

**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. 500 & 511

**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as otherwise ordered herein, no other or further notice is necessary; and objections, if any, to the Motion having been withdrawn, resolved or overruled on the merits; and this Court

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.

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;

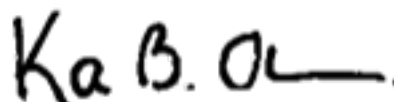
IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

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.

Dated: June 10th, 2024
Wilmington, Delaware

Handwritten signature of Karen B. Owens in black ink.

KAREN B. OWENS
UNITED STATES BANKRUPTCY JUDGE

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:
<ul style="list-style-type: none"> Initial Distribution: 	<ul style="list-style-type: none"> 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.
<ul style="list-style-type: none"> Subsequent Distributions: 	<ul style="list-style-type: none"> 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:	<ul style="list-style-type: none"> <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.

	<ul style="list-style-type: none"> • Additional Documents: 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. • Timing of Initial Distribution: 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. • Non-Occurrence of Approval Contingency: 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.