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

Hearing Date: _____

Judge: John K. Sherwood

ORDER GRANTING MOTION TO CITIZENS BANK TO PROHIBIT THE DEBTOR'S USE OF CASH COLLATERAL

The relief set forth on the following page is **ORDERED**.

The Court having reviewed the EMERGENCY MOTION OF CITIZENS BANK, N.A. TO PROHIBIT DEBTOR'S USE OF CASH COLLATERAL, and any related responses or objections, it is hereby:

ORDERED that Citizens Bank, N.A.'s request that the Court prohibit the Debtor's use of cash collateral in contravention of the Bankruptcy Code is GRANTED; the Debtor shall not utilize any Cash Collateral, as such term is defined in the Motion, absent further order of this Court.

_____

Hon. John K. Sherwood

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY	
Caption in Compliance with D.N.J. LBR 9004-2(C) Julie M. Murphy Daniel Pereira Stradley Ronon Stevens & Young, LLP 457 Haddonfield Rd., Suite 100 Cherry Hill, New Jersey 08002 T: (856) 321-2409 F: E-Mail: jmmurphy@stradley.com dpereira@stradley.com *Attorneys for Citizens Bank, N.A.*	
In re: NOSTRUM LABORATOREIS, INC., Debtor.	Case No. 24-19611 (JKS) Chapter 11 Requested Hearing Date: Objection Deadline: Judge: Hon. John K. Sherwood

EMERGENCY MOTION OF CITIZENS BANK, N.A. TO PROHIBIT DEBTOR'S USE OF CASH COLLATERAL

TO: THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Citizens Bank, N.A. ("Citizens"), by and through its undersigned counsel, does hereby submit the following Emergency Motion to Prohibit the Use by Nostrum Laboratories Inc. of Cash Collateral, and in support thereof does hereby aver as follows:

INTRODUCTION

1. On or about September 30, 2024 (the "Petition Date"), Nostrum Laboratories Inc. ("Nostrum" or the "Debtor") filed a voluntary petition for relief (the "Petition") under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

2. Pursuant to Sections 1107 and 1108 of the Bankruptcy Code, the Debtor remains

in possession of its assets and is, upon information and belief, operating its business as a debtor-in-possession and likely using cash collateral in violation of the Bankruptcy Code.

3. As of the date of this objection, Nostrum has not sought the Court's permission to utilize cash collateral over the objections of Citizens, nor sought any other typical "first" day relief.

4. While counsel for Nostrum contacted Citizens' counsel indicating that it intended to seek Citizens' consent to use its cash collateral, no formal request has been made, no terms have been proposed and no budget has been delivered.

5. Moreover, Citizens was informed that filing counsel for Nostrum has or will immediately withdraw as counsel.

6. As set forth below, Citizens holds a perfected, first priority lien on and security interest in all of the Debtor's assets, including cash and proceeds thereof, to secure the Debtor's debt to Citizens in an aggregate amount, as of October 1, 2024, of $18,417,875.62.

7. Based on financial statements periodically produced to Citizens by Nostrum, as well as the review, analysis and conclusions of a fiscal agent appointed to monitor Nostrum's financial affairs, Nostrum lacks sufficient unencumbered cash to fund its flagging operations and pay operating expenses. In fact, just three months ago, Nostrum sold Citizens' collateral (three Abbreviated New Drug Applications) without seeking its consent or notifying it of the sale, and the Debtor used the proceeds to fund operations[1].

8. Given the inability of the Debtor to operate without liquidating counsel and the other findings of the fiscal agent, Citizens does not consent to the Debtor's use of cash collateral and notified Debtor's filing/prior counsel of its objection by e-mail on September 30, 2024.

[1] This disposition of collateral occurred during the pendency of Citizens' Receivership Motion (hereinafter defined) and was in direct contravention to testimony presented by Nostrum to the United States District Court Judge presiding over the motion.

9. The Debtor is incapable of providing Citizens adequate protection of Citizens' interest in cash collateral, as required under Sections 363(c)(2), 363(d) and 363(e) of the Bankruptcy Code. 11 U.S.C. §§ 363(c)(2), 363(d) and 363(e).

10. Citizens has been forced to endure the diminution in value of its Collateral (hereinafter defined) for more than three years, during which the Debtor's financial condition rapidly deteriorated, all while the Debtor has paid for luxury vehicles and sold Citizens' collateral without consent and illegally diverted the proceeds rather than remitting them to Citizens.

11. In the years leading up to the Petition Date, Nostrum has never provided Citizens with a budget that projects its financial results or other financial statements within any degree of accuracy, and without a financial advisor, chief restructuring officer or other competent and independent professional in charge of Nostrum, Nostrum will continue to provide inaccurate financial information to creditors and the Court in this proceeding.

12. To permit the use of Citizens' cash collateral without its consent or additional adequate protection and other protections forces Citizens to continue bear the entire risk of the diminution in value of its Collateral, which is not a result envisioned under the Bankruptcy Code.

13. Additionally, given the consistent losses sustained in the years leading up to the filing of the Petition and the inability of Nostrum to operate without depleting Citizens' collateral, which is either not replaced (in the case of ANDAs sold) or replaced at a rate slower than it is used (in the case of accounts receivable), Nostrum is unlikely to be able to propose any measures that will adequately protect Citizens' interests in the cash collateral.

14. Thus, pursuant to, among other things, 11 U.S.C. §§ 363(p)(1), Nostrum should not be permitted to utilize cash collateral.[2]

[2] Concurrently herewith, Citizens has filed an Emergency Motion to Appoint a Chapter 11 Trustee, or, in the Alternative to Dismiss this Chapter 11 Case (the "Trustee Motion"), which motion details the findings of the United

JURISDICTION

15. This Court has jurisdiction over the subject matter of this motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157. Venue here is appropriate pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

A. Loans to Nostrum

16. Prior to the Petition Date, Investors Bank, predecessor by merger to Citizens, extended three credit facilities to Nostrum: (a) a $5 million line of credit/term loan; (b) a $12 million revolving line of credit; and (c) a $5 million term loan (collectively, the "Loans").

17. The obligations of the Debtor to Citizens for the Loans are evidenced by, among other things, a Loan Agreement between Citizens, Borrower, Nostrum Pharmaceuticals, LLC ("Pharma") and Nirmal Mulye ("Mulye", and together with the Debtor and Pharma, the "Obligors"), dated as of December 31, 2020 (as amended, modified, and/or supplemented from time to time, the "Loan Agreement"). A true and correct copy of the Loan Agreement and subsequent amendments are attached to the Certification of Julie M. Murphy in Support of Emergency Motion to Prohibit Use of Cash Collateral ("Murphy Cert") as Exhibit A and incorporated herein by reference.

18. The obligations of the Debtor to Citizens are further evidenced by, that certain (a) Line of Credit/Term Loan Note in the maximum amount of $5,000,000 by Nostrum, (b) Revolving Credit Note in the maximum amount of $12,000,000, and (c) that certain Term Loan Note in the original principal amount of $5,000,000 (together, as the same may be amended, modified,

States District Court for the District of New Jersey regarding Citizens' Motion to Appoint a Receiver, finding gross mismanagement, material overstatement of asset value by the Debtor and numerous examples of the Debtor's dishonesty. The Trustee Motion and exhibits in support thereof are incorporated herein as if set forth herein by reference.

supplemented and/or restated from time to time, the "Notes"). True and correct copies of the Notes are attached to the Murphy Cert. as Exhibit B and incorporated herein by reference.

19. Pursuant to that certain Security Agreement dated December 31, 2020 (the "Security Agreement"), the obligations of the Debtor to Citizens for the Loans are also secured by, among other things, a security interest in all of the Debtor's personal property, including without limitation, all accounts, chattel paper, deposit accounts, documents, general intangibles, goods, inventory, equipment, trademarks, contract rights, instruments, investment property, letter of credit rights, letters of credit, money, supporting obligations and proceeds and products of the foregoing (as more particularly described in the Security Agreement, the "Collateral") as well as a pledge of certain bonds to Citizens. A true and correct copy of the Security Agreement is attached to the Murphy Cert. as Exhibit C and incorporated herein by reference.

20. The UCC-1 Financing Statement filed with the New Jersey Department of the Treasury on December 31, 2020 at Filing Number 54975457 (the "UCC-1") evidences the perfection of Citizens' security interest in the Collateral. A true and correct copy of the UCC-1 is attached to the Murphy Cert. as Exhibit D and incorporated herein by reference.

21. The Loan Agreement, Notes, the Security Agreement and all other documents evidencing the obligations of Obligors to Citizens for the Loans shall be hereinafter referred to as the "Loan Documents."

22. By the above-described Loan Documents, Citizens' liens extend to all of the Debtor's assets and all cash and cash proceeds thereof (the "Cash Collateral").

B. Pre-Petition Proceedings.

23. On or about October 31, 2022, the Debtor, Citizens, Nirmal Mulye and Pharma entered into a forbearance agreement (the "Forbearance Agreement"). A true and correct copy of

the Forbearance Agreement is attached to the Murph Cert. as Exhibit E and incorporated herein by reference.

24. Pursuant to the Forbearance Agreement the Debtor acknowledged and/or agreed, among other things:

(a) the continuing validity and binding effect and force of the Loan Documents (*id.*, Section 2);

(b) the existence of the Existing Defaults (as defined in the Forbearance Agreement) (*id.*, Section 3);

(c) that it had no defense, set off, counterclaim or challenge against the payment of any sums owing under the Loan Documents (*id.*, Section 5);

(d) that the full amount of the indebtedness under the Loan Documents was validly and duly owing to Citizens (*id.*, Section 6);

(e) that Citizens was owed $17,226,584.78, together with accruing interest (including PIK interest), costs and fees (including without limitation attorneys' fees).

25. The Forbearance Agreement likewise (a) required payment in full of the debt to Citizens no later than December 31, 2022, and (b) prohibited the sale of Collateral, including Abbreviated New Drug Applications and Drug Master Files.

26. Citizens was not paid in full on account of the Loans prior to December 31, 2022, and Citizens' obligation to forbear under the Forbearance Agreement expired.

27. On or about October 6, 2023, Citizens commenced litigation against the Debtor in the United States District Court for the District of New Jersey (the "District Court") and moved for the appointment of a receiver (the "Receivership Motion").

28. Citizens filed the Receivership Motion as a result of the Debtor's insolvency, gross

mismanagement, suspected fraud in its financial statements and reporting and the inability or unwillingness of the Debtor to obtain financing, effectuate a sale of assets or otherwise take steps necessary to pay the Citizens indebtedness.

29. On April 22, 2024, the District Court held a full day evidentiary hearing on the Motion, during which the Debtor painted a "rosy" picture of its financial position, and Citizens' expert testified about its insolvency on a cash flow and balance sheet basis.

30. On June 27, 2024, the District Court issued an order appointing a fiscal agent, and on July 29, 2024, the District Court appointed Keith Balla, from PKF O'Connor Davies (the "Fiscal Agent") as the fiscal agent to, *inter alia*, investigate and analyze the operations and financial condition of the Debtor, to monitor the operations of the Debtor, and to provide periodic written updates to the District Court.

31. On September 16, 2024, the Fiscal Agent issued his initial report (the "Initial Report") regarding the financial status of Nostrum, its management, its ability to continue operations and other matters within his purview.

32. On September 24, 2024, in response to the findings outlined in the Initial Report and Citizens' renewed request for the appointment of a receiver, the District Court held a hearing, granted the request for a receiver and found that Citizens sufficiently demonstrated each prong necessary to justify the appointment of a receiver under Fed. R. Civ. P. 66. *See*, Tr. Sept. 24, 2024 Hrg., p. 107:13-25; 108:1-18, a true and correct copy of which is attached to the Murphy Cert. as Exhibit F and incorporated herein by reference.

33. While the application for appointment of a receiver was granted on the record on September 24, 2024, as of the Petition Date no order naming such receiver had been entered. *Id.*, p. 108:16-18.

RELIEF REQUESTED

34. Citizens requests that the Court prohibit the Debtor's use of cash collateral in contravention of the Bankruptcy Code and, in the alternative, that the Court condition the Debtor's use of cash collateral on the appointment of a chapter 11 trustee and provision to Citizens of adequate assurance acceptable to Citizens as set forth more fully herein.

BASIS FOR RELIEF

35. Under Sections 363(c), (d) and (e) of the Bankruptcy Code, a debtor may not use cash collateral unless (a) all entities with an interest in such cash collateral consent, or (b) the court authorizes the use. To authorize the use of a secured party's cash collateral over its objection, the debtor is required to provide adequate protection.

36. As set forth above and evidenced by the Loan Documents, Citizens has a first priority lien on and security interest in the Debtor's assets, including the Cash Collateral.[3]

37. As such, Citizens has an interest in the Debtor's Cash Collateral. *See* 11 U.S.C. § 363(a) (stating that cash collateral consists of: "cash, negotiable instruments, documents of title, securities, deposit accounts or other cash equivalents" including the products and proceeds of such property).

38. On September 30, 2024, Citizens' counsel advised the Debtor's counsel at the time that it does not consent to the use of Cash Collateral.

39. In spite of Citizens' objection to the use of Cash Collateral, upon information and belief, the Debtor continues to operate and continues to utilize Cash Collateral in contravention to the provisions of the Bankruptcy Code.

40. The Debtor has not offered adequate protection to Citizens, has not provided any

[3] In fact, the District Court found no dispute that Citizens is a secured creditor. *See*, Ex. F, p. 105:4-5.

acceptable budget and has not reached out to Citizens to discuss the terms of any post-petition Cash Collateral use.

41. Given the history of losses and the Debtor's inability to operate without utilizing the proceeds of Collateral, including the proceeds of intangible assets which are required to be remitted to Citizens, the Debtor will be unable to provide adequate protection of Citizens' interests in the Cash Collateral.

42. Moreover given that, as of the date of this filing, the Debtor has filed no first day motions, has no application pending for the appointment of counsel and has no plan for moving forward in this chapter 11 case, any Cash Collateral expended is almost certain to be squandered, result in a diminution in the value of Citizens' interests in Cash Collateral and fail to benefit the estate.

43. Adequate protection is designed to "as nearly as possible under the circumstances of the case provide the creditor with the value of his bargained for rights." *Resolution Trust Corp. v. Swedeland Dev. Group*, 16 F.3d 552, 564 (3d Cir. 1994). Additionally, adequate protection should safeguard the creditor against the diminution in the value of its collateral. *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996).

44. Adequate protection must be sufficient to protect Citizens' interest from any diminution in value while in use by the Debtor. *See, e.g.*, *In re Pacific Lifestyle Homes, Inc.*, 2009 WL 688908, at *8 (Bankr. W.D. Wash. 2009); *In re Moselle*, 195 B.R. 277, 288 (Bankr. S.D.N.Y. 1996); *In re Gallegos Research Group*, 193 B.R. 577, 584 (Bankr. D. Colo. 1994).

45. Therefore, the extent of adequate protection the Debtor should be required to provide is determined by the expected decrease in value of Citizens' interest in the Cash Collateral. *See, e.g.*, *Pacific Lifestyle Homes*, 2009 WL 688908, at *8; *In re Glasstream Boats, Inc.*, 110 B.R.

611, 613 (Bankr. M.D. Ga. 1990); *In re Rankin*, 49 B.R. 565, 569 (Bankr. W.D. Mo. 1985).

46. The existence of an equity cushion alone is not sufficient when it is likely to erode or where the debtor's operational plans may result in a deterioration of the collateral. *See In re Sharon Steel Corp.*, 159 B.R. 165, 169 (W.D. Pa. 1993).

47. Given a rapidly eroding equity cushion (if any), the Debtor's continued losses and the Debtor's reliance on sales of Citizens' Collateral to pay operating expenses, the Debtor will be unable to meet its burden to establish the adequate protection of Citizens' interests in the Cash Collateral.

48. Citizens anticipates that the Debtor will assert that the value of its assets exceeds the value of the debt owed to Citizens and, therefore, an equity cushion adequately protects Citizens. Citizens, however, contests the purported value of the Debtor's assets in light of, *among other things* the findings of the Fiscal Agent and the District Court that raised substantial questions about the value of the Debtor's assets as reported in various financial statements provided to Citizens.

49. Even if an equity cushion exists, there is a substantial likelihood that it will quickly erode as the Debtor dissipates assets and continues to sustain losses.

50. The Debtor has been unable to sustain a positive EBITDA for the last two years, consistently has negative cash on hand, has had years of losses and has already demonstrated that it cannot operate without the liquidation of Citizens' Collateral to meet operating expenses. For example, shortly before the Petition Date, the Debtor liquidated three of its Abbreviated New Drug Applications (contrary to the express terms of the Forbearance Agreement and during the pendency of the Receivership Motion) and utilized the proceeds to sustain operations.

51. Thus, the continued operation of the Debtor's business and use of Cash Collateral

will result in the diminution in value of Citizens' Cash Collateral and Collateral that no replacement lien can protect.

52. Moreover, given that the Debtor has consistently demonstrated, as found by the District Court and the Fiscal Agent appointed by the District Court, its inability to issue projections with any degree of accuracy, any budget proposed by the Debtor will lack sufficient detail and specificity to allow creditors to fully evaluate a proposed use of Cash Collateral.

53. For instance, the District Court found that "financial projections prepared by [the Debtor] were knowingly unrealistic" and that "Nostrum did not take steps to correct those projections." *See*, Opinion Appointing Fiscal Agent, a true and correct copy of which is attached to the Murphy Cert. as Exhibit G.

54. It is likely that any budget, to the extent one is ultimately prepared and provided, will show that the Debtor's estimated monthly revenues are insufficient to pay its estimated monthly expenses, calling into doubt whether replacement liens will sufficiently protect Citizens' interests.

55. The Debtor could have contacted Citizens to negotiate cash collateral terms that truly and adequately protect Citizens' interests including, but not limited to, protections commonly included in cash collateral orders such as a detailed budget, reporting requirements, requirements to use Citizens as its sole depository bank (as required under the Loan Documents), adequate protection payments, acknowledgement of the Debtor's obligations and Citizens' liens, and/or super-priority administrative expense claims.

56. Instead, the Debtor filed this chapter 11 case without any negotiated provisions in place that would permit the Debtor's use of Cash Collateral while adequately protecting Citizens' interests. The Petition was filed with no plan whatsoever.

57. The Debtor should not be permitted to utilize Citizens' Cash Collateral absent the appointment of a chapter 11 trustee and the provision to Citizens of adequate protections sufficient to fully preserve its interests.

58. To the extent, as Citizens suspects, the Debtor has used Citizens' Cash Collateral since the Petition Date, the Debtor should be required to provide a report to Citizens and the U.S. Trustee of all cash and other funds that have been transferred to its debtor-in-possession accounts, all revenue and other receipts and disbursements of the Debtor since the Petition Date, where such revenue and receipts have been deposited and how such revenue and receipts have been expended, and all other disbursements that have been made by the Debtor since the commencement of this case.

WAIVER OF MEMORANDUM OF LAW

59. Citizens 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 Citizens relies is set forth herein and this Motion does not raise any novel issues of law.

CONCLUSION

WHEREFORE, Citizens respectfully requests that this Court enter an order denying the Debtor's use of Cash Collateral or, in the alternative, conditioning the Debtor's use of Cash Collateral on, among other things, (i) the appointment of a chapter 11 trustee, (ii) he provision of additional adequate protection to Citizens including, but not limited to, adequate protection payments and super-priority administrative expense claims, (iii) full disclosure regarding the Debtor's Budget and the anticipated expenses to which the Cash Collateral will be applied, (iv) Debtor's reporting of all cash and other funds that have been transferred to its debtor-in-possession accounts, all revenue and other receipts of the Debtor since the petition date, where such revenue

and receipts have been deposited and how such revenue and receipts have been expended, and all other disbursements that have been made by the Debtor since the commencement of this case, (vi) requiring all funds to be maintained in depository accounts at Citizens; (vii) a finding that Citizens holds valid, perfected first-priority liens on the Debtor's assets including the Cash Collateral, and (vii) and granting such other relief as this Court deems just, proper and equitable.

Date: October 6, 2024

STRADLEY, RONON, STEVENS & YOUNG, LLP

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Application for admission pro hac vice forthcoming

Counsel to Citizens Bank, N.A.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

	:	No. No. 24-19611 (JKS)
	:	
In re:	:	**CERTIFICATION OF JULIE M.**
	:	**MURPHY IN SUPPORT OF**
NOSTRUM LABORATORIES,	:	**CITIZENS BANK'S EMERGENCY**
INC.,	:	**MOTION FOR TO PROHIBIT THE**
	:	**DEBTOR'S USE OF CASH**
Debtor.	:	**COLLATERAL**
	:	
	:	

I, Julie M. Murphy, hereby declare under penalty of perjury that the following is true and correct:

1. I am a partner with the law firm Stradley Ronon Stevens & Young, LLP, representing Citizens Bank, N.A. ("Citizens"), in the above-captioned bankruptcy case. I am fully familiar with the facts set forth herein and submit this certification in support of Citizens motion for the appointment of a chapter 11 trustee pursuant to 11 U.S.C. § 1104(a) or, in the alternative, dismissal of this chapter 11 case.

2. I also serve as lead counsel for Citizens in its action against Nostrum Laboratories, Inc. ("Nostrum" or the "Debtor") that is identified as *Citizens Bank, N.A. v. Nostrum Laboratories, Inc., et al.*, Case No. 23-20765 (the "Receivership Action").

3. Attached hereto as Exhibit A are true and correct copies of the Loan Agreement, and each amendment thereto, which were entered into evidence in the Receivership Action as part of exhibit "P-1" during the April 22, 2024 evidentiary hearing.

4. Attached hereto as Exhibit B are true and correct copies of the Notes that were also entered into evidence in the Receivership Action also as part of exhibit "P-1" during the April 22, 2024 evidentiary hearing.

5. Attached hereto as Exhibit C is a true and correct copy of the Security Agreement that was entered into evidence in the Receivership Action also as part of exhibit "P-1" during the April 22, 2024 evidentiary hearing.

6. Attached hereto as Exhibit D is a true and correct copy of the UCC-1 Financing Statement filed with the New Jersey Department of the Treasury on December 31, 2020 at Filing Number 54975457 that was entered into evidence in the Receivership Action also as part of exhibit "P-1" during the April 22, 2024 evidentiary hearing.

7. Attached hereto as Exhibit E is a true and correct copy of the Forbearance Agreement that was entered into evidence in the Receivership Action also as part of exhibit "P-1" during the April 22, 2024 evidentiary hearing.

8. Attached hereto as Exhibit F is a true and correct copy of the transcript from the September 24, 2024 evidentiary hearing in the Receivership Action.

9. Attached hereto as Exhibit G is a true and correct copy of the opinion authored by the Honorable Georgette Castner dated June 27, 2024 in the Receivership Action.

I certify under penalty of perjury that, based upon my personal knowledge, information, and belief, that the foregoing information is true and correct.

Date: October 6, 2024

/s/ Julie M. Murphy

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Attorneys for Plaintiff, Citizens Bank, N.A., successor by merger to Investors Bank

EXHIBIT A-1

Loan Agreement, with amendments

LOAN AGREEMENT

By and Between

NOSTRUM LABORATORIES, INC.
Borrower,

NIRMAL MULYE
Individual Guarantor,

NOSTRUM PHARMACEUTICAL LLC
Corporate Guarantor,

And

INVESTORS BANK
Bank

As of December 31, 2020

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LOAN AGREEMENT

Dated as of December 31, 2020

NOSTRUM LABORATORIES, INC., a New Jersey corporation, having an office at 1370 Hamilton Street, Somerset, New Jersey 08873 (the "Borrower"), **NOSTRUM PHARMACEUTICALS LLC**, a Delaware limited liability company, having an office at 1370 Hamilton Street, Somerset, New Jersey 08873 (the "Corporate Guarantor"), NIRMAL MULYE, residing at 1000 Biscayne Boulevard, Miami, FL 33132 (individually the "Individual Guarantor"; the Corporate Guarantor and the Individual Guarantor collectively, the "Guarantors") and **INVESTORS BANK**, a New Jersey commercial chartered bank having an address of 101 JFK Parkway, Short Hills, New Jersey 07078 (the "Bank"), hereby agree as follows:

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

SECTION 1.01. Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"Affiliate" means, as to any Person (a) any Person which, directly or indirectly, is in control of, is controlled by, or is under common control with such Person, or (b) any Person who is a director, manager, member, managing member, general partner or senior executive officer (i) of such Person, (ii) of any Subsidiary of such Person or (iii) of any Person described in clause (a) above. For purposes of this definition, control of a Person shall mean the power, direct or indirect, (x) to vote 5% or more of the Equity Interests having ordinary voting power for the election of directors of such

Person or other Persons performing similar functions for any such Person, or (y) to direct or cause the direction of the management and policies of such Person whether by ownership of Equity Interests, contract or otherwise.

"Aggregate Outstandings" means, at any time, the aggregate of the principal amount of outstanding Revolving Credit Loans.

"Agreement" means this Loan Agreement, as amended, supplemented or modified from time to time.

"Anti-Terrorism Laws" shall mean any Laws relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering or bribery, and any regulation, order, or directive promulgated, issued or enforced pursuant to such Laws, all as amended, supplemented or replaced from time to time.

"Assignment and Assumption Agreement" shall have the meaning set forth in Section 7.10 hereof.

"Board of Governors" means the Board of Governors of the Federal Reserve System of the United States of America.

"Borrowing Base" means (i) Seventy-Five percent (75%) of the Borrower's Eligible Accounts Receivable, (ii) less rebates, credits and allowances to account debtors in the form of credit memos or invoices from customers, (iii) plus fifty percent (50%) of the Borrower's Eligible Inventory up to a maximum of fifty percent (50%) of the aggregate Borrowing Base.

"Business Day" means any day other than Saturday or Sunday or a legal holiday on which commercial banks in New Jersey are authorized or required by law to be closed for business and, if the applicable Business Day relates to any LIBOR Rate Loans, such day must also be a day on which dealings are carried on in the London interbank market.

"Capital Expenditures" means, as to any Person, expenditures made or liabilities incurred for the acquisition of any fixed assets or improvements (or of any replacements or substitutions thereof or additions thereto) which have a useful life of more than one year and which, in accordance with GAAP, would be classified as capital expenditures (but excluding expenditures made in connection with the repair, replacement or restoration of assets to the extent funded from insurance proceeds paid on account of the loss of or damage to, or from awards or compensation arising from the taking by eminent domain or condemnation of, the assets being repaired, replaced or restored). Capital Expenditures shall include the total principal portion of Capitalized Lease Obligations.

"Capitalized Lease Obligations" means any indebtedness of the Borrower and Corporate Guarantor represented by obligations under a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

"Closing Date" shall mean December 31, 2020 or such other date as may be agreed to by the parties hereto.

"Collateral" shall have the meaning set forth in the Security Agreement.

"Commitment" means the Bank's obligation to make the Loans pursuant to the terms and conditions of this Agreement.

"Compliance Certificate" shall mean a compliance certificate of the President or the Chief Financial Officer of the Borrower in form and substance acceptable to the Bank.

"Computer System(s)" means any and all hardware, software, databases, websites, applications, mobile devices and applications, storage devices, servers, transmission media, internet connected devices and applications, network-connected devices and applications, computers, operating systems, network interfaces, network devices, interface cards, hubs, bridges, switches, routers, gateways, firewalls, media and peripherals.

"Covered Entity" shall mean (a) the Borrower, each of Borrower's Subsidiaries, all Guarantors and all pledgors of Collateral and (b) each Person that, directly or indirectly, is in control of a Person described in clause (a) above. For purposes of this definition, control of a Person shall mean the direct or indirect (x) ownership of, or power to vote, 25% or more of the issued and outstanding equity interests having ordinary voting power for the election of directors of such Person or other Persons performing similar functions for such Person, or (y) power to direct or cause the direction of the management and policies of such Person whether by ownership of equity interests, contract or otherwise.

"CPLTD" means current portion of long term Debt.

"Cyber Attack" means any action by any Person, any of its employees, or any third party that has the effect, or potentially may have the effect, of altering, damaging, stealing, accessing, acquiring, disabling and/or destroying any portion of data or the Computer Systems of Borrower or Corporate Guarantor or any Subsidiary of Borrower.

"Data Breach" shall have the meaning ascribed to it by any applicable Privacy Law that pertains to the unauthorized access or acquisition of data.

"DEA" means the Drug Enforcement Administration of the United States and any successor agency thereof.

"Debt" means, as to any Person, (i) all indebtedness or liability of such Person for borrowed money; (ii) indebtedness of such Person for the deferred purchase price of property or services; (iii) obligations of such Person as a lessee under Capitalized Lease Obligations; (iv) current liabilities of

such Person in respect of unfunded vested benefits under any Plan; (v) obligations of such Person under letters of credit issued for the account of such Person; (vi) obligations of such Person arising under acceptance facilities; (vii) all guaranties, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds to invest in any other Person, or otherwise to assure a creditor against loss; (viii) obligations secured by any Lien on property owned by such Person whether or not the obligations have been assumed; and (ix) all other liabilities recorded as such, or which should be recorded as such, on such Person's financial statements in accordance with GAAP.

"Debt Service Coverage Ratio" shall have the meaning given such term in Section 5.03

"Default" means any of the events specified in Section 6.01 of this Agreement, whether or not any requirement for notice or lapse of time or any other condition has been satisfied.

"Dollars" and the sign "$" mean lawful money of the United States of America.

"Drug Application" means a new drug application, an abbreviated drug application, a biologic license application, or any other product license application for any Product, as appropriate, as those terms are defined in the FDCA.

"EBITDA" shall mean for any period with respect to any Person, earnings before interest, taxes, depreciation, and amortization, all as determined by the Bank in accordance with GAAP.

"Eligible Accounts Receivable" means those accounts receivable of the Borrower which (i) arise in the ordinary course of business, (ii) are subject to a first, perfected security interest of the Bank, and (iii) are evidenced by an invoice or other documentary evidence reasonably satisfactory to the Bank provided, however no account receivable shall be an Eligible Account Receivable if:

(a) it arises out of a sale made by the Borrower to an Affiliate or to a person controlled by such an Affiliate;

(b) it is due or unpaid more than ninety (90) days after its invoice date;

(c) the account receivable is from an account debtor of which fifty (50%) percent or more of such account debtor's accounts receivable are otherwise ineligible hereunder;

(d) any covenant, representation or warranty contained in any Loan Document with respect to such account receivable has been breached;

(e) the account debtor has commenced a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or made an assignment for the benefit of creditors, or a decree or order for relief has been entered by a court having jurisdiction in the premises in respect of the account debtor in an involuntary case

under any state or federal bankruptcy laws, as now constituted or hereafter amended, or if any other petition or other application for relief under any state or federal bankruptcy law has been filed against the account debtor, or if the account debtor has failed, suspended business, ceased to be solvent, called a meeting of its creditors, or consented to or suffered a receiver, trustee, liquidator or custodian to be appointed for it or for all or a significant portion of its assets of affairs;

(f) the sale to the account debtor is on a guaranteed sale, sale-and-return, sale on approval, consignment or any other repurchase or return basis or is evidenced by chattel paper;

(g) the account debtor is the United States of America, any state or any department, agency or instrumentality of the United States of America or any state;

(h) the account debtor is not domiciled in the United States unless the receivables from such account debtor are covered pursuant to credit insurance or letters of credit satisfactory to the Bank in its sole discretion;

(i) the goods giving rise to such account receivable have not been shipped and delivered to or have been rejected by the account debtor or the services giving rise to such receivable have not been performed by the Borrower or have been rejected by the account debtor or the account receivable otherwise does not represent a final sale;

(j) the account debtor is also a creditor or supplier of the Borrower or has disputed liability to Borrower, or has made any claim with respect to any other account receivable due to the Borrower, or the account receivable otherwise is or may become subject to any right of set-off;

(k) the Borrower has made any agreement with the account debtor for any deduction therefrom, (except for discounts or allowances made in the ordinary course of business for prompt payment, all of which discounts or allowances are reflected in the calculation of the face value of each respective invoice related thereto) provided, that only the amount of any such deduction shall be ineligible pursuant to this clause (k);

(l) any return, rejection or repossession of the merchandise has occurred;

(m) such account receivable is not payable to the Borrower;

(n) the Bank, in good faith and in the exercise of its discretion in a reasonable manner, believes that collection of such account receivable is insecure or that such account receivable may not be paid by reason of the account debtor's inability to pay, or the accounts receivable of the account debtor exceed a credit limit determined by

the Bank, in good faith and in the exercise of its discretion in a reasonable manner, provided that only the amount of such excess shall be ineligible; or

(o) the Bank determines in its reasonable discretion, that such account receivable, or such category of accounts receivable, is ineligible.

"Eligible Inventory" means all finished goods inventory of the Borrower valued at the lower of cost or market value, determined on a first-in-first-out basis, other than (i) inventory which is, in the Bank's reasonable opinion, obsolete, slow moving or unmerchantable, (ii) inventory located at a business premises not located in the United States, (iii) inventory not subject to a perfected security interest in favor of the Bank, or (iv) goods or materials which would not be classified as inventory on a balance sheet of the Borrower prepared in accordance with GAAP. To the extent the inventory is at a location not owned by Borrower, the Borrower will receive such Landlord/Warehouse waivers as it deems it to be necessary, satisfactory to the Bank.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, the regulations promulgated thereunder and the published interpretations thereof as in effect from time to time.

"ERISA Affiliate" means any trade or business (whether or not incorporated) which together with any other Person would be treated, with such Person, as a single employer under Section 4001 of ERISA.

"Event of Default" means any of the events specified in Section 6.01 of this Agreement, provided that any requirement for notice or lapse of time or any other condition has been satisfied.

"FDA" means the Food and Drug Administration of the United States or any successor entity thereto.

"FDCA" means the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. Section 301 *et seq.,* and all regulations promulgated thereunder, including but not limited to 21 C.F.R. Parts 803, 806, 807, 812, and 820.

"Field Audit" means an examination of the books and records of the Borrower to be performed by employees or other representatives of the Bank.

"Fixed Charge Coverage Ratio" shall have the meaning given such term in Section 5.03

"Fixed Rate" means, for the Term Loan, an annual interest rate of 3.60%.

"Fixed Rate Loan" means the Term Loan bearing interest at the Fixed Rate in accordance with the provisions of Article II hereof., and the Line of Credit/Term Loan after the Line of Credit/Term Loan Conversion Date, fixed at a rate equal to 325 basis points in excess of the 5 year

United States Treasury Securities as made available by the Federal Reserve Board in effect five (5) business days prior to the Line of Credit/Term Loan Conversion Date. In no event shall the 5 year United States Treasury Securities index be below 1.25%. A floor of 3.60% will be instituted.

"Funded Debt" shall mean, with respect to any Person, without duplication, (a) all Aggregate Outstandings and (b) the aggregate principal amount of all Debt of Borrower as described in clauses (i),(ii), and (iii) of the definition of Debt, as reflected on the balance sheet prepared at such date of determination in accordance with GAAP.

"GAAP" means Generally Accepted Accounting Principles.

"Generally Accepted Accounting Principles" means those generally accepted accounting principles and practices which are recognized as such by the American Institute of Certified Public Accountants acting through the Financial Accounting Standards Board ("FASB") or through other appropriate boards or committees thereof and which are consistently applied for all periods so as to properly reflect the financial condition, operations and cash flows of a Person, except that any accounting principle or practice required to be changed by the FASB (or other appropriate board or committee of the FASB) in order to continue as a generally accepted accounting principle or practice may be so changed. Any dispute or disagreement between the Borrower and the Bank relating to the determination of Generally Accepted Accounting Principles shall, in the absence of manifest error, be conclusively resolved for all purposes hereof by the written opinion with respect thereto, delivered to the Bank, of the independent accountants selected by the Borrower and approved by the Bank for the purpose of auditing the periodic financial statements of the Borrower.

"Good Manufacturing Practices" or "GMP" means current good manufacturing practices, as set forth in the Quality System Regulation, 21 C.F.R. Part 820 and as set forth in 21 C.F.R. Parts 210 and 211.

"Governmental Body" shall mean any nation or government, any state or other political subdivision thereof or any entity, authority, agency, division or department exercising the executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to a government (including any supra-national bodies such as the European Union or the European Central Bank) and any group or body charged with setting financial accounting or regulatory capital rules or standards (including, without limitation, the Financial Accounting Standards Board, the Bank for International Settlements or the Basel Committee on Banking Supervision or any successor or similar authority to any of the foregoing).

"Guarantor" or "Guarantors" means one or more of the Individual Guarantor or the Corporate Guarantor, and any other Person who is required to guarantee the obligations of the Borrower in accordance with Section 5.01(l) of this Agreement.

"Guaranty" or "Guaranties" means the guaranty or guaranties executed and delivered by the Guarantors pursuant to Section 3.01(f) of this Agreement.

"Hazardous Materials" includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 9601 et. seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule or regulation.

Healthcare Laws means all applicable Laws relating to the development, distribution, manufacturing, marketing, sale or use of the Products and the possession, control, warehousing, marketing, sale, and distribution of medical devices and/or pharmaceuticals generally, including, without limitation, all federal and state laws governing the sale and distribution of drugs, including over-the-counter drugs, biologicals, and supplements, including the Controlled Substances Act (21 U.S.C. § 801 *et seq.),* the Food, Drug and Cosmetic Act of 1938 (21 U.S.C. Chapter 9), the Dietary Supplement Health and Education Act (P.L. 103-417 (1994)), the Omnibus Budget and Reconciliation Act of 1990 (P.L. 101-508 (1990)), the Generic Drug Enforcement Act of 1992, Food and Drug Administration Amendments Act (FDAAA) of 2007 (P.L. 110-85 (2007)), the Patient Protection and Affordable Care Act (P.L. 111-148 (2010)), the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152 (2010)) and the Food and Drug Administration Safety and Innovation Act (FDASIA) (P.L. 112-114 (2012)).

"Interest Determination Date" means, in the case of a LIBOR Rate Loan, the last day of the applicable Interest Period.

"Interest Payment Date" means (i) as to each LIBOR Rate Loan, the first Business Day of each month, and (ii) as to each Fixed Rate Loan, the first Business Day of each month.

"Interest Period" means as to any LIBOR Rate Loan, the period commencing on the date of such LIBOR Rate Loan and ending on the numerically corresponding day in the calendar month that is three months thereafter, as the Borrower may elect (or, if there is no numerically corresponding day, on the last Business Day of such month); provided, however, (i) that no Interest Period for a Revolving Credit Loan shall end later than the Revolving Credit Maturity Date, (ii) that no Interest Period for the Line of Credit/Term Loan shall end later than the Line of Credit/Term Loan Conversion Date (iii) if any Interest Period would end on a day which shall not be a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (iv) interest shall accrue from and including the first day of such Interest Period to but excluding the date of payment of such interest, and (v) no Interest Period of particular duration may be selected by the Borrower if the Bank determines, in its sole, good faith discretion, that LIBOR Rate Loans with such maturities are not generally available.

"Investment" means any stock, evidence of Debt or other security of any Person, any loan,

advance, contribution of capital, extension of credit or commitment therefor, including without limitation the guaranty of loans made to others (except for current trade and customer accounts receivable for services rendered in the ordinary course of business and payable in accordance with customary trade terms in the ordinary course of business) and any purchase of (i) any security of another Person or (ii) any business or undertaking of any Person or any commitment or option to make any such purchase, or any other investment.

"Law(s)" shall mean any law(s) (including common law), constitution, statute, treaty, regulation, rule, ordinance, opinion, issued guidance, release, ruling, order, executive order, injunction, writ, decree, bond, judgment, authorization or approval, lien or award of or any settlement arrangement, by agreement, consent or otherwise, with any Governmental Body, foreign or domestic.

"Line of Credit/Term Loan" shall have the meaning assigned to such term in Section 2.09(b) of this Agreement.

"Line of Credit/Term Loan Conversion Date" means January 1, 2022, or such later date as agreed to by the Bank in writing, without there being any obligation on the part of the Bank to extend the Line of Credit/Term Loan Conversion Date.

"Line of Credit/Term Loan Drawdown Period" means the period of time commencing on the Closing Date and ending of December 31, 2021.

"Line of Credit/Term Loan Maturity Date" means January 1, 2027.

"Line of Credit/Term Loan Note" means a promissory note of the Borrower payable to the order of the Bank, in substantially the form of Exhibit C annexed hereto, evidencing the indebtedness of the Borrower to the Bank resulting from the Line of Credit/Term Loan made by the Bank to the Borrower pursuant to the Agreement.

"Leverage Ratio" shall have the meaning given such term in Section 5.03.

"LIBOR Alternate Source" shall have the meaning set forth in the definition of LIBOR Rate.

"LIBOR Rate" shall mean for any LIBOR Rate Loan for the then current Interest Period relating thereto, the interest rate per annum determined by the Bank by dividing (the resulting quotient rounded upwards, if necessary, to the nearest 1/100th of 1% per annum) (a) the rate which appears on the Bloomberg Page BBAM1 (or on such other substitute Bloomberg page that displays rates at which U.S. dollar deposits are offered by leading banks in the London interbank deposit market), or, if not available from Bloomberg, the rate which is quoted by another source selected by the Bank for the purpose of displaying rates at which U.S. dollar deposits are offered by leading banks in the London interbank deposit market (a "LIBOR Alternate Source"), at approximately 11:00

a.m., London time, two (2) Business Days prior to the commencement of such Interest Period as the London interbank offered rate for U.S. Dollars for an amount comparable to such LIBOR Rate Loan and having a borrowing date and a maturity comparable to such Interest Period (or if there shall at any time, for any reason, no longer exist a Bloomberg Page BBAM1 (or any substitute page) or any LIBOR Alternate Source, a comparable replacement rate determined by the Bank at such time (which determination shall be conclusive absent manifest error)), by (b) a number equal to 1.00 minus the Reserve Percentage.

The LIBOR Rate shall be adjusted with respect to any LIBOR Rate Loan that is outstanding on the effective date of any change in the Reserve Percentage as of such effective date. Bank shall give reasonably prompt notice to Borrower of the LIBOR Rate as reasonably determined or adjusted in accordance herewith, which determination shall be conclusive absent manifest error.

"LIBOR Rate Loan" shall means (i) the Line of Credit/Term Loan during the Line of Credit/Term Loan Drawdown Period, and (ii)any Revolving Credit Loan that bears interest based on the LIBOR Rate.

"LIBOR Successor Rate" shall have the meaning set forth in Section 2.26(b) hereof.

"Lien" means any mortgage, deed of trust, pledge, security interest, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), or preference, priority, or other security agreement or preferential arrangement, charge, or encumbrance of any kind or nature whatsoever, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction to evidence any of the foregoing.

"Loan" or Loans" means the Revolving Credit Loans, the Term Loan, and the Line of Credit/Term Loan, as the context requires.

"Loan Documents" means this Agreement, the Notes, the Guaranties, the Security Agreement, and any other instrument, document or agreement executed or delivered pursuant to this Agreement.

"Medicaid" means the medical assistance program established by Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.) and any statutes succeeding thereto.

"Medicare" means the health insurance program for the aged and disabled established by Title XVIII of the Social Security Act (42 U.S.C. § 1395 et seq.) and any statutes succeeding thereto.

"Malware" means any software that may, or does, alter, damage, steal, access, acquire, destroy and/or disable any portion of data and/or the Computer Systems of Borrower or Corporate Guarantor or any Subsidiary of Borrower.

"Material Adverse Change" means, as to any Person, (i) a material adverse change in the financial condition, business, operations, properties or results of operations of such Person or (ii) any event or occurrence which could have a material adverse effect on the ability of such Person to perform its obligations under the Loan Documents.

"Multiemployer Plan" means a Plan described in Section 4001(a)(3) of ERISA which covers employees of the Borrower or any ERISA Affiliate.

"Note" or **"Notes"** means one of more of the Revolving Credit Note, the Term Loan Note, and the Line of Credit/Term Loan Note, as the context requires.

"Organizational Documents" shall mean, with respect to any Person, any charter, articles or certificate of incorporation, certificate of organization, registration or formation, certificate of partnership or limited partnership, bylaws, operating agreement, limited liability company agreement, or partnership agreement of such Person and any and all other applicable documents relating to such Person's formation, organization or entity governance matters (including any shareholders' or equity holders' agreement or voting trust agreement) and specifically includes, without limitation, any certificates of designation for preferred stock or other forms of preferred equity.

"Overadvance" means a Revolving Credit Loan which causes the principal amount of all Aggregate Outstandings to exceed the Borrowing Base.

"PBGC" means the Pension Benefit Guaranty Corporation or any entity succeeding to any or all of its functions under ERISA.

"Permits" means registrations, listing, licenses, certificates, accreditations (including ISO 13485 or ISO 13488), product clearances or approvals, provider numbers or provider authorizations, marketing authorizations, other authorizations, registrations, permits, consents and approvals or exemptions thereto required in connection with the conduct of Borrower's business or to comply with any applicable laws, including, without limitation, Healthcare Laws, establishment registrations, establishment licenses, device listings, drug listings, drug establishment registrations, Investigational Device Exemptions (IDEs), 510(k) exemptions, 510(k) clearances, PMA approvals, biologic license application (BLAs), Drug Identification Numbers (DINs), as those terms are defined in the FDCA and implementing regulations and the corresponding medical devices regulations and food and drug regulations, and those issued by State governments for the conduct of Borrower's business or necessary in the manufacturing, importing, exporting, possession, ownership, warehousing, marketing, promoting, sale, labeling, furnishing, distribution or delivery of goods or services under laws applicable to the business of Borrower or any Device Application or Drug Application.

"Permitted Investments" means, (i) direct obligations of the United States of America or any governmental agency thereof, or obligations guaranteed by the United States of America, provided that such obligations mature within one year from the date of acquisition thereof; (ii) time

certificates of deposit having a maturity of one year or less issued by any commercial bank organized and existing under the laws of the United States or any state thereof and having aggregate capital and surplus in excess of $1,000,000,000.00; (iii) money market mutual funds having assets in excess of $2,500,000,000.00; (iv) commercial paper rated not less than P-1 or A-1 or their equivalent by Moody's Investor Services, Inc. or Standard & Poor's Corporation, respectively; or (v) tax exempt securities rated Prime 2 or better by Moody's Investor Services, Inc. or A-1 or better by Standard & Poor's Corporation.

"Person" means an individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or other entity or a federal, state or local government, or a political subdivision thereof or any agency of such government or subdivision.

"Plan" means any employee benefit plan established, maintained, or to which contributions have been made by the Borrower or any ERISA Affiliate.

"Prime Rate" means the rate which appears on the Bloomberg Page PRIMBB (or on such other substitute Bloomberg page that displays the published prime rate), or the highest prime rate if more than one is published thereon. If a Bloomberg page ceases to be available, the Bank may use the rate which is quoted by another source selected by the Bank for the purpose of a similar published prime rate. The Prime Rate is not necessarily the best or lowest rate of interest charged by the Bank in connection with extensions of credit to borrowers, subject to increase or decrease in such prime rate effective as of the day any such change occurs. The Bank's determination of the Prime Rate shall be conclusive and final.

"Privacy Laws" means all international, federal, state and local privacy, cybersecurity, data breach, data collection, data disposal, data security, data storage, data transfer, and digital advertising and marketing laws, statutes, regulations, ordinances and codes relating to the protection of data and/or governing the collection, use, storage, transfer, sharing, or disposal of data and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of international, federal, state, and local governmental agencies and authorities with respect thereto.

"Products" means any products manufactured, sold, licensed, developed, tested, distributed or marketed by Borrower or the Corporate Guarantor.

"Prohibited Transaction" means any transaction set forth in Section 406 of ERISA or Section 4975 of the Internal Revenue Code of 1986, as amended from time to time.

"Recall" means the removal, modification, relabeling, field-correction, destruction, or correction of a marketed product.

"Regulation D" means Regulation D of the Board of Governors, as the same may be amended and in effect from time to time.

"Regulation T" means Regulation T of the Board of Governors, as the same may be amended and in effect from time to time.

"Regulation U" means Regulation U of the Board of Governors, as the same may be amended and in effect from time to time.

"Regulation X" means Regulation X of the Board of Governors, as the same may be amended and in effect from time to time.

"Reportable Compliance Event" means that any Covered Entity becomes a Sanctioned Person, or is charged by indictment, criminal complaint or similar charging instrument, arraigned, or custodially detained in connection with any Anti-Terrorism Law or any predicate crime to any Anti-Terrorism Law, or has knowledge of facts or circumstances to the effect that it is reasonably likely that any aspect of its operations is in actual or probable violation of any Anti-Terrorism Law.

"Reportable Event" means any of the events set forth in Section 4043 of ERISA.

"Reserve Percentage" means as of any day the maximum effective percentage in effect on such day as prescribed by the Board of Governors (or any successor) for determining the reserve requirements (including supplemental, marginal and emergency reserve requirements) with respect to eurocurrency funding (currently referred to as "Eurocurrency Liabilities").

"Revolving Credit Loans" shall have the meaning assigned to such term in Section 2.01 of this Agreement.

"Revolving Credit Maturity Date" means December 31, 2021, or such later date as the Bank may extend the Revolving Credit Maturity Date in writing until, without there being any obligation of the Bank to extend the Revolving Credit Maturity Date.

"Revolving Credit Note" means the promissory notes of the Borrower payable to the order of the Bank, in substantially the form of Exhibit A annexed hereto, evidencing the indebtedness of the Borrower to the Bank resulting from Revolving Credit Loans made by the Bank to the Borrower pursuant to this Agreement.

"Sanctioned Country" shall mean a country subject to a sanctions program maintained under any Anti-Terrorism Law.

"Sanctioned Person" shall mean any individual person, group, regime, entity or thing listed or otherwise recognized as a specially designated, prohibited, sanctioned or debarred person, group, regime, entity or thing, or subject to any limitations or prohibitions (including but not limited to the blocking of property or rejection of transactions), under any Anti-Terrorism Law.

"Security Agreement" means the security agreement to be executed and delivered pursuant to Section 3.01(g) of this Agreement.

"Subordinated Debt" means Debt of any Person, the repayment of which the obligee has agreed in writing, on terms which have been approved by the Bank in advance in writing, shall be subordinate and junior to the rights of the Bank with respect to Debt owing from such Person to the Bank.

"Subordination Agreement" is described in Section 5.01(p).

"Subsidiary" means, as to any Person, any corporation, partnership or joint venture whether now existing or hereafter organized or acquired: (i) in the case of a corporation, of which a majority of the securities having ordinary voting power for the election of directors (other than securities having such power only by reason of the happening of a contingency) are at the time owned by such Person and/or one or more Subsidiaries of such Person or (ii) in the case of a partnership or joint venture of which a majority of the partnership or other ownership interests are at the time owned by such Person and/or one or more of its Subsidiaries.

"Term Loan" shall have the meaning assigned to such term in Section 2.09 of this Agreement.

"Term Loan Maturity Date #1" means January 1, 2026.

"Term Loan Note #1" means a promissory note of the Borrower payable to the order of the Bank, in substantially the form of Exhibit B annexed hereto, evidencing the indebtedness of the Borrower to the Bank resulting from the Term Loan made by the Bank to the Borrower pursuant to the Agreement.

"Unfunded Capex" shall mean, for any period, the amount of Capital Expenditures which are not financed.

"Unused Facility Fee" means the fee payable pursuant to Section 2.06 of this Agreement.

SECTION 1.02. Computation of Time Periods. In this Agreement in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding".

SECTION 1.03. Accounting Terms. Except as otherwise herein specifically provided, each accounting term used herein shall have the meaning given to it under GAAP.

ARTICLE II

AMOUNT AND TERMS OF THE LOANS

SECTION 2.01. The Revolving Credit Loans. (a) The Bank agrees on the terms and subject to the conditions of this Agreement, to lend to the Borrower prior to the Revolving Credit Maturity Date such amounts as the Borrower may request from time to time (individually, a "Revolving Credit Loan" or collectively, the "Revolving Credit Loans"), which amounts may be borrowed, repaid and reborrowed, provided, however, that the Aggregate Outstandings shall not exceed the lesser of (x) Twelve Million Dollars ($12,000,000), or (y) the Borrowing Base (the "Commitment") (or such lesser amount of the Commitment as may be reduced pursuant to Section 2.07 hereof). At no time shall the Aggregate Outstandings exceed the Borrowing Base. Within the limit of the Commitment, and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Revolving Credit Loans.

(b) Each Revolving Credit Loan shall be a LIBOR Rate Loan as the Borrower may request subject to and in accordance with Section 2.02. The Bank may at its option make any LIBOR Rate Loan by causing a foreign branch or affiliate to make such Loan, provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of the Revolving Credit Note. Subject to the other provisions of this Agreement, Revolving Credit Loans of more than one type may be outstanding at the same time provided, however, that not more than five (5) LIBOR Rate Loans may be outstanding at any time, under this Agreement.

SECTION 2.02. Notice of Revolving Credit Loans. (a) The Borrower shall give the Bank irrevocable written notice at least three (3) Business Days prior to each Revolving Credit Loan comprised in whole or in part of one or more LIBOR Rate Loans (subject to Section 2.25 hereof). If a notice of borrowing is received by the Bank after 12:00 p.m. on a Business Day, such notice shall be deemed to have been given on the next succeeding Business Day.

(b) Each notice given pursuant to this Section 2.02 shall specify the date of such borrowing and the amount thereof and the principal amounts thereof and Interest Period or Interest Periods with respect thereto.

(c) The Borrower shall have the right, on such notice to the Bank as is required pursuant to (a) above, to continue any LIBOR Rate Loan or a portion thereof into a subsequent Interest Period subject to the following:

(i) if a Default or an Event of Default shall have occurred and be continuing at the time of any proposed continuation the loan shall bear interest at a rate per annum of the Prime Rate plus .50% with a floor of 3.60%;

(ii) in the case of a continuation of fewer than all Loans, the aggregate principal amount of each LIBOR Rate Loan continued shall be in the minimum principal amount of $250,000.00 and in increased integral multiples of $50,000.00;

(iii) each continuation shall be effected by the Bank applying the proceeds of

the new Loan to the Loan (or portion thereof) being continued;

(iv) if the new Loan made as a result of a continuation shall be a LIBOR Rate Loan, the first Interest Period with respect thereto shall commence on the date of continuation;

(v) in the event that the Borrower shall not give notice to continue a LIBOR Rate Loan as provided above, the Loan shall be repaid by the Borrower at the then current Interest Period.

SECTION 2.03. Revolving Credit Note. (a) Each Revolving Credit Loan shall be in the minimum principal amount of $100,000.00, and in minimum multiples of $50,000.00 thereafter. The Revolving Credit Note shall be dated the Closing Date and be in the principal amount of Twelve Million and 00/100 Dollars ($12,000,000.00) and shall mature on the Revolving Credit Maturity Date, at which time the entire outstanding principal balance and all interest thereon shall be due and payable. The Revolving Credit Note shall be entitled to the benefits and subject to the provisions of this Agreement.

(b) At the time of the making of each Revolving Credit Loan and at the time of each payment of principal thereon, the Bank is hereby authorized by the Borrower to make a notation on the schedule annexed to the Revolving Credit Note of the date and amount, and the type and Interest Period, if applicable, of the Revolving Credit Loan or payment, as the case may be. Failure to make a notation with respect to any Revolving Credit Loan shall not limit or otherwise affect the obligation of the Borrower hereunder or under the Revolving Credit Note, and any payment of principal by the Borrower shall not be affected by the failure to make a notation thereof on said schedule.

SECTION 2.04. Payment of Interest on Revolving Credit Note. In the case of a Revolving Credit Loan, interest shall be payable at a rate per annum equal to the higher of (i) the LIBOR Rate plus 3.50%, or (ii) 3.60% and shall be computed on the basis of the actual number of days elapsed over a year of 360 days). Such interest shall be payable on each Interest Payment Date, commencing with the first Interest Payment Date after the date of such LIBOR Rate Loan and on the Revolving Credit Maturity Date.

SECTION 2.05. Use of Proceeds Revolving Credit Loans. The proceeds of the Revolving Credit Loans shall be used by the Borrower to repay existing debt and for working capital needs. No part of the proceeds of any Revolving Credit Loan may be used for any purpose that directly or indirectly violates or is inconsistent with, the provisions of Regulations T, U or X.

SECTION 2.06. Fees. The Borrower agrees to pay to the Bank, commencing on 180 days after the commencement of this agreement from the date of this Agreement and for so long as the Commitment remains in effect, on the 1st Business Day of each calendar quarter, and on any day that

the Commitment is reduced or terminated, an Unused Facility Fee computed at a rate per annum equal to .25% (computed on the basis of the actual number of days elapsed over 360 days) on the average daily unused amount of the Commitment, such Unused Facility Fee being payable for the calendar quarter, or part thereof, preceding the payment date.

SECTION 2.07. Reduction of Commitment. Upon at least three (3) Business Days' written notice to the Bank, the Borrower may irrevocably elect to have the unused Commitment terminated in whole or reduced in part provided, however, that any such partial reduction shall be in a minimum amount of $100,000.00 and in increased integral multiples of $50,000.00. The Commitment, once terminated or reduced, shall not be reinstated without the express written approval of the Bank.

SECTION 2.08. Prepayment of Revolving Credit Loans.

(a) The Borrower shall have the right at any time and from time to time, subject to the provisions of this Agreement including but without limitation Section 2.25, prepay any Revolving Credit Loan which is a LIBOR Rate Loan, in whole or in part, on three (3) Business Days' prior irrevocable written notice to the Bank, provided, however, that each such prepayment shall be on a Business Day and shall be in an aggregate principal amount which is in the minimum amount of $100,000.00 and in increased integral multiples of $50,000.00.

(b) In the event that the Aggregate Outstandings exceed the Borrowing Base, the Borrower shall make an immediate prepayment, subject to the provisions of this Agreement, including but without limitation Section 2.25 of such excess, together with accrued interest thereon.

(c) The notice of prepayment under this Section 2.08 shall set forth the prepayment date and the principal amount of the Loan being prepaid and shall be irrevocable and shall commit the Borrower to prepay such Loan by the amount and on the date stated therein. All prepayments shall be accompanied by accrued interest on the principal amount being prepaid to the date of prepayment. Each prepayment under this Section 2.08 shall be applied first towards unpaid interest on the amount being prepaid and then towards the principal in whole or partial prepayment of Loans as specified by the Borrower. In the absence of such specification, amounts being prepaid shall be applied to LIBOR Rate Loans in the order of the nearest expiration of their Interest Periods.

SECTION 2.09. The Term Loan and Line of Credit/Term Loan. (a) The Bank hereby agrees on the date of this Agreement, and on the terms and conditions and in reliance upon the representations and warranties of the Borrower hereinafter set forth in this Agreement, to make a Term Loan to the Borrower in the principal amount of Five Million and 00/100 Dollars ($5,000,000.00) and the Borrower agrees to borrow such amount by executing and delivering to the Bank, the Term Loan Note. The Term Loan shall be a Fixed Rate Loan. The Bank may at its option make any LIBOR Rate Loan by causing a foreign branch or affiliate to make such Loan, provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of the Notes. The Borrower hereby authorizes and directs the Bank to

deposit $1,500,000.00 of the Term Loan into a blocked deposit account number 1001607818 maintained at the Bank ("Term Loan Escrow Account"). Said monies in the Term Loan Escrow Account shall be advanced by the Bank to the Borrower upon submission to the Bank of such invoices and other information as may be required by the Bank to substantiate the utilization of such proceeds as required by Section 2.15 of hereof.

(b) The Bank hereby agrees on the date of this Agreement, and on the terms and conditions and in reliance upon the representations and warranties of the Borrower hereinafter set forth in this Agreement, to make a Line of Credit/Term Loan to the Borrower during the Line of Credit/Term Loan Drawdown Period in an aggregate principal amount not to exceed Five Million and 00/100 Dollars ($5,000,000.00) and the Borrower agrees to borrow such amount by executing and delivering to the Bank, the Line of Credit/Term Loan Note. The Line of Credit/Term Loan shall be (i) during the Line of Credit/ Term Loan Drawdown Period a LIBOR loan, (ii) and after the Line of Credit/Term Loan conversion date a Fixed Rate Loan. The Bank may at its option make any LIBOR Rate Loan by causing a foreign branch or affiliate to make such Loan, provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of the Notes, shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of the Notes.

SECTION 2.10. INTENTIONALLY OMITTED

SECTION 2.11. Term Loan Note and the Line of Credit/Term Loan Note. (a) The Term Loan shall be evidenced by the Term Loan Note. The Term Loan Note shall be dated the Closing Date and shall mature on the Term Loan Maturity Date, at which time the entire outstanding principal balance and all interest thereon shall be due and payable. The Term Loan Note shall be entitled to the benefits and subject to the provisions of this Agreement.

(b) The Line of Credit/Term Loan shall be evidenced by the Line of Credit/Term Loan Note. The Line of Credit/Term Loan Note shall be dated the Closing Date and shall mature on the Line of Credit/Term Loan Maturity Date, at which time the entire outstanding principal balance and all interest thereon shall be due and payable. The Line of Credit/Term Loan Note shall be entitled to the benefits and subject to the provisions of this Agreement.

SECTION 2.12. Repayment of Term Loan Note and the Line of Credit/Term Loan Note. (a) The Term Loan shall be repaid in sixty (60) installments of principal plus interest beginning on the first Business Day of the second calendar month following the Closing Date, or the first day of the next calendar month following the Closing Date if the Term Loan closes on the first day of a month, and continuing on the first day of each month thereafter. The first fifty-nine (59) monthly installments shall consist of equal principal installments in the amount of $83,333.33 plus interest. The final monthly installment, due and payable on the Term Loan Maturity Date, shall equal the then outstanding principal balance of the Term Loan Note, together with all accrued and unpaid interest.

(b) During the Line of Credit/Term Loan Drawdown Period, interest only shall be due and payable with respect to the Line of Credit/Term Loan, which payments shall occur on an Interest Payment Date. After the Line of Credit/Term Loan Conversion Date, the Line of Credit/Term Loan shall be repaid In sixty (60) installments of principal plus interest beginning on the first Business Day of the first calendar month following the Line of Credit/Term Loan Conversion Date, and continuing on the first Business Day of each month thereafter. The first fifty-nine (59) monthly installments of principal shall consist of equal monthly principal installments equal to principal amount outstanding under the Line of Credit/Term Loan on the Line of Credit/Term Loan Conversion Date divided by sixty (60) (rounded to the nearest cent) plus interest.. The final monthly installment, due and payable on the Line of Credit/Term Loan Maturity Date shall equal the then outstanding principal balance of the Line of Credit/ Term Loan Note, together with all accrued and unpaid interest.

SECTION 2.13. Payment of Interest on the Term Loan Note and the Line of Credit/Term Loan Note. (a) In the case of the Line of Credit/Term Loan during the Line of Credit/Term Loan Drawdown Period, with respect to each advance, interest shall be payable at a rate per annum (computed on the basis of the actual number of days elapsed over a year of 360 days) equal to the higher of (i) the LIBOR Rate plus 3.50% or (ii) 3.60%. Such interest shall be payable to the Bank on each Interest Payment Date, commencing with the first Interest Payment Date after the date of such LIBOR Rate Loan, on each Interest Determination Date and at the conclusion of the Line of Credit/Term Loan Drawdown Period.

(b) In the case of the Term Loan and/or the Line of Credit/Term Loan is a Fixed Rate Loan, interest shall be payable as set forth in Section 2.12 above, and shall be computed on the basis of the actual number of days elapsed over a year of 360 days.

SECTION 2.14. INTENTIONALLY OMITTED

SECTION 2.15. Use of Proceeds Term Loan and Line of Credit/Term Loan. The proceeds of the Term Loan shall be used by the Borrower to finance existing equipment (limited to 80% of the cost of the equipment (exclusive of the soft costs, including transportation and installation) as evidenced by invoices dated six months or less) and leasehold improvements. The proceeds of the Line of Credit/Term Loan shall be used exclusively to finance new equipment and shall be limited to 80% of invoice purchase price (exclusive of soft costs, including transportation and installation).

SECTION 2.16. Prepayment of Term Loan and Line of Credit/Term Loan.

(a) LIBOR Rate Loans. During the Line of Credit/Term Loan Drawdown Period, the Borrower shall have the right at any time and from time to time, subject to the provisions hereof and of Section 2.25, to prepay any part of the Line of Credit/Term Loan, in whole or in part, on three (3) Business Days prior irrevocable written notice to the Bank, provided, however, that such prepayment

shall be in an aggregate minimum principal amount of $100,000.00 and in increased integral multiples of $50,000.00.

(b) Fixed Rate Loans. (a)Upon 90-day notice, the Term Loan may be prepaid as follows:

Full or partial (in the minimum amount of $50,000.00) prepayment of the Term Loan is permitted provided the Borrower pays to the Bank together with the prepayment the following prepayment premiums:

Month of Prepayment (the month following the Closing Date being Month 1)		Applicable Percentage
(a)	1-12	3%
(b)	13-24	2%
(c)	25-36	1%
(d)	37-48	1%
(e)	49 until sixty (60) days prior to the Term Loan Maturity Date	1%

Notwithstanding anything contained herein to the contrary, Term Loan may be prepaid up to 10% of the outstanding principal amount one time each year without a prepayment premium upon five (5) Business days' prior written notice.

All sums payable pursuant to this Section 2.16 shall also be due and payable by Borrower upon demand in the event of any involuntary prepayments or any acceleration of the Term Loan. In addition, if the Term Loan Maturity Date occurs as a result of a an Event of Default and the Borrower tenders payment of the Term Loan or any part thereof to the Bank, such tender shall constitute an evasion of the prepayment provisions and shall be deemed to be a voluntary prepayment which shall require the payment by the Borrower of the premium prescribed herein.

(c) After the Line of Credit/Term Loan Conversion Date, upon 90-days' notice, the Line of Credit/Term Loan may be prepaid as follows:

Full or partial (in the minimum amount of $50,000.00) prepayment of the Line of Credit/Term Loan is permitted provided the Borrower pays to the Bank together with the prepayment the following prepayment premiums:

Month of Prepayment (the month following the Line of Credit/Term Loan Conversion Date)	Applicable Percentage

(a)	1-12	3%
(b)	13-24	2%
(c)	25-36	1%
(d)	37-48	1%
(e)	49 until sixty (60) days prior to the Line of Credit/Term Loan Maturity Date	1%

Notwithstanding anything contained herein to the contrary, Line of Credit/Term Loan may be prepaid up to 10% of the outstanding principal amount one time each year without a prepayment premium upon five (5) Business days' prior written notice.

All sums payable pursuant to this Section 2.16 shall also be due and payable by Borrower upon demand in the event of any involuntary prepayments or any acceleration of the Line of Credit/Term Loan. In addition, if the Line of Credit/Term Loan Maturity Date occurs as a result of a an Event of Default and the Borrower tenders payment of the Line of Credit/Term Loan or any part thereof to the Bank, such tender shall constitute an evasion of the prepayment provisions and shall be deemed to be a voluntary prepayment which shall require the payment by the Borrower of the premium prescribed herein.

(d) The notice of prepayment under this Section 2.16 shall set forth the prepayment date and the principal amount of the Loan being prepaid and shall be irrevocable and shall commit the Borrower to prepay such Loan by the amount and on the date stated therein. All prepayments shall be accompanied by accrued interest on the principal amount being prepaid to the date of prepayment. Each prepayment under this Section 2.16 shall be applied first towards unpaid interest on the principal amount being prepaid and then towards the principal in whole or partial prepayment of Loans by the Borrower. All prepayments shall be applied first to LIBOR Rate Loans outstanding in the order of the nearest expiration of their Interest Periods. All partial prepayments of the Term Loan and the Line of Credit/Term Loan shall be applied to installments of principal of the Term Loan and the Line of Credit/Term Loan in the inverse order of maturity.

SECTION 2.17. Authorization to Debit Borrower's Account. The Bank is hereby authorized to debit the Borrower's account maintained with the Bank for (i) all scheduled payments due from the Borrower of principal and/or interest and/or commissions or fees under the Notes or this Agreement, (ii) the Unused Facility Fee, and (iii) all other amounts due hereunder; all such debits to be made on the days such payments are due in accordance with the terms hereof.

SECTION 2.18. Late Charges, Default Interest. (a) In the event that any payment shall become overdue for a period of ten (10) days (other than at maturity), a late charge of five percent (5%) of the payment so overdue may be charged by the Bank for the purpose of defraying the expense incident to handling such delinquent payment.

(b) Upon the occurrence and during the continuation of an Event of Default, the Borrower shall pay to the Bank, interest on all Loans (after as well as before judgment) at a rate per annum (computed on the basis of the actual number of days elapsed over a year of 360 days) equal to five (5.00%) percent plus the interest rate which would then be in otherwise effect.

SECTION 2.19. Payments. All payments by the Borrower hereunder or under the Notes shall be made in U.S. dollars in immediately available funds at the office of the Bank by 1:00p.m. on the date on which such payment shall be due. Interest on each Note shall accrue from and including the date of each Loan to but excluding the date on which such Loan is paid in full.

SECTION 2.20. Interest Adjustments. (a) If the provisions of this Agreement or the Notes would at any time otherwise require payment by the Borrower to the Bank of any amount of interest in excess of the maximum amount then permitted by applicable law the interest payments shall be reduced to the extent necessary so that the Bank shall not receive interest in excess of such maximum amount. To the extent that, pursuant to the foregoing sentence, the Bank shall receive interest payments hereunder or under the Notes in an amount less than the amount otherwise provided, such deficit (hereinafter called the "Interest Deficit") will cumulate and will be carried forward (without interest) until the termination of this Agreement. Interest otherwise payable to the Bank hereunder and under the Notes for any subsequent period shall be increased by such maximum amount of the Interest Deficit that may be so added without causing the Bank to receive interest in excess of the maximum amount then permitted by applicable law.

(b) The amount of the Interest Deficit shall be treated as a prepayment penalty and paid in full at the time of any optional prepayment by the Borrower to the Bank of all outstanding Loans. The amount of the Interest Deficit relating to the Notes at the time of any complete payment of the Notes at that time outstanding (other than an optional prepayment thereof) shall be cancelled and not paid.

SECTION 2.21. Eurocurrency Reserve Requirement. It is understood that the cost to the Bank of making or maintaining LIBOR Rate Loans may fluctuate as a result of the applicability of, or change in, the Eurocurrency Reserve Requirement. The Borrower agrees to pay to the Bank from time to time, as provided in Section 2.22 below, such amounts as shall be necessary to compensate the Bank for the portion of the cost of making or maintaining any LIBOR Rate Loans made by it resulting from any change in the Eurocurrency Reserve Requirement, it being understood that the rates of interest applicable to LIBOR Rate Loans hereunder have been determined on the basis of the Eurocurrency Reserve Requirement in effect at the time of determination of the LIBOR Rate and that such rates do not reflect costs imposed on the Bank in connection with any change to the Eurocurrency Reserve Requirement. It is agreed that for purposes of this paragraph the LIBOR Rate Loans made hereunder shall be deemed to constitute Eurocurrency Liabilities as defined in Regulation D and to be subject to the reserve requirements of Regulation D without benefit or credit of proration, exemptions or offsets which might otherwise be available to the Bank from time to time under Regulation D.

SECTION 2.22. Increased Costs. If, after the date of this Agreement, the adoption of, or any change in, any applicable law, regulation, rule or directive, or any interpretation thereof by any authority charged with the administration or interpretation thereof:

(i) subjects the Bank to any tax with respect to its Commitment, the Loans, the Notes or on any amount paid or to be paid under or pursuant to this Agreement, the Loans or the Notes (other than any tax measured by or based upon the overall net income of the Bank);

(ii) changes the basis of taxation of payments to the Bank of any amounts payable hereunder (other than any tax measured by or based upon the overall net income of the Bank);

(iii) imposes, modifies or deems applicable any reserve, capital adequacy or deposit requirements against any assets held by, deposits with or for the account of, or loans made by, the Bank; or

(iv) imposes on the Bank any other condition affecting its Commitment, the Loans, its Note or this Agreement;

and the result of any of the foregoing is to increase the cost to the Bank of maintaining this Agreement or the Commitment, making the Loans, or to reduce the amount of any payment (whether of principal, interest or otherwise) receivable by the Bank or to require the Bank to make any payment on or calculated by reference to the gross amount of any sum received by them, in each case by an amount which the Bank, in its sole, reasonable judgment deems material, then and in any such case:

(a) the Bank above shall notify the Borrower, together with the date thereof, the amount of such increased cost or reduction or payment and the way in which such amount has been calculated; and

(b) the Borrower shall pay to the Bank, within ten (10) days after the advice referred to in subsection (a) hereinabove, such an amount or amounts as will compensate the Bank for such additional cost, reduction or payment for so long as the same shall remain in effect.

The determination of the Bank as to additional amounts payable pursuant to this Section 2.22 shall be conclusive evidence of such amounts absent manifest error. The provisions of this Section 2.22 shall survive the termination of this Agreement and the payment of the Loans and all other amounts due hereunder.

SECTION 2.23. Capital Adequacy. If the Bank shall have reasonably determined that, subsequent to the date hereof, any change in the applicability of any law, rule, regulation or guideline, or the adoption after the date hereof of any other law, rule, regulation or guideline regarding capital adequacy, or any change in any of the foregoing or in the interpretation or administration of any of the foregoing by any governmental authority, central bank or comparable

agency charged with the interpretation or administration thereof, or compliance by the Bank (or any lending office of the Bank) or the Bank's holding company with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on the Bank's capital or on the capital of the Bank's holding company, if any, as a consequence of its obligations hereunder to a level below that which the Bank or the Bank's holding company could have achieved but for such adoption, change or compliance (taking into consideration the Bank's policies and the policies of the Bank's holding company with respect to capital adequacy) by an amount deemed by the Bank to be material, then from time to time:

(a) the Bank shall notify the Borrower of such event, together with the date thereof, the amount of such reduced rate of return and the way in which such amount has been calculated; and

(b) the Borrower shall pay to the Bank within ten (10) days after the advice referred to in subsection (a) hereinabove, such an amount or amounts as will compensate the Bank for such reduced rate of return for so long as such reduction shall remain in effect.

SECTION 2.24. Change in Legality. (a) Notwithstanding anything to the contrary contained elsewhere in this Agreement, if any change after the date hereof in law, rule, regulation, guideline or order, or in the interpretation thereof by any governmental authority charged with the administration thereof, shall make it unlawful for the Bank to make or maintain any LIBOR Rate Loan or to give effect to its obligations as contemplated hereby with respect to a LIBOR Rate Loan, then, by written notice to the Borrower, the Bank shall:

(i) declare that LIBOR Rate Loans will not thereafter be made by the Bank hereunder, whereupon the Borrower shall be prohibited from requesting LIBOR Rate Loans from the Bank hereunder unless such declaration is subsequently withdrawn; and

(ii) require that, subject to the provisions hereof, all outstanding LIBOR Rate Loans made by the Bank be converted to a Loan bearing interest at the rate per annum of Prime Rate plus .50%, with a floor of 3.60% whereupon all of such LIBOR Rate Loans shall be automatically converted to such a Loan as of the effective date of such notice as provided in paragraph (b) below.

(b) For purposes of this Section 2.24, a notice to the Borrower by the Bank pursuant to paragraph (a) above shall be effective, for the purposes of paragraph (a) above, if lawful, and if any LIBOR Rate Loans shall then be outstanding, on the last day of the then current Interest Period; otherwise, such notice shall be effective on the date of receipt by the Borrower.

SECTION 2.25. Funding Losses. The Borrower agrees to compensate the Bank for any loss or expense which the Bank may sustain or incur as a consequence of (a) default by the Borrower in payment or prepayment when due of the principal amount of or interest on any LIBOR Rate Loan, (b) default by the Borrower in making a borrowing of, conversion into or continuation of LIBOR

Rate Loans after the Borrower has given a notice requesting the same in accordance with the provisions of this Agreement, (c) default by the Borrower in making any prepayment after the Borrower has given a notice thereof in accordance with the provisions of this Agreement, or (d) the making of a prepayment or conversion of LIBOR Rate Loans on a day which is not the last day of an Interest Period with respect thereto, including, without limitation, in each case, any such loss (including, without limitation, loss of margin) or expense arising from the reemployment of funds obtained by it or from amounts payable by the Bank to lenders of funds obtained by it in order to make or maintain such Loans. Such compensation may include an amount equal to the excess, if any, of (i) the amount of interest which would have accrued on the amount so prepaid or converted, or not so borrowed, converted or continued, for the period from the date of such prepayment or conversion or of such failure to borrow, convert or continue to the last day of such Interest Period (or, in the case of a failure to borrow, convert or continue, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such Loans provided for herein, over (ii) the amount of interest (as reasonably determined by such Bank) which would have accrued to the Bank on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank eurodollar market. This covenant shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder. When claiming under this Section 2.25, the Bank shall provide to the Borrower a statement, signed by an officer of the Bank, explaining the amount of any such loss or expense (including the calculation of such amount), which statement shall, in the absence of manifest error, be conclusive with respect to the parties hereto.

SECTION 2.26. Change in LIBOR; Availability of Rates. (a) In the event, and on each occasion, that, on the day the interest rate for any LIBOR Rate Loan is to be determined, the Bank shall have determined (which determination, absent manifest error, shall be conclusive and binding upon the Borrower) that Dollar deposits in the amount of the principal amount of the requested LIBOR Rate Loan are not generally available in the interbank eurodollar market, or that the rate at which such Dollar deposits are being offered will not adequately and fairly reflect the cost to the Bank of making or maintaining the principal amount of such LIBOR Rate Loan during such Interest Period, such LIBOR Rate Loan shall be unavailable. The Bank shall, as soon as practicable thereafter, give written notice of such determination of unavailability to the Borrower. Any request by the Borrower for an unavailable LIBOR Rate Loan shall be deemed to have been a request for a Loan bearing interest at a rate per annum of the Prime Rate plus .50% with a floor of 3.60%. After such notice shall have been given and until the Bank shall have notified the Borrower that the circumstances giving rise to such unavailability no longer exist, each subsequent request for an unavailable LIBOR Rate Loan shall be deemed to be a request for a Loan bearing interest at a rate per annum of the Prime Rate plus .50% with a floor of 3.60%.

(b) Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Bank determines (which determination shall be conclusive absent manifest error), or the Borrower notifies the Bank that the Borrower has determined that:

(i) adequate and reasonable means do not exist for ascertaining the LIBOR Rate for any requested Interest Period, including, without limitation, because the LIBOR

Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) the administrator of the LIBOR Rate or a Governmental Body having jurisdiction over the Bank has made a public statement identifying a specific date after which LIBOR or the LIBOR Rate shall no longer be made available, or used for determining the interest rate of loans (such specific date, the "Scheduled Unavailability Date"), or

(iii) syndicated loans currently being executed, or that include language similar to that contained in this Section, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR,

then, reasonably promptly after such determination by the Bank or receipt by the Bank of such notice, as applicable, the Bank and the Borrower may amend this Agreement to replace LIBOR with an alternate benchmark rate (including any mathematical or other adjustments to the benchmark (if any) incorporated therein), giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities for such alternative benchmarks (any such proposed rate, a "LIBOR Successor Rate"), together with any proposed LIBOR Successor Rate Conforming Changes (as defined below) and any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after the Bank shall have posted such proposed amendment to the Borrower. Such LIBOR Successor Rate shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Bank, such LIBOR Successor Rate shall be applied in a manner as otherwise reasonably determined by the Bank.

If no LIBOR Successor Rate has been determined and the circumstances under clause (i) above exist or the Scheduled Unavailability Date has occurred (as applicable), the Bank will promptly so notify the Borrower. Thereafter, the obligation of the Bank to make or maintain LIBOR Rate Loans shall be suspended, (to the extent of the affected LIBOR Rate Loans or Interest Periods). Upon receipt of such notice, the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of LIBOR Rate Loans (to the extent of the affected LIBOR Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a borrowing of a Loan, bearing interest at a rate per annum of the Prime Rate plus .50% with a floor of 3.60%. .

Notwithstanding any definition of the LIBOR Successor Rate, at no time shall the per annum rate of interest with respect to the Revolving Loan or the Line of Credit/ Term Loan during the Line of Credit/ Term Loan Drawdown period be less than 3.60% per annum.

For purposes hereof, "LIBOR Successor Rate Conforming Changes" means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Interest Period, timing and frequency of determining rates, and making payments of interest and other administrative matters as may be appropriate, in the discretion of the Bank in consultation with the Borrower, to reflect the adoption of such LIBOR Successor Rate and to permit the administration thereof by the Bank in a manner substantially consistent with market practice (or, if the Bank determines that adoption of any portion of such market practice is not administratively feasible or that no market

practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as the Bank determines is reasonably necessary in connection with the administration of this Agreement).

ARTICLE III

CONDITIONS OF LENDING

SECTION 3.01. Conditions Precedent to the Making of the Initial Revolving Credit Loan and the Term Loan. The obligation of the Bank to make the initial Revolving Credit Loan, and make the Term Loan and the Line of Credit/Term Loan contemplated by this Agreement are each subject to the conditions precedent that the Bank shall have received from the Borrower and the Guarantors on or before the date of this Agreement the following, each dated such day, in form and substance satisfactory to the Bank and its counsel:

(a) The Revolving Credit Note, duly executed by the Borrower and payable to the order of the Bank.

(b) The Term Loan Note and the Line of Credit/Term Note, each duly executed by the Borrower and payable to the order of the Bank.

(c) A certificate of the Secretary or Assistant Secretary (or other equivalent officer, partner or manager) of the Borrower in form and substance satisfactory to Bank dated as of the date hereof which shall certify (i) copies of resolutions in form and substance reasonably satisfactory to Bank, of the board of directors (or other equivalent governing body, member or partner) of the Borrower authorizing (x) the execution, delivery and performance of this Agreement, the Notes and the other Loan Documents to which the Borrower is a party (including authorization of the incurrence of indebtedness, Revolving Credit Loans, the Term Loan and the Line of Credit/Term Loan), and (y) the granting by the Borrower of the security interests in and liens upon the Collateral to secure the obligations of the Borrower hereunder (and such certificate shall state that such resolutions have not been amended, modified, revoked or rescinded as of the date of such certificate), (ii) the incumbency and signature of the officers of the Borrower authorized to execute this Agreement and the Loan Documents, (iii) copies of the Organizational Documents of such Borrower as in effect on such date, complete with all amendments thereto, and (iv) the good standing (or equivalent status) of the Borrower in its jurisdiction of organization and each applicable jurisdiction required by the Bank where the conduct of the Borrower's business activities or the ownership of its properties necessitates qualification, as evidenced by good standing certificate(s) (or the equivalent thereof issued by any applicable jurisdiction) dated not more than 60 days prior to the date hereof, issued by the Secretary of State or other appropriate official of each such jurisdiction.

(d) A certificate of the Secretary or Assistant Secretary (or other equivalent officer, partner or manager) of the Corporate Guarantor in form and substance satisfactory to Bank dated as of the date hereof which shall certify (i) copies of resolutions in form and substance reasonably satisfactory to

Bank, of the board of directors (or other equivalent governing body, member or partner) of the Corporate Guarantor authorizing the execution, delivery and performance of this Agreement and the other Loan Documents to which the Corporate Guarantor is a party (and such certificate shall state that such resolutions have not been amended, modified, revoked or rescinded as of the date of such certificate), (ii) the incumbency and signature of the officers of each Corporate Guarantor authorized to execute this Agreement and the Loan Documents, (iii) copies of the Organizational Documents of each Corporate Guarantor as in effect on such date, complete with all amendments thereto, and (iv) the good standing (or equivalent status) of each Corporate Guarantor in its jurisdiction of organization and each applicable jurisdiction required by the Bank where the conduct of each Corporate Guarantor's business activities or the ownership of its properties necessitates qualification, as evidenced by good standing certificate(s) (or the equivalent thereof issued by any applicable jurisdiction) dated not more than 60 days prior to the date hereof, issued by the Secretary of State or other appropriate official of each such jurisdiction.

(e) An opinion of Rivkin Radler LLP, counsel for the Borrower and the Guarantors as to certain matters referred to in Article IV hereof and as to such other matters as the Bank or its counsel may reasonably request.

(f) From each of the Guarantors, an executed Guaranty.

(g) From the Borrower, an executed Security Agreement giving to the Bank a first priority security interest in the Collateral.

(h) From the Borrower, UCC-1 filings perfecting the Bank's first priority security interest in the Collateral.

(i) From the Corporate Guarantor, the Subordination Agreement.

(j) From the Borrower and the Corporate Guarantor, a list of all credit facilities with lenders, other than the Bank (other than credit agreements and facilities to be terminated at the Closing Date).

(k) From the Borrower, (i) the fees and expenses to be paid pursuant to this Agreement, and (ii) those other fees, charges and expenses as the Borrower and the Bank may mutually agree.

(l) Evidence that the Bank shall, prior to the date of this Agreement, have completed its due diligence reviews of the Borrower and Guarantors, the results of which shall be satisfactory to the Bank in its sole discretion.

(m) The following statements shall be true and the Bank shall have received a certificate signed by the President or Chief Financial Officer of the Borrower and each Corporate Guarantor dated the date hereof, stating that:

(i) The representations and warranties contained in Article IV of this Agreement and in

the Guaranties are true and correct on and as of such date; and

(ii) No Default or Event of Default has occurred and is continuing, or would result from the making of the Term Loan, the Line of Credit/Term Loan or the initial Revolving Credit Loan.

(n) All legal matters incident to this Agreement and the Loan transactions contemplated hereby shall be satisfactory to Wilentz, Goldman & Spitzer, P.A., counsel to the Bank.

(o) Receipt by the Bank of such other approvals, opinions or documents as the Bank or its counsel may reasonably request.

SECTION 3.02. Conditions Precedent to All Revolving Credit Loans. The obligation of the Bank to make each Revolving Credit Loan (including the initial Revolving Credit Loan) shall be subject to the further conditions precedent that on the date of such Revolving Credit Loan:

(a) The following statements shall be true and each request for a Revolving Credit Loan shall be deemed to be a certification by the Borrower that:

(i) The representations and warranties contained in Article IV of this Agreement and in the Guaranties are true and correct on and as of such date as though made on and as of such date; and

(ii) No Default or Event of Default has occurred and is continuing, or would result from such Revolving Credit Loan;

(b) The Bank shall have received a Borrowing Base Certificate as described in Section 5.01(xiii) of this Agreement; and

(c) The Bank shall have received such other approvals, opinions or documents as the Bank may reasonably request.

SECTION 3.03. Conditions Precedent to Advances Under Line of Credit/Term Loan.

The obligation of the Bank to make each advance Line of Credit/Term Loan (including the initial advance under the Line of Credit/Term Loan) shall be subject to the further conditions precedent that on the date of such Line of Credit/Term Loan:

(a) The following statements shall be true and each request for a Line of Credit/Term Loan shall be deemed to be a certification by the Borrower that:

(i) The representations and warranties contained in Article IV of this Agreement and in the Guaranties are true and correct on and as of such date as though made on and as of such date; and

(ii) No Default or Event of Default has occurred and is continuing, or would result from

such advance under Line of Credit/Term Loan.

(b) The Bank shall have received such other approvals, opinions or documents as the Bank may reasonably request.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

SECTION 4.01. Representations and Warranties. On the Closing Date, and on each date that the Borrower requests a Revolving Credit Loan and Line of Credit/ Term Loan, the Borrower and each of the Guarantors represent and warrant as follows:

(a) On the date hereof, the only Subsidiaries of the Borrower or the Corporate Guarantor are those set forth on Schedule 4.01(a) annexed hereto, which Schedule accurately sets forth with respect to each such Subsidiary, its name and address, any other addresses at which it conducts business, its state of incorporation and each other jurisdiction in which it is qualified to do business and the identity and shareholdings of its stockholders. Except as set forth on Schedule 4.01(a), all of the issued and outstanding shares of each Subsidiary which are owned by the Borrower or the Corporate Guarantor are owned by the Borrower or the Corporate Guarantor free and clear of any mortgage, pledge, lien or encumbrance. Except as set forth on Schedule 4.01(a), there are not outstanding any warrants, options, contracts or commitments of any kind entitling any Person to purchase or otherwise acquire any shares of common or capital stock or other equity interest of the Borrower, the Corporate Guarantor or any Subsidiary of the Borrower or a Corporate Guarantor, nor are there outstanding any securities which are convertible into or exchangeable for any shares of the common or capital stock of the Borrower, any Corporate Guarantor or any Subsidiary of the Borrower or the Corporate Guarantor.

(b) The Borrower is a corporation and Corporate Guarantor is a limited liability company, each duly organized, validly existing and in good standing under the laws of their respective jurisdictions of organization and each has the power to own its assets and to transact the business in which it is presently engaged and is duly qualified and is in good standing in all other jurisdictions where the character or nature of its business requires such qualification, except where the failure to so qualify would not have a Material Adverse Change with respect to Borrower or Corporate Guarantor.

(c) The execution, delivery and performance by the Borrower and the Guarantor of the Loan Documents to which they are a party are within the Borrower's and the Corporate Guarantor's power and have been duly authorized by all necessary action and do not and will not (i) require any consent or approval of their respective equityholders which has not been obtained; (ii) do not contravene the

Borrower's or the Corporate Guarantor's organizational documents; (iii) violate any provision of or any law, rule, regulation, contractual restriction, order, writ, judgment, injunction, or decree, determination or award binding on or affecting the Borrower or any Guarantor; (iv) result in a breach of or constitute a default under any indenture or loan or credit agreement, or any other agreement, lease or instrument to which the Borrower or any Guarantor is a party or by which it or its properties may be bound or affected; and (v) result in, or require, the creation or imposition of any Lien (other than the Lien of the Loan Documents) upon or with respect to any of the properties now owned or hereafter acquired by the Borrower or any Guarantor.

(d) No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by the Borrower or any Guarantor of any Loan Document to which it is a party, except authorizations, approvals, actions, notices or filings which have been obtained, taken or made, as the case may be.

(e) The Loan Documents when delivered hereunder will have been duly executed and delivered on behalf of the Borrower and the Guarantor, as the case may be, and will be legal, valid and binding obligations of the Borrower and the Guarantor, as the case may be, enforceable against the Borrower or such Guarantor in accordance with their respective terms.

(f) The financial statements of the Borrower and Corporate Guarantor for the fiscal year ended December 31, 2019, copies of which have been furnished to the Bank, fairly present the financial condition of the Borrower and Corporate Guarantor as at such date and the results of operations of the Borrower and Corporate Guarantor for the period ended on such date, all in accordance with GAAP, and since such date there has been (i) no material increase in the liabilities of the Borrower and Corporate Guarantor and (ii) no Material Adverse Change in the Borrower and Corporate Guarantor.

(g) The personal financial statements of the Individual Guarantor, prepared as of June 30, 2020,, copies of which have been furnished to the Bank, fairly reflect the financial condition of the Individual Guarantor and since the last day of such year there has been (i) no material increase in the liabilities of the Individual Guarantor and (ii) no Material Adverse Change in any of the Individual Guarantor.

(h) Except as set forth on Schedule 4.01(h), there is no pending or threatened action, proceeding or investigation affecting the Borrower, any Guarantor or any Subsidiary of the Borrower or Corporate Guarantor, before any court, governmental agency or arbitrator, which may either in one case or in the aggregate, result in a Material Adverse Change in the Borrower, any Guarantor or any such Subsidiary.

(i) The Borrower and Corporate Guarantor have filed all federal, state and local tax returns required to be filed and have paid all taxes, assessments and governmental charges and levies thereon to be due, including interest and penalties. The federal income tax liability of the Borrower and each

Corporate Guarantor has been finally determined and satisfied for all taxable years up to and including the taxable year ending December 31, 2019.

(j) The Borrower, Corporate Guarantor and each Subsidiary of the Borrower or Corporate Guarantor possess all licenses, permits, franchises, patents, copyrights, trademarks and trade names, or rights thereto, to conduct their respective businesses substantially as now conducted and as presently proposed to be conducted, and neither the Borrower, any Guarantor nor any such Subsidiary are in violation of any similar rights of others.

(k) Neither the Borrower nor Corporate Guarantor is a party to any indenture, loan or credit agreement or any other agreement, lease or instrument or subject to any charter or corporate restriction which could result in a Material Adverse Change in the Borrower or Corporate Guarantor.

(l) The Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulations T, U or X), and no proceeds of any Loan will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock or in any other way which will cause the Borrower to violate the provisions of Regulations T, U or X.

(m) No proceeds of any Loan will be used to acquire any security in any transaction which is subject to Sections 13 or 14 of the Securities Exchange Act of 1934.

(n) The Borrower, Corporate Guarantor and each Subsidiary of the Borrower or Corporate Guarantor are in all material respects in compliance with all federal and state laws and regulations in all jurisdictions where the failure to comply with such laws or regulations could result in a Material Adverse Change in the Borrower, any of the Guarantors or any such Subsidiary.

(o) The Borrower, Corporate Guarantor, each Subsidiary of the Borrower or Corporate Guarantor and each ERISA Affiliate are in compliance in all material respects with all applicable provisions of ERISA. Neither a Reportable Event nor a Prohibited Transaction has occurred and is continuing with respect to any Plan; no notice of intent to terminate a Plan has been filed nor has any Plan been terminated; no circumstances exist which constitute grounds under Section 4042 of ERISA entitling the PBGC to institute proceedings to terminate, or appoint a trustee to administrate, a Plan, nor has the PBGC instituted any such proceedings; neither the Borrower, Corporate Guarantor, any Subsidiary of the Borrower or Corporate Guarantor, nor any ERISA Affiliate has completely or partially withdrawn under Sections 4201 or 4204 of ERISA from a Multiemployer Plan; the Borrower, Corporate Guarantor, each Subsidiary of the Borrower or Corporate Guarantor and each ERISA Affiliate have met their minimum funding requirements under ERISA with respect to all of their Plans and the present fair market value of all Plan assets exceeds the present value of all vested benefits under each Plan, as determined on the most recent valuation date of the Plan in accordance with the provisions of ERISA for calculating the potential liability of the Borrower, Corporate Guarantor, any such Subsidiary or any ERISA Affiliate to PBGC or the Plan under Title IV of ERISA; and neither the Borrower, any Corporate Guarantor, any such Subsidiary nor any ERISA

Affiliate has incurred any liability to the PBGC under ERISA.

(p) The Borrower, the Guarantor and each Subsidiary of the Borrower or Corporate Guarantor are in compliance with all federal, state or local laws, ordinances, rules, regulations or policies governing Hazardous Materials in all material respects, and neither the Borrower, any Guarantor nor any such Subsidiary has used Hazardous Materials on, from, or affecting any property now owned or occupied or hereafter owned or occupied by the Borrower, any Guarantor or any such Subsidiary in any manner which violates federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials. To the Borrower's, Guarantors' and such Subsidiaries' knowledge, no prior owner of any such property or any tenant, subtenant, prior tenant or prior subtenant have used Hazardous Materials on, from or affecting such property in any manner which violates federal, state or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials.

(q) The proceeds of the Revolving Credit Loans, the Term Loan and the Line of Credit/Term Loan shall be used exclusively for the purposes set forth in Section 2.05 and Section 2.15, respectively of this Agreement.

(r) The properties and assets of the Borrower and the Corporate Guarantor are not subject to any Lien other than those described in Section 5.02(a) hereof.

(s) Neither the business nor the properties of the Borrower, any Guarantor or any Subsidiary of the Borrower or Corporate Guarantor are affected by any fire, explosion, accident, strike, hail, earthquake, embargo, act of God or of the public enemy, or other casualty (whether or not covered by insurance), which could result in a Material Adverse Change in the Borrower, any Guarantor or any such Subsidiary.

(t) The Lien on the Collateral created by the Security Agreement constitutes a valid first priority perfected security interest in favor of the Bank.

(u) The liability of the Guarantors as a result of the execution of their respective Guaranties and the execution of this Agreement shall not cause the liabilities (including contingent liabilities) of each of the Guarantors to exceed the fair saleable value of their respective assets.

(v) The Guarantors acknowledge they have derived or expect to derive a financial or other advantage from the Loans obtained by the Borrower from the Bank.

(w) Schedule 5.02 is a complete and correct list of all credit agreements, indentures, purchase agreements, guaranties, Capital Leases, and other investments, agreements and arrangements, each providing for or relating to extensions of credit (including agreements and arrangements for the issuance of letters of credit or for acceptance financing) in respect of which the Borrower or

Corporate Guarantor are in any manner directly or contingently obligated, and the maximum principal or face amounts of the credit in question, outstanding or to be outstanding, are correctly stated, and all Liens of any nature given or agreed to be given as security therefor are correctly described or indicated in such Schedule, other than credit agreements and facilities which will be terminated at the Closing Date.

(x) As of the date hereof, the Borrower and Corporate Guarantor have no commercial tort claims.

(y) As of the date hereof, the Borrower and Corporate Guarantor have no letter of credit rights.

(z) To the extent applicable, Borrower and Corporate Guarantor have obtained all Permits, or has contracted with third parties holding Permits, necessary for compliance with all laws, including Healthcare Laws and the FDCA, and for the research, development, testing, manufacturing, packaging, labeling, handling, storage, advertising, promoting, marketing, distribution, and communication of the Products, and all such Permits are current.

(aa) To the extent applicable, Borrower and Corporate Guarantor have been operating in compliance with all Healthcare Laws, including reporting to the FDA of device malfunctions and/or device-related serious injuries or deaths pursuant to 21 C.F.R. § 803 and reporting to FDA of corrections or removals pursuant to 21 C.F.R. § 806.

(bb) Except as set forth on Schedule 4.01(bb), neither Borrower nor Corporate Guarantor has received any written notice that any governmental authority including, without limitation, the FDA, the Office of the Inspector General of HHS, or the United States Department of Justice has commenced or threatened to initiate any action against Borrower or Corporate Guarantor, any action to enjoin Borrower, Corporate Guarantor, or its officers, directors, employees, shareholders, or their agents and affiliates, from conducting their businesses at any facility owned or used by them or for any material civil penalty, injunction, seizure, or criminal action, to the extent applicable.

(cc) To the extent applicable, except as set forth on Schedule (cc), neither Borrower nor Corporate Guarantor have received from the FDA at any time since April 3, 2016, a warning letter, Form 483, "Untitled Letter," other correspondence or notice setting forth allegedly objectionable observations or alleged violations of laws and regulations enforced by the FDA or DEA, including but not limited to the FDCA, or any comparable correspondence from any state or local authority responsible for regulating medical device products, drug products and establishments, or any comparable correspondence from any foreign counterpart of the FDA or DEA, or any comparable correspondence from any foreign counterpart of any state or local authority with regard to any Product or the development, manufacture, processing, distribution, packing, or holding thereof.

(dd) Except as set forth on Schedule 4.01(dd), Borrower and Corporate Guarantor have not engaged in any Recalls or other forms of product retrieval from the marketplace of any Products since January 1, 2016.

(ee) Except as set forth on Schedule 4.01(ee), Borrower and Corporate Guarantor are in compliance with (a) the Federal Health Care Program requirements applicable to Borrower and Corporate Guarantor, and (b) federal and state reporting obligations applicable to Borrower or Corporate Guarantor, including, without limitation, any state law reporting obligations relating to sales and marketing to healthcare professionals, any price reporting obligations pursuant to the Medicaid Drug Rebate program, the Medicare program, and any other federal or state programs (including, without limitation, the 340B Drug Pricing program).

(ff) Neither Borrower, nor Corporate Guarantor and any of their officer, manager, director, employee or agent, nor any other person or entity acting on behalf of Borrower or Corporate Guarantor, acting alone or together, have directly or indirectly (i) made any illegal or unethical contribution, gift, bribe, rebate, payoff, commissions, promotional allowances, influence payment, kickback, or other payment or economic benefit to any person or entity, private or public, regardless of what form, whether in money, property, or services; (ii) established or maintained any fund or asset that has not been recorded in the books and records of Borrower; (iii) engaged in any business practices or conducted any dealings that are materially contrary to accepted industry standards; or (iv) aided, abetted, caused (directly or indirectly), participated in, or otherwise conspired with, any person or entity to violate the terms of any judgment, sentence, order, or decree of any court or governmental authority.

(gg) Since January 1, 2010, neither Borrower nor Corporate Guarantor and any of their affiliates, directors, members, employees, agents, officers, or managers:

i. has been convicted of or charged with any violation of any law related to any Federal Health Care Programs, as defined in 42 U.S.C. § 1320a-7b(f);

ii. has been convicted of any crime or engaged in any conduct for which debarment is mandated by 21 U.S.C. Section 335a(a) or authorized by 21 U.S.C. Section 335a(b);

iii. has made an untrue statement of material fact or fraudulent statement to the FDA or failed to disclose a material fact required to be disclosed to the FDA, committed an act, made a statement, or failed to make a statement that could reasonably be expected to provide a basis for the FDA to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," set forth in 56 Fed. Regulation 46191 (September 10, 1991);

iv. has been convicted of, charged with, or investigated for any violation of law related to fraud, theft, embezzlement, breach of fiduciary responsibility, financial misconduct, obstruction of an investigation, or controlled substances; or

v. has been excluded, suspended, or debarred from participation, or are otherwise ineligible to participate, in (i) any Federal Health Care Programs, or in Federal procurement or non-procurement programs; or (ii) any other federal or state government programs or activities, including, without limitation, the FDA; or (iii) have committed any

violation of law that is reasonably expected to serve as the basis for any such exclusion, suspension, debarment, or other ineligibility.

(hh) With respect to Products:

i. each Product is not adulterated or misbranded within the meaning of the FDCA;

ii. each Product is not an article prohibited from introduction into interstate commerce under the provisions of the FDCA or any state law;

iii. each Product has been and/or shall be manufactured, labeled, imported, possessed, owned, warehoused, marketed, promoted, sold, labeled, furnished, distributed, and marketed in accordance with all applicable Permits and Healthcare Laws, including but not limited to the FDCA;

iv. each Product has been and/or shall be developed, designed and manufactured in accordance with Good Manufacturing Practices;

v. with respect to any Product being tested or manufactured by Borrower or Corporate Guarantor, Borrower or Corporate Guarantor has received and shall be in compliance with, and such Product shall be the subject of, all Permits needed in connection with the testing or manufacture of such Product as such testing is currently being conducted by or on behalf of Borrower or Corporate Guarantor, and Borrower and Corporate Guarantor has not received any notice from any applicable government authority, specifically including the FDA, that such government authority is conducting an investigation or review of (A) Borrower's or Corporate Guarantor's manufacturing facilities and processes for such Product which have disclosed any material deficiencies or violations of laws (including Healthcare laws) and/or the Permits related to the manufacture of such Product, or (B) any such Permit or that any such Permit has been revoked or withdrawn, nor has any such governmental authority issued any order or recommendation stating that the development, testing, and/or manufacturing of such Product by Borrower or Corporate Guarantor should cease;

vi. all studies conducted or being conducted with respect to any of the Products of the Borrower or Corporate Guarantor have been, and are being, conducted in material compliance with the applicable requirements of all regulations and guidances that relate to the conduct of clinical studies issued by the FDA, DEA, or any other applicable governmental authority.

vii. with respect to any Product marketed or sold by Borrower or Corporate Guarantor, Borrower and Corporate Guarantor shall have received, and such Product shall be the subject of, all Permits needed in connection with the marketing and sales of such Product as currently being marketed or sold by Borrower or Corporate Guarantor, and Borrower and Corporate Guarantor has not received any notice from any applicable governmental authority, specifically including the FDA, that such governmental authority is conducting an investigation or review of any such Permit or approval or that any such Permit has been revoked or withdrawn, nor has any such governmental authority issued any order or recommendation

stating that such marketing or sales of such Product cease or that such Product be recalled from the marketplace; and

viii. each Product that is not a "new drug," as that term is defined in 21 U.S.C. Section 321(p), is generally recognized by qualified experts as safe and effective for its intended uses as those terms have been interpreted by FDA and the United States Supreme Court.

ARTICLE V

COVENANTS OF THE BORROWER

SECTION 5.01. Affirmative Covenants. So long as (i) any amount shall remain outstanding under any Note, or (ii) the Commitment shall remain in effect, the Borrower and the Guarantors will, unless the Bank shall otherwise consent in writing:

(a) Compliance with Laws, Etc. Comply, and cause each Subsidiary of the Borrower or the Corporate Guarantor to comply, in all material respects with all applicable laws, rules, regulations and orders, where the failure to so comply could result in a Material Adverse Change in the Borrower, the Corporate Guarantor or any such Subsidiary.

(b) Reporting Requirements. Furnish to the Bank: (i) Annual Financial Statements. As soon as available and in any event within one hundred twenty (120) days after the end of each fiscal year of the Borrower, a copy of the financial statements of the Borrower for such year, including balance sheets with related statements of income and retained earnings and statements of cash flows, all in reasonable detail and setting forth in comparative form the figures for the previous fiscal year, prepared on an audited basis by independent certified public accountants selected by the Borrower and satisfactory to the Bank, all such financial statements to be prepared in accordance with GAAP;

(ii) Quarterly Financial Statements. (1) As soon as available and in any event within sixty (60) days after the end of each quarterly fiscal period of the Borrower, a copy of the financial statements of the Borrower for such quarterly fiscal period, including a balance sheet with related statements of income and retained earnings and a statement of cash flows, all in reasonable detail and setting forth in comparative form the figures for the comparable quarterly fiscal period for the previous fiscal year, prepared by management, all such financial statements to be prepared in accordance with GAAP, subject to year-end adjustments;

(iii) Semi-annual Financial Statements. Furnish to the Bank as soon as available and in any event within sixty (60) days after the end of each semi-annual fiscal period of the Borrower, a copy of Management prepared consolidated and consolidating financial statements to be submitted by the Borrower and the Corporate Guarantor;

(iv) Management Letters. Promptly upon receipt thereof, copies of any reports submitted to the Borrower or Corporate Guarantor by independent certified public accountants in connection with

examination of the financial statements of the Borrower and the Corporate Guarantor made by such accountants;

(v) Certificate of No Default. Simultaneously with the delivery of the financial statements referred to in Section 5.01(b)(i) and (ii), a Compliance Certificate of the President, the Chief Financial Officer, or a Vice President of the Borrower (1) certifying that no Default or Event of Default has occurred and is continuing, or if a Default or Event of Default has occurred and is continuing, a statement as to the nature thereof and the action which is proposed to be taken with respect thereto; and (2) with computations demonstrating compliance with the covenants contained in Section 5.03.

(vi) Notice of Litigation. Promptly after the commencement thereof, but in any event within 10 days thereafter, notice of all actions, suits and proceedings before any court or governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, affecting the Borrower, Corporate Guarantor or any Subsidiary of the Borrower or Corporate Guarantor which, if determined adversely to the Borrower, the Corporate Guarantor or any such Subsidiary could result in a Material Adverse Change in the Borrower, Corporate Guarantor or any such Subsidiary.

(vii) Notice of Defaults and Events of Default. As soon as possible and in any event within five (5) days after the occurrence of each Default or Event of Default, a written notice setting forth the details of such Default or Event of Default and the action which is proposed to be taken by the Borrower with respect thereto.

(viii) ERISA Reports. Promptly after the filing or receiving thereof, but in any event within 10 days thereafter, copies of all notices which the Borrower, Corporate Guarantor and any Subsidiary of the Borrower or Corporate Guarantor, receives from the PBGC or the U.S. Department of Labor under ERISA; and as soon as possible after the Borrower, Corporate Guarantor or any such Subsidiary knows or has reason to know that any Reportable Event or Prohibited Transaction has occurred with respect to any Plan or that the PBGC or the Borrower, Corporate Guarantor or any such Subsidiary has instituted or will institute proceedings under Title IV of ERISA to terminate any Plan, the Borrower or the Corporate Guarantor will deliver to the Bank a certificate of the President, the Chief Financial Officer, or a Vice President of the Borrower or the Corporate Guarantor setting forth details as to such Reportable Event or Prohibited Transaction or Plan termination and the action the Borrower or the Corporate Guarantor proposes to take with respect thereto;

(ix) Reports to Other Creditors. Promptly after the furnishing thereof by the Borrower or the Corporate Guarantor, copies of any statement or report furnished to any other party pursuant to the terms of any indenture, loan, or credit or similar agreement and not otherwise required to be furnished to the Bank pursuant to any other clause of this Section 5.01(b).

(x) Proxy Statements, Etc. To the extent applicable, promptly after the sending or filing thereof, copies of all proxy statements, financial statements and reports which the Borrower or the Corporate Guarantor sends to its stockholders, and copies of all regular, periodic, and special reports,

and all registration statements which the Borrower or the Corporate Guarantor files with the Securities and Exchange Commission or any governmental authority which may be substituted therefor, or with any national securities exchange.

(xi) Accounts Receivable Aging. As soon as available, but in any event within 15 days after the end of each calendar month, a summary of accounts receivable of the Borrower aged to show the number of days each such account has been outstanding from its invoice date, in form reasonably satisfactory to the Bank.

(xii) Accounts Payable Aging. As soon as available, but in any event within 15 days after the end of each calendar month, a summary of accounts payable of the Borrower aged to show the number of days each such account has been outstanding from its invoice date.

(xiii) Borrowing Base Certificate. As part of each request for a Revolving Loan and as soon as available, but in any event within 15 days after the end of each calendar month, a "Borrowing Base Certificate,"(accompanied by an account receivable aging and inventory report) in a form, to be provided hereafter by the Bank, accompanied by a statement signed by the Borrower's President, Chief Financial Officer, or a Vice President to the effect that such certificate is true, correct and complete.

(xiv) Statements of Individual Guarantors. As soon as available and in any event within 120 days after the end of each calendar year, a copy of the financial statement of the each of the Individual Guarantors for such year, prepared on the Bank's standard form or such other form as is reasonably satisfactory to the Bank.

(xv) Tax Returns. As soon as available and in any event within 30 days after filing, copies of the Guarantor's annual tax returns.

(xvi) General Information. Such other information respecting the condition or operations, financial or otherwise, of the Borrower, any Guarantor or any Subsidiary of the Borrower or the Corporate Guarantor as the Bank may from time to time reasonably request.

(c) Taxes. Pay and discharge, and cause its Subsidiaries to pay and discharge, all taxes, assessments and governmental charges upon it or them, its' or their income and its or their properties prior to the dates on which penalties are attached thereto, unless and only to the extent that (i) such taxes shall be contested in good faith and by appropriate proceedings by the Borrower, any Guarantor or any such Subsidiary, as the case may be, and (ii) there be adequate reserves therefor in accordance with GAAP entered on the books of the Borrower, the Corporate Guarantor or any such Subsidiary.

(d) Entity Existence. Preserve and maintain, and cause its Subsidiaries to preserve and maintain, their entity existence and good standing in the jurisdiction of their incorporation and the rights, privileges and franchises of the Borrower, the Corporate Guarantor and each such Subsidiary in each case where failure to so preserve or maintain could result in a Material Adverse Change in

the Borrower, Corporate Guarantor or such Subsidiary.

(e) Maintenance of Properties and Insurance. (i) Keep, and cause any Subsidiaries to keep, the respective properties and assets (tangible or intangible) that are useful and necessary in its business, in good working order and condition, reasonable wear and tear excepted; and (ii) maintain, and cause any Subsidiaries to maintain, insurance with financially sound and reputable insurance companies or associations in such amounts and covering such risks as are usually carried by companies engaged in similar businesses and owning properties doing business in the same general areas in which the Borrower, Corporate Guarantor and any such Subsidiaries operate.

(f) Books of Record and Account. Keep and cause any Subsidiaries to keep, adequate records and proper books of record and account in which complete entries will be made in a manner to enable the preparation of financial statements in accordance with GAAP, reflecting all financial transactions of the Borrower, the Corporate Guarantor, and any such Subsidiaries.

(g) Visitation; Field Audit/Exam. At any reasonable time, and from time to time, permit and cooperate with the Bank or any agents or representatives thereof, to examine and make copies of and abstracts from the books and records of, and visit the properties of, the Borrower or Corporate Guarantor and to discuss the affairs, finances and accounts of the Borrower or any Guarantor with any of the respective officers or directors of the Borrower or Corporate Guarantor or the Borrower's or Corporate Guarantor's independent accountants, and once during each period of twelve (12) consecutive months or, if an Event of Default has occurred and is continuing, at any time that the Bank requests, Borrower will permit, , the Bank to conduct a Field Audit/ Exam, including an examination of the Collateral included in the Borrowing Base. Borrower shall cooperate with the Bank in connection with the such Field Audit/ Exam and the expense of such Field Audits/ Exam shall be at the cost and expense of the Borrower.

(h) Performance and Compliance with Other Agreements. Perform and comply with each of the provisions of each and every agreement the failure to perform or comply with which could result in a Material Adverse Change in the Borrower, any Guarantor or any Subsidiary.

(i) Continued Perfection of Liens and Security Interest. Record or file or rerecord or refile the Loan Documents or a financing statement or any other filing or recording or refiling or rerecording in each and every office where and when necessary to preserve and perfect the security interests of the Loan Documents.

(j) Pension Funding. Comply with the following and cause each ERISA Affiliate of the Borrower, the Corporate Guarantor or any Subsidiary of the Borrower or the Corporate Guarantor to comply with the following:

(i) engage solely in transactions which would not subject any of such entities to either a civil penalty assessed pursuant to Section 502(i) of ERISA or a tax imposed by Section 4975 of the Internal Revenue Code in either case in an amount in excess of $25,000.00;

(ii) make full payment when due of all amounts which, under the provisions of any Plan or ERISA, the Borrower, Corporate Guarantor, any such Subsidiary or any ERISA Affiliate of any of same is required to pay as contributions thereto;

(iii) all applicable provisions of the Internal Revenue Code and the regulations promulgated thereunder, including but not limited to Section 412 thereof, and all applicable rules, regulations and interpretations of the Accounting Principles Board and the Financial Accounting Standards Board;

(iv) not fail to make any payments in an aggregate amount greater than $25,000.00 to any Multiemployer Plan that the Borrower, Corporate Guarantor, any such Subsidiary or any ERISA Affiliate may be required to make under any agreement relating to such Multiemployer Plan, or any law pertaining thereto; or

(v) not take any action regarding any Plan which could result in the occurrence of a Prohibited Transaction.

(k) Licenses. Maintain at all times, and cause each Subsidiary to maintain at all times, all licenses or permits necessary to the conduct of its business or as may be required by any governmental agency or instrumentality thereof.

(l) New Subsidiaries. Cause any Subsidiary of the Borrower formed after the date of this Agreement to become a Guarantor of all Debts and other obligations of the Borrower under this Agreement.

(m) Privacy Matters. (i) Borrower and Corporate Guarantor shall take reasonable commercial efforts to ensure that (x) the Computer Systems and all operations and businesses conducted thereon remain in compliance with all Privacy Laws, (y) commercially reasonable technical, administrative and physical controls are employed to protect the integrity and function of the Computer Systems; and (z) no Malware is placed or permitted to be placed on any Computer Systems.

(ii) Borrower and Corporate Guarantor shall establish and maintain a system, including using appropriate technologies, to monitor and endeavor to assure continued compliance with all applicable Privacy Laws which system shall include periodic reviews by experts in cyber security of such compliance.

(iii) In the event Borrower and Corporate Guarantor becomes aware or receives notice of any Cyber Attack, Data Breach or threat of Cyber Attacks or Data Breach, and notification is required to be made to any Person or third party under any contract, agreement, Privacy Law, or applicable law, Borrower shall, within one (1) Business Day of such notification to any Person or third party, give written notice of same to the Bank detailing facts and circumstances of such Cyber Attack, Data

Breach or threat of Cyber Attacks or Data Breach.

(iv) Borrower and Corporate Guarantor shall defend and indemnify the Bank and hold the Bank and its employees, agents, directors and officers harmless from and against all loss, liability, damage and expense, claims, costs, fines and penalties, including reasonable attorney's fees, suffered or incurred by Bank under or on account of Borrower's and Corporate Guarantor's violation of any Privacy Laws; provided that Borrower and Corporate Guarantor shall not be liable for any portion of such loss, liability, damage, expenses, claims, costs, fines, fees or penalties resulting from the Bank's or such other indemnitee's gross negligence or willful misconduct..

(o) Banking Relationship. The Borrower shall maintain at all times its banking and depository relationship, including its primary operating accounts, with the Bank, commencing not later than sixty (60) days from the date hereof. In the event that the Borrower fails, in the reasonable judgment of the Bank to maintain its banking and depository relationship, including its primary operating accounts, with the Bank, the interest rate applicable to each of the Notes shall, at the Bank's option be increased by one percent (1.00%) per annum until such time as the Borrower resumes the maintenance of such primary banking and depository relationship with the Bank.

(p) Management Fee. (i) Cause the payment of all management fees of the Corporate Guarantor be subordinated in all respect to the payment of the Term Loan.

(ii) In accordance with the Subordination Agreement, Bank shall be notified if Management Fee exceeds One Million Dollars ($1,000,000.00) a month.

(q) In connection with the research, development, testing, manufacture, processing, handling, packaging, labeling, storage, advertising, promoting, marketing, distribution or sale of each and any Product by Borrower or Corporate Guarantor, to the extent applicable, Borrower and the Corporate Guarantor, in all material respect, shall comply fully and completely in all respects with all applicable NDAs, BLAs, ANDAs, all Healthcare Laws and all laws and Permits at all times issued by any government authority, specifically including the FDA, with respect to such development, testing, manufacture, marketing, or sales of such Product by Borrower as such activities are at any such time being conducted by Borrower.

SECTION 5.02. Negative Covenants. So long as (i) any amount shall remain outstanding under any Note, or (ii) the Commitment shall remain in effect, neither the Borrower nor the Corporate Guarantor will, without the written consent of the Bank:

(a) Liens, Etc. Create, incur, assume or suffer to exist, any Lien, upon or with respect to any of its properties, now owned or hereafter acquired, except:

(i) Liens in favor of the Bank securing Debt permitted by Section 5.02(b)(i) hereof;

(ii) Liens for taxes or assessments or other government charges or levies if not yet due

and payable or if due and payable if they are being contested in good faith by appropriate proceedings and for which appropriate reserves are maintained;

(iii) Liens imposed by law, such as mechanics', materialmen's, landlords', warehousemen's, and carriers' Liens, and other similar Liens, securing obligations incurred in the ordinary course of business which are not past due or which are being contested in good faith by appropriate proceedings and for which appropriate reserves have been established;

(iv) Liens under workers' compensation, unemployment insurance, Social Security, or similar legislation;

(v) Liens, deposits, or pledges to secure the performance of bids, tenders, contracts (other than contracts for the payment of money), leases (permitted under the terms of this Agreement), public or statutory obligations, surety, stay, appeal, indemnity, performance or other similar bonds, or other similar obligations arising in the ordinary course of business;

(vi) Liens described in Schedule 5.02, provided that no such Liens shall be renewed, extended or refinanced;

(vii) Judgment and other similar Liens arising in connection with court proceedings (other than those described in Section 6.01(f)), provided the execution or other enforcement of such Liens is effectively stayed and the claims secured thereby are being actively contested in good faith and by appropriate proceedings;

(viii) Easements, rights-of-way, restrictions, and other similar encumbrances which, in the aggregate, do not materially interfere with the Borrower's or Corporate Guarantor's occupation, use and enjoyment of the property or assets encumbered thereby in the normal course of its business or materially impair the value of the property subject thereto;

(ix) Purchase money Liens on any property hereafter acquired or the assumption of any Lien on property existing at the time of such acquisition, or a Lien incurred in connection with any conditional sale or other title retention agreement or a Capital Lease, provided that:

(1) Any property subject to any of the foregoing is acquired by the Borrower or the Corporate Guarantor in the ordinary course of its respective business and the Lien on any such property is created contemporaneously with such acquisition;

(2) Each such Lien shall attach only to the property so acquired and fixed improvements thereon; and

(3) The obligation secured by such Lien is not prohibited by the provisions of Section 5.02(b).

(b) Debt. Create, incur, assume, or suffer to exist, any Debt, except:

(i) Debt of the Borrower under this Agreement or the Notes;

(ii) Debt described in Schedule 5.02;

(iii) Subordinated Debt;

(iv) Accounts payable to trade creditors for goods or services and current operating liabilities (other than for borrowed money), in each case incurred in the ordinary course of business and paid within the specified time, unless contested in good faith and by appropriate proceedings;

(v) Debt of the Borrower or Corporate Guarantor secured by purchase money Liens permitted by Section 5.02(a)(ix), provided that the aggregate amount of all such debt, outstanding at any time, shall not exceed $500,000.00.

(vi) Debt incurred in connection with Borrower's purchase of Abbreviated New Drug Applications ("ANDAs") and/or Drug Master File ("DMFs"), provided that the aggregate amount of all such debt, outstanding at any time, shall not exceed $1,000,000.00 per annum.

(c) Lease Obligations. Create, incur, assume, or suffer to exist any obligation as lessee for the rental or hire of any personal property, except (i) Capital Leases permitted by Section 5.02(a); (ii) leases existing on the date of this Agreement and any replacements, extensions or renewals thereof; and (iii) leases (other than Capital Leases) which do not in the aggregate require the Borrower or Corporate Guarantor to make payments (including taxes, insurance, maintenance, and similar expenses which the Borrower or Corporate Guarantor is required to pay under the terms of any lease) in any fiscal year of the Borrower or Corporate Guarantor in excess of $100,000.

(d) Merger. Merge into, or consolidate with or into, or have merged into it, any Person; and, for the purpose of this subsection (d), the acquisition or sale by the Borrower or a Guarantor by lease, purchase or otherwise, of all, or substantially all, of the common stock or the assets of any Person or of it shall be deemed a merger of such Person with the Borrower or a Guarantor;

(e) Sale of Assets, Etc. Sell, assign, transfer, lease or otherwise dispose of any of its assets, (including a sale-leaseback transaction) with or without recourse, except for (i) inventory disposed of in the ordinary course of business; (ii) the sale or other disposition of assets no longer used or useful in the conduct of its business, (iii) so long as no Default or Event of Default shall exist at the time, or shall result therefrom, Borrower and the Corporate Guarantor may sell ANDAs and DMFs in the ordinary course of business consistent with past practices; and (iv) so long as no Default or Event or Default shall exist at the time, or shall result therefrom, the Individual Guarantor may, for estate planning purposes, cause the Corporate Guarantor to transfer non-income producing assets or investments, or interests in such assets or investments, to trusts formed for the benefit of lineal descendants of the Individual Guarantor, provided (A) any such trusts become Guarantors under this

Agreement, and execute and deliver such guaranties, agreements and satisfy such terms and conditions, as may reasonably be required by the Bank and (B) the Individual Guarantor remains in compliance with Section 5.02(p) and (q) hereof.

(f) Investments, Etc. Make any Investment other than (i) Permitted Investments and (ii) so long as no Default or Event of Default shall exist at the time, or shall result therefrom, the Borrower and Corporate Guarantor may (A) purchase ANDAs and DMFs in the ordinary course of business consistent with past practice,(B) the Corporate Guarantor may make additional Investments in entities in which it has existing control or ownership of at least 40% of the voting equity securities consistent with past practices; provided that the aggregate amount of all such Investments in new entities shall not exceed more than $1,000,000 in any fiscal year and (C) Borrower or the Corporate Guarantor may make other Investments of not more than $1,000,000 in the aggregate in any fiscal year.

(g) Transactions with Affiliates. Except in the ordinary course of business and pursuant to the reasonable requirements of the Borrower's, a Corporate Guarantor's or a Subsidiary's business and upon fair and reasonable terms no less favorable to the Borrower, or the Corporate Guarantor or the Subsidiary than would be obtained in a comparable arm's length transaction with a Person not an Affiliate, enter into any transaction, including, without limitation, the purchase, sale, or exchange of property or the rendering of any service, with any Affiliate except that so long as no Default of Event or Default shall exist at this time, or shall result therefrom, Borrower may continue to pay management and research and development fees to the Corporate Guarantor, and the Corporate Guarantor may continue to pay research and development fees to the to the Borrower, in both cases consistent with past practice, provided that the aggregate amount of all management fees paid by the Borrower to the Corporate Guarantor shall not exceed $12,000,000.00 a year.

(h) Prepayment of Outstanding Debt. Pay, in whole or in part, any outstanding Debt (other than Debt owing to the Bank) of the Borrower or the Corporate Guarantor, which by its terms is not then due and payable.

(i) Guarantees. Guaranty, or in any other way become directly or contingently obligated for any Debt of any other Person (including any agreements relating to working capital maintenance, take or pay contracts or similar arrangements) other than (i) the endorsement of negotiable instruments for deposit in the ordinary course of business, (ii) guarantees existing on the date hereof and set forth in Schedule 5.02 annexed hereto, or (iii) guarantees in the ordinary course of business consistent with past practice not exceeding $1,000,000 in any fiscal year. .

(j) Change of Business. Neither Borrower nor the Corporate Guarantor may materially alter the nature of its business, but for avoidance of doubt, the Corporate Guarantor may make investments as described in Section 5.02(f) in connection with its business as a research and development company consistent with past practice.

(k) Fiscal Year. Change the ending date of its fiscal year from the calendar year.

(l) Losses. Incur a net annual post-tax loss for any fiscal year.

(m) Accounting Policies. Change any accounting policies, except as permitted by GAAP.

(n) Change of Tax Status. Change its tax reporting status as a corporation, without the prior written consent of the Bank.

(o) Dividends, Etc. Declare or pay any dividends, purchase, redeem, retire or otherwise acquire for value any of its capital stock now or hereafter outstanding, or make any distribution of assets to its stockholders as such, whether in cash, assets, or in obligations of the Borrower or the Corporate Guarantor; or allocate or otherwise set apart any sum for the payment of any dividend or distribution on, or for the purchase, redemption or retirement of any shares of its capital stock; or make any other distribution by reduction of capital or otherwise in respect of any share of its capital stock. Notwithstanding the foregoing, for any fiscal year during which Borrower or the Corporate Guarantor is an electing S corporation for federal income tax purposes, it may declare and pay cash dividends out of its net income for the current or preceding fiscal year, provided however that no such dividend may be paid which would result in the Borrower and the Corporate Guarantor failing to meet the requirements of Section 5.03 hereof.

(p) Change in Ownership. Permit (i) the Corporate Guarantor to fail or cease owning less than 90% of all voting stock of Borrower or (ii) the Individual Guarantor, directly or indirectly, to fail or cease owning less than 51% of the voting membership interest of the Corporate Guarantor, provided that the remaining ownership of the Corporate Guarantor shall be owned by Trusts formed for behalf of the linear descendants of the Individual Guarantor for estate planning purposes, and the Borrower and Corporate Guarantor provide all information necessary in order for the Bank to ensure that they are in compliance with Section 7.12 and any other Anti-Terrorism and Customer Due Diligence/ Know Your Customer requirements applicable to the Bank.

(q) Management. Fail to the retain Individual Guarantor in a reasonably active full time capacity in the management of the Borrower and the Corporate Guarantor.

(r) Hazardous Material. The Borrower, the Guarantor and each Subsidiary of the Borrower or Corporate Guarantor shall not cause or permit any property owned or occupied by the Borrower, the Guarantor or any such Subsidiary to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable federal, state and local laws or regulations nor shall the Borrower, any Guarantor or any such Subsidiary cause or permit, as a result of any intentional or unintentional act or omission on the part of the Borrower, the Guarantor or any such Subsidiary or any tenant or subtenant, a release of Hazardous Materials onto any property owned or occupied by the Borrower, the Guarantor or any such Subsidiary or onto any other property. The Borrower, the Guarantor and each such Subsidiary shall not fail to comply with all applicable federal, state and local laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall not fail to obtain and comply with, any

and all approvals, registrations or permits required thereunder. The Borrower and the Guarantor shall execute any documentation reasonably required by the Bank in connection with the representations, warranties and covenants contained in this paragraph and Section 4.01 of this Agreement.

SECTION 5.03. Financial Requirements. So long as (i) any amount shall remain outstanding under any Note, or (ii) the Commitment shall remain in effect:

(a). Debt Service Coverage Ratio. The Borrower shall not permit the Debt Service Coverage Ratio to be less than 1.25 to 1.0 for any fiscal year, fiscal quarter or semi-annual period. "Debt Service Coverage Ratio" shall mean the ratio of EBITDA minus taxes for such period, divided by the sum of the Borrower's CPLTD (for such fiscal period immediately preceding the current fiscal period), plus interest expense. EBITDA shall not include any gains or losses, non-reoccurring items, or non-cash income or expenses outside ordinary course of business.

(b). Fixed Charge Coverage Ratio. The Borrower shall not permit the Fixed Charge Coverage Ratio to be less than 1.10 to 1.0 for any fiscal year, fiscal quarter or semi-annual period. "Fixed Charge Coverage Ratio" shall mean the ratio of EBITDA minus taxes, distributions, and unfunded capex for such period, divided by the sum of the Borrower's CPLTD (for such fiscal period immediately preceding the current fiscal period), plus interest expense. EBITDA shall not include any gains or losses, non-reoccurring items, or non-cash income or expenses outside ordinary course of business.

(c). Total Funded Debt to EBITDA. The Borrower shall not permit total Funded Debt to EBITDA to be more than 2.75 to 1.0 for any fiscal year, fiscal quarter or semi-annual period, EBITDA shall not include any gains or losses, non-reoccurring items, or non-cash income or expenses outside ordinary course of business.

(d). No Net Loss. Borrower shall not incur a net annual post-tax loss in any fiscal year.

ARTICLE VI

EVENTS OF DEFAULT

SECTION 6.01. Events of Default. The occurrence of any one or more of the following events shall be an "Events of Default" hereunder:

(a) The Borrower shall fail to pay any installment of principal of, or interest on, any Note when due or any fees or other amounts owed in connection with this Agreement; or

(b) Any representation or warranty made by the Borrower or any Guarantor herein or in the Loan Documents or which is contained in any certificate, document, opinion, or financial or other statement furnished at any time under or in connection with any Loan Document shall prove to have been incorrect in any material respect when made; or

(c) (i) The Borrower shall fail to meet any of the financial covenants set forth in Section 5.03 hereof; or

(ii) The Borrower or any Guarantor shall fail to perform any term, covenant, or agreement contained in this Agreement (other than the financial covenants set forth in Section 5.03 hereof) or in any other Loan Document (other than the Notes) on its part to be performed or observed within fifteen (15) days after notice of such failure is sent by the Bank to the Borrower or such Guarantor, as the case may be; or

(d) The Borrower, any Guarantor, or any Subsidiary of the Borrower shall (i) fail to pay any Debt (excluding Debt evidenced by the Notes) of the Borrower, any Guarantor or any such Subsidiary (as the case may be), or any interest or premium thereon, when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt, or (ii) any other default under any agreement or instrument relating to any such Debt, or any other event shall occur and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if in either of such case, the effect of such default or event is to accelerate, or to permit the acceleration of, the maturity of such Debt; or any such Debt shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof; or

(e) The Borrower, any Guarantor or any Subsidiary of the Borrower shall generally not pay its Debts as such Debts become due, or shall admit in writing its inability to pay its Debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against the Borrower, any Guarantor or any such Subsidiary seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its Debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, or other similar official for it or for any substantial part of its property and if instituted against the Borrower, any Guarantor or any such Subsidiary shall remain undismissed for a period of 30 days; or the Borrower, any Guarantor or any such Subsidiary shall take any action to authorize any of the actions set forth above in this subsection (e); or

(f) Any judgment or order or combination of judgments or orders for the payment of money, in excess of $100,000.00 in the aggregate, which sum shall not be subject to full, complete and effective insurance coverage, shall be rendered against the Borrower, any Guarantor or any Subsidiary of the Borrower and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be any period of 30 consecutive days

during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(g) Any Guarantor shall fail to perform or observe any term or provision of its Guaranty or any representation or warranty made by any Guarantor (or any of its officers or partners) in connection with such Guarantor's Guaranty shall prove to have been incorrect in any material respect when made; or

(h) Any of the following events occur or exist with respect to the Borrower, Corporate Guarantor, any Subsidiary of the Borrower, or any ERISA Affiliate: (i) any Prohibited Transaction involving any Plan; (ii) any Reportable Event with respect to any Plan; (iii) the filing under Section 4041 of ERISA of a notice of intent to terminate any Plan or the termination of any Plan; (iv) any event or circumstance that might constitute grounds entitling the PBGC to institute proceedings under Section 4042 of ERISA for the termination of, or for the appointment of a trustee to administer, any Plan, or the institution of the PBGC of any such proceedings; (v) complete or partial withdrawal under Section 4201 or 4204 of ERISA from a Multiemployer Plan or the reorganization insolvency, or termination of any Multiemployer Plan; and in each case above, such event or condition, together with all other events or conditions, if any, could in the opinion of the Bank subject the Borrower, any Corporate Guarantor, any such Subsidiary or any ERISA Affiliate to any tax, penalty, or other liability to a Plan, a Multiemployer Plan, the PBGC, or otherwise (or any combination thereof) which in the aggregate exceeds or may exceed $50,000.00; or

(i) This Agreement or any other Loan Document, at any time after its execution and delivery and for any reason, ceases to be in full force and effect or shall be declared to be null and void, or the validity or enforceability of any document or instrument delivered pursuant to this Agreement shall be contested by the Borrower, any Guarantor or any party to such document or instrument or the Borrower, any Guarantor or any party to such document or instrument shall deny that it has any or further liability or obligation under any such document or instrument; or

(j) A Material Adverse Change shall have occurred with respect to the Borrower or any Guarantor;

(k) An event of default specified in any Loan Document other than this Agreement shall have occurred and be continuing; or

(l) Any injunction, whether temporary or permanent, or any instruction by the FDA, to the extent applicable, that the Borrower or Corporate Guarantor or any of its Subsidiaries cease or suspend manufacture, marketing or sale of any Product, which cessation or suspension could have a Material Adverse Change on the ability of the Borrower or the Corporate Guarantor to perform its obligations under the Loan Documents, and which such cessation or suspension lasting more than 90 consecutive calendar.

SECTION 6.02. Remedies on Default. Upon the occurrence and continuance of an Event

of Default the Bank may, by notice to the Borrower, (i) terminate the Commitment, (ii) declare the Notes, all interest thereon and all other amounts payable under this Agreement to be forthwith due and payable, whereupon the Commitment shall be terminated, the Notes, all such interest and all such amounts shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower and (ii) proceed to enforce its rights whether by suit in equity or by action at law, whether for specific performance of any covenant or agreement contained in this Agreement or any Loan Document, or in aid of the exercise of any power granted in either this Agreement or any Loan Document or proceed to obtain judgment or any other relief whatsoever appropriate to the enforcement of its rights, or proceed to enforce any other legal or equitable right which the Bank may have by reason of the occurrence of any Event of Default hereunder or under any Loan Document, provided, however, upon the occurrence of an Event of Default referred to in Section 6.01(e), the Commitment shall be immediately terminated, the Notes, all interest thereon and all other amounts payable under this Agreement shall be immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower. Any amounts collected pursuant to action taken under this Section 6.02 shall be applied to the payment of, first, any reasonable costs incurred by the Bank in taking such action, including but without limitation reasonable attorney's fees and expenses, second, to payment of the accrued interest on the Notes, and third, to payment of the unpaid principal of the Notes.

SECTION 6.03. Remedies Cumulative. No remedy conferred upon or reserved to the Bank hereunder or in any Loan Document is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Agreement or any Loan Document or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Bank to exercise any remedy reserved to it in this Article VI, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Agreement or in any Loan Document.

SECTION 6.04. Grace Provision. If the Borrower shall fail to perform any of the terms, covenants, provisions or conditions of this Agreement or any Loan Document and if the default is of such nature that it cannot be cured by the payment of a sum of money, only then the Borrower shall have a period of fifteen (15) days, where no time period is provided for performance (or such other number of days for performance as may be elsewhere provided in this Agreement or any Loan Document) to cure such default. However, if such non-monetary default cannot reasonably be cured within such fifteen (15) day period (or such other number of days for performance as may be elsewhere provided in this Agreement or any Loan Document) and the Borrower shall have commenced to cure such default within such fifteen (15) day period (or such other number of days for performance as may be elsewhere provided in this Agreement or any Loan Document) and thereafter diligently and expeditiously proceeds to cure the same, such fifteen (15) day period (or such other number of days for performance as may be elsewhere provided in this Agreement or any

Loan Document) shall be extended for so long as it shall require the Borrower, in the expeditious exercise of due diligence, to cure such default, it being understood that no extension shall be for a period beyond fifteen (15) days (i.e., sixty (60) days in the aggregate); provided, however, that the extension of the grace period provided in this sentence shall not be applicable to the delivery of any financial statements or information required pursuant to this Agreement or upon the breach of any of the provisions in Sections 5.02 and 5.03 of this Agreement.

ARTICLE VII

MISCELLANEOUS

SECTION 7.01. Amendments. Etc. Except as otherwise expressly provided in this Agreement, any provision of this Agreement may be amended or modified only by an instrument in writing signed by the Borrower, the Guarantors and the Bank, and any provision of this Agreement may be waived by the Borrower (if such provision requires performance by the Bank) or by the Bank (if such provision requires performance by the Borrower); provided that no amendment, modification or waiver shall, unless by an instrument signed by the Bank: (a) increase or extend the term of the Commitment or the Loans, (b) extend the date fixed for the payment of principal of or interest on any Loan, (c) reduce the amount of any payment of principal thereof or the rate at which interest is payable thereon or any fee payable hereunder, (d) alter the terms of this Section 7.01, (e) change the fees payable to the Bank except as otherwise provided herein, (f) permit the Borrower to transfer or assign any of its obligations hereunder or under the other Loan Documents, (g) give any payment priority to any Person (including the Bank) over amounts due in connection with the Loans, or (h) release any Collateral (other than as permitted by a security agreement). No failure on the part of the Bank to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

SECTION 7.02. Notices, Etc. Any notice or request hereunder may be given to the Borrower, the Guarantor and the Bank at their respective addresses set forth below or at such other address as may hereafter be specified in a notice designated as a notice of change of address under this Section. Any notice, request, demand, direction or other communication (for purposes of this Section 7.02 only, a "Notice") to be given to or made upon any party hereto under any provision of this Agreement shall be given or made by telephone or in writing (which includes by means of electronic transmission (i.e., "e-mail")) or by setting forth such Notice on a website to which Borrowers are directed (an "Internet Posting") if Notice of such Internet Posting (including the information necessary to access such site) has previously been delivered to the applicable parties hereto by another means set forth in this Section 7.2 in accordance with this Section 7.2. Any such Notice must be delivered to the applicable parties hereto at the addresses and numbers set forth under their respective names on Section 7.2 hereof or in accordance with any subsequent unrevoked Notice from any such party that is given in accordance with this Section 7.2.

Any Notice shall be effective:

(a) In the case of hand-delivery, when delivered;

(b) If given by mail, four (4) days after such Notice is deposited with the United States Postal Service, with first-class postage prepaid, return receipt requested;

(c) In the case of a telephonic Notice, when a party is contacted by telephone, if delivery of such telephonic Notice is confirmed no later than the next Business Day by hand delivery, an Internet Posting or an overnight courier delivery of a confirmatory Notice (received at or before noon on such next Business Day);

(d) In the case of electronic transmission, when actually received and notice by another method has become effective;

(e) In the case of an Internet Posting, upon delivery of a Notice of such posting (including the information necessary to access such site) by another means set forth in this Section 16.6; and

(f) If given by any other means (including by overnight courier), when actually received.

(i) If to the Bank at:

INVESTORS BANK

101 JFK Parkway
Short Hills, New Jersey 07078
Attention: Commercial Banking
Telephone: _____
Email:

with a copy to:

Wilentz, Goldman & Spitzer P.A.
90 Woodbridge Center Drive, Suite 900
Woodbridge, NJ 07095
Attention: Peter R. Herman, Esq.
Telephone: (732) 855- 6046
Email: pherman@wilentz.com

(ii) If to the Borrower, Corporate Guarantor or Individual Guarantor (as the case may be):

NOSTRUM LABORATORIES, INC
1370 Hamilton Street

Somerset, New Jersey 08873
Attention: Nirmal Mulye, Ph.D.
Telephone: 609-306-7862
Email: nirmal@nostrumpharma.com

Nostrum Pharmaceuticals, LLC
1370 Hamilton Street
Somerset, New Jersey 08873
Attention: Rohinton Toddywala, Ph.D.
Telephone: 908-334-0624
Email: ronnie@nostrumpharma.com

(iv) If to Individual Guarantor

Nirmal Muyle, Ph.D.

1000 Biscayne Boulevard
Miami, FL 33132
Telephone: (609) 306-7862
Email: nirmal@nostrumpharma.com

in each case, with a copy to:

Law Offices of Carlton R. Asher, Jr.
110 Est 59th Street, Suite 2200
New York, NY 10022
Attention: Carlton R. Asher, Jr.
Telephone: (212) 308-7171
Email: asherlaw@att.net

SECTION 7.03. No Waiver, Remedies. No failure on the part of the Bank to exercise, and no delay in exercising, any right, power or remedy under any Loan Document, shall operate as a waiver thereof; nor shall any single or partial exercise of any right under any Loan Document preclude any other or further exercise thereof or the exercise of any other right. The remedies provided in the Loan Documents are cumulative and not exclusive of any remedies provided by law.

SECTION 7.04. Costs, Expenses and Taxes. The Borrower agrees to pay on demand all costs and expenses of the Bank in connection with the preparation, execution, delivery and administration of this Agreement, the Notes and any other Loan Documents, including, without limitation, the fees and expenses of counsel for the Bank with respect thereto and with respect to advising the Bank as to its rights and responsibilities under this Agreement, and all costs and

expenses, if any (including counsel fees and expenses), of the Bank in connection with the enforcement of this Agreement, the Notes and any other Loan Documents. The Borrower shall at all times protect, indemnify, defend and save harmless the Bank from and against any and all claims, actions, suits and other legal proceedings, and liabilities, obligations, losses, damages, penalties, judgments, costs, expenses or disbursements which the Bank may, at any time, sustain or incur by reason of or in consequence of or arising out of the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. The Borrower acknowledges that it is the intention of the parties hereto that this Agreement shall be construed and applied to protect and indemnify the Bank against any and all risks involved in the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, all of which risks are hereby assumed by the Borrower, including, without limitation, any and all risks of the acts or omissions, whether rightful or wrongful, of any present or future de jure or de facto government or governmental authority, provided that the Borrower shall not be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Bank's gross negligence or willful misconduct. The provisions of this Section 7.04 shall survive the payment of the Notes and the termination of this Agreement.

SECTION 7.05. Right of Set-off. Upon the occurrence and during the continuance of any Event of Default, the Bank is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Bank or any Affiliates of the Bank to or for the credit or the account of the Borrower or the Corporate Guarantor against any and all of the obligations of the Borrower or the Corporate Guarantor now or hereafter existing under this Agreement and the Notes, irrespective of whether or not the Bank shall have made any demand under this Agreement or the Notes and although such obligations may be unmatured. The rights of the Bank under this Section are in addition to all other rights and remedies (including, without limitation, other rights of set-off) which the Bank may have.

SECTION 7.06. Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrower, the Guarantors and the Bank and thereafter it shall be binding upon and inure to the benefit of the Borrower, the Guarantors and the Bank and their respective successors and assigns, except that neither the Borrower nor any Guarantor shall have any right to assign its rights hereunder or any interest herein without the prior written consent of the Bank.

SECTION 7.07. Further Assurances. The Borrower and the Guarantor agree at any time and from time to time at its expense, upon request of the Bank or its counsel, to promptly execute, deliver, or obtain or cause to be executed, delivered or obtained any and all further instruments and documents and to take or cause to be taken all such other action the Bank may deem desirable in obtaining the full benefits of this Agreement or any other Loan Document.

SECTION 7.08. Section Headings, Severability, Entire Agreement. Section and subsection headings have been inserted herein for convenience only and shall not be construed as part of this Agreement. Every provision of this Agreement and each other Loan Document is

intended to be severable; if any term or provision of this Agreement, any other Loan Document, or any other document delivered in connection herewith or therewith shall be invalid, illegal or unenforceable for any reason whatsoever, the validity, legality and enforceability of the remaining provisions hereof or thereof shall not in any way be affected or impaired thereby. All exhibits and schedules to this Agreement shall be annexed hereto and shall be deemed to be part of this Agreement. This Agreement and the exhibits and schedules attached hereto embody the entire agreement and understanding between the Borrower, the Guarantors, the Bank and supersede all prior agreements and understandings relating to the subject matter hereof.

SECTION 7.09. Governing Law. This Agreement, Notes and all other Loan Documents shall be governed by, and construed in accordance with, the laws of the State of New Jersey.

SECTION 7.10. Successors and Assigns. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that the Borrower may not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Bank.

(b) The Bank may at any time grant to one or more banks or other institutions (each a "Participant") participating interests in its Commitment or any or all of its Loans. In the event of any such grant by the Bank of a participating interest to a Participant, whether or not upon notice to the Borrower, the Bank shall remain responsible for the performance of its obligations hereunder, and the Borrower shall continue to deal solely and directly with the Bank in connection with its rights and obligations under this Agreement. Any agreement pursuant to which the Bank may grant such a participating interest shall provide that the Bank shall retain the sole right and responsibility to enforce the obligations of the Borrower hereunder including, without limitation, the right to approve any amendment, modification or waiver of any provision of this Agreement; provided that such participation agreement may provide that the Bank will not agree to any modification, amendment or waiver of this Agreement described in Section 7.01 hereof without the consent of such Participant. The Borrower agrees that each Participant shall, to the extent provided in its participation agreement, be entitled to the benefits of this Article VII and Article III hereof with respect to its participating interest. An assignment or other transfer which is not permitted by subsection (c) or (d) below shall be given effect for purposes of this Agreement only to the extent of a participating interest granted in accordance with this subsection (b).

(c) The Bank may at any time assign to one or more banks or other institutions (each an "Assignee") all, or a proportionate part of all, of its rights and obligations under this Agreement and the Notes, and such Assignee shall assume such rights and obligations.

(d) The Bank may at any time assign all or any portion of its rights under this Agreement and its Note to a Federal Reserve Bank or the Federal Home Loan Bank of New York. No such assignment shall release the transferor Bank from its obligations hereunder.

(e) Borrower and the Guarantor authorizes the Bank to disclose to any transferee and any prospective transferee any and all financial information (including, without limitation, any tax returns) in the Bank's possession concerning such obligor which has been delivered to the Bank by or on behalf of such obligor pursuant to this Agreement or in connection with the Bank's credit evaluation of such obligor; subject to the Bank entering into a confidentiality agreement with such transferee or prospective transferee.

SECTION 7.11. Waiver of Jury Trial. The Borrower, the Guarantor and the Bank waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Agreement or any Loan Document.

SECTION 7.12. Anti-Terrorism Laws.

(a) The Borrower represents and warrants that (i) no Covered Entity is a Sanctioned Person and (ii) no Covered Entity, either in its own right or through any third party, (A) has any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person in violation of any Anti-Terrorism Law; (B) does business in or with, or derives any of its income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law; or (C) engages in any dealings or transactions prohibited by any Anti-Terrorism Law.

(b) The Borrower covenants and agrees that (i) no Covered Entity will become a Sanctioned Person, (ii) no Covered Entity, either in its own right or through any third party, will (A) have any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person in violation of any Anti-Terrorism Law; (B) do business in or with, or derive any of its income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law; (C) engage in any dealings or transactions prohibited by any Anti-Terrorism Law or (D) use the Revolving Credit Loans and the Term Loan to fund any operations in, finance any investments or activities in, or, make any payments to, a Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law, (iii) the funds used to repay the Obligations will not be derived from any unlawful activity, (iv) each Covered Entity shall comply with all Anti-Terrorism Laws and (v) the Borrowers shall promptly notify the Bank in writing upon the occurrence of a Reportable Compliance Event.

SECTION 7.13. Execution in Counterparts; Electronic Signatures. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. A manually signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. The Bank is also entitled to rely on all ancillary and supporting documentation delivered by electronic transmission.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

NOSTRUM LABORATORIES, INC., Borrower

By:_____
Nirmal Mulye, Ph.D.
Chairman and Chief Executive Officer

NOSTRUM PHARMACEUTICALS LLC,
Corporate Guarantor

By:_____
Nirmal Mulye, Ph.D.
President

Individual Guarantor

_____
NIRMAL MULYE, Ph.D., Individually

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :
: ss
COUNTY OF Monroe :

BE IT REMEMBERED, that on this 29 day of December, 2020, before me, the subscriber, an officer duly authorized to take acknowledgments for use in the Commonwealth of Pennsylvania, personally appeared NIRMAL MULYE, PH.D. who came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

(a) is named in and personally signed the attached document; and

(b) signed, sealed, and delivered this document as his or her act and deed.

_____
Notary Public

Commonwealth of Pennsylvania - Notary Seal
TRICIA MARIA DIAZ, Notary Public
Monroe County
My Commission Expires September 5, 2023
Commission Number 1357241

[SIGNATURE PAGE TO LOAN AGREEMENT]
[Additional Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

INVESTORS BANK

By:_____
Robert J. Christmas
Senior Vice President

ACKNOWLEDGMENT

STATE OF NEW JERSEY :
: ss
COUNTY OF _____ :

BE IT REMEMBERED, that on this __ day of December, 2020, before me, the subscriber, an officer duly authorized to take acknowledgments for use in the State of New Jersey, personally appeared ROBERT J. CHRISTMAS who came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

(a) is named in and personally signed the attached document; and

(b) signed, sealed, and delivered this document as his or her act and deed.

_____
Notary Public

[SIGNATURE PAGE TO LOAN AGREEMENT]

Schedule 4.01(a)

Subsidiaries of the Borrower and the Corporate Guarantor, setting forth with respect to each such Subsidiary, name and address, any other addresses at which it conducts business, its state of incorporation and each other jurisdiction in which it is qualified to do business and the identity and shareholdings of its stockholders.

[See the attached Excel spreadsheet]

Schedule 4.01(a)

Nostrum Pharmaceuticals,LLC ("NPLLC") & Nostrum Laboratories, Inc ("NLI") Subsidiaries- Equity Ownership

Entity	NPLLC % Ownership	Other Shareholders % Ownership	% Ownership	Business Address	State of Incorporation
Dealer Credit Services,Inc.	40%	Brittanie Greenbach	40%	112 N. 12th Street,Suite 1114 , Tampa ,Florida 33602	Florida
Gene Biotherapeutics, Inc.	80.2%	Various Other shareholders	19.8%	11230 Sorrento Valley Rd, Suite 220,San Diego, California 92121	Delaware
InspiRx,Inc.	84.42%	Various Affiliated Officers, Executives, Board Members, Advisors	15.58%	1370 Hamilton Street,Somerset, New Jersey 08873	New Jersey
Nostrum Energy, LLC	60%	2010 Mulye Family Trust (Grantor Trust)	40%	Nirmal Mulye- Grantor,1000 Biscayne Boulevard,Miami, Florida 33132	Nirmal Mulye- Grantor
Nostrum Hamilton Realty ,LLC	100%	NA	NA	1370 Hamilton Street,Somerset, New Jersey 08873	New Jersey
Nostrum Laboratories,Inc.	100%	NA	NA	1370 Hamilton Street,Somerset, New Jersey 08873	New Jersey

Nostrum Laboratories, Inc ("NLI") Subsidiaries- Equity Ownership

Entity	NLI % Ownership	Other Shareholders % Ownership	% Ownership	Business Address	
NLI Healthcare India Pvt Ltd	100%	NA	NA	Behind Mittal Estate Bldg No 5,Mumbai, Maharashtra 400059 India	India

Schedule 4.01(h)

Pending or threatened action, proceeding or investigation affecting the Borrower, any Guarantor or any Subsidiary of the Borrower or Corporate Guarantor.

In Re: Zantac (Ranitidine) Products Liability Litigation MDL, MDL No 2924, Case No, 20-MD-2924. This multi-district litigation consolidates various cases, involving product liability and related claims, for pre-trial purposes, and concerns the ranitidine medication. It is currently pending in United States District Court for the Southern District of Florida, before Hon. Robin L. Rosenberg. Nostrum Laboratories, Inc. ("Nostrum") has received a series of letter demands for indemnity from distributors and retailers, including, Cardinal Health, Publix Supermarkets, Walmart, and AmerisourceBergen, who claim to have supplied Nostrum's briefly marketed ranitidine product. The legal defense relating to this matter is being provided by the Chubb Group of Insurance Companies.

Nostrum is currently responding to a Department of Justice Civil Investigative Demand ("CID"), which requests basic documents and information regarding a pending dispute between the Centers for Medicare & Medicaid Services and Nostrum, regarding one of Nostrum's products, Nitrofurantoin Oral Suspension ("Nitro OS"). This CID was issued pursuant to the False Claims Act, 31 U.S.C. §§ 3729-3733, and concerns allegations that Nostrum knowingly underpaid Medicaid rebate amounts owed due to Nostrum's participation in the Medicaid Drug Rebate Program for the drug Nitro OS, in violation of the False Claims Act.

Schedule 4.01(bb)

Notice from the FDA, the Office of the Inspector General of HHS, or the United States Department of Justice has commenced or threatened to initiate any action against Borrower or Corporate Guarantor, of any action to enjoin Borrower, Corporate Guarantor, or its officers, directors, employees, shareholders, or their agents and affiliates, from conducting their businesses.

None

Schedule 4.01(cc)

Warning letters, Form 483, "Untitled Letter," other correspondence or notice of objectionable observations or alleged violations of laws and regulations enforced by the FDA or DEA since April 3, 2016.

None

Schedule 4.01(dd)

Recalls or other forms of product retrievals from the marketplace.

Since January 1, 2016 there were no FDA or other Recalls mandated by a Governmental Body. The Borrower did withdraw the following three Products from the market on a voluntary basis.

Recall D-1059-2020

- Product Name: Theophylline ER Tablets 400mg
- Lot Recalled: THE190501
- Packaging Presentation: 100 count bottle
- This recall was initiated because a rejected batch was compressed, packaged and labeled with an incorrect lot number
- Status of Product in Distribution: Material was returned to our facility and was destroyed by a reverse distributor
- Dates of Recall: Initiation 3/16/2020 Termination: Requested 6/23/2020
- Investigation Number: INV20-0004

Recall D-0067-2021

Product Name: Metformin HCL ER Tablet USP

Lots Recalled:

Metformin HCl ER Tablet USP 750 mg: MET200101 and MET200301

Metformin HCl ER Tablet USP 500 mg: MET100201 and MET100401

- Packaging Presentation: 100 count bottle
- This recall was initiated because testing of NDMA in packaged product exceeded the acceptable intake level of 96ng/day on recalled batches
- Status of Product in Distribution: Recall is active
- Dates of Recall: Initiation 10/23/2020 Recall Status is active
- Investigation Number: INV20-0023

Recall D-0473-2018

Product Name: Calcium Acetate Capsules

Lot Recalled: CAL173502

Packaging Presentation: 200 count bottle

- This recall was initiated because a bottle of calcium acetate contained one tablet of venlafaxine in it.
- Status of Product in Distribution: Recall is closed
- Dates of Recall: Initiation 02/2018 Recall Status is closed
- Investigation Number: PC18-005

Schedule 4.01(ee)

Non-compliance with (a) the Federal Health Care Program requirements applicable to Borrower and Corporate Guarantor, and (b) federal and state reporting obligations applicable to Borrower or Corporate Guarantor, relating to sales and marketing to healthcare professionals or any price reporting obligations, etc.

None.

Schedule 5.02

List of all credit agreements, guaranties, Capital Leases, and other agreements and arrangements providing for or relating to (a) extensions of credit, (b) Liens and (c) existing Debt.

[See the attachements]

(a) Extensions of Credit

Nostrum Laboratories, Inc.
Schedule 5.02

Sr. No	Creditor	Nature of Agreement	Amount of Credit	Liens Securing Credit	Principal Outstanding	Property Subject to Lien
1	Leaf Capital Funding LLC	Equipment Finance	$ 126,725	$ 126,725	$ 10,179	O'Hara Labcoat M10 Tablet Coating System
2	Leaf Capital Funding LLC	Equipment Finance	$ 83,830	$ 83,830	$ 11,962	G140 capsule Filler Change Parts
3	M-Theory 1 (Royal Bank America Leasing L.P.	Equipment Finance	$ 110,677	$ 110,677	$ 16,050	460 Vac System
4	Commercial Capital Company LLC	Equipment Finance	$ 230,000	$ 230,000	$ 42,005	Kilian Synthesis 500
5	EMC/De Lage Landen Financial Services, Inc	Equipment Finance	$ 532,554	$ 532,554	$ 126,671	Network upgrade components
6	Commercial Capital Company LLC	Equipment Finance	$ 176,571	$ 176,571	$ 38,245	Videojet Imprints Serialization Upgrade Kit for syn500 707290
7	Commercial Capital Company LLC	Equipment Finance	$ 246,554	$ 246,554	$ 75,645	ICP-OES with Chiller, IQ/OQ/PQ, on-site training & Consumables Inline Centrifugal 6" duct fan molded Housing/two brakets Two Pipetter with tips 2 Switching Valve- one for torch, one for purge Spetrum Two FTIR & TGA 4000 Multiwave Pro 60hz package 24HVT50 & ROTOR 8 NXF100
8	Commercial Capital Company LLC	Equipment Finance	$ 58,995	$ 58,995	$ 29,555	ICH-G1HD 10 x18 Stability Chamber
9	Commercial Capital Company LLC	Equipment Finance	$ 419,320	$ 419,320	$ 219,737	Videojet Imprints Serialization Solution
10	Commercial Capital Company LLC	Equipment Finance	$ 76,154	$ 76,154	$ 39,939	CMX Professional Floating Server- calibration
11	Mercedes-Benz Financial Services	Auto Loan	$ 51,676	$ 51,676	$ 26,207	Auto C300W4 SN: 55SWF4KB0JU263699
12	Commercial Capital Company LLC	Equipment Finance	$ 380,315	$ 380,315	$ 242,779	Seyono Model SM-600 High SpeedShear-Granulator
13	Commercial Capital Company LLC	Equipment Finance	$ 37,500	$ 37,500	$ 14,775	Fryma VME-50 with all accessories
14	Commercial Capital Company LLC	Equipment Finance	$ 87,079	$ 87,079	$ 59,692	Kaye Labwatch Pro Monitoring System
15	Commercial Capital Company LLC	Equipment Finance	$ 19,929	$ 19,929	$ 13,469	Compressor Change Out
16	GE HFS, LLC	Equipment Finance	$ 188,678	$ 188,678	$ 138,594	SP Sepharose Fast Flow AKTA Pilot System Tricorn 10/200 Column
17	Commercial Capital Company LLC	Equipment Finance	$ 57,838	$ 57,838	$ 39,653	Cam Track Synthesis 500
18	Commercial Capital Company LLC	Equipment Finance	$ 76,235	$ 76,235	$ 51,072	Mini DeBee 30 High Pressure Homogenizer
19	Commercial Capital Company LLC	Equipment Finance	$ 35,770	$ 35,770	$ 15,134	Software
20	Commercial Capital Company LLC	Equipment Finance	$ 203,065	$ 203,065	$ 142,233	Drying Machine Fitzpatrick Roller Compactor Granulation stack
21	Commercial Capital Company LLC	Equipment Finance	$ 70,200	$ 70,200	$ 58,616	Feblech Technologies Modular Clean Room panels
22	HPEFS	Equipment Finance	$ 118,780	$ 118,780	$ 48,928	StorageCraft
23	Commercial Capital Company LLC	Equipment Finance	$ 327,760	$ 327,760	$ 213,682	(2) 400 Ton Carrier Chiller
24	Mercedes-Benz Financial Services	Auto Loan	$ 66,064	$ 66,064	$ 50,049	Auto 2020 4JGFB4KB7LA056191
25	Mercedes-Benz Financial Services	Auto Loan	$ 61,490	$ 61,490	$ 51,240	Auto 2020 GLC300W4 WDC0G8EB0LF738798
26	Lamborghini Financial Services	Auto Loan	$ 233,770	$ 233,770	$ 205,065	ZPBUA1ZL4LLA08020
27	Onset Financial Inc	Equipment Finance	$ 363,946	$ 363,946	$ 298,879	Tablet Press
28	Commercial Capital Company LLC	Equipment Finance	$ 1,129,191	$ 1,129,191	$ 982,908	Tablet Coater
29	Commercial Capital Company LLC	Equipment Finance	$ 698,984	$ 698,984	$ 647,752	Upgrades G140-8148
30	Bank of America	Equipment Finance	$ 1,068,688	$ 1,068,688	$ 1,018,629	I20 Check Weighers 7 (2) Tablet Capsule Filing Lines
31	Bank of America	Equipment Finance	$ 430,861	$ 430,861	$ 410,678	Phase 1 new server for 6 LC's 1290 HPLC Refurished 1260 HPLC's
32	Bank of America	Equipment Finance	$ 275,889	$ 275,889	$ 271,592	Fette 3200i Tablet Press De-Duster Checker UPLC System (Ohio)
33	Bank of America	Equipment Finance	$ 1,227,885	$ 1,227,885	$ 1,227,885	3090 Tablet Press w/ 61 station "B" turret 551676 Thermo Scientific Q Mass Spectrometer w/Dionex Ultimate 3000 UPLC UV Light System PM-1000 Blender
34	Waterford Bank	Term Loan	$ 150,000	$ 150,000	$ 134,293	Roof Refurbishment
35	Waterford Bank	Construction & Permanent Loan	$ 1,500,000	$ 1,500,000	$ 1,497,388	Construction & Permanent Note - Warehouse Expansion
36	Waterford Bank	Open-End Mortgage	$ 350,000	$ 350,000		Building (not utilized yet)
37	Wells Fargo Bank	Auto Loan	$ 33,906	$ 33,906	$ 16,856	Auto 2017 Chev Malibu Hybrid
38	Bank Of India	Line of Credit	$ 6,000,000	$ 6,000,000	$ 5,983,254	Account Receivable, Inventory, Fixed Assets
39	Mylan Pharmaceuticals, LLC	APA	$ 4,000,000	$ 4,000,000	$ 4,000,000	Sucralfate Tab 1g, 100/500cnt (ANDA # 074415) Theophylline ER Tab 400 & 600mg (ANDA # 040560) Piroxcam Cap 10/20mg (ANDA # 074116) Carbamazepine ER Cap 100/200/300mg (ANDA# 076697)
40	Mylan Pharmaceuticals, LLC	Settlement Agreement	$ 10,000,000	$ 10,000,000	$ 10,000,000	Sucralfate Tab 1g, 100/500cnt (ANDA # 074415) Theophylline ER Tab 400 & 600mg (ANDA # 040560) Piroxcam Cap 10/20mg (ANDA # 074116) Carbamazepine ER Cap 100/200/300mg (ANDA# 076697)
	Total		$ 31,306,881	$ 31,306,881	$ 26,473,319	

NOSTRUM LABORATORIES INC.
NOSTRUM PHARMACEUTICALS, LLC
NIRMAL MUYLE

(b) Existing Liens and Security Interests

Debtor	Secured Party	UCC Filing Number/ Filing Date	Collateral
Nirmal Muyle Patriot Act Search (FL SOS)	No Records.		
Nostrum Laboratories Inc. [1]	Hitachi Capital America Corp.	51604875 3/29/2016	Items of personal property leased pursuant to Lease Agreement including equipment.
Nostrum Laboratories Inc.	Commercial Capital Company, LLC Corefirst Bank & Trust	53801542 1/14/2020	Specific leased equipment.
Nostrum Laboratories Inc.	Bank of America, N.A.	54268203 6/26/2020	Specific leased equipment.
Nostrum Laboratories Inc.	Leaf Capital Funding, LLC and/or Its Assigns	51576622 3/10/2016	Specific equipment. Collateral change relating to items of equipment.
Nostrum Laboratories Inc.	Wells Fargo Vendor Financial Services, LLC	52796193 5/23/2018	Specific leased equipment.
Nostrum Laboratories Inc.	Western Equipment Finance, Inc.	51811082 8/9/2016	Specific equipment.

[1] Search results from New Jersey Department of Treasury.

Debtor	**Secured Party**	**UCC Filing Number/ Filing Date**	**Collateral**
Nostrum Laboratories Inc.	Community First Bank Commercial Capital Company, LLC and/or Its Assigns	52340482 7/31/2017	Specific equipment.
Nostrum Laboratories Inc.	Corefirst Bank Commercial Capital Company LLC	52842405 6/18/2018	Specific leased equipment.
Nostrum Laboratories Inc.	Royal Bank America Leasing, LP	51732644 6/17/2016	Specific equipment.
Nostrum Laboratories Inc.	Community First Bank Commercial Capital Company, LLC	53146731 12/18/2018	Specific leased equipment.
Nostrum Laboratories Inc.	Bank of America, N.A.	54268210 6/26/2020	Specific equipment.
Nostrum Laboratories Inc.	GE HFS, LLC	52905256 7/23/2018	Specific equipment.
Nostrum Laboratories Inc.	DE Lage Landen Financial Services, Inc.	51808822 8/8/2016	Specific equipment. Collateral change relating to items of equipment.
Nostrum Laboratories Inc.	Commercial Capital Company LLC Community First Bank	53834283 2/4/2020	Specific equipment.
Nostrum Laboratories Inc.	Bank of America, N.A.	54737554 8/31/2020	Specific equipment.

Debtor	**Secured Party**	**UCC Filing Number/ Filing Date**	**Collateral**
Nostrum Laboratories Inc.	Commercial Capital Company, LLC and/or Its Assigns	52354801 8/9/2017	Specific equipment. Assigned to Community First Bank.
Nostrum Laboratories Inc.	Community First Bank Commercial Capital Company, LLC	53149103 12/19/2018	Specific equipment.
Nostrum Laboratories Inc.	Bank of America, N.A.	54840153 10/15/2020	Specific equipment.
Nostrum Laboratories Inc.	Corporation Service Company, as Representative First Guaranty Bank	53855161 2/13/2020	Specific leased equipment. Assigned to First Guaranty Bank. Restated Collateral.
Nostrum Laboratories Inc.	Mylan Pharmaceuticals Inc.	53728861 12/3/2019	List of abbreviated new drug applications.
Nostrum Laboratories Inc.	Community First Bank Commercial Capital Company, LLC	52649484 2/22/2018	Specific leased equipment.
Nostrum Laboratories Inc.	Community First Bank Commercial Capital Company, LLC	53266644 3/8/2019	Specific equipment.
Nostrum Laboratories Inc.	Leaf Capital Funding, LLC and/or Its Assigns	51632133 4/14/2016	Specific equipment.
Nostrum Laboratories Inc.	Corefirst Bank & Trust Commercial Capital Company, LLC Community First Bank	53801463 1/14/2020	Specific leased equipment. Added party – Corefirst Bank & Trust.

Debtor	**Secured Party**	**UCC Filing Number/ Filing Date**	**Collateral**
Nostrum Laboratories Inc.	Commercial Capital Company, LLC Community First Bank	52649497 2/22/2018	Specific leased equipment.
Nostrum Laboratories Inc.	Canon Financial Services, Inc.	53193995 1/18/2019	Specific leased equipment.
Nostrum Laboratories Inc.	Community First Bank Commercial Capital Company, LLC	53333881 4/16/2019	Specific leased equipment.
Nostrum Laboratories Inc.	Western Equipment Finance, Inc.	51901295 10/11/2016	Specific equipment.
Nostrum Laboratories Inc.	NBKC Bank	51830582 8/23/2016	Specific leased equipment.
Nostrum Laboratories Inc.	Commercial Capital Company, LLC Community First Bank	53146762 12/18/2018	Specific leased equipment.
Nostrum Pharmaceuticals, LLC [2]	Americorp Financial, LLC Leaf Capital Funding, LLC	20197956175 11/12/2019	Specific equipment. Assigned to Leaf Capital Funding, LLC
Nostrum Pharmaceuticals, LLC	Thermo Fisher Financial Services, Inc.	20201711029 3/9/2020	Specific leased equipment.

[2] Search results from Delaware Secretary of State.

Debtor	**Secured Party**	**UCC Filing Number/ Filing Date**	**Collateral**
Nostrum Pharmaceuticals, LLC	Thermo Fisher Financial Services, Inc.	202004531556 6/30/2020	Specific equipment.

(c) Existing Debt

Nostrum Laboratories, Inc.
Schedule 5.02

Sr. No	Creditor	Nature of Agreement	Amount of Credit	Liens Securing Credit	Principal Outstanding	Property Subject to Lien
1	Leaf Capital Funding LLC	Equipment Finance	$ 126,725	$ 126,725	$ 10,179	O'Hara Labcoat M10 Tablet Coating System
2	Leaf Capital Funding LLC	Equipment Finance	$ 83,830	$ 83,830	$ 11,962	G140 capsule Filler Change Parts
3	M-Theory 1 (Royal Bank America Leasing L P	Equipment Finance	$ 110,877	$ 110,877	$ 15,050	460 Vac System
4	Commercial Capital Company LLC	Equipment Finance	$ 230,000	$ 230,000	$ 42,005	Kilian Synthesis 500
5	EMC/De Lage Landen Financial Services, Inc	Equipment Finance	$ 532,554	$ 532,554	$ 128,671	Network upgrade components
6	Commercial Capital Company LLC	Equipment Finance	$ 176,571	$ 176,571	$ 36,245	Videojet Imprints Serialization Upgrade Kit for sym500 707290
7	Commercial Capital Company LLC	Equipment Finance	$ 246,554	$ 246,554	$ 75,645	ICP-OES with Chiller, IQ/OQ/PQ, on-site training & Consumables Inline Centrifugal 6" duct fan molded Housing/two brakets Two Pipetter with tips 2 Switching Valve- one for torch, one for purge Spetrum Two FTIR & TGA 4000 Multiwave Pro 60hz package 24HVT50 & ROTOR 8 NXF100
8	Commercial Capital Company LLC	Equipment Finance	$ 58,995	$ 58,995	$ 29,555	ICH-G1HD 10 x18 Stability Chamber
9	Commercial Capital Company LLC	Equipment Finance	$ 419,320	$ 419,320	$ 219,737	Videojet Imprints Serialization Solution
10	Commercial Capital Company LLC	Equipment Finance	$ 78,154	$ 78,154	$ 39,959	CMX Professional Floating Server- calibration
11	Mercedes-Benz Financial Services	Auto Loan	$ 51,678	$ 51,678	$ 26,207	Auto C300W4 SN: 55SWF4KB0JU263699
12	Commercial Capital Company LLC	Equipment Finance	$ 380,315	$ 380,315	$ 242,779	Sesona Model SM-600 High SpeedShear-Granulator
13	Commercial Capital Company LLC	Equipment Finance	$ 37,500	$ 37,500	$ 14,775	Fryma VME-50 with all accessories
14	Commercial Capital Company LLC	Equipment Finance	$ 87,079	$ 87,079	$ 59,692	Kaye Labwatch Pro Monitoring System
15	Commercial Capital Company LLC	Equipment Finance	$ 19,929	$ 19,929	$ 13,469	Compressor Change Out
16	GE HFS, LLC	Equipment Finance	$ 188,678	$ 188,678	$ 138,594	SP Sepharose Fast Flow AKTA Pilot System Tricorn 10/200 Column
17	Commercial Capital Company LLC	Equipment Finance	$ 57,838	$ 57,838	$ 39,653	Cam Track Synthesis 500
18	Commercial Capital Company LLC	Equipment Finance	$ 76,235	$ 76,235	$ 51,072	Mini DeBee 30 High Pressure Homogenizer
19	Commercial Capital Company LLC	Equipment Finance	$ 35,770	$ 35,770	$ 15,134	Software
20	Commercial Capital Company LLC	Equipment Finance	$ 203,065	$ 203,065	$ 142,233	Drilling Machine Fitzpatrick Roller Compactor Granulation stack
21	Commercial Capital Company LLC	Equipment Finance	$ 70,200	$ 70,200	$ 58,616	Feltech Technologies Modular Clean Room panels
22	HPEFS	Equipment Finance	$ 118,780	$ 118,780	$ 48,928	StorageCraft
23	Commercial Capital Company LLC	Equipment Finance	$ 327,760	$ 327,760	$ 213,682	(2) 400 Ton Carrier Chiller
24	Mercedes-Benz Financial Services	Auto Loan	$ 66,064	$ 66,064	$ 50,049	Auto 2020 4JGFB4KB7LA058191
25	Mercedes-Benz Financial Services	Auto Loan	$ 61,490	$ 61,490	$ 51,240	Auto 2020 GLC300W4 WDC0G8EB0LF738798
26	Lamborghini Financial Services	Auto Loan	$ 233,770	$ 233,770	$ 205,065	ZPBUA1ZL4LLA08020
27	Onset Financial Inc	Equipment Finance	$ 363,946	$ 363,946	$ 298,879	Tablet Press
28	Commercial Capital Company LLC	Equipment Finance	$ 1,129,191	$ 1,129,191	$ 982,908	Tablet Coater
29	Commercial Capital Company LLC	Equipment Finance	$ 698,984	$ 698,984	$ 647,752	Upgrades G140-6148
30	Bank of America	Equipment Finance	$ 1,068,668	$ 1,068,668	$ 1,018,629	(20 Check Weighers 7 (2) Tablet Capsule Filling Lines
31	Bank of America	Equipment Finance	$ 430,861	$ 430,861	$ 410,678	Phase 1 new server for 8 LC's 1290 HPLC Refurshed 1260 HPLC's
32	Bank of America	Equipment Finance	$ 275,889	$ 275,889	$ 271,592	Fette 3200i Tablet Press De-Duster Checker UPLC System (Ohio)
33	Bank of America	Equipment Finance	$ 1,227,885	$ 1,227,885	$ 1,227,885	3090 Tablet Press w/ 61 station "B" turret 551878 Thermo Scientific Q Mass Spectrometer w/Dionex Ultimate 3000 UPLC UV Light System PM-1000 Blender
34	Waterford Bank	Term Loan	$ 150,000	$ 150,000	$ 134,293	Roof Refurbishment
35	Waterford Bank	Construction & Permanent Loan	$ 1,500,000	$ 1,500,000	$ 1,497,388	Construction & Permanent Note - Warehouse Expansion
36	Waterford Bank	Open-End Mortgage	$ 350,000	$ 350,000		Building (not utilized yet)
37	Wells Fargo Bank	Auto Loan	$ 33,906	$ 33,906	$ 16,866	Auto 2017 Chev Malibu Hybrid
38	Bank Of India	Line of Credit	$ 6,000,000	$ 6,000,000	$ 5,983,254	Account Receivable, Inventory, Fixed Assets
39	Mylan Pharmaceuticals, LLC	APA	$ 4,000,000	$ 4,000,000	$ 4,000,000	Sucralfate Tab 1g, 100/500cnt (ANDA # 074415) Theophylline ER Tab 400 & 600mg (ANDA # 040560) Piroxcam Cap 10/20mg (ANDA # 074116) Carbamazepine ER Cap 100/200/300mg (ANDA# 076697)
40	Mylan Pharmaceuticals, LLC	Settlement Agreement	$ 10,000,000	$ 10,000,000	$ 10,000,000	Sucralfate Tab 1g, 100/500cnt (ANDA # 074415) Theophylline ER Tab 400 & 600mg (ANDA # 040560) Piroxcam Cap 10/20mg (ANDA # 074116) Carbamazepine ER Cap 100/200/300mg (ANDA# 076697)
	Total		$ 31,306,881	$ 31,306,881	$ 28,473,319	

EXHIBIT A

REVOLVING CREDIT NOTE

$12,000,000 December 31, 2020

FOR VALUE RECEIVED, on the Revolving Loan Maturity Date, NOSTRUM LABORATORIES, INC., a New Jersey corporation, having its principal place of business at 1370 Hamilton Street, Somerset, New Jersey 08873 ("Borrower"), promises to pay to the order of INVESTORS BANK ("Bank") at the office of the Bank located at 101 JFK Parkway, Short Hills, New Jersey 07078, the principal sum of the lesser of: (a) TWELVE MILLION DOLLARS ($12,000,000); or (b) the aggregate unpaid principal amount of all Revolving Credit Loans made by Bank to Borrower pursuant to the Agreement (as defined below).

Borrower shall pay interest on the unpaid principal balance of this Note from time to time outstanding, at said office, at the rates of interest, at the times and for the periods set forth in the Agreement.

All payments including prepayments on this Note shall be made in lawful money of the United States of America in immediately available funds. Except as otherwise provided in the Agreement, if a payment becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day, and interest shall be payable thereon at the rate herein specified during such extension.

Borrower hereby authorizes Bank to enter from time to time the amount of each Loan to Borrower and the amount of each payment on a Loan on the schedule annexed hereto and made a part hereof. Failure of Bank to record such information on such schedule shall not in any way effect the obligation of Borrower to pay any amount due under this Note.

This Note is the Revolving Credit Note referred to in that certain Loan Agreement among Borrower, certain Guarantors and the Bank of even date herewith (the "Agreement"), as such Agreement may be amended from time to time, and is subject to prepayment and its maturity is subject to acceleration upon the terms contained in said Agreement. All capitalized terms used in this Note and not defined herein shall have the meanings given them in the Agreement.

If any action or proceeding be commenced to collect this Note or enforce any of its provisions, Borrower further agrees to pay all costs and expenses of such action or proceeding and reasonable attorneys' fees and expenses and further expressly waives any and every right to interpose any counterclaim in any such action or proceeding. Borrower hereby submits to the jurisdiction of the Superior Court of the State of New Jersey and agrees with Bank that personal jurisdiction over Borrower shall rest with the Superior Court of the State of New Jersey for purposes of any action on

or related to this Note, the liabilities, or the enforcement of either or all of the same. Borrower hereby waives personal service by manual delivery and agrees that service of process may be made by certified mail, return receipt requested, directed to the Borrower at the Borrower's address set forth above or at such other address as may be designated in writing by the Borrower to Bank in accordance with Section 7.02 of the Agreement, and that upon mailing of such process such service shall be effective with the same effect as though personally served.

Borrower hereby expressly waives any and every right to a trial by jury in any action on or related to this Note, the liabilities hereunder or the enforcement of either or all of the same.

Subject to the provisions of the Agreement, Bank may transfer this Note to a transferee or transferees, who shall thereupon become vested with all the powers and rights above given to Bank in respect thereto, and Bank shall thereafter be forever relieved and fully discharged from any liability or responsibility with respect to any matters occurring after the date of such transfer. The failure of any holder of this Note to insist upon strict performance of each and/or all of the terms and conditions hereof shall not be construed or deemed to be a waiver of any such term or condition.

Borrower and all endorsers and guarantors hereof waive presentment and demand for payment, notice of non-payment, protest, and notice of protest.

This Note shall be construed in accordance with and governed by the laws of the State of New Jersey.

[Signature Page to Follow]

IN WITNESS WHEREOF, the party hereto have caused this Note to be executed by its respective officer thereunto duly authorized, as of the date first above written.

NOSTRUM LABORATORIES, INC.

By: _____
Nirmal Mulye, Ph.D.
Chairman and Chief Executive Officer

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :
: ss
COUNTY OF Monroe :

BE IT REMEMBERED, that on this 29 day of December, 2020, before me, the subscriber, an officer duly authorized to take acknowledgments for use in the Commonwealth of Pennsylvania, personally appeared NIRMAL MULYE, PH.D. who came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

(a) is named in and personally signed the attached document; and

(b) signed, sealed, and delivered this document as his or her act and deed.

_____
Notary Public

Commonwealth of Pennsylvania - Notary Seal
TRICIA MARIA DIAZ, Notary Public
Monroe County
My Commission Expires September 5, 2023
Commission Number 1357241

[SIGNATURE PAGE TO REVOLVING CREDIT NOTE]

Schedule of Revolving Credit Loans

Making Date	Amount of Loan	Amount of Principal Paid or Prepaid	Unpaid Principal Balance	Name of Person Making Notation

EXHIBIT B

TERM LOAN NOTE

$5,000,000 December 31, 2020

FOR VALUE RECEIVED, NOSTRUM LABORATORIES, INC., a New Jersey corporation, having its principal place of business at 1370 Hamilton Street, Somerset, New Jersey 08873 ("Borrower"), promises to pay to the order of INVESTORS BANK ("Bank") at the office of the Bank located at 101 JFK Parkway, Short Hills, New Jersey 07078, the principal sum of FIVE MILLION DOLLARS ($5,000,000.00).

Borrower shall pay interest on the unpaid balance of this Note from time to time outstanding at said office, at the rates of interest, at the times and for the periods as set forth in the Agreement (as defined below).

Borrower shall pay the principal balance of this Note from time to time outstanding in the manner set forth in the Agreement (as defined below).

All payments including prepayments on this Term Loan Note shall be made in lawful money of the United States of America in immediately available funds. Except as otherwise provided in the Agreement, if a payment becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day, and interest shall be payable thereon at the rate herein specified during such extension.

This Term Loan Note is the Term Loan Note referred to in that certain Loan Agreement among Borrower, certain Guarantors and Investors Bank of even date herewith (the "Agreement"), as such Agreement may be amended from time to time, and is subject to prepayment and its maturity is subject to acceleration upon the terms contained in said Agreement. All capitalized terms used in this Term Loan Note and not defined herein shall have the meanings given them in the Agreement.

If any action or proceeding be commenced to collect this Term Loan Note or enforce any of its provisions, Borrower further agrees to pay all costs and expenses of such action or proceeding and reasonable attorneys' fees and expenses and further expressly waives any and every right to interpose any counterclaim in any such action or proceeding. Borrower hereby submits to the jurisdiction of the Superior Court of the State of New Jersey and agrees with Bank that personal jurisdiction over Borrower shall rest with the Superior Court of the State of New Jersey for purposes of any action on or related to this Term Loan Note, the liabilities, or the enforcement of either or all of the same. Borrower hereby waives personal service by manual delivery and agrees that service of process may be made by post-paid certified mail, return receipt requested, directed to Borrower at Borrower's address designated in the Agreement or at such other address as may be designated in

writing by Borrower to Bank in accordance with Section 7.02 of the Agreement, and that upon mailing of such process such service be effective with the same effect as though personally served.

Borrower hereby expressly waives any and every right to a trial by jury in any action on or related to this Term Loan Note, the liabilities or the enforcement of either or all of the same.

Subject to the provisions of the Agreement, Bank may transfer this Term Loan Note and may deliver the security or any part thereof to the transferee or transferees, who shall thereupon become vested with all the powers and rights above given to Bank in respect thereto, and Bank shall thereafter be forever relieved and fully discharged from any liability or responsibility in the matter. The failure of any holder of this Term Loan Note to insist upon strict performance of each and/or all of the terms and conditions hereof shall not be construed or deemed to be a waiver of any such term or condition.

Borrower and all endorsers and Guarantors hereof waive presentment and demand for payment, notice of non-payment, protest, and notice of protest.

This Term Loan Note shall be construed in accordance with and governed by the laws of the State of New Jersey.

[Signature Page to Follow]

IN WITNESS WHEREOF, the party hereto have caused this Note to be executed by its respective officer thereunto duly authorized, as of the date first above written.

NOSTRUM LABORATORIES, INC.

By: _____
Nirmal Mulye, Ph.D.
Chairman and Chief Executive Officer

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :
: ss
COUNTY OF Monroe :

BE IT REMEMBERED, that on this 29 day of December, 2020, before me, the subscriber, an officer duly authorized to take acknowledgments for use in the Commonwealth of Pennsylvania, personally appeared NIRMAL MULYE, PH.D. who came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

(a) is named in and personally signed the attached document; and

(b) signed, sealed, and delivered this document as his or her act and deed.

_____
Notary Public

Commonwealth of Pennsylvania - Notary Seal
TRICIA MARIA DIAZ, Notary Public
Monroe County
My Commission Expires September 5, 2023
Commission Number 1357241

[SIGNATURE PAGE TO TERM LOAN NOTE]

EXHIBIT C

LINE OF CREDIT/TERM LOAN NOTE

$5,000,000 December 31, 2020

FOR VALUE RECEIVED, NOSTRUM LABORATORIES, INC., a New Jersey corporation, having its principal place of business at 1370 Hamilton Street, Somerset, New Jersey 08873 ("Borrower"), promises to pay to the order of INVESTORS BANK ("Bank") at the office of the Bank located at 101 JFK Parkway, Short Hills, New Jersey 07078, the principal sum of FIVE MILLION DOLLARS ($5,000,000.00).

Borrower shall pay interest on the unpaid balance of this Note from time to time outstanding at said office, at the rates of interest, at the times and for the periods as set forth in the Agreement (as defined below).

Borrower shall pay the principal balance of this Note from time to time outstanding in the manner set forth in the Agreement (as defined below).

All payments including prepayments on this Line of Credit/Term Loan Note shall be made in lawful money of the United States of America in immediately available funds. Except as otherwise provided in the Agreement, if a payment becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day, and interest shall be payable thereon at the rate herein specified during such extension.

This Line of Credit/Term Loan Note is the Line of Credit/Term Loan Note referred to in that certain Loan Agreement among Borrower, certain Guarantors and Investors Bank of even date herewith (the "Agreement"), as such Agreement may be amended from time to time, and is subject to prepayment and its maturity is subject to acceleration upon the terms contained in said Agreement. All capitalized terms used in this Line of Credit/Term Loan Note and not defined herein shall have the meanings given them in the Agreement.

If any action or proceeding be commenced to collect this Line of Credit/Term Loan Note or enforce any of its provisions, Borrower further agrees to pay all costs and expenses of such action or proceeding and reasonable attorneys' fees and expenses and further expressly waives any and every right to interpose any counterclaim in any such action or proceeding. Borrower hereby submits to the jurisdiction of the Superior Court of the State of New Jersey and agrees with Bank that personal jurisdiction over Borrower shall rest with the Superior Court of the State of New Jersey for purposes of any action on or related to this Line of Credit/Term Loan Note, the liabilities, or the enforcement of either or all of the same. Borrower hereby waives personal service by manual delivery and agrees that service of process may be made by post-paid certified mail, return receipt requested, directed to Borrower at Borrower's address designated in the Agreement or at such other

address as may be designated in writing by Borrower to Bank in accordance with Section 7.02 of the Agreement, and that upon mailing of such process such service be effective with the same effect as though personally served.

Borrower hereby expressly waives any and every right to a trial by jury in any action on or related to this Line of Credit/Term Loan Note, the liabilities or the enforcement of either or all of the same.

Subject to the provisions of the Agreement, Bank may transfer this Line of Credit/Term Loan Note and may deliver the security or any part thereof to the transferee or transferees, who shall thereupon become vested with all the powers and rights above given to Bank in respect thereto, and Bank shall thereafter be forever relieved and fully discharged from any liability or responsibility in the matter. The failure of any holder of this Line of Credit/Term Loan Note to insist upon strict performance of each and/or all of the terms and conditions hereof shall not be construed or deemed to be a waiver of any such term or condition.

Borrower and all endorsers and Guarantors hereof waive presentment and demand for payment, notice of non-payment, protest, and notice of protest.

This Line of Credit/Term Loan Note shall be construed in accordance with and governed by the laws of the State of New Jersey.

[Signature Page to Follow]

IN WITNESS WHEREOF, the party hereto have caused this Note to be executed by its respective officer thereunto duly authorized, as of the date first above written.

NOSTRUM LABORATORIES, INC.

By: _____
Nirmal Mulye, Ph.D.
Chairman and Chief Executive Officer

ACKNOWLEDGEMENT

COMMONWEALTH OF PENNSYLVANIA :
: ss
COUNTY OF Monroe :

BE IT REMEMBERED, that on this 29 day of December, 2020, before me, the subscriber, an officer duly authorized to take acknowledgments for use in the Commonwealth of Pennsylvania, personally appeared NIRMAL MULYE, PH.D. who came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

(a) is named in and personally signed the attached document; and

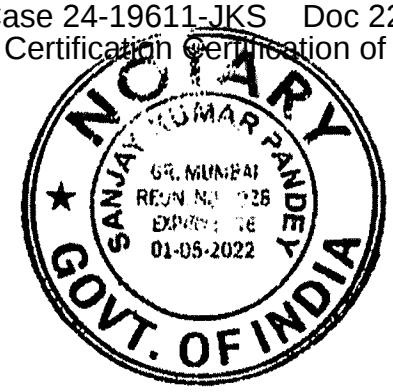
(b) signed, sealed, and delivered this document as his or her act and deed.

_____
Notary Public

Commonwealth of Pennsylvania - Notary Seal
TRICIA MARIA DIAZ, Notary Public
Monroe County
My Commission Expires September 5, 2023
Commission Number 1357241

[SIGNATURE PAGE TO LINE OF CREDIT/TERM LOAN NOTE]

EXHIBIT A-2



FIRST AMENDMENT TO LOAN AGREEMENT

This First Amendment to Loan Agreement made as of the 29th day of June, 2021 by and among **NOSTRUM LABORATORIES, INC.**, a New Jersey corporation, having an office at 1370 Hamilton Street, Somerset, New Jersey 08873 ("Borrower"), **NOSTRUM PHARMACEUTICALS LLC**, a Delaware limited liability company, having an office at 1370 Hamilton Street, Somerset, New Jersey 08873 ("Corporate Guarantor"), **NIRMAL MULYE**, residing at 1000 Biscayne Boulevard, Miami, Florida 33132 ("Individual Guarantor;", together with Corporate Guarantor, "Guarantors") and **INVESTORS BANK**, a New Jersey commercial chartered bank having an address of 101 JFK Parkway, Short Hills, New Jersey 07078 ("Bank"), hereby agree as follows:

WITNESETH:

WHEREAS, Bank, Borrower and Guarantors previously entered into commercial lending arrangements in accordance with the terms and conditions of a certain Loan Agreement dated December 31, 2020 (the "Agreement"), pursuant to which Bank has extended certain credit facilities to Borrower.

WHEREAS, Borrower has requested and Bank has agreed, among other things, to enter into a sale-lease back arrangement with City of Kansas City, Missouri ("City") pursuant to a certain Lease Agreement dated as of June 1, 2021 the ("Project Lease") by and between City and Borrower in connection with City's issuance of its Taxable Industrial Revenue Bonds (Nostrum Laboratories, Inc. Project) Series 2021, in the maximum aggregate principal amount not to exceed $13,000,000 (the "Series 2021 Bonds") for the purpose of acquiring and installing certain personal

property (the "Project Equipment"), which is the subject of financing having been provided by the Bank under the Agreement, which equipment is more particularly described on Schedule A attached hereto (the "Investors Equipment"), and the subject of financing having been provided by Bank of American, N.A., which equipment is more particularly described on Schedule B attached hereto..

WHEREAS, in connection with the Series 2021 Bonds, City is executing and delivering (i) a Trust Indenture (the "Indenture") with UMB Bank, N.A., as trustee, to issue and secure the 2021 Series Bonds, and (ii) the Project Lease with the Borrower pursuant to which the City, as lessor, will acquire title to the Project Equipment and will lease the Project Equipment to the Borrower in consideration of rentals and upon the terms and conditions set forth in the Project Lease.

WHEREAS, the forgoing arrangement is intended to provide certain tax benefits to the Borrower, by virtue Borrower being the holder of, and obligor and payee with respect to, the Series 2021 Bonds, resulting in payments under the Project Lease being treated as payments in lieu of taxes.

NOW, THEREFORE, for and in consideration of mutual covenants and agreements herein contained, and other good and valuable consideration, receipt of which is hereby acknowledged, it is agreed as follows:

1. The following definitions are hereby added to Section 1.01 of the Agreement to read as follows:

"Bond Pledge Agreement": That certain Bond Pledge Agreement dated June 29, 2021 by Borrower in favor of Bank, as amended and/or restated from time to time.

"City" shall have the same meaning ascribed to said term as in the First Amendment.

"First Amendment": That certain First Amendment to Loan Agreement dated June 29, 2021 by and among Bank, Borrower and Guarantors.

"Indenture" shall have the same meaning ascribed to said term as in the First Amendment.

"Intercreditor Agreement": That certain Intercreditor Agreement dated as of June 29, 2021, by and between Bank of America, N.A. and Bank, and agreed to and acknowledged by Borrower, as amended and/or restated from time to time.

"Project Equipment" shall have the same meaning ascribed to said term as in the First Amendment.

"Project Lease" shall have the same meaning ascribed to said term as in the First Amendment.

"Series 2021 Bonds" shall have the same meaning ascribed to said term as in the First Amendment.

2. The following definition contained in Section 1.01 of the Agreement is hereby amended to read as follows:

"Loan Documents" means this Agreement, the Notes, the Guaranties, the Security Agreement, the Intercreditor Agreement, the Bond Pledge Agreement, and any other instrument, document or agreement executed or delivered pursuant to this Agreement.

3. The following Section 5.01 (b) (xvii) is hereby added to the Agreement to read as follows:

(xvii) Payments under the Project Lease.

Simultaneously with the delivery of the financial statements referred to in Section 5.01 (b) (i), or at such other times as requested by the Bank, evidence, in form and substance acceptable to the Bank, that all payments under the Project Lease have been duly paid.

4. Section 5.02(e) of the Agreement is hereby amended to read as follow:

(e) Sale of Assets, Etc. Sell, assign, transfer, lease or otherwise dispose of any of its assets, (including a sale-leaseback transaction) with or without recourse, except for (i) inventory disposed of in the ordinary course of business; (ii) the sale or other disposition of assets no longer used or useful in the conduct of its business, (iii) so long as no Default or Event of Default shall exist at the time, or shall result therefrom, Borrower and the Corporate Guarantor may sell ANDAs and DMFs in the ordinary course of business consistent with past practices; (iv) so long as no Default or Event or Default shall exist at the time, or shall result therefrom, the Individual Guarantor

may, for estate planning purposes, cause the Corporate Guarantor to transfer non-income producing assets or investments, or interests in such assets or investments, to trusts formed for the benefit of lineal descendants of the Individual Guarantor, provided (A) any such trusts become Guarantors under this Agreement, and execute and deliver such guaranties, agreements and satisfy such terms and conditions, as may reasonably be required by the Bank and (B) the Individual Guarantor remains in compliance with Section 5.02(p) and (q) hereof; and (v) the sale-lease back transactions contemplated by the Project Lease, Indenture and Intercreditor Agreement.

5. The following Event of Default is hereby added to Section 6.01(m) to the Agreement to read as follows:

(m) Any "Event of Default" under the Indenture or the Project Lease shall occur.

6. Borrower and each Guarantor acknowledges and represents that:

a. the Agreement and Loan Documents, as amended hereby, are in full force and effect without any defense, claim, counterclaim, right or claim of set-off;

b. to the best of its or his knowledge, no default by Lender in the performance of its duties under the Agreement or the Loan Documents has occurred;

c. all representations and warranties of Borrower contained in the Agreement and in the Loan Documents are true and correct in all material respects as of this date, except for any representation or warranty that specifically refers to an earlier date;

d. Borrower and each Guarantor has taken all necessary action to authorize the execution and delivery of the First Amendment;

e. The First Amendment is a modification of an existing obligation and is not a novation;

NOTARY SANJAY KUMAR PANDEY GR. MUMBAI REGN. NO. 4026 EXPIRY DATE 01-05-2022 GOVT. OF INDIA

f. except as set forth in Schedule 4.01(h) of the Agreement, there is presently no pending litigation against Borrower or any Guarantor which could reasonably be expected to have a Material Adverse Effect; and

g. no Default or Event of Default presently exits under the Agreement or the Loan Documents.

7. The First Amendment has been duly executed and delivered by the parties hereto, and the Agreement, as amended hereby, and all Loan Documents executed in connection with the Agreement and the First Amendment, as amended, constitute legal, valid and binding obligations of the Borrower thereto in accordance with their terms.

8. The Borrower agrees to pay all fees and expenses associated with the preparation and negotiation of the First Amendment and related documentation, including reasonable attorney fees.

9. All capitalized terms contained in the First Amendment shall have the same meanings ascribed to them in the Agreement, as amended hereby.

10. The First Amendment may be executed in one or more counterparts, each of which shall constitute one and the same Amendment.

11. Each of the parties has signed this Agreement as of the day and year first above written.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

NOTARY SANJAY KUMAR PANDEY GR. MUMBAI REGN. NO. 028 EXPIRY DATE 01-05-2022 GOVT. OF INDIA

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

NOSTRUM LABORATORIES, INC., Borrower

By: _____
Nirmal Mulye, Ph.D.
Chairman and Chief Executive Officer

NOSTRUM PHARMACEUTICALS LLC,
Corporate Guarantor

By: _____
Nirmal Mulye, Ph.D.
Chairman and Chief Executive Officer

Individual Guarantor

_____
NIRMAL MULYE, Ph.D., Individually

[SIGNATURE PAGE TO FIRST AMENDMENT TO LOAN AGREEMENT]\

NOTARY SANJAY KUMAR PANDEY GR. MUMBAI REGN. NO. 1028 EXPIRY DATE 01-05-2022 INDIA

ACKNOWLEDGMENT

STATE OF MAHARASHTRA)
: ss.:
REPUBLIC OF INDIA)

BE IT REMEMBERED, that on this 24th day of June, 2021, before me, the subscriber, an officer duly authorized to take acknowledgments for use in the State of Maharashtra, personally appeared NIRMAL MULYE, PH.D. who came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

(a) is named in and personally signed the attached document; and

(b) signed, sealed, and delivered this document as his or her act and deed.

24-06-2021

Notary Public

SANJAY KUMAR PANDEY
Advocate & Notary Govt. Of India
Room No.7, Swami Krishna Nand Chawl,
Swami Compound, Near Marathi School,
Opp. Highway Caves Road, Jogeshwari East
Mumbai-400 060

NOTED AT SR NO. 598
IN THE NOTARIAL REGISTER

NOTARY SANJAY KUMAR PANDEY Greater Mumbai Regd. No. 4028 GOVERNMENT OF INDIA

NOTARY SANJAY KUMAR PANDEY GR. MUMBAI REGN. NO. 4028 EXPIRY DATE 01-05-2022 GOVT OF INDIA

NOTARIAL NOTARIAL NOTARIAL NOTARIAL NOTARIAL

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

INVESTORS BANK

By: _____
Robert J. Christmas
Senior Vice President

[SIGNATURE PAGE TO FIRST AMENDMENT TO LOAN AGREEMENT]

EXHIBIT A-3

SECOND AMENDMENT TO
LOAN AGREEMENT

This Second Amendment to Loan Agreement made as of the 20th day of September, 2021 (this "Amendment") by and among **NOSTRUM LABORATORIES, INC.**, a New Jersey corporation, having an office at 1370 Hamilton Street, Somerset, New Jersey 08873 ("Borrower"), **NOSTRUM PHARMACEUTICALS LLC**, a Delaware limited liability company, having an office at 1370 Hamilton Street, Somerset, New Jersey 08873 ("Corporate Guarantor"), **NIRMAL MULYE**, residing at 1000 Biscayne Boulevard, Miami, FL 33132 ("Individual Guarantor;", together with Corporate Guarantor, "Guarantors") and **INVESTORS BANK**, a New Jersey commercial chartered bank having an address of 101 JFK Parkway, Short Hills, New Jersey 07078 ("Bank"), hereby agree as follows:

W I T N E S E T H:

WHEREAS, Bank, Borrower and Guarantors previously entered into commercial lending arrangements in accordance with the terms and conditions of a certain Loan Agreement dated December 31, 2020, as amended by that certain First Amendment to Loan Agreement dated as of June 29, 2021 by and among the same parties (the "Agreement"), pursuant to which Bank has extended certain credit facilities to Borrower; and

WHEREAS, the parties to the Agreement desire to amend certain provisions regarding the use of proceeds with respect to advances under Line of Credit/ Term Loan;

NOW, THEREFORE, for and in consideration of mutual covenants and agreements herein contained, and other good and valuable consideration, receipt of which is hereby acknowledged, it is agreed as follows:

1. The following definition is hereby added to Section 1.01 of the Agreement to read

as follows:

"Second Amendment": That certain Second Amendment to Loan Agreement dated September 20th, 2021 by and among Bank, Borrower and Guarantors.

2. Subsection 2.15 of the Agreement is hereby amended to read as follow:

SECTION 2.15. Use of Proceeds Term Loan and Line of Credit/Term Loan. The proceeds of the Term Loan shall be used by the Borrower to finance (i) existing equipment (limited to 80% of the cost of the equipment (exclusive of the soft costs, including transportation and installation) as evidenced by invoices dated six months or less) and (ii) leasehold improvements. The proceeds of the Line of Credit/Term Loan shall be used by the Borrower to finance (i) new equipment (limited to 80% of the cost of the equipment (exclusive of soft costs, including transportation and installation) as evidenced by invoices and (ii) leasehold and capital improvements.

3. This Amendment has been duly executed and delivered by the parties hereto, and the Agreement, as amended hereby, and all Loan Documents executed in connection with the Agreement and this Amendment, as amended, constitute legal, valid and binding obligations of the Borrower thereto in accordance with their terms.

4. The Borrower agrees to pay all fees and expenses associated with the preparation and negotiation of this Amendment and related documentation, including reasonable attorney fees.

5. All capitalized terms contained in this Amendment shall have the same meanings ascribed to them in the Agreement.

6. This Amendment may be executed in one or more counterparts, each of which shall constitute one and the same Amendment.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized, as of the date first above written.

NOSTRUM LABORATORIES, INC., Borrower

By: _____
Nirmal Mulye, Ph.D.
Chairman and Chief Executive Officer

NOSTRUM PHARMACEUTICALS LLC,
Corporate Guarantor

By: _____
Nirmal Mulye, Ph.D.
President

Individual Guarantor

_____
NIRMAL MULYE, Ph.D., Individually

[SIGNATURE PAGE TO FIRST AMENDMENT TO LOAN AGREEMENT]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

INVESTORS BANK

By:_____
Robert J. Christmas
Senior Vice President

[SIGNATURE PAGE TO FIRST AMENDMENT TO LOAN AGREEMENT]

ACKNOWLEDGMENT

STATE OF FLORIDA)
: ss.:
COUNTY OF BROWARD)

BE IT REMEMBERED, that on this 23 day of September, 2021, before me, the subscriber, an officer duly authorized to take acknowledgments for use in the State of Florida personally appeared NIRMAL MULYE, PH.D. who came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person): SHOWS VALID FL DL.

(a) is named in and personally signed the attached document; and

(b) signed, sealed, and delivered this document as his or her act and deed.

JUAN CARLOS GARCIA
Notary Public - State of Florida
Commission # HH 044888
My Comm. Expires Sep 21, 2024
Bonded through National Notary Assn.

Notary Public

EXHIBIT A-4

THIRD AMENDMENT TO
LOAN AGREEMENT

This Third Amendment to Loan Agreement made as of the 31st day of December, 2021 (this "Amendment") by and among **NOSTRUM LABORATORIES, INC.**, a New Jersey corporation, having an office at 1370 Hamilton Street, Somerset, New Jersey 08873 ("Borrower"), **NOSTRUM PHARMACEUTICALS LLC**, a Delaware limited liability company, having an office at 1370 Hamilton Street, Somerset, New Jersey 08873 ("Corporate Guarantor"), **NIRMAL MULYE**, residing at 1000 Biscayne Boulevard, Miami, FL 33132 ("Individual Guarantor;", together with Corporate Guarantor, "Guarantors") and **INVESTORS BANK**, a New Jersey commercial chartered bank having an address of 101 JFK Parkway, Short Hills, New Jersey 07078 ("Bank"), hereby agree as follows:

W I T N E S E T H:

WHEREAS, Bank, Borrower and Guarantors previously entered into commercial lending arrangements in accordance with the terms and conditions of a certain Loan Agreement dated December 31, 2020, as amended by that certain First Amendment to Loan Agreement dated as of June 29, 2021 by and among the same parties and as further amended by that certain Second Amendment to Loan Agreement dated as of September 20, 2021 by and among the same parties (the "Agreement"), pursuant to which Bank has extended certain credit facilities to Borrower; and

WHEREAS, the parties to the Agreement desire to amend certain provisions regarding the Revolving Credit Loans and the Line of Credit/Term Loan;

NOW, THEREFORE, for and in consideration of mutual covenants and agreements herein contained, and other good and valuable consideration, receipt of which is hereby acknowledged, it is agreed as follows:

1. The following definitions contained in Section 1.01 of the Agreement are hereby amended to read as follows:

"Line of Credit/Term Loan Conversion Date" means April 1, 2022, or such later date as agreed to by the Bank in writing, without there being any obligation on the part of the Bank to extend the Line of Credit/Term Loan Conversion Date.

"Line of Credit/Term Loan Drawdown Period" means the period of time commencing on the Closing Date and ending of March 31, 2022.

"Revolving Credit Maturity Date" means March 31, 2022, or such later date as the Bank may extend the Revolving Credit Maturity Date in writing until, without there being any obligation of the Bank to extend the Revolving Credit Maturity Date.

2. This Amendment has been duly executed and delivered by the parties hereto, and the Agreement, as amended hereby, and all Loan Documents executed in connection with the Agreement and this Amendment, as amended, constitute legal, valid and binding obligations of the Borrower thereto in accordance with their terms.

3. The Borrower agrees to pay all fees and expenses associated with the preparation and negotiation of this Amendment and related documentation, including reasonable attorney fees.

4. All capitalized terms contained in this Amendment shall have the same meanings ascribed to them in the Agreement.

5. This Amendment may be executed in one or more counterparts, each of which shall constitute one and the same Amendment.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

INVESTORS BANK

By: _____ Digitally signed by John T. Harrison Date: 2021.12.28 14:19:40 -05'00'

John T. Harrison
Senior Vice President

[SIGNATURE PAGE TO THIRD AMENDMENT TO LOAN AGREEMENT]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized, as of the date first above written.

NOSTRUM LABORATORIES, INC., Borrower

By:_____
Nirmal Mulye, Ph.D.
Chairman and Chief Executive Officer

NOSTRUM PHARMACEUTICALS LLC,
Corporate Guarantor

By:_____
Nirmal Mulye, Ph.D.
President

Individual Guarantor

_____
NIRMAL MULYE, Ph.D., Individually

[SIGNATURE PAGE TO THIRD AMENDMENT TO LOAN AGREEMENT]

ACKNOWLEDGMENT

COMMONWEALTH OF ~~PENNSYLVANIA~~ FLORIDA)
: ss.:
COUNTY OF Broward)

BE IT REMEMBERED, that on this 29 day of December, 2021, before me, the subscriber, an officer duly authorized to take acknowledgments for use in the Commonwealth of Pennsylvania, personally appeared NIRMAL MULYE, PH.D. who came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

(a) is named in and personally signed the attached document; and

(b) signed, sealed, and delivered this document as his or her act and deed.

Joshua Baboolal
Notary Public

JOSHUA MATTHEW BABOOLAL
Notary Public - State of Florida
Commission # HH 204248
My Comm. Expires Dec 5, 2025
Bonded through National Notary Assn.

EXHIBIT A-5

FOURTH AMENDMENT TO
LOAN AGREEMENT

This Fourth Amendment to Loan Agreement made as of the 31 day of March, 2022 (this "Amendment") by and among **NOSTRUM LABORATORIES, INC.**, a New Jersey corporation, having an office at 1370 Hamilton Street, Somerset, New Jersey 08873 ("Borrower"), **NOSTRUM PHARMACEUTICALS LLC**, a Delaware limited liability company, having an office at ~~1370~~ 9 VERONICA AVENUE ~~Hamilton Street,~~ Somerset, New Jersey 08873 ("Corporate Guarantor"), **NIRMAL MULYE**, residing at 1000 Biscayne Boulevard, Miami, FL 33132 ("Individual Guarantor;", together with Corporate Guarantor, "Guarantors") and **INVESTORS BANK**, a New Jersey commercial chartered bank having an address of 101 JFK Parkway, Short Hills, New Jersey 07078 ("Bank"), hereby agree as follows:

W I T N E S E T H:

WHEREAS, Bank, Borrower and Guarantors previously entered into commercial lending arrangements in accordance with the terms and conditions of a certain Loan Agreement dated December 31, 2020, as amended by that certain First Amendment to Loan Agreement dated as of June 29, 2021 by and among the same parties, as further amended by that certain Second Amendment to Loan Agreement dated as of September 20, 2021 by and among the same parties, and as further amended by that certain Third Amendment to Loan Agreement dated as of December 31, 2021 by and among the same parties (the "Agreement"), pursuant to which Bank has extended certain credit facilities to Borrower; and

WHEREAS, the parties to the Agreement desire to amend certain provisions regarding the Revolving Credit Loans and the Line of Credit/Term Loan;

NOW, THEREFORE, for and in consideration of mutual covenants and agreements herein

contained, and other good and valuable consideration, receipt of which is hereby acknowledged, it is agreed as follows:

1. The following definitions contained in Section 1.01 of the Agreement are hereby amended to read as follows:

"Line of Credit/Term Loan Conversion Date" means July 1, 2022, or such later date as agreed to by the Bank in writing, without there being any obligation on the part of the Bank to extend the Line of Credit/Term Loan Conversion Date.

"Line of Credit/Term Loan Drawdown Period" means the period of time commencing on the Closing Date and ending of June 30, 2022.

"Revolving Credit Maturity Date" means June 30, 2022, or such later date as the Bank may extend the Revolving Credit Maturity Date in writing until, without there being any obligation of the Bank to extend the Revolving Credit Maturity Date.

2. [Notwithstanding anything contained in the Loan Documents to the contrary, in the event that the Revolving Credit Maturity Date is not extended, all amounts under the Line of Credit/ Term Loan and the Term Loan shall be due and payable on the Revolving Credit Maturity Date.]

3. This Amendment has been duly executed and delivered by the parties hereto, and the Agreement, as amended hereby, and all Loan Documents executed in connection with the Agreement and this Amendment, as amended, constitute legal, valid and binding obligations of the Borrower thereto in accordance with their terms.

4. The Borrower agrees to pay all fees and expenses associated with the preparation and negotiation of this Amendment and related documentation, including reasonable attorney fees.

5. All capitalized terms contained in this Amendment shall have the same meanings ascribed to them in the Agreement.

6. This Amendment may be executed in one or more counterparts, each of which shall constitute one and the same Amendment.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized, as of the date first above written.

NOSTRUM LABORATORIES, INC., Borrower

By: _____
Nirmal Mulye, Ph.D.
Chairman and Chief Executive Officer

NOSTRUM PHARMACEUTICALS LLC,
Corporate Guarantor

By: _____
Nirmal Mulye, Ph.D.
President

Individual Guarantor

_____
NIRMAL MULYE, Ph.D., Individually

[SIGNATURE PAGE TO FOURTH AMENDMENT TO LOAN AGREEMENT]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

INVESTORS BANK

By: _____
John Harrison
Market Executive

[SIGNATURE PAGE TO FOURTH AMENDMENT TO LOAN AGREEMENT]

ACKNOWLEDGMENT

STATE OF FLORIDA
~~COMMONWEALTH OF~~ PENNSYLVANIA)
: ss.:
COUNTY OF BROWARD)

BE IT REMEMBERED, that on this __ day of March, 2022, before me, the subscriber, an officer duly authorized to take acknowledgments for use in the STATE ~~Commonwealth~~ of FLORIDA ~~Pennsylvania~~, personally appeared NIRMAL MULYE, PH.D. who came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

(a) is named in and personally signed the attached document; and

(b) signed, sealed, and delivered this document as his or her act and deed.

Notary Public

Notary Public State of Florida
Paul A Bahadur
My Commission HH 002606
Expires 08/13/2024

EXHIBIT A-6

Citizens Bank

Erin Kane
Citizens Bank
28 State Street
Boston, MA 02109
Erin.c.kane@citizensbank.com

June 30, 2022

VIA OVERNIGHT COURIER

Nostrum Laboratories, Inc.
9 Veronica Avenue
Somerset, New Jersey 08873
Attn: Nirmal Mulye

Nirmal Mulye
1000 Biscayne Blvd
Miami, FL 33132

Nostrum Pharmaceuticals, LLC
9 Veronica Avenue
Somerset, New Jersey 08873
Attn: Nirmal Mulye

Re: Loan Agreement by and between Nostrum Laboratories, Inc. ("**Borrower**"), Nirmal Mulye ("**Individual Guarantor**"), Nostrum Pharmaceuticals, LLC ("**Corporate Guarantor**", and together with Individual Guarantor, the "**Guarantors**") and Investors Bank, a division of Citizens Bank, N.A., ("**Bank**"") dated as of December 31, 2020 (as the same has been amended, modified, supplemented and/or restated from time to time, the "**Loan Agreement**")

Dear Mr. Mulye:

Reference is made herein to the Loan Agreement. Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Loan Agreement.

By letter dated June 2, 2022, Bank notified Borrower of the occurrence of certain Existing Events of Default and Existing Defaults which Existing Defaults have matured into Events of Default because of the failure to cure such Existing Defaults within 15 days of notice thereof, as follows: (a) failure of the Borrower to satisfy the minimum required Debt Service Coverage Ratio, Fixed Charge Coverage Ratio and Total Funded Debt to EBITDA ratio as of the fiscal year ending December 31, 2021, in violation of Section 5.03 of the Loan Agreement; (b) failure of Borrower to deliver annual audited financial statements in violation of Section 5.01(b)(i) of the Loan Agreement, (c) failure of Borrower to deliver the semi-annual management prepared consolidated and consolidating financial statements by the Corporate Guarantor for the semi-annual periods ending December 31, 2020, June 30, 2021 and December 31, 2021, in violation of Section

5.01(b)(iii) of the Loan Agreement, and (d) failure of Borrower to deliver a Certificate of No Default and Compliance Certificate in violation of Section 5.01(b)(v) of the Loan Agreement (the foregoing occurrences (a) through (d) collectively, the "**Existing Events of Defaults**").

Further, pursuant to the Loan Agreement, the Revolving Credit Maturity Date is scheduled to occur on June 30, 2022, at which point, if not otherwise extended, the outstanding principal balance, all accrued and unpaid interest and all other costs and fees set forth in the Loan Documents (as such term is defined in the June 2, 2022 correspondence) with respect to each of the Loans shall be due and payable in full.

Borrower and Guarantors have requested that Bank extend the Revolving Credit Maturity Date to August 15, 2022. Bank is willing to extend the Revolving Credit Maturity date and to amend the Loan Agreement pursuant to the terms and conditions set forth in this letter agreement (this "**Agreement**"). This letter, when executed as indicated below, shall constitute the agreement by and among Borrower, Guarantor and Bank regarding the matters set forth herein.

1. **Modified Definitions**. The following definitions in Section 1.01 of the Loan Agreement are hereby amended to read as follows:

"Interest Payment Date" means the first Business Day of each month.

"Line of Credit/Term Loan Conversion Date" means August 15, 2022, or such later date as agreed to by Bank in writing, without there being any obligation on the part of the Bank to extend the Line of Credit/Term Loan Conversion Date.

"**Line of Credit/Term Loan Drawdown Period**" means the period of time commencing on the Closing Date and ending effective June 15, 2022.

"**Revolving Credit Maturity Date**" means August 15, 2022, or such later date as agreed to by Bank in writing, without there being any obligation on the part of the Bank to extend the Revolving Credit Maturity Date.

2. **Drawdown**. Borrower acknowledges that it is no longer permitted to borrow further Line of Credit/Term Loans and Bank is not obligated to and shall not make additional Line of Credit/Term Loans to Borrower.

3. **Interest Rates/Payment of Interest**. All Loans shall be converted to Fixed Rate Loans effective July 1, 2022 and to that end the following sections of the Loan Agreement are hereby deleted in their entirety and amended to read as follows:

"**Section 2.01(b)** Each Revolving Credit Loan shall be a Fixed Rate Loan.

"**Section 2.02 Notice of Revolving Credit Loans**. The Borrower shall give the Bank irrevocable written notice at least one (1) Business Day prior to each Revolving Credit Loan. If a notice of borrowing is received by Bank after 12 p.m. on a Business Day, such notice shall be deemed to have been given on the next succeeding Business Day.

"**Section 2.04. Payment of Interest on Revolving Credit Note**. In the case of a Revolving Credit Loan, interest shall be payable at a rate per annum equal to 3.60% per annum and shall be computed on the basis of the actual number of days elapsed over a year of 360 days. Such interest shall be payable on the first day of each month and on the Revolving Credit Maturity Date.

"**Section 2.08(a)** The Borrower shall have the right at any time and from time to time, subject to the provisions of this Agreement, to prepay any Revolving Credit Loan, in whole or in part, provided, however, that each such prepayment shall be on a Business Day and shall be in an aggregate principal amount which is in the minimum amount of $100,000.00 and in increased integral multiples of $50,000.00.

"**Section 2.13. Payment of Interest on the Term Loan Note and the Line of Credit/Term Loan Note**. In the case of the Term Loan and the Line of Credit/Term Loan, interest shall be payable at a rate per annum equal to 3.60% per annum and shall be computed on the basis of the actual number of days elapsed over a year of 360 days. Interest on the Term Loan shall be payable as set forth in Section 2.12. Interest on the Line of Credit/Term Loan shall be payable on the first day of each month.

4. **Other LIBOR References**. Sentences in Sections 2.08, 2.09(a), 2.09(b) and 2.16(d) of the Loan Agreement referencing "LIBOR Rate Loan" or "LIBOR Rate Loans" are hereby deleted. Sections 2.16(a), 2.21, 2.24, 2.25, and 2.26 of the Loan Agreement, no longer have force or effect but shall continue to exist solely for historical and reference purposes and to the extent there are any indemnification or other obligations owed to Bank arising therefrom. The definitions of "Interest Determination Date", "Interest Period", "LIBOR Alternative Source", "LIBOR Rate", "LIBOR Rate Loan", and "LIBOR Successor Rate", as set forth in Section 1.10 of the Loan Agreement, no longer have force or effect but shall continue to exist solely for historical and reference purposes and to the extent there are any indemnification or other obligations owed to Bank arising therefrom.

5. **Acknowledgment of Defaults; No Waiver**. Borrower and Guarantors hereby acknowledge the existence and occurrence of the Existing Events of Default, and that nothing contained herein shall be deemed a waiver of, or forbearance with regard to, any such Existing Events of Default and Bank reserves all of its right and remedies under the Loan Documents, applicable law or otherwise, with regard thereto.

6. **Acknowledgment of Collateral**. Borrower and Guarantors hereby represent, warrant, acknowledge, confirm and agree that, in addition to all other Collateral set forth in the Loan Documents, Bank Indebtedness is and shall continue to be secured by the following security documents: a) the Security Agreement, b) the Bond Pledge Agreement, and c) the Guaranties. Borrower and Guarantors further represent, warrant, acknowledge and confirm that Bank's liens on the Collateral, and all interests in the Collateral which have been assigned to Bank, have been perfected and Bank's interests and liens in the Collateral are valid and effective, and are not subject to any defenses.

7. **Binding Effect of Documents**. Borrower and Guarantors hereby acknowledge, ratify, confirm and agree that: (a) each of the Loan Documents to which it is a party has been duly

executed and delivered to Bank by Borrower and Guarantors, as applicable, and each is in full force and effect as of the date hereof, (b) the agreements and obligations of Borrower and Guarantors contained in such documents and in this Agreement constitute the legal, valid and binding obligations of Borrower and Guarantors, enforceable against them in accordance with their respective terms, and neither Borrower nor any Guarantor has any valid defense to the enforcement of such obligations and the Loan Documents or any claims or counterclaims against Bank, and (c) Bank is and shall be entitled to the rights, remedies and benefits provided for in this Agreement, the Loan Documents and applicable law.

8. **No Waiver or Course of Dealing**. Each Guarantor and the Borrower does hereby acknowledge and agree that effective as of the date hereof any waiver or implied waiver by Bank of any obligation or covenant of Borrower, Guarantors, or any of them, under the Loan Agreement and other Loan Documents is expressly terminated and rescinded and that each Guarantor and the Borrower is obligated to, and is expected by Bank to, strictly perform and comply with all of such obligations and covenants as provided in the Loan Agreement and other Loan Documents.

9. **Conditions Precedent**. This Agreement shall become effective upon receipt by Bank of this Agreement, duly executed on behalf of Borrower and all Guarantors.

10. **Representation, Warranties and Statements**. Borrower and Guarantors represent and warrant to Bank that as of the date hereof, (i) the representations, warranties and statements of set forth in the Loan Documents are true and correct as if made on this date (except to the extent such representations and warranties expressly refer to an earlier date), (ii) there have been no liens, encumbrances, security interests, or claims filed against or created in any of the collateral or other assets of the Borrower other than liens in favor of Bank, other than any Permitted Liens, and (iii) no defaults exist under the Loan Agreement other than the Existing Events of Default.

11. **Release**. Borrower and each Guarantor hereby fully, finally and forever acquits, quitclaims, releases and discharges Bank and its officers, directors, employees, agents, successors and assigns of and from any and all obligations, claims, liabilities, damages, demands, or causes of action to, of or for the benefit (whether directly or indirectly) of Borrower or any Guarantor at law or in equity, known or unknown, contingent or otherwise, statutory, in contract or in tort, as well as any other kind or character of action now held, owned or possessed by Borrower or any Guarantor on account of, arising out of, related to or concerning, whether directly or indirectly, proximately or remotely to the Loan, Loan Agreement, or other Loan Documents.

12. **No Other Amendments**. Except as expressly modified hereby, all terms and conditions of the Loan Agreement and the other Loan Documents shall remain unmodified and in full force and effect.

13. **Counterparts**. This Agreement and the following pages may be executed in counterparts, but all such counterparts shall together constitute one and the same agreement.

If acceptable to the Borrower and Guarantors please have this Agreement signed by no later than June 30, 2022.

INVESTORS BANK, a division of CITIZENS BANK, N.A.,

Erin Kane

By:_____
ERIN KANE

Each of the undersigned, intending to be legally bound, do hereby consent and agree to the above terms and conditions of this Agreement this ____ day of June, 2022.

BORROWER

NOSTRUM LABORATORIES, INC.

By:_____
NIRMAL MULYE, Ph.D.
President and CEO

GUARANTORS

NOSTRUM PHARMACEUTICAL LLC

By:_____
NIRMAL MULYE, Ph.D., President

_____
NIRMAL MULYE, Ph.D., Individually

EXHIBIT B-1

Line of Credit/Term Loan Note

LINE OF CREDIT/TERM LOAN NOTE

$5,000,000 December 31, 2020

FOR VALUE RECEIVED, NOSTRUM LABORATORIES, INC., a New Jersey corporation, having its principal place of business at 1370 Hamilton Street, Somerset, New Jersey 08873 ("Borrower"), promises to pay to the order of INVESTORS BANK ("Bank") at the office of the Bank located at 101 JFK Parkway, Short Hills, New Jersey 07078, the principal sum of FIVE MILLION DOLLARS ($5,000,000.00).

Borrower shall pay interest on the unpaid balance of this Note from time to time outstanding at said office, at the rates of interest, at the times and for the periods as set forth in the Agreement (as defined below).

Borrower shall pay the principal balance of this Note from time to time outstanding in the manner set forth in the Agreement (as defined below).

All payments including prepayments on this Line of Credit/Term Loan Note shall be made in lawful money of the United States of America in immediately available funds. Except as otherwise provided in the Agreement, if a payment becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day, and interest shall be payable thereon at the rate herein specified during such extension.

This Line of Credit/Term Loan Note is the Line of Credit/Term Loan Note referred to in that certain Loan Agreement among Borrower, certain Guarantors and Investors Bank of even date herewith (the "Agreement"), as such Agreement may be amended from time to time, and is subject to prepayment and its maturity is subject to acceleration upon the terms contained in said Agreement. All capitalized terms used in this Line of Credit/Term Loan Note and not defined herein shall have the meanings given them in the Agreement.

If any action or proceeding be commenced to collect this Line of Credit/Term Loan Note or enforce any of its provisions, Borrower further agrees to pay all costs and expenses of such action or proceeding and reasonable attorneys' fees and expenses and further expressly waives any and every right to interpose any counterclaim in any such action or proceeding. Borrower hereby submits to the jurisdiction of the Superior Court of the State of New Jersey and agrees with Bank that personal jurisdiction over Borrower shall rest with the Superior Court of the State of New Jersey for purposes of any action on or related to this Line of Credit/Term Loan Note, the liabilities, or the enforcement of either or all of the same. Borrower hereby waives personal service by manual delivery and agrees that service of process may be made by post-paid

certified mail, return receipt requested, directed to Borrower at Borrower's address designated in the Agreement or at such other address as may be designated in writing by Borrower to Bank in accordance with Section 7.02 of the Agreement, and that upon mailing of such process such service be effective with the same effect as though personally served.

Borrower hereby expressly waives any and every right to a trial by jury in any action on or related to this Line of Credit/Term Loan Note, the liabilities or the enforcement of either or all of the same.

Subject to the provisions of the Agreement, Bank may transfer this Line of Credit/Term Loan Note and may deliver the security or any part thereof to the transferee or transferees, who shall thereupon become vested with all the powers and rights above given to Bank in respect thereto, and Bank shall thereafter be forever relieved and fully discharged from any liability or responsibility in the matter. The failure of any holder of this Line of Credit/Term Loan Note to insist upon strict performance of each and/or all of the terms and conditions hereof shall not be construed or deemed to be a waiver of any such term or condition.

Borrower and all endorsers and Guarantors hereof waive presentment and demand for payment, notice of non-payment, protest, and notice of protest.

This Line of Credit/Term Loan Note shall be construed in accordance with and governed by the laws of the State of New Jersey.

[Signature Page to Follow]

IN WITNESS WHEREOF, the party hereto have caused this Note to be executed by its respective officer thereunto duly authorized, as of the date first above written.

NOSTRUM LABORATORIES, INC.

By: _____
Nirmal Mulye, Ph.D.
Chairman and Chief Executive Officer

ACKNOWLEDGEMENT

COMMONWEALTH OF PENNSYLVANIA :
: ss
COUNTY OF Monroe :

BE IT REMEMBERED, that on this 29 day of December, 2020, before me, the subscriber, an officer duly authorized to take acknowledgments for use in the Commonwealth of Pennsylvania, personally appeared NIRMAL MULYE, PH.D. who came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

(a) is named in and personally signed the attached document; and

(b) signed, sealed, and delivered this document as his or her act and deed.

_____
Notary Public

Commonwealth of Pennsylvania - Notary Seal
TRICIA MARIA DIAZ, Notary Public
Monroe County
My Commission Expires September 5, 2023
Commission Number 1357241

[SIGNATURE PAGE TO LINE OF CREDIT/TERM LOAN NOTE]

EXHIBIT B-2

Revolving Term Note

REVOLVING CREDIT NOTE

$12,000,000 December 31, 2020

FOR VALUE RECEIVED, on the Revolving Loan Maturity Date, NOSTRUM LABORATORIES, INC., a New Jersey corporation, having its principal place of business at 1370 Hamilton Street, Somerset, New Jersey 08873 ("Borrower"), promises to pay to the order of INVESTORS BANK ("Bank") at the office of the Bank located at 101 JFK Parkway, Short Hills, New Jersey 07078, the principal sum of the lesser of: (a) TWELVE MILLION DOLLARS ($12,000,000); or (b) the aggregate unpaid principal amount of all Revolving Credit Loans made by Bank to Borrower pursuant to the Agreement (as defined below).

Borrower shall pay interest on the unpaid principal balance of this Note from time to time outstanding, at said office, at the rates of interest, at the times and for the periods set forth in the Agreement.

All payments including prepayments on this Note shall be made in lawful money of the United States of America in immediately available funds. Except as otherwise provided in the Agreement, if a payment becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day, and interest shall be payable thereon at the rate herein specified during such extension.

Borrower hereby authorizes Bank to enter from time to time the amount of each Loan to Borrower and the amount of each payment on a Loan on the schedule annexed hereto and made a part hereof. Failure of Bank to record such information on such schedule shall not in any way effect the obligation of Borrower to pay any amount due under this Note.

This Note is the Revolving Credit Note referred to in that certain Loan Agreement among Borrower, certain Guarantors and the Bank of even date herewith (the "Agreement"), as such Agreement may be amended from time to time, and is subject to prepayment and its maturity is subject to acceleration upon the terms contained in said Agreement. All capitalized terms used in this Note and not defined herein shall have the meanings given them in the Agreement.

If any action or proceeding be commenced to collect this Note or enforce any of its provisions, Borrower further agrees to pay all costs and expenses of such action or proceeding and reasonable attorneys' fees and expenses and further expressly waives any and every right to interpose any counterclaim in any such action or proceeding. Borrower hereby submits to the jurisdiction of the Superior Court of the State of New Jersey and agrees with Bank that personal jurisdiction over Borrower shall rest with the Superior Court of the State of New Jersey for purposes of any action on or related to this Note, the liabilities, or the enforcement of either or all

of the same. Borrower hereby waives personal service by manual delivery and agrees that service of process may be made by certified mail, return receipt requested, directed to the Borrower at the Borrower's address set forth above or at such other address as may be designated in writing by the Borrower to Bank in accordance with Section 7.02 of the Agreement, and that upon mailing of such process such service shall be effective with the same effect as though personally served.

Borrower hereby expressly waives any and every right to a trial by jury in any action on or related to this Note, the liabilities hereunder or the enforcement of either or all of the same.

Subject to the provisions of the Agreement, Bank may transfer this Note to a transferee or transferees, who shall thereupon become vested with all the powers and rights above given to Bank in respect thereto, and Bank shall thereafter be forever relieved and fully discharged from any liability or responsibility with respect to any matters occurring after the date of such transfer. The failure of any holder of this Note to insist upon strict performance of each and/or all of the terms and conditions hereof shall not be construed or deemed to be a waiver of any such term or condition.

Borrower and all endorsers and guarantors hereof waive presentment and demand for payment, notice of non-payment, protest, and notice of protest.

This Note shall be construed in accordance with and governed by the laws of the State of New Jersey.

[Signature Page to Follow]

IN WITNESS WHEREOF, the party hereto have caused this Note to be executed by its respective officer thereunto duly authorized, as of the date first above written.

NOSTRUM LABORATORIES, INC.

By:_____
Nirmal Mulye, Ph.D.
Chairman and Chief Executive Officer

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :
: ss
COUNTY OF Monroe :

BE IT REMEMBERED, that on this 29 day of December, 2020, before me, the subscriber, an officer duly authorized to take acknowledgments for use in the Commonwealth of Pennsylvania, personally appeared NIRMAL MULYE, PH.D. who came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

(a) is named in and personally signed the attached document; and

(b) signed, sealed, and delivered this document as his or her act and deed.

_____
Notary Public

Commonwealth of Pennsylvania - Notary Seal
TRICIA MARIA DIAZ, Notary Public
Monroe County
My Commission Expires September 5, 2023
Commission Number 1357241

[SIGNATURE PAGE TO REVOLVING CREDIT NOTE]

EXHIBIT B-3

Term Note

TERM LOAN NOTE

$5,000,000 December 31, 2020

FOR VALUE RECEIVED, NOSTRUM LABORATORIES, INC., a New Jersey corporation, having its principal place of business at 1370 Hamilton Street, Somerset, New Jersey 08873 ("Borrower"), promises to pay to the order of INVESTORS BANK ("Bank") at the office of the Bank located at 101 JFK Parkway, Short Hills, New Jersey 07078, the principal sum of FIVE MILLION DOLLARS ($5,000,000.00).

Borrower shall pay interest on the unpaid balance of this Note from time to time outstanding at said office, at the rates of interest, at the times and for the periods as set forth in the Agreement (as defined below).

Borrower shall pay the principal balance of this Note from time to time outstanding in the manner set forth in the Agreement (as defined below).

All payments including prepayments on this Term Loan Note shall be made in lawful money of the United States of America in immediately available funds. Except as otherwise provided in the Agreement, if a payment becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day, and interest shall be payable thereon at the rate herein specified during such extension.

This Term Loan Note is the Term Loan Note referred to in that certain Loan Agreement among Borrower, certain Guarantors and Investors Bank of even date herewith (the "Agreement"), as such Agreement may be amended from time to time, and is subject to prepayment and its maturity is subject to acceleration upon the terms contained in said Agreement. All capitalized terms used in this Term Loan Note and not defined herein shall have the meanings given them in the Agreement.

If any action or proceeding be commenced to collect this Term Loan Note or enforce any of its provisions, Borrower further agrees to pay all costs and expenses of such action or proceeding and reasonable attorneys' fees and expenses and further expressly waives any and every right to interpose any counterclaim in any such action or proceeding. Borrower hereby submits to the jurisdiction of the Superior Court of the State of New Jersey and agrees with Bank that personal jurisdiction over Borrower shall rest with the Superior Court of the State of New Jersey for purposes of any action on or related to this Term Loan Note, the liabilities, or the enforcement of either or all of the same. Borrower hereby waives personal service by manual delivery and agrees that service of process may be made by post-paid certified mail, return receipt requested, directed to Borrower at Borrower's address designated in the Agreement

or at such other address as may be designated in writing by Borrower to Bank in accordance with Section 7.02 of the Agreement, and that upon mailing of such process such service be effective with the same effect as though personally served.

Borrower hereby expressly waives any and every right to a trial by jury in any action on or related to this Term Loan Note, the liabilities or the enforcement of either or all of the same.

Subject to the provisions of the Agreement, Bank may transfer this Term Loan Note and may deliver the security or any part thereof to the transferee or transferees, who shall thereupon become vested with all the powers and rights above given to Bank in respect thereto, and Bank shall thereafter be forever relieved and fully discharged from any liability or responsibility in the matter. The failure of any holder of this Term Loan Note to insist upon strict performance of each and/or all of the terms and conditions hereof shall not be construed or deemed to be a waiver of any such term or condition.

Borrower and all endorsers and Guarantors hereof waive presentment and demand for payment, notice of non-payment, protest, and notice of protest.

This Term Loan Note shall be construed in accordance with and governed by the laws of the State of New Jersey.

[Signature Page to Follow]

IN WITNESS WHEREOF, the party hereto have caused this Note to be executed by its respective officer thereunto duly authorized, as of the date first above written.

NOSTRUM LABORATORIES, INC.

By: _____
Nirmal Mulye, Ph.D.
Chairman and Chief Executive Officer

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :
: ss
COUNTY OF Monroe :

BE IT REMEMBERED, that on this 29 day of December, 2020, before me, the subscriber, an officer duly authorized to take acknowledgments for use in the Commonwealth of Pennsylvania, personally appeared NIRMAL MULYE, PH.D. who came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

(a) is named in and personally signed the attached document; and

(b) signed, sealed, and delivered this document as his or her act and deed.

_____
Notary Public

Commonwealth of Pennsylvania - Notary Seal
TRICIA MARIA DIAZ, Notary Public
Monroe County
My Commission Expires September 5, 2023
Commission Number 1357241

[SIGNATURE PAGE TO TERM LOAN NOTE]

EXHIBIT C

Security Agreement

SECURITY AGREEMENT

Security Agreement dated as of December 31, 2020 ("Security Agreement") made by NOSTRUM LABORATORIES, INC, a New Jersey corporation ("Grantor") to INVESTORS BANK, a New Jersey state chartered bank ("Secured Party").

In consideration of Secured Party providing credit to Grantor, Grantor hereby agrees as follows:

Section 1. Definitions. As used in this Security Agreement, the following terms have the following meanings (terms defined in the singular to have the same meaning when used in the plural and vice versa):

"Applicable State" means the State of New Jersey.

"Collateral" has the meaning specified in "Grant of Security Interest" (Section 3), subject to .

"Contracts" means each contract, agreement, instrument and indenture to which Grantor is a party or under which Grantor has any right, title and interest or to which Grantor or its property is subject.

"Loan Agreement" means the Loan Agreement between Grantor and Secured Party dated December 31, 2021.

"Secured Obligations" means any and all present and future liabilities and obligations of Grantor to Secured Party, whether incurred by Grantor as principal or guarantor or otherwise, and whether due or to become due, secured or unsecured, absolute or contingent, joint or several, direct or indirect, acquired outright, conditionally or as collateral security by Secured Party from another, liquidated or unliquidated, arising by operation of law or otherwise, together with all fees and expenses incurred in collecting any or all of the items specified in this definition or enforcing any rights under any of the documents executed in connection with any such liabilities and obligations, including all fees and expenses of Secured Party's counsel and of any experts and agents which may be paid or incurred by Secured Party in collecting any such items or enforcing any such rights.

"Security Agreement" means this Security Agreement.

"UCC" means the Uniform Commercial Code of the State of New Jersey.

All terms defined in the UCC that are used in this Security Agreement have the meaning specified in the UCC or where applicable, the meanings give them in the Loan Agreement..

Section 2. Rules of Interpretation. When used in this Security Agreement: (1) "or" is not exclusive, (2) a reference to a law includes any amendment or modification to such law, and (3) a reference to an agreement, instrument or document includes any amendment or modification of such agreement, instrument or document.

Section 3. Grant of Security Interest. Grantor hereby grants to I Secured Party a continuing security interest in and lien on all right, title and interest of Grantor in and to each of the following items in which it has any right, title or interest, whether now owned or hereafter acquired, created or existing: (1) all Accounts, (2) all Chattel Paper (whether tangible or electronic), (3) all Deposit Accounts, (4) all Documents, (5) all General Intangibles (including Payment Intangibles and Software), (6) all Goods (including Inventory, Equipment, Fixtures and Accessions), (7) all Trademarks, (8) all Contract Rights, (9) all Instruments (including promissory notes), (10) all Investment Property, (11) all Letter-of-Credit Rights, (12) all Letters of Credit, (13) all Money, (14) all Supporting Obligations, and (15) all Proceeds and products of the foregoing (the "Collateral").

Section 4. Security for Secured Obligations. The Collateral secures the prompt and complete payment when due of all Secured Obligations.

Section 5. Filing of Financing Statement. Grantor hereby authorizes Secured Party, its counsel or its representative, at any time and from time to time, to file financing statements and amendments covering the Collateral in such jurisdictions, as Secured Party may deem necessary or desirable to perfect the security interests granted by Grantor under this Security Agreement. Such financing statements may describe the collateral covered by such financing statements as "all assets of Grantor", "all personal property of Grantor" or words of similar effect.

Section 6. Actions to Perfect Security Interest. Grantor agrees that from time to time, it will promptly execute and deliver all instruments and documents, and take all actions, that may be necessary or desirable, or that Secured Party may request, for the attachment, perfection and maintenance of the priority of, the security interest of Secured Party in any and all of the Collateral or to enable Secured Party to exercise and enforce any and all of its rights, powers and remedies under this Security Agreement with respect to any and all of the Collateral.

Section 7. Continued Perfection of Security Interest. Unless Grantor has provided Secured Party with thirty (30) days prior written notice of its intention to do any of the following and prior to taking such proposed action Grantor has executed and delivered all such additional document and performed all additional acts as Secured Party may require, in its sole discretion, to continue or maintain the existence and priority of the security interest of Secured Party in the Collateral, Grantor shall not: (1) change its name, (2) change its identity or structure, (3) transfer any of the Collateral to any other party other than the sale of Collateral in the ordinary course of its business or as permitted in the

Loan Agreement, or (4) change the location where the books and records related to the Collateral are maintained.

Section 8. Representations and Warranties. At the time of execution of this Security Agreement and each time Secured Party provides credit as noted above, Grantor represents and warrants to Secured Party as follows:

(1) Name of Grantor. The exact legal name of Grantor is the name specified in the preamble to this Security Agreement. The Grantor has not been known by any other name during the five (5) years prior to the date of this Security Agreement.

(2) Location of Grantor. Grantor is a corporation organized or formed under the laws of the Applicable State. Each location used by Grantor to conduct its business is located in the Applicable State and all assets used in the conduct of such business and all records related to such business are located in the Applicable State or elsewhere as disclosed in writing to Secured Party. All of the assets used in the operation of its business are in the possession of, and under the control of, Grantor and none of the assets used by Grantor in the conduct of its business are held by any third party.

(3) Location for Filing of Financing Statement. With respect to any item of Collateral in which a security interest can be perfected by the filing of a UCC financing statement, the filing of such a statement with the Secretary of State of the Applicable State will perfect the security interest of Secured Party in such Collateral.

(4) Formation, Good Standing, Power and Due Qualification. Grantor (a) is a corporation duly incorporated, validly existing, and in good standing under the laws of the jurisdiction of its incorporation, (b) has the corporate power and authority, as the case may be, to own its assets and to transact the business in which it now engages or proposes to engage in, and (c) is duly qualified as a foreign corporation and in good standing under the laws of each other jurisdiction in which such qualification is required.

(5) Authority. The execution, delivery and performance by Grantor of this Security Agreement are within its corporate powers, have been duly authorized by all necessary corporate, and do not and will not (a) require any consent or approval of its stockholders, which has not been obtained, or (b) contravene its charter or bylaws.

(6) No Contravention. The execution, delivery and performance by Grantor of this Security Agreement do not and will not (a) violate any provision of any law, order, writ, judgment, injunction, decree, determination, or award presently in effect applicable to Grantor, (b) result in a breach of or constitute a default under any indenture or loan or credit agreement or any other agreement, lease, or instrument to which Grantor is a party or by which Grantor's properties may be bound or affected, or (c) result in, or require, the creation or imposition of any lien upon or with respect to any of the properties now owned or hereafter acquired by Grantor.

(7) Governmental Authority. No authorization, approval or other action by, and no notice to or filing with, any governmental authority is required for the due execution, delivery and performance by Grantor of this Security Agreement.

(8) Legally Enforceable Security Agreement. This Security Agreement is the legal, valid and binding obligation of Grantor, enforceable against Grantor in accordance with its terms, except to the extent that such enforcement may be limited by (a) applicable bankruptcy, insolvency, and other similar laws affecting creditors' rights generally, or (b) general equitable principles, regardless of whether the issue of enforceability is considered in a proceeding in equity or at law.

(9) No Restrictions on Collateral. None of the Collateral is subject to a restriction that prohibits, restricts or limits the grant of a security interest in such Collateral pursuant to this Security Agreement, the perfection of the security interest granted by this Security Agreement (including the priority of such security interest) or the exercise by Secured Party of its rights, remedies and powers under this Security Agreement or otherwise.

(10) Security Interest and Claims. This Security Agreement creates a valid security interest in the Collateral and such security interest secures the payment of all Secured Obligations. The security interest of Secured Party in the Collateral is a first priority security interest. Grantor owns the Collateral free and clear of any security interest, except for the security interest created by this Security Agreement and the liens permitted under Section 5.02(a) of the Loan Agreement.

(11) Acquisition in Ordinary Course of Business. All of the Collateral, including all Equipment and all Inventory, was acquired in the ordinary course of business.

(12) Compliance With Law. All of the Collateral was acquired, used, produced and sold or disposed of in accordance with all applicable laws, including in the case of inventory, the Fair Labor Standards Act.

(13) Inventory. None of the Inventory is held on consignment or subject to a sale or return or sale on approval or similar arrangement.

(14) Equipment. All Equipment which is useful or necessary to the business of Grantor is in good repair, ordinary wear and tear excepted.

(15) Accounts. Grantor has originated all Accounts. None of the Accounts have either been sold to another party or otherwise transferred or delivered to any party for the purpose of collecting such Account. Grantor is duly qualified in all states where required to enable Grantor to enforce collection of its Accounts due from customers residing in that state.

(16) Contracts. All of the Contracts material to the operation of the business of Grantor are in full force and effect and Grantor has performed in all material respects its obligations under each such Contract, and to the knowledge of Grantor the other parties

to each such Contract have performed in all material respects their respective obligations under each such Contract.

Section 9. Covenants. Grantor agrees:

(1) Reporting Requirements. Grantor will immediately notify Secured Party if (a) any claim, including any attachment, levy, execution or other legal process, is made against any or all of the Collateral, (b) any representation and warranty included in this Security Agreement would no longer be true if made on such date, (c) there is any material loss or damage to, or material decline in the value of, or material change in the nature of, any of the Collateral or (d) there is a redemption or exchange of any or all of the Collateral. Grantor will furnish to Secured Party from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with such Collateral as Secured Party may request, all in reasonable detail.

(2) Records. Grantor will keep and maintain at its expense complete and accurate records related to the Collateral, including records of all payments made, all credits granted and all other documentation related to the Collateral.

(3) Inspection. Upon reasonable notice to Grantor and during normal business hours Grantor will allow Secured Party or its designees to visit its offices and each location where any Collateral is located to inspect its books and records, make copies thereof, and inspect the Collateral.

(4) Restrictions on Collateral. Grantor will not enter into any agreement or undertaking that restricts or limits the right or ability of Grantor or Secured Party to sell, assign or transfer any of the Collateral.

(5) Defense of Collateral. Grantor will defend the Collateral against all claims and demands of all parties, other than Secured Party.

(6) No Security Interest or Claims. Grantor will not create, permit or suffer to exist, any security interest on any of the Collateral other than the security interest under this Security Agreement. It will discharge or cause to be discharged all security interests and claims on any or all of the Collateral, except for the security interest under this Security Agreement. It will pay promptly when due all property and other taxes, assessments and governmental charges or levies imposed upon, and all claims (including claims for labor, materials and supplies) against the Collateral.

(7) Transfer and Other Security Interests. Grantor shall not sell, assign (by operation of law or otherwise), transfer or otherwise dispose of any of the Collateral except for sales, assignments and transfers of Collateral in the ordinary course of business or as permitted in the Loan Agreement.

(8) Compliance with Law. Grantor will comply in all material respects with all laws applicable to any or all of the Collateral, except to the extent the failure to comply

will not have a material adverse effect on the rights of Secured Party under this Security Agreement, the priority of the security interest of Secured Party in the Collateral or the value of the Collateral.

(9) Insurance. (a) Grantor shall, at its own expense, maintain insurance with respect to all the Equipment and all the Inventory in such amounts, against such risks, in such form and with such insurers as are usually carried by companies engaged in the same or similar business as Grantor and such other insurance as reasonably required by Secured Party. Each policy for liability insurance shall (i) designate Secured Party, as an additional insured and (ii) provide for all losses to be paid on behalf of Secured Party and Grantor as their respective interests may appear. Reimbursement under any liability insurance maintained by Grantor may be paid directly to the party who shall have incurred liability covered by such insurance. Each policy for property damage insurance shall (i) designate Secured Party as a lender loss payee and (ii) provide for all losses to be paid directly to Secured Party.

(b) In addition, each such policy shall (i) name Secured Party as an insured party under such policy (without any representation or warranty by or obligation upon Secured Party), (ii) contain the agreement by the insurer that any loss under such policy shall be payable to Secured Party notwithstanding any action, inaction or breach of representation or warranty by Grantor, (iii) provide that there shall be no recourse against Secured Party for payment of premiums or other amounts with respect to such policy and (iv) provide that at least thirty (30) days prior written notice of amendment to, cancellation of or lapse shall be given to Secured Party by the insurer.

(c) If requested by Secured Party, Grantor shall deliver to Secured Party (i) original or duplicate policies of such insurance policies, (ii) a report of a reputable insurance broker with respect to such insurance, and (iii) duly executed instruments of assignment of such insurance policies to perfect Secured Party's security interest in such policy, including without limitation, acknowledgments of such assignments from the respective insurers.

(d) In case of any loss involving damage to Equipment or Inventory Investors will determine whether such insurance proceeds shall be used (a) to make or cause to be made the necessary repairs to or replacements of such Equipment or Inventory, or (b) to pay the Secured Obligations, and if there are any contingent Secured Obligations, to provide cash collateral to cover such Secured Obligations. Notwithstanding the foregoing, so long as no Default or Event of Default shall exist at the time, Secured Party shall make the proceeds of the insurance available to Grantor to replace the destroyed or damaged Collateral, subject to Secured Party's disbursement procedure and other requirements as may be required by the Secured Party.

(10) Equipment. Grantor shall cause the Equipment necessary for the conduct of its business to be maintained and preserved in good working order, repair and condition, ordinary wear and tear excepted, and shall in the case of any loss or damage to any of its Equipment as quickly as practicable after the occurrence thereof, make or cause to be

made all repairs, replacements, and other improvements in connection therewith which are necessary or desirable to so maintain and preserve such Equipment.

(11) Inventory. In accordance with reasonable business practice, Grantor will maintain all Inventory in good saleable or useable condition, Grantor will (a) not sell, assign, lease, mortgage, transfer or otherwise dispose of any interest in any Inventory other than sales of Inventory in the ordinary course of business, and (b) not use or permit any of the Inventory to be used for any unlawful purpose or in violation of any law, or for hire.

(12) Accounts. Grantor will remain duly qualified in all states where required to enable Grantor to enforce collection of the Accounts due from account debtors in that state. Except as otherwise provided in this Security Agreement, it shall continue to collect, at its own expense, all amounts due or to become due to Grantor under the Accounts. In connection with such collections, Grantor may take (and, at Secured Party's discretion, shall take) such action, as Grantor or Secured Party may deem necessary or advisable to enforce collection of the Accounts.

(13) Contracts. Grantor will perform all of its duties and obligations under each contract material to the operation of its business. It will require that all other parties to each such contract perform all of their respective duties and obligations.

Section 10. Rights and Remedies. If Grantor fails to perform any agreement contained in this Security Agreement, Secured Party may itself perform, or cause performance of, such agreement.

Upon a failure to pay when due any or all of the Secured Obligations, Secured Party may exercise in respect of any or all of the Collateral each of the following rights, remedies and powers and Grantor agrees that each of the following rights, remedies and powers is commercially reasonable:

(1) General Remedies. Secured Party may exercise in respect of any or all of the Collateral all rights, remedies and powers provided for in this Security Agreement, by law, in equity or otherwise available to it, including all the rights and remedies of a secured party under the UCC (whether or not the UCC applies to the affected Collateral).

(2) Right to Accelerate Obligations Owed to Grantor. To the extent that any obligation to make payment on any Collateral is not then due or a demand for payment has not been made and Grantor has the right, in accordance with the term of such Collateral, to require or make a demand for payment on such Collateral, Secured Party has the right to require and to make a demand for payment on such Collateral.

(3) Accounts, Contracts, and Other Collateral. Secured Party has the right to notify the account debtors or obligors under any Accounts, Contracts, and other Collateral of the security interest of Secured Party in such Account, Contract, or other Collateral and to direct such account debtors or obligors to make payment of all amounts due or to become

due to Grantor thereunder directly to Secured Party or to an account designated by Secured Party and, upon such notification, to enforce collection of any such Accounts, Contracts, and other Collateral, and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as Grantor might have done. After receipt by Grantor of such notice from Secured Party, (a) all amounts and proceeds (including wire transfers, checks and other instruments) received by Grantor in respect of any Accounts, Contracts, or other Collateral shall be received in trust for the benefit of Secured Party under this Security Agreement, shall be segregated from other funds of Grantor and shall be forthwith deposited to such account or paid over or delivered to Secured Party in the same form as so received (with any necessary endorsement or assignment) to be held as Collateral, or be applied as provided by this Section, as determined by Secured Party, and (b) Grantor shall not adjust, settle or compromise the amount or payment of any such Account, Contract, or other Collateral or release wholly or partly any account debtor or obligor thereof, or allow any discount thereon, other than any discount allowed for prompt payment.

(4) Assembly of Collateral. Secured Party may require Grantor to, and Grantor hereby agrees that it will at its expense and upon the request of Secured Party forthwith, assemble all or any part of the Collateral as directed by Secured Party and make it available to Secured Party at a place to be designated by Secured Party that is reasonably convenient to both Secured Party and Grantor.

(5) Entering Premises. Secured Party or its designated agents may enter, with or without judicial process, upon any premises of Grantor and take possession of all or any part of the Collateral, and remove such Collateral to a location specified by Secured Party.

(6) Use of Premises. Secured Party shall have the right to enter and remain upon each and every location of Grantor without cost or charge to Secured Party, and use the same together with materials, supplies, books and records of Grantor for the purpose of collecting and liquidating the Collateral, or for preparing for sale and conducting the sale of the Collateral, whether by foreclosure, auction or otherwise.

(7) Sale or Other Disposition of Collateral. Secured Party may, without notice, except as specified below, sell, lease, license or otherwise dispose of and grant options to purchase, lease, license or otherwise acquire, any or all of the Collateral in one or more parcels at public or private sale or other disposition, for cash, on credit, for future delivery or otherwise and upon such other terms, including price, as Secured Party may deem commercially reasonable.

(8) Notice of Sale or Other Disposition of Collateral. Grantor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days' notice to Grantor of the time and place of any public or private sale is to be made shall constitute reasonable notification. Secured Party shall not be obligated to make any sale of any or all of the Collateral after any notice of sale has been given. Secured Party may adjourn any public or private sale from time to time by announcement at the time and place fixed for such

sale, and such sale may, without further notice, be made at the time and to the place to which it was so adjourned.

(9) Commercially Reasonable Sale. Grantor agrees that it is not commercially unreasonable for Secured Party (a) to fail to incur expenses reasonably deemed significant by Secured Party to prepare Collateral for disposition or otherwise to fail to complete raw material or work in process into finished goods or other finished products for disposition, (b) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (c) to fail to exercise collection remedies against account debtors or other persons obligated on Collateral or to fail to remove liens or encumbrances on or any adverse claims against Collateral, (d) to exercise collection remedies against account debtors and other persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (e) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (f) to contact other persons, whether or not in the same business as Grantor, for expressions of interest in acquiring all or any portion of the Collateral, (g) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the collateral is of a specialized nature, (h) to dispose of Collateral by utilizing Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets, (i) to dispose of assets in wholesale rather than retail markets, (j) to disclaim disposition warranties, including disclaimers of warranties of title, possession, quiet enjoyment and the like, (k) to purchase insurance or credit enhancements to insure Secured Party against risk of loss, collection or disposition of Collateral or to provide to Secured Party a guaranteed return from the collection or disposition of Collateral, or (l) to the extent deemed appropriate by Secured Party, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist Secured Party in the collection or disposition of any of the Collateral. Grantor agrees that the purpose of this Section is to provide non-exhaustive indications of what actions or omissions by Secured Party would fulfill the duties of Secured Party under the UCC of the State or any other relevant jurisdiction in the exercise by Secured Party of remedies against the Collateral and that other actions or omissions by Secured Party shall not be deemed to fail to fulfill such duties solely on account of not being indicated in this Section. Without limitation upon the foregoing, nothing contained in this Section shall be construed to grant any rights to Grantor or to impose any duties on Secured Party that would not have been granted or imposed by this Security Agreement or by applicable law in the absence of this Section.

(10) Proceeds. If any of the Collateral is sold by Secured Party upon credit or for future delivery, Secured Party shall not be liable for the failure of the purchaser to purchase or pay for the same and, in the event of any such failure, Secured Party may resell such Collateral. In no event shall Grantor be credited with any part of the proceeds of sale of any Collateral until and to the extent cash payment in respect thereof has actually been received by Secured Party. To the extent any of the Secured Obligations are

contingent, cash proceeds received by Secured Party in respect of any sale of, collection from, or other realization upon all or any part of the Collateral may, in the discretion of Secured Party, be held by Secured Party as collateral for such contingent Secured Obligations. Any cash held by Secured Party as Collateral and all cash proceeds received by Secured Party in respect of any sale of, collection from, or other realization upon all or any part of the Collateral may, in the discretion of Secured Party, be applied, first, to pay all costs and expenses incurred by Secured Party in connection with or incident to the custody, preservation, use or operation of, or the sale of, collection from, or other realization upon, any and all of the Collateral, second, to pay all reasonable attorney's fees and legal expenses incurred by Secured Party in connection with or incident to the custody, preservation, use or operation of, or the sale of, collection from, or other realization upon, any and all of the Collateral, third, to pay all matured and unpaid Secured Obligations, in whole or in part by Secured Party against, all or any part of the Secured Obligations in such order as Secured Party shall elect, fourth, if and to the extent any of the Secured Obligations are unmatured or contingent, to provide cash collateral for all such Secured Obligations, and fifth, in accordance with applicable law. If the proceeds of the sale of the Collateral are insufficient to pay all of the Secured Obligations, Grantor agrees to pay upon demand any deficiency to Secured Party.

Secured Party shall not by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies under this Security Agreement. A waiver by Secured Party of any right or remedy under this Security Agreement on any one occasion, shall not be construed as a bar to or waiver of any such right or remedy which Secured Party would have had on any future occasion nor shall Secured Party be liable for exercising or failing to exercise any such right or remedy.

Section 11. Appointment of Secured Party Attorney-in-Fact. (a) Grantor hereby irrevocably appoints Secured Party attorney-in-fact, with full authority in the place and stead of Grantor and in the name of Grantor, Secured Party or otherwise (i) upon the occurrence of an Event of Default, to take any and all action and exercise all rights and remedies granted to Secured Party under this Security Agreement, and (ii) upon the occurrence of an Event of Default, to execute any instrument which Secured Party may deem necessary or advisable to accomplish the purpose of this Security Agreement.

Grantor hereby ratifies and approves all acts of Secured Party as its attorney in-fact pursuant to this Section, and Secured Party, as its attorney in-fact, will not be liable for any acts of commission or omission, nor for any error of judgment or mistake of fact or law, other than those which result from Secured Party's gross negligence or willful misconduct. This power, being coupled with an interest, is irrevocable so long as this Security Agreement remains in effect.

Section 12. Grantor Remains Liable. In all events, including the exercise by Secured Party of any of the rights under this Security Agreement, Grantor remains liable to perform all of its duties and obligations under the contracts and agreements included in the Collateral to which it is a party to the same extent as if this Security Agreement had not been executed. Secured Party shall not have any obligation or liability under any such

contracts and agreements by reason of this Security Agreement, nor shall Secured Party be obligated to perform any of the obligations or duties of Grantor under, or to take any action to collect or enforce any claim or rights under, any such contract or agreement.

The powers conferred on Secured Party under this Security Agreement are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the safe custody of any Collateral in its possession and the accounting for moneys actually received by it under this Security Agreement, Secured Party shall not have any duty as to any such Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any such Collateral.

Section 13. Indemnity and Expenses. Grantor agrees to indemnify Secured Party and each of its directors, officers, employees, agents and affiliates from and against any and all claims, losses and liabilities growing out of or resulting from this Security Agreement or the transactions contemplated by this Security Agreement (including, without limitation, enforcement of this Security Agreement), except claims, losses or liabilities resulting from the gross negligence or willful misconduct of the person to be indemnified.

Grantor will upon demand pay to Secured Party the amount of any and all expenses, including the reasonable fees and out of pocket disbursements of its counsel and of any experts and agents, which Secured Party may incur in connection with (1) any amendment to this Security Agreement, (2) the administration of this Security Agreement, (3) filing or recording fees incurred with respect to or in connection with this Security Agreement, (4) the custody, preservation, use or operation of, or the sale of, collection from, or other realization upon, any of the Collateral, (5) the exercise or enforcement of any of the rights of Secured Party under this Security Agreement, or (6) the failure by Grantor to perform or observe any of the provisions of this Security Agreement.

Section 14. Amendments. No amendment or waiver of any provision of this Security Agreement nor consent to any departure by Grantor from this Security Agreement shall in any event be effective unless the same shall be in writing and signed by Secured Party and Grantor, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 15. Addresses for Notices. All notices and other communications provided for under this Security Agreement shall be in writing and, mailed or delivered by messenger or overnight delivery service, addressed, in the case of Grantor to the address specified below its signature, and in the case of Investors to the address specified below; or as to any such party at such other address as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section.

Investors Bank
Business Lending

101 JFK Parkway
Short Hills, New Jersey 07078

All such notices and other communications shall, when mailed or delivered by messenger or overnight delivery service, respectively, be effective one (1) day after being placed in the mails or delivered to the messenger or overnight delivery service, respectively, addressed as specified above.

Section 16. Continuing Security Interest, Transfer of Secured Obligations. Notwithstanding the fact that there may be no Secured Obligations outstanding from time to time, this Security Agreement shall create a continuing security interest in all of the Collateral. This Security Agreement shall be binding upon Grantor and inure to Secured Party and its successors, transferees and assigns. Grantor may not transfer or assign its obligations under this Security Agreement. Secured Party may assign or otherwise transfer all or a portion of its rights or obligations with respect to the Secured Obligations to any other party, and such other party shall then become vested with all the benefits in respect of such transferred Secured Obligations and the security interest granted to Secured Party pursuant to this Security Agreement or otherwise. Grantor agrees that Secured Party can provide information regarding Grantor to any prospective or actual successor, transferee or assign.

Section 17. Submission to Jurisdiction. Grantor hereby irrevocably submits to the jurisdiction of any federal or state court sitting in the State of New Jersey, over any action or proceeding arising out of or related to this Security Agreement and agrees with Secured Party that personal jurisdiction over Grantor rests with such courts for purposes of any action on or related to this Security Agreement. Grantor hereby waives personal service by manual delivery and agrees that service of process may be made by prepaid certified mail directed to Grantor at the address of Grantor for notices under this Security Agreement or at such other address as may be designated in writing by Grantor to Secured Party, and that upon mailing of such process such service will be effective as if Grantor was personally served. Grantor agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any manner provided by law. Grantor further waives any objection to venue in any such action or proceeding on the basis of inconvenient forum. Grantor agrees that any action on or proceeding brought against Secured Party shall only be brought in such courts.

Section 18. Setoff. Grantor agrees that, in addition to, and without limiting, any right of setoff, banker's lien or counterclaim Secured Party may otherwise have, Secured Party shall be entitled, at its option, to offset balances (general or special, time or demand, provisional or final) held by it for the account of Grantor, at any of the offices of Secured Party, in Dollars or any other currency, against any amount payable by Grantor to Secured Party under this Security Agreement which is not paid when demanded (regardless of whether such balances are then due to Grantor), in which case Secured Party shall promptly notify Grantor; provided that Secured Party's failure to give such notice shall not affect the validity of such offset.

Section 19. Governing Law. This Security Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, except to the extent that the validity or perfection of the security interest under this Security Agreement, or remedies under this Security Agreement, in respect of any particular Collateral are governed by the laws of a jurisdiction other than the State of New Jersey.

Section 20. Miscellaneous. This Security Agreement is in addition to and not in limitation of any other rights and remedies Secured Party may have by virtue of any other instrument or agreement heretofore, contemporaneously herewith or hereafter executed by Grantor or by law or otherwise. If any provision of this Security Agreement is contrary to applicable law, such provision shall be deemed ineffective without invalidating the remaining provisions of this Security Agreement. If and to the extent that applicable law confers any rights in addition to any of the provisions of this Security Agreement, the affected provision shall be considered amended to conform to such law. The headings in this Security Agreement are for convenience of reference only, and shall not affect the interpretation or construction of this Security Agreement.

Section 21. WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, GRANTOR EXPRESSLY WAIVES ANY AND EVERY RIGHT TO A TRIAL BY JURY IN ANY ACTION ON OR RELATED TO THIS SECURITY AGREEMENT.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, Grantor has duly executed and delivered this Security Agreement as of the date of this Security Agreement.

NOSTRUM LABORATORIES, INC

By: _____

Nirmal Mulye, Ph.D.
Chairman and Chief Executive Officer

Address for Notices

1370 Hamilton Street
Somerset, New Jersey 08873
Attention: Nirmal Mulye, Ph.D

ACKNOWLEDGEMENT

COMMONWEALTH OF PENNSYLVANIA :
: ss
COUNTY OF Monroe :

BE IT REMEMBERED, that on this 29 day of December, 2020, before me, the subscriber, an officer duly authorized to take acknowledgments for use in the Commonwealth of Pennsylvania, personally appeared NIRMAL MULYE, PH.D. who came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

(a) is named in and personally signed the attached document; and

(b) signed, sealed, and delivered this document as his or her act and deed.

_____
Notary Public

Commonwealth of Pennsylvania - Notary Seal
TRICIA MARIA DIAZ, Notary Public
Monroe County
My Commission Expires September 5, 2023
Commission Number 1357241

[SIGNATURE PAGE TO SECURITY AGREEMENT]

EXHIBIT D

UCC-1 Financing Statement

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)
PETER R. HERMAN, ESQ. 7328556046

B. E-MAIL CONTACT AT FILER (optional)
pherman@wilentz.com

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

PETER R. HERMAN, ESQ.
90 WOODBRIDGE CENTER DRIVE, SUITE 900
WOODBRIDGE, NJ 07095
US

State of New Jersey
Department of the Treasury
Division of Revenue & Enterprise Services
UCC Section
Filed

Filing Number:54975457

12/31/20 13:45:39

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME
NOSTRUM LABORATORIES INC.

OR

1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
1370 HAMILTON STREET	SOMERSET	NJ	08873	US

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME
INVESTORS BANK

OR

3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
101 JFK PARKWAY	SHORT HILLS	NJ	07078	US

4. COLLATERAL: This financing statement covers the following collateral:
ALL ASSETS. The Collateral is within the scope of the New Jersey Uniform Commercial Code, pursuant to 12A:9-102 and 12A:9-109.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:
☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:
☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:
FILE WITH THE STATE OF NEW JERSEY CLIENT MATTER NO. 161627.644

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS

9. NAME OF FIRST DEBTOR: Same as line 1a or 1b on Financing Statement; if line 1b was left blank because Individual Debtor name did not fit, check here ☐

9a. ORGANIZATION'S NAME
NOSTRUM LABORATORIES INC.

OR

9b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

State of New Jersey
Department of the Treasury
Division of Revenue & Enterprise Services
UCC Section
Filed

Filing Number:54975457

12/31/20 13:45:39

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

10. DEBTOR'S NAME: Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c

10a. ORGANIZATION'S NAME

OR

10b. INDIVIDUAL'S SURNAME

INDIVIDUAL'S FIRST PERSONAL NAME

INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

10c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

11. ☐ ADDITIONAL SECURED PARTY'S NAME or ☐ ASSIGNOR SECURED PARTY'S NAME: Provide only one name (11a or 11b)

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

11c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral):

13. ☐ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS (if applicable)

14. This FINANCING STATEMENT:
☐ covers timber to be cut ☐ covers as-extracted collateral ☐ is filed as a fixture filing

15. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest):

16. Description of real estate:

17. MISCELLANEOUS:
The filer attests that the Collateral set forth in this Financing Statement is within the scope of the New Jersey Uniform Commercial Code-Secured Transactions pursuant to N.J.S.A. 12A:9-102 and N.J.S.A. 12A:9-109, as required by N.J.S.A. 12A:9-502.

EXHIBIT E

Forbearance Agreement

FORBEARANCE AGREEMENT

THIS FORBEARANCE AGREEMENT (the "**Agreement**") is made this 31st day of October, 2022 (the "**Effective Date**"), by and among NOSTRUM LABORATORIES, INC., a New Jersey corporation with an address of 9 Veronica Avenue, Somerset, New Jersey (the "**Borrower**"), NOSTRUM PHARMACEUTICAL LLC, a Delaware limited liability company with an address of 9 Veronica Avenue, Somerset, New Jersey ("**Pharmaceutical**"), NIRMAL MULYE, an individual with an address of 1000 Biscayne Blvd., Miami Florida ("**Mulye**", and together with Pharmaceutical, the "**Guarantors**", and together with Borrower, each an "**Obligor**", together, collectively, the "**Obligors**") and Investors Bank, a division of Citizens Bank, N.A. (the **"Bank"**).

REFERENCES TO CAPITALIZED TERMS USED HEREIN AND NOT OTHERWISE DEFINED SHALL HAVE THE MEANING SET FORTH IN SECTION 1 HEREOF.

BACKGROUND

A. Pursuant to that certain Loan Agreement by and between Borrower, Guarantors and Bank dated as of December 31, 2020 (as the same has been amended, modified, supplemented and/or restated from time to time, including without limitation by that certain Letter Agreement by and between Obligors and Bank dated June 30, 2022, the "**Loan Agreement**"), Bank agreed to extend to Borrower three credit facilities: (1) that certain Line of Credit/Term Loan in the maximum principal amount of Five Million Dollars ($5,000,000) (the "**Line/Term Loan**"), (b) that certain Revolving Credit Loan in the maximum amount of Twelve Million Dollars ($12,000,000) (the "**RLOC**"), and (c) that certain Term Loan in the original principal amount of Five Million Dollars ($5,000,000) (the "**Term Loan**", and together with the Line/Term Loan and the RLOC, the "**Loans**").

B. The Borrower's obligations to Bank under the Loan Agreement are evidenced by, among other things, (1) that certain Line of Credit/Term Loan Note by Borrower to Bank, dated as of December 31, 2020, in the maximum amount of $5,000,000 (as the same has been amended, modified, supplemented and/or restated from time to time, the "**Line/Term Note**"), (2) that certain Revolving Credit Note by Borrower to Bank, dated as of December 31, 2020, in the maximum principal amount of $12,000,000 (as the same has been amended, modified, supplemented and/or restated from time to time, the "**RLOC Note**"), and (c) that certain Term Loan Note by Borrower to Bank, dated as of December 31, 2020, in the original principal amount of $5,000,000 (the "**Term Note**", and together with the Line/Term Note and the RLOC Note, the "**Notes**").

C. The obligations of the Borrower to the Bank under the Loan Agreement and the Notes are secured by, among other things, (a) that certain Security Agreement by Borrower to Bank, dated as of December 31, 2020 (as the same may have been amended, modified, supplemented and/or restated from time to time, the "**Security Agreement**"), pursuant to which the Borrower granted to the Bank a first priority security interest in and to all of Borrower's Accounts, Chattel Paper, Deposit Accounts, Documents, General Intangibles, Goods, Inventory, Equipment, Fixtures and Accessions, Trademarks, Contract Rights, Instruments, Investment

Property, Money, Letters of Credit, Supporting Obligations, and products and proceeds thereof (as such terms are defined and are more particularly described in the Security Agreement, the "**Personal Property Collateral**"), which security interest is perfected by virtue of, among other things, the UCC-1 Financing Statement listing Borrower, as debtor, and Bank as secured party, recorded with the New Jersey Department of Treasury at Filing Number 54975457 (together with all amendments and/or continuations thereof, the "**UCC-1**"), (b) that certain Bond Pledge Agreement by and between the Borrower, the Bank and UMB Bank, N.A., as trustee, dated as of June 29, 2021 (as the same may be amended, modified, supplemented and/or restated from time to time, the "**Bond Pledge Agreement**"), pursuant to which Borrower pledged Bond No. 1 (as such term is defined in the Bond Pledge Agreement, the "**Bond Collateral**") to the Bank as security for the obligations under the Loan Documents, (c) that certain Corporate Guaranty Agreement by Corporate Guarantor in favor of the Bank, dated as of December 31, 2020 (as the same may have been amended, modified, supplemented and/or restated from time to time, the "**Corporate Guaranty**"), (d) that certain Individual Guaranty Agreement by Individual Guarantor in favor of the Bank, dated as of December 31, 2020 (as the same may have been amended, modified, supplemented and/or restated from time to time, the "**Individual Guaranty**", and together with the Corporate Guaranty, the "**Guaranties**"), and (e) that certain Fee Subordination Agreement by and between Corporate Guarantor, as Manager, and the Bank, and acknowledged by Borrower (as the same may have been amended, modified, supplemented and/or restated from time to time, the "**Fee Subordination Agreement**", and together with the Loan Agreement, the Notes, the Security Agreement, UCC-1, the Bond Pledge Agreement, the Corporate Guaranty, the Individual Guaranty and any other document executed in connection with or otherwise evidencing the Loans, as the same may be amended, modified, supplemented and/or restated from time to time, the "**Loan Documents**").

D. As of July 30, 2022, the Aggregate Outstandings exceed the Borrowing Base by $5,430,005.67 (the "**Existing Overadvance**").

E. Obligors are in default if their obligations under the Loan Documents as a result, *inter alia*, of the following: (a) failure of the Borrower to satisfy the minimum required Debt Service Coverage Ratio, Fixed Charge Coverage Ratio and Total Funded Debt to EBITDA ratio as of the fiscal year ending December 31, 2021, in violation of Section 5.03 of the Loan Agreement; (b) failure of Borrower to deliver annual audited financial statements in violation of Section 5.01(b)(i) of the Loan Agreement, (c) failure of Borrower to deliver the semi-annual management prepared consolidated and consolidating financial statements by the Corporate Guarantor for the semi-annual periods ending June 30, 2021 and June 30, 2022, in violation of Section 5.01(b)(iii) of the Loan Agreement, (d) failure of Borrower to deliver a Certificate of No Default and Compliance Certificate in violation of Section 5.01(b)(v) of the Loan Agreement, (d) failure of Borrower to deliver a Borrowing Base Certificate within fifteen (15) days of month end for the month ending August 30, 2022, in violation of Section 5.01(b)(xiii), (e) the existence of a tax lien in favor of the New Jersey Division of Taxation as of March 24, 2022, recorded at DJ 038005-22, TX00456622 (the "**State Tax Lien**") in violation of Section 5.02(a), (f) Borrower's failure to repay the Existing Overadvance in accordance with Section 2.08(b) of the Loan Agreement, and (g) Borrower's failure to repay the Loans in full on or before the Revolving Credit Maturity Date, which occurred August 15, 2022 (together, collectively, the **"Existing Defaults"**). As a result of the occurrence of the Existing Defaults, Bank may exercise

its rights and remedies against Obligors pursuant to any and all of the Loan Documents and under applicable law.

F. At Obligors' request, Bank has agreed to enter into this Agreement, inter alia, to (i) ratify and confirm the respective obligations and liability of Obligors to Bank under the Loan Documents, (ii) reaffirm, ratify and continue Bank's liens on, and security interests in, certain assets of Obligors, and (iii) set forth the terms and conditions under which Bank will forbear from exercising and enforcing the rights available to it under the Loan Documents.

NOW, THEREFORE, in consideration of foregoing premises and intending to be legally bound hereby, the parties hereto agree as follows:

TERMS

1. **CAPITALIZED TERMS**. For purposes of this Agreement:

(a) **"Bank Indebtedness"** shall have the meaning set forth in **Section 5** below.

(b) "**Cash Equivalents**" means any investment in (i) direct obligations of the United States or any agency thereof, or obligations guaranteed by the United States or any agency thereof with a maturity date of no more than one (1) year from the date of acquisition, (ii) commercial paper with a duration of not more than three (3) months rated at least A-1 by Standard & Poor's Ratings Service and P-1 by Moody's Investors Services, Inc., which is issued by a Person organized under the laws of any state of the United States or of the District of Columbia, (iii) time deposits, certificates of deposit and banker's acceptances with a duration of not more than three (3) months issued by any office located in the United States of any bank or trust company which is organized under the laws of the United States or any state thereof, or is licensed to conduct a banking business in the United States, and has capital, surplus and undivided profits of at least $500,000,000 and which issues (or the parent of which issues) certificates of deposit or commercial paper with a rating described in clause (ii) above, (iv) repurchase agreements and reverse repurchase agreements with a duration of not more than thirty (30) days with respect to securities described in clause (i) above entered into with an office of a bank or trust company meeting the criteria specified in clause (iii) above, or (v) any money market or mutual fund which invests only in the foregoing types of investments, has portfolio assets in excess of $5,000,000,000 and is rated AAA by Standard & Poor's Ratings Service and AAA by Moody's Investors Services, Inc.

(c) **"Code"** means the Uniform Commercial Code as adopted in the State of New Jersey as the same may be amended from time to time.

(d) **"Collateral"** means all tangible and intangible property of Obligors pledged and/or granted to Bank as security for the Loans including, without limitation, the following: the Personal Property Collateral and the Bond Collateral.

(e) "**Default**" shall mean any event, condition or failure to act which with the giving of any required notice or the lapse of time could become an Event of Default.

(f) "**Dilution Reserve**" shall mean seventy-one basis points (0.71%).

(g) **"Existing Defaults"** shall have the meaning set forth in Background.

(h) **"Forbearance Documents"** means this Agreement and all other documents executed in connection herewith, as each of the same may be amended, modified, supplemented and/or restated from time to time.

(i) "**Loan Documents**" means documents included in the definition thereof in the Loan Agreement together with each of the Forbearance Documents.

(j) All other capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Loan Agreement.

2. **CONFIRMATION OF BACKGROUND/BINDING EFFECT OF DOCUMENTS**. Obligors do hereby jointly and severally ratify, confirm and acknowledge that the statements contained in the foregoing Background are true and complete in all respects and that the Loan Documents including, without limitation, the Guaranties, are valid, binding and in full force and effect as of the date hereof and fully enforceable against Obligors and their assets in accordance with the terms thereof. Guarantors further acknowledge that nothing contained in this Agreement shall be deemed to impair, reduce or release in any manner whatsoever any of the obligations of Guarantors under the Guaranties. ***The Obligors acknowledge and agree that any Obligor's failure to comply with any term of this Forbearance Agreement or any of the other Forbearance Documents is and shall be an Event of Default under the Loan Documents. Notwithstanding any provisions in the other Loan Documents to the contrary, the Obligors shall not be entitled to any grace or cure period relative to the covenants and other terms and conditions set forth in the Forbearance Documents.***

3. **GENERAL ACKNOWLEDGEMENTS**. Obligors do hereby acknowledge and agree as follows:

(a) They are currently in default of their obligations under the Loan Documents as a result of the occurrence of the Existing Defaults, and Obligors do hereby fully and finally waive any further notice or demands from Bank to Obligors in connection therewith;

(b) Neither this Agreement nor any other agreement entered in connection herewith or pursuant to the terms hereof shall be deemed or construed to be a compromise, satisfaction, reinstatement, accord and satisfaction, novation or release of any of the Loan Documents, or any rights or obligations thereunder, or a waiver by Bank of any of its rights under the Loan Documents or at law or in equity;

(c) As a result of the Existing Defaults, Bank has no further obligation to advance any additional monies under the Loans;

(d) Except as specifically provided herein, neither this Agreement nor any other agreement executed in connection herewith or pursuant to the terms hereof, nor any actions taken pursuant to this Agreement or such other agreement shall be deemed to cure any of the Existing Defaults or any other Events of Default which may exist under the Loan Documents or

to be a waiver by the Bank of the Existing Defaults or any other existing Defaults or Events of Default under the Loan Documents, or of any rights or remedies in connection therewith or with respect thereto, it being the intention of the parties hereto that the obligations of Obligors with respect to the Loan Documents are and shall remain in full force and effect;

(e) All liens, security interests, rights and remedies granted to the Bank in the Loan Documents are hereby renewed, confirmed and continued, and shall also secure the performance by Obligors of their respective obligations hereunder; and

(f) If at any time a payment or payments made by any Obligor on any part of the Bank Indebtedness are subsequently invalidated, declared to be fraudulent or preferential, and are set aside or are required to be repaid to a trustee, receiver or any other person or entity under any bankruptcy act, state or federal law, common law or equitable cause, then to the extent of such payment or payments, the Bank Indebtedness intended to be satisfied shall be revived and continued in full force and effect as if such payment or payments had not been made.

4. **ACKNOWLEDGEMENT OF SECURITY INTERESTS**. Obligors acknowledge, confirm and agree that Bank has and shall continue to have, valid, enforceable and perfected first priority security interests in and liens upon the Collateral heretofore granted by any of them to Bank pursuant to the Loan Documents or otherwise granted to or held by Bank and shall also secure the performance by each of them of its respective obligations under this Agreement. Each Obligor hereby confirms and agrees that (i) all security interests and liens granted to Bank continue in full force and effect and are hereby ratified and confirmed by Obligors, and (ii) all Collateral remains free and clear of any liens, other than liens in favor of Bank or as otherwise expressly permitted by the Loan Documents. Nothing herein is intended to impair or limit the validity, priority and extent of Bank's security interests in and liens upon the Collateral.

5. **CHALLENGE TO ENFORCEMENT**. Obligors do acknowledge and agree that it none of them has any defense, set off, counterclaim or challenge against the payment of any sums owing under the Loan Documents, or the enforcement of any of the terms or conditions thereof.

6. **CONFIRMATION OF EXISTING INDEBTEDNESS**. Obligors do hereby confirm and acknowledge that as October 24, 2022, the foregoing sums are due and owing:

Line/Term Loan

Principal	$3,250,000.07
Interest (as of 10/24/22)	$6,175.00

RLOC

Principal	$12,000,000.00
Interest (as of 10/24/22)	$28,800

Term Loan

Principal	$1,936,961.00
Interest (as of 10/24/22)	$4,648.71

The foregoing sums, together with all accrued and unpaid interest thereon (including without limitation PIK Interest (as hereinafter defined), future advances, attorneys' fees and expenses and all other fees, costs and expenses due or to become due under the Forbearance Documents, shall be collectively referred to herein as the **"Bank Indebtedness."**

Obligors do hereby acknowledge and agree that all sums described in this **Section 6** are validly and duly owing to Bank.

7. **FORBEARANCE**. Bank hereby agrees to forbear from exercising the rights and remedies available to it as a result of the Existing Defaults, until the earlier of (a) the occurrence of any Default or Event of Default (other than the Existing Defaults) under this Agreement or the other Loan Documents, and (b) December 2, 2022 (such earlier date being the "**Forbearance Expiration Date**").

8. **FORBEARANCE FEE**. In addition to the other payments described in this Agreement, the Obligors shall pay Bank a non-refundable forbearance fee of Five Thousand Dollars ($5,000) (the "**Forbearance Fee**"), which Forbearance Fee shall be fully earned and payable on the Effective Date.

9. **INTEREST RATE**. From and after the date hereof, interest will accrue on outstanding principal balance of the Loans at a rate equal to Three Hundred Sixty Basis Points (3.60%) per annum (the "**Fixed Rate**"). All Loans shall bear additional interest on the outstanding principal amount of the Loans at a per annum rate equal to fifty basis points (0.50%) (the **"PIK Interest**"), which shall accrue until the Forbearance Expiration Date. The PIK Interest shall be calculated on the basis of a three hundred sixty (360) day year and actual days elapsed, by adding such interest to the outstanding principal balance under each of the Loans on the last day of each calendar quarter, and thereafter shall itself accrue interest pursuant to the terms of this Agreement (the "**PIK Interest Payment**"). After the Forbearance Expiration Date, Bank may increase the Fixed Rate of interest to accrue on the outstanding principal balance under the Loans, including the PIK Interest previously and thereafter added to the principal balance of the Loans, by an additional five hundred basis points (5.00%) (the "**Default Rate**") as set forth in Section 2.18(b) of the Loan Agreement. All such increases may be applied retroactively to the date of the occurrence of the Event of Default giving rise to the Forbearance Termination Date. PIK Interest will continue to accrue after the Forbearance Expiration Date notwithstanding the Default Rate being in effect.

10. **MODIFICAITON TO BORROWING BASE; OVERADVANCE**.

(a) Notwithstanding anything to the contrary in the Loan Agreement or any other Loan Document, during the term of this Agreement, the Borrowing Base shall be calculated as follows:

> "**Borrowing Base**" means (A) the product of the Dilution Reserve, multiplied by the sum of (i) seventy-five percent (75%) of Borrower's Eligible Accounts Receivable, less (ii) rebates, credits and allowances to account debtors in the form of credit memos or invoices from customers, less (iii) chargebacks accrued with respect to accounts relating to McKesson Corporation, AmerisourceBergen Drug Corporation and Cardinal Health, plus (B) fifty percent (50%) of the Borrower's Eligible Inventory, up to a maximum of fifty percent (50%) of the aggregate Borrowing Base."

(b) Bank and Obligors acknowledge that, after giving effect to the foregoing Borrowing Base calculation, the Existing Overadvance will be $5,016,323.47. From and after the date hereof, the Aggregate Outstandings shall not exceed the Borrowing Base, calculated in accordance herewith, by more than $5,500,000, such excess amount being the "**Approved Overadvance**". Bank agrees that so long as (i) no Default or Event of Default (other than the Existing Defaults) shall have occurred, and (ii) the Approved Overadvance does not increase as set forth in any Borrowing Base Certificate required to be delivered pursuant to the terms hereof or the Loan Documents, the existence of the Approved Overadvance shall not constitute an Event of Default hereunder (the "**Permitted Overadvance**").

11. **PAYMENTS OF BANK INDEBTEDNESS**. During the term of this Agreement, Obligors will pay, or cause to be paid, to Bank the following sums:

(a) On the Effective Date, Obligors shall pay to Bank (i) the Forbearance Fee, and (ii) a sum sufficient to reimburse Bank for all costs, legal fees and disbursements by Bank in connection with the review and enforcement of the Loan Documents, as well as in connection with the preparation, execution and delivery of this Agreement and any other costs reimbursable under the Loan Documents;

(b) In addition to the payments required hereunder, Obligors shall continue to make payments of the Loans as set forth in the Loan Documents;

(c) All Bank Indebtedness shall be paid indefeasibly in full on or before the Forbearance Expiration Date, including, without limitation, the PIK Interest Payment.

12. **ADDITIONAL COVENANTS**. In addition to all of the covenants contained in the Loan Documents, during the term of this Agreement and so long as the Bank Indebtedness is outstanding, Obligors will comply with the following:

(a) **Consultant.** Borrower shall engage and retain a management consultant (the "**Consultant**") acceptable to Bank in Bank's sole and absolute discretion, to assist the Borrower in, *inter alia*, evaluating its financial condition and operations, reviewing Borrower's cash flow budget, preparing a strategic business report and plan for Borrower. Borrower agrees to the following related to the engagement of the Consultant:

(i) On or before November 4, 2022, Obligors shall furnish to Bank an engagement letter for the Consultant, which engagement letter shall be acceptable to Bank in its

sole discretion including with respect to the identity and qualifications of the Consultant and scope of services to be performed by such Consultant;

(ii) On or before November 28, 2022, Obligors shall furnish to Bank a strategic business report prepared with the assistance of and reviewed by the Consultant, and in form satisfactory to the Bank in its sole discretion, which report shall include a cash flow budget for Borrower for the remainder of the 2022 calendar year based on facts and assumptions which Obligors and the Consultant believe to be reasonable, and recommendations regarding Borrower's business operations;

(iii) Obligors shall work with the Consultant to provide the weekly and monthly financial reporting as set forth in **Section 12(b)** hereof, including the Cash Flow Projections (as hereinafter defined); and

(iv) Borrower shall and does hereby authorize the Consultant to (A) share with Bank all budgets, records, projections, financial information, reports and other information relating to the operations, financial condition, taxes, reorganization, financing, capital raise, litigation and any other business issues as requested by Bank in its sole discretion, (B) make itself available to Bank as requested by Bank from time to time, to have open discussions with and to share with Bank any of the information described in the foregoing clause, information regarding the consulting services provided to Borrower and any other information concerning Borrower, its financial condition, assets, liabilities, prospects, operations or otherwise.

(b) **Financial Reporting**

(i) Beginning on November 15, 2022, and continuing on November 30, 2022, and each of the 15th and last day of each calendar month thereafter, Obligors shall provide to Bank 13-week cash flow projections (the "**Cash Flow Projections**"), together with a report comparing the actual results for the prior two-week period to the corresponding period in the Cash Flow Projections and accompanied by a brief explanation of any negative variance. The Cash Flow Projections shall be prepared by Obligors in consultation with the Consultant based on assumptions which Borrower and Consultant believe to be reasonable setting forth, among other things, sales, receipts, disbursements and such line-item detail as satisfactory to Bank for each period therein.

(ii) As soon as practicable and in any event on or before the thirtieth day following each calendar month, beginning with the month ending October 31, 2022, Borrower shall furnish (or cause to be furnished) to Bank the following financial reports, which shall be prepared by Borrower in consultation with, and reviewed by, the Consultant, and delivered in form satisfactory to Bank in its sole discretion:

(A) A monthly financial statement of Borrower including, statements of cash flow, income, retained earnings, and profit and loss and surplus for the preceding month;

(B) a balance sheet as of the end of the preceding month; and

(C) a covenant compliance certificates in the form attached hereto as **Exhibit A** and attaching evidence satisfactory to the Bank in its sole discretion that demonstrate Borrower's compliance with the financial covenant set forth in **Section 12(c)** of this Agreement, which shall be accompanied by account statements or other evidence acceptable to the Bank in its sole discretion to evidence the represented cash and Cash Equivalents asserted therein, the truth and accuracy of which shall be certified by the Borrower President, Chief Financial Officer or Vice President.

Provided, however, that the foregoing deliverables for the month ending September 30, 2022, deliverable on or before October 31, 2022, need not be prepared in consultation with or reviewed by the Consultant.

(c) **Financial Covenants**. The financial covenants set forth in Section 5.03 of the Loan Agreement are suspended for the duration of the term of this Agreement. During the term of this Agreement, Borrower shall adhere to the following financial covenant:

(i) **Monthly Minimum Liquidity** Borrower shall maintain liquid assets consisting of unrestricted cash and Cash Equivalents of Borrower that are free and clear of any pledge, security interest, lien, claim or other encumbrance (other than in favor of Bank) an amount equal to or greater than $50,000.00 as of the end of each calendar month.

(d) **Other Reporting.** On a monthly basis when Obligors deliver the items required by **Section 12(b)(ii)** of this Agreement, Obligors shall provide to Bank a written update of the status of discussions with Medicaid regarding its claim, including any offers to settle, discount, or pay the same, and including any threats by Medicaid to institute litigation or other sanctions against Borrower.

(e) **Warehouseman's Release and Waiver Agreement**. On or before November 8, 2022, Borrower shall deliver to Bank a fully executed Warehouseman's Release and Waiver Agreement acceptable to Bank in its sole discretion, the form of which is attached hereto as **Exhibit B**, from Eversana Life Science Services, LLC ("**Eversana**") for the storage of Borrower's inventory at Eversana's warehouse in Memphis, Tennessee.

(f) **Additional Indebtedness**.

(i) Attached hereto as Schedule 12(f)(i) is a true, correct and complete listing of all presently existing indebtedness of each Obligor, including the identity of the creditor, the current payment schedule and the current amount outstanding in connection therewith (the "**Additional Indebtedness**").

(ii) On or before November 4, 2022, Borrower will provide to Bank a Schedule 12(f)(ii), setting forth a true, correct and complete listing of all liens presently existing encumbering any assets (whether real or personal property) of each Obligor, including the identity of the creditor, the current payment schedule, the assets encumbered and the current

amount outstanding in connection therewith (the "**Existing Liens**").

(iii) Except as otherwise set forth in Schedule 12(f)(i), Obligors represent and warrant that (A) they are current with respect to all Additional Indebtedness, and (B) no default or event of default exists with respect to any Additional Indebtedness.

(iv) Notwithstanding anything to the contrary in any Loan Document, each Obligor acknowledges and agrees that none of them shall incur any indebtedness, whether direct or indirect, other than (A) trade debt incurred in the ordinary course of business, (B) the Bank Indebtedness, and (C) the Additional Indebtedness.

(v) Notwithstanding anything to the contrary in any Loan Document, each Obligor acknowledges and agrees that none of them shall create, incur or permit to exist any mortgage, pledge, encumbrance, lien, security interest or charge of any kind (including liens or charges upon properties acquired or to be acquired under conditional sales agreements or other title retention devices) on its property or assets, whether now owned or hereafter acquired, or upon any income, profits or proceeds therefrom, other than (A) liens in favor of Bank and (B) the Existing Liens.

(vi) Notwithstanding anything to the contrary in any Loan Document, each Obligor acknowledges and agrees that, other than sale of inventory in the ordinary course of business, none of them shall sell, pledge, transfer or encumber any of such Obligors' assets, including without limitation Abbreviated New Drug Applications and Drug Master Files, without Bank's prior written consent. With respect to the sale of Abbreviated New Drug Applications and Drug Master Files only, the Bank's consent shall not be unreasonably withheld or delayed.

13. **CROSS DEFAULT**. Notwithstanding anything to the contrary contained in the Loan Documents, the occurrence of an Event of Default or Default hereunder or under any of the Forbearance Documents shall constitute an Event of Default and Default under each of the Forbearance Documents and, following the occurrence of any such Event of Default or Default, Bank may, at Bank's option and without further notice to Obligors, exercise any and all rights available to Bank under any of the Loan Documents, at law, in equity or otherwise.

14. **CONDITIONS**. Without in any manner limiting the other requirements contained herein, Bank's agreement to forbear contained herein is expressly contingent upon satisfaction, as determined by Bank, of each of the following:

(a) Receipt by Bank of this Agreement, fully executed and duly delivered by each Obligor;

(b) Receipt by Bank of the Forbearance Fee and reimbursement of all bank expenses required pursuant to **Section 11(a)** of this Agreement;

(c) Receipt by Bank of a Borrowing Base Certificate for the months ending August 30, 2022 and September 30, 2022, utilizing the revised definition of Borrowing Base set forth herein;

(d) Other than the Existing Defaults, there shall have occurred no Event of Default or event, which with the giving of notice or passage of time, or both, would constitute an Event of Default hereunder or under any of the Loan Documents;

(e) Receipt by Bank of the driver's license of Nirmal Mulye;

(f) Receipt by Bank of Borrower's agreement with Eversana for the storage of Borrower's inventory at Eversana's warehouse and other services provided by Eversana to Borrower;

(g) Receipt by Bank of a Compliance Certificate, in the form attached hereto as **Exhibit A**, with account statements or other evidence satisfactory to Bank in its sole discretion, demonstrating Borrower's compliance with the covenant set forth in Section 12(c) hereof;

(h) Bank shall have received a certificate of an authorized officer of Borrower and Pharmaceuticals delivering true, accurate and complete versions of (i) its certificate/articles of incorporation or organization (including any certificates of designation) and its by-laws or operating agreement (or a certification of no change, as applicable), (ii) the resolutions authorizing its execution, delivery and full performance of this Agreement and all other documents, certificates and actions required hereunder or in connection herewith, (iii) an incumbency certificate setting forth its officers (together with the corresponding signatures), and (iv) a good standing certificate (issued within 10 calendar days before the date hereof) with respect to the jurisdiction of formation for each of Borrower and Pharmaceuticals and where each of Borrower and Pharmaceuticals is qualified to conduct business under Applicable Law; and

(i) Such other documentation as required by Bank in its sole and absolute discretion.

15. **ADDITIONAL DOCUMENTS AND FUTURE ACTIONS**. Obligors will, at their sole cost, take such actions and provide Bank from time to time with such agreements, financing statements and additional instruments, documents or information as Bank may in its discretion deem necessary or advisable to perfect, protect, maintain or enforce the security interests in the Collateral, to permit Bank to protect or enforce its interest in the Collateral, or to carry out the terms of the Forbearance Documents. Obligors hereby authorize and appoint Bank as their attorney in fact, with full power of substitution, to take such actions as Bank may deem advisable to protect the Collateral and its interests thereon and its rights hereunder, to execute on Obligors' behalf and file at Obligors' expense financing statements, and amendments thereto, in those public offices deemed necessary or appropriate by Bank to establish, maintain and protect a continuously perfected security interest in the Collateral, and to execute on Obligors' behalf such other documents and notices as Bank may deem advisable to protect the Collateral and its interests therein and its rights hereunder. Such power being coupled with an interest is irrevocable. Obligors irrevocably authorize the filing of a carbon, photographic or other copy of this Agreement, or of a financing statement, as a financing statement and agree that such filing is sufficient as a financing statement.

16. **REPRESENTATIONS AND WARRANTIES**. In consideration of the forbearance extended herein by Bank, Obligors do hereby represent and warrant, as applicable, which representations and warranties shall survive until all Bank Indebtedness and all other obligations of the Obligors to Bank are paid and satisfied in full, as follows:

(a) Except with respect to the Existing Defaults, all representations and warranties of Obligors set forth in the Loan Documents are true and complete as of the date hereof.

(b) Other than the Existing Defaults, no condition or event exists or has occurred which would constitute a Default or an Event of Default under the Loan Documents.

(c) The execution and delivery of this Agreement by Obligors and all documents and agreements to be executed and delivered pursuant to the terms hereof;

(i) has been duly authorized by all requisite corporate or limited liability company, as applicable, action by Obligors;

(ii) will not conflict with or result in the breach of or constitute a Default (upon the passage of time, delivery of notice or both) under Obligors' Articles of Incorporation or Certificate of Formation, as applicable, or By Laws or Operating Agreement, as applicable or any applicable statute, law, rule, regulation or ordinance or any indenture, mortgage, loan or other document or agreement to which any Obligor is a party or by which any of them is bound or affected; or

(iii) will not result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of any Obligor, except liens in favor of the Bank or as permitted hereunder or under the Loan Documents.

17. **CERTAIN FEES, COSTS, EXPENSES AND EXPENDITURES**. Obligors will pay all of the Bank's expenses in connection with the review, preparation, negotiation, documentation and closing of this Agreement and the consummation of the transactions contemplated hereunder, including without limitation, fees, disbursements, expenses, appraisal costs and fees and reasonable expenses of counsel retained by Bank and all fees related to filings, recording of documents and searches, whether or not the transactions contemplated hereunder are consummated. Nothing contained herein shall limit in any manner whatsoever Bank's right to reimbursement under any of the Forbearance Documents.

18. **EVENTS OF DEFAULT**. Occurrence of any one or more of the following shall constitute an Event of Default hereunder and under each of the Loan Documents:

(a) The failure of any Obligor to comply with the terms of any of the Forbearance Documents; or

(b) An Event of Default under the other Loan Documents; or

(c) All or any part of the Collateral or any other assets of Obligors are attached, seized, subjected to a writ or distress warrant, or levied upon, or come within the possession or control of a receiver, trustee, custodian or assignee for the benefit of creditors.

Notwithstanding the foregoing, in no event shall the Existing Defaults constitute an Event of Default hereunder. Bank agrees to endeavor to give Obligors notice of a default or Event of Default; Obligors confirm, acknowledge and agree that (i) the agreement by Bank to give such notice does not entitle any Obligor to any grace or cure period with respect to such default or Event of Default, (ii) failure of Bank to give such notice shall not prejudice the Bank's rights and remedies hereunder or under any of the Loan Documents, at law or in equity, and (iii) the failure of Bank to give such notice shall not form the basis of any defense, claim or cause of action against the Bank or in connection with this Agreement, the Loan Documents, at law or in equity, all of which are hereby waived.

19. **REMEDIES**. At the option of Bank, upon the expiration or earlier termination of the forbearance period provided herein, and without further notice or demand, which notice and demand is expressly waived by Obligors, (a) the entire outstanding Bank Indebtedness shall be immediately due and payable; and/or (b) Bank may (i) terminate its obligation to forbear hereunder; and (ii) exercise each and every right and remedy under the Forbearance Documents, at law, in equity or otherwise.

20. **RELEASE AND INDEMNIFICATION**. In order to induce Bank to enter into this Agreement, Obligors do hereby agree as follows:

(a) **Release**. Obligors hereby fully, finally and forever acquits, quitclaims, releases and discharges Bank and its officers, directors, employees, agents, successors and assigns of and from any and all obligations, claims, liabilities, damages, demands, debts, liens, deficiencies or cause or causes of action to, of or for the benefit (whether directly or indirectly) of Obligors, at law or in equity, known or unknown, contingent or otherwise, whether asserted or unasserted, whether now known or hereafter discovered, whether statutory, in contract or in tort, as well as any other kind or character of action now held, owned or possessed (whether directly or indirectly) by Obligors on account of, arising out of, related to or concerning, whether directly or indirectly, proximately or remotely (i) the negotiation, review, preparation or documentation of the Loan Documents or any other documents or agreements executed in connection therewith, (ii) the administration of the Loan Documents; (iii) the enforcement, protection or preservation of Bank's rights under the Loan Documents, or any other documents or agreements executed in connection therewith, and/or (iv) any action or inaction by Bank in connection with any such documents, instruments and agreements (the **"Released Claims"**).

(b) **Covenant Not to Litigate**. In addition to the release contained in **Subsection 20(a)** above, and not in limitation thereof, Obligors do hereby agree that they will never prosecute, nor voluntarily aid in the prosecution of, any action or proceeding relating to the Released Claims, whether by claim, counterclaim or otherwise.

(c) **Transfer of Claims**. If, and to the extent that, any of the Released Claims are, for any reason whatsoever, not fully, finally and forever released and discharged pursuant to the terms of **Subsection 20(a)** above, Obligors do hereby absolutely and unconditionally grant,

sell, bargain, transfer, assign and convey to Bank all of the Released Claims and any proceeds, settlements and distributions relating thereto.

(d) **Indemnification**. Obligors expressly agree to indemnify and hold harmless Bank and its officers, directors, employees, agents, successors and assigns, of and from any and all obligations, losses, claims, damages, liabilities, demands, debts, liens, costs and expenses of Bank and/or its officers, directors, employees, agents, successors and assigns that may be asserted by, or may arise out of, whether directly or indirectly, proximately or remotely, any investigation, litigation, or other proceedings initiated, undertaken or joined in by Obligors or any other third party (including, without limitation, any employee, agent, personal representative, heir, executor, successor or assign of any Obligor) (together, the "**Indemnitees**") in connection with (i) the negotiation, review, preparation or documentation of the Loan Documents or any other documents or agreements executed in connection with the Bank Indebtedness, or any of them, (ii) the administration of the Loan Documents; (iii) the enforcement, protection or preservation of Bank's rights under the Loan Documents or any other documents or agreements executed in connection with the Bank Indebtedness, or any of them, (iv) the validity, perfection or enforceability of the Loan Documents, and/or (v) any action or inaction by Bank in connection with any of the foregoing (together, "**Claims**"); provided, however, that no Obligor shall be required to indemnify the Indemnitees for Claims found by final order of a court of competent jurisdiction to have been caused by the willful misconduct or gross negligence of the Indemnitees.

Obligors acknowledge that the foregoing is intended to be a general release with respect to the matters described therein. Obligors do hereby expressly acknowledge and agree that the waivers and releases contained in this Agreement shall not be construed as an admission of and/or the existence of any claims of Obligors, or any of them, against Bank. Obligors do further acknowledge that, to the extent that any such claims may exist, they are of a speculative nature so as to be incapable of objective valuation and that, to the extent that any such claims may exist and may have value, such value would constitute primarily "nuisance" value or "leverage" value in adversarial proceedings between Obligors, or any of them, and Bank. In any event, Obligors do hereby acknowledge and agree that the value to Obligors of this Agreement and of the covenants and agreements on the part of Bank contained in this Agreement substantially and materially exceeds any and all value of any kind or nature whatsoever of any claims or liabilities waived or released by Obligors hereunder.

21. **NO COURSE OF DEALING**.

(a) **Termination of Waivers**. Obligors do hereby acknowledge and agree that effective as of the date hereof any waiver or implied waiver by Bank of any obligation or covenant of Obligors, or any of them, under the Loan Documents is expressly terminated and rescinded (except as expressly provided herein to the contrary) and that Obligors are obligated to, and are expected by Bank to, strictly perform and comply with all of such obligations and covenants as provided in the Loan Documents.

(b) **Future Forbearance**. Nothing contained herein shall be deemed to obligate Bank to enter into any other forbearance agreements or to waive any Events of Default.

22. **COMMUNICATIONS AND NOTICES**. All notices, requests and other communications made or given in connection with this Agreement or under the Loan Documents shall be made in accordance with the provisions of the Loan Agreement.

23. **WAIVERS. In connection with any proceedings hereunder or in connection with any of the Bank Indebtedness, including without limitation any action by Bank in replevin, foreclosure or other court process or in connection with any other action related to the Bank Indebtedness or the transactions contemplated hereunder, each Obligor waives:**

(a) **all errors, defects and imperfections in such proceedings;**

(b) **all benefits under any present or future laws exempting any property, real or personal, or any part of any proceeds thereof from attachment, levy or sale under execution, or providing for any stay of execution to be issued on any judgment recovered in connection with the Bank Indebtedness or in any replevin or foreclosure proceeding, or otherwise providing for any valuation, appraisal or exemption;**

(c) **all rights to inquisition on any real estate, which real estate may be levied upon pursuant to a judgment obtained in connection with any of the Bank Indebtedness and sold upon any writ of execution issued thereon in whole or in part, in any order desired by Bank;**

(d) **presentment for payment, demand, notice of demand, notice of nonpayment, protest and notice of protest of any of the Bank Indebtedness;**

(e) **any requirement for bonds, security or sureties required by statute, court rule or otherwise;**

(f) **any demand for possession of any collateral prior to commencement of any suit;**

(g) **any right to require or participate in the marshalling of any Obligors' assets; and**

(h) **all benefits under present and future laws permitting termination of any Guarantor's obligations by delivery of notice or otherwise, other than by performance of all Guarantors' obligations hereunder and under the Guaranties.**

24. **WAIVER OF RIGHTS UNDER THE CODE. Each Obligor hereby waives and renounces such Obligor's:**

(a) **rights under Section 9-611 of the Code to notification of time and place of any public sale or the time after which any private sale or other intended disposition of any collateral is to be made;**

(b) **rights under Section 9-620 of the Code to notification of Bank's proposal to retain any collateral in satisfaction of the Bank Indebtedness; and**

(c) **rights under Section 9-623 of the Code to redeem any collateral by tendering fulfillment of all obligations secured by such collateral.**

Obligors further agree that disposition of any collateral by Bank at any auction performed by a duly licensed auctioneer regularly engaged in the sale by auction is a sale in conformity with reasonably commercial practices and disposition of collateral at such an auction is a commercially reasonable disposition in accordance with Section 9-627 **of the Code.**

25. **EXCLUSIVE JURISDICTION**. Obligors hereby consent to the exclusive jurisdiction of any state or federal court located within the State of New Jersey, and irrevocably agree that, subject to the Bank's election, all actions or proceedings relating to the Forbearance Documents or the transactions contemplated hereunder shall be litigated in such courts, and Obligors waive any objection which they may have based on improper venue or forum non conveniens to the conduct of any proceeding in any such court and waive personal service of any and all process upon them and consent that all such service of process be made by mail or messenger directed to them at the address set forth in **Section 22** for Obligors. Nothing contained in this **Section 25** shall affect the right of Bank to serve legal process in any other manner permitted by law or affect the right of Bank to bring any action or proceeding against any Obligor or their respective property in the courts of any other jurisdiction.

26. **CONSENT TO RELIEF FROM THE AUTOMATIC STAY**. Obligors hereby agree that if, during the forbearance term provided herein, any Obligor shall (i) file, or be the subject of, any bankruptcy petition filed with any bankruptcy court of competent jurisdiction, (ii) be the subject of any order for relief issued under such Title 11 of the U.S. Code, as amended, (iii) file or be the subject of any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for debtors, (iv) seek, consent to or acquiesce in the appointment of any trustee, receiver, conservator or liquidator, (v) be the subject of any order, judgment or decree filed against any Obligor for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or other relief for debtors, the Bank immediately, and without further action by the Bank, shall be entitled to relief from any automatic stay imposed by section 362 of Title 11 of the U.S. Code, as amended, or from any other stay or suspension of remedies imposed in any other manner with respect to the exercise of any rights and remedies by the Bank against its collateral and any proceeds thereof which otherwise is available to the Bank under Article 9 of the Code or other applicable state law of any jurisdiction in which any collateral or proceeds may now or hereafter be located. Obligors hereby irrevocably and unconditionally consent to such immediate relief and agrees to take any and all actions necessary or required of it to entitle the Bank to the relief provided in this **Section 26**. Obligors' agreement and consent set forth above shall not apply to any case under chapter 11 of Title 11 of the United States Code in which an Obligor is the debtor-in-possession and where Bank is receiving adequate protection (as such term is used under 11 U.S.C. §§ 361, 362, 363 and 364) satisfactory to the Bank in its reasonable discretion; provided, however, that notwithstanding such limitation on the consent set forth in this **Section 26**, such limitation shall not otherwise restrict or limit Bank's rights under this Agreement, the Loan Documents, at law or in equity, including without limitation, to seek relief from the automatic stay pursuant to 11 U.S.C. § 362 or otherwise take any action or seek any relief.

27. **TIME OF ESSENCE**. Time is of the essence of this Agreement.

28. **INCONSISTENCIES**. To the extent of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of the Forbearance Documents, the terms and conditions of this Agreement shall prevail. All terms and conditions of the Forbearance Documents not inconsistent herewith shall remain in full force and effect and are hereby ratified and confirmed by Obligors.

29. **BINDING EFFECT**. This Agreement and all rights and powers granted hereby will bind and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

30. **SEVERABILITY**. The provisions of this Agreement and all other Forbearance Documents are deemed to be severable, and the invalidity or unenforceability of any provision shall not affect or impair the remaining provisions which shall continue in full force and effect.

31. **NO THIRD-PARTY BENEFICIARIES**. The rights and benefits of this Agreement and the Forbearance Documents shall not inure to the benefit of any third party.

32. **MODIFICATIONS**. No modification of this Agreement or any of the Forbearance Documents shall be binding or enforceable unless in writing and signed by or on behalf of the party against whom enforcement is sought.

33. **HOLIDAYS**. If the day provided herein for the payment of any amount or the taking of any action falls on a Saturday, Sunday or public holiday at the place for payment or action, then the due date for such payment or action will be the next succeeding business day.

34. **LAW GOVERNING**. This Agreement has been made, executed and delivered in the State of New Jersey and will be construed in accordance with and governed by the laws of such State.

35. **EXHIBITS AND SCHEDULES**. All exhibits and schedules attached hereto are hereby made a part of this Agreement.

36. **HEADINGS**. The headings of the Articles, Sections, paragraphs and clauses of this Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Agreement.

37. **COUNTERPARTS**. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Agreement by signing any such counterpart. Delivery of an executed counterparty of a signature page to this Agreement by facsimile or other electronic transmission (e.g., "pdf" or "tif") will be effective as delivery of a manually executed counterpart hereof.

38. **ENTIRE AGREEMENT**. This Agreement constitutes the entire agreement among the parties hereto concerning the subject matter set forth herein and supersedes all prior

or contemporaneous oral and/or written agreements and representations not contained herein concerning the subject matter of this Agreement.

39. **JOINT AND SEVERAL LIABILITY**. Obligors hereby acknowledge and confirm that all agreements, covenants, conditions and provisions of this Agreement are and shall be the joint and several obligations of each Obligor.

40. **WAIVER OF RIGHT TO TRIAL BY JURY. OBLIGORS AND BANK WAIVE ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THIS AGREEMENT OR ANY OTHER DOCUMENT OR INSTRUMENT REFERRED TO HEREIN OR DELIVERED IN CONNECTION HEREWITH, OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF any Obligor WITH RESPECT TO THIS AGREEMENT OR ANY OTHER DOCUMENT OR INSTRUMENT REFERRED TO HEREIN OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE. OBLIGORS AND BANK AGREE AND CONSENT THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF OBLIGORS AND BANK TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. OBLIGORS ACKNOWLEDGE THAT THEY HAVE HAD AN OPPORTUNITY TO CONSULT WITH COUNSEL REGARDING THIS SECTION, THAT THEY FULLY UNDERSTAND ITS TERMS, CONTENT AND EFFECT, AND THAT THEY VOLUNTARILY AND KNOWINGLY AGREE TO THE TERMS OF THIS SECTION.**

41. **RESULTS OF NEGOTIATION**. Obligors acknowledge that they have been represented by counsel in connection with the execution and delivery of this Agreement and that the terms and conditions of this Agreement are the result of negotiation between the parties hereto. Obligors further acknowledge that they have knowingly (a) waived their right to (i) trial by jury; and (ii) certain other rights as set forth in detail in Sections 23, 24, 25 and 26 above, and (b) consented to relief from the automatic stay as set forth in Section 26 above. Obligors acknowledge that such waivers and consents constitute a material inducement for Bank to enter into this Agreement and they have been fully advised of the consequences of such provisions by their counsel.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

BORROWER

NOSTRUM LABORATORIES, INC.

By:_____
NIRMAL MULYE, Ph.D.
Chairman and CEO

GUARANTORS

NOSTRUM PHARMACEUTICAL LLC

By:_____
NIRMAL MULYE, Ph.D., President

_____
NIRMAL MULYE, Ph.D., Individually

BANK

INVESTORS BANK, a division of CITIZENS BANK, N.A.,

By:_____
ERIN KANE

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

BORROWER

NOSTRUM LABORATORIES, INC.

By:_____
NIRMAL MULYE, Ph.D.
Chairman and CEO

GUARANTORS

NOSTRUM PHARMACEUTICAL LLC

By:_____
NIRMAL MULYE, Ph.D., President

_____
NIRMAL MULYE, Ph.D., Individually

BANK

INVESTORS BANK, a division of CITIZENS BANK, N.A.,

By:_____
ERIN KANE
Officer

STATE OF FLORIDA :
SS.
COUNTY OF Miami-Dade :

On this, the 31st day of October, 2022 before me, a Notary Public, personally appeared Nirmal Mulye who acknowledged himself to be the Chairman and CEO of Nostrum Laboratories, Inc., a New Jersey corporation, and that he as such Chairman and CEO being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as Chairman and CEO.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public
My commission expires:

ALLEN R CHERRY III
Notary Public-State of Florida
Commission # HH 19074
My Commission Expires
July 08, 2024

STATE OF FLORIDA :
SS.
COUNTY OF Miami-Dade :

On this, the 31st day of October, 2022 before me, a Notary Public, personally appeared Nirmal Mulye who acknowledged himself to be the President of Nostrum Pharmaceuticals, LLC, a Delaware limited liability company, and that he as such President being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the limited liability company by himself as President.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public
My commission expires:

ALLEN R CHERRY III
Notary Public-State of Florida
Commission # HH 19074
My Commission Expires
July 08, 2024

STATE OF FLORIDA :
SS.
COUNTY OF Miami-Dade :

On this, the 31st day of October, 2022, before me, a Notary Public, personally appeared Nirmal Mulye, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, and he/she/they acknowledged that he/she/they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Allen R Cherry III

Notary Public
My commission expires:

ALLEN R CHERRY III
Notary Public-State of Florida
Commission # HH 19074
My Commission Expires
July 08, 2024

EXHIBIT A

Compliance Certificate

COVENANT COMPLIANCE CERTIFICATE

_____, 20__

Investors Bank, a division of Citizens Bank, N.A.
28 State Street
Boston, MA 02109
Attention: Erin Kane
Email: erin.c.kane@citizensbank.com

The undersigned, the _____ of Nostrum Laboratories, Inc. a New Jersey corporation ("Borrower"), gives this certificate to Investors Bank, a division of Citizens Bank, N.A. ("Bank"), in accordance with the requirements of Section 12(c) of that certain Forbearance Agreement dated August [__], 2022, by and between Borrower, Guarantors and Bank ("Forbearance Agreement"). Capitalized terms used in this Certificate, unless otherwise defined herein, shall have the meanings ascribed to them in the Loan Agreement.

1. Based upon my review of the account statements of Borrower for the month ending _____, 20__, copies of which are attached hereto, I hereby certify that:

a. The liquid assets consisting of unrestricted cash and Cash Equivalents of Borrower that are free and clear of any pledge, security interest, lien, claim or other encumbrance (other than in favor of Bank) are: $_____.

2. No Event of Default, other than the Existing Defaults, exist on the date hereof, other than: _____ [if none, so state].

Very truly yours,

NOSTRUM LABORATORIES, INC.

By:_____
NIRMAL MULYE, Ph.D.
Chairman and CEO

EXHIBIT B

Warehouseman's Release and Waiver Agreement

NOSTRUM LABORATORIES, INC.

_____ ___, 2022

Eversana Life Science Services LLC
190 N. Milwaukee Street
Milwaukee, Wisconsin 53202
Attention: _____

Dear Madams and Sirs:

Please be advised that Nostrum Laboratories, Inc. (the "**Company**"), Nostrum Pharmaceutical LLC and Nirmal Mulye, have entered into a financing arrangement with Investors Bank, a division of Citizens Bank, N.A., as administrative agent (in such capacity, "**Lender**") and the Company has granted to Lender a first priority security interest in substantially all of its assets including, without limitation, all inventory of the Company, whether now owned or hereafter acquired ("**Inventory**"). As required by the terms of the financing arrangement, you are requested to note your receipt and acceptance of the following by signing and returning a copy of this letter to the Agent at the address set forth below.

You hereby acknowledge and agree that (i) the Company has delivered to you, or may from time to time deliver to you, certain of its Inventory for storage in your warehouse located at 4550 Mendenhall Road, Memphis, Tennessee 38141, (ii) Lender's security interest in the Inventory is and shall be senior to all liens, claims and interests, other than your warehouseman's lien, if any, for any accrued and unpaid warehousing fees charged by you for the actual storage of the Inventory, (iii) to the extent applicable, all warehouse receipts and other documents of title which evidence Inventory ("**Receipts**") shall be non-negotiable and shall be issued to or for the account of Lender, (iv) you shall provide Lender with a copy of such receipts, to the extent applicable, or other documents relating to the Inventory, including documents of title, upon Lender's request therefor, (v) you hold possession of the Inventory for Lender's benefit and that you shall continue to hold possession of the Inventory for Lender's benefit until you receive written notice from Lender that Lender's security interest has been terminated, and (vi) you have not previously been notified by any other party of a security interest claimed in the Inventory.

Lender hereby authorizes you, subject to the conditions described below, to release any of the Inventory to any authorized agent of the Company upon the Company's request. Your authority to release the Inventory to the Company is subject to the condition that upon the written direction of Lender, you shall refuse to release the Inventory to the Company and you shall only release such aforesaid property or Inventory to Lender or the party designated by Lender in such oral or written direction. You agree to permit Lender or its nominee access to the Inventory, subject to applicable restrictions under applicable law, for purposes of inspecting and removing the Inventory at Lender's request without first receiving the consent or permission of the Company.

The Company agrees that you shall have no liability to the Company if you comply with Lender's oral or written direction as described above. The Company further agrees that it will

continue to pay all charges, costs and expenses, if any, related to the Inventory and will reimburse you for all reasonable costs or expenses, if any, incurred as a direct result of your compliance with the terms and provisions of this letter. Lender shall not be directly or indirectly liable or responsible for any of said charges, costs or expenses, whether due or to become due.

If all or any of the Inventory stored in your facility is protected by property or casualty insurance carried by you, you agree that any proceeds received from such insurance as a result of any loss to any such Inventory, shall be paid by check or checks payable to Lender delivered to the address set forth below.

You hereby warrant and represent that you do not deal in the type of goods stored by the Company and you do not buy or sell such goods in the ordinary course of your business. You hereby warrant, represent and covenant that the Inventory owned by the Company shall not be commingled with goods owned by any other person or entity and you shall keep the Inventory separate from any other goods.

Please confirm receipt of this letter and your agreement to the above by signing the enclosed copy of this letter as indicated and returning it to the Company at the above address, Attention: Nirmal Mulye.

Very Truly Yours,

COMPANY: Nostrum Laboratories, Inc.
By: Nirmal Mulye, Chariman and CEO

Acknowledged and Agreed to this _____
day of _____, 2022:

Bailee:

Eversana Life Science Services, LLC

_____
(Please Print)

By:_____
Name:
Title:

Lender Address:

Investors Bank, a division of Citizens Bank, N.A.
28 State Street
Boston, MA 02109
Attention: Erin Kane
Telephone: 401-644-4903
Email: erin.c.kane@citizensbank.com

With a copy to:

Stradley Ronon Stevens & Young, LLP
2005 Market Street
Suite 2600
Philadelphia, PA 19103
Attention: Gretchen M. Santamour, Esq.
Julie M. Murphy, Esq.
Telephone: 215-564-8523 or 856-321-2409
Email: gsantamour@stradley.com
jmmurphy@stradley.com

STATE OF _____ :

: SS.

COUNTY OF _____ :

On this, the _____ day of _____, 2022, before me, the undersigned notary public, personally appeared _____ who acknowledged himself/herself to be the _____ of _____, and that he/she as such _____, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____
Notary Public
My Commission Expires:

EXHIBIT F

Excerpts of Transcript

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CITIZENS BANK, NATIONAL ASSOCIATION,

Plaintiff,

v.

NIRMAL MULYE, NOSTRUM LABORATORIES, INC., and NOSTRUM PHARMACEUTICALS, LLC,

Defendants.

CIVIL ACTION NUMBER:

23-cv-00545-RK

EVIDENTIARY HEARING

Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street
Trenton, New Jersey 08608
September 24, 2024
Commencing at 10:42 a.m.

B E F O R E: **THE HONORABLE ROBERT KIRSCH, UNITED STATES DISTRICT JUDGE**

A P P E A R A N C E S:

STRADLEY RONON STEVENS & YOUNG, LLP
BY: JULIE M. MURPHY, ESQUIRE
JOSEPH W. CATUZZI, ESQUIRE
LIBERTY VIEW
457 HADDONFIELD ROAD, SUITE 100
CHERRY HILL, NJ 08002
For the Plaintiff

Carol Farrell, Official Court Reporter
cfarrell.crr@gmail.com
856-318-6100

Proceedings recorded by mechanical stenography; transcript produced by computer-aided transcription.

A P P E A R A N C E S (Continued):

LAW OFFICE OF BRIDGETTE Y. AHN
BY: BRIDGETTE Y. AHN, ESQUIRE
PMB 1236
111 TOWN SQUARE PLACE, SUITE 1203
JERSEY CITY, NJ 07310
For the Defendants

LAW OFFICES OF CARLTON R. ASHER, JR.
BY: CARLTON R. ASHER, JR., ESQUIRE
110 E. 59TH STREET
NEW YORK, NY 10022
General Counsel for the Defendant,
Nostrum Laboratories, Inc.

A L S O P R E S E N T:

James L. Grainer, CFO of Nostrum Laboratories, Inc.,
and Nostrum Pharmaceuticals, LLC

Keith Balla, Special Fiscal Agent

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(PROCEEDINGS held in open court before The Honorable Robert Kirsch, United States District Judge, at 10:42 a.m.)

THE COURT: Okay. Folks on Citizens, can you step up, please. The next matter, come on up. Who are the lead lawyers?

MS. MURPHY: Good morning, Your Honor. Julie Murphy from Stradley Ronon --

THE COURT: Hi, Ms. Murphy. How are you? Nice to meet you.

MS. MURPHY: Nice to meet you.

MR. CATUZZI: Good morning, Your Honor. Joseph Catuzzi of Stradley Ronon, also on behalf of Citizens.

THE COURT: Good morning.

MS. AHN: Good morning, Your Honor. My name is Bridgette Ahn, representing defendants in this matter.

THE COURT: Okay.

MS. AHN: And with me is my co-counsel, Mr. Carlton R. Asher, who was admitted pro hac vice in the corporate action which was consolidated into this main action by Your Honor.

THE COURT: Excellent. Okay.

MR. ASHER: Good morning, Your Honor.

THE COURT: Good morning, counsel. Thank you all for being on time.

I hope the fiscal agent is here.

MR. BALLA: That's me, Keith Balla.

THE COURT: How are you?

MR. BALLA: Good.

THE COURT: I'm going to give you the benefit of my preliminary observations, for whatever it is worth.

It is a pretty simple, straightforward case. All right? And nobody is going to convolute this because it's not convolutable.

I'm at a loss as to how this has morphed into, for years, what is a pretty straightforward loan, default, what appears to be an expiration of a forbearance, and here we are. So I'm going to put -- I assume the fiscal agent has received defense counsel's letter.

MR. BALLA: I have. I haven't read it. I was in Ohio yesterday at the other plant and traveling back.

THE COURT: I think you should read it. Okay?

By the way, is there anything confidential in your report? I mean it's splashed confidential. But is there -- obviously, there is no grand jury material. What's confidential about it?

MR. BALLA: I think from the defendants' side, the confidentiality deals with the ANDAs and the sales that they have and to what customers.

THE COURT: So if we refer generally to ANDAs -- there is an ANDA that was sold purportedly on June 24th of 2024. Judge Castner issued her opinion three days later, I think. Is

my chronology right?

MS. MURPHY: Your Honor, I believe you are correct as to the date of the sale of the ANDA.

As to Judge Castner's order --

MR. CATUZZI: I believe -- so, Judge Castner's order was June 27th, so I believe you are right, three days, within a three-day period.

THE COURT: Yes, okay. It was on the heels of.

If we refer, generally speaking, to the sale of an ANDA or the existence of an ANDA, does that compromise the confidentiality of the defendant?

MS. AHN: No, Your Honor. We are comfortable with that.

THE COURT: Then that's how we are going to proceed. Thank you for that, by the way.

This is not going to be -- Judge Castner, my highly regarded colleague, was exhaustive here, and, frankly, didn't have to hold an evidentiary hearing under the law, under 66, but she did. And she heard multiple witnesses from both sides. And she made very comprehensive findings. I have read that opinion very carefully.

In my judgment, she was very contemplative and very deliberative, and very measured. I think another judge on these facts would have appointed a receiver right away. But she gave the defense, in my judgment, a very prudent

opportunity to resist what some view as a severe prophylactic measure. I'm not here to reinvent the wheel. Many of those findings that she found to support a fiscal agent, we don't have to revisit. The law of the case.

The few that remain, frankly, they didn't, in my judgment, tilt decidedly in front of the defense.

She acknowledged, as I see it, every single prong. She accorded a measure of endorsing the plaintiff's view, and by that I mean it was very clear to any honest reading of that opinion that she acknowledged there were significant, serious issues regarding the financial solvency of the defendant. But, notwithstanding that, she was reluctant, as a measured judge should be, to go right ahead with a receiver.

We're not reopening this. I'm surprised this case hasn't resolved. There is a motion for summary judgment. I'm going to dig right on into it.

This is not going to be a long, drawn-out proceeding. I've got a 12:00 on a very complicated trial that we just had about 10 or 15 days, so I would like the fiscal agent to review carefully what your colleague from the defense has leveled. There is accusations with regard to you and your neutrality. And then I expect you will very briefly take the stand.

I will allow you, Ms. Murphy, to inquire of him very generally. I assume you are going to move to admit his report. And I basically am going to try to confirm why his view is what

it is.

I will give defense counsel limited opportunity to cross-examine him, and then we shall go forward.

I understand the application is, again, for a receiver. And it's regrettable that we're here. Not that you don't seem perfectly pleasant and professional, all, for me to deal with. But if the notion is -- because I saw your application to delay this, I can't understand how we're still here. So there is no more delay, and we're going to get right to it. Okay?

MR. ASHER: I understand, Your Honor. Of course, the fiscal agent's work is not yet complete.

THE COURT: And I wonder why that is so, but I think we are going to learn that. Thank you.

MR. ASHER: I can address --

THE COURT: I think I made my position pretty clear. Okay?

MR. ASHER: That's true.

THE COURT: Yes. Good. Excellent. Clarity is important.

And we'll hear from him. And maybe the explanation for his inability to complete his work is self-inflicted. Maybe he's going to say that he had a family crisis over the last six weeks that's taken him out of town. Maybe he would say, I've gotten all these certified audits from 2023. But

here's what we know, and I don't think you dispute this.

The loan, the underlying loan was for 22 something million. As I'm looking at you, 17 something million remains. And if my information is correct, the defendants haven't paid a cent on this since July of '23. Yet somehow, the defense's position presents a very rosy financial vista. Something is not making sense to me.

So I just want you to understand this is not going to be an all day hearing.

Judge Castner did the yeoman's work here. I don't understand how this case didn't resolve. I'm keeping an open mind. But I've never heard a defense, I've never heard of one, where the argument is there is a forbearance agreement for posterity. I've never heard that. And I've looked, and I've never seen a case to support that. Maybe that's this case. Maybe it is. I know that Judge Castner expressed some skepticism in her opinion. I share that healthy dollop of skepticism. But I of course will keep an open mind throughout. But if that's the defense, I have just never seen it. I look forward to seeing you in a few minutes. When the fiscal agent, who is a neutral -- you are an arm of the Court.

MR. BALLA: Right.

THE COURT: So you will be placed under oath. You have an obligation of candor to the Court, obviously.

MR. BALLA: Right.

THE COURT: Okay? So if you have in any way been unable to actually get at information that has been forthcoming from the defense, you are going to have to own that, obviously. Understood?

MR. BALLA: Yes.

THE COURT: Okay.

MR. ASHER: Your Honor, I didn't anticipate, based upon the text message, that there was going to be an evidentiary hearing on this issue which you've just outlined. Accordingly, we are entitled to conduct a deposition to --

THE COURT: No.

MR. ASHER: -- or conduct discovery --

THE COURT: There has been limited discovery -- I'm sorry for interrupting you, counsel.

I am not going to permit this to get off the tracks. In my judgment, this has been a very simple, straightforward case that has been, for whatever reason, unwieldy. No more.

Judge Castner allowed limited discovery.

I spoke with Judge Arpert, my friend and my colleague. He allowed limited discovery.

Judge Castner had an exhaustive evidentiary hearing that she was not required to do.

I know you know the law. I'm not trying to be condescending to you. Judges, as a matter of course, have entered receiverships under Rule 66 throughout this country

with no evidentiary hearing, and the law couldn't be more clear. But my colleague did above and beyond that. And the findings, in any objective read, are not terribly compelling to the defense. Yet notwithstanding, and I think correctly, she exercised the appropriate restraint to allow a fiscal agent, in a less intrusive way, arguably, than a receiver, to have at it. And almost instantaneously, counsel, at least what I read -- now, we'll see what he says under oath -- he's been stymied.

So if your notion is that -- it is an evidentiary hearing in the sense of I will allow limited -- we've got a report from him. But I'm not reopening what Judge Castner did.

MR. ASHER: Oh, no, of course. Judge, I don't intend to get into that at all.

THE COURT: Yes.

MR. ASHER: I'm only talking about the fact that we received, on the 16th of this month, a report with voluminous exhibits, and so forth and so on, and we responded to it. We framed the accounting and stability issues relevant to the appointment of a receiver or for other purposes, but -- under Rule 66. And, of course, Judge Castner permitted discovery. But I'm only talking about this particular report that we received just two weeks ago --

THE COURT: I'm getting the distinct impression from my review of this record that delay is your friend, at every juncture, and I mean this with the utmost respect. At every

turn, including a letter that I got from you yesterday seeking to postpone this ad infinitum, today, that there is no juncture that the defense will resist to avoid joining the issue. And I'm telling you, no more. So I have heard you --

MR. ASHER: I understand, Your Honor.

THE COURT: I have heard you, and we are going to proceed accordingly. Okay?

I can rule on the papers. I'm entitled to rule on the papers. You've had discovery authorized by a United States District Court Judge and another Magistrate Judge. There was a comprehensive hearing which resulted in a fulsome opinion. And now, purportedly, and I don't know yet, but the neutral, the arm of the Court, is claiming he's obstructed, he is not getting the information that he's entitled, and there is a serious doubt -- and I'm not speaking for him, because he's going to speak for himself. There is a serious doubt, contrary to what Judge Castner hoped, as to whether or not the defense has the assets sufficient to collateralize a $17 million outstanding debt.

So, as a courtesy to you, I wanted you to know where the Court is coming from. I looked at this record. I can't believe so little progress was made on a very distinct, readily provable, or not, action. And that's what we're doing.

MR. ASHER: Judge --

THE COURT: Thank you.

MR. ASHER: Judge --

THE COURT: Please read it and indicate that to me.

Every time I'm done saying something, you want to say something, counsel.

MR. ASHER: I do.

THE COURT: Yes. Go ahead.

MR. ASHER: There are two different issues, Your Honor. There is the issue that you've addressed at greater length, having to do with an anticipated decision that you are presumably going to render shortly, about the summary judgment issue, in one or both of the set of claims.

THE COURT: Well, hold on. Just let me be clear about this.

MR. ASHER: But that's not what I'm not talking about. I'm talking about his testimony.

THE COURT: Oh, I know that.

MR. ASHER: He isn't addressing the summary judgment issue. He's addressing the issue of an ancillary matter under Rule 66, which is a different -- it's a different tribunal.

THE COURT: Let me be clear about this. When I say with all due deliberate speed, I endeavor to do that in every one of my 400 cases. Okay? At any given time, I have a hundred pending motions. Don't cry a tear for me. I wanted this job and I feel blessed to have it, and I give my level best to every one of the 400 cases that I have.

So when I say with all due deliberate speed, I don't have the capability, counsel, of stopping the operations of my chambers to look at this pending summary judgment which I think was pending since May, correct?

MS. MURPHY: (Nods head.)

THE COURT: But I can promise you it's on my radar. And it's on my radar because I, again -- I don't want to sound like a broken record -- I don't understand how a case of relative straightforward legal principles has languished. And I think the parties, including you, defense counsel, have a right to all due deliberate speed, because justice delayed is justice denied. I didn't think of that cliche, by the way, but it's true. There are two discrete issues.

And I'm going to endeavor to hear from the fiscal agent, with an open mind, but I'm not reopening Judge Castner's proceedings. She made findings, and any findings I'm going to make are either going to be consistent, exactly where she was, and we continue on with the fiscal agent. If I'm satisfied that the defense has been forthcoming and open and transparent and cooperative, then I will keep this going. And I don't know why I would have received the report I did, but that's why we put folks under testimony. But this is not an all day hearing.

MR. ASHER: No, I understand. We didn't know that there was going to be an evidentiary hearing. And, Your Honor, in the case that had been before you for a significant period

of time, they have been fully submitted for summary judgment disposition. Okay? Now we have -- now we have the separate issue having to do -- issues that don't go to the liability issue in the case. They are not even relevant to the motions for summary judgment.

THE COURT: Well, I will be honest. It could moot everything. If your client dissipates all the assets, there is nothing left to fight over. That's not justice, is it?

MR. ASHER: No one has raised that issue, even plaintiff. The only thing that they raised, Your Honor, in the papers --

THE COURT: Do me a favor, don't raise your voice with me.

MR. ASHER: Sorry, your Honor.

THE COURT: Just so you know, there is a microphone right in front of me. I love passionate advocacy. I welcome it. Don't yell at the Court.

MR. ASHER: I didn't think I was. I apologize, Your Honor.

The only time that they have suggested or alleged that there have been a dissipation of assets was when, as they said in their recent letter to Your Honor, that we sold three of the ANDAs as set forth in Keith's report, and that the proceeds were used in order to fund the administration of the case.

Well, there are 50-plus ANDAs, and these three, as set

forth in our declaration, shows that it's not -- it was not being operated. It was defunct, as permitted, even under the loan agreement. So --

THE COURT: So, counsel, I've got a couple things -- I have something to say in response to that, and I'm going to ask Ms. Murphy, is that accurate? Okay? Meaning is this a newfound request of the plaintiffs or is this a newfound concern of the plaintiffs, the dissipation of assets, meaning this has just come up now? It would sort of beg the question, if it wasn't a principal concern of the plaintiff, why did you file for receivership with an order to show cause many months ago? But you're an officer of the court, and I expect candor from you as well.

One of the problems that you have with this position, counsel, is -- that there is no concern regarding dissipation of assets from the defense that it is an unreasonable concern, and a newfound concern, is the fact that Judge Castner recited, which I don't think you contest, that since July of 2023, the plaintiffs have been paid not one dollar on the outstanding loan. That would seem to support a significant, serious solvency issue. Otherwise, you would be making good on it.

I would like you to represent to me, Ms. Murphy, if you would, is counsel's representation to me accurate, meaning has this been a newfound concern, the dissipation of evidence -- I'm sorry -- of assets, or has this been

longstanding?

MS. MURPHY: No, Your Honor, I believe we pled it in our receivership motion.

As to what the loan documents say, the forbearance agreement that was signed, I can read to you, says: During the term of this agreement and so long as the bank indebtedness is outstanding, obligors will comply with the following: Notwithstanding anything to the contrary in any loan document, each obligor acknowledges and agrees that, other than sale of inventory in the ordinary course of business, none of them shall sell, pledge, transfer, encumber, any of such obligor's assets, including, without limitation, Abbreviated New Drug Applications and drug master files, without bank's prior written consent.

With respect to the sale of Abbreviated New Drug Applications and drug master files only, the bank's consent shall not be unreasonably withheld or delayed.

THE COURT: Again, I don't know -- counsel, please be seated. Please be seated. Counsel --

MR. ASHER: I am. You notice that, Your Honor, she didn't answer your question.

THE COURT: Counsel, please be seated.

MR. ASHER: Just for the record.

THE COURT: Thank you. I'm going to ask you again. Please be seated, counsel.

MR. ASHER: Yes.

THE COURT: Thank you. And you as well. Thank you.

MS. AHN: You would like me too?

THE COURT: Yes, I would. Everybody is standing at me, right?

Please read the letter from defense counsel so you are up to speed.

I have a 12:00 matter. I expecting to be on the bench as soon as you report to me that you've had a chance to read this thoroughly. You will be placed under oath for a very limited amount of time and a very limited scope, to satisfy the Court. I will allow brief cross-examination. I am not reopening this or opening this. This litigation has been ongoing, there has been discovery, and we are moving on. Okay? Thank you.

Please indicate to Ms. Markey when you have read it.

THE COURTROOM DEPUTY: All rise.

(Recess from 11:05 11:39 a.m.)

THE COURTROOM DEPUTY: All rise. The Honorable Robert Kirsch presiding.

THE COURT: Please be seated. Thank you.

The matter is Citizens Bank v. Nostrum Laboratories and Nostrum Pharmaceuticals, and then there is an individual defendant as well, Civil Action Number 23-20765. I think there is another civil action number which has been consolidated but

for purposes of today, we will go with what I just indicated.

For the plaintiffs, Citizens, please.

MS. MURPHY: Good morning, Your Honor. Julie Murphy and Joseph Catuzzi from Stradley Ronon Stevens & Young for Citizens Bank.

THE COURT: Good morning.

For the defendants?

MR. ASHER: Good morning, Your Honor. My name is Carlton Asher. I'm along here with Bridgette Ahn.

THE COURT: I'm sorry. How do you pronounce your name, counsel?

MS. AHN: It's Ahn, Your Honor, as in on/off.

THE COURT: Yes. Welcome.

MS. AHN: Thank you.

THE COURT: Very well. The matter is before the Court upon the Court's scheduling on an emergent basis.

Before the Court is a letter from plaintiffs dated September 17, 2024, and the Court also has a letter from the defendants dated September 16, 2024 -- no, no, I'm sorry, that's the report from the neutral. The letter that I have from the defendants is dated September 23, 2024, which sought an adjournment and a postponement which the Court denied.

The Court has reviewed a report from the fiscal agent appointed by my colleague, Judge Castner, dated September 16, 2024.

And, of course, the Court has read, as indicated, Judge Castner's thoughtful opinion dated June 27, 2024, which was the aftermath of an evidentiary hearing where the judge set forth comprehensive findings of fact and conclusions of law and frankly invited counsel to participate in same.

I have a question before we get started, Ms. Murphy, to you. And I don't know if it was you, Mr. Catuzzi, or Mr. Asher, but before I left to allow the fiscal agent to take a look at the submission from the defense, I think it was you, and I may be wrong, and it may be Mr. Catuzzi or, again, it may be Mr. Asher, that indicated that a summary judgment has been pending for a significant amount of time. Was it you who said that?

MR. ASHER: I did, Your Honor, I made that statement.

THE COURT: Okay. I might be missing something, Mr. Asher, and I mean this --

MR. ASHER: In turn, forgive me, Your Honor, that's what I understood from Ms. Ahn because she's counsel of record in the case of Citizens Bank against Nirmal Mulye.

THE COURT: So I mean this sincerely. We have an extraordinary Clerk's Office. How they process the mountain of material that comes in every day is herculean, to say the least. But I'm aware of only one summary judgment that was filed in May of 2024, that was fully briefed in July of 2024. Am I right?

MS. MURPHY: That's correct, Your Honor. We had filed a letter with Judge Castner requesting leave to file a summary judgment motion in the corporate case, which we have not received, but the summary judgment motion, as the Court said, you are correct, May, and fully briefed in July.

THE COURT: So, Mr. Asher, I'm not here to quibble. That's a newly filed motion. I'm going to get to this as soon as practicable.

MR. ASHER: Yes.

THE COURT: And I'm not here to quibble. I wish that I could turn around a pending motion immediately, but it's not possible, and I don't want to misread it, but I got the impression from one of the lawyers, and apparently it was you, sir, that you think this motion is pending for an inordinate amount of time.

MR. ASHER: I don't know if I said inordinate --

THE COURT: You did not.

MR. ASHER: -- but I certainly understood what Your Honor said earlier, that you intend to get to it shortly.

THE COURT: I do.

MR. ASHER: I appreciate that.

THE COURT: And I want to be clear about something, and I think this was a concern of yours, Mr. Asher, and you would be right to be concerned about it. Whatever findings the Court makes today regarding a -- whether the Court changes any

of the terms and conditions of the fiscal agent is separate and distinct from the issues in the summary judgment. I think you were concerned about that. And if I didn't address that, you have a right to hear -- you are correct about that. Obviously, everything is interrelated, to a certain degree, but they are separate legal determinations. I hope that assuages you.

MR. ASHER: No, no. Yes, Your Honor, I appreciate that. Thank you.

THE COURT: Yes. You're welcome.

Okay. It is 11:45 at this point. If we are not able to conclude this -- I have a specially set matter at 12:00 that I'm not going to adjourn. If necessary, we will come back because I've got an afternoon calendar, we will come back at 3:00 to resume and conclude this. Okay? Excellent.

MS. MURPHY: Thank you, Your Honor.

THE COURT: Ms. Murphy, I will hear you.

MS. MURPHY: Good morning, Your Honor. Citizens would like to call Keith Balla to the stand.

MR. ASHER: Your Honor, I just want to make sure it's on the record, in line with what I had said to Your Honor before, I believe that we are entitled, on notice of a hearing, we have been informed today that you apparently want to reach a decision on some issue. We would like to know whatever the issue is that's been presented for Your Honor's decision --

THE COURT: Counsel, did you not read the same letter

that I read on September 17 that your co-counsel responded to?

MR. ASHER: Yes.

THE COURT: Okay. So let me be clear about this, okay? The purpose is essentially reopening Judge Castner's finding on appointing a fiscal agent which was pursuant to the application presented by the plaintiffs for a receivership under Rule 66. The matter was presented to the Court, and I'm going to hear from the fiscal agent, without any additional delay.

MR. ASHER: I appreciate that, Your Honor.

THE COURT: You've got to let me finish, please. Okay? Thank you.

Without any additional delay.

The allegations or the assertions set forth by Ms. Murphy in her letter dated September 17 prompted immediately the Court to schedule today's matter. I don't know if I -- and, Patti, you can tell me. Was it the 18th? It could have been the 19th, but it was with all due deliberate speed, I set this. Then yesterday, the day before the hearing, for the first time I got a request for a postponement from the defendant which I immediately denied. The reason, this is tantamount to a motion for preliminary injunction. Any notion that the defense is ambushed by this is preposterous. The application from the plaintiffs regarding a receiver has been months long, maybe longer.

MS. MURPHY: Almost one year, Your Honor.

THE COURT: Okay. So any notion that this has been a rush to judgment or that the defense has been sandbagged -- please be seated. Thank you.

MR. ASHER: Your Honor, I wanted to complete my record.

THE COURT: I have to say this, Mr. Asher. I have been a judge for 15 years. Every time I pause to gather my thoughts, you stand up and interrupt me, and I know you're not trying to be rude. You strike me as a perfect gentleman. But this has to be six, eight, 10, 12 times that I have had to ask you to allow me to finish my thought. For the record, I'm not raising my voice. I have never raised my voice with you. But I'm repeating myself. Because whatever it is that I'm saying in a measured, even tone is not registering with you. And I don't think you are being discourteous to me, but something is lost in my articulation.

I'm going to say this again, with the utmost respect. Please let me finish.

MR. ASHER: Yes, Judge.

THE COURT: Thank you.

The notion that the defense has been sandbagged or ambushed by this is preposterous. The request for a receiver in this case, one need only review the docket. As Ms. Murphy reminded the Court, I knew it was months long, it's actually

longer. It's approaching a year.

There was a comprehensive evidentiary hearing which was conducted in April of 2024 where my colleague on the District Court heard from a multitude of witnesses on both sides. That's after discovery was authorized.

After that, if that's not enough, even though Rule 66 does not require any of this, Judge Castner invited findings of fact and conclusions of law.

Even after that, while finding, in my judgment, a multitude of factors militating strongly in favor of the appointment of a receiver, as I indicated before, Judge Castner was quite measured and instead appointed a fiscal agent. That fiscal agent, the parties couldn't agree to. Even that somehow was a dispute.

I'm used to litigation, Mr. Asher. I have been a trial lawyer my whole professional life for over 30 years. I love courtrooms. But it is unusual the level here of disagreement, even on perfunctory matters, that I would expect seasoned lawyers to agree to. It required Judge Castner herself to engage in a vetting process. That's unusual. Usually with lawyers of this expertise, on something like who the neutral can be, is not something that bubbles up to a court.

We are one of the busiest districts in the country. There's a judicial emergency in this district, so much so that

the United States Congress is trying to rescue us through the appointment of additional judicial spots, to accommodate the level of complex civil litigation that we have. We have had to have Circuit Court Judges pitch in. We have had our beautiful colleagues from the Eastern District of Pennsylvania pitch in here. And why am I saying this? Because I expect the lawyers to assist. There is only 17 of us active District Court Judges here.

And so when the parties can't agree on the fiscal agent, that's something that shows me a breakdown.

I endeavor to say that if I were to announce on the record that today is Tuesday, one of the lawyers would stand up and say, technically, in Australia, with the time change, it's Wednesday. Now, you all laugh, and there was a moment of levity to the ridiculous analogy that I'm bringing, but there is also truth to what I'm saying as well.

And what I'm telling you is you've made your record, Mr. Asher. The record couldn't be more clear that you have been noticed that this issue has been joined forever here, and we will move forward.

Swear the witness in.

THE COURTROOM DEPUTY: Please raise your right hand.

(**KEITH BALLA**, HAVING BEEN DULY SWORN OR DULY AFFIRMED, TESTIFIED AS FOLLOWS:)

THE WITNESS: Yes.

THE COURTROOM DEPUTY: Please state your name for the record and spell your last.

THE WITNESS: Keith Balla, B-A-L-L-A.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Patti, can you come up here, please.

(DIRECT EXAMINATION OF KEITH BALLA BY MS. MURPHY:)

Q. Good morning, Mr. Balla. My name is Julie Murphy. I'm counsel for Citizens Bank, the plaintiff in this matter. Thank you for being here today.

MS. MURPHY: Your Honor, may I approach the witness?

THE COURT: Yes.

And I have a question for you. How long do you expect this direct examination to be?

MS. MURPHY: I was aiming for 15 minutes, Your Honor.

THE COURT: I am too.

MS. MURPHY: Okay. I will do my best.

THE COURT: Yes.

MS. MURPHY: Your Honor, may I approach the bench?

THE COURT: Of course. And Mr. Asher, the same, and Ms. Ahn, you don't have to ask the Court. There is no jury here. I appreciate the courtesy that the lawyers extend. You have free rein around the courtroom, all the lawyers. Understood?

MR. ASHER: Yes, thank you, Your Honor.

MS. MURPHY: Thank you.

THE COURT: You're welcome.

BY MS. MURPHY:

Q. Mr. Balla, I just placed in front of you a large stack of VeloBind documents. Did you bring this stack of documents to court with you today?

A. Yes.

Q. Okay. What is the stack that I handed you?

A. This is my report for the period from inception of the appointment as special fiscal agent through September 16th.

Q. Thank you.

And did you prepare that report?

A. Yes.

Q. Okay. And the copy in front of you, is it the same copy that you provided electronically to the Court and the parties on September 16th?

A. Yes.

Q. Thank you.

You were appointed as special fiscal agent in this case on July 29th, 2024, is that correct?

A. Yes.

Q. Okay. And when you were appointed, did you understand that the scope of your duties were to investigate, analyze, and monitor the operations of Nostrum Laboratories, Inc.?

A. Yes.

Q. Okay. And did you commence those duties on or around July

29th, 2024?
A. Yes.
Q. Okay. After you were appointed on July 29th, you met with the parties on August 1st, 2024; is that correct?
A. It was a Zoom call, I believe.
Q. A telephone conference? And counsel was present as well?
A. Yes.
THE COURT: I'm sorry. Was that August 1, did you say?
MS. MURPHY: Yes.
THE COURT: Thank you.
BY MS. MURPHY:
Q. And during that call, you provided a list of information that you would be seeking from Nostrum Laboratories, Inc., correct?
A. Yes, a document request list.
Q. Okay. And after the call, did you provide a written request to the defendant?
A. Yes.
Q. Thank you.
Just so the record is clear, when I refer to "defendant," I'm referring to Nostrum Laboratories, Inc.
A. Yes.
Q. Okay. And did you receive a response to the written request for documents from Nostrum?

A. Yes, we did receive responses.
Q. Did you receive everything that you asked for from Nostrum?
A. No.
Q. No.
When you didn't receive everything that you asked for in your written document request, did you make an effort to follow up?
A. Yes.
Q. Did you follow up more than once?
A. Yes.
Q. Okay. As we sit here today, have you received everything that you've asked for from Nostrum?
A. I believe we didn't, no.
Q. For example, you were not provided the financial information for Nostrum Pharmaceuticals, LLC, correct?
A. Correct.
Q. And you had requested certain information from the company's auditors, correct?
A. Yes.
Q. And did you receive all of the information you requested from the auditors?
A. No.
Q. Okay. In the course of the last six weeks, did you conduct interviews with the various principals, employees, and

agents of Nostrum Laboratories, Inc.?
A. Yes.
Q. Okay. And you flew to Kansas City, correct?
A. Yes.
Q. Because defendant has an office there?
A. A manufacturing plant and their administrative offices with all the financial records are in Kansas City, Missouri.
Q. Okay. And you flew to the Ohio location yesterday; is that correct?
A. Yes, I flew to Ohio, toured the plants with the plant manager yesterday, and spoke to the plant manager about the operations in Ohio.
Q. Okay. Thank you.
And in the course of the interviews, your report states that you were instructed that all interviews were to be conducted with a particular employee of Nostrum Labs, correct, with Mr. Parashram Sabale?
A. Yes, the controller. He sat in on all the interviews.
Q. He sat in on all the interviews.
And in your report you also indicated that Mr. Asher made an instruction that no information was to be provided to you or your colleagues without his review; is that correct?
A. I believe that's correct.
Q. Okay. In your report, you came to certain conclusions about the operations and assets of Nostrum Laboratories,

correct?
A. Yes.
Q. Okay. Now, even though you have indicated that you didn't get every document you asked for from the company, do you feel that you had enough information to come to the conclusions that you came to in your report?
A. Yes.
Q. Okay. What did you conclude regarding the solvency of Nostrum Laboratories, Inc.?
A. There were several components of the balance sheet and the assets that we questioned the values on the financial statements. So where there were impairments to those assets, we asked questions regarding reserves against those assets and were reserves put in place for the impairments, and those reserves were not put against the impairments for those assets. So, in our analysis, since no information was provided regarding the collectability of certain assets like the advances to Nostrum Pharmaceutical, the parent company, and a demand loan were significant balances, and no information or documentation was provided to ensure collectability of those assets, we felt that reserves should be put against those assets.
Q. So once you put the reserve against those assets, what was the result on the company's balance sheet?
A. It was a negative net worth.

Q. Okay. So insolvent?
A. Yes.
Q. Okay. And there are really two tests for insolvency, right, Mr. Balla, balance sheet insolvency and inability to pay debts as they come due?
A. Correct. In terms of the inability to pay debts as they come due, we had a discussion with the executive vice president, Jack Foster, and Parashram, who is the controller, and inquired about how they pay their bills, and how they handle production with ordering new materials, because their accounts payable are so extensive and so voluminous, and they indicated to us that they pay only those bills that would enable them to operate, to take in new material for production, and let everything else wait.
Q. So, in your opinion, is the company able to pay its debts as they come due?
A. No, I think that's evident in the financial statements, that they are not able to pay their current liabilities as they come due, based on their operations.
Q. Okay. Thank you, Mr. Balla.
You also came to a conclusion about the value of the accounts receivable set forth in the --
THE COURT: I'm going to interrupt you.
MS. MURPHY: Yes.
THE COURT: My teleconference is waiting for me. Here

is what we are going to try to do. Actually, here is what we are going to do, rather than do this in a piecemeal thing, because I don't want to interrupt you again, and I certainly don't want to interrupt the cross-examination which I expect will -- and I do appreciate this, that the material had been disclosed in the report and accessible to the defendants as early as September 16. Is that accurate?

MS. MURPHY: Yes, Your Honor.

THE COURT: Okay. So here is what we will do. I have got a 2:00, is that correct, Patti? I've got a 2:00?

THE COURTROOM DEPUTY: Yes, Judge, that's correct.

THE COURT: I would like counsel -- and, sir, I'm sorry to inconvenience you -- I would like you back in the courtroom at 2:00, and as soon as I'm done with that matter, which will be in my chambers, we will resume and conclude this. Okay?

MS. MURPHY: Thank you, Judge.

THE COURT: Thanks.

MS. AHN: Your Honor, I have child care that ends at 4 p.m. I will look into the matter to ensure that my infant son is not left alone.

THE COURT: Your infant son will not be left alone, counsel. Luckily, I think we've got Mr. Asher here to assist if we go past 4, but I don't expect to and I hope not to go past 4. But tell me, if you don't mind, you don't have to

answer the question. Let's go off the record.
(Discussion held off the record.)
THE COURT: We will go back on the record. Please let me know if you have a child care issue, but I expect you to do the best that you can. Okay?
MS. AHN: Thank you, Your Honor.
THE COURT: Of course. That's a priority to me. I would like the lawyers to come talk to me for two minutes. Thanks. And then we are going to adjourn until 2:00.
Carol, thank you so much.
(A recess was taken at 12:04 p.m.)
(A luncheon recess was taken.)
THE COURTROOM DEPUTY: All rise. The Honorable Robert Kirsch presiding.
THE COURT: Okay, folks, welcome back. Sir, please take the witness stand.
(The witness resumed the stand.)
BY MS. MURPHY:
Q. Good afternoon, Mr. Balla. Thank you for coming back here today. I will just remind you that you remain sworn in from this morning.
A. Yes.
Q. Thank you.
Mr. Balla, when we last left off, we were talking about the balance sheet of Nostrum Laboratories, Inc. Do you recall

our conversation?
A. Yes.
Q. Okay. And you testified that you found that the assets were likely overstated as a result of, primarily, two advances on the balance sheet. Am I characterizing that correctly?
A. Several items, but there is an advance to the parent company for approximately $20 million, and a demand loan to Asia Pacific which is a related party as well. And I questioned the business purpose for the Asia Pacific loan, how that relates to the pharmacy manufacturing business, and the other one is to the parent company, so I asked for parent company financial statements to see, is there -- does the parent company have the ability to repay the advance.
Q. And in your report I believe you determined that it was unlikely that, based on your interviews with various managerial representatives, that that advance was not collectible; is that accurate?
A. Nostrum did not provide me with any documentation as to how it was collectible, whether -- they didn't provide me with the financial statements for Nostrum Pharmaceutical to evidence that they had sufficient assets to repay the advance. And they didn't supply any information about Asia Pacific that they had the ability to repay the loan.
Q. Okay. And when I just asked you now about the overstatement of assets, you said there were several items, so

we talked about these two advances. And you also found that the value of the accounts receivable, as reported, were likely overstated; is that correct?

A. We analyzed the accounts receivable for receivables over three hundred and -- over a year old; basically, that they are not current if they are not going to be collected within a year. So an appropriate reserve should be set on those.

We inquired with the auditor as to how they confirmed the receivables, and he stated that he takes a sampling of invoices, to request confirmations, and he did not perform an analysis to reconcile the full accounts receivable balance with -- independently with the customer, which is what is typically done. You ask for what is the outstanding balance, provide all the open invoices, and the company then reconciles that back and forth for the auditor when they do their audit. So then you know if all those old invoices are, in fact, valid and will they be paid at some point in time.

Q. Okay. So, given the reserve that was not taken, the balance of accounts receivable has been overstated; is that accurate?

A. The reserve I'm speaking to in the report is the reserve for accounts receivable over a year old.

Q. Over a year old. Thank you for clarifying.

THE COURT: But you need to synthesize that for me, sir. So what you're saying is that the accounts receivable

that are in excess of a year, you don't have confidence -- and I'm not speaking for you. I'm trying to glean what you're telling me. You don't have confidence that those receivables are -- a certain portion of those are likely to be repaid; is that accurate?

THE WITNESS: Right. We are looking at the receivable, is it collectible or is it impaired? Because it's over a year old, it may not be collectible. So additional reserve -- so in the letter back to me, it mentioned about there are reserves, these are these other reserves for all these other items. But with regard to the accounts receivable over a year old, there needed to be a larger reserve for those amounts.

Q. And if you take into account that reserve, what is the impact on the company's financial position?

A. Well, it's a negative impact. Any reserve is going to be a negative impact on the balance sheet of the assets.

And then I had another potential impairment of assets which was the deferred tax assets.

Q. Yes. Could you explain that for me, please, and also for the Court?

A. Yes. I will try to make it simple. But if you have losses in a business from a tax standpoint, those losses are carried forward to offset future taxable income. So from an accounting standpoint, then you would have an asset because you

are not going to pay income tax when you do have income going forward because of the -- what they call net operating losses that have accumulated in the past. So at the tax rate against the losses that would offset future income, that's a deferred tax asset, one of the deferred tax assets. Not all of them, but one of the deferred tax assets is the net operating loss, the tax effect of that.

So the big question, though, is: Will you eventually have taxable income? Because if you don't have taxable income, you are never going to realize that deferred tax asset.

So in looking at the financial statements of the company, which sustained losses that they do have, we believe that there should be a reserve against the deferred tax asset as well, because it's an impairment that taxable income may never be realized in this company.

Q. Okay. And so, again, taking into account that reserve, what's the impact on the company's financial position?

A. Well, the asset then is impaired, so there is a reserve set against it, so there is a negative impact on the balance sheet.

Q. Okay. Thank you.

One other area your report explored were other creditors of the defendant that were requesting payment. And, in particular, you called out the company's logistics provider, RxCrossroads. Do you remember that portion of your report?

A. Yes.
Q. Okay. And you found that RxCrossroads is owed a significant sum of money, correct?
A. Yes. They are the main logistics provider, so they handle all of the inventory and movement of the product between the customer and the company.
Q. And so would it be accurate to say that the risk of owing the logistics provider such a significant sum of money is that your inventory may be withheld, not delivered, or the logistics provider may otherwise withhold its services?
A. Potentially. It depends on the contract between the company and the logistics provider, what they contractually entered into with regard to the inventory, who has title and if there is a substantial balance owed to them, can they just hold your inventory.
Q. Your report also notes payments of expenses for which you could determine no legitimate business purpose. Is that accurate?
A. Some.
Q. Okay. And would you detail those for the Court, please.
A. Let me jump to that page.
THE COURT: I'm sorry, I didn't get the answer to that question. I'm going to restate the question posed to you, sir. Your report also notes payments of expenses for which you could determine no legitimate business purpose. Is that accurate?

What was your answer?

THE WITNESS: I said there are some.

THE COURT: Okay. Thank you.

BY MS. MURPHY:

Q. And to aid in your analysis, Mr. Balla, you may look to Page 16 of your report, if that would help refresh your recollection as to those expenses.

A. Okay. So as part of our analysis, we looked at the bank accounts, each of the bank accounts, and the activity going in and out of the bank accounts for cash or analysis of cash. Then we highlighted there was a payment for a Porsche, and there was a Lamberghini payment for a Lamberghini. So in looking at the business, obviously, you need maybe vehicles for salespeople to go places, but a Lamberghini I think would be a little more extravagant or maybe a Porsche.

THE COURT: I mean, could there be another more extravagant vehicle than a Lamberghini?

THE WITNESS: I'm sure there is other vehicles.

BY MS. MURPHY:

Q. Okay. So thank you, Mr. Balla.

During our break, you had an opportunity to read the defendants' letter to the Court; is that right?

A. Yes.

Q. Okay. And the defendants say that nothing really material has changed in the defendants' finances this year or,

specifically, since April 2024. But based on your review and your conclusions -- and I will just cite your conclusion -- that current operations are not sustainable, do you agree with that statement, Mr. Balla?

A. Yes. I went to observe and tour the Kansas City facility, and we were informed that they operate one eight-hour shift each day, five days a week. And to produce enough profits to pay their liabilities, they would need to have more than one shift, and a lot more sales revenue, with better margins, hopefully, to do that.

And then in our interviews with Jack Foster, who is the executive vice president in charge of operations for both Kansas City and Bryan, Ohio, he stated that they basically review on a regular basis their liabilities and payables to see who they have to pay in order to get product out the door, and everybody else has to wait. And we asked about is there pending litigation from vendors, which they indicated there is, and, you know, how they plan to pay those expenses. So a plan was provided to our initial document request, after we issued our report, as to what the company plans to do.

Q. So that plan is not included in your report?

A. No. It was -- we had our document request list and inquiries that we made of the company. One was a business plan projecting out five years what they anticipate doing with the business and how they plan to increase sales and so forth.

That was submitted to us after our report was issued.
Q. Okay. Thank you.
Your report also notes the sale of three ANDAs in June of 2024, correct?
A. Yes. That, in our analysis of the cash, the bank accounts --
Q. Yes.
A. -- that's where we discovered that, the 900,000, that was the sale of ANDAs.
Q. Oh, okay. So the company didn't tell you that they sold ANDAs in June?
A. They did after we made the inquiry from our analysis of the bank account activity.
Q. I see.
THE COURT: So, in other words, you detected it from the documents, and the defendants then confirmed in fact that they sold?
THE WITNESS: Well, we didn't know what the 900,000 represented, so we saw this 900,000 come into the bank account, so then we questioned, you know, where did this come from, what is this? And then we had the answer, that was the sale of ANDAs.
THE COURT: And your understanding is that under the agreement, they were obliged to disclose this to you in advance, correct?

THE WITNESS: No, no. My understanding is, from an accounting standpoint, from a financial standpoint --

THE COURT: Yes.

THE WITNESS: And these are intangible assets, and the value of the intangible is based on the revenue stream you get from that intangible. So selling the intangible is like selling a building. So it's like the last resort to pay your bills to sell an intangible asset because it's no longer going to produce revenue for you. So you typically sell the inventory, and then you have accounts receivable. So to sell a noncurrent asset as an intangible, you're eliminating that income stream ever from being in the company.

THE COURT: So then am I reading this correctly that it's a sign of financial desperation, is that what I'm reading from you?

THE WITNESS: Pretty much so, that you are in a desperate situation so you need to sell fixed assets and intangible assets to meet your obligations.

BY MS. MURPHY:

Q. And what were the proceeds of the ANDA used for, of the ANDA sale, what were they used for?

A. I didn't trace all the dollars, but our understanding was it was used for the operations.

Q. Your report also includes a breakdown of the value of the defendants' intellectual property, of the ANDAs. Am I stating

that accurately?

A. Yes. One of the questions I raised was how did the capital equity section of the financial statements increase. So we made inquiry, and eventually, the auditor provided the journal entry that created the increase in equity of the business, and it was for an acquisition of ANDAs from the parent company. And so then I questioned, you know, since it's a related party, do you have a third-party independent valuation report? Which they did. And they provided the independent valuation report.

So then I do valuations as well of businesses, so I looked at the methodology that they used, which was the relief from royalty method which is appropriate for valuing intellectual property like this, and then I looked at the financial projections. So the -- the valuator had financial projections that were supplied by management that showed for each ANDA what the annual revenue would be. So one might be 7 million a year for 20 years, another was 15 million for 20 years. So this was done in 2014, when this company bought from the parent company these ANDAs, the valuation, and it was $32,500,000. They bought these ANDAs. So I said okay, I don't know -- it said management provided the forecast for the revenue. So I looked back to see what ANDAs do we still have and what are the actual revenues now -- this was done in 2014, they projected out 20 years -- to come up with the value? Then I said all right,

what is the revenue now that the company is projecting for those same ANDAs?

So when I looked at those, they were substantially less than the projection that was done in 2014 to justify the price of the sale of the ANDAs from the parent company to this company.

So I believe that a reserve should be set in place for the value of those ANDAs because if they are originally projected to generate 7 million in revenue and they're only generating $900,000, their value is substantially less.

Q. Thank you.

Mr. Balla, defendants' letter which you read, it states on the one hand that they fully complied with, you know, all of your requests, and on the other hand, it states that your report is based on incomplete information.

But, sir, in rendering the conclusions in your report today -- before the Court here regarding solvency, asset value, and other, you know, irregularities that you pointed to, do you feel like you had sufficient information to come to those conclusions?

A. Yes. Based on the information that we reviewed, the historical information and more current information in 2024, with regard to sales -- excuse me -- and the -- after my report was issued, the company did provide us with their business plan, I think two days after we issued our report. And even

looking at that plan now -- I'll just pull it up here on my phone.

To look at the viability of the business, this is what was provided. It was September 18th, it was Item Number 22 of our information request, and I'll read it. It says:

The following are only solutions for growth, improvement, and any business and profitability:

One, cost reduction. So cost reduction will help, you know, reduce losses, but if you cut it so low you can't produce, you're not going to have any profits anyway because you have fixed costs.

Reduce liabilities by paying them off or selling assets. So that's viable, sell off assets like the ANDAs to pay off liabilities.

Increase sales for existing products. So yes, we all want to increase sales for existing products, but in terms of a business plan, where you have a struggling business, you really need to be very detailed and say, all right, we have these 50 ANDAs, here's how we're going to Walgreens, Walmart, CVS, and we have letters of commitment from them that they are going to buy from us. None of that exists or was provided to us. So it just says increase sales for existing products. So how do you do that? You know, you have to go out to the customers and get commitments. None of that was provided.

Launch new products. So launching new products, you would

have to list here's the new product, here's the marketplace with what the sales are, here we have commitments, and we need FDA approval or whatever, other kinds of regulatory approval, to get it to that point, and here's the costs to get it through that regulatory approval process. That wasn't provided either.

And the fifth item, it says, get investors or a strategic buyer. So that's good, but we asked for where are letters of commitment from lenders. Nothing was provided. We asked for letters of commitment from equity infusion -- strategic buyer or investor. Nothing was provided. So absent those items, then -- you know, I'll read a little further down here.

THE COURT: So what you're basically saying is this supposed plan amounts to nothing more than unsubstantiated aspirations.

THE WITNESS: Correct.

BY MS. MURPHY:

Q. And receipt of this business plan, did that alter any of the conclusions that you reached in your September 16th report, Mr. Balla?

A. No.

Q. Okay. And Mr. Balla, I'm just going to read to you your conclusion, and I will ask if you, standing here today, still agree with what you wrote.

Due to Nostrum -- and this is Page 24 of your report. Due to Nostrum Laboratories' continuously deteriorating financial

position and its lack of a clear and viable mitigation improvement plan, it is my opinion that, as of June 30th, 2024, Nostrum Laboratories lacks the working capital and net worth necessary to meet its financial obligations. Based on the documents and information provided, there is substantial doubt about Nostrum Laboratories' ability to continue as a going concern operation.

Do you still agree with those conclusions sitting here today, Mr. Balla?

A. Yes, I do.

And, if I can, because this is part of the business plan, Item Number 22, it further goes on to say that, number one, while continuing to implement the above-mentioned initiatives, they want to keep the operations going, which is good, they want to keep it going.

Number two, negotiate a settlement with the bank that would result in a settlement of the lawsuits or a buyout of the loans; B, withdrawal of the lawsuits and continue to maintain a forbearance. Then it says financing or sale of company assets, either all or in two parts, Kansas City and Bryan, Ohio, manufacturing facilities. Under similar circumstances, we implemented the same plan, they said, in 2012 to '15.

And in number three, if the above fail, file bankruptcy protection.

So this is from the company.

Q. Thank you.

And you did not see any evidence of those plans being implemented during the last six weeks of your engagement --

A. The cost reduction, yes, we saw definitely the cost reduction. The labor is substantially down. There has been significant cost reductions.

Q. And that's evidenced by the one shift per day at the Kansas City facility?

A. And a lot fewer employees.

Q. Okay.

A. For both facilities.

Q. But putting that aside, no other pieces of that plan?

A. No, no. The biggest part would be alternative to financing or an equity infusion or sale of the intellectual property ANDAs to bring down the liabilities.

Q. Okay. Thank you, Mr. Balla.

MS. MURPHY: I don't have any further questions, Your Honor.

THE COURT: Are you seeking to admit the report prepared by the fiscal agent?

MS. MURPHY: Thank you, Judge. Yes, I am. We would move to admit that as Balla-1 if we could.

THE COURT: Any objection?

MR. ASHER: No.

THE COURT: Noting no objection, it is in. Does it

need to be placed under seal?

MS. MURPHY: Your Honor, we don't believe it does. I would let Mr. Balla or the defendants weigh in on that.

THE COURT: Okay.

MR. ASHER: Yes, Your Honor, we would request that it be under seal.

THE COURT: On what grounds?

MR. ASHER: Well, it discusses extensively about the internal information relating to our company which itself is confidential.

MS. AHN: It includes information about the company's trade secrets, including its products.

THE COURT: Any objection to putting the exhibit under seal?

MS. MURPHY: No.

THE COURT: I will be making reference to this in an opinion. Understood?

MR. ASHER: Yes.

THE COURT: Okay. I'm going to grant your application. So the Exhibit 1 will be placed under seal.

(PLAINTIFF EXHIBIT BALLA-1 WAS RECEIVED IN EVIDENCE UNDER SEAL.)

MS. MURPHY: Thank you, Your Honor.

THE COURT: You're welcome.

Before I tender this for cross-examination, counsel, I

want to ask you a question about the pending summary judgment.

MS. MURPHY: Yes.

THE COURT: I think you referenced before that you sought leave to file a second. Is that accurate?

MS. MURPHY: Yes, it is, Your Honor. Since -- so prior to the consolidation of the two cases, we filed a motion for summary judgment in the individual guarantor case, so that motion is pending, fully briefed as of the end of July. And that's against the individual guarantor, Nirmal Mulye.

Pursuant to Judge Castner's procedures, we filed a letter requesting leave to file summary judgment against the company and the corporate guarantor.

THE COURT: Can I ask you, why did you have two lawsuits here? Why wasn't there one lawsuit against the company and the individual guarantor?

MS. MURPHY: Your Honor, there were some business considerations in doing that, which was really to give the company some time to seek refinancing without litigation pending against it. And I say that without prejudice to the fact that forbearance agreement expired and we had no obligation to forbear against litigation against the company, but once it become clear there was not going to be a turnaround or any other financing, then we had no alternative but to pursue all of our rights and remedies.

THE COURT: Okay. And since you've for almost a year

sought a receiver in this case, is it your belief that the fiscal agent, the gentleman who is on cross-examination, is equipped to serve as a receiver here or no?

MS. MURPHY: Your Honor, we have no qualms about Mr. Balla's qualifications. We think he has done a wonderful job as fiscal agent.

THE COURT: Yes.

MS. MURPHY: The one thing we raised in camera and will raise here again is that we do think that there should be a -- or Mr. Balla should be empowered to employ a liquidating agent who buys and sells ANDAs in, you know, in the ordinary course who is familiar with the market. I know Mr. Balla's firm has, and I won't speak for him, I'll let him speak, but they have a turnaround arm. I did inquire whether they had pharmaceutical experience. It doesn't sound like they do, which is why we would push to -- or we would ask the Court to appoint our proposed receiver. The CV of the proposed receiver is of record in the case. And he, in fact, testified before Judge Castner. There was a voir dire by our colleagues during that proceeding, so his credentials are of record. As I stated previously, he was the CRO for Teligent Pharmaceuticals which was a bankruptcy proceeding in New Jersey so we think he's got the qualifications --

THE COURT: Let me ask you a question. Would it make -- and I will entertain this after the cross-examination.

Cross.

MS. MURPHY: Thank you.

MR. ASHER: Yes, thank you, Your Honor.

(CROSS EXAMINATION OF KEITH BALLA BY MR. ASHER:)

Q. Mr. Balla, have you ever engaged on any forensic or other projects having to do with pharmaceutical companies with the exception of Nostrum?

A. Forensic? No.

Q. So this is the first time that you worked relating to a pharmaceutical company?

A. No. You said "forensic." So --

Q. Let me start over again.

You are a CPA professional, correct?

A. Yes.

Q. Now, during the course of your work as a CPA professional, have you ever worked on a pharmaceutical company with the exception of Nostrum?

A. Yes.

Q. Okay. And what are they?

A. Neil Laboratories.

Q. What does it do?

A. They were a manufacturer of pharmaceuticals in New Jersey, and unfortunately were shut down by the federal government.

Q. Any other instances where you've worked on a pharmaceutical company project before, besides Nostrum and the

company you just mentioned?
A. And Neil Labs? Not that I could recall.
Q. Okay. And the company that you just mentioned a minute ago, what was the type of product that they manufactured, purchased, or sold?
A. It was highly regulated like oxycodone-type drugs, and it was a significant amount that disappeared, and they were immediately shut down by the federal government.
Q. Now, you answered a minute ago to suggest that you didn't do any work with respect to that company concerning a forensic matter like this case. Is that right?
A. Yes.
Q. Okay. Now, in this instance, did you use anybody from your company to evaluate how the regulatory and commercial attributes relating to pharmaceutical business, in connection with this project?
A. Can you be more specific with your question?
Q. Let me restate, withdraw it and say it more specifically.
Did you use any personnel in your firm to address any regulatory issues pertaining to the DEA or FDA aspects relating to generic pharmaceutical companies like Nostrum?
A. No.
Q. Now, I noticed that yesterday you were working at our pharmaceutical company in Bryan, Ohio; is that right?
A. Yes.

Q. Okay. And you conducted a inspection and a review of the facility?
A. Yes.
Q. Okay. And did it appear to you to be an ongoing business with personnel engaged in various projects pertaining to what they represented to you to be their pharmaceutical business?
A. Yes. The Bryan, Ohio, facility is a liquid product, and I toured the entire plant. I saw that they had finished goods inventory. They had highly regulated inventory, under lock and key in the safe. I have to say it was a very clean facility for an old, old building, and they had two operations that they walked me through. One was a small volume bottling of liquid and the other was a high volume bottling of liquid.
Q. Did they also walk through with you their warehouse facilities?
A. Yes. Yeah, brand new warehouse.
Q. All right. And did it appear to be full of inventory or work-in-process-type documents?
A. I wouldn't say work in process. It was either raw materials or finished goods.
Q. Yes, sir. In the case of Kansas City, our facility there, last month you spent there for three days; is that correct?
A. Yes.
Q. Okay. What do they do?
A. At that facility, everything was in tablet form. So we

went -- they gave us a tour of the mixing rooms. Everything was sealed, you know, for contaminants and cleaned thoroughly. Then they had showed where they mix it, compress it, and then bottle it in the bottling section with the tablets, and taking it from raw materials, went to the --

THE COURT: There is no allegations of quality control issues, are there?

THE WITNESS: -- warehouse.

MS. MURPHY: No, Your Honor.

THE COURT: Okay. So the fact that these manufacturing plants seemed to be well maintained and pristine in terms of distributing quality product, that's not at issue, correct?

MS. MURPHY: No, Your Honor.

MR. ASHER: I will pursue that very point, Your Honor.

THE COURT: I don't know what the relevance of this is.

MR. ASHER: May I demonstrate that?

THE COURT: Quickly.

BY MR. ASHER:

Q. Now, do you know what would happen if a receiver is appointed to go through the process of liquidating the business insofar as the regulatory and compliance aspects of the pharmaceutical business, sir?

A. No, I wouldn't do that.

MR. CATUZZI: I'm just going to object to a hypothetical question.

THE COURT: He's an expert.

MR. ASHER: He was the Court's expert.

THE COURT: No question. I permitted the question. He indicated he's not equipped to answer the question.

MR. ASHER: That's right.

BY MR. ASHER:

Q. In your report, you refer primarily to two audit reports for the years ending 2021 and 2022. Is that right?

A. I refer to those as well as the more current information that we were able to get from the company because the audit for 2023 had not been completed. And then we looked at the current information from the company for through June of 2024.

THE COURT: Which leads me to a question, forgive me, please. I see your credentials which are on Page 2. You are a CPA licensed in New Jersey and New York. You've been providing consulting and accounting and tax services for about 40 years. You are a partner in the forensic litigation and evaluation group. You've got a number of certifications and accreditations.

When would you expect to be able to view -- because here we are in September of '24, and you requested to see the audited statements of 2023. Correct?

THE WITNESS: Yes.

THE COURT: In your 40-year experience, when generally would you expect to see audited financial statements?

THE WITNESS: Ideally, you want them completed within 90 days after the end of the year, ideally. You're not a public company, it's a private company, you can have it done whenever you want. But ideally, you want to be closer to the end of the year than a lot further out.

THE COURT: So, in other words, in your experience, is it unusual that here we are, the end of September, that yet you still don't have audited financials from '23? Is that unusual?

THE WITNESS: It's -- I would say it's on the late side for getting the audit done. But it depends on the company. If the company doesn't produce the records or the auditor had, you know, a medical illness or a whole host of different things that can hold it up, but ideally, you would want it within the first 90 days.

THE COURT: Continue.

BY MR. ASHER:

Q. How -- the points that you and the Court have just addressed, how does that impact the viability and sustainability of the company?

A. Well, the auditor, if he has substantial doubt about the company's ability to continue as a going concern, he's then required to issue a going concern opinion of the business and do a lot more work in terms of validation of the assets with

regard to his opinion.
Q. But how does it actually impact the sustainability and operation of the company as opposed to whether it needs to be sold or marketed to somebody through Goldman Sachs or by somebody else? How does it impact the actual genuine operation of a company, whether it has audited or unaudited or compliant under GAAS or GAAP principles?
A. Well, it's a historical financial statement, so it's not 2024. It's 2023, so it's historical. However, if the auditor gives a going concern opinion, it affects all your creditors, could affect all your bank covenants, could be out, if they get a going concern opinion. So --
Q. Well, the absence of the compliant or audit documents that you are referring to are not actually needed in order -- on a day-to-day basis to market, manufacture, and sell pharmaceutical products, correct?
A. Not to manufacture, but if you want to know if you're making money, you want to have accurate financials on a regular basis.
Q. So, absent the financials, it still has the ability to make, market, and sell the product in the third party, correct?
A. You could manufacture, produce the product and have no records, but it doesn't mean you're making money and you're going to be in business very long.
Q. Okay. Now, in this case, the company has been in

business, based upon the financial statements that you've reviewed, it has been in business during this period of time, correct?

A. Yes.

Q. Okay. Now, the audited financials that you referred to of '21 and '22, you actually, in your report, wrote down substantially some of the assets. To begin with, I noticed that you reported correctly that several of their assets were reclassified from '21 to '22 from current to other assets. Is that right?

A. Yes.

Q. Okay. And what is the significance in terms of having other assets as opposed to current assets insofar as the two particular items that we're talking about?

A. Because working capital is a key figure and component in operating a business, and working capital consists of your current assets, less your current liabilities is the working capital, to continue with the ongoing operations of a business. So if assets that are not current are put in as current, it's misleading to the reader of the financial statement, thinking you have more working capital than you really do have.

Q. All right. So you now -- as we have just discussed, we are talking about the year 2021, correct?

A. Yes.

Q. That's three years ago, right? Yes?

A. Yes.
Q. Okay. And so what we are doing here today is for the Court's evaluation, what's going to happen to this company going forward, not historically, as set forth in your report. Isn't that right?
A. I looked at the historical operations, as well as the current operations, both.
Q. But your detailed report concerning 2021 and 2022 relates to a historical period that took place a number of years ago; is that a fair statement?
A. There was a misclassification in those two years, yes.
Q. All right. So what is the impact today, on a going-forward basis, that the -- that -- with respect to these two assets, one of which are treated as other assets for $20 million and the other for about $19 million as other assets? Are they actually needed in the business of the company?
A. Well, they're listed as an asset of the company. So the question I raised is: Is the advance collectible? And that's why I asked for supporting documentation to justify whether it's collectible or not to even list it as an asset.
Q. Now, we are not today having a 10b-5 case for securities fraud. We're talking about whether this company has the ability to survive moving forward.
And my question is: Did you, in your detailed study, determine whether those two particular other assets were needed

in the operation of the company or not?
A. Actually, those two assets, if the demand loan was repaid, which is $9 million, it would be able to cure half of the default of the bank debt, and the other 20 million advanced to the parent company, if there is substantial sufficient assets for that, could justify the parent company repaying the advance and not have the bank debt at all, and you're not in default and you just continue on in business.
Q. My question has to do with the ongoing operations, and you have addressed part of it. But what I'm asking you was: Were they needed in order to maintain the operation of the company? Were they needed to maintain the business?
A. Well, my question that I did raise was what was the business purpose to give that money out from the company, to deplete the company of an asset that could be used in operations, and give an advance to the parent company and a loan to a related party.
Q. That's a generally accepted accounting or generally accepted audit principle type concern, correct?
A. Well, it's a business concern as well. What's the business purpose for the loan to a related party and what's the business purpose for the advance to the parent company, because it's depleting the company of cash assets that could have been there to buy more inventory, pay down accounts payable, and have more operating revenues.

THE COURT: Can I understand this correctly, sir? The loan to a related company was for 9 million and the advance to the parent was 20 million?

THE WITNESS: Yes.

THE COURT: 29 million?

THE WITNESS: 29 million total.

THE COURT: Which dwarfs the amount due and owing allegedly the plaintiffs here, correct?

THE WITNESS: Yes.

THE COURT: So, in other words, instead of these two arguably related party distributions, this entire due and owing debt could have been resolved?

THE WITNESS: Yes.

THE COURT: And then some, correct?

THE WITNESS: Yes. Yes.

BY MR. ASHER:

Q. That's a theoretical possibility with any company, isn't that true, when you look at an other asset that is not an actual liquid asset? Isn't that always true? Whether it's Pfizer or AbbVie or General Motors, if you look at a nonliquid asset, it's not available for the payment of a bank debt?

A. Well, the question is why isn't it liquid? In other words, what was the business purpose to make the advance from liquid assets to the parent company and to the related party as a loan, which depletes the company of having liquid assets to

run its operations.
Q. Now, in your report, you wrote down these two other assets to zero; isn't that right?
A. Yes.
Q. Okay. And you concluded that it resulted in that the company was insolvent as of the end of 2022, correct?
A. Yes.
Q. Now, did you report, in your September 16, 2024, report to the Court, that there was a substantial settlement that reduced a $34 million claim that had been settled with the Department of Justice? Did you anywhere in your report mention that in here?
A. No.
Q. Was there a reason why you failed to mention that?
A. I don't know that that's relevant for their ongoing operations, that -- that liability was a settlement case.
Q. Oh, did you see in the 2024 -- which I have right here -- and it's the 2024, it's one of the documents that's before the Court, which says that, as set forth that the settlement was reached in 2022, and that's reflected in the unaudited reports that were also before the Court right now, from 2023 and 2024, showing that those write-offs that you have referred to have no consequence insofar as the liquid asset or the net worth statement of the company; isn't that a fair statement?
A. I did not make an adjustment for that.

Q. Okay. So in the 2023 and the 20- -- the December 31, 2024, statements, they show they appear to be solvent, according to Nostrum's documents, correct? They show to be solvent.

A. In terms of a liquidation solvency, their statements may show that. I don't recall off the top of my head. But if they can't meet their current liabilities with their current assets, those obligations, so it's like a technical insolvency if you can't pay your obligations when they come due.

Q. Sure.

Two tests. The first test, one at a time, on the balance sheet that you discussed extensively in here show that for the relevant years, not '21, '22, but for '23 and '24, and before the Court are documents that show on a balance sheet test that the companies were solvent, correct?

A. I can't answer that right now.

Q. And in Mr. Graham's declaration that's been submitted, the financials that you had an opportunity to review earlier today at the direction of the Court, okay, it shows that the working capital was at $9 million for the year as of June 30, 2024. Did you see that?

A. No, because that was an exhibit attached and nobody had a copy of the exhibit.

Q. Okay.

A. I read the narrative but no exhibits were attached.

Q. But you agree with me, in any event, that by reason of once you eliminate the $34 million settlement that's reported in the audit report of 2022, that it substantially impacts to the financial statements as set forth in detail in your report?
A. I would say this. There is a positive impact for a settlement for a $32 million obligation.
Q. Did you actually consider that in your evaluation?
A. No.
Q. In your 36-page report?
A. No.
Q. Even though it was one of the most significant things that Nostrum had told you, namely, the settlement with the Department of Justice for $34 million, that was reduced from 34 to about $3 million, was that brought to your attention?
A. No.
Q. We didn't tell you that?
A. No.
Q. It's also set forth in the report that you've just discussed at length. It's in the audit report of December 31, 2022. The subsequent event notes are extensive and talks about the settlement. Do you remember that?
A. I don't recall that, no.
Q. Okay. Given the amount of it, to be material to your report and the conclusions that you -- that you have discussed with us today before the Court?

A. I don't know what the question was.
Q. The $34 million adjustment referred to in the 2022 report is material in terms of an overall evaluation of the solvency of Nostrum; is that a fair statement?
A. It's a significant settlement. I would have to look at how it ultimately panned out in 2024 at the end of the day.
Q. Now, we have inquired on a number of occasions concerning the completeness of your report. For example, you had inquired about going to the second other Ohio facility -- I mean the second pharmaceutical company facility, and you actually conducted your inspection yesterday. Right?
A. Yes.
Q. Okay. And you also, with us, had arranged for a interview with our logistics company, the McKesson 3PL logistics company, which is now currently scheduled this week and hopefully will actually complete.

My point is: Is it a fair statement that there have been other things that are ongoing as part of your inspection and report that have taken place since September 16?
A. Well, like I mentioned earlier, September 18th, there was a response to Item Number 22 in our document and information request which was the business plan --
Q. Right.
A. -- laid out. So things have come in since the date of the report.

I did go to the facility yesterday to tour the plant and see the operations. So --

THE COURT: The question is as the fiscal agent, you haven't stopped your function simply because you have issued a what I view to be a very problematic, troubling report on September 16, correct?

THE WITNESS: Right. I view this as an interim report. I haven't stopped my duties to continue to monitor operations.

THE COURT: And so, in so doing, since September 16, information continues to come in, as you would expect, unless I -- frankly, unless I terminated your function, right?

THE WITNESS: Yes. Yes.

BY MR. ASHER:

Q. Indeed, pursuant to Judge Castner's order, you were required, subject to the Court order -- or a Court order, that you were required every 60 days to prepare a report concerning the activities and condition within the scope set forth in Judge Castner's order, correct?

A. Yes, that's correct.

Q. And do you expect, subject to the Court order, that you would continue to perform that function?

A. Yes, and have a subsequent report as well.

Q. Okay. Now, one of the subjects that was touched upon in direct examination about the fact that you had made requests,

and which Nostrum had responded, in one instance you addressed to me, as general counsel of Nostrum, a letter dated August 2, 2024, a list of actually 25 items, 25 subject matters. And subsequently, one of your colleagues has given us other subject matters and so forth, which extended up to somewhere in the neighborhood of about 50 subject matters. Does that sound right?

A. Yes, we have a detail, those that were responded to and those that haven't been responded to.

Q. So while it has been noted that in a couple of instances, you may not have received a complete or a fulsome number of documents, were there any instances -- I mean is it generally correct that virtually all of them have been responded to, whether it was satisfactory or unsatisfactory, from your standpoint?

A. I'll answer this question. I asked for the financial statements for Nostrum Pharmaceuticals, and I was denied that, and I think that's a critical component to the evaluation of whether that advance is collectible.

Q. Now, on your oath, sir, did you ever say that to me?

A. Did I --

Q. Did you ever say that to me or anybody at Nostrum? We never knew that.

A. I said it to people at Nostrum when I talked to them.

Q. And --

A. Parashram.
Q. And what did you say to him?
A. That I need to look at the financial statement to validate the collectability of the receivable.
Q. Okay. Anything else, any other subject?
THE COURT: I don't understand the question.
THE WITNESS: I'd have to look at the list to see what else was wasn't complied with, but that one is in particular because it's a significant number, $20 million.
BY MR. ASHER:
Q. I sent to you an email that said that it was not -- specifically, you said to me -- and I can just read from one of your emails. You said could you please also provide the various documents requested in the August 2, 2024, letter from Nostrum Pharmaceuticals, LLC. But the letter that you're referring to relates exclusively and only to Nostrum Laboratories, the subsidiary. So the point is that we have -- we have now responded to you to say that the parent company was not part of your -- the court order at all, and I never received any response.
MS. MURPHY: Judge, objection. I haven't heard a question.
THE COURT: I haven't either, and I'm looking at the screen, and it consists of I think 10 lines of a supposed chronology from a lawyer who is not a witness. So I'm

sustaining the objection.

MS. MURPHY: Thank you.

THE COURT: I have a question. Mr. Asher, are you winding down, by the way?

MR. ASHER: I don't know yet, Your Honor.

THE COURT: I think you are.

MR. ASHER: No, I'm in the middle, and we also, further, we are calling our chief financial officer to call today, to testify also.

THE COURT: Well, you are going to request that, and I'm going to hear a proffer. The Court is under no obligation in these proceedings -- this is not a trial on the merits. The Court is under no obligation to take any testimony. Frankly, in my judgment, the parties have had the benefit of an extraordinary, both in terms of discovery and a prior evidentiary hearing, so I'm going to wait to hear what the proffer is before I allow any additional witness testimony. So please don't be presumptuous and indicate to the Court how the matter is going to proceed.

My question to you, sir, is: Mr. Asher asked you a number of questions regarding a supposed resolution -- not supposed -- a resolution with the Department of Justice which involved 30-something million, and you didn't treat that in your comprehensive report. Do you remember those questions?

THE WITNESS: Yes.

THE COURT: My question is: Regardless of the issue with DOJ, does that impact any of your myriad of conclusions here and troubling aspects which you've outlined both in your report and your testimony today?

THE WITNESS: No, because the company still is struggling to survive.

THE COURT: So that really goes to my question. Does the issue, the supposed resolution, forget -- the resolution with DOJ, does that impact on any of the collectability issues you testified to?

THE WITNESS: No.

THE COURT: Does it resolve any of the issues regarding the negative net worth?

THE WITNESS: It could possibly affect the negative net worth. I would have to look at how that impacts.

THE COURT: You also testified that the company doesn't appear to be able to pay their current liabilities as they come due. Does that have anything to do with DOJ?

THE WITNESS: No.

THE COURT: Okay. So those conclusions -- many of your conclusions, including insufficient reserves, and you have a lack of confidence regarding the collectables, this is your testimony, not mine.

THE WITNESS: Yes.

THE COURT: Is that separate and distinct and having

nothing to do with the DOJ resolution?

THE WITNESS: Yes. Because it relates primarily to the assets.

THE COURT: Understood.

BY MR. ASHER:

Q. I wanted to put before you again the declaration of James Grainer which the Court had requested you to review. I think I have a copy of it that you had reviewed.

A. I have it here.

Q. Just turning to Paragraph 5, Paragraph Number 5 on Page 2, here in this paragraph, it says that your report is purely an exercise in a formalistic application of GAAP accounting principles to Nostrum's finances and lists incorrect critiques of various subject matters.

My question to you, sir, is: The primary or principal critique set forth in your report concerning Nostrum's financial statements centered on GAAP accounting principles; is that right?

A. Some of the critique related to the audited financial statements I would agree is generally accepted accounting principle related and generally accepted auditing standards, was what the auditor should do in confirming the validity of assets.

Q. But there is no reference in the main concerning improvements in Nostrum's operations; true?

A. How I would improve their operations?
Q. No, no.
Was there any reference in your report concerning Nostrum's improvements in its operations?
A. I didn't view that they improved.
Q. Did you address it either way, either way? Were you silent or you reached -- or you actually addressed it explicitly?
A. I didn't explicitly reference the 2024 year.
Q. But the Court required for a report concerning the conditions of the company. So my question is: Did you intentionally overlook improvements or attempts to improve the company?
A. No.
Q. What happened?
A. Well, I was told that they reduced salaries and payroll, and we confirmed that they did. They had cost reductions. But to the extent of the cost reductions they have, I didn't believe it's going to be sufficient for this company to be viable.
Q. What do you suggest should happen now for this company?
A. You're asking my opinion what should happen?
Q. Is that within your area of competence?
A. I don't know how --
THE COURT: It seems so well beyond what a fiscal

agent is supposed to testify to. He's supposed to report to the Court on what he is seeing and what the documents are portraying. To ask him to hypothesize and render advice to your client, Mr. Asher, is so beyond the confines that I would ask you to move along.

BY MR. ASHER:

Q. Now, in your own report, there is actually no demonstrated or statement of an understanding of the pharmaceutical industry itself. Fair statement?

A. I don't -- I don't profess to be a pharmaceutical expert.

Q. Did you ever address or acknowledge having any understanding of the generic pharmaceutical industry, in the report itself?

A. I didn't elaborate on the pharmaceutical industry in my report. I don't believe I did.

Q. But based on what you testified this afternoon, it appears that you actually have not had any experience in the generic pharmaceutical industry except in one case when you had worked in the past with respect to another aquatic client -- or forensic client of your company?

MS. MURPHY: Objection, Your Honor, asked and answered. We have gone over Mr. Balla's experience in the pharmaceutical industry already.

THE COURT: He's a CP A. He was appointed by my colleague to serve as a fiscal agent, and the result of that,

frankly, was because the defense and the plaintiffs couldn't agree on a fiscal agent. And you've also indicated to me, Mr. Asher, that you don't agree on a receiver either. In my chambers, a receiver was proposed who has expertise in the pharmaceutical industry, and you have objected to that person as well, for the record.

Next question.

BY MR. ASHER:

Q. On Paragraph 6, there are numerous bullet points that are mentioned concerning ongoing values of the company. This is what James Grainer, the declarant, has said, ongoing values were ignored. But there is certainly a number of bullet points, beginning on Page 3, talks about improvement of sales from 2022 to 2023, a growth by approximately 19.4 percent. Do you see that?

A. Yes.

Q. Do you agree with that or -- let me withdraw that.

Did you identify that there was improvement in sales from 2022 to 2023?

A. I would have to look back at --

MS. MURPHY: Objection.

THE COURT: On what grounds?

MS. MURPHY: It's asked and answered. We have already talked about whether or not Mr. Balla has addressed improvements in the company's financials over time in his

report.

MR. ASHER: It's conclusory --

THE COURT: Does this relate to the audited financials that were produced to you for '23?

THE WITNESS: They're not audited yet.

THE COURT: Exactly.

THE WITNESS: For 2023.

THE COURT: So can you answer the question posed? Do you remember the question posed?

THE WITNESS: Well, he put in this certification that it went up by 19.4 percent. I would have to look back at the reports and see if it did or didn't. I don't have it memorized.

BY MR. ASHER:

Q. I understand. But didn't you take that into consideration in connection with your conclusion that the company was insolvent?

A. We took into consideration 2023's unaudited information from the company, 2024's unaudited information from the company, and the audited information from '21 and '22.

Q. So is it a fair statement that while you were able to assess and evaluate from a GAAP and GAAS standpoint the financials for this company for '21 and '22, you actually were unable to address in any professional or material way with regard to the years 2023 or 2024?

A. No, we apply the same generally accepted accounting principles and -- in our analysis and analytical testing that we go through.

Q. Now --

THE COURT: You've got to let him finish, Mr. Asher.

THE WITNESS: The only difference was the 2023 audit wasn't completed yet.

BY MR. ASHER:

Q. Okay. You didn't see anything wrong about the assertion set forth in Mr. Grainer's declaration that Nostrum's sales improved from the year 2022 to year 2023 by approximately 19.4 percent?

A. I'd have to look back at the financial statements --

Q. I understand. But it sounds material to you, doesn't it, whether you have it in your mind right now?

A. A 20 percent -- almost 20 percent increase in sales is good.

Q. So, and it sounds material also, correct?

A. Should be.

Q. Did you also, from your discussions with the personnel at Nostrum, that some of its pharmaceutical products have recently obtained regulatory approval?

A. They did mention that there was some regulatory approval. We are looking for hard facts as to what is the revenue that's going to get produced from those. Where are their contracts

with a Walmart or a Walgreens or CVS that they are going to sell this product to?

THE COURT: Do you know, sir, what the generally accepted trajectory timeline is for those that receive regulatory approval and how that translates to product out the door?

THE WITNESS: I don't know specifically the timeline from regulatory approval.

THE COURT: Did you know that it can be well in excess of 10 or 15 years? Did you know that?

THE WITNESS: I know it's long. I didn't know specifically how long.

BY MR. ASHER:

Q. Well, based upon what you may or may not have learned, is it correct that the trajectory can be different between a New Drug Application versus a Abbreviated New Drug Application, which is what we do?

A. A lot faster. It's a lot faster, the abbreviated.

Q. And in the case of Nostrum, there have been a number of recently obtained regulatory approvals, correct?

A. I would have to look back at the detail that they supplied us.

Q. Did you ever hear anything about a company [sic] called Theophylline with strengths of 100 milligrams and 200 milligrams that was now in the market?

A. I think I actually had that on the chart, one of the exhibits in my report.
Q. We gave you a long list of all of our Abbreviated New Drug Applications, approved, unapproved, and so forth? You and your colleagues had this list?
A. Right.
Q. And in the case of Theophylline, it now enjoys a certain market exclusivity? Did anyone tell you about that?
A. I don't recall getting documentation that supported exclusivity in the marketplace for sales of that one drug.
Q. But if the list given by Nostrum made that assertion, did you or anybody in your company conduct any investigation in terms of whether these assertions were correct or incorrect?
A. The assertion? We asked for supporting documentation as to how that converts to revenue.
Q. Okay. And what did they tell you concerning Theophylline, 100 milligrams and 200 milligrams?
A. I would have to look at the projection that they put together. I don't remember it off the top of my head, the projection, but it would be on their projection.
Q. Now, next among these bullet points was the $34 million settlement with CMS and DOJ that we talked about earlier today. Did you see this when you reviewed this declaration today?
A. Yes.
Q. Is this the item that we were talking about earlier?

A. Yes.
Q. All right. And so it reduced the liability moving into the years '23 and '24, correct?
A. Yes.
Q. And whenever you reviewed the unaudited financials for '23 and '24, you didn't see the 34 million anymore, correct?
A. I'd have to look at the detail of what's in the payables and liabilities, accrued liabilities and payables.
Q. One of the products at Nostrum called Sucralfate, which is one of our principal products, did you ever conduct any or any of your colleagues conduct a study in terms of its -- whether it's a market position, a viable, whether it contributes to profits or sales from our standpoint or --
A. We relied on what the company provided us with regard to their projections byproduct.
Q. Did you ever test the projections concerning Sucralfate itself?
A. If it's in the tests where I looked at it prior to the valuation, I would have measured it against that -- if it was part of that. I don't know if it was.
Q. Now, moving forward in the declaration which is the subject matters of concern with respect to your report, there was another subject matter having to do with the sale of three non-commercialized ANDAs which has been the subject of colloquy today and the subject of your report, what, if anything, did

you do to learn or obtain information about the $900,000 sale of three Abbreviated New Drug Applications?

A. We reviewed the bank statements for the bank activity and discovered the $900,000 receipt coming into the company and then raised the question, what was this from? And then the company responded back to us they sold ANDAs and used the money for operations.

Q. Did they tell you that it was being sold in the ordinary course of business?

A. No, they just said they sold the ANDAs.

Q. That's all they said?

A. Yeah.

Q. Okay. And did they tell you that it's incompliant with the bank loan?

MS. MURPHY: Objection.

MR. CATUZZI: Objection.

THE COURT: Sustained.

Next question? Because you've been going on now for over 45 minutes which I think is significantly more than the direct examination.

MR. ASHER: I have additional subject matter, subject to Your Honor's direction.

THE COURT: What else do you have to ask of this gentleman? Because I will note my observations, much of your cross-examination has, in my judgment, no relevance to the

issues at bar. And I'm not here to debate this with you.

MR. ASHER: I understand, Your Honor.

THE COURT: That's my observations.

His conclusions thus far remain, in my judgment, rather consistent. On the valuation of these particular products, the critical aspect is whether the company has the ability to either make good on the outstanding debt or the Court is satisfied, as Judge Castner was very sketchy on, whether there is collateral to satisfy. And the witness thus far seems to have remained unshaken in his conclusion of significant questions regarding the viability ongoing financially of your client. So whether this product is the cost-cutting measures, et cetera, the $34 million resolution or settlement with DOJ doesn't alter the fiscal agent's testimony, and I went through this with him, and I was waiting for him to say, well, Judge, actually, this changes my view, and he didn't say that. So I'm asking you, Mr. Asher, to please wrap it up.

BY MR. ASHER:

Q. Now, under --

THE COURT: Did you hear me?

MR. ASHER: I did. I was just proceeding.

THE COURT: Okay. Because you are not acknowledging.

MR. ASHER: No, no, I was. No, I was proceeding without sufficient acknowledgment. I meant to by simply moving promptly which you asked me to do.

THE COURT: Okay. I just didn't know if you heard me or if anything registered. And so if I am addressing you at the end, it would be appreciated if you simply said, thank you, Judge, I've heard you, you don't even need to say thank you. That's up to you. You can say I hear you.

MR. ASHER: I appreciate what Your Honor said.

THE COURT: Okay.

MR. ASHER: Thank you.

THE COURT: You're welcome.

BY MR. ASHER:

Q. In the work papers that are before the Court, it showed by reason of the elimination of the $34 million, which we have discussed at length, the net equity before any adjustments maintained $41 million. Did you see that? In the December -- excuse me -- in the June 30, 2024, audit report.

A. We never got an audit report for June of 2024.

Q. You're saying that when you prepared the report, you didn't have the June 30, 2024?

A. We had the internal financials from the company but not an audit report.

Q. Sure, understand, understand. Thank you.

Within the company's unaudited financials as of June 30, 2024, did you look to see whether those documents showed a net equity before any adjustments of $41 million?

A. I'd have to look back. I don't recall.

Q. Did you consider a report of that nature given to you to be material in reaching your opinion concerning the solvency of the company?
A. We utilized the company's books and records and we used their trial balance because they couldn't produce the financial statements, so we actually used the trial balance which is a precursor to preparing a financial statement.
Q. With regard to the spreadsheets that have been shown in Exhibit G to Mr. Grainer's -- I can show it to you right now. It shows that there is net equity before any adjustments of $41 million. Did you look at any of those spreadsheets that have been provided to you during your engagement?
A. Absolutely.
Q. Yes or no?
A. Yes.
Q. Did you note that the net equity was shown before any adjustments of $41 million?
A. I didn't note that in my report.
Q. Okay. Why didn't do you that? Why not?
A. I'd have to look back. I'd have to look back and see if something you're raising now is actually relevant. I can't say just off the top of my head it's relevant.
Q. Relatedly, the same document shows that if you make an adjustment for a write-off, as you did, for NP LLC and Asia Pacific, which was a total of $29 million according to your

report, it still leaves a net equity and working capital of the company of $11 million. Did you note that in your review of the unaudited financials that were provided by Nostrum to your company?

A. I don't think I reported that they had significant working capital.

Q. You said you had a negative working capital, correct?

A. Yes.

Q. Okay. But their own documents which you had for the year 2023 and for the first six months of this year, showing a net equity and showing a working capital amount, but you haven't noted them at all in your report. Why not?

A. No, I did utilize the December 2023 year-end information as well as the June 30th six-month information in my report.

Q. My question is: You were serving as a neutral, not an adversary, and you're giving it to the Court to give a full disclosure in what you were giving, neutral and a balanced position, fair and balanced. Okay? You didn't even make any reference to the results in the company's own unaudited financials for the year ending 2023 and for the six months ending June 30, 2024. I mean, was there actual specific reason why you, on an objective, neutral standpoint, to make no reference to the Court?

A. I don't think the company is in great financial conditions as you're stating. So that's why I didn't include things of --

that they're in great financial condition because I think they're in bad financial condition.

MR. ASHER: Move to strike, Your Honor. It's totally unresponsive.

THE COURT: It's a hundred percent responsive. It's just not the answer you want, Mr. Asher.

MR. ASHER: It goes to my honest specific question, Your Honor --

THE COURT: I'm not striking it. Your question --

MR. ASHER: I appreciate your point.

THE COURT: Your question begs my question to you. If the financial status of this company is, as you want me to believe, rosy, which is the word, frankly --

MR. ASHER: I don't.

THE COURT: Hold on -- which is exactly the word that my colleague used in her report, that the working capital is flush, and net equity is north of 10 million for '23 or '24, how do you explain not paying a dime on the 17 something million that you acknowledge you owe to the plaintiff? I'm not making the number up. You've acknowledged to me, in my chambers, as an officer of the Court, that the outstanding debt was about 22 million something, right? Yes or no? Just answer it yes or no.

MR. ASHER: There is -- there is a -- I don't recall the $22 million number that I referred to Your Honor. But I

have acknowledged or I could today acknowledge to you that they have a claim of 19 -- they have -- of $17 million, and our defense is not that there is $17 million. Our defense, as noted in our affirmative defenses in our motion papers in the past, is that they are not currently due because of the extended forbearance agreement that was put in place.

THE COURT: By the way, when does that forbearance agreement end?

MR. ASHER: It continues as long of the various elements that the parties have continued to put in place throughout this entire two-plus year period.

THE COURT: Forever?

MR. ASHER: It is --

THE COURT: Mr. Asher, just answer my question.

MR. ASHER: It could be, it could be.

THE COURT: It could be?

MR. ASHER: It could be because it has to do with these contingencies. The contingencies are, number one, to make monthly reports, and other extensive reports every month are given to the bank, throughout this entire period of time. Every year we give them borrowing base certificates, we give them a whole variety of these documents, and --

THE COURT: And that you believe -- you believe legally binds the plaintiff to sit on their hands and wait until the next millennium?

MR. ASHER: Yes.

THE COURT: Okay. Thank you for the candor with the Court. I really appreciate that.

MR. ASHER: It has to do with the fraudulent inducements that they put in place, that caused us to enter into the forbearance agreement to begin with. Back in --

THE COURT: I'm going to be authorizing the filing of the summary judgment as to the other action.

MS. MURPHY: Thank you, Your Honor.

THE COURT: You're welcome.

Anything else of this witness?

MR. ASHER: Let me --

THE COURT: We have been going at this for an hour with this gentleman.

MR. ASHER: I just wanted to go next to the account receivable which was discussed at length.

THE COURT: How much longer do you have with the witness? I have indulged the parties way beyond what I anticipated and what I indicated.

MR. ASHER: I think I could probably wrap it up in about 15 minutes.

THE COURT: You'll have five.

MR. ASHER: All right.

BY MR. ASHER:

Q. Turn to Page 12 --

MR. ASHER: Thank you, Judge.

THE COURT: You're welcome.

BY MR. ASHER:

Q. To Number 12, Page 6, which is certain assertions of corporate funds used for personal purposes. One of which has to do with Zona Rosa, which is for a leased apartment in Kansas City. Do you see that?

A. Yes.

Q. Why was that put in the report?

A. We raised a concern that it may not be a business purpose.

Q. This goes to the gist of this entirety of -- you had an opportunity to speak with them and ask them about these items like this. Hey, they have an apartment in Kansas City for this cause. Why do they have it? Was this a concern? You said you have a concern but did you -- your job was to ask Nostrum, we have a concern. Why did you have an apartment? Was this a personal one rather than one that was used for the company?

A. I agree this one, maybe we didn't ask. I don't know.

Q. What about the $6,000 from the controller? Did you ask him -- you were dealing with him or your colleagues were dealing with him every day. Did they say, Parashram, what's the story about the $6,000?

A. We did ask him about the 6,000. I don't recall what his response was.

Q. But have you seen the letter from plaintiff's counsel in

which they did not -- they put -- they included in their letter that prompted this hearing, without making any reference of the reasoning that was given concerning the $6,000? Did you see their letter?

A. Yes.

Q. Okay. Did you note that they did not include what his explanation was for the $6,000?

A. I don't recall it. It wasn't in the letter but --

Q. Why did you put $6,000 in of that nature? Was that material or was it merely to be adversarial the way you wrote this report?

A. Not at all adversarial. It's questioning why would a controller, an employee, lend money to a business.

Q. Is that material from an accounting standpoint? Or is it from an operational standpoint?

A. It may not be material from an accounting standpoint. It just raises question why would the controller be lending money to the company signing his paycheck.

Q. And did he also tell you that it was paid back within the matter of a few days?

A. No.

THE COURT: Generally speaking, sir, if you are dealing with a solvent company, would you see a controller of a company loan his or her employer what I view to be a relatively paltry sum of money of $6,000? Is that something you generally

see in your 40-year experience?

THE WITNESS: No.

THE COURT: Is that one of the reasons perhaps why you raised it?

THE WITNESS: It's very unusual, very unusual for an employee to loan money to a company. He might be a shareholder, I don't know, in the main company.

BY MR. ASHER:

Q. To that very point, this hearing doesn't -- isn't a 10b-5 investigation. This question has to do with whether the company's operation would impact the collateral. Your report doesn't even address the financial -- whether the financial condition of the company impacts the collateral value for the benefit of this bank. Did you even address that anywhere in your report?

A. I think it's addressed throughout my report, that the bank has insufficient collateral.

Q. Insufficient collateral? Explain.

A. Well, if you don't have a viable company and you go bankrupt and out of business, you know --

Q. I hear you. But what about the collateral? That's what we're talking about. How was their operations -- excuse me. How did Nostrum's operations impact their collateral which is, according to the prior company's report, showed that they have more than $36 million and more, as set forth in one of these

reports? Which I can show you, which we gave to you, which we give to you from one of the prior companies that showed --

MS. AHN: ANDAs.

BY MR. ASHER:

Q. -- far in excess of $36 plus million. Did you see that there was any impact to those operations?

A. I didn't see anywhere where the bank was repaid.

Q. Is there anything else that you can add to that question -- can you add anything more to your answer to that question, sir?

A. The business is struggling, clearly is struggling, based on the documents I have reviewed.

Q. Okay. Did it have any impact to the collateral value?

A. The loan is in default, so you're not paying the debts. The company is not paying the debts.

Q. You're an accountant. You're a forensic accountant. Please explain how the financial condition of the company impacts the collateral value of their loan, please.

A. Well, you collected $900,000 from sales of ANDAs which was their collateral, and you used it for operations that went for payroll and other expenses. They didn't get paid $900,000 on the bank. That's definitely affected their collateral.

Q. Okay. Anything else?

A. I think throughout my report, if you read my report.

Q. Be more specific. You cite $900,000 right now. You

talked about a $6,000 item a minute ago. Please enumerate whether there are any other ways in which the Court can determine whether the actual operation can impact their multimillion dollars of collateral that the previous report or previous accounting firm identified.

A. My report has everything in it. I don't think I could add anymore than my report has in it.

THE COURT: We have gone past the five minutes. Now we are past an hour. I will give you three more questions.

BY MR. ASHER:

Q. Have you ever seen Dalto Consulting's company?

A. You mean the report?

Q. It's entitled Collateral Liquidation Analysis as of December 31, 2023.

A. I believe we have a copy of that report.

Q. Yes, you asked, and we provided it to you.

MR. ASHER: Your Honor, may I approach and show it to him?

THE COURT: You've got two more questions.

MR. ASHER: I understand.

THE COURT: Of course you can come up, Mr. Asher, and if you'd like, I can grab it from you.

BY MR. ASHER:

Q. Reviewing that document --

THE COURT: Counsel, you just gave him -- excuse me

for a second. How many pages is the document?

THE WITNESS: 33.

THE COURT: You handed him a document, honestly, about seven seconds ago. He hasn't gotten past the title page because I'm next to him. And you asked him "reviewing that document," and you're asking for a conclusion. Does that sound like a fulsome, fair way for the Court to delve into?

MR. ASHER: If he had never seen it before, I understand the concern. But just about two weeks ago, we gave him this report when he asked for it, and I assumed professionally, given the Court-appointed requirements that he has, that he has looked at it to reach a report that says that our company is insolvent. This company says it's not insolvent.

THE COURT: Do you want to take an opportunity to review it, sir?

THE WITNESS: Yeah, let me -- do you have a specific question about the report?

MR. ASHER: I will try it again, Your Honor.

BY MR. ASHER:

Q. Reviewing the document before you, from a brief review of it, and based on your recollection of whether you reviewed it over the past several weeks when we gave it to you, pursuant to your request, does it impact or influence in any way your own professional forensic judgment in terms of to the solvency or

insolvency of Nostrum?

A. This report does not impact the conclusions of my report.

MR. ASHER: Thank you, Your Honor. No further questions.

THE COURT: Any redirect?

MS. MURPHY: Your Honor, I have three questions, if I may.

(REDIRECT EXAMINATION OF KEITH BALLA BY MS. MURPHY:)

Q. Mr. Balla, you testified that you saw -- that you have reviewed the June 30th, 2024, internally prepared financial statements of Nostrum, correct?

A. Yes.

Q. Okay. And is it fair to say that those reflected year-to-date negative EBITDA in the neighborhood of $2.5 million?

A. I don't remember off the top of my head. I would have to look back.

Q. Does that sound out of bounds for what you recall reviewing for 2024 performance by Nostrum?

A. I'd have to look back. I don't remember, off the top of my head, the number.

THE COURT: You want to point him to his report, please.

MS. MURPHY: Fair enough. Your Honor, I don't believe those are included as an exhibit to the report unless my

colleague tells me it was.

THE COURT: Well, you can show a witness anything to refresh his or her recollection.

MS. MURPHY: Thank you, Judge. We do have them up here.

THE COURT: And so here is how this works under the Rules of Evidence. You can tender -- please identify what it is in the record, you can show it to the witness, and then take it back from the witness, and ask him if it refreshes his recollection.

MS. MURPHY: Thank you, Your Honor.

THE COURT: And then we will go from there.

BY MS. MURPHY:

Q. Mr. Balla, I'm going to show you what I will represent to you are the interim financial statements, the profit and loss of Nostrum. Can you take a look at that, please, and let me know if it refreshes your recollection?

A. Yes. Yes.

Q. Okay.

A. That's their profit and loss report.

Q. Profit and loss report. Can you look specifically at the EBITDA year to date to refresh your recollection?

A. Consolidated year to date --

THE COURT: I'm not asking you to recite it out loud, sir. Counsel has asked you a question, and now she's pulled

the screen away. The question is: Does it refresh your recollection?

THE WITNESS: Yes.

MR. ASHER: Can I see the document?

MS. MURPHY: Sure.

THE COURT: And I'm sorry. Does it?

THE WITNESS: Yes.

THE COURT: Okay.

MS. MURPHY: I'm just refreshing recollection. It's not an exhibit.

MR. ASHER: Hold on, I'm a slow reader.

Thank you very much.

THE COURT: So the witness, for purposes of the record, was shown a document which was on a screen. As instructed, counsel pulled the screen away. And the question was posed to him: Does it refresh your recollection? And the witness indicated it had.

Now you may proceed with the question.

MS. MURPHY: Thank you, Judge.

BY MS. MURPHY:

Q. Mr. Balla, year-to-date consolidated EBITDA for Nostrum Laboratories, Inc., fair to say that it was in the neighborhood of negative $2.5 million --

A. Yes.

Q. -- as of June 30th, 2024?

A. Yes.
Q. What does negative EBITDA signify to you as an accountant?
A. Number one, you don't have any profits. So you're backing out depreciation, which is a noncash item, taking out taxes and amortization, so it's strictly your revenue, cost of sales -- S -- selling general and administrative expenses basically, and it's a negative number.
Q. Last question for you, Mr. Balla: Is it fair to say, in your experience, do accounting principles vary from industry to industry?
A. There is specialized principles in certain areas. There are, from an accounting standpoint, there is industry specific standards. But there is general standards for financial statement preparation. But there are industry standards for reporting of different things as well.
Q. So for the general -- the general standards that -- those standards have universal application, regardless of the industry of the company; is that fair to say?
A. Generally, for financial statement purposes.
Q. Okay. So for the purposes of your report, would you have expected accounting principles to differ just because this is a pharmaceutical company?
A. No, not based on what was presented. If -- the audited financial statements that were prepared by the auditor, we went through those, as well as we went through the internal

financial statements for '23 and '24.

Q. Thank you, Mr. Balla.

MS. MURPHY: No further questions, Judge.

MR. ASHER: Your Honor, now that they raised the new point about that spreadsheet, may I look at the spreadsheet one more time?

THE COURT: Of course.

MR. ASHER: Thank you, Your Honor.

THE COURT: Sure.

MR. ASHER: Much appreciated.

THE COURT: So your recross will be limited to that.

MR. ASHER: That's correct. I mean, I appreciate your observation, Your Honor. Thank you.

THE COURT: You're welcome.

MR. ASHER: Very much appreciate it.

THE COURT: Ms. Murphy, can you assist Mr. Asher and bring this up to the witness?

MS. MURPHY: Yes, Your Honor.

(Discussion held off the record between Mr. Asher and Ms. Murphy.)

MR. ASHER: No further questions, Your Honor.

THE COURT: The witness is excused. I'm sure you are disappointed. Please step down. Okay.

We are going to take a three-minute break for me.

Mr. Asher, this is the first I'm hearing you want to

call whom and for what purpose and for how long?

MR. ASHER: Mr. James Grainer, our CFO, to address the subject matter of --

THE COURT: Didn't he file an affidavit here?

MR. ASHER: He did.

THE COURT: Yes. Unnecessary.

Anything else?

MR. ASHER: We may submit that that's part of the record for Your Honor's consideration.

THE COURT: So you would like to submit his affidavit as an exhibit?

MR. ASHER: Yes. No, into the record.

THE COURT: Of course.

MR. ASHER: Given this is, as you have observed, it's a Rule 66 function, to be used and submitted by the Court --

THE COURT: If you are asking -- I'm sorry. If you are asking for the Court -- you are offering Mr. Grainer's affidavit as a defense exhibit --

MR. ASHER: Yes.

THE COURT: -- I will accept it and it's admitted into evidence, as D-1. Does that satisfy you?

MR. ASHER: It is. Thank you very much.

THE COURT: You are very welcome.

(DEFENDANT EXHIBIT D-1 WAS RECEIVED IN EVIDENCE.)

THE COURT: I'm going to go off the bench for about

three minutes. Thanks.

THE COURTROOM DEPUTY: All rise.

(A recess was taken at 4:34 p.m.)

THE COURTROOM DEPUTY: All rise. The Honorable Robert Kirsch presiding.

THE COURT: I just met with Counsel and advised them off the record what I'm about to state on the record.

The Court, having considered the entirety of the record, having heard the testimony today, having reviewed carefully Exhibit 1 from the plaintiffs and Exhibit 1 from the defense, and having heard the testimony from the fiscal agent today, the Court, pursuant to Rule 66, will be appointing a receiver.

The Court will not endeavor at this juncture to set forth comprehensive findings of fact and conclusions of law. It will do so in due course in a written decision. I wanted to give the parties the benefit.

I do believe that time is of the essence here.

I'm satisfied by the neutral, highly experienced and credentialed fiscal agent, who has been a CPA for some 40 years, who testified to a myriad of significant and problematic areas leading him to conclude that the defendants are in extreme dire precarious financial circumstances. He pointed out a number of irregularities. I need not recite them in detail now. He testified to collectability issues; he

testified to oddities where corporate employees are lending the company de minimus amounts of money, which is odd, to say the least; that there were advances and/or loans totaling $29 million to either a parent and/or related company; that there are insufficient reserves; that three ANDAs were sold to meet operating costs; and that the plan, so to speak, to increase sales, to launch new products, to get investors, all were illusory, meaning aspirational, with no underlying, confirming, substantiating commitments. I think I asked the question, do these essentially appear to be unsubstantiated aspirations, and the fiscal agent indicated yes.

The supposed or the resolution with the Department of Justice in 2022 of some $34 million that the fiscal agent indicated is essentially beside the point to his ultimate conclusions. Very effective, fulsome cross-examination did not shake the witness from his fundamental testimony of the precarious state of the defendants.

He also testified to a lack of full cooperation from the defendants in terms of turning over his requested documentation, and I am satisfied that the factors that the Court must consider in appointing a receiver under Rule 66 have been met.

I would also note the following, and this will be pointed out in a written decision when the Court writes it.

Judge Castner found a number of factors militated

towards the appointment of a receiver at the outset. This is after the initial evidentiary hearing. This is the second evidentiary hearing.

First, and it's not disputed, there is an equitable interest. The plaintiff is a secured creditor.

In terms of probability of success, according to Judge Castner in her written decision, and I'm quoting, "On the present record, it appears that plaintiff's probability of success on the merits of its claims is reasonably high." I'm changing that finding today to what appears to be beyond reasonably high.

Mr. Asher, who is an excellent lawyer, but, as an officer of the court, has a duty of candor with the Court. And when I asked him the question, does this supposed forbearance agreement extend potentially for posterity, he answered yes, which means to the next millennium. And that means if the defendants continue, in his words, not mine, to provide data or information to the plaintiffs, they are legally precluded from making good on the 17 million that are outstanding. I know of no legal authority to satisfy that. And the documents which I have received or reviewed, rather, do not seem to support that view.

I also believe that it was either the testimony or an affidavit that was provided by -- is it Mr. Grainer?

MR. ASHER: Grainer, Your Honor.

THE COURT: Grainer, acknowledged himself that the agreement really was -- the supposed oral agreement with Citizens Bank was that they would consider an extension of the forbearance, that it was possible that they would extend the forbearance period. That is not an implied contract of any sort that any reasonable person could rely upon.

My hunch is, and this is just a hunch, it's neither here nor there, is that Citizens Bank regrets any period of forbearance here. But, regardless, the probability of success militates strongly, significantly in favor of the plaintiff.

In terms of the financial position of the debtor, Judge Castner noted that Nostrum "struggled with cash flow issues, has been unable so far to raise funds to repay the debts it owes plaintiffs." And in the words of the guarantor, "going through very difficult times." No truer words have ever been spoken.

With regard to this, Judge Castner concluded "On this record the Court finds that plaintiff has demonstrated legitimate concerns with Nostrum Laboratories' capacity to pay debts as they become due, as well as its capacity to raise funds from prospective lenders to help repay plaintiff's loans. The record also demonstrates that Nostrum Laboratories' financial position has been unstable and it has struggled with cash flow issues since at least 2022. This factor, therefore, favors the appointment of a receiver, although it is not

necessarily dispositive on its own."

None of these factors, as I read it, are dispositive, by the way. They are simply factors that the Court should consider and balance.

Possibility of irreparable injury, danger to property being lost or diminished. Here, Judge Castner wrote, "The evidence lends support to Nostrum Laboratories' claim that it has adequate collateral that could be sold to repay the loans."

And then later, she indicates, "The Court cannot find that plaintiff's interest in Nostrum Laboratories' collateral would be irreparably injured in the absence of a receivership," and then she goes on.

The facts on the ground have changed. The exhaustive report prepared by the fiscal agent, his testimony today, unmistakably, unquestionably, unambiguously reflects a precarious financial position, including selling three ANDAs for $900,000, none of which went to the plaintiff, which nobody disputes has millions of dollars due and owing, but instead for operating expenses. And the factors continue.

But in the end, I don't read any of Judge Castner's findings, which ultimately led her to exercise restraint and go for an interim, less severe prophylactic measure of a fiscal agent, rather than a receiver, none of them, none of Judge Castner's findings in any way indicated to the Court, this Court, that she found there was no basis or no area of concern

for the plaintiffs.

To the contrary, she acknowledged in prong after prong, factor after factor, that she acknowledged the plaintiff's concerns, she legitimized and validated those concerns, but nonetheless, believed that in the end, a more measured, incremental approach was appropriate. Of course, I find no fault in that. That's what good judges do.

But the facts on the ground have changed, and they have prompted this Court to now elevate this to a receivership or to impose a receiver.

I note that there has been some dozen or so receivers appointed by my colleagues in the District Court over the last 10 or 12 years. Some begun, frankly, like Judge Castner's order, first with a fiscal agent. Many went right to receiverships.

So the Court will be granting the application. I am more than satisfied Rule 66 has been satisfied, and I will be issuing an opinion to this effect.

I am going to direct the plaintiffs -- the plaintiffs and the defendants can't agree on anything thus far. I beseeched counsel to attempt to work something out in the middle of this proceeding and at the end. It's not theoretically possible here -- regrettable, but it doesn't seem like it's happening.

I'm not going to entertain a prolonged argument on who

the receiver should be. I proposed three very experienced receivers, but was advised by both parties that the receiver needs to have expertise in the pharmaceutical industry. I don't believe any of the three that I proposed has that requisite expertise. So at least the parties agree on that.

And here is what I'm going to tell you. I'm going to direct the plaintiffs to come forward within the next ten days -- actually, seven days. You are going to propose three individuals to the defendants on a receiver. That receiver must be arm's length from the plaintiffs, meaning your client cannot have a close professional or, obviously, personal relationship, because the defendants are entitled to have some confidence that whoever it is that the Court appoints is, in fact, neutral and unbiased, and I'm directing you towards that.

Now, for the defendants, you will agree to one of those. Do not submit, Mr. Asher, your own list back, and so the merry-go-round continues. That's over. Somebody had to be responsible to come forward with the list of three neutrals. I chose the plaintiffs, but I gave you the last word of the three. But you will choose one of the three, based upon, as an officer of the court, Ms. Murphy, your representation to me and to your learned colleagues across the aisle that you are going to pick somebody that is detached from your client and does not have a close personal and/or professional relationship. There must be folks in the pharmaceutical industry that meet that

bill.

MS. MURPHY: Yes, Your Honor.

THE COURT: You will tender that within seven days to the defendants.

And Mr. Asher, Ms. Ahn, you will have three days to advise me which individual you pick.

Ms. Murphy, if you do not get a response or, for whatever reason, which will not shock me, the defendants don't cooperate, don't agree, somehow they come up with some explanation that the three neutrals too are not good, you will tender that to me. I will make a selection of the three that I can assure you I will never have heard of. Okay? And then we shall go forward.

I have already authorized you to file a motion for summary judgment. The way this will work is you will not file it with the Court. You will bundle it, which means you will serve the defendants, you will -- the parties will of course abide by the schedule time period. The defendant will serve its opposition on you, and then when the reply is due, you will serve the entirety on the Court.

Not prejudging this, this is a very straightforward case. I don't view this as complicated in the slightest, which is why I beseeched the parties to see if they could figure something out.

Anything else from the plaintiffs?

MS. MURPHY: Your Honor, a question about the identity of the receiver. I just want to make sure I'm very clear. Do prior engagements with Citizens Bank preclude the recommendation, so long as those are disclosed to the Court and the other parties?

THE COURT: I mean, I don't know why it would. Citizens Bank, this is not a mom-and-pop shop.

MS. MURPHY: Correct.

THE COURT: My guess is this is a niche industry of experts. There has to be a number of them. I don't know any of them. I can't imagine that Mr. Asher or Ms. Ahn would make a credible argument that the fact that an expert once served a role with Citizens Bank, which must have -- I don't know -- tens of thousands of employees throughout the United States? Am I right, Mr. Asher, would that trouble you?

MR. ASHER: Ms. Murphy referred, Your Honor, to prior engagement. If I heard Ms. Murphy correctly, that would be a concern. Prior engagement with the bank? That's -- and the critical point is even if I don't care, even if Your Honor doesn't care, our management will care, and just as they gave extreme concern about the fact that the prior engagement, we were required to engage, required by the bank earlier in this case, turned out that they had like years and years of working with the bank, and it obviously created a mistrust and --

THE COURT: I think there is such a level of mistrust,

and I will be honest with you. I think your client has done everything it can to delay and engage in all sorts of dilatory antics here.

With that in mind, it would be preferable if you could find somebody that hasn't engaged with the bank in the last five years. Okay?

MS. MURPHY: Okay.

THE COURT: Anything beyond that, five years, makes the absurd argument preposterous. Okay? It might even be helpful if you were able to find somebody that the defendants can't quarrel with, that never had any actions with the bank. That would probably be better. It would just take one headache off a hundred headaches.

MS. MURPHY: We will do our best, Your Honor.

THE COURT: Okay. Anything else?

MS. MURPHY: Nothing further from us.

THE COURT: Counsel for the defendants?

MR. ASHER: I don't think we have anything, Your Honor. Thank you very much for your attention regarding our case today.

THE COURT: You are very welcome. It was a pleasure to have counsel. Thank you all for your hard work.

And that's it. The matter is adjourned, I will await the name of -- and you will get an opinion on this in due course. Okay?

MS. MURPHY: Thank you, Your Honor. Thank you all for your time this afternoon.

MS. AHN: Thank you.

MR. ASHER: Thank you.

THE COURTROOM DEPUTY: All rise.

(The proceedings concluded at 5:20 p.m.)

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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/S/ Carol Farrell, NJ-CCR, FCRR, RDR, CRR, RMR, CRC, CRI
Court Reporter/Transcriber

September 29, 2024
Date

EXHIBIT G

Opinion of District Court

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CITIZENS BANK, N.A., Plaintiff, v. NOSTRUM LABORATORIES, INC., and NOSTRUM PHARMACEUTICALS, LLC, Defendants.	Civil Action No. 23-20765 (GC) (JTQ) **OPINION**

CASTNER, U.S.D.J.

THIS MATTER comes before the Court upon Plaintiff Citizens Bank, N.A.'s Motion to Appoint Receiver pursuant to Federal Rule of Civil Procedure ("Rule") 66. (ECF No. 11.) Defendants Nostrum Laboratories, Inc., and Nostrum Pharmaceuticals, LLC, opposed, and Plaintiff replied. (ECF Nos. 30 & 35.) The Court held an evidentiary hearing on April 22, 2024, and the parties submitted post-hearing objections, proposed findings of fact, and conclusions of law on May 6, 2024. (ECF Nos. 77-83.) The Court has carefully considered the parties' submissions and for the reasons set forth below, and other good cause shown, Plaintiff's motion is **GRANTED** in part and **DENIED** in part. Specifically, the Court will appoint a special fiscal agent to supervise Nostrum Laboratories, Inc., and to report to the Court and the parties on a regular basis as to the company's financial status as well as the value and disposition of its business assets.

I. BACKGROUND

A. PROCEDURAL BACKGROUND

In January 2023, Plaintiff Citizens Bank, N.A., sued Nirmal Mulye, President and Chief Executive Officer of Defendants Nostrum Laboratories, Inc., and Nostrum Pharmaceuticals, LLC, in the United States District Court for the District of New Jersey. (Civil Action No. 23-00545, ECF No. 1.) Plaintiff alleged that in December 2020 it had extended to Nostrum Laboratories, a generic pharmaceutical manufacturer, three credit facilities totaling $22 million and that Mulye had agreed to individually guarantee the loans. (*Id.* ¶¶ 10, 13.) Plaintiff sued Mulye under theories of breach of contract, promissory estoppel, and unjust enrichment for default. (*Id.* ¶¶ 38-54.)

Eight months later, on September 28, 2023, Plaintiff brought this suit against Nostrum Laboratories and Nostrum Pharmaceuticals, the parent of Nostrum Laboratories.[1] (ECF No. 1.) Plaintiff seeks repayment of the loans in the total amount of just under $17 million (inclusive of principal and interest). (*Id.* ¶¶ 10, 41.) Plaintiff asserts the following causes of action: Count One against Nostrum Laboratories for breach of contract; Count Two against Nostrum Pharmaceuticals for breach of contract; Count Three against Nostrum Laboratories and Nostrum Pharmaceuticals for promissory estoppel; Count Four against Nostrum Laboratories for unjust enrichment; and Count Five against Nostrum Pharmaceuticals for unjust enrichment. (*Id.* ¶¶ 43-79.)

Before Defendants answered, Plaintiff filed a motion to appoint a receiver on October 6, 2023. (ECF No. 11.) Plaintiff asks the Court to appoint Vladimir Kasparov of Portage Point Partners as the receiver over Nostrum Laboratories and its collateral, granting to the receiver authority to take complete and exclusive possession of them with the option of selling them to

[1] Subject-matter jurisdiction is based on diversity jurisdiction pursuant to 28 U.S.C. § 1332(a). (*See* ECF No. 1 ¶¶ 3-7; ECF No. 6; ECF No. 76.)

secure repayment of Plaintiff's loans. (ECF No. 17.) Defendants opposed the motion on November 20, 2023, and Plaintiff replied on November 27, 2023. (ECF Nos. 30 & 35.)

On November 3, 2023, Defendants answered the Complaint and asserted affirmative defenses. (ECF No. 26.)

On February 1, 2024, Plaintiff filed a motion to expedite the receivership motion, which asked the Court to hold a show cause hearing on why the request for the appointment of a receiver should not be granted. (ECF No. 39.) Defendants opposed the motion to expedite. (ECF No. 49.)

On February 16, 2024, the Court held a telephonic conference with counsel for the parties and then entered an order directing them to meet and confer and to provide correspondence on two issues: (1) whether the parties would agree to the appointment of a special fiscal agent to monitor Nostrum Laboratories' financial affairs, and (2) what limited discovery Defendants requested prior to an evidentiary hearing on the motion to appoint a receiver. (ECF No. 51.) The parties subsequently submitted correspondence indicating that they did not agree on a fiscal agent and outlining their respective positions on the limited discovery. (ECF Nos. 53-59.)

On March 19, 2024, the Court issued an order granting in part and denying in part Defendants' request for pre-hearing discovery and scheduling an in-person evidentiary hearing for April 22, 2024. (ECF No. 61.)

The evidentiary hearing included testimony from five witnesses. (ECF Nos. 73 & 95.) Plaintiff called Erin Kane, Assistant Vice President of Citizens Bank; Eric Slone, of Kenneth J. Dalto & Associates; and Vladimir Kasparov, Managing Director of Portage Partners. Defendants called James Grainer, Chief Financial Officer of Nostrum Laboratories and Nostrum Pharmaceuticals, and Nirmal Mulye, Chairman of the Board and Chief Executive Officer of

Nostrum Laboratories and President of Nostrum Pharmaceuticals. The parties agreed to the admission of over fifty exhibits with objections reserved on several exhibits.[2]

On May 6, 2024, the parties filed proposed findings of fact and conclusions of law. (ECF Nos. 81-83.) The parties also filed briefs on objections to certain exhibits as well as the report and testimony of Eric Slone. (ECF Nos. 77-80.)

After obtaining leave of the Court, Plaintiff filed a certification on June 14, 2024, representing that during the first quarter of 2024, Nostrum Laboratories' reported balance of accounts receivables declined by over one million dollars while its over-advance grew by approximately $750,000.00. (ECF No. 89.) Defendants filed their response on June 20, 2024, arguing that Plaintiff had "mischaracterize[d] the accounts receivables" by relying on gross receivables that do "not accurately represent the receivables reported on Nostrum's balance sheet that will ultimately be converted into cash." (ECF No. 92 at 1-2.) Defendants also argued that the borrowing base certificates "ignore[] certain account receivables" and do "not represent the true collateral value of" assets. (*Id.* at 2-3.)

B. FACTUAL FINDINGS[3]

On December 31, 2020, Plaintiff's predecessor, Investors Bank, extended three credit facilities to Nostrum Laboratories via a Loan Agreement: (1) a $12 million revolving line of credit; (2) a $5 million credit/term loan; and (3) a $5 million term loan. (Tr. 13:1-4; Exh. P-1, A-1 & B-

[2] The parties emailed the Court a joint exhibit list following the hearing confirming the exhibits they agreed to admit and those on which objections were reserved.

[3] The Court relies on the testimony at the April 22, 2024 evidentiary hearing and admitted exhibits for its factual findings.

1 to -3.[4]) Nirmal Mulye is an individual guarantor of the loans and Nostrum Pharmaceuticals is a corporate guarantor. (Tr. 14:14-16; Exh. P-1, A-1.)

As collateral for the loans, Nostrum Laboratories granted a perfected security interest in its business assets, including but not limited to Nostrum Laboratories' accounts, goods, trademarks, contract rights, as well as proceeds and products. (Tr. 13:5-21; Exh. P-1, C-1.) The Uniform Commercial Code filing perfecting the lien on business assets was recorded in New Jersey. (Tr. 13:16-21; Exh. P-1, C-2.)

On June 2, 2022, counsel for Plaintiff sent Nostrum Laboratories, Nostrum Pharmaceuticals, and Mulye a letter that served "as formal notice of the occurrence of certain Defaults and Events of Default under the Loan Agreement." (Tr. 25:3-26:9; Exh. P-4.) The defaults and events of default included "failure of the Borrower to satisfy the minimum required Debt Service Coverage Ratio, Fixed Charge Coverage Ratio and Total Funded Debt to EBITDA[5] ratio as of the fiscal year ending December 31, 2021," as well as the failure of the borrower and individual guarantor to provide various financial statements, certificates of compliance/no default, and tax returns. (*Id.*)

On June 30, 2022, Plaintiff entered into a letter agreement with Nostrum Laboratories, Nostrum Pharmaceuticals, and Mulye that granted an extension of the loans' maturity date to August 15, 2022. (Tr. 27:2-13; Exh. P-1, A-6.) The loans were not repaid on August 15. (Tr.

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[4] "Tr." Refers to the transcript of the April 22, 2024 evidentiary hearing, which can be found at ECF No. 95. "P-" refers to Plaintiff's exhibits, and "D-" refers to Defendants' exhibits.

[5] EBITDA stands for earnings before interest, taxes, depreciation, and amortization. According to testimony adduced during the evidentiary hearing, EBITDA "is a measurement of [operating] cash flow," and it is important because cash flow "allows the company to continue operating" and is "a measurement of the performance of a company and the ability of a company to generate cash," measuring what is being produced and if a company is "making money off that activity." (Tr. 37:7-15, 117:15-18.)

28:2-4.) Instead, Plaintiff and Defendants negotiated a forbearance agreement to extend the time to repay the indebtedness. (Tr. 28:5-19; Exh. P-6.)

On October 31, 2022, Plaintiff entered into the forbearance agreement with Nostrum Laboratories, Nostrum Pharmaceuticals, and Mulye. (Exh. P-1, G; Tr. 31:14-32:2.) Plaintiff agreed "to forbear from exercising the rights and remedies available to it as a result of the Existing Defaults, until" December 2, 2022, at the latest, at which point Nostrum Laboratories was obligated to repay its indebtedness. (Exh. P-1, G at 6-8; Tr. 30:5-23, 32:3-5.) The forbearance agreement acknowledges that Nostrum Laboratories, Nostrum Pharmaceutical, and Mulye were "in default of their obligations under the Loan Documents" and that Plaintiff had "and shall continue to have, valid, enforceable and perfected first priority security interests in and liens upon the Collateral." (Exh. P-1, G at 4-5.) The agreement states that as of October 24, 2022, Plaintiff was owed $17,226,584.80 in principal and interest on the loans. (*Id.* at 5-6.) The agreement also states that "[n]othing contained [t]herein shall be deemed to obligate [Plaintiff] to enter into any other forbearance agreements or to waive any Events of Default." (*Id.* at 14.)

On December 6, 2022, Plaintiff sent a letter to Nostrum Laboratories, Nostrum Pharmaceuticals, and Mulye that informed them that "the Forbearance Agreement expired on December 2, 2022, at which point [they] were obligated, and failed, to repay the entire amount of the Bank Indebtedness," including outstanding interest. (Tr. 33:13-34:6; Exh. P-7.)

On January 30, 2023, counsel for Plaintiff sent Nostrum Laboratories, Nostrum Pharmaceuticals, and Mulye a letter reminding them that "the entire Bank Indebtedness [was] presently due and owing." (Tr. 38:19-39:24; Exh. P-8.) Plaintiff wrote that it intended "to immediately pursue certain rights and remedies, including . . . to institute suit against the Individual Guarantor to collect the outstanding Bank Indebtedness." (*Id.*) The next day, January 31, 2023, Plaintiff filed suit against Mulye in the United States District Court for the District of New Jersey

to collect the outstanding loan balance. *See Citizens Bank, N.A. v. Mulye*, Civil Action No. 23-00545 (D.N.J.).

On February 6, 2023, Ken Dalto of Dalto Consulting, Inc.—a professional services firm that assists distressed businesses with restructuring—contacted Plaintiff on behalf of Nostrum Laboratories to outline a refinancing plan.[6] (Tr. 110:1-11:21; Exh. P-9.) Dalto requested six months to give Nostrum Laboratories time to secure new credit financing. (*Id.*) The plan included contacting an estimated 200 to 250 lenders. (*Id.*) The request for a six-month forbearance was rejected by Plaintiff on February 9, 2023. (Tr. 41:21-42:7; Exh. P-23.)

Nostrum Laboratories did not follow through on Dalto's advice and did not prepare a refinancing plan to repay Plaintiff in full. (Tr. 111:22-23, 112:21-24, 118:9-17.) Instead, the strategy as described in an email from Mulye was to "focus on getting a settlement conference with the bank so they can come up with the number that they will settle for." (Tr. 119:1-121:12; Exh. P-17.)

In February 2023, Plaintiff was asked to participate in "an all-hands meeting." (Tr. 42:8-43:4; Exh. P-23.) Plaintiff agreed to a meeting conditioned on the receipt of certain information, including a "detailed analysis of the accounts receivable, inventory, equipment, ANDAs[7] and associated intellectual property." (*Id.*) Plaintiff emphasized that its agreement to a meeting did not "constitute a forbearance or . . . a waiver of any of the bank's rights and remedies." (Tr. 43:5-16; Exh. P-23.)

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[6] As required by the forbearance agreement, Nostrum Laboratories selected Dalto Consulting to serve as restructuring consultant. (Tr. 102:13-19; Exh. P-1, G at 7-8.)

[7] *See Dr. Reddy's Lab'ys, Inc. v. Thompson*, 302 F. Supp. 2d 340, 343 (D.N.J. 2003) ("Companies desiring to produce and sell generic versions of already-approved new drugs, however, need not submit the same testing data. Instead, generic drug makers file abbreviated new drug applications (ANDAs), the contents of which are set by the statute, that include data showing the generic drug to be the same as or the bioequivalent of an FDA-approved drug.").

On May 9, 2023, Dalto Consulting was informed by Nostrum Laboratories that due to "cash flow issues," the company could not pay Dalto Consulting's hourly fees and that Nostrum Laboratories wanted to stop using Dalto Consulting to seek financing until the company could "come up with a plan." (Exh. P-25.)

On July 7, 2023, Nostrum Laboratories confessed to judgment in the Supreme Court of the State of New York for $1,040,000.00 owed to its former logistics provider Eversana Life Science Services, LLC. (Tr. 291:5-13; Exh. P-18.)

On July 10, 2023, Ken Dalto of Dalto Consulting sent Plaintiff's representatives an email stating that "[b]ased on [their] observation and analysis of the Nostrum situation for the past eight months, it [was Dalto's] informed opinion that the company is deeply insolvent, with a myriad of financial, operational and legal problems such that the company cannot be turned around." (Tr. 48:11-49:6; Exh. P-10.) The email characterized Nostrum Laboratories' debt as "staggering," referred to its financial management practices as "financial firefighting," and stated the opinion that the collateral was "likely deteriorating in excess of reporting." (*Id.*)

The last payment that Nostrum Laboratories made to Plaintiff on the outstanding loans was approximately $240,000.00 in July 2023. (Tr. 62:5-10, 68:24-69:2, 266:17-19; Exh. D-108.) Nostrum Laboratories has made no payment since then. (Tr. 50:21-23.) The amounts that Nostrum Laboratories maintains in its depositary accounts at Citizens Bank are typically under $100,000.00 and insufficient to debit for loan payments. (Tr. 63:10-64:1.)

On September 26, 2023, counsel for Plaintiff sent correspondence to Mulye, Nostrum Laboratories, and Nostrum Pharmaceuticals notifying them that Plaintiff intended to file "suit against Borrower and Pharma and a motion for the appointment of a receiver over the Borrower's assets and business." (Exh. P-24.)

Two days later, on September 28, 2023, Plaintiff initiated the present case.

On October 25, 2023, Nostrum Laboratories signed an agreement with the United States Department of Justice ("DOJ"). (Tr. 22:13-23:18; Exh. P-11.) Nostrum Laboratories promised to pay the DOJ proceeds of certain collateral, including fifty percent of any repayment from a loan to Asia Pacific Investment Holdings Limited, twenty-five percent of any payments from certain insurance policies, and five percent of the company's EBITDA. (*Id*.)

As of March 2024, the outstanding principal and interest on Plaintiff's loans to Nostrum Laboratories exceeded $17.1 million. (Tr. 14:2-8.)

II. LEGAL STANDARD

The appointment of a receiver is governed by Federal Rule of Civil Procedure 66. Federal courts sitting in diversity have typically applied federal law when determining whether to appoint a receiver.[8] *See, e.g.*, *Midwest Bank v. Goldsmith*, 467 F. Supp. 3d 242, 248 (M.D. Pa. 2020) ("[A] federal court sitting in diversity must apply federal law when determining whether to appoint a receiver." (collecting cases)); *Wells Fargo Bank, N.A. v. CCC Atl., LLC*, 905 F. Supp. 2d 604, 610 (D.N.J. 2012) ("In diversity suits, federal law governs the issue of whether a receiver should be appointed."); *Nissan Motor Acceptance Corp. v. Infiniti of Englewood, LLC*, Civ. No. 18-17228, 2023 WL 5321035, at *2 (D.N.J. Aug. 17, 2023) (same); *FTE Networks, Inc. v. Szkaradek*, Civ. No. 22-785, 2023 WL 8650002, at *5 (D. Del. Dec. 14, 2023) (same).

Although a district court has the discretion to "appoint a receiver in a proper case," such as "to avert . . . loss of assets through waste and mismanagement,"[9] *Tanzer v. Huffines*, 408 F.2d 42,

[8] Both parties in this case agree that federal law should apply to the motion to appoint a receiver. (*See* ECF No. 82 at 20; ECF No. 83 at 5.)

[9] *See also Deutsche Bank Tr. Co. Americas v. Greenfield of Perkiomen Valley, LLC*, Civ. No. 23-1439, 2024 WL 38040, at *2 (E.D. Pa. Jan. 3, 2024) ("The purpose of a receivership is to secure, manage, protect, and preserve the property at issue.").

43 (3d Cir. 1969), a receivership is "an extraordinary, a drastic and . . . an 'heroic' remedy," *KeyBank Nat'l Ass'n v. Fleetway Leasing Co.*, 781 F. App'x 119, 122 (3d Cir. 2019) (quoting *Maxwell v. Enter. Wall Paper Mfg. Co.*, 131 F.2d 400, 403 (3d Cir. 1942)). *See also Manufacturers & Traders Tr. Co. v. Minuteman Spill Response, Inc.*, 999 F. Supp. 2d 805, 816 (W.D. Pa. 2013) ("Because a receiver 'unquestionably interfere[s]' with an individual's right to otherwise control his or her property, a district court should appoint a receiver only 'in cases of necessity, and when the plaintiff clearly and satisfactorily shows that an emergency exists and the receiver is needed to protect the property interests of the plaintiff.'" (quoting *Mintzer v. Arthur L. Wright & Co.*, 263 F.2d 823, 825 (3d Cir. 1959))). Accordingly, before appointing a receiver, courts should consider, among other things, "whether 'milder measures will give the plaintiff . . . adequate protection for his rights." *KeyBank Nat'l Ass'n*, 781 F. App'x at 122 (quoting *Maxwell*, 131 F.2d at 403). And courts must "articulate[] the legal principles and factual bases that justif[y] imposing a receivership." *Id.* "[T]he party seeking appointment . . . bears the heavy burden of justifying the need for a receiver." *U.S. Bank Nat'l Ass'n v. B-R Penn Realty Owner, LP.*, Civ. No. 21-0502, 2021 WL 1721863, at *2 (E.D. Pa. Apr. 29, 2021).

There is no precise formula for determining when a receiver should be appointed,[10] but as "a general rule, . . . receivers are appointed only when the party seeking receivership has 'an equitable interest in the property to be seized or . . . judgments that cannot otherwise be satisfied,'" and there is either "a showing of fraud or the imminent danger of property being lost, injured, diminished in value or squandered, and where legal remedies are inadequate." *Leone Indus. v. Associated Packaging, Inc.*, 795 F. Supp. 117, 120 (D.N.J. 1992) (quoting *Piambino v. Bailey*, 757

[10] *See, e.g.*, *Canada Life Assur. Co. v. LaPeter*, 563 F.3d 837, 844 (9th Cir. 2009) ("[T]here is 'no precise formula for determining when a receiver may be appointed.'" (citation omitted)).

F.2d 1112, 1131 (11th Cir. 1985)); *see also Julius Realty Corp. v. Thompson*, Civ. No. 20-04575, 2022 WL 2981003, at *7 (D.N.J. July 28, 2022).

To aid in the determination, district courts in this Circuit have distilled a fuller list of nine factors that may be considered: "(1) the probability of the plaintiff's success in the action; (2) the possibility of irreparable injury to the plaintiff's interests in property; (3) the inadequacy of the security to satisfy the debt; (4) the probability that fraudulent conduct has occurred or will occur to frustrate the plaintiff's claim; (5) the financial position of the debtor; (6) the imminent danger of the property being lost, concealed, injured, diminished in value, or squandered; (7) the inadequacy of the available legal remedies; (8) the lack of a less drastic equitable remedy; and (9) the likelihood that appointing a receiver will do more harm than good." *Value Drug Co. v. Only One Hub, Inc.*, Civ. No. 23-00263, 2023 WL 8540912, at *5 (W.D. Pa. Dec. 11, 2023) (citing *Manufacturers*, 999 F. Supp. 2d at 816); *see also Fimbel v. Fimbel Door Corp.*, Civ. No. 14-1915, 2016 WL 1379788, at *3 (D.N.J. Apr. 7, 2016) (explaining that the "nine equitable factors, compiled from the case law of multiple circuits," may be considered by a district court "to determine whether it is appropriate to appoint a receiver").

Ultimately, the "form and quantum of evidence required on a motion requesting the appointment of a receiver is a matter of judicial discretion." *KeyBank Nat'l Ass'n v. Fleetway Leasing Co.*, Civ. No. 18-667, 2019 WL 5102206, at *5 (E.D. Pa. Oct. 11, 2019) (quoting Wright & Miller, 12 Fed. Prac. & Proc. Civ. § 2983 (3d ed. 2019)); *accord U.S. Bank Nat'l Ass'n*, 2021 WL 1721863, at *1 n.1. Indeed, courts have referred to the procedures that govern receivership motions as "less formal" than trial or summary judgment and more "akin" to "a motion for a preliminary injunction." *Julius Realty Corp. v. Thompson*, Civ. No. 20-4575, 2023 WL 2728786, at *3 (D.N.J. Mar. 31, 2023); *Fimbel*, 2016 WL 1379788, at *2 ("[B]ecause Plaintiffs seek interim equitable relief, akin to a motion for preliminary injunction, the Court is not bound by the strict

rules governing evidence at trial or summary judgement, and therefore, may consider the evidence presented by Plaintiffs."); *see also Miller v. Fisco, Inc.*, 376 F. Supp. 468, 470 (E.D. Pa. 1974) ("[T]he instant motion is more akin to a motion for injunctive relief than to a motion to dismiss for failure to state a claim."). Courts, for example, have granted receivership motions without holding an evidentiary hearing, so long as the record contained sufficient facts to justify the appointment. *See, e.g.*, *Cornerstone Realty Partners, Inc. v. Rabolli*, Civ. No. 15-7393, 2017 WL 1243142, at *1 (D.N.J. Mar. 17, 2017) ("An evidentiary hearing need not be held beforehand when the record discloses sufficient facts to warrant appointment of a receiver."); *Kacmarski v. Eppehimer*, Civ. No. 13-07522, 2014 WL 7404538, at *2 (D.N.J. Dec. 30, 2014) (same).

III. DISCUSSION

A. EVIDENTIARY OBJECTIONS

Following the evidentiary hearing, the parties filed objections to certain exhibits and testimony. Plaintiff objected to three proposed exhibits from Defendants, and Defendants objected to expert testimony and a report submitted by Plaintiff. (ECF Nos. 77-80.) The Court will address the objections before proceeding to the merits of the receivership motion.

1. DEFENDANTS' EXHIBITS

Plaintiff objects to three proposed exhibits from Defendants: D-93, D-131, and D-152.

D-93 is a March 2024 email exchange between James Grainer, Nostrum Laboratories' Chief Financial Officer, and Bob Schnitzer of Rosenthal & Rosenthal, Inc., titled "Projections." (Exh. D-93.) Attached to the email exchange is an Excel sheet that purports to project Nostrum Laboratories' profits and losses, balance sheet, and cash flows for 2024, but Defendants indicate that they are offering the exhibit simply to show "due diligence efforts are being made for the purpose of providing refinancing" to Nostrum Laboratories. (ECF No. 78 at 1.) Plaintiff objects to D-93 on the ground that the exhibit was not introduced at the evidentiary hearing and was,

instead, merely referenced by Defendants' counsel as an "important" exhibit. (ECF No. 79 at 1.) Plaintiff argues that it "was not afforded an opportunity to ask any witness about the email." (*Id.*) Defendants submit a certification from Grainer who attests that the email exchange was "in connection with Rosenthal Inc.'s pending due diligence efforts . . . to consider providing [Nostrum Laboratories] with substitute funding" for the loans owed to Plaintiff. (ECF No. 78-2 ¶ 4.) And Defendants write that Nostrum Laboratories "is engaged in due diligence efforts with other prospective lenders as well." (ECF No. 78 at 1.) Even if the Court were to consider the email exchange at D-93, it is redundant. There was testimony at the evidentiary hearing from Grainer and Mulye about Nostrum Laboratories' attempts to secure alternative financing to repay Plaintiff, (*see* Tr. 296:14-297:10, 312:6-8, 312:21-313:16), and the email exchange does not contribute anything material on that issue. There is no indication that Rosenthal, Inc., has agreed or is on the verge of agreeing to provide financing to Nostrum Laboratories, and the testimony of the witnesses is sufficient to show that Defendants are trying to secure other prospective lenders.

D-131 is a "draft" audit report, dated "December 31, 2022," said to have been prepared by Ram Associates, CPAs, of Hamilton, New Jersey. (Exh. D-131.) The word "draft" is stamped in the middle of every page, and the report appears to be an analysis of Nostrum Laboratories' consolidated financial statements for 2022. (*Id.*) Plaintiff objects to the exhibit on the ground that it is unauthenticated, "lacks any foundational testimony," and is "unaccompanied by any sworn testimony from the purported author." (ECF No. 79 at 2.) Defendants do not contest Plaintiff's objections but note that there is now a final draft of the 2022 report available. (ECF No. 78 at 1-2.) Because D-131 is an unauthenticated "draft" report that is now supplanted by a final report, the Court will not consider the draft report for the present motion.

D-152 is the final audit report, dated "December 31, 2022," from Ram Associates. (Exh. D-152.) Plaintiff does "not object to Nostrum's use of D-152 to show that an audit was obtained,"

but it objects to use of the audit report "for any other purpose." (ECF No. 79 at 2.) Plaintiff notes that it received the report only days before the evidentiary hearing and that the report's author did not testify during the hearing. (*Id.*) Defendants write that Nostrum Laboratories "endorses the statements in D-152" and that it confirms "Nostrum's solvency." (ECF No. 78 at 1-2.) The Court will accept D-152 for the purposes of showing that a 2022 audit report was completed in April 2024, but the Court cannot rely on the report to "confirm" Nostrum's solvency as of 2024. Not only was there no testimony from the report's author nor did any witnesses at the evidentiary hearing testify about how the report demonstrates Nostrum Laboratories' solvency, but the report covers the period that ended on December 31, 2022, and does not prove that Nostrum Laboratories is or has been solvent after that date.

2. PLAINTIFF'S EXPERT TESTIMONY AND REPORT

Defendants object to Plaintiff's witness, Eric Slone, being qualified as an expert and his report, P-20, being admitted as an expert report. (ECF No. 77.) Defendants emphasize that Slone "does not have experience working with generic pharmaceutical manufacturers" and that he "had insufficient facts and data relating to Nostrum's finances after June of 2023." (*Id.* at 1-3.) Defendants also fault Slone for failing to obtain "facts and information necessary to form an informed opinion, on a number of subject matters, including those relating to Nostrum's financial reporting, financial projections, accounts payables, and relationships with its business partners and suppliers." (*Id.* at 3-4.)

Plaintiff responds that Slone "has been a certified public accountant for over 40 years and a certified insolvency and restructuring advisor for 20 years" and that he "has advised hundreds of financially distressed businesses . . . regarding restructuring their businesses and managing financial crises." (ECF No. 80 at 1.) Plaintiff notes that Defendants did not object to Mr. Slone testifying as an expert prior to the evidentiary hearing, despite the Court directing the parties to

raise any objections at that time. (*Id.* at 2-3.) Plaintiff further notes that it is not offering Slone "as a generic pharmaceutical expert," but "as an expert in accounting and business restructuring," and it argues that Slone "need not have specialized experience in the pharmaceutical industry to opine that Nostrum's inability to pay its debts as they come due renders it insolvent." (*Id.* at 3-4.) Finally, Plaintiff argues that Slone "testified he received and reviewed Nostrum's financial[s] for all periods relevant to his opinion testimony; therefore, he possessed the information upon which his conclusions are based." (*Id.* at 5.)

Upon careful review, the Court finds that Slone is qualified to testify as an expert in accounting and business restructuring, and it will accept his report, P-20, for that purpose. Defendants' objections to Slone's lack of specialized experience with generic pharmaceutical manufacturers as well as the other critiques of Slone's knowledge about Nostrum Laboratories' processes go to the weight that should be given to Slone's testimony when evaluating the financial status of Nostrum Laboratories, not the reliability of the testimony. *See In re Paoli R.R. Yard PCB Litig.*, 35 F.3d 717, 744 (3d Cir. 1994) ("The grounds for the expert's opinion merely have to be good, they do not have to be perfect. The judge might think that there are good grounds for an expert's conclusion even if the judge thinks that there are better grounds for some alternative conclusion, and even if the judge thinks that a scientist's methodology has some flaws such that if they had been corrected, the scientist would have reached a different result.").

Slone is clearly qualified to offer an opinion on a corporation's accounting practices and business restructuring. Slone is Managing Director of Dalto Consulting, a certified public accountant since 1983, a certified insolvency and restructuring advisor since 2003, holds certificates in distressed business valuations and financial forensics, and graduated from Michigan State University with a degree in accountancy in 1981. (Exh. P-15, A-1.) He testified during the hearing that he has been involved with hundreds of audits, "consulted for hundreds of

manufacturing companies," and reviews financial statements daily, including to ensure that they comply with generally accepted accounting principles. (Tr. 98:9-100:15, 162:5-7.) Slone and Dalto Consulting were selected by Nostrum Laboratories to serve as their consultant in October 2022, and Slone continued to receive financial information from Nostrum Laboratories through December 2023. (Tr. 102:10-25, 123:3-10.)

As to the reliability of Slone's methods and procedures, his opinions are based on his personal experience consulting for Nostrum Laboratories and his post-consulting review of the company's financial data. This combined with Slone's years of experience working in accounting and business restructuring as well as his work auditing hundreds of companies are sufficient to meet the reliability requirement. *See, e.g.*, *Equinox Properties, LLC v. Harford Mut. Ins. Co.*, Civ. No. 21-15929, 2023 WL 5447279, at *4 (D.N.J. Aug. 24, 2023) ("[I]n some cases the expert's training and experience will provide an adequate and reliable foundation to admit an opinion for consideration."); *see also Oddi v. Ford Motor Co.*, 234 F.3d 136, 158 (3d Cir. 2000) ("[T]here may be some circumstances where one's training and experience will provide an adequate foundation to admit an opinion and furnish the necessary reliability."). Indeed, Slone's report indicates that his opinions and conclusions were based on his review of the monthly financial reporting that Nostrum Laboratories sent Plaintiff from October 2022 through December 2023. (Exh. P-20 at 9.)

Defendants take issue with the fact that Slone does not have specific experience with generic pharmaceutical manufacturers, but this degree of specialization is not required for an accountant to testify about the financial status of a corporation. *See, e.g.*, *Holbrook v. Lykes Bros. S.S. Co.*, 80 F.3d 777, 782 (3d Cir. 1996) ("[I]t is an abuse of discretion to exclude testimony simply because the trial court does not deem the proposed expert to be the best qualified or because the proposed expert does not have the specialization that the court considers most appropriate.");

Washington v. Kellwood Co., 105 F. Supp. 3d 293, 309 (S.D.N.Y. 2015) ("The liberal construction of Rule 702 is exemplified by an experienced forensic accountant's ability to testify to the valuation of businesses without regard to the particular industry focus of those enterprises."); *Main St. Mortg., Inc. v. Main St. Bancorp., Inc.*, 158 F. Supp. 2d 510, 513 (E.D. Pa. 2001) ("We find that Biddick, although not specialized in the mortgage industry, is sufficiently qualified to make the damages estimate contained in his report. Biddick is an experienced public accountant who has conducted valuations of various businesses and previously performed analysis similar to that done here."). Accordingly, the Court will consider Slone's testimony and report.

B. APPOINTMENT OF A RECEIVER

The Court examines below the factors that are relevant to the appointment of a receiver. Based on that analysis, the Court concludes that the appointment of a special fiscal agent, not a receiver, to supervise Nostrum Laboratories' business and assets and to report to the Court and the parties on a regular basis is the appropriate remedy at this time.

1. EQUITABLE INTEREST

There appears to be no dispute that Plaintiff, as a secured creditor of Nostrum Laboratories' business assets, has a sufficient "legal interest" to move for the appointment of a receiver or other equitable relief. (Tr. 13:5-21; Exh. P-1, C-1 to C-2.) Thus, this factor weighs in favor of Plaintiff's application. *See, e.g.*, *Stonebridge Bank v. Nita Properties, LLC*, Civ. No. 09-5145, 2011 WL 2173771, at *1 (D.N.J. June 1, 2011) ("A secured creditor has a legal interest in the property on which it has a security interest."); *see also Pusey & Jones Co. v. Hanssen*, 261 U.S. 491, 497 (1923) ("A receiver is often appointed upon application of a secured creditor who fears that his security will be wasted.").

2. PROBABILITY OF SUCCESS

On the present record, it appears that Plaintiff's probability of success on the merits of its claims is reasonably high.

The evidence indicates that the loans matured on August 15, 2022, and the parties then entered into a forbearance agreement set to expire on December 2, 2022, at which point Nostrum Laboratories was obligated to repay its indebtedness. (Exh. P-1, A-6, G at 6-8; Tr. 27:2-13, 30:5-23, 32:3-5.) The forbearance agreement recognized Plaintiff's continuing secured interest in Nostrum Laboratories' assets and that, as of October 24, 2022, Plaintiff was owed $17,226,584.80 in principal and interest on the loans. (Exh. P-1, G at 4-6.) Nostrum Laboratories and Nostrum Pharmaceuticals both acknowledged in the forbearance agreement that they were "in default [o]f their obligations under the Loan Documents as a result of," among other things, the "failure to repay the Loans in full on or before the Revolving Credit Maturity Date, which occurred August 15, 2022." (*Id.* at 2.) The factual record further indicates that the last payment that Nostrum Laboratories made on the loans was in July 2023, almost a year ago. (Tr. 62:5-10, 68:24-69:2, 266:17-19; Exh. D-108.)

Defendants' primary defense is that Plaintiff impliedly extended the forbearance agreement beyond December 2, 2022, but there is currently limited support for this claim. (ECF No. 83 at 7-9.) The forbearance agreement stated that "[n]othing contained [t]herein shall be deemed to obligate [Plaintiff] to enter into any other forbearance agreements or to waive any Events of Default." (Exh. P-1, G at 14.) And on December 6, 2022, just four days after the forbearance agreement allegedly expired, Plaintiff sent a letter to Nostrum Laboratories, Nostrum Pharmaceuticals, and Mulye that informed them that they "were obligated, and failed, to repay the entire amount of the Bank Indebtedness," including outstanding interest. (Tr. 33:13-34:6; Exh. P-7.) Next, on February 6, 2023, Ken Dalto (then serving as Defendants' consultant) contacted

Plaintiff to ask for a further six-month forbearance to give Nostrum Laboratories time to secure new credit financing. (Tr. 110:1-11:21; Exh. P-9.) The request for a six-month forbearance appears to have been rejected in writing by Plaintiff on February 9, 2023. (Tr. 41:21-42:7; Exh. P-23.)

The main evidence that Defendants cite to support their contention that Plaintiff impliedly extended the forbearance agreement is a declaration from James Grainer, Nostrum Laboratories' Chief Financial Officer, who attests that Erin Kane, Assistant Vice President of Citizens Bank, "implicitly assured [him] that the term of the Forbearance Agreement would be extended based on [Nostrum Laboratories'] performance of the material terms of the Forbearance Agreement." (Exh. D-14R ¶ 5.) Yet Grainer's own declaration undermines the claim that there was an assurance of an extension when he further attests that "Ms. Kane informed [him] that she would review and *consider* granting the extension," and "[he] was assured that it was *possible* that [Nostrum Laboratories] *might* qualify for an extension of the Forbearance Agreement." (*Id.* (emphases added).) Grainer also testified that Nostrum Laboratories did not negotiate a term in the signed forbearance agreement that entitled the company to a further extension of forbearance from Plaintiff. (Tr. 262:10-19.)

On this record, that Kane may have suggested at some point that Plaintiff would "consider" an extension of the forbearance period and that it was "possible" that Nostrum Laboratories "might" obtain an extension is not strong evidence of an implied agreement, particularly when the parties' written forbearance agreement expressly stated that Plaintiff was not obligated to enter into any other forbearance agreements or to waive the defaults. *See, e.g.*, *Baer v. Chase*, 392 F.3d 609, 619 (3d Cir. 2004) ("[A]n implied-in-fact contract 'must be sufficiently definite [so] that the performance to be rendered by each party can be ascertained with reasonable certainty.'" (citation omitted)); *see also Frank Briscoe Co. v. Travelers Indem. Co.*, 899 F. Supp. 1304, 1308 (D.N.J.

1995) ("It is also well-established, as a matter of law, that the Court cannot rewrite the contract or alter it simply because its results turned out differently than the parties expected."). An implied extension of the forbearance agreement is further undermined by the fact that Defendants, through Dalto Consulting, explicitly asked Plaintiff in February 2023 for a six-month extension that was then rejected in writing. (*See* Tr. 41:21-42:7; Exh. P-23.)

Defendants argue that a motion to appoint a receiver is premature before a final judgment, but the caselaw they cite is inapposite. (ECF No. 83 at 6-7.) In many of those cases, there was more evidence raising a genuine dispute as to the issue of default than what is now before the Court. *See, e.g.*, *Wells Fargo Bank, N.A. v. Premier Hotels Grp., LLC*, Civ. No. 14-56, 2015 WL 404549, at *9 (M.D. Pa. Jan. 29, 2015) (denying motion to appoint receiver where there were "genuine issues of material fact . . . regarding [the] alleged default"); *see also Lieberman v. Corporacion Experienca Unica, S.A.*, 226 F. Supp. 3d 451, 473 (E.D. Pa. 2016) (finding that the plaintiffs had not demonstrated probability of success by simply surviving a motion to dismiss because "surviving a motion to dismiss does not necessarily mean that the claim is likely to succeed"). The Court also notes that it allowed Defendants to take limited discovery in this case in advance of the evidentiary hearing, and Defendants have also taken discovery in the related case filed by Plaintiff against Mulye in his individual capacity.

3. FINANCIAL POSITION OF DEBTOR

The financial position of Nostrum Laboratories is subject to intense dispute between the parties, with each advancing competing claims about what precisely the evidence shows. However, even construing the evidence in the light most favorable to Defendants, what is clear is that Nostrum Laboratories has struggled with cash flow issues, has been unable so far to raise

funds to repay the debts it owes Plaintiff, and (in the words of Mulye) is "going through very difficult times" in the industry.[11] (Tr. 313:14-15.)

Plaintiff contends that Nostrum Laboratories is "insolvent" and cannot pay its debts as they become due. (ECF No. 82 at 24-25.) Plaintiff points to Nostrum Laboratories' latest cash flow report that reflects "staggering (and unexplained) negative deviations between projected cash on hand and actual cash on hand" as well as to financial statements indicating that Nostrum Laboratories "experienced a negative EBITDA of nearly $3 million for 2023 with an additional negative EBITDA of $612,000 for the first two months of 2024 (and an after-tax loss of $795,000 for the entire first quarter of 2024)." (*Id.* at 27-28.) During the evidentiary hearing, Slone testified that Nostrum Laboratories is, in his view, "severely insolvent," and his April 2024 report concluded that the company is both "cash flow" insolvent and "balance sheet" insolvent. (Tr. 117:10-22; Exh. P-20.) Slone opined that Nostrum Laboratories' "prolonged negative EBITDA . . . is a primary indicator of cash flow insolvency" and that its inability to make payments on the loans to Plaintiff or to "raise debt or equity to repay its indebtedness to Citizens Bank . . . is a clear sign of insolvency." (*Id.*)

In contrast, Defendants contend that Nostrum Laboratories' "first quarter 2024 financial results show that its financial condition has improved, not worsened." (ECF No. 83 at 9.) While they acknowledge that Nostrum Laboratories "had cash flow problems in 2022," they claim that sales "have increased in the past year about 19-and-half percent" and accuse Plaintiff of "misleadingly cherry pick[ing] results from the last two months of 2024." (*Id.* at 13-14.) They argue that "[a]ny assertion that the business might be generally declining, . . . even if true, is not

[11] Defendants also acknowledged in their initial briefing that Plaintiff would "at best, only establish that [Nostrum Laboratories] is financially troubled." (ECF No. 30 at 6.)

the basis for granting the emergency relief sought" where there has not been "a catastrophic loss of its main assets." (*Id.* at 15.)

At the evidentiary hearing, Mulye testified that Nostrum Laboratories has struggled to secure financing to repay its indebtedness to Plaintiff, and in correspondence from May 2023 Mulye confirmed that, as of that time, there was "no way [he] c[ould] raise $17M and the bank should know that." (Tr. 312:21-313:2; Exh. P-17.) Mulye wrote further that the "current state of the company and the banking crisis limit[ed] the sources for getting the money as well as the amounts that c[ould] be raised." (Exh. P-17.) Nostrum Laboratories has not made any payments to Plaintiff on the loans since July 2023 nor secured refinancing from an alternative source. (Tr. 62:5-10, 68:24-69:2, 266:17-19; Exh. D-108.) Moreover, during his testimony, Grainer acknowledged that Nostrum Laboratories had a net income in the first quarter of 2024 of negative $795,000.00 and an EBITDA for 2023 of negative $2.7 million, though he emphasized that Nostrum Laboratories' EBITDA had improved by about ten million dollars since the prior period. (Tr. 271:19-272:1, 276:9-13.) Grainer also certified that Mulye had "been selling some of his personal assets and investing them in" Nostrum Laboratories "to assist with [the company's] operations." (Exh. D-14R ¶ 55.)

Nostrum Laboratories' difficulties paying its debts appear to extend beyond Plaintiff's loans. In July 2023, Nostrum Laboratories confessed to a $1,040,000.00 judgment in the Supreme Court of the State of New York owed to its former logistics provider Eversana Life Science Services, LLC. (Exh. P-18.) And the amounts Nostrum Laboratories owed to Enem Nostrum Remedies Private Limited, an India-based company that does testing and is owned by Mulye's family members,[12] increased from approximately $1.3 million in March 2023 to $4.46 million in

[12] (*See* Tr. 333:9-13.)

February 2024. (*Compare* P-26, *with* P-28 at 5.) As of February 2024, Nostrum also reportedly owed Archimica, a company that provides Nostrum Laboratories with the raw materials to produce one of its drugs that accounts for 80% of its revenue, approximately $1.6 million, and entered into a payment plan to allow for the continued delivery of materials. (D-149 ¶ 9; Tr. 294:2-295:5.)

On this record, the Court finds that Plaintiff has demonstrated legitimate concerns with Nostrum Laboratories' capacity to pay debts as they become due as well as its capacity to raise funds from prospective lenders to help repay Plaintiff's loans. The record also demonstrates that Nostrum Laboratories' financial position has been unstable, and it has struggled with cash flow issues since at least 2022. This factor therefore favors the appointment of a receiver, although it is not necessarily dispositive on its own. *Compare Wilmington Tr., Nat'l Ass'n v. 24 Com. St. LLC*, Civ. No. 21-05498, 2021 WL 4786117, at *9 (D.N.J. Oct. 14, 2021) ("[T]he need for additional financing does speak to the Borrower's unstable financial status. Accordingly, the Court find that this factor favors Plaintiff."), *with Miller*, 376 F. Supp. at 472 ("Even the threat of insolvency, which may be a very real threat facing Fisco, is inadequate to permit the appointment of a receiver.").

4. Possibility of Irreparable Injury /Danger of Property Being Lost or Diminished in Value/Inadequacy of Security

While the evidence suggests that Nostrum Laboratories' receivables and inventory have declined in value over time and may be continuing to decline, there is also evidence that suggests that the sale of some or all of Nostrum Laboratories' assets—namely, its Abbreviated New Drug Applications—would still result in sufficient cash to repay Plaintiff in full.

Plaintiff argues that the value of Nostrum Laboratories' collateral is deteriorating and that the company's "conduct reflects a disregard for the protection of [Plaintiff's] interests in its collateral." (ECF No. 82 at 28-29.) It notes that the value "of accounts receivables has . . . declined

by over $4 million during the last year" and that the "eligible receivables are declining because the receivables are aging out of the borrowing base at a faster rate than the company can generate new receivables." (*Id.* at 29-30.) It also notes that the value of Nostrum Laboratories' inventory declined by approximately three million dollars between August 2022 and December 2023, from approximately $5.1 million in eligible inventory in August 2022 to $2.2 million in December 2023. (*Id.* at 30.) Plaintiff criticizes Nostrum Laboratories for its "failure to disclose the location of . . . inventory collateral and refusal to secure a warehouse waiver from its logistics provider." (*Id.* at 30.) It also expresses concern that Nostrum Laboratories has a past due balance with its new logistics providers, which could result in a lien that would "impair Citizens' liens in that collateral." (*Id.*) Finally, Plaintiff maintains that Nostrum Laboratories' settlement with the DOJ in October 2023, which resulted in certain collateral being pledged to the DOJ, evidenced a disregard for Nostrum Laboratories' commitments to Plaintiff. (*Id.* at 31.)

In response, Defendants argue that "there is no possibility of irreparable injury." (ECF No. 83 at 12.) Defendants contend that the value of their assets, "even under a forced liquidation," would be multiple times higher than what is due to Plaintiff. (*Id.*) Accordingly, Defendants insist that Plaintiff's claim can be satisfied through an eventual money judgment if Plaintiff prevails and without the present appointment of a receiver. (*Id.*) Defendants argue that Nostrum Laboratories remains "a high functioning pharmaceutical manufacturer, continuing to make and market pharmaceutical products to the public," and that it is "working to reduce its ongoing business expenses while better utilizing and expanding its product portfolio." (*Id.* at 13.) As to the settlement with DOJ, Defendants argue that Nostrum Laboratories eliminated a fixed $34 million liability, the "net result" of which was to "improve[] dramatically" the company's "financial position" and to make it "a more attractive candidate for future" financing. (*Id.* at 14.)

The evidence lends support to Nostrum Laboratories' claim that it has adequate collateral that could be sold to repay the loans. A "Collateral Liquidation Analysis," prepared in March 2023 by Dalto Consulting, found that as of December 31, 2023, the net collateral value of Nostrum Laboratories' accounts receivables, inventory, property and equipment, as well as real estate was between approximately $11.2 million and $16.1 million. (Exh. D-16 at 4.) This included equipment at a manufacturing facility in Kansas City, Missouri, and at a second facility in Bryan, Ohio. (*Id.* at 11-12.) In addition, Dalto Consulting estimated that Nostrum Laboratories' ANDAs had a cash value of $35.5 million, assuming that the ANDAs were "not sold in a sale of all business assets . . . in an organized M&A process with investment bankers." (*Id.* at 33.) The report noted that there was "an argument the ANDAs have much more value on a going concern basis" and that Nostrum Laboratories' senior management had estimated the ANDAs' value at $73 million or more. (*Id.*)

During the evidentiary hearing, Slone testified that he stood by Dalto Consulting's collateral-liquidation analysis and confirmed that the estimate for receivables, inventory, and fixed assets, was based on a "forced liquidation" while the estimate for the ANDAs "was done on an orderly sale process," not a fair market value valuation. (Tr. 180:24-181:21.) On behalf of Nostrum Laboratories, Grainer testified that he believed that Dalto Consulting's valuation "understate[d] . . . the value of the assets" and that it was Nostrum Laboratories' view that it had "single ANDAs that would have more value than" what Dalto Consulting had assessed for all of the ANDAs together. (Tr. 221:15-23.) Grainer was also of the opinion that Nostrum Laboratories' assets had increased in value since the collateral-liquidation analysis based on the paying down of debt on equipment and leases as well as the settlement with DOJ. (Tr. 222:21-223:7.)

On this record, the Court cannot find that Plaintiff's interest in Nostrum Laboratories' collateral would be irreparably injured in the absence of a receivership, even if the overall value

of Nostrum Laboratories' assets has declined since the alleged defaults. The Court appreciates Plaintiff's concerns about Nostrum Laboratories' unstable financial position and the pledges of collateral to the DOJ, but the evidence suggests that the company retains seemingly substantial value in ANDAs that could be sold to satisfy a judgment in this case. Kane, Assistant Vice President at Citizens Bank, acknowledged during her testimony that "there is potentially significant value in ANDAs" but noted that Dalto Consulting's valuation had been completed in 2023 and that Nostrum Laboratories' "management team [had] exhibited no ability to monetize or realize any value from any of the ANDAs in the time" that she had been involved in the matter. (Tr. 45:9-46:3.) While Plaintiff's concerns may be fair, they must be weighed against the March 2023 analysis from Dalto Consulting (the expert that Plaintiff now relies on in this case) that concludes that the ANDAs may be worth more than twice what is currently owed to the lender, even when the ANDAs are not sold for fair market value. *See, e.g.*, *Manufacturers & Traders Tr. Co.*, 999 F. Supp. 2d at 826 (denying the appointment of a receiver where the evidence did not show that the "substantial collateral interests would not adequately cover any monetary loss to M & T Bank"); *U.S. Bank Nat'l Ass'n*, 2021 WL 1721863, at *3 ("'[S]omething more than just the doubtful financial standing of the defendant and the inadequacy of the security' is required where, as here, Lender seeks a receiver to 'manage and operate the mortgaged property pending foreclosure.'" (citation omitted)).

5. FRAUDULENT CONDUCT

Plaintiff identifies inconsistencies in Nostrum Laboratories' financial reporting and overly rosy projections that raise genuine questions as to whether the company has tried to present a slanted picture of its financial position. Specifically, Plaintiff offered testimony and other evidence to support its claim that financial projections prepared by Nostrum Laboratories in December 2022 were knowingly unrealistic based on timeframes associated with the approval of new ANDAs and

other revenue, yet Nostrum Laboratories did not take steps to correct those projections. (ECF No. 82 at 35-36.) Plaintiff also contends that Nostrum Laboratories inflated its inventory in violation of generally accepted accounting principles, overstated the value of its assets on its books and records, and misrepresented over four million dollars of invoices to Cardinal Health as "new shipments of finished goods" that led to inflated eligible receivables in May 2023. (*Id.* at 36-37.) In response, Defendants contend that Plaintiff's allegations "were manufactured for the purposes of this motion" and "reveal a complete lack of understanding of the highly regulated nature of the pharmaceutical industry." (ECF No. 83 at 16-19.) Defendants argue that Nostrum Laboratories' financial projections were reviewed with Dalto Consulting and were not "fantastical" based on the assumptions at that time. (*Id.* at 18.) They also argue that Nostrum Laboratories' accounts receivables data, including as to Cardinal Health, and its valuation of inventory and assets were proper and consistent with "industry wide reconciliation process." (*Id.* at 17-18.)

Having considered the documentary evidence and testimony, the Court finds that Plaintiff has presented credible evidence that the financial projections presented by Nostrum Laboratories in December 2022 were potentially not realistic based on information that was then-known to it and that there are legitimate questions about how Nostrum Laboratories characterized the invoices to Cardinal Health in May 2023. This favors Plaintiff, though the Court does not find that it rises to the level of fraud or presently necessitates the appointment of a receiver. *See, e.g.*, *William J. Mansfield, Inc. v. Udren L. Offs., P.C.*, Civ. No. 18-03569, 2019 WL 1442618, at *1 (E.D. Pa. Mar. 22, 2019) (finding a receiver not warranted where the plaintiff "expresse[d] concern that [the defendant's] lack of transparency about its finances may portend future fraudulent conduct").

6. INADEQUACY OF AVAILABLE LEGAL REMEDIES

Plaintiff argues that the appointment of a receiver with the power to sell Nostrum Laboratories' assets is the only adequate legal remedy because Nostrum Laboratories "cannot

repay its creditors absent a sale or liquidation," and the company's refusal to "comply with its contractual obligations" places Plaintiff's "interests in the collateral" at "unnecessary risk and further diminution during the pendency of this action." (ECF No. 82 at 39-40.) The Court appreciates Plaintiff's desire to secure the value of assets as early as possible, but it does not find that Plaintiff has shown that no other legal remedies are adequate at this stage in the litigation. Based on the record before it, the Court is not convinced that the substantial value that Nostrum Laboratories apparently possesses in its ANDAs could not be secured following a judgment. The key is not to prematurely take equitable action but to put in place an interim mechanism to protect Plaintiff's interests while allowing the case to progress. *Cf. Hipple v. Hipple*, Civ. No. 12-1256, 2016 WL 1449231, at *2 (E.D. Pa. Apr. 13, 2016) (appointing receiver to sell patents where time was "of the essence" because the patents were set to "expire in the near future" and the defendant had not complied with judicial "order to reinstate and sell the patents").

7. MILDER EQUITABLE REMEDY/LIKELIHOOD OF MORE HARM THAN GOOD

Based on the above, the Court does not find that a receiver is currently warranted, and there is a threat that the appointment of a receiver and the possible liquidation of Nostrum Laboratories' business would do more harm than good. Among other things, a receiver taking control of Nostrum Laboratories may result in the loss of institutional knowledge, closing of manufacturing facilities, breakdown in business relationships, and difficulty continuing to conduct business. Nevertheless, while a receiver may be too "drastic" a remedy, the equitable factors support the appointment of a special fiscal agent to oversee and monitor Nostrum Laboratories' operations and assets and to provide regular reports to the Court and the parties.

The discretion to appoint a special fiscal agent where a receiver may not yet be warranted is well settled. In *Fimbel v. Fimbel Door Corporation*, for example, the district court explained that "some courts opt to appoint a special fiscal agent, rather than a receiver, because a special

fiscal agent is a 'less dramatic' and 'less intrusive device' than a receiver." 2016 WL 1379788, at *4 (quoting *Leone Indus.*, 795 F. Supp. at 120). Indeed, fiscal agents "'are generally appointed to monitor corporate record keeping or to prevent the erosion of assets on behalf of shareholders' or other plaintiffs." *Id.* (quoting *In re Prudential Ins. Co. of Am. Sales Pracs. Litig.*, 962 F. Supp. 450, 560 (D.N.J. 1997)). There, the court found the appointment of a fiscal agent justified where there was "ample evidence" that the company had a "habit of making unsecured loans . . . without formalizing these transfers through notes or loan agreements" and had failed "to maintain basic documentation of its transactions," indicating that the plaintiffs' "interests [were] at risk of loss through neglect, at best, and through fraud, at worst." *Id.* at *7. The court also highlighted "questions surrounding the financial positions" of the company and the effect on "the security of Plaintiffs' interests." *Id.*

Similarly, in *Julius Realty Corporation v. Thompson*, the district court noted that "[s]pecial fiscal agents are appropriate where close supervision, but not control, is necessary." 2022 WL 2981003, at *7. And there, given "concerns about cash outflows" from the company and its "history of bankruptcy," the court found that a special fiscal agent was warranted given the "imminent danger" of "property being diminished in value or squandered." *Id.*

Here, the Court finds for similar reasons that a special fiscal agent would serve the purpose of closely supervising Nostrum Laboratories to monitor the company's operations and to prevent the further erosion of assets that may be utilized to repay Plaintiff's loans. The Court will empower the fiscal agent to audit Nostrum Laboratories and to track the outflow of its assets—giving the agent an opportunity to alert the Court if it becomes necessary to take further equitable action. The Court sees little chance that a fiscal agent will do more harm than good because, as in *Fimbel*, the "agent's duties will be restricted to investigation, observation, and oversight." 2016 WL 1379788, at *7. Nostrum Laboratories will also not incur additional burdens because "providing information

to the special fiscal agent will not be a significant addition to the discovery costs that [it] has already undertaken [and will undertake] in the instant litigation. And, such costs are greatly outweighed by the protections offered by the appointment of a special fiscal agent." *Id.* The Court will also split the cost of the special fiscal agent evenly between the parties, with the understanding that the parties may seek to recoup the cost as part of any judgments.

Such an appointment is justified by record evidence that shows that Nostrum Laboratories' assets have declined in value; that Nostrum Laboratories has been in a financially unstable position and struggled with cash flow issues since at least 2022; that Nostrum Laboratories has pledged collateral to the DOJ that was promised to Plaintiff and incurred debts to other vendors, resulting in at least one confession of judgment to a former logistics provider; and that Nostrum Laboratories' financial projections in December 2022 were potentially not realistic based on information that was then-known to it. Taken together, these factors favor interim equitable relief in the form of oversight and monitoring to ensure that Plaintiff's secured interest in Nostrum Laboratories' assets is not jeopardized during the pendency of this litigation.

The Court will issue a separate order naming the special fiscal agent and delineating the authority and responsibilities of the agent. The parties will be given an opportunity to determine if they can agree on the individual to be appointed as the fiscal agent.

C. STAY PENDING APPEAL

Defendants ask the Court to stay any appointment pending an appeal, but do not meaningfully address the factors for a stay. (*See* ECF No. 83 at 24.) In any event, the Court sees no basis for a stay. The Court is not appointing a receiver to take control of Nostrum Laboratories or to replace its management. Instead, the special fiscal agent will be empowered to closely

monitor the company's affairs and assets and to alert the Court if additional equitable relief becomes warranted. This is an appropriate remedy under the circumstances.

IV. CONCLUSION

For the reasons set forth above, and other good cause shown, Plaintiff's Motion to Appoint Receiver (ECF No. 11) is **GRANTED** in part and **DENIED** in part. An appropriate Order follows.

Dated: June 27, 2024

GEORGETTE CASTNER
UNITED STATES DISTRICT JUDGE