

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

In re:

VALERITAS HOLDINGS, INC., *et al.*,<sup>1</sup>  
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, the Debtors filed the *Notice of Proposed Assumption or Assumption and Assignment of Certain Executory Contracts* [D.I. 127] (the “Cure Notice”), which lists, among others, Winthrop Resources Corporation (“Winthrop”). TCF National Bank (“TCF”), as the successor by merger to Winthrop, is the proper counterparty to the Lease.<sup>2</sup>

2. Based on continuing discussions between the Parties regarding outstanding amounts stated on the Cure Notice and other related matters, TCF, Zealand Pharma A/S (the purchaser of substantially all of the Debtors’ assets), 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**.

<sup>1</sup> 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 c/o DLA Piper LLP (US), 1251 Avenue of the Americas, New York, New York 10020.

<sup>2</sup> 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**, approving the Stipulation and granting such other and further relief as the Court may deem just and proper.

Dated: April 3, 2020  
Wilmington, Delaware

Respectfully submitted,

**DLA PIPER LLP (US)**

*/s/ Maris J. Kandestin*

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*Counsel to the Debtors and Debtors in  
Possession*

**EXHIBIT A**

**Proposed Order**

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

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In re: : Chapter 11
  
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VALERITAS HOLDINGS, INC., *et al.*,<sup>1</sup> : Case No. 20-10290 (LSS)
  
:
  
Debtors. : (Jointly Administered)
  
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X Re: D.I. 127 & \_\_
  
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**ORDER APPROVING STIPULATION TO RESOLVE ASSUMPTION  
AND CURE DISPUTE AND OTHER RELATED ISSUES**

Upon consideration of the stipulation (the “Stipulation”), between and among the Debtors, TCF National Bank, successor by merger to Winthrop Resources Corp. (hereafter “TCF”), and Zealand Pharma A/S (“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

<sup>1</sup> 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) (collectively, the “Debtors”). The corporate headquarters and the mailing address for the Debtors is 750 Route 202 South, Suite 600, Bridgewater, New Jersey 08807.

relief granted in this Order; and any objections to the requested relief having been withdrawn or overruled;

**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> , <sup>4</sup>	:	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”), TCF National Bank, successor by merger to Winthrop Resources Corp. (hereafter “TCF”), and Zealand Pharma A/S (“Purchaser”). The Debtors, TCF, and Purchaser may each be referred to as a “Party,” and together, the “Parties,” in this Stipulation.

**RECITALS**

WHEREAS, on March 6, 2020, Debtors filed the *Notice of Proposed Assumption or Assumption and Assignment of Certain Executory Contracts* [D.I. 127] (the “Cure Notice”), which lists Winthrop Resources Corporation (“Winthrop”) as a counterparty to that certain Lease Agreement (and together with all applicable lease schedules and attachments thereto, the “Lease”), with a cure amount of \$42,817.00 (the “TCF Cure Amount”). TCF, as the successor by merger to Winthrop, is the proper counterparty to the Lease.

<sup>4</sup> 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 c/o DLA Piper LLP (US), 1251 Avenue of the Americas, New York, New York 10020.

WHEREAS, on March 20, 2020, the United States Bankruptcy Court for the District of Delaware entered the *Order (I) Authorizing the Sale of Substantially All of the Debtors' Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, (II), Approving the Agreement, (III), Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* [D.I. 232] approving the sale (the "Sale") of substantially all of the Debtors' assets to Purchaser.

WHEREAS, on April 2, 2020, the Sale closed.

WHEREAS, under the Lease, which provides for TCF's lease to the Debtors of certain hardware, software, and all related services (collectively, the "Equipment" as further identified on **Schedule A** hereto), the Debtors were obligated to, among other things, make quarterly payments of \$36,888.00 in the aggregate (the "Lease Payments").

WHEREAS, TCF's right to receive the Lease Payments was secured by a Letter of Credit ("LOC") issued in the amount of \$350,351.70 (the "Secured Amount") on behalf of the Debtors for the benefit of TCF.

WHEREAS, prior to filing their chapter 11 cases, the Debtors defaulted under the Lease by failing to make certain Lease Payments and thereafter, in accordance with the terms of the Lease, an accelerated amount of \$353,679.56 became immediately due and owing to TCF.

WHEREAS, on February 21, 2020, TCF sent a notice to Silicon Valley Bank to draw down on the LOC for the full Secured Amount (the "LOC Draw").<sup>5</sup>

WHEREAS, the funds recovered by TCF as a result of the LOC Draw were not property of the estate.

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<sup>5</sup> Based on the Debtors' records, the LOC funds have not yet been transferred to TCF, so the LOC Draw may still be in process. Regardless, as part of the Sale, Purchaser purchased the LOC. See Section 1.1 of that certain Asset Purchase Agreement [D.I. 67].



WHEREAS, after the LOC Draw, \$3,327.86 (the “Remaining Balance”) remained due and owing from the Debtors to TCF (the “TCF Claim”).

WHEREAS, in lieu of an assumption and assignment of the Lease, Purchaser wishes to buy the Equipment.

WHEREAS, the Debtors and TCF desire to resolve the TCF Claim.

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, the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereby stipulate and agree as follows:

1. **Settlement**. The Parties hereby fully and finally settle and resolve all of the Parties' Disputes as set forth herein.
2. **Purchase Price**. Within five (5) days of the entry of an Order of this Court approving this Agreement (“Approval Order”), Purchaser shall pay three thousand three hundred twenty-seven dollars and eighty-six cents (\$3,327.86) (the “Purchase Price”) to TCF in accordance with payee information to be provided by TCF (the “Purchase Price Payment”).
3. **Effective Date**. This Stipulation and all terms and provisions contained herein shall be effective on the earlier of: (i) the date the Purchase Price Payment clears TCF's bank account; and (ii) the date the Approval Order becomes a Final Order<sup>6</sup> (the “Effective Date”).

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<sup>6</sup> For purposes of this Stipulation, the term “Final Order” means, as applicable, an order or judgment of the Court or other court of competent jurisdiction with respect to the relevant subject matter, which has not been reversed, stayed, modified or amended, and as to which the time to appeal or seek certiorari has expired and no appeal or petition for certiorari has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be filed has been resolved by the highest court to which the order or judgment could be appealed or from which certiorari could be sought or the new trial, reargument or rehearing shall have been denied, resulted in no modification of such order or has otherwise been dismissed with prejudice.

4. **Lease Termination.** Immediately upon the occurrence of the Effective Date, the Lease, to the extent not already terminated, will be deemed terminated along with all rights and obligations thereunder.

5. **Transfer of Equipment Ownership.** Notwithstanding anything to the contrary, including in paragraphs 7 and 9 of the Lease, TCF shall sell, assign, transfer and convey the Equipment to Purchaser free and clear of all liens, encumbrances and liabilities. Such ownership of the Equipment shall be as-is and where-is and will automatically transfer from TCF to Purchaser on the Effective Date.

6. **Waiver of TCF Cure Amount and TCF Claim.** Immediately upon the occurrence of the Effective Date, TCF will be deemed to have waived its right to collect from the Debtors on account of the TCF Cure Amount and the TCF Claim.

7. **Amounts Previously Received.** TCF shall retain any and all amounts collected from the Debtors prior to the Effective Date, including, but not limited to, rental payments, deposits, and late fees. Such amounts shall be deemed valid and authorized and not subject to avoidance under the Bankruptcy Code or any other applicable law.

8. **LOC Draw.** Immediately upon the occurrence of the Effective Date, the LOC Draw will be deemed valid and authorized, and not subject to avoidance under the Bankruptcy Code or any other applicable law.

9. **Court Approval.** 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.

10. **Representations.** 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.

11. **No Admission of Liability.** Neither the negotiation, nor the performance, nor the terms and conditions of this Stipulation shall be deemed or construed to be an admission of any facts or liability of any kind by any Party for any purpose, and each Party expressly denies any liability on its part concerning or related to any and all of the resolved disputes and issues.

12. **Construction.** 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.

13. **Entire Agreement.** This Stipulation contains the entire agreement among the Parties with respect to the subject matter hereof and upon the 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.

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

15. **Non-Severability.** Should any provision of this Stipulation be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable for any reason, each Party shall have the right to terminate the entire Stipulation if such Party determines that the removal of such provision adversely affects such Party.

16. **Authority.** 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.

17. **Governing Law/Jurisdiction.** 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.

18. **Successors and Assigns.** 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.

19. **Attorneys' Fees.** 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.

20. **Counterparts.** 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.

21. **Titles and Headings.** 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 2, 2020

**Benesch, Friedlander, Coplan & Aronoff  
LLP**

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*Counsel to TCF National Bank*

**SCHEDULE A**

**Equipment List**

**EQUIPMENT LIST**

<b><u>MANUFACTURER</u></b>	<b><u>QTY</u></b>	<b><u>MACHINE/MODEL</u></b>	<b><u>EQUIPMENT DESCRIPTION (including features)</u></b>
Brother	42	J460DW	Multifunction Color Printer
Lenovo	31	T480	Think Pad - 14" – Core i5 8350U 8 GB RAM – 256 GB SSD
Apple	43	MR6Y2LL/A	9.7 inch iPad Wi-Fi = Cellular – 6 <sup>th</sup> generation – Tablet – 32GB – 9.7" – 3G, 4G
Lenovo	8	20LD001KUS	14" ThinkPad X1 Yoga 3 <sup>rd</sup> Gen Touchscreen LCD 2 in 1 Ultrabook Intel Core i7 (8 <sup>th</sup> Gen) i7-8550U Quad-core (4 Core) 1.8 GHz 8GB LPDDR3 256GB SSD Windows 10 Pro 64-Bit
Targus	43	THZ671GL	VersaVu – Flip Cover for Tablet
Targus	6	THZ671GL	USB – Lighting Cable 3ft
Apple	4	MD836LL/A	12W USB Power Adapter – White Freight
Synergistix			Implementation Fee (CATS Mobile Version 2.1.2.)
Synergistix	1		CATS Mobile Version - 2.1.2 License (70 Users)
Brother	71	MFC-J460DW	Multifunction All-in-One Inkjet Printer (Color)
Lenovo	57	20HD000WUS	ThinkPad T470 – 14" – Core i5 7200U- 8 GB RAM - 256 GB SSD
Lenovo	15	20JD004UUS	ThinkPad X1 Yoga – 14" Core i7 7500 – 8 GB RAM - 512 GB SSD
Apple	68	MP242LL/A	9.7 inch iPad Wi-Fi + Cellular Tablet 32 GB – Space Gray
Targus	68	THZ671GL	VersaVu Classic 360 Hard Case for Tablet – Faux Lether-Black- for Apple iPad Air
StarTech.com	66	USB2HAB6	6ft USB 2.0 Certified A to B Cable
Windows	1	AAA-03579-CCG	Windows 10 Pro Upgrade License for Image Freight