption and Cure Dispute and Other Related Issues* (the “Stipulation”) attached as Exhibit 1 to the *Order Approving Stipulation to Resolve Assumption and Cure Dispute and Other Related Issues* (the “Proposed Order”), attached hereto as **Exhibit A**.

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number, are: Valeritas Holdings, Inc. (8907); Valeritas, Inc. (1056); Valeritas Security Corporation (9654); Valeritas US, LLC (0007). The corporate headquarters and the mailing address for the debtors is 750 Route 202 South, Suite 600, Bridgewater, New Jersey 08807.

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Stipulation (as defined below).



WHEREFORE, the Debtors respectfully request that the Court enter the proposed order, attached hereto as **Exhibit A**, granting the relief requested, and grant such other and further relief as the Court may deem just and proper.

Dated: April 2, 2020
Wilmington, Delaware

Respectfully submitted,

DLA PIPER LLP (US)

/s/ Maris J. Kandestin

Maris J. Kandestin (DE 5294)

1201 North Market Street, Suite 2100

Wilmington, Delaware 19801

Telephone: (302) 468-5700

Facsimile: (302) 394-2341

Email: maris.kandestin@us.dlapiper.com

-and-

Rachel Ehrlich Albanese (admitted *pro hac vice*)

1251 Avenue of the Americas

New York, New York 10020

Telephone: (212) 335-4500

Facsimile: (212) 335-4501

Email: rachel.albanese@us.dlapiper.com

Counsel to the Debtors and Debtors in Possession

EXHIBIT A

Proposed Order

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

-----X
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In re: : Chapter 11

:

VALERITAS HOLDINGS, INC., *et al.*,³ : Case No. 20-10290 (LSS)

:

Debtors. : (Jointly Administered)

:

X Re: D.I. 127 & __

-----X

**ORDER APPROVING STIPULATION TO RESOLVE ASSUMPTION
AND CURE DISPUTE AND OTHER RELATED ISSUES**

Upon consideration of the stipulation (the “Stipulation”),¹ between and among the Debtors, QAD, and Purchaser resolving the assumption and cure dispute, and upon consideration of the record of these chapter 11 cases; and this Court having found that (i) this Court has jurisdiction over the Debtors, their estates, property of their estates and to consider the Stipulation under 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, (ii) this Court may enter a final order consistent with Article III of the United States Constitution, (iii) this is a core proceeding under 28 U.S.C § 157(b)(2)(A), (iv) venue of this Stipulation in this District is proper under 28 U.S.C. §§ 1408 and 1409, and (v) no further or other notice of the Stipulation is required under the circumstances; and this Court having reviewed the Stipulation and having determined that the legal and factual bases set forth in the Stipulation establish just cause for the relief granted in this order; and any objections to the requested relief having been withdrawn or overruled;

³ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number, are: Valeritas Holdings, Inc. (8907); Valeritas, Inc. (1056); Valeritas Security Corporation (9654); Valeritas US, LLC (0007). The corporate headquarters and the mailing address for the debtors is 750 Route 202 South, Suite 600, Bridgewater, New Jersey 08807.

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Stipulation.

IT IS HEREBY ORDERED THAT:

1. The Stipulation attached hereto as **Exhibit 1**, which is incorporated herein as if set forth in full, is approved.
2. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), the terms and provisions of this Order shall be immediately effective and enforceable upon its entry.
3. The Debtors are hereby authorized to take all actions they deem necessary to effectuate the relief granted in this Order.
4. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation or interpretation of this Order and the Stipulation.

Exhibit 1

Stipulation

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

	X	
	:	
In re:	:	Chapter 11
	:	
VALERITAS HOLDINGS, INC., <i>et al.</i> , ⁵	:	Case No. 20-10290 (LSS)
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	Re: D.I. 127

**STIPULATION TO RESOLVE ASSUMPTION AND
CURE DISPUTE AND OTHER RELATED ISSUES**

This Stipulation and Agreement (the “Stipulation”) is entered into by and between the above-captioned debtors and debtors in possession (collectively, the “Debtors”), QAD Inc. (“QAD”), and Zealand Pharma A/S or its permitted designee (“Purchaser”). The Debtors, QAD, and Purchaser may each be referred to as a “Party,” and together, the “Parties,” in this Stipulation.

RECITALS

WHEREAS, on March 6, 2020, the Debtors filed the *Notice of Proposed Assumption or Assumption and Assignment of Certain Executory Contracts* [D.I. 127], which lists, among others, that certain *License and Maintenance Agreement*, dated April 17, 2009, between QAD and the Debtors (the “License Agreement”).

WHEREAS, pursuant to the terms of the License Agreement, QAD provides certain software that is used in the Debtors’ ongoing operations and is anticipated to be utilized by Purchaser following the close of the sale of the Debtors’ business.

⁵ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number, are: Valeritas Holdings, Inc. (8907); Valeritas, Inc. (1056); Valeritas Security Corporation (9654); Valeritas US, LLC (0007). The corporate headquarters and the mailing address for the debtors is 750 Route 202 South, Suite 600, Bridgewater, New Jersey 08807.

WHEREAS, QAD asserts that (1) the License Agreement cannot be transferred without its consent and (2) it is entitled to a transfer fee (the “Transfer Fee”) in the event of such a transfer.

WHEREAS, the Parties wish to proceed with the assumption and assignment of the License Agreement and QAD wishes to negotiate a new contract with Purchaser for the continued use of QAD’s software.

WHEREAS, prior to the execution of this Stipulation, the Parties have engaged in good-faith, arms’-length negotiations with respect to the foregoing issues (the “Parties’ Disputes”).

NOW, THEREFORE, in consideration of the foregoing Recitals and of the mutual promises and agreements contained herein, the Parties hereby agree as set forth herein, subject to the approval of the United States Bankruptcy Court for the District of Delaware (the “Court”), as follows:

STIPULATION

1. The Parties hereby fully and finally settle and resolve all of the Parties’ Disputes as set forth herein.

2. This Stipulation is subject to and conditioned upon the entry of a final, non-appealable order of the Court (a “Final Order”) approving this Stipulation (the “Stipulation Effective Date”). In the event that the Stipulation Effective Date does not occur, this Stipulation shall be deemed null and void and of no force or effect. In such event, nothing (including the Recitals) contained in this Stipulation, any motion or certification filed seeking an order from the Court approving this Stipulation, nor any correspondence or other communications related to the negotiations, drafting or approval of this Stipulation, shall be argued or deemed to be an admission against any Party’s interest in any litigation by and between any parties, and the Parties shall be automatically returned to their respective positions status quo ante.

3. Assumption and assignment of the License Agreement is conditioned on QAD and the assignee entity (which shall be Purchaser or an affiliate designated by Purchaser) entering into a new standard QAD License and Maintenance Agreement, and the assignee entity paying to QAD a Transfer Fee (not to exceed \$14,720 plus applicable sales taxes), on or before April 24, 2020.

4. QAD acknowledges and agrees that the Debtors paid for maintenance on the License Agreement through April 30, 2020.

5. QAD acknowledges that, other than the Transfer Fee, there are no amounts due on owing on account of the License Agreement.

6. The Debtors shall use commercially reasonable efforts to obtain Court approval by Final Order of this Stipulation, on such notice and hearing as the Court may require.

7. Each Party warrants and represents to the other Parties that (i) it has been represented by counsel, or has had the full opportunity to be represented by counsel, in connection with entering into this Stipulation, (ii) it has carefully read this Stipulation and knows and understands the contents thereof, (iii) it understands and agrees to all provisions of this Stipulation, and (iv) it has freely and voluntarily caused this Stipulation to be executed.

8. No Party shall be deemed to be the drafter of this Stipulation for any purpose. Accordingly, this Stipulation shall be interpreted and construed in a neutral manner in accordance with the plain meaning of the language contained herein and shall not be presumptively construed against any Party.

9. This Stipulation contains the entire agreement among the Parties with respect to the subject matter hereof and upon the Stipulation Effective Date, supersedes all other prior agreements, understandings, representations or warranties between the Parties. No representations

have been made or relied upon by the Parties with respect to the subject matters hereof, except as set forth herein.

10. This Stipulation may not be modified, amended or supplemented by the Parties except by written agreement of the Parties.

11. Should any provision of this Stipulation be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable for any reason, the Parties shall have the right to terminate the entire Stipulation if the removal of such provision adversely affects such Party.

12. Each of the undersigned represents and warrants that it has the full power to and is authorized and empowered to bind the Party on whose behalf that person has executed this Stipulation.

13. This Stipulation and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the Bankruptcy Code (to the extent applicable) and the laws of the state of Delaware, without giving effect to the principles of conflicts of laws that would require the application of the law of any other jurisdiction. The Parties acknowledge and agree that, except otherwise noted, the Court shall have the exclusive jurisdiction over this Stipulation, that any claims, causes of action or other legal proceedings in connection with or related in any manner to this Stipulation may be brought only before the Court and expressly waive any right to trial by jury, if any. This Stipulation and all of the terms, conditions and provisions hereof, shall be binding upon and inure to the benefit of the Parties hereto and their respective employees, agents, representatives, heirs, successors and assigns, including any debtor representative or trustee appointed in the Chapter 11 Cases, any chapter 7 bankruptcy trustee if the Chapter 11 Cases are converted, and/or any litigation or liquidating trust or similar representative.

14. Each Party shall be responsible for the payment of its own attorneys' fees, costs and all of its expenses in connection with the matters referred to in this Stipulation.

15. This Stipulation may be executed in counterparts, by either an original signature or signature transmitted by facsimile or electronic mail transmission or other similar electronic process and each copy so executed shall be deemed to be an original and all copies executed shall constitute one and the same agreement.

16. All titles and headings contained in this Stipulation are for convenience of reference only and shall not be construed to limit or extend the terms of this Stipulation.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties by and through their duly authorized counsel hereby execute this Stipulation as of the date first written above, intending to be legally bound.

Date: April 1, 2020

DLA PIPER LLP (US)

/s/ Maris J. Kandestin
Maris J. Kandestin
1201 North Market Street, Suite 2100
Wilmington, Delaware 19801
Telephone: (302) 468-5700
Facsimile: (302) 394-2341
Email: maris.kandestin@us.dlapiper.com

-and-

Rachel Ehrlich Albanese
1251 Avenue of the Americas
New York, New York 10020
Telephone: (212) 335-4500
Facsimile: (212) 335-4501
Email: rachel.albanese@us.dlapiper.com

Counsel to the Debtors and Debtors in Possession

Benesch, Friedlander, Coplan & Aronoff LLP

/s/ Kevin M. Capuzzi
Kevin M. Capuzzi
222 Delaware Avenue, Suite 801
Wilmington, Delaware 19801
Telephone: (302) 442-7010
Facsimile: (302) 442-7012
Email: kcapuzzi@beneschlaw.com

-and-

Richard Kanowitz
55 Hudson Yards
New York, NY 10001-2157
Telephone: (212) 479-6167
Facsimile: (212) 479-6275
Email: rkanowitz@cooley.com

-and-

Cullen D. Speckhart
1299 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004-2400
Telephone: (202) 776-2052
Facsimile: (202) 842-7899
Email: cspeckhart@cooley.com

Counsel for Zealand Pharma A/S

QAD Inc.

/s/ Jason Pickering

Jason Pickering

VP Legal Affairs

10000 Midlantic Drive

Mount Laurel Township, New Jersey 08054

Telephone: (856) 840-2489

Facsimile: (856) 840-2740

Email: jkp@qad.com