Docket #0002 Date Filed: 6/16/2020

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
PROTEUS DIGITAL HEALTH, INC.,	:	Case No. 20-11580 (____)
Debtor.[1]	:	

DECLARATION OF LAWRENCE R. PERKINS IN SUPPORT OF THE DEBTOR'S CHAPTER 11 PETITION AND FIRST DAY PLEADINGS

I, Lawrence R. Perkins, being duly sworn, depose and say:

1. I am the Interim Chief Executive Officer of Proteus Digital Health, Inc. (the "Debtor"), a corporation organized under the laws of Delaware and debtor-in-possession in the above-captioned chapter 11 case (the "Chapter 11 Case"). I have served in such capacity since February 6, 2020. Prior to being appointed as Interim CEO, I was appointed as Chief Restructuring Officer for the Debtor effective as of November 6, 2019.

2. I am also the Founder and Chief Executive Officer of SierraConstellation Partners ("Sierra"). Sierra has provided financial advisory and consulting support to me in my roles with the Debtor since my original appointment, and is proposed to continue in this capacity during the Chapter 11 Case.

3. I have over 20 years of management consulting and advisory experience with distressed companies or companies undergoing transition. I have held roles in various industries including healthcare industrial manufacturing, retail, real estate, and financial services.

[1] The last four digits of the Debtor's taxpayer identification number are 2680. The Debtor's corporate headquarters is located at 2600 Bridge Parkway, Redwood City, California 94065.

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4. In my capacity as CRO and Interim CEO of the Debtor, and as a result of my discussions with the Debtor's employees, consultants, professionals and Board of Directors (the "Board"), I have become generally familiar with the Debtor's day-to-day operations, business and financial affairs, and books and records.

5. Except as otherwise indicated herein, all statements set forth in this declaration (the "Declaration") are based on: (i) my personal knowledge of and familiarity with the Debtor's operations, finances, and restructuring efforts; (ii) my review of relevant documents and information provided to me by employees of or advisors to the Debtor or professionals retained by Debtor; (iii) my opinion based on my experience and knowledge of the Debtor's operations and financial and business affairs, including my general knowledge of the industry in which the Debtor operates: (iv) information supplied to me by and consultation with other members of Debtor's management, and the Debtor's professional advisors; and/or (v) my opinion based on my experience, knowledge, and information concerning the Debtor's operations and financial condition. I have obtained this information in the course of my tenure working with the Debtor and its professionals, including Debtor's outside corporate and restructuring counsel. In making this Declaration, I also have relied on information and materials that the Debtor's personnel and advisors have gathered, prepared, verified and provided to me, in each case under my ultimate supervision, at my direction and/or for my benefit in preparing this Declaration.

6. My investigation of the Debtor's operations and circumstances is ongoing. To the extent that I learn that any information provided herein is materially inaccurate, I or the Debtor will act promptly to notify the Court and other parties; however, I believe all information herein to be true to the best of my knowledge.

7. I am authorized to submit this Declaration on behalf of the Debtor and am over the age of 18. If called upon to testify, I would testify competently to the facts set forth herein.

8. This Declaration is divided into two parts. Part I provides background information regarding the Debtor, its business, its capital structure and the circumstances surrounding the commencement of the Chapter 11 Case. Part II sets forth the relevant facts in support of each of the First Day Pleadings.

PART I.

BACKGROUND

A. The Chapter 11 Filing

9. On June 15, 2020 (the "Petition Date"), the Debtor filed a voluntary petition in this Court for relief under chapter 11 of the Bankruptcy Code. The Debtor continues to manage and operate its business as debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

B. The Debtor's Business

10. The Debtor is a pioneer and leader of the "Digital Medicines" industry. "Digital Medicines" are oral pharmaceuticals formulated with an ingestible sensor aimed at tracking a patient's adherence to prescribed medication treatments. When patients use Digital Medicines, their mobile devices collect information about medication taken and safely transmit the data via the cloud to the healthcare provider. Care teams are able to see if their patients are properly taking their medication and observe and analyze real-time data regarding the patient's overall health such as heart rate, activity and rest. Digital Medicines enable care teams to manage larger patient populations and make medical decisions without the need for a patient to physically

travel to the doctor's office. Digital Medicines can help accelerate the trend toward conducting medical consultations over the internet. This opportunity is especially pronounced in rural areas and developing economies both domestically and internationally, particularly in light of challenges posed by the COVID-19 pandemic and resulting social distancing measures.

11. The Debtor was one of the first in healthcare to identify the importance of Digital Medicines. The Debtor was founded in 2002 by Andrew Thompson, Dr. George Savage, and Mark Zdeblick for the purpose of researching and developing Digital Medicines and, specifically, to improve outcomes for patients who regularly take prescription medication. Since its founding, the Debtor has pursued its vision to revolutionize and improve the healthcare industry through creating and establishing the clinical, regulatory and commercial standards, infrastructure, pathways, evidence, and advocacy to make drug therapy based on Digital Medicines the standard of care.

12. The Debtor has developed and commercialized a service offering called Proteus Discover™, a Digital Medicines solution that connects drug ingestions to outcomes and is designed to enable patients to engage in their own healthcare, be rapidly assessed and treated to goal.

13. The Proteus Discover ingestible sensor is the size of a grain of sand and comprised of dietary materials that are embedded in pill-form medications. Once swallowed, the sensor transmits data to a wearable sensor patch that records the date and time of ingestion. The sensor patch also tracks the patient's steps, sleep and heart rate. This data is encrypted and sent to a mobile device application via bluetooth. Patients can review the health statistics collected on the application, and share the data with their healthcare providers through a digital portal. Through the digital portal, healthcare providers can analyze individual and aggregated patient data,

recommend treatment modifications, and understand patterns and trends common to all of their patients.

14. The Debtor has engaged in ongoing scientific validation of Proteus Discover, including bench studies, randomized clinical trials, and studies in certain high risk populations. The Debtor has studied patients with a number of health conditions including cardiovascular disease, diabetes, tuberculosis, hepatitis C, cancer, and mental illness.

15. The Debtor made significant progress over the past five years, including the commencement of clinical trials in 2015 in conjunction with a partnership between the Debtor and Oracle. In 2016, the Debtor entered into its first agreement with a large health care system based in California that would start prescribing Proteus Discover™ to its patients.

16. And, significantly, in 2017, the Debtor announced the first United States Food and Drug Administration ("FDA") approval of the Digital Medicine Abilify MyCite®, a drug-device combination product comprised of Abilify tablets to be marketed and distributed by Otsuka Pharmaceutical Co., Ltd. ("Otsuka") in conjunction with the Debtor's sensor, patch and mobile device application.

17. The Proteus-Otsuka relationship was originally governed by a License and Collaboration Agreement dated as of June 25, 2012 (the "LCA") pursuant to which Otsuka obtained from the Debtor exclusive rights in certain disease fields to develop and commercialize Otsuka's products incorporating, or for use with, the Debtor's technology. Together with the LCA, the Debtor and Otsuka entered into a Supply Agreement, Quality Agreement and the Pharmacovigilance Agreement (collectively, the "LCA Ancillary Agreements").

18. In October 2018, the Debtor and Otsuka entered into that certain Expanded Collaboration Agreement (as amended from time to time), which superseded the LCA while

maintaining the parties' rights under the LCA Ancillary Agreements. The Expanded Collaboration Agreement provides for Otsuka to pay the Debtor certain milestone payments and other royalties. The Expanded Collaboration Agreement was amended from time to time, and most recently amended and restated effective as of December 30, 2019 as discussed in Section B below.

19. On May 5, 2020, the Debtor announced a multi-year, outcomes-based initiative with the State of Tennessee's Medicaid program, TennCare. This collaboration, which is based upon compelling evidence regarding the benefit of Digital Medicines for underserved populations, will support TennCare-covered patients undergoing hepatitis C treatment to achieve a cure through improved medication adherence and stronger connections to their care teams. Particularly with the impact of the COVID-19 pandemic and related social distancing, enabling healthcare teams to effectively engage and connect with patients remotely through tools like Proteus Discover can have significant benefit in improving health outcomes. The Debtor also has been collaborating with patient advocacy leaders to gather feedback and recommendations to shape its innovative TennCare initiative.

20. Currently, the Debtor has a panel of more than 20 Digital Medicines that treat cardiovascular and metabolic diseases including hypertension and diabetes being prescribed to patients in the United States. They are prepared and delivered via specialty pharmacy services.

21. As of the Petition Date, the Debtor holds approximately 400 patents, has completed over 100 clinical studies involving over 100,000 ingestions, published over 69 abstracts and scientific papers, and has secured certain regulatory clearances for its Digital Medicines in the United States, Europe and China.

C. The Debtor's Corporate Structure

22. The Debtor is a Delaware corporation with leased headquarters located at 2600 Bridge Parkway, Redwood City, California 94065. The Debtor also has a leased manufacturing facility located at 3956 Point Eden Way, Hayward, CA 94545.

23. The Debtor has a wholly owned subsidiary, non-debtor Proteus Digital Health UK Limited, which is based in London, England. Proteus Health UK Limited has no significant assets or operations and is in the process of being wound up.

24. The Debtor has issued and outstanding approximately 13.734 million shares of common stock, held by hundreds of investors. The Debtor also has issued and outstanding approximately 76 million shares of preferred stock, and approximately 900,000 warrants for the purchase of both common and preferred stock remain outstanding as of the Petition Date. Additionally, certain current and former employees were issued options to purchase the Debtor's equity in the Debtor pursuant to an employee incentive plan.

D. The Debtor's Prepetition Capital Structure

25. The Debtor's assets are comprised primarily of owned intellectual property, manufacturing and related equipment, furniture and fixtures, its leased manufacturing facility in Hayward, and receivables and business opportunities arising in connection with its Otsuka relationship. Additionally, as of the Petition Date, the Debtor has approximately $9.5 million in cash and cash equivalents, including professional retainer amounts and security deposits with respect to the Debtor's leases.

26. The Debtor's liabilities primarily relate to (i) rent-related obligations under its leases for its corporate headquarters in Redwood City, California and its manufacturing facility in Hayward, California; (ii) approximately $9.5 million in principal and accrued interest under that certain Credit Agreement, dated as of May 8, 2015 (as amended, supplemented, or otherwise

modified, the "Prepetition Credit Agreement") by and among the Debtor, as borrower, and OrbiMed Royalty Opportunities II, LP, as lender ("OrbiMed" or the "Prepetition Lender") pursuant to which OrbiMed provided term loans (collectively, the "Prepetition Loan"); (iii) approximately $3.5 million for trade and other third party accounts payable; (iv) approximately $2.23 million on account of a loan through the Paycheck Protection Program pursuant to the Coronavirus Aid, Relief, and Economic Security Act, which the Debtor used to fund payroll and employee benefits; and (v) certain obligations to employees, as discussed in the Wages and Benefits Motion (defined below).

27. Interest on the Prepetition Loan accrues at the non-default rate of 15% per annum payable in cash.[2] Commencing upon the Termination Date (as defined in the Prepetition Credit Agreement, as amended),[3] interest will accrue at a rate of 19% per annum payable in cash.[4] The Prepetition Loan originally matured on May 8, 2021, but is now due and payable in full on or before August 15, 2020.[5]

28. Pursuant to that certain Pledge and Security agreement dated as of May 8, 2015 (the "Prepetition Security Agreement"), the Prepetition Loan is secured by a first priority lien on the "Collateral" (as defined in the Prepetition Security Agreement) (the "Prepetition Collateral"), which is comprised of substantially all of the Debtor's assets, except for

[2] Amended pursuant to that certain Second Limited Forbearance Agreement dated and effective as of December 30, 2019 (the "Second Forbearance Agreement").

[3] Termination Date is defined in the Second Forbearance Agreement as "the earlier to occur of: (a) 11:59 p.m. Eastern time, on July 15, 2020; and (b) the date on which any Forbearance Default . . . occurs."

[4] Amended pursuant to that certain Limited Forbearance Agreement dated as of December 4, 2019 and made effective as of September 30, 2019.

[5] Amended pursuant to that certain First Amendment to Second Limited Forbearance Agreement dated as of May 28, 2020.

certain assets specifically identified in the Prepetition Security Agreement. The Prepetition Security Agreement specifically excludes the Debtor's Intellectual Property from the Prepetition Collateral, but includes "all Proceeds and all Accounts of all Intellectual Property."[6]

B. Events Leading to Chapter 11 Filing

29. The Debtor's business remains almost entirely in the "pre-revenue" stage of development. Since inception, the Debtor has relied primarily on equity capital and advances under its agreements with Otsuka to finance its operations.

30. Leading up to the fourth quarter of 2019, the Debtor experienced a severe liquidity crisis while attempting to resolve certain issues with Otsuka in connection with the Expanded Collaboration Agreement. This liquidity crisis prompted the Debtor to furlough nearly all of its employees for over two weeks and commence preparations for a potential Chapter 11 filing in November 2019. In addition, the Debtor experienced several events of default under the Prepetition Security Agreement.

31. In the midst of this crisis, the Debtor retained me and my firm. Fortunately, we were able to negotiate a framework with Otsuka and the Prepetition Lender that allowed the Debtor to bring back its employees and continue to operate. This framework encompassed:

(a) Amended and restated terms for the Expanded Collaboration Agreement effective as of December 30, 2019 (the "A&R ECA"), whereby Otsuka agreed to make certain payments and advances to the Debtor totaling approximately $90 million, which included (i) approximately $10 million advanced to the Debtor between November 15, 2019 and the execution of the A&R ECA, (ii) $32.5 million paid to the Debtor by

[6] Pursuant to the Prepetition Security Agreement, the terms "Proceeds" and "Accounts" have the meanings set forth in the Uniform Commercial Code.

Otsuka upon the execution of the A&R ECA, and (iii) three Milestone Payments due under the A&R ECA:

- $26.5 million due on or after February 14, 2020;
- $13.0 million due on or after April 17, 2020 (the "April Milestone Payment");
- $8.0 million due on or after June 15, 2020 (the "June Milestone Payment")[7]; and

(b) Forbearance from the Prepetition Lender, which culminated in a Second Limited Forbearance Agreement effective as of December 30, 2019, whereby the Prepetition Lender agreed to forbear in return for, *inter alia*, the following repayments to the Prepetition Lender (calibrated to sync with the Otsuka Milestone Payments):

- $24,000,000 on or before December 30, 2019;
- $21,000,000 on or before February 21, 2020;
- $7,750,000 on or before April 30, 2020 (the "April Installment"); and
- The remaining balance owed under the Prepetition Credit Agreement on or before July 15, 2020 (the "Final Installment").

32. Although the Milestone Payments and the repayment schedule for the Prepetition Lender were designed to provide the Debtor with some excess working capital (net of repayments to the Prepetition Lender), the Debtor anticipated that it would need additional funding in order to support its operations through the Final Installment and beyond. The Debtor and its

[7] As set forth below, the June Milestone Payment was subsequently split into two equal installments, one paid on May 29, 2020 and the other due not before June 30, 2020.

professionals made a diligent effort throughout the first quarter of 2020 to secure additional funding from a number of sources. Despite having several promising opportunities, the onset of the COVID-19 pandemic created significant uncertainty in the capital markets and frustrated the Debtor's efforts.

33. In April, the Debtor determined that making the full April Installment to the Prepetition Lender would not leave the Debtor with sufficient cash to operate on a go-forward basis. The Debtor therefore embarked on a simultaneous effort to (a) negotiate with the Prepetition Lender a modification of the due dates for the April Installment and the Final Installment, (b) explore with Otsuka the potential to accelerate a portion of the June Milestone Payment, and (c) bring to market a formal financing/sale process with the assistance of an investment banker.

34. After an interview process, the Debtor selected and retained Raymond James & Associates, Inc. ("Raymond James") as its investment banker effective as of May 5, 2020. Raymond James:

- Prepared marketing materials, including a teaser and 27-page Confidential Information Memorandum ("CIM");
- Organized a 244-file initial data room for parties under NDA;
- Identified and contacted 247 parties, comprised of 97 strategic parties and 150 capital providers;
- Collaborated with the Debtor's management to prepare a management presentation;
- Distributed CIMs to 29 parties under NDA;
- Conducted 50+ calls with prospective parties, many of which included management participation; and

- Sent out 23 process letters requesting indications of interest by June 10, 2020.

35. While the Raymond James marketing process was ongoing, the Debtor successfully negotiated an amendment to the Second Forbearance Agreement, whereby the Prepetition Lender agreed, *inter ali*a, to: (a) defer and split the April Installment into in two parts, $3,750,000 paid by the Debtor on or before May 29, 2020, and $4,000,000 paid by Otsuka directly to the Prepetition Lender on or before June 1, 2020; and (b) defer the Final Installment to August 15, 2020. The Debtor also successfully negotiated a modification to the A&R ECA whereby Otsuka agreed to advance $4,000,000 of the June Milestone Payment on May 29, 2020 (to directly fund the June 1 payment to the Prepetition Lender), and the timing for the remaining $4,000,000 of the June Milestone Payment was extended to not before June 30, 2020.

36. These agreements provided the Debtor with sufficient liquidity to fund operations through approximately mid-August, in order to facilitate the Raymond James marketing process. Throughout the weeks leading up to June 10, the Debtor consulted frequently with its advisors, key stakeholders and board of directors to determine the course of action that would most likely maximize value for all of the Debtor's stakeholders. Prior to the June 10 deadline, Raymond James engaged Otsuka regarding its interest in potentially acquiring some or all of the Debtor's assets.

37. Unfortunately, prevailing market conditions made it very difficult for parties (particularly strategics) to complete sufficient diligence to submit an indication of interest by June 10. Although Raymond James received significant and ongoing interest from multiple parties, no indications of interest were received by the June 10 deadline.

38. Following the June 10 deadline, Otsuka and the Debtor have had fruitful discussions regarding a potential transaction that could serve as a stalking horse bid in a chapter 11 sale process. These discussions, as well as Raymond James' marketing efforts, are ongoing.

39. In light of all of these circumstances, and after having explored multiple options and carefully considering the alternatives, the Board, in consultation with managements and the Debtor's advisors, made the difficult decision to file for chapter 11 protection in order to preserve the Debtor's assets and conduct a sale process or other transaction, all in an effort to maintain continuity of business operations (including the Debtor's TennCare initiative) and maximize going concern value for the benefit of the Debtor's creditors and equity stakeholders. The Debtor anticipates that it will seek approval of appropriate bidding and sale procedures in the early weeks of the Chapter 11 Case.

40. As explained in more detail below, the Debtor has negotiated with the Prepetition Lender for the consensual use of cash collateral in accordance with an Approved Budget, which will provide the funding runway necessary for the Debtor to complete a sale or other restructuring transaction.

* * *

PART II.

FIRST DAY PLEADINGS

41. In furtherance of these objectives, the Debtor filed the First Day Pleadings[8] concurrently with the commencement of the Chapter 11 Case. I have reviewed each of the First Day Pleadings (including the exhibits and schedules attached thereto) and, to the best of my

[8] Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the relevant First Day Pleadings filed contemporaneously herewith.

knowledge, information and belief, the facts set forth therein are true and correct. Based on my personal knowledge, information supplied to me by and discussions with other members of Debtor's management, Debtor's counsel and professionals and representatives, my review of relevant documents, my opinion based upon my experience and the aforementioned review and discussions, and as set forth in more detail below, I believe the relief sought in the First Day Pleadings is: (a) vitally necessary for the Debtors to (i) effectuate a smooth transition into, and operate within, the Chapter 11 Case, (ii) avoid immediate and irreparable harm, and (iii) avoid interruption or disruption to its business and estate to the greatest extent practicable; (b) in the best interests of the Debtors' creditors, estates and other stakeholders; and (c) constitutes a critical element in maximizing value during the Chapter 11 Case.

A. Administrative Motion

1. Debtor's Application for Authorization to Employ and Retain Kurtzman Carson Consultants LLC as Claims and Noticing Agent Effective as of the Petition Date (the "Claims Agent Application")

42. Through the Claims Agent Application, the Debtor requests entry of an order appointing Kurtzman Carson Consultants LLC ("KCC") as claims and noticing agent ("Claims and Noticing Agent") for the Debtor and its Chapter 11 Case, including assuming full responsibility for the distribution of notices and the maintenance, processing and docketing of proofs of claim filed in the Chapter 11 Case.

43. KCC has acted as the claims and noticing agent in numerous cases of comparable size, including several large bankruptcy cases pending in both this District and in other districts. Additionally, in compliance with the *Protocol for the Employment of Claims and Noticing Agents Under 28 U.S.C. § 156(c) of the United States Bankruptcy Court for the District of Delaware*, the Debtor obtained and reviewed engagement proposals from two (2) other Court-approved claims and noticing agents to ensure selection through a competitive process. I believe

based on all engagement proposals obtained and reviewed, that KCC's rates are competitive and reasonable given KCC's quality of services and expertise. I have worked with KCC before and have found them to be a highly competent and diligent provider of claims and noticing services.

44. As more fully detailed in the Claims Agent Application, I understand that KCC will engage in certain claims administration and noticing services as necessary, including, but not limited to, the distribution of notices and the maintenance, processing and docketing of proofs of claim filed in the Chapter 11 Case. The Claims Agent Application pertains only to the work to be performed by KCC under the Clerk's delegation of duties permitted by 28 U.S.C. § 156(c) and Local Rule 2002-1(f).[9]

45. I am advised that Local Rule 2002-1(f) requires the Debtor to retain a claims and noticing agent in this Chapter 11 Case, as the Debtor's creditor matrix contains more than two hundred (200) creditors or parties in interest. I believe that by appointing KCC as the Claims and Noticing Agent in this Chapter 11 Case, the distribution of notices and the processing of claims will be expedited, and the Clerk will be relieved of the administrative burden of processing what may be an overwhelming number of claims. Accordingly, I believe that retention of KCC is in the best interests of the Debtor and its estate and creditors.

B. Operational Motions

1. Debtor's Motion for Interim and Final Orders Pursuant to 11 U.S.C. §§ 105(A) and 366 (I) Approving Debtor's Proposed Form of Adequate Assurance of Payment, (II) Establishing Procedures for Resolving Objections by Utility Companies, and (III) Prohibiting Utility Companies From Altering, Refusing Or Discontinuing Service ("Utilities Motion")

[9] Although the Services Agreement (as defined in the Claims Agent Application) with KCC contemplates that KCC will provide services for the Debtor outside the scope of 28 U.S.C. § 156(c), the Debtor will seek authorization by separate application to retain and employ KCC as administrative advisor pursuant to Bankruptcy Code section 327 in the event that the Debtor requires such services.

46. By the Utilities Motion, the Debtor requests entry of interim and final orders (a) approving the Debtor's proposed form of adequate assurance of payment (the "Proposed Adequate Assurance") to their utilities, as that term is used in Bankruptcy Code section 366 (the "Utility Companies"); (b) approving procedures for resolving any objections by the Utility Companies relating to the Proposed Adequate Assurance; and (c) prohibiting the Utility Companies from altering, refusing or discontinuing services to or discriminating against the Debtor solely on the basis of the commencement of the Chapter 11 Case, a debt that is owed by the Debtor for services rendered prior to the Petition Date or on account of any perceived inadequacy of the Debtor's Proposed Adequate Assurance.

47. The Debtor fully intends to pay all undisputed postpetition obligations owed to the Utility Companies in a timely manner in accordance with the consensual use of cash collateral negotiated with the Prepetition Lender. Nevertheless, to provide additional assurance of payment for future services to the Utility Companies following the Petition Date, the Debtor proposes to establish a newly-created, interest-bearing, segregated account (the "Utility Deposit Account") and (ii) place a deposit equal to the Debtor's estimated aggregate cost for two (2) weeks of Utility Services, calculated based on the historical average over the past twelve (12) months, into such Utility Deposit Account. The Debtor also proposes a procedure by which Utility Companies may request additional adequate assurance (the "Adequate Assurance Procedures"), as described in the Utilities Motion.

48. The services provided by the Utility Companies (the "Utility Services") to the Debtor are critical to the continuing operations of the Debtor's business. Accordingly, preserving the Utility Services on an uninterrupted basis is essential to preserving and maximizing

the value of the estates. Thus, it is critical that Utility Services continue uninterrupted during the Chapter 11 Cases.

49. I believe that the relief requested in the Utilities Motion is in the best interest of the Debtor's estate, its creditors and all parties in interest, and constitutes a critical element of achieving a successful and smooth transition to chapter 11.

2. Debtor's Motion for Interim and Final Orders Pursuant to 11 U.S.C. §§ 105(a), 363, 507(a), 541, 1107(a) and 1108, and Fed. R. Bankr. P. 6003 and 6004, to, Inter Alia, (I) Authorize, But Not Direct, the Debtor to Pay Prepetition Wages, Compensation and Employee Benefits; (II) Authorize, But Not Direct, the Debtor to Continue Certain Employee Benefit Programs in the Ordinary Course; (III) Authorize all Banks to Honor Prepetition Checks For Payment Of Prepetition Employee Obligations; and (IV) Grant Other Related Relief ("Wages and Benefits Motion")

50. By the Wages and Benefits Motion, the Debtor requests entry of interim and final orders authorizing, but not directing, the Debtor to (a) pay certain prepetition wages, compensation, employee benefits and other related obligations (the "Employee Obligations") in an aggregate amount not to exceed $17,000 on an interim basis, and in an aggregate amount not to exceed $817,000 on a final basis; and (b) honor and continue (but not assume) in the ordinary course of business the Debtor's existing employee benefit programs (the "Employee Programs"). To the extent any Employee is owed in excess of the $13,650.00 limit contained in section 507(a)(4) of the Bankruptcy Code (the "Priority Cap") on account of prepetition Employee Obligations, the Debtor will not pay any such Employee an amount more than the Priority Cap on account of such obligations without further order of the Court.

51. As of the Petition Date, the Debtor employed approximately 93 employees (the "Employees"). Of these, 69 are salaried Employees and 24 are hourly Employees. Most of the Employees are highly skilled engineers or technicians (many of whom have advanced degrees) with specialized training necessary to operate the Debtor's business. The Employees provide a

variety of essential functions, including: research and development, software development, manufacturing, quality control, regulatory compliance, customer service, and general and administrative including executive, finance, legal, human resources, corporate communications, information technology and other operations matters. The Employees' expertise in each of their respective positions, and their understanding of the Debtor's operations, are essential to the effective operation of the Debtor's business.

52. The Debtor's Employees are particularly critical to maintaining going concern value for the estate due to the highly technical nature of the Debtor's business; the Employees represent much of the core "know how" that makes up the Debtor's technology assets. Thus, retaining the Employees is critical to the Debtor's ability to operate and maximize value in this Chapter 11 Case. Any disruption from Employee resignations or diminishment of their morale could have devastating effects on the Debtor's restructuring efforts. Accordingly, it is critical that the Debtor be authorized to pay the Employee Obligations and maintain Employee Programs.

53. I believe that the relief requested in the Wages and Benefits Motion is in the best interest of the Debtor's estate, its creditors and all parties in interest, and constitutes a critical element of achieving a successful and smooth transition to chapter 11.

3. Debtor's Motion Interim and Final Orders (A) Authorizing the Debtor to (I) Continue to Operate Its Cash Management System, (II) Honor Certain Prepetition Obligations Related Thereto and (III) Maintain Existing Business Forms; (B) Authorizing the Debtor's Bank to Honor All Related Payment Requests and (C) Granting Related Relief ("Cash Management Motion")

54. By the Cash Management Motion, the Debtor seeks entry of interim and final orders, (a) authorizing the Debtor to (i) continue to operate its cash management system (the "Cash Management System"), (ii) honor certain prepetition obligations related thereto, (iii) maintain existing business forms in the ordinary course of business in accordance with the

terms described in the Cash Management Motion; and (b) authorizing the Debtor's banks to honor all related payment requests.

55. As of the Petition Date, the Debtor maintained two bank accounts: (1) a domestic operating account held at Silicon Valley Bank (the "Operating Account"); and (2) a domestic investment account held at Morgan Stanley Smith Barney (the "Investment Account"). The Operating Account is the account to which substantially all of the Debtor's receipts are deposited, and from which substantially all of the Debtor's disbursements (including all checks, wires, and ACH transfers) are made, including payroll. Silicon Valley Bank, which maintains the Operating Account, is a party to a Uniform Depository Agreement with the U.S. Trustee as required under the Operating Guidelines for Chapter 11 Cases as promulgated by the U.S. Trustee for Region 3, District of Delaware (the "Operating Guidelines"). The Investment Account is a brokerage account, which currently holds no funds. The Debtor will not allow any funds to be paid into or disbursed from the Investment Account during the Chapter 11 Case.

56. Through the Cash Management Motion, the Debtor requests authority to: (a) continue to use, with the same account number, the Operating Account; (b) treat the Operating Account for all purposes as an account of the Debtor as debtor in possession; and (c) conduct banking transactions by all usual means and debit the Operating Account on account of all usual items and payment instructions.

57. In addition, as part of the Cash Management System, the Debtor utilizes preprinted business forms (the "Business Forms") in the ordinary course of its business. To minimize expenses to their estates and avoid confusion on the part of employees, customers, vendors, and suppliers during the pendency of the Chapter 11 Case, the Debtor requests that the Court authorize its continued use of all correspondence and Business Forms (including, without

limitation, letterhead, purchase orders, invoices, and preprinted checks) as such forms were in existence immediately before the Petition Date and thereafter, without reference to the Debtor's status as debtor in possession, rather than requiring the Debtor to incur the expense and delay of ordering entirely new business forms as required under the U.S. Trustee Guidelines.

58. Maintaining the Cash Management System, including the ability to continue to use the Operating Account and existing Business Forms, will help minimize any disruption in the Debtor's business operations as it focuses on and advances its bankruptcy case, and preserve the value of its estate. Indeed, any disruptions in the Cash Management System could lead to delays in satisfying the Debtor's obligations to its employees, vendors and suppliers. In order to avoid the potential erosion of value that could ensue from any such interruptions, I believe it is imperative that the Debtor be authorized to continue the Cash Management System consistent with the Debtor's historical practice.

4. Debtor's Motion for Interim and Final Orders Authorizing Debtor To (I) Maintain Existing Insurance Policies and Pay all Obligations Arising Thereunder; and (II) Renew, Revise, Extend, Supplement or Enter Into New Insurance Policies Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 1107 and 1108, and Fed. R. Bankr. P. 6003 And 6004 ("Insurance Motion")

59. By the Insurance Motion, the Debtor requests entry of an order authorizing, but not directing, the Debtor to (i) maintain existing Insurance Policies (defined below) and to pay in the ordinary course all premiums, deductibles, administration fees, and audited amounts related to the Insurance Policies (collectively, the "Insurance Obligations") and (ii) renew, revise, extend, supplement or enter into new insurance policies.

60. The Debtor maintains various insurance policies providing coverage for, among other things, workers' compensation, directors and officers liability, excess liability, crime, property, automobile, and general/professional liability (each an "Insurance Policy" and,

collectively, the "Insurance Policies"). The Insurance Policies are obtained from various insurance carriers (each an "Insurance Carrier" and, collectively, the "Insurance Carriers").

61. The Insurance Policies are essential to the preservation of the value of the Debtor's business, property and assets. Not only are some of the Insurance Policies required by various regulations, laws, and contracts (including the Prepetition Credit Agreement) that govern the Debtor's commercial activities, but I have also been advised by counsel that section 1112(b)(4)(C) of the Bankruptcy Code provides that "failure to maintain appropriate insurance that poses a risk to the estate or to the public" is "cause" for mandatory conversion or dismissal of a chapter 11 case. Moreover, I have been advised by counsel that the U.S. Trustee Guidelines require the Debtor to maintain insurance coverage throughout the pendency of the Chapter 11 Case.

62. The aggregate amount of annual premiums on account of the Debtor's Insurance Policies is approximately $728,082 (including premiums the Debtor has already paid to date). The Debtor pays the premiums annually or periodically (typically quarterly) throughout the policy term. In the ordinary course of business, the Debtor pays the premiums through its insurance broker, Woodruff-Sawyer & Co., Inc. As of the Petition Date, the Debtor is current on all of its Insurance Obligations. However, out of an abundance of caution, the Debtor requests authority to continue to pay its Insurance Obligations in the ordinary course of business.

63. I believe that the coverage types, levels and premiums for these Policies are neither unusual in amount nor in number in relation to the extent of the business operations conducted by the Debtor, and they are similar to businesses of comparable size and type to those of the Debtor.

64. I believe that the relief requested in the Insurance Motion is necessary to preserve and enhance the value of the Debtor's estate for the benefit of all creditors, and that absent the relief sought in the Insurance Motion, a failure to pay any Insurance Obligations or to permit the Debtor to renew, revise, extend, supplement, change or enter into new insurance policies, as needed in its business judgment, will immediately threaten the continued operation of the Debtor and, consequently, the Debtor's estate.

5. Debtor's Motion For Entry of Interim and Final Orders (I) Authorizing Debtor to Use Cash Collateral, (II) Granting Adequate Protection to Secured Lender, (III) Scheduling Final Hearing, and (IV) Granting Related Relief ("Cash Collateral Motion")

65. By the Cash Collateral Motion, the Debtor requests the entry of interim and final orders (i) authorizing the Debtor's to use the Prepetition Collateral, including Cash Collateral, and (ii) granting adequate protection to the Prepetition Lender for any diminution in value occurring from and after the Petition Date of its interests in the Prepetition Collateral as of the Petition Date, including the Cash Collateral; (iii) subject to entry of the Final Order, waiving the Debtor's right to surcharge the Prepetition Collateral; and (iv) granting related relief.

66. The Prepetition Lender and the Debtor have negotiated at arm's-length and in good faith regarding the Debtor's consensual use of Cash Collateral to fund the continued operation of the Debtor's business during the period from the Petition Date through the earlier of (a) July 31, 2020, if the Final Order has not been entered by the Court prior to such date; and (b) the Termination Date (i.e., the earliest to occur of the Outside Date, or other triggering event as described in the Interim Order). The Prepetition Lender has agreed to the Debtor's proposed use of Prepetition Collateral, including Cash Collateral, on the terms and conditions set forth in the Interim Order, and the terms of the adequate protection provided for therein. Subject to the

terms set forth in the Interim Order, the Debtor will use Cash Collateral in accordance with a 13-week budget

67. As more fully described in the Cash Collateral Motion, the Debtor has committed to provide the Prepetition Lender with certain adequate protection consisting of, among other things, adequate protection liens and superpriority claims to protect the Prepetition Lender against any Diminution in Value (as defined in the Interim Order).

68. Access to existing Cash Collateral will provide the Debtor with the liquidity necessary to continue to operate its business and thus preserve and maintain the going concern value of its estate, thereby facilitating a successful chapter 11 sale process or other value-maximizing transaction. Without access to such liquidity, the Debtor's ability to navigate through chapter 11 would be jeopardized, to the detriment of the Prepetition Lender and all of the Debtor's other stakeholders. As a result, the Debtor has an immediate need to use Cash Collateral to ensure access to sufficient working capital to administer the Chapter 11 Case.

69. The Debtor and the Prepetition Lender negotiated at arms' length regarding the terms of the Debtor's use of the Prepetition Collateral, including Cash Collateral, as set forth in the Interim Order and the Budget. I believe that the agreed-upon adequate protection package is fair and appropriate under the circumstances of the Chapter 11 Case.

70. For these reasons, and as further described in the Cash Collateral Motion, I believe the relief requested therein is in the best interests of the Debtor's estate, its creditors, and all other parties in interest, and will enable the Debtor to continue to manage its business operations while the Debtor is in chapter 11 without disruption in order to maximize the estate's value.

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true correct.

Dated: June 16, 2020
Wilmington, Delaware

By: /s/ Lawrence R. Perkins
Name: Lawrence R. Perkins
Title: Interim CEO