

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

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|----------------------|---|-------------------------|
| In re: |) | Chapter 11 |
| |) | |
| GRITSTONE BIO, INC., |) | Case No. 24-12305 (KBO) |
| |) | |
| Reorganized Debtor. |) | |
| _____ |) | |

**GRITSTONE BIO, INC.'S MOTION TO
ASSUME AND ASSIGN THE GENEVANT LICENSES**

Gritstone bio, Inc., formerly a debtor and debtor in possession (the “**Debtor**”) in the above-captioned chapter 11 cases and now reorganized (the “**Reorganized Debtor**”), hereby moves the Court (this “**Motion**”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**”), pursuant to sections 105, 363(b), and 365(a) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”) and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and upon the Declaration of Matthew Hawryluk (the “**Hawryluk Declaration**”) annexed hereto, authorizing the Debtor to assume and assign to Seattle Project Corp. (“**SPC**”) the Genevant Licenses (as defined below) with Genevant Sciences GmbH (Genevant Sciences GmbH, with Genevant Sciences Corporation and Genevant Sciences, Inc., collectively, “**Genevant**”). In support of the Motion, by and through its undersigned counsel, the Reorganized Debtor states as follows¹:

I.

SUMMARY OF ARGUMENT

1. Under the test applied in the Third Circuit, patent licenses may be assumed and assigned to third parties under section 365(c) of the Bankruptcy Code, notwithstanding a

¹ By agreement of the parties, this Motion addresses only the threshold issue of whether language contained in each of the Genevant Licenses permits their assignment under the circumstances of the sale of assets to SPC without any additional consent from Genevant.

general rule against such assignments, when the licensor consents to the assignment. That consent may be given in the license itself. Each of the Genevant Licenses contains language allowing assignment by the Debtor-licensee to a third-party purchaser of “all or substantially all” of the Debtor’s assets “related to” the particular Genevant License.

2. As described below and in the Hawryluk Declaration, the sale of the assets to SPC in December 2024 falls within the consent language contained in the Genevant Licenses. Because the Genevant Licenses are therefore assignable to SPC, they are assumable by the Debtor. This Court’s inquiry should end there, and the Court should enter the Proposed Order authorizing the assumption of the Genevant Licenses by the Debtor and their assignment to SPC.

II.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter 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. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Debtor and Reorganized Debtor confirm their consent pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

4. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The statutory and rule bases for the relief sought herein are sections 105(a), 363(b), 365(a), and 503(b) of the Bankruptcy Code and Bankruptcy Rules 6004 and 6006.

III.

GENERAL BACKGROUND

A. Bankruptcy Filing

6. On October 10, 2024 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Case**”). The Debtor operated its business and managed its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code until confirmation of the Plan (as defined herein). No request for the appointment of a trustee or examiner was made in the Chapter 11 Case. A detailed description of the Debtor’s business and the facts precipitating the filing of the Debtor’s Chapter 11 Case are set forth in the *Declaration of Celia Economides in Support of the Debtor’s Chapter 11 Petition and First Day Relief* [Docket No. 17].

B. The Sale Process

7. On October 23, 2024, the Debtor filed the *Motion for (I) an Order (A) Approving Bid Procedures for the Sale of the Debtor’s Assets; (B) Approving Certain Bid Protections in Connection with the Debtor’s Entry Into Any Potential Stalking Horse Agreements; (C) Scheduling the Auction and Sale Hearing; (D) Approving the Form and Manner of Notice Thereof; and (E) Granting Related Relief; and (II) an Order or Orders (A) Approving the Sale of the Debtor’s Assets Free and Clear of all Encumbrances; and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases* [Docket No. 67] (the “**Sale Procedures Motion**”). The Sale Procedures Motion requested approval of (a) the sale of some or all of the Debtor’s assets to one or more buyers and (b) procedures regarding the assumption and assignment

of executory contracts, which were applicable to all the Debtor's contracts subject to designation by a particular buyer.

8. On November 14, 2024, the Court entered an order [Docket No. 181] (the "**Sale Procedures Order**") granting the Sale Procedures Motion.

9. In accordance with the Sale Procedures Order, 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] (the "**Contract Assumption Notice**"), which listed certain agreements with Genevant that, subject to the designation by a potential buyer, would be assumed and assigned in connection with the Debtor's asset sale.

10. In addition to other contracts, the Contract Assumption Notice referenced the following contracts between the Debtor and Genevant:

- *Option and License and Development Agreement* entered into between Genevant and Gritstone dated as of October 20, 2020 (as amended or modified, the "**2020 License**").
- *Nonexclusive License and Development Agreement* entered into between Genevant and Gritstone dated as of January 15, 2021 (as amended or modified, the "**2021 License**"); and
- *Option and Nonexclusive License Agreement* entered into between Genevant and Gritstone, dated as of August 10, 2023 (as amended or modified, the "**2023 License**", and, with the 2020 License and the 2021 License, the "**Genevant Licenses**").

11. On December 4, 2024, Genevant filed the *Limited Objection and Reservation of Rights of Genevant to Notice of Potential Assumption, Assumption and Assignment, or Transfer of Executory Contracts and Unexpired Leases* [Docket No. 220] (the "**Cure Objection**").

12. Pursuant to the Sale Procedures Order, the Debtor held a multi-day auction between December 9, 2024 and December 12, 2024. Following the auction, on December 13,

2024, the Debtor filed the *Notice of Filing of Successful Bidders and Auction Results for Sale of Assets* [Docket No. 257] (the “**Notice of Successful Bidders**”), which, as discussed below in more detail, resulted in three sales to three separate parties, one of which would be consummated through a plan of reorganization.

13. 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 Executory Contracts; and (C) Granting Related Relief* [Docket No. 293] (the “**SPC Sale Order**”) which approved the Asset Purchase Agreement (the “**SPC APA**”) between the Debtor and SPC.

14. On December 31, 2024, as permitted by the SPC Sale Order and SPC APA, the Debtor filed the supplemental contract notice [Docket No. 325] (the “**Supplemental Notice**”), which designated certain contracts for the assumption and assignment to SPC. The Genevant Licenses were included in the Supplemental Notice.

15. The deadline to assert objections to the Supplemental Notice was originally set for January 14, 2025 but was extended for Genevant to June 30, 2025, pursuant to that certain *Order (I) Approving Stipulation Regarding the Potential Assumption, Assumption and Assignment, or Transfer of Genevant Agreements and (II) Granting Related Relief* [Docket No. 476] (the “**Assignment Stipulation**”), for the purpose of permitting SPC and Genevant to meet and confer regarding a fully consensual agreement regarding the assignment of the Genevant Licenses from the Debtor to SPC.

16. On June 30, 2025, pursuant to the Assignment Stipulation, Genevant objected to the Supplemental Notice [Docket No. 704] (the “**Genevant Procedural Objection**”).

C. The Chapter 11 Plan of Reorganization

17. On April 3, 2025, the Court entered an Order [Docket No. 601] confirming the Debtor's Second Modified Chapter 11 Plan of Reorganization [Docket No. 585] (the "**Plan**"). On April 4, 2025, the Effective Date (as defined in the Plan) of the Plan occurred.

18. The Assignment Stipulation preserved the Debtor's right to seek to assume and assign the Genevant Licenses after confirmation of the Plan subject to the reservation of rights and defenses of the Debtor and Genevant.

D. The Genevant Licenses

19. The Genevant Licenses each contain substantially similar assignment provisions that generally require the consent of Genevant except under certain circumstances.

20. For example, under the 2020 License,

Neither Party shall assign or transfer any of its rights and obligations hereunder without the prior written consent of the other Party, **except (a) to a purchaser of all or substantially all of the assets or business of such Party to which this Agreement relates**, or to the Successor resulting from any Change of Control, or (b) to an Affiliate; provided, however, that (i) such assignment to an Affiliate shall not relieve such Party of its obligations herein, and (ii) in each case, the assigning Party shall provide the other Party with written notice of such assignment or transfer within thirty (30) days after such assignment or transfer. Any purported transfer or assignment in contravention of this Section 10.4.1 shall, at the option of the nonassigning Party, be null and void and of no effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their permitted successors and assigns.

2020 License § 10.4.1 (emphasis added)

21. Similarly, the 2021 License provides:

Neither Party shall assign or transfer any of its rights and obligations hereunder without the prior written consent of the other Party, **except (a) to a purchaser of all or substantially all of the assets or business of such Party to which this Agreement relates**, or to the Successor resulting from any Change of Control, or (b) to an

Affiliate; provided, however, that (i) such assignment to an Affiliate shall not relieve such Party of its obligations herein, and (ii) in each case, the assigning Party shall provide the other Party with written notice of such assignment or transfer within thirty (30) days after such assignment or transfer. Any purported transfer or assignment in contravention of this Section 10.4.1 shall, at the option of the nonassigning Party, be null and void and of no effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their permitted successors and assigns.

2021 License § 10.4.1 (emphasis added)

22. Last, the 2023 License provides:

Neither Party shall assign or transfer any of its rights and obligations hereunder without the prior written consent of the other Party, **except: (a) to a purchaser of all or substantially all of the assets or business of such Party to which this Agreement relates**, or to the Successor resulting from any Change of Control; or (b) to an Affiliate; provided, however, that (i) such assignment to an Affiliate shall not relieve such Party of its obligations herein, and (ii) in each case, the assigning Party shall provide the other Party with written notice of such assignment or transfer within thirty (30) days after such assignment or transfer. Additionally, Genevant shall have the right to assign its rights to receive payments hereunder to an Affiliate or Third Party without Gritstone's consent. Any purported transfer or assignment in contravention of this Section 11.4 shall, at the option of the nonassigning Party, be null and void and of no effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their permitted successors and assigns.

2023 License § 11.4 (emphasis added).

E. Gritstone's Prepetition Businesses

23. The Debtor's business was researching and developing products for use in curing, treating, and preventing illnesses in the areas of oncology (the study of cancers) (the "**Oncology Sector**") and infectious disease (the "**Infectious Disease Sector**"). The Debtor operated the following principal platforms or programs:

- a. the "EDGE" platform, a system that uses predictive artificial intelligence to predict peptide targets that are found on the surface of diseased cells (including

infected cells and cancer cells) in which the immune system is able to mount a response;

- b. the “GRANITE” program, which focuses on individualized or patient-by-patient cancer vaccines;
- c. the “SLATE” program, which focuses on providing “off-the-shelf” cancer vaccines;
- d. programs involving chimpanzee adenoviruses, and
- e. programs involving self-amplifying messenger ribonucleic acid (“samRNA”). *See* Hawryluk Declaration, Para. 6.

24. While the EDGE, GRANITE, SLATE, and chimpanzee adenovirus programs and platforms were used by Gritstone primarily in its Oncology Sector, they all have some applicability to, and usefulness in, the Infectious Disease Sector as well. *See* Hawryluk Declaration, Para. 7.

25. The samRNA technology is essential for both sectors. The technology involves encasing samRNA that will target a particular tumor or infectious disease antigen within a “lipid nanoparticle” or “LNP.” The LNP carries the samRNA. *See* Hawryluk Declaration, Para. 8.

26. The three Licenses collectively permit a licensee to use technology, know-how, and/or intellectual property owned by Genevant or any of its affiliates or subject to, or covered by, patents controlled by Genevant or any of its affiliates, including such technology, know-how, and/or intellectual property related to LNPs, in conjunction with intellectual property of the licensee (including samRNA), in connection with research, development, manufacture, and

production on a commercial scale of products for use in curing, treating, and/or preventing various infectious diseases. *See* Hawryluk Declaration, Para. 9.

27. The Licenses were used by the Debtor in the Infectious Disease Sector of its business. The Debtor entered into the Licenses in part to obtain access to Genevant's LNP technology and know-how. *See* Hawryluk Declaration, Para. 10.

28. Each of the Genevant Licenses permits, with certain restrictions, (a) sublicensing by the licensee and (b) the use of third-party contractors by the licensee to manufacture products. *See* Hawryluk Declaration, Para. 11.

29. The 2020 License covers the field of human immunodeficiency virus (HIV). *See* Hawryluk Declaration, Para. 12.

30. The 2021 License covers the field of SARS-CoV-2 (also known as COVID 19). *See* Hawryluk Declaration, Para. 13.

31. The 2023 License covers various fields, such fields to be designated and licensed as provided in the 2023 License on a pathogen-by-pathogen basis, but excluding the field of hepatitis B infections in humans. *See* Hawryluk Declaration, Para. 14.

F. The Three Bankruptcy Sales

32. In connection with the sale process noted above, the Debtor obtained authorization to consummate three sales, each of which is summarized below.

(i) The Hercules Sale

33. On December 20, 2024, the Court entered the *Order (I) Approving Asset Purchase Agreement and Authorizing the Sale of Certain of Debtor's Assets; (II) Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Rights, Encumbrances, and Other Interests Pursuant to Bankruptcy Code Sections 105, 363(b), 363(f) and 363(m); and (III) Granting Related*

Relief [Docket No. 288] (the “**Hercules Sale Order**”), which approved the sale of various machinery and equipment to Hercules Capital, Inc. (“**Hercules**”) by way of a credit bid on account of Hercules’s prepetition secured claim.

34. The asset purchase agreement (the “**Hercules APA**”) between the Debtor and Hercules is annexed to the Hercules Sale Order. The Hercules APA reflects that Hercules purchased the following:

[A]ll of Seller’s machinery, equipment (including, but not limited to computers, laptops, monitors, and related electronics), and other tangible personal property, including, but not limited to, (i) that listed and identified on Schedule 2.1(a), and (ii) all of the equipment and other tangible personal property abandoned by Seller located at 660 Beacon Street, 6th Floor, Boston, MA.

Hercules APA, § 2.1.

35. Schedule 2.1(a) of the Hercules APA is a comprehensive list of the assets purchased by Hercules. As reflected on the foregoing referenced schedule, Hercules purchased freezers, refrigeration units, centrifuges, incubators, laboratory tools and equipment, parts and accessories relating to the foregoing, computers and related equipment, officer furniture, and any other tangible asset against which Hercules had a lien (collectively, the “**Machinery & Equipment**”).

36. While the Debtor used the Machinery & Equipment in its business, the Machinery & Equipment was fungible. That is, the Machinery & Equipment was not unique but was the type of property that could be purchased by any party to facilitate the use and application of the various patents owned by and licensed to the Debtor. *See* Hawryluk Declaration, Para. 17(b).

(ii) **The FSI Sale and Plan**

37. At the outset of the case, the Debtor and Future Solution Investments LLC (“**FSI**”) entered into a debtor in possession financing agreement under which FSI lent the Debtor up to \$25,000,000. *See* Docket No. 180 (the “**DIP Order**”).

38. At the auction, FSI submitted a credit bid seeking to purchase a subset of the Debtor’s assets. On December 20, 2024, the Court entered the *Order (A) Approving Selection of Successful Bid; and (B) Granting Related Relief* [Docket No. 286] (the “**FSI Sale Order**”).

39. The assets designated by FSI are listed on Exhibit A of the FSI Sale Order, which consist of six different patents in the TCR and antibody binder technologies and are generally referenced herein and in the SPC APA as the “Binder IP.”

40. The Binder IP and the related business was not sold to SPC but was retained by the Debtor and formed the basis for the Debtor’s reorganization. *See* Hawryluk Declaration, Paras. 5(c) and 17(a).

(iii) **The SPC Sale**

41. As noted above, on December 23, 2024, the Court entered the SPC Sale Order that approved the SPC APA, pursuant to which SPC purchased all of the Debtor’s assets excluding the patents associated with the Binder IP (which were retained by the Debtor and formed the basis of its reorganization) and the Machinery & Equipment (which was purchased by Hercules through a credit bid).

42. To the extent that the EDGE, GRANITE, SLATE, and chimpanzee adenovirus programs and platforms may be used or useful in connection with the Infectious Disease Sector and the LNP technology licensed by Genevant, SPC bought the entirety of those

assets, including all related products, pre-clinical and clinical data, all essential patent families, and all manufacturing know-how. *See* Hawryluk Declaration, Paras. 15 and 19.

43. In addition, SPC purchased all of the Debtor's assets related to samRNA, including all related products, pre-clinical and clinical data, all essential patent families, and all manufacturing know-how, all of which are essential to a licensee's performance under the Genevant Licenses. *See* Hawryluk Declaration, Paras. 16 and 19.

IV.

RELIEF REQUESTED

44. By this Motion, the Debtor respectfully requests entry of an order, in substantially the form of the Proposed Order, approving the assumption of the Genevant Licenses and their assignment to SPC, pursuant to sections 105(a), 363(b), and 365(a) of the Bankruptcy Code and Bankruptcy Rules 6004 and 6006.

V.

BASIS FOR RELIEF REQUESTED

45. Section 365(a) of the Bankruptcy Code provides that, subject to court approval, a debtor in possession "may assume or reject any executory contracts or unexpired leases of the debtor." 11 U.S.C. § 365(a). Upon finding that a debtor has exercised its sound business judgment in determining to assume an executory contract or unexpired lease, courts will approve the assumption under section 365(a) of the Bankruptcy Code. *See Nostas Assocs. v. Costich (In re Klein Sleep Prods., Inc.)*, 78 F.3d 18, 25 (2d Cir. 1996); *see also Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1099 (2d Cir. 1993).

46. Section 105(a) of the Bankruptcy Code provides in relevant part that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the

provisions of this title.” 11 U.S.C. § 105(a). Section 105(a) has been interpreted to expressly empower bankruptcy courts with broad equitable powers to “craft flexible remedies that, while not expressly authorized by the Code, effect the result the Code was designed to obtain.” *Official Comm. of Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics Corp. v. Chinery*, 330 F.3d 548, 568 (3d Cir. 2003) (*en banc*).

47. While the term “executory contract” is not defined in the Bankruptcy Code, the Third Circuit has adopted the following definition: “[An executory contract is] a contract under which the obligation of both the bankrupt and the other party to the contract are so far unperformed that the failure of either to complete performance would constitute a material breach excusing performance of the other.” *Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 39 (3d Cir. 1989) (internal citations omitted). Patent license agreements, like the Genevant Licenses, are executory contracts. *See, e.g., In re Access Beyond Techs., Inc.*, 237 B.R. 32, 42-45 (Bankr. D. Del. 1999) (holding that a patent license agreement was an executory contract). Notably, the Genevant Procedural Objection does not contest that the Genevant Licenses are executory. *See, generally*, Genevant Procedural Objection.

48. A debtor’s right to assign executory contracts is subject to the following limitation:

The trustee may not assume or assign any executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if . . . 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 or the debtor in possession, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and . . . such party does not consent to such assumption or assignment. . .

11 U.S.C. § 365(c)(1).

49. Section 365(c)(1)'s limitation on the assignment of executory contracts applies whenever the contract is "subject to a legal prohibition against assignment" to a third party and the non-debtor party to the contract does not consent to assignment. *Matter of West Electronics Inc.*, 852 F.2d 79, 83 (3d Cir. 1988).

50. Section 365(c)(1) of the Bankruptcy Code limits a debtor's ability to assign that executory contract to a third party and makes no reference to whether a debtor actually intends to assign the executory contract to a third party. *See, e.g., In re Catapult Entm't Inc.*, 165 F.3d 747, 750 (9th Cir. 1999). Thus, the plain language of Section 365(c)(1) of the Bankruptcy Code establishes what courts have come to refer to as the "Hypothetical Test." *See, e.g., id.* at 750; *West Electronics*, 852 F.2d at 83.

51. The Third Circuit adopted the Hypothetical Test in *West Electronics*. *Id.* at 83 (stating that "the relevant inquiry is not whether [applicable non-bankruptcy law] would preclude an assignment from ... a debtor to ... a debtor in possession, but whether it would foreclose an assignment by [a debtor] to [a third party]").

52. Under the Hypothetical Test, the Court must evaluate whether, in light of the applicable federal law on patents, Genevant would have to accept performance of the Genevant Licenses from an entity "other than the Debtor." *Id.* at 82-83. The "long standing federal rule of law with respect to the assignability of patent license agreements provides that these agreements are personal to the licensee and not assignable **unless expressly made so in the agreement.**" *Unarco Industries, Inc. v. Kelley Co., Inc.*, 465 F.2d 1303, 1306 (7th Cir. 1972) (internal citations omitted) (emphasis added).

53. Thus, the issue here is whether or not the Genevant Licenses provide the required consent to assignment, notwithstanding the general rule of non-assignability. Each of the Genevant Licenses contains the following contractual provision:

Neither Party shall assign or transfer any of its rights and obligations hereunder without the prior written consent of the other Party, **except (a) to a purchaser of all or substantially all of the assets or business of such Party to which this Agreement relates, . . .**

2020 License § 10.4.1 (emphasis added), 2021 License § 10.4.1 (emphasis added), and 2023 License § 11.4 (emphasis added).

54. The limitations under section 365(c)(1) of the Bankruptcy Code and *West Electronics* do not apply because applicable law will not excuse a counterparty's performance when the counterparty consents to be bound to a third party. *In re MeSearch Media Techs. Ltd.*, 668 B.R. 828, 837-840 (Bankr. W.D. Pa. 2025) ("if an agreement contains language that it may be assigned per § 365(c)(1)(A), the inquiry ends there"); *aff'd*, 2025 U.S. Dist. LEXIS 164696, 10*-15* (W.D. Pa. Aug. 25, 2025); *In re Physiotherapy Holdings, Inc.*, 538 B.R. 231-33 (D. Del. 2015) (affirming bankruptcy court on assumability and assignability of license where licensor waived right to withhold consent to assignment; but reversing on the separate issue of whether multiple agreements constituted a single contract under section 365); *In re Quantegy, Inc.*, 326 B.R. 467, 471 (Bankr. M.D. Ala 2005) (where licensor consented to assignment of license to a purchaser of licensee's assets, "the licensor cannot be heard to complain that ... applicable law excuses him from the consequences of his own contract"); *In re Supernatural Foods, LLC*, 268 B.R. 759, 804 (Bankr. M.D. La. 2001) ("applicable law' as referenced in § 365(c)(1) does not prevent the trustee's assumption and assignment" where consent to assignment was granted in the license itself).

55. In *MeSearch Media*, the debtor sought to assume and assign a license agreement. The licensor opposed the assumption and assignment invoking section 365(c)(1) of the Bankruptcy Code. The license at issue contained the following language regarding the assignment of the license agreement:

Assignment of Agreement. This Agreement and the rights granted hereunder shall inure to the benefit of the parties hereto and shall not be assignable by either party, *except to a successor in interest* or wholly-owned subsidiary of that party, without the written consent of the other, which consent shall not be unreasonably withheld.

MeSearch Media, 668 B.R. at 837-38 (emphasis in original).

56. The bankruptcy court in *MeSearch Media* held that the license agreement was assignable without the consent of the counterparty because the agreement expressly provided that it could be assigned to a “successor in interest.” *Id.* at 838. The court found that the reorganized debtor is a “successor in interest” and authorized the assumption and assignment of the license agreement. *Id.* This decision was recently affirmed by the district court. *See* 2025 U.S. Dist. LEXIS 164696, 10*-15* (W.D. Pa. Aug. 25, 2025).

57. As cited above, the courts in *Physiotherapy Holdings*, *Quantegy*, and *Supernatural Foods* each approved the assumption and assignment of an agreement over the objection of a counterparty because the contracts contained language permitting the assignment to a third-party under the applicable conditions, which were each satisfied.

58. The Genevant Licenses contain just such language. Each of the Genevant Licenses provides that the Debtor may assign it, provided that the assignment is to “a purchaser of all or substantially all of the assets or business of such Party to which this Agreement relates” 2020 License § 10.4.1, 2021 License § 10.4.1, and 2023 License § 11.4.

59. As to the assets not purchased by SPC, the Binder IP (*i.e.*, the assets purchased by FSI pursuant to the FSI Sale Order and the Plan) does not relate to – indeed, has nothing to do with – the Genevant Licenses. *See* Hawryluk Declaration, Para. 17(a).

60. Further, the equipment sold to Hercules under the Hercules Sale Order was not uniquely used in the Debtor’s performance under the Genevant Licenses. The Debtor’s performance or use of the patents under the Genevant Licenses could be conducted with other equipment or by subcontracting to third parties that own and operate equipment such as the Hercules Equipment. *See* Hawryluk Declaration, Para. 17(b). As such, that equipment was not necessary for the Debtor’s performance under the Genevant Licenses.

61. The Debtor expects that Genevant will rely upon *In re Sunterra Corp.*, 361 F.3d 257, 271 (4th Cir. 2004) to overcome the cited exceptions in the Genevant Licenses that each allow for assignment, on the grounds that the Genevant Licenses do not also provide that they may be “assumed.” In *Sunterra*, the court acknowledged that the licensor consented to assignment of the license agreement to a successor in interest under specific circumstances, but the court held that this provision did not apply to the assumption of the agreement and therefore did not satisfy the Hypothetical Test. *Id.* at 271. The court held that assumption and assignment are distinct, and the agreement must have contained consent to both. *Id.*

62. However, *Sunterra* does not help Genevant, because *Sunterra* is not the law in the Third Circuit; that law is, rather, the opposite. As discussed above, the Third Circuit follows the Hypothetical Test, “if the other party consents [to assignment]... the trustee may ***assume and assign*** the contract [citing Section 365(c)(1)(b)].” *Cinicola v. Scharffenberger*, 248 F.3d 110, 121 (3d Cir. 2001) (brackets and emphasis added); *see also, e.g., Crivella Holdings, Ltd. v. MeSearch Media Tech., Ltd.*, 2025 U.S. Dist. LEXIS 164696, 5* (W.D. Pa. Aug. 25, 2025), *aff’g* 668 B.R.

828 (Bankr. W.D. Pa. 2025) (affirming the “well-reasoned opinion of the Bankruptcy Court that *Sunterra* is inconsistent with § 365(c),” because, “if an agreement contains language that it may be assigned per § 365(c)(1)(A), the inquiry ends there”).

63. Further, section 365(c) of the Bankruptcy Code does not require an express consent to “assumption” because if the agreement can be assigned, it can be assumed. *See, e.g., In re MeSearch Media Tech., Ltd.*, 668 B.R. 828, 839 (Bankr. W.D. Pa. 2025) (citing *West Electronics*) (holding that section 365(c)(1) “does not ... require[] language consenting to assumption, but, rather ... if the License can be assigned, it can be assumed”) ; *Supernatural Foods*, 268 B.R. at 804-05 (where consent to assignment is given in the relevant agreement, section 365(c)(1) does not prohibit assumption and assignment); *Physiotherapy Holdings*, 538 B.R. at 233 (citing *West Electronics*) (“[b]ecause the [l]icense [a]greement is assignable under [section] 365(c) ... it is also assumable” and affirming bankruptcy court on that issue); *Quantegy*, 326 B.R. at 471 (where the license contained consent to assignment to a third party, the license could also be assumed by the debtor under § 365(c)(1)).

64. The Debtor and Reorganized Debtor believe that assumption and assignment of the Genevant Licenses is in the best interest of its estate and creditors. The reorganization of the Debtor under the Plan was focused on the preservation and exploitation of the Binder IP, which did not utilize the Genevant Licenses.

65. The business operated by the Debtor with respect to the Edge, GRANITE, SLATE, and chimpanzee adenovirus programs and platforms may be used or useful in connection with the Infectious Disease Sector and the LNP technology governed by the Genevant Licenses. There is no dispute that SPC bought the entirety of those assets, including all related products, pre-

clinical and post-clinical data, all essential patent families, and all manufacturing know-how. *See* Hawryluk Declaration, Para. 15.

66. In addition, SPC purchased all of the Debtor's assets related to samRNA, including all related products, pre-clinical and post-clinical data, all essential patent families, and all manufacturing know-how, all of which are essential to a licensee's performance under the Genevant Licenses. *See* Hawryluk Declaration, Para. 16.

67. Thus, the facts here clearly demonstrate that Genevant's consent is not required for the Debtor to assume and assign the Genevant Licenses to SPC, because SPC purchased the assets relating to the Debtor's business to which the Genevant Licenses relate and left behind only assets that are unrelated to the Genevant Licenses and to the Debtor's performance thereunder.²

68. Accordingly, the Debtor and Reorganized Debtor believe that the assumption and assignment of the Genevant Licenses is in the best interests of the estate and stakeholders and represents the exercise of its sound business judgment. For all the reasons set forth above, the Debtor, in an exercise of its sound business judgment, submits that the Court should approve the assumption and assignment of the Genevant Licenses.

VI.

RELIEF UNDER BANKRUPTCY RULES 6004(H) AND 6006(D) IS APPROPRIATE

69. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property (other than cash collateral) is stayed for 14 days after the order is entered," unless the court orders otherwise, while Bankruptcy Rule 6006(d) provides that an "order

² While SPC did not take assignments of all the Debtor's contracts and leases, those not assigned to SPC were not related to the Genevant Licenses.

authorizing the trustee to assign an executory contract or unexpired lease . . . is stayed for 14 days after the order is entered,” unless the court orders otherwise. The Debtor requests that the Court waive the 14-day stay period under Bankruptcy Rules 6004(h) and 6006(d).

VII.

NOTICE

70. Notice of this Motion will be provided to the following parties, or, in lieu thereof, their counsel, if known: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the Liquidating Trustee; (c) counsel to Genevant; and (d) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Reorganized Debtor submits that no other or further notice need be provided.

WHEREFORE, the Reorganized Debtor respectfully requests that the Court grant the Motion and grant such other relief as is just and proper.

Dated: October 8, 2025

PACHULSKI STANG ZIEHL & JONES LLP

/s/ James E. O'Neill

Debra I. Grassgreen, (admitted *pro hac vice*)

John W. Lucas, (admitted *pro hac vice*)

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Counsel to the Reorganized Debtor

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

In re:

GRITSTONE BIO, INC.,

Reorganized Debtor.

Chapter 11

Case No. 24-12305 (KBO)

DECLARATION OF MATTHEW HAWRYLUK

I, Matthew Hawryluk, declare under penalty of perjury:

1. I am a consultant to various companies for whom I act as Chief Business Officer.

I hold a BS degree from the University of Notre Dame, a Ph.D. from the University of Pittsburgh School of Medicine, and an M.B.A. from Carnegie Mellon University.

2. I make this declaration (this “**Declaration**”) in support of the *Motion to Assume and Assign the Genevant Licenses* (the “**Motion**”) filed herewith.

3. Except as otherwise indicated, I have personal knowledge of the facts set forth in this Declaration, and, if called as a witness, I could and would competently testify to the matters set forth herein.

My Background at Gritstone

4. I was employed by Gritstone bio, Inc. (“**Gritstone**”), from November 2015 through the sale of its assets in December 2024 in the above-captioned chapter 11 bankruptcy case (the “**Bankruptcy Case**”) in positions that included Executive Vice President and Chief Business Officer; I also managed Gritstone’s site in Boston, Massachusetts.

5. Among other experiences in the course of my employment at Gritstone:

- a. I was the person primarily responsible for negotiating and documenting, on behalf of Gritstone, the following agreements between Gritstone, as licensee, and

Genevant Sciences GmbH (“**Genevant**”), as licensor, and am familiar with the terms and provisions of each:

- i. that certain *Option and License and Development Agreement* entered into between Genevant and Gritstone dated as of October 20, 2020 (as amended or modified, the “**2020 License**”);
 - ii. that certain *Nonexclusive License and Development Agreement* entered into between Genevant and Gritstone dated as of January 15, 2021 (as amended or modified, the “**2021 License**”), and
 - iii. that certain *Option and Nonexclusive License Agreement* entered into between Genevant and Gritstone, dated as of August 10, 2023 (as amended or modified, the “**2023 License**, and, with the 2020 License and the 2021 License, the “**Licenses**”).
- b. In my roles at Gritstone, I led the negotiations for and structured the multi-party sales of Gritstone’s assets under 11 U.S.C. § 363 in the Bankruptcy Case. I am familiar with the assets sold to – and the assets excluded from the sale to – Seattle Project Corp. (“**SPC**”) pursuant to (i) 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 of Certain Unexpired Leases and Executory Contracts; and (C) Granting Related Relief* entered in the Chapter 11 Case on December 23, 2024 (Docket No. 293) and (ii) the Asset Purchase Agreement dated as of December 30, 2024 between Gritstone, as seller, and SPC, as buyer, and filed in the Bankruptcy Case as Exhibit A to the

Notice of Final Asset Purchase Agreement Between the Debtor and Seattle Project Corp. on December 31, 2024 (Docket No. 324) (the “**SPC APA**”).

- c. In my role at Gritstone, I also negotiated and structured the following sales: (i) the sale of the assets that were sold to Hercules Capital, Inc. pursuant to the *Order (I) Approving Asset Purchase Agreement and Authorizing the Sale of Certain of Debtor’s Assets; (II) Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Rights, Encumbrances, and Other Interests Pursuant to Bankruptcy Code Sections 105, 363(b), 363(f) and 363(m); and (III) Granting Related Relief* entered on December 20, 2024 (Docket No. 288) (the “**Hercules Sale**”); and (ii) the sale of the assets that are the subject of the *Order (A) Approving Selection of Successful Bid; and (B) Granting Related Relief* entered on December 20, 2024 (Docket No. 286) (the “**FSI Sale**”), regarding the credit bid of Future Solution Investments LLC, and, specifically, the assets referred to in the SPC APA as “**Binder IP**.” The Binder IP was eventually retained and used by the Gritstone to reorganize when it emerged from chapter 11.

The Licenses in the Context of Gritstone’s Business

6. Gritstone’s business was researching and developing products for use in curing, treating, and preventing illnesses in the areas of oncology (the study of cancers) (the “**Oncology Sector**”) and infectious disease (the “**Infectious Disease Sector**”). Gritstone operated the following principal platforms or programs:

- a. the “EDGE” platform, a system that uses predictive artificial intelligence to predict peptide targets that are found on the surface of diseased cells (including

infected cells and cancer cells) in which the immune system is able to mount a response;

- b. the “GRANITE” program, which focuses on individualized or patient-by-patient cancer vaccines;
- c. the “SLATE” program, which focuses on providing “off-the-shelf” cancer vaccines;
- d. programs involving chimpanzee adenoviruses, and
- e. programs involving self-amplifying messenger ribonucleic acid (“samRNA”).

7. While the EDGE, GRANITE, SLATE, and chimpanzee adenovirus programs and platforms were used by Gritstone primarily in its Oncology Sector, they all have some applicability to, and usefulness in, the Infectious Disease Sector as well.

8. The samRNA technology is essential for both sectors. The technology involves encasing samRNA that will target a particular tumor or infectious disease antigen within a “lipid nanoparticle” or “LNP.” The LNP carries the samRNA.

9. The three Licenses collectively permit a licensee to use technology, know-how, and/or intellectual property owned by Genevant or any of its affiliates or subject to, or covered by, patents controlled by Genevant or any of its affiliates, including such technology, know-how, and/or intellectual property related to LNPs, in conjunction with intellectual property of the licensee (including samRNA), in connection with research, development, manufacture, and production on a commercial scale of products for use in curing, treating, and/or preventing various infectious diseases.

10. The Licenses were used by Gritstone in the Infectious Disease Sector of its business. Gritstone entered into the Licenses in part to obtain access to Genevant's LNP technology and know-how.

11. Each of the Licenses permits, with certain restrictions, (a) sublicensing by the licensee and (b) the use of third-party contractors by the licensee to manufacture products.

12. The 2020 License covers the field of human immunodeficiency virus (HIV).

13. The 2021 License covers the field of SARS-CoV-2 (also known as COVID 19).

14. The 2023 License covers various fields, such fields to be designated and licensed as provided in the 2023 License on a pathogen-by-pathogen basis, but excluding the field of hepatitis B infections in humans.

15. To the extent that the EDGE, GRANITE, SLATE, and chimpanzee adenovirus programs and platforms may be used or useful in connection with the Infectious Disease Sector and the LNP technology licensed by Genevant, SPC bought the entirety of those assets, including all related products, pre-clinical and clinical data, all essential patent families, and all manufacturing know-how.

16. More importantly, SPC purchased all of Gritstone's assets related to samRNA, including all related products, pre-clinical and clinical data, all essential patent families, and all manufacturing know-how, all of which are essential to a licensee's performance under the Licenses.

17. The assets excluded from the sale to SPC (the "**Excluded Assets**") were unrelated to the Licenses or unnecessary for Gritstone's performance under them. In particular:

- a. The Binder IP retained by reorganized Gritstone comprises the patent families described in Schedule 2.2(l) of the SPC APA and is entirely unrelated to the

Licenses, the intellectual property licensed from Genevant under the Licenses, or Gritstone's own intellectual property required to perform under the Licenses.

- b. The equipment sold to Hercules Capital, Inc., in the Hercules Sale, as itemized in the asset purchase agreement associated with the Hercules Sale and attached to the entered order authorizing the Hercules Sale (the "**Hercules Equipment**"), was not unique to Gritstone's performance under the Licenses. Gritstone's performance or use of the patents under the Licenses could be utilized by other equipment or through third parties that own and operate equipment such as the Hercules Equipment.
- c. The Hercules Equipment included a manufacturing facility and related equipment used by Gritstone to create, for new patient trials, personalized cancer vaccines on an individualized, patient-by-patient basis. That equipment and facility were not suited to late-stage, large-scale commercialization of products as contemplated by the Licenses; instead, the Licenses permitted, and the parties contemplated that Gritstone would contract out commercial-scale manufacturing of products covered by the Licenses to third parties. The GRANITE personalized cancer vaccine program required manufacturing at small scale. This is a different approach compared to manufacturing for off-the-shelf product candidates and products where scale can be increased to drive costs down. Also, off-the-shelf product candidates and products do not require "on-demand" manufacturing which can delay treatment.

18. I am generally familiar with the contracts rejected by Gritstone in the Bankruptcy Case (other than contracts that might have been used to administer the company's accounting or

other administrative needs that were not related to clinical research). In that context, none were necessary for performance under, or otherwise related to, the Licenses, the intellectual property licensed from Genevant under the Licenses, or Gritstone's own intellectual property required to perform under the Licenses.

19. I reviewed the following "schedules" regarding assets sold to SPC under the SPC APA: (a) Schedule 2.1(c) of the SPC APA [Assigned Contracts]; (b) Schedule 2.1(e) [Designated Patents], and (c) Schedule 2.1(i) of the SPC APA [Other Transferred Assets]. In particular, the patent families listed in Schedule 2.1(e) each relate to samRNA, chimpanzee adenovirus, EDGE, GRANITE, and SLATE. Plus, the "Assigned Contracts" listed in Schedule 2.1(c) and the "Other Transferred Assets" listed in Schedule 2.1(i) are contracts and assets that Gritstone used in connection with its clinical research while using samRNA, chimpanzee adenovirus, EDGE, GRANITE, and SLATE.

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

Executed on October 8, 2025.

/s/ Matthew Hawryluk
Matthew Hawryluk

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

In re:

GRITSTONE BIO, INC.,

Reorganized Debtor.

Chapter 11

Case No. 24-12305 (KBO)

Hearing Date: October 29, 2025 at 2:00 p.m. (ET)

Objection Deadline: October 22, 2025 at 4:00 p.m. (ET)

**NOTICE OF GRITSTONE BIO, INC.'S MOTION
TO ASSUME AND ASSIGN THE GENEVANT LICENSES**

PLEASE TAKE NOTICE THAT on October 8, 2025, Gritstone bio, Inc. (the “Reorganized Debtor”) filed *Gritstone bio, Inc.’s Motion to Assume and Assign the Genevant Licenses* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Third Floor, Wilmington, Delaware 19801 (the “Bankruptcy Court”). A copy of the Motion is attached hereto.

PLEASE TAKE FURTHER NOTICE that any response or objection to the entry of an order with respect to the relief sought in the Motion must be filed with the Bankruptcy Court on or before **October 22, 2025 at 4:00 p.m. prevailing Eastern time.**

PLEASE TAKE FURTHER NOTICE that at the same time, you must also serve a copy of the response or objection upon: (a) counsel for the Reorganized Debtor, (i) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Courier 19801), Attn: James E. O’Neill (joneill@pszjlaw.com); and (ii) Pachulski Stang Ziehl & Jones LLP, One Sansome Street, Suite 3430, San Francisco, CA 94104, Attn: John W. Lucas (jlucas@pszjlaw.com); (b) Office of the U.S. Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Timothy J. Fox, Jr., Esq.

(timothy.fox@usdoj.gov); and (c) any party that requests service pursuant to Bankruptcy Rule 2002.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF DEMANDED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

PLEASE TAKE FURTHER NOTICE THAT, IF OBJECTIONS ARE RECEIVED, A HEARING TO CONSIDER THE RELIEF SOUGHT IN THE MOTION WILL BE HELD ON OCTOBER 29, 2025, AT 2:00 P.M. (ET) BEFORE THE HONORABLE KAREN B. OWENS, UNITED STATES BANKRUPTCY COURT JUDGE, AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 6TH FLOOR, COURTROOM NO. 3, WILMINGTON, DELAWARE 19801.

Dated: October 8, 2025

PACHULSKI STANG ZIEHL & JONES LLP

/s/ James E. O'Neill

Debra I. Grassgreen, (admitted *pro hac vice*)

John W. Lucas, (admitted *pro hac vice*)

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Counsel to the Reorganized Debtor

EXHIBIT A

Proposed Order

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

| | | |
|----------------------|---|-------------------------|
| In re: |) | Chapter 11 |
| |) | |
| GRITSTONE BIO, INC., |) | Case No. 24-12305 (KBO) |
| |) | |
| Reorganized Debtor. |) | Ref. Docket No. _____ |
| |) | |
| _____ |) | |

**ORDER GRANTING GRITSTONE BIO, INC.’S
MOTION TO ASSUME AND ASSIGN GENEVANT LICENSES**

Upon consideration of *Motion to Assume and Assign the Genevant Licenses* (the “Motion”);¹ the Court having reviewed the Motion and the related Declaration of Matthew Hawryluk; and having considered the relief requested in the Motion and the record in the above-captioned cases; and having determined that the relief requested in the Motion (i) is fair, reasonable, appropriate, and in the best interests of Debtor’s estate, (ii) represents a sound exercise of the Debtor’s business judgment, and (iii) is in the best interests of the Debtor, its estate, and creditors; and it appearing that this Court has jurisdiction over the matter 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 it appearing that this is a core proceeding pursuant to 28 U.S.C. §§ 157(b); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and the Court having determined that notice of the Motion was sufficient under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion and at the hearing thereon establish just cause for the relief granted herein, it is **HEREBY ORDERED THAT:**

1. The Motion is granted.

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

2. The Genevant Licenses shall be assumed by the Debtor and assigned to Seattle Project Corp. (“**SPC**”), pursuant to sections 365(a) and (b) of the Bankruptcy Code effective as of the date of entry of this Order on the terms set forth herein.

3. SPC is hereby directed to pay the cure payable to Genevant in the amount of \$.

4. The Debtor, SPC, and Genevant are hereby authorized to take such additional actions or execute such additional documents as are necessary or appropriate to implement the terms of this Order.

5. Notwithstanding the possible applicability of Rules 6004(h), 6006(d), or 9014 of the Bankruptcy Rules, any other Bankruptcy Rule, this Order shall be immediately effective and enforceable upon its entry and there shall be no stay of effectiveness or execution of this Order.

6. The Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation, interpretation, or enforcement of this Order.