

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

In re

ZYMERGEN INC.,¹

Liquidating Debtor.

Chapter 11

Case No. 23-11661 (KBO)

Hearing Date:
TBD

Objection Deadline:
TBD

**MOTION OF ZYM LIQUIDATING TRUST FOR ENTRY OF AN ORDER
APPROVING STIPULATION BETWEEN THE ZYM LIQUIDATING TRUST
AND U.S. SECURITIES AND EXCHANGE COMMISSION**

The ZYM Liquidating Trust (the “Liquidating Trust”) hereby submits this motion (the “Motion”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), (a) authorizing the Liquidating Trust to enter into the Commission Claim Stipulation Term Sheet (the “Stipulation”) between the Liquidating Trust and the U.S. Securities and Exchange Commission (the “SEC,” and together with the Liquidating Trust, the “Parties”) attached to the Proposed Order as Exhibit 1, and (b) granting the Liquidating Trust such other and further relief as the Court deems just and proper. In support of this Motion, the Liquidating Trust respectfully states as follows:

JURISDICTION

1. 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.

¹ The chapter 11 case is now being administered by the ZYM Liquidating Trust, pursuant to the terms of the Liquidating Debtors’ *First Amended Joint Chapter 11 Plan of Liquidation* (D.I. 372-1). The ZYM Liquidating Trust’s mailing address is 500 East Broward Boulevard, Suite 1700, Fort Lauderdale, FL 33394.

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

2. The Liquidating Trust consents 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.

3. The statutory bases for the relief requested herein are 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

4. On October 3, 2023 (the “Petition Date”), the above-captioned debtor and its affiliated debtors (collectively, the “Debtors”) each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. On October 13, 2023, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed the Official Committee of Unsecured Creditors pursuant to section 1102 of the Bankruptcy Code.² No trustee or examiner has been appointed in these cases.

² On October 16, 2023, one of the committee members resigned from the Committee. D.I. 62. On November 1, 2023, the U.S. Trustee appointed one new member to the Committee. D.I. 134.

5. 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), filed on October 3, 2023.

6. On February 5, 2024, the Court entered the *Findings of Fact, Conclusions of Law, and Order Confirming the Debtors' First Amended Joint Chapter 11 Plan of Liquidation* (D.I. 372) (the "Confirmation Order"), confirming the *Debtors' First Amended Joint Chapter 11 Plan of Liquidation* (D.I. 372-1) (the "Plan").³ The effective date of the Plan occurred on February 23, 2024 (the "Effective Date"). Pursuant to the Plan, the Liquidating Trust was formed and the Liquidation Trust Assets were transferred to the Liquidating Trust. The Confirmation Order provides that the Liquidating Trust "shall have the exclusive right, authority, and standing to initiate, file, prosecute, abandon, compromise, settle, withdraw, litigate to judgment or release any Claims." Confirmation Order ¶ 11. Moreover, the Plan provides that "the Liquidation Trustee may settle or compromise any Disputed Claim without approval of the Bankruptcy Court; provided that any settlement of a Disputed Claim that results in an Allowed Claim in excess of \$1,000,000 must be made after notice and an opportunity for parties-in-interest to object." Plan § 8.5.

7. Pursuant to the Plan, the Plan consolidates Allowed Claims and Interests of all Debtors into one estate for purposes of distribution. Plan at § 3.3. The Plan provides that each holder of an Allowed Class 3 General Unsecured Claim will receive its "Pro Rata share of the Cash to be distributed from the Liquidation Trust, if any, after the establishment of the Wind-Down Reserve, subject, in the case of the General Unsecured Claims held by Ginkgo, to the subordination of such Claims to other General Unsecured Claims as set forth in the Settlement Agreement and Section 7.10 of the Plan." *Id.* at § 4.3(b). Junior in priority to Allowed Class 3

³ Capitalized terms not defined herein are defined in the Plan or the Stipulation, as applicable.

General Unsecured Claims are Allowed Class 4 Subordinated Claims and Class 5 Interests. With respect to Allowed Class 4 Subordinated Claims and Class 5 Interests, the Plan provides that holders will receive a Pro Rata share of the Cash to be distributed from the Liquidating Trust, if any, after all senior Allowed Claims, including Class 3 General Unsecured Claims, are satisfied in full. *Id.* at §§ 4.4(b), 4.5(b).

8. “Subordinated Claims” are defined broadly in the Plan and generally include Claims for (i) damages arising from the purchase or sale of any security of the Debtor, (ii) violations of securities laws, misrepresentations, or any similar Claims, or (iii) that are otherwise subject to subordination under section 510 or any other provision of the Bankruptcy Code. *Id.* § 1.89. With respect to any Claim asserted by the SEC, paragraph 38 of the Confirmation Order provides:

Notwithstanding any provision in the Plan, Plan Supplement or this Confirmation Order, including the definition of “Subordinated Claim” in the Plan, any claim by the SEC shall be subject to subordination only in accordance with applicable law and in an appropriate proceeding, which may include a contested matter. All rights of the Debtors, Committee, Liquidation Trust, and other parties to object to and seek subordination of any SEC claim, and all defenses of the SEC to any such objection or request to subordinate any such claim, are preserved in their entirety.

Confirmation Order, ¶ 38.

B. The SEC Claim

9. The Debtors have previously described the background to the SEC’s potential claim.⁴ Specifically, on April 22, 2021, Debtor Zymergen Inc. (“Zymergen”) completed its initial public offering (“IPO”) of its common stock. In connection with the IPO, Zymergen filed with the SEC a Registration Statement on Form S-1 (“Registration Statement”). The Registration

⁴ The background description in this Motion regarding the SEC Claim is that solely of the Debtors.

Statement discussed Zymergen's business, technology, product pipeline, strategies and goals as they existed at the time, including with respect to its first product, Hyaline, launched just a few months earlier.

10. Following the IPO, data suggested that the market opportunity for Hyaline was not as robust as previously believed, several key customers encountered technical difficulties implementing Hyaline into their manufacturing processes, and the company eventually concluded that its prior estimates of near-term demand had been overly optimistic. Zymergen disclosed these issues in August 2021 and replaced its then CEO, Josh Hoffman, who had led Zymergen through its IPO. The company further disclosed that it did not expect to generate material revenue in 2021 or 2022 and that it would conduct a reexamination of Zymergen's portfolio and target markets. These disclosures caused the company's stock price to decline sharply by approximately 70%. Zymergen then announced in November 2021 that it was discontinuing Hyaline and certain other products in its pipeline and would focus on a smaller number of programs that it believed provided opportunities to capitalize on its capabilities. The company further disclosed that it had completed a reduction in force of approximately 220 positions.

11. The decline of the value of the company's stock following the IPO spurred litigation against Zymergen and its directors and management seeking damages based upon allegations that the Registration Statement filed by Zymergen and upon which purchasers of Zymergen's securities allegedly relied contained materially false and misleading statements in violation of securities laws, the later disclosure of which caused the sharp decline in value of Zymergen's stock. The litigation included (i) a putative securities class action filed on behalf of purchasers of common stock in the United States District Court for the Northern District of California and is captioned *Wang v. Zymergen Inc., et al.*, Case No. 5:21-cv-06028-PCP, (ii) a

putative derivative lawsuit filed by shareholders in the United States District Court for the Northern District of California captioned *Mellor v. Hoffman, et al.*, Case No. 5:21-cv-08723-PCP, and (iii) an action filed against Zymergen on behalf of holders of convertible promissory notes who purchased Zymergen common stock in the Superior Court of the State of Delaware captioned *Fortis Advisors LLC v. Zymergen Inc.*, C.A. No. N23C-01-191-EMD CCLD (Del. Super. Ct.).

12. In addition, the SEC opened an investigation (the “SEC Investigation”). In light of the SEC Investigation, the Debtors contacted the SEC staff prior to confirmation of the Plan to determine whether the SEC expected to assert any claims in the chapter 11 cases. The SEC staff advised the Debtors that, if the SEC asserted a claim in the cases, it would file the claim as a Class 3 General Unsecured Claim. The Debtors believed (and the Liquidating Trust believes) that any claim asserted by the SEC related to the Registration Statement and IPO should be properly classified as a Class 4 Subordinated Claim. However, if the SEC were to assert a substantial claim, it could delay distributions to the Debtors’ other general unsecured creditors while such claim was litigated; and if the SEC’s claim was ultimately allowed as a Class 3 General Unsecured Claim, it would significantly dilute recoveries of other general unsecured creditors. Moreover, any litigation between the SEC and the Liquidating Trust would be complex and expensive, likely further depleting recoveries to the Debtors’ general unsecured creditors. Accordingly, shortly before confirmation, the Debtors consulted with the SEC staff regarding the SEC’s potential claim and the Governmental Bar Date.

13. The Confirmation Order requires the Liquidating Trust to make the Initial Distribution “on or as soon as reasonably practicable after the Effective Date in accordance with the Plan and the Liquidation Trust Agreement.” Confirmation Order ¶ 11. It provides further that “[i]f the Initial Distribution Date is prior to the Governmental Bar Date and prior to the filing of a

proof of claim by the [SEC], the Liquidation Trustee shall consult with the SEC regarding an appropriate reserve, if any, in connection with any potential claim by the SEC.” *Id.*

14. Following confirmation of the Plan, the Liquidating Trust stepped in for the Debtors and continued discussions with the SEC staff regarding the SEC’s potential claim, which have resulted in the Stipulation. While these negotiations have taken place, the Governmental Bar Date (solely as it applies to the SEC) has been extended to June 14, 2024.

15. If approved, the Stipulation would provide a mechanism by which the Liquidating Trust could make a meaningful Initial Distribution to Holders of Allowed Class 3 General Unsecured Claims, while the Liquidating Trust and SEC staff negotiate and finalize a proposed settlement of the SEC claim in what the Stipulation refers to as the “Additional Documents.” The final proposed settlement and Additional Documents will be subject to SEC approval, and the Additional Documents will be subject to Bankruptcy Court approval. The terms of the Stipulation between the Liquidating Trust and the SEC are attached as Exhibit 1 to the Proposed Order. The material terms of the Stipulation are:⁵

- a) The SEC shall receive a Class 3 General Unsecured Claim against the Debtors which shall be Allowed in an amount set forth in the Additional Documents (defined below) (the “SEC Claim”), which shall be paid separately from other Allowed Class 3 General Unsecured Claims (“Third Party Claims”).
- b) The Initial Distribution to holders of Allowed Class 3 General Unsecured Claims will total up to \$33,000,000, comprising (i) \$5,000,000 that will be paid (or reserved, as set forth below) solely on account of the SEC Claim and (ii) the remainder of the Initial Distribution (up to \$28,000,000) will be paid solely to holders of Third Party Claims.
- c) Any subsequent Distributions shall be made as follows: (i) Holders of Third Party Claims shall receive 50% of all subsequent Distributions (and the SEC

⁵ The summary of the Stipulation is provided for informational purposes only and is qualified in its entirety by the Stipulation. If there are any inconsistencies between the summary contained herein and the Stipulation, the terms of the Stipulation shall control.

shall receive the other 50% of all subsequent Distributions) until Holders of Third Party Claims have received 100% of the Allowed amount of such Claims; (ii) once Holders of Third Party Claims have received 100% of the Allowed amount of such Claims, the SEC shall receive 100% of all subsequent Distributions until the SEC Claim has been paid in full; and (iii) Once the SEC Claim has been paid in full, 100% of all subsequent Distributions shall be paid on account of the General Unsecured Claims held by Ginkgo or as otherwise provided under the Plan.

- d) The SEC and the Liquidating Trust shall negotiate in good faith to agree to additional documentation regarding the SEC Claim (the “Additional Documents”), to be finalized and executed by the Liquidating Trust by July 1, 2024. The Liquidating Trust will be authorized to agree to a SEC Claim in the Additional Documents in the amount of \$30 million, subject to Bankruptcy Court approval of the Additional Documents. The Additional Documents, including the amount of the SEC Claim, will be subject to SEC approval (the “Approval Contingency”) and will not be filed with the Court until satisfaction of the Approval Contingency. Entry of the Order approving the Stipulation will authorize the Liquidating Trust to agree to a SEC Claim in the Additional Documents in the amount of up to \$30 million, provided, however, that the Additional Documents (other than the amount of a SEC Claim up to \$30 million) will be subject to further Bankruptcy Court approval. Upon satisfaction of the Approval Contingency, the Liquidating Trust may file, and seek Bankruptcy Court approval of, the Additional Documents. Upon Bankruptcy Court approval of the Additional Documents, any SEC Claim of up to \$30 million will be an Allowed Class 3 General Unsecured Claim without the need for the SEC to file a proof of claim or further documentation, and will be entitled to receive any Commission Distributions (as defined in the Stipulation).
- e) Once agreeable Additional Documents are finalized and executed by the Liquidating Trust and delivered to the SEC, which shall occur on or prior to July 1, 2024 (but, for the avoidance of doubt, will be subject to Bankruptcy Court approval), the Liquidating Trust shall make the Initial Distribution and any subsequent Distributions, provided, however, that until the Approval Contingency occurs and the Bankruptcy Court approves the Additional Documents, the Liquidating Trust shall hold any Commission Distributions in reserve solely for payment of the SEC Claim.
- f) If Additional Documents are submitted to the SEC for approval but the Approval Contingency does not occur, neither the Liquidating Trust nor the Liquidating Trustee shall have any liability to the SEC for having made the Initial Distribution. If the SEC withdraws or elects not to file an SEC Claim, then any Commission Distributions held in reserve will revert to the Liquidating Trust and be distributed in accordance with the Plan.

- g) Either party may terminate the Stipulation if (i) the other party materially breaches the Stipulation or any representation in the Stipulation, (ii) the party seeking termination provides 14 days written notice prior to the termination becoming effective, and (iii) the terminating party makes a good-faith effort to resolve any dispute underlying the proposed termination. In addition, the Liquidating Trust may provide written notice to terminate the Stipulation if the Liquidating Trustee is not authorized by the terms of the Stipulation to make the Initial Distribution to Holders of Third Party Claims by July 1, 2024.
- h) The Governmental Bar Date, solely as it applies to the SEC, shall be extended to September 30, 2024, or such later date as may be agreed by the parties or ordered by the Bankruptcy Court. If the Stipulation is terminated, then the Governmental Bar Date, solely as it applies to the SEC, will be the 14th day following such termination becoming effective.

RELIEF REQUESTED

16. The Liquidating Trust respectfully requests entry of the Proposed Order, (a) authorizing the Liquidating Trust to enter into the Stipulation between the Liquidating Trust and the SEC, as set forth in Exhibit 1 to the Proposed Order, and (b) granting the Liquidating Trust such other and further relief as the Court deems just and proper.

BASIS FOR RELIEF

17. 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 (TMT Trailer Ferry)*, 390 U.S. 414, 424 (1968) (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 *TMT Trailer Ferry*, 390 U.S. at 424).

18. “[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. 321, 330 (Bankr. D. Del. 2004) (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 Wash. Mut. 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. at 801.

19. The Third Circuit has set out four criteria for a bankruptcy court to consider when evaluating a compromise or 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 at 393; *accord Will v. Nw. Univ. (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).

20. As set forth in greater detail below, the Liquidating Trust's entry into the Stipulation satisfies each of the *Martin* factors and falls well above the lowest point in the range of reasonableness. Therefore, the Court should approve the Stipulation.

21. First, the Parties each believe they would prevail in any litigation with respect to the allowed amount of any Claim by the SEC—creating a desire for the Parties to enter into the Stipulation here. The Liquidating Trust believes that any Claim by the SEC related to the IPO and Registration Statement is subject to subordination pursuant to section 510(b) of the Bankruptcy Code and would therefore be a Class 4 Subordinated Claim. The SEC, on the other hand, believes that section 510(b) of the Bankruptcy Code does not apply to the SEC Claim. The Liquidating Trust believes there is no definitive legal authority addressing the issue, and as a result, litigating the SEC Claim would require the Court to adjudicate a novel, complex issue. Therefore, there is risk that the Liquidating Trust would be unsuccessful in seeking to subordinate the SEC Claim. Given the attendant risks of litigation, the potential expenditure of resources, and the favorable terms of the Stipulation, the Liquidating Trust has determined that the proposed Stipulation is in the best interests of the Liquidating Trust and its beneficiaries.

22. With respect to the second factor, the ease of collections is not relevant to the terms of the Stipulation.

23. The third factor is satisfied as litigation regarding the SEC's Claim will be complex and costly, which costs will be borne by the Liquidating Trust's beneficiaries. Although the Liquidating Trust believes that the question of whether section 510(b) of the Bankruptcy Code subordinates the SEC Claim is primarily a legal question, the amount and validity of the SEC

Claim will be a highly fact-intensive and time-consuming inquiry requiring considerable evidence, including likely testimony from numerous witnesses. Moreover, even if the Court were to adjudicate the dispute, it is almost certain that an appeal would follow, further extending the litigation and increasing cost to the Liquidating Trust. In furtherance of the Confirmation Order, the Stipulation establishes a reserve for the SEC Claim. The Stipulation further provides a mechanism by which the Liquidating Trust may make a meaningful Initial Distribution to unsecured creditors without further delay, or incurring the burden, expense or uncertainty resulting from litigation.

24. Fourth and finally, the Stipulation 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. *In re Nutraquest, Inc.*, 434 F.3d at 645. The Liquidating Trust has determined that the Stipulation is the best option to maximize value for the benefit of the unsecured creditors in these cases. As discussed above, the Stipulation eliminates the potential for costly and burdensome litigation. Further, litigation will delay distributions to creditors and result in the immediate reduction of value available to the Debtors' stakeholders. The Stipulation allows the Liquidating Trust to make a distribution to Holders of Allowed Class 3 General Unsecured Claims by July 1, which will result in a substantial recovery for such creditors, even with the reserve from the Initial Distribution for payment of any approved SEC Claim.

25. For the foregoing reasons, entry into the Stipulation constitutes a reasonable exercise of the Liquidating Trust's business judgment, falls well above the lowest point in the range of reasonableness and is in the best interests of the estates and the beneficiaries of the Liquidating Trust. Therefore, the Court should enter the Proposed Order approving the Stipulation.

NOTICE

Notice of this Motion shall be provided to (i) the U.S. Trustee, (ii) the SEC, and (iii) 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 Liquidating Trust respectfully requests that the Court (i) enter the Proposed Order, substantially in the form of **Exhibit A**, approving the Stipulation, and (ii) grant the Liquidating Trust such other and further relief as the Court may deem just and proper.

Dated: May 31, 2024
Wilmington, Delaware

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EXHIBIT A

Proposed Order

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

In re

ZYMERGEN INC.,¹

Liquidating Debtor.

Chapter 11

Case No. 23-11661 (KBO)

Re: D.I. __

**ORDER APPROVING THE STIPULATION BETWEEN THE ZYM
LIQUIDATING TRUST AND U.S. SECURITIES AND EXCHANGE COMMISSION**

Upon the *Motion of ZYM Liquidating Trust for Entry of an Order Approving the Stipulation Between the ZYM Liquidating Trust and the U.S. Securities and Exchange Commission* (the “Motion”) for entry of an order approving the Stipulation² attached hereto as **Exhibit 1** between the Liquidating Trust and the SEC; 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 this chapter 11 case 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; and objections, if any, to the Motion having been withdrawn, resolved or overruled on the merits; and this Court

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

having found and determined that the relief set forth in this Order is in the best interests of the Liquidating Trust and its beneficiaries; 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 Stipulation attached as **Exhibit 1** is approved.
3. The Liquidating Trust is authorized to agree to a SEC Claim in the Additional Documents in the amount of up to \$30 million.
4. Following the occurrence of the Approval Contingency, the Liquidating Trust shall file the Additional Documents and serve the Additional Documents on all parties requesting notice pursuant to Bankruptcy Rule 2002. Parties may object to the Additional Documents (other than the amount of the SEC Claim if such claim is no greater than \$30 million), by filing and serving a written objection upon the Liquidating Trust no later than fourteen days after the Liquidating Trust files and serves the Additional Documents. If no objection to the Additional Documents is timely filed, the Additional Documents shall be deemed approved without further notice or order of the Court. If an objection to the Additional Documents is timely filed and properly served and not withdrawn or resolved, the Liquidating Trust shall schedule a hearing on such objection on at least seven days' notice to such objecting party.
5. The Governmental Bar Date, solely as it applies to the SEC, shall be extended to September 30, 2024, or such later date as may be agreed by the parties or ordered by the Bankruptcy Court. If the Stipulation is terminated, then the Governmental Bar Date, solely as it applies to the SEC, will be the 14th day following such termination becoming effective.

6. The Parties thereto are authorized to take all actions necessary and appropriate to give effect to this Order.

7. This Court shall retain jurisdiction over any and all issues arising from or related to the implementation and interpretation of this Order.

EXHIBIT 1

Stipulation

IN RE ZYMERGEN, INC. – COMMISSION CLAIM STIPULATION TERM SHEET

This Term Sheet (this “**Term Sheet**”) describes the terms of a stipulation (the “**Stipulation**”) between (i) the ZYM Liquidating Trust (the “**Liquidating Trust**”), successor in interest to the debtors and debtors in possession in the jointly administered cases captioned *In re Zymergen Inc., et al.*, Case No. 23-11661 (KBO) (the “**Chapter 11 Cases**”) pending before the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) and (ii) the U.S. Securities and Exchange Commission (the “**Commission**”). The Stipulation will become effective upon entry of an order by the Bankruptcy Court approving the Stipulation (“**Stipulation Approval**”).

All capitalized terms used but not defined herein shall have the meanings ascribed to them in the *First Amended Joint Chapter 11 Plan of Liquidation* dated February 1, 2024 [Ex. A to D.I. 372] (the “**Plan**”).

Allowed Class 3 SEC Claim:	The Commission shall receive a Class 3 General Unsecured Claim against the Debtors (the “ Commission Claim ”) which shall be Allowed in an amount set forth in the Additional Documents (defined below). The Commission Claim shall be paid separately from other Allowed Class 3 General Unsecured Claims (“ Third Party Claims ” ¹) in accordance with the provisions governing Commission Distributions set forth below.
Commission Distributions:	Distributions on account of the Commission Claim from the Initial Distribution, and from any subsequent Distributions, (collectively, the “ Commission Distributions ”) will be made as follows:
Initial Distribution:	The Initial Distribution will total up to \$33,000,000, and be paid as follows: (i) \$5,000,000 will be paid (or reserved, as set forth below) solely on account of the Commission Claim; (ii) the remainder of the Initial Distribution (up to \$28,000,000) will be paid solely to holders of Third Party Claims.
Subsequent Distributions:	- Holders of Third Party Claims shall receive 50% of all subsequent Distributions (and the Commission shall receive the other 50% of all subsequent Distributions) until Holders of Third Party Claims have received 100% of the Allowed amount of such Claims. - Once Holders of Third Party Claims have received 100% of the Allowed amount of such Claims, the Commission shall receive 100% of all subsequent Distributions until the Commission Claim has been paid in full. - Once the Commission Claim has been paid in full, 100% of all subsequent Distributions shall be paid on account of the General Unsecured Claims held by Ginkgo or as otherwise provided under the Plan.
Aggregate Amount of Third Party Claims:	The Liquidating Trust shall represent that the aggregate amount of Third Party Claims does not exceed \$37,500,000. ²
Additional Terms and Documentation:	<u>Government Bar Date</u>: The Government Bar Date, solely as it applies to the Commission, shall be extended to September 30, 2024, or such later date as may be agreed by the parties or ordered by the Bankruptcy Court. If the Stipulation is terminated, then the Government Bar Date, solely as it applies to the Commission, will be the 14th day following such termination becoming effective.

¹ For the avoidance of doubt, neither the Commission Claim nor any General Unsecured Claims held by Ginkgo shall constitute a Third Party Claim.

² This \$37,500,000 includes claims that the Trust believes should be subordinated but have not yet been subordinated by the Court.

	• <u>Additional Documents:</u> The Commission staff and the Liquidating Trust shall negotiate in good faith to agree to additional documentation regarding the Commission Claim (the “Additional Documents”) to be finalized and executed by the Liquidating Trust by July 1, 2024. The Additional Documents will include, without limitation, an Offer or Consent by the Liquidating Trust, and a proposed Order to be entered by the Commission or a proposed final judgment to be entered by a court of competent jurisdiction. The Additional Documents, including the amount of the Commission Claim, will be subject to Commission approval (the “Approval Contingency”) and will not be filed with the Bankruptcy Court until satisfaction of the Approval Contingency. The Stipulation Approval will authorize the Liquidating Trust to agree to a Commission Claim in the Additional Documents in the amount of up to \$30 million, provided, however, that the Additional Documents (other than the amount of a Commission Claim up to \$30 million) will be subject to further Bankruptcy Court approval. Upon satisfaction of the Approval Contingency, the Liquidation Trust may file, and seek Bankruptcy Court approval of, the Additional Documents. Upon Bankruptcy Court approval of the Additional Documents, any Commission Claim of up to \$30 million will be an Allowed Class 3 General Unsecured Claim without the need for the Commission to file a proof of claim or further documentation, and will be entitled to receive any Commission Distributions. • <u>Timing of Initial Distribution:</u> Once agreeable Additional Documents are finalized and executed by the Liquidating Trust and delivered to the Commission staff, which shall occur on or prior to July 1, 2024 (but, for the avoidance of doubt, will be subject to Bankruptcy Court approval), the Liquidating Trust shall make the Initial Distribution and any Subsequent Distributions, provided, however, that until the Approval Contingency occurs and the Bankruptcy Court approves the Additional Documents, the Liquidating Trust shall hold any Commission Distributions in reserve solely for payment of the Commission Claim. • <u>Non-Occurrence of Approval Contingency:</u> If Additional Documents are submitted to the Commission for approval but the Approval Contingency does not occur, neither the Liquidating Trust nor the Liquidating Trustee shall have any liability to the Commission for having made the Initial Distribution. If the Commission withdraws or elects not to file a Commission Claim, then any Commission Distributions held in reserve will revert to the Liquidating Trust and be distributed in accordance with the Plan.
Termination:	Either party may terminate the Stipulation if (i) the other party materially breaches the Stipulation or any representation in the Stipulation, (ii) the party seeking termination provides 14 days written notice prior to the termination becoming effective, and (iii) the terminating party makes a good-faith effort to resolve any dispute underlying the proposed termination. In addition, the Liquidating Trust may provide written notice to terminate this Stipulation if the Liquidating Trustee is not authorized by the terms of this Stipulation to make the Initial Distribution to Holders of Third Party Claims by July 1, 2024.
Settlement Communication:	This Term Sheet is part of a proposed settlement among the parties. Nothing herein shall be deemed an admission of any kind. To the extent provided by FRE 408, and any applicable state rules of evidence, this Term Sheet and all negotiations relating thereto shall not be admissible into evidence in any proceeding.