UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Caption in Compliance with D.N.J. LBR 9004-1(b)

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In re: NOSTRUM LABORATORIES, INC., Debtor.	Case No.: 24-19611 Chapter 11 Honorable John K. Sherwood, U.S.B.J.

THE DEBTOR'S MOTION ON SHORT NOTICE FOR ENTRY OF AN ORDER (I) AUTHORIZING THE DEBTOR TO UTILIZE CASH COLLATERAL TO PAY PREPETITION ASSOCIATE WAGES, SALARIES, OTHER COMPENSATION AND REIMBURSABLE ASSOCIATE EXPENSES, (II) AUTHORIZING THE DEBTOR TO UTILIZE CASH COLLATERAL TO MAKE PREPETITION CONTRIBUTIONS TO NON-EXECUTIVE 401(K) RETIREMENT ACCOUNTS; AND (III) GRANTING RELATED RELIEF

The above-captioned Debtor in possession (the "Debtor") respectfully states as follows in support of this motion:[1]

Relief Requested

1. The Debtor seeks entry of an order, substantially in the form attached hereto as **Exhibit A** (respectively, the "Order": (i) authorizing the Debtor to utilize cash collateral to pay prepetition wages, salaries, and other compensation from cash collateral; (ii) authorizing the Debtor to utilize cash collateral to make contributions to non-executive 401(k) retirement accounts; and (iii) granting related relief.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the District of New Jersey (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11*, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.). The Debtor confirms its consent to the Court entering a final order in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are Sections 105(a), 362(d), 363(b), 507(a), and 541(b)(1) of Title 11 of the United States Code (the "Bankruptcy Code"), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules

[1] A detailed description of the Debtor and its business, including the facts and circumstances giving rise to the Debtor's Chapter 11 case, is set forth in the Declaration of Dr. Nirmal Mulye in Support of Debtor's First Day Motions (the "Mulye Declaration"), filed contemporaneously herewith.

2002-1, 9013-1, and 9013-5 of the Local Bankruptcy Rules for the District of New Jersey (the "Local Rules").

Background

5. The Debtor is engaged in the formulation and commercialization of specialty pharmaceutical products and controlled release, orally administered, branded and generic drugs.

6. The Debtor manufactures several life-saving drugs that only it manufactures, such as theophylline SR in 100mg and 200mg dosages, which is used to treat a host of lung diseases.

7. On September 30, 2024 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code ("Petition"). The Debtor is operating its business and assets as a debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases, and no official committees have been appointed or designated.

8. On October 4, 2024, the Debtor was unable to satisfy its payroll obligations to its employees due to the Petition.

9. This Motion is made on short notice to ensure that the Debtor can satisfy its prepetition employee obligations and continue to meet its employee obligations by using its cash collateral to meet those obligations.

10. The Debtor is only monetizable as a going concern. The Debtor's employees are a key factor in keeping the Debtor a going concern, because the Debtor cannot operate without its workforce, many of whom are specially trained in the Debtor's standard operating procedures and in regulatory compliance.

11. If the Debtor ceases operations, the Debtor reasonably believes there will be insufficient assets to ensure that both the Secured and Unsecured Creditors are repaid.

12. Moreover, if the Debtor ceases operations, many of the life-saving drugs it manufactures will become unavailable to consumers, as Debtor is the ***only*** manufacturer of those drugs.

13. If the Debtor is permitted to continue its operations, the Debtor reasonably believes it can generate significant, if not full value for the secured and unsecured creditors, as a result of a confirmable plan.

14. The Debtor's secured creditor with an interest in the cash collateral, Citizen's Bank, N.A., (the "Secured Creditor") has consented to the relief sought in this Motion, including the Debtor's request to use cash collateral to satisfy approximately $274,000.00 of its employee obligations, including payroll, relevant payroll taxes, non-executive 401(k) contributions, and any payroll service fees. For the avoidance of any doubt, Debtor does not seek any relief beyond that which Secured Creditor consented to. Debtor to reserves the right to file subsequent applications with the Court to use cash collateral for other purposes or to make additional payments to emplopyees.

The Debtor's Need To Use Cash Collateral

15. As described in the Mulye Declaration, the Debtor requires access to additional liquidity and use of cash collateral to continue operating its business during this Chapter 11 case, preserve and maximize the value of the bankruptcy estate for the benefit of all parties in interest, and ensure payment and retention of the Debtor's workforce.

16. With access to cash collateral, the Debtor intends to satisfy its prepetition obligations as incurred in the ordinary course of business operations, specifically by honoring its prepetition obligations to its employees.

17. The Debtor makes this motion with the consent of its secured creditor, Citizens Bank, which consented specifically to the use of cash collateral for prepetition wages, salaries, and other compensation as well as non-executive 401(k) contributions. *See* the Declaration of Anthony J. D'Artiglio, Esq. (the "D'Artiglio Declaration") ¶ 6, **Exhibit A**.

The Debtor's Workforce

18. As of the Petition Date, the Debtor employs approximately 94 employees in its two manufacturing facilities in Kansas City and Ohio (the "Employees"), including approximately 92 full-time Employees and approximately one part-time Employee. *See* Mulye Declaration ¶ 44. In addition to the Employees, the Debtor also periodically retains individuals as independent contractors (together with the Employees, the "Associates").[2]

19. The Associates perform a wide variety of functions which are critical to the manufacture, sale, and delivery of the Debtor's products and the ultimate preservation of value of the Debtor's estate. *See* Mulye Declaration ¶ 45.

20. In many instances, the Associates include personnel who are intimately familiar with the Debtor's, business, processes, and systems. They are also familiar with the Debtor's standard operating procedures and the complex regulatory scheme inherent to the pharmaceutical industry. These workers cannot be easily replaced.

21. In addition, the Debtor is required to meet certain minimum requirements set by Federal and State regulations for the number of personnel operating machinery. Therefore, cost-saving measures cannot significantly reduce the number of employees involved in the manufacturing process, making the workforce vital to the Debtor's ongoing business operations.

[2] There is currently one independent contractor who is not an insider who works at the Ohio facility.

22. Without the continued, uninterrupted services of the Associates, the Debtor's business operations will be materially impaired.

23. Further, the vast majority, if not all of, the Associates rely on their compensation and benefits to pay their daily living expenses. These workers will be unfairly harmed if the Debtor is not permitted to pay compensation earned prepetition.

24. Consequently, the Debtor respectfully submits that the relief requested herein is necessary and appropriate under the facts and circumstances of this Chapter 11 proceeding.

Associate Compensation and Benefits

25. To minimize the personal hardship that the Associates could suffer if prepetition employment-related obligations remain unpaid during the administration of this Chapter 11 case, the Debtor seeks authority to: (a) pay and honor certain prepetition claims relating to, among other things, wages, salaries, sales commissions, other compensation, 401k contributions, payroll processing services, federal, state, and local withholding taxes, and other amounts withheld (including garnishments, applicable shares of insurance premiums, and taxes) that the Debtor has historically provided in the ordinary course (collectively, the "Associate Compensation and Benefits")[3] and (b) pay all costs incident to the Associate Compensation and Benefits.

26. The Debtor seeks authority to make approximately $274,000.00 in payments related to prepetition amounts owed on account of the Associate Compensation and Benefits. *See* Mulye Declaration ¶ 49.

[3] The descriptions of the Associate Compensation and Benefits set forth in this Motion constitute a summary only. The actual terms of the agreements, contracts, plans, programs, policies, and manuals governing the Associate Compensation and Benefits will govern in the event of any inconsistency with the description in this Motion.

27. The Debtor does not seek authority to pay any amounts per Associate in excess of the statutory cap of $15,150.00 under Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code pursuant to this Order. The Debtor does, however, seek authority at this time to pay amounts in excess of $15,150.00.

I. Prepetition Compensation, Withholdings, and Related Unpaid Obligations.

28. The Debtor incurs obligations to its Associates for, among other things, wages, salaries, overtime, and other obligations described herein (collectively, the "Associate Compensation"). The Debtor's historical average monthly gross Associate Compensation, including wages, salaries, commissions, and related compensation, has been approximately $432,000.00.

29. The Debtor pays approximately 53 Associates -- over half of its workforce -- on an hourly basis (the "Hourly Associates") and the remaining approximately 41 Associates—are paid on a salaried basis (the "Salaried Associates"). The Debtor pays most of its Associates (both Hourly Associates and Salaried Associates) bi-weekly.

30. The Debtor anticipates that its monthly gross Associate Compensation, including wages, salaries, and related compensation, will remain around $432,000.00 during the pendency of this Chapter 11 case.

31. As of the Petition Date, the Debtor estimates that it owes approximately $250,000.00 on account of unpaid Associate Compensation earned by Associates prior to the Petition Date (the "Unpaid Compensation"). *See* Mulye Declaration ¶¶ 47-48.

32. The majority of the Debtor's payroll is made by direct deposit through electronic transfer of funds to the Associates' bank accounts or other electronic means.

33. Failure to pay the Unpaid Compensation will result in financial hardship for the Associates and lead to the risk of widespread departures at all levels of the Debtor's corporate

structure. In light of the substantial benefit the Associates will continue to provide to the Debtor's estates and the costs attendant to filling sudden vacancies, the Debtor hopes to avoid imposing such a hardship on its Associates.

34. The Debtor requests authority to pay any Unpaid Compensation in the ordinary course and consistent with past practice. For the avoidance of doubt, as of the Petition Date, the Debtor does not believe that it owes Unpaid Compensation to any Associate in excess of the $15,150.00 statutory cap imposed by Section 507(a)(4) of the Bankruptcy Code.

A. Withholding And Deduction Obligations.

35. During each applicable payroll period, the Debtor routinely deduct certain amounts from Associates' paychecks, including garnishments, child support, and similar deductions, as well as other pre-tax and after-tax deductions payable pursuant to certain employee benefit plans discussed herein, such as an applicable share of 401(k) plan deferrals, legally-ordered deduction, and miscellaneous deductions (collectively, the "Deductions"), and forward such amounts to various third-party recipients.

36. In addition to the Deductions, certain federal, state, and local laws require that the Debtor withholds certain amounts from Associates' gross pay related to federal, state, and local income taxes, as well as Social Security and Medicare taxes (collectively, the "Associate Payroll Taxes") for remittance to the appropriate federal, state, or local taxing authorities, as applicable. The Debtor must then match the Associate Payroll Taxes from its own funds and pay, based upon a percentage of gross payroll, additional amounts for federal and state unemployment insurance and Social Security and Medicare taxes ("Company Payroll Taxes," together with the Associate Payroll Taxes, the "Payroll Taxes"). The Payroll Taxes are generally processed and forwarded to

the appropriate federal, state, and local taxing authorities in accordance with each of the authorities' guidelines, rules, schedules, or regulations, as applicable.

37. As of the Petition Date, the Debtor estimates that it owes approximately $72,000.00 on account of the Withholding and Deduction Obligations on a prepetition basis. *See* Mulye Declaration ¶¶ 47-48.

38. Any amounts held by the Debtor on account of the Withholding and Deduction Obligations are held in trust by the Debtor and are not property of the Debtor's estates. The Debtor does not believe it requires authorization to remit such payments to the appropriate third parties. Out of an abundance of caution, however, the Debtor seeks authority to deduct and remit amounts to the appropriate third parties, as applicable, in a manner consistent with historical practice for any unpaid Withholding and Deduction Obligations.

B. Non-Executive 401(k) Contributions.

39. The Debtor offers eligible Employees the opportunity to participate in a 401(k) plan (the "Retirement Plan"). The Debtor seeks authority to pay any prepetition amounts owed on account of the Retirement Plans.

40. The Debtor offers eligible Employees the opportunity to participate in the Retirement Plan, which generally provides for pre-tax salary deductions of compensation up to limits set by the Internal Revenue Code.

41. As of the Petition Date, the Debtor estimates that it owes approximately $25,000.00 under the Retirement Plan. *See* Mulye Declaration ¶¶ 47-48.

42. Many Employees' retirement savings solely consist of the Retirement Plan, and many Associates choose to participate in the Retirement Plan because of the 401(k) Contribution

provision. In addition, the Debtor believes that the 401(k) Deductions are generally held in trust by the Debtor and are not property of its estate.

43. Pursuant to the limited consent provided by Citizens Bank, the 401(k) Contributions that shall be remitted and paid will not include contributions made to any executive or officer's 401(k) plans. *See* D'Artiglio Declaration ¶ 6, **Exhibit A**.

44. The Debtor seeks the authority to remit all unremitted ***non-executive*** 401(k) Deductions collected in the ordinary course of business.

45. For purposes of this Motion, Nirmal Mulye, Carlton Asher, Esq., Bridget Ahn, Esq., Jack Berk, and other officers or 1099 employees are considered "executive" employees who will not receive 401k payments pursuant to this Order.

C. Adequate Protection Lien.

1. In exchange for the Secured Creditor consenting to release of the cash collateral funds for payment of pre-petition employee salaries and benefits, Secured Creditor shall granted an automatically perfected, valid, binding, enforceable, non-avoidable, and effective adequate protection lien up to the amount of pre-petition payments made pursuant to this Order for any post-petition revenue received by the Debtor, which shall be senior to all other security interests in, liens on, or claims against any of the Debtor's post-petition revenue up to the amount of payments made pursuant to this Order.

Basis for Relief

I. Sufficient Cause Exists To Authorize The Debtor To Honor The Associate Compensation.

A. Certain Of The Associate Compensation Is Entitled To Priority Treatment.

42. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code entitle certain of the Associate Compensation to priority treatment to the extent such payments do not exceed

$15,150.00 for each individual as provided for under Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code. As priority claims, the Debtor is required to pay these claims in full to confirm a Chapter 11 plan. *See* U.S.C. § 1129(a)(9)(B) (requiring payment of certain allowed unsecured claims, given priority under Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, for wages, salaries, or commissions). To the extent that an Associate receives no more than $15,150.00 on account of claims entitled to priority, the relief sought with respect to compensation only affects the timing of payments to Associates and does not have any material negative impact on recoveries for general unsecured creditors. To the extent an Associate is owed more than $15,150.00 on account of certain Associate Compensation and Benefits, the Debtor submits that the full payment of such obligations in the ordinary course is warranted under Section 363(b)(1) of the Bankruptcy Code and the doctrine of necessity.

43. The Debtor's Associates are essential to the Debtor's business, and payment of the Associate Compensation and Benefits at this time is necessary to avoid potential material disruption to the Debtor's ordinary-course operations.

44. Finding new qualified talent would be extremely difficult, particularly given current labor market conditions. Such recruitment efforts would most likely require, among other things, higher salaries, guaranteed bonuses, and more comprehensive compensation packages than are currently provided to Associates.

45. Courts in this circuit have recognized that "[w]age priority has been a feature of the bankruptcy law since 1898." *See, e.g.*, *In re Garden Ridge Corp.*, No. 04-10324 (KJC), 2006 WL 521914, at *2 (Bankr. D. Del. Mar. 2, 2006) (citing 4 Alan N. Resnick & Henry J. Sommer, Collier on Bankruptcy ¶ 507.05[1] (15th ed. 2005)). Its purpose is to "alleviate hardship on

workers...who may have no other source of income...." *Id.* (citing Collier on Bankruptcy ¶ 507.05[1]).

B. Payment Of Certain Associate Compensation Is Required By Law.

46. As discussed above, the Debtor also seeks authority to pay the Withholding and Deduction Obligations to the appropriate third-party payees. These amounts principally represent Associate earnings that governments, Associates, and judicial authorities have designated for deduction from Associates' wages.

47. Certain Withholding and Deduction Obligations are not property of the Debtor's estate because the Debtor has withheld such amounts from Associates' wages on another party's behalf. *See* 11 U.S.C. §§ 541(b)(1), (d). Further, federal, state, and local laws require the Debtor to withhold certain tax payments from Associates' wages and to pay such amounts to the appropriate taxing authority. *See* 26 U.S.C. §§ 6672, 7501(a); *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95–97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes).

48. Because the Withholding and Deduction Obligations may not be property of the Debtor's estate, the Debtor requests authorization to transmit the Withholding and Deduction Obligations to the proper parties in the ordinary course of business. *See In re Dameron*, 155 F.3d 718, 721 (4th Cir. 1998).

49. The Debtor, therefore, respectfully requests that the Court recognize that the Withholding and Deduction Obligations are not property of the Debtor's estate and, regardless of whether the Debtor collected the amounts prior to the Petition Date, authorize the Debtor to transmit such monies to the proper parties in the ordinary course of business.

II. Payment Of The Associate Compensation Is Warranted Under Section 363(b) Of The Bankruptcy Code And The Doctrine Of Necessity.

50. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business's going-concern value. *See, e.g.*, *In re Just for Feet, Inc.*, 242 B.R. 821, 825–26 (D. Del. 1999); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175–76 (Bankr. S.D.N.Y. 1989); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983). In so doing, these courts acknowledge that several legal theories rooted in Sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims.

51. Section 363(b) of the Bankruptcy Code permits a bankruptcy court, after notice and a hearing, to authorize a debtor to "use, sell, or lease, other than in the ordinary course of business, property of the estate." *See* 11 U.S.C. § 363(b)(1). "In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions." *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (collecting cases); *see also Armstrong World*, 29 B.R. at 397 (relying on Section 363 to allow contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to debtors); *In re Ionosphere Clubs*, 98 B.R. at 175 (finding that a sound business justification existed to justify payment of certain prepetition wages); *In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring the debtor to show a "good business reason" for a proposed transaction under Section 363(b)).

52. Courts are also authorized to make payments of prepetition claims in appropriate circumstances based on Section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy

Code codifies a bankruptcy court's inherent equitable powers to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." *See* 11 U.S.C. § 105(a). Under Section 105(a), courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor's business. *See In re Just for Feet*, 242 B.R. at 825–26. Specifically, a court may use its power under Section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the "necessity of payment" rule (also referred to as the "doctrine of necessity"). *See, e.g., In re Ionosphere Clubs*, 98 B.R. at 176; *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (stating that courts may authorize payment of prepetition claims when there "is the possibility that the creditor will employ an immediate economic sanction, failing such payment"); *see also In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of the business). A bankruptcy court's use of its equitable powers to "authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." *In re Ionosphere Clubs*, 98 B.R. at 175–76 (citing *Miltenberger v. Logansport, C. & S.W. Ry. Co.*, 106 U.S. 286 (1882)). Indeed, at least one court has recognized that there are instances when a debtor's fiduciary duty can "only be fulfilled by the preplan satisfaction of a prepetition claim." *In re CoServ*, 273 B.R. at 497.

53. Furthermore, it is necessary for the smooth transition into Chapter 11 and maintain the Debtor's workforce as any work stoppages, delays, or mass resignations would threaten the Debtor's ability to manufacture, quality control, and distribute its pharmaceuticals, some of which are only manufactured by the Debtor.

54. For example, the Debtor is the only manufacturer in the United States that manufactures theophylline SR in 100mg and 200mg dosages. Theophylline is a life-saving drug used to treat COPD, chronic bronchitis, asthma, emphysema, and other lung diseases.

55. If the Debtor were to see a work stoppage or mass resignation of its Associates, the attendant pause in production of these life-saving drugs would almost certainly result in grave concerns for the affected patients. It is in the public interest to avoid facing a potential wave of medical emergencies and injuries because of the bankruptcy stay.

The Requirements of Bankruptcy Rule 6003 Are Satisfied

56. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." As set forth in this motion, the Debtor believes an immediate and orderly transition into Chapter 11 is critical to the viability of its operations and that any delay in granting the relief requested could hinder the Debtor's operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first 21 days of these Chapter 11 cases would severely disrupt the Debtor's operations at this critical juncture. Payment of the Associate Compensation discussed above is vital to a smooth transition into Chapter 11. Accordingly, the Debtor submits that it has satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support the relief requested herein.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

57. To implement the foregoing successfully, the Debtor seeks a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

Waiver of Memorandum of Law

58. The Debtor respectfully requests that the Court waive the requirement to file a separate memorandum of law pursuant to Local Rule 9013-1(a)(3) because the legal basis upon which the Debtor relies is set forth herein and the Motion does not raise any novel issues of law.

Reservation of Rights

59. Nothing contained in this motion or any order granting the relief requested in this motion, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with any such order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtor under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of the Debtor's or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in this motion or any order granting the relief requested by this motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to Section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtor's estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtor or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

No Prior Request

60. No prior request for the relief sought in this motion has been made to this or any other court.

Notice

61. The Debtor will provide notice of this Motion to the following parties and/or their respective counsel, as applicable: (a) the office of the United States Trustee for the District of New Jersey; (b) the Debtor's top 20 unsecured creditors (on a consolidated basis), (c) the United States Attorney's Office for the District of New Jersey; (d) the Secured Creditors; and (f) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtor respectfully requests that the Court enter interim and final orders, in substantially the forms submitted herewith, granting the relief requested herein and such other relief as is just and proper under the circumstances.

Dated: Woodland Park, New Jersey
October 7, 2024

ANSELL GRIMM & AARON, P.C.

s/Anthony J. D'Artiglio
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Proposed Attorneys for the Debtor

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Caption in Compliance with D.N.J. LBR 9004-1(b)

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Proposed Attorneys for Nostrum Laboratories, Inc.

In re: NOSTRUM LABORATORIES, INC., Debtor.	Case No.: 24-19611 Chapter 11 Honorable John K. Sherwood, U.S.B.J.

DECLARATION OF ANTHONY J. D'ARTIGLIO, ESQ. IN SUPPORT OF DEBTOR'S MOTION ON SHORT NOTICE FOR ENTRY OF AN ORDER (I) AUTHORIZING THE DEBTOR TO UTILIZE CASH COLLATERAL TO PAY PREPETITION ASSOCIATE WAGES, SALARIES, OTHER COMPENSATION AND REIMBURSABLE ASSOCIATE EXPENSES, (II) AUTHORIZING THE DEBTOR TO UTILIZE CASH COLLATERAL TO MAKE PREPETITION CONTRIBUTIONS TO NON-EXECUTIVE 401(K) RETIREMENT ACCOUNTS; AND (III) GRANTING RELATED RELIEF

I, ANTHONY J. D'ARTIGLIO, ESQ., proposed counsel for the Debtor Nostrum Laboratories, Inc. ("Debtor"), declare under penalty of the perjury under the law of the United States:

1. On September 30, 2024 (the "Petition Date"), the Debtor filed a voluntary petition for relief in this Court pursuant to Chapter 11 of Title, United States Code (the "Bankruptcy Code"). We understand that Debtor remains in possession of its assets and continues management of its business as a Debtor-in-Possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

2. This Court has jurisdiction over the Application pursuant to 28 U.S.C. §§ 1334 and this a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are Sections 105(a), 362(d), 363(b), 507(a), and 541(b)(1) of Title 11 of the Bankruptcy Code, Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 2002-1, 9013-1, and 9013-5 of the Local Bankruptcy Rules for the District of New Jersey (the "Local Rules").

5. By this motion, the Debtor seeks entry of an order, pursuant to Rule 6003 of the Bankruptcy Rules and Section 507(a)(4) and (a)(5) of the Bankruptcy Code, to utilize cash collateral to pay prepetition wages, salaries, other compensation, and to make contributions to non-executive 401(k) retirement accounts.

6. On October 3, 2024, the Debtor's secured creditor with an interest in cash collateral, Citizens Bank, consented to allow the Debtor to use its cash collateral to satisfy its payroll obligations for the October 4, 2024 cycle, including making salary and wage payments as well as 401(k) retirement account contributions, with the limitation that no 401(k) contributions be made to any officer or executive of the Debtor. A true and accurate copy of this correspondence is annexed hereto as **Exhibit A**.

7. On October 7, 2024, I confirmed this consent with Citizens Bank confirmed its consent to allow the Debtor to use its cash collateral to satisfy its payroll obligations for the October 4, 2024 cycle, including making salary and wage payments as well as 401(k) retirement account contributions, with the limitation that no 401(k) contributions be made to any officer or executive of the Debtor.

8. Notice of this Motion will be provided to: (i) the Office of the United States Trustee

and, (ii) Citizens Bank, and (iii) all parties who filed a notice of appearance. Debtor submits that no further notice is required.

WHEREFORE, the Debtor requests that the Court enter an order granting this Motion, and ordering any additional relief deemed just and proper by the Court.

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

Dated: Woodland Park, New Jersey
October 7, 2024

ANSELL GRIMM & AARON, P.C.

s/*Anthony J. D'Artiglio*

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EXHIBIT A

Anthony Sango

Subject: FW: Citizens' Response to Nostrum Request to Consent to Payroll for 10/4/24

From: Murphy, Julie <Jmmurphy@stradley.com>
Sent: Thursday, October 3, 2024 10:40 AM
To: Joseph DiPasquale <JDiPasquale@foxrothschild.com>
Cc: Santamour, Gretchen <GSantamour@STRADLEY.COM>; David Bruck <DBRUCK@greenbaumlaw.com>
Subject: Citizens' Response to Nostrum Request to Consent to Payroll for 10/4/24

Joe,

The bank is willing to give its limited consent to Nostrum to pay the October 4, 2024, payroll only, in the amount of $274,466.74 (and as reflected on the attached PDFs sent this morning), so long as you represent to Citizens that none of the funds handwritten for the 401k payments will be made to Mulye, Asher, Ahn, Berk or any other officer of the company or 1099. Please confirm this representation in a return email to me.

We note that this consent is limited to the 10/4 payroll and that Citizens does not consent to any other use by Nostrum of cash collateral whether now or in the future. [redacted]

Julie

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Caption in Compliance with D.N.J. LBR 9004-1(b)

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In re: NOSTRUM LABORATORIES, INC., Debtor.	Case No.: 24-19611 Chapter 11 Honorable John K. Sherwood, U.S.B.J.

ORDER (I) AUTHORIZING THE DEBTOR TO UTILIZE CASH COLLATERAL TO PAY PREPETITION ASSOCIATE WAGES, SALARIES, AND OTHER COMPENSATION, (II) AUTHORIZING THE DEBTOR TO UTILIZE CASH COLLATERAL TO SATISFY PAYROLL TAX OBLIGATIONS; AND (III) AUTHORIZING THE DEBTOR TO UTILIZE CASH COLLATERAL TO MAKE PREPETITION CONTRIBUTIONS TO NON-EXECUTIVE 401(K) RETIREMENT ACCOUNTS; AND (IV) GRANTING RELATED RELIEF

The relief set forth on the following pages, numbered one (1) through five (5) is **ORDERED**.

Upon the Motion For Entry an Order (I) Authorizing the Debtor to Utilize Cash Collateral to Pay Prepetition Associates Wages, Salaries, Other Compensation and Reimbursable Associate Expenses, (II) Authorizing the Debtor to Utilize Cash Collateral to Satisfy Payroll Tax Obligations, (III) Authorizing the Debtor to Utilize Cash Collateral to Make Prepetition Contributions to Non-Executive 401(k) Retirement Accounts, and (IV) Granting Related Relief, for the reasons set forth

in in the Motion; and upon the Declaration of Anthony J. D'Artiglio, Esq., and the Declaration of Nirmal Mulye, Ph.D; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the Standing Order of Reference to the Bankruptcy Court Under Title 11 of the United States District Court for the District of New Jersey, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtor's estates, its creditors, and other parties in interest; and this Court having found that the Debtor's notice of the Motion was appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion establish just, cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefore **IT IS HEREBY ORDERED THAT**:

1. The Motion is **GRANTED**.

2. The Debtor is authorized, but not directed, to honor and pay any prepetition amounts related to thereto; provided that the Debtor shall not make any payments in excess of the amounts set forth in Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code to any individual Associate without further order of this Court; provided further that (a) the Debtor shall seek Court approval, on notice, of any modification or change that would implicate any portion of Section 503(c) of the Bankruptcy Code; and (b) nothing herein shall be deemed to authorize the payment of any amounts that violate, implicate, or are otherwise subject to Section 503(c) of the Bankruptcy

Code.

3. The Debtor is authorized, but not directed, to forward any unpaid amounts on account of Withholding and Deduction Obligations to the appropriate third-party recipients or taxing authorities in the ordinary course of business.

4. The Debtor is authorized, but not directed, to pay in the ordinary course of business any costs and expenses incidental to payment of the Associate Compensation and Benefits obligations, including the 401(k) Contributions for non-executive employees, all administrative and processing costs, and necessary payments to outside professionals. For purposes of this Motion and Order, Nirmal Mulye, Carlton Asher, Esq., Bridget Ahn, Esq., Jack Berk, and other officers or 1099 employees are considered "executive" employees who will not receive 401k payments pursuant to this Order. Nothing contained herein is intended or should be construed to create an administrative priority claim on account of the Associate Compensation and Benefits obligations.

5. Secured creditor Citizens Bank, N.A. is granted an automatically perfected, valid, binding, enforceable, non-avoidable, and effective adequate protection lien up to the amount of pre-petition payments made pursuant to this Order for any post-petition revenue received by the Debtor, which shall be senior to all other security interests in, liens on, or claims against any of the Debtor's post-petition revenue up to the amount of payments made pursuant to this Order.

6. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtor's designation of any particular check or electronic payment request as approved by this Order.

7. Nothing contained in the Motion or this Final Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this Final Order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtor under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of the Debtor's or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in the Motion or this Final Order; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to Section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtor's estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtor or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

8. The Debtor is authorized, but not directed, to issue post-petition checks, or to effect post-petition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these Chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

9. Nothing in this Final Order authorizes the Debtor to accelerate any payments not otherwise due.

10. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

11. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final

Order are immediately effective and enforceable upon its entry.

12. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

13. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

Dated: _____ _____

Hon. John K. Sherwood, U.S.B.J.