

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

In re:

GRITSTONE BIO, INC.

Debtor.

Chapter 11

Case No. 24-12305 (KBO)

Re: Doc No. 423 and 492

Obj. Deadline: March 17, 2025 @ 5:00 p.m. (est)

Confirmation Hrg.: March 25, 2025 @ 10:00 a.m. (est)

**ORACLE'S LIMITED OBJECTION AND RESERVATION OF RIGHTS REGARDING
DEBTOR'S FIRST MODIFIED CHAPTER 11 PLAN OF REORGANIZATION**

Oracle America, Inc., successor in interest to NetSuite, Inc. ("Oracle"), a creditor and contract counterparty in the above-captioned Chapter 11 case, submits this limited objection and reservation of rights ("Rights Reservation") regarding *Gritstone Bio, Inc.'s First Modified Chapter 11 Plan of Reorganization* [Dkt. No. 423] ("Plan") and Exhibit C to the *Notice of Filing Plan Supplement for Gritstone Bio, Inc.'s First Modified Chapter 11 Plan of Reorganization* [Dkt. No. 492] ("Assumption Schedule"), filed by Gritstone Bio, Inc. ("Debtor")

I. INTRODUCTION

As currently postured, the Plan and Assumption Schedule indicate that Oracle's NetSuite agreements with the Debtor will be rejected by operation of the Plan. If that is the Debtor's intention, Oracle has no objection. However, it is Oracle's understanding that the Debtor wishes to continue to use the Oracle NetSuite agreements, which have been renewed post-petition. In that event, the Oracle agreements must be assumed and cured.

Accordingly, on this limited basis, Oracle objects and reserves all of its rights regarding the Debtor's potential assumption of Oracle's NetSuite contracts through the Plan.



II. FACTUAL BACKGROUND

The Debtor filed the above-captioned case on October 10, 2024. The Debtor continues to operate as a debtor in possession.

Oracle is a licensor of computer software and, pursuant to agreements, provides software-related products, technical support, maintenance, educational materials, and programs, as well as cloud-based and point of sale services, which Oracle often customizes for the customer's specific needs. Prior to the Petition Date, Oracle and the Debtor entered into a Subscription Services Agreement dated February 26, 2019 ("SSA") pursuant to which the parties have executed several agreements for NetSuite accounting and financial management services (collectively, the "Oracle Agreements").

On February 11, 2025, the Debtor filed the Plan, which provides for the automatic rejection of all executory contracts upon entry of the Confirmation Order, unless specifically listed on the Assumption Schedule for assumption via the Plan, or previously assumed, assumed and assigned, or rejected. Plan Art. VI. A.

On March 5, 2025, the Debtor filed the Assumption Schedule, which indicates that "None" of the Debtor's executory contracts will be assumed through the Plan.

The Oracle Agreements must be assumed in order for the Debtor to continue to utilize the NetSuite services, because the SSA is a pre-petition executory contract. Such assumption means that the Debtor must pay all sums owed in cure, including any post-petition amounts which may have come due under the Oracle Agreements. As of the Petition Date, Oracle was owed not less than \$19,451.18, as follows:

Invoice No.	Invoice Date	Invoice Amount	Amount Paid	Balance Owed
1977470	09/11/2024	\$42,144.30	\$22,693.12	\$19,451.18

Additional amounts may be due to Oracle pursuant to renewal agreements entered into by Debtor post-petition.

III. ARGUMENT

A. The Oracle Agreements Must Be Assumed and Cured in Order for the Debtor to Continue to Use NetSuite Services Following Plan Confirmation.

“[R]ejection of any executory contract under § 365 of the Bankruptcy Code may not be *partial* rejection, i.e., the debtor must either assume or reject the executory contract *in toto*. *In re Gellert*, 55 B.R. 970, 973 (Bankr. D.N.H. 1985). Where ostensibly separate agreements are economically integrated, they should be assumed or rejected together. *See In re Buffets Holdings*, 387 B.R. 128 (Bankr. D. Del. 2008).

Here, Oracle is providing NetSuite services post-petition pursuant to the terms of the pre-petition SSA. The SSA and any post-petition service renewal agreements form an integrated contract that must be assumed or rejected together. If it is the Debtor’s intention to retain the NetSuite services following Plan confirmation, the Oracle Agreements must be assumed and cured.

B. The Debtor May Not Assume the Oracle Agreements Absent Oracle’s Consent Because The Agreements Pertain To One Or More Licenses Of Intellectual Property.

Section 365(c) of the Bankruptcy Code provides, in relevant part:

The trustee may not assume or assign any executory contract ... of the debtor ... if (1)(A) applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor ..., whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and (B) such party does not consent to such assumption or assignment.

11 U.S.C. § 365(c).

Federal law makes non-exclusive intellectual property licenses non-assignable absent consent of the licensor. *See In re Catapult Entertainment, Inc.*, 165 F.3d 747 (9th Cir. 1999), *cert. dismissed*, 528 U.S. 924 (1999) (patent law renders non-exclusive patent licenses personal and non-assignable under Bankruptcy Code § 365(c)(1)); *In re Sunterra Corp.*, 361 F.3d 257, 271 (4th Cir. 2004) (holding that a debtor was statutorily barred by § 365(c)(1) from assuming a computer software license where contract counterparty did not consent to the assumption); *see also In re Trump Entm't Resorts, Inc.*, 526 B.R. 116, 126 (Bankr. D. Del. 2015) (“Non-exclusive

patent and copyright licenses create only personal and not property rights in the licensed intellectual property and so are not assignable.”); *In re Rupari Holding Corp.*, 573 B.R. 111, 119 (Bankr. D. Del. 2017) (holding that the debtor could not assume and assign a trademark license without the consent of the non-debtor licensor).

The Oracle Agreements are, or pertain to, non-exclusive licenses of copyrighted software. Therefore, the Debtor must obtain Oracle’s consent before seeking to assume the Oracle Agreements. Absent cure of all amounts due thereunder, and assumption of the SSA together with any renewal documents, Oracle does not consent to Debtor’s assumption of the Oracle Agreements.

C. To Assume the Oracle Agreements, the Debtor Must Cure All Arrearages.

Before assuming an unexpired executory contract, a debtor must (1) cure (or provide adequate assurance of a prompt cure of) any defaults under the subject contracts, and (2) provide adequate assurance of future performance under the contract. *See* 11 U.S.C. § 365(b)(1). Absent the foregoing, a debtor may not assume an executory contract.

At present, Oracle believes that the cure amount is not less than \$19,451.18. Absent Debtor’s cure of the outstanding amounts due Oracle, the Debtor may not assume Oracle’s agreements.

D. Unless the Debtor Provide Adequate Assurance of Future Performance, the Court Should Not Permit Assumption of Oracle’s Contracts.

In addition to requiring that defaults be cured, Section 365(b)(2) of the Bankruptcy Code obligates a debtor to provide adequate assurance of future performance under the contract before the executory contract may be assumed. *See* 11 U.S.C. § 365(b)(2). In light of the Debtor’s failure to provide either adequate assurance of prompt payment of the cure or future performance under the contract, Oracle is unable to determine whether Debtor has complied, or will comply, with all of the requirements of section 365(b) of the Bankruptcy Code. Accordingly, Oracle reserves its rights to be heard regarding all assumption and cure issues.

IV. CONCLUSION

For the reasons set forth above, Oracle respectfully requests that the Court deny the Debtor's request via the Plan to continue to use the Oracle NetSuite services without assuming and curing the relevant contracts, and Oracle reserves its right to be heard on all issues set forth herein.

DATED: March 17, 2025

By: /s/ James E. Huggett

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