

# **Exhibit A**

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6 ARADIGM CORPORATION  
Debtor and Debtor-in-Possession

8 UNITED STATES BANKRUPTCY COURT

9 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

10  
11 In re:

12 ARADIGM CORPORATION,

13  
14 Debtor.

Case No.: 19-40363 WJL

Chapter 11

**[PROPOSED] FINAL ORDER PURSUANT  
TO 11 U.S.C. §§ 105, 362, 363, 364, 503 AND  
507, AND FED. R. BANKR. P. 2002, 4001,  
6003, 6004 AND 9014 FOR ORDER (I)  
AUTHORIZING THE DEBTOR TO  
OBTAIN SENIOR SECURED,  
SUPERPRIORITY, POSTPETITION  
FINANCING, (II) GRANTING LIENS AND  
SUPERPRIORITY CLAIMS, (III)  
MODIFYING AUTOMATIC STAY, AND  
(IV) GRANTING RELATED RELIEF**

Hearing Date: May 29, 2019

Time: 10:30 a.m.

Place: 1300 Clay Street, Room 220  
Oakland, CA

Judge: Hon. William J. Lafferty

22  
23 Upon the Motion, dated May 1, 2019 (the "**Motion**"), of Aradigm Corporation, a California  
24 corporation, as debtor in possession (the "**Debtor**"), pursuant to sections 105, 362, 363,  
25 364(c)(1), 364(c)(2), 364(c)(3), 364(e), 503, and 507 of title 11 of the United States Code (the  
26 "**Bankruptcy Code**"), Rules 2002, 4001, 6003, 6004 and 9014 of the Federal Rules of Bankruptcy  
27 Procedure (the "**Bankruptcy Rules**"), and the local rules for the United States Bankruptcy Court  
28 for the Northern District of California (the "**Local Bankruptcy Rules**"), seeking entry of a final

1 order granting the relief requested in and the transactions contemplated by the Motion including:

2 (A) Authorizing the Debtor to obtain a post-petition Loan in an aggregate principal  
3 amount of up to \$2,000,000.00 pursuant to the terms and conditions set forth in the Senior Secured,  
4 Super-Priority Debtor In Possession Credit Agreement substantially in the form attached hereto as  
5 Exhibit 1 (the “**DIP Credit Agreement**”)<sup>1</sup>, by and between the Debtor, as borrower, on the one  
6 hand, and 21 April Fund, Ltd., an exempted company organized under the laws of the Cayman  
7 Islands, and 21 April Fund, L.P., a Delaware limited partnership as lender (individually and  
8 together, “**Lender**”), on the other hand;

9 (B) Authorizing the Debtor to execute, deliver, and to perform under the DIP Credit  
10 Agreement, the Promissory Note (in the form attached as Exhibit A to the DIP Credit Agreement),  
11 the Security Agreement (in the form attached as Exhibit E to the DIP Credit Agreement), and the  
12 other Loan Documents (as same may be amended, restated, supplemented, or otherwise modified  
13 from time to time in accordance with the terms thereof);

14 (C) Granting Lender allowed super-priority administrative claims pursuant to  
15 Bankruptcy Code section 364(c)(1) in respect of all Obligations, and valid, enforceable, non-  
16 avoidable and automatically perfected Liens on and security interests in all Collateral (as defined  
17 below), pursuant to Bankruptcy Code sections 364(c)(2) and 364(c)(3), to secure the Obligations, in  
18 each case as and to the extent, and subject to the relative ranking and priorities set forth in this  
19 Order;

20 (D) Authorizing the Debtor to use proceeds of the Loan solely in accordance with this  
21 Order and the Loan Documents;

22 (E) Authorizing the Debtor to pay all fees, costs, and expenses due pursuant to the DIP  
23 Credit Agreement and the other Loan Documents;

24 (F) Vacating or modifying the automatic stay imposed by Bankruptcy Code section 362  
25 to the extent necessary to implement and effectuate the terms and provisions of this Order; and  
26

27 <sup>1</sup> Initial capitalized terms used herein but not otherwise defined herein shall have the  
28 meanings give to those terms in the DIP Credit Agreement.

1 (G) Waiving any applicable stay (including under Bankruptcy Rule 6004) with respect to  
2 the effectiveness and enforceability of this Order and providing for the immediate effectiveness of  
3 this Order.

4 The Court, having considered the Motion, the terms of the Loan, the DIP Credit Agreement  
5 and the exhibits thereto, and the Declaration of Lisa Thomas (the "**Thomas Declaration**") filed in  
6 support of the Motion, and the evidence submitted at the hearing held before this Court on May 29,  
7 2019 to consider entry of this Order (the "**Hearing**"); and due and proper notice of the Motion and  
8 the Hearing having been given; and it appearing that approval of the relief requested in the Motion  
9 is fair and reasonable and in the best interests of the Debtor, its creditors and estate, and essential  
10 for the Debtor's working capital needs and continued operation to protect the value of its business  
11 and assets pending, and to help facilitate, their sale; and all objections, if any, to the entry of this  
12 Order having been withdrawn, resolved or overruled by the Court; and after due deliberation and  
13 consideration, and for good and sufficient cause appearing therefor:

14 **THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND**  
15 **CONCLUSIONS OF LAW<sup>2</sup>**

16 **A. Petition Date.**

17 On February 15, 2019 (the "**Petition Date**"), the Debtor filed a voluntary petition for relief  
18 under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern  
19 District of California, Oakland Division, commencing this chapter 11 case (the "**Chapter 11**  
20 **Case**").

21 **B. Debtor-in-Possession.**

22 The Debtor is continuing to operate its business and manage its properties as a debtor-in-  
23 possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or examiner has been  
24 appointed in the Chapter 11 Case.

25  
26 <sup>2</sup> The findings and conclusions set forth herein constitute the Court's findings of fact and  
27 conclusions of law pursuant to Bankruptcy Rule 7052. To the extent any findings of fact constitute  
28 conclusions of law, they are adopted as such. To the extent any conclusions of law constitute  
findings of fact, they are adopted as such.

1           **C.      Jurisdiction and Venue.**

2           This Court has jurisdiction over these proceedings, pursuant to 28 U.S.C. §§ 157 and 1334  
3 and the Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges, General Order  
4 24 (N.D. Cal.) and Rule 5011-1(a) of the Bankruptcy Local Rules for the United States District  
5 Court for the Northern District of California. Consideration of the Motion constitutes a core  
6 proceeding under 28 U.S.C. § 157(b)(2). Venue for the Chapter 11 Case and the proceedings on the  
7 Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The bases for the relief  
8 sought in the Motion and granted in this Order are sections 105, 362, 363, 364, 503 and 507 of the  
9 Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004 and 9014, and the Local Bankruptcy Rules.

10           **D.      Notice.**

11           Notice of the Hearing and the relief requested in the Motion has been provided by first class  
12 mail to all parties in interest listed on the Debtor's Master Mailing List. Furthermore, a copy of the  
13 Motion and of the Thomas Declaration have been sent by first class mail to: (a) the Office of the  
14 U.S. Trustee for Region 17 (Attn: Terry Didion) (the "**U.S. Trustee**"); (b) counsel to Lender; (c) the  
15 parties listed on the Debtor's list of its twenty largest unsecured creditors; (d) the Securities and  
16 Exchange Commission; (e) the Internal Revenue Service; (f) all known parties asserting a lien on,  
17 or a security interest in, the assets of the Debtor; and (g) those persons who have formally appeared  
18 in the Chapter 11 Case and requested service pursuant to Bankruptcy Rule 2002 (collectively, the  
19 "**Notice Parties**").

20           Such notice of the Hearing and the relief requested in the Motion constitutes due, sufficient  
21 and appropriate notice and complies with the applicable provisions of the Bankruptcy Code,  
22 Bankruptcy Rules, and the Local Bankruptcy Rules.

23           **E.      Committee Formation.**

24           As of the date hereof, no committee has been appointed in the Chapter 11 Case.

25           **F.      Permitted Liens and Senior Liens.**

26           Nothing herein shall constitute a finding or ruling by the Court that any alleged Permitted  
27 Lien or Prior Lien are valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover,  
28 nothing herein shall prejudice the rights of any party-in-interest, including, but not limited to the

1 Debtor or Lender, to challenge the validity, priority, enforceability, seniority, avoidability,  
2 perfection, or extent of any alleged Permitted Lien or Permitted Prior Lien.

3 **G. Immediate Need for Postpetition Financing.**

4 The ability of Debtor to finance its operations, preserve and maintain the value of its assets,  
5 and to maximize the return for all creditors requires the availability of the Loan. In the absence of  
6 the availability of such funds and liquidity in accordance with the terms hereof, the Debtor would be  
7 forced to liquidate and would thereby lose the prospect of maximizing the value of its assets for  
8 possible sale, which would result in serious and irreparable harm to the Debtor and its estate,  
9 creditors, and other stakeholders.

10 **H. No Credit Available on More Favorable Terms.**

11 The Debtor has been unable to obtain: (a) adequate unsecured credit allowable under section  
12 503(b)(1) of the Bankruptcy Code as an administrative expense, or (b) credit for money borrowed  
13 with priority over any or all administrative expenses of the kind specified in sections 503(b) or  
14 507(b) of the Bankruptcy Code. The Debtor has been unable to obtain credit for borrowed money  
15 without granting the Liens, the Super-Priority Claim (defined below) and certain other protections  
16 set forth herein to (or for the benefit of) Lender. Moreover, the Debtor was unable to obtain  
17 financing from sources other than Lender on more favorable terms and conditions than the terms  
18 and conditions of the Loan Documents.

19 **I. Extension of Financing.**

20 Lender has indicated a willingness to provide financing to the Debtor in accordance with the  
21 DIP Credit Agreement and the other Loan Documents, subject to (a) entry of this Order, including,  
22 among other things, approval of the benefits and protections for Lender contained herein, (b)  
23 approval of the Loan Documents, and (c) findings by this Court that such financing is essential to  
24 Debtor's estate, that Lender is a good faith lender, and that Lender's claims, Super-Priority Claims,  
25 security interests, and Liens and other protections granted pursuant to and in connection with this  
26 Order and the Loan Documents, will not be affected by any subsequent reversal, modification,  
27 vacatur, stay or amendment of, as the case may be, this Order, or any other order, as provided in  
28 Bankruptcy Code section 364(e).

1           **J.       Business Judgment and Good Faith Pursuant to Section 364(e).**

2           (a)       The Loan Documents are the result of a competitive process conducted by the  
3 Debtor. The Debtor concluded that the Loan and the terms of the Loan Documents represent the  
4 best available financing under the circumstances. The DIP Credit Agreement and the other Loan  
5 Documents were negotiated in good faith and at arm's length between the Debtor and Lender. The  
6 terms and conditions of the Loan, the DIP Credit Agreement, and the other Loan Documents, and  
7 the fees paid and to be paid thereunder are fair, reasonable, and the best available under the  
8 circumstances, reflect the Debtor's exercise of prudent business judgment consistent with its  
9 fiduciary duties, and constitute reasonably equivalent value and consideration.

10          (b)       All obligations incurred, payments made, and transfers or grants of security  
11 set forth in this Order, the DIP Credit Agreement, and the other Loan Documents by the Debtor are  
12 granted to or for the benefit of Lender for fair consideration and reasonably equivalent value, and  
13 are granted contemporaneously with the making of the Loans and/or Commitment and any other  
14 financial accommodations secured thereby.

15          (c)       The credit to be extended under the Loan, the DIP Credit Agreement, and the  
16 other Loan Documents are hereby found to have been extended by Lender in good faith and for  
17 valid business purposes and uses, and in express reliance upon the protections offered by section  
18 364(e) of the Bankruptcy Code, and Lender (and its successors and assigns) is entitled to the full  
19 protection and benefits of section 364(e) of the Bankruptcy Code regardless of whether this Order,  
20 or any provision hereof, is vacated, reversed or modified, on appeal, or otherwise.

21           **K.       Relief Essential; Best Interest.**

22          The relief requested in the Motion and provided in this Order is necessary, essential, and  
23 appropriate for the continued operation of the Debtor's businesses and the management and  
24 preservation of its assets and property. It is in the best interest of the Debtor's estate that the Debtor  
25 be allowed to enter into the DIP Credit Agreement and the other Loan Documents, incur the  
26 Obligations, and grant the Liens and Super-Priority Claims contemplated in the DIP Credit  
27 Agreement, in this Order, and under the other Loan Documents to Lender.

28          **NOW, THEREFORE,** on the Motion of the Debtor and the record before this Court with

1 respect to the Motion, including the record made during the Hearing and the Thomas Declaration,  
2 and with the consent of the Debtor and Lender, and good and sufficient cause appearing therefor,

3 **IT IS HEREBY ORDERED** that:

4 1. **Motion Granted.** The Motion is hereby granted on a final basis in accordance with  
5 the terms and conditions set forth in this Order. Any objections to the Motion with respect to entry  
6 of this Order to the extent not withdrawn or otherwise resolved, and all reservation of rights  
7 included therein, are hereby denied and overruled.

8 2. **Authorization of the Loan.**

9 (a) The Loan and the Loan Documents are hereby approved. The Debtor is  
10 hereby authorized to enter into the Loan Documents and to pay all Obligations without further order  
11 of the Court. The Debtor is hereby authorized to borrow money and obtain Advances pursuant to  
12 the Loan Documents, up to the Aggregate Commitment, in each case, in accordance with and  
13 subject to the terms of this Order and the other Loan Documents.

14 (b) In furtherance of the foregoing and without further approval of this Court, the  
15 Debtor is authorized to perform all acts, to make, execute, and deliver all instruments and  
16 documents (including, without limitation, the execution, filing, and recordation of any Loan  
17 Documents), and to pay all fees, that may be required or necessary for Debtor's performance of its  
18 obligations under the Loan Documents, including, without limitation:

19 (i) The execution, delivery and performance of the Loan Documents,  
20 including, without limitation, the creation and perfection of the Liens described and provided for  
21 herein;

22 (ii) The non-refundable payment to Lender of the fees referred to in the  
23 DIP Credit Agreement and the other Loan Documents (which fees, whether paid prior to or after the  
24 date hereof, are hereby approved) and costs and expenses as are or may be due under the Loan  
25 Documents from time to time, including, without limitation, fees and expenses of the professionals  
26 retained by Lender as and to the extent provided for in the Loan Documents without the necessity of  
27 filing retention motions or fee applications (subject to paragraph 17 hereof with respect to the  
28 payment of such professional fees and expenses); and



1 (iii) The performance of all other acts that may be necessary, required, or  
2 advisable under or in connection with the Loan Documents.

3 (c) The DIP Credit Agreement and the other Loan Documents represent,  
4 constitute, and evidence the Obligations, and the Loan Documents and Obligations are valid and  
5 binding obligations of the Debtor, enforceable against the Debtor, its estate, and any successors  
6 thereto, including without limitation, any trustee appointed in the Chapter 11 Case or any case under  
7 chapter 7 of the Bankruptcy Code upon conversion of any of the Chapter 11 case (collectively, the  
8 “**Successor Cases**”) in accordance with the terms thereof and this Order. All obligations incurred,  
9 payments made, and transfers or grants of security set forth in this Order, the DIP Credit  
10 Agreement, or the other Loan Documents by the Debtor are granted to or for the benefit of Lender  
11 for fair consideration and reasonably equivalent value, and are granted contemporaneously with the  
12 making of the Loan and/or the Commitment and other financial accommodations secured thereby.  
13 No obligation incurred, payment made, transfer or grant of security set forth in this Order, the DIP  
14 Credit Agreement, or the other Loan Documents by the Debtor as approved by this Order, shall be  
15 stayed, restrained, voided, voidable or recoverable under the Bankruptcy Code or under any  
16 applicable non-bankruptcy law, or subject to any defense, reduction, subordination, setoff,  
17 recoupment, counterclaim, or any other challenge under the Bankruptcy Code or any applicable  
18 non-bankruptcy law, rule or regulation.

19 3. **Liens.** Immediately upon the entry of this Order, and effective as of the Petition  
20 Date, in order to secure the Obligations, Lender is hereby granted valid, binding, fully and  
21 automatically perfected, continuing, enforceable and non-avoidable liens and security interests (as  
22 further defined in the Security Agreement, collectively, the “**Liens**”) in the Collateral as security for  
23 the prompt and complete performance and payment when due (whether by acceleration or  
24 otherwise) of the Obligations. The term “**Collateral**” shall mean all pre- and post-petition and  
25 assets and properties of the Debtor, including all “**Collateral**” as defined and cross-defined in the  
26 DIP Credit Agreement, whether now owned by or owing to, or hereafter acquired by, or arising in  
27 favor of, the Debtor, whether owned or consigned by or to, or leased from or to, the Debtor, and  
28 wherever located including, without limitation, all cash and cash equivalents of the Debtor wherever

1 located including, inventory, accounts and accounts receivable, other rights to payment, contracts,  
2 instruments, documents and chattel paper, all securities (whether or not marketable), goods,  
3 equipment, inventory and fixtures, all leasehold property interests, general intangibles, patents,  
4 copyrights, trademarks, trade names and all other intellectual property, capital stock, investment  
5 property, all books and records, commercial tort claims, and all accessions to, substitutions and  
6 replacements for, and rents, profits and products of, each of the foregoing; provided, however, that  
7 the Collateral shall not include Excluded Collateral (as defined in and pursuant to the terms of the  
8 Security Agreement).

9       4.     **Priority of the Liens.** The Liens shall have the following priorities (in each case  
10 subject to the Carve Out):

11               (a)     Pursuant to Bankruptcy Code section 364(c)(2), a first-priority perfected Lien  
12 on and security interest in all Collateral that is not subject to a valid, perfected, enforceable and  
13 unavoidable lien or security interest as of the Petition Date (the “**Prior Liens**”); and

14               (b)     Pursuant to Bankruptcy Code section 364(c)(3), a second-priority perfected  
15 Lien on and security interest in all Collateral that is subject to a Prior Lien.

16       5.     **Super-Priority Claim.**

17               (a)     Upon the entry of this Order, effective as of the Petition Date, Lender is  
18 hereby granted pursuant to Bankruptcy Code section 364(c)(1), an allowed super-priority  
19 administrative expense claim (the “**Super-Priority Claim**”) for all Obligations, which shall rank  
20 junior to the Carve Out; and (b) with priority over any and all administrative expense claims,  
21 unsecured claims and all other claims asserted against the Debtor (without the need to file a proof of  
22 claim) or its estate in the Chapter 11 Case or any Successor Cases at any time, now existing or  
23 hereafter arising of any kind or nature whatsoever, including all other administrative expenses of the  
24 kind specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 364,  
25 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726, 1113 and 1114 and applicable non-  
26 bankruptcy law, and over any and all other administrative expenses, unsecured or other claims  
27 arising under any other provision of the Bankruptcy Code. The Super-Priority Claim shall, for  
28 purposes of Bankruptcy Code section 1129(a)(9)(A), be considered an administrative expense claim

1 against the Debtor allowed under Bankruptcy Code section 503(b) and shall be payable from and  
2 have recourse to all pre- and post-petition property and assets of Debtor, including all Collateral.  
3 The Super-Priority Claim shall be entitled to the full protection of Bankruptcy Code section 364(e)  
4 in the event that this Order, or any provision hereof, is vacated, reversed, or stayed in any respect or,  
5 except and to the extent as expressly permitted by the Loan Documents, modified or amended in  
6 any manner, on appeal, or otherwise.

7 (b) Except as expressly permitted in this Order or in the other Loan Documents,  
8 the Liens and the Super-Priority Claim, as applicable, (i) shall not be made subject to or *pari passu*  
9 with (A) any lien, security interest or claim heretofore or hereinafter granted in the Chapter 11 Case  
10 or any Successor Cases, and shall be valid and enforceable against the Debtor, its estate, any trustee  
11 or any other estate representative appointed or elected in the Chapter 11 Case or any Successor  
12 Cases and/or upon the dismissal of the Chapter 11 Case or any Successor Cases, (B) any lien that is  
13 avoided and preserved for the benefit of the Debtor and its estate under Bankruptcy Code section  
14 551 or otherwise, (C) any intercompany or affiliate lien or claim, and (D) any liens arising after the  
15 Petition Date; and (ii) shall not be subject to Bankruptcy Code sections 506(c), 510, 549, 550, or  
16 551.

17 **6. Use of the Loan Proceeds; Lien Perfection.**

18 (a) **Use of Loan Proceeds.** Subject to the terms and conditions of this Order, the  
19 DIP Credit Agreement and the other Loan Documents, the Debtor is authorized to use the Loan  
20 Proceeds up to the amount of the Aggregate Commitment, only for payment of the Carve Out, the  
21 fees, costs and expenses authorized by this Order and the other Loan Documents, and the Debtor's  
22 working capital needs as subject to and itemized in the DIP Budget, provided, however, that  
23 variances of ten percent (10%) in the aggregate shall be permitted.

24 (b) **Lien Perfection.** This Order shall be sufficient and conclusive evidence  
25 of the validity, enforceability, perfection and priority of the Liens without the necessity of filing or  
26 recording any financing statement, deed of trust, mortgage, or other instrument, or document that  
27 may otherwise be required under the law of any jurisdiction or the taking of any other action to  
28 validate or perfect the Liens or to entitle the Liens to the priorities granted herein and in the other

1 Loan Documents. Notwithstanding the foregoing, the Debtor shall be authorized to execute and  
2 deliver to Lender (and as applicable, perform under) all financing statements, security agreements  
3 (including the Security Agreement), notices of liens, and other similar documents as Lender may  
4 reasonably request to grant, preserve, protect and perfect the validity and priority of the Liens;  
5 provided, however, that notwithstanding anything to the contrary in this Order, the DIP Credit  
6 Agreement, or any other Loan Document, no such filing or recordation shall be necessary or  
7 required to perfect the Liens, and the Debtor shall not be required to execute or deliver any  
8 mortgage, authorize any fixture filing, execute or deliver any agreement providing "control" as  
9 defined in Section 9-104, 9-105, 9-106 and 9-107 of the UCC as in effect in any relevant  
10 jurisdiction or undertake any registration in respect of assets subject to a certificate of title in order  
11 to perfect the Liens in any portion of the Collateral, including any and all cash wherever located or  
12 held, and all such liens and security interests are hereby deemed fully and automatically perfected.  
13 Lender may, at its sole discretion, file such financing statements, security agreements, notices of  
14 liens and other similar documents, and is hereby granted relief from the automatic stay of  
15 Bankruptcy Code section 362 in order to do so, and all such financing statements, security  
16 agreements, notices of liens and other similar documents shall be deemed to have been filed or  
17 recorded on the Petition Date. Lender, at its sole discretion, may file/record a copy of this Order as  
18 a financing statement with any recording officer designated to file or record financing statements or  
19 the like, or with any registry of deeds or similar office, in any jurisdiction Lender determines is  
20 necessary or advisable and, in such event, the subject filing or recording officer shall be authorized  
21 to file or record such copy of this Order.

22       **7. Insurance of Collateral.** Unless Lender otherwise consents in writing, until the  
23 indefeasible payment in full of all Obligations in cash (other than any indemnity, unliquidated, or  
24 contingent claims that are not yet due and payable) and the termination of the Commitment  
25 ("payment in full" or "paid in full"), the Debtor shall continue to maintain all property, operational,  
26 and other insurance as and to the extent required and specified in the Loan Documents. Upon entry  
27 of this Order and to the fullest extent provided by applicable law, Lender shall be, and shall be  
28 deemed to be, without any further action or notice, named as an additional insured and loss payee

(as applicable) on each insurance policy maintained by the Debtor that in any way relates to the Collateral.

**8. Limitations on the Use of Loan Proceeds.** None of the Loan or the Collateral, or proceeds of thereof, and none of the Carve Out or its proceeds may be used, directly or indirectly, by the Debtor, any Committee, if any, or any trustee or other estate representative appointed in the Chapter 11 Case or any Successor Cases or any other person or entity to do any of the following (nor shall any professional fees, disbursements, costs or expenses be paid in connection therewith):

- (a) to object to, contest, prevent, hinder, delay or interfere with, in any way, Lender's enforcement or realization upon any of the Collateral;
- (b) to object to or challenge in any way the Liens, the Obligations, or the Collateral, or any other claims or liens held by or on behalf of Lender;
- (c) to investigate (including by way of examinations or discovery proceedings, whether formal or informal), prepare, assert, join, commence, support or prosecute any action for any claim, counter-claim, action, arbitration, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination or similar relief against, or adverse in any material respect to the interests of, Lender or any of its affiliates, subsidiaries, agents, officers, directors, shareholders, employees, agents, attorneys, advisors, professionals, predecessors in interest, successors, or assigns with respect to any transaction, occurrence, omission, action or other matter arising under, in connection with or related to this Order, (i) the other Loan Documents, or the Loan, (ii) the interests of Lender under any pre-petition financing arrangement with, or equity interest in the Debtor, or (iii) for monetary, injunctive or any other relief whatsoever against Lender;
- (d) to prevent, hinder, or otherwise delay the exercise by Lender of any rights and remedies under the Loan Documents, or applicable law, or the enforcement or realization (whether by foreclosure, credit bid, further order of the Bankruptcy court or otherwise) by Lender upon any of the Collateral;
- (e) to make any distribution under a Restructuring Plan;
- (f) to make any payment in settlement of any claim, action or proceeding, before any court, arbitrator or other governmental body without the prior written consent of Lender; or
- (g) to pay any fees or similar amount to any Person in connection with any Asset Sale (including so-called "topping" or "breakup" fees) without the prior written consent of Lender; in each case, including, without limitation, (A) any claims or causes of

1 action arising under chapter 5 of the Bankruptcy Code, (B) any so-called "lender liability" claims  
2 and causes of action, (C) any claim or cause of action with respect to the validity, enforceability,  
3 priority and extent of, or asserting any defense, counterclaim, or offset to, the Obligations, the  
4 Super-Priority Claim, the Liens or, the Loan Documents, (D) any claim or cause of action seeking  
5 to challenge, invalidate, modify, set aside, avoid, marshal, subordinate, disallow, or recharacterize  
6 in whole or in part, the Obligations, the Liens, the Super-Priority Claim, or the Collateral, (E) any  
7 action seeking to modify any of the rights, remedies, priorities, privileges, protections and benefits  
8 granted to Lender hereunder or under any of the Loan Documents (in each case, including, without  
9 limitation, claims, proceedings or actions that have the effect of preventing, hindering or delaying  
10 any of Lender's assertions, enforcements, realizations or remedies on or against the Collateral in  
11 accordance with the applicable Loan Documents and this Order.

12       **9.     No Further Consents.** To the fullest extent permitted by the Bankruptcy Code and  
13 other applicable law, any provision of any lease, loan document, easement, use agreement, proffer,  
14 covenant, license, contract, organizational document or other instrument or agreement that requires  
15 the consent of any party or the payment of any fees or obligations to any governmental entity or  
16 non-governmental entity in order for the Debtor to pledge, grant, mortgage, sell, assign, or  
17 otherwise transfer any fee or leasehold interest or the proceeds thereof or any other Collateral is  
18 hereby deemed to be inconsistent with the applicable provisions of the Bankruptcy Code and shall  
19 have no force or effect with respect to the Liens on such leasehold interests or such other Collateral  
20 or the proceeds of any assignment and/or sale thereof by any the Debtor in favor of Lender in  
21 accordance with the terms of the Loan Documents and this Order.

22       **10.    Carve Out.**

23           (a)     Subject to the terms and conditions contained in this paragraph 10, the Liens  
24 and the Super-Priority Claim shall be subject and subordinate to a Carve Out (the "**Carve Out**"),  
25 which shall comprise the following: (i) all fees required to be paid to the Clerk of the Bankruptcy  
26 Court and the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a) in the Chapter 11  
27 Case; (ii) all reasonable and documented fees and expenses, not to exceed \$50,000.00 in the  
28 aggregate, incurred by a trustee under Bankruptcy Code section 726(b); (iii) the aggregate amount



1 of the fees and expenses approved by the Bankruptcy Court pursuant to Bankruptcy Code sections  
2 330 or 331 of Professionals (including for the avoidance of doubt, Jeffer Mangels Butler & Mitchell  
3 LLP; RoseRyan, Inc.; Moss Adams, LLP; and Bozicevic Field & Francis, LLP) to the extent  
4 reflected in the DIP Budget through and including the Carve-Out Date; provided, however, that the  
5 Carve-Out may only be used for the payment of fees and expenses of Professionals to the extent  
6 allowed by order of the Bankruptcy Court in the Chapter 11 Case.

7 (b) Following the date that is the earlier of (i) Borrower's receipt of a written  
8 notice of an Event of Default from Lender and (ii) the Maturity Date (the "**Carve-Out Date**"),  
9 amounts payable from the Carve Out to Professionals for fees and expenses first incurred after such  
10 date shall not exceed \$250,000.00. The ability of any party to object to the fees, expenses,  
11 reimbursement or compensation described above shall not be impaired by the terms of the Carve  
12 Out.

13 (c) Without affecting paragraph (b) immediately above, on the Carve-Out Date,  
14 the Debtor shall promptly provide notice by email to all Professionals, at the email addresses set  
15 forth in each such Professional's notice of appearance filed with the Court (or, if there is no such  
16 notice of appearance, at such Professional's last known email address), informing them that the  
17 Debtor' ability to pay them is subject to and limited as stated above.

18 (d) Nothing in this Order or in any of the Loan Documents shall be construed as  
19 consent to the allowance of any particular professional fees or expense of the Debtor, or of any  
20 other person or shall affect the right of Lender to object to the allowance and payment of such fees  
21 and expenses. Lender shall not be responsible for the direct payment or reimbursement of any fees  
22 or disbursements of any Professionals incurred in connection with the Chapter 11 Case or any  
23 Successor Cases under any chapter of the Bankruptcy Code. Nothing in the Order or otherwise  
24 shall be construed to obligate Lender in any way to pay compensation to or to reimburse expenses  
25 of any Professional, or to guarantee that the Debtor has sufficient funds to pay such compensation  
26 or reimbursement.

27 (e) For the avoidance of doubt, Lender shall have no obligation to lend or  
28 advance any additional funds to or on behalf of the Debtor, or provide any other financial

1 accommodations to the Debtor, immediately upon or after the occurrence of any act, event or  
2 condition that would trigger the Maturity Date under the DIP Credit Agreement.

3 **11. Proceeds of Subsequent Financing.** If at any time prior to payment in full of all  
4 Obligations, the Debtor, the Debtor's estate, any trustee, any examiner, or any responsible officer  
5 subsequently appointed in the Chapter 11 Case or the Successor Cases, shall in violation of this  
6 Order, the DIP Credit Agreement, or the other Loan Documents, obtain credit or incur debt pursuant  
7 to Bankruptcy Code sections 364(b), (c) or (d), and such financings are secured by any Collateral,  
8 then all of the cash proceeds derived from such credit or debt shall immediately be turned over to  
9 Lender for application in accordance with the DIP Credit Agreement and the other Loan  
10 Documents.

11 **12. Disposition of Collateral.** The Debtor shall not sell (including, without limitation,  
12 any sale and leaseback transaction), transfer (including any assignment of rights), lease, encumber  
13 or otherwise dispose of any portion of the Collateral, except as expressly permitted by the DIP  
14 Credit Agreement or the other Loan Documents.

15 **13. Protective Filings.** Any automatic stay otherwise applicable to Lender, whether  
16 arising under Bankruptcy Code sections 105 or 362 or otherwise, is hereby modified, without  
17 further notice to, hearing of, or order from this Court, to the extent necessary to permit Lender, in its  
18 sole discretion to make any filing at any time in any domestic or foreign jurisdiction with respect to  
19 any patent, trademark or copyright to perfect or prove any lien granted hereunder.

20 **14. Rights and Remedies Upon an Event of Default; Modification of Automatic**  
21 **Stay.**

22 (a) Any automatic stay otherwise applicable to Lender, whether arising under  
23 Bankruptcy Code sections 105 or 362 or otherwise, is hereby modified, without further notice to,  
24 hearing of, or order from this Court, to the extent necessary to permit Lender, upon the occurrence  
25 and during the continuation of an Event of Default, to exercise all rights and remedies provided for  
26 in this Order, any of the Loan Documents or applicable law, including, without limitation, (i)  
27 declare the termination, reduction or restriction of the Commitment to the extent any such  
28 commitment thereunder remains, (ii) declare all Obligations to be immediately due and payable,



1 without presentment, demand, protest, or other notice of any kind, all of which are expressly waived  
2 by the Debtor, (iii) the termination of the Loan Documents as to any future liability or obligation of  
3 Lender and Lender, but without affecting any of the Liens or the Obligations of the Debtor, (iv)  
4 freeze monies or balances in the Debtor's Deposit Accounts (as defined in the Security Agreement),  
5 (v) otherwise enforce any and all rights against the Collateral under the Loan Documents, and (vi)  
6 take any other actions or exercise any other rights or remedies permitted under this Order, the Loan  
7 Documents or applicable law; provided that, prior to the exercise of any right in clauses (iv) through  
8 (vi) of this paragraph, Lender shall provide five (5) Business Days' written notice (which may be via  
9 electronic mail or other electronic means) (the "**Remedies Notice**") to lead counsel to Debtor, the  
10 U.S. Trustee, and the Committee (if any), of the occurrence of an Event of Default and Lender's  
11 intent to exercise such rights and remedies (the "**Remedies Notice Period**"). The Debtor shall file a  
12 copy of such Remedies Notice on the Court's docket no later than one Business Day following  
13 receipt thereof.

14 (b) In any hearing after the effectiveness of the Remedies Notice, the only issue  
15 that may be raised by any Person in opposition thereto or to any remedy exercised or to be exercised  
16 by Lender is whether an Event of Default has occurred and is continuing. Unless during such  
17 Remedies Notice Period, the Court determines that the Event of Default (and each of them, if more  
18 than one) has not occurred, the automatic stay as described above as to Lender shall automatically  
19 be terminated immediately at 12:01 A.M. prevailing Eastern Time on the day immediately  
20 following the last Business Day of the Remedies Notice Period, and Lender shall be permitted to  
21 exercise any and all rights and remedies set forth herein, in the Loan Documents and as otherwise  
22 available at law or in equity without further order of or application to the Court.

23 (c) The automatic stay imposed under Bankruptcy Code section 362(a) is hereby  
24 modified pursuant to the terms of this Order as necessary to permit (i) Debtor to grant the Liens and  
25 the Super-Priority Claim, (ii) Debtor to incur all Obligations and pay all fees, costs and expenses  
26 under the DIP Credit Agreement and the other Loan Documents, and (ii) the implementation of all  
27 of the terms, rights, benefits, privileges, and remedies of this Order and the Loan Documents, in  
28 each case, without further notice, hearing or order of the Court.

1           **15.     Proofs of Claim.** Lender shall not be required to file a proof of claim in the Chapter  
2   11 Case or any Successor Cases for any claim allowed in this Order. Notwithstanding any order  
3   entered by the Court in relation to the establishment of a bar date in the Chapter 11 Case or any  
4   Successor Cases to the contrary, Lender is hereby authorized and entitled, at its sole and absolute  
5   discretion, but not required, to file (and amend and/or supplement, as it sees fit) a proof of claim in  
6   the Chapter 11 Case or any Successor Cases for any claim allowed in this Order. Any proof of  
7   claim filed by Lender shall be deemed to be in addition to and not in lieu of any other proof of claim  
8   that may be filed by Lender. Any order entered by the Court in relation to the establishment of a  
9   bar date for any claim (including without limitation administrative claims) in the Chapter 11 Case or  
10 any Successor Cases shall not apply to Lender.

11           **16.     Good Faith Under Bankruptcy Code Section 364(e); No Modification or**  
12 **Stay of this Order.** Lender has acted in good faith in connection with the Loan Documents, and its  
13 reliance upon this Order is in good faith. Based on the findings set forth in this Order and the  
14 record made at the Hearing, and in accordance with Bankruptcy Code section 364(e), in the event  
15 any or all of the provisions of this Order are hereafter modified, amended, vacated or stayed by a  
16 subsequent order of this Court or any other court, Lender is entitled to all the protections and  
17 benefits provided by section 364(e) of the Bankruptcy Code.

18           **17.     Expenses.** The Debtor is authorized to pay all pre- and postpetition fees, costs,  
19 disbursement, and expenses of Lender that are payable by the Debtor in accordance with the Loan  
20 Documents and this Order. The invoice for any such fees and expenses shall not be required to  
21 comply with the U.S. Trustee guidelines, but shall be reasonably detailed (and may be redacted for  
22 privilege or confidentiality concerns), and shall be sent to the U.S. Trustee, lead counsel for any  
23 Committee appointed in the Chapter 11 Case and lead counsel to the Debtor (collectively, the “**Fee**  
24 **Notice Parties**”). If no objection to payment of the requested fees and expenses are made, in  
25 writing by any of the Fee Notice Parties within ten (10) calendar days after delivery of such  
26 invoices (the “**Fee Objection Period**”), then, without further order of, or application to, the Court  
27 or notice to any other Person, such fees and expenses shall be paid by the Debtor to the extent  
28 payable in accordance with the terms of the DIP Credit Agreement. If an objection is made by any

1 of the Fee Notice Parties within the Fee Objection Period to payment of the requested fees and  
2 expenses, then only the disputed portion of such fees and expenses shall not be paid until the  
3 objection is resolved by the applicable parties in good faith or by order of the Court, and the  
4 undisputed portion shall be paid by the Debtor to the extent payable in accordance with the terms of  
5 the DIP Credit Agreement and any other applicable Loan Document. Notwithstanding the  
6 foregoing, the Debtor is authorized to pay on the Closing Date all reasonable and documented fees,  
7 costs, and out-of-pocket expenses of Lender incurred on or prior to such date to the extent payable  
8 in accordance with the terms of the DIP Credit Agreement.

9 **18. Indemnification.** The Debtor is authorized to indemnify and hold harmless Lender  
10 and each of the Indemnitees in accordance with and subject to the terms and conditions of the DIP  
11 Credit Agreement.

12 **19. Binding Effect.** The provisions of this Order shall be binding upon and inure to the  
13 benefit of the Debtor, Lender, and their respective successors and assigns (including any trustee or  
14 other fiduciary hereinafter appointed as a legal representative of the Debtor or with respect to the  
15 property of the estate of Debtor), any and all creditors of the Debtor, any Committee, and any other  
16 parties in interests and each of their respective successors and assigns, whether in the Chapter 11  
17 Case, in any Successor Cases, or upon dismissal of any such chapter 11 or chapter 7 case.

18 **20. No Waiver by Failure to Seek Relief.** The failure at any time of Lender to require  
19 strict performance by the Debtor of any provision of this Order, or to seek relief or otherwise  
20 exercise its rights or remedies under this Order, the DIP Credit Agreement, or the other Loan  
21 Documents, or otherwise, shall not prejudice or constitute a waiver of any of Lender's rights under  
22 this Order, thereunder, or otherwise. None of the rights or remedies of any party under this Order  
23 shall be deemed to have been amended, modified, suspended, or waived unless such amendment,  
24 modification, suspension, or waiver is in writing and signed by the party against whom enforcement  
25 is sought.

26 **21. Rights Reserved.** Notwithstanding anything to the contrary in this Order, the entry  
27 of this Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or  
28 otherwise impair any of the rights, claims, privileges, objections, defenses or remedies of Lender

1 under the Bankruptcy Code, or under applicable non-bankruptcy law against any other Person in  
2 any court, including without limitation, the right of Lender (a) to request conversion of the Chapter  
3 11 Case to a case under chapter 7, dismissal of the Chapter 11 Case, or the appointment of a trustee  
4 in the Chapter 11 Case, (b) to propose, subject to the provisions of Bankruptcy Code section 1121, a  
5 chapter 11 plan; (c) to request modification of the automatic stay; or (d) to exercise any of the  
6 rights, claims, or privileges (whether legal, equitable, or otherwise) on behalf of Lender.

7 **22. No Third Party Rights.** Except and to the extent as explicitly provided for herein,  
8 this Order does not create any rights for the benefit of any third party, creditor, equity holder or any  
9 direct, indirect, third party or incidental beneficiary.

10 **23. Section 506(c) Waiver.** As a material inducement to Lender to agree to provide the  
11 Commitment, and in exchange for Lender's willingness to provide the Commitment and the Carve  
12 Out as set forth in this Order, upon entry of this Order, no costs or expenses of administration that  
13 have been or may be incurred in the Chapter 11 Case at any time, including, without limitation, any  
14 costs and expenses incurred in connection with the preservation, protection, or enhancement of  
15 realization by Lender upon the Collateral, shall be charged against Lender, the Obligations or the  
16 Collateral pursuant to Bankruptcy Code sections 105 or 506(c), or otherwise during the period that  
17 Borrower is authorized to borrow under the Loan, without the prior express written consent of  
18 Lender, at its sole discretion, and no such consent shall be implied, directly or indirectly, from any  
19 other action, inaction, or acquiescence by Lender (including, without limitation, consent to the  
20 Carve Out), in each case, except for and subject to the terms of the Carve Out.

21 **24. No Marshalling.** Lender shall not be subject to the equitable doctrine of  
22 "marshaling" or any other similar doctrine with respect to any of the Collateral.

23 **25. Right to Credit Bid.** Subject to the terms and conditions of the Loan Documents,  
24 Lender shall have the unqualified right to "credit bid" up to the full amount of the Obligations in  
25 connection with any sale or other disposition of all or any portion of the Collateral, including,  
26 without limitation, sales occurring pursuant to Bankruptcy Code section 363 or included as part of  
27 any restructuring plan subject to confirmation under Bankruptcy Code section 1129(b)(2)(A)(iii)  
28 and as further set forth in the DIP Credit Agreement.

1           **26.     Amendments.** Notwithstanding anything contained in this Order to the contrary, no  
2 amendment, modification or supplement of any of the Loan Documents shall be effective unless in  
3 writing and in accordance with the applicable Loan Document(s). Subject to the terms and  
4 conditions of the applicable Loan Documents, the Debtor and Lender may make any nonmaterial  
5 amendment, modification, or supplement of any provision of the DIP Credit Agreement or the other  
6 Loan Documents, and the Debtor is authorized to enter into any such amendment, modification,  
7 supplement, or waiver, without further notice to or approval of the Court. In the case of any  
8 material amendment, modification, or supplement to the Loan Documents that are adverse to Debtor  
9 (a “**Material Amendment**”), the Debtor shall provide notice (which may be provided via electronic  
10 mail or other electronic means) to the Notice Parties, each of whom shall have five (5) calendar  
11 days from the date of receipt of such notice to object in writing to such Material Amendment. If no  
12 objections are timely received (or if the Notice Parties indicate via electronic mail that they have no  
13 objection) to the Material Amendment, the Debtor may proceed to execute and perform under the  
14 Material Amendment, which shall become effective immediately upon execution. If a Notice Party  
15 timely objects, approval of the Court (which may be sought on an expedited basis) will be necessary  
16 to effectuate the Material Amendment.

17           **27.     Priority of Terms.** To the extent of any conflict between or among (a) the express  
18 terms or provisions of any of the other Loan Documents, the Motion, any other order of this Court,  
19 or any other agreements, on the one hand, and (b) the terms and provisions of this Order, on the  
20 other hand, unless such term or provision in this Order is phrased in terms of “as defined in” or “as  
21 set forth in” any of the Loan Documents, the terms and provisions of this Order shall govern.

22           **28.     Survival of Order.** The provisions of this Order and any actions taken pursuant to  
23 this Order shall survive and shall not be modified, impaired, or discharged by entry of any order that  
24 may be entered (a) confirming any chapter 11 plan in the Chapter 11 Case, (b) converting the  
25 Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code, (c) dismissing the Chapter 11  
26 Case, (d) withdrawing of the reference of the Chapter 11 Case from this Court, or (e) providing for  
27 abstention from handling or retaining of jurisdiction of the Chapter 11 Case in this Court. The  
28 terms and provisions of this Order, including the Liens, the Super-Priority Claim, and other rights,

1 privileges, benefits and protections afforded herein and in the Loan Documents to Lender shall  
2 continue in full force and effect notwithstanding the entry of such order, and shall maintain their  
3 respective priorities as provided by this Order, the DIP Credit Agreement, and the other Loan  
4 Documents (as the case may be) until the indefeasible payment in full of the Obligations in cash,  
5 and this Court shall retain jurisdiction, notwithstanding dismissal of the Chapter 11 Case, for the  
6 purposes of enforcing the foregoing to the extent permitted by applicable law.

7       **29.     Enforceability.** This Order shall constitute findings of fact and conclusions of law  
8 pursuant to Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to  
9 the Petition Date immediately upon execution hereof. Any finding of fact shall constitute a finding  
10 of fact even if it is stated as a conclusion of law, and any conclusion of law shall constitute a  
11 conclusion of law even if it is stated as a finding of fact.

12       **30.     Waiver of Any Applicable Stay.** This Order shall be effective upon its entry and  
13 not subject to any stay (all of which are hereby waived), notwithstanding anything to the contrary  
14 contained in Bankruptcy Rule 4001(a)(3), 6004 or any other Bankruptcy Rule.

15       **31.     Discharge.** The Obligations shall not be discharged by the entry of an order  
16 confirming any plan in any of the Chapter 11 Case, notwithstanding the provisions of Bankruptcy  
17 Code section 1141(d), unless such Obligations have been indefeasibly paid in full in cash, on or  
18 before the effective date of such confirmed plan, or Lender has otherwise agreed in writing.

19       **32.     Limitation of Liability.** In determining to make any Advance pursuant to this  
20 Order, the DIP Credit Agreement, or the other Loan Documents, Lender shall not be deemed to be  
21 in control of the operations of the Debtor or to be acting as a responsible person with respect to the  
22 operation or management of the Debtor. Neither Lender nor its Affiliates are successors to Debtor  
23 or its estate by reason of any theory of law or equity.

24       **33.     Retention of Jurisdiction.** This Court has and will retain jurisdiction to hear,  
25 determine and, if applicable, enforce the terms of, any and all matters arising from or related to this  
26 Order and the other Loan Documents.

27                               \*\*END OF ORDER\*\*  
28

**COURT SERVICE LIST**

All parties will be served via e-filing notifications