

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

KaloBios Pharmaceuticals, Inc.,

Debtor.¹

Chapter 11

Case No. 15-12628 (LSS)

Objection Deadline:

March 31, 2016, at 4:00 p.m. (ET)

Hearing Date:

April 28, 2016, at 10:00 a.m. (ET)

**DEBTOR'S MOTION FOR ENTRY OF AN ORDER PURSUANT TO 28 U.S.C. § 1452,
FED. R. BANKR. P. 9006(b)(1) AND 9027(a)(2) AND DEL. BANKR. L.R. 9006-2
EXTENDING THE DEBTOR'S TIME TO FILE NOTICES OF REMOVAL OF CLAIMS
AND CAUSES OF ACTION RELATED TO THE DEBTOR'S CHAPTER 11 CASE**

KaloBios Pharmaceuticals, Inc., as debtor and debtor in possession ("KaloBios" or the "Debtor"), hereby moves (the "Motion") for entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Order"), pursuant to 28 U.S.C. § 1452, Rules 9006(b)(1) and 9027(a)(2) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 9006-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") extending the Debtor's time to file notices of removal of claims and causes of action relating to this chapter 11 case pending as of the Petition Date (the "Removal Deadline") by 120 days, from March 28, 2016 through and including July 26, 2016. In support of the Motion, the Debtor respectfully represents as follows:

Jurisdiction

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ The last four digits of the Debtor's federal tax identification number are 7236. The Debtor's address is 442 Littlefield Ave., San Francisco, CA 94080.

3. The bases for the relief requested herein is 28 U.S.C. § 1452, Bankruptcy Rules 9006(b)(1) and 9027(a)(2) and Local Rule 9006-2.

Background

4. On December 29, 2015 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. No trustee, examiner or committee has been appointed in the Debtor's case.

6. The Debtor anticipates filing a plan of reorganization (the "Plan") and a disclosure statement by mid-April with the goal of having a confirmed Plan by mid-June and an effective date on or before June 30, 2016.

Relief Requested

7. By this Motion, the Debtor respectfully requests entry of an order, pursuant to 28 U.S.C. § 1452, Bankruptcy Rules 9006(b)(1) and 9027(a)(2) and Local Rule 9006-2, extending the Removal Deadline by 120 days, through and including July 26, 2016. The Debtor requests that the extended Removal Deadline apply to all matters specified in Bankruptcy Rule 9027(a)(2). The Debtor further requests that the relief requested herein be granted without prejudice to the Debtor's right to seek further extensions of the Removal Deadline.

Basis for Relief

8. Bankruptcy Rule 9027 and 28 U.S.C. § 1452 govern the removal of claims and causes of action pending as of the Petition Date. Specifically, 28 U.S.C. § 1452 provides, in part, that for claims related to bankruptcy cases:

A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or

cause of action under section 1334 of this title.

28 U.S.C. § 1452.

9. Bankruptcy Rule 9027(a)(2) sets forth the time for a debtor to file notices to remove claims or causes of action, and provides that:

If the claim or cause of action in a civil action is pending when a case under the Code is commenced, a notice of removal may be filed only within the longest of (A) 90 days after the order for relief in the case under the Code, (B) 30 days after the entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under § 362 of the Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.

Fed. R. Bankr. P. 9027(a)(2).

10. Bankruptcy Rule 9006(b)(1) permits the Court to extend the Removal Deadline “for cause shown,” and provides, in part, that:

Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order

Fed. R. Bankr. P. 9006(b)(1).

11. Local Rule 9006-2 provides that “if a motion to extend the time to take any action is filed before the expiration of the period prescribed . . . , the time shall automatically be extended until the Court acts on the motion, without the necessity for the entry of a bridge order.” Del. Bankr. L.R. 9006-2.

12. It is well established that this Court has authority to grant the relief requested by this Motion and extend the Removal Deadline. *See, e.g., Pacor, Inc. v. Higgins*, 743 F.2d 984, 996 (3d Cir. 1984) (holding that the deadline for removal of actions may be extended pursuant to

Bankruptcy Rule 9006); *Raff v. Gordon*, 58 B.R. 988, 990 (E.D. Pa. 1986) (holding that Bankruptcy Rule 9006 authorizes expansion of time to file notice of removal); *In re Jandous Elec. Const. Corp.*, 106 B.R. 48, 49–50 (Bankr. S.D.N.Y. 1989) (holding that a court may extend the time in which to file motions to remove civil actions pursuant to Bankruptcy Rule 9006). Indeed, requests to extend the time to file notices of removal are routinely granted in this district. See, e.g., *In re Overseas Shipholding Group, Inc.*, Case No. 12-20000 (PJW) (Bankr. D. Del. Mar. 5, 2013); *In re WP Steel Venture LLC*, Case No. 12-11661 (KJC) (Bankr. D. Del. Jan. 11, 2013); *In re DDMG Estate*, Case No. 12-12568 (BLS) (Bankr. D. Del. Jan. 8, 2013); *In re Powermate Holding Corp.*, Case No. 08-10498 (KG) (Bankr. D. Del. Dec. 11, 2012); *In re TWTR, Inc.*, Case No. 07-10787 (PJW) (Bankr. D. Del. Apr. 3, 2012); *In re DBSI, Inc.*, Case No. 08-12687 (PJW) (Bankr. D. Del. May 24, 2010).

Cause Exists to Extend Removal Deadline

13. Based on the Petition Date of December 29, 2015, the Removal Deadline currently expires on March 28, 2016, absent further orders of this Court.

14. Since the Petition Date, the Debtor has devoted significant resources and efforts responding to, and attending contested hearings related to, various objections,² an adversary proceeding³ and the United States Trustee's motion to appoint a chapter 11 trustee or convert the case to chapter 7.⁴

² The various objections include *Emergency Motion of Gregory Rea, RTAT LLC, Edward H. Painter, Nancy Retzlaff, and Armistice Capital Master Fund, Ltd. to (I) Escrow Certain Funds; or Alternatively, (II) Expedite the Adversary Proceeding* (D.I. 13) and *Objection to the Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to Implement an Employee Bonus Plan, (II) Authorizing the Debtor to Pay Bonuses to Non-Insider Employees in Accordance with the Employee Bonus Plan, and (III) Granting Related Relief* (D.I. 159).

³ *Gregory Rea, RTAT LLC, Edward H. Painter, Nancy Retzlaff, Armistice Capital, Master Fund, Ltd., Andrew Pizzo, and Sabine Gritti v. KaloBios Pharm., Inc.*, Case No. 16-50001 (LSS) (Bankr. D. Del. Jan. 7, 2016).

⁴ *United States Trustee's Emergency Motion for an Order Directing the Appointment of a Trustee or, in the Alternative, Conversion to a Chapter 7 Case* (D.I. 106).

The Debtor was also focused on negotiating and seeking Court approval of a letter of intent with Savant Neglected Diseases, LLC (“Savant”) for the rights to benznidazole, which is a key part of the Debtor’s restructuring plan. Additionally, the Debtor has devoted time to fulfilling its obligations as a debtor in possession, such as reviewing its books and records in order to assemble and file with the Court its schedules of assets and liabilities and statement of financial affairs (collectively, the “Schedules”).

15. The Debtor submits that the requested extension is in the best interests of its estate and creditors because the foregoing initiatives have taken up a significant amount of the Debtor’s time. While after a reasonable search the Debtor is not aware of any pending state court actions, should the Debtor learn of any state court actions against it, the requested extension will afford the Debtor a sufficient opportunity to make fully informed decisions concerning whether such litigation matters may and should be removed.

16. The other parties to any claims or causes of action pending as of the Petition Date will suffer no prejudice from the relief sought herein. Prepetition causes of action against the Debtor are stayed by operation of the automatic stay under section 362(a) of the Bankruptcy Code. Accordingly, preserving the Debtor’s ability to remove claims and causes of action pending as of the Petition Date, pursuant to Bankruptcy Rule 9027(a)(2), imposes no delay or unnecessary burdens on the Debtor’s counterparties.

Notice

17. The Debtor has provided notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) known claimants in civil actions pending against the Debtor as of the Petition Date; and (c) any party who has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested in this Motion, the Debtor respectfully submits that no further notice is necessary.

WHEREFORE, the Debtor respectfully requests that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and granting such other and further relief as this Court deems just and proper.

Dated: March 17, 2016
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Marcy J. McLaughlin

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