

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

In re:

DEXTERA SURGICAL INC.,¹

Debtor.

Chapter 11

Case No. 17-12913 (____)

**DECLARATION OF JULIAN NIKOLCHEV IN SUPPORT
OF DEXTERA SURGICAL INC.'S FIRST DAY MOTIONS**

I, Julian Nikolchev, hereby declare under penalty of perjury:

1. I am the President and Chief Executive Officer of Dextera Surgical Inc. ("Dextera" or the "Debtor"), a corporation organized under the laws of the State of Delaware and the debtor and debtor in possession in the above-captioned case. In this capacity, I am familiar with Dextera's day-to-day operations, business, financial affairs, and books and records.

2. On the date hereof (the "Petition Date"), Dextera commenced a voluntary case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in this Court (the "Chapter 11 Case"). Dextera continues to operate its business and manage its property as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. I submit this declaration (the "First Day Declaration") to provide an overview of Dextera and the Chapter 11 Case, and to support Dextera's chapter 11 petition and "First-Day" motions filed concurrently herewith (each, a "First Day Motion"). Except as otherwise indicated, all facts set forth in this First Day Declaration are based on my personal knowledge of Dextera's operations and financial affairs, obtained from my review of relevant documents or from information provided to me by other members of Dextera's management or advisors, or on

¹ The last four digits of the Debtor's federal tax identification number are 7832. The Debtor's address is 900 Saginaw Drive, Redwood City, CA 94063.

my opinion based on my experience and knowledge about Dextera's operations and financial condition. I am authorized to submit this First Day Declaration on behalf of Dextera and, if called as a witness, could and would testify competently to the facts stated herein.

4. I joined Dextera as President and Chief Executive Officer in October 2015, and have more than 30 years of medical device experience, including as a chief executive officer with a record of successfully leading management teams, managing products through the technical development process to commercialization, and building successful companies that have been subsequently acquired by larger medical device companies. From 2014 to 2015, I worked as a consultant for several early stage start-up companies, SRI International and NanoDimension, Inc., a venture capital firm. I previously served as founder, Chief Executive Officer and Chief Technology Officer of Pivot Medical, a medical device company (now part of Stryker Sports Medicine) from 2007 to 2014, where I was responsible for directing the transition from development enterprise to a full commercial organization with the leading brand in the fastest growing orthopedic market segment. I joined Pivot Medical while serving as a venture partner at Frazier Healthcare Ventures, a venture capital firm where I was a venture partner from 2006 to 2008. Before Frazier, I served as founder, president and Chief Executive Officer of CardioMind (sold to Biosensors International) from 2003 to 2006, as president and Chief Executive Officer of AVAcore Technologies from 2000 to 2003, and as founder and president of Pro*Duct Health, a medical device company (sold to Cytoc) from 1997 to 2000. Prior to Pro*Duct Health, I served as manager of the new venture group at Target Therapeutics from 1991 to 1992, where I subsequently founded Conceptus (sold to Bayer AG in 2014) and served as founder and Chief Technology Officer for many years. Prior to my tenure at leading medical device companies, I served in a variety of escalating management positions within engineering

organizations. I hold B.S. and M.S. degrees in Mechanical Engineering from Stanford University and a M.S. degree in Management of Technology from the Massachusetts Institute of Technology. I am also the author of numerous papers on technology commercialization and new technology development and an inventor and co-inventor on more than 35 issued or pending patents.

5. Part I of this First-Day Declaration describes the business of the Debtor and the developments that led to the filing of the Chapter 11 Case. Part II of this First-Day Declaration sets forth the relevant facts in support of the First-Day Motions filed concurrently herewith in the Debtor's Chapter 11 Case.

PRELIMINARY STATEMENT

6. As set forth in greater detail below, and as reflected in the First Day Motions, Dextera has filed this Chapter 11 Case to preserve and maximize the value of its assets for the benefit of its creditors and other stakeholders. Dextera has executed a Stalking Horse Agreement (defined below) with a lead bidder, subject to higher or otherwise better bids in a competitive, market-tested sale and auction process that will be subject to Court approval. Upon closing, the sale will allow Dextera's business to emerge from bankruptcy as a viable going concern, which will benefit all of its creditors and other stakeholders, and will make possible the continued development and use of Dextera's surgical products, as discussed in more detail below.

PART I - GENERAL BACKGROUND

Dextera's Business

7. Founded in 1997 as Vascular Innovations, Inc., the Debtor changed its name in November 2001 to Cardica, Inc. and in June 2016 to Dextera Surgical Inc. Headquartered in Redwood City, California, Dextera is an innovative medical device company that designs and manufactures proprietary stapling devices that enable the advancement of minimally invasive

surgical procedures. Dextera had its initial public offering in 2006 and its common stock is publicly traded and prior to this filing, had been listed on the NASDAQ Capital Market (DXTR).

8. With increasing demand for minimally invasive surgery, Dextera has designed a disruptive product in the MicroCutter5/80™, the world's first and only five-millimeter surgical stapler that articulates to 80 degrees in each direction. As the smallest-profile articulating stapler available today, the MicroCutter 5/80 may reduce the amount of dissection and tissue handling required to position the stapler in confined spaces, enabling access to difficult-to-reach anatomy. The cartridge-based device's small size and wide articulation range are designed to enhance the surgeon's access and visualization at the surgical site, and to mitigate limitations on the advancement of minimally invasive surgical approaches created by larger stapling devices. Moreover, Dextera has focused on building strategic partnerships that support the commercialization of its products while improving its supply chain to make it more efficient and cost effective.

9. Dextera Surgical also markets the only automated anastomosis devices for coronary artery bypass graft surgery on the market today: the C-Port® Distal Anastomosis Systems and PAS-Port® Proximal Anastomosis System. These products, sold by Dextera under the Cardica brand name, have demonstrated long-term reliable clinical performance for more than a decade.

10. Dextera is commercializing and developing the MicroCutter 5/80 Stapler based on proprietary "staple-on-a-strip" technology intended for use by thoracic, pediatric, bariatric, colorectal and general surgeons. This technology enables Dextera to develop products with innovative features such as consistent staple forms, significantly reduced tool shaft diameter and increased articulation. Together, these advances in stapler design enable surgeons to perform

procedures on a broader array of patients and to develop procedural methods previously unattainable with existing products in the market. The MicroCutter 5/80, which is currently commercially available, is a cartridge-based stapler device with a 5 millimeter shaft diameter, 80 degrees of articulation in both directions, and a 30 millimeter staple line. It is cleared for specified indications for use in the United States, and in the European Union (EU), for a broader range of specified indications of use. Dexera estimates that the commercially available MicroCutter 5/80, along with additional potential products, if developed, would be suited for use in approximately 1.4 million procedures annually in the United States, involving, an estimate of over four million staple cartridge deployments, three million of which would likely be deployed in laparoscopic procedures.

11. In January 2016, Dexera received 510(k) clearance from the U.S. Food and Drug Administration (“FDA”), to use the MicroCutter 5/80 with a white reload, to deploy staples for use in thin tissue, and in July 2016, received FDA 510(k) clearance to use the MicroCutter 5/80 with a blue reload, to deploy staples for use in medium thickness tissue, both for the transection and resection in open or minimally invasive urologic, thoracic, and pediatric surgical procedures. These clearances complement the existing indications for use of the MicroCutter 5/80 in surgical procedures in the small and large intestine and in the appendix.

12. Following the 510(k) clearances, Dexera conducted an evaluation of the MicroCutter 5/80, which deploys both blue and white cartridges, with selected centers of key opinion leaders in the U.S. and Europe. This was done through initial market preference testing to evaluate surgeons’ preferences and to validate the MicroCutter’s clinical benefits prior to broadening its commercial launch. Dexera completed market testing of the MicroCutter 5/80 with approximately 55 procedures and 200 staple cartridge deployments. In this market

preference testing, the MicroCutter 5/80 demonstrated reliable and consistent hemostasis (stopping of the blood flow). Following this successful evaluation of the MicroCutter 5/80, Dexter expanded the commercial launch to a select group of customers in the U.S. and Europe. The Debtor is conducting the MicroCutter-Assisted Thoracic Surgery Hemostasis, or MATCH, registry, a post-market surveillance registry, to evaluate the hemostasis and ease-of-use for the MicroCutter 5/80. This is an open-label, multi-center registry and Dexter has plans to enroll up to 120 patients requiring surgical stapling during a lobectomy (surgical removal of a lobe of an organ) or segmentectomy (surgical removal of a segment of a lung lobe) at leading centers in the U.S. and Europe. As of September 30, 2017, Dexter had enrolled 107 patients in the MATCH registry.

13. In May 2017, Dexter filed a 510(k) with the FDA seeking to expand the indications for use of the MicroCutter 5/80 to include surgery on solid organs, including liver, pancreas, kidney and spleen. Dexter received clearance from the FDA for this 510(k) for open surgical procedures in August 2017.

14. Dexter has certain material agreements with third parties involving the distribution and/or development of products. Century Medical, Inc. ("CMI"), a Japanese corporation that is a wholly owned subsidiary of Itochu Corp., is Dexter's exclusive distributor in Japan of the PAS-Port system, pursuant to a distribution agreement entered into in June 2003, which has been subsequently amended. The latest amendment, effective July 1, 2014, among other things, extended the term of the distribution agreement for another five years, extending the expiration date to July 31, 2019.

15. On August 16, 2010, Dexter entered into a license agreement ("License Agreement") with Intuitive Surgical Operations, Inc. ("Intuitive Surgical"), pursuant to which

Intuitive Surgical was granted a worldwide, sub-licensable, exclusive license to use Dexera's intellectual property in the robotics field in diagnostic or therapeutic medical procedures, but excluding vascular anastomosis applications, for an upfront license fee of \$9.0 million. Dexera is eligible to receive single-digit royalties on sales by Intuitive Surgical, its affiliates or its sub-licensees of specified stapler and clip applier products covered by Dexera's patent rights as well as on sales of certain other products covered by such patent rights that may be developed in the future, if any. Under the License Agreement, Intuitive Surgical has rights to improvements in Dexera's technology and intellectual property over a specified period of time.

16. On December 31, 2015, Dexera and Intuitive Surgical amended the license agreement to include, among other things, an agreement providing for a feasibility evaluation and potential development of a surgical stapling cartridge for use with Intuitive Surgical's *da Vinci* Surgical Systems. The feasibility evaluation allowed Intuitive Surgical to test and evaluate Dexera's MicroCutter technology. The six-month feasibility evaluation was completed successfully and Intuitive Surgical exercised its option to initiate a joint development program for an 8-millimeters-in-diameter surgical stapling cartridge for use with the *da Vinci* Surgical System, and Dexera and Intuitive Surgical entered into a joint development program in which Intuitive Surgical would be responsible for the development work on the stapler and Dexera would be responsible for the development work on the stapler cartridge. Pursuant to the agreement, Dexera would have received further funding for development of the cartridge and tooling as well as a unit-based royalty on commercial sales.

17. In November 2017, Intuitive Surgical informed Dexera that it would not be continuing the joint development program. Based upon this decision, the terms of the amended license agreement provide that the license to Intuitive Surgical has become non-exclusive.

18. In October 2016, Dextera entered into a marketing and distribution agreement with B. Braun Surgical S.A., or B. Braun, for B. Braun to sell the MicroCutter 5/80 surgical stapler in Spain. For fiscal year 2017, sales to B. Braun in Spain accounted for approximately 10% of Dextera's product sales.

19. Dextera generated net revenue of approximately \$3.0 million for the fiscal year ended June 30, 2015, approximately \$4.1 million for the fiscal year ended June 30, 2016, and approximately \$3.4 million for the fiscal year ended June 30, 2017. Dextera invested in obtaining regulatory clearances and product development, evaluation, and manufacturing, but experienced interruptions in the ability to produce both staplers and staple reload cartridges to meet customer demand. It also incurred substantial operating losses that significantly impacted liquidity, ultimately leading to the need to file the Chapter 11 Case.

20. Dextera currently has 47 full-time employees, two part-time employees, and one international employee. As of September 30, 2017, Dextera's financial statements reflected assets with a book value totaling approximately \$6.53 million and liabilities totaling approximately \$14.821 million. Dextera also has a wholly-owned German subsidiary, Dextera Surgical GmbH, located in Laichingen, Germany, which employs one employee and which has been used in connection with product sales in Europe. Dextera Surgical GmbH has not filed for bankruptcy or insolvency protection under U.S. or German law.

21. To reduce cash expenditures and operating losses, during 2017, Dextera did not pay cash bonuses or grant company-wide employee raises, eliminated nearly all consulting expenses and certain other outside services, greatly reduced legal and intellectual property expenses, and established new supplier relationships intended to improve product gross margins.

Prepetition Capital Structure

22. On September 2, 2011, Dextera entered into a Secured Note Purchase Agreement (the “Note Purchase Agreement”) with CMI. Pursuant to the Note Purchase Agreement, Dextera issued to CMI a Secured Promissory Note (the “Note”) in the original principal amount of \$4,000,000, with interest accruing at an annual rate of 5%, payable quarterly in arrears. Under the terms of the Note Purchase Agreement, as amended on September 14, 2017, quarterly principal payments of \$125,000, plus accrued interest, are due under the Note on December 31, 2017, March 31, 2018, and June 30, 2018, with the remaining principal balance of \$3.5 million due on September 18, 2018. As of the Petition Date, the outstanding principal was \$3.875 million and accrued interest under the Note was approximately \$33,000.

23. To secure Dextera’s obligations under the Note Purchase Agreement and the Note, Dextera executed a Security Agreement dated as of September 2, 2011, granting CMI a security interest in substantially all of Dextera’s personal property assets and proceeds thereof but, with respect to intellectual property, only in such intellectual property, licenses, and payment intangibles of Dextera related to the PAS-Port™ product. As such, CMI did not receive a security interest in Dextera’s intellectual property, including patents, related to the C-Port system, the MicroCutter, or Dextera’s other products.

24. On December 9, 2011, CMI entered into a deposit account control agreement with Silicon Valley Bank, at which Dextera maintains its bank accounts, and also entered into a collateral account agreement with Oppenheimer, at which Dextera previously maintained a securities account.

25. On September 25, 2017, CMI filed an UCC-1 Financing Statement (“UCC-1”) with the Secretary of State for the State of Delaware with respect to the other personal property assets granted to CMI as collateral. CMI had not previously filed a UCC-1 Financing Statement.

As such, the UCC-1 was first filed within 90 days of the Petition Date to perfect the security interest granted in September 2011. Dextera contends that CMI's security interest in the Debtor's assets, other than potentially with respect to the deposit accounts at Silicon Valley Bank, is subject to avoidance under the Bankruptcy Code.

26. Dextera is currently authorized to issue two classes of capital stock, designated as Common Stock and Series B Preferred Stock. As of October 31, 2017, there were 48,206,266 shares of Common Stock outstanding and 172 Series B Preferred shares outstanding. Each share of Series B Preferred is convertible into 3,704 common shares and, if all Series B Preferred shares were converted to Common Stock, then 637,088 additional shares of Common Stock would be outstanding. There are also 1,735,267 stock options and restricted stock units outstanding with an average exercise price exceeding \$3.00 per share.

27. Dextera's most recent public offering was completed on May 15, 2017, involving 8,000 shares of convertible Series B Preferred and related Series 1 and Series 2 Warrants at a price to the public of \$1,000 per share of convertible Series B Preferred for gross proceeds of \$8 million. Almost all of the 8,000 Series B Preferred shares were thereafter converted to Common Stock. There are 29,487,545 Series 1 Warrants outstanding with an expiration date of May 16, 2022 and 6,667,311 Series 2 Warrants outstanding with an expiration date of May 16, 2018. Both Series 1 and Series 2 Warrants have an exercise price of \$0.27 per share.

28. The Series 1 and Series 2 Warrants provide for the right to be exercised for shares of Common Stock, including by net exercise in the event that a registration statement is not available for the issuance of shares of Common Stock in a cash exercise, and further provide for certain alternative rights under specified circumstances in the event of a fundamental transaction, depending upon the nature of the fundamental transaction.

Events Leading to Chapter 11 Filing

29. To preserve going-concern value and enable the Debtor to execute its business plan, Dextera has been pursuing potential merger or acquisition partners, or potential major investors, for approximately one year. Starting in the fourth quarter of 2016, I made extensive efforts with my CFO and our investment bank to identify merger or acquisition partners or potential investors. I personally contacted a number of investors and companies active in the medical device industry and related fields, who I believed might have an interest in merging with, acquiring, or investing in Dextera. As part of that process, I spoke directly with many potentially interested parties, both at in-person meetings and by telephone.

30. In addition, on December 21, 2016, Dextera engaged JMP Securities LLC (“JMP”) to solicit interest from third parties with respect to a possible merger, consolidation, tender or exchange offer, or sale or exclusive license of all or a majority of Dextera’s assets or outstanding equity interests.

31. JMP drafted marketing materials and contacted potentially interested parties as detailed below (the “Prepetition Marketing Process”). In consultation with Dextera’s management, JMP prepared a short “teaser” summarizing Dextera’s business and the opportunity presented, public information books that included SEC filings, press releases, research reports, and corporate presentations, as well as a financial forecast model and other information. Based on prior industry relationships and additional research, JMP compiled a list of potential strategic and healthcare-focused financial buyers who might be interested in investing in or acquiring Dextera. Dextera also built a comprehensive online data room to facilitate due diligence requests from potential investors or buyers.

32. In early January 2017, JMP initiated the Prepetition Marketing Process, contacting and distributing the “teaser” to 49 potential investors or purchasers. Four parties that

executed non-disclosure agreements were given additional information and one was provided access to a confidential data room established by JMP, with various potentially interested parties conducting interviews with Dextera management (collectively, “Diligence Information”). The Diligence Information provided prospective investors or buyers with detailed information on, among other topics, Dextera’s business, strategy, growth opportunities, technology, legal and regulatory matters, and historical and projected financial performance.

33. As the Prepetition Marketing Process continued, a process letter was sent to 24 parties, at the time establishing a bid deadline of March 31, 2017. The deadline did not result in acceptable proposals so JMP continued to engage with potential parties during the rest of the spring and summer of 2017 to explore potential transactions.

34. During early October, JMP made further contacts to 13 of the parties it had previously contacted. On October 11, 2017, one of those parties (the “Stalking Horse Purchaser”), submitted a term sheet for an out-of-court acquisition of substantially all of the assets of Dextera. After further discussions between Dextera and JMP, on the one hand, and the Stalking Horse Purchaser on the other hand, the parties determined that an asset sale in a chapter 11 bankruptcy case was required. The parties executed a non-binding term sheet for such an asset sale dated November 9, 2017, and thereafter negotiated the terms of an asset purchase agreement. That process was completed just prior to the Petition Date when, on December 11, 2017, the parties executed an asset purchase agreement (the “Stalking Horse Agreement”).

35. In the Stalking Horse Agreement, the Stalking Horse Purchaser has committed to acquire substantially all of the Debtor’s assets in a sale (the “Sale”) pursuant to section 363 of the Bankruptcy Code. The transaction is conditioned upon approval by this Court and is subject to higher or otherwise better competing offers, as described more fully below.

36. As more fully described in Part II below, in addition to entering into the Stalking Horse Agreement, the Debtor entered into that certain Post-Petition Loan and Security Agreement, between the Debtor, as borrower, and the Stalking Horse Purchaser or its designee (the “DIP Lender”), as lender (the “DIP Facility”), pursuant to which, among other things, the DIP Lender has agreed to loan the Debtor up to \$1.5 million in debtor in possession financing, subject to the Court’s approval, to fund the Debtor’s Chapter 11 Case and sale process.

37. The timeline and specific dates proposed in the Sale Motion (defined below) and the associated bidding procedures, if approved, will provide the Debtor sufficient time to expose its business and assets again to potential overbidders, conduct an auction if any qualified overbids are presented, and bring before the Court for approval the Sale to the successful bidder, and will permit the Sale to close consistent with the liquidity available to the Debtor. If the timeline proposed in the Sale Motion is not approved, or if there are material delays in that timeline, the Debtor will run out of cash, will be unable to continue operations, and therefore will be unable to satisfy the conditions to the closing of the Stalking Horse Agreement or an asset purchase agreement executed by a winning bidder other than the Stalking Horse Purchaser.

PART II - SUPPORT FOR RELIEF REQUESTED IN FIRST DAY MOTIONS

38. Dextera has filed with its chapter 11 petition a number of First Day Motions seeking relief that Dextera believes is critical and necessary for it to operate with minimal disruption and to preserve the value of its assets and business during the Chapter 11 Case. I have reviewed each of the First Day Motions referenced below. The facts stated in each are true and correct to the best of my knowledge and belief, with appropriate reliance on Dextera’s employees and advisors. The relief sought in each First-Day Motion is necessary for Dextera to continue its operations with as little disruption as possible and to permit Dextera to proceed with its efforts to maximize the value of its assets and the recovery for its creditors and stakeholders.

39. The following is a summary of the relief requested in each First Day Motion and the reasons for such requests. The facts set forth in the First Day Motions are incorporated herein in their entirety.

A. Debtor's Motion for Interim and Final Orders (A) Authorizing the Use of Cash Collateral; (B) Providing Adequate Protection, (C) Modifying the Automatic Stay, and (D) Scheduling a Final Hearing ("Cash Collateral Motion")

40. Pursuant to sections 105(a), 361, 362, 363, and 507 of the Bankruptcy Code, Rule 4001 of the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), the Debtor requests entry of interim and final orders, (i) authorizing the Debtor to use cash collateral (the "Cash Collateral"); (ii) providing adequate protection; (iii) modifying the automatic stay; and (iv) scheduling a final hearing with respect to the Cash Collateral Motion.

41. Material terms of the Debtor's proposed use of Cash Collateral are set out in the Cash Collateral Motion in accordance with Bankruptcy Rule 4001(b) and the Local Rules.

42. As of the Petition Date, the Debtor had approximately \$1,010,000 in cash on hand. I believe that CMI is the only creditor that asserts an interest in the Debtor's Cash Collateral. As discussed above, CMI's security interest in the Debtor's assets, other than potentially with respect to the deposit accounts at Silicon Valley Bank, is subject to avoidance under the Bankruptcy Code because CMI first filed its UCC-1 within the 90-day prepetition preference period to secure only antecedent debt extended to the Debtor in 2011.

43. In conjunction with its request for debtor in possession financing, discussed below, the Debtor must also use Cash Collateral to continue to operate and undertake the sale process described herein to maximize and maintain the value of its assets. The Debtor has an urgent need to use Cash Collateral and thereby avoid immediate and irreparable harm to the Debtor and its bankruptcy estate. It is therefore critical that the Debtor be granted authority to

use Cash Collateral on an interim basis in the amount set forth in the budget (the “Budget”), a true and correct copy of which is annexed as Exhibit 1 to the Cash Collateral Motion, pending a final hearing on use of Cash Collateral, to continue its business operations and administer this Chapter 11 Case. The Budget reflects ongoing cost reduction measures and represents the minimum amounts required to continue business operations and complete the sale process.

44. The Debtor has a critical and immediate need for the use of Cash Collateral. Without the use of Cash Collateral, in addition to debtor in possession financing, the Debtor would be unable to pay its current operating expenses to maintain its ordinary course, going-concern business, let alone the required further expense of its restructuring advisors, and would be required to cease operations. Accordingly, the Debtor has determined that it needs the ability to use Cash Collateral to meet general business obligations while it seeks to sell substantially all of its assets on a going-concern basis through its Chapter 11 Case.

45. The Budget projects cash flow, accruals and resulting funding requirements for 13 weeks. The Debtor has determined that the use of Cash Collateral according to the Budget is necessary and appropriate to fund this Chapter 11 Case, that the Budget is achievable, and that together with the proposed debtor in possession financing, it will allow the Debtor to meet its postpetition obligations as they arise.

46. Approval of the Cash Collateral Motion on an interim and final basis, together with the proposed debtor in possession financing, will provide the Debtor with the ability to meet its current and ongoing operating expenses through the conclusion of the sale process, and thereafter to fund a responsible wind-down process. As indicated above, absent the immediate use of Cash Collateral, the Debtor would not be able to meet its current payroll and other current obligations, and would be forced to cease operations, and would inevitably lose access to the DIP

Facility, thereby immediately impeding the Debtor's ability to maximize the value of its assets. Authorization to use Cash Collateral as set forth in the Cash Collateral Motion and the Budget is essential to maximizing the realizable value of the Debtor's business on a going-concern basis, furthering the interests of all case stakeholders.

47. In light of the foregoing, I believe that the relief requested in the Cash Collateral Motion is in the best interests of the estate.

B. Debtor's Motion for Entry of Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 362, 364, 503 AND 507 and Fed. R. Bankr. P. 2002, 4001 and 9014 (I) Authorizing Debtor to Obtain PostPetition Financing (II) Granting Liens and Super-Priority Claims to PostPetition Lender and (III) Scheduling a Final Hearing ("DIP Financing Motion")

48. The Debtor further seeks interim and final orders granting it authority to borrow up to \$1.5 million in debtor in possession financing pursuant to the DIP Facility.

49. The material terms of the Debtor's proposed DIP Facility are set out in the DIP Financing Motion in accordance with Bankruptcy Rule 4001(c) and the Local Rules. These include a 9.25% interest rate, a 1% DIP Facility Fee, and postpetition liens, security interests, and superpriority claims.

50. Prior to executing the Post-Petition Loan and Security Agreement with the DIP Lender, the Debtor made efforts to obtain proposals for debtor in possession financing from parties other than the DIP Lender. With the assistance of JMP, I and the Debtor's Chief Financial Officer engaged in discussions with several potential lenders seeking such debtor in possession financing. Unfortunately, no party other than the DIP Lender was willing to extend any debtor in possession financing to the Debtor on any terms, much less on terms more favorable than those in the Post-Petition Loan and Security Agreement.

51. In connection with the Debtor's pre-petition marketing efforts, the DIP Lender emerged as the only party willing and able to provide the Debtor with the postpetition financing

necessary to bridge operations to the conclusion of a section 363 sale process. Accordingly, and contemporaneously with the negotiations entered into between the parties regarding the terms of the Stalking Horse Agreement, the Debtor and the DIP Lender conducted a series of arm's length, good-faith negotiations of the terms of a proposed financing that culminated in the parties' entry into the documentation evidencing the DIP Facility.

52. The Debtor has determined that entering into the DIP Facility is necessary and appropriate to fund this Chapter 11 Case. Approval of the DIP Facility will provide the Debtor with immediate and ongoing access to borrowing availability to pay its current and ongoing operating expenses through the conclusion of the sale process, and thereafter to fund a responsible wind-down process. As indicated above, absent the DIP Facility, the Debtor would exhaust its cash collateral, would not be able to meet its payroll and other current obligations, and would be forced to cease operations, thereby immediately impeding the Debtor's ability to maximize the value of its assets. The DIP Facility is essential to maximizing the realizable value of the Debtor's business on a going-concern basis, furthering the interests of the Debtor's employees, customers, creditors, and other stakeholders.

53. In light of the foregoing, I believe that the relief requested in the Cash Collateral Motion is in the best interests of the estate.

C. Debtor's Motion for Orders (A)(I) Authorizing And Approving Bidding Procedures, And Stalking Horse Payment; (II) Authorizing And Approving the Debtor's Entry Into the Stalking Horse APA; (III) Scheduling an Auction and Sale Hearing; (IV) and Approving Procedures for Assumption and Assignment of Executory Contracts and Unexpired Leases and Determining Cure Amounts and (B) (I) Authorizing the Sale of Substantially all of the Debtor's Assets Free and Clear of All Claims, Liens, Rights, Interests, and Encumbrances; (II) Approving the Stalking Horse APA; and (III) Authorizing the Debtor to Assume and Assign Certain Executory Contracts and Unexpired Leases ("Sale Motion")

54. In the Sale Motion, the Debtor seeks authority to enter into and consummate the Stalking Horse Agreement with the Stalking Horse Purchaser. The Debtor's proposed sale of its

assets to the Stalking Horse Purchaser will be subject to higher or otherwise better competing bids for the Debtor's assets. In the Sale Motion, the Debtor also requests, among other things, the Court's approval of procedures (the "Bidding Procedures") for (i) submitting qualified bids for any or all of the Debtor's assets or business, and (ii) conducting an auction with respect to any assets on which the Debtor receives more than one bid. Further, the Debtor requests the Court's approval of customary stalking horse protections (the "Bidder Protections"), including a break-up fee of \$519,000, which represents three percent (3%) of the cash purchase price set forth in the Stalking Horse Agreement. The "First Day" relief sought by the Debtor with respect to the Sale Motion is limited to consideration by the Court of a motion to shorten time with respect to the Bidding Procedures and Bidder Protections relief sought in the Sale Motion.

D. Debtor's Motion for an Order Pursuant to Bankruptcy Code Sections 105(a), 363, and 507(a) Authorizing the Debtor to (i) Pay Prepetition Wages, Salaries, Commissions, Employee Benefits, and Other Compensation; (ii) Remit Withholding Obligations; (iii) Maintain Employee Compensation and Benefits Programs and Pay Related Administrative Obligations; and (iv) Have Applicable Banks and Other Financial Institutions Receive, Process, Honor, and Pay Certain Checks Presented for Payment and Honor Certain Fund Transfer Requests ("Wage Motion")

55. The Debtor seeks to minimize (i) the personal hardship to its employees (collectively, the "Employees") as a result of the filing of this Chapter 11 Case and (ii) the disruption to its business for the benefit of its creditors and its estate, by requesting the authority (a) to pay and/or honor certain prepetition claims for, among other items, wages, salaries, and certain incentive payments adopted prepetition in the ordinary course of business (collectively, the "Wages"), employee benefits, and other compensation or reimbursements (collectively, the "Benefits"), and to pay all costs incident to the foregoing (collectively, the "Wages and Benefits") up to an aggregate amount of \$390,000 during the interim period, and (b) to continue to pay and/or honor such Wages and Benefits as they become due postpetition in the ordinary course of the Debtor's business. As of the Petition Date, the Debtor's estimated semi-monthly

payroll, including estimated employee and employer Payroll Tax obligations, is approximately \$240,000. The Wages and Benefits for which this relief is sought are set forth in detail in the Wage Motion.

56. Upon approval on an interim basis of the DIP and Cash Collateral Motion and the initial funding of the DIP Facility, the Debtor will have sufficient postpetition funds both to promptly pay all Wages and Benefits to the extent described in the Wages Motion and to continue its operations on an ongoing basis, subject to this Court's granting of the Sale Motion described above. In addition, the payments made to any Employees on account of unpaid prepetition wages or other benefits will not exceed the \$12,850 statutory cap per Employee provided under section 507(a)(4) of the Bankruptcy Code. Consequently, there is no reason for the payment of the Wages and Benefits to the Employees as outlined in the Wage Motion to be delayed, which would directly harm the Employees and disrupt the Debtor's efforts in this Chapter 11 Case.

E. Debtor's Motion for an Order Bankruptcy Code Sections 105(a), 345, 363, 364, 1107 and 1108 (i) Authorizing (a) Maintenance of Existing Bank Accounts, (b) Continued Use of Existing Business Forms, and (c) Continued Use of Existing Cash Management System, and (ii) Granting an Interim and Final Waiver of Section 345(b) Deposit and Investment Requirements ("Cash Management Motion")

57. The Debtor needs to maintain its current bank accounts with Silicon Valley Bank and its securities account with Oppenheimer (and its German subsidiary's bank account) to continue to make ordinary course disbursements, including payment of payroll obligations, to collect customer receipts, corporate credit card, and other obligations.

58. More specifically, in the Cash Management Motion, the Debtor seeks authorization (1) to maintain its existing bank accounts and to pay any prepetition banking fees imposed by the financial institution where the Debtor's bank account is maintained, if any, (2) to continue to use its existing business forms and checks, (3) to continue to use its existing cash

management system, and (4) waive, on an interim basis, the deposit and investment guidelines imposed under section 345(b) of the Bankruptcy Code.

59. The relief requested in the Cash Management Motion is essential to facilitate the orderly operation of the Debtor's business and reorganization process.

F. Debtor's Motion For Interim and Final Orders Under Bankruptcy Code Sections 105(a) and 366 (i) Prohibiting Utility Providers From Altering, Refusing or Discontinuing Service, (ii) Deeming Utilities Adequately Assured of Future Performance, and (iii) Establishing Procedures for Determining Adequate Assurance of Payment ("Utility Motion")

60. In the normal course of business, the Debtor has relationships with various utility companies and other providers (each a "Utility Provider" and, collectively, the "Utility Providers") for the provision of telephone, gas, electricity and related services (the "Utility Services"). The Utility Providers include, without limitation, the entities set forth on Exhibit A attached to the Utility Motion. The Debtor estimates that its average monthly postpetition payments to the Utility Providers will aggregate approximately \$3,400.

61. Uninterrupted Utility Services are critical to the Debtor's ongoing operations. The Debtor proposes to provide adequate assurance to the Utility Providers by maintaining an aggregate deposit of \$3,400. This amount, which is equal to one month of the Debtor's estimated average postpetition monthly aggregate cost of utility services, will be held in a newly created and segregated account as adequate assurance of the Debtor's future payment to its Utility Providers. In addition, as set forth in the Utilities Motion, the Debtor seeks to establish reasonable procedures by which a Utility Provider may request additional adequate assurance of future payment, in the event that such Utility Provider believes that it has not been provided with satisfactory adequate assurance.

G. Debtor's Motion For Entry of an Order (I) Authorizing the Debtor to Continue Insurance Policies and Pay Obligations in Respect Thereof, and (II) Authorizing Financing Institutions to Honor and Process Checks and Transfers Related to Such Insurance Obligations ("Insurance Motion")

62. In the ordinary course of its business, the Debtor maintains numerous insurance policies that provide coverage for, among other things, general liability, workers' compensation, property damage, cargo transportation, employment practices liability, fiduciary liability, commercial crime, and products liability insurance (each an "Insurance Policy" and collectively, the "Insurance Policies"). The Insurance Policies are essential for the preservation of the Debtor's business, and are, in some cases, required by various laws, regulations or contracts that govern the Debtor's business. The Debtor maintains the Insurance Policies through several different insurance carriers (the "Insurance Carriers"). The Debtor pays for its insurance on either a quarterly or annual basis, depending on the individual Insurance Policy and annual payments to the Insurance Carriers total approximately \$325,000 in the aggregate. As of the Petition Date, the Debtor owed the Insurance Carriers approximately \$24,000 for prepetition coverage, approximately \$8,000 of which will become due and owing prior to the entry of a final order on the motion.

63. The Insurance Policies, and timely and uninterrupted payment for coverage under such policies, are necessary and essential to preserve the value of the Debtor's business, property, and assets. Maintaining the Insurance Policies protects the value of the Debtor's estate by insuring property and personal damage and other matters. The relief requested in the Insurance Motion is essential to facilitate the orderly operation of the Debtor's business and reorganization process.

H. Debtor's Motion For Entry of an Order (I) Authorizing Payment of Certain Prepetition Shipping and Delivery Charges, and (II) Confirming the Administrative Expense Priority Status for the Debtor's Undisputed Obligations for the Postpetition Delivery of Goods and Services ("Shipper and Supplier Motion")

64. The Debtor utilizes a number of third-party shippers, freight forwarders, and similar critical transportation vendors (such parties, the "Shippers") to (i) ship finished products to customers, and (ii) procure components to manufacture, package and test medical devices. The Debtor uses both ground and air freight forwarders. The Shippers are owed approximately \$10,000 on account of amounts that will come due on or before twenty-one days after the Petition Date, absent the immediate payment of which such Shippers will refuse to make ongoing deliveries to the Debtor and the Debtor's customers.

65. In the ordinary course of the Debtor's business, numerous suppliers and service providers provide the Debtor with goods and services that are integral to the Debtor's business operations. As of the Petition Date, the Debtor had outstanding prepetition purchase orders (the "Outstanding Orders") with certain suppliers and providers (the "Suppliers") in the amount of approximately \$450,000 for unpaid Goods and Services that will be provided postpetition.

66. The relief requested in the Shipper and Suppliers Motion is essential to facilitate the orderly operation of the Debtor's business and reorganization process.

For all of the foregoing reasons, I respectfully request that the Court grant the relief requested in each of the First-Day Motions filed concurrently herewith.

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

Dated: December 11, 2017

/s/ Julian Nikolchev _____

Julian Nikolchev