

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

)	Chapter 11
In re:)	
)	Case No. 24-10137 (MFW)
INVIVO THERAPEUTICS)	
CORPORATION, et. al.,)	(Jointly Administered)
)	
Debtors.)	Hearing Date: July 9, 2024 at 10:30 AM
)	Objection Date: June 28, 2024
)	Docket Nos. 18, 113 & 223

**ORACLE’S SUPPLEMENTAL RIGHTS RESERVATION REGARDING DEBTORS’
SALE MOTION AND RELATED NOTICE OF DEBTORS’ INTENT TO ASSUME AND
ASSIGN CERTAIN UNEXPIRED LEASES AND EXECUTORY CONTRACTS AND
FIXING OF CURE AMOUNTS (“SUPPLEMENTAL RIGHTS RESERVATION”)**

Oracle America, Inc., successor in interest to NetSuite, Inc. (“Oracle”), a creditor and contract counterparty in the above-captioned jointly administered Chapter 11 cases, submits this Supplemental Rights Reservation regarding the *Notice of Rescheduled Sale Hearing, Asset Purchase Agreement, and Proposed Sale Order* [Dkt. No. 223], (“Sale Notice”) filed in connection with the *Motion of Debtors For Entry Of Orders: (A)(I) Approving Bid Procedures Relating To The Sale of Substantially All Of The Debtors’ Assets, (II) Approving Stalking Horse Bid Protections, (III) Scheduling A Hearing To Consider The Sale, (IV) Approving The Form And Manner Of Notice Of Sale By Auction, (V) Establishing Notice And Procedures For The Assumption And Assignment Of Contracts And Leases, and (VI) Granting Related Relief; and (B)(I) Approving Asset Purchase Agreement And Authorizing The Sale Of Certain Assets Of The Debtors Outside The Ordinary Course Of Business; (II) Authorizing The Sale Of Assets Free And Clear Of All Liens, Claims, Encumbrances And Interests, (III) Authorizing The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases, and (IV) Granting Related Relief* [Dkt. No. 18] (“Sale Motion”) filed by InVivo Therapeutics Corporation, *et al.* (“Debtors”).



This Supplemental Rights Reservation follows previously timely filed Oracle's *Limited Objection to and Reservation of Rights Regarding Debtors' Sale Motion and Related Notice of Debtors' Intent to Assume and Assign Certain Unexpired Leases and Executory Contracts* ("Assumption Notice") ("Rights Reservation") [Dkt. No. 130], filed on March 29, 2024. By this reference, Oracle hereby incorporates its Rights Reservation as though set forth here in full.

A. SUPPLEMENTAL RIGHTS RESERVATION

1. Oracle filed its Rights Reservation to preserve its rights with respect to the Debtors' potential assumption and assignment of any agreement between the Debtors and Oracle (the "Oracle Agreement").

2. Oracle's Rights Reservation, which remains unresolved, raised several issues. Key among them was the lack of specificity regarding the Oracle Agreement the Debtors wished to assume and assign, which rendered Oracle unable to verify the accuracy of the Debtors' proposed cure amount.

3. In addition, at the time the Rights Reservation was filed, no purchaser(s) was identified and no asset purchase agreement was available for review. Therefore, Oracle was unable to determine whether the Debtors and the ultimate purchaser(s) would enter into a transition services agreement, if the ultimate purchaser would be an acceptable Oracle customer, and/or whether the requirements of Bankruptcy Code § 365 will be met.

4. On June 14, 2024, the Debtors filed the Sale Notice, indicating that Debtors received interest from Global Medical, Inc. ("Global"), a potential buyer for certain assets of the Debtors. Attached as Exhibit "A" to the Sale Notice is an Asset Purchase Agreement between Global and the Debtors ("APA").

5. Section 2.5 of the APA states:

Assumed Executory Contracts.

(a) On March 15, 2024, Seller filed that certain *Notice of Debtors' Intent to Assume and Assign Certain Unexpired Leases and Executory Contracts and Fixing of Cure Amounts* (the "Assumption Notice") with the Court. Pursuant to such Assumption Notice, the counterparty to each Assumed Executory Contract was provided with notice of (i) the fact that Seller may seek to assign such Assumed Executory Contract in connection with the Chapter 11 Case and (ii) the proposed Cure Costs for such Assumed Executory Contract. **Seller hereby confirms that no counterparty to an Assumed Executory Contract filed an objection to such Assumption Notice prior to the March 29, 2024 deadline set forth in such Assumption Notice. As a result of the foregoing, and to the maximum extent permitted by the Bankruptcy Code, each Assumed Executory Contract shall be assumed and assigned to Purchaser pursuant to section 365 of the Bankruptcy Code as of the Closing Date. [emphasis supplied].**

(b) Seller shall not file any motion to reject any Assumed Executory Contract.

6. The emphasized, last two sentences of subsection (a) quoted above are incorrect with respect to Oracle.

7. Oracle timely filed its Rights Reservation, including its objection to the Assumption Notice, and as a result of the misrepresentation noted here, Oracle files this Supplemental Rights Reservation to continue to preserve its rights to be heard, and to correct the record.

8. Furthermore, and as discussed in detail in the Rights Reservation, Oracle does not consent to the assumption and assignment of the Oracle Agreement.

B. CONCLUSION

9. For the foregoing reasons, and as set forth in Oracle's Rights Reservation, Oracle respectfully requests that the Sale Motion be denied solely to the extent the Debtors seek

authorization to assume and assign, or transfer or share use of, any Oracle agreement in the absence of Oracle's advance written consent.

Dated: June 28, 2024
Wilmington, Delaware

MARGOLIS EDELSTEIN

By: /s/ James E. Huggett
James E. Huggett, Esq. (#3956)
300 Delaware Avenue, Suite 800
Wilmington, Delaware 19801
Telephone: (302) 888-1112
E-mail: jhuggett@margolisedelstein.com
Amish R. Doshi, Esq.
DOSHI LEGAL GROUP, P.C.
1979 Marcus Avenue, Suite 210E
Lake Success, NY 11042
Tel: (516) 622-2335
E-Mail: amish@doshilegal.com

Shawn M. Christianson, Esq.
Arlen Moradi, Esq.
**BUCHALTER, A PROFESSIONAL
CORPORATION**
425 Market Street, Suite 2900
San Francisco, California 94105-2491
Tel: (415) 227-0900

Peggy Bruggman, Esq.
Alice Miller, Esq.
ORACLE AMERICA, INC.
500 Oracle Parkway
Redwood City, California 94065

Attorneys for Oracle America, Inc.

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CERTIFICATE OF SERVICE

I, James E. Huggett, hereby certify that on June 28, 2024, I served a copy of *Oracle's Supplemental Rights Reservation Regarding Debtors' Sale Motion And Related Notice Of Debtors' Intent To Assume And Assign Certain Unexpired Leases And Executory Contracts And Fixing Of Cure Amounts ("Supplemental Rights Reservation")* on the parties listed on the attached Service List via electronic mail, where available.

/s/ James E. Huggett
James E. Huggett (#3956)

SERVICE LIST

BY CM/ECF

<p>Matthew B. McGuire, Esq. Joshua B. Brooks, Esq. LANDIS RATH & COBB, LLP 919 Market Street, Suite 1800 Wilmington, DE 19801</p>	<p>Joseph Cudia, Esq. OFFICE OF US TRUSTEE 844 King Street, Suite 2207 Wilmington, DE 19801</p>
<p>George Shuster, Esq. Benjamin Loveland, Esq. WILMER CUTLER PICKERING HALE & DORR LLP 7 World Trade Center 250 Greenwich Street New York, New York 10007</p>	