

**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)

Hearing Date:

December 11, 2023 at 10:00 a.m. (ET)

Objection Deadline:

December 4, 2023 at 4:00 p.m. (ET)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER APPROVING
THE SETTLEMENT AGREEMENT WITH GINKGO BIOWORKS, INC.
AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

By this Motion, the above-captioned debtors and debtors in possession (the “Debtors”) seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), (a) authorizing them to enter into a settlement agreement (the “Settlement Agreement”) between the Debtors, Ginkgo Bioworks, Inc. (“Ginkgo” or the “Stalking Horse Bidder”), and the Official Committee of Unsecured Creditors (the “Committee,” and together with the Debtors and Ginkgo, the “Parties”) attached to the Proposed Order as **Exhibit 1**, and (b) granting the Debtors such other and further relief as the Court deems just and proper. In support of this Motion, the Debtors respectfully state as follows:

PRELIMINARY STATEMENT

1. As the Debtors have stated from the beginning of these cases, the path to maximizing recoveries to creditors relies on two primary objectives: minimizing administrative

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.

expense and maximizing the sale price of their assets. To that end, prior to the petition date, the Debtors negotiated and ultimately accepted the Stalking Horse Bid (defined below) from Ginkgo, which provided a floor sale price against which other bidders could seek to overbid and guaranteed a material recovery for the Debtors' creditors. And, although the Debtors negotiated the Stalking Horse Bid to be in a form that would minimize objections in light of the parent-subsidary relationship between the Debtors and Ginkgo, there remained unresolved concerns that were subsequently raised by the Committee that the Debtors, the Committee, and Ginkgo spent weeks attempting to resolve and which ultimately resulted in the Settlement Agreement.

2. The Settlement Agreement between the Debtors, the Committee and Ginkgo provides a path to a global settlement between the parties and confers greater value and certainty to the Debtors' estates, primarily through Ginkgo's fifty percent increase in the cash consideration under the Stalking Horse Bid, Ginkgo's assumption or elimination of millions of dollars of liabilities, and the outline of terms of an amended plan that will be solicited to creditors for approval. Further, the Settlement Agreement resolves potential, costly litigation and results in meaningful recoveries to the Debtors' creditors. As a result, and as detailed below, entry into the Settlement Agreement falls well above the lowest level of reasonableness. Therefore, the Court should approve the Settlement Agreement.

JURISDICTION

3. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding under 28 U.S.C. §

157(b). Venue of these cases and the Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The Debtors consent pursuant to rule 9013-1(f) of the *Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court of the District of Delaware* (the “Local Rules”) to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

5. The statutory basis for the relief requested herein is section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”), as supplemented by rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

BACKGROUND

A. General Background

6. On October 3, 2023 (the “Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

7. On October 13, 2023, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed the Committee pursuant to section 1102 of the Bankruptcy Code. No trustee or examiner has been appointed in these cases.

8. The factual background relating to the Debtors’ commencement of these Chapter 11 cases is set forth in detail in the *Declaration of Claire Smith in Support of Chapter 11 Petitions and First Day Relief* (D.I. 9), which is incorporated herein by reference.

B. Stalking Horse Agreement and Bidding Procedures Motion

9. The Debtors commenced these chapter 11 cases to conduct a value-maximizing process for the sale of their assets pursuant to section 363 of the Bankruptcy Code. To that end, prior to the Petition Date, the Debtors received an initial bid by Ginkgo for the purchase of the Acquired Assets. Thereafter, the Debtors, through the Restructuring Committee, whose sole member is independent of Ginkgo and has sole authority to negotiate and enter into any sale transaction on behalf of the Debtors, engaged in extensive negotiations with Ginkgo at arms-length. The Restructuring Committee rejected the initial offer by Ginkgo, and numerous rounds of offers and counteroffers followed.

10. Following extensive, arms' length negotiations between the parties, the Restructuring Committee accepted a bid by Ginkgo for the sale (the "Sale") of certain of the Debtors' assets (the "Acquired Assets") on behalf of the Debtors (the "Stalking Horse Bid"). In connection with the Stalking Horse Bid, the Debtors and Ginkgo entered into an asset purchase agreement (the "Stalking Horse Agreement"), which provided for a cash purchase price of \$5,000,000, plus the assumption or elimination of significant liabilities of the Debtors. Among other liabilities, 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 may receive under the Debtors' Plan (defined below). Additionally, the original Stalking Horse Agreement provided that Ginkgo would not be acquiring any prepetition claims against itself.

11. On the Petition Date, the Debtors filed a motion (D.I. 5) (the "Bidding Procedures Motion") for entry of an order to approve, among other things, (i) the Debtors' entry into the Stalking Horse Agreement with Ginkgo, subject to higher and better bids, and (ii) the

process and procedures (the “Bidding Procedures”) for the value-maximizing sale process in these chapter 11 cases. Attached to the Bidding Procedures Motion as Exhibits A, B and C, respectively, were a proposed form of order approving the Bidding Procedures Motion (the “Bidding Procedures Order”), the Stalking Horse Agreement, and a proposed form of order approving the Sale pursuant to the Stalking Horse Agreement (the “Sale Order”).

12. The Committee raised numerous objections to the original Stalking Horse Agreement and Bidding Procedures. Among other objections, the Committee asserted that the Debtors’ estates may have colorable claims against Ginkgo which it wanted to ensure were not affected by the Stalking Horse Agreement. Ginkgo disputes the Committee’s assertion and thereafter sought to acquire prepetition claims of the Debtors’ estates against itself.

13. The Debtors engaged in extensive discussions with the Committee and Ginkgo in an attempt to resolve the dispute among the Parties and the Committee’s objections. To that end, rather than seek to obtain approval of the Stalking Horse Bid over the Committee’s objections, the Debtors twice adjourned the hearing on the Bidding Procedures Motion to allow time for the parties to work towards a resolution and avoid value-destructive litigation.

14. The negotiations among the Parties proved fruitful. On November 14, 2023, the Debtors filed the Global Settlement Term Sheet (D.I. 173) (the “Settlement Term Sheet”) and revised forms of the Bidding Procedures Order and Sale Order, reflecting the terms of an agreement between the Debtors, Ginkgo and the Committee. The Parties’ settlement resolved the Committee’s objections to the Bidding Procedures Motion and Stalking Horse Agreement and permit the Debtors to proceed with their value-maximizing sale process.

15. Also on November 14, 2023, the Court held a hearing to consider the Bidding Procedures Motion. At the hearing, Ginkgo, the Committee, and the Debtors affirmed

their agreement to the Settlement Term Sheet. The Debtors also informed the Court that the Parties intended to revise the Stalking Horse Agreement to incorporate the relevant terms of the Settlement Term Sheet.

16. On November 20, 2023, the Court entered a revised form of Bidding Procedures Order (D.I. 194) that incorporated the terms of the Settlement Term Sheet. Attached to the Bidding Procedures Order as Exhibits 2 and 6, respectively, are the Stalking Horse Agreement, as amended by its Amendment No. 1, and the agreed form of Sale Order.

17. In accordance with the Settlement Term Sheet, the Debtors file this Motion seeking entry of the Proposed Order approving the Settlement Agreement.

C. The Settlement Agreement²

18. The Settlement Agreement includes certain terms and provisions regarding the Debtors' sale process, the Stalking Horse Agreement and the *Joint Chapter 11 Plan of Liquidation* (D.I. 27) (as may be amended, modified and supplemented, the "Plan") filed by the Debtors. The Parties' settlement results in the following material revisions to the Stalking Horse Bid:

- i. a 50% increase in cash consideration (\$2,500,000) (Stalking Horse Agreement Amendment No. 1, § 1(c));
- ii. an agreement by Ginkgo to assume the Debtors' non-residential real property lease for the premises located at 1440 Stanford Avenue, resulting in a benefit to the Debtors' estates of approximately \$5,000,000 through the return to the Debtors' estates of cash that is collateralizing a letter of credit in favor of the landlord and elimination of a significant rejection damages claim (*Id.* at § 1(b); Settlement Agreement at ¶ 2);

² The summary of the terms of the Settlement Agreement is provided for the benefit of the Court and parties in interest and is qualified in all respects by the terms and conditions of the Settlement Agreement itself. In the event of any conflict between this summary and the terms of the Settlement Agreement, the Settlement Agreement shall control.

- iii. the required prompt payment by Ginkgo of \$2,117,254.29 in outstanding invoices due and payable to the Debtors (Stalking Horse Agreement Amendment No. 1, § 1(h); Settlement Agreement at 3);
- iv. the required payment of all amounts due and payable under any additional invoices that are invoiced by the Debtors at least five business days prior to the closing date of the sale (Settlement Agreement at ¶ 3(a));
- v. the closing of the sale may not occur if the aggregate amount of payables not yet due and payable exceeds \$2,000,000 (*Id.* at ¶ 3(b));
- vi. Ginkgo's purchase of estate claims against Ginkgo (among others), but excluding (a) those arising out of intentional fraud occurring during these chapter 11 cases, (b) claims against directors and officers of the Debtors who served prior to October 19, 2022, and (c) any of the Debtors' current or former insurance policies (*Id.* at ¶¶ 4, 5);
- vii. the subordination of any claims of Ginkgo against the Debtors to all claims designated as Class 3 claims under the Plan and the release by Ginkgo of all claims against the former directors and officers of each Debtor (*Id.* at ¶ 7);
- viii. the parties shall work together in good faith to close the Sale by January 1, 2024 (*Id.* at ¶ 11).

19. Additionally, the Settlement Agreement ensures the Committee's support

for confirmation of the Plan, as amended to:

- i. include (x) customary exculpations of the Committee, its members and its advisors and representatives, and (y) other terms customary in a plan in a Chapter 11 case where an official committee of unsecured creditors is appointed;
- ii. include a release of Ginkgo, including its current and former affiliates, and its advisors and representatives;
- iii. assign certain causes of action to the Liquidating Trust established under the Plan to pursue on behalf of the Debtors' estates;
- iv. permit any holder of a claim under the Plan to opt out of any releases to be given by holders of claims in favor of non-Debtor third parties; and
- v. incorporate reasonable comments from the Committee and, with respect to the release of Ginkgo contemplated by clause (ii) above, Ginkgo.

Id. at ¶ 14. Further, pursuant to the Settlement Agreement, the Plan (other than in respect of clause (ii) above) may not be modified or amended in a manner adverse to the Committee or any Class 3 or Class 4 creditor without the Committee’s prior written consent, which may not be unreasonably withheld. (*Id.*).

20. Finally, the Settlement Agreement provides Ginkgo and the Committee with the right to terminate the Settlement Agreement under certain conditions. *Id.* at ¶ 20. Such conditions include the failure by the Committee or Ginkgo to fulfill certain obligations, if Ginkgo and members of the Committee are unable to reach an agreement for bilateral releases by December 15, 2023, and if the amount of allowable Class 3 claims asserted against the Debtors (other than claims held by members of the Committee) exceeds \$7,450,000. *Id.* at ¶ 20(a), (b). If the Settlement Agreement is terminated, the release of Ginkgo contemplated by the Sale Order will be null and void and Ginkgo will have the right to withdraw the Stalking Horse Bid and submit a revised bid for the Acquired Assets. *Id.* at ¶ 20(c).

BASIS FOR RELIEF

21. Section 105(a) provides, in pertinent part, that the “[c]ourt may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy Code. 11 U.S.C. § 105(a). Bankruptcy Rule 9019(a) provides, in relevant part, that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). Compromises and settlements are “a normal part of the process of reorganization.” *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968) (*TMT Trailer Ferry*) (quoting *Case v. L.A. Lumber Prods. Co.*, 308 U.S. 106, 130 (1939)). The Third Circuit has emphasized that “[c]ompromises are favored in bankruptcy.” *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996) (quoting Collier on Bankruptcy ¶ 9019.03[1] (15th ed. 1993)); see also *In re World Health Alts., Inc.*, 344 B.R.

291, 296 (Bankr. D. Del. 2006) (finding settlements “generally favored in bankruptcy”). Additionally, the Third Circuit has recognized that ““(i)n administering reorganization proceedings in an economical and practical manner it will often be wise to arrange the settlement of claims as to which there are substantial and reasonable doubts.”” *In re Penn Cent. Transp. Co.*, 596 F.2d 1102, 1113 (3d Cir. 1979) (quoting *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968)).

22. “[T]he decision whether to approve a compromise under [Bankruptcy] Rule 9019 is committed to the sound discretion of the Court, which must determine if the compromise is fair, reasonable, and in the interest of the estate.” *In re Louise’s, Inc.*, 211 B.R. 798, 801 (D. Del. 1997). The court need not be convinced that the settlement is the best possible compromise in order to approve it. *In re Coram Healthcare Corp.*, 315 B.R. at 330 (citation omitted). Rather, a settlement should be approved by a court so long as the settlement is above “the lowest point in the range of reasonableness.” *Id.* (citation omitted); *see also Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608, 613 (2d Cir. 1983); *In re Washington Mutual Inc.*, 442 B.R. 314, 328 (Bankr. D. Del. 2011); *In re Key3Media Grp., Inc.*, 336 B.R. 87, 92–93 (Bankr. D. Del. 2005). Taken together, section 105(a) and Bankruptcy Rule 9019(a) grant a bankruptcy court the power to approve a proposed compromise and settlement when it is in the best interests of the debtor’s estate and its creditors. *See In re Marvel Entm’t Grp., Inc.*, 222 B.R. 243, 249 (D. Del. 1998) (proposed settlement held in best interest of the estate); *In re Louise’s, Inc.*, 211 B.R. 798, 801 (D. Del. 1997). Basic to the process of evaluating proposed settlements is “the need to compare the terms of the compromise with the likely rewards of litigation.” *TMT Trailer Ferry*, 390 U.S. at 424–25.

23. The Third Circuit has set out four criteria for a bankruptcy court to consider when evaluating a settlement proposal: “(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors.” *In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996); *accord In re Nutraquest, Inc.*, 434 F.3d 639, 644 (3d Cir. 2006) (finding that the *Martin* factors are useful when analyzing a settlement of a claim against the debtor as well as a claim belonging to the debtor).

24. As set forth in greater detail below, the Debtors’ entry into the Settlement Agreement satisfies each of the *Martin* factors and falls well above the lowest point in the range of reasonableness. Therefore, the Court should approve the Settlement Agreement.

A. Probability of Success on the Merits and Subsequent Collection

25. First, litigation of (i) the Committee’s objections to the Bidding Procedures Motion, Stalking Horse Agreement and Sale Order and (ii) causes of action asserted by the Committee on behalf of the estates against Ginkgo would be speculative and time-consuming. The Committee’s objections and assertions of causes of action against Ginkgo raised numerous legal and factual issues that would require extensive briefing and discovery. Further, as described in greater detail below, such litigation would be tremendously expensive for the Debtors’ estates. The Debtors’ estates would not be guaranteed a favorable outcome in the event of litigation, and it is especially unclear whether any such litigation would ultimately confer a benefit on the Debtors’ estates because the termination of the Settlement Agreement would likely result in the loss of the certainty of a substantial recovery provided by the Stalking Horse Bid in exchange for a speculative litigation recovery that may, after the time and expense required to litigate (which the Debtors expect Ginkgo to vehemently oppose), result in a lower recovery for unsecured creditors. Accordingly, the Debtors concluded that the Settlement Agreement best served the Debtors’

interest in maximizing value for all of their stakeholders by avoiding extensive and potentially value-destructive litigation.

B. Complexity, Expense, Inconvenience, and Delay Attendant to Litigation

26. Second, litigation of the Committee's objections to the Sale and potential causes of action against Ginkgo would be complex, enormously expensive and significantly delay the resolution of these chapter 11 cases, potentially resulting in a significant reduction of recoveries to general unsecured creditors.

27. As an initial matter, litigation would be time-consuming and delay the resolution of these chapter 11 cases. The Debtors' estates have no pending litigation against Ginkgo. Accordingly, to prosecute causes of action against Ginkgo on behalf of the Debtors' estates, the Committee would face a long road to receiving any potential recovery. First, the Committee would need to file a motion to obtain standing to assert claims on behalf of the estates. Then, assuming it is granted standing, the Committee would need to draft and file a complaint, and dispositive motion practice would likely follow, as is common in the majority of litigation. If the Committee's complaint survives, the parties would engage in discovery leading to a trial that may not occur for a year or longer. Further, even if the Committee's suit were successful, any judgment obtained would be subject to appeal with no guarantee as to the ultimate outcome, further delaying resolution of the Committee's suit and potential creditor recoveries in these chapter 11 cases.

28. Similarly, litigation of the Committee's objections to the Sale to Ginkgo would also be time-consuming and complex. As with any suit commenced by the Committee against Ginkgo, the Committee's sale objections would undoubtedly involve extensive discovery and briefing. Indeed, prior to the adjournment of the hearing on the Bidding Procedures Motion, the Committee served two deposition notices and written discovery on the Debtors.

29. Meanwhile, such litigation would be exceptionally expensive for the Debtors' estates. Prosecuting the litigation would likely result in the expenditure of millions of dollars of estate resources as the Debtors and the Committee are both estate fiduciaries whose professional fees are paid by the estates. These costs would be borne exclusively by the Debtors' general unsecured creditors, who are the fulcrum class in these chapter 11 cases and whose recoveries diminish dollar for dollar for any administrative expenses incurred.

30. The administrative expense associated with prosecuting the litigation is compounded through the likely loss to the Debtors' estates of the Stalking Horse Agreement. As described above, the Settlement Agreement includes the amended Stalking Horse Agreement which confers significant value on the Debtors' estates. Primarily, the Stalking Horse Agreement benefits the estates through (i) \$7,500,000 in cash consideration and (ii) the assumption or elimination of significant liabilities, including a minimum of \$10,000,000 in employee severance and expenses and damages associated with the Stanford Lease. Further, the Stalking Horse Agreement establishes a floor for competitive bidding for the Acquired Assets, meaning any bid received by the Debtors that provides greater consideration to the Debtors' estates directly inures to the benefit on the Debtors' creditors. Abandoning the Stalking Horse Agreement in favor of pursuing costly and speculative litigation would result in the loss of such value.

31. The Settlement Agreement resolves the Parties' disputes now without the need for extensive, costly, and uncertain litigation. With the Settlement Agreement in hand, the Debtors will be able to focus on the timely and efficient resolution of these cases through a value-maximizing sale of their assets and subsequent confirmation of the Plan.

C. Best Interest of Creditors and Parties in Interest

32. Finally, the Settlement Agreement is in the best interests of the Debtors' estates and stakeholders. The "paramount interest of creditors" factor focuses on those parties that

are affected by the agreement but not party thereto. *See Will v. Northwestern Univ. (In re Nutraquest, Inc.)*, 434 F.3d 639, 645 (3d Cir. 2006). However, the interests of such parties, although deserving of consideration, “cannot be permitted to predominate over the best interests of the estate as a whole.” *In re Capmark Fin. Grp. Inc.*, 438 B.R. 471, 519 (Bankr. D. Del. 2010). Both the Debtors and the Committee, the estate fiduciaries in these cases, have determined that the Settlement Agreement is the best option to maximize value for the benefit of the unsecured creditors in these cases. As discussed above, the Settlement Agreement eliminates the potential for costly and burdensome litigation that will delay the resolution of these cases and result in the immediate reduction of value available to the Debtors’ stakeholders. Further, the Debtors will be able to proceed with their sale process, confirmation of the Plan and provide their stakeholders with meaningful recoveries on account of their claims in early 2024.

33. For the foregoing reasons, entry into the Settlement Agreement constitutes a reasonable exercise of the Debtors’ business judgment, falls well above the lowest point in the range of reasonableness and is in the best interests of the Debtors’ estates, their creditors and all stakeholders. Therefore, the Court should enter the Proposed Order approving the Settlement Agreement.

NOTICE

34. Notice of this Motion shall be provided to (i) the U.S. Trustee, (ii) the Committee, (iii) Ginkgo, and (iv) all parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

CONCLUSION

WHEREFORE, for the reasons set forth above, the Debtors respectfully request that the Court (i) enter the Proposed Order, substantially in the form of **Exhibit A**, approving the

Settlement Agreement, and (ii) grant the Debtors such other and further relief as the Court may deem just and proper.

Dated: November 27, 2023
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

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**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)

Hearing Date:

December 11, 2023 at 10:00 a.m. (ET)

Objection Deadline:

December 4, 2023 at 4:00 p.m. (ET)

**NOTICE OF DEBTORS' MOTION FOR ENTRY OF AN ORDER APPROVING
THE SETTLEMENT AGREEMENT WITH GINKGO BIOWORKS, INC.
AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

PLEASE TAKE NOTICE that on November 27, 2023, the above-captioned debtors and debtors in possession (the "Debtors") filed the *Debtors' Motion for Entry of an Order Approving the Settlement Agreement with Ginkgo Bioworks, Inc. and the Official Committee of Unsecured Creditors* (the "Motion") with the United States Bankruptcy Court for the District of Delaware (the "Court").

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief sought in the Motion must be (a) in writing; (b) filed with the Clerk of the Bankruptcy Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801; and (c) served as to be received on or before **December 4, 2023 at 4:00 p.m. (ET)** (the "Objection Deadline") by the undersigned counsel to the Debtors.

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.

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion will be held on **December 11, 2023, at 10:00 a.m. (ET)** before the Honorable Karen B. Owens at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 6th Floor, Courtroom #3, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE THAT ONLY OBJECTIONS MADE IN WRITING AND TIMELY FILED AND RECEIVED IN ACCORDANCE WITH THE PROCEDURES ABOVE WILL BE CONSIDERED BY THE COURT AT SUCH HEARING. IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE APPLICATION WITHOUT FURTHER NOTICE OR HEARING.

Dated: November 27, 2023
Wilmington, Delaware

**MORRIS, NICHOLS, ARSHT & TUNNELL
LLP**

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EXHIBIT A

Proposed Order

**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)

Re: D.I. 173

**ORDER AUTHORIZING THE DEBTORS' ENTRY INTO THE SETTLEMENT
AGREEMENT WITH GINKGO BIOWORKS, INC. AND THE
OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

Upon the *Debtors' Motion for Entry of an Order Approving the Settlement Agreement with Ginkgo Bioworks, Inc. and the Official Committee of Unsecured Creditors* (the "Motion") for entry of an order approving the Settlement Agreement² attached hereto as **Exhibit 1** between the Debtors, Ginkgo, and the Committee; and this Court having jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of these Chapter 11 Cases and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that proper and adequate notice of the Motion and the relief requested therein has been provided in accordance with the Bankruptcy Rules and the Local Rules, and that, except as otherwise ordered herein, no other or further notice is necessary;

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

and objections (if any) to the Motion having been withdrawn, resolved or overruled on the merits; and this Court having found and determined that the relief set forth in this Order is in the best interests of the Debtors and their estates; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Settlement Agreement attached as **Exhibit 1** is approved.
3. The Debtors, the Committee and Ginkgo are authorized to take all actions necessary and appropriate to give effect to this Order.
4. This Court shall retain jurisdiction over any and all issues arising from or related to the implementation and interpretation of this Order.

EXHIBIT 1

Settlement Agreement

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this “Settlement Agreement”), dated November 27, 2023, is made by and between: (1) Zymergen Inc. and its affiliated debtors and debtors in possession (the “Debtors”) in the chapter 11 cases (the “Chapter 11 Cases”) pending in the United States Bankruptcy Court for the District of Delaware (the “Court”) and jointly administered under case *In re Zymergen Inc.*, Case No. 23-11661 (KBO); (2) the Official Committee of Unsecured Creditors (the “Committee”) appointed in the Chapter 11 Cases; and (3) Ginkgo Bioworks, Inc. (together with its affiliates (other than the Debtors), “Ginkgo” or the “Stalking Horse Bidder”). Hereinafter, the Debtors, the Committee and Ginkgo are referred to collectively as the “Parties.”

WHEREAS, on October 3, 2023 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code in the Court, thereby commencing the Chapter 11 Cases.

WHEREAS, on the Petition Date, the Debtors filed 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”),*

seeking entry of an order authorizing, in part, the sale of certain of their assets pursuant to that certain Asset Purchase Agreement, dated as of October 3, 2023, by and among Zymergen Inc., Lodo Therapeutics Corporation, enEvolv, Inc., Genesis Acquisition Sub LLC and Ginkgo Bioworks, Inc., (as amended by the Stalking Horse Amendment (as defined below), and as may be further amended, supplemented or otherwise modified from time to time, the “Stalking Horse Agreement”),¹ subject to higher and better bids.

WHEREAS, on October 4, 2023, the Debtors filed the *Joint Chapter 11 Plan of Liquidation* (D.I. 27) (as may be modified, amended, or supplemented from time to time, the “Plan”) and the *Disclosure Statement for Joint Chapter 11 Plan of Liquidation* (D.I. 28) (as may be modified, amended, or supplemented from time to time, the “Disclosure Statement”).

WHEREAS, the Committee raised certain objections to the Bidding Procedures Motion and, on November 9, 2023, filed an objection and reservation of rights (D.I. 159) (the “Objection”) thereto.

WHEREAS, following extensive arms’-length negotiations, the Parties reached an agreement to resolve the Committee’s objections (the “Settlement”), as set forth in the *Notice of Filing of Global Settlement Term Sheet* (D.I. 173) (the “Term Sheet”).

WHEREAS, in connection with the Settlement, (i) the Debtors and Ginkgo entered into Amendment No. 1 to the Stalking Horse Agreement, dated as of November 17, 2023 (the “Stalking Horse Amendment”) to amend the terms of the Stalking Horse Agreement consistent with the Term Sheet and this Settlement Agreement and (ii) the Committee withdrew the Objection with prejudice.

¹ Undefined terms used herein shall have the meanings ascribed to them in the Bidding Procedures Order or Stalking Horse Agreement, as appropriate.

WHEREAS, the Debtors, the Committee and Ginkgo submitted a revised form of order approving the Bidding Procedures Motion, which incorporated the terms of the Term Sheet (D.I. 192-1) (the “Agreed Bidding Procedures Order”).

WHEREAS, on November 20, 2023, the Court entered the Agreed Bidding Procedures Order (D.I. 194).

WHEREAS, on or prior to November 21, 2023, Ginkgo paid to the Debtors, in immediately available funds by wire transfer in an amount equal to \$2,117,254.29, in full satisfaction of the amounts due and payable under the following invoices issued by the Debtors to Ginkgo prior to the date hereof: 22070, 22119, 22120, 22127, 22231 and 22273.

WHEREAS, the Parties are entering into this Settlement Agreement pursuant to the Term Sheet to memorialize the terms of the Settlement.

NOW THEREFORE, in consideration of the foregoing and the mutual promises and covenants set forth herein, the Parties do hereby agree, subject to the approval of the Bankruptcy Court, as follows:

1. Incorporation of Recitals. The Recitals are incorporated herein by reference.

A. Stalking Horse Bid

2. Assumption of the Stanford Lease. In connection with the Assumption of the Stanford Lease pursuant to the Stalking Horse Agreement: (i) the existing letter of credit securing obligations under the Stanford Lease (the “Stanford Lease Letter of Credit”) shall be returned undrawn to the Debtors at or prior to Closing, (ii) the Debtors shall have no remaining reimbursement obligations under such letter of credit and (iii) the lien on the \$2 million of cash deposited to backstop the Stanford Lease Letter of Credit shall have been released.

3. Outstanding Ginkgo Payables.

(a) As set forth in Section 7.2(f)(i) of the Stalking Horse Agreement, it shall be a condition to Closing under the Stalking Horse Agreement that (a) Ginkgo shall have paid to the Debtors all amounts due and payable as of such date, including without limitation, any amounts due under (1) any additional invoices under the Employee Leasing Agreement or the Use and Occupancy Agreement, dated as of October 31, 2022, by and between Zymergen Inc. and Ginkgo, issued by the Debtors to Ginkgo prior to Closing, (2) any additional invoices issued by the Debtors to Ginkgo on account of restricted stock unit taxes paid by Zymergen Inc. for which it is entitled to reimbursement by Ginkgo under Zymergen Inc.'s and Ginkgo's arrangement and (3) the following invoices issued by the Debtors to Ginkgo prior to the date hereof: 22160, 22161, 22162, 22163, 22164, 22165, 22166 and 22176, in each of (1), (2) and (3), to the extent such amounts: (A) were invoiced at least five (5) Business Days prior to the Closing Date and (B) were not subject to a good faith dispute by Ginkgo; provided, that Ginkgo shall have paid any portion of such amounts not subject to a good faith dispute by Ginkgo; provided, further, that (x) the Debtors shall deliver such invoices to Ginkgo within ten (10) Business Days following the end of each month other than the month in which Closing occurs and (y) in the case of the month in which the Closing Date occurs, solely to the extent such amounts were invoiced at least five (5) Business Days prior to the Closing as set forth in clause (A) of this paragraph; provided, further, that, for the avoidance of doubt, the failure of the Debtors to deliver such invoices during the periods prescribed in this paragraph shall not result in a waiver by the Debtors of such amounts and Ginkgo shall remain obligated to pay such amounts after the Closing Date; provided, further, that the obligations of the Debtors to consummate the transactions in the Stalking Horse

Agreement shall not be subject to Ginkgo's payment of such amounts described in the immediately preceding proviso.

(b) As set forth in Section 7.2(f)(ii) of the Stalking Horse Agreement, it shall be a condition to Closing under the Stalking Horse Agreement that the aggregate amount of payables not yet due and payable, as estimated in good faith by the Debtors in consultation with the Committee, shall not exceed \$2,000,000.

4. Claims Against Ginkgo. As set forth in Section 1.1(g) of the Stalking Horse Agreement, the Stalking Horse Agreement and Sale Order have been be modified to provide that Ginkgo shall acquire all Claims available to the Debtors' estates (i) against the Purchaser Released Parties (except for Claims related to any act or omission of the Purchaser Related Parties that constitutes intentional fraud occurring on or after the Petition Date), (ii) against those with whom Ginkgo continues to conduct business in regard to the Acquired Assets or Assumed Liabilities after the Closing, (iii) against any counterparty under any Assigned Contract arising out of such Assigned Contract, and (iv) arising from any warranty, guaranty, indemnity or other contractual, statutory or common law right in regard to the Acquired Assets or the Assumed Liabilities; *provided*, that in respect of Claims under clauses (i), (ii) and (iii), Ginkgo shall not prosecute or seek recovery for any transfer that may be avoided under sections 544, 545, 547, 549, or 553(b) of the Bankruptcy Code other than as a defense (to the extent permitted under applicable Law) against, or to assert a right of setoff or recoupment to, any claim or cause of action raised in respect of Claims under clauses (i), (ii) and (iii) (excluding all claims or causes of action of the Debtors set forth in Schedule 1.2(a) to the Stalking Horse Agreement).

5. For the avoidance of doubt, notwithstanding the foregoing, none of the following shall be transferred to Ginkgo or released by the Sale Order or under the Plan:

(a) Claims or causes of action against directors and officers of the Debtors who served prior to October 19, 2022. including Josh Hoffman, Enakshi Singh, Steven Chu, Jay T. Flatley, Christine M. Gorjanc, Travis Murdoch, Matthew A. Ocko, Sandra E. Peterson, Zach Serber, and Rohit Sharma; and

(b) Claims or causes of action against any current or former insurers of the Debtors or any insurance policies of the Debtors (or rights to proceeds thereunder, which shall not be limited in any respect by the transfer and release set forth in paragraph 7 hereto); *provided* that any rights of Ginkgo to coverage under a policy listed on Schedule 1.2(a)(i) of the Stalking Horse Agreement (excluding the insurance policies described in the rows opposite “Directors & Officers Liability Run Off Policy”) that relate to claims on the Acquired Assets arising after the Closing Date shall not be excluded, except to the extent insurance proceeds under such insurance policies are payable in respect of claims against the Debtors and not on the Acquired Assets.

6. Bilateral Releases. As set forth in Section 7.3(h) of the Stalking Horse Agreement, as a condition to the Closing, each member of the Committee as of such date, in their individual capacity, shall have agreed with Ginkgo to a mutual release of claims related to the Debtors (which shall include releases of affiliates and related parties) (a “Bilateral Release”); *provided* that such condition may be waived by Ginkgo in its sole discretion pursuant to the terms of the Stalking Horse Agreement. For the avoidance of doubt, none of the members of the Committee nor Ginkgo shall be obligated to enter into any Bilateral Release on any terms, and negotiations with respect thereto shall be conducted in each party’s sole discretion. No liability whatsoever shall arise from any decision by Ginkgo or any member of the Committee not to enter into any Bilateral Release.

7. Releases by Ginkgo. At Closing of the Sale under the Stalking Horse Agreement, (i) all of Ginkgo's Claims against the Debtors, if any, shall be irrevocably subordinated to all claims designated as Class 3 claims under the Plan (other than to the extent any amendments, modifications or supplements to the Plan would expand or otherwise modify the scope of claims designated as Class 3 claims in the Plan (as set forth in the form provided to Ginkgo on or prior to the date hereof), in which case, Ginkgo's consent shall be required prior to such Plan amendment, modification, or supplement) and (ii) Ginkgo shall release all claims against the former directors or officers of each Debtor.

8. Other Terms and Conditions. The other terms and conditions of the Stalking Horse Agreement shall be identical to those set forth in the Agreed Bidding Procedures Order with such changes as are mutually agreed between Ginkgo and the Debtors so long as such changes are not adverse to the Committee or the Class 3 Creditors (defined below), taken as a whole, or Class 4 Creditors (defined below), taken as a whole; provided that the foregoing shall not be construed to limit Ginkgo's rights pursuant to the Stalking Horse Agreement.

9. Sale Order. The Sale Order shall be in form and substance substantially identical to the form of Sale Order attached as Exhibit 6 to the Agreed Bidding Procedures Order; provided that the Sale Order may be modified as set forth in paragraph 10 below (the "Agreed Sale Order"). If Ginkgo is the Successful Bidder at the Auction, the Committee shall support and not object to entry of the Agreed Sale Order.

10. Modifications. Upon one (1) business days' written notice to the Committee, the Stalking Horse Agreement, the Agreed Sale Order, and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, solely in accordance with the terms thereof, provided that any such modification, amendment or supplement shall not be

materially adverse to (i) creditors holding claims in Class 3 (“Class 3 Creditors”) of the Plan, taken as a whole, (ii) creditors holding claims in Class 4 of the Plan (“Class 4 Creditors”), taken as a whole, or (iii) the Committee, in each case, without the written consent of the Committee, provided further that the foregoing shall not be construed to limit the rights of the Stalking Horse Bidder under the Stalking Horse Agreement. For the avoidance of doubt, any reduction to the recoveries of Class 3 Creditors shall be deemed to be materially adverse to the Class 3 Creditors, taken as a whole.

11. Closing Date. If Ginkgo is the Successful Bidder at the Auction, all parties shall work together in good faith to close the Sale on or before January 1, 2024.

B. Chapter 11 Plan

12. Timing. The Debtors shall use reasonable best efforts to achieve approval of the Agreed Disclosure Statement (defined below) on or before December 19, 2023, confirmation of the Agreed Plan (defined below) on or before February 2, 2024, and the Effective Date of the Agreed Plan on or before February 9, 2024.

13. Disclosure Statement. The Committee shall support and not object to approval of the Disclosure Statement, as amended to reflect the Agreed Plan and this Settlement and to include reasonable Committee comments (the “Agreed Disclosure Statement”).

14. Plan of Liquidation. The Committee shall support and not object to (i) confirmation of the Plan, as amended to:

- (a) include (x) customary exculpations of the Committee, its members and its advisors and representatives, and (y) other terms customary in a plan in a Chapter 11 case where an official committee of unsecured creditors is appointed;

(b) include a release of Ginkgo, including its current and former affiliates, and its advisors and representatives;

(c) incorporate this Settlement;

(d) permit any holder of a claim under the Plan to opt-out of any releases to be given by holders of claims in favor of non-Debtor third parties; and

(e) incorporate reasonable comments from the Committee and, with respect to the release of Ginkgo contemplated by clause (b) of this Section 14, Ginkgo;

which Plan (other than in respect of Paragraph 14(b) above) may be further modified or amended in a manner not adverse to the Committee or any Class 3 Creditor or Class 4 Creditor with the Committee's prior written consent, not to be unreasonably withheld and, in the case of a modification or amendment to the scope of Class 3 claims, as contemplated by Section 4, or a modification to the release of Ginkgo, Ginkgo (the "Agreed Plan"), and (ii) entry of the Proposed Confirmation Order. Notwithstanding anything to the contrary herein, the Committee shall not be required under any circumstances to consent to any changes that expand the scope of the release, exculpation or injunction provisions of the Agreed Plan or the Proposed Confirmation Order.

15. Litigation Claims. All claims and causes of action of the Debtors against (a) any former director or officer of any Debtor or (b) any other person who has no connection with the continuing business of Ginkgo (as identified by Ginkgo in good faith), as provided in the Stalking Horse Agreement and Agreed Sale Order, in each case, shall be transferred on the Effective Date to the liquidation trust to be established under the Plan for the benefit of the Debtors' creditors (the "Liquidation Trust"). For the avoidance of doubt, no claims against the Debtors' current officers and directors, solely in their capacities as such, arising out of conduct occurring after October 19, 2022 shall be transferred to the Liquidation Trust.

16. Liquidation Trust Matters. The Agreed Plan shall provide (i) that the Committee shall select any Liquidation Trustee, in consultation with the Debtors, and (ii) for procedures for the appointment of subsequent Liquidation Trustees, if any. The amount of the Wind-Down Reserve and Wind-Down Budget (as such terms are defined in the Plan) shall be reasonably acceptable to both the Debtors and the Committee. The Liquidation Trustee shall use reasonable best efforts to object to the allowance of claims against the Debtors by 90 days after the effective date of the Agreed Plan. All parties' rights with respect to the allowance, disallowance or settlement of claims are reserved and preserved.

17. Confirmation Order. The Debtors shall provide the Committee and Ginkgo with a draft order confirming the Agreed Plan on or before December 11, 2023, which shall be consistent with the Agreed Plan in all respects (the "Proposed Confirmation Order"), and the Debtors shall incorporate all reasonable comments from the Committee and Ginkgo to the Proposed Confirmation Order.

C. Miscellaneous

18. Bankruptcy Court Approval. Promptly upon the execution of this Settlement Agreement, the Debtors shall file and serve a motion (the "Rule 9019 Motion") with the Bankruptcy Court seeking entry of an order approving this Settlement Agreement pursuant to Bankruptcy Rule 9019. The Debtors will use their best efforts to prosecute the Rule 9019 Motion and obtain entry of an order approving the Rule 9019 Motion (the "Rule 9019 Order"). The Rule 9019 Motion shall be heard prior to the Auction, subject to Court availability.

19. Investigation. The Committee shall not seek standing to assert any claims against Ginkgo or commence any investigation against Ginkgo, in each case, other than in connection with a failure of Ginkgo to close the Sale, unless this Settlement Agreement is terminated.

20. Termination.

(a) This Settlement Agreement shall terminate by notice from the Committee to the non-terminating parties, if (a) the Debtors fail to file, or the Court declines to enter, the Agreed Bidding Procedures Order, the Rule 9019 Order, or the Agreed Sale Order, (b) Ginkgo is not the Successful Bidder at the Auction, (c) the Stalking Horse Agreement terminates in accordance with its terms, (d) Ginkgo fails to timely make any payment that the Bankruptcy Court has determined is owed to the Debtors, (e) the Stanford Lease is not assumed and assigned on terms consistent with this Settlement Agreement and the Stalking Horse Agreement (with any lien on the \$2,000,000 of cash securing the Stanford Lease Letter of Credit released), (f) following the general claims Bar Date (as defined in the Agreed Plan) established in these Chapter 11 Cases and prior to the Closing of the Sale, the amount of allowable Class 3 claims asserted against the Debtors (other than claims held by members of the Committee) exceeds \$7.45 million and the Committee and the Debtors reasonably determine in good faith (1) such claims are colorable and (2) such claims will not be paid by a non-Debtor third party (*e.g.*, insurance), (g) Ginkgo excludes contracts and leases from the sale not already excluded under the Stalking Horse Agreement, and such exclusions directly or indirectly result in an aggregate amount of \$100,000 of administrative claims or \$500,000 of general unsecured claims against the Debtors unless Ginkgo, in its sole discretion, agrees to contribute an additional amount in respect of such claim(s) in excess of such cap such that creditor recoveries are unchanged; provided that the Debtors shall confirm in writing to Ginkgo and the Committee that, to their knowledge, other than as previously disclosed to Ginkgo and the Committee prior to entry of the Agreed Bidding Procedures Order, there are no outstanding amounts payable under the contracts that are

currently scheduled to be assumed under the Stalking Horse Purchase Agreement or (h) any Committee member informs the Committee that it is unable to reach agreement with Ginkgo on a Bilateral Release (unless Ginkgo irrevocably waives in writing (which may be via email) the condition to Closing for a Bilateral Release with respect to such Committee member); provided that the Committee may not exercise its right to terminate this Settlement Agreement pursuant to this clause (h) before December 15, 2023.

(b) This Settlement Agreement shall terminate by notice from Ginkgo to the non-terminating parties if (a) the Debtors fail to file, or the Court declines to enter, the Agreed Bidding Procedures Order, the Rule 9019 Order, or the Agreed Sale Order, (b) Ginkgo is not the winning bidder at the Auction, (c) the Stalking Horse Agreement terminates in accordance with its terms, (d) the Closing does not occur on or before January 1, 2024, solely because of actions or failures to act by the Debtors and/or the Committee, (e) the Debtors modify the release provisions of the Plan in a manner adverse to Ginkgo or its related parties, (f) the Committee seeks standing to assert any claims against Ginkgo or commences any investigation against Ginkgo, in each case, other than in connection with a failure of Ginkgo to close the Sale, or (g) Ginkgo determines that it is unable to reach agreement with a member of the Committee on a Bilateral Release; provided that Ginkgo may not exercise its right to terminate this Settlement Agreement pursuant to this clause (g) before December 15, 2023.

(c) If this Settlement terminates, (a) the release of Ginkgo contemplated by the Agreed Sale Order shall be null and void and (b) (other than a termination as a result of (x) a material breach by Ginkgo of the Stalking Horse Agreement or (y) Ginkgo fails to timely make any payment that the Bankruptcy Court has determined is owed to the Debtors), Ginkgo may

elect to have Amendment No. 1 to the Stalking Horse Agreement, which sets forth the terms dated as of November 17, 2023, be unilaterally terminated and this Agreement shall be interpreted without giving effect to Amendment No. 1, provided that if Amendment No. 1 is terminated, the Purchaser shall have the right to submit any bid it chooses in accordance with the Bidding Procedures. If Ginkgo elects to terminate its Stalking Horse Bid, the Auction shall be cancelled and the Debtors shall seek approval as soon as reasonably practicable for new bidding procedures.

21. Settlement Communication. This Settlement Agreement and the transactions contemplated herein are part of a proposed settlement among the parties. Nothing herein shall be deemed an admission of any kind. To the extent provided by Rule 408 of the Federal Rules of Evidence, and any applicable state rules of evidence, all negotiations relating to this Settlement Agreement shall not be admissible into evidence in any proceeding.

22. Expenses. Each of the Debtors and Ginkgo shall bear its own costs and expenses in connection with this Settlement Agreement and the Chapter 11 Cases.

23. Good Faith. The Parties expressly represent and warrant that this Settlement Agreement was negotiated and executed in good faith and acknowledge that execution of this Settlement Agreement is not the product or result of any duress, economic or otherwise.

24. Authority. Each Party represents and warrants that each individual signing the Settlement Agreement on behalf of such Party is fully authorized to sign on behalf of said Party. Each Party represents and warrants that it has read and understands the terms of this Settlement Agreement.

25. Jurisdiction. The Parties hereby irrevocably consent to the jurisdiction of the Bankruptcy Court with respect to any action to enforce the terms and provisions of this Settlement

Agreement and, so long as the Bankruptcy Court has and agrees to exercise such jurisdiction, expressly waive any right to commence any such action in any other forum. In the event the Bankruptcy Court determines that it does not have such jurisdiction or declines to exercise such jurisdiction, then the Parties hereby irrevocably consent to the jurisdiction of the state and federal courts of Delaware with respect to any action to enforce the terms and provisions of this Settlement Agreement and expressly waive any right to commence any such action in any other forum.

26. Entire Agreement. This Settlement Agreement reflects the entire agreement and understanding between the Parties with respect to the subject matter of this Settlement Agreement. It is expressly understood and agreed that this Settlement Agreement may not be altered, amended, modified, or otherwise changed in any respect except by a writing executed by all Parties.

27. Further Assurances. The Parties shall execute and deliver such further instruments, documents, or papers and perform all acts necessary or proper to carry out and effectuate the terms of this Settlement Agreement.

28. Governing Law. This Settlement Agreement shall be governed, construed, and enforced in accordance with the laws of the Delaware without regard to its conflict of laws principles.

29. No Waiver. The Parties agree that no breach of any provision hereof can be waived except in writing signed by the Party against whom such waiver is to be enforced. The waiver of a breach of any provision hereof shall not be deemed a waiver of any other breach of any provision hereof.

30. Non-Severable. The provisions of this Settlement Agreement are non-severable.

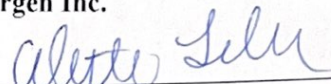
31. Jointly Drafted. Each Party has cooperated in the drafting and preparation of this Settlement Agreement. This Settlement Agreement shall not be construed or interpreted against any Party as the draftsman.

32. Execution in Counterparts; Electronic Signatures. This Settlement Agreement may be executed in any number of counterparts, each of which, when so executed, will be deemed an original, but all such counterparts will constitute but one and the same document. Delivery by a Party of an executed counterpart of a signature page to this Settlement Agreement by facsimile or .PDF document sent by email will be effective as delivery of an original executed counterpart. In addition, the Parties consent to the execution of this Settlement Agreement by an “electronic signature,” as that term is used in either the Uniform Electronic Transactions Act, the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7006(5), or any similar law.

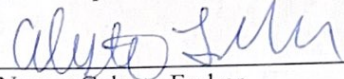
(Signature pages follow)

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed as of the date set forth above in the preamble paragraph.

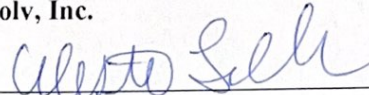
Zymergen Inc.

By 
Name: Celeste Ferber
Title: President and SVP, Legal

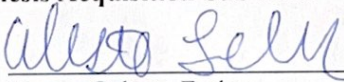
Lodo Therapeutics Corporation

By 
Name: Celeste Ferber
Title: President

enEvolv, Inc.

By 
Name: Celeste Ferber
Title: President

Genesis Acquisition Sub LLC

By 
Name: Celeste Ferber
Title: President and SVP, Legal,
Zymergen Inc., Managing Member

**FOR THE OFFICIAL UNSECURED
CREDITORS COMMITTEE:**

**SIMPSON THACHER & BARTLETT LLP,
Counsel to the Official Unsecured Creditors
Committee**

/s/ David R. Zylberberg

Name: David R. Zylberberg

GINKGO BIOWORKS, INC.

By  _____

Name: Jason Kelly

Title: Chief Executive Officer