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8 Proposed Bankruptcy Counsel for
9 ARADIGM CORPORATION,
10 Debtor and Debtor-in-Possession

11 UNITED STATES BANKRUPTCY COURT

12 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

13 In re

CASE NO. 19-40363 WJL

14 ARADIGM CORPORATION

Chapter 11

15 **APPLICATION OF DEBTOR AND**
16 **DEBTOR IN POSSESSION FOR ORDER**
17 **AUTHORIZING THE EMPLOYMENT OF**
18 **JEFFER MANGELS BUTLER &**
19 **MITCHELL LLP AS GENERAL**
20 **BANKRUPTCY COUNSEL TO THE**
21 **DEBTOR**

[No Hearing Set]

Judge: William J. Lafferty

22 Aradigm Corporation, a California corporation, debtor and debtor in possession herein (the
23 "Debtor"), submits its application (the "Application"), pursuant to section 327(a) of title 11 of the
24 United States Code (the "Bankruptcy Code") and Rules 2014(a) and 2016(b) of the Federal Rules of
25 Bankruptcy Procedure (the "Bankruptcy Rules"), authorizing the Debtor's employment of Jeffer
26 Mangels Butler & Mitchell LLP, as general bankruptcy counsel to the Debtor, effective February
27 15, 2019 (the "Petition Date"), on the terms and conditions described in this Application.

28 **APPLICATION**

In support of the Application, the Debtor respectfully represents as follows:

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BACKGROUND

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

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

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

8 JURISDICTION AND VENUE

9 This Court has jurisdiction to consider this Application pursuant to 28 U.S.C. §§ 157 and
10 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue is proper in
11 this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

12 SCOPE OF EMPLOYMENT

13 The Debtor requires general bankruptcy counsel to represent it in this case as a debtor in
14 possession and to render the following illustrative types of professional services, including, but not
15 limited to:

16 a. To advise the Debtor regarding its rights and responsibilities as a chapter 11 debtor
17 and debtor in possession, specifically including the requirements of the Bankruptcy Code, the
18 Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules, the Region 17 United States
19 Trustee Guidelines ("UST Guides"), and how the application of such provisions relate to the
20 administration of the Debtor's estate;

21 b. To advise and to assist the Debtor in connection with the preparation of certain
22 documents to be filed with the Bankruptcy Court and the Office of the United States Trustee
23 ("UST"), including, without limitation, Schedules of Assets and Liabilities, Statement of Financial
24 Affairs, Statement of Equity Security Holders, Monthly Operating Reports, and other such
25 documents;

26 c. To represent the Debtor with respect to bankruptcy issues in the context of this
27 pending chapter 11 case, and any adversary proceeding, the outcome of which would affect the
28 administration of the chapter 11 case; and

1 d. To advise, to assist and to represent the Debtor in the negotiation, formulation and
2 confirmation of a plan of reorganization or other proceedings necessary and appropriate to the
3 Debtor's chapter 11 estate and the satisfaction of the rights, claims and demands of creditors and
4 other parties in interest herein.

5 Through this Application, the Debtor seeks Court authority to employ JMBM as the Debtor's
6 bankruptcy and reorganization counsel to render the services hereinabove described and such other
7 necessary and appropriate services, as may be required to properly represent the Debtor and the
8 chapter 11 estate of the Debtor, at the expense of the estate, effective as of the commencement of
9 the Debtor's Chapter 11 case.

10 **QUALIFICATIONS OF JMBM AND COMPENSATION PROCEDURE**

11 JMBM is composed of attorneys who specialize in the practice of insolvency,
12 reorganization, and bankruptcy law, as well as, among other things, corporate, litigation, real
13 property, hospitality, land use, and labor law. JMBM is well qualified to represent the Debtor, and is
14 known throughout the State of California and across the United States. All attorneys comprising or
15 associated with JMBM who will render services in this case are duly admitted to practice law in the
16 Courts of the State of California. JMBM's bankruptcy attorneys are admitted in all Federal judicial
17 districts in California, and are routinely admitted *pro hac vice* in bankruptcy cases throughout the
18 United States. A summary of the experience and qualifications of JMBM attorneys who will likely
19 render services to the Debtor during the pendency of the bankruptcy case is attached as Exhibit A to
20 the supporting Declaration of Bennett G. Young ("Young Declaration") appended hereto. More
21 information on JMBM is available at its website, www.jmbm.com.

22 All JMBM attorneys who will render services to the Debtor and the estate are familiar with
23 the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules, and
24 the UST Guides and shall comply with them. JMBM understands the provisions of 11 U.S.C.
25 §§ 327, 328, 329, 330 and Rule 2016 of the Federal Rules of Bankruptcy Procedure, which require,
26 among other things, Court approval of employment of professionals, and Court authorization of any
27 fees and costs that JMBM will receive from the Debtor, after notice and hearing, in accordance with
28 Rule 2002 of the Federal Rules of Bankruptcy Procedure.

1 The Debtor will employ JMBM as counsel on an hourly rate basis. JMBM's fees are
2 computed and billed on a time-expended basis in accordance with the hourly rates assigned to each
3 professional or paraprofessional. The hourly rates of the members of JMBM who are expected to
4 render services on behalf of the Debtor during this bankruptcy case are included in paragraph 3 of
5 the Young Declaration.

6 Certain services may be rendered by other JMBM professionals in other specialty groups,
7 whose hourly rates may be different from the rates of the bankruptcy professionals, but whose rates
8 do not exceed the rates of the bankruptcy group. All JMBM rates are subject to periodic adjustment
9 and the applicable rates are those in effect at the time the services are rendered.

10 On or about February 11, 2019, JMBM was retained by the Debtor to file this Chapter 11
11 case. A true and complete copy of the engagement agreement between the Debtor and JMBM is
12 attached to the Declaration of Bennett G. Young as Exhibit B. The engagement agreement is
13 JMBM's standard form engagement agreement. JMBM understands and agrees that: (a)
14 notwithstanding paragraph 5 of the engagement agreement, any lien on the Retainer will only be
15 allowed consistent with applicable bankruptcy law, (b) notwithstanding paragraph 6 of the
16 engagement agreement, interest may not be charged on past due balances inconsistent with
17 applicable bankruptcy law, and (c) notwithstanding paragraph 11 of the engagement agreement,
18 JMBM acknowledges and understands that if any dispute arises between the Debtor and JMBM in
19 the context of JMBM's representation of the Debtor in the bankruptcy case, such dispute(s) shall be
20 heard by and otherwise resolved by the Bankruptcy Court and that the parties may or may not be
21 entitled to a jury trial as determined by applicable law.

22 JMBM was initially retained by Debtor on or about October 23, 2018 to advise the Debtor
23 regarding certain contingency planning. JMBM was paid an initial retainer of \$2,500 on or about
24 October 23, 2018. On January 29, 2019, February 6, 2013, and February 13, 2019, JMBM was paid
25 additional retainers in the amount of \$2,500; \$10,000; and \$251,717, respectively (collectively, the
26 "Retainer"). The source of the Retainer was the Debtor's funds. JMBM and the Debtor agreed that
27 the Retainers would be applicable to services rendered and expenses incurred by JMBM on behalf
28 of the Debtor in the bankruptcy case. \$25,291.16 of the Retainer was applied to prepetition services

1 rendered and expenses incurred, leaving a balance of \$241,425.84 as of the Petition Date.

2 JMBM requests court approval to draw down the Retainer (and any additional funds paid
3 pursuant to any subsequent Court order) on a monthly basis as they are earned for fees and costs
4 benefiting the estate until the Retainer is exhausted. Not being allowed to draw down the Retainer
5 on a monthly basis will place an undue hardship on JMBM, as it likely will be rendering substantial
6 services and incurring substantial costs without payment of reimbursement thereof. JMBM is a
7 well-known and established law firm in California and has practiced in this Court and in the
8 Northern District of California for many years. JMBM can and will respond to any reassessment of
9 fees and expenses paid from the Retainer. All funds drawn against the Retainer are subject to review
10 and final approval of the Court.

11 Other than as set forth above, no compensation will be paid by the Debtor to JMBM, except
12 upon application to and approval by the Bankruptcy Court, after notice and a hearing.

13 Not more frequently than every 120 days, JMBM will file a full and complete fee
14 application with the Court, on notice to creditors and interested parties, seeking formal allowance of
15 its fees and costs.

16 JMBM has agreed to accept compensation from the estate for its services such additional
17 sums as may be allowed by this Court, based upon time spent and services rendered, results
18 achieved, difficulties encountered, and other appropriate factors.

19 JMBM does not hold any pre-petition claims against the Debtor or the estate of the Debtor
20 and, as such, is not a creditor of the Debtor.

21 **JMBM IS DISINTERESTED**

22 To the best of the Debtor's knowledge, and as set forth in the Young Declaration, the Debtor
23 believes that JMBM is a "disinterested person" within the meaning of Section 101(14) of the
24 Bankruptcy Code. As discussed in the Young Declaration, JMBM does not hold or represent any
25 interest adverse to the Debtor, its creditors or the estate which would prohibit JMBM from serving
26 as Debtor's counsel pursuant to 11 U.S.C. Sections 327(e) et. seq. Based upon the foregoing, the
27 Debtor believes that the employment of JMBM as its special counsel is in the best interest of the
28 Debtor, its estate, and parties in interest.

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NOTICE

Notice of this Application and the Application have been served on the Office of the United States Trustee. Debtor respectfully submits that such notice is appropriate under the circumstances and that no other or further notice is necessary or required.

NO PRIOR APPLICATION

No previous application for the relief requested herein has been made to this Court or any other court.

WHEREFORE, the Debtor respectfully requests authorization to employ JMBM as its special counsel pursuant to 11 U.S.C. section 327(a) on the terms and conditions set forth in this Application, with compensation to be at the expense of the estate in such amount as the Court may hereafter allow, effective as of February 15, 2019.

DATED: February 22, 2019 ARADIGM CORPORATION,

By: /s/ John M. Siebert
John M. Siebert
Responsible Individual

Respectfully submitted by:

JEFFER MANGELS BUTLER & MITCHELL LLP

By: /s/ Bennett G. Young
BENNETT G. YOUNG
[Proposed] Bankruptcy Counsel for ARADIGM CORPORATION