IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re SYNTHEGO CORPORATION,[1] Debtor.	:	Chapter 11 Case No. 25-10823 (MFW) **Hearing Date: June 3, 2025 at 2:00 PM ET** **Objection Deadline: May 29, 2025 at 4:00 PM ET (extended for U.S. Trustee)** **Re: D.I. 11, 73**

UNITED STATES TRUSTEE'S OBJECTION TO THE MOTION FOR AN ORDER (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, AND (VI) GRANTING RELATED RELIEF

In support of his objection to the *Motion for an Order (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 and (VI) Granting Related Relief* [D.I. 11] (amended on May 23, 2025 -- D.I. 73) (as amended, the "DIP Financing Motion"), Andrew R. Vara, the United States Trustee for Regions 3 and 9 ("U.S. Trustee"), by and through his undersigned counsel, states:

PRELIMINARY STATEMENT

1. Debtor seeks Court approval of $52,500,000 in financing (the "DIP Financing Facility"), consisting of $15 million of additional funds and $37.5 of rolled-up prepetition debt,

[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.

from Perceptive Credit Holdings III, LP ("Perceptive") as the administrative agent for the Debtor's prepetition lenders and the stalking horse bidder for substantially all of the Debtor's assets. The U.S. Trustee objects to the DIP Financing Motion because the Closing Fee[2] and Exit Fee (collectively, the "Fees") are exorbitant when compared to the amount of additional funds being brought into the estate: together, the Closing Fee of $525,000 and the Exit Fee of $2,100,000 equal 17.5% of the $15 million in new funds being lent. Debtor has also not shown that the interest rate, currently set at 15.8%, is a reasonable market rate under the circumstances. Given the fees, the interest rate and the lender's dual role as a stalking horse, the lender is not entitled to the protections of section 364(e) of the Code on the proposed financing terms.

JURISDICTION AND STANDING

3. This Court has jurisdiction to hear the DIP Financing Motion and this Objection.

4. Pursuant to 28 U.S.C. § 586, the U.S. Trustee is charged with the administrative oversight of cases commenced pursuant to the Bankruptcy Code. This duty is part of the U.S. Trustee's overarching responsibility to enforce the bankruptcy laws as written by Congress and interpreted by the courts. *See U.S. Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.),* 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that U.S. Trustee has "public interest standing" under 11 U.S.C. § 307, which goes beyond mere pecuniary interest); *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6th Cir. 1990) (describing the U.S. Trustee as a "watchdog").

5. Pursuant to 11 U.S.C. § 307, the U.S. Trustee has standing to be heard with regard to the DIP Financing Motion.

[2] Capitalized terms not defined herein shall have the meaning ascribed to such terms in the DIP Financing Motion.

BACKGROUND

6. On May 5, 2025, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

7. On May 6, 2025, the Debtor filed a motion seeking approval of post-petition financing, through which the Debtor sought approval of a $50,000,000 DIP Financing Facility from Perceptive, including a total of $12.5 million in additional borrowing and $37.5 million of prepetition debt treated as post-petition debt. [D.I. 11]. After a hearing and some negotiated amendments, the Court entered an order approving the DIP Financing Motion on an interim basis (the "Interim DIP Financing Order") [D.I. 42]. Under the Interim DIP Financing Order, the Challenge Period to object to Perceptive's prepetition secured liens ends July 22, 2025. Interim DIP Financing Order ¶ 12(a). On May 23, 2025, the Debtor filed an amendment to the post-petition financing motion to increase the "new money" borrowed via the DIP Financing Facility from $12.5 million to $15 million, for a total DIP Financing Facility of $52,500,000. [D.I. 73].

8. To borrow $15 million under the proposed DIP Financing Facility, Debtor seeks authority to allow Perceptive to recategorize and roll-up $37.5 million of its prepetition debt into post-petition debt, with (i) a Closing Fee of 1% of total financing, (ii) an Exit Fee of 4% of total financing, and (iii) a floating interest rate (currently 15.8%). The Closing Fee of $525,000 and the Exit Fee ($2,100,000) total $2,625,000 (together, the "Fees"), which, if approved, would result in Perceptive receiving 17.5% of the new money borrowed in fees alone.

9. Debtor also filed a motion seeking to sell substantially all of its assets at an auction be held on June 26, 2025, with Perceptive serving as the proposed stalking horse bidder. Perceptive's stalking horse bid for substantially all of Debtor's assets consists of (i) a credit bid pursuant to section 363(k) of the Bankruptcy Code of obligations equal to an amount not less than

$72,411,918.28, plus up to $12,500,000 in respect of the new DIP Loans (as defined in the Interim DIP Financing Order), plus accrued and unpaid prepetition and post-petition interest thereon and (ii) the assumption of certain liabilities. [D.I. 12 ¶ 13]. The U.S. Trustee raised several informal objections in connection with the bid procedures motion, but they have now been resolved in principle after various agreed changes, including the elimination of the Termination Fee.

10. To date, the U.S. Trustee has not appointed an official committee of unsecured creditors due to lack of sufficient interest. [D.I. 68].

ARGUMENT

The DIP Financing Motion Should Be Denied Because the Terms of the Proposed DIP Financing Facility Are Not Fair or Reasonable and Therefore Not an Appropriate Exercise of Debtor's Business Judgment.

11. Sections 364 (c) and (d) of the Bankruptcy Code provide as follows:

> (c) If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—
>
> (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;
>
> (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
>
> (3) secured by a junior lien on property of the estate that is subject to a lien.
>
> (d) (1) The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if—
>
> (A) the trustee is unable to obtain such credit otherwise; and
>
> (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.
>
> (2) In any hearing under this subsection, the trustee has the burden of proof on the issue of adequate protection.

11 U.S.C. § 364 (c) & (d).

12. In seeking approval of a post-petition loan, a debtor has the burden of proving that, "[t]he terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender." *In re L.A. Dodgers LLC*, 457 B.R. 308, 312 (Bankr. D. Del 2011) (citations omitted); *see also In re LATAM Airlines Grp. S.A.,* 620 B.R. 722, 767 (Bankr. S.D. N.Y. 2020). A debtor also must establish that it is "unable to obtain unsecured credit per 11 U.S.C. § 364(b)," and that "[t]he credit transaction is necessary to preserve the assets of the estate." *L.A. Dodgers,* 457 B.R. at 312.

13. In determining whether to approve a debtor's request under section 364, a court must examine whether the relief requested is an appropriate exercise of the debtor's business judgment. *See U.S. Bank Trust Nat'l Assn v. Am. Airlines, Inc. (In re AMR Corp.)*, 485 B.R. 279, 287 (Bankr. S.D.N.Y 2013). "[C]ases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest." *In re Ames Dept. Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990).

14. With a current interest rate of 15.8% and Fees totaling $2,625,000 (comprising of 17.5% of the new money borrowed), the aggregate cost of the DIP Financing Facility does not meet the requirements of being fair and reasonable. Therefore, the DIP Financing Motion should not be approved as a reasonable exercise of Debtor's business judgment.

15. The Debtor also seeks a finding that Perceptive is a good faith lender, entitled to the protections of subsection (e) of section 364 of the Code, which provides:

> The reversal or modification on appeal of an authorization under this section to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, ***to an entity that extended such credit in good faith***, whether or

> not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

11 U.S.C. § 364(e) (emphasis added).

16. A lender that offers post-petition DIP financing with a high interest rate contingent on the approval of unreasonable Fees would not appear to be acting in good faith. This is especially true given that the DIP Lender is also Debtor's prepetition lender and the stalking horse bidder of substantially all its assets for an auction that is proposed to take place in less than a month.

CONCLUSION

17. The U.S. Trustee leaves Debtor to its burden to establish it is reasonable business judgement to borrow funds at a current floating interest of 15.8% with Fees of $2,625,000 (comprising 17.5% of the new money borrowed), and to establish that the DIP Lender is a good faith lender entitled to the protections of section 364(e) of the Code.

WHEREFORE, the U.S. Trustee requests that this Court issue an order denying the DIP Financing Motion and granting such other relief as this Court deems appropriate, fair and just.

Respectfully submitted,

ANDREW R. VARA
UNITED STATES TRUSTEE
REGIONS 3 AND 9

By: */s/ Megan Seliber*
Megan Seliber
Trial Attorney
J. Caleb Boggs Federal Building
844 King Street, Suite 2207, Lockbox 35
Wilmington, DE 19801
(202) 567-1480
megan.seliber@usdoj.gov

Dated: May 29, 2025