

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

In re:

Baxano Surgical, Inc.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 14-12545 (CSS)

Related D.I.: 176, 212, 281, 318, 384 and 503

**ORDER APPROVING (A) FIFTH MODIFICATION OF FINAL  
ORDER (I) AUTHORIZING DEBTOR TO OBTAIN POSTPETITION  
FINANCING PURSUANT TO 11 U.S.C. §§ 105, 362, 363, AND 364,  
(II) GRANTING LIENS AND SUPERPRIORITY CLAIMS TO  
POSTPETITION LENDER PURSUANT TO 11 U.S.C. §§ 364 AND 507,  
(III) AUTHORIZING USE OF CASH COLLATERAL PURSUANT TO  
11 U.S.C. § 363, (IV) PROVIDING ADEQUATE PROTECTION TO  
PREPETITION SECURED LENDER PURSUANT TO  
11 U.S.C. §§ 361, 362, 363, 364, AND 507, AND (V) SCHEDULING FINAL  
HEARING PURSUANT TO BANKRUPTCY RULES 4001(B) AND (C) AND  
LOCAL BANKRUPTCY RULE 4001-2, AND (B) GRANTING RELATED RELIEF**

Upon the motion (the "Motion") of the above-captioned debtor and debtor-in-possession (the "Debtor") for entry of an order modifying that certain Final Order (I) Authorizing Debtor to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 362, 363 and 364 (II) Granting Liens and Superpriority Claims to Postpetition Lender Pursuant to 11 U.S.C. §§363 and 507, (III) Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. §363, (IV) Providing Adequate Protection to Prepetition Secured Lender Pursuant to 11 U.S.C. §§361, 362, 363, 364 and 507, and (V) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(B) and (C) and Local Bankruptcy Rule 4001-2 [D.I. 176] (as modified by the First Modification of Final DIP Order [D.I. 281], the Second Modification of Final DIP Order [D.I. 318], the Third Modification of Final DIP Order [D.I. 384] and the Fourth Modification of Final DIP Order [D.I.

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<sup>1</sup> The last four digits of the Debtor's tax identification number are 9022. The Debtor's mailing address is P.O. Box 98386, Raleigh, North Carolina 27624.

503], the “Final DIP Order”<sup>2</sup>; the Court finds that (i) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334(b); (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) the venue of this proceeding and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; (iv) the relief requested in the Motion is in the best interest of the Debtor, its estate and its creditors; (v) proper and adequate notice of the Motion and the hearing thereon has been given and that no other or further notice is necessary; and (vi) upon the record herein after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein. Therefore, it is hereby:

**ORDERED** that the Motion is **GRANTED** as set forth herein; and it is further

**ORDERED** that all of the terms of the Final DIP Order shall remain in full force and effect pursuant to the terms thereof provided, however, the Budget attached to the Order Approving the Fourth Modification of Final Order, and all references to the Budget in the Final Order, are deleted and the Debtor shall be permitted to use Cash Collateral to pay any and all post-petition operating expenses (including wages to employees and amounts owed to Tamarack Associates, Inc.) and all other administrative expenses (including amounts owed to professionals, to the extent such payment is permitted under any other order of this Court and including the Carryover Carveout) without regard to any budget, and it is further

**ORDERED** that, because the DIP Obligations have been paid in full, the term “Maturity Date,” as defined in the DIP Termsheet is hereby replaced with the earlier of the Effective Date of the Second Amended Plan of Baxano Surgical, Inc. [D.I. 570] and September 22, 2015 solely for purposes of the Debtor’s continued use of Cash Collateral; and it is further;.

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<sup>2</sup> Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed to them in the Final DIP Order.

**ORDERED** that notwithstanding the possible applicability of Rules 6004(h) of the Bankruptcy Rules or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

**ORDERED** that the Debtor is hereby authorized and empowered to take all actions necessary to implement the relief granted in this Order; and it is further

**ORDERED** that, to the extent necessary, this Court shall consider an extension of this Order at the omnibus hearing in this case on September 22, 2015 at <sup>10:00</sup>~~9:00~~ a.m. (the "Continued Hearing"); and it is further:

**ORDERED** that, in the event the Plan Effective Date has not occurred on or before August 17, 2015, the Debtor shall promptly serve by regular mail, postage prepaid, copies of this Order and a notice that a further extension of the Final DIP/Cash Collateral Order will be considered at the Continued Hearing on the following: (i) the Office of the United States Trustee; (ii) the United States Securities and Exchange Commission; (iii) the Internal Revenue Service; (iv) the Office of the United States Attorney for the District of Delaware; (v) the Committee; (vi) all parties filing request for service under Bankruptcy Rule 2002; and (vii) all other known parties asserting a lien against the Debtor's assets. The notice shall state that any party in interest objecting to the extension of the Final DIP/Cash Collateral Order shall file an objection at least seven (7) days prior to the Continued Hearing.

**ORDERED** that this Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order; and it is further:

Dated: July <sup>24</sup>, 2015  
Wilmington, Delaware

  
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CHRISTOPHER A. SONTCHI  
UNITED STATES BANKRUPTCY JUDGE