

**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)

(Joint Administration Requested)

**DECLARATION OF CLAIRE SMITH IN SUPPORT OF
CHAPTER 11 PETITIONS AND FIRST DAY RELIEF**

I, Claire Smith, hereby declare under penalty of perjury, as follows:

1. I am the Senior Vice President of Finance of Zymergen Inc. (“Zymergen” and together with its affiliated debtors and debtors in possession, the “Debtors”). I am or have been responsible for overseeing the Debtors’ accounting, reporting, planning, taxation, risk management, and other aspects of the Debtors.

2. I have held my current position with the Debtors since August of 2022. Prior to that, I served as Corporate Controller of Zymergen from November 2015 to August 2022. Before joining the Debtors, I served as Controller at Sensys Networks, Inc. from May 2012 until November 2015, and Glass, Lewis & Co. from March 2009 until December 2011. From January 1999 until March 2009, I served in various capacities, including as Vice President of Finance and Operations, at the British Broadcasting Corporation and its affiliate. Prior to that, I was a Finance Manager at Barclays Bank and an Audit Supervisor at PricewaterhouseCoopers. I hold a Master of Arts degree from the University of Oxford and am a Chartered Accountant with the Institute of Chartered Accountants in England and Wales.

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.

3. I submit this declaration (the “Declaration”) in support of the Debtors’ chapter 11 petitions and First Day Motions (as defined below) and to provide information to the Court and parties in interest regarding the Debtors. As a result of my tenure with the Debtors, I am familiar with the day-to-day operations and business and financial affairs of the Debtors. Except as otherwise indicated herein, all statements set forth in this Declaration are based upon my personal knowledge, information supplied to me by the other members of the Debtors’ management or the Debtors’ professionals, my review of relevant documents, or my opinion based upon my experience and knowledge of the Debtors’ operations and financial conditions and the industry in which the Debtors operate. If called as a witness, I could and would competently testify to the matters set forth in this Declaration.

4. Today (the “Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101-1532 (the “Bankruptcy Code”). The Debtors intend to operate their business and manage their property as debtors in possession.

5. Concurrently with this Declaration, the Debtors have filed various motions and applications seeking immediate or expedited relief (collectively, the “First Day Motions”) to minimize the adverse effects of the Debtors’ filing for chapter 11 protection, and to enhance the Debtors’ ability to maximize value for the benefit of their estates and creditors through the contemplated sale of all or substantially all of their assets pursuant to an auction and sale process. As further discussed below, I am familiar with the contents of each of the First Day Motions and I believe the Debtors would suffer immediate and irreparable harm absent the ability to continue their business operations through the relief sought in the First Day Motions.

6. Part I of this Declaration provides background with respect to the Debtors' business and capital structure, and the events leading to the commencement of these Chapter 11 Cases. Part II sets forth the relevant facts in support of the First Day Motions.

I. BACKGROUND OF THE DEBTORS AND CERTAIN EVENTS PRECEDING THE FILING OF THEIR CHAPTER 11 CASES

A. General Background and History

7. Zymergen, which was founded in April 2013, is a science and material innovation company focused on designing, developing and commercializing bio-based products for use in a variety of industries. Zymergen's business initially focused on providing research and development services to customers and collaboration partners using Zymergen's proprietary platform, which includes its metagenomic library, data science and software tools. Starting in late 2019 and early 2020, Zymergen shifted to a revenue model focused on using its proprietary platform and expertise to develop, market, and commercialize its own bio-based products, seeking to provide more sustainable alternatives as compared to traditional chemical companies that often use petrochemicals for product development. In December 2020, Zymergen launched its initial product, Hyaline, the first in a planned franchise of optical films, designed for electronics companies to use for display touch sensors in personal devices and other applications. Hyaline used a molecule identified through Zymergen's proprietary platform that was developed to address (among other things) the anticipated market for robust foldable touchscreens and high density flexible printed circuits. Zymergen had a number of other products in development, including, for example, all-natural pesticides and other bio-derived crop protection products, as well as a bio-based insect repellent.

8. To further its business strategy, Zymergen acquired certain other companies which comprise Zymergen's affiliated Debtors. First, in December 2017, Zymergen

acquired metagenomics firm Radiant Genomics, which became Debtor Genesis Acquisition Sub, LLC (“Genesis”). Then, in March 2020, Zymergen acquired Debtor enEvlov, Inc. (“enEvolv”), which had a platform centered on technology to search cells. Finally, in May 2021, shortly after its initial public offering (*see* Section IV.B *infra*), Zymergen acquired Lodo Therapeutics Corporation (“Lodo”). Lodo added a collection of environmental microbial DNA, additional expertise in metagenomics, and an experienced drug discovery team and proprietary technology for a drug discovery program Zymergen considered implementing.

9. Zymergen’s business and the industry in which it operated involved the use of highly complex technology and was cutting-edge. As a result, the manufacturing and commercialization of products presented certain challenges, including being able to accurately identify, predict and capitalize on market opportunities. As of early 2021, Zymergen had not commercialized any products and had a history of operating losses. Nonetheless, the company raised approximately \$1 billion in investments by 2021.

B. Initial Public Offering and Resulting Litigation

10. In 2021, Zymergen conducted an initial public offering (“IPO”) of its common stock, which was completed on April 22, 2021, and raised approximately \$530 million.

11. The day before, on April 21, 2021, Zymergen filed with the Securities and Exchange Commission (“SEC”) a Registration Statement on Form S-1 (“Registration Statement”) in connection with its IPO. The Registration Statement furnished investors with a comprehensive discussion of Zymergen’s business, technology, product pipeline, strategies and goals as they existed at the time and also provided candid and detailed discussions of the risks and challenges it faced in executing on its strategy, bringing products to market, and ultimately generating revenue. Further, the Registration Statement made clear that Zymergen had only

launched Hyaline, its first product, a few months earlier, and explained in detail the many risks and hurdles the company faced in successfully completing the qualification process for potential customers (principally, electronics companies) and ultimately commercializing that specific product.

12. Some of those risks came to pass in the months following the IPO. Among other things, emerging 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 promptly 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%. Following further developments and a rigorous analysis of all of its programs, Zymergen 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.

13. The decline of the value of the company's stock following the IPO spurred litigation against the company and its directors and management. Specifically, the following three actions were commenced and remain pending:

- On August 4, 2021, a putative securities class action was filed on behalf of purchasers of common stock pursuant or traceable to the Registration Statement. The action remains pending in the United States District Court for the Northern District of California and is captioned *Wang v. Zymergen Inc., et al.*, Case No.

3:21-cv-06028-VC. The complaint names Zymergen, certain of its former officers and directors, and the IPO underwriters as defendants. The action alleges that the Registration Statement filed by Zymergen and upon which purchasers 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 purchasers seek damages arising from their purchase of Zymergen stock, attorneys' fees and other remedies.

- On November 9, 2021, one of Zymergen's then purported shareholders filed a putative derivative lawsuit in the United States District Court for the Northern District of California captioned *Mellor v. Hoffman, et al.*, Case No. 3:21-cv-08723-VC. The complaint names certain of Zymergen's former officers and directors as defendants and Zymergen as nominal defendant based on allegations substantially similar to those in the securities class action. The complaint purports to assert claims on Zymergen's behalf for breach of fiduciary duty, unjust enrichment, abuse of control, gross mismanagement, corporate waste, and contribution under the federal securities laws and seeks corporate reforms, unspecified damages and restitution, and fees and costs.
- On February 7, 2023, an action was filed against Zymergen by Fortis Advisors LLC, solely in its capacity as Stockholders' Representative for the holders of convertible promissory notes of Lodo who purchased Zymergen common stock in connection with Zymergen's acquisition of Lodo. The lawsuit, which is pending in the Superior Court of the State of Delaware and is captioned *Fortis Advisors LLC v. Zymergen Inc.*, C.A. No. N23C-01-191-EMD CCLD (Del. Super. Ct.), alleges violations of California's Blue Sky laws and expressly references and relies on substantially the same allegations made in the securities class action pending in the Northern District of California – specifically, that the Registration Statement contained materially false and misleading statements, the later disclosure of which caused the sharp decline in value of Zymergen's stock. Like the securities class action members, the noteholders seek damages arising from the purchase of Zymergen stock, related attorneys' fees and other remedies.

C. Zymergen's Strategic Alternatives and the Ginkgo Merger

14. Given the challenges facing Zymergen following the IPO, in late 2021 and early 2022, the Zymergen board, with the assistance of the company's advisors and managers, considered the potential benefits, risks, and considerations of the following three strategic alternatives: (1) a sale of Zymergen, (2) a carve-out transaction involving the financing and separation or sale of Zymergen's automation business, which includes modular hardware, modern web-based software, custom and turnkey workflows, and active monitoring and support,

and (3) continuing to operate on a stand-alone basis under its current strategic plan, which contemplated a financing raise such as through a private investment in public equity transaction or an at-the-market equity offering.

15. After discussion of the benefits, risks and considerations of pursuing these strategic alternatives, the Zymergen board concluded that the sale of Zymergen to a single party would be the strategic alternative most likely to enhance and balance value for Zymergen's stockholders and its public benefit purpose. The Zymergen board approved Zymergen's exploration of the sale of Zymergen to a single party as the primary focus of Zymergen management and advisors. Nevertheless, given the various risks, considerations, and uncertainties with pursuing a sale of Zymergen, the Zymergen board also concluded that it would be prudent to explore all three strategic alternatives in parallel and also approved Zymergen's exploration of such alternatives in parallel.

16. In the first half of 2022, Zymergen's investment banker, Cowen, contacted a number of potentially interested strategic parties. Numerous such parties (including Ginkgo Bioworks ("Ginkgo")) executed confidentiality agreements and received diligence information. Zymergen's management conducted meetings with various parties who expressed interest in submitting a formal proposal to acquire Zymergen and were provided bid process letters. Ultimately, two parties, one of which was Ginkgo, submitted proposals to acquire Zymergen.

17. Concurrently, Zymergen and its advisors conducted a parallel process through which a number of financial parties were contacted regarding a possible carve-out transaction involving the financing and separation of the Zymergen automation business.

18. As a result of this marketing process, and after several months of due diligence, analysis, and discussion, the Zymergen board concluded that it would pursue a sale of the entire company instead of a carve-out transaction.

19. In May 2022, Zymergen received non-binding proposals from Ginkgo and one other party. Zymergen and the two parties exchanged many revised proposals and continued to conduct due diligence. Throughout June and July 2022, Zymergen's board and management continued to meet regularly to discuss all strategic alternatives, and Zymergen simultaneously continued to negotiate with potential purchasers, including Ginkgo. By the end of July, the Zymergen board determined that the merger agreement negotiated with Ginkgo was in the best interests of the company and its stockholders. Specifically, Zymergen's board believed that the merger would result in a leading synthetic biology company with enhanced scale and capabilities that will enable it to better address various execution risks and uncertainties and withstand industry challenges and macroeconomic risks. For Ginkgo, the transaction would lead to the integration of Zymergen's automation, software, and data science tools, along with biological assets to enhance the opportunities of Ginkgo's platform.

20. In the fall of 2022, Zymergen solicited a stockholder vote on the proposed merger. A majority of the company's stockholders voted in favor of the merger, and the merger closed in October 2022. As a result, Zymergen now exists as a wholly owned subsidiary of Ginkgo.

D. Events Leading to the Chapter 11 Cases

21. Following the merger, Zymergen's business shifted primarily to a services-based business by which it provides support on an arms' length basis to Ginkgo in its service of customers seeking to use cell engineering to solve challenges across diverse markets,

from food and agriculture to pharmaceuticals to industrial and specialty chemicals. To accomplish this, Zymergen continues to utilize its unique and proven synthetic biology technology platform which consists of, among other things, its:

- i. metagenomic library with more than 6 billion data points, which is both among the largest in the world and geographically diverse and allows Zymergen to leverage its proprietary diversity for improvements for strain optimization, enzyme improvement, and enzyme discovery;
- ii. comprehensive IP portfolio;
- iii. data science and software tools;
- iv. portfolio of products in development, including in agriculture, drug discovery, electronics, polymers and 3D printing; and
- v. state of the art automation system, which provides for the assembly of entire work cells within mere hours or days and is comprised of interconnected devices to enable total lab automation.

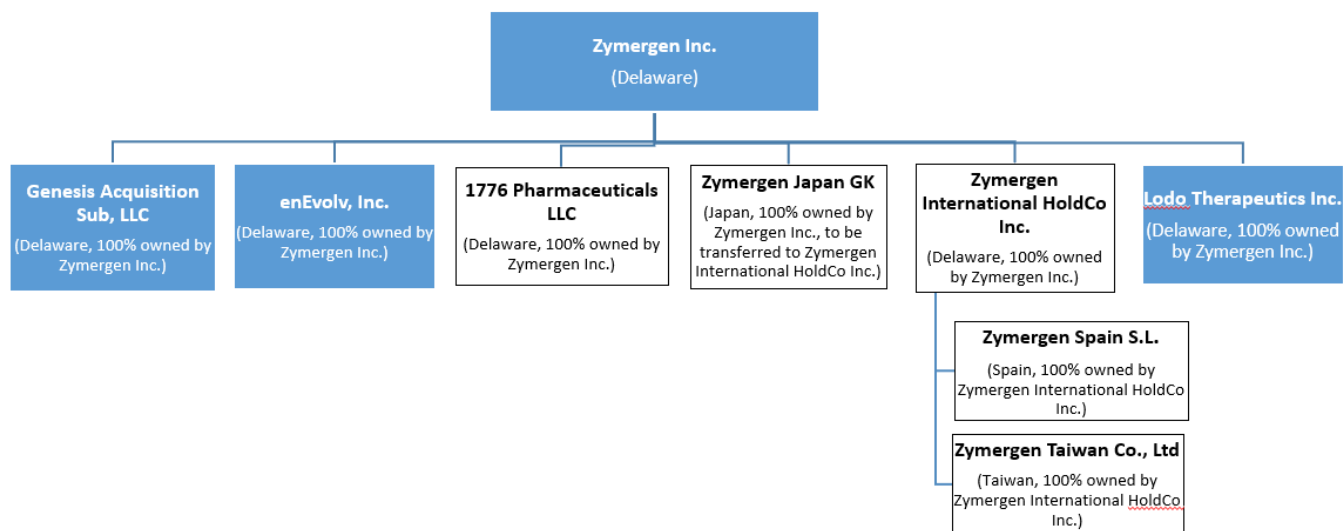
22. Despite the significant value of its assets and the merger, however, Zymergen has continued to operate on a cash negative basis, notwithstanding that it has taken numerous steps to reduce its operating costs, including reductions in force prior to and following the merger. For example, in the last 14 months alone, Zymergen has terminated 323 positions. Further, among other expenses, Zymergen expends significant amounts in defending against the various litigation matters commenced following its IPO, including an investigation commenced by the SEC.

23. The Debtors filed the Chapter 11 Cases to maximize value of their business and assets by conducting a court supervised sale process, reducing their cash burn to preserve resources, and centralizing the claims asserted by and against the Debtors to efficiently resolve those claims and provide meaningful recoveries to their creditors. The Debtors believe that the best opportunity to maximize recoveries for their creditors is through a swift stay in

Chapter 11 to minimize administrative expenses and ultimately to distribute their cash on hand plus sale proceeds to creditors.

E. The Debtors' Prepetition Corporate Structure

24. The following chart depicts the relationship among the Debtors (highlighted in blue) and their non-Debtor affiliates, which have either no or *de minimis* assets:



F. The Debtors' Prepetition Capital Structure

25. As of the Petition Date, none of the Debtors are borrowers or obligors with respect to any funded debt obligations. The Debtors estimate that, as of the Petition Date, they had approximately \$7.4 million in unpaid trade and other ordinary course obligations.

II. FACTS IN SUPPORT OF MOTIONS

A. First Day Motions

26. Concurrently herewith, the Debtors have filed the following First Day Motions seeking relief related to the administration of the chapter 11 cases, the continuation of their operations and cash management needs, to ensure a smooth entry into chapter 11:

- (a) *Debtors' Motion for an Order Authorizing Joint Administration of the Debtors' Chapter 11 Cases;*

- (b) *Debtors' Application for Appointment of Epiq Corporate Restructuring, LLC as Claims and Noticing Agent;*
- (c) *Debtors' Motion for Entry of Interim and Final Orders (I) Prohibiting Utility Providers from Altering, Refusing or Discontinuing Utility Services, (II) Approving Proposed Adequate Assurance of Payment to Utility Providers and Authorizing Debtors to Provide Additional Assurance, (III) Establishing Procedures to Resolve Requests for Additional Assurance and (IV) Granting Related Relief;*
- (d) *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Certain Prepetition Wages, Benefits and Other Compensation Obligations and (II) Granting Related Relief; and*
- (e) *Debtors Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Continue their Existing Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain their Bank Accounts and Existing Business Forms, (D) Implement Changes to the Existing Cash Management System as Necessary, and (E) Continue Ordinary Course Affiliate Transactions, (II) Waiving the U.S. Trustee's Operating Guidelines, and (III) Granting Related Relief.*

27. In addition to the First Day Motions, the Debtors are also filing on the Petition Date the *Debtors' First Omnibus Motion for Entry of an Order (I) Authorizing the Debtors to (A) Reject Certain Unexpired Leases Nunc Pro Tunc to the Petition Date, and (B) Abandon Any Personal Property that Remains at the Leased Premises, and (II) Granting Related Relief* (the "Lease Rejection Motion").

28. I am familiar with the contents of each First Day Motion (including the exhibits to such motions) and the Lease Rejection Motion and believe that the relief sought in each motion: (a) will enable the Debtors to continue their operations and preserve the value of their assets; (b) is critical to the Debtors' chapter 11 efforts; (c) best serves the interests of the Debtors' estates and creditors; and (d) with respect to each First Day Motion, is necessary to avoid immediate and irreparable harm for the reasons described therein. Further, it is my belief

that the relief sought in the motions is in each case narrowly tailored and necessary to achieve the goals identified above.

29. Each of the motions is described in greater detail below.

i. Joint Administration Motion

30. The Debtors seek the joint administration of their chapter 11 cases for procedural purposes only. I understand that it would be far more efficient for the administration of these chapter 11 cases if the Court were to authorize their joint administration. I understand that many of the motions, hearings, and other matters involved in these chapter 11 cases will affect all of the Debtors, and given the nature of the Debtors' operations, the treatment of certain contracts and business relationships of a single Debtor may impact the assets and operations of other Debtors. I understand that joint administration will reduce costs and facilitate the administrative process by avoiding the need for duplicative hearings, notices, applications and orders. I understand that the relief sought is solely procedural and is not intended to affect substantive rights.

ii. Epiq Corporate Restructuring, LLC Retention Application

31. The Debtors seek the appointment of Epiq Corporate Restructuring, LLC ("Epiq") as Claims and Noticing Agent to assume full responsibility for, among other things, the distribution of notices and the maintenance, processing and docketing of proofs of claim filed in the Debtors' chapter 11 cases. I understand that Epiq is a data-processing firm with extensive experience in noticing, claims processing, and other administrative tasks in chapter 11 cases. I understand that, in compliance with the Protocol for the Employment of Claims and Noticing Agents Under 28 U.S.C. §156(c) of the United States Bankruptcy Court for the District of Delaware, the Debtors obtained and reviewed engagement proposals from at least two (2) other

Court-approved claims and noticing agents to ensure selection through a competitive process. I believe that Epiq's rates are competitive and reasonable given Epiq's quality of services and expertise. Given the need for the services described above and Epiq's expertise in providing such services, I believe that retaining Epiq will expedite service of notices, streamline the claims administration process, and permit the Debtors to focus on their restructuring efforts.

iii. Utilities Motion

32. The Debtors are seeking entry of an order: (a) prohibiting Utility Providers from altering, refusing, or discontinuing services or discriminating against the Debtors solely on the basis of the commencement of these cases or that the Debtors did not pay a debt when due prepetition; (b) determining that the Debtors have provided each of the Utility Companies with "adequate assurance of payment" within the meaning of section 366 of the Bankruptcy Code, based on the Debtors' establishment of a segregated account in the amount of \$10,250, which is equal to the Debtors' estimate of two weeks of postpetition Utility Services based on the monthly average of all Utility Services; and (c) establishing procedures for determining additional adequate assurance of payment, if any, and authorizing the Debtors to provide additional adequate assurance of payment to the Utility Providers.

33. In connection with the operation of their business and the management of their research facilities and laboratories, the Debtors obtain utility services (collectively, the "Utility Services") from various utility companies (collectively, the "Utility Providers"). As of the Petition Date, I estimate that there are seven Utility Providers that provide Utility Services to the Debtors for the office buildings and laboratory facilities in Emeryville, California. I believe that even a temporary interruption of the Debtors' Utility Services would cause significant disruption to the Debtors' ability to preserve and maximize the value of their assets. The

Debtors assets include certain microorganisms that, if properly refrigerated and stored, I believe are likely to provide value to the estates. Moreover, one of the Debtors' Utility Providers provides the Debtors' access to and storage of its library of metagenomic data, which I believe is an important source of value to the estates. The Debtors' goal in these cases is to maximize the value of their assets and realize that value for the benefit of their estates through a sale of their assets. To achieve this goal, I believe that the Debtors must retain the Utility Services in order to maintain the value of certain of its perishable assets. For these reasons, I believe that the relief requested in the Utilities Motion is in the best interest of the Debtors and their estates.

iv. Employee Wage Motion

34. The Debtors have filed a motion seeking authority to, among other things, (a) pay all (i) prepetition wages, salaries and compensation to employees and independent contractors, (ii) all related administrative and incidental costs, (iii) all obligations arising under the Employee Leasing Agreement (as defined below) with Ginkgo and (iv) obligations arising under employee benefits programs (collectively, the "Employee Obligations"); (b) pay all amounts withheld from salaries, wages, and other compensation amounts related to the federal, state, and local income taxes, as well as Social Security and Medicare taxes (collectively, "Payroll Taxes"), and make other payroll deductions, including, but not limited to, Social Security and Medicare taxes and to pay, based on a percentage of gross payroll (and subject to state-imposed limits), additional amounts to the taxing authorities for, among other things, state and federal unemployment insurance (collectively with the Payroll Taxes, the "Payroll Deduction Obligations"); and (c) honor and continue the Debtors' prepetition programs, policies and practices as described in this Motion in the ordinary course of business.

a. Employees and Independent Contractors

35. As of the Petition Date, the Debtors employ approximately 101 people, all of whom are located in the United States, employed full-time, and paid a salary. Additionally, in the ordinary course of business, the Debtors augment their staff needs using independent contractors (the “Independent Contractors”), the majority of whom are provided by staffing agencies or similar contract vendors. The number of Independent Contractors will vary from month to month depending on the needs of the business. None of the Debtors’ employees are represented by labor unions. The majority of the Debtors’ employees work at the Debtors’ headquarters and facilities in Emeryville, California, in addition to remote and home-based employees across the U.S.

36. The employees mostly consist of scientists, computer scientists, and engineers, with expertise in a variety of specialized scientific fields, who hold doctorate or other advanced degrees relevant to their work for the Debtors. I believe that the employees have extensive, specialized knowledge about the industry and the Debtors’ projects. As such, I further believe that the employees possess skill sets unique to the Debtors’ business and perform a variety of critical functions throughout the Debtors’ business, including, among other things, human resource services, administrative functions, and operations and financial management. In addition to their employees, the Debtors rely significantly on their Independent Contractors, who I understand have expertise related to the Debtors’ operations and provide services in specific areas, including product development and engineering, accounting, legal contract review, and payroll and benefits support, among others.

37. In addition, many of the Debtors’ employees perform services for the benefit of Ginkgo, pursuant to an employee leasing agreement between Zymergen and Ginkgo (the

“Employee Leasing Agreement”). In return, Ginkgo reimburses the Debtors for any Employee Obligations incurred on account of such employees, solely with respect to the work performed for Ginkgo. As of the Petition Date, approximately 90 employees are performing work for Ginkgo. In addition, certain employees of Ginkgo perform services for the Debtors under the Employee Leasing Agreement, and the Debtors reimburse Ginkgo for the costs related thereto. Thus, I believe that any disruption of the Debtors’ workforce would hinder the Debtors’ ability to perform under the Employee Leasing Agreement. These employees also perform critical tasks for Zymergen relating to the maintenance and preservation of Zymergen’s perishable assets, premises, automation processes, and equipment.

b. Wages

38. The employees are paid semi-monthly, and the staffing agencies which supply the Independent Contractors are paid as part of the Debtors’ standard accounting practices and according to the terms of the staffing agencies’ contract(s) with the Debtors (collectively, and together with the salary and wages paid to the Debtors’ employees, the “Wages”). In addition, under the Employee Leasing Agreement, Ginkgo typically invoices the Debtors on a monthly basis (such amounts, the “Invoiced Wages” and together with the Wages, the “Wage Compensation”). It is my understanding that as of the Petition Date, the total amount of outstanding prepetition Wage Compensation on account of employees, Independent Contractors, and Employee Leasing Agreement invoices is approximately \$115,000, all of which will come due during the first twenty-one (21) days of these cases (the “Interim Period”).

c. PTO and Benefits

39. The Debtors maintain several paid leave benefit programs for their employees, providing paid leave for personal time off (“PTO”) to certain employees, holidays, and other paid leave. It is my understanding that as of the Petition Date, the total amount of outstanding

prepetition PTO obligations equals approximately \$5,000, all of which will come due in the Interim Period. The other forms of paid leave do not involve incremental cash outlays beyond the standard payroll obligations.

40. The Debtors offer all eligible employees and their dependents fully insured medical coverage, administered by Cigna and Kaiser Permanente (the “Medical Benefit Plans”). Monthly premiums paid for Medical Benefit Plans total approximately \$200,000. The Debtors estimate that, as of the Petition Date, approximately \$200,000 is owed on account of Medical Benefit Plans. Additionally, the Debtors provide eligible employees with access to dental and vision coverage through Delta Dental and Guardian (VSP), respectively (the “Additional Benefit Plans”, and together with the Medical Benefit Plans, the “Benefit Plans”). The Additional Benefit Plans are self-insured programs. The Debtors estimate that, as of the Petition Date, approximately \$15,000 is owed on account of the Additional Benefit Plans.

41. In addition, the Debtors maintain a 401(k) savings plan, a qualified defined contribution plan pursuant to section 401(k) of the Internal Revenue Code, for all employees (the “401(k) Plans”). The Debtors do not make contributions directly to employees’ 401(k) accounts, but the Debtors pay regular service fees to a payroll administrator. The ongoing services of the payroll administrator are imperative to the Debtors’ ability to provide the 401(k) Plans to their employees. As of the Petition Date, I believe the estimated amount of accrued but unpaid service fee obligations owed by the Debtors to the 401(k) administrator is approximately \$40,000, all of which will come due and owing after the Interim Period.

42. The Debtors also provide basic disability and basic accidental death and dismemberment insurance coverage (“Disability Insurance”) through Unum. The Debtors’ average total monthly cost in connection with Disability Insurance is approximately \$13,000. As

of the Petition Date, I understand that approximately \$10,500 is owed on account of Disability Insurance obligations.

43. The Debtors also pay amounts directly to their payroll processor on account of unemployment insurance benefits for the employees. Eligibility for unemployment benefits is determined by the applicable state unemployment agency. The Debtors average total monthly obligations on account of such benefits is approximately \$5,000, all of which will become due and owing during the Interim Period.

44. The Debtors also pay COBRA benefits for terminated employees (“COBRA Benefits”). My understanding is the Debtors are obligated to provide COBRA Benefits to employees if they are terminated. I believe that failing to provide such benefits in the ordinary course of business could be detrimental to the morale of the Debtors current employees, and continuing to honor the COBRA Benefits program will enhance the stability of the workforce. As of the Petition Date, I understand that approximately \$55,000 remains outstanding on account of COBRA Benefits, approximately \$25,000 of which will come due and owing during the Interim Period.

45. The Debtors, in the ordinary course of business, reimburse employees for a variety of ordinary, necessary, and reasonable business-related expenses that the employees incur on behalf of the Debtors in the scope of their employment. Most employees initially incur and pay such expenses by using personal funds or credit cards, and are subsequently reimbursed by the Debtors. Such expenses must be approved by the Debtors’ management before the Debtors issue a reimbursement. It is my understanding that, as of the Petition Date, approximately \$15,000 is owed on account of prepetition reimbursable expenses, all of which will become due and owing during the Interim Period.

46. In addition, the Debtors currently have corporate credit cards issued by Silicon Valley Bank, N.A. (the “Corporate Credit Cards”) that certain employees use for business expenses such as travel, hotels and meals. The Corporate Credit Cards ensure that the employees are able to fulfill financial obligations of the Debtors that arise in the ordinary course of business. In the ordinary course, obligations arising from the use of the Corporate Credit Card are paid directly by the Debtors. On average, the Debtors accrue up to \$50,000 of charges each month. I believe that, as of the Petition Date, approximately \$45,000 is owed on account of the Corporate Credit Cards, approximately \$35,000 of which will become due and owing during the Interim Period.

47. The Debtors also offer several other miscellaneous benefits to certain eligible employees. These miscellaneous benefits include, but are not limited to flexible spending accounts, health savings accounts, legal aid benefits, commuter benefits, identity theft insurance, and pet insurance. The Debtors estimate that, as of the Petition Date, approximately \$14,000 is owed on account of prepetition amounts related to certain of these miscellaneous benefits, all of which will become due and owing during the Interim Period. In addition, the Debtors are currently holding approximately \$90,000 for the benefit of the employees’ flexible savings accounts and commuter benefits. I believe that honoring these miscellaneous benefits will help boost employee morale and confidence in Debtors, and maintain the current workforce. The obligations owed to the employees with respect to these miscellaneous benefits are *de minimis*.

d. Payroll Taxes and Payroll Deduction Obligations

48. In the ordinary course of business, the Debtors are required by law to withhold Payroll Taxes and remit such Payroll Taxes to the appropriate taxing authorities. The Debtors also are required to make payments from their own funds on account of Social Security and

Medicare taxes and to pay, based on a percentage of gross payroll (and subject to state-imposed limits), the Employer Payroll Taxes. It is my understanding that, as of the Petition Date, approximately \$5,000 is owed on account of Payroll Deduction Obligations, all of which will become due and owing during the Interim Period.

49. Zymergen also historically awarded restricted stock units (the “Zymergen-Issued RSUs”) of Zymergen stock to Zymergen employees, which were subject to a determined vesting schedule. These awards were converted into awards for Ginkgo stock in connection with Ginkgo’s acquisition of Zymergen. Zymergen is responsible for selling the Zymergen-Issued RSU shares upon their vesting on behalf of and in an agent capacity for the employees. The employees incur tax obligations on account of the vesting of such Zymergen-Issued RSUs, which Zymergen satisfies by selling sufficient shares of the employee’s Zymergen-Issued RSUs in corresponding amounts to cover the employee’s tax liability. Moreover, in the ordinary course of business, Zymergen incurs and pays employer tax obligations with respect to the sale of these RSU shares.

50. Ginkgo has also issued restricted stock units to certain Zymergen employees (the “Ginkgo-Issued RSUs”). When the employee’s Ginkgo-Issued RSUs vest, Ginkgo sells the shares on the employee’s behalf, and Zymergen pays the associated employee taxes as part of its regular payroll withholding remissions on behalf of the employee. Ginkgo then reimburses Zymergen for the full amount of employee taxes associated with these stock sales.

51. It is my understanding that as of the Petition Date, the total amount of outstanding tax obligations in relation to the Zymergen-Issued RSUs and the Ginkgo-Issued RSUs equals approximately \$400,000, all of which will come due in the Interim Period.

e. Payroll Processing Services

52. The Debtors use One Source Virtual (“OSV”) to administer their payroll, which includes issuing payroll payments to the appropriate funds transfer networks, generating pay statements, and coordinating the payment of any deductions or other applicable withholdings. The ongoing services of OSV are imperative to the smooth functioning of the Debtors’ payroll processing. The Debtors pay OSV approximately \$6,000 per month for its services. It is my understanding that, as of the Petition Date, approximately \$6,000 is owed to OSV in accrued but unpaid fees related to such services, all of which will become due and owing after the Interim Period.

v. Cash Management Motion

53. In the ordinary course of their business prior to the Petition Date, as is typical with businesses of similar size and scope, the Debtors maintain a centralized cash management system (the “Cash Management System”) to collect, transfer, and disburse funds generated through their operations efficiently and to record such transactions accurately. The Debtors have filed a motion for authorization to: (a) continue their existing Cash Management System, (b) honor certain prepetition obligations related thereto, (c) maintain their existing bank accounts and business forms, (d) implement any changes to the Cash Management System as the Debtors deem necessary or appropriate, including, without limitation, opening new bank accounts or closing existing bank accounts, and (e) continue ordinary course transactions with their affiliates.

a. Cash Management System

54. The Debtors maintain an integrated, centralized cash management system (the “Cash Management System”) to collect, transfer, manage and disburse funds generated and

used. The Debtors' Cash Management System comprises eighteen (18) bank accounts (collectively, the "Bank Accounts"), maintained at Silicon Valley Bank, N.A. ("SVB") and JPMorgan Chase, N.A. ("JPM") and together with SVB, the "Banks"), as further identified and described in the Motion. It is my understanding that JPM is an authorized depository with the U.S. Trustee. I also understand that as a result of SVB's failure in early March 2023 and the subsequent purchase and assumption of a substantial portion of its assets and liabilities by First-Citizens Bank & Trust Company ("First Citizens"), the Debtors' Bank Accounts at SVB are now part of First Citizens, and that First Citizens is an authorized depository with the U.S. Trustee.

55. The Cash Management System is centrally managed by the Debtors. The Debtors maintain daily oversight of the Cash Management System and implement cash management controls for entering, processing, and releasing funds. Additionally, the Debtors regularly reconcile books and records to ensure that all transfers are accounted for properly. The Debtors use a variety of business forms in the ordinary course, including, among others, checks, invoices and letterhead.

56. Historically, the Cash Management System generally facilitated the following principal cash management functions: (a) cash collection; (b) disbursements to fund the Debtors' operations; and (c) intercompany transfers. A schematic illustrating the general flow of funds through the Cash Management System is attached to the motion as Exhibit D.

57. It is my belief that maintaining the prepetition Cash Management System is critical to the Debtors' ability to preserve the value of their assets. Specifically, the Debtors intend to utilize their existing Cash Management System throughout the chapter 11 cases in the ordinary course of business and in accordance with historical practices. In my opinion, the existing Cash Management System is crucial for managing the Debtors' remaining business

processes throughout these chapter 11 cases, including processing payroll and paying key parties in interest, such as critical vendors and utility providers, which is necessary to preserving and maximizing the value of the Debtors' estates.

b. Service Charges

58. In the ordinary course of business, the Banks charge, and the Debtors pay, honor or allow deduction from the appropriate account, certain service charges, fees and other costs and expenses associated with maintaining the Bank Accounts in accordance with the applicable agreements or schedules of fees governing the Bank Accounts (collectively, the "Service Charges"), which historically have not exceeded approximately \$10,000 per month. It is my understanding that there are approximately \$10,000 of accrued but unpaid Service Charges outstanding as of the Petition Date, all of which will become due and owing during the first 21 days of this chapter 11 case (the "Interim Period").

c. Affiliate Transactions

59. In the ordinary course of business, the Debtors engage in routine business relationships both among the Debtors and between the Debtors and certain non-debtor affiliates (the "Affiliate Transactions").

60. Debtor Zymergen has several wholly-owned subsidiaries, including Debtors Lodo, enEvolv, and Genesis, and several non-debtors. It is my understanding that Lodo is currently the only Zymergen subsidiary with ongoing operations, which relate to one contract for which future payments may be earned. Payments from the contract counterparty made to Lodo are deposited into the Lodo Checking Account, and periodically those funds are transferred to Zymergen's Receivables Account. Those transfers reduce the intercompany payable balance from Lodo to Zymergen. Expenses related to the fulfillment of Lodo's contract are paid from

Zymergen's Payables Account, which increases the intercompany payable balance from Lodo to Zymergen. Although there were historically transfers of funds between Zymergen and its other subsidiaries (including its non-debtor subsidiaries), those subsidiaries are substantially inactive today.

61. In the ordinary course of their business, the Debtors enter into arms-length transactions with Ginkgo. Specifically, in the ordinary course of business, the Debtors sell excess inventory and equipment to Ginkgo in exchange for cash. Moreover, as previously described, the Debtors and Ginkgo are parties to an employee leasing agreement, pursuant to which Ginkgo reimburses the Debtors for the costs associated with services provided by employees of the Debtors, and the Debtors reimburse Ginkgo for services performed by certain Ginkgo employees. Such amounts are invoiced and paid in the normal course of business. In addition, the Debtors and Ginkgo are also parties to the Real Estate Use and Occupancy Agreements defined and described in the motion.

62. I believe that the ability of the Debtors to use their existing Cash Management System, continue intercompany transactions, continue to use their customary business forms is essential to the orderly operation of the Debtors' business and in the best interests of the Debtors' Estates. I believe that any material interruption in the Debtors' existing Cash Management System could cause confusion, disrupt payroll, introduce inefficiency into the Debtors' operations when efficiency is most essential, and strain the Debtors' relationships with critical third parties, each of which could diminish the prospects for a successful restructuring. Moreover, it is my understanding that all of the Debtors' bank accounts are maintained at banks that have been approved by the U.S. Trustee as an authorized bank depository in accordance with the U.S. Trustee Guidelines.

vi. Lease Rejection Motion

63. In addition to the First Day Motions, the Debtors have filed a motion seeking to (i) reject of certain unexpired leases of nonresidential leased property (the “Real Property Leases”) and an unexpired lease of personal property with De Lage Laden Financial Services, Inc. (the “De Lage Lease” and together with the Real Property Leases, the “Specified Leases”), and (ii) abandon any personal property of the Debtors, including furniture, fixtures and equipment remaining at leased premises. It is my belief that the Specified Leases are not necessary to the administration of these bankruptcy cases or the preservation of value of the Debtors’ estates. As a result, I believe that not rejecting the Specified Leases would create an enormous financial burden for the Debtors and provide no benefit to the Debtors’ business or their estates.

64. I further believe that rejection of the Specified Leases effective as of the Petition Date is in the Debtors’ best interests and will reduce administrative costs for the estates. I also understand that that (i) the Debtors have vacated and surrendered the leased premises and abandoned personal property remaining on the premises and (ii) the landlords and counterparties should immediately begin efforts to relet or re-contract the premises to mitigate their damages. In addition, the Debtors no longer require the equipment leased under the De Lage Lease and the lease is financially burdensome to the Debtors’ estates. I further understand that the Debtors will serve the motion on the respective counterparties to the Specified Leases to be rejected and acknowledge that the Debtors will not have the right to withdraw the motion. As a result, I believe that it is fair and equitable for the Court to order that the Specified Leases be rejected retroactively.

65. Finally, I believe that any personal property of the Debtors to be abandoned pursuant to the motion is of inconsequential value or burdensome to the Debtors' estates to remove. I further understand that the cost of retrieving, marketing, and reselling the abandoned personal property outweighs any recovery that the Debtors and their estates could reasonably hope to attain for such abandoned personal property, and that the abandoned property does not pose a threat to public health or safety. As a result, I believe that abandonment of the Debtors' personal property as requested in the motion is in the best interests of the Debtors and their estates.

66. In conclusion, for the reasons stated herein and in each of the foregoing motions, I respectfully request that each of the motions be granted in its entirety, together with such other and further relief as this Court deems just and proper.

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

Dated: October 3, 2023
Emeryville, California

/s/ Claire Smith
Claire Smith
Senior Vice President of Finance,
Zymergen Inc.