

Hearing Date and Time: February 6, 2018 at 10:00 a.m.
Objection Deadline and Time: January 30, 2018 at 4:00 p.m.

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Proposed Counsel for Debtors-in-Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:	:	Chapter 11
	:	
ADVANCE SCIENCE TECHNOLOGIES,	:	Case No. 17-13668 (SMB)
INC., and FS-IP LLC,	:	(Jointly Administered)
	:	
Debtors. ¹	:	
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**DEBTORS’ AMENDED MOTION FOR AN ORDER
PURSUANT TO SECTIONS 105(a), 362(a)(3), AND 541 OF THE
BANKRUPTCY CODE AND BANKRUPTCY RULE 3001 ESTABLISHING
NOTICE AND HEARING PROCEDURES FOR TRADING OF THE
BENEFICIAL OWNERSHIP OF RELATED PARTY EQUITY SECURITIES**

TO: THE HONORABLE STUART M. BERNSTEIN,
UNITED STATES BANKRUPTCY JUDGE:

Advance Science Technologies, Inc. (“*AST*”) and FS-IP LLC (“*FS-IP*”), as debtors and
debtors-in-possession (collectively, the “*Debtors*”), respectfully represent:

PRELIMINARY STATEMENT

1. These chapter 11 cases are “prepackaged Chapter 11 case[s]” within the scope
and definition set forth in Part II of the Guidelines for Prepackaged Chapter 11 Cases in the

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification
number, are: Advance Science Technologies, Inc. (6977); and FS-IP LLC (5674). The Court has entered
an order respecting joint administration of the Debtors’ bankruptcy cases. Docket No. 23.

United States Bankruptcy Court for the Southern District of New York (the “**Guidelines**”)² as the Debtors, contemporaneously with the filing of their respective chapter 11 petitions, filed, among other documents, the Debtors’ Joint Prepackaged Plan of Reorganization [Dkt No. 9] (the “**Plan**”) and Information and Disclosure Statement [Dkt No. 10] (the “**Disclosure Statement**”). All classes of creditors and shareholders entitled to vote accepted the Plan prior to the Petition Date (as defined herein).³ All other claims and equity interests are not impaired under the Plan.

2. The Debtors are filing this Amended Motion pursuant to the Court’s ruling on the record at the Debtors’ first-day hearing on January 5, 2018 and so-ordered memorandum order entered on January 10, 2018 [Dkt. No. 25] following a chambers conference on the same day in which the Court denied the Debtors’ *Motion for Interim and Final Orders Pursuant to Sections 105(a), 362(a)(3), and 541 of the Bankruptcy Code and Bankruptcy Rule 3001 Establishing Notice and Hearing Procedures for Trading of the Beneficial Ownership of Related Party Equity Securities* [Dkt. No. 7] (the “**Initial Motion**”) without prejudice to the Debtors’ filing an amended motion seeking similar but modified relief.

3. Accordingly, this Amended Motion seeks approval of certain notice and hearing procedures with respect to certain transfers of beneficial ownership of equity securities in the Debtors’ non-debtor parent entity Fortior Solutions, Inc. (f/k/a SureID, Inc) (“**Fortior**”) consistent with the Court’s prior rulings. The proposed procedures will give the Debtors an opportunity to seek emergency relief from the Court if necessary to avoid the immediate and irreparable harm to the Debtors’ estates that could arise in the event holders of Fortior equity

² Part II of Guidelines provides that “a ‘prepackaged Chapter 11 case’ is one in which the Debtor, substantially contemporaneously with the filing of its Chapter 11 petition, files a Confirmation Hearing Scheduling Motion for Prepackaged Plan in substantially the form annexed [to the Guidelines] as Exhibit A and satisfying the criteria set forth in Part III.A. below, Prepackaged Plan, disclosure statement (or other solicitation document), and voting certification.”

³ Capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the Plan

securities seek to transfer their beneficial ownership interests as described below. To be clear, this Amended Motion does not seek an order enjoining trading of any equity securities or invalidating *ab initio* trades that do not comply with the proposed procedures.

4. The Tax Attributes⁴ owned by Fortior, and in which all of the members of the Fortior consolidated U.S. tax group have an interest, provide significant value to the Debtors (as part of such group). It is in the best interests of the Debtors' estates to preserve, to the fullest extent possible, the flexibility to maximize the availability of the Tax Attributes upon consummation of the Debtors' proposed Plan. The Debtors therefore seek limited relief that will enable the Debtors to closely monitor certain transfers of the beneficial ownership of Fortior's equity securities, so as to be in a position to act expeditiously if necessary to preserve the Tax Attributes.

BACKGROUND

5. On December 29, 2017 (the "*Petition Date*"), the Debtors each commenced with this Court a voluntary case (collectively, the "*Chapter 11 Cases*") under chapter 11 of title 11 of the United States Code (the "*Bankruptcy Code*"). The Debtors are authorized to continue to operate their businesses and manage their assets as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these chapter 11 cases.

6. Factual background regarding the Debtors, including their business operations, corporate and capital structure, and the events leading to these chapter 11 cases, is set forth in the *Declaration of Sean Sullivan Pursuant to Local Bankruptcy Rule 1007-2, in Support of First Day Pleadings* (the "*Sullivan Declaration*").

⁴ For purposes of this Motion, "Tax Attributes" means net operating loss carryforwards ("*NOLs*"), capital losses, unrealized built-in losses and certain other tax and business credits and other tax attributes.

7. As relevant to this Amended Motion, Debtor FS-IP (f/k/a SID-IP LLC) was formed on July 14, 2017, and Debtor AST (f/k/a SID-GB, Inc.) was formed on August 1, 2017 in anticipation of and to facilitate the restructuring of Fortior and its subsidiaries, including the separation of Fortior's commercial and government businesses. In connection with a prepetition sale process, on or about July 24, 2017 Fortior transferred to FS-IP ownership of Fortior's physical kiosks (known as SureID Registration Stations or "SRSs") and related communication systems (known as Secured Communication Units or "SCUs") that are placed nationwide with a major retailer and which are used to input customer personal information to initiate fingerprinting and other identity-related services. Thereafter, the SRSs and SCUs owned by FS-IP were sold as part of Fortior's prepetition sale of commercial assets to Sterling. After the sale of assets to Sterling, Fortior transferred additional assets to FS-IP that were not sold to Sterling. Those assets include certain intellectual property, credentialing printers and laminators, that may be used to support Fortior's remaining business.

8. Following this internal restructuring, Fortior continued to own the government business and 100% of the equity interest in AST. AST's sole asset is the equity of its subsidiary, FS Merger Sub, Inc. Both Debtors are guarantors of Fortior's debt obligations to Goldman Sachs Specialty Lending Group, L.P., as Administrative Agent for the Lenders under the Debtors' senior secured credit facility (the "**Agent**"). The execution of the guaranties was done as part of the internal restructuring, the overall formation of the entities and the contribution of assets to the Debtors. Each of the assets contributed to the Debtors were subject to the liens and claims of the Agent. Accordingly, absent consent of the Agent, the assets could not be transferred to the Debtors. As a condition to granting such consent, the Agent required that the Debtors guaranty the Obligations to the Agent.

9. As part of these prepackaged bankruptcies, the Debtors and Fortior, along with the rest of their affiliates, entered into a *Restructuring Support Agreement* with the Agent (the “*RSA*”). The RSA outlines the restructuring of the Debtors financial obligations, including a substantial reduction in debt and recapitalization, and provides the Debtors with a contractual interest in the preservation of the Tax Attributes by imposing restrictions on Fortior’s ability to issue or permit the transfer of its equity securities. In addition, as described in the Disclosure Statement and exhibits thereto, pursuant to the RSA, Fortior (f/k/a SureID, Inc.) amended its articles of incorporation to impose certain restrictions on the transfer of Fortior’s stock. Specifically, under the Fourth Amended and Restated Articles of Incorporation, no shares of stock of Fortior may be sold, assigned, transferred or conveyed without the consent of Fortior’s Board of Directors.⁵ The RSA also sets forth certain obligations of each of the parties. In this regard, Debtors’ are obligated to seek approval of this Motion.

RELIEF REQUESTED

10. Prior to the Petition Date, the Debtors commenced and completed the solicitation of votes on the Plan through their Disclosure Statement. As set forth in more detail in the Disclosure Statement, the Debtors have filed a prepackaged Plan that, if confirmed, will result in a substantial reduction of the Debtors’ debt and reorganization of the corporate structure and ownership of the Fortior corporate group. Because the members of the Fortior corporate group will derive significant value on a reorganized basis from the potential future use of Fortior’s Tax Attributes, the Debtors are seeking to establish notice and hearing procedures respecting

⁵ Article 7 of the Fourth Amended and Restated Articles of Incorporation of Fortior (a copy of which is annexed to the Disclosure Statement) contains the following restriction on the transfer of shares of Fortior: “No shares of capital stock of the Company may be sold, assigned, transferred or conveyed without the consent of the Board of Directors, which consent shall not be unreasonably withheld.” (the “*Charter Restrictions*”)

transfers of Fortior stock in order to give the Debtors an opportunity to seek relief from this Court if necessary to preserve the availability of those Tax Attributes.

11. The procedures proposed by this Amended Motion are in addition to and consistent with the Charter Restrictions that were expressly and overwhelmingly approved by Fortior's shareholders in conjunction with approval of the RSA. Importantly, however, the relief requested herein only seeks to impose a five-day notice requirement on certain types of sales and acquisitions of Fortior stock that would give the Debtors five days to seek relief from the Court to prevent such trading if necessary to protect the Tax Attributes. The relief sought does not seek an order invalidating *ab initio* trades that do not comply with the proposed procedures.

12. As such, the notice and hearing procedures proposed in this Amended Motion merely help the Debtors prevent potential violations of the trading restrictions already approved by Fortior's shareholders and included in the Charter by allowing them to object to the transfer during a five-day period.

13. Concurrent with the filing of this Amended Motion, and in accordance with the Court's instruction, the Debtors are filing a proposed scheduling order (a "**Scheduling Order**") that establishes a hearing date to consider this Amended Motion. The Scheduling Order includes a requirement that holders of equity interests in Fortior give the Debtors 72-hours' notice of any potential trading in equity interests in Fortior. The intent of this requirement is to give the Debtors an opportunity to police potential violations of the Charter Restrictions and seek emergency relief to prevent such violations, but does not actually preclude such holders from engaging in trades after the expiration of the 72-hour period.

14. The Debtors believe that they have modified the relief requested in this Amended Motion in accordance with the Court's previous instruction by (i) limiting the relief to the

imposition of a notice requirement that will give the Debtors an opportunity to seek emergency relief to protect Tax Attributes if necessary, (ii) removing any requested relief with respect to Fortior's equity interests in AST given that Fortior has contractually agreed (in the RSA) to not trade in such securities, and (iii) providing notice of the Amended Motion and the Scheduling Order to all Fortior shareholders prior to the hearing to consider this Amended Motion. The Debtors accordingly request that this Court enter the proposed order submitted herewith.

JURISDICTION AND VENUE

15. This Court has jurisdiction over these chapter 11 cases under 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the Southern District of New York, dated December 1, 2016. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2). As discussed below, the Court also has subject-matter jurisdiction to grant the requested relief.

16. Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

17. The statutory predicates for the relief sought herein are sections 105(a), 362(a)(3), 363(c), and 541 of the Bankruptcy Code, and Bankruptcy Rules 3001.

THE TAX ATTRIBUTES

18. Fortior has generated, and during the case is expected to generate further, a significant amount of Tax Attributes for U.S. federal income tax purposes. The Debtors estimate that Fortior has federal NOLs of approximately \$86 million that are available to offset future taxable income. The Tax Attributes are valuable assets to the Debtors' estates which the Debtors have benefited from in the past, in which the Debtors have a beneficial interest today, which the Debtors will own in their entirety if the Plan is confirmed, and the preservation of which is embodied in the third party agreement (the RSA) that will benefit the Debtors in the future.

POTENTIAL LIMITATIONS ON THE USE OF FORTIOR'S TAX ATTRIBUTES

19. As a general matter, if a corporation undergoes an “ownership change,” Section 382 (“**Section 382**”) of title 26 of the United States Code, the Internal Revenue Code of 1986, as amended (the “**IRC**”), could severely limit or eliminate the corporation’s ability to use its NOLs and certain other tax attributes to offset future taxable income. *See* IRC § 382. Under Section 382, an ownership change occurs when the percentage, by value, of a company’s equity held by one or more persons each holding five percent or more of the stock (taking into account ownership attribution rules and, in certain cases, taking into account Options to acquire such stock) has increased by more than fifty percentage points over the lowest percentage of equity owned by such shareholders at any time during the preceding three-year period or since the last ownership change, as applicable (the “**Testing Period**”). *Id.* at § 382(g), (i), and (k). If there has been a prior ownership change, the Testing Period for determining whether another ownership change has occurred begins on the first day following the date of the prior ownership change. *Id.* § 382(i)(2). Section 383 of the IRC (“**Section 383**”) imposes a similar limitation on certain tax credits of a corporation. *Id.* § 383. For clarity, this discussion refers only to Section 382 but the rules, principles, and policies regarding Section 382 are also generally applicable to Section 383’s limit on a corporation’s use of credits after an ownership change and are incorporated by reference into Section 383 by the IRC and the Treasury Regulations promulgated thereunder. *See id.* § 383(e); 26 C.F.R. § 1.383-1(g) (2014).

20. The general purpose of Section 382 is to prevent the trafficking of a corporation’s NOLs, net unrealized built-in losses (“**Built-in Losses**”) or certain other tax attributes. To achieve this objective, Section 382 limits the amount of the corporation’s taxable income that can be offset by a pre-change loss to an amount equal to the product of the long-term tax-exempt

rate (as published monthly by the U.S. Department of the Treasury) as of the ownership change date and the value of the equity of the corporation immediately before the ownership change (a “**Section 382 Limitation**”).⁶ Built-in losses recognized during the five-year period after the ownership change may further reduce the Section 382 Limitation. Trading in Fortior’s equity securities prior to the effective date of the Plan could result in the imposition of such a Section 382 Limitation, which would directly impair a valuable asset of the Debtors.

21. By contrast, the limitations imposed by Section 382 in the context of a change of ownership that occurs pursuant to a confirmed chapter 11 plan are significantly more relaxed. See 26 U.S.C. § 382(l)(5) and (6).⁷ The occurrence of such an ownership change resulting from a transfer to the prepetition lenders pursuant to the Plan can be expected to maximize the availability of the Tax Attributes by (a) allowing the Debtors to avail of the special bankruptcy-related rules under section 382; and (b) reducing the likelihood of an ownership change post-confirmation that would not qualify for such special bankruptcy-related rules, and thus would subject the Debtors to a more severe limitation.

⁶ The Section 382 Limitation may be increased if the loss corporation has a net unrealized built-in gain at the time of the ownership change that is recognized during the five-year period after the ownership change. See IRC § 382(h)(1)(A).

⁷ Section 382(l)(5) of the IRC generally applies if stockholders and “qualified creditors” (as determined in accordance with applicable rules under section 382 and the Treasury regulations promulgated thereunder) of the corporation undergoing an ownership change beneficially own stock, pursuant to such a plan of reorganization approved by the court, constituting at least 50% of the total combined value and voting power of equity interests in the corporation immediately after the ownership change, such that the corporation is not subject to the limitations imposed by section 382 with respect to that ownership change. Although section 382(l)(5) imposes no limitation, the entirety of the NOL carryforward can be lost if there is an ownership change in the two years following emergence from bankruptcy. Under section 382(l)(6), if a corporation experiences an ownership change pursuant to a confirmed plan and section 382(l)(5) does not apply (either because the corporation elects out of that provision or because its requirements are not satisfied), the appropriate value of the reorganized corporation's equity for the purposes of calculating the limitation under section 382 would reflect the increase in value of the reorganized company’s equity resulting from the restructuring of creditor claims in the plan.

**PROPOSED PROCEDURES FOR TRADING OF THE BENEFICIAL
OWNERSHIP OF THE SECURITIES**

22. By establishing procedures for continuously monitoring the trading of the beneficial ownership of Fortior's equity securities, the Debtors and Fortior can preserve their ability to seek substantive relief at the appropriate time, particularly if it appears that additional trading of the beneficial ownership of Fortior's equity securities prior to the effective date of the Plan may result in an ownership change that would jeopardize the availability of the Tax Attributes. Accordingly, the Debtors request that this Court enter the proposed order establishing the below notice and hearing procedures with respect to trading of the beneficial ownership of Fortior's equity securities:⁸

- a) Any person or entity (as defined in Treasury Regulations Section 1.382-3(a)(1) (2014)) who currently is or becomes a Substantial Shareholder (as defined in paragraph (e) below) shall file with this Court and serve on the "Notice Parties" a notice of such status, in the form of **Exhibit 1** attached to the proposed order submitted herewith, on or before the later of (i) fourteen (14) calendar days after the date of entry of the Notice of Order (as defined below) and (ii) five (5) calendar days after becoming a Substantial Shareholder. "Notice Parties" means counsel for (i) the Debtors; (ii) the U.S. Trustee; (iii) any statutory committee(s); and (iv) Goldman Sachs Specialty Lending Group, L.P., as Administrative Agent for the Lenders under the Debtors' senior secured credit facility;
- b) At least five (5) calendar days prior to effectuating any transfer of the beneficial ownership of equity securities (including transfers or grants of Options to acquire or sell such securities, as defined below and transfer of such securities pursuant to the exercise of Options) that would result in an increase in the amount of Stock (as defined below) beneficially owned by a Substantial Shareholder or would result in a person or entity becoming a Substantial Shareholder, such Substantial Shareholder (or person or entity that may become a Substantial Shareholder) shall file with this Court and serve on the Notice Parties advance written notice, in the form of **Exhibit 2** attached to the proposed

⁸ With respect to the procedures set forth herein, the Debtors request that the Court permit the Debtors to waive, in writing and in their sole and absolute discretion, but in any event subject to the terms of the RSA, any and all restrictions, stays and notification procedures contained in the Motion or in any order entered with respect hereto should the Debtors conclude in their sole discretion that any such restriction, stay or notification procedure is not necessary to protect its Tax Attributes; *provided, however*, the Debtors shall provide notice of any such waiver to the Administrative Agent, the U.S. Trustee and any statutory committee in writing within three business days thereafter.

order submitted herewith, of the intended transfer of the beneficial ownership of equity securities;

c) At least five calendar days prior to effectuating any transfer of the beneficial ownership of equity securities (including transfers or grants of Options to acquire or sell such securities, as defined below and transfer of such securities pursuant to the exercise of Options) that would result in a decrease in the amount of Stock beneficially owned by a Substantial Shareholder or would result in a person or entity ceasing to be a Substantial Shareholder, such Substantial Shareholder shall file with this Court and serve on the Notice Parties advance written notice, in the form of **Exhibit 3** attached to the proposed order submitted herewith, of the intended transfer of the beneficial ownership of equity securities (the notices required to be filed and served under paragraph (b) and this paragraph (c), each a “**Notice of Proposed Transfer**”);

d) The Debtors shall have five (5) calendar days after receipt of a Notice of Proposed Transfer to file with this Court and serve on such Substantial Shareholder (or person or entity that may become a Substantial Shareholder) an objection to any proposed transfer of the beneficial ownership of equity securities described in the Notice of Proposed Transfer on the grounds that such transfer may adversely affect the Debtors’ ability to utilize the Tax Attributes and a request for emergency relief from the Court. If the Debtors do not object within such period, such transaction may proceed solely as set forth in the Notice of Proposed Transfer. Further transactions within the scope of this paragraph (d) must be the subject of additional notices as set forth herein, with an additional 72-hour waiting period; and

e) For purposes of these procedures, (A) a “**Substantial Shareholder**” is any person or entity (as defined in Treasury Regulations Section 1.382-3(a)) which beneficially owns at least 4.5% of any issued and outstanding common or preferred shares of Fortior Solutions, Inc. (f/k/a SureID, Inc.) (the “**Stock**”), and (B) “beneficial ownership” (or any variation thereof of the Stock and Options to acquire the Stock) shall be determined in accordance with applicable rules under Section 382, Treasury Regulations promulgated thereunder and rulings issued by the Internal Revenue Service, and thus, to the extent provided therein, from time to time shall include, without limitation, (i) direct and indirect ownership (e.g., a holding company would be considered to beneficially own all shares owned or acquired by their subsidiaries); (ii) ownership by the holder’s family members and persons acting in concert with the holder to make a coordinated acquisition of stock; and (iii) ownership of an Option to acquire the Stock, but only to the extent such Option is treated as exercised under Treasury Regulation section 1.382-4(d). An “**Option**” to acquire stock includes any contingent purchase, warrant, convertible debt, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

23. To ensure parties in interest receive appropriate notice of these procedures, the

Debtors request that this Court approve the following provisions.

24. Following entry of the Order granting the Amended Motion, the Debtors propose to send a notice in substantially the form attached to the proposed order submitted herewith as Exhibit 4 (the “*Notice of Order*”) to: (i) U.S. Trustee; (ii) all creditors of the Debtors; (iii) all parties entitled to notice pursuant to Local Rule 2002; (iv) any directly registered holders of the Stock; and (v) any record holders (i.e., banks, brokers, intermediaries, other nominees or their mailing agents (collectively, the “*Nominees*”) of the Stock.

25. Upon receipt of the Notice of Order, the Nominees shall serve the Notice of Order to any beneficial holders by no later than five (5) business days after being served with the Notice of Order. Additionally, any person or entity or broker or agent acting on such person or entity’s behalf who sells an aggregate amount equal to 4.5% of any class of issued and outstanding shares of the Stock (or an Option with respect thereto) to another person or entity will be required to provide a copy of the Notice of Order to such purchaser of such Stock or to any broker or agent acting on such purchaser’s behalf.

BASIS FOR RELIEF REQUESTED

26. Bankruptcy courts have jurisdiction over assets of a debtor’s estate. *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec., LLC*, 474 B.R. 76 (S.D.N.Y. 2012) (“In a case before a bankruptcy court, the bankruptcy court has in rem jurisdiction over all estate property, including claims and causes of action to recover estate property, regardless of the location of the property or claim.”). Bankruptcy courts also have jurisdiction to enjoin actions which threaten assets of the estate or the value thereof. *In re Quigley Co.*, 676 F.3d 45 (2d Cir. 2012) (“bankruptcy court . . . has jurisdiction to enjoin third-party non-debtor claims that directly affect the res of the bankruptcy estate.”) (internal citation omitted); *In re Drexel Burnham Lambert Grp., Inc.*, 960 F.2d 285, 293 (2d Cir. 1992) (“[i]n bankruptcy cases, a court may enjoin a

creditor from suing a third party, provided the injunction plays an important part in the debtor's reorganization plan.”).

27. Courts have uniformly held that a debtor's net operating losses constitute property of the estate under section 541 of the Bankruptcy Code. In the seminal case, *Prudential Lines*, this court held that a “debtor's potential ability to utilize NOLs is property of an estate.” *Official Comm. of Unsecured Creditors v. PSS Steamship Co. (In re Prudential Lines, Inc.)*, 107 B.R. 832, 838 (Bankr. S.D.N.Y. 1989); *see also Nisselson v. Drew Indus., Inc. (In re White Metal Rolling & Stamping Corp.)*, 222 B.R. 417, 424 (Bankr. S.D.N.Y. 1998) (“It is beyond peradventure that NOL carrybacks and carryovers are property of the estate of the loss corporation that generated them.”). As discussed above, both Debtors have the ability to benefit from the use of the Tax Attributes because the NOLs inure to the benefit of the Debtors as members of Fortior's consolidated U.S. tax group. As a result, the NOLs are an important source of value for the Debtors' reorganization. Accordingly, this Court has the authority under section 362 of the Bankruptcy Code to enforce the automatic stay by restricting the transfer of the Debtors' equity securities that could jeopardize the existence or value of this asset. *See In re Phar-Mor, Inc.*, 152 B.R. 924, 927 (Bankr. N.D. Ohio 1993) (holding that section 362 of the Bankruptcy Code prohibited the sale of stock in the debtors as an exercise of control of the debtors' NOLs, which were property of the debtors' estates).

28. Nevertheless, the Debtors do not seek relief as broad as a restraint on trading of Fortior's equity securities. This Amended Motion does not seek to bar trading of the beneficial ownership of Fortior's. Rather, the Debtors only seek to establish procedures enabling them only to monitor those types of trading of the beneficial ownership of Fortior's equity securities that pose a serious risk under the Section 382 ownership change test, so as to preserve the Debtors'

ability to seek substantive relief if it appears that a proposed trade of equity securities will jeopardize the use of the Tax Attributes. Only if the Debtors receive notice of trading of Fortior equity securities and are granted emergency relief by the Court will any trading be enjoined.

29. Here, it is clear that the Debtors have a direct and concrete interest in the Tax Attributes as members of the Fortior corporate group that are eligible to and intend to file 2017 consolidated tax returns as part of the corporate group. Accordingly, the Debtors would be significantly harmed by the loss of or limitation on the ability to use the Tax Attributes. Prior to the Petition Date, the Debtors benefitted from the Tax Attributes in connection with the sale of the commercial business to Sterling. Similarly, the Debtors will be entitled to utilize the Tax Attributes in the future, thus directly affecting the *res* of the bankruptcy estate, including because upon consummation of the Plan (if confirmed), the Tax Attributes will be the direct property of Reorganized AST.

30. Moreover, preservation of the Tax Attributes is subject to an express written agreement—the RSA—expressly agreed to by Fortior’s shareholders. Similar to a tax sharing agreement, the RSA restricts Fortior’s ability to issue or permit trading in its equity securities so that the Tax Attributes will be preserved for the benefit of the Debtors. *See, e.g., In re Downey Fin. Corp.*, 499 B.R. 439, 454-55 n. 69 (Bankr. D. Del. 2013) (citing cases and holding “[i]f an express written agreement is in effect then the agreement controls the disposition of [a] tax refund”).

31. Accordingly, the Debtors respectfully request that the Court enter the proposed order approving the procedures to protect the Debtors against the possible loss of the Tax Attributes, including the NOLs.

NOTICE

32. Notice of this Motion will be provided to (i) the U.S. Trustee; (ii) all creditors of the Debtors; (iii) all parties entitled to notice pursuant to Local Rule 2002; (iv) any directly registered holders of the Stock; (v) any Nominees of the Stock; and (vi) the transfer agent(s) for the Stock. In light of the nature of the relief requested herein, no other or further notice is necessary.

NO PRIOR REQUEST

33. Other than the Initial Motion, no previous request for the relief sought herein has been made to this Court or any other court.

CONCLUSION

34. For the foregoing reasons, the Debtors respectfully request that the Court enter a final order substantially in the form attached to this Motion.

Dated: January 16, 2018
New York, New York

PERKINS COIE LLP
Proposed Counsel for Debtors-in-Possession

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:	:	Chapter 11
	:	
ADVANCE SCIENCES TECHNOLOGIES,	:	Case No. 17-13668 (SMB)
INC., AND FS-IP LLC,	:	(Jointly Administered)
	:	
Debtors. ¹	:	
-----	X	

**ORDER PURSUANT TO SECTIONS 105(a), 362(a)(3),
AND 541 OF THE BANKRUPTCY CODE AND BANKRUPTCY
RULE 3001 ESTABLISHING NOTICE AND HEARING
PROCEDURES FOR TRADING OF THE
BENEFICIAL OWNERSHIP OF RELATED PARTY EQUITY SECURITIES**

Upon the motion (the “*Motion*”)² of the debtors-in-possession in the above-captioned chapter 11 case for entry of an order under sections 105, 362(a)(3) and 541 of the Bankruptcy Code and Bankruptcy Rule 3001, establishing notice and hearing procedures with respect to certain transfers of the beneficial ownership of the equity securities of Fortior Solutions, Inc.; and the Court finding that: (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and (c) due and sufficient notice of the Motion has been given under the particular circumstances and it appears that no other or further notice need be provided; and the relief requested being a reasonable exercise of the Debtors' sound business judgment consistent with their fiduciary duties and in the best interests of the Debtors and their estates; and after due deliberation thereon and good and sufficient cause appearing therefor, it is hereby:

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Advance Sciences Technologies, Inc. (6977); and FS-IP LLC (5674).

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

2. The following procedures for monitoring the trading of the beneficial ownership of the equity securities of Fortior are hereby approved:

a) Any person or entity (as defined in Treasury Regulations Section 1.382-3(a)(1) (2014)) who currently is or becomes a Substantial Shareholder (as defined in paragraph (e) below) shall file with this Court and serve on the “Notice Parties” a notice of such status, in the form of **Exhibit 1** attached to the proposed order submitted herewith, on or before the later of (i) fourteen (14) calendar days after the date of entry of the Notice of Order (as defined below) and (ii) five (5) calendar days after becoming a Substantial Shareholder. “Notice Parties” means counsel for (i) the Debtors; (ii) the U.S. Trustee; (iii) any statutory committee(s); and (iv) Goldman Sachs Specialty Lending Group, L.P., as Administrative Agent for the Lenders under the Debtors’ senior secured credit facility;

b) At least five (5) calendar days prior to effectuating any transfer of the beneficial ownership of equity securities (including transfers or grants of Options to acquire or sell such securities, as defined below and transfer of such securities pursuant to the exercise of Options) that would result in an increase in the amount of Stock (as defined below) beneficially owned by a Substantial Shareholder or would result in a person or entity becoming a Substantial Shareholder, such Substantial Shareholder (or person or entity that may become a Substantial Shareholder) shall file with this Court and serve on the Notice Parties advance written notice, in the form of **Exhibit 2** attached to the proposed order submitted herewith, of the intended transfer of the beneficial ownership of equity securities;

c) At least five calendar days prior to effectuating any transfer of the beneficial ownership of equity securities (including transfers or grants of Options to acquire or sell such securities, as defined below and transfer of such securities pursuant to the exercise of Options) that would result in a decrease in the amount of Stock beneficially owned by a Substantial Shareholder or would result in a person or entity ceasing to be a Substantial Shareholder, such Substantial Shareholder shall file with this Court and serve on the Notice Parties advance written notice, in the form of **Exhibit 3** attached to the proposed order submitted herewith, of the intended transfer of the beneficial ownership of equity securities (the notices required to be filed and served under paragraph (b) and this paragraph (c), each a “*Notice of Proposed Transfer*”);

d) The Debtors shall have five (5) calendar days after receipt of a Notice of Proposed Transfer to file with this Court and serve on such Substantial Shareholder (or person or entity that may become a Substantial Shareholder) an objection to any proposed transfer of the beneficial ownership of equity securities described in the Notice of Proposed Transfer on the grounds that such transfer may adversely affect the Debtors’ ability to utilize the Tax Attributes and a request for emergency relief from the Court. If the Debtors do not object within such period, such transaction may proceed solely as set forth in the Notice of Proposed Transfer. Further transactions within the scope of this paragraph (d) must be the subject of additional notices as set forth herein, with an

additional 72-hour waiting period; and

e) For purposes of these procedures, (A) a “**Substantial Shareholder**” is any person or entity (as defined in Treasury Regulations Section 1.382-3(a)) which beneficially owns at least 4.5% of any issued and outstanding common or preferred shares of Fortior Solutions, Inc. (f/k/a SureID, Inc.) (the “**Stock**”), and (B) “beneficial ownership” (or any variation thereof of the Stock and Options to acquire the Stock) shall be determined in accordance with applicable rules under Section 382, Treasury Regulations promulgated thereunder and rulings issued by the Internal Revenue Service, and thus, to the extent provided therein, from time to time shall include, without limitation, (i) direct and indirect ownership (e.g., a holding company would be considered to beneficially own all shares owned or acquired by their subsidiaries); (ii) ownership by the holder’s family members and persons acting in concert with the holder to make a coordinated acquisition of stock; and (iii) ownership of an Option to acquire the Stock, but only to the extent such Option is treated as exercised under Treasury Regulation section 1.382-4(d). An “**Option**” to acquire stock includes any contingent purchase, warrant, convertible debt, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

3. The Debtors may waive, in writing and in their sole and absolute discretion, but in any event subject to the terms of the RSA, any and all restrictions, stays and notification procedures contained in the Motion or in any order entered with respect hereto should the Debtors conclude in their sole discretion that any such restriction, stay or notification procedure is not necessary to protect their Tax Attributes; *provided, however*, the Debtors shall provide notice of any such waiver to the Administrative Agent, the U.S. Trustee and the Committee in writing within three (3) business days thereafter.

4. The Debtors shall serve a notice in substantially the form annexed hereto as Exhibit 4 (the “*Notice of Order*”) to: (i) U.S. Trustee; (ii) all creditors of the Debtors; (iii) all parties entitled to notice pursuant to Local Rule 2002; (iv) any directly registered holders of the Stock; (v) any record holders (i.e., banks, brokers, intermediaries, other nominees or their mailing agents (collectively, the “*Nominees*”) of the Stock; and (vi) the transfer agent(s) for the Stock.

5. Upon receipt of the Notice of Order, the Nominees shall serve the Notice of Order to any beneficial holders, no later than five (5) business days after being served with the Notice of Order.

6. Any person or entity or broker or agent acting on such person or entity's behalf who sells an aggregate amount equal to 4.5% of any class of issued and outstanding shares of the Stock (or an Option with respect thereto) to another person or entity will be required to provide a copy of the Notice of Order to such purchaser of such Stock or to any broker or agent acting on such purchaser's behalf.

7. The requirements set forth in this Order are in addition to the requirements of Bankruptcy Rule 3001(e) and applicable securities, corporate and other laws, including without limitation the Charter Restrictions, and do not excuse compliance therewith.

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

9. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: _____, 2018
New York, New York

UNITED STATES BANKRUPTCY JUDGE