UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	**Chapter 11**
SYNERGY PHARMACEUTICALS INC., *et al.*,	**Case No. 18-14010 (___)**
Debtors.[1]	**(Joint Administration Pending)**

DECLARATION OF GARY G. GEMIGNANI IN SUPPORT OF CHAPTER 11 PETITIONS AND FIRST-DAY PAPERS

I, Gary G. Gemignani, hereby declare under penalty of perjury that the following is true to the best of my knowledge, information, and belief:

1. I am the Chief Financial Officer of Synergy Pharmaceuticals Inc. ("**Synergy Pharmaceuticals**") and Synergy Advanced Pharmaceuticals, Inc. ("**Synergy Advanced**," and collectively with Synergy Pharmaceuticals, the "**Debtors**," the "**Company**," or "**Synergy**"), the debtors and debtors-in-possession in the above-captioned cases. To minimize any business disruption caused by the commencement of these Chapter 11 Cases (as defined below), the Debtors seek various types of relief through "first-day" applications and motions filed contemporaneously herewith (collectively, the "**First-Day Papers**").[2] I submit this declaration (this "**Declaration**") in support of the Debtors' (a) voluntary petitions for relief under chapter 11

[1] The Debtors in these chapter 11 cases, along with the last four digits of their respective tax identification numbers, are as follows: Synergy Pharmaceuticals Inc. (5269); Synergy Advanced Pharmaceuticals, Inc. (4596). The address of the Debtors' corporate headquarters is 420 Lexington Avenue, Suite 2012, New York, New York 10170.

[2] Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the relevant First-Day Papers.

of title 11 of the United States Code (the "**Bankruptcy Code**") and (b) First-Day Papers. I am authorized to submit this Declaration on behalf of the Debtors.

2. I have held my current position as Executive Vice President and Chief Financial Officer of Synergy Pharmaceuticals since April 2017. I have more than 20 years of experience in the pharmaceutical and biopharmaceutical industry. Prior to joining Synergy, most recently, I served as Chief Executive Officer and Chief Financial Officer of Biodel, Inc. (now Albireo), overseeing business and strategic planning, operations, and financing activities of the company. During my tenure at Biodel, Inc., I successfully led the reverse merger with Albireo and managed several corporate restructurings to strengthen the company's overall financial position. Prior to this, I served in senior and executive financial and operational roles with multiple public and private companies including Coronado Biosciences, Inc., Gentium S.p.A., Novartis Pharmaceutical Corp., Wyeth, and Prudential Financial. I received a Bachelor of Science in Accounting from St. Peter's College.

3. As a result of my tenure with the Company, my review of relevant documents, and my discussions with other members of the Debtors' management teams, I am familiar with the Debtors' day-to-day operations, business affairs, and books and records. Except as otherwise noted, I have personal knowledge of the matters set forth herein and, if called as a witness, would testify competently thereto. Except as otherwise stated, all facts set forth in this Declaration are based on my personal knowledge, my discussions with other members of the Debtors' senior management, my review of relevant documents, or my opinion, based on my experience and knowledge of the Debtors' operations and financial conditions. In making this Declaration, I have relied in part on information and materials that the Debtors' personnel and advisors have

gathered, prepared, verified, and provided to me, in each case under my supervision, at my direction, and for my use in preparing this Declaration.

4. This Declaration is divided into two parts. Part I provides background information about the Debtors, their business operations, their corporate and capital structures, and the circumstances surrounding the commencement of the Chapter 11 Cases. Part II sets forth the relevant facts in support of each of the First Day Papers.

PART I

BACKGROUND

I. The Chapter 11 Cases

5. On the date hereof (the "**Petition Date**"), each Debtor commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code (collectively, the "**Chapter 11 Cases**"). The Debtors have requested that the Chapter 11 Cases be jointly administered.

6. The Debtors continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

7. To date, the Office of the United States Trustee for the Southern District of New York (the "**U.S. Trustee**") has not appointed a creditors' committee in the Chapter 11 Cases, nor has any trustee or examiner been appointed therein.

II. The Debtors' Businesses

8. Synergy is a biopharmaceutical company focused on the development and commercialization of novel gastrointestinal ("**GI**") therapies. The Company has pioneered discovery, research, and development efforts around analogs of uroguanylin, which can be used for the treatment of GI diseases and disorders. Uroguanylin is a naturally occurring human GI peptide. Synergy's proprietary GI platform includes one commercial product, TRULANCE, and a second product candidate, dolcanatide.

A. TRULANCE (Plecanatide)

9. The Company's only commercial product, plecanatide, is available and being marketed by the Company in the United States, under the trademark name TRULANCE, for the treatment of adults with chronic idiopathic constipation ("**CIC**") and irritable bowel syndrome with constipation ("**IBS-C**"). CIC and IBS-C are chronic, functional GI disorders that afflict millions of people worldwide.

10. People with CIC have persistent symptoms of difficult-to-pass and infrequent bowel movements, including abdominal bloating and discomfort. Irritable bowel syndrome ("**IBS**") is characterized by recurrent abdominal pain associated with two or more of the following criteria: related to defecation, associated with a change in the frequency of stool, or associated with a change in the form (appearance) of the stool. IBS can be subtyped by the predominant stool form as measured by the Bristol Stool Form Scale: constipation (IBS-C), diarrhea (IBS-D), or mixed (IBS-M).

11. TRULANCE is structurally identical to human uroguanylin (except for a single amino acid substitution) and is the only treatment thought to replicate the pH-sensitive activity of uroguanylin. Uroguanylin acts in the small intestine to stimulate fluid secretion and maintain stool consistency necessary for regular bowel function.

12. In January 2017, the FDA approved TRULANCE three milligram tablets for the once-daily treatment of adults with CIC. The Company began commercializing TRULANCE in the United States in March 2017. In January 2018, the FDA approved TRULANCE for the treatment of adults with IBS-C. TRULANCE is the only prescription medication for adults with CIC and IBS-C that can be taken once daily, with or without food, at any time of the day. TRULANCE is packaged in a unique, 30-day calendar blister pack.

13. On February 27, 2018, the Company entered into a definitive licensing, development and commercialization agreement (the "**Cipher Agreement**") with Cipher Pharmaceuticals Inc. ("**Cipher**") under which Cipher was granted the exclusive right to develop, market, distribute, and sell TRULANCE in Canada. Under the terms of the Cipher Agreement, Synergy received an upfront payment of $5 million and is eligible for an additional regulatory milestone payment, as well as royalties from product sales in Canada. In addition, Cipher is responsible for the costs and expenses associated with the development and commercialization of TRULANCE in Canada (including the costs of obtaining regulatory approval) and is required to purchase exclusively from Synergy in Canada.

14. On August 6, 2018, the Company entered into a definitive licensing, development and commercialization agreement (the "**Luoxin Agreement**") with Shandong Luoxin Pharmaceutical Group Stock Co., Ltd. ("**Luoxin**") granting Luoxin with exclusive rights to develop and commercialize TRULANCE in mainland China, Hong Kong, and Macau. Under the terms of the Luoxin Agreement, Synergy received an upfront payment of $10.1 million (net of China withholding tax and VAT) and is eligible for additional regulatory and commercial milestone payments, as well as royalties from product sales. In addition, Luoxin is responsible for the costs and expenses associated with the development and commercialization of TRULANCE in China, Hong Kong, and Macau (including the costs of obtaining regulatory approval) and is required to purchase exclusively from Synergy its requirements of TRULANCE in China, Hong Kong, and Macau.

15. Synergy does not manufacture or distribute TRULANCE itself. Instead, Synergy manages its production and distribution of TRULANCE through third-party contract manufacturers. TRULANCE production and distribution consists of several phases: (a)

manufacturing the raw ingredients for its products (*i.e.*, the active pharmaceutical ingredient (the "**API**")), (b) manufacturing the API into consumable pharmaceuticals, (c) testing the pharmaceuticals to conduct both analytical release studies and stability samples, (d) packaging the Debtors' commercial product, and (e) distribution to ensure that the Debtors' commercial products and samples make their way to end-users.

B. Dolcanatide

16. Dolcanatide is the Company's development-stage compound. Dolcanatide is designed to be an analog of uroguanylin with enhanced resistance to standard digestive breakdown by proteases in the intestine. The Company has demonstrated proof-of-concept in treating patients with ulcerative colitis. In addition, the Company has shown proof-of-concept with dolcanatide in treating patients with opioid-induced constipation ("**OIC**").

C. Patents and Proprietary Rights

17. Patents and other proprietary rights are an essential element of the Company's business. As of the Petition Date, the Company has approximately 33 issued United States patents related to TRULANCE, dolcanatide, various derivatives and analogs of TRULANCE and dolcanatide, and their uses and manufacture. Each of the existing U.S. patents expires between 2022 and 2034. In addition, Synergy has numerous granted foreign patents, which cover TRULANCE and dolcanatide, certain analogs, and their uses. Each of the foreign patents expires between 2022 and 2030. The Company also has patent applications relating to TRULANCE and dolcanatide pending in the United States and foreign jurisdictions.

D. The Debtors' Corporate and Capital Structures

18. The Debtors' organizational structure is comprises two entities: Synergy Pharmaceuticals and its wholly owned subsidiary, Synergy Advanced, both Delaware

corporations. Synergy Pharmaceuticals is publicly traded on the NASDAQ Global Select Market under the symbol SGYP.

19. As of the Petition Date, the Debtors had two issuances of debt outstanding of approximately:

(a) approximately $110 million of outstanding principal and accrued but unpaid interest including PIK interest under Synergy Pharmaceuticals' senior secured term loan; and

(b) approximately $19 million in aggregate principal amount of 7.50% senior convertible notes due 2019.

(i) Secured Term Loan

20. Synergy Pharmaceuticals is party to a senior secured term loan (the "**Prepetition Term Loan**") under that certain Term Loan Agreement (as amended, restated, modified, or supplemented from time to time, the "**Prepetition Term Loan Agreement**"),[3] with CRG Servicing LLC ("**CRG**"), as administrative agent and collateral agent (in such capacity, the "**Prepetition Term Loan Agent**"), and the lenders named therein (the "**Prepetition Term Lenders**"). Synergy Pharmaceuticals' obligations under the Prepetition Term Loan are guaranteed by Synergy Advanced and secured by liens on and security interests in (a) substantially all of the Company's tangible and intangible assets, other than certain customary excluded collateral,[4] and (b) certain capital stock owned by the Company.

21. Synergy Pharmaceuticals borrowed $100 million under the Prepetition Term Loan on September 1, 2017, the closing date of the facility. Pursuant to Amendment No. 1 and Amendment No. 2, Synergy Pharmaceuticals had the ability to borrow an additional principal

[3] The Prepetition Term Loan Agreement was amended on February 26, 2018 ("**Amendment No. 1**"), August 28, 2018 ("**Amendment No. 2**"), October 30, 2018, November 13, 2018, and November 16, 2018.

[4] The proceeds from the licenses granted to Cipher and Luoxin are not encumbered by the Prepetition Term Loan.

amount of $25 million on or before October 31, 2018 ("**Second Borrowing**"); if the Second Borrowing had been completed, Synergy could have borrowed an additional principal amount of $25 million on or before December 31, 2018 ("**Third Borrowing**"); and if the Second Borrowing and Third Borrowing had been completed, Synergy could have borrowed an additional principal amount of $50 million on or before February 28, 2019. Synergy elected not to draw down the Second Borrowing, and as a result there are no additional principal borrowings available under the Prepetition Term Loan Agreement.

22. Between October 30, 2018 and November 16, 2018, the Company entered into four waivers (the "**Term Loan Waivers**"), pursuant to which the Prepetition Term Lenders waived compliance with the Minimum Market Capitalization Covenant (defined below). As consideration for the Prepetition Term Lenders' entry into the last two Term Loan Waivers, the Company paid the Prepetition Term Lenders $300,000 in fees.

23. On November 21, 2018, the Company entered into that certain Limited Forbearance Agreement (the "**Forbearance Agreement**") with the Prepetition Term Loan Agent and the Prepetition Term Lenders. Under the Forbearance Agreement, the Company acknowledged and agreed that it was in default under the Prepetition Term Loan Agreement based on its failure to maintain an Average Market Capitalization (as defined in the Prepetition Term Loan Agreement), calculated on a trailing five trading day basis, in an amount equal to at least 200% of the aggregate outstanding principal amount of the Prepetition Term Loan (excluding PIK Loans (as defined in the Prepetition Term Loan Agreement)). Pursuant to the Forbearance Agreement, the Prepetition Term Lenders agreed to temporarily forbear from exercising their respective rights and remedies in connection with a default relating to the Prepetition Term Loan Agreement for the period commencing on November 20, 2018 and

ending on the earlier to occur of (a) December 5, 2018 (11:59 p.m. Central Time) and (b) the occurrence of any additional default or Event of Default (as defined in the Prepetition Term Loan Agreement) other than a Liquidity Covenant Default (as defined in the Forbearance Agreement) under the Prepetition Term Loan Agreement. On December 5, 2018, the Company delivered a notice of default with respect to the Minimum Liquidity Covenant (defined below). The Forbearance Agreement was amended on December 5, 2018, to extend the forbearance period until the earliest to occur of (a) December 14, 2018 (11:59 p.m. Central time), (b) the occurrence of any additional default or Event of Default (as defined in the Prepetition Term Loan Agreement) other than a Liquidity Covenant Default (as defined in the Forbearance Agreement) or with respect to the Average Market Capitalization (as defined in the Prepetition Term Loan) covenant, and (c) the filing of a petition in bankruptcy if the first-day motions fail to include a motion for approval of debtor-in-possession financing and use of cash collateral acceptable to the Prepetition Term Loan Agent and Prepetition Term Lenders.

24. The Prepetition Term Loan matures on June 30, 2025. Prior to November 20, 2018, the Prepetition Term Loan bore interest at a rate equal to 9.5% per annum, with quarterly, interest-only payments, a portion of which, at the Company's option, were paid in kind. Under the terms of the Forbearance Agreement, the Prepetition Term Loan bears interest at the Default Rate of 13.5%, which must be paid in cash.

25. The Prepetition Term Loan is subject to a prepayment premium (the "**Prepayment Premium**"), upon the occurrence of certain events including the commencement of these Chapter 11 Cases and the prepayment of the Prepetition Term Loan. The Prepayment Premium steps down each year. For the period July 1, 2018 to June 30, 2019, the Prepayment Premium is equal to 32.5% of the aggregate outstanding principal amount of Prepetition Term

Loan being prepaid. In addition, upon any prepayment or repayment of the Prepetition Term Loans (including at maturity), there is a back-end facility fee equal to two percent (2.0%) of (a) in the case of a partial optional or mandatory prepayment, the aggregate principal amount of Prepetition Term Loans (including PIK Loans (as defined in the Prepetition Term Loan Agreement)) prepaid or (b) in the case of any other payment for any other reason, the aggregate principal amount of the maximum amount of Prepetition Term Loans (including PIK Loans (as defined in the Prepetition Term Loan Agreement)) advanced or deemed advanced (the "**Back-End Facility Fee**").

26. As of the Petition Date, approximately $110 million is outstanding under the Prepetition Term Loan Agreement, inclusive of accrued but unpaid interest. The Prepayment Premium was triggered upon the filing of the Chapter 11 Cases and became due and payable in the amount of approximately $35.0 million upon the filing. In addition, the Back-End Facility Fee of approximately $2.2 million will apply upon payment of the Prepetition Term Loan at maturity or prepayment on any earlier date.

(ii) 7.50% Senior Convertible Notes

27. Pursuant to that certain Indenture dated as of November 3, 2014, by and among Wells Fargo Bank, National Association, as Trustee and Synergy Pharmaceuticals,[5] Synergy Pharmaceuticals issued $200 million aggregate principal amount of 7.50% Senior Convertible Notes with a maturity date of November 1, 2019 (the "**Prepetition Notes**"). The obligations under the Prepetition Notes are unsecured and are not guaranteed.

[5] On February 28, 2017, Synergy received consents from certain holders of its Prepetition Notes to enter into that certain Supplemental Indenture with Wells Fargo, N.A., as trustee, which eliminated certain restrictive covenants (*i.e.*, Limitation on Indebtedness, Future Financing Rights for Certain Investors, and Licensing Limitations). The Company paid an assignee approximately $1.6 million for such consent.

28. In several transactions from January 2015 through March 2017, approximately $181.4 million in aggregate principal amount of the Prepetition Notes were converted pursuant to the terms of the Prepetition Notes, or pursuant to the terms of various privately negotiated exchanges, into shares of Synergy's common stock, including shares issued in satisfaction of accrued and unpaid interest. As of the Petition Date, the Prepetition Notes had an outstanding principal balance of approximately $18.6 million and are classified as a current liability as the Company believes it may not be in compliance with certain provisions of the Prepetition Notes, which could result in an acceleration of the maturity of the Prepetition Notes.

(iii) Synergy Common Stock

29. As of November 9, 2018, there were 248,037,301 shares of Synergy Pharmaceuticals' common stock outstanding. On December 11, 2018, the closing price of Synergy's stock was $0.34 cents/share. In connection with its November 13, 2017 issuance of 21,705,426 shares of common stock, Synergy Pharmaceuticals also issued warrants to purchase 21,705,426 shares of Synergy Pharmaceuticals' common stock at an exercise price equal to $2.86 per share.

III. Events Precipitating the Chapter 11 Cases

A. Challenges Achieving Projected Sales and Accessing Capital Markets

30. As noted above, Synergy first obtained FDA approval for TRULANCE in January 2017 for the treatment of adults with CIC. The Debtors began commercializing TRULANCE in the United States in March 2017. In January 2018, the FDA also approved TRULANCE for the treatment of adults with IBS-C.

31. The Company has faced several headwinds in its efforts to increase sales volume, and, as a result, sales growth for TRULANCE has been slower than anticipated. Market access is highly competitive. The companies that sell products that compete with TRULANCE have more

capital, significantly larger operations and infrastructure, and thus, have been able to provide larger discounts for managed care organizations and negotiate better terms with payors. In addition, the overall market growth for branded CIC and IBS-C products has been slower than anticipated.

32. Furthermore, the Company has been severely limited in its ability to obtain additional capital via public markets due to (a) the Company's shareholders voting not to approve any increase in authorized shares and (b) restrictive debt covenants in the Prepetition Term Loan Agreement, including without limitation restrictions imposed on additional capital raised through a debt financing. Due to its inability to access additional capital on reasonable terms, the Company has been unable to effectively address the impediments it has faced in the past year.

B. Debt Restructuring Efforts

33. The Company's commercialization and research and development efforts have required significant investments. To fund these investments, the Company has engaged in several capital-raising transactions in the last several years, including entering into the Prepetition Term Loan Agreement in September 2017. The Prepetition Term Loan Agreement, however, contains restrictive financial covenants, including:

- a minimum liquidity covenant (the "**Minimum Liquidity Covenant**") requiring the Company to maintain liquidity at the end of each day in an amount exceeding the greater of (i) $10 million plus the aggregate principal amount of outstanding Prepetition Notes and (ii) to the extent Synergy incurred Permitted Priority Debt (as defined in the Prepetition Term Loan Agreement), the minimum cash balance, if any, required of the Company by the Permitted Priority Debt creditors plus the aggregate principal amount of outstanding Prepetition Notes, which as of the Petition Date, required the Company to maintain a daily liquidity of approximately $28.6 million;

- a minimum market capitalization covenant (the "**Minimum Market Capitalization Covenant**") requiring the Company to maintain at all times an average market capitalization of 200% of the aggregate outstanding principal amount of the Prepetition Term Loan (excluding PIK Loans (as defined in the Prepetition Term

Loan Agreement)), which is equal to $200 million,[6] calculated on a trailing five trading day basis; and

- a minimum revenue covenant, which is subject to an equity cure or a permitted debt cure, requiring minimum revenues from sales of TRULANCE of $61 million for the twelve-month period beginning January 1, 2018 (*i.e.*, January 1, 2018 through December 31, 2018).[7]

At the time at which the Company had entered into the Prepetition Term Loan Agreement—six months after the Company began commercializing TRULANCE—the Company's sales forecasts supported (and exceeded) the thresholds at which these financial covenants were set.

34. As a result of its lower-than-expected sales performance through June 2018, the Company forecasted that it could be at risk of defaulting on its 2018 Minimum Revenue Covenant. The Company projected that total net sales for 2018 would be between $42 million and $47 million, which would be below the $61 million threshold in the Minimum Revenue Covenant, which, absent an equity cure, would trigger a default.

35. Anticipating potential defaults under the Prepetition Term Loan Agreement, Synergy entered into discussions with CRG in an attempt to renegotiate the terms of the Prepetition Term Loan Agreement; however, Synergy was unable to further amend the Prepetition Term Loan Agreement with respect to the financial covenants.

36. Simultaneously, the Company pursued potential alternative financing options and engaged in a marketing process for a sale of the Company (which is described below in more detail). Ultimately, only one party was identified that was potentially willing to provide

[6] The Minimum Market Capitalization Covenant was initially set at $300 million. However, in connection with the Amendment No. 1, the Minimum Market Capitalization Covenant was revised to an amount equal to 200% of the aggregate outstanding principal amount of the Term Loan (excluding PIK Loans (as defined in the Prepetition Term Loan Agreement)).

[7] The minimum revenue covenant also contains minimum revenue requirements for the twelve month periods beginning January 1, 2017, January 1, 2019, January 1, 2020, January 1, 2021, and January 1, 2022.

alternative financing, and the Company and one of its financial advisors commenced preliminary discussions regarding the terms of that potential alternative financing. However, the Company, in consultation with its legal and financial advisors, determined that the alternative financing that was offered did not align with the Company's strategic objectives, was unlikely to provide greater value than the BH Stalking-Horse Agreement (defined below), and was not reasonably executable. Moreover, as of October 2018, the Company had not identified any strategic transactions that were reasonably executable outside of a chapter 11 proceeding.

37. On October 25, 2018, after negotiations to amend the Prepetition Term Loan Agreement had proven unsuccessful to date, and in light of its financial situation, the Company issued a press release updating its stakeholders about its strategic-review process (described in greater detail below), liquidity situation, and sales projections for 2018. Subsequently, Synergy's stock price fell, reducing its market capitalization to approximately $107 million. Synergy's common stock continued to trade at approximately the same levels over the next four trading days and, as a result, Synergy's market capitalization fell below the $200 million covenant threshold for five trading days, which would have triggered a default on the Minimum Market Capitalization Covenant had the Company not entered into the Term Loan Waivers.

38. Between October 30, 2018, and November 16, 2018, the Prepetition Term Lenders entered into the four Term Loan Waivers, agreeing to waive compliance with the Minimum Market Capitalization Covenant through November 20, 2018. On November 21, 2018, Synergy and the Prepetition Term Lenders entered into the Forbearance Agreement, pursuant to which the Prepetition Term Lenders agreed to temporarily forbear from exercising rights and remedies in connection with defaults under the Prepetition Term Loan Agreement through December 5, 2018, which was subsequently extended to December 14, 2018.

39. On or about November 13, 2018, the Company engaged FTI Consulting ("**FTI**") to provide financial advisory services in connection with the Company's operational efforts and a potential restructuring transaction.

C. Consideration of Strategic Alternatives and Sale Process

40. In parallel with its efforts to obtain relief under the Prepetition Term Loan and/or source alternative financing, Synergy continued to run a strategic review process to explore potential strategic alternatives to maximize value, including a sale, restructuring, or other transaction. That review process commenced in May 2018 (the "**2018 Strategic Review Process**") when Synergy directed Centerview Partners LLC ("**Centerview**") to conduct buyer outreach. The 2018 Strategic Process followed an extensive buyer outreach process conducted by Centerview over the prior three-year period beginning with Synergy's engagement of Centerview in 2015.

41. During that three-year period, Centerview, at the Company's direction, contacted over 30 pharmaceutical companies and financial buyers in order to assess their interest level in a strategic transaction with Synergy. During that outreach effort, several companies expressed interest in a potential transaction with Synergy and conducted due diligence. However, that process yielded no reasonable offers to acquire the Company, nor any other attractive strategic transactions.

42. During the 2018 Strategic Review Process conducted in the second, third, and fourth quarters of 2018, at the direction of the Company, Centerview contacted the third parties that had previously expressed interest in the Company, as well as several additional potential buyers, including pharmaceutical companies and potential financial buyers. In parallel, the Company continued its efforts to (a) identify a corporate partner with the commercial infrastructure and capabilities to augment Synergy's efforts to maximize sales of TRULANCE

and (b) identify commercial products to in-license to further leverage Synergy's commercial infrastructure. In connection with these discussions, a virtual data room containing extensive information about the Company, including documents describing the Company's business and financial results in considerable detail, was established for those parties who entered into non-disclosure agreements.

43. Over the course of the 2018 Strategic Review Process, Synergy and Centerview held in-depth conversations with various potential interested parties, including Bausch Health Companies ("**BH**"), with whom they had been speaking since 2017, regarding potential commercial partnerships or an acquisition of the Company. As described above, Cipher was granted the exclusive right to develop, market, distribute, and sell TRULANCE in Canada and the Company entered into a definitive licensing, development, and commercialization agreement with Luoxin granting it exclusive rights to develop and commercialize TRULANCE in mainland China, Hong Kong, and Macau. However, as of October 25, 2018, the Company was unable to execute any other partnering or in-licensing transaction, and only BH had submitted a non-binding offer subject to due diligence to acquire the Company. The non-binding BH offer contemplated an out-of-court sale, but valued Synergy significantly below the Company's market capitalization. After receiving the non-binding BH offer, the Company engaged actively with BH in pursuit of facilitating a value-maximizing transaction.

44. Following the Company's October 25, 2018 press release and the drop in the Company's market capitalization, BH reaffirmed its interest in pursuing an acquisition of the Company with a non-binding offer to purchase all of Synergy's stock in an out-of-court sale. The Company remained committed to pursuing a strategic or alternative financial transaction that would maximize value. Accordingly, the Company continued to engage in extensive negotiations

with BH regarding a sale transaction, while simultaneously seeking out other potential strategic partners and alternative financial transactions. Centerview, at the direction of the Company, continued its outreach effort to other potential buyers, including several other third parties not previously contacted. Ultimately, the Company's outreach to potential buyers did not result in further written offers.

45. As conversations with BH and outreach to other potential buyers progressed, the Company, in consultation with its financial advisors and counsel, determined that, given the Company's difficulties in achieving sales projections and its deteriorating liquidity position, a sale of the Company to BH was the best available option to maximize value, and that an in-court sale pursuant to Bankruptcy Code section 363 was the only reasonably executable structure through which a transaction with BH could be completed.

46. The Debtors subsequently continued negotiations with BH. These negotiations resulted in substantial improvements in value over BH's initial section 363 sale offer, and ultimately culminated in an agreement with BH (the "**Stalking-Horse Agreement**") that contemplates a section 363 sale (the "**Sale**") subject to higher and better offers, and pursuant to which BH would serve as stalking-horse bidder (the "**Stalking-Horse Bidder**"). The Debtors executed the Stalking-Horse Agreement on or about December 12, 2018. The Stalking-Horse Agreement contemplates the transfer of substantially all of the assets of the Debtors (including the Debtors' intellectual property, certain customer and vendor contracts, accounts receivable, and goodwill) and, to that end, provides for, among other things, the assumption and assignment to the Stalking-Horse Bidder of certain contracts material to the operation of the business.

47. The Debtors' board of directors (the "**Board**") met regularly throughout the Debtors' process of considering strategic and financial alternatives and was kept apprised of the

status of proposals and options available to the Debtors. In addition to numerous other meetings that were regularly held throughout the strategic alternatives process, at a meeting of the Board held on December 11, 2018, the Board, after full deliberation, determined that entering into the Stalking-Horse Agreement, filing these Chapter 11 Cases, and pursuing the sale process contemplated in the Stalking-Horse Agreement (which subjects the Stalking-Horse Agreement to higher and better offers) as part of these Chapter 11 Cases would be the appropriate means by which to pursue a value maximizing transaction.

48. The Debtors believe that the transaction negotiated with the Stalking-Horse Bidder represents the highest and best offer available to the Debtors at this time, subject to higher and better offers received during the marketing process contemplated by the Debtors' contemporaneously filed motion to approve the Sale. The transaction negotiated with the Stalking-Horse Bidder is the culmination of a comprehensive marketing process that transpired over a multi-year period. This prepetition marketing process will be supplemented during the postpetition marketing period contemplated by the bidding procedures, thereby providing further opportunity for interested bidders to formally bid for the Debtors' assets and business operations.

D. DIP Financing

49. Once the Debtors determined that the Sale would be executed through a section 363 process, Centerview, at the direction of the Debtors, reached out to the Debtors' prepetition lenders, regarding the terms of potential debtor-in-possession ("**DIP**") financing. The Debtors received two DIP proposals, one of which was from the Prepetition Term Lenders. Both proposals contemplated a "priming" DIP facility. In addition, Centerview solicited financing proposals from several potential third-party financing sources. None of the parties contacted were willing to provide DIP financing on a junior basis or participate in a priming fight under these circumstances. Ultimately, Synergy determined that the debtor-in-possession financing (the

"**DIP Financing**") provided by the Prepetition Term Lenders represented the best available alternative for debtor-in-possession financing. The DIP Financing will facilitate the section 363 sale process, providing the Debtors with new capital—in the form of a senior secured, priming, superpriority debtor-in-possession term loan facility in the aggregate principal amount of approximately $155 million (including $45 million in "new money" loans)—needed to allow the Debtors to continue operations through the closing of the Sale and facilitate an orderly post-closing wind-down.

PART II

FIRST-DAY PAPERS[8]

50. To facilitate their restructuring efforts, the Debtors have filed the First-Day Papers, each as listed on the attached **Exhibit A**, concurrently with this Declaration, and respectfully request that this Court enter the proposed orders granting such First-Day Papers. I have reviewed each of the First-Day Papers and proposed orders (including the exhibits thereto), and the facts set forth therein are true and correct to the best of my knowledge, information, and belief. I believe that the relief sought in each First-Day Paper (a) is vital to enable the Debtors transition into, and operate in, Chapter 11 with minimum interruption or disruption to their businesses or loss of productivity or value and (b) constitutes a critical element in maximizing value during these Chapter 11 Cases.

I. Administrative Pleadings (Items 1 through 5)

51. The Debtors have filed five "administrative" pleadings that seek to (a) jointly administer the Chapter 11 Cases for procedural purposes only, (b) authorize the Debtors to file a consolidated list of creditors, (c) grant the Debtors additional time to file their schedules

[8] Capitalized terms used but not defined in Part II have the meanings ascribed to them in the relevant First-Day Paper.

statements, (d) establish certain notice, case management, and administrative procedures in the Chapter 11 Cases, and (e) authorize the Debtors to retain Prime Clerk LLC ("**Prime Clerk**") as claims and noticing agent.

A. Joint Administration (Item 1)

52. The Debtors are requesting that the Chapter 11 Cases be jointly administered for procedural purposes only. As set forth above, the Debtors are affiliated with each other. Joint administration of these cases will avoid the unnecessary time and expense of duplicative motions, applications, orders, and other papers and related notices that otherwise would need to be filed in all of the cases absent joint administration. Accordingly, joint administration will save considerable time and expense.

B. Motion to File Consolidated List of Creditors (Item 2)

53. The Debtors seek entry of any order (a) authorizing the Debtors to file a consolidated list of creditors in lieu of submitting separate mailing matrices for each Debtor, (b) authorizing the Debtors to redact certain personal identification information for individual creditors, and (c) granting related relief.

54. I believe that permitting the Debtors to maintain a single consolidated list of creditors, in lieu of filing a separate creditor matrix for each Debtor, is warranted. Under the circumstances, reformatting the Creditor List, preparing and filing separate formatted creditor matrices, and otherwise complying with the List-Filing Requirements will unnecessarily burden the Debtors, without any corresponding benefit to the estates. Moreover, I believe that cause exists to authorize the Debtors to redact address information of individual creditors—many of whom are the Debtors' employees—from the Creditor List because such information could be used to perpetrate identity theft.

55. As stated herein, Synergy is a public company with over approximately 248 million shares of common stock outstanding. Synergy's stock is publicly traded on the NASDAQ, and beneficial ownership of the common stock is widely dispersed. I believe that preparing a list of all of Synergy's equity security holders with last-known addresses and sending notice to all parties on such list will be burdensome, expensive, time consuming, and serve little or no beneficial purpose.

C. Motion Extending Time to File Schedules and Statements (Item 3)

56. The Debtors are requesting (a) a 14-day extension of time to file their schedules of assets and liabilities and statements of financial affairs (collectively, the "**Schedules and Statements**") and (b) permission to file their monthly operating reports required by the Operating Guidelines and Reporting Requirements for Debtors in Possession and Trustees, issued by the Executive Office of United States Trustees (rev. 11/27/13) (the "**U.S. Trustee Guidelines**") by consolidating the information required for each Debtor in one report that tracks and breaks out all the specific information (*e.g.*, receipts, disbursements, etc.) on a debtor-by-debtor basis in each monthly operating report ("**MOR**"). I believe that, given the substantial burdens already imposed on the Debtors' management by the commencement of these Chapter 11 Cases, the limited number of employees available to collect the information, the competing demands upon such employees, and the time and attention the Debtors must devote to the restructuring process, cause exists to extend the deadline to file a list the Debtors' Schedules and Statements. The requested extension will enhance the accuracy of the Statements and Schedules when filed and help avoid the potential necessity of substantial subsequent amendments. I do not believe that any party-in-interest will be prejudiced by the requested extension of time.

57. Furthermore, I believe that consolidating the information required by the U.S. Trustee Guidelines for each Debtor in one report that tracks and breaks out all specific

information on a debtor-by-debtor basis will promote efficiency in these Chapter 11 Cases without prejudicing any party-in-interest, as the MORs would accurately reflect the Debtors' business operations and financial affairs.

D. Case Management Motion (Item 4)

58. The Debtors have proposed certain notice, case management, and administrative procedures (the "**Case Management Procedures**"). I believe the Case Management Procedures will facilitate service of notices, motions, applications, declarations, objections, responses, memoranda, briefs, supporting documents, and other documents filed in these Chapter 11 Cases (collectively, the "**Court Filings**") that will be less burdensome and costly than serving such pleadings on every potentially interested party, which, in turn, will maximize the efficiency and orderly administration of these Chapter 11 Cases, while at the same time ensuring that appropriate notice is provided, particularly to parties who have expressed an interest in these cases and those directly affected by a request for relief.

E. Application to Retain Prime Clerk as Claims and Noticing Agent (Item 5)

59. The Debtors seek authority to retain Prime Clerk as claims and noticing agent in the Chapter 11 Cases. I understand that requesting such appointment is required by the rules of this Court given that the Debtors have more than 250 creditors and/or parties-in-interest listed on their creditor matrix. I believe that Prime Clerk's retention is the most effective and efficient manner of noticing these creditors and parties-in-interest of the filing of the Chapter 11 Cases and other developments in the Chapter 11 Cases. In addition, Prime Clerk will transmit, receive, docket, and maintain proofs of claim filed in connection with the Chapter 11 Cases. Accordingly, I believe that retention of Prime Clerk, an independent third party with significant experience in

this role, to act as an agent of this Court, is in the best interests of the Debtors and their estates and their creditors.[9]

II. Operational Pleadings (Items 6 through 12)

60. The Debtors have filed seven "operational" pleadings that seek to (a) authorize the Debtors to continue using their Cash-Management System (as defined below), (b) authorize the Debtors to pay Employees (as defined below), (c) authorize the Debtors to maintain insurance coverage and pay related obligations, (d) authorize the Debtors to pay Taxes and Assessments (as defined below), (e) authorize the Debtors to pay their Utility Companies (as defined below) and provide adequate assurance of payment to those Utility Companies, (f) authorizing the Debtors to pay their Critical Vendors (as defined below), and (g) authorize the Debtors to maintain their Customer Programs (as defined below).

A. Motion to Continue Cash-Management System (Item 6)

61. The Debtors are seeking entry of an order (a) authorizing, but not directing, the Debtors to maintain their existing cash-management system and bank accounts; (b) modifying certain operating guidelines relating to bank accounts set forth in the U.S. Trustee Guidelines; (c) authorizing, but not directing the payment of related prepetition obligations; (d) authorizing, but not directing the Debtors to continue using existing checks, business letterhead, purchase orders, invoices, envelopes, promotional materials, and other business forms and correspondence (collectively, the "**Business Forms**"); (e) modifying certain requirements under section 345(b) of the Bankruptcy Code; and (f) authorizing, but not directing, the continuation of various transactions relating to (i) the business relationship between the Debtors and (ii) the certain

[9] The Debtors intend to file a subsequent application to retain Prime Clerk to perform certain administrative services under Bankruptcy Code section 327.

shared management, general, administrative, and/or other similar shared services between the Debtors (the "**Intercompany Transactions**") and the accordance of administrative-expense-priority status to all claims arising postpetition in the ordinary course of business as a result of an Intercompany Transaction (such postpetition claims, the "**Intercompany Claims**").

62. *Cash-Management System*. The Debtors maintain a cash management system (the "**Cash-Management System**") that facilitates reporting, monitors collection and disbursement of funds, reduces administrative expenses by facilitating the movement of funds and the development of more timely and accurate balance and presentment information, and administers the various Bank Accounts (as defined below) required to effect the collection, disbursement, and movement of cash.

63. The Cash-Management System consists of a cash account at HSBC Bank USA, National Association (the "**Operations Account**" held at "**HSBC**") and a money-market deposit account at Morgan Stanley Bank, National Association (the "**MMDA**" held at "**Morgan Stanley**" and, together with the Operations Account, the "**Bank Accounts**"). Both of the Bank Accounts are subject to control agreements in favor of CRG.

64. In connection with the Cash-Management System, the Debtors may incur fees and other charges (collectively, all such fees and charges, the "**Bank Account Claims**") in connection with (a) checks which have been dishonored or returned for insufficient funds in the applicable amount, and (b) any reimbursement or other payment obligations, such as overdrafts, arising under any agreements governing the Bank Accounts, including, without limitation, any prepetition cash management agreements or treasury services agreements (the "**Bank Account Agreements**").

65. *Business Forms*. The Debtors use Business Forms in the ordinary course of business. Because the Business Forms were used prepetition, they do not reference the Debtors' current status as debtors-in-possession. Requiring the Debtors to change existing Business Forms would unnecessarily distract the Debtors from their restructuring efforts, impose needless expenses on the estates, and would confer no corresponding benefit upon those dealing with the Debtors.

66. *Intercompany Transactions*. In the ordinary course of business, the Debtors engage in Intercompany Transactions. The Intercompany Transactions relate almost entirely to payroll charges for Synergy Advanced, as Synergy Pharmaceuticals pays the employees of Synergy Advanced on behalf of Synergy Advanced.

67. The Intercompany Transactions reduce administrative costs and ensure the orderly and efficient operation of the Debtors' enterprise. If the Debtors cannot continue the Intercompany Transactions, their ordinary-course operations would be unnecessarily and severely hindered. Indeed, if the Intercompany Transactions cannot continue, the Debtors would be virtually unable to operate their business during the Chapter 11 Cases, and the likelihood of a successful reorganization would decrease dramatically.

68. *Relief from the Requirements of Section 345*. I believe that the Debtors' Cash-Management System and Bank Accounts comply with section 345 of the Bankruptcy Code. Nonetheless, to the extent the Cash-Management System and the Bank Accounts do not strictly comply with Bankruptcy Code section 345, the Debtors request that they be permitted to maintain their Bank Accounts, including the MMDA, in accordance with their existing practices, for a 45-day period commencing upon entry of the Interim Order.

69. The Debtors' Cash Account is maintained by HSBC, an FDIC-insured depository that has signed a Uniform Depository Agreement. And the funds in the MMDA are invested solely in short-term U.S. Government securities. The MMDA is maintained at a reputable, financially sound institution, and the funds in the MMDA are invested solely in highly liquid, short-term U.S. government securities that the Debtors regard as cash equivalents.

70. Accordingly, I believe that the Debtors' request for relief from section 345 is warranted.

B. Payment of Employee and Payroll Obligations (Item 7)

71. To minimize the personal hardship that the Debtors' employees will suffer if prepetition obligations are not honored, as well as the harm which would result to the Debtors if employee morale is not maintained, I believe it is critically important that the Debtors (a) pay and/or perform, as applicable, prepetition obligations to current employees (collectively, the "**Employees**"), including accrued prepetition wages, salaries, other cash, and non-cash compensation claims, except as otherwise set forth in the concurrently filed *Debtors' Motion for Entry of Interim and Final Order Authorizing Debtors To Pay Prepetition Wages, Compensation, and Employee Benefits* (the "**Employee Motion**") (collectively, the "**Employee Claims**"), and pay obligations to or on account of temporary employees and independent contractors (collectively, the "**Temporary Employee/Independent Contractor Claims**"); (b) honor and continue in the ordinary course of business, until further notice, and pay (but not assume) the prepetition amounts associated with the Debtors' vacation, sick-time, and holiday-time policies, mobile-expense policies, employee-benefit plans and programs, savings and retirement plans, and worker's compensation plans and programs, the most significant of which are described below, and to pay all fees and costs in connection therewith, except as otherwise set forth in the Employee Motion (collectively, the "**Employee-Benefit Obligations**"); (c)

reimburse Employees for prepetition out-of-pocket expenses incurred in the ordinary course of business and pay business expenses charged to corporate credit cards (the "**Employee-Expense Obligations**"); and (d) pay over to the appropriate parties all prepetition withholdings from Employees and payroll-related taxes associated with the Employee Claims and the Employee-Benefit Obligations (the "**Employee Withholdings**" and, together with the Employee Claims, the Temporary Employee/Independent Contractor Claims, the Employee-Benefit Obligations, and the Employee-Expense Obligations, the "**Prepetition Employee Obligations**").

72. The Debtors employ 280 full-time Employees and one part-time temporary employee (the "**Temporary Employees**"). All of the Debtors' Employees are salaried. Thirty-nine Employees are employed by Synergy Pharmaceuticals, and 241 Employees are employed by Synergy Advanced. The Employees provide a variety of services to support the Debtors' operations. Approximately 12 Employees work in the Debtors' scientific and drug development organization, nine work in technical operations and quality assurance, 238 work in the sales and commercial team, and 21 work in general and administrative functions. The Debtors' salesforce employees work from home when they are not in the field. The Debtors' other employees generally work out of one of the Debtors' two corporate offices in New York, New York and Chesterbrook, Pennsylvania. The Debtors utilize approximately 26 individuals and firms who are engaged through various agreements as contractors, scientific collaborators, and advisors ("**Contractors**"). The Debtors do not have any unionized employees.

73. *Wages and Salaries*. Employees are paid on a semi-monthly basis on the 15th and the final day of each month (or, if such date is a holiday or weekend, on the immediately preceding business day). Payroll obligations for Employees are current on each pay date. The

Debtors have made their most recent payroll, for the period December 1, 2018, through December 15, 2018, for all Employees

74. The Debtors estimate that as of the Petition Date, substantially no amounts are owed on account of accrued and unpaid wages, salaries, and related payroll taxes and withholdings (the "**Employee Wage Claims**"). The Debtors further estimate that, as of the Petition Date, approximately $2,500 is accrued and owed to the Temporary Employees (the "**Temporary Employee Claims**") and $389,000 is accrued and owed to the Contractors (the "**Contractor Claims**")

75. *Sales Incentive Plan.* In the ordinary course of business, the Debtors maintain a quarterly incentive plan (the "**Sales Incentive Plan**") to reward non-insider Employees in the Debtors' salesforce (the "**Sales Employees**") for achieving certain sales quotas. The sales targets are typically set in the first quarter of the year and are cumulative throughout the year.

76. Approximately 222 of the Debtors' Sales Employees are eligible to participate in the Sales Incentive Plan. None of the Sales Employees are involved in the management of the Debtors' business. Amounts payable to Sales Employees under the Sales Incentive Plan depend upon the Employees' position-level and performance during the quarter, with various incentive components under the Sales Incentive Plans being designed to reward the Sales Employees for sales growth and to align such Employees' interests with the operational goals and objectives of the Debtors. In addition to quarterly bonuses, the Company also occasionally runs sales competitions that provide additional opportunities for incentive compensation. I believe that payments paid under the Sales Incentive Plan are an integral part of the aggregate compensation package for Sales Employees and provide substantial value to the Debtors' estates because they encourage such Employees to achieve important performance goals.

77. In fourth quarter 2018, due to overly optimistic sales projections, a significantly lower than usual portion of the Debtors sales force was projected to achieve their sales target and get the full amount of their quarterly incentive compensation. In order to realign the sales force with the Debtors' operational and sales growth objectives, the Debtors made two changes to their Sales Incentive Plan. First, the Debtors reduced the fourth quarter sales targets to better align with realistic expectations of prescription volumes. Second, the Company introduced a new sales contest spanning December 2018 through March 2019 to grow prescription volume. The Debtors believe that these changes to the sales force's sales incentive plan will motivate improved performance and, therefore, will promote the Debtors' objectives to maximize value for stakeholders as the Debtors progress through the sale process.

78. As of the Petition Date, no amounts are due and owing for the fourth quarter portion of the Sales Incentive Plan, but a portion of Sales Incentive Plan for the fourth quarter of this year relates to the prepetition period. Sales Incentive Plan payments for the fourth quarter of 2018 would, in the ordinary course of business, be paid in February 2019. The Debtors estimate that the maximum prepetition portion of the fourth quarter Sales Incentive Plan is approximately $1,800,000. I believe that the Sales Incentive Plan is critical to maintaining the morale and productivity of the Debtors' sales force and to maximizing the value of the Debtors' estates.

79. *Annual Corporate Bonus*. In addition to the Sales Incentive Plan, the Debtors historically maintained an annual incentive plan for non-sales Employees (the "**Corporate Employees**") (the "**Corporate Bonus Plan**" and, together with the Sales Incentive Plans, the "**Incentive Plans**"). Approximately 58 Corporate Employees are eligible to participate in the Corporate Bonus Plan. Based on our current situation, the Board of Directors has not approved any annual bonuses for 2018.

80. *Retention Bonus*. In November 2018, the Company offered retention bonuses (the "**Retention Bonus**") to 18 Employees, who are not executive management. The amount paid to each Employee under the Retention Bonus was discretionary. As a condition to receiving the bonus, the Employees were required to execute retention agreements generally requiring that the individual remain employed by the Company or repay the Retention Bonus upon his or her resignation or termination by the Company for cause. All Retention Bonuses totaled approximately $1.1 million. No Retention Bonus amounts remain accrued and unpaid as of the Petition Date.

81. *Other Compensation: Vacation, Holiday, and Sick Time, and Business Expenses.* The Debtors offer their Employees other forms of compensation, including vacation time, overtime pay, paid holidays, other earned time off, and reimbursement of certain business expenses. I believe that these forms of compensation are usual, customary, and necessary if the Debtors are to retain qualified employees during the reorganization process.

82. Vacation time ("**Vacation Time**") accrues based on an Employee's position level within the Company. All Employees at or above "Vice President" receive four weeks of Vacation Time, which accrues at 1.25 days per month. All other Employees receive three weeks of Vacation Time, which accrues at 1.67 days per month. With the exception of approximately 34 Employees, all accrued Vacation Time must be used by year-end or such Vacation Time is forfeited. Employees accrue and use Vacation Time constantly, making it difficult to quantify the cost of accrued Vacation Time as of the Petition Date. The maximum amount of unused Vacation Time is four weeks per Employee as of the Petition Date.

83. The Debtors provide Holiday time ("**Holiday Time**") in accordance with an approved holiday schedule. The Debtors have designated 12 holidays during calendar year 2018.

84. The Debtors provide personal days ("**Personal Time**") to certain Employees. Such Employees are eligible for three personal days during each calendar year. Personal Time accrues at one personal day per trimester, and no cash payouts for unused Personal Time (whether at the end of the calendar year or upon an Employee's termination) are offered.

85. The Debtors also provide Employees with sick time ("**Sick Time**" and, together with Vacation Time, Holiday Time, and Personal Days, "**PTO**"). Employees are entitled to seven days of Sick Time per calendar year, which can be increased with a note from a physician. Sick Time may not be rolled over to the next calendar year, and no cash payouts for unused Sick Time (whether at the end of the calendar year or upon an Employee's termination) are offered.

86. The Debtors routinely reimburse Company employees for travel, lodging, ground transportation, meals, supplies, and other business expenses (collectively, the "**Reimbursable Expenses**"). There are currently 251 active corporate credit cards held by Employees through a program at American Express that are used to pay for these expenses, as well as smaller point-of-sale purchases of fuel and other supplies. Amounts charged to the corporate credit cards are subject to a monthly review and approval process.

87. Employees may also incur out-of-pocket Reimbursable Expenses and seek reimbursement for their Reimbursable Expenses from the Debtors. Accordingly, the Reimbursable Expenses are incurred by Employees with the understanding that they will be reimbursed by the Debtors.

88. Most charges, credits, and payments for Reimbursable Expenses are administered by, and flow through, Concur, an online expense reimbursement software program. In particular, Employees submit expense reports through Concur. The Debtors only pay for the Reimbursable Expenses charged to the Employee's corporate American Express card after the Employee's

expense report is approved by the Employee's manager. After all requisite approvals by the Debtors and Concur's own audit, the Debtors pay American Express directly. If Employees incur Reimbursable Expenses other than on an American Express card, the Debtors reimburse the Employee directly.

89. Certain prepetition Reimbursable Expenses may not have been paid as of the Petition Date because, among other reasons, Employees had not yet submitted a request for reimbursement or approval of an expense report was still pending. Because Employees do not always submit claims for reimbursement promptly, there may be a lag time between the time expenses are incurred and the time expenses are reimbursed, and because there is a review period, it is difficult for the Debtors to determine with precision the actual amount of incurred but not reported Reimbursable Expenses as of any particular time. The average aggregate monthly amount expended by the Debtors for out-of-pocket and corporate card Reimbursable Expenses varies and can be up to $800,000, which is primarily related to expenses incurred by Employees in sales-related functions.

90. *Employee Benefits*. The Debtors provide benefit packages to Employees, including medical plans, dental plans, vision plans, and life insurance plans.

91. The Debtors provide their Employees with medical benefits pursuant to three different preferred provider medical plans (collectively, the "**Medical Plans**") through Cigna ("**Cigna**"). As of the Petition Date, approximately 75 Employees have elected individual coverage under the Medical Plans, 48 Employees have elected to cover themselves and a dependent under the Medical Plans, and 142 Employees have elected family coverage under the Medical Plans.

92. The Medical Plans are funded through Employee contributions by participating Employees and by the Debtors. Approximately 80–85% of the cost of the Medical Plans is borne by the Debtors, and Employees contribute to the Medical Plans through payroll deductions to pay for the balance. Employee contributions are collected by the Debtors as a pro-rated amount at each payroll period. Thus, payments to the Medical Plans consist of both trust-fund payments (*i.e.*, Employee contributions) and contributions from the Debtors. Total annualized spend related to the Medical Plans, based on the Debtors' most current enrollment data, is approximately $5,900,000. In addition, the Debtors occasionally incur *de minimis* true-up payments under the Medical Plans for prior periods. As of the Petition Date, the Debtors estimate that approximately $500,000 is currently owed under the Medical Plans.

93. The Debtors also offer their Employees dental benefits pursuant to two dental plans (the "**Dental Plan**") through Principal Financial. As of the Petition Date, approximately 50 Employees have elected individual coverage, 37 Employees have elected to cover themselves and a dependent, and 97 Employees have elected family coverage.

94. The Dental Plan is funded through contributions by participating Employees and by the Debtors. Approximately 80–89% of the cost of the Dental Plan is borne by the Debtors, and the remainder is paid through Employee contributions which the Debtors collect as a pro-rated amount at each payroll period. The total annual cost of the Dental Plan to the Debtors is approximately $218,434. As of the Petition Date, the Debtors estimate that no amounts are owed under the Dental Plan.

95. The Debtors also offer their Employees vision benefits pursuant to a vision plan (the "**Vision Plan**") through Principal Financial. As of the Petition Date, approximately 47

Employees have elected individual coverage, 36 Employees have elected to cover themselves and a dependent, and 85 Employees have elected family coverage.

96. The Vision Plan is funded through contributions by participating Employees and by the Debtors. Approximately 83–85% of the cost of the Vision Plan is borne by the Debtors, and the remainder is paid through Employee contributions which the Debtors collect as a pro-rated amount at each payroll period. The total annual cost of the Vision Plan is approximately $23,517. As of the Petition Date, the Debtors estimate that no amounts are owed under the Vision Plan.

97. The Debtors provide Employees with, or, in some cases, give Employees the option of purchasing, certain types of life and disability insurance, including basic life, accidental death and dismemberment, short-term disability insurance, long-term disability insurance, supplemental life, and related programs (collectively, the "**Life Insurance Plans**") pursuant to policies issued by Principal Financial.

98. The Debtors provide each Employee basic term life and accidental death and dismemberment insurance ("**Basic Life Insurance**") through Principal Financial. Generally, such Employees receive Basic Life Insurance coverage equal to 1.5 times annual base salary, up to a maximum of $750,000.

99. The Debtors provide each Employee with short-term disability coverage ("**Short-Term Disability**") through Principal Financial. Such coverage generally provides 60% of the Employee's weekly earnings up to a maximum of $2,000 per week for 12 weeks following a seven-day elimination period. The Debtors provide each Employee with long-term disability coverage ("**Long-Term Disability**") through Principal Financial. Such coverage generally provides 60% of the Employee's pre-disability earnings up to a monthly maximum of $12,000.

100. Employees may obtain certain types of supplemental life insurance coverage for themselves and their spouses and dependents ("**Supplemental Life Insurance**") at their own expense through Principal Financial. In particular, at their own expense, Employees may obtain supplemental life and accidental death and dismemberment insurance coverage for themselves of up to $500,000. Employees who elect supplemental life insurance coverage for themselves may also obtain, at their own expense, life insurance coverage of up to $200,000 for their spouse (amount cannot exceed 100% of the Employee's benefit amount) and up to $10,000 per child.

101. The Basic Life Insurance, Short-Term Disability, and Long-Term Disability, are paid primarily through employer contributions, with the Debtors bearing approximately 100% of the aggregate cost. The cost of the Supplemental Life Insurance is borne solely by Employees. The Debtors pay approximately $27,300 per month to Principal Financial on account of the Basic Life Insurance, Short-Term Disability, and Long-Term Disability. As of the Petition Date, the Debtors estimate that there are no obligations outstanding under the Life Insurance Plans, inclusive of amounts withheld from Employees.

102. The Debtors also offer Employees the opportunity to use tax-advantaged flexible spending accounts ("**FSA**") to use pre-tax dollars toward the payment of medical or dependent care expenses. At the beginning of each calendar year, the FSA participants commit a set amount of funds for the FSA, and the Debtors collect a pro-rated amount at each payroll period and pay claims as they come due (up to the pre-committed amount). The participant submits claims to the claims administrator, and the claims administrator reimburses the Employee for the claimed amount and seeks reimbursement from the Debtors. The Debtors pay an administrative fee of approximately $850 per month for the FSA. As of the Petition Date, approximately $300 is outstanding on account of administrative fees and claims under the FSA

103. The Debtors also make available to Employees, at the Employees' expense, certain additional insurance coverage. As of the Petition Date, such optional coverage includes supplemental (voluntary) life insurance, AD&D insurance, and voluntary critical illness and accident insurance, all of which are provided by Principal Financial, a legal and identity protection plan provided by LegalShield, and a transit benefit provided by Clarity (collectively, the "**Optional Plans**"). The Optional Plans are fully funded by Employees. As such, the Debtors withhold monthly premiums for the Optional Plans from the payroll disbursements to Employees who elect to participate. On average, the aggregate monthly cost for all Employee premiums under the Optional Plan is approximately $5,000. The Debtors incur no out-of-pocket costs on account of the Optional Plan.

104. *Savings and Retirement Plans*. The Debtors offer Employees a savings and retirement plan. Specifically, Employees each year may contribute pre-tax or post-tax compensation, consistent with IRS regulations, for investment in a 401(k) plan (the "**401(k) Plan**"). The Debtors do not offer a discretionary annual company 401(k) match. The 401(k) Plan is invested with Wells Fargo and administered by Paychex. Paychex withholds funds for Employees participating in the 401(k) Plan.

105. The Debtors provide workers' compensation benefits (the "**Workers' Compensation Programs**") to the Employees. In particular, I have been advised under the laws of the various jurisdictions in which they operate, the Debtors are required to maintain policies and programs to provide Employees with workers' compensation benefits. In accordance with this obligation, the Debtors maintain workers' compensation insurance policies in all jurisdictions where they operate. The workers' compensation benefits provided by the Debtors are covered primarily under the Debtors' workers' compensation insurance program

administered by Chubb. Chubb requires payment of the entire premium before the policy period begins. For the current policy period, which ends February 1, 2019, premiums to Chubb for workers' compensation and employers' liability coverage were approximately $89,157. Premiums are calculated based on the classification and gross wages of the Debtors' workforce. At the end of the policy year, Chubb conducts an audit of the Debtors' workforce with respect to classification and gross wages and may require the Debtors to pay an additional premium amount for that policy year. Since the Debtors' employees have increased in number over the past year, the Debtors expect that they will owe Chubb an additional premium amount of up to approximately $80,000 for the current policy year.

106. I have further been advised that failure to maintain workers' compensation insurance could result in administrative or legal proceedings against the Debtors and their officers and directors.

107. *Social Security, Income Taxes, and Other Withholding*. The Debtors routinely withhold from Employee paychecks amounts that the Debtors are required to transmit to third parties. Examples include Social Security, FICA, federal and state income taxes, garnishments, charitable donations, health care payments, other insurance payments, 401(k) contributions, and certain other voluntary payroll deductions. The Debtors believe that such withheld funds, to the extent that they remain in the Debtors' possession, constitute monies held in trust and therefore are not property of the Debtors' bankruptcy estates.

108. *Severance Plans*. In addition to the Debtors' other benefit plans and programs, the Debtors provide severance pay to Employees under a company-wide severance plan (the "**Severance Plan**"). Under the Severance Plan, severance pay and benefits may be granted to eligible full-time Employees in particular circumstances.

109. Under the Severance Plan, in the context of a change-in-control transaction (a "**Change in Control**"), including a sale of substantially all of the Debtors' assets as provided in the Stalking-Horse Agreement, eligible Employees are entitled to receive as a lump-sum cash payment (a) an amount equal to the eligible Employee's pay for between two and 12 months, depending on the Employee's seniority (the "**Severance Duration**"), and (b) a monthly payment to help the Employee pay for health insurance for the Severance Duration (collectively, the "**Change in Control Severance**"). Notably, an Employee is not eligible for Change in Control Severance if the Employee is terminated after declining to accept an offer of employment from the Company or any affiliate or successor employer that (a) does not (i) materially reduce the Employee's duties, authority or responsibilities; (ii) materially reduce the Employee's annual compensation; or (iii) require a relocation of the Employee to a facility or a location that increases the one-way commute of the Employee by more than 50 miles or, in the case of Sales Employee, require a relocation of the Employee's personal residence to a location that is more than 50 miles from the location of the Employee's personal residence at the time of the employment offer, or (b) is offered to the Employee in connection with the Change in Control and which the Employee accepts (a "**Comparable Position**"). All Change in Control Severance payments are subject to the eligible Employee's execution of a release of claims in favor of the Debtors.

110. The Debtors estimate that following a Change in Control, and after accounting for those employees who will receive an offer from the buyer of the Debtors' assets, total liabilities for Change in Control Severance would be $15 million or less. This amount aligns with the $15 million of cash consideration in the Stalking-Horse Agreement that may only be used for Employee Change in Control Severance payments.

111. The Debtors' CEO and I, the CFO, both participate in the Debtors' Severance Plan.

112. The applicable Severance Duration for eligible Employees is summarized in the chart below:

Sales Job Level Title	Severance Duration
GI Account Specialist (GIAS)	2 months
Regional GI Account Specialist (RGIAS)	3 months
Regional Business Director (RBD) / Sr. RBD	6 months
Senior Area Business Director	8 months
Non-Sales Job Level Title	**Severance Duration**
Professional I / Support	2 months
Prof II / Manager	3 months
Senior Manager / Associate Director	4 months
Director / MSL / Sr. MSL	6 months
Senior Director	6 months
Vice President	9 months
Senior Vice President and above	12 months

113. *Continuation of Employee Programs*. The Debtors seek to continue their ordinary-course Employee compensation (including, wages, salaries, and the Incentive Plans), PTO, expense reimbursement, corporate credit cards, mobile expenses, benefits (including, without limitation, insurance), savings and retirement plans, workers' benefits (including, without limitation, insurance), and related programs during the postpetition reorganization process. I believe the continuation of these programs is essential to the success of the Debtors' reorganization.

114. Moreover, I believe that failing to honor these obligations would have devastating consequences for the Debtors' ability to operate their business during these Chapter 11 Cases

and, thus, the Debtors' reorganization. Authorization to pay the Prepetition Employee Obligations is, in my opinion, necessary to maximize the value of the Debtors' estates for all creditors and stakeholders.

C. Insurance Motion (Item 8)

115. The Debtors maintain insurance policies for, among other things, premise liability, business automobile liability, workers'-compensation liability, umbrella liability, transit liability, products liability and clinical trials, and directors and officers liability (collectively, the "**Insurance Policies**").

116. The Debtors' Insurance Policies generally require payment of the entire premium before the policy period begins or shortly thereafter. For the current policy periods, which end January 31, 2019, February 1, 2019, or July 31, 2019, the total annual premiums and brokers' fees under the Insurance Policies totaled approximately $4,704,474.26.[10] It is my understanding that the coverage types, levels, and premiums for these Insurance Policies are typical for comparably sized companies in the Debtors' industry. The Debtors believe that no amounts are currently outstanding on the Insurance Policies. However, certain of the Debtors' Insurance Policies provide for periodic premium adjustments, which could either increase or decrease the Debtors' Insurance Obligations.

117. If the Debtors are unable to make any payments that may be owed on account of the Insurance Policies, including on account of a premium adjustment, I believe that the unpaid third-party insurance carriers (collectively, the "**Insurance Carriers**") may seek relief from the automatic stay to terminate such Insurance Policies. The Debtors then would be required to

[10] In the case of the Debtors' directors and officers liability policies, the policies were extended by six months to July 31, 2019. The premium for such policies also includes a six-year tail

obtain replacement insurance on an expedited basis and at a significant cost. Even if these Insurance Providers were not permitted to terminate the agreements, any interruption of payment would have an adverse effect on the Debtors' ability to obtain future policies at reasonable rates.

D. Taxes Motion (Item 9)

118. In the ordinary course of business, the Debtors incur (a) income, property, production, and other taxes (the "**Taxes**") and (b) business license fees, compliance and regulatory fees, and other similar assessments (the "**Assessments**"). The Debtors pay or remit, as the case may be, the Taxes and Assessments as incurred, or monthly, quarterly, semiannually, or annually, to various federal, state, county, and city taxing, licensing, and regulatory authorities (the "**Applicable Authorities**"), as required by applicable laws and regulations. The Debtors were substantially current in the payment of assessed and undisputed Taxes and Assessments that came due and payable prior to the Petition Date; however, certain Taxes and Assessments attributable to the prepetition period are not yet due.

119. *Income Taxes*. The Debtors are subject to income taxation by the federal government and certain state governments (collectively, "**Income Taxes**"). Nonetheless, because the Debtors are operating at a net loss for the prepetition period, the Debtors have little or no Income Tax liability as of the Petition Date.

120. *Property Taxes*. Under the applicable leases governing the Debtors' leased real property, the Debtors are required to pay as additional rent to the applicable landlords an amount sufficient to cover all real-estate taxes owed in connection with the leased premises (the "**Property Taxes**"). The landlords, in turn, pay Property Taxes to the Applicable Authorities. The Debtors estimate that they do not owe any Property Taxes directly to the Applicable Authorities and that they are current with respect to their payment of Property Taxes under the

applicable leases. However, as of the Petition Date, there may be prepetition Property Taxes owed on the leased properties that have not yet become due and payable.

121. *Regulatory and Licensing Fees*. Laws and regulations in jurisdictions in which the Debtors operate require the Debtors to pay fees (collectively, the "**Regulatory and Licensing Fees**") to obtain a range of licenses and permits from a number of different Applicable Authorities. The methods for calculating amounts due for such licenses and permits, and the deadlines for paying such amounts, vary by jurisdiction. The Debtors paid $310,000 for licensing fees as required by the Food and Drug Administration and are current on all other miscellaneous regulatory and licensing fees incurred as part of normal operations.

122. *Business Taxes, Annual Reporting Fees, and Other Miscellaneous Taxes*. Certain states require the Debtors to pay various business taxes, annual reporting fees, and other miscellaneous taxes and fees to remain in good standing in order to conduct business within the state (the "**Miscellaneous Fees and Business Taxes**"). The manner in which the fees are computed vary according to the tax law of the applicable jurisdiction. I have been advised that as the Miscellaneous Fees and Business Taxes come due, the Applicable Authorities to whom these Miscellaneous Fees and Business Taxes are owed may be entitled to a priority claim.

123. It is my understanding that many of the Taxes constitute so-called trust fund obligations that the Debtors are required to collect from third parties and held in trust for payment to the taxing and regulatory authorities. I understand that the funds that would be used to pay the trust fund Taxes are not property of the Debtors' estates.

124. I have also been advised that the nonpayment of certain of the Taxes that constitute trust fund obligations and are not property of the Debtors' estates may result in personal liability for the Debtors' officers and directors. Efforts by the Applicable Authorities to

collect such trust fund amounts would unnecessarily divert the Debtors' officers and directors from tasks relating to the restructuring and ongoing management of the Debtors' business.

125. Additionally, the Applicable Authorities may cause the Debtors to be audited if the Taxes are not paid immediately. Such audits will unnecessarily divert the Debtors' attention away from the reorganization process and may cause expense and distraction in excess of the relatively minimal amount of the Taxes. In all cases, I believe that the Debtors' failure to pay Taxes could have an adverse impact on their ability to operate in the ordinary course of business.

E. Utilities (Item 10)

126. In the ordinary course of business, the Debtors obtain electricity, telephone, internet and technology, water, and similar utility products and services (the "**Utility Services**") from "utilities" as that term is used in section 366 of the Bankruptcy Code (the "**Utility Companies**"). The Debtors have filed a motion requesting that this Court approve (a) the Debtors' proposed form of adequate assurance of postpetition payment (the "**Proposed Adequate Assurance**") to the Utility Companies and (b) the Debtors' proposed procedures for resolving any objections by the Utility Companies relating to the Proposed Adequate Assurance, and prohibiting the Utility Companies from altering, refusing, or discontinuing service to, or discriminating against, the Debtors.

127. In particular, the Debtors have proposed for the Utility Companies the establishment of a newly created, interest-bearing segregated account in which the Debtors will place a deposit equal to approximately two weeks of Utility Services (the "**Utility-Deposit Account**"). I believe that creation of the Utility-Deposit Account and the additional procedures set forth in the motion adequately protect the rights that I have been advised are provided to the Utility Companies under the Bankruptcy Code, while also protecting the Debtors' need to continue to receive, for the benefit of their estates, the Utility Services upon which their

businesses depend. The Debtors estimate the aggregate of all the Utility Deposits will be approximately $15,000.

128. I believe that any interruption in Utility Services, even for a brief period of time, would disrupt the Debtors' ability to continue operations. Such a result could potentially jeopardize the Debtors' ability to perform under their customer contracts and impair the Debtors' reorganization efforts and, ultimately, the value of the Debtors' business. In my opinion, it is critical that Utility Services continue uninterrupted during the Chapter 11 Cases

F. Critical Vendors Motion (Item 11)

129. I believe that 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 have filed a motion requesting, but not directing, the Debtors to make payments toward the prepetition fixed, liquidated and undisputed claims of the Critical Vendors (the "**Critical Vendor Claims**"). The Debtors estimate that they have approximately 43 Critical Vendors that are owed approximately $2,640,000.

130. *Operations and Supply Chain*. Given the Company's size, it is more efficient for the Company to maintain an outsourced supply chain, with third-party vendors providing manufacturing, packaging, and distribution services. Synergy relies on (a) a third-party to manufacture the raw ingredients for TRULANCE (the "**Medication**") (*i.e.*, the active pharmaceutical ingredient, or "**API**"), (b) a contract manufacturing organization (a "**CMO**") to manufacture the API into consumable pharmaceuticals, (c) the API provider and CMO to test the pharmaceuticals to conduct both analytical release studies and stability samples, (d) a third-party to package the Debtors' commercial product, and (e) third-party distributors to ensure that the

Debtors' commercial products and samples make their way to end-users. Synergy does not have any internal manufacturing capacity and does not take any physical possession of API or manufactured pharmaceuticals at any point in the supply chain.

131. The Debtors currently contract with a sole-source provider of API for the key raw ingredient in its pharmaceutical product. API is shipped from its manufacturer to the Debtors' CMO, which manufactures the API into consumable pharmaceuticals. A separate sole-source provider packages the product into the Debtors' commercial SKU, a 30-count blister pack and a seven-count sample pack. Finally, distribution of blister and sample packs is provided by separate third-party providers.

132. Further, in order to ensure the quality of drug products, the FDA carefully monitors drug manufacturers' compliance with the FDA's Current Good Manufacturing Practice ("**CGMP**") regulations. For the Debtors to remain in compliance with the CGMP regulations, each of its manufacturers and suppliers must also comply with the CGMP regulations. The Debtors' current manufacturers and suppliers have each passed the CGMP audit and certification.

133. Due to the highly regulated nature of the Debtors' business, nearly every change to a vendor or product in the Debtors' supply chains requires regulatory approval from one or multiple jurisdictions, including ensuring that any new vendor facility or processes were also in compliance with CGMP regulations. Even seemingly mundane changes—such as switching bottle or label manufacturers—can require months to years of regulatory study and the concomitant expenditure of millions of dollars to execute. More complex changes, like switching to a different CMO or API manufacturer, take even longer and are more expensive.

134. The Debtors' business is ill-equipped to switch vendors or suppliers on short notice and faces significant risks to its supply chain if certain prepetition amounts cannot be paid. Due to the regulatory nature of the Synergy's business and its relationship with sole-source providers, the Debtors have limited-to-no options when it comes to arranging replacement suppliers. Replacing suppliers is time-consuming, cost prohibitive, and in certain circumstances, plainly not feasible. Moreover, I believe that any failure of a supplier to provide the necessary goods for delivery to the Debtors' customers likely would create shortages in the Debtors' supply chain and adversely affect the customers' willingness to do business with the Debtors in the future, thereby impacting cash flow, profitability, and the ability of the Debtors to restructure their business.

135. *Market Access and Sales Support*. Given the Debtors' size, the Debtors utilize third-party vendors with considerable experience with and knowledge about TRULANCE to (a) help the Debtors negotiate and obtain drug formulary access for TRULANCE, (b) provide critical third-party data on market activity, including wholesaler inventory and sales, script data by region and down to the doctor level to help Synergy increase market penetration, (c) consolidate and report internal data to ensure compliance with Federal and State regulations, (d) assist patients who are experiencing difficulty navigating formulary access for obtaining TRULANCE, and (e) operate a critical call center for patients if they are experiencing any issues or concerns with TRULANCE.

136. I believe the Debtors' business would suffer if forced to switch vendors assisting with market access and sales support. The continuation of business with these vendors is vital to the Debtors' ability to continue operating smoothly in order to conduct a successful sale process. The vendors' familiarity with TRULANCE will be difficult to replace immediately and any

attempt to do so may disrupt the Debtors' formulary access and sales support. For example, without formulary access, patients who benefit from TRULANCE may be required to pay entirely out of pocket, which would limit the Debtors' customer base and disrupt the Debtors' operations. Moving to another vendor for the operation of the call center would be similarly disruptive, as it would require the Debtors to recreate and distribute their marketing materials, as the phone number associated with the call center would change following the transition of the call center to a new vendor.

137. *Clinical Studies*. I have been advised that in connection with the FDA approval of TRULANCE, the Debtors conduct clinical and post-marketing trials to continue gathering safety and efficacy information about the product, as well as for marketing purposes. In fact, the Debtors are subject to post-marketing regulatory requirements from the FDA governing the labeling, packaging, storage, advertising, promotion, recordkeeping, and submission of safety and other post-market indications for TRULANCE. Some of these regulations may require the Debtors to conduct further clinical trials supporting the safety and efficacy of TRULANCE and failure to complete these required trials could result in a withdrawal of the Debtors' marketing authorizations or approval. In certain clinical trials, the Debtors rely on a contract research organization ("**CRO**") to conduct the TRULANCE clinical trial. In other clinical trials, the Debtors are dependent on third-party clinical trial project manager (together with the CRO, the "**Clincial Trial Vendors**") to oversee the Debtors' TRULANCE clinical trial sites. The Clinical Trial Vendors are generally not obligated to enroll or maintain a minimum number of patients in a clinical trial. Difficulty enrolling or maintaining patients in sufficient numbers will delay or terminate ongoing trials, negatively impacting the Debtors' business and effectively withdrawing treatment from patients enrolled in trials. For example, under the Pediatric Research Equity Act,

clinical studies are underway assessing the efficacy and safety of TRULANCE in pediatric patients with certain gastrointestinal disorders (and other clinical studies are in late planning stages). Absent payment of the Clinical Trial Vendors' prepetition claims, the Clinical Trial Vendors may cease enrollment of new patients. Therefore, I believe it is imperative that the Debtors maintain working relationships with these clinical trial sites.

138. The Debtors have identified certain Critical Vendors that cannot be replaced within a reasonable amount of time and whose goods and services are necessary to ensure survival of the Debtors' business. In addition, it is my understanding that certain Critical Vendors operate on thin margins and may be highly dependent upon the Debtors' business for a substantial portion of their revenues. Therefore, the failure to pay certain prepetition invoices could render certain vendors insolvent.

139. The Debtors have identified as Critical Vendors only those suppliers and service providers that meet the stringent criteria proposed by the Debtors. The Debtors have examined other options short of payment of Critical Vendor Claims and have determined that to avoid significant disruption of the Debtors' operations the Debtors must pay the Critical Vendor Claims.

G. Customer Programs Motion (Item 12)

140. Customers of TRULANCE include wholesalers (the "**Wholesalers**"), regional distributors, private insurers, and gastroenterologist practices (together, with the Wholesalers, the "**Direct Customers**"). The Debtors estimate that 95% of their annual sales derive from three Direct Customers who participate in some, if not all, of the customer programs and practices (the "**Customer Programs**").

141. Medications purchased by Direct Customers ultimately are delivered to patients, including, but not limited to, patients of the U.S. Department of Veterans Affairs (the "**VA**"), the

U.S. Department of Defense (the "**DOD**"), 340B Entities (as defined below), recipients of Medicaid and Medicare benefits, physicians' offices, recipients of the Debtors' financial support programs that are designed to help offset the costs of the Medications, recipients of TRULANCE samples, and patients with private insurance (collectively, the "**Indirect Customers**" and, together with the Direct Customers, the "**Customers**").

142. Prior to the Petition Date, the Debtors offered their Customers certain benefits including, among other things, (a) discounted rates on the Medication for Direct Customers, the VA, the DOD, certain hospitals, private insurance companies, and 340B Entities (as defined below), and chargebacks to Direct Customers related thereto; (b) discounts and revenue-based fees to Direct Customers; (c) Medicaid rebates and Medicare Part D rebates; (d) financial assistance for certain users of the Medication; (e) free doses of the Medication for certain Indirect Customers; (f) a return policy on purchases of the Medication; (g) contingency-based chargebacks; and (h) Customer credit arrangements.

143. It is my understanding that the Debtors' Customer Programs are common in the specialty pharmaceutical industry. I believe that most major specialty pharmaceutical companies, including many of the Debtors' competitors, employ similar or identical customer programs. Therefore, if the Debtors are to stay competitive, I believe that it is critical that the Debtors be authorized to continue the Customer Programs and honor prepetition obligations associated therewith in their business judgement.

144. *Discounts, Fees, and Other Benefits Provided to Direct Customers*. The Debtors have contracts with Direct Customers that provide for industry-standard discounts, such as a program that affords a two-percent discount (the "**Prompt-Pay Discount**") to Direct Customers for payment of invoices within a period of time specified by contract and consistent with

standard industry terms. More specifically, when a Direct Customer pays an invoice within the applicable time period, the Direct Customer is entitled to discount its payment to the Debtors by two percent. These Prompt-Pay Discounts encourage the Direct Customers to enter into and maintain contracts with them. On average, the Debtors extend approximately $180,000 in Prompt-Pay Discounts each month.

145. In addition to purchasing the Medication, certain of the Direct Customers provide various services to the Debtors, including managing inventory, distributing the Medication to Indirect Customers, and managing industry-specific data. The Debtors compensate the Direct Customers for these services by discounting the sale of Medication to the Direct Customers a fixed contractual rates (the "**Fixed-Rate Discounts**"). The Fixed-Rate Discounts are determined by calculating the amount of invoiced sales generated by the relevant Direct Customer and multiplying those sales by a fixed percentage rate established by contract between the Debtors and the individual Direct Customer. Most of the Fixed-Rate Discounts are applied as credits against outstanding invoices. The Debtors' average monthly liability for the Fixed-Rate Discounts is approximately $1,300,000.

146. The Debtors participate in numerous federal programs, including Medicare, Medicaid, the U.S. Department of Health and Human Services' 340B Drug Pricing Program, and the Secretary of Veterans Affairs' Federal Supply Schedule (the "**Federal Supply Schedule**"). Each of these programs requires the Debtors to sell the Medication at a substantial discount to wholesale acquisition cost ("**WAC**") to the applicable Customers. It is my understand that these programs operate in the following manner: the Debtors sell the Medication to the Direct Customers at WAC, or some other price agreed to by the Debtors and the Direct Customers; the Direct Customers, in turn, provide the Medication to the relevant governmental-program

participant at a statutorily mandated price, which is usually lower than the Direct Customers' acquisition cost. This means that the Direct Customers have sold the products to the governmental program participant at a loss. The Direct Customers, to compensate for this loss, charge back the Debtors in an amount equal to the difference between the then-current WAC and the price at which they sold the product to the applicable governmental-program participant.

147. The Debtors are a party to a master agreement governing their participation in the Federal Supply Schedule programs (the "**Master Agreement**"). The Master Agreement allows the Debtors to sell the Medication to the VA and the DOD, to whom the Debtors provide certain price concessions (the "**VA and DOD Programs**" serving "**VA and DOD Hospitals**"), and pursuant to the 340B program (the "**Hospital Program**"). The VA and DOD Hospitals place orders for the Medication through Wholesalers who in turn purchase the Medication from the Debtors and then ship the product directly to the VA and DOD Hospitals. The VA and the DOD are each subject to the Federal Supply Schedule, which provides the maximum amount that can be charged to certain government entities for pharmaceuticals based on a specific formula. In accordance with the Federal Supply Schedule, the Debtors charge member patients discounted rates for their medications. If the price of the Medication offered through the VA and DOD Programs is lower than the WAC price, the Wholesaler will charge back the Debtors for the difference. The price of the Medication for the VA and DOD programs is set annually, but is subject to change if another Customer of the Debtors designated by the Debtors and with similar purchasing needs as the VA and DOD (the "**Tracking Customer**") receives a lower price than the VA or DOD. The price of the Medication for the VA and DOD programs then would be adjusted to match the price given to the Tracking Customer. The Debtors expect that the discount for the Medication will remain the same or increase in the future, contingent on price

changes. Chargebacks and purchases related to the VA and DOD Programs are reconciled through the Debtors' lockbox processor and the Debtors' accounts receivable and do not generally result in a cash payment.

148. Certain hospitals, clinics, and other entities provide the majority of their services to low-income patients and receive payments from the Centers for Medicaid and Medicare Services ("**CMS**") to cover the costs of providing care to uninsured patients (such hospitals, clinics, and other entities, the "**340B Entities**"). Pursuant to the Hospital Program, the Debtors provide the Medication to 340B Entities at a discounted price, which is calculated on a quarterly basis and set by statute. For 340B Entity patients who receive Medicaid, the Debtors are required to pay a Medicaid Rebate (as defined below). For non-Medicaid patients, after a 340B Entity submits a request for the Medication to one of the Debtors' Direct Customers, and the Direct Customer fulfills that request, the Direct Customer then submits a chargeback to the Debtors for the difference between the price that the Direct Customer paid and the discounted price that the 340B Entities paid for the product. Chargebacks and purchases related to the Hospital Program are reconciled through the Debtors' lockbox processor and the Debtors' accounts receivable and do not generally result in a cash payment.

149. For the first half of 2018, the Debtors' average monthly liability for chargebacks related to the VA and DOD Programs, the Hospital Program, and the additional two-percent discount off the Debtors grant on all purchases made by the VA (the "**Industrial Funding Fee**") was approximately $120,000. The Debtors estimate that, as of the Petition Date, there is approximately $120,000 in accrued obligations under the VA and DOD Programs, the Hospital Program, and the Industrial Funding Fee. As discussed above, most of the amounts related to the

VA and DOD Programs and the Hospital Program are settled via credits against outstanding invoices.

150. In the ordinary course of business, the Debtors' Direct Customers may be unable to sell products they purchased from the Debtors because the product expires or there is demand falls. Accordingly, the Debtors allow their Direct Customers and certain Indirect Customers to return the expired products in exchange for replacement products or credit within a limited time before and after the date of expiration (the "**Sales-Return Program**"). As of the Petition Date, the Debtors estimate that there is a liability of approximately $2,300,000 related to the Sales-Return Program.

151. *Medicaid Rebates and Medicare Part D Rebates*. Medicaid is a health program, jointly funded by the states and federal government and managed by the states, that assists low-income individuals and families in obtaining health care. Under Medicaid, the Debtors' Direct Customers provide the Medication to hospitals and pharmacies that dispense the Medication to a Medicaid patients. State will collect utilization data on the use of the Medication and send the Debtors one or more reports and invoices. The Debtors are then responsible for paying a rebate (the "**Medicaid Rebate**" granted pursuant to the "**Medicaid Drug Rebate Program**") on the Medication for each time that the Medication was dispensed to Medicaid patients.

152. The Medicaid Drug Rebate Program covers certain outpatient drugs, including the Medication, and requires the Debtors to enter into a national rebate agreement with the Secretary of Health and Human Services in exchange for Medicaid coverage of the Medication. A statutory formula establishes the Medicaid Rebate due for each unit of the Medication dispensed to a Medicaid patient. The Debtors pay the Medicaid Rebates to CMS on a quarterly basis. For the third quarter of 2018, the Debtors' average monthly liability for the Medicaid Rebates was

$476,000. As of the Petition Date, the Debtors estimate that approximately $2,450,000 has accrued but has not yet been invoiced for Medicaid Rebates. The Debtors expect that these amounts will be invoiced within 90 days of the Petition Date.

153. The United States government administers Medicare, a national insurance program that primarily serves Americans over the age of 65. Medicare Part D is a prescription drug program through which seniors choose from a wide variety of privately administered drug plans that negotiate individually with drug makers (the "**Medicare Part D Program**").The Debtors are party to contracts with several private insurers with Part D business lines, pursuant to which the Debtors pay certain rebates related to the Medicare Part D program (the "**Medicare Part D Rebates**"). In connection with the Medicare Part D Program, the Debtors negotiate price concessions with Medicare Part D Program administrators or grant rebates in a similar fashion as the Medicaid Rebates described above. The Medicare Part D Rebates are paid quarterly, about 45 days after the end of a fiscal quarter. For the third quarter of 2018, the Debtors' invoiced Medicare Part D Rebates totaled $336,000. The Debtors estimate that their prepetition liability for Medicare Part D Rebates is also approximately $336,000.

154. The Debtors are party to a Medicare Part D Coverage Gap Program Discount Agreement with CMS, pursuant to which the Debtors provide discounts to a third-party provider of CMS, Palmetto GBA, LLC ("**Palmetto**"), which in turn provides discounted prescription drugs to Medicare Part D Program beneficiaries within the so-called "coverage gap" (the "**Coverage-Gap Program**"). Under the Coverage Gap Program, Palmetto consolidates all the claims arising from the Coverage Gap Program from CMS against the Debtors and sends an invoice to the Debtors. Palmetto may seek payment of claims dating back up to four quarters. Palmetto is not required to, and does not, provide updates to the Debtors regarding the status of

claims that have not yet been included in an invoice sent to the Debtors. As such, the Debtors do not know the amount of any outstanding prepetition liability. However, based on previous invoices, the Debtors anticipate that there is approximately $514,000 in outstanding prepetition liability. This amount is not yet due and payable, but may become due and payable over the course of the Chapter 11 Cases.

155. Participation in Medicaid, Medicare, the VA and DOD Programs, and the Hospital Program requires that the Debtors pay Medicaid Rebates and Medicare Part D Rebates. It is my understanding that the Debtors' participation in the VA and DOD Programs and the Hospital Program is dependent on the Debtors' ability to provide the Medication to Medicaid and Medicare patients. If the Debtors fail to fulfill their obligations to Medicaid and Medicare, including payment of the Medicaid Rebates and Medicare Part D Rebates as they become due, they risk becoming excluded from all federal programs. As such, I believe that honoring Medicaid Rebates and Medicare Part D Rebates is an integral part of the Debtors' business, and the Debtors cannot risk any harm that may arise from the failure to pay Medicaid Rebates and Medicare Part D Rebates. I believe that any failure to make these payments could result in severe consequences, including denial of coverage and damage to the Debtors' relationship with their Customers, which will irreparably impair the Debtors' efforts to conduct their business during the Chapter 11 Cases and maximize value.

156. *Private-Insurer Programs*. The Debtors are party to agreements with several private insurance programs (collectively, the "**Private Insurers**") that cover the cost of the Medication for their beneficiaries. These programs operate similarly to the Medicaid and Medicare Programs, in that the Debtors are required to provide periodic rebates and administrative fees to Private Insurers based on their pricing schedules. In the third quarter of

2018, these rebates and fees totaled approximately $3,030,000. The Debtors estimate that their prepetition liability for the Private Insurer programs is approximately $2,700,000.

157. *Financial Assistance*. The Debtors also provide certain patients co-pay assistance to offset their out-of-pocket costs for the Medication (the "**Co-Pay Reduction Program**"). The Co-Pay Reduction Program is offered to patients covered by commercial insurance and excludes beneficiaries of Medicare, Medicaid, and the VA and DOD Programs. Patients eligible for the Co-Pay Reduction Program receive a coupon, which discounts the cost of the Medication. Coupons are distributed in a variety of ways: some patients receive coupons from their doctors, other through patient websites or other promotions programs, and others through pharmacies. The Debtors then reimburse the applicable Indirect Customer through a third-party vendor. The Debtors estimate that their liability as of the Petition Date under the Co-Pay Reduction Program is $1,050,000.

158. I believe that the financial assistance the Debtors offer through the Co-Pay Reduction Program has been integral to their efforts to build and strengthen the customer base for the Medication and that continuing the Co-Pay Reduction Program is necessary to preserve the value of their estates. Moreover, such programs are standard in the pharmaceutical industry.

159. The Debtors routinely provide free samples of the Medication to Indirect Customers (the "**Sampling Program**"). The Sampling Program allows patients to trial the Medication experience its potential benefits without incurring out-of-pocket expenses or incurring delays associated with insurance approvals.

160. I believe that the Sampling Program is a critical part of the Debtors' continuing marketing efforts for the Medication and that similar programs dispensing complimentary samples of products are typical in the pharmaceutical industry. Such sampling programs

encourage both healthcare providers and patients to try products, encourage doctors to learn about products, and stimulate patient usage. The Debtors estimate that the average monthly cost of the Sampling Program, including administration of the Sampling Program, is $22,500.

161. I believe that maintaining the Customer Programs in the ordinary course of business is critically important to the Debtors' ongoing business. The Debtors must continue to honor the Customer Programs to maximize the value of their businesses and their inventory. I believe that, should the Debtors fail to honor their obligations under the Customer Programs, both Direct Customers and Indirect Customers will stop purchasing and/or distributing the Medication. As discussed above, the Debtors' failure to honor their obligations under the governmental health programs, such as Medicaid and Medicare, will jeopardize the Debtors' eligibility to participate in these programs and have a pronounced impact on the Debtors' business and estate. As such, it is my belief that any delay in honoring the Debtors' obligations thereunder could severely disrupt the Debtors' efforts to maximize value in the Chapter 11 Cases.

H. Equity Trading Procedures Motion (Item 13)

162. The Debtors have generated, and are currently generating, a significant amount of NOLs for U.S. federal income tax purposes. As of December 31, 2017, the Debtors had approximately $733.6 million of NOLs available to offset taxable income. While the value of the Debtors' Tax Attributes is contingent upon the amount of the Debtors' taxable income that may be offset by the Tax Attributes before they expire and any existing limitation on their usage, the Debtors' NOLs and other Tax Attributes could translate into potential future tax savings which are valuable assets of the Debtors' estates. For example, the Company could utilize its NOLs to offset income earned or recognized during the course of the Chapter 11 Cases or to offset any gain that may be recognized in connection with a sale transaction in bankruptcy.

163. It is my understanding that the Debtors' ability to use its 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 its 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. Therefore, I submit that the relief requested in the Equity Trading Procedures Motion is necessary and in the best interests of the Debtors' estates, their creditors and other parties-in-interest.

PART III

INFORMATION REQUIRED BY LOCAL BANKRUPTCY RULE 1007-2

164. It is my understanding that Local Bankruptcy Rule 1007-2 requires that the Debtors provide certain information, which is set forth below.[11]

165. As required under Local Bankruptcy Rule 1007-2(a)(3), to the best of the Debtors' knowledge and belief, no official committee or ad hoc group of creditors was organized prior to the Petition Date.

166. As required under Local Bankruptcy Rule 1007-2(a)(4), **Exhibit B** lists the following information with respect to each of the holders of the Debtors' 20 largest unsecured claims on a consolidated basis, excluding claims of insiders: the creditor's name, address (including the number, street, apartment or suite number, and zip code, if not included in

[11] The information contained in the Exhibits attached to this Declaration shall not constitute an admission of liability by, nor is it binding on, the Debtors. The Debtors reserve all rights to assert that any debt or claim listed herein is a disputed claim or debt, and to challenge the priority, nature, amount, or status of any claim or debt. The descriptions of the collateral securing the underlying obligations are intended only as brief summaries. In the event of any inconsistencies between the summaries set forth and the respective corporate and legal documents relating to such obligations, the descriptions in the corporate and legal documents shall control.

the post office address), telephone number, the name(s) of person(s) familiar with the Debtors' accounts, the amount of the claim, and an indication of whether the claim is contingent, unliquidated, disputed or partially secured. In each case, the claim amounts listed on **Exhibit B** are estimated and subject to verification. In addition, the Debtors reserve their rights to assert remedies, defenses, counterclaims, and offsets with respect to each claim.

167. As required under Local Bankruptcy Rule 1007-2(a)(5), **Exhibit C** provides the following information with respect to each of the holders of the five largest secured claims against the Debtors on a consolidated basis: the creditor's name and address (including the number, street, apartment or suite number, and zip code, if not included in the post office address), the amount of the claim, a brief description and an estimate of the value of the collateral securing the claim, and whether the claim or lien is disputed. In each case, the claim amounts listed on **Exhibit C** are estimated and subject to verification. In addition, the Debtors reserve their rights to assert remedies, defenses, counterclaims, and offsets with respect to each claim.

168. As required under Local Bankruptcy Rule 1007-2(a)(6), the Debtors submit that as of September 30, 2018, the Debtors' unaudited consolidated financial statements, as prepared in accordance with U.S. generally accepted accounting principles ("**GAAP**"), aggregated $83,039,825 in total assets and $179,283,378 in total liabilities.

169. As required under Local Bankruptcy Rule 1007-2(a)(7), to the best of the Debtors' knowledge and belief, as of November 9, 2018, 248,037,301 shares of common stock were outstanding. **Exhibit D** lists those shares held by the Debtors' officers and directors.

170. As required under Local Bankruptcy Rule 1007-2(a)(8), **Exhibit E** provides a list of all the Debtors' property in the possession or custody of any custodian, public

officer, mortgagee, pledgee, assignee of rents, or secured creditor, or agent for any such entity, giving the name, address, and telephone number of each such entity and the court in which any proceeding relating thereto is pending.

171. As required under Local Bankruptcy Rule 1007-2(a)(9), **Exhibit F** provides a list of the premises owned, leased, or held under other arrangement from which the Debtors operate their businesses.

172. As required under Local Bankruptcy Rule 1007-2(a)(10), **Exhibit G** provides the location of the Debtors' substantial assets, the location of their books and records, and the nature, location, and value of assets held by the Debtors outside the territorial limits of the United States.

173. As required under Local Bankruptcy Rule 1007-2(a)(11), **Exhibit H** provides a list of the nature and present status of actions or proceedings, pending or threatened, against the Debtors or their property where a judgment against the Debtors or a seizure of the Debtors' property may be imminent.

174. As required under Local Bankruptcy Rule 1007-2(a)(12), **Exhibit I** provides a list of the names of the individuals who comprise the Debtors' existing senior management, their tenure with the Debtors, and a brief summary of their relevant responsibilities and experience.

175. As required under Local Bankruptcy Rule 1007-2(b)(1)-2(A) and (C), **Exhibit J** provides the estimated weekly payroll amount, on a consolidated basis, to be paid to the Debtors' employees (exclusive of officers, directors, and stockholders) and the estimated amounts proposed to be paid to officers, stockholders, directors, and financial and business consultants retained by the Debtors, for the thirty-day period following the Petition Date.

176. As required under Local Bankruptcy Rule 1007-2(b)(3), **Exhibit K** provides the estimated cash receipts and disbursements, estimated net cash gain or loss, and estimated obligations and receivables expected to accrue that remain unpaid, other than professional fees, on a consolidated basis for the 30-day period following the Petition Date.

Dated: New York, New York
December 12, 2018

/s/ Gary G. Gemignani
Gary G. Gemignani
Executive Vice President and Chief Financial Officer

EXHIBIT A

List of Papers Seeking First-Day Relief

1. Debtors' Motion for Entry of Order (I) Directing Joint Administration of Cases (II) Waiving Requirements of Bankruptcy Code Section 342(c)(1) and Bankruptcy Rule 1005 and 2002(n)

2. Debtors' Motion for Entry of Order (I) Waiving Certain Creditor-List Filing Requirements; (II) Authorizing the Filing of a Consolidated List of Top 20 Unsecured Creditors; (III) Authorizing Debtors to Redact Certain Personal Identification Information for Individual Creditors; (IV) Authorizing Debtors to Establish Procedures for Notifying Parties of the Commencement of These Cases; and (V) Waiving the Requirements to File the List of Equity Security Holders and Provide Notice of Commencement to Equity Security Holders

3. Debtors' Motion for Entry of an Order (I) Extending Time for Debtors to File Schedules and Statements and (II) Authorizing Debtors to File Consolidated Monthly Operating Reports

4. Debtors' Motion for Order Authorizing the Establishment of Certain Notice, Case Management, and Administrative Procedures

5. Debtors' Application for Order Appointing Prime Clerk LLC as Claims and Noticing Agent *Nunc Pro Tunc* to the Petition Date

6. Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Continued Use of Existing Cash-Management System, Bank Accounts, and Business Forms, and Payment of Related Prepetition Obligations, (II) Modifying Certain Deposit Requirements, and (III) Authorizing Continuance of Intercompany Transactions and Honoring Certain Related Prepetition Obligations

7. Debtors' Motion for Interim and Final Orders Authorizing Debtors to Pay Prepetition Wages, Compensation, and Employee Benefits

8. Debtors' Motion for Interim and Final Orders Authorizing Debtors to (I) Maintain Existing Insurance Policies and Pay all Insurance Obligations Arising Thereunder and (II) Renew, Revise, Extend, Supplement, Change, or Enter Into New Insurance Policies

9. Debtors' Motion for Entry of Interim and Final Orders Authorizing Debtors to Pay Certain Prepetition Taxes, Assessments, and Related Obligations

10. Debtors' Motion for Entry of Interim and Final Orders (I) Approving Debtors' Proposed Form of Adequate Assurance of Payment; (II) Establishing Procedures for Resolving Objections by Utility Companies; and (III) Prohibiting Utility Companies From Altering, Refusing, or Discontinuing Service

11. Debtors' Motion for Entry of Interim and Final Orders Authorizing Payment of Prepetition Claims of Certain Critical Vendors

12. Debtors' Motion for Entry of Interim and Final Orders Authorizing Debtors to Honor Certain Prepetition Obligations to Customers and to Continue Customer Programs

13. Debtors' Motion For Entry Of Interim And Final Orders Establishing Notice And Hearing Procedures For Trading In, Or Claims Of Worthlessness With Respect To, Equity Securities In The Debtors

EXHIBIT B

Consolidated List of the Holders of the Debtors' 20 Largest Unsecured Claims

	Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim	Amount of unsecured claim
1.	Wells Fargo Bank, National Association, as Indenture Trustee to the 7.50% Convertible Senior Notes due 2019	Wells Fargo Bank, National Association Corporate Trust-DAPS Reorg 6th and Marquette Ave 12th Floor MAC N9303-121 Minneapolis, MN 55479 Attn: Stefan Victory Phone: 1-800-344-5128 Fax: 1-866-969-1290 Email: dapsreorg@wellsfargo.com	7.50% Convertible Senior Notes due 2019	$ 18,755,901.37
2.	Healix Inc.	Healix, Inc. 100 West 33rd Street New York, NY 10001 Attn: Joshua Forney Tel: 646-609-9946 Email: Joshua.Forney@healixglobal.com	Trade Debt	$ 3,357,953.86
3.	Chiltern International, Inc.	Chiltern International, Inc. 1016 W. 9th Ave King of Prussia, PA 19406 Attn: Glenn Kerkhof Tel: 423-968-9533 Email: usfinance@chiltern.com	Trade Debt	$ 1,155,302.50
4.	AmbioPharm, Inc.	AmbioPharm, Inc. 1024 Dittman Court North Augusta SC 29842 Attn: Sammi Liu Tel: 610-301-3317 Email: sammi.liu@ambiopharm.com	Trade Debt	$ 1,000,000.00
5.	Sudler & Hennessey LLC	Sudler & Hennessey LLC 230 Park Ave. New York, NY 10003 Attn: Tel: 212-614-3937 Email: ClientFinanceDept@sudler.com	Trade Debt	$ 863,508.50
6.	Relay Health Pharmacy	Relay Health Pharmacy 5995 Windward Parkway Alpharetta, GA 30005-4184 Attn: Roosevelt Brown Tel: 404-728-3016 Email: Roosevelt.Brown@McKesson.com	Gross to Net Programs	$ 825,000.00
7.	Ogilvy CommonHealth Worldwide, LLC	Ogilvy CommonHealth Worldwide, LLC 400 Interpace Parkway Parsippany, NJ 07054 Attn: Andrew Schirmer, CEO Tel: 973-352-1000 Email: andrew.schirmer@ogilvy.com	Trade Debt	$ 669,280.79

	Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim	Amount of unsecured claim
8.	TrialCard Incorporated	TrialCard Incorporated 2250 Perimeter Park Drive Morrisville, NC 27560 Attn: Accounts Receivable Tel: 919-845-0774 Email: AR@trialcard.com	Gross to Net Programs	$ 566,940.00
9.	Palmetto GBA, LLC	Palmetto GBA, LLC 17 Technology Circle Columbia, SC 29203 Attn: Joe Johnson, President Tel: 803-735-1034 Email: info@palmettogba.com	Gross to Net Programs	$ 513,764.83
10.	Prime Therapeutics LLC	Prime Therapeutics LLC 800 Nicollet Mall Minneapolis, MN 55402 Tel: 800-858-0723	Gross to Net Programs	$ 456,323.02
11.	Charles River Laboratories, Inc	Charles River Laboratories, Inc251 Ballardvale StreetWilmington, MA 01887-1000Attn: Mandy GloverTel: 978-658-6000Email: Mandy.Glover2@crl.com	Trade Debt	$ 382,227.00
12.	Express Scripts Inc.	ESI PSG 131 S Dearborn - 6th Floor Chicago, IL 60603 Attn: PJ Strong Tel: (952) 837-7467 Email: PJStrong@express-scripts.com	Gross to Net Programs	$ 267,344.35
13.	eResearch Technology, Inc.	eResearch Technology, Inc. 225 West Station Square Dr. Pittsburgh, PA 15219 Attn: Tara Yokopenic Tel: 800-225-0090 Email: tara.yokopenic@ert.com	Trade Debt	$ 258,365.00
14.	Aetna Inc.	Aetna Health Management P.O. Box #100896 Atlanta, GA 30384 Attn: Tel: (952) 594-6365 Email: aslesens@aetna.com	Gross to Net Programs	$ 234,425.26
15.	Health Strategies Group, LLC	Health Strategies Group, LLC 790 Township Line Rd. Yardley, PA 19067 Attn: Rod Cavin, CEO Tel: 609-397-5282 Email: ar@healthstrategies.com	Trade Debt	$ 206,112.50
16.	UPM Pharmaceuticals, Inc.	UPM Pharmaceuticals, Inc. 501 5th Street Bristol, TN 37620 Attn: John P. Gregory, CEO Tel: 423-989-8000 Email: sorce@upm-inc.com	Trade Debt	$ 203,405.00

	Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim	Amount of unsecured claim
17.	CIGNA Group Insurance	CIGNA Group Insurance 1455 Valley Center Pkwy Bethlehem, PA 18017-2288 Attn: David Cordani, CEO Tel: 215-761-1000 Email: david.cordani@cigna.com	Employee Benefits	$ 174,625.54
18.	The H&W Group, Inc dba Salutem	The H&W Group, Inc dba Salutem 200 E. Randolph St. Chicago, IL 60601 Attn: Adam Woodruff Tel: 312-240-2638 Email: Adam.Woodruff@edelman.com	Trade Debt	$ 173,958.75
19.	The Scottsdale Resort & McCormick	The Scottsdale Resort & McCormick 7700 East McCormick Parkway Scottsdale, AZ 85258 Attn: Tel: 480-991-9000 Fax: 480-596-7422 Email:	Trade Debt	$ 168,499.73
20.	Sofitel Philadelphia	Sofitel Philadelphia 120 South 17th St Philadelphia, PA 19103 Attn: Angela Bauer Tel: 215-569-8300 Email: angela.bauer@sofitel.com	Trade Debt	$ 151,998.33

EXHIBIT C

Consolidated List of the Holders of the Debtors' Five Largest Secured Claims

Pursuant to Local Bankruptcy Rule 1007-2(a)(5), the following is a list of creditors holding the five largest secured claims against the Debtors, on a consolidated basis, as of the Petition Date.

The information contained herein shall not constitute an admission of liability by, nor is it binding on, the Debtors. The Debtors reserve all rights to assert that any debt or claim included herein is a disputed claim or debt, and to challenge the priority, nature, amount, or status of any such claim or debt. The descriptions of the collateral securing the underlying obligations are intended only as brief summaries. In the event of any inconsistencies between the summaries set forth below and the respective corporate and legal documents relating to such obligations, the descriptions in the corporate and legal documents shall control.

Creditor Name	Creditor Contact	Amount of Claim	Collateral Description and Value
CRG Servicing, LLC, as Administrative Agent	Andrei Dorenbaum 1000 Main Street, Suite 2500 Houston, TX 77002	$109,873,998.89	(i) All tangible and intangible assets of the Debtors, except for certain customary excluded property, and (ii) all of the capital stock owned by the Debtors (limited, in the case of the stock of certain non-U.S. subsidiaries of the Company and certain U.S. subsidiaries substantially all of whose assets consist of equity interests in non-U.S. subsidiaries, to 65% of the capital stock of such subsidiaries, subject to certain exception).
SL Green Management, LLC	Adam Weissleder 420 Lexington Ave, 18th Floor New York, NY 10170	$0	Landlord security deposit of $237,791.84

Creditor Name	Creditor Contact	Amount of Claim	Collateral Description and Value
Chesterbrook Partners, L.P.	955 Chesterbrook Blvd., Suite 120 Wayne, PA 19087-5615 Attn: Property Manager	$0	Landlord security deposit of $64,761.58

EXHIBIT D

Summary of the Publicly Held Securities of the Debtors

Pursuant to Local Bankruptcy Rule 1007-2(a)(7), the following lists the stock held by each of the debtor's officers and directors and the amounts so held.

Directors and Officers	Common Share Amount and Nature of Beneficial Ownership as of November 9, 2018
Spigelman, Melvin	48,305
Brancaccio, John	116,571
Adams, Thomas	72,238

EXHIBIT E

Summary of Debtors' Property Held by Third Parties

Pursuant to Local Bankruptcy Rule 1007-2(a)(8), the following lists the Debtors' property, as of the Petition Date, that is in the possession or custody of any custodian, public officer, mortgagee, pledge, assignee of rents, secured creditor, or agent for any such entity.

Certain property of the Debtors is likely to be in the possession of various other persons, including maintenance providers, shippers, common carriers, materialmen, custodians, public officers, mortgagees, pledges, assignees of rents, secured creditors, or agents. Through these arrangements, the Debtors' ownership interest is not affected. In light of the movement of this property, providing a comprehensive list of the persons or entities in the possession of the property, their addresses and telephone number, and the location of any court proceeding affecting such property would be impractical.

EXHIBIT F

Summary of Debtors' Property From Which the Debtors' Operate Their Business

Pursuant to Local Bankruptcy Rule 1007-2(a)(9), the following lists the location of the premises owned, leased, or held under other arrangement from which the Debtors operate their businesses as of the Petition Date.

Property Address	City, State	Country	Owned or Leased
420 Lexington Avenue, Suite 2012	New York, NY	U.S.A.	Leased
620 Lee Road	Chesterbrook, PA	U.S.A.	Leased

EXHIBIT G

Location of the Debtors' Substantial Assets, Books and Records, and Nature and Location of Debtors' Assets Outside the United States

Pursuant to Local Bankruptcy Rule 1007-2(a)(10), the following provides the location of the Debtors' substantial assets, books and records, and the nature, location, and value of any assets held by the Debtors outside the territorial limits of the United States as of the Petition Date.

Location of Debtors' Substantial Assets

The Debtors' have substantial assets in New York.

Location of the Books and Records

420 Lexington Avenue, Suite 2012, New York, New York, 10170.

Debtors' Assets Outside the United States

The Company is party to a definitive licensing agreement with Cipher Pharmaceuticals ("Cipher") under which Cipher was granted the exclusive right to develop, market, distribute, and sell TRULANCE in Canada.

The Company is party to a licensing agreement with Luoxin Pharmaceutical Group Co., Ltd., Shandong ("Luoxin") granting Luoxin with exclusive rights to develop and commercialize TRULANCE in mainland China, Hong Kong, and Macau.

Synergy also has numerous granted foreign patents, which cover TRULANCE and dolcanatide, certain analogs, and their uses, and has patent applications relating to TRULANCE and dolcanatide pending in foreign jurisdictions.

EXHIBIT H

Summary of Legal Actions Against the Debtors

Pursuant to Local Bankruptcy Rule 1007-2(a)(11), the following lists actions and proceedings pending or threatened against the Debtors or their properties where a judgment against the Debtors or a seizure of their property may be imminent as of the Petition date. This list reflects actions or proceedings considered material by the Debtors and, if necessary, will be supplemented in the corresponding schedules to be filed by the Debtors in these chapter 11 cases.

Entity	Case Caption	Case No.	Court and Jurisdiction	Nature of Claim	Status
Synergy Pharmaceuticals Inc.	*In re Synergy Pharmaceuticals, Inc. Securities Litigation*	1:18-cv-00873-AMD-VMS	U.S. District Court for the Eastern District of New York	Putative federal securities class action	Pending
Synergy Pharmaceuticals Inc.	*Davydov v. Hamilton et al.*	2:18-cv-03375-AMD-VMS	U.S. District Court for the Eastern District of New York	Derivative Stockholder Suit	Pending
Synergy Pharmaceuticals Inc.	*Pierro and Pierro v. Stefano et al.*	65751/2018	Supreme Court of the State of New York, County of Westchester	Personal Injury	Pending
Synergy Pharmaceuticals Inc.	*Solak v. Jacob et al.*	651931/2018	Supreme Court of the State of New York, County of New York	Derivative Stockholder Suit	Pending

EXHIBIT I

The Debtors' Senior Management

Pursuant to Local Bankruptcy Rule 1007-2(a)(12), the following provides the names of the individuals who constitute the Debtors' existing senior management, their tenure with the Debtors, and a brief summary of their responsibilities and relevant experience as of the Petition Date.

Name/Position	Relevant Experience/ Responsibility	Tenure
Troy Hamilton Director and Chief Executive Officer	Troy Hamilton is Director and Chief Executive Officer of Synergy. Troy has over 21 years of experience in the pharmaceutical industry, with an emphasis on general management, commercialization, partnerships, acquisitions, and global product launches in the gastroenterology and primary care markets. Previously, Troy served as Chief Commercial Officer of Synergy from July 2015 to December 2017. Prior to joining Synergy, Troy held multiple commercial leadership roles over a nine year period within the Gastrointestinal (GI) Business Unit at Shire Pharmaceuticals, including Vice President, Product Strategy and Commercial Lead, Vice President of GI International Marketing, Global General Manager for the Inflammatory Bowel Disease franchise, and Head of US Marketing. Before Shire, he spent 10 years at Johnson & Johnson's Janssen Pharmaceuticals and McNeil Specialty Products in a number of in-house and field-based leadership roles within brand management, strategic planning, new product development, and medical services. Troy holds a BSc in Pharmacy and PharmD from the University of the Sciences in Philadelphia and an MBA from St. Joseph's University.	Dec. 2017-Present
Gary Gemignani Executive Vice President and Chief Financial Officer	Mr. Gemignani's career in healthcare spans over three decades, including senior management positions at several pharmaceutical and biopharmaceutical companies. Most recently, he served as Chief Executive Officer and Chief Financial Officer of Biodel, Inc., (now Albireo), overseeing business and strategic planning, operations, and financing activities of the Company. During his tenure, Mr. Gemignani successfully led the reverse merger with Albireo and managed several corporate restructurings to strengthen Albireo's overall financial position. Prior to this role, Mr. Gemignani served in senior and executive financial and operational roles with multiple public and private companies including Coronado Biosciences, Inc., Gentium S.p.A., Novartis Pharmaceutical Corp. and Wyeth. Mr. Gemignani began his career with Arthur Andersen and Company and holds a Bachelor's of Science from St. Peter's College.	Apr. 2017 - Present
Leslie Magnus Interim Chief Medical Officer	Leslie Magnus, M.D., joined Synergy with over 25 years of experience in the pharmaceutical industry, with expertise in building and leading Medical Affairs teams (Medical Science Liaisons, Scientific Communications, Medical Information, Pharmacovigilance). Her background includes work in multiple therapeutic areas including gastroenterology, women's healthcare, neuroscience and neuropathic pain for both launch products as well as established brands. In addition,	Oct. 2015 – Present

	she has significant experience in clinical research. Prior to joining Synergy, Dr. Magnus held positions at both large and small pharmaceutical organizations including Allergan, Parke-Davis/Warner Lambert, UCB and Aspreva. At these organizations, Dr. Magnus worked on compounds such as Neurontin, Loestrin, Keppra and several gastrointestinal products. She received her undergraduate degree from Brown University, her medical degree from Albany Medical College and completed her residency training at New York Hospital-Cornell Medical Center. She is an author on numerous scientific publications.	
Marianne Jackson Senior Vice President, Sales and Market Access	Marianne joined Synergy with over 25 years of commercial leadership experience in the biopharmaceutical industry with emphasis on P&L and general management, strategy, product launches, brand marketing, sales, commercial operations and market access. She has worked extensively in both US and international markets in the gastrointestinal, CNS, pain and rare disease therapeutic areas. Most recently, Marianne held the role of SVP of Global Commercial operations at Shire Pharmaceuticals where she was responsible for building and leading the market insight, sales force effectiveness and training, marketing services and commercial compliance operations teams to support the $6 billion business. Prior to that, she was the VP of Sales for the GI Business Unit at Shire and was instrumental in guiding the flagship brand, Lialda®, to a market leadership status. Prior to Shire, Marianne spent over 20 years at AstraZeneca in various leadership roles encompassing VP of Global Marketing, National Sales Director, Area Sales Director and she led the marketing efforts for brands such as Vimovo®, Seroquel®, Nexium® and Prilosec®. Marianne received her BBA in Marketing and Master of Science degrees from Texas A&M University. She is an active member of the National MS Society, where she was previous Board Chair of the Greater Delaware Valley chapter.	Jan. 2016 – Present
Pam Cebulski Senior Vice President, Marketing	Pamela joined Synergy with more than 25 years of healthcare experience, with a strong background in several US and global commercial-related areas including new product development, product launches, P&L responsibility, sales & marketing leadership, partnerships, and acquisitions. This experience spans numerous healthcare markets including gastroenterology, neuroscience, pain, respiratory care and women's health. Prior to Synergy, Pam had an extensive career with Johnson & Johnson spanning all three business sectors of consumer, pharmaceuticals and medical devices. Most recently, she was responsible for the Ethicon Advanced Biologics franchise as well as medical device innovation with a focus in the colorectal specialty. Prior to this position, she held several positions at Janssen Pharmaceuticals leading the Invega® Sustenna®, Invega®, Risperdal® Consta®, Topamax®, Aciphex®, and Duragesic® marketing teams.	Oct. 2015 – Present

	Pam's career at Johnson & Johnson began in the Consumer Sector where she progressed through roles of increasing responsibility across OTC and consumer products companies leading notable brands such as Tylenol, Imodium A-D, Stayfree, Carefree, o.b., Monistat, K-Y, Healthy Woman, Uristat, Nizoral Rx-to-OTC switch and the Aveeno acquisition. Pam's career in brand management began with Procter & Gamble in the respiratory care OTC franchise. She earned her MBA from Cornell University's Johnson Graduate School of Management and BS in Marketing/International Business from The American University.	
Scott Brunetto Vice President, Commercial Operations	Scott joined Synergy with over 25 years of experience in the pharmaceutical industry, with an emphasis on marketing and sales analytics including marketing research, forecasting, competitive intelligence, promotion response modeling, sales force analysis and incentive compensation. He has experience across multiple in-line Rx and OTC brands as well as experience with commercialization, partnerships, acquisitions, and global product launches in gastroenterology and other specialty markets. Prior to joining Synergy, Scott held business intelligence and commercial operation leadership roles over a seven-year period within Shire Pharmaceuticals' GI Business Unit. Most recently, he was Senior Director, Global Commercial Insights & Analytics, responsible for the Shire's global GI portfolio. He joined Shire as the Head of Global Market Research for the GI Business Unit, working on recently launched Lialda® and the continued commercialization of Pentasa®. He previously spent 14 years at Johnson & Johnson's Janssen Pharmaceuticals, McNeil Specialty Products, and Ortho-McNeil in several commercial operations and analytic leadership roles across a number of therapeutic areas including mycology, allergy, CNS, pain, and women's health. He came to J&J from IMS Health. Scott holds a BBA in Marketing from the George Washington University School of Business.	Oct. 2015 - Present

EXHIBIT J

Debtors' Payroll for the 30 Day Period Following the Petition Date

Pursuant to Local Rules 1007-2(b)(1)-(2)(A) and (C), the following provides, for the 30-day period following the Petition Date, the estimated amount of weekly payroll to employees (exclusive of officers, directors, and stockholders), the estimated amount paid and proposed to be paid to officers, stockholders, and directors, and the amount paid or proposed to be paid to financial and business consultants retained by Debtors.

Estimated amount of weekly payroll to employees (exclusive of officers, directors, and stockholders): $1,500,000

Estimated amount paid and proposed to be paid to officers, stockholders, and directors: $82,000

Amount paid or proposed to be paid to financial and business consultants: $6,000,0000

EXHIBIT K

Debtors' Estimated Cash Receipts and Disbursements for the Thirty-Day Period Following the Filing of the Chapter 11 Petitions

Pursuant to Local Rule 1007-2(b)(3), the following provides, for the 30-day period following the Petition Date, the Debtors' estimated cash receipts and disbursements, net cash gain or loss, and obligations and receivables expected to accrue that remain unpaid, other than professional fees.

Estimated Operating Cash Receipts	$9,000,000
Estimated Cash Disbursements	($20,000,000)
Net Cash Loss	($11,000,000)
Accrued Obligations	$8,100,000[1]
Uncollected Receivables	$8,900,000[2]

[1] The estimate of accrued and unpaid obligations reflects general, standardized assumptions on vendor payment terms, gross-to-nets, and monthly payroll timing.
[2] The estimate of uncollected receivables reflects standardized assumptions on the timing of sales and receipts.