

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

In re:

GRITSTONE BIO, INC.,¹

Debtor.

Chapter 11

Case No. 24-12305 (KBO)

Jointly Administered

Re. Dkt. Nos. 307, 487, 493

**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF CERTARA USA, INC.
IN RESPONSE TO DEBTOR'S (I) FOURTH NOTICE OF DESIGNATION OF
CONTRACTS FOR ASSUMPTION AND ASSIGNMENT PURSUANT TO ASSET
PURCHASE AGREEMENT WITH SEATTLE PROJECT CORP.; AND (II) FIRST
NOTICE OF SATISFIED CLAIMS**

Certara USA, Inc. ("Certara"), by and through its undersigned counsel, hereby submits its limited objection (the "Limited Objection") to (i) *Fourth Notice Of Designation Of Contracts For Assumption And Assignment Pursuant To Asset Purchase Agreement With Seattle Project Corp.* [Docket No. 493] (the "Designation Notice"); and (ii) *First Notice of Satisfied Claims* [Docket No. 487] (the "Satisfied Claims Notice"), filed by Gritstone bio, Inc. (the "Debtor"), and respectfully states as follows:

INTRODUCTION

1. Certara is a leading software service provider that offers drug development and clinical pharmacology strategy as well as Health Economics and Outcomes Research and Market Access solutions to its customers.

2. Certara and the Debtor entered into a Master Service Agreement ("MSA") dated March 17, 2022, pursuant to which Certara provides ongoing services to the Debtor under

¹ The Debtor's mailing address is 4698 Willow Road, Pleasanton, CA 94588, and the last four digits of the Debtor's federal tax identification number is 953.



Statements of Work ("SOWs"), which include, without limitation, Statement of Work dated March 4, 2024 ("March SOW"), Statement of Work dated September 28, 2023 ("September SOW"), and an Amendment to the September SOW dated November 17, 2023 (the MSA, together with SOWs and any amendments thereto, collectively, the "Contract").²

3. The Contract contains an Entire Agreement Clause which states as below:

This Agreement, including any Work Orders or exhibits hereunder, constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements, representations, proposals, discussions, communications and terms and conditions between the Parties, whether oral or in writing, including but not limited to any and all terms contained within confidentiality and nondisclosure agreements, purchase orders, and other contracts including, but not limited to, any separate confidentiality, security or privacy requirements agreed to by the Parties unless explicitly referenced and agreed to by the Parties hereto.

See Master Service Agreement, Sec. 10.1.

4. On January 8, 2025, Certara filed a Proof of Claim in the amount of \$46,126.55 for the prepetition outstanding amount under the Contract. *See* POC No. 77. On February 12, 2025, Certara filed an administrative claim in the amount of \$4,365.60 for post-petition outstanding amounts as of that time under the Contract (the "Administrative Claim"). *See* POC No. 143.

5. On November 14, 2024, the Debtor filed the *Notice of Potential Assumption, Assumption and Assignment, or Transfer of Executory Contracts and Unexpired Leases* [Docket No. 186] for the potential assumption of the Contract (the "Assumption Notice").

6. On December 23, 2024, the Court entered the *Order (A) Approving the Sale of Substantially All of the Debtor's Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving Assumption and Assignment of Certain Unexpired Leases and*

² The Contract is subject to confidentiality terms and contains commercially sensitive information, and is available for review upon request subject to confidentiality issues being appropriately addressed.

Executory Contracts; and (C) Granting Related Relief [Docket No. 293], approving the sale and the Asset Purchase Agreement between the Debtor and Seattle Project Corp. (the "SPC APA").

7. On December 24, 2024, the Debtor filed the *Amended Second Omnibus Motion for the Entry of an Order (A) Authorizing Rejection of Executory Contracts Effective as of the Applicable Rejection Date; (B) Abandoning any Remaining Personal Property; and (C) Granting Related Relief* [Docket No. 307] (the "Rejection Motion") seeking to reject the Contract.

8. On February 28, 2025, the Debtor filed the *First Notice of Satisfied Claims* [Docket No. 487] (the "Satisfied Claims Notice") asserting that Certara's Administrative Claim in the amount of \$4,365.60 has been satisfied.

9. On March 6, 2025, the Debtor filed the *Fourth Notice Of Designation Of Contracts For Assumption And Assignment Pursuant To Asset Purchase Agreement With Seattle Project Corp.* [Docket No. 493] (the "Designation Notice"), which seeks to designate parts of the Contract to be assumed pursuant to the SPC APA.

10. Certara respectfully request that the Court direct the Debtor, subject to meeting any cure obligations and addressing its prior Rejection Motion, to designate the Contract for assumption or rejection, not piecemeal, but rather in its entirety.

LIMITED OBJECTION

A. The Certara Contract Must Be Rejected or Assumed *Cum Onere*

11. A debtor's assumption of a contract must be *cum onere* – including all of the conditions, liabilities and obligations as well as the benefits of such contract or lease. *In re Fleming Cos.*, 499 F.3d 300, 308 (3d Cir. 2007); *see also In re ANC Rental Corp., Inc.*, 277 B.R. 226, 238–39 (Bankr. D. Del. 2002) (holding that debtor may not assume only part of a contract but must

assume the entire agreement). Further, a multi-part agreement is not severable if the parties entered into the agreement as a whole, without which there would have been no agreement. *See In re Buffets Holdings, Inc.*, 387 B.R. 115, 119 (Bankr. D. Del. 2008); *See also In re Karfakis*, 162 B.R. 719, 725 (Bankr. E.D. Pa. 1993) ("two contracts which are essentially inseparable can be, and should be, viewed as single, indivisible agreements between the parties"); *In re Philip Servs. (Del.), Inc.*, 284 B.R. 541 (Bankr. D. Del. 2002) (interrelatedness of agreements made them inseparable for purposes of §365, particularly where one agreement incorporated the other and where the consideration for each was related).

12. The Contract in question is governed by Delaware law, which provides that whether a contract is severable depends on the intent of the parties as reflected in the four corners of the agreement. *GMG Capital Invs., LLC v. Athenian Venture Partners I, L.P.*, 36 A.3d 776, 779 (Del. 2012). Separate agreements that refer to each other and import each other's terms, without countervailing restrictive language, provide a clear indication that the parties intended for those agreements to establish one complete agreement. *In re Physiotherapy Holdings, Inc.*, 538 B.R. 225, 235 (D. Del. 2015). When a Chapter 11 debtor seeks to assume under 11 U.S.C. § 365 a contract that its counterparty believes is part of an integrated whole with other contracts, the counterparty may object to the debtor's proposed piecemeal assumption. *See In re MKUL, Inc.*, No. 23-18094-EPK, 2024 WL 3912193, at *5 (Bankr. S.D. Fla. Aug. 22, 2024). Considering the express terms and cross-references of Certara's MSA and SOWs which operate as one integrated Contract, including the Entire Agreement Clause contained therein, the Contract is one integrated agreement that must be assumed in toto. Debtor's proposed piecemeal assumption should therefore be disallowed.

13. Accordingly, Certara seeks affirmative language in any order authorizing the assumption and assignment of the Contract that, to the extent the Contract is assumed, all pre- and post-petition obligations under the Contract outstanding at the time of assumption shall be cured in order to effectuate the assumption and all obligations associated with the Contract shall remain post-assumption as opposed to piecemeal selection of certain SOWs or other impermissible divisions of the burdens and benefits of the Contract. Certara further reserves the right to amend this Objection to reflect any additional post-petition obligations up to the date of assumption, if any.

B. Certara's Administrative Claim Should be Allowed to the extent it Remains Unpaid

13. Certara's records indicate that its Administrative Claim in the amount of \$4,365.60 (POC No. 143) is only partially satisfied, with \$2,740.60 remaining unpaid. Therefore, Certara respectfully requests that the Court allow the remaining outstanding balance of Certara's Administrative Claim.

RESERVATION OF RIGHTS

14. Certara reserves the right to supplement or otherwise modify this Objection as necessary or appropriate, including to reflect additional cure amounts which accrue after the date hereof, take discovery and/or respond to any reply filed by the Debtor or any further notice relating to the proposed assumption and assignment and cure amounts of any contracts or agreements between the Debtor and Certara. Nothing contained in this Objection constitutes a waiver of any of the claims, defenses, entitlements, rights or remedies of Certara, each of which is expressly reserved.

WHEREFORE, Certara respectfully requests that the Court grant relief consistent with the foregoing Limited Objection and provide Certara with any other relief the Court deems just and proper.

Dated: March 20, 2025

/s/ Cheryl A. Santaniello

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