IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
	)	
SORRENTO THERAPEUTICS, INC., *et al.*[1]	)	Case No. 23-90085 (CML)
	)	
Debtors.	)	(Jointly Administered)
	)	(Emergency Hearing Requested)

DEBTORS' SECOND EMERGENCY MOTION FOR ENTRY OF AN ORDER APPROVING MODIFICATIONS TO VIVASOR ASSET PURCHASE AGREEMENT

Emergency relief has been requested. Relief is requested not later than April 2, 2024.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

The above-captioned debtors and debtors in possession (collectively, the "Debtors") state the following in support of this motion (this "Motion"):

RELIEF REQUESTED

1. The Debtors seek entry of an order, substantially in the form attached hereto (the "Order"), approving the modifications described herein to the *Asset Purchase Agreement* between Sorrento Therapeutics, Inc. and Vivasor, Inc. (the "Purchaser" and the "APA"), approved by the Court on March 8, 2024 [Docket No. 2001] (the "Sale Order") and modified by the Court's order on March 26, 2024 [Docket No. 2093] (the "First Modifications Order"). If the Debtors and Purchaser finalize an APA amendment with such modifications before the hearing, they will file the amendment with the Court. Otherwise, the Debtors and Purchaser will finalize the amendment after entry of the order and prior to closing.

[1] The Debtor entities in these chapter 11 cases, along with the last four digits of each Debtor entity's federal tax identification number, are: Sorrento Therapeutics, Inc. (4842) and Scintilla Pharmaceuticals, Inc. (7956). The Debtors' service address is: 9380 Judicial Drive, San Diego, CA 92121.

2. Emergency relief is required by April 2, 2024. Under the proposed modifications, the deadline to consummate the sale is April 3, 2024 (extended from April 1, 2024). The Debtors need to close the sale and consummate their plan as soon as possible, to minimize the operating costs of these estates, to give certainty to employees who may be transitioning employment, and to maximize the amount of cash available for the liquidating trustee. If the Debtors do not promptly obtain approval of the proposed modifications so that they can promptly close the sale, the Debtors risk losing the sale in total and/or risk leaving the liquidating trustee with insufficient cash to pursue recoveries. Last, the Purchaser and the Unsecured Creditors' Committee support the relief requested. The Debtors have kept the Equity Committee informed of the negotiations and modifications, but the Equity Committee has not indicated a position with respect to the relief.

JURISDICTION & VENUE

3. The United States Bankruptcy Court for the Southern District of Texas (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). The Debtors confirm their consent to the entry of a final order by the Court. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested are sections 105 and 363 of title 11 of the Bankruptcy Code (the "Bankruptcy Code"), rules 2002, 6004, and 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and rules 4002-1(e) and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "Bankruptcy Local Rules").

BACKGROUND

5. On February 13, 2023, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. A detailed description of the Debtors, their businesses, and the facts and circumstances supporting these cases are set forth in greater detail in the *Declaration of Mohsin Meghji, Chief Restructuring Officer of the Debtors, in Support of Chapter 11 Petitions*

[Docket No. 5]. On February 28, 2023, the U.S. Trustee appointed the Unsecured Creditors' Committee, which was reconstituted on March 28, 2023 [Docket No. 313], June 7, 2023 [Docket No. 813], and July 28, 2023 [Docket No. 1123]. On April 10, 2023, the U.S. Trustee appointed the Equity Committee, which was reconstituted on April 14, 2023 [Docket No. 448].

6. On November 30, 2023, the Court entered an order confirming the Debtors' chapter 11 plan of liquidation [Docket No. 1616] (with a corrected order entered on December 13, 2023 at Docket No. 1652). On March 8, 2024, the Court entered the Sale Order—(a) approving the sale of the Debtors' remaining assets to Vivasor, Inc. and (b) approving the Debtors' modifications to their plan (as reflected in such order).

7. On March 26, 2024, the Court entered the First Modifications Order, modifying the APA and the plan with respect to the Debtors' Virex assets, which (among other things) increased the price of the Virex option and provided for Virex to remain under Sorrento after the plan effective date instead of being transferred to the liquidation trust.

8. After a lengthy marketing process for all assets that resulted in no better offer, the APA provides for the sale of (among other things) Sorrento's equity interests in Aardvark Therapeutics, Inc. (which total approximately 8.4%) for $500,000. On March 29, 2024, the Financial Times published an article explaining that Aardvark is preparing for a potential IPO, which the Financial Times commented could value the company at around $2 billion. A valuation at that number would value Sorrento's stake at roughly $168 million, before dilution. All of that is highly speculative, but that new information led the parties to negotiate these proposed modifications so that the Debtors' estates can benefit from any potential upside.

THE MODIFICATIONS

9. Under the proposed modifications:

- ***Closing***. The outside date for closing would be extended from April 1, 2024 to April 3, 2024.

- ***Aardvark Shares***. Sorrento would retain half of its equity (i.e., 4.2%) in Aardvark (which would then be transferred to the liquidation trust at emergence), rather than transferring all of it to the Purchaser. Of the 4.2% being transferred to the Purchaser, title to half of that (i.e., 2.1%) would not be transferred until Purchaser pays the Deferred Cash (defined below), such payment due by April 30, 2024. If the payment is not made by then, the Debtors' estate would retain title to those shares.

- ***DIP Loan***. The Purchaser's DIP loan (approximately $5 million) would remain repaid at closing (via a credit against the purchase price).

- ***Cash Consideration***. The $9.5 million of cash consideration under the original deal (resulting from the $15.5 million cash consideration less the $5 million DIP loan less the $1 million deposit) would be modified to $4.5 million of cash—$3 million of which would be paid at closing and $1.5 million of which would be paid no later than April 30, 2024 (the "Deferred Cash").

- ***$5 Million Note***. The $5 million unsecured note to be issued by Purchaser to Sorrento under the original sale would be replaced by a $5 million, one-year secured note issued by Sorrento to Purchaser or a designee of Purchaser at closing (with 8% interest), secured solely by Sorrento's equity interests in Aardvark.

    - The proceeds of such note would enter the Debtors' estates and be used to consummate the chapter 11 plan, with any remaining proceeds transferred at emergence to the Liquidating Trust, which will then be responsible for such obligations (notwithstanding anything in the Debtors' chapter 11 plan or confirmation order to the contrary).

- ***Upside Consideration***. The Purchaser would pay to the Liquidating Trust (or Sorrento, after creditors are paid in full in cash):

    - 25% on the first $15 million of proceeds that the Purchaser receives from its Aardvark shares; and

    - 10% on the next $15 million of proceeds that the Purchaser receives from its Aardvark shares.

- ***Release.*** In exchange for the consideration detailed herein, the amended APA shall contain a full release by the Debtors of any and all claims, known and unknown, that may be assertable or alleged by or on behalf of the Debtors or their estates against the Purchaser, Henry Ji, and/or any other investors and/or interested parties in the Purchaser including all professionals, and a mutual release by such parties in favor of the Debtors, in each case that relate in any way to the Aardvark shares.

BASIS FOR RELIEF

10. The modifications to the APA should be approved. First, the terms reflect hard-fought negotiations that were conducted at arm's length and in good faith among sophisticated parties and advisors—namely, the Purchaser (represented by Paul Hastings), the Unsecured Creditors' Committee (represented by Milbank), the Equity Committee (represented by Glenn Agre and Greenberg Traurig), and the Debtors (led by their Chief Restructuring Officer and represented by Latham & Watkins).

11. Second, the modifications to the APA are a sound exercise of the Debtors' business judgment. Based on recently discovered information regarding a potential Aardvark IPO, the modifications allow for the Debtors' estate to (i) retain certain Aardvark shares and (ii) receive other upside consideration in exchange for the transferred Aardvark shares. There is certainly no guarantee that Aardvark will successfully complete an IPO and the valuation of Aardvark in any IPO is speculative, but the Debtors—with input from the Creditors' Committee and the Equity Committee—believe that these modifications are favorable to the estate as they (i) permit the sale to proceed and (ii) provide for potential upside recoveries to the estate, which could be significantly larger than the $500,000 that was previously going to be paid for the Aardvark shares.

WAIVER OF BANKRUPTCY RULES 6004(A) AND 6004(H)

12. For the reasons described herein regarding the Debtors' lack of liquidity and exigent circumstances, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

NOTICE

13. The Debtors will provide notice of this Motion to the following parties or their respective counsel: (a) the U.S. Trustee for the Southern District of Texas; (b) the Purchaser (as defined in the Sale Order); (c) the Creditors' Committee; (d) the Equity Committee; and (e) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, no other or further notice need be given.

The Debtors request that the Court enter an order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: April 1, 2024

/s/ *Kristhy M. Peguero*
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Counsel to the Debtors

Certificate of Accuracy

I certify that the foregoing statements are true and accurate to the best of my knowledge. This statement is being made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ Kristhy M. Peguero
Kristhy M. Peguero

Certificate of Service

I certify that, on April 1, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Kristhy M. Peguero
Kristhy M. Peguero

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
	)	
SORRENTO THERAPEUTICS, INC., *et al.*,[2]	)	Case No. 23-90085 (CML)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	**Re: Dkt. Nos. 2001, 2093, ___**

SECOND ORDER APPROVING MODIFICATIONS
TO VIVASOR ASSET PURCHASE AGREEMENT

Upon consideration of the motion (the "Motion")[3] of the above-captioned debtors and debtors in possession (the "Debtors) for entry of an order (this "Order") approving the modifications described herein to the *Asset Purchase Agreement* between Sorrento Therapeutics, Inc. and Vivasor, Inc. (the "APA"), approved by the Court on March 8, 2024 [Docket No. 2001] (the "Sale Order") and attached as Exhibit 1 thereto and modified by the Court's order on March 26, 2024 [Docket No. 2093] (the "First Modifications Order"); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and this 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 this Court having found that the relief requested in the Motion is in the best interests of the Debtors, their creditors, and other parties in interest; and this Court having found that the Debtors' notice

[2] The Debtor entities in these chapter 11 cases, along with the last four digits of each Debtor entity's federal tax identification number, are: Sorrento Therapeutics, Inc. (4842) and Scintilla Pharmaceuticals, Inc. (7956). The Debtors' service address is: 9380 Judicial Drive, San Diego, CA 92121.

[3] Capitalized terms used but not defined herein have the meanings given to them in the Motion.

of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT**:

1. The following modifications are approved:

- ***Closing***. The outside date for closing is extended from April 1, 2024 to April 3, 2024.

- ***Aardvark Shares***. Sorrento will retain half of its equity (i.e., 4.2%) in Aardvark (which will then be transferred to the liquidation trust at emergence), rather than transferring all of it to the Purchaser. Of the 4.2% being transferred to the Purchaser, title to half of that (i.e., 2.1%) will not be transferred until Purchaser pays the Deferred Cash (defined below), such payment due by April 30, 2024. If the payment is not made by then, the Debtors' estate will retain title to those shares.

- ***DIP Loan***. The Purchaser's DIP loan (approximately $5 million) will remain repaid at closing (via a credit against the purchase price).

- ***Cash Consideration***. The $9.5 million of cash consideration under the original deal (resulting from the $15.5 million cash consideration less the $5 million DIP loan less the $1 million deposit) will be modified to $4.5 million of cash—$3 million of which will be paid at closing and $1.5 million of which will be paid no later than April 30, 2024 (the "Deferred Cash").

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    - The proceeds of such note will enter the Debtors' estates and be used to consummate the chapter 11 plan, with any remaining proceeds transferred at emergence to the Liquidating Trust, which will then be responsible for such obligations (notwithstanding anything in the Debtors' chapter 11 plan or confirmation order to the contrary).

- ***Upside Consideration***. The Purchaser will pay to the Liquidating Trust (or Sorrento, after creditors are paid in full in cash):
    - 25% on the first $15 million of proceeds that the Purchaser receives from its Aardvark shares; and
    - 10% on the next $15 million of proceeds that the Purchaser receives from its Aardvark shares.
- ***Release.*** In exchange for the consideration detailed herein, the amended APA shall contain a full release by the Debtors of any and all claims, known and unknown, that may be assertable or alleged by or on behalf of the Debtors or their estates against the Purchaser, Henry Ji, and/or any other investors and/or interested parties in the Purchaser including all professionals, and a mutual release by such parties in favor of the Debtors, in each case that relate in any way to the Aardvark shares.

2. The Sale Order [Docket No. 2001] shall continue in full force and effect with respect to the APA [Docket No. 2001, Exhibit 1], as modified by the First Modifications Order [Docket No. 2093], the modifications described herein, and any agreed amendment documenting such modifications.

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

4. This Order is effective immediately.

5. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order—including but not limited to the Sale Order and the APA (and any amendments thereto).

Dated: ______________, 2024
Houston, Texas

____
CHRISTOPHER LOPEZ
UNITED STATES BANKRUPTCY JUDGE