

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

In re

ZYMERGEN INC., et al.,¹

Debtors.

Chapter 11

Case No. 23-11661 (KBO)

(Jointly Administered)

**DECLARATION OF IVONA SMITH
IN SUPPORT OF THE BIDDING PROCEDURES MOTION**

I, Ivona Smith, hereby declare as follows:

1. I am the sole member of the Restructuring Committee of Debtor Zymergen Inc. (“Zymergen”). I submit this declaration (this “Declaration”) in support of the *Debtors’ Motion for (I) an Order Pursuant to Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors’ Assets; (B) Approving the Debtors’ Entry into Stalking Horse Agreement and Related Bid Protections (C) Approving Procedures for the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (D) Scheduling an Auction and Sale Hearing; (E) Approving Forms and Manner of Notice of Respective Dates, Times, and Places in Connection Therewith; and (F) Granting Related Relief; (II) an Order (A) Approving the Sale of the Debtors’ Assets Free and Clear of Claims, Liens, and Encumbrances; and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Certain Related Relief* [D.I. 5] (the “Bidding Procedures Motion”).²

¹ The Debtors in these chapter 11 cases, along with the Debtors’ federal tax identification numbers, are Zymergen Inc. (2439), Lodo Therapeutics Corporation (8730), EnEvolv, Inc. (2402), and Genesis Acquisition Sub, LLC (3640). The corporate headquarters and the mailing address for the Debtors is 1440 Stanford Ave., Emeryville, California 94608.

² Capitalized terms not defined herein are defined in the Bidding Procedures Motion.

2. Unless otherwise indicated, all facts set forth in this Declaration are based on my personal knowledge, my discussions with the Debtors' management and other professionals, including members of Intrepid Investment Bankers LLC ("Intrepid"), the Debtors' investment banker, or other interested parties, my review of relevant documents, including the Bidding Procedures and the Stalking Horse Agreement, or my opinion based upon my experience, knowledge, and information concerning the Debtors' operations and financial affairs. If called upon to testify, I would testify competently to the facts set forth in this Declaration.

QUALIFICATIONS AND ROLE IN THESE CHAPTER 11 CASES

3. I joined Zymergen's Board of Directors (the "Board") on August 7, 2023. I understand that in my capacity as a Director, I have a fiduciary duty to act in the best interest of the Debtors' estates.

4. I graduated from the New York University School of Business with a Masters in Business Administration and Fordham University with a Bachelor's Degree in Finance.

5. I have twenty-five years of experience working in distressed situations, including restructurings and corporate finance. I am currently employed as a Consultant for Drivetrain, LLC, an independent fiduciary services firm that provides services to the distressed investment community including board service, chapter 11 plan administration and litigation trust services. I previously worked as a portfolio manager for Fair Oaks Capital and as the co-founder and principal at Restoration Capital Management for eleven years.

6. To the best of my knowledge, prior to joining the Board, I had no connection to the Debtors, the Stalking Horse Bidder or any of their respective affiliates. To the best of my knowledge, I still have no connection to the Stalking Horse Bidder or its affiliates, other than the Debtors. I am not a shareholder, employee, or director of Stalking Horse Bidder or any of its

affiliates, other than the Debtors. My understanding is that I was asked to join the Board as an independent director to oversee a fair, value-maximizing and comprehensive restructuring of the Debtors free of any influence by the Debtors' parent company, Ginkgo Bioworks Holdings, Inc.

7. To that end, on August 31, 2023, the Board formed the Restructuring Committee, of which I am the sole member. The Restructuring Committee has sole authority over the Debtors' restructuring efforts, including the Debtors' sale process and decision to enter into any agreement concerning the sale or disposition of the Debtors' Assets. Specifically, the board resolutions appointing the Restructuring Committee grant the Restructuring Committee the "*sole authority* and [to] be empowered to: (i) take any necessary or appropriate action related to the restructuring of the Company, . . . (iii) make such investigation of any Potential Transaction, Ginkgo Transaction or Alternative Transaction as the Restructuring Committee deems advisable to maximize the value of the enterprise; (iv) evaluate the terms of any Potential Transaction, Ginkgo Transaction or Alternative Transaction; (v) *negotiate the terms of any definitive agreement with respect to any Potential Transaction, Ginkgo Transaction, or Alternative Transaction*; (vi) *accept or reject any Potential Transaction, Ginkgo Transaction, or Alternative Transaction*; and (vii) *take any necessary or appropriate action related to any Potential Transaction, Ginkgo Transaction, or Alternative Transaction*[.]" (emphasis added).

SELECTION OF THE STALKING HORSE BID

8. Prior to the Petition Date, the Debtors received an initial bid by the Stalking Horse Bidder for the purchase of the Acquired Assets. Thereafter, the Restructuring Committee engaged in extensive negotiations with the Stalking Horse Bidder at arms-length and with the assistance of the Debtors' advisors. The initial offer by Stalking Horse Bidder was rejected by the

Restructuring Committee and numerous rounds of offers and counteroffers followed. During the negotiations, I consulted regularly with Intrepid and the Debtors' other professionals.

9. Following extensive, arms' length negotiations between the parties, in my capacity as sole member of the Restructuring Committee, I decided to accept the Stalking Horse Bid on behalf of the Debtors. As initially filed, the Stalking Horse Agreement included a cash purchase price of \$5,000,000, plus the assumption or elimination of significant liabilities of the Debtors. The Stalking Horse was not purchasing any claims against itself. Among other things, in addition to the cash purchase price, I understand the Stalking Horse Bid eliminates approximately \$5,000,000 in employee severance liability, which, in light of the amount of unsecured claims in these chapter 11 cases, has a significant impact on the ultimate distributions that creditors will receive under the chapter 11 liquidating plan proposed by the Debtors.

10. Moreover, the Debtors and Official Committee of Unsecured Creditors (the "Committee") have continued to negotiate with the Stalking Horse since filing the Bidding Procedures Motion. These negotiations have been extensive, taking place over more than two weeks, ultimately resulting in a resolution that provides a path for prompt exit from Chapter 11 and maximizes value for the Debtors' creditors.

11. This resolution includes an increase in cash consideration by 50% (a \$2.5 million increase) and the assumption of a non-residential real property lease that has an approximate \$5,000,000 benefit to the estate through the return of a cash collateralized letter of credit and claim elimination, a revision to the Stalking Horse Agreement pursuant to which the Stalking Horse will now acquire all estate claims against itself, plus revisions to the Bidding Procedures Order and bidding procedures to resolve concerns raised by the Committee, the United States Trustee, and other parties. I understand that this resolution will be memorialized in a

Bankruptcy Rule 9019 motion that will be served out on notice to parties in interest who will have an opportunity to object.

12. In addition to the value conferred by the revised Stalking Horse Bid on the Debtors' estates through the cash purchase price and assumption or elimination of liabilities, I also understand that the Stalking Horse Bid serves a critical function of setting a "floor" for further competitive bidding on the Debtors' Assets. I understand that if the Debtors were to continue to market their Assets without the benefit of the Stalking Horse Agreement serving as the floor, the Debtors might encounter greater challenges in their pursuit of the highest or otherwise best offer for the Assets. I further understand that Intrepid is continuing to market the Debtors' Assets and any offer that tops the Stalking Horse Bid will inure to the benefit of the Debtors' stakeholders. Therefore, it is my belief that the Stalking Horse Bid provides a significant benefit to the Debtors' sale process and the ability of the Debtors to maximize the value of their Assets for the benefit of their stakeholders.

13. Finally, I understand that the ultimate Sale to the Stalking Horse is subject to approval of the Sale Order, which is not currently before the Court. Similarly, as noted above, I understand that the settlement of certain claims between the Stalking Horse and the Committee, which is an integral component of the proposed Sale, is subject to the entry of an order granting a forthcoming motion to approve such settlement.

14. Based on the foregoing, I determined in the exercise of my reasonable business judgment to accept the revised Stalking Horse Bid.

BIDDING PROCEDURES

15. In addition, I oversaw the creation of the Bidding Procedures. I understand that the Bidding Procedures are designed to promote participation and active bidding, ensure an

orderly and expeditious postpetition marketing process, and generate the highest or otherwise best available recoveries to Debtors' stakeholders by encouraging potential bidders to submit competitive, value-maximizing Bids for the Debtors' Assets. I further understand that the Bidding Procedures describe, among other things, the procedures for interested parties to gain access to due diligence, the process for submitting Bids, the requirements for Bidders and Bids to become "qualified," the receipt and negotiation of Bids received, the conduct of any auction, the selection and approval of one or more Successful Bidders, and the deadlines with respect to the foregoing. Further, I understand that the Bidding Procedures allow for the flexibility to submit Bids either for the entirety of the business or groups of Assets. Based on the foregoing, I believe that the Bidding Procedures and the Debtors' proposed sale timeline are appropriate under the circumstances because they will provide the best means for the Debtors to maximize the value of their Assets for the benefit of their stakeholders.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: November 14, 2023
New York, New York

By: /s/ Ivona Smith
Ivona Smith
Sole Member, Restructuring Committee