IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
SIENTRA, INC., *et al.*,[1]	)	Case No. 24-10245 (JTD)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	**Re: Docket Nos. 8, 52**
	)	

Objection Deadline: March 5, 2024 at 4:00 p.m. (ET)
Hearing Date: March 12, 2024 at 2:00 p.m. (ET)

NOTICE OF ENTRY OF INTERIM ORDER AND FINAL HEARING REGARDING DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO (A) HONOR CERTAIN PREPETITION OBLIGATIONS TO CUSTOMERS AND (B) OTHERWISE CONTINUE CERTAIN CUSTOMER PROGRAMS IN THE ORDINARY COURSE OF BUSINESS AND (II) GRANTING RELATED RELIEF

PLEASE TAKE NOTICE that on February 13, 2024, the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Honor Certain Prepetition Obligations to Customers and (B) Otherwise Continue Certain Customer Programs in the Ordinary Course of Business and (II) Granting Related Relief* (the "Motion") [Docket No. 8] with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). A copy of the Motion is attached hereto as **Exhibit 1**.

PLEASE TAKE FURTHER NOTICE that the Debtors presented certain first-day motions at a hearing before the Honorable John T. Dorsey at the Bankruptcy Court on February 14, 2024. The Bankruptcy Court granted the relief requested by the Motion on an interim basis and entered the *Interim Order (I) Authorizing Debtors to (A) Honor Certain*

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: Sientra, Inc. (1000); Mist Holdings, Inc. (4221); Mist, Inc. (1202); and Mist International, Inc. (3363). The Debtors' service address is 3333 Michelson Drive, Suite 650, Irvine, CA 92612.

Prepetition Obligations to Customers and (B) Otherwise Continue Certain Customer Programs in the Ordinary Course of Business and (II) Granting Related Relief (the "Interim Order") [Docket No. 52], attached hereto as **Exhibit 2**.

PLEASE TAKE FURTHER NOTICE that any response or objection to the entry of a final order with respect to the relief sought in the Motion must be filed with the Bankruptcy Court on or before **March 5, 2024 at 4:00 p.m. prevailing Eastern Time**.

PLEASE TAKE FURTHER NOTICE that at the same time, you must also serve a copy of the response or objection upon: (i) the proposed counsel to the Debtors, (a) Kirkland & Ellis LLP and Kirkland & Ellis International LLP, 601 Lexington Avenue, New York, New York 10022, (Attn: Joshua A. Sussberg, P.C. (joshua.sussberg@kirkland.com) and Nicole L. Greenblatt, P.C. (nicole.greenblatt@kirkland.com) and Elizabeth H. Jones, Esq. (elizabeth.jones@kirkland.com); and (b) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, Delaware 19801, Attn: Laura Davis Jones, Esq. (ljones@pszjlaw.com), David M. Bertenthal (dbertenthal@pszjlaw.com) and Timothy P. Cairns, Esq. (tcairns@pszjlaw.com); (ii) the Office of The United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: John H. Schanne, II, Esq. (john.schanne@usdoj.gov); and (iii) counsel to any statutory committee appointed in these chapter 11 cases.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE FINAL RELIEF REQUESTED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE FINAL RELIEF SOUGHT IN THE MOTION WILL BE HELD ON **MARCH 12, 2024**

AT 2:00 P.M. PREVAILING EASTERN TIME BEFORE THE HONORABLE JOHN T. DORSEY, UNITED STATES BANKRUPTCY COURT JUDGE, AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 5TH FLOOR, COURTROOM NO. 5, WILMINGTON, DELAWARE 19801.

Dated: February 15, 2024

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Laura Davis Jones

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Proposed Co-Counsel to the
Debtors and Debtors in Possession

Exhibit 1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
SIENTRA, INC., *et al.*,[1]	)	Case No. 24-10245 (___)
Debtors.	)	(Joint Administration Requested)

DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO (A) HONOR CERTAIN PREPETITION OBLIGATIONS TO CUSTOMERS AND (B) OTHERWISE CONTINUE CERTAIN CUSTOMER PROGRAMS IN THE ORDINARY COURSE OF BUSINESS AND (II) GRANTING RELATED RELIEF

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

RELIEF REQUESTED

The Debtors seek entry of an interim order on an expedited basis, substantially in the form attached hereto as **Exhibit A** (the "Proposed Interim Order") and, following a final hearing to be set by the Court (as defined herein) (the "Final Hearing"), the entry of a final order, substantially in the form attached hereto as **Exhibit B** (the "Proposed Final Order"): (i) authorizing, but not directing, the Debtors to (a) honor certain prepetition obligations to customers and (b) otherwise continue, renew, replace, modify, implement, revise, or terminate Customer Programs (as defined herein) in the ordinary course of business consistent with past practices and in the Debtors' sound business judgment and (ii) granting related relief. In addition, the Debtors request that the Court

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: Sientra, Inc. (1000); Mist Holdings, Inc. (4221); Mist, Inc. (1202); and Mist International, Inc. (3363). The Debtors' service address is 3333 Michelson Drive, Suite 650, Irvine, CA.

(as defined herein) schedule a final hearing within approximately 28 days of the commencement of these chapter 11 cases to consider approval of this Motion on a final basis.

JURISDICTION AND VENUE

1. The United States District Court for the District of Delaware has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, which was referred to the United States Bankruptcy Court for the District of Delaware (the "Court") under 28 U.S.C. § 157 pursuant to the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Debtors confirm their consent pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 105(a) and 363(b) of title 11 of the United States Code (the "Bankruptcy Code"), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy Rules"), and Local Rules 2002-1 and 9013-1(m).

BACKGROUND

4. On the date hereof (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this motion, the Debtors filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No party has requested the appointment of a trustee or examiner in these chapter 11 cases, and no committees have been appointed or designated.

5. Headquartered in Irvine, California, Sientra is a medical aesthetics company focused on empowering people to change their lives through increased self-confidence and self-respect. Backed by unrivaled clinical and safety data, Sientra's platform of products includes a comprehensive portfolio of round and shaped breast implants, the first fifth-generation breast implants approved by the FDA for sale in the United States; the industry's most complete tissue expander portfolio including the ground-breaking AlloX2® breast tissue expander (with patented dual-port and integral drain technology); the next-generation AlloX2Pro™, the first FDA-cleared MRI-compatible tissue expander, the DermaSpan® single port tissue expander, and the Softspan™ range of extremity expanders; the Viality™ with AuraClens™ enhanced viability fat transfer system; the SimpliDerm® Human Acellular Dermal Matrix; and BIOCORNEUM, the preferred scar gel of plastic surgeons.

6. A detailed description of the Debtors' business and facts precipitating the filing of the Debtors' chapter 11 proceedings are set forth in the *Declaration of Ron Menezes in Support of*

the Debtors' Chapter 11 Petitions and First Day Relief (the "First Day Declaration"), incorporated herein by reference.

THE DEBTORS' CUSTOMERS AND CUSTOMER PROGRAMS

7. Prior to the commencement of these Chapter 11 Cases, in the ordinary course of business (and as is customary in the Debtors' industry to develop and maintain customer loyalty and provide confidence in the marketplace for the Debtors' products), the Debtors implemented certain programs, practices, incentives, promotions, and other accommodations described and defined below, including (i) a product return and refund policy (the "Return and Refund Policy"), (ii) two warranty programs (the "Warranty Programs"), (iii) marketing programs (the "Marketing Programs"), and (iv) sales incentive rebates (the "Sales Incentive Rebates" and, collectively with the Return and Refund Policy, the Warranty Programs and the Marketing Programs, the "Customer Programs.") The Customer Programs are designed to generate goodwill, maintain loyalty, incentivize sales and improve the Debtors' profitability by maximizing the satisfaction of the Debtors' customers (the "Customers").

8. The Debtors' Customers are primarily hospitals and surgeons. Certain Customer Programs are intended to accommodate the hospitals' practice of purchasing implants. As described further below, hospitals purchase implants in multiples, which means they purchase more than they will need for a given surgery. The end-user of the Debtors' products are the recipients of the breast implants. These recipients or patients are not the direct Customers of the Debtors but patient confidence in the Debtors' implants is key to the Debtors' business. For

example, the Warranty Programs (described further below) benefit the patients and are intended to provide the patient with confidence that the Debtors will stand behind their products.

9. Maintaining goodwill and sustaining Customer relationships through the Customer Programs is critical to the Debtors' ongoing operations and the preservation and maximization of the value of the Debtors' assets. Failure to continue the Customer Programs and satisfy certain prepetition obligations in connection therewith would not only completely alter to the Debtors' business model and Customer sales practices but also would risk alienating the Debtors' most loyal and valuable current Customers. Discontinuing the Customer Programs would jeopardize future patronage and revenue from such Customers, adversely affecting the Debtors' position in the marketplace and would significantly hamper the Debtors' prospects for a successful restructuring.

A. Return and Refund Policy

10. Given the nature of the Debtors' products and their medical applications, the Debtors have instituted a Return and Refund Policy for all unused breast implants. Prior to a breast reconstruction or augmentation surgery, a hospital will order and pay for multiple implants in several sizes but will only use one or two in the surgery. This practice allows for proper sizing which cannot be determined definitively until the actual surgery. Any unused, unopened implants may be returned post-surgery and a credit will be issued for returned implants in accordance with the terms of the Return and Refund Policy. Hospitals have ninety days to return any unused product. Each implant has a serial number and is carefully tracked. Pursuant to the standard terms and conditions of sale, the Debtors offer credit ("Customer Credit") for returned product and may ship new product at no charge for the Customer Credit but, as a Customer accommodation,

cash refunds may be issued over time. The practice of offering Customer Credits and cash refunds for unused product is industry standard and the Debtors have implemented and maintained the Return and Refund Policy to remain competitive. Customers expect a Return and Refund Policy like the Debtors have implemented and to discontinue it puts the Debtors in an inferior position in the marketplace and will negatively affect sales.

11. The Customer Credits accrue over time as product is returned. The Debtors account for all returned product, track inventory based on its serial number and account for Customer Credits due back to Customers. Based on historical practice of Customers purchasing more product than they will use in any given procedure, the Debtors book a provisional refund liability at the time the sale is made when the Customer pays for all of the product shipped since, inevitably, there will be a return of the product that was not used in surgery. When product is returned, the Debtors book the Customer Credit. Periodically, Customers submit a request for issuance of the refund for the Customer Credit and a reconciliation process occurs whereby the Debtors work with the Customer to determine the final amount of the refund. This process can take several months from the date of the Customer request to the final reconciliation and payment of the refund.

12. The Debtors believe that continuing to issue Customer Credits and honor the Customer Program refunds is essential to maintaining their relationships with their Customers and to remaining competitive in their industry. Accordingly, the Debtors seek the authority to, in their discretion, (i) honor Customer Credits issued to Customers prior to the Petition Date, and (ii) continue to adhere to the Return and Refund Policy for the benefit of Customers in the ordinary course of business, consistent with past practices, including honoring and paying Customer refunds

for Customer Credits for returns completed with the Debtors prepetition or for product which is eligible for return based on prepetition sales up to the maximum aggregate amount of $1,500,000.00.

B. The Warranty Programs

13. The Debtors offer two warranty programs to patients who receive breast implants. Importantly, while the Debtors' Customers are physicians or hospitals that purchase the implants, the warranties are offered to patients who receive the implants. The two warranty programs vary based on the date of implantation.

14. The Debtors provide a Limited Warranty and Product Replacement Program for their Silicone Gel Breast Implants (the "LWRP"). The LWRP is a ten-year warranty program that covers products implanted between April 1, 2012 and April 30, 2018. The LWRP is a product replacement and limited warranty program.

15. The Debtors offer the Sientra Platinum20 Product Replacement and Limited Warranty Program (the "Platinum20 Program") which offers a twenty-year warranty product replacement and limited warranty program for implants used on or after May 1, 2018. Historically, the Debtors have paid out approximately $250,000 per quarter on account of the Warranty Programs.

16. The Warranty Programs provide replacement product and a limited cash payment which ranges between $2,000.00 and $7,500.00 per patient depending on the nature of the circumstances which warrant implant replacement. The product replacement is offered at no charge and the payment is made (a) only to cover unreimbursed medical expenses associated with

removal of the old implant and/or implantation of the new implant and (b) only where the patient provides a release to the Debtors. Warranty Programs like the Debtors are industry standard and similar warranties are offered by the Debtors' competitors. The Warranty Programs provide assurance to the Customer hospitals and physicians and, more importantly, to the patients receiving the implants. By this Motion, the Debtors request authorization to honor all prepetition obligations associated with the Warranty Programs.

C. Marketing Programs and Sales Incentive Rebates

17. The Debtors offer a variety of Marketing Programs to patients and surgeons. The Marketing Programs are intended to incentivize patients and surgeons to purchase the Debtors' products. As of the Petition Date, the Debtors do not owe any amounts on the Marketing Programs. However, out of an abundance of caution, by this Motion the Debtors seek authority to continue to pay any amounts on account of the Marketing Programs on a postpetition basis in the ordinary course of business consistent with their prepetition practices.

18. The Debtors also offer certain sales incentive rebates ("Sales Incentive Rebates") if certain sales targets are met. The Debtors estimate that, as of the Petition Date, they owe less than $100,000.00 on account of Sales Incentive Rebates. The Debtors seek the authority to pay amounts due under the Sales Incentive Rebates dues as of the Petition Date and to continue and honor, in their discretion, the Marketing Programs and the Sales Incentive Rebates in the ordinary course.

BASIS FOR RELIEF

A. HONORING CUSTOMER PROGRAMS IS APPROPRIATE PURSUANT TO SECTIONS 105(a) AND 363(b) OF THE BANKRUPTCY CODE

19. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business's going-concern value. *See, e.g.*, *In re Just for Feet, Inc.*, 242 B.R. 821, 825–26 (D. Del. 1999); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175–76 (Bankr. S.D.N.Y. 1989); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983). In so doing, these courts acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims.

20. Section 363(b) of the Bankruptcy Code permits a bankruptcy court, after notice and a hearing, to authorize a debtor to "use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). "In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions." *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (collecting cases).

21. Courts also authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code codifies a bankruptcy court's inherent equitable powers to "issue any order, process, or judgment that is

necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Under section 105(a) of the Bankruptcy Code, courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor's business. *See In re Just for Feet, Inc.*, 242 B.R. at 825-26. Specifically, a court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the "necessity of payment" rule (also referred to as the "doctrine of necessity"). *See, e.g., In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (stating that courts may authorize payment of prepetition claims when there "is the possibility that the creditor will employ an immediate economic sanction, failing such payment"); *see also In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of the business). A bankruptcy court's use of its equitable powers to "authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175–76 (Bankr. S.D.N.Y. 1989) (citing *Miltenberger v. Logansport, C. & S.W. Ry. Co.*, 106 U.S. 286 (1882)).

22. Continuing to administer the Customer Programs without interruption during the pendency of these chapter 11 cases will help to preserve the Debtors' valuable customer relationships and goodwill, and to maintain business and drive additional business, which will inure to the benefit of all the Debtors' stakeholders and their estates. The Debtors have determined, in a sound exercise of their business judgment, that maintaining the Customer Programs, including payment of any amounts due thereunder in the ordinary course of business, are critical to the

success of these chapter 11 cases. If the Debtors are unable to continue the Customer Programs postpetition or pay amounts due and fulfill obligations owing on account of the Customer Programs, the Debtors' risk alienating certain customer constituencies (who might then initiate business relationships with the Debtors' competitors) and suffer corresponding losses in customer loyalty that will harm the Debtors' prospects for reorganization or otherwise damages the value of the estates. Additionally, the Debtors may be unable to attract new Customers for their services and products. Ultimately, the damage from failing to honor the Debtors' obligations under the Customer Programs would far exceed the cost associated with maintaining and administering the Customer Programs. The relief requested herein will protect and preserve the Debtors' goodwill, prevent Customers from forming business relationships with the Debtors' competitors, and allow the Debtors to effectively compete for new Customers during this critical time.

23. More specifically, the Return and Refund Policy is intended to accommodate the Debtors' hospital Customers who routinely purchase for more implants than necessary for a given surgery. Because of the Return and Refund Policy, Customers feel comfortable ordering and paying for more product than what is needed since they know the unused product can be returned. Having the Customer pay for the full amount of product provided also gives the Debtors better cash flow. Additionally, the Warranty Programs instill patient confidence and promote sales and use of the Debtors' products. The Marketing Programs and Sales Incentive Rebates incentivize Customer use and sales of the Debtors Products. The Customer Programs provide incentives that are critically important to keep the Debtors competitive and maximize product sales while they restructure.

24. Failure to honor the Customer Programs could place the Debtors at a competitive disadvantage in the marketplace, amplifying the negative effect of any customer uncertainty that may arise from these chapter 11 cases. Such uncertainty could erode the Debtors' hard-earned reputation and brand loyalty, which could adversely impact their prospects for a successful emergence from bankruptcy. Maintaining the Customer Programs and the corresponding relationships will ensure a smooth transition immediately following the filing of these chapter 11 cases. Accordingly, the Debtors submit that they have shown sufficient cause to warrant the authority to honor the Customer Programs and to honor any customer obligations relating thereto.

25. Where, as here, retaining the loyalty and patronage of customers is critical to the success of the chapter 11 cases, courts in this district have granted relief similar to the relief requested herein. *See, e.g.*, *In re Amyris, Inc.,* No. 23-11131 (TMH) (Bankr. D. Del. Aug. 11, 2023) (authorizing the debtors to honor customer-related obligations in the ordinary course of business and to honor prepetition obligations related to same); *In re FB Debt Financing Guarantor, LLC*, No. 23-10025 (KBO) (Feb. 6, 2023) (same); *In re Winc, Inc.,* 22-11238 (LSS) (Bankr. D. Del. Jan. 4, 2023) (same); *In re OSG Group Holdings*, Case No. 22-10718 (JTD) (Bankr. D. Del. Aug. 29, 2022) (same); *In re Gold Standard Baking, LLC*, Case No. 22-10559 (JKS) (Bankr. D. Del. July 18, 2022) (same).[2]

[2] Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

SATISFACTION OF BANKRUPTCY RULE 6003

26. The Debtors believe that they are entitled to immediate authorization for the relief contemplated by this Motion. Pursuant to Bankruptcy Rule 6003, "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting the following: . . . (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition, but not a motion under Rule 4001." To the extent that the requirements of Bankruptcy Rule 6003 are applicable to the relief requested in the Motion, the Debtors submit that for the reasons already set forth herein, the relief requested in this Motion is necessary to avoid immediate and irreparable harm. For reasons discussed above and in the First Day Declaration, the relief requested herein is integral to the Debtors' administrative activities in these Chapter 11 Cases and necessary to preserve the Debtors' operations and the value of their business. Failure to receive such authorization and other relief during the first twenty-one (21) days of these Chapter 11 Cases would severely disrupt the administration of the Debtors' estates at this critical juncture. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

RESERVATION OF RIGHTS

27. Nothing contained in this Motion or any order grating the relief requested in this Motion, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with any such order), is intended as or shall be construed or deemed to be: (a)

an admission as to the amount of, basis for or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's rights to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is and administrative expense claim, other priority claim or otherwise of a type specified or defined in this Motion or any order granting the relief requested by this Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) other that with respect to the liens in favor of the Prepetition Agents, an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

WAIVER OF BANKRUPTCY RULE 6004

28. The Debtors seek a waiver of any stay of the effectiveness of any order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), "[a]n order authorizing the use, sale or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." As set forth in the Motion, the relief requested herein is essential to prevent immediate and irreparable harm to the Debtors' business operations.

Accordingly, the Debtors submit that ample cause exists to justify a waiver of the fourteen (14) day stay imposed by Bankruptcy Rule 6004(h), to the extent that it applies.

NOTICE

29. The Debtors will provide notice of this Motion to: (a) the Office of the United States Trustee; (b) the holders of the thirty (30) largest unsecured claims against the Debtors (on a consolidated basis); (c) the office of the attorney general for each of the states in which the Debtors operate; (d) United States Attorney's Office for the District of Delaware; (e) the Internal Revenue Service; (f) the United States Securities and Exchange Commission; (g) the United States Department of Justice; (h) the DIP Secured Parties and the Prepetition First Lien Secured Parties and their counsel; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002 (the "Notice Parties"). As this Motion is seeking "first day" relief, within two business days of the hearing on this motion, the Debtors will serve copies of this motion and any order entered in respect to this Motion as required by Local Rule 9013 1(m). In light of the nature of the relief requested, no other or further notice need be given.

NO PRIOR REQUEST

30. No prior request for the relief sought in this Motion has been made to this or any other Court.

CONCLUSION

WHEREFORE, the Debtors respectfully request that this Court enter the Interim Order and the Final Order, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: February 12, 2024

PACHULSKI STANG ZIEHL & JONES LLP

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-and-

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Proposed Co-Counsel to the Debtors and Debtors in Possession

EXHIBIT A

Interim Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
SIENTRA, INC., *et al.*,[1]	)	Case No. 24-10245 (___)
Debtors.	)	(Joint Administration Requested)
	)	**Re: Docket No. ____**

INTERIM ORDER (I) AUTHORIZING DEBTORS TO (A) HONOR CERTAIN PREPETITION OBLIGATIONS TO CUSTOMERS AND (B) OTHERWISE CONTINUE CERTAIN CUSTOMER PROGRAMS IN THE ORDINARY COURSE OF BUSINESS AND (II) GRANTING RELATED RELIEF

Upon consideration of the motion (the "Motion")[2] of the Debtors for the entry of this interim order (the "Interim Order") and a final order (i) authorizing, but not directing, the Debtors, in their discretion, to (a) honor certain prepetition obligations to Customers and (b) otherwise continue Customer Programs in the ordinary course of business consistent with past practices and in the Debtors' sound business judgment; and (ii) granting related relief, all as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and this Court having jurisdiction over this matter 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; upon the Debtors' representation that any form of payment to Customers is consistent with the Debtors' debtor in possession financing budget; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), 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

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: Sientra, Inc. (1000); Mist Holdings, Inc. (4221); Mist, Inc. (1202); and Mist International, Inc. (3363). The Debtors' service address is 3333 Michelson Drive, Suite 650, Irvine, CA.

[2] A capitalized term used but not defined herein have the meaning ascribed to it in the Motion.

and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at an interim hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing 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 Motion is GRANTED on an interim basis as set forth herein.

2. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 2024 at__:__ _.m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on _____, 2024, and shall be served on: (a) proposed counsel to the Debtors, (i) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, Delaware 19801, Attn: Laura Davis Jones (ljones@pszjlaw.com) and (ii) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Joshua A. Sussberg, P.C. (joshua.sussberg@kirkland.com), Nicole L. Greenblatt, P.C. (nicole.greenblatt@kirkland.com), and Elizabeth H. Jones (elizabeth.jones@kirkland.com); (b) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: John Schanne (john.shanne@usdoj.gov); (c) counsel to any statutory committee appointed in these chapter 11 cases; and (d) the DIP Secured Parties and the Prepetition First Lien Secured Parties and their counsel, (i) Sullivan & Cromwell LLP, 125 Broad Street, New York, New York 10004-2498, Attn: Ari B. Blaut

(blauta@sullcrom.com) and Benjamin S. Beller (bellerb@sullcrom.com) and (ii) Potter Anderson & Corroon LLP, 1313 N. Market Street, Wilmington, Delaware 19801, Attn: Christopher Samis (csamis@potteranderson.com) and Aaron H. Stulman (astulman@potteranderson.com). In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.

3. Subject to the Approved Budget (as defined in the order approving DIP financing), the Debtors are authorized, but not directed, in their discretion, to (a) continue, renew, replace, modify, implement, revise, or terminate the Customer Programs in the ordinary course of business and without further order of this Court, and to perform and honor all prepetition obligations thereunder in the ordinary course of business and in the same manner and on the same basis as if the Debtors performed and honored such obligations prior to the Petition Date.

4. Subject to the Approved Budget, the Debtors shall continue to administer and honor the Customer Credits in the ordinary course of business, consistent with past practices, including honoring and paying refunds for Customer Credits up to a maximum aggregate amount of $600,000.00 on an interim basis.

5. Nothing in this Interim Order nor any actions taken hereunder: (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors or their estates; (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors or their estates to contest the validity, priority, or amount of any claim against the Debtors or their estates; (c) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors or their estates with

respect to any and all claims or causes of action against any third party; (d) shall be construed as a promise to pay a claim or continue any applicable program postpetition, which decision shall be in the discretion of the Debtors; or (e) shall create, or is intended to create, any rights in favor of, or enhance the status of any claim held by, any person. Any payment made pursuant to this Interim Order is not intended to be nor should it be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

6. Nothing in the Motion or this Interim Order, nor as a result of any payment, setoff, deduction or issuance of credit, made pursuant to this Interim Order, shall be deemed or construed as a waiver of the right of the Debtors, or shall impair the ability of the Debtors, to contest the validity and amount of any payment, setoff, deduction or issuance of credit, made pursuant to this Interim Order.

7. Nothing contained in this Interim Order shall be construed to accelerate payments that are not otherwise due and payable.

8. The requirements of Bankruptcy Rule 6003 are satisfied.

9. Notwithstanding Bankruptcy Rule 6004(h), this Interim Order shall be effective and enforceable immediately upon entry hereof and notice of the Motion as provided therein shall be deemed good and sufficient pursuant to the requirements of Bankruptcy Rule 6004(a) and the Local Rules.

10. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Interim Order.

11. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Interim Order.

EXHIBIT B

Final Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
SIENTRA, INC., *et al.*,[1]	)	Case No. 24-10245 (___)
Debtors.	)	(Joint Administration Requested)
	)	**Re: Docket No. ____**

FINAL ORDER (I) AUTHORIZING DEBTORS TO (A) HONOR CERTAIN PREPETITION OBLIGATIONS TO CUSTOMERS AND (B) OTHERWISE CONTINUE CERTAIN CUSTOMER PROGRAMS IN THE ORDINARY COURSE OF BUSINESS AND (II) GRANTING RELATED RELIEF

Upon consideration of the motion (the "Motion")[2] of the Debtors for the entry of an interim order and this final order (the "Final Order") (i) authorizing, but not directing, the Debtors, in their discretion, to (a) honor certain prepetition obligations to Customers and (b) otherwise continue Customer Programs in the ordinary course of business consistent with past practices and in the Debtors' sound business judgment; and (ii) granting related relief, all as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and this Court having jurisdiction over this matter 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; upon the Debtors' representation that any form of payment to Customers is consistent with the Debtors' debtor in possession financing budget; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), 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

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: Sientra, Inc. (1000); Mist Holdings, Inc. (4221); Mist, Inc. (1202); and Mist International, Inc. (3363). The Debtors' service address is 3333 Michelson Drive, Suite 650, Irvine, CA.

[2] A capitalized term used but not defined herein have the meaning ascribed to it in the Motion.

this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at an interim hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing 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 Motion is **GRANTED** on a **final** basis as set forth herein.

2. Subject to the Approved Budget, the Debtors are authorized, but not directed, in their discretion, to (a) continue, renew, replace, modify, implement, revise, or terminate the Customer Programs in the ordinary course of business and without further order of this Court, and to perform and honor all prepetition obligations thereunder in the ordinary course of business and in the same manner and on the same basis as if the Debtors performed and honored such obligations prior to the Petition.

3. Subject to the Approved Budget, the Debtors shall continue to administer and honor Customer refunds in the ordinary course of business, consistent with past practices, including honoring and paying, subject to the consent of the required lenders under the DIP Facility, refunds for Customer Credits up to the maximum aggregate amount of $1,500.000 on a final basis.

4. Nothing in this Final Order nor any actions taken hereunder: (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors or their estates; (b) shall

impair, prejudice, waive, or otherwise affect the rights of the Debtors or their estates to contest the validity, priority, or amount of any claim against the Debtors or their estates; (c) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors or their estates with respect to any and all claims or causes of action against any third party; (d) shall be construed as a promise to pay a claim or continue any applicable program postpetition, which decision shall be in the discretion of the Debtors; or (e) shall create, or is intended to create, any rights in favor of, or enhance the status of any claim held by, any person. Any payment made pursuant to this Final Order is not intended to be nor should it be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

5. Nothing in the Motion or this Final Order, nor as a result of any payment, setoff, deduction or issuance of credit, made pursuant to this Final Order, shall be deemed or construed as a waiver of the right of the Debtors, or shall impair the ability of the Debtors, to contest the validity and amount of any payment, setoff, deduction or issuance of credit, made pursuant to this Final Order.

6. Nothing contained in this Final Order shall be construed to accelerate payments that are not otherwise due and payable.

7. Notwithstanding Bankruptcy Rule 6004(h), this Final Order shall be effective and enforceable immediately upon entry hereof and notice of the Motion as provided therein shall be deemed good and sufficient pursuant to the requirements of Bankruptcy Rule 6004(a) and the Local Rules.

8. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Final Order.

9. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Final Order.

Exhibit 2

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
SIENTRA, INC., *et al.*,[1]	)	Case No. 24-10245 (JTD)
Debtors.	)	(Jointly Administered)
	)	**Re: Docket No. 8**

INTERIM ORDER (I) AUTHORIZING DEBTORS TO (A) HONOR CERTAIN PREPETITION OBLIGATIONS TO CUSTOMERS AND (B) OTHERWISE CONTINUE CERTAIN CUSTOMER PROGRAMS IN THE ORDINARY COURSE OF BUSINESS AND (II) GRANTING RELATED RELIEF

Upon consideration of the motion (the "Motion")[2] of the Debtors for the entry of this interim order (the "Interim Order") and a final order (i) authorizing, but not directing, the Debtors, in their discretion, to (a) honor certain prepetition obligations to Customers and (b) otherwise continue Customer Programs in the ordinary course of business consistent with past practices and in the Debtors' sound business judgment; and (ii) granting related relief, all as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and this Court having jurisdiction over this matter 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; upon the Debtors' representation that any form of payment to Customers is consistent with the Debtors' debtor in possession financing budget; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), 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

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: Sientra, Inc. (1000); Mist Holdings, Inc. (4221); Mist, Inc. (1202); and Mist International, Inc. (3363). The Debtors' service address is 3333 Michelson Drive, Suite 650, Irvine, CA.

[2] A capitalized term used but not defined herein have the meaning ascribed to it in the Motion.

and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at an interim hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing 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 Motion is GRANTED on an interim basis as set forth herein.

2. The final hearing (the "Final Hearing") on the Motion shall be held on **March 12, 2024 at 2:00 p.m., prevailing Eastern Time.** Any objections or responses to entry of a final order on the Motion shall be filed on or before **4:00 p.m., prevailing Eastern Time, on March 5, 2024,** and shall be served on: (a) proposed counsel to the Debtors, (i) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, Delaware 19801, Attn: Laura Davis Jones (ljones@pszjlaw.com) and (ii) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Joshua A. Sussberg, P.C. (joshua.sussberg@kirkland.com), Nicole L. Greenblatt, P.C. (nicole.greenblatt@kirkland.com), and Elizabeth H. Jones (elizabeth.jones@kirkland.com); (b) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: John Schanne (john.shanne@usdoj.gov); (c) counsel to any statutory committee appointed in these chapter 11 cases; and (d) the DIP Secured Parties and the Prepetition First Lien Secured Parties and their counsel, (i) Sullivan & Cromwell LLP, 125 Broad Street, New York, New York 10004-2498, Attn: Ari B. Blaut

(blauta@sullcrom.com) and Benjamin S. Beller (bellerb@sullcrom.com) and (ii) Potter Anderson & Corroon LLP, 1313 N. Market Street, Wilmington, Delaware 19801, Attn: Christopher Samis (csamis@potteranderson.com) and Aaron H. Stulman (astulman@potteranderson.com). In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.

3. Subject to the Approved Budget (as defined in the order approving DIP financing), the Debtors are authorized, but not directed, in their discretion, to (a) continue, renew, replace, modify, implement, revise, or terminate the Customer Programs in the ordinary course of business and without further order of this Court, and to perform and honor all prepetition obligations thereunder in the ordinary course of business and in the same manner and on the same basis as if the Debtors performed and honored such obligations prior to the Petition Date.

4. Subject to the Approved Budget, the Debtors shall continue to administer and honor the Customer Credits in the ordinary course of business, consistent with past practices, including honoring and paying refunds for Customer Credits up to a maximum aggregate amount of $600,000.00 on an interim basis.

5. Nothing in this Interim Order nor any actions taken hereunder: (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors or their estates; (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors or their estates to contest the validity, priority, or amount of any claim against the Debtors or their estates; (c) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors or their estates with

respect to any and all claims or causes of action against any third party; (d) shall be construed as a promise to pay a claim or continue any applicable program postpetition, which decision shall be in the discretion of the Debtors; or (e) shall create, or is intended to create, any rights in favor of, or enhance the status of any claim held by, any person. Any payment made pursuant to this Interim Order is not intended to be nor should it be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

6. Nothing in the Motion or this Interim Order, nor as a result of any payment, setoff, deduction or issuance of credit, made pursuant to this Interim Order, shall be deemed or construed as a waiver of the right of the Debtors, or shall impair the ability of the Debtors, to contest the validity and amount of any payment, setoff, deduction or issuance of credit, made pursuant to this Interim Order.

7. Nothing contained in this Interim Order shall be construed to accelerate payments that are not otherwise due and payable.

8. The requirements of Bankruptcy Rule 6003 are satisfied.

9. Notwithstanding Bankruptcy Rule 6004(h), this Interim Order shall be effective and enforceable immediately upon entry hereof and notice of the Motion as provided therein shall be deemed good and sufficient pursuant to the requirements of Bankruptcy Rule 6004(a) and the Local Rules.

10. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Interim Order.

11. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Interim Order.

Dated: February 14th, 2024
Wilmington, Delaware

JOHN T. DORSEY
UNITED STATES BANKRUPTCY JUDGE