

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Bostwick Laboratories, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 17-10570 (BLS)

(Joint Administration)

Related Docket Nos. 6, 28, 142

**FINAL ORDER AUTHORIZING CONTINUED
USE OF THE DEBTORS' CASH MANAGEMENT SYSTEM**

Upon the Motion² filed by the above-referenced debtors and debtors-in-possession (collectively, the "Debtors") for entry of a final order (the "Final Order") authorizing the Debtors to: (a) continue to operate their cash management system; and (b) honor certain prepetition obligations related thereto, all as more fully set forth in the Motion; and the First Day Declaration; and the Court having jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that proper and adequate notice of the Motion and hearing thereon has been given and that no other or further notice is necessary; and the Court having found that good and sufficient cause exists for the granting of the relief

¹ The Debtors are the following entities (last four digits of EIN in parentheses): (i) Bostwick Laboratories, Inc., a Delaware corporation (3169); and (ii) Bostwick Laboratories Holdings, Inc., a Delaware corporation (1042). The mailing address for the Debtors is 100 Charles Lindbergh Blvd., Uniondale, NY 11553.

² Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Motion.

requested in the Motion after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion, it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** on a final basis to the extent set forth herein.
2. Any objections to the Motion that have not been withdrawn or otherwise resolved are hereby **OVERRULED**.
3. The Debtors are authorized, but not directed, to: (a) continue operating the Cash Management System as described in the Motion and (b) honor their prepetition obligations related thereto, as described in the Motion.
4. The Debtors are further authorized, but not directed, to: (a) continue to use, with the same account numbers, the Bank Accounts in existence as of the Petition Date; (b) treat the Bank Accounts for all purposes as accounts of the Debtors as debtors in possession; (c) deposit funds in and withdraw funds from the Bank Accounts by all usual means, including wire transfers, checks and other debits; and (d) pay the Bank Fees (including any prepetition amounts), and to otherwise perform their obligations under the documents governing the Bank Accounts, subject to the limits set forth herein.
5. Bank of America, N.A. (the "Cash Management Bank") is authorized to continue to maintain, service, and administer the Bank Accounts as accounts of the Debtors as debtors-in-possession, without interruption and in the ordinary course, and to receive, process, honor, and pay, to the extent of available funds, any and all drafts, wires, credit card payments, ACH transfers, electronic fund transfers, or other items presented, issued, or drawn on the Bank Accounts on account of a claim, whether arising before, on, or after the Petition Date; provided that (a) those certain existing deposit agreements between the Debtors and the Cash Management

Bank, as modified by any orders entered in these chapter 11 cases, shall continue to govern the post-petition cash management relationship between the Debtors and the Cash Management Bank, and all of the provisions of such agreements, including the termination and fee provisions, shall remain in full force and effect (except as modified hereby), and (b) the Debtors and the Cash Management Bank may, without further order of this Court, agree to and implement non-substantive changes to the Cash Management System and procedures related thereto in the ordinary course of business.

6. All banks, including the Cash Management Bank shall not honor or pay any bank payments drawn on the listed Bank Accounts or otherwise issued before the Petition Date to the extent that the Debtors specifically issue stop payment orders in accordance with the documents governing such Bank Accounts. The Debtors are authorized to enter into additional deposit agreements with the Cash Management Bank or any other bank, as necessary in connection with any debtor in possession financing. The Cash Management Bank is authorized to rely on the Debtors' direction as to whether any bank payments should be honored or dishonored, regardless of whether the Cash Management Bank believes the payment is authorized by an order of the Court. To the extent that the Debtors direct that any bank payment be dishonored or the Cash Management Bank inadvertently dishonors any bank payment, the Debtors may issue replacement bank payments consistent with the orders of this Court.

7. In the course of providing cash management services to the Debtors, the Cash Management Bank is authorized, without further order of this Court, to deduct the applicable Bank Fees from the appropriate Bank Account.

8. The Cash Management Bank is further authorized to (a) honor the Debtors' directions with respect to the opening and closing of any Bank Account and (b) accept

and hold the Debtors' funds in accordance with the Debtors' instructions; provided that the Cash Management Bank shall not have any liability to any party for relying on such instructions to the extent such reliance otherwise complies with applicable law.

9. The Debtors are authorized to continue to use their pre-printed checks, correspondence, and business forms and checks, including, but not limited to, purchase orders, letterhead, envelopes, promotional materials, and other business forms, substantially in the forms existing immediately prior to the Petition Date, without reference to the Debtors' debtor-in-possession status, provided that the Debtors will add the "Debtor in Possession" designation to any checks that they create or order postpetition.

10. Subject to Bankruptcy Code section 553, all banks that maintain the Bank Accounts are prohibited from offsetting, affecting, freezing, or otherwise impeding the Debtors' use of any funds in the Bank Accounts on account of, or by reason of, any claim (as defined in Bankruptcy Code section 101(5)) of any such bank against the Debtors that arose before the Petition Date, absent further order of this Court.

11. The Debtors are authorized to close any existing Bank Accounts as it may deem necessary and appropriate in their sole discretion; provided, however, that the Debtors shall give notice within fifteen (15) days that includes (a) the reason for the closing of the Bank Account, (b) the amount of cash in such Bank Account, if any, at the time such account was or will be closed, and (c) where such funds will be or have been transferred or will be or are otherwise held to the Office of the U.S. Trustee and counsel for the committee of unsecured creditors (the "Committee"). The Debtors are authorized to open any new Bank Accounts provided that any such new Bank Accounts shall be opened at banks that executed a Uniform Depository Agreement with the Office of the U.S. Trustee for the District of Delaware, or at such

banks that are willing to timely execute such an agreement and the Debtors will provide fifteen (15) days advance written notice to the U.S. Trustee and counsel for the Committee that includes (x) a description of the proposed new Bank Account, (y) the purpose of the proposed new Bank Account, and (z) the name and location of the bank at which such proposed new Bank Account shall be held. Any new Bank Accounts are subject to the rights, obligations, limitations and other relief granted in this Final Order.

12. The Debtors shall record the balances of each of their Bank Accounts as of the Petition Date and shall maintain accurate and detailed records of all transfers, including but not limited to intercompany transfers between the Debtors, so that all transactions may be readily ascertained, traced, recorded properly and distinguished between pre-petition and post-petition transactions. The Debtors shall maintain their books and records in accordance with the preceding sentence substantially in accordance with the methods utilized prior to the commencement of these chapter 11 cases, supplemented as necessary to comply with the provisions of this Order.

13. The Debtors shall not be permitted to make any transfers to non-Debtor affiliates (the "Unfiled Affiliates"); provided however, that if an Unfiled Affiliate lacks sufficient funds and the Debtors determine that such a transfer is necessary to prevent loss of value of the Debtors' interest in an Unfiled Affiliate, the Debtors may transfer such funds on no less than ten (10) business days advance written notice of such proposed transfer to counsel to the Committee, which notice shall specify the amount and the business purpose of the transfer. If the Committee objects to such proposed payment within such ten (10) business day period, the Debtors will not make the proposed transfer that is the subject of the Committee's objection, and will schedule a hearing to address such objection on an expedited basis.

14. The Debtors shall maintain a matrix (the "Matrix") summarizing (i) the name of each Debtor or Unfiled Affiliate that received or is to receive a transfer from any of the Debtors; (ii) the amount of such transfer, and (iii) a description of the purpose of such transfer. The Matrix shall be provided (a) upon request, to the U.S. Trustee, and (b) on a monthly basis (or such other agreed upon time period), to counsel to the Committee. The Debtors shall otherwise properly document and record any such transfers in accordance herewith.

15. To the extent there is a transfer of cash from a Bank Account of the Debtors and their Unfiled Affiliates that is unencumbered by a prepetition lien or security interest ("Unencumbered Funds") to a Bank Account that is subject to an account control agreement for the benefit of a secured party or otherwise contains cash that was subject to a perfected lien or security interest as of the Petition Date, such transferred cash shall not become subject to such lien or security interest solely because of such transfer. The Committee's right to investigate and/or challenge any transfers and/or any purported liens on or security interests in any of the Debtors' cash is expressly preserved.

16. Nothing in this Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Order or the Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) asserted in

connection with the Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

17. The Debtors shall calculate quarterly fees under 28 U.S.C. section 1930(a)(6) based on the disbursements of each Debtor, regardless of who pays those disbursements.

18. The requirement to establish separate accounts for cash collateral and/or tax payments is hereby waived.

19. Notice of the Motion satisfies the requirements set forth in Bankruptcy Rule 6004(a).

20. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, this Final Order shall be immediately effective and enforceable upon its entry.

21. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Final Order in accordance with the Motion.

22. The Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Final Order.

Dated: April 10, 2017
Wilmington, Delaware



HONORABLE BRENDAN L. SHANNON
CHIEF UNITED STATES BANKRUPTCY JUDGE