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ARADIGM CORPORATION
Debtor and Debtor-in-Possession

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

In re
ARADIGM CORPORATION

CASE NO. 19-40363 WJL

Chapter 11

**MOTION OF DEBTOR AND DEBTOR IN
POSSESSION FOR INTERIM AND
FINAL AUTHORITY TO CONTINUE
EXISTING CASH MANAGEMENT
SYSTEM, AND MAINTAIN EXISTING
BANK ACCOUNTS AND BUSINESS
FORMS**

Judge: William J. Lafferty

Aradigm Corporation, as debtor and debtor in possession (the "Debtor") in the above-captioned chapter 11 case (the "Chapter 11 Case"), hereby submit this Motion (the "Motion"), pursuant to sections 105(a), and 363(b) of title 11 of the United States Code (the "Bankruptcy Code") and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), requesting interim and final authority, in the ordinary course of business and consistent with the Debtor's prepetition practices, to continue operating its existing cash management system (the "Cash Management System"), as described herein, including the continued maintenance of the existing bank accounts at the Debtor's bank (the "Bank"), and (b) maintain existing business forms. A proposed form of order granting the relief requested herein on an interim basis is annexed hereto as Exhibit A (the "Proposed Interim Order").

MEMORANDUM OF POINTS AND AUTHORITIES

I. JURISDICTION

The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, the *Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges*, General Order 24 (N.D. Cal.), and Rule 5011-1(a) of the Bankruptcy Local Rules for the United States District Court for the Northern District of California (the "Bankruptcy Local Rules"). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

II. BACKGROUND

As set forth in the Declaration of Lisa Thomas, Acting Corporate Controller of the Debtor, filed concurrently herewith, the Debtor commenced this chapter 11 case by the filing of a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on February 15, 2019. The Debtor remains in possession and control of its assets and is authorized to conduct its business operations as debtor in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee, examiner or official committee has been appointed by the Office of the United States Trustee in this case.

The Debtor is a publicly traded emerging specialty pharmaceutical company focused on the development and commercialization of products for the treatment and prevention of severe respiratory diseases. The Debtor has concentrated on the development of drug delivery technologies, particularly the development of respiratory drug delivery. The Debtor's lead product candidates are proprietary formulations of the potent antibiotic ciprofloxacin that are delivered by inhalation for the management of infections associated with the severe respiratory diseases of cystic fibrosis, non-cystic fibrosis bronchiectasis ("NCFBE") or infections with non-tuberculous mycobacteria.

The Debtor's inhaled ciprofloxacin formulation ("Ciprofloxacin DI") for the treatment of NCFBE patients with chronic lung infection with *P. aeruginosa* recently completed two Phase 3 trials. In July 2017, the Debtor submitted a New Drug Application ("NDA") to the Federal Drug Administration ("FDA") for Ciprofloxacin DI. In January 2018, the FDA sent a Complete Response

1 Letter ("CRL") stating that it cannot approve the NDA in its present form. In 2018 the Debtor
2 addressed all issues stated in the CRL and the FDA is now requesting the conduct of an additional
3 Phase 3 trial. The Debtor remain confident in the efficacy, safety and quality of Ciprofloxacin DI
4 and is committed to continue working on the approval of Ciprofloxacin DI in the US for NCFBE
5 patients who have very severe disease with high morbidity and mortality and no available treatment
6 options.

7 In March 2018, the Debtor submitted a marketing authorization application ("MAA") to the
8 European Medicines Agency ("EMA"), seeking approval for Ciprofloxacin DI for the treatment of
9 NCFBE patients with chronic lung infection with *P. aeruginosa*. The EMA is currently reviewing
10 the MAA for Ciprofloxacin DI according to standard timelines.

11 The Debtor continues to seek regulatory approval of Ciprofloxacin DI formulation to treat
12 NCFBE patients. However, the Debtor has limited operating income and relies on investor capital to
13 fund its operations and its research and development efforts. Addressing the delays the Debtor has
14 experienced obtaining regulatory approval and the FDA's request for an additional Phase 3 trial will
15 require significant expenditures by the Debtor on additional research and development, but the
16 Debtor lacks the capital to fund these expenditures. The Debtor therefore filed this Chapter 11 case
17 in order to conserve its cash resources and to pursue a sale of its assets.

18 The Debtor currently has a limited staff of thirteen persons. To conserve cash, these persons
19 work on a part time basis. The majority of the personnel focus on the Debtor's research and
20 development efforts and the regulatory approval process. The Debtor's accounting personnel
21 consists of Ms. Thomas, the Acting Controller, and one assistant. These individuals are responsible
22 for the internal accounting function as well as the preparation of the Debtor's schedules and
23 statements and the Debtor's reporting to the United States Trustee.

24 III. THE CASH MANAGEMENT SYSTEM AND BANK ACCOUNTS

25 In the ordinary course of business, the Debtor utilizes its Cash Management System, which
26 is an integrated, centralized system designed to collect, transfer, and disburse funds. The main
27 components of the Cash Management System are cash collection, including the collection of
28 payments made to the Debtor from revenue generated in the ordinary course of business, and cash

1 disbursements that fund the Debtor's business operations and related obligations. The Debtor
2 believes that it is critical that the existing Cash Management System and its existing bank accounts
3 remain intact during the Chapter 11 Case.

4 The Cash Management System facilitates cash monitoring, forecasting, and reporting and
5 enables the Debtor to maintain control over the administration of its bank accounts. The Debtor
6 maintains three bank account (each, a "Bank Account" and, collectively, the "Bank Accounts") at
7 Wells Fargo Bank ("Bank"), which has been designated as an authorized depository by the Office of
8 the United States Trustee for Region 17 (the "U.S. Trustee") pursuant to the U.S. Trustee's
9 Guidelines (the "UST Guidelines").

10 The Debtor's main account is a collection account into which cash and other receivables
11 generated from the Debtor's operations are deposited. The Debtor also maintains a disbursement
12 account for accounts payable payments and other disbursements and a payroll account. Maintaining
13 the Cash Management System in its current state is crucial to the Debtor's reorganization. A
14 disruption of the Cash Management System could unnecessarily disrupt the Debtor's operations and
15 jeopardize its efforts to sell its assets, which could impede the successful administration of the
16 Chapter 11 Case.

17 In the ordinary course of business, the Debtor incurs and pays, honors, or allows to be
18 deducted from the appropriate Bank Accounts, certain service charges, repayments on account of
19 ordinary course ACH credit extensions, and other related fees, costs, and expenses charged by the
20 bank (collectively, the "Bank Fees"). To the extent the balance in the applicable Bank Account
21 decreases below a threshold amount established by the applicable Bank, the Debtor may incur
22 additional fees for sending and receiving wire transfers, clearing checks, ACH transfers, and other
23 transactions. The Debtor seeks authority to continue to pay such amounts, including any amounts
24 relating to the period prior to the Petition Date, as they come due in the ordinary course of business.

25 In the ordinary course of business, the Debtor issues checks from time to time and uses a
26 variety of correspondence and business forms, including, but not limited to, letterhead, purchase
27 orders, and invoices (collectively, the "Business Forms"). To minimize the expense to the Debtor's
28 estate associated with developing and/or purchasing entirely new forms or otherwise complying

1 with Bankruptcy Local Rule 2015-1(a),¹ the delay in conducting business prior to obtaining such
2 forms, and the confusion of suppliers and other vendors, the Debtor seeks authority to continue
3 using its Business Forms substantially in the forms used immediately prior to the Petition Date,
4 without reference therein to the Debtor's status as "Debtor in Possession." The Debtor does not
5 believe that any prejudice will be suffered by any party of this relief is granted.

6 **IV. BASIS FOR RELIEF REQUESTED**

7 The orderly sale of the Debtor's assets will be significantly enhanced by the continuation of
8 the Cash Management System during the Chapter 11 Case. Accordingly, the Debtor seeks authority
9 in the ordinary course of business and consistent with the Debtor's prepetition practices to continue
10 maintaining and operating the Cash Management System and to make ordinary course changes to it
11 consistent with prepetition practices and maintain existing Business Forms. In order to avoid
12 inadvertently paying a pre-petition obligation, the Debtor has stopped payment on all of its
13 outstanding pre-petition checks.

14 **A. Continuation of the Cash Management System is in the Best Interests of the** 15 **Debtor and All Other Parties in Interest**

16 As set forth above, the Debtor requests authority to continue using the Cash Management
17 System in the same manner as before the Petition Date, to implement ordinary course changes to the
18 Cash Management System consistent with past practices and to continue to use its existing Bank
19 Accounts. Such relief is appropriate under sections 363 and 105(a) of the Bankruptcy Code.

20 Section 363(c)(1) of the Bankruptcy Code authorizes a debtor to "use property of the estate
21 in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1). The purpose
22 of this section is to provide a debtor with the flexibility to engage in the ordinary transactions
23 required to operate its business without unneeded oversight by its creditors or the court. Included
24 within the purview of section 363(c) of the Bankruptcy Code is a debtor's ability to continue

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26 ¹ Bankruptcy Local Rule 2015-1(a) requires that "[T]he signature card (or if there is none,
27 the depository agreement) for any account containing funds which are the property of a bankruptcy
28 estate must clearly indicate that the depositor or investor is a 'debtor-in-possession' or a trustee in
bankruptcy."

1 “routine transactions” necessitated by a debtor’s cash management system. *See, e.g., In re OccMeds*
2 *Billing Servs., Inc.*, Case No. 07-28444, 2008 WL 73690, at *3 (Bankr. E.D. Cal. Jan. 3, 2008)
3 (noting that so long as bank accounts are not a creditor’s cash collateral “the debtor does not need
4 the permission of the court to use them in ordinary course of its business”). Accordingly, the Debtor
5 believes it is authorized pursuant to section 363(c)(1) of the Bankruptcy Code to continue the
6 collection, concentration, and disbursement of cash pursuant to the Cash Management System as
7 described above.

8 The Cash Management System constitutes an ordinary-course and essential business
9 practice providing significant benefits to the Debtor, including the ability to control corporate funds,
10 ensure the maximum availability of funds when and where necessary, and ensure the availability of
11 timely and accurate account balance information consistent with prepetition practices. Accordingly,
12 the continued use of the Cash Management System without interruption is vital to the Debtors’
13 business operations and the success of the Chapter 11 Case.

14 Furthermore, the Debtor has been advised that the process closing its existing bank accounts
15 and opening new DIP accounts will take some time, perhaps as much as two weeks. If the Debtor
16 does not have access to its cash during that period, the Debtor’s ability to sell its assets successfully
17 may be jeopardized.

18 Finally, the Debtor’s accounting staff is very limited, consisting of only two individuals. In
19 addition to their normal duties, these persons are responsible for preparing the statements,
20 schedules, and the US Trustee reports. Requiring the Debtor to close its existing bank accounts and
21 open new DIP accounts will strain the Debtor’s limited staff and be unduly burdensome.

22 In furtherance of the foregoing, the Debtor request that Wells Fargo Bank, the bank at which
23 the Bank Accounts are maintained, be authorized to continue to administer such accounts as they
24 were maintained prepetition, without interruption, in the ordinary course of business. The Debtor
25 also requests authority to pay Bank Fees as the come due, including the prepetition Bank Fees that
26 remain unpaid as of the Petition Date. Payment of the Bank Fees is in the best interests of the
27 Debtors, their estates, and all parties in interest as it will prevent any disruption to the Cash
28 Management System. Moreover, because the Bank may have setoff rights with respect to the

1 prepetition Bank Fees, payment of the prepetition Bank Fees should not affect other parties in
2 interest and would merely be a matter of timing. The Bank should also be authorized to pay any and
3 all drafts, wires, and ACH transfers issued on the Bank Accounts for payment of any claims arising
4 after the Petition Date, so long as sufficient funds exist in these accounts. For the foregoing reasons,
5 continuation of the Cash Management System is necessary, appropriate, and in the best interests of
6 the Debtor, its estate, and all other parties in interest in these Chapter 11 Case and should be
7 authorized as requested herein.

8 **B. Maintenance of the Debtor's Existing Bank Accounts and Business Forms is**
9 **Warranted**

10 The UST Guidelines generally require that a chapter 11 debtor, among other things: (i)
11 establish debtor-in-possession accounts for all estate monies required for the payment of taxes
12 (including payroll taxes); (ii) close all existing bank accounts and open new debtor-in-possession
13 accounts at banks that are designated as "authorized depositories" by the U.S. Trustee; (iii) obtain
14 checks that bear the designation "Debtor-in-Possession"; and (iv) reference the debtor's bankruptcy
15 case number and type of account on each such check. These requirements are designed to establish
16 a clear line of demarcation between prepetition and postpetition claims and payments and to help
17 protect against a debtor's inadvertent payment of prepetition claims by preventing banks from
18 honoring checks drawn before the commencement of a debtor's chapter 11 case.

19 In this Chapter 11 Case, strict enforcement of the UST Guidelines would severely disrupt
20 the Debtor's ordinary financial operations by reducing efficiencies, increasing administrative
21 burdens, and creating unnecessary expenses. If the Debtor was required to close the Bank Accounts
22 and open new debtor-in-possession accounts, the Debtors would be forced to reconstruct the Cash
23 Management System in its entirety. The opening of new bank accounts would increase operating
24 costs, and the delays that would result from opening new accounts, revising cash management
25 procedures, and redirecting payments would negatively impact the Debtor's ability to operate their
26 business while establishing these new arrangements, to the detriment of all parties in interest.

27 The Debtor believes that its transition into chapter 11 will be significantly smoother and
28 more orderly, with minimum burden, disruption and harm to the Debtor's operations, if the Bank

1 Accounts are continued following the Petition Date with the same account numbers. By preserving
2 business continuity and avoiding the disruption and delay to the Debtor's collection and
3 disbursement procedures that would necessarily result from closing the Bank Accounts and opening
4 new accounts all parties in interest will be best served. The confusion that would otherwise result,
5 absent the relief requested herein, would ill-serve the Debtor's rehabilitative efforts. Accordingly,
6 the Debtor respectfully requests authority to maintain the Bank Accounts in the ordinary course of
7 business.

8 To minimize expenses, the Debtor should also be permitted to maintain and continue to use
9 its Business Forms substantially in the forms existing immediately before the Petition Date. Strict
10 compliance with the UST Guidelines, which require reprinting such documents, would
11 unnecessarily increase the Debtor's expenses. Accordingly, the Debtor believes it is appropriate to
12 continue to use all Business Forms as such forms were in existence prior to the commencement of
13 the Chapter 11 Case, without any reference to the Debtor's current status as debtors in possession.

14 In short, any benefits of the Debtor's strict compliance with the UST Guidelines would be
15 far outweighed by the resulting expense, inefficiency, and disruption to the Debtor's business.
16 Accordingly, the Debtor requests authority to maintain their Bank Accounts and Business Forms
17 during the Chapter 11 Case. Furthermore, the Debtor seeks a waiver of the UST Guidelines to the
18 extent that requirements outlined therein otherwise conflict with (i) the Debtor's existing practices
19 under the Cash Management System, (ii) any action taken by the Debtor in accordance with the
20 Proposed Interim Order, or (iii) any other order entered in the Chapter 11 Case.

21 **V. REQUEST FOR BANKRUPTCY RULE 6004 WAIVERS**

22 The Debtor requests a waiver of the notice requirements under Bankruptcy Rule 6004(a) and
23 any stay of the order granting the relief requested herein pursuant to Bankruptcy Rule 6004(h). As
24 explained above, the relief requested herein is necessary to avoid immediate and irreparable harm to
25 the Debtor. Accordingly, ample cause exists to justify the waiver of the notice requirements under
26 Bankruptcy Rule 6004(a) and the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the
27 extent such notice requirements and stay apply.

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Exhibit A

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

In re
ARADIGM CORPORATION

CASE NO. 19-40363 WJL

Chapter 11

**INTERIM ORDER AUTHORIZING
DEBTOR AND DEBTOR IN POSSESSION
TO CONTINUE EXISTING CASH
MANAGEMENT SYSTEM, AND
MAINTAIN EXISTING BANK
ACCOUNTS AND BUSINESS FORMS**

Judge: William J. Lafferty

This matter came before the Court on February __, 2019, on the motion (the "Motion") of Aradigm Corporation, as debtor and debtor in possession (the "Debtor") in the above-captioned chapter 11 case (the "Chapter 11 Case"), pursuant to sections 105(a), 363(b), and 363(c) of title 11 of the United States Code (the "Bankruptcy Code") and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), requesting interim and final authority, in the ordinary course of business and consistent with the Debtor's prepetition practices, to continue operating its existing cash management system (the "Cash Management System"), as described herein, including the continued maintenance of the existing bank accounts at the Debtor's bank (the "Bank"), and (b) maintain existing business forms. Bennett G. Young of Jeffer Mangels Butler & Mitchell, LLP appeared on behalf of the Debtor; other appearances are noted in the record of the hearing.

1 The Court having determined that it has jurisdiction to consider the Motion pursuant to 28
2 U.S.C. §§ 157 and 1334, the *Order Referring Bankruptcy Cases and Proceedings to Bankruptcy*
3 *Judges*, General Order 24 (N.D. Cal.), and Rule 5011-1(a) of the Bankruptcy Local Rules for the
4 United States District Court for the Northern District of California (the "Bankruptcy Local Rules").
5 This is a core proceeding pursuant to 28 U.S.C. § 157(b) and that venue is proper before the Court
6 pursuant to 28 U.S.C. §§ 1408 and 1409, and the Court having found and determined that good and
7 sufficient notice of the Motion and an opportunity to be heard thereon has been provided, and it
8 appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable
9 harm to the Debtor and its estate as contemplated in Bankruptcy Rule 6003, and it is in the best
10 interests of the Debtor, its estate and all parties in interest, and good cause appearing

11 IT IS HEREBY ORDERED THAT:

- 12 1. The Motion is granted on an interim basis, as provided herein.
- 13 2. The Debtor is authorized to continue to maintain and manage its cash pursuant to the
14 Cash Management System in the same manner as before the Petition Date.
- 15 3. The Debtor is authorized to (i) maintain and continue to use its existing Bank
16 Accounts in the names and with the account numbers existing immediately before the Petition Date,
17 (ii) deposit funds in and withdraw funds from such accounts by all usual means, including, without
18 limitation, checks, wire transfers, ACH transfers, and other debits, and (iii) treat their prepetition
19 Bank Accounts for all purposes as debtor in possession accounts.
- 20 4. The Debtor's Bank is authorized to debit the Debtor's accounts in the ordinary
21 course of business without the need for further order of this Court for: (i) all checks drawn on the
22 Debtor's accounts which are cashed at such Bank's counters or exchanged for cashier's checks by
23 the payees thereof prior to the Petition Date; (ii) all checks or other items deposited in one of
24 Debtor's accounts with such Bank prior to the Petition Date which have been dishonored or
25 returned unpaid for any reason, together with any fees and costs in connection therewith, to the
26 same extent the Debtor was responsible for such items prior to the Petition Date; and (iii) all
27 undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any Bank as
28 service charges for the maintenance of the Cash Management System.

1 5. The Debtor's Bank may rely on the representations of the Debtor with respect to
2 whether any check or other payment order drawn or issued by the Debtor prior to the Petition Date
3 should be honored pursuant to this or any other order of this Court, and the Bank shall not have any
4 liability to any party for relying on such representations by the Debtor as provided for herein;

5 6. Those certain existing deposit agreements between the Debtors and its existing
6 depository and disbursement banks shall continue to govern the postpetition cash management
7 relationship between the Debtor and the Bank, and that all of the provisions of such agreements,
8 including, without limitation, the termination and fee provisions, shall remain in full force and
9 effect.

10 7. The Debtor and the Bank may, without further Order of this Court, agree to and
11 implement changes to the cash management systems and procedures in the ordinary course of
12 business, including, without limitation, the opening and closing of bank accounts.

13 * * * END OF ORDER * * *

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COURT SERVICE LIST

All parties will be served via e-filing notifications