

1 JEFFER MANGELS BUTLER & MITCHELL LLP
BENNETT G. YOUNG (Bar No. 106504)

2 *byoung@jmbm.com*
Two Embarcadero Center, 5th Floor
3 San Francisco, California 94111-3813
Telephone: (415) 398-8080
4 Facsimile: (415) 398-5584

5 Attorney for
ARADIGM CORPORATION
6 Debtor and Debtor-in-Possession

8 UNITED STATES BANKRUPTCY COURT

9 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

10 In re

11 ARADIGM CORPORATION,

12
13 Debtor

CASE NO. 19-40363 WJL

Chapter 11

**NOTICE OF HEARING ON MOTION OF
DEBTOR 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

23
24 PLEASE TAKE NOTICE that a hearing on the Motion Of Debtor Pursuant To 11 U.S.C.
25 §§ 105, 362, 363, 364, 503 And 507, And Fed. R. Bankr. P. 2002, 4001, 6003, 6004 And 9014 For
26 Order (I) Authorizing The Debtor To Obtain Senior Secured, Superpriority, Postpetition Financing,
27 (II) Granting Liens And Superpriority Claims, (III) Modifying Automatic Stay, And (IV) Granting
28 Related Relief (the "DIP Loan Motion") filed by Aradigm Corporation, as debtor and debtor in

1 possession (the "Debtor") in the above-captioned chapter 11 case will be held on May 29, 2019, at
2 10:30 a.m., or as soon thereafter as the matter may be heard, before the Honorable William Lafferty,
3 United States Bankruptcy Judge, in his courtroom, located at 1300 Clay Street, Courtroom 220,
4 Oakland, California.

5 The Motion is on file with the Bankruptcy Court. A copy of the Motion may be obtained on
6 request to the undersigned counsel to the Debtor.

7 By the Motion, the Debtor requests entry of an Order granting, among other things, the
8 following relief:

9 (1) **Authorization of DIP Loans** – authorizing the Debtor to obtain postpetition
10 financing pursuant to a senior secured, superpriority debtor-in-possession new
11 money credit facility in an aggregate principal amount of up to \$2,000,000 on the
12 terms and conditions set forth in the senior secured superpriority debtor-in-
13 possession credit, guaranty and security agreement substantially in the form attached
hereto as **Exhibit B** (the "**DIP Credit Agreement**")¹, by and among the Borrower,
and **21 APRIL FUND, LTD.**, an exempted company organized under the laws of
the Cayman Islands, and **21 APRIL FUND, L.P.**, a Delaware limited partnership
(collectively "**DIP Lenders**") and shall include the following features:

14 (a) **Interest Rates**: Interest shall accrue at the Base Rate plus 3% per annum. The
15 **Base Rate** will be the highest of (a) 1% and (b) the prime rate as published in
16 the Money Rates Section or column of The Wall Street Journal; however, if
17 such rate is, at any time while the obligations under the DIP Facility remain
18 outstanding, no longer published, the Base Rate will be the average of the prime
interest rates that are announced, from time to time, by the three (3) largest
banks (by assets) headquartered in the United States that publish a prime,
base or reference rate. Default interest shall equal an additional 3% per
annum.

19 (b) **Maturity Date**: The earlier of: January 31, 2020; the 363 Asset Sale closing
20 date, the effective date of any chapter 11 plan of Borrower; and the
21 acceleration of the DIP Facility as a result of the occurrence of an Event
of Default; provided, that the Maturity Date may be extended by the DIP
Lenders in the DIP Lenders' sole and absolute discretion.

22 (c) **Events of Default**: Material events of default include:

- 23 i. Default in payment obligations;
- 24 ii. Inaccuracy of representations and warranties when made or deemed
25 made or breach of covenant;
- 26 iii. Entry of unstayed judgments;

27 ¹ Capitalized terms used herein but not otherwise defined herein shall have the meaning
28 given to them in the DIP Credit Agreement.

- iv. Invalidity of loan documents, or security interests;
- v. Dismissal or conversion of cases to a case under chapter 7;
- vi. Appointment of a trustee or an examiner;
- vii. Entry of an order (1) staying, reversing, vacating, modifying or amending the Order, (2) granting relief from stay, (3) authorizing financing or sale of substantially all assets without the repayment of DIP Loans or (4) except as permitted by the DIP Loan Documents, granting senior or pari passu liens or superpriority claims;
- viii. Filing by the Debtor or any other party of a reorganization plan that does not require the repayment of the DIP Loans;
- ix. Debtor fails to comply with the terms of the Orders or any other Bankruptcy Court order in any material respect; and
- x. Debtor seeks to, or supports (in any such case by way of any motion or other pleading filed with the Bankruptcy Court or any other writing to another party in interest executed by or on behalf of Debtor), any other Person's motion to disallow, in whole or in part, DIP Lenders' claim in respect of the Obligations or to challenge the validity, perfection, priority, non-avoidability or enforceability of the Liens in favor of DIP Lender.

(d) Borrowing Limits: \$2 million;

(e) Conditions to Closing: Material closing conditions include:

- i. Execution of DIP Credit Agreement;
- ii. The payment of fees and expenses set forth in the DIP Loan Documents (which will be withheld from the initial Advance);
- iii. Entry of the Order authorizing DIP Loans; and
- iv. No change has occurred that results in a Material Adverse Effect; provided, however, that any changes attributable solely to the commencement of the Chapter 11 Case shall not constitute a Material Adverse Effect.

(f) Indemnification: Debtor shall indemnify and hold harmless the DIP Lenders and their Affiliates, officers, directors, employees, agents, advisors, attorneys, and representatives from and against any and all claims, damages, losses, liabilities and expenses (including reasonable fees of counsel and disbursements), joint or several, that may be incurred by or asserted or awarded, in each case arising out of or in connection with or relating to any investigation, litigation or proceeding, or the preparation of any defense with respect thereto, arising out of or in connection with or relating to the DIP Loan Documents, or the transactions contemplated thereby, or any use made or proposed to be made with the proceeds of the DIP Loans.

///

- 1 (2) **Entry into DIP Loan Documents** – authorizing the Debtor to execute and deliver
2 the DIP Credit Agreement and other documentation, including security agreements,
3 pledge agreements, mortgages, promissory notes, certificates, instruments,
4 commitment letters, and such other documentation which may be necessary or
5 required to implement the DIP Loans and perform thereunder and/or that may be
6 reasonably requested by DIP Lenders;
- 7 (3) **Liens and Superpriority Claims** – granting to the DIP Lenders (collectively, the
8 “**DIP Secured Parties**”) allowed superpriority administrative claims pursuant to
9 section 364(c)(1) of the Bankruptcy Code in respect of all DIP Obligations, and
10 valid, enforceable, non-avoidable and automatically perfected liens on and security
11 interests in all DIP Collateral (as defined below), pursuant to sections 364(c)(2) and
12 364(c)(3) of the Bankruptcy Code, to secure the DIP Obligations, in each case as
13 subject to the Carve-Out set forth in the Order;
- 14 (4) **Payment of Fees and Expenses** – authorizing the Debtor to pay all fees, costs and
15 expenses due pursuant to the DIP Credit Agreement and the other DIP Loan
16 Documents;
- 17 (5) **Stay Relief** – vacating or modifying the automatic stay imposed by section 362 of
18 the Bankruptcy Code to the extent necessary to implement and effectuate the terms
19 and provisions of the Order; and
- 20 (6) **Waiver of Stay** – waiving any applicable stay (including under Bankruptcy Rule
21 6004) with respect to the effectiveness and enforceability of the Order and providing
22 for the immediate effectiveness of the Order.

23 DATE: May 1, 2019

24 JEFFER MANGELS BUTLER & MITCHELL LLP
25 BENNETT G. YOUNG, ESQ.

26 By: /s/ Bennett G. Young
27 BENNETT G. YOUNG
28 Attorney for ARADIGM CORPORATION
Debtor and Debtor-in-Possession