IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
SYNTHEGO CORPORATION,[1]	Case No. 25-10823 (MFW)
Debtor.	**Related to Docket Nos. 11, 42, 73, 91, 98**

REPLY OF THE DEBTOR IN SUPPORT OF MOTION OF THE DEBTOR FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTOR TO OBTAIN POST-PETITION SECURED FINANCING, (II) AUTHORIZING THE USE OF CASH COLLATERAL, (III) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF

The above-captioned debtor and debtor in possession (the "Debtor") files this Reply in support of the *Motion of the Debtor for Entry of Interim and Final Orders (I) Authorizing the Debtor to Obtain Post-Petition Financing, (II) Authorizing the Use of Cash Collateral, (III) Granting Liens and Superpriority Administrative Expense Status, (IV) Granting Adequate Protection; (V) Modifying the Automatic Stay; (VI) Scheduling Final Hearing; and (VII) Granting Related Relief* [Docket No. 11] (as amended by Docket No. 73, the "Motion").[2] In support of this Reply, the Debtor is filing a Declaration of Allen Soong, the Debtor's Chief Restructuring Officer (the "CRO Declaration"), and further respectfully states as follows:

RELEVANT BACKGROUND

1. On May 9, 2025, the Court entered an interim order approving the Motion [Docket No. 42] (the "Interim Order"). Pursuant to the Interim Order, the Debtor was authorized

[1] The Debtor's mailing address is 3696 Haven Avenue, Suite A, Redwood City, California, 94063, and the last four digits of the Debtor's federal tax identification number is 9518.

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

to borrow up to $5,000,000 of new money DIP Loans and $10,000,000 of DIP Roll-Up Loans were approved on an interim basis.

2. Since entry of the Interim Order, the DIP Secured Parties agreed, at the request of the Debtor, to increase the amount of new money DIP Loans to provide needed additional liquidity to fund this Chapter 11 Case. As such, on May 23, 2025, the Debtor filed an amendment to the Motion [Docket No. 73] seeking to increase the principal amount of the new money DIP Loans available to the Debtor under the DIP Facility, subject to entry of the Final Order, from an aggregate principal amount of $12,500,000 to $15,000,000 in order to provide additional liquidity to the Debtor.

3. Pursuant to the Interim Order, the objection deadline for the Motion was May 27, 2025, at 4:00 p.m. (ET), which the Debtor and the DIP Secured Parties extended with respect to the Office of the United States Trustee (the "U.S. Trustee") to May 29, 2025, in order to continue working towards a global resolution of the U.S. Trustee's issues.

4. On May 29, 2025, the U.S. Trustee filed an objection to the Motion [Docket No. 91] on the basis that the Closing Fee (1% of the total facility), Exit Fee (4% of the total facility), and interest rate (currently 15.8% per annum) are excessive. The U.S. Trustee also challenges, without any factual basis aside from the proposed economics of the DIP Facility, the good faith of the DIP Lender for purposes of section 364(e) of the Bankruptcy Code.

5. All other issues raised by the U.S. Trustee with respect to a proposed Final Order on the Motion have been resolved. The Debtor has separately filed a proposed form of final order, which reflects the resolution of those other issues [Docket No. 98].

6. Since the filing of the U.S. Trustee's objection, the parties have continued to work in good faith to attempt to resolve the remaining objections. Although the U.S. Trustee's

objection has not yet been resolved, the Debtor has obtained the agreement of the DIP Secured Parties to certain additional, material modifications to the economic terms of the DIP Facility. In particular, the DIP Secured Parties have agreed that they would forego any further Roll-Up Loans in connection with the DIP Facility. Instead, all remaining loans under the Prepetition Loans (beyond the $10 million of existing Roll-Up Loans) will remain prepetition secured debt. As such, in addition to remaining subject to the terms of the Prepetition Credit Agreement, they will not benefit from the additional collateral or protections provided by the DIP Credit Agreement.

APPLICABLE LEGAL STANDARD

7. As stated in the Motion, a debtor's decision to enter into a postpetition lending facility under section 364 of the Bankruptcy Code is governed by the business judgment standard. *See, e.g.*, *Trans World Airlines, Inc. v. Travelers Int'l AG (In re Trans World Airlines, Inc.)*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving postpetition credit facility because such facility "reflect[ed] sound and prudent business judgment"); *In re Ames Dep't Stores, Inc.*, 115 B.R. at 38 (financing decisions under section 364 of the Bankruptcy Code must reflect a debtor's business judgment).

8. Bankruptcy courts routinely accept a debtor's business judgment on many business decisions, including the decision to borrow money. *See, e.g., Group of Inst. Investors v. Chicago, Mil., St. P. & Pac.*, 318 U.S. 523, 550 (1943) (holding that decisions regarding assumption or rejection of leases are left to the business judgment of the debtor); *In re Simasko Prod. Co.,* 47 B.R. 444, 449 (D. Colo. 1985) ("Business judgments should be left to the board room and not to this Court."). Further, one court has noted that "[m]ore exacting scrutiny [of the debtors' business decisions] would slow the administration of the debtor's estate and increase its cost, interfere with the Bankruptcy Code's provision for private control of administration of the

estate, and threaten the court's ability to control a case impartially." *Richmond Leasing Co. v. Capital Bank, N.A.,* 762 F.2d 1303, 1311 (5th Cir. 1985).

9. Bankruptcy courts generally will defer to a debtor in possession's business judgment regarding the need for and the proposed use of funds, unless such decision is arbitrary and capricious. *In re Curlew Valley Associates*, 14 B.R. 506, 511-13 (Bankr. D. Utah 1981); *see also Trans World Airlines, Inc.,* 163 B.R. at 974 (approving interim loan, receivables facility and asset-based facility based upon prudent business judgment of the debtor). Generally courts will not second-guess a debtor in possession's business decisions involving "a business judgment made in good faith, upon a reasonable basis, and within the scope of his authority under the Code." *Curlew Valley,* 14 B.R. at 513-14 (footnotes omitted).

THE DIP FEES AND INTEREST RATE ARE REASONABLE AND THE DIP LENDER HAS ACTED IN GOOD FAITH

10. Applying the foregoing deferential business judgment legal standard to the Motion and on the basis of the facts set forth in the CRO Declaration, the Debtor urges the Court to approve the DIP Facility as proposed given the full package of benefits to which the Debtor is entitled thereunder, including, without limitation, the additional $2.5 million in new money DIP Loans that the DIP Lender has agreed to provide since the filing of this Chapter 11 Case, and the additional agreements reached with the DIP Secured Parties since entry of the Interim Order, as described above.

11. First, it must be emphasized that no creditor or economic stakeholder has asserted any objection (formally or informally) to the DIP Facility. Only the U.S. Trustee has filed an objection and solely based on the economics of the DIP Facility as to which the Debtor's business judgment squarely applies.

12. Second, the DIP Facility must be viewed as a whole. For instance, as set forth in the CRO Declaration, the DIP Lender is not being paid any cash interest or fees by the Debtor during the course of this case, except for reimbursement of lender professional fees. The Closing Fee, the Exit Fee, and monthly interest are all accruing in-kind and are not payable until maturity of the DIP Facility. DIP facilities with similar interest rates and fees have been repeatedly approved in this District. *See In re Danimer Scientific, Inc., et al.*, Case No. 25-10518 (MFW) [Docket No. 195] (approving an interest rate of 12.5% PIK on new money and 15% PIK on the roll-up); *In re iSun, Inc., et al.*, 24-11144 (TMH) [Docket No. 177] (approving an interest rate of SOFR + 18% PIK and a 4% commitment fee on the total DIP facility, including the $1 million roll-up); *In re View, Inc.*, Case No. 24-10694 (CTG) [Docket No. 132] (approving an interest rate of SOFR + 14% PIK); *In re Biora Therapeutics, Inc.*, Case No. 24-12849 (BLS) [Docket No. 147] (approving an interest rate of SOFR + 12.5% PIK on new money and SOFR + 13% PIK on the roll-up); *In re Ambri Inc.*, Case No. 24-10952 (LSS) [Docket No. 163] (approving an interest rate of 15% PIK and a funding fee equal to 1% PIK of the total DIP facility, including the approximately $25 million roll-up); *In re ViewRay, Inc., et al.*, Case No. 23-10935 (KBO) [Docket No. 226] (approving a 4% exit fee on the total DIP facility, including the $12 million roll-up); *In re Plastiq, Inc., et al.*, Case No. 23-10671 (BLS) [Docket No. 138] (approving an interest rate of SOFR + 12.5% PIK); *In re AN Global LLC, et al.*, Case No. 23-11294 (JKS) [Docket No. 447] (approving an interest rate of SOFR + 11% PIK); *In re Nogin, Inc., et al.*, Case No. 23-11945 (CTG) [Docket No. 244] (approving a $1.3 million exit premium, equal to approximately 5% of the total DIP facility, including the $8.5 million roll-up); *In re Phoenix Service Int'l*, Case No. 22-10906 (MFW) [Docket No. 237] (approving an interest rate of SOFR + 12% (2% cash and 10% PIK) on new money and SOFR + 12% PIK on the roll-up).

13. Third, the DIP Lender is also the stalking horse credit bidder for the Debtor's assets with a credit bid that includes all obligations under the DIP Facility, so the DIP Lender will only recover on account of its DIP fees if there is a successful overbidder.

14. Fourth, the Prepetition Secured Parties' agreement to forego any further Roll-Up Loans means that the DIP fees will also be paid on a substantially reduced amount of DIP Loans relative to the amount originally contemplated by the DIP Motion. Under this construct, the DIP Facility would consist only of an upsized new money DIP Loan of $15 million and $10 million of Roll-Up Loans (reduced from $37.5 million), the substantial majority of which were funded in the two months prior to the commencement of this case. The DIP Secured Parties have received no closing or similar fees, or any cash interest in respect of loans it made in the weeks leading up to the filing of this case, and the DIP fees and interest will supplant any fees and interest that the DIP Lender, as Prepetition Lender, would otherwise be entitled to charge the Debtor under the Prepetition Credit Documents, and which likely would have to be paid as part of any successful overbid.

15. Fifth, there is no alternative financing available to the Debtor and the economic terms of the proposed DIP Facility are the best available and have been negotiated in good faith and at arms' length. The U.S. Trustee argues that the DIP Lender is not entitled to a good faith finding under section 364(e) of the Bankruptcy Code because the U.S. Trustee second-guesses the economics of the DIP Facility. The DIP Facility was negotiated at arms' length and in good faith by the Debtor and the DIP Lender, each of whom was represented by experienced and independent counsel. There is no legal or factual basis for the U.S. Trustee's position that unfavorable economics (in the U.S. Trustee's view) renders the DIP Facility as anything less than the result of a good faith negotiation, entitling the DIP Lender to a good faith finding.

16. In sum, as set forth in more detail in the CRO Declaration, the Debtor submits that the economics underlying the DIP Facility are fair and reasonable and consistent with, or better than, market norms when considered as a whole package. For these reasons, the Debtor's sound business judgment clearly supports approval of the DIP Facility. Access to the DIP Facility, along with use of Cash Collateral, will allow the Debtor to continue to operate and pave the way for a going concern sale process for the Debtor's assets, thus maximizing value for all of its constituents.

Dated: June 2, 2025

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