IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
EGALET CORPORATION, et al.,	)	Case No. 18 -12439 ( )
Debtors.[1]	)	Joint Administration Requested

DECLARATION OF ROBERT RADIE, CHIEF EXECUTIVE OFFICER OF EGALET CORPORATION, IN SUPPORT OF CHAPTER 11 PETITIONS AND FIRST DAY MOTIONS

Pursuant to 28 U.S.C. § 1746, I, Robert Radie, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge and belief:

1. I am the President and Chief Executive Officer of each of the above-captioned debtors and debtors-in-possession (collectively, the "**Company**" or "**Debtors**"). I have served in such capacity since March 2012. Egalet Corporation—the parent company—and its Debtor subsidiaries collectively comprise a specialty pharmaceutical company engaged in the business of developing, manufacturing, and commercializing innovative treatments for pain and other conditions. I am familiar with the Debtors' day-to-day operations, business affairs, books, and records.

2. I am currently responsible for, among other things, making decisions with respect to the Debtors' cash management, assessment and implementation of strategic alternatives, and the restructuring of the Debtors' businesses, in each case as approved by the boards of directors of each of the Debtors. On the date hereof (the "**Petition Date**"), each of the Debtors filed

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of their respective federal tax identification numbers, are: Egalet Corporation (5334), Egalet US Inc. (6649), and Egalet Limited (Foreign). The Debtors' corporate headquarters and mailing address is located at 600 Lee Road, Suite 100, Wayne, PA 19087.

voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the District of Delaware thereby commencing the above captioned cases (the "**Chapter 11 Cases**") and filed motions described herein requesting certain relief (the "**First Day Motions**"). I submit this declaration (the "**Declaration**") on behalf of the Debtors in support of their chapter 11 petitions and the First Day Motions.

3. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108. The Debtors have sought an order directing that the Chapter 11 Cases be jointly administered for procedural purposes only by this Court. No trustee, examiner, or official committee has been appointed in the Chapter 11 Cases.

4. The First Day Motions seek, among other things, to ensure the continuation of the Debtors' cash management system and other business operations without interruption and to establish certain other administration procedures to stabilize operations and facilitate the Debtors' restructuring.

5. Except as otherwise indicated herein, all of the facts set forth in this Declaration are based upon my personal knowledge, information supplied to me by other members of the Debtors' management or professionals, information learned from my review of the relevant documents, or my experience and knowledge of the Debtors' operations and financial condition and the specialty pharmaceutical industry generally. If called as a witness, I could and would testify to the facts set forth in this Declaration. I am authorized to submit this Declaration on behalf of the Debtors.

6. To assist the Court in becoming familiar with the Debtors and the initial relief sought, this Declaration is organized into four main sections. Part I of this Declaration describes the Debtors' prepetition businesses. Part II of this Declaration describes the Debtors' prepetition capital structure. Part III of this Declaration describes the events leading to the commencement of the Chapter 11 Cases. Finally, Part IV of this Declaration sets forth my basis for testifying to the facts underlying and described in of each of the First Day Motions.

PART I

The Debtors' Prepetition Businesses

A. Overview

7. The Company is headquartered in Wayne, Pennsylvania and is comprised, as of the Petition Date, of the three Debtors. Egalet Corporation is the ultimate parent company to each of the other Debtors, each of which is a direct, wholly-owned subsidiary of Egalet Corporation. Egalet Corporation is a public reporting company under Section 12(b) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), and its shares of common stock, par value $0.001 per share (the "**Prepetition Egalet Common Stock**"), are publicly traded under the symbol "EGLT" on the OTCQX Bulletin Board. Prior to September 19, 2018, the Prepetition Egalet Common Stock traded on the Nasdaq Capital Market, and prior to July 11, 2018 the Prepetition Egalet Common Stock traded on the Nasdaq Global Market, in each case, under the same symbol.

8. The Debtors' are currently marketing SPRIX® (ketorolac tromethamine) Nasal Spray ("**SPRIX Nasal Spray**") and OXAYDO® (oxycodone HCI, USP) tablets for oral use only ("**OXAYDO**"). Prior to September 28, 2018, the Debtors also marketed ARYMO® ER (morphine sulfate) extended-release ("**ER**") tablets, for oral use ("**ARYMO ER**"). OXAYDO

and ARYMO ER are both categorized as "CII" controlled substances under the Controlled Substances Act.

9. Beyond the Debtors' commercial programs, they have a pipeline of products developed using their proprietary Guardian® Technology. The Debtors also own 21 U.S. patents and 48 foreign patents covering their product candidates and technology platform. Recently, the Debtors' primary effort has been to identify potential partners to advance their product candidates.

10. The Debtors' net losses were approximately $24.3 million and $51.9 million for the six months ended June 30, 2018 and 2017, respectively, and approximately $69.4 million and $90.6 million for the years ended December 31, 2017 and 2016, respectively. The Debtors recognized revenues of $13.7 million and $11.7 million for the six months ended June 30, 2018 and 2017, respectively, and $26.1 million and $17.0 million for the years ended December 31, 2017 and 2016, respectively. As of June 30, 2018, the Debtors had an accumulated deficit of $317.7 million. The Debtors have incurred significant expenses and operating losses related to their significant commercialization and development expenses as they have grown their sales, marketing and distribution infrastructure to sell their commercial products in the U.S., as well as their research and development activities.

i. SPRIX Nasal Spray

11. The Debtors acquired SPRIX Nasal Spray, the first and only approved nasal spray formulation of a nonsteroidal anti-inflammatory drug ("**NSAID**"), used for short-term (up to five days) management of moderate to moderately severe pain in adults that requires analgesia at the opioid level, in January 2015. The Debtors acquired SPRIX Nasal Spray and certain related assets from Luitpold Pharmaceuticals, Inc. ("**Luitpold**") for $7.0 million. Under the Debtors' purchase agreement with Luitpold, the Debtors were assigned an exclusive license with

Recordati Ireland Ltd. (“**Recordati**”) for intranasal formulations of ketorolac tromethamine (the “**SPRIX Licensed Product**”), the active ingredient in SPRIX Nasal Spray. The exclusive term of the license agreement expires, on a country-by-country basis, on the later of the final expiration of any patent right in such country that contains a valid claim covering the SPRIX Licensed Product, or ten years from the date of the first commercial sale of the SPRIX Licensed Product in such country.

12. In January 2018, the Debtors announced a partnership with OraPharma, Inc. (“**OraPharma**”), a division of Valeant Pharmaceuticals International, Inc., to co-promote SPRIX Nasal Spray to more than 9,000 dentists, dental specialists and oral surgeons across the United States. This partnership is the Debtors’ second partnership for SPRIX Nasal Spray following Ascend Therapeutics (“**Ascend**”), which began to promote SPRIX Nasal Spray to approximately 11,000 women's healthcare practitioners in September 2017. SPRIX Nasal Spray is currently sold in the United States by the Debtors, Ascend and OraPharma, and is covered by a patent that expires in December 2018 and the exclusive term of the license with respect to the United States expires in May 2021.

13. During the six-month period ended June 30, 2018, revenue from SPRIX Nasal Spray accounted for approximately $10.2 million of the Debtors’ $13.7 million of total revenues, or approximately 74.5%.

ii. OXAYDO

14. At the same time that the Debtors acquired SPRIX Nasal Spray, the Debtors in-licensed OXAYDO, an immediate-release (“**IR**”) oral formulation of oxycodone designed to discourage intranasal abuse, which is indicated for the management of acute and chronic pain severe enough to require an opioid analgesic and for which alternative treatments are inadequate. The Debtors licensed OXAYDO from Acura Pharmaceuticals (“**Acura**”) for a $5.0 million

upfront payment and a $2.5 million milestone payment upon commercial launch, which occurred in September 2015. In addition, Acura is entitled to a one-time $12.5 million milestone payment if OXAYDO net sales reach $150.0 million in a calendar year and a tiered royalty percentage based on sales thresholds. The Debtors' royalty payment obligations commenced on the first commercial sale of OXAYDO and expire, on a country-by-country basis, upon the expiration of the last to expire valid patent claim covering OXAYDO in such country (or if there are no patent claims in such country, then upon the expiration of the last valid claim in the U.S.). Royalties are reduced upon the entry of generic equivalents, as well as for payments the Debtors are required to make to acquire intellectual property rights to commercialize OXAYDO, with an aggregate minimum floor. The term of the Acura license agreement expires, in its entirety, upon the final expiration of any such patent claim in any country. OXAYDO is currently sold in the United States and is covered by six U.S. patents that expire between 2023 and 2025. Patents covering OXAYDO in foreign jurisdictions expire in 2024.

15. During the six-month period ended June 30, 2018, revenue from OXAYDO accounted for approximately $2.9 million of the Debtors' $13.7 million of total revenues, or approximately 21.2%.

iii. ARYMO ER

16. ARYMO ER, an extended-release and abuse-deterrent sulfate product, is the first approved product developed using the Debtors' proprietary Guardian Technology, creating tablets that are difficult to manipulate for misuse and abuse. Results from in vitro testing demonstrated that ARYMO ER tablets, in comparison to non-AD morphine sulfate extended-release tablets, have increased resistance to cutting, crushing, grinding or breaking using a variety of tools. Due to its physical and chemical properties, ARYMO ER makes abuse by injection difficult.

17. During the six-month period ended June 30, 2018, revenue from ARYMO ER accounted for approximately $0.5 million of the Debtors' $13.7 million of total revenues, or approximately 3.9%.

18. On September 28, 2018, the Debtors notified the U.S. Food and Drug Administration (the "**FDA**") that, for business reasons, the Debtors would be discontinuing the manufacture and promotion of ARYMO ER effective September 28, 2018 (the "**Discontinuation**"). As part of its notice, the Debtors requested that the Orange Book (as defined below) staff move ARYMO ER to the "Discontinued Drug Products List" of the Approved Drug Products and Therapeutic Equivalence Evaluations (the "**Orange Book**") publication, and that the Prescription Drug User Fee Act user fee staff note the discontinued status of the product.

PART II

Prepetition Capital Structure

A. Prepetition Funded Indebtedness

19. As of the Petition Date, the Debtors have funded debt facilities in place with a principal amount of approximately $128.6 million, of which approximately $80.0 million is senior secured debt (the "**First Lien Secured Notes**") and $48.6 million is unsecured debt (collectively, the "**Convertible Notes**"). The below chart summarizes the Debtors' prepetition material indebtedness:

Debt Obligation	Principal Governing Document(s)	Approximate Primcipal Amount Outstanding as of the Petition Date	Maturity Date	Security Status
13% Senior Secured Notes	Indenture, dated as of August 31, 2016, among Egalet Corporation, the other Debtors (as guarantors) and U.S. Bank National Association, as trustee and collateral agent (in such capacity, the "**First Lien Notes Trustee**") (the "**First Lien Secured Notes Indenture**") Collateral Agreement (as amended, supplemented, or otherwise modified from time to time, the "**First Lien Secured Notes Collateral Agreement**"), dated as of August 31, 2016, among Egalet Corporation, the other Debtors and the First Lien Notes Trustee	$80.0 million	September 20, 2033	Secured
5.50% Convertible Senior Notes	Indenture, dated as of April 7, 2015, among Egalet Corporation, the other Debtors (as guarantors) and The Bank of New York Mellon, as trustee (in such capacity, the "**5.50% Convertible Notes Trustee**")	$24.7 million	April 1, 2020	Unsecured
6.50% Convertible Senior Notes	Indenture, dated as of December 27, 2017, among Egalet Corporation, the other Debtors (as guarantors) and The Bank of New York Mellon, as trustee (in such capacity, the "**6.50% Convertible Notes Trustee**")	$23.9 million	December 31, 2024	Unsecured

i. First Lien Secured Notes

20. On August 31, 2016, the Debtors completed the initial closing of their offering of up to $80.0 million in aggregate principal amount of the First Lien Secured Notes and entered into the First Lien Secured Notes Indenture. Egalet Corporation issued $40.0 million aggregate principal amount of the First Lien Secured Notes at such initial closing, and issued an additional $40.0 million aggregate principal amount of the First Lien Secured Notes in connection with the approval by the FDA of ARYMO ER in January 2017. The First Lien Secured Notes were sold only to qualified institutional buyers within the meaning of Rule 144A under the Securities Act, and the Debtors used the net proceeds from the First Lien Secured Notes and the Existing

Royalty Rights (as defined below) to repay all obligations under the Debtors' previously outstanding loan agreement with Hercules Technology Growth Capital, Inc., to support the approval and commercialization of ARYMO ER, to support the development of Egalet-002 and for general corporate purposes.

21. Interest on the First Lien Secured Notes accrues at a rate of 13% per annum and is payable semi-annually in arrears on March 20 and September 20 of each year commencing on March 20, 2017. Following the approval of ARYMO ER by the FDA in January 2017, in lieu of a straight-line fixed amortization schedule, on each interest payment date commencing on March 20, 2018, the Debtors are obligated to pay an installment of principal on the First Lien Secured Notes in an amount equal to 15% (or 17% if certain sales targets are not met) of the aggregate net sales of OXAYDO, SPRIX Nasal Spray, ARYMO ER and Egalet-002, if approved, for the two consecutive fiscal quarterly period most recently ended, less the amount of interest payable on the First Lien Secured Notes on such interest payment date. The First Lien Secured Notes Indenture also requires the payment of an optional redemption price upon acceleration of First Lien Secured Notes as set forth therein, including the filing of chapter 11 cases. As of the Petition Date, such premium was $7.2 million.

22. The First Lien Secured Notes are senior secured obligations of Egalet Corporation and have the benefit of a security interest in the First Lien Secured Notes collateral. The stated maturity date of the First Lien Secured Notes prior to the approval of ARYMO ER by the FDA was March 20, 2020 and, following the FDA's approval of ARYMO ER in January 2017, the stated maturity date of the First Lien Secured Notes automatically became September 20, 2033.

23. In connection with the initial closing of the First Lien Secured Notes offering on August 31, 2016, Egalet Corporation entered into royalty rights agreements with each of the

purchasers of the First Lien Secured Notes pursuant to which Egalet Corporation sold to such purchasers the right to receive, in the aggregate, a payment equal to 1.5% of the aggregate net sales of OXAYDO and SPRIX Nasal Spray from August 31, 2016 through December 31, 2020, and at the second closing of the offering in January 2017, entered into separate royalty rights agreements with each such purchaser pursuant to which the Debtors sold to such purchasers the right to receive 1.5% of the aggregate net sales of ARYMO ER payable from the date of first sale of ARYMO ER through December 31, 2020 (collectively, the "**Existing Royalty Rights**").

24. Guaranty. The obligations of Egalet Corporation under the First Lien Secured Notes Indenture and the First Lien Secured Notes are unconditionally guaranteed on a secured basis by the other Debtors.

25. Collateral Securing First Lien Secured Notes. The Debtors granted the First Lien Notes Trustee, for the benefit of the holders of the First Lien Secured Notes, a continuing security interest in and lien on substantially all assets of the Debtors (the "**Prepetition Collateral**").

26. Certain assets of the Debtors are specifically excluded from the Prepetition Collateral pursuant to the First Lien Secured Notes Indenture including, among other things, certain new drug applications, licensed intellectual property rights, other approvals and licenses and clinical and other data, in each case, relating to OXAYDO) and leasehold interests in real property (excluding fixtures).

ii. 5.50% Convertible Notes

27. On April 7, 2015, Egalet Corporation completed the issuance through a private placement of $60.0 million in aggregate principal amount of the 5.50% Convertible Notes. On May 6, 2015, the Debtors issued an additional $1.0 million in principal amount pursuant to the initial purchasers' exercise of their 30-day over-allotment, for aggregate gross proceeds of $61.0

million. Interest on the 5.50% Convertible Notes is payable semi-annually in arrears on April 1 and October 1 of each year, commencing October 1, 2015. In September 2016, in connection with the issuance of the First Lien Secured Notes and in accordance with the terms of the 5.50% Indenture, Egalet Corporation and the other Debtors entered into a supplemental indenture pursuant to which the other Debtors agreed to guarantee the obligations of Egalet Corporation under the 5.50% Indenture and the 5.50% Convertible Notes.

28. The 5.50% Convertible Notes are general, unsecured and unsubordinated obligations of Egalet Corporation and rank senior in right of payment to all of Egalet Corporation's indebtedness that is expressly subordinated in right of payment to the 5.50% Convertible Notes. The 5.50% Convertible Notes are effectively subordinated to any secured indebtedness of Egalet Corporation to the extent of the value of the assets securing such indebtedness.

29. Prior to the Petition Date, the 5.50% Convertible Notes were convertible prior to maturity, subject to certain conditions, into shares of Prepetition Egalet Common Stock at a conversion rate of 67.2518 shares per $1,000 principal amount of the 5.50% Convertible Notes (equivalent to a conversion price of approximately $14.87 per share of Prepetition Egalet Common Stock). This conversion rate was subject to adjustment upon the occurrence of certain specified events. Egalet Corporation was obligated to satisfy the conversion obligation by paying or delivering, as the case may be, cash, shares of Prepetition Egalet Common Stock or a combination thereof, at Egalet Corporation's election. As of the Petition Date, the conditions to conversion had not been satisfied.

iii. 6.50% Convertible Notes

30. On December 20, 2017, Egalet Corporation entered into exchange agreements with certain holders of the 5.50% Convertible Notes pursuant to which the such holders agreed to

exchange, in the aggregate, approximately $36.4 million of outstanding principal amount of the 5.50% Convertible Notes for, in the aggregate, (i) approximately $23.9 million of the 6.50% Convertible Notes, (ii) a warrant exercisable for 3.5 million shares of the Prepetition Egalet Common Stock at an exercise price of $0.01 per share and (iii) payments, in cash, of all accrued but unpaid interest as of the closing on the 5.50% Convertible Notes exchanged in the transaction (the "**2017 Convertible Notes Exchange**"). At the closing of the 2017 Convertible Notes Exchange on December 27, 2017, 2.5 million of such warrants were exercised, and the remaining 1.0 million of such warrants were exercised in January 2018. The Debtors consummated the 2017 Convertible Notes Exchange in reliance upon the exemption from registration provided by Section 4(a)(2) under the Securities Act.

31. Interest on the 6.50% Convertible Notes is payable semiannually in arrears on January 1 and July 1 of each year commencing July 1, 2018 at a rate of 6.50% per year. The 6.50% Convertible Notes are scheduled to mature on December 31, 2024.

32. The 6.50% Convertible Notes are general, unsecured and unsubordinated obligations of Egalet Corporation and rank senior in right of payment to all of Egalet Corporation's indebtedness that is expressly subordinated in right of payment to the 6.50% Convertible Notes. The 6.50% Convertible Notes are effectively subordinated to any secured indebtedness of Egalet Corporation to the extent of the value of the assets securing such indebtedness.

33. Prior to the Petition Date, the 6.50% Convertible Notes were convertible at any time until the close of business on the business day immediately preceding the maturity date. Upon conversion and subject to certain conditions, holders of the 6.50% Convertible Notes would be entitled to receive shares of Prepetition Egalet Common Stock at a conversion rate of

749.6252 shares of Common Stock per $1,000 principal amount of 6.50% Convertible Notes, which is equivalent to a conversion price of approximately $1.33 per share.

B. Stockholders' Equity

34. As of the Petition Date, Egalet Corporation had no shares of preferred stock outstanding and a single class of common stock outstanding, the Prepetition Egalet Common Stock. As noted above, Egalet Corporation is a public reporting company under Section 12(b) of the Exchange Act and the shares of Prepetition Egalet Common Stock are publicly traded on the OTCQX Bulletin Board under the symbol "EGLT". The Prepetition Egalet Common Stock entitles holders to a portion of the voting rights of Egalet Corporation and economic rights, including rights to dividends, if any, and distributions upon liquidation, to the extent of any surplus. As of October 26, 2018, there were 56,772,101 shares of Prepetition Egalet Common Stock outstanding and warrants to purchase 16,666,667 shares of Prepetition Egalet Common Stock outstanding with a weighted average exercise price of $1.92.

PART III

Events Leading to the Chapter 11 Cases

A. Prepetition Business Model and Related Debt Issuances to Fund Research and Development and Commercial Operations.

35. Egalet Corporation completed the initial public offering of shares of Prepetition Egalet Common Stock in February 2014. The Debtors' goal was to be a leading specialty pharmaceutical company focused on the development, manufacture and commercialization of abuse-deterrent pharmaceutical products. Prescription medications, particularly opioids, are prone to being abused through physical and chemical manipulation for the purpose of increasing drug concentration in the bloodstream in order to accelerate and intensify their effects.

36. In reaction to the increasing costs and other consequences of widespread prescription opioid abuse, the United States government and a number of state legislatures have introduced or enacted legislation and regulations intended to encourage the development and adoption of abuse-deterrent forms of pain medications. Many of the Debtors' products and product candidates are specifically designed to deter common methods of abuse, and the Debtors believed that these actions by regulators and legislators created an opportunity for the Debtors to develop and commercialize products and product candidates with abuse-deterrent claims on the product label.

37. The Debtors' strategy for achieving that goal was to, among other things:

a. develop and obtain FDA approval for ARYMO ER as an abuse-deterrent morphine product for the treatment of moderate to severe pain;

b. develop and obtain FDA approval for Egalet-002 as an abuse-deterrent oxycodone product for the treatment of moderate to severe pain;

c. commercialize ARYMO ER and Egalet-002;

d. leverage its proprietary technology platform to develop additional product candidates and create out-licensing opportunities; and

e. explore business development opportunities to leverage its assets and build its product portfolio.

38. To supplement the Debtors' internally developed product pipeline, in January 2015, the Debtors acquired SPRIX Nasal Spray from Luitpold and licensed OXAYDO from Acura and supplemented their overall strategy to include executing their sale and marketing strategies for SPRIX Nasal Spray, OXAYDO and, upon approval by the FDA, ARYMO ER.

39. To fund the development of its commercial operations with respect to its approved products, its research and development costs related to its product candidates and its business development activities, during the course of 2015, 2016 and 2017, Egalet Corporation engaged in several capital raising transactions including the issuance of $61.0 million of the

5.50% Convertible Notes in April 2015, the issuance of $86.3 million of Prepetition Egalet Common Stock in July 2015, the issuance of $40.0 million of the First Lien Secured Notes in August 2016 and the issuance of an additional $40.0 million of the First Lien Secured Notes in January 2017 upon the approval of ARYMO ER by the FDA, and the issuance of $30.0 million of Prepetition Egalet Common Stock and related warrants in July 2017.

40. In December 2017, in connection with the ongoing issues described in subsection B. below, Egalet Corporation entered into the 2017 Convertible Notes Exchange pursuant to which, among other things, approximately $36.4 million of outstanding principal amount of the 5.50% Convertible Notes was exchanged for approximately $23.9 million of the 6.50% Convertible Notes and certain other consideration.

B. Poor Financial Performance, Nasdaq Delisting and Related Issues under Indebtedness Documents.

41. For the years ended December 31, 2017, 2016 and 2015, the Debtors reported net losses of approximately $69.4 million, $90.6 million and $57.9 million, respectively. These losses were a result of the Debtors' continued investments in their commercialization capabilities, the Debtors' research and development activities, the Debtors' increasing debt service obligations and general difficulties in increasing the revenue generated from the Debtors' marketed products, including challenges specific to the abuse-deterrent market such as shifting legislative and social responses to the opioid epidemic.

42. These challenges also resulted in a corresponding decline in the trading price of the Prepetition Egalet Common Stock, with the closing price thereof falling from $15.92 on March 13, 2015 to $11.02 on December 31, 2015, $7.65 on December 30, 2016, $1.00 on December 29, 2017 and $0.10 on October 26, 2018. As a result of this decline, commencing in November 2017, Egalet Corporation received a series of notices from The Nasdaq Stock Market

LLC ("**Nasdaq**") indicating that it was not in compliance with certain continued listing requirements for the listing of the Prepetition Egalet Common Stock on the Nasdaq Global Market and/or the Nasdaq Capital Market related to the minimum market value and minimum closing bid price of the Prepetition Egalet Common Stock. These deficiencies ultimately resulted in the transfer of the listing of the Prepetition Egalet Common Stock from the Nasdaq Global Market to the Nasdaq Capital Market effective July 11, 2018 (the "**Nasdaq Transfer**") and the pending delisting of the Prepetition Egalet Common Stock from the Nasdaq Capital Market (the "**Nasdaq Delisting**").

43. Under the 5.50% Indenture, the Nasdaq Transfer constituted a "Fundamental Change" and required Egalet Corporation to make an offer to purchase all of the $24.7 million of 5.50% Convertible Notes outstanding on the terms set forth in the 5.50% Indenture (the "**5.50% Notes Fundamental Change Offer**"). In addition, under the 6.50% Indenture, the Nasdaq Delisting constituted a "Fundamental Change" and required Egalet Corporation to make an offer to purchase all of the $23.9 million of 6.50% Convertible Notes outstanding on the terms set forth in the 6.50% Indenture (the "**6.50% Notes Fundamental Change Offer**"). However, the negative covenants in the First Lien Secured Notes Indenture did not provide the Company with the requisite restricted payment capacity to repurchase both the 6.50% Convertible Notes and the 5.50% Convertible Notes and, to the extent that the Debtors would be unable to make any such payment in accordance with the terms of the First Lien Secured Notes, it would result in a default under the First Lien Secured Notes Indenture, cross-defaults under the 5.50% Indenture and the 6.50% Indenture and other adverse consequences, including the ability of the holders of the First Lien Secured Notes to exercise the remedies available to them as secured lenders.

44. Given these circumstances and constraints, the Debtors' existing capital structure was no longer sustainable.

C. Retention of Professional Advisors and Evaluation of Strategic Alternatives.

45. To address the Debtors' continued non-compliance with the continued listing requirements for the listing of the Prepetition Egalet Common Stock on the Nasdaq Capital Market, the potential consequences under the 5.50% Indenture, the 6.50% Indenture and the First Lien Secured Notes Indenture related thereto, and the Debtors' ongoing assessment of their financial condition and liquidity, in the second and third quarters of 2018, the Debtors engaged a number of financial advisors to explore a variety of strategic alternatives. On March 21, 2018, the Debtors engaged Leerink Partners LLC ("**Leerink**") as a financial advisor in connection with a potential acquisition transaction or capital raising transaction. On June 20, 2018, the Debtors engaged Piper Jaffray & Co. ("**Piper Jaffray**") as a financial advisor in connection with a potential acquisition transaction, capital raising transaction or restructuring transaction. On June 27, 2018, the Debtors engaged H.C. Wainwright & Co., LLC ("**HCW**") as a financial advisor in connection with a potential capital raising transaction. In addition, the Debtors engaged in preliminary discussions with certain holders of the 5.50% Convertible Notes regarding potential transactions pursuant to which such holders would convert their 5.50% Convertible Notes into Egalet Corporation equity securities. On August 20, 2018, the Debtors engaged Berkeley Research Group, LLC ("**BRG**") as a financial advisor in connection with the Debtors' operational efforts and consideration of a restructuring transaction. Dechert LLP ("**Dechert**") has been acting as the Debtors' outside legal counsel since 2013.

46. During the second quarter of 2018, Leerink identified several potential acquisition opportunities for marketed products of certain third-party pharmaceutical companies, including Iroko Pharmaceuticals Inc. and its direct and indirect subsidiaries (collectively, "**Iroko**"), and the

Debtors and Leerink commenced initial negotiations and due diligence with respect to certain of those targets, which continued into July 2018. In July 2018, Piper Jaffray and the Debtors engaged in preliminary discussions regarding both a potential private placement of Egalet Corporation securities and a variety of potential restructuring transactions with respect to the Debtors' indebtedness, and commenced preliminary outreach to certain holders of the First Lien Secured Notes, 5.50% Convertible Notes and 6.50% Convertible Notes. Also in July 2018, HCW and the Debtors engaged in preliminary discussions regarding a potential public offering of Egalet Corporation equity securities. As these discussions progressed into August and September 2018, the combination of a potential restructuring of the Debtors' indebtedness and the Iroko Acquisition (defined below) increasingly appeared to present the most viable alternative for the Debtors.

D. Iroko Acquisition

i. Iroko

47. Iroko is a privately-held company formed under the laws of the British Virgin Islands and based in Philadelphia, Pennsylvania. Iroko is a global specialty pharmaceutical company focused on developing and commercializing innovative treatment options for responsible pain management. Iroko markets three FDA-approved low-dose SoluMatrix® NSAIDs, VIVLODEX® ("**VIVLODEX**"), TIVORBEX® ("**TIVORBEX**"), and ZORVOLEX® ("**ZORVOLEX**"), as well as INDOCIN® (indomethacin) oral suspension and suppositories ("**INDOCIN**") and has a number of other development-stage product candidates.

ii. Negotiations with Iroko

48. In the second quarter of 2018, Iroko and the Debtors commenced formal discussions regarding a potential acquisition of substantially all of Iroko's assets by the Debtors (the "**Iroko Acquisition**"). The parties exchanged extensive confidential financial and business

information in order to conduct their respective due diligence and assess whether a transaction was viable and in their respective best interests. Multiple proposals regarding the business terms of a proposed acquisition were exchanged among the parties, and numerous meetings, conferences, and negotiations were held.

49. The Debtors and their advisors engaged in an exhaustive evaluation of an acquisition of Iroko's assets, including a full analysis of potential synergies to be realized, integration risks, costs attendant to implementation of an acquisition, and a host of other factors. On October 30, 2018, after concluding that the Iroko Acquisition was in the best interests of their respective stakeholders and should be expeditiously pursued, Iroko, Egalet Corporation and Egalet US Inc. entered into the Purchase Agreement, providing for the Iroko Acquisition.

iii. The Purchase Agreement[2]

50. Structure. The Purchase Agreement provides that, upon the terms and subject to the conditions set forth therein, Egalet US Inc. will acquire certain assets and rights of Iroko, referred to in the Purchase Agreement as the "Transferred Assets" and assume certain liabilities of Iroko, referred to in the Purchase Agreement as the "Assumed Liabilities." The Purchase Agreement also contemplates that Iroko will retain certain of its assets and rights, referred to in the Purchase Agreement as the "Excluded Assets," and all liabilities and obligations other than the Assumed Liabilities, which retained liabilities and obligations are referred to in the Purchase Agreement as "Excluded Liabilities." The Iroko Acquisition is to be effectuated pursuant to, and is conditioned upon, among other things, the occurrence of the Effective Date under the *Joint*

[2] This summary is qualified in its entirety by the Purchase Agreement. To the extent that any provision of this summary is inconsistent with the Purchase Agreement, the Purchase Agreement will control.

Plan of Reorganization for Egalet Corporation and its Affiliated Debtors Under Chapter 11 of the Bankruptcy Code (the "**Plan**")[3] filed on the date hereof.

51. Consideration. Subject to the terms and conditions of the Purchase Agreement, at the closing of the Iroko Acquisition, as consideration for the Transferred Assets, in addition to the assumption of the Assumed Liabilities, Reorganized Corp will issue to Iroko (or its designees) (i) $45 million in aggregate principal amount of the Series A-2 Notes and (ii) 49.0% of the aggregate number of shares of New Egalet Common Stock outstanding on the Effective Date (without giving effect to any shares issued or to be issued pursuant to the Management Incentive Plan), a portion of which may be issuable in the form of warrants in the accordance with the terms of the Purchase Agreement. The consideration will also include the Iroko Royalty (as defined below).

52. In addition, as consideration for certain pre-closing inventory purchases and regulatory fees to be paid by Iroko, at the closing of the transactions contemplated by the Purchase Agreement, Reorganized Corp will issue to Iroko an unsecured promissory note in the aggregate principal amount of $4,500,000 as reimbursement for such amounts (the "**Interim Payments Note**"). In connection with the issuance of the Series A-2 Notes, on the Effective Date, Iroko and Egalet Corporation will also enter into a New Royalty Rights Agreement (as defined below).

53. Iroko Royalty. Subject to the terms and conditions of the Purchase Agreement, during the Royalty Term (as defined below), Iroko will be entitled to receive the Royalty Payments (as defined in the Purchase Agreement) (the "**Iroko Royalty**") from Reorganized Corp based upon Indocin Net Sales (as defined in the Purchase Agreement). The "Royalty Term" will

3 Capitalized terms not defined herein shall have the meanings ascribed to them in the Plan.

commence on the later of January 1, 2019 and the Closing Date (as defined in the Purchase Agreement) and end on the tenth anniversary of the Closing Date. The Iroko Royalty shall be payable quarterly during the Royalty Term. For the fiscal year ending December 31, 2019, the Iroko Royalty will be equal to: 15% of Indocin Net Sales greater than $20 million for the period from the Closing Date through December 31, 2019; and for each subsequent fiscal year during the Royalty Term, the Iroko Royalty will be equal to 20% of annual Indocin Net Sales for such fiscal year greater than $20 million. The Iroko Royalty target will be prorated for any fiscal year during the Royalty Period that is not a full fiscal year in accordance with the terms of the Purchase Agreement.

Board of Directors; Reorganized Corp Shareholder Agreement. On the Effective Date, the term of each member of the current boards of directors of the Debtors shall expire. The board of Reorganized Corp on the Effective Date shall consist of seven (7) members: (i) the Iroko Directors, (ii) the current Chief Executive Officer of Egalet Corporation, (iii) the current Chairman of the Board of Directors of Egalet Corporation, (iv) the Secured Director, (v) the Convertible Director, and (vi) the Joint Director. The identity of the individuals that will serve on the new board of directors of the Reorganized Debtors and the officers of the Reorganized Debtors will be identified in the Plan Supplement. Following the Effective Date, the appointment and removal of the members of the board of each of the Reorganized Debtors shall be governed by the terms of each Reorganized Debtor's respective corporate governance documents, including, with respect to Reorganized Corp, the Reorganized Corp Shareholder Agreements. On the Effective Date, the Reorganized Debtors shall enter into one or more agreements regarding board structure and director rights, which shall include provisions consistent in all material respects with the terms described on **Exhibit B** to the Plan and be in form and substance reasonably acceptable to the Required Supporting Noteholders and Iroko.

In connection with the closing of the transactions contemplated by the Purchase Agreement, Reorganized Corp and Iroko will also enter into the Reorganized Corp Shareholder Agreement pursuant to which, among other things, Iroko will agree to customary lock-up and standstill provisions with respect to its New Egalet Common Stock. The Reorganized Corp Shareholder Agreement will also provide Iroko with certain rights related to the designation, appointment, replacement and removal of the Iroko Directors.

54. Covenants, Representations and Warranties. The Debtors and Iroko have each made customary covenants in the Purchase Agreement, including, among others, covenants relating to confidentiality and regulatory matters (including anti-trust filings), as well as covenants to conduct their respective businesses in the ordinary between the execution of the Purchase Agreement and the consummation of the Iroko Acquisition (subject to certain exceptions, including the implementation of the transactions contemplated by the Plan on the terms described therein). In addition, the Purchase Agreement contains provisions that restrict each party's ability to initiate, solicit, or knowingly encourage or facilitate competing third-party proposals for any transaction involving a merger of such party or the acquisition of a significant portion of its stock or assets, subject to certain exceptions. Further, Iroko and certain of its affiliates have agreed to certain restrictive covenants including with respect to non-competition and non-solicitation of customers, suppliers and employees for periods of up to 18 months following the Closing Date.

55. In addition, as compensation for certain royalty payments payable by Iroko to third parties following the closing of the Iroko Acquisition, pursuant to the Purchase Agreement,

the Debtors have agreed to pay to Iroko, on a quarterly basis, with respect to any payments or proceeds whatsoever arising from a Naproxen Product, Tivorbex Product or Zorvolex Product (each as defined in the Purchase Agreement), five percent (5%) of all Net Sales (as defined in the Purchase Agreement) and certain other amounts in respect of a sublicense of any such product.

56. The Debtors and Iroko have also made customary representations and warranties regarding their respective businesses, including representations and warranties regarding organization, due authority, their respective financial statements, intellectual property matters, tax matters, compliance with law, their respective material contracts, sufficiency of assets, employee and employee benefit matters and regulatory matters.

57. <u>Conditions</u>. Consummation of the Iroko Acquisition is subject to certain conditions, including, among others: (i) expiration or termination of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "**Hart-Scott-Rodino Act**"); (ii) the absence of any order or injunction prohibiting the consummation of the Iroko Acquisition; (iii) approval of the Plan and entry of the Confirmation Order; (iv) subject to certain exceptions, the accuracy of representations and warranties of the Debtors or Iroko contained in the Purchase Agreement as if made on the closing date; (v) each of the Debtors and Iroko having performed their respective obligations pursuant to the Purchase Agreement; (vi) the receipt of certain third party consents and release of liens on Transferred Assets; (vii) the filing of certain information with the FDA and there being no recall of Iroko's or Egalet's products, (viii) Reorganized Corp having (A) an aggregate cash balance of at least $10.2 million minus a buffer of fifteen percent (15%) of that amount and (B) current liabilities of no more than $40.93 million plus a buffer of 7.5% of that amount, in each case, as of the closing date of the Iroko Acquisition and after giving effect to the Plan, (ix) Reorganized Corp having no outstanding

indebtedness other than the New Secured Notes and the Interim Payments Note, and (x) no Material Adverse Effect (as defined in the Purchase Agreement) having occurred with respect to Iroko's or Egalet's respective businesses.

58. Termination. The Purchase Agreement contains certain termination rights for the Debtors and Iroko, including (i) by mutual written consent of Iroko and the Debtors, (ii) in the event of certain breaches or inaccuracies of a representation, warranty or covenant that, if continuing on the closing date would cause certain closing conditions to be unsatisfied, (iii) if any governmental authority enjoins the Iroko Acquisition or the Debtors convert the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code. In addition, the Purchase Agreement automatically terminates without any further notice or action by the Debtors or Iroko on the earliest to occur of the following dates: (i) the date that is five (5) days after the date of the Purchase Agreement unless the Petition Date shall have occurred; (ii) the date that is 120 days after the Petition Date unless the Plan has been confirmed by the Bankruptcy Court pursuant to the Confirmation Order and the Confirmation Order is in full force and effect and has not been stayed, modified or vacated; and (iii) January 31, 2019; provided that the Debtors and Iroko may mutually agree in writing, each in its sole discretion, to extend any such deadlines or milestones . If the Purchase Agreement is terminated under certain circumstances, the Debtors may be required to reimburse a portion of Iroko's transaction fees up to a maximum aggregate amount of $1,500,000 (the "**Buyer Reimbursement Obligation**"). Within ten (10) Business Days after the Petition Date, the Debtors are required to file with the Bankruptcy Court a motion, in form and substance reasonably satisfactory to Iroko, seeking approval of the Buyer Reimbursement Obligation as an administrative expense of the Debtors' Chapter 11 Cases under section 503(b) of the Bankruptcy Code.

59. Indemnification. Iroko and the Debtors have agreed to indemnify each other and certain of their respective affiliates and related persons from and against certain Damages (as defined in the Purchase Agreement) including Damages resulting from breaches of representations, warranties and covenants. In addition, Iroko has agreed to indemnify the Debtors from and against any Damages related to Excluded Liabilities and Excluded Assets (each as defined in the Purchase Agreement) and the Debtors have agreed to indemnify Iroko from and against any Damages related to the Assumed Liabilities and certain liabilities related to the Plan and the accompanying disclosure statement (the "**Disclosure Statement**").

60. Iroko's indemnification obligations pursuant to the Purchase Agreement will be supported by (i) a right of set-off in favor of the Debtors against amounts otherwise owed to Iroko by the Debtors, including with respect to the Series A-2 Notes, the New Royalty Rights Agreements, and the Iroko Royalty, and (ii) a right of recoupment. In addition, certain affiliates of Iroko have agreed to indemnify the Debtors against Damages relating to Excluded Liabilities in certain circumstances and subject to certain limitations.

61. Each party's indemnification obligations are subject to customary caps, deductibles, survival periods and other limitations.

62. Services Agreements. As part of the Purchase Agreement, Iroko and the Debtors will enter into a transition services agreement, pursuant to which, in order to assist the Debtors with the integration of Iroko's business following the Effective Date, Iroko will provide the Debtors certain transition services for specified periods of time in exchange for the payment of agreed-upon amounts or other appropriate consideration for such services. In addition, on the date of the Purchase Agreement, Egalet Corporation entered into two separate master services agreements with each of Athilio Pharma, LLC ("**Athilio**") and 42 North, LLC ("**42 North**")

pursuant to which Athilio and 42 North will provide certain services to the Debtors with respect to Iroko's business and the transition thereof.

63. Registration Rights Agreement. In connection with the closing of the transactions contemplated by the Purchase Agreement, Egalet Corporation and Iroko will enter into a registration rights agreement pursuant to which Egalet Corporation will grant to Iroko customary demand and piggyback registration rights with respect to the shares of New Egalet Common Stock issued as consideration to Iroko.

64. Stockholder Agreement. In connection with the closing of the transactions contemplated by the Purchase Agreement, Egalet Corporation and Iroko will also enter into the Reorganized Corp Shareholder Agreement pursuant to which, among other things, Iroko will agree to customary lock-up and standstill provisions with respect to the New Egalet Common Stock. The Reorganized Corp Shareholder Agreement will also provide Iroko with certain rights related to the designation, appointment, replacement and removal of two directors on the board of directors of Egalet Corporation.

E. The Reorganized Debtors' Business

65. Following the Effective Date and the consummation of the Iroko Acquisition, the Reorganized Debtors will operate under the "Egalet" name and will market six commercial products: SPRIX Nasal Spray, OXAYDO, INDOCIN, VIVLODEX, TIVORBEX and ZORVOLEX. Following the Effective Date, the Reorganized Debtors will have a dedicated internal sales force that will target pain medicine physicians, primary care physicians, nurse practitioners, orthopedic surgeons and neurologists in the United States with the intent to build awareness and increase adoption of the Reorganized Debtors' products. The Reorganized Debtors also intend to continue to look for partnerships similar to their ongoing relationships

with OraPharma and Ascend to bring SPRIX Nasal Spray to specialists the Debtors cannot reach with their internal salesforce

66. The Iroko Acquisition is expected to result in cross-selling opportunities for the Reorganized Debtors sales force and various other synergies. More specifically, the Iroko Acquisition enables the filing of the Plan providing for an increased recovery by creditors of the Debtors as compared to a liquidation of the Debtors under chapter 7 of the Bankruptcy Code, and the combined company is expected to become a more profitable and financially stable company, better able to compete and respond to the competitive challenges and cyclical business conditions.

67. The Reorganized Debtors will be headquartered in Wayne, Pennsylvania, and I will continue to serve as the President and Chief Executive Officer of the Reorganized Debtors.

F. Forbearance Agreement and Restructuring Support Agreement

68. After extensive, good faith negotiations, on September 18, 2018, the Company entered into a forbearance agreement with certain holders of approximately 94% of the outstanding First Lien Secured Notes (as amended, supplemented, or otherwise modified from time to time, the "**Forbearance Agreement**"). Pursuant to the Forbearance Agreement, such holders agreed to forebear from exercising their rights and remedies under the First Lien Secured Notes Indenture and the related security documents until the earlier of (a) 11:59 p.m. New York City time on October 14, 2018[4] and (b)(I) 5:01 p.m. New York City time on the first business day following the date on which certain Events of Termination (as defined in the Forbearance Agreement) shall have occurred, and (II) immediately upon the occurrence of certain other Events of Termination. The Events of Termination include, among other things, any Debtor

4 This date was extended to October 21, 2018, and then to October 24, 2018, pursuant to subsequent amendments to the Forbearance Agreement.

making any payment, distribution, purchase, redemption, exchange or other acquisition for value with respect to the 5.50% Convertible Notes or 6.50% Convertible Notes. However, the Events of Termination expressly exclude potential events of default arising under Section 6.01(d) of the First Lien Secured Notes Indenture as a result of any failure by the Company to repurchase any 5.50% Convertible Notes tendered in connection with the 5.50% Notes Fundamental Change Offer and related cross-defaults under the 6.50% Indenture. Accordingly, the Company was able to forego the consummation of the 5.50% Notes Fundamental Change Offer without the possibility of the holders of the First Lien Secured Notes exercising their available rights and remedies as secured bondholders.

69. After several weeks of additional, good faith negotiations, on October 30, 2018, the Debtors, the Supporting Noteholders, which institutions hold or manage, in the aggregate, approximately 94% of the First Lien Secured Notes Claims in Classes 3A, 3B and 3C, and approximately 67% of the Convertible Notes Claims in Classes 4A, 4B and 4C, entered into the Restructuring Support Agreement (attached to the Disclosure Statement as **Exhibit 3)**.[5] Pursuant to the Restructuring Support Agreement, the Supporting Noteholders party thereto agreed to support the confirmation of a plan of reorganization consistent with the terms of the Restructuring Support Agreement. The Plan proposed by the Debtors is consistent with the Restructuring Support Agreement and is supported by the parties to the Restructuring Support Agreement.

70. The Restructuring Support Agreement contains customary terms, including an agreement among the Debtors and the Supporting Noteholders to support a plan of

[5] This summary is qualified in its entirety by the Restructuring Support Agreement. To the extent that any provision of this summary is inconsistent with the Restructuring Support Agreement, the Restructuring Support Agreement will control.

reorganization that is consistent with the Restructuring Support Agreement and an agreement by the parties to negotiate in good faith regarding necessary documentation (including, but not limited to, (i) this Disclosure Statement and any motion seeking the approval hereof, (ii) the order approving the Disclosure Statement, (iii) the Confirmation Order, (iv) the ballots for voting on the Plan, (v) the motion to approve the form of the ballots and any solicitation of the Plan, (vi) any documentation relating to the New Secured Notes and (vii) the post-emergence organizational documents, equity holder-related agreements or other related documents to be executed on or before the Effective Date), and to refrain from supporting any plans of reorganization other than the Plan. In addition, the consensual use of cash collateral is an integral part of the Restructuring Support Agreement.

71. The Restructuring Support Agreement permits the Required Supporting Secured Noteholders or the Required Supporting Unsecured Noteholders to terminate the agreement upon the occurrence (or failure to occur) of certain events, including:

(i) the Petition Date shall not have occurred on or before October 30, 2018;

(ii) the Company shall have failed to file the Plan and the Disclosure Statement on the Petition Date;

(iii) the Court shall not have entered the Interim Cash Collateral Order on or before the date that is five (5) days after the Petition Date;

(iv) the Court shall not have entered the Disclosure Statement Order, the Final Cash Collateral Order or the RSA Order on or before the date that is forty (40) days after the Petition Date;

(v) the Court shall not have entered the Confirmation Order on or before the date that is eighty (80) days after the Petition Date;

(vi) the Effective Date shall not have occurred by the date that is ninety five (95) days after the Petition Date; and

(vii) the termination of the Purchase Agreement.

72. The Restructuring Support Agreement contemplates, among other things, that as long as the Restructuring Support Agreement remains in effect, the Debtors and the other parties to the Restructuring Support Agreement each agree to use commercially reasonable efforts to support and consummate the restructuring transactions (the "Restructuring Transactions") contemplated in the Restructuring Support Agreement. The Restructuring Support Agreement also includes a customary "fiduciary out" provision.

PART IV

The First Day Motions and Other Pleadings

73. Concurrently with the commencement of the Chapter 11 Cases, the Debtors have filed, and request approval for, a number of proposed orders (the "**First Day Orders**"), which the Debtors believe are necessary to enable them to operate with a minimum level of disruption and loss of productivity. The Debtors request that each of the First Day Orders be entered as critical elements in stabilizing and facilitating the Debtors' operations during the pendency of the Chapter 11 Cases. A description of the relief requested and the facts supporting each of the First Day Orders is set forth below.

A. Administrative and Procedural Matters

74. The Debtors have filed three "administrative" pleadings that seek to (1) jointly administer the Chapter 11 Cases, and (2) extend the time for the Debtors to file schedules of assets and liabilities and statements of financial affairs (collectively, the "**Schedules and Statements**") through and including 90 days after the Petition Date (as may be extended, the "**Deadline**"), and waive the requirement that the they file their Schedules and Statements upon

confirmation of the Plan if confirmation occurs on or before the Deadline; and (3) establish procedures for continuously monitoring the trading of the Debtors' equity securities. The Debtors' attorneys have explained to me the customary practices with regard to the requested relief in chapter 11 business reorganization cases and the rationale for these pleadings.

i. Joint Administration Motion

75. The Debtors filed a motion (the "**Joint Administration Motion**") requesting joint administration of the Chapter 11 Cases, three in total, for procedural purposes only. Many of the motions, hearings, and other matters involved in the Chapter 11 Cases will affect all of the Debtors. Therefore, I believe that the joint administration of the Chapter 11 Cases will avoid the unnecessary time and expense of duplicate motions, applications and orders, thereby saving considerable time and expense for the Debtors and resulting in substantial savings for their estates. Accordingly, I believe the Court should approve the Joint Administration Motion.

ii. Motion to Extend the Time, and upon Plan Confirmation, Waive the Requirement to File Schedules and Statements

76. The Debtors filed a motion (the "**Schedules and Statements Motion**") requesting to extend the time for the Debtors to file the Schedules and Statements through and including the Deadline, and waive the requirement that the Debtors file their Schedules and Statements upon confirmation of the Plan if confirmation occurs on or before the Deadline. The Debtors are currently focusing on maintaining operations with minimal disruption during their transition into chapter 11. Accordingly, the Debtors have limited resources available to complete the detailed internal review of their books and records necessary to complete the Schedules and Statements while attending to the numerous other matters involved in such transition. It is my understanding, however, that no party in interest would be prejudiced by the Court granting the Debtors' request for an extension through and including the Deadline. The narratives and data

incorporated in this Declaration and the Debtors' chapter 11 petitions and the exhibits attached thereto provide creditors and parties in interest with a substantial amount of information about the Debtors and their financial affairs. Therefore, it is my belief that relief sought in the Schedules and Statements Motion is necessary and appropriate in light of the circumstances surrounding these Chapter 11 Cases.

iii. Trading Procedures Motion

77. The Debtors have certain attributes for U.S. federal income tax purposes (the "**Tax Attributes**"), which are expected to include approximately $195,855,300 in estimated, consolidated net operating loss carryforwards ("**NOLs**") by the end of the Debtors' 2018 taxable year. The Tax Attributes are a valuable asset because the Debtors generally can carry forward their Tax Attributes to reduce or eliminate their income tax liability, thereby potentially freeing up funds to meet working capital requirements and service debt. In particular, the Tax Attributes may be available to the Debtors to offset taxable income generated by ordinary course activity and other transactions completed during the course of the Chapter 11 Cases. Additionally, the Debtors can carry forward the NOLs and credits to reduce their future tax liability, thereby potentially recovering cash for the benefit of their estates.

78. It is my understanding that the Debtors' ability to use their Tax Attributes, however, could be severely limited under Section 382 of title 26 of the United States Code as a result of the trading and accumulation of its equity securities prior to consummation of a chapter 11 plan. The Debtors thus seek to establish procedures for continuously monitoring the trading of their equity securities so that the Debtors can preserve their ability to seek substantive relief at the appropriate time, particularly if it appears that additional trading may jeopardize the use of

their NOLs under Section 382 (the "**Trading Procedures Motion**"). Therefore, I submit that the relief requested in the Trading Procedures Motion is appropriate and in the best interests of the Debtors' estates, their creditors and other parties in interest.

B. <u>Motion to Continue Cash Management System</u>

79. The Debtors filed a motion (the "**Cash Management Motion**") seeking entry of interim and final orders, under Sections 105, 345, 363, and 507 of the Bankruptcy Code, (i) approving the Debtors' continued maintenance of their existing bank accounts and use of their cash management system (the "**Cash Management System**"); (ii) authorizing the payment of certain obligations related thereto; (iii) authorizing the Debtors to continue engaging in Intercompany Transactions (as defined below) in the ordinary course of business; (iv) granting administrative expense status for Postpetition Intercompany Claims (as defined below); (v) approving the Debtors' continued use of existing checks and business forms; (vi) granting the Debtors a waiver of the requirements contained in section 345(b) the Bankruptcy Code; (vii) scheduling a hearing to consider the relief requested herein on a final basis; and (viii) granting related relief to the Debtors.

<u>The Cash Management System</u>

80. The Cash Management System constitutes an essential business practice and is substantially similar to systems utilized by comparable corporate enterprises. The Cash Management system enables the Debtors to monitor the collection and disbursement of funds and to facilitate cash monitoring, forecasting, and reporting. The Debtors' third party logistics provider, a subsidiary of Cardinal Health 105, Inc., tracks all of the Debtors' trade receipts related to the sale of pharmaceutical products, and provides such information to the Debtors. The Debtors' finance, accounting, and treasury personnel implement controls for transferring and disbursing funds, including in connection with intercompany transactions, track all such transfers

and disbursements, and regularly reconcile the Debtors' books and records to ensure that all receipts, transfers, and disbursements are properly recorded.

The Bank Accounts

81. The bank accounts through which the Cash Management System operates are part of a company-wide accounting and cash concentration and disbursement system used by the Debtors.

82. The Debtors maintain five (5) deposit accounts, as listed in the table attached as Exhibit B to the Cash Management Motion. The Debtors incorporated in the United States—Egalet Corporation and Egalet US Inc. (the "**U.S. Debtors**")—maintain four (4) of those deposit accounts at Wells Fargo Bank, N.A. (collectively, the "**U.S. Bank Accounts**"). Egalet Limited, a Debtor incorporated in the U.K. that operates in Denmark, maintains one deposit account denominated in Danish Kroner (the "**Danish Bank Account**," and together with the U.S. Bank Accounts, the "**Bank Accounts**") at Danske Bank (together with Wells Fargo Bank, N.A., the "**Banks**"). All of the Bank Accounts are non-interest bearing accounts.

i. U.S. Operating Accounts

83. One of the U.S. Bank Accounts is a lockbox account (ending in x2072) maintained by Egalet US Inc. (the "**Lockbox Account**"). The Lockbox Account is the U.S. Debtors' primary account for receipt of customer payments. The funds from the Lockbox Account are, in turn, transferred in the ordinary course of business to operating or payroll U.S. Bank Accounts to fund operations. As the Cash Management System does not incorporate any automatic sweeps or zero-balance accounts, funds from the Lockbox Account are directed to other accounts by the Debtors' finance and treasury department in the ordinary course of business on an as-needed basis.

84. Egalet US Inc. maintains an operating account (ending in x2064) (the "**Egalet U.S. Operating Account**"), which is funded from the Lockbox Account or, if there is a shortfall in funds from the Lockbox Account, from the Money Market Fund (as defined below) in the Investment Account (as defined below). The Egalet U.S. Operating Account is used primarily to pay the U.S. Debtors' operating disbursements for trade payables. Certain miscellaneous cash receipts unrelated to pharmaceutical sales—such as insurance refunds related to the Debtors' auto fleet program or revenue sharing proceeds from Wells Fargo Bank, N.A. ("**Wells Fargo**") related to the U.S. Debtors' corporate credit card program—are also funded into the Egalet U.S. Operating Account, and used for operating expenses.

85. Invoices for trade disbursements are subject to the review of the heads of the departments that have purchased the goods or services as well as several members of the finance department. In a given week, the Finance Operations Manager reviews invoices that have been approved by department heads and prepares a list of invoices that are both approved and due to be paid. The list is then reviewed by the Executive Director of Financial Planning and Analysis and the Chief Accounting Officer, and those employees determine which invoices should be paid that week. After that review, the Chief Accounting Officer approves transfers from the Lockbox Account (or the Money Market Fund in the Investment Account, if necessary) to the Egalet U.S. Operating Account via Wells Fargo's online platform in the aggregate amount necessary to cover the approved invoices. The Chief Accounting Officer then approves transfers from the Egalet U.S. Operating Account to the vendors as prepared by the Finance Operations Manager. The payments are populated on the online Wells Fargo Cash Electronic Office (the "**Wells Fargo CEO**") platform via an interface with the Debtor's Oracle enterprise resource planning platform. All members of the finance and treasury department are notified of all such transfers.

86. Egalet Corporation also maintains an operating account (ending in x2056) (the "**Egalet Corp Operating Account**", and together with the Egalet U.S. Operating Account, the "**U.S. Operating Accounts**") which has been used primarily for scheduled debt-service payments on its 13% Senior Secured Notes, 5.50% Convertible Notes due 2020, and 6.50% Convertible Notes due 2024 (collectively, the "**Notes**") and other scheduled payments under the indentures governing the Notes (the "**Notes Payments**"). Inflows into the Egalet Corp Operating account are also funded from the Lockbox Account or, if there is a shortfall in funds from the Lockbox Account, from the Money Market Fund in the Investment Account via an intermediate transfer to the Egalet U.S. Operating Account. In addition, from time to time, Egalet Corporation has sold shares of its common stock in "at the market offerings" as defined in Rule 415 under the Securities Act of 1933, as amended. The net proceeds of these offerings (after agreed commissions) have been deposited in the Egalet Corp Operating Account.

87. The indenture trustees for the Notes provide the Debtors with invoices for scheduled Notes Payments. To the extent funds in the Egalet Corp Operating Account are insufficient to cover the scheduled payments, the Chief Accounting Officer approves funds transfers initiated by the Finance Operations Manager through the Wells Fargo CEO platform from the Lockbox (or the Money Market Fund in the Investment Account, via an intermediate transfer to the Egalet U.S. Operating Account, if necessary) to the Egalet Corp Operating Account, typically one or two days prior to the scheduled due date. The Chief Accounting Officer then manually transfers funds from the Egalet Corp Operating Account to the relevant indenture trustee on the due date.

ii. Payroll Account

88. Egalet US Inc. maintains a payroll account (ending in x5382) (the "**Payroll Account**") which is used to fund all U.S. employee payroll and related withholdings and taxes, as well as payments for certain employee benefits. Payroll for U.S. employees is made on the 15th and last day of the month (unless such days fall on weekends or holidays, in which case payroll is made on the business day before such weekend or holiday) and is processed through a third-party administrator, ADP, LLC ("**ADP**"). Prior to each scheduled payroll due date, the Chief Accounting Officer approves the transfers funds from the Lockbox Account (or the Money Market Fund in the Investment Account, via an intermediate transfer to the Egalet U.S. Operating Account, if necessary) to prefund the Payroll Account. Subsequently, two days in advance of the relevant payroll due date, ADP automatically draws from the Payroll Account as necessary to fund net employee pay, and, typically on the same day, makes a separate draw of funds for employee taxes and withholdings. ADP then distributes payroll to the employees through direct deposit, and withholdings to applicable third parties.

iii. The Danish Bank Account

89. Egalet, Limited maintains the Danish Bank Account at Danske Bank to conduct its limited operations. The Danish Bank Account is used for Danish receipts and collections—primarily from Danish tax credits and value-added tax reimbursements—and Danish disbursements, including payroll for the four employees located in Denmark.[6]

90. Disbursements from the Danish Bank Account are managed in a similar manner to disbursements from the Egalet U.S. Operating Account. Invoices for trade payables are reviewed by personnel from the department that incurred the expense. A finance consultant in Denmark creates weekly lists of invoices that have been approved by the relevant personnel and

[6] Since 2016, the Debtors have not transferred cash from any of the U.S. Bank Accounts or the Investment Account to the Danish Bank Account to fund Egalet Limited's operations.

due to be paid. The U.S. finance personnel then reviews those lists, and the Chief Accounting Officer approves the transfers to vendors through Danske Bank's online portal.

91. The mechanics for payroll funding for Egalet Limited are also similar to those of U.S. payroll. Two days prior to each monthly payroll date, Egalet Limited's third-party payroll processor, Bluegarden A/S, debits the Danish Bank Account as necessary to fund net employee pay, employee taxes and withholdings, and certain benefits.

Investment Account

92. Egalet Corporation maintains an investment account (ending in x9461) (the "**Investment Account**") with Wells Fargo Clearing Services, LLC.[7] The Investment Account was funded with certain of the proceeds of its issuance of the Notes. There are no other regular inflows into the Investment Accounts.

93. The Debtors' investment policy requires that funds be invested only in fixed income instruments denominated and payable in U.S. dollars, including:

- Obligations of the U.S. government and its agencies;
- Money market funds of at least $5.0 billion registered according to SEC Rule 2a-7 of the Investment Company Act of 1940 and rated AAA or equivalent by at least one Nationally Recognized Statistical Rating Organization ("**NRSRO**");
- Federal Deposit Insurance Corporation ("**FDIC**")-backed bank debt issued by banks as either corporate notes or certificates of deposits under the statutory

7 The funds or other property in the Bank Accounts and the Investment Account are collateral securing the obligations under the 13% Senior Secured Notes issued by Egalet Corporation and guaranteed by the other Debtors, and the related indenture (the "**Secured Notes Indenture**"). The U.S. Debtors' banking and investment activities were previously with Silicon Valley Bank, but were transferred to Wells Fargo in mid-2018. At that time, no deposit account control agreements were put in place with respect to the U.S. Bank Accounts or the Investment Account. Nevertheless, the security interest of the collateral trustee under the Secured Notes Indenture (i) in the funds in the U.S. Bank Accounts, as proceeds of collateral and (ii) in the property in the Investment Account, as proceeds of collateral or investment property, remains perfected due to the filing of UCC financing statements.

minimum for FDIC guaranty (250K) or fully backed for principal and interest by FDIC; and

- Non-Financial corporate obligations including Commercial Paper issued by companies with financials meeting designated pre-approval criteria and minimum short-term credit ratings of A-1/P-1/F1 from at least two NRSROs.

94. Funds in the Investment Account are invested in (i) a Goldman Sachs money market fund (the "**Money Market Fund**") and (ii) U.S. treasuries and corporate notes (the "**Marketable Securities**"). The investments in the Money Market Fund are highly liquid, and are used to fund the U.S. Debtors' operations, payroll, or debt service when the Lockbox Accounts do not have sufficient funds. The need to utilize funds from the Money Market Fund is assessed by the Debtors' finance and treasury department, and funds are transferred to the Egalet U.S. Operating Account at the direction of the Chief Accounting Officer. Pursuant to a standing instruction with Wells Fargo Clearing Services, LLC, funds from the Money Market Fund are available upon the Debtors' request, and may be transferred to the Egalet U.S. Operating Account on the same day as requested.

95. The Marketable Securities are less liquid than the Money Market Fund. Although the Marketable Securities are categorized as "available for sales" securities, the Debtors' practice is generally to hold them to maturity. The proceeds paid at maturity are invested in the Money Market Fund. Historically, some of those proceeds have been reinvested in Marketable Securities based on the Debtors' outlook for liquidity requirements and in consultation with Wells Fargo Clearing Services, LLC as investment advisor.

Corporate Card Collateral Account

96. Egalet US Inc. provides corporate credit cards to most of the U.S. employees for payment of business-related expenses through the WellsOne Commercial Card program. Pursuant to this program, Wells Fargo provides Egalet US Inc. with a $400,000 aggregate credit

line, and Egalet US Inc. pays Wells Fargo monthly from the Egalet U.S. Operating Account for all expense charges of U.S. employees. Given that the success of the Debtors' business is heavily dependent on its sales personnel, and such personnel must incur significant travel and entertainment expenses to be effective, the availability of corporate credit card program is of vital importance. That availability is conditioned upon the maintenance of collateral to secure Egalet US Inc.'s credit line. Thus, Egalet US Inc. maintains a restricted certificate of deposit account at Wells Fargo Bank, N.A. (ending in x1527) (the "**Credit Card Collateral Account**"), that serves as security for the corporate credit card program pursuant to a security agreement. The Credit Card Collateral Account is an interest-bearing account, and interest is deposited into the Egalet Corp Operating Account.

<u>Intercompany Transactions</u>

97. In the ordinary course of business, the Debtors engage in business transactions with each other (collectively, the "**Intercompany Transactions**"), some of which result in intercompany receivables and payables (collectively, the "**Intercompany Claims**"). Accordingly, at any given time there may be Intercompany Claims owing by one Debtor to another Debtor.

98. The Company keeps meticulous records of the Intercompany Transactions that allow for the Debtors to readily ascertain, trace, and account for all such transactions and any resulting Intercompany Claims. Each Intercompany Transaction is accounted for in the appropriate books and records of the Debtors. To ensure that each Debtor will not fund the operations of another entity at the expense of its creditors, the Debtors will continue to maintain the records of such transfers in the event that this Court authorizes the continuation of the Intercompany Transactions on the terms set forth in the Cash Management Motion.

99. The Intercompany Transactions are necessary to ensure that the Debtors have sufficient funding, goods, or services to continue operating in the ordinary course. For example, in the ordinary course of business, the U.S. Debtors perform sales, marketing, regulatory and other functions related to the commercialization of intellectual property owned by Egalet Limited Pursuant to certain shared services agreements, or in accordance with the Debtors' policy of paying U.S. dollar denominated debt from U.S. accounts, the expenses of those functions are paid from the Egalet Inc. Operating Account. Those payments result in the recording of Intercompany Claims of Egalet US Inc. against Egalet Limited as book entries. Further, when cash from the Money Market Fund in the Investment Account is transferred to the Egalet Inc. Operating Account for payment of trade payables, an Intercompany Claim of Egalet Corporation against Egalet US Inc. is booked. Similarly, when cash from the Lockbox Account is transferred to the Egalet Corp Operating Account for Notes Payments, the Debtors record an Intercompany Claim of Egalet US Inc. against Egalet Corp. Intercompany Claims in favor of Egalet Corporation against Egalet US Inc. and Egalet Limited are recorded in connection with certain stock compensation to employees as well as the Debtors' employee stock purchase plan.

100. The system of Intercompany Transactions is important to the Debtors' ability to manage their operations. If the Intercompany Transactions were to be discontinued, the Cash Management System and the Company's operations would be unnecessarily disrupted to the detriment of the Debtors and their creditors and other stakeholders.

<u>Business Forms</u>

101. In the ordinary course of business, the Debtors use a number of business forms, including, but not limited to, checks, letterhead, and invoices (the "**Business Forms**"). If the Debtors were required to obtain new business forms as a result of the filing of these Chapter 11

Cases, the Debtors would incur significant expense and attendant delay in effectuating their ordinary course, prepetition business transactions. Under the proposed form of interim order, attached to the Cash Management Motion, the Debtors will begin printing "Debtor-in-Possession" on all checks which the Debtors or their agents print themselves within ten days of the entry of such order, but request that the Court authorize the continued use of Business Forms that have already been printed, rather than incur the expense and delay of ordering new business forms.

102. Moreover, based on the information set forth above and in the Cash Management Motion, it is my belief that relief sought in the Cash Management Motion is necessary and appropriate in light of the circumstances surrounding these Chapter 11 Cases.

C. Wages and Benefits Motion

103. The Debtors filed a motion (the "**Wages and Benefits Motion**") requesting entry of an order (i) authorizing, but not directing, (a) the payment of prepetition wages, salaries, and commissions and (b) the payment and honoring of prepetition employee policies and benefits, and (ii) authorizing banks, financial institutions, and third-party agents to honor and process checks and electronic transfer requests related to the foregoing.The Debtors' Employees

104. The Debtors have approximately 132 salaried employees (collectively, the "**Employees**")[8] that conduct its business, including executive and administrative, sales, finance, quality assurance, marketing, commercial analytics, legal, manufacturing, communications, business development, human resources, and research and development services. Of those 132 Employees, 128 are located in the U.S. (the "**U.S. Employees**"), and four (4) are located in Denmark (the "**DK Employees**"). None of the U.S. Employees are members of any union or

[8] No Employees are paid hourly.

subject to a collective bargaining agreement. Under Danish law, the DK Employees are entitled to join a trade union that assists salaried employees with negotiating their salaries and benefits and provides access to other services such as legal and career advice. Egalet Ltd., however, is not party to any collective bargaining or other agreement with any such union.

105. The Debtors depend on the Employees to oversee virtually every aspect of their business operations. The Employees' relationships with vendors, suppliers, customers, health care providers, and other third-parties, and their specialized skills and knowledge and understanding of the Debtors' businesses, are all essential to the Debtors' ability to continue their operations and effectuate a smooth transition into chapter 11. A significant unplanned loss of Employees, or the harm caused by decreased morale as a result of the Debtors' inability to pay prepetition unpaid obligations owed to their Employees, would be detrimental to the continuation of the Debtors' businesses and to the ability of the Debtors to maximize the value of their estates for the benefit of all creditors and other parties-in-interest through these Chapter 11 Cases.

Prepetition Employee Obligations

A. Salary Obligations, Commissions, and Payroll Disbursement

i. Salary Obligations

106. The Debtors pay the Employees' salaries (the "**Salary Obligations**") in exchange for the services that they provide to the Debtors in the ordinary course of business. On a given payroll date, Employees are paid for Salary Obligations accrued during the time period running from the last payroll date. In other words, once payroll is made on a payroll date, there are no arrearages with respect to Salary Obligations.

107. The U.S. Employees receive semi-monthly payments for wages and salaries. Payroll for U.S. Employees is made on the 15th and last day of the month, unless such day falls

on a weekend or holiday, in which case payroll is made on the business day before such weekend or holiday. The DK Employees are paid once monthly on the last business day of the month.

108. Based on current compensation levels for the Debtors' existing employee base, the Debtors' estimate that semi-monthly gross Salary Obligations for the U.S. Employees is approximately $663,000 and monthly gross Salary Obligations for the DK Employees is approximately $60,000.

109. As of the Petition Date, ADP (defined below) has drawn funds in the amounts necessary to satisfy Salary Obligations due on October 31, 2018 to ensure that U.S. payroll will be processed on time. In addition, on September 30, 2018, the Debtors pre-paid the DK Employees for Salary Obligations for the period from October 1, 2018 through the October 31, 2018. Accordingly, the Debtors do not believe that any Employee is owed any money on account of prepetition Salary Obligations.

ii. Commissions

110. Additionally, in the ordinary course of business, the Debtors pay commissions ("the **Commissions**") to their 87 sales Employees (the "**Commission Employees**"), which Commissions are awarded based on prescription volume targets set by the Debtors' management and reviewed as appropriate based on the Debtors' business needs. Commissions are an important component of the Commission Employees' overall compensation.

111. The Commissions are paid quarterly, typically within 45 days after last day of each quarter. The lag period following the end of the quarter is necessary for the Debtors to reconcile prescription volume data with performance targets. To perform their quarterly Commission reconciliation, the Debtors utilize prescription data provided by (i) Cardinal Health

Specialty Pharmacy with respect to the SPRIX product, and (ii) IQVIA, a third-party vendor to which pharmacies report such data, with respect to the opioid products.

112. The volume of prescriptions of the Debtors' products is the main determinant of the Debtors' success and their key business growth metric. Prescription volume is driven, in substantial part, by the Commission Employees' efforts vis-à-vis health care providers. Payment of the Commissions incentivizes the Commission Employees to maximize prescription volume, aligns such Employees' interests with the goals and objectives of the Debtors, and thereby provides substantial value to the Debtors' estates.

113. In early October 2018, to stabilize the workforce and demonstrate the Debtors' commitment to its Commission Employees, the Debtors paid Commissions to Commission Employees for the third quarter of 2018 earlier than usual. The amounts of such payments were based on actual prescription data for the SPRIX product line, and estimated prescriptions for the Debtors' opioid products (the "**Estimated Q3 Commission Amounts**"). Since those payments, the Debtors have received the relevant actual prescription data from IQVIA and calculated the exact amounts of the Commissions due each Commission Employee for the third quarter of 2018 (the "**Actual Q3 Commission Amounts**"). For certain Commission Employees the Estimated Q3 Commission Amounts paid exceeded the Actual Q3 Commission Amounts, and the difference will be debited form their payment of fourth quarter Commissions. For other Commission Employees, Actual Q3 Commission Amounts exceeded the Estimated Q3 Commission Amounts paid. The Debtors intend to pay these Commission Employees the difference (the "**True Up Commission Payment**") in the payroll scheduled for November 15, 2018, and request authority to do so. The True Up Commission Payments aggregate to

approximately $18,000, and no True Up Commission Payment payable to any single employee the $12,850 priority cap under section 507(a)(4) of the Bankruptcy Code (the "**Priority Cap**").

114. In addition, the Debtors request authority to pay the Commission Employees the Commission amounts attributable to the prepetition portion of the fourth quarter of 2018 (the "**Prepetition Accrued Commission**"). The Debtors do not currently have sufficient prescription data to calculate the exact amount of Prepetition Accrued Commission that will be payable to each Commission Employee, but based on estimates, the Debtors do not believe that any Commission Employee will be entitled to receive in excess of the Priority Cap on account of True Up Commission Payments plus Prepetition Accrued Commission. Accordingly, the Debtors request authority to pay each Commission Employee the Prepetition Accrued Commission owed to him or her in the ordinary course in the next quarterly Commission payment, to the to the extent that True Up Commission Payments plus Prepetition Accrued Commission for such Commission Employee does not exceed Priority Cap. In total, the Debtors' request authority to pay no more than $1,117,950 in the aggregate on account of True Up Commission Payments and Prepetition Accrued Commission.

iii. Payroll Disbursement.

115. The Debtors' payroll process for U.S. Employees is administered through ADP, LLC ("**ADP**"). ADP performs all services related to the U.S. Employee payroll, including payroll deductions and withholdings. Ordinarily, two (2) business days in advance of each semi-monthly payroll date, ADP automatically draws from the Egalet US Inc. payroll account as necessary to fund net U.S Employee pay, and, typically on the same day, makes a separate draw of funds for U.S. Employee taxes and withholdings. The funds are then distributed by ADP to

the U.S. Employees, taxing authorities, and certain benefit plan administrators. All U.S. Employees are paid by direct deposit.

116. In the ordinary course of business, ADP draws funds from the Egalet US Inc. payroll account to collect service fees in the approximate amount of $4,000 per pay month (the "**ADP Payroll Processing Fees**"). The Debtors estimate that, as of the Petition Date, they owe ADP approximately $3,000 for ADP Payroll Processing Fees. As ADP's services are critical to ensuring that the U.S. Employees are paid on time, appropriate deductions are made, payroll reporting is accurate, and appropriate amounts are remitted to third parties, the Debtors seek authority to pay all ADP Payroll Processing Fees in the ordinary course of business, including prepetition amounts.

117. With respect to the DK Employees, Bluegarden A/S ("**Bluegarden**") provides the Debtors with similar services to ADP. Bluegarden debits the Egalet Ltd. operating account two (2) days in advance of each monthly payroll date to cover DK Employee payroll and applicable withholdings, and then distributes the funds to DK Employees, taxing authorities, and benefit administrators. Bluegarden charges approximately $100 per month for its services (the "**Bluegarden Payroll Processing Fees**," and together with the ADP Payroll Processing Fees, the "**Payroll Processing Fees**"), and the Debtors estimate that they owe approximately $100 in prepetition Bluegarden Payroll Processing Fees. Bluegarden's services are critical to the smooth functioning of the payroll system for DK Employees, and thus the Debtors seek authority to pay all Bluegarden Payroll Processing Fees in the ordinary course of business.

iv. Incentive Compensation Programs

118. In addition to the Salary Obligations and Commissions, the Debtors maintain, in the ordinary course of business, an Annual Incentive Bonus Plan, under which the 45 Employees

that are not Commission Employees are paid a bonus in January of each year for work performed during the prior year (the "**Annual Bonus**"). Employees' eligibility for an Annual Bonus, and the amount of such bonus, is tied to performance goals set periodically (typically annually) by the compensation committee of the board of directors. The performance goals may be based upon a variety of financial, operational, or business development-related measures. The Debtors are not seeking authority to pay Annual Bonuses pursuant to this Motion. The Plan, however, provides for the payment of the Annual Bonuses upon the Effective Date of the Plan.

B. <u>Withholding Obligations</u>

119. As employers, the U.S. Debtors are required by law to withhold certain amounts from the U.S Employees' salaries and other compensation and to pay such withholdings to third parties on behalf of those U.S. Employees. These amounts include federal, state, and local income taxes, as well as Social Security and Medicare taxes (collectively, the "**U.S. Withholding Taxes**"), which are required to be remitted to the appropriate taxing authorities (collectively, the "**U.S. Taxing Authorities**"). The Debtors are also required to make payments from their own funds on account of Social Security and Medicare taxes and to pay, based on a percentage of gross payroll (and subject to state-imposed limits), additional amounts to the U.S. Taxing Authorities for, among other things, state and federal unemployment insurance (collectively, the "**U.S. Employer Payroll Taxes**," and together with the U.S. Withholding Taxes, the "**U.S. Payroll Tax Obligations**"). Going forward, with respect to each semi-monthly pay period, the Debtors estimate that their average liabilities for U.S. Withholding Taxes and U.S. Employer Payroll Taxes will total approximately $200,000 and $60,000, respectively.

120. In the ordinary course of business, when processing payroll for the U.S. Employees, the Debtors may also be required by law, in certain circumstances, to withhold from

certain of the U.S. Employees' wages amounts for various garnishments, such as tax levies, child support, and other court-ordered garnishments (collectively, the "**Garnishments**"). As of the Petition Date, three (3) of the U.S. Employees are identified in the Debtors' payroll records as being subject to a garnishment order. The Debtors' most recent payroll period shows a total garnishment of approximately $2,600 from these U.S. Employees' paychecks on account of the orders. The Debtors do not believe that, as of the Petition Date, they hold any prepetition garnishments that have not been remitted.

121. The Debtors also withhold U.S. Employee portions of insurance plan contributions, 401(k) contributions, and contributions under health savings accounts (the "**U.S. Benefit Withholdings**," and together with the U.S. Payroll Tax Obligations and the Garnishments, the "**U.S. Withholding Obligations**").

122. Prior to each payroll, ADP calculates the U.S. Withholdings Obligations to be made from and in respect of such payroll. ADP remits the withholdings to the appropriate third parties. Withholdings may be remitted to the applicable third-party recipient weekly, monthly, or quarterly, depending on state, and local, laws, foreign law or relevant contractual arrangements (although the funds are paid to ADP each payroll cycle). Consequently, as of the Petition Date, ADP may be in possession of withholdings relating to the prepetition period. As of the Petition Date, the Debtors believe that all U.S. Withholding Obligations have been paid.

123. In Denmark, the Debtors withhold certain amounts from the pay of the DK Employees, including, without limitation, certain taxes and DK Employee pension contributions and are required to pay the employer portion of certain payroll-related taxes to Danish taxing authorities (collectively, the "**DK Withholding Obligations**," and together with the **U.S. Withholding Obligations**, the "**Withholding Obligations**"). Typically, the DK Withholding

Obligations are approximately $196,000 Danish Kroner ("**DKK**"), which is approximately $32,000 per month. Bluegarden performs the same functions with respect to DK Withholding Obligations as ADP does with respect to U.S. Withholding Obligations, and may be in possession of withholdings relating to the prepetition period. As of the Petition Date, the Debtors believe that there are no accrued and unpaid DK Withholding Obligations.

124. Although the Debtors believe there are no accrued and unpaid Withholding Obligations as of the Petition Date, out of an abundance of caution, the Debtors have requested authority to pay, in the aggregate, prepetition Withholding Obligations not to exceed $50,000.

C. Expense Reimbursement and T&E Administration Fees

125. At any given time, in the ordinary course of business, the Debtors may have obligations for the payment or reimbursement, as applicable, of certain employee expense obligations, such as the actual costs of travel, meals, lodging, expenses related to mobile devices and service, expenses related to the Debtors' car fleet program for Commission Employees and other miscellaneous office expenses.

126. The employee expense obligations include those incurred through the use of corporate credit cards provided (i) to all but 16 of the Debtors' U.S. Employees under the WellsOne Commercial Card program with Wells Fargo Bank, N.A. and (ii) to all DK Employees through Danske Bank (the "**Credit Card Accounts**"). Employees use their corporate credit cards for business-related expenses, and then submit expense reports through a third party administrator, Concur. Those expense reports are subject to several levels of internal approval and audit procedures, and are reconciled with the invoices for the Credit Card Accounts provided monthly to the Debtors. The Debtors remit monthly payments (the "**Credit Card Expense**

Payments") directly to Wells Fargo[9] or Danske Bank, as applicable, which payments average approximately $500,000 per month. As of the Petition Date, the Debtors estimate that they owe no amounts on account of Credit Card Expense Payments.

127. The Debtors also provide a reimbursement to all Employees for mobile device service (the "**Mobile Device Reimbursement**"). Employees receive this reimbursement monthly through the payroll system. The monthly expense for this reimbursement averages approximately $10,000. As of the Petition Date, no amount is owed for Mobile Device Reimbursement.

128. The Debtors provide corporate cars to their Commission Employees through a fleet program provided by Emkay Fleet Management. The Commission Employees' regular tasks include considerable travel to visit with health care providers, and the fleet program is intended to mitigate the expense associated with such travel. Each pay period, the Debtors deduct $55 from Commission Employees' pay for such employees' personal use of fleet vehicles, which is included in such employees' gross earnings as imputed income. Commission Employees are required to reconcile their vehicle usage on a quarterly basis. If a Commission Employee's personal usage exceeds the amount corresponding to the aggregate amount deducted from such employee's pay for a given quarter, the employee is required to pay additional charges. If personal usage amounts to less than the amount deducted, the employee does not receive a refund. The Debtors' average monthly payment to Emkay Fleet Management for the fleet program (the "**Fleet Program Payment**") is approximately $120,000. As of the Petition Date, the Debtors owe Emkay Fleet Management approximately $60,000.

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[9] Wells Fargo provides the Debtors with a $400,000 credit line, which is secured by a certificate of deposit account maintained at Wells Fargo.

129. Additionally, the employee expense obligations occasionally include miscellaneous expenses incurred by Employees using their personal credit cards or cash, which are reimbursed based on expense report submissions by the applicable Employees through the Concur system. These expenses are subject to the same internal approval and audit procedures as corporate credit card usage, to ensure that only legitimate business-related expenses are charged and reimbursed. Once approved in the Concur system, Employees are reimbursed via direct deposit from the Egalet US Inc. operating account or the Egalet Ltd. operating account, as applicable, within 15 days. To the extent that such miscellaneous employee expense obligations (the "**Miscellaneous Expense Obligations**") have been incurred prepetition but not submitted, or have been submitted and are awaiting approval, the Debtors may owe prepetition amounts to Employees. As of the Petition Date, the Debtors estimate that they owe approximately $10,000 in such Miscellaneous Expense Obligations.

130. In the ordinary course of business, Concur invoices the Debtors for its expense administration services (the "**T&E Administration Fees**," and together with the Credit Card Expense Payments, the Mobile Device Reimbursement, the Fleet Program Payment, and the Miscellaneous Expense Obligations, the "**Employee Expense Obligations**"). During fiscal year 2018, the Debtors paid approximately $6,000 to Concur on account of the T&E Administration Fees. The Debtors believe that they owe no T&E Administration Fees as of the Petition Date.

131. The payment of Employee Expense Obligations in the ordinary course will allow the Debtors' Employees to seamlessly perform their job functions during the course of the chapter 11 cases. Absent payment, significant disruption in such functions—particularly with respect to the Commission Employees' travel and entertainment demands—may occur. Further, it would be inequitable to require Employees to bear any expenses in furtherance of their

responsibilities to the Debtors that they expected to have paid or reimbursed. Requiring Employees to do so would have a significant negative effect on Employee morale and could lead to attrition in the Debtors' workforce. Accordingly, to avoid harming the individual Employees who have incurred costs in reliance on the Debtors' expense policies, and to facilitate the Employees performance of their job functions at an optimal level, the Debtors request the authority, in their discretion and in the exercise of their business judgment, to continue to honor their Employee Expense Obligations in the ordinary course of business regardless of when such obligations arose, including paying any prepetition amounts with regard to the Employee Expense Obligations.

D. Health and Welfare Programs

132. The Debtors sponsor several health care packages available to all their U.S. Employees, including (i) medical insurance, dental insurance, and vision care; (iii) telemedicine services, (iii) health savings and flexible spending accounts; (iv) COBRA benefits; (v) basic life and accidental death and dismemberment and supplemental life and accidental death and dismemberment insurance; (vi) life events insurance; (vii) short-term disability benefits; and (viii) long-term disability benefits (collectively, the "**Health and Welfare Plans**"). For the DK Employees, similar health and welfare benefits are provided through government programs, for which the Debtors have no obligations or liabilities.

133. The Debtors offer Health and Welfare Plans to eligible U.S. Employees. Additionally, U.S. Employees have the option of enrolling eligible dependents in the Health and Welfare Plans. New U.S. Employees become eligible for benefits offered under the Health and Welfare Plans on the first of the month following their first day of their employment. The Health

and Welfare Plans are administered by several different vendors, including Independence Blue Cross ("**IBC**"), MetLife, Vision Service Plan ("**VSP**"), PNC Bank, N.A., ADP and/or certain of its affiliates, The Standard, Chubb, WageWorks, and Trustmark.

i. Medical, Dental, and Vision Care

134. Regular U.S. Employees scheduled to work 30 or more hours per week ("**Regular U.S. Employees**") are eligible to participate in the medical, dental, and vision benefit programs. The medical insurance packages for the U.S. Employees are provided through a medical plan administered through IBC. The U.S. Employees may choose between a preferred provider organization plan, which includes integrated prescription coverage (a "**PPO**"), and a high-deductible plan with prescription coverage provided under a separate rider (the "**High Deductible Plan**," and together with the PPO, the "**U.S. Medical Plan**"). All U.S. Employee insurance claims under the U.S. Medical Plan are processed and paid by IBC.

135. The vision insurance package for the U.S Employees is provided through a vision plan administered by VSP (the "**U.S. Vision Plan**") under which VSP processes and pays all claims. Through VSP, the U.S. Employees have access to a comprehensive, high-quality vision plan providing coverage for exams, frames, lenses and other services.

136. The dental insurance package for the Employees is provided through a PPO dental plan administered by MetLife (the "**U.S. Dental Plan**") under which MetLife processes and pays all claims. The U.S. Dental Plan provides coverage for preventative care, basic services, major surgeries, and orthodontia.

137. Approximately 118 U.S. Employees participate in the U.S. Medical Plan, 114 Employees participate in the U.S. Vision Plan, and 118 U.S. Employees participate in the U.S. Dental Plan. The Debtors fund 95% of the monthly premiums for the U.S. Medical Plan, U.S.

Vision Plan, and U.S. Dental Plan for U.S. Employees with single coverage, and 85% of such monthly premiums for U.S. Employees with coverage for at least one family member. The remaining amounts of monthly premiums are funded by amounts withheld from U.S. Employee compensation. The Debtors pay approximately $191,000 in monthly premiums and fees to IBC for the U.S. Medical Plan, $1,250 in monthly premiums and fees to VSP for the U.S. Vision Plan, and $11,000 for the in monthly premiums and fees to MetLife for the U.S. Dental Plan. As of the Petition Date, the Debtors have paid all prepetition premiums and fees for the U.S. Medical Plan, U.S. Vision Plan, and U.S. Dental Plan.

ii. Telemedicine

138. The Debtors provide U.S. Employees with access to telemedicine services through SwiftMD. Telemedicine is a supplemental health benefit that provides convenient access to non-emergency medical care from doctors by phone or videoconference. The Debtors pay approximately $550 per month to Swift MD. As of the Petition Date, the Debtors owe SwiftMD approximately $550 for prepetition services.

iii. Spending Accounts

139. The Debtors offer each of their Regular U.S. Employees the option to enroll in health savings accounts ("**HSAs**"), healthcare flexible spending accounts ("**Healthcare FSAs**"), limited purpose flexible spending accounts ("**LP FSAs**"), and dependent care accounts ("**Dependent Care Accounts**," and together with the Healthcare FSAs and the LP FSAs, the "**FSA Accounts**," and the FSA Accounts together with the HSAs, the "**Spending Accounts**").

140. The HSAs provide U.S. Employees that participate in the High Deductible Medical Plan the opportunity, on a pre-tax basis, to reimburse themselves for medical, dental and vision care expenses that are eligible for reimbursement under Internal Revenue Service ("**IRS**") guidelines. Seventeen (17) U.S. Employees are enrolled in the HSA program, which is administered through PNC Bank, N.A. For each participating U.S. Employee, the Debtors fund a pre-tax contribution into the HSA of $1,000 per year if the U.S. Employee has single coverage or $2,000 per year if the Employee is covering a spouse or one or more dependents (the "**Employer Contribution**"). These contributions are made *pro rata* according to the semi-monthly payroll schedule. Employees may choose to deposit funds into the HSA on a pre-tax basis, withheld from each semi-monthly paycheck, up to the limits set by the IRS. HSA funds roll over and accumulate year to year if not spent. The Debtors pay to PNC Bank, N.A., on average, approximately $4700 per month for the HSA, which amounts to the $2,200 in Employee contributions that are withheld from the Employees' paychecks and $2,500 as the prorated portion of the Employer Contribution. The Debtors also pay PNC Bank, N.A. service fees for administering the HSAs, which amount to approximately $70 per month. As of the Petition Date, the Debtors do not owe PNC Bank, N.A. any payment on account of the HSA.

141. The Healthcare FSA allows Regular U.S. Employees to withhold from each semi-monthly paycheck, on a pre-tax basis, amounts for reimbursement of eligible medical, prescription, dental and vision care expenses, up to limits set by the IRS. U.S. Employees who participate in the High Deductible Medical Plan with an HSA may not enroll in the Healthcare FSA, but have the option to contribute to an LP FSA account up to limits set by the IRS, for reimbursement of limited eligible out-of-pocket expenses. The Dependent Care Accounts allow participating U.S. Employees to withhold from each semi-monthly paycheck, on a pre-tax basis,

amounts for reimbursement of eligible expenses incurred for the care, while the U.S. Employee is at work, of children, disabled spouses, elderly parents or other dependents who are physically or mentally incapable of self-care, up to limits set by the IRS.

142. FSA Accounts have a grace period. For the current plan year, funds can only be used for eligible expenses incurred from September 1, 2018 through November 15, 2019. If eligible expenses incurred during that period are less than the elected annual amount contributed for the year, the balance is forfeited.

143. Eleven (11) U.S. Employees are enrolled in the Healthcare FSA program, three (3) U.S. Employees are enrolled in the LP FSA program, and eight (8) U.S. Employees are enrolled in the Dependent Care Account program. The FSA Accounts are administered by WageWorks. Historically, the Debtors have paid WageWorks certain service fees for administering the FSA Accounts (collectively, the "**FSA Administration Fees**"). The Debtors pay WageWorks approximately $200 per month in FSA Administration Fees, and believe that they owe WageWorks approximately $200 as of the Petition Date.

144. The semi-monthly FSA contributions of participating U.S. Employees are deducted from the gross payroll amount attributable to those U.S. Employees, and the funds remain with the Debtors. When a claim for reimbursement of an eligible expense is submitted to WageWorks by U.S. Employee, WageWorks processes the claim and, to the extent the claim does not exceed the amount remaining in the U.S. Employee's FSA Account, draws funds from the Egalet US Inc. payroll account. WageWorks then pays claims via a debit card provided to the U.S. Employee or reimburses the U.S. Employee as claims are processed via check or direct deposit. As of the Petition Date, the Debtors hold approximately $22,000 in funds that are subject to participating U.S. Employee claims.

iv. COBRA

145. Furthermore, pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (as amended, "**COBRA**"), the Debtors offer eligible former U.S. Employees the opportunity to continue insurance coverage under the Debtors' U.S. Medical Plan, U.S. Dental Plan, U.S. Vision Plan and FSA Accounts (the "**COBRA Benefits**"). The former U.S. Employees pay 102% of the premiums owed for COBRA Benefits directly to WageWorks, the COBRA Administrator. WageWorks, in turn, pays the Debtors 100% of premiums received for the Debtors to pay to the providers of the applicable benefit plans. WageWorks retains the remaining 2% as the administrative fee. As such, the Debtors do not currently pay any additional monthly premiums in connection with providing the COBRA Benefits. As of the Petition Date, three (3) of the Debtors' former Employees have elected to receive COBRA Benefits, and six (6) of the Debtors' former Employees who remain eligible to enroll in COBRA Benefits but have yet done so. As of the Petition Date, the Debtors hold no premiums transferred from WageWorks that have yet to be paid to the providers of benefit plans.

v. Life Insurance and Accident and Disability Insurance

146. The Debtors provide basic life insurance and accident and disability insurance to all Regular U.S Employees through its basic life and accidental death and dismemberment package, which is provided through The Standard (the "**U.S. Life and AD&D Plan**"). The premiums for the U.S. Life and AD&D Plan are fully funded by the Debtors. The U.S. Life and AD&D Plan is subject to a maximum coverage equal to two times eligible pay up to a maximum of $500,000.

147. Additionally, the Debtors provide all Regular U.S. Employees the option to purchase supplemental life and accidental death and dismemberment coverage for themselves,

their spouses, and/or children, which is provided through The Standard (the "**U.S. Supplemental Life and AD&D Plans**"). The U.S. Supplemental Life and AD&D Plans are subject to certain maximum levels of coverage. Premiums for U.S. Supplemental Life and AD&D Plans are fully funded by participating U.S. Employees through payroll withholdings.

148. The Debtors pay The Standard approximately $14,000 per month for the U.S. Life and AD&D Plan and the U.S. Supplemental Life and AD&D Plan, including amounts withheld from U.S. Employee paychecks for the U.S. Supplemental Life and AD&D Plans. As of the Petition Date, the Debtors owe no accrued and unpaid premiums or other amounts on account of the U.S. Life and AD&D Plan or the U.S. Supplemental Life and AD&D Plan.

149. The Debtors also offer Regular U.S. Employees the option to purchase Universal Life or Life Events Insurance through Trustmark (the "**Universal Plans**"). Universal Life provides an additional death benefit and Universal Life Events provides for a death benefit, a portion of which may be used for long term care while the insured is still alive. Premiums for the Universal Plans are funded by participating U.S. Employees through payroll withholdings. The Debtors pay Trustmark approximately $600 per month for the Universal Plans, including amounts withheld from U.S. Employee paychecks. The Debtors estimate that as of the Petition Date, they owe Trustmark approximately $600 in accrued and unpaid amounts on account of the Universal Plans.

vi. Short-Term and Long Term Disability Benefits

150. The Debtors provide short-term disability benefits (the "**U.S. Short-Term Disability Plan**") and long-term disability benefits (the "**U.S. Long-Term Disability Plan**," and together with the U.S. Short Term Disability Plan, the "**U.S. Disability Plans**") to Regular U.S. Employees. The U.S. Disability Plans are provided through The Standard, and are fully funded

by the Debtors. The U.S. Short-Term Disability Plan benefits have an elimination period of one (1) day for an injury and eight (8) days for sickness, and once initiated replaces 60% of the U.S. Employee's wages or salary, up to a maximum of $2,000 per week, for up to 90 days. The U.S. Long-Term Disability Plans have an elimination period of 90 days. The benefit pays 60% of monthly earnings up to a maximum of $16,538 per month, for up to the U.S. Employee's Social Security Normal Retirement Age. The Debtors pay The Standard premiums of approximately $7,700 per month for the U.S. Disability Plans. As of the Petition Date, the Debtors owe no amounts with respect to the U.S. Disability Plans.

vii. Business Travel Accident Insurance.

151. The Debtors provide business travel accident insurance (the "**U.S. BTA Plan**") to Regular U.S. Employees. The U.S. BTA Plan is provided through Chubb, and is fully funded by the Debtors. Under the U.S. BTA Plan, U.S. Employees traveling at the authorization, direction and expense of the Debtors have access to services such as medical provider search and referrals to help find hospitals and doctors in a given locale, monitoring of treatment, facilitation of medical payment, coordination of medication, emergency medical evacuations and medically-necessary repatriation, transportation to join a hospitalized family member, and dependent children/traveling companion assistance. A death benefit is payable to the insured's beneficiary if loss of life occurs during such travel. The Debtors paid Chubb premiums of approximately $1,350 for the three-year period. As of the Petition Date, no obligations with respect to the U.S. BTA Plan were unpaid.

152. The Debtors provide similar business travel accident insurance (the "**DK BTA Plan**") through Marsh Insurance. The Debtors' owe no obligations with respect to the DK BTA Plan.

E. Retirement Plan

153. All Regular U.S. Employees are entitled to participate in a 401(k) plan offered by the Debtors (the "**401(k) Plan**") beginning on their date of hire, and may enter the 401(k) Plan beginning on the first day of the month following their date of hire. The 401(k) Plan is administered by an affiliate of ADP, with Reliance Trust acting as the 401(k) Plan Trustee. Under the 401(k) Plan, the Debtors withhold from all participating U.S. Employees' paychecks the relevant contributions, at the U.S. Employee's request, including pre-tax 415 earnings[10] for contribution to the 401(k) Plan and/or after tax contributions to a 401(k) Roth plan (the "**401(k) Employee Contribution**"). All 401(k) Employee Contributions are vested immediately at 100%. The Debtors believe that, as of the Petition Date, all 401(k) Employee Contributions have been transferred to the 401(k) Plan.

154. Additionally, the Debtors provide a matching contribution of $1.00 for every $1.00 of 401(k) Employee Contribution up to the first 3% of an U.S. Employee's eligible annual earnings, and $.50 for every $1.00 of 401(k) Employee Contribution up to the next 2% of eligible annual earnings, up to maximum limits set by the IRS (the "**401(k) Match Obligations**"). 401(k) Match Obligations vest according to a schedule based on years of service, with the 401(k) Match Obligations being 100% vested immediately. The 401(k) Match Obligations are funded when 401(k) Employee Contributions are funded. As of the Petition Date, the Debtors are current on their 401(k) Match Obligations.

155. The Debtors incur various fees associated with the 401(k) Plans (the "**401(k) Administration Fees**"). The 401(k) Administration Fees are generally paid to the ADP affiliate

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[10] 415 earnings include, under the Internal Revenue Code, all wages, salaries and other amounts includible in the gross income, including bonuses, commissions, and other incentive compensation.

by the Debtors in the approximate amount of $1,300 per month. As of the Petition Date, the Debtors estimate that they owe approximately $3,000 in 401(k) Administration Fees.

156. Additionally, in connection with the 401(k) Plan the Debtors also pay fiduciary consulting fees (the "**Fiduciary Consulting Fees**") to Kestra Advisory Services, LLC in the approximate amount of $7,000 quarterly. Services provided by Kestra Advisory Services, LLC include investment advice for plan participants. The Debtors estimate that as of the Petition Date, approximately $3,500 in prepetition obligations with respect to the fiduciary consulting services were unpaid.

157. Egalet Ltd. maintains a pension scheme for DK Employees (the "**DK Pension Scheme**"). DK Employees may contribute a portion of their base salary to their pensions, which is paid by Egalet Ltd. to ATP Livslang Pension. For a DK Employee that contributes at least 5% of their base salary, Egalet Ltd. contributes 10% of that DK Employee's base salary to their pension at Skandia Pension (the "**DK Employer Match**"). Employee contributions and the DK Employer Match are funded monthly. The pension agreement also includes (i) compensation in case of loss of earning capacity, critical illness, or death, (ii) health insurance, and (iii) optional orphan's pension. As of the Petition Date, the Debtors have remitted all amounts with respect to the DK Pension Scheme, including employee contributions and DK Employer Match obligations.[11]

[11] In addition to the benefits described above, prior to the Petition Date, the Debtors offered their Employees the ability to participate in an employee stock purchase plan ("**ESPP**"). Under the ESPP, Employees had the opportunity to purchase up to 1,500 shares of Egalet Corporation stock per offering period at a 15% discount to market value. There were two offering periods per year, one running from January 1 to June 30 and the other from July 1 to December 31. Employees were able to opt into the ESPP prior to the start of each offering period. Employees that chose to opt in contribute an amount of their choosing each semi-monthly pay period, which was deducted from the gross payroll payable to those Employees and held by the Debtors. Prior to the end of each offering period, the Employees that have opted in could (i) do nothing, in which case their ESPP contributions would be used to purchase an amount of shares equal to their aggregate contributions over the offering period, subject to the 1,500 share limit, or (ii) opt out of purchasing shares, in which case the Debtors would remit their contributions to them in cash. In the event a single Employee contributed more than

F. <u>Paid Time Off, Vacation, and Other Leave Benefits</u>

158. The Debtors, in the ordinary course of business, provide their Employees paid time off ("**Paid Time Off**"). U.S. Employees begin with a minimum of fifteen (15) days of annual paid vacation and five (5) paid sick days, plus additional paid time off for holidays, bereavement, jury duty, military leave, moving, house settlement and, for eligible U.S. Employees, parental leave. All U.S. Employees earn one additional vacation day per year of service, up to a maximum of twenty-five (25) days per year. Employees in their first year of service must be employed no later than January 31st for that year to count as a full year of service. Eligible U.S. Employees accrue vacation on a semi-monthly basis on a vesting schedule based on years of service. No vacation time may be carried over to the next year. Upon termination of employment with the Debtors, for whatever reason, an Employee will be paid for earned and accrued unused vacation time. The Debtors anticipate that their Employees will utilize any accrued vacation time in the ordinary course of business, which will not create any material cash flow requirements beyond the Debtors' normal payroll obligations.

159. Pursuant to Danish law, the DK Employees are entitled to five (5) weeks of Paid Time Off. The Debtors provide DK Employees an additional five (5) paid days off for holidays and one day off for moving.

160. With respect to their current Employees, the Debtors estimate that approximately $1,045,000 of earned but unused Paid Time Off has accrued as of the Petition Date. This amount, however, is not a current cash payment obligation, as the Employees are only entitled to

necessary to purchase 1,500 shares, the difference between the Employee's aggregate contribution and the purchase price of the shares was remitted to the Employee in cash. On September 30, 2018, the Debtors terminated the ESPP and returned all Employee contributions for the current offering period prepetition. As of the Petition Date, the Debtors did not hold any Employee contributions to the ESPP.

cash payment for accrued and unused Paid Time Off in the event that the Employee ceases to be employed by the Debtors. Because Paid Time Off is an essential feature of the Debtors' employment benefits and failure to provide this benefit could harm employee morale and encourage the premature departure of employees, the Debtors request authority to honor all of their Paid Time Off obligations.

161. Subject to the Court's entry of the Interim Order and Final Order, and consistent with the Debtors' past practices, the Debtors intend to comply with their policies related to Paid Time Off in the ordinary course of business, including, without limitation, to make cash payments (subject to entry of the Final Order) (the "**PTO Payments**") for accrued but unused Paid Time Off in the event that an Employee is terminated subsequent to the Petition Date.[12]

G. <u>Contractors</u>

162. In the ordinary course of business, the U.S. Debtors and Egalet Ltd. utilize 10 independent contractors that operate as individuals or LLCs (the "**Independent Contractors**") and 3 contractors provided by employment agencies (the "**Agency Contractors**," and together with the Independent Contractors, the "**Contractors**") for various services to supplement the work performed by the Employees. These Contractors provide a variety of services to the Debtors, including accounting, finance, compliance, IT, medical and regulatory support and other back office support services. The Contractors are necessary to the smooth functioning of Debtors' operations. Certain Contractors perform functions that are not otherwise performed by the Debtors' Employees. For example, an Agency Contractor serves as the sole accounting function for Egalet Ltd.

[12] If state law requires payment of accrued and unused Paid Time Off, the Debtors are seeking authority to make such payment in the Interim Order.

163. The Contractors are compensated via various structures, including project based, hourly, or daily rates (collectively, the "**Contractor Payments**"), which are paid directly to the Contractors. The Debtors estimate that approximately $48,150 in Contractor Payments are accrued and unpaid as of the Petition Date. The Debtor seeks the authority, in its discretion, to pay that amount to the Contractors in the interim period to ensure that the Debtors' operations are not interrupted.

Worker's Compensation Policy

164. The Debtors maintain workers' compensation insurance, and request authority to continue to maintain such insurance in the Insurance Motion.

165. Moreover, the Debtors need the support of their Employees to continue their business operations and successfully prosecute their chapter 11 cases. Any delay or disruption in the payment or honoring of the salaries or the benefits described herein would significantly impair Employee morale at a time when the Debtors have a critical need for dedication, confidence, and cooperation from their Employees to ensure as smooth a transition as possible into operations under chapter 11.

166. I believe that if these obligations are not satisfied, otherwise loyal Employees may well seek other employment, which would cause a very substantial disruption in the Debtors' business operations. In addition, the Debtors would incur out-of-pocket and intangible costs to recruit and train new employees if existing Employees seek other employment. If the Debtors are unable to pay their Employees and the Employees seek other employment, the Debtors' relationships with vendors, customers, and other parties may be significantly compromised. Moreover, the Employees would suffer financial and personal hardship, and perhaps lose access

to critical services or be unable to meet their own personal obligations through no fault of their own, if the Debtors are unable to satisfy the obligations described herein.

167. For all of the reasons discussed above, the Debtors have determined that payment of the amounts described in the Wages and Benefits Motion is necessary to maintain the morale and continued dedication of the Debtors' Employees. As such, it is my belief that the requested authority to satisfy the Debtors' prepetition obligations to and on account of their Employees, as described in the Wages and Benefits Motion, is essential to the continuation of the Debtors' businesses and to the ability of the Debtors to maximize value for their estates.

D. Motion Authorizing Use of Cash Collateral

168. The ability of the Debtors to finance their operations and complete a successful chapter 11 reorganization requires immediate continued use of the Debtors' assets, including cash (the "**Cash Collateral**"). In the absence of the use of Cash Collateral, the continued operation of the Debtors' businesses would not be possible and immediate and irreparable harm to the Debtors, their estates, and their creditors would occur. It is my understanding that the Debtors do not have sufficient available sources of working capital and financing to operate their businesses in the ordinary course of business or to maintain their property without the use of Cash Collateral. The relief requested in the motion (the "**Cash Collateral Motion**") is therefore necessary for the continued operation of the Debtors' businesses and the preservation of their property, and thus is in the best interests of the Debtors, their estates, and their creditors.

169. The Prepetition Secured Creditors (as defined in the Cash Collateral Motion) and the Debtors have negotiated at arms-length and in good faith regarding the Debtors' use of Cash Collateral to fund the continued operation of the Debtors' businesses during the period (the "**Specified Period**") from the Petition Date through the date which is the earliest to occur of (i) the expiration of the Remedies Notice Period (as defined in the Cash Collateral Motion), (ii) the

date that is 45 days from the Petition Date if the Court has not entered the Final Order on or before such date, and (iii) the date that is 6 months after the Petition Date. The Prepetition Trustee (as defined in the Cash Collateral Motion) (with the consent of the Prepetition Secured Noteholders) has agreed not to object to, conditioned on the entry of the Interim Order, the Debtors' proposed use of Cash Collateral, on the terms and conditions set forth in the Interim Order, and the terms of the adequate protection provided for therein.

170. As further set forth in the Cash Collateral Motion, the Interim Order provides adequate protection in the form of superpriority claims and adequate protection liens to protect the Prepetition Secured Creditors against any diminution in value arising from the Debtors' use of Cash Collateral or the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code. The Debtors further propose to make disbursements pursuant to a 13-week cash flow forecast, including the anticipated uses of the Cash Collateral, annexed to the Interim Order as Exhibit A, subject to permitted variances.

171. Access to existing Cash Collateral on an interim basis will provide the Debtors with the liquidity necessary to continue to operate their business and thus preserve and maintain the going concern value of the Debtors' estates. Without access to such liquidity, the Debtors' ability to navigate through the chapter 11 process will be jeopardized, to the detriment of the Prepetition Secured Creditors and all of the Debtors' other stakeholders. As a result, the Debtors have an immediate need to use Cash Collateral to ensure access to sufficient working capital throughout the Specified Period.

E. Motions for Payment of Other Critical Business Expenditures

iv. Insurance Motion

172. It is my understanding that the Debtors are substantially current on amounts owed under their insurance program (the "**Insurance Program**"). Out of an abundance of caution,

however, the Debtors filed a motion (the "**Insurance Motion**") seeking authorization to make payments attributable to the prepetition period (plus any unforeseen deductible payment amounts for prepetition claims).

173. The Insurance Programs provides coverage for, among other things: directors and officers liability, crime, fiduciary, employee practices liability, commercial general liability, international general liability, automobile liability, products and completed operations liability, worker compensation, stock throughput, umbrella liability, and travel insurance (collectively, the "**Policies**"). All of the Policies are managed through Marsh USA ("**Marsh**"), as broker, both in the United States and in Denmark. Marsh assists the Debtors in determining the appropriate type and amount of insurance coverage and then negotiates with insurance companies to procure the optimal policies. Marsh is compensated for its services through commissions from the insurance carriers. Consequently, the Debtors do not owe Marsh any brokerage fees.

174. The Debtors financed a portion of the payment of the premiums for its directors and officers liability, crime, fiduciary and employee practices liability policies through an agreement with AFCO Insurance Premium Finance ("**AFCO**"). The Debtors have paid the remaining insurance premiums to AFCO for the period ending February 5, 2019.

175. The Insurance Program is essential to the preservation of the value of the Debtors' business, property and assets. Not only are some of the Policies required by various regulations, laws, and contracts that govern the Debtors' commercial activities, but I have also been advised by the Debtors' attorneys that section 1112(b)(4)(C) of the Bankruptcy Code provides that "failure to maintain appropriate insurance that poses a risk to the estate or to the public" is "cause" for mandatory conversion or dismissal of a chapter 11 case. Moreover, I have been advised by my attorneys that the Operating Guidelines for Chapter 11 Cases by the Office of the

United States Trustee for the District of Delaware (the "**U.S. Trustee Guidelines**") require the Debtor to maintain insurance coverage throughout the pendency of the Chapter 11 Cases.

v. Taxes Motion

176. The Debtors' filed a motion (the "**Taxes Motion**") authorizing but not directing the Debtors to pay certain prepetition Taxes and Assessments (defined below) in the ordinary course of business and (ii) authorizing banks and financial institutions to honor and process related checks and transfers.

177. The Debtors incur taxes in the ordinary course of business, primarily comprising of state and local income taxes and state franchise taxes (the "**Taxes**"). In the most recently concluded calendar year, the Debtors incurred approximately $15,000 in Tax liabilities payable to various authorities. To the best of the Debtors' knowledge, no Taxes are currently due and owing. However, out of an abundance of caution, in the event any Taxes are owed, the Debtors seek authority to make such payments up to and including $20,000 for any amounts due to the various state and local U.S. taxing authorities and various Danish taxing authorities (the "**Taxing Authorities**").

178. In addition to Taxes, the Debtors incur business license, compliance and regulatory fees and other similar assessments (the "**Assessments**"). Laws and regulations in jurisdictions in which the Debtors operate require the Debtors to pay fees to obtain a range of business licenses and permits from a number of different authorities (the "**Regulatory Authorities**" and together with the Taxing Authorities, the "**Applicable Authorities**"). The methods for calculating amounts due for such licenses and permits, and the deadlines for paying such amounts, vary by jurisdiction. In the most recently concluded fiscal year, the Debtors incurred less than $6,000 in fee liabilities payable to the Regulatory Authorities. The Debtors

estimate that they are required to remit approximately $6,000 in prepetition Assessments to the Regulatory Authorities within 30 days of the Petition Date.

179. It is my understanding that, if the prepetition Taxes and Assessments are not paid, many of the Applicable Authorities to which these taxes are owed may audit the Debtors, file liens, submit motions for relief from the automatic stay, or take other aggressive action against the Debtors during the Chapter 11 Cases. If that were to occur, it would divert the Debtors' attention from their business operations and reorganization efforts and could cause the Debtors' estates to incur interest expenses, penalties, fees, and/or litigation costs, all to the detriment of the Debtors' creditors and other parties-in-interest. Moreover, payment of certain of the prepetition Taxes and Assessments are necessary for the Debtors to maintain their good standing to operate in the jurisdictions in which they do business. Any dispute with an Applicable Authority over the payment of these Taxes and Assessments could impair the Debtors' ability to conduct business in a particular jurisdiction and could negatively affect the Debtors' businesses as a whole by creating a risk that the regulatory authorities will cancel or fail to renew necessary permits or authorizations.

vi. Customer Programs

180. In the ordinary course of business, the Debtors have sought to develop and sustain a positive reputation in the marketplace through the implementation of certain forms of sales and marketing programs for the direct and indirect customers of the Debtors' pharmaceutical products. Such programs include (a) Customer Discounts; (b) Rebate Programs; (c) Chargebacks; (d) the Co-Pay Buy-Down Program; and (e) the Sales Return Program (collectively, the "**Customer Programs**"). Each Customer Program is unique and structured to fit the attributes of the particular product, customer and situation. A graphical description of the Customer Programs for OXAYDO is attached as Exhibit B to the Customer Programs Motion,

and a graphical description of the Customer Programs for SPRIX Nasal Spray is attached as Exhibit C to the Customer Programs Motion.

181. The universal goals of the Customer Programs are to meet competitive pressures, maximize sales, ensure customer satisfaction, and generate brand loyalty and goodwill for the Debtors, thereby retaining current Customers (defined below), attracting new ones, and ultimately enhancing net revenue. Through the Customer Programs, the Debtors provide, among other things, incentives for Customers to purchase the Debtors' products, discounted rates on the Debtors' products for purchases made by patients covered by health insurance, discounted rates on the Debtors' products for purchases made by patients eligible for certain government programs, and discounted rates on the Debtors' products for purchases made by low-income hospitals and clinics.

182. The Debtors' Customer Programs are common and typical of those in the pharmaceutical industry. Competition in the Debtors' industry is intense, and high standards of service, reliability, and quality performance are necessary to obtain significant awards of business from Customers. Therefore, the success and viability of the Debtors' business, and ultimately the Debtors' ability to preserve and maximize value for creditors through the Debtors' chapter 11 cases, are fundamentally dependent upon the continuation of the Customer Programs and honoring the Debtors' obligations thereunder. Maintaining ordinary course relationships with the Customers is integral to preserving the value of the Debtors' business. The Debtors submit that any value-maximizing outcome to these chapter 11 cases will, of necessity, involve the Debtors' ability to continue the Customer Programs.

<u>Customer Discounts</u>

183. With respect to OXAYDO, the Debtors' customers are wholesalers (the "**Wholesalers**"), who sell the Debtors' products to networks of pharmacies to be dispensed to patients. The Debtors have contracts with the Wholesalers to sell OXAYDO at a wholesale acquisition cost ("**WAC**"), which is the base price determined by the Debtors in their sole discretion and adjusted from time to time. The contracts with the Wholesalers provide for industry-standard discounts, including a discount to the Wholesalers for paying their invoice within the payment terms of the contract (the "**Prompt Pay Discount**"). Additionally, the Debtors have entered into distribution services agreements ("**DSAs**") with the Wholesalers. Under the DSAs, the Wholesalers charge a fee for the distribution of products, which is typically deducted from payment on purchase of the Debtors' products (the "**DSA Deduction**"). Along with product distribution, the Wholesalers provide reports of incoming and outgoing shipments to assist the Debtors forecast product demand.

184. With respect to SPRIX Nasal Spray, the Debtors' sole customer is Cardinal Health Specialty Pharmacy ("**CHSP**", and together with the Wholesalers, the "**Customers**"). CHSP adjudicates prescription claims and sends the Debtors' products directly to patients' homes overnight.[13] Pursuant to the Debtors' contract with CHSP (the "**CHSP Contract**"), CHSP receives a discount on-invoice purchase of products (the "**CHSP Discount**"). Further, as with the contracts with the Wholesalers, the CHSP Contract provides for an industry standard Prompt Pay Discount. On average, the Prompt Pay Discount, DSA Deduction and CHSP Discount (together, the "**Customer Discounts**") constitute approximately 5% – 13% of gross sales.

<u>Rebate Programs and Chargebacks</u>

[13] SPRIX Nasal Spray is a cold chain product and requires an uninterrupted series of refrigerated production, storage and distribution.

185. In the ordinary course of business, the Debtors remit rebates to private insurance companies (the "**Commercial Rebate Program**") and government agencies (the "**Government Rebate Program**", and together with the Commercial Rebate Program, the "**Rebate Programs**").

186. With respect to the Commercial Rebate Program, the Debtors have negotiated with certain private insurance companies and entered into agreements in order to gain access to patients covered by insurance and establish a preferred placement on their formulary. Under these agreements, the Debtors make rebate payments based on agreed upon rebate percentages and volume of sales. Under certain of these agreements, the cost to the patients for the Debtors' products is subsidized by private insurance plans via pharmacy benefit managers ("**PBMs**"), with which the Debtors have special pricing arrangements. The patients pay premiums to the insurance companies and the insurance companies enter into agreements with the PBMs to manage their drug costs and negotiate rebates with the Debtors. The Debtors pay an administrative fee to each PBM. The Debtors receive invoices and claim level detail for the rebate claims under the Commercial Rebate Program either monthly or quarterly, depending on their arrangement with the PBM or private insurance company.

187. The Debtors estimate that approximately $500,000 is due under the Commercial Rebate Program as of the Petition Date. Absent approval to continue making rebate payments under the Commercial Rebate Program, there is a potential risk that PBMs will attempt to reduce coverage of the Debtors' products or remove the products from their formulary entirely, which would result in an inability to access a substantial market of covered patients.

188. With respect to the Government Rebate Program, the Debtors are required to provide discounts in accordance with applicable federal and state law related to drug prices. The

Debtors must provide discounts in connection with government programs administered by the Center for Medicare and Medicaid Services ("**CMS**"), state Medicaid programs, the Medicaid Drug Rebate Program, the 340B Program, Medicare Part D, and programs requiring participating in the Federal Supply Schedule established by the Veterans Health Care Act of 1992. The amount of rebates paid under the Government Rebate Program is not negotiated. Instead, rebate amounts are determined by applying statutorily-prescribed formulas, which are based on a variety of characteristics of a particular drug. The Debtors receive rebate invoices from the various Government Rebate Programs quarterly.

189. The Debtors estimate that approximately $1,100,000 is due under the Government Rebate Program as of the Petition Date. Continuing to participate in the Government Rebate Program is critical to the Debtors' efforts to market and sell its products and continue the business as a going concern. Moreover, if the Debtors fail to comply with payments required by government agencies, they could be subject to additional reimbursement requirements, penalties, sanctions and/or fines under federal law.

190. In the ordinary course of business, the Debtors have contracted with Cumberland Consulting Group ("**Cumberland**") to assist the Debtors in administering Commercial and Government Rebate Programs, with the exception of one Commercial Rebate Program with CVS Caremark ("**CVS**"). The Debtors pay CVS directly for quarterly rebates. Additionally, CVS requires that the Debtors pay a pre-payment on the expected rebates for a given quarter at the beginning of the quarter. When the claims detail is available, the Debtor makes a true-up payment for the remainder due. If the remainder is less than the pre-payment, the pre-payment is carried forward to future periods. Cumberland provides various services, including verifying prescription claims for accuracy before payment and payment processing to rebate agencies.

Cumberland also assists the Debtors with government price reporting calculations. The Debtors pay Cumberland a monthly fee of $5,467 for ongoing services. The Debtors are required to pay additional fees for separate services, such as the setup of new contract agreements and for ad hoc consulting services. As of the Petition Date, the Debtors estimate that approximately $21,000 is due to Cumberland for its services in connection with the Rebate Programs.

191. With respect to the sale of OXAYDO, the Debtors offer deductions taken at point-of-sale to certain public health service entities ("**PHS Entities**"), which include low-income hospitals and clinics. The PHS Entities pay for the Debtors' products at a discounted price, and the Wholesalers recoup the amount of the discount through a chargeback to the Debtors (the "**Chargebacks**"). The Chargebacks do not result in an actual payment of cash to the Wholesalers. Instead, given that Wholesalers continue to owe the Debtors for subsequent product purchases, the Wholesalers simply reduce their next payment to the Debtors by the amount of the deductions to the PHS Entities. Because purchases and Chargebacks happen through the accounts receivable system on a daily basis, it is difficult for the Debtors to determine with precision the actual amount of outstanding Chargebacks at any particular time.

<u>Co-Pay Buy-Down Program</u>

192. When a patient's insurance does not completely cover the WAC of the Debtors' products, such patient is eligible for the Debtors' Co-Pay Buy-Down Program. Under the Co-Pay Buy-Down Program, the Debtors cover the remaining cost of the product over and above the insurance coverage (the "**Out-of-Pocket Costs**"). With respect to SPRIX Nasal Spray, CHSP sells the product to the patient for no Out-of-Pocket Costs. CHSP then invoices the Debtors on a monthly basis for the aggregate Out-of-Pocket Costs not paid to CHSP by patients. With respect to OXAYDO, the Debtors contract with third party entities, including RelayHealth and

McKesson Patient Relationships Solutions ("McKesson Specialty Arizona") who pay each patient's Out-of-Pocket Costs to the Wholesaler, and then invoice the Debtors on a monthly basis for the aggregate Out-of-Pocket Costs they pay. Given that prohibitive Out-of-Pocket Costs are likely to deter patients from purchasing the Debtors' products, the Co-Pay Buy-Down Program is essential to building brand loyalty. The Debtors estimate that approximately $ 11,212,000 is due under the Co-Pay-Buy-Down Program as of the Petition Date.

193. By offering Customer Discounts, Rebate Programs, Chargebacks and the Co-Pay Buy-Down Program, (together, the "**Discount Programs**") the Debtors are able to incentivize their Customers to enter into contracts with the Debtors. In addition, allowing Customers to set off the Customer Discounts, Chargebacks and Returns (as discussed below) against amounts owing to the Debtors is a customary practice in the pharmaceutical industry. The Debtors believe that the failure to continue to allow the Customers to purchase the product with the Discount Programs will result in such Customers ceasing to (a) enter into purchase agreements with the Debtors or (b) purchase the Debtors' product. Any interruption in purchases by Customers will likely have a devastating impact on the Debtors' ability to continue to sell their products and be detrimental to the Debtors' revenue stream.

Sales Return Program

194. In the ordinary course of business, the Debtors' Customers may be unable to sell products they purchased from the Debtors because the product expires, the product is damaged and unsellable, or for some other reason. Accordingly, the Debtors allow Customers to return expired and damaged products (a "**Return**") in exchange for credit within a limited time before and after the date of expiration (the "**Sales Return Program**"). Purchasers of OXAYDO may return the expired product within six (6) months prior to and twelve (12) months after the

expiration date. Credits are then issued by the Debtors to the Customer based on its purchase history and can be used to offset any amounts owed to the Debtors. The Debtors may also allow for returns of discontinued products, including ARYMO® ER (morphine sulfate) extended-release tablets, for oral use CII. Due to the short amount of days on hand CHSP holds SPRIX Nasal Spray and the direct-to-patient method shipment of the product, there is little to no exposure of returns of SPRIX Nasal Spray. As of the Petition Date, the Debtors estimate that there is approximately $120,000 in potential Returns of the Debtors' products, which would be setoff against the Debtors' prepetition accounts receivable entirely in the first 30 days of these Chapter 11 Cases. To maintain its Customers' goodwill and continued business, the Debtors seek authorization to honor any prepetition Return requests and obligations under the Sales Return Program that occur post-petition in the ordinary course of business.

195. The ability of the Debtors to maximize the value of their business and inventory is heavily dependent on continuing these Customer Programs. Any delay in honoring the Debtors' obligations under the Customer Programs (collectively, the "**Customer Obligations**") could severely disrupt the Debtors' efforts to maximize value. Any failure to honor prepetition Customer Obligations, even for a brief period of time, may drive away valuable Customers, thereby harming the Debtors' efforts to maximize the value of their inventory.

196. As of the Petition Date, the Debtors estimate they have outstanding Customer Obligations of approximately $14,028,000. Many of the Customer Obligations, however, take the form of credits applied to a particular Customer's account. The Customer Obligations that are not offset against postpetition receivables are approximately $12,833,000. Moreover, many of the Debtors' liabilities under the Customer Programs will accrue post-petition, as such obligations are based upon annual sales and growth targets. The Debtors desire to continue,

during the post-petition period, those Customer Programs that they believe are beneficial to their business and are cost-effective. Accordingly, the Debtors seek authorization to continue the Customer Programs and to perform, in their discretion, the Customer Obligations irrespective of whether these obligations arose prior or subsequent to the Petition Date

vii. Utilities

197. The Debtors filed a motion (the "**Utilities Motion**") pursuant to Section 366 of the Bankruptcy Code, seeking entry of an order (i) prohibiting the Debtors' utilities service providers from altering or discontinuing service; (ii) approving an adequate assurance deposit as adequate assurance of postpetition payment to the utilities; and (iii) establishing procedures for resolving any subsequent requests by the utilities for additional adequate assurance of payment..

198. In the ordinary course of business and in connection with the management of their properties and operation of their businesses, the Debtors obtain electricity, gas, trash collection, water, telephone services and/or other similar services (collectively, the "**Utility Services**") from a number of utility companies (collectively, the "**Utility Providers**"). The Debtors estimate that, in 2018, they have paid approximately $25,000, on average, in aggregate monthly payments to the Utility Providers for Utility Services rendered in the 12 months before the Petition Date. To the best of the Debtors' knowledge, there are generally no material defaults or arrearages of any significance with respect to undisputed invoices for the Utility Services, other than payment interruptions that may be caused by the commencement of these chapter 11 proceedings. As of the Petition Date, to the best of the Debtors' knowledge, there are no deposits held by the Utility Providers

199. The Debtors' access to uninterrupted Utility Service is essential to their ongoing operations and to their reorganization efforts. The Debtors own and/or maintain significant amounts of machinery, equipment, and other assets at a number of their owned and leased

facilities. Should a Utility Provider refuse or discontinue Utility Services, even for a brief period, the Debtors' business operations could be severely disrupted. If such disruption occurred, then the impact on the Debtors' business operations and revenue would be extremely harmful and would jeopardize the Debtors' ability to preserve and maximize the value of their respective estates. It is therefore critical that the Utility Services must continue uninterrupted. Therefore, the Debtors seek to establish an orderly process for providing adequate assurance to their Utility Companies without hindering the Debtors' ability to maintain operations. Specifically, by the Utilities Motion, the Debtors seek approval of an adequate assurance deposit of approximately $12,500.00 (which is approximately fifty percent (50%) of the estimated monthly cost of the Utility Services, based on historical averages over the prior twelve (12) months) into a newly-created segregated, interest-bearing account, as adequate assurance of postpetition payment to the Utility Providers pursuant to Section 366(b) of the Bankruptcy Code. Further, I am informed and believe that the proposed Adequate Assurance Procedures (as defined in the Utilities Motion) are consistent with procedures that are typically approved in Chapter 11 cases in this District. Accordingly, based on the foregoing and those additional reasons set forth in the Utilities Motion, I believe that the relief requested in such motion is necessary to avoid immediate and irreparable harm and is in the best interests of the Debtors' estates and their creditors and all other parties in interest.

viii. Critical Vendors

200. The Debtors' business depends on, among other things, the Debtors' ability to retain their vendors and service providers and to maintain their reputation and customer loyalty within the pharmaceutical industry. The Debtors continue to do business with vendors whose goods and services are essential to the Debtors' operations (the "**Critical Vendors**"). The Debtors filed a motion (the "**Critical Vendors Motion**") seeking entry of an order granting

authority to make payments on account of the prepetition claims of the Critical Vendors (the "**Critical Vendor Claims**"), not to exceed an aggregate amount of $3,200,000 (the "**Critical Vendor Claims Cap**"). The Debtors believe that most, if not all, of the Critical Vendor Claims will come due within the first thirty (30) days after the Petition Date, in accordance with ordinary trade terms agreed to between the Debtors and the Critical Vendors.

201. The Debtors have categorized their Critical Vendors into two subsets for purposes of this Motion and seek different caps on payment to such categories of Critical Vendors on account of their prepetition claims. First, the Debtors have Critical Vendors which provide manufacturing and supply services to the Debtors (the "**Critical Supply and Service Vendors**"). The Debtors are seeking authority to pay such Critical Supply and Service Vendors up to $2,200,000. Second, the Debtors have Critical Vendors that assist in the marketing of their pharmaceutical products (the "**Critical Co-Promote Commercialization Partners**"). The Debtors are seeking authority to pay such Critical Co-Promote Commercialization Partners up to $1,000,000.

202. The Debtors seek authority to pay, in their business judgment, all or a portion of the Critical Vendor Claims. The Debtors estimate the maximum amount needed to pay the Critical Vendor Claims is the amount of the Critical Vendor Claims Cap. The Critical Vendor Claims Cap represents the Debtors' best estimate as to how much must be paid to such creditors to continue an uninterrupted supply of critical goods and services. The Debtors may pay less than the requested amount. The Debtors further request that the Court grant the Debtors the authority to allocate the forgoing amounts at the Debtors' discretion without prejudice to seek additional relief on an emergency basis, and subject to an agreement to receive terms consistent

with Customary Trade Terms (as defined in the Critical Vendors Motion) from the Critical Vendors.

203. In an exercise of business judgment, the Debtors have determined that continuing to receive specialized goods and services from the Critical Vendors is necessary to operate and restructure their business as a going concern and to maximize value. If granted discretion to satisfy Critical Vendor Claims, as requested in this Motion, the Debtors will assess, case by case and in real time, the benefits to the estates of paying the Critical Vendor Claims and pay each claim only to the extent their estates will benefit. Without this relief, the Debtors believe that the Critical Vendors could limit their efforts or cease providing goods and services to the Debtors or otherwise take action to impede the Debtors' restructuring – a dire result for the Debtors and their stakeholders.

204. The Debtors believe that most of their vendors will continue to do business with the Debtors after commencement of their chapter 11 cases because doing so makes good business sense. The Debtors, however, anticipate that certain Critical Vendors that supply goods or services that are necessary to their business may: (a) refuse to deliver goods or services without payment of their prepetition claims; (b) refuse to deliver goods or services on reasonable credit terms absent payment of prepetition claims, thereby requiring the Debtors to use even greater liquidity and increase their operating costs; or (c) reduce their efforts to deliver the same quality of goods or services.

205. Further, all of the prepetition claims that the Debtors seek to pay hereunder are unimpaired under the Plan. Therefore, the relief requested herein simply accelerates the timing of payments on account of the Critical Vendor Claims that would otherwise be payable upon the

effective date of the plan. The mere timing difference is, in the Debtors' business judgment, warranted in order to avoid the risk of deteriorating relationships with the Critical Vendors.

206. To ensure that the Debtors identify only those vendors that are actually critical to the Debtors' businesses, the Debtors have and will continue to extensively analyze and review their immediate needs. To determine which of the Debtors' vendors are critical to the Debtors' business, the Debtors will use the following criteria: (a) whether the vendor in question is a "sole source" provider; (b) whether quality requirements or other specifications prevent the Debtors from obtaining a vendor's products or services from alternative sources within a reasonable timeframe; (c) whether a vendor meeting the standards of (a) or (b) is likely to refuse to ship product to the Debtors postpetition if their prepetition balances are not paid; (d) the degree to which replacement costs (including, pricing, transition expenses, professional fees and lost sales of future revenue) exceed the amount of a vendor's prepetition claim; and (e) whether an agreement exists by which the Debtors could compel a vendor to continue performing on prepetition terms.

207. I am confident that this process has appropriately identified only those vendors that meet some or all of the foregoing stringent guidelines and that, if the Debtors failed to pay for the vital goods and services they have provided prepetition, would likely cease to provide them in the future. It is my opinion that the cessation of such goods or services would adversely impact the Debtor's ability to reorganize, and any efforts to replace such good or services would distract the Debtor from the chapter 11 process more generally, at the expense of the Debtor's creditors and other parties in interest.

208. I have reviewed each of the First Day Motions (including the exhibits and schedules attached thereto) described above, and, to the best of my knowledge, I believe that the

facts set forth in the First Day Motions are true and correct. If I were called upon to testify, I could and would, based on the foregoing, testify competently to the facts set forth in each of the First Day Motions.

209. Furthermore, as a result of my personal knowledge, information supplied to me by other members of the Debtors' management and from my colleagues that perform services for the Debtors, from my review of relevant documents, or upon my opinion based upon my experience, discussions with the Debtors' advisors and knowledge of the Debtors' operations and financial condition, I believe the relief sought in the First Day Motions is necessary for the Debtors to effectuate a smooth transition into chapter 11 bankruptcy, to avoid irreparable harm to their businesses and estates, and is in the best interests of the Debtors' creditors, estates, and other stakeholders.

210. Accordingly, for the reasons stated herein and in each of the First Day Motions filed concurrently or in connection with the commencement of these Chapter 11 Cases, I believe that the relief sought in the First Day Motions should be granted by the Court in its entirety, together with such other and further relief for the Debtors as this Court deems just and proper, in the most expeditious manner possible.

Dated: October 30, 2018

/s/ Robert Radie
Name: Robert Radie
Title: Chief Executive Officer