

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

In re

**ZYMERGEN INC., et al.,**<sup>1</sup>

Debtors.

Chapter 11

Case No. 23-11661 (KBO)

(Jointly Administered)

**Re: D.I. 5**

**DECLARATION OF IVONA SMITH  
IN SUPPORT OF THE DEBTORS' SALE MOTION**

I, Ivona Smith, hereby declare as follows:

1. I am the sole member of the Restructuring Committee of Debtor Zymergen Inc. ("Zymergen"). Pursuant to the *Debtors' Motion for (I) an Order Pursuant to Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors' Assets; (B) Approving the Debtors' Entry into Stalking Horse Agreement and Related Bid Protections (C) Approving Procedures for the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (D) Scheduling an Auction and Sale Hearing; (E) Approving Forms and Manner of Notice of Respective Dates, Times, and Places in Connection Therewith; and (F) Granting Related Relief; (II) an Order (A) Approving the Sale of the Debtors' Assets Free and Clear of Claims, Liens, and Encumbrances; and (B) Approving the Assumption and Assignment of Executory Contracts and*

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<sup>1</sup> 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.

*Unexpired Leases; and (III) Certain Related Relief* [D.I. 5] (the “Sale Motion”),<sup>2</sup> the Debtors seek entry of an order, among other things, authorizing and approving (i) the sale of certain of the Debtors’ assets to Ginkgo Bioworks, Inc. (“Ginkgo”) pursuant to that certain Amended Asset Purchase Agreement, dated December 19, 2023 [D.I. 270-2] (the “Ginkgo Agreement”) and (ii) the sale of certain of the Debtors’ assets to Pivot Bio., Inc. (“Pivot Bio” and together with Ginkgo, the “Successful Bidders”) pursuant to that certain Asset Purchase Agreement, dated December 19, 2023 [D.I. 269-2] (the “Pivot Bio Agreement”).

2. I submit this declaration (the “Declaration”) in support of the entry of the Debtors’ proposed (a) *Order (I) Authorizing the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Claims, Liens, Rights, Interests and Encumbrances, (II) Approving the Asset Purchase Agreement and (III) Authorizing the Debtors to Assume and Assign Certain Executory Contracts and Unexpired Leases* [D.I. 270-1] (the “Ginkgo Sale Order”) and (b) *Order (I) Authorizing the Sale of Certain of the Debtors’ Assets Free and Clear of All Claims, Liens, Rights, Interests and Encumbrances, (II) Approving the Asset Purchase Agreement and (III) Authorizing the Debtors to Assume and Assign Certain Executory Contracts and Unexpired Leases* [D.I. 269-1] (the “Pivot Bio Sale Order”).

3. Unless otherwise indicated, all facts set forth in this Declaration are based on my personal knowledge, my discussions with the Debtors’ management and other professionals, including members of Intrepid Investment Bankers LLC (“Intrepid”), the Debtors’ investment banker, or other interested parties, my review of relevant documents, including the Bidding Procedures, the Ginkgo Agreement, the *Settlement Agreement* dated November 27, 2023 between the Debtors, the Committee, and Ginkgo [D.I. 251-1] (the “Settlement Agreement”) and

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<sup>2</sup> Capitalized terms not defined herein are defined in the Sale Motion.

the Pivot Bio Agreement, or my opinion based upon my experience, knowledge, and information concerning the Debtors' sale process, operations and financial affairs. If called upon to testify, I would testify competently to the facts set forth in this Declaration.

**QUALIFICATIONS AND ROLE IN THESE CHAPTER 11 CASES**

4. I joined Zymergen's Board of Directors (the "Board") on August 7, 2023. I understand that in my capacity as a Director, I have a fiduciary duty to act in the best interest of the Debtors' estates.

5. I graduated from the New York University School of Business with a Masters in Business Administration and Fordham University with a Bachelor's Degree in Finance.

6. I have twenty-five years of experience working in distressed situations, including restructurings and corporate finance. I am currently employed by Drivetrain, LLC, an independent fiduciary services firm that provides services to the distressed investment community including board service, chapter 11 plan administration and litigation trust services. I previously worked as a portfolio manager for Fair Oaks Capital and as the co-founder and principal at Restoration Capital Management for eleven years.

7. To the best of my knowledge, prior to joining the Board, I had no connection to the Debtors, the Successful Bidders, or any of their respective affiliates. To the best of my knowledge, I still have no connection to the Successful Bidders or their affiliates, other than the Debtors who are affiliates of Ginkgo. I am not a shareholder, employee, or director of either of the Successful Bidders or any of their affiliates, other than the Debtors. My understanding is that I was asked to join the Board as an independent director to oversee a fair, value-maximizing and comprehensive restructuring of the Debtors free of any influence by the Debtors' parent company, Ginkgo Bioworks Holdings, Inc.

8. To that end, on August 31, 2023, the Board formed the Restructuring Committee, of which I am the sole member. The Restructuring Committee has sole authority over the Debtors' restructuring efforts, including the Debtors' sale process and decision to enter into any agreement concerning the sale or disposition of the Debtors' Assets. Specifically, the board resolutions appointing the Restructuring Committee grant the Restructuring Committee the "*sole authority* and [to] be empowered to: (i) take any necessary or appropriate action related to the restructuring of the Company, . . . (iii) make such investigation of any Potential Transaction, Ginkgo Transaction or Alternative Transaction as the Restructuring Committee deems advisable to maximize the value of the enterprise; (iv) evaluate the terms of any Potential Transaction, Ginkgo Transaction or Alternative Transaction; (v) *negotiate the terms of any definitive agreement with respect to any Potential Transaction, Ginkgo Transaction, or Alternative Transaction; (vi) accept or reject any Potential Transaction, Ginkgo Transaction, or Alternative Transaction; and (vii) take any necessary or appropriate action related to any Potential Transaction, Ginkgo Transaction, or Alternative Transaction[.]*" (emphasis added).

## **THE SALE PROCESS**

### **A. The Stalking Horse Agreement**

9. Prior to the Petition Date, the Debtors received an initial bid by Ginkgo for the purchase of the Acquired Assets. Thereafter, the Restructuring Committee engaged in extensive negotiations with Ginkgo at arms-length and with the assistance of the Debtors' advisors, including Intrepid. The initial offer by Ginkgo was rejected by the Restructuring Committee and numerous

rounds of offers and counteroffers followed. During the negotiations, the Restructuring Committee consulted regularly with Intrepid.

10. Ultimately, the Debtors, through the Restructuring Committee, accepted a bid from Ginkgo, who served as the Stalking Horse Bidder and whose bid served as the Stalking Horse Bid (as defined below). After the Petition Date, the Debtors, through the Restructuring Committee, Ginkgo and the Official Committee of Unsecured Creditors (the “Committee”) engaged in further, extensive, arms-length negotiations with respect to the Stalking Horse Bid, resulting in modifications to the Stalking Horse Bid and Stalking Horse Agreement.

11. On November 20, 2023, the Court entered the *Order Pursuant to Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors’ Assets; (B) Approving the Debtors’ Entry into Stalking Horse Agreement and Related Bid Protections; (C) Approving Procedures for the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (D) Scheduling an Auction and Sale Hearing; (E) Approving Forms and Manner of Notice of Respective Dates, Times, and Places in Connection Therewith; and (F) Granting Related Relief* [D.I. 194] (the “Bid Procedures Order”). Pursuant to the Bid Procedures Order, the Court approved the Debtors’ entry into the Stalking Horse Agreement with Ginkgo, whereby Ginkgo’s initial bid served as the stalking horse bid (the “Stalking Horse Bid”), subject to higher and better bids.

#### **B. The Qualified Bids**

12. Prior to the Bid Deadline, Pivot Bio submitted a Qualified Bid for a subset of the Debtors’ Assets (the “Pivot Bio Bid”) that were included as Acquired Assets under the Stalking Horse Agreement. The Debtors also received two additional partial bids after the Bid

Deadline, but after reviewing and consulting with Debtors' management and other professionals, including Intrepid, and the Committee, I determined that neither bid was actionable or constituted a Qualified Bid and that the Debtors would not pursue them further.

13. Prior to the Auction, the Debtors, together with their counsel and Intrepid, in consultation with the Committee, engaged in extensive negotiations with Pivot Bio and Ginkgo regarding a potential agreement between the Debtors, Pivot Bio, and Ginkgo that would allow the Debtors to accept both a revised bid from Ginkgo (the "Revised Stalking Horse Bid") and the Pivot Bio Bid. On December 13 and 14, the Debtors held the Auction, which was attended by both Ginkgo and Pivot Bio. During the Auction, the Debtors, in consultation with the Committee, continued to engage in arms-length negotiations with Ginkgo and Pivot Bio.

14. As a result of the extensive negotiations among the parties, the parties reached an agreement. Accordingly, at the end of the auction, I determined on behalf of the Debtors in the exercise of my reasonable business judgment and in consultation with the Committee that the Revised Stalking Horse Bid received from Ginkgo and the bid received from Pivot Bio were the highest and best bids, and selected Ginkgo and Pivot Bio as the Successful Bidders for distinct subsets of the Debtors' assets. In addition, I selected the Stalking Horse Bid as the Back-Up Bid.

15. The Ginkgo Agreement includes a cash purchase price of at least \$6,300,000, plus the assumption or elimination of significant liabilities of the Debtors. Among other things, in addition to the cash purchase price, I understand the Ginkgo Agreement eliminates approximately \$5,000,000 in employee severance liability and results in the assumption and assignment to Ginkgo of a non-residential real property lease that has an approximate \$5,000,000 benefit to the estate through the return of a cash collateralized letter of credit and claim elimination.

I further understand that, in light of the amount of unsecured claims in these chapter 11 cases, the elimination of such liabilities for the estates has a significant impact on the ultimate distributions that creditors will receive under the chapter 11 liquidating plan proposed by the Debtors.

16. The Pivot Bio Agreement includes a cash purchase price of \$2,300,000, plus the assumption of certain liabilities of the Debtors.

17. Taken together and as compared to the Stalking Horse Bid, the Ginkgo Agreement and Pivot Bio Agreement result in at least \$950,000 of additional value for the Debtors' estates.

18. Based on the foregoing, I believe that the proposed Sales to Ginkgo and Pivot Bio together represent the highest and best offer for the Debtors' Assets. Accordingly, I believe the Court should approve the Sales.

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.

Dated: December 19, 2023  
New York, New York

By: /s/ Ivona Smith  
Ivona Smith  
Sole Member, Restructuring Committee