IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
SANGAMO THERAPEUTICS, INC.,[1]	Case No. 26-10989 (CTG)
Debtor.	**Related Docket Nos. 13, 122, 139**

OBJECTION OF GENENTECH, INC., F. HOFFMANN-LA ROCHE LTD, AND HOFFMANN-LA ROCHE INC. TO DEBTOR'S MOTION FOR AN ORDER (I) APPROVING THE SALE OF CERTAIN INTELLECTUAL PROPERTY ASSETS FREE AND CLEAR OF ALL INTERESTS PURSUANT TO 11 U.S.C. §§ 363(b) AND 363(f) AND (II) AUTHORIZING REJECTION OF EXECUTORY CONTRACTS PURSUANT TO 11 U.S.C. § 365(a)

Genentech, Inc. ("Genentech"), F. Hoffmann-La Roche Ltd, and Hoffmann-La Roche Inc. (collectively, "Roche," and together with Genentech, the "Objectors") respectfully submit this objection to the Debtor's motion (the "Sale Motion")[2] to approve the sale of certain IP assets (the "Subject IP Assets") to Eli Lilly and Company ("Lilly") free and clear of all interests pursuant to section 363 of title 11 of the United States Code (the "Bankruptcy Code") to the extent such sale would abrogate Objectors' rights under the Genentech License Agreement and Roche License

[1] The last four digits of the Debtor's federal tax identification number are 9556. The Debtor's principal office is located at 501 Canal Blvd., Suite A100, Richmond, California 94804.

[2] *See Motion of Debtor for (I) an Order (A) Approving Bidding Procedures for the Sale of Substantially All of the Debtor's Assets, (B) Approving the Debtor's Entry into the Stalking Horse APAs and Granting Bid Protections, (C) Authorizing the Debtor to Designate Additional Stalking Horse Bidders and to Provide Bid Protections with Respect to the Debtor's Remaining Assets, (D) Approving Assumption and Assignment and Rejection Procedures, (E) Scheduling an Auction and Sale Hearing, and Approving Forms and Manner of Notice Thereof; (II) an Order (A) Approving the Sale of the Debtor's Assets Free and Clear of All Claims, Liens, and Encumbrances, and (B) Approving the Assumption and Assignment and/or Rejection of Certain Executory Contracts and Unexpired Leases, and (C) Granting Certain Related Relief* [D.I. 13].

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Agreement (each as defined herein and, together, the "License Agreements").[3] In support thereof, Objectors respectfully state as follows:

PRELIMINARY STATEMENT

1. The Debtor [redacted]. Similarly, the Debtor [redacted].

2. Both License Agreements contain express provisions confirming that the licenses granted thereunder are licenses of "intellectual property" within the meaning of the Bankruptcy Code, entitling the licensees to the protections of section 365(n) thereof. Those provisions were not boilerplate; they were bargained-for terms, reflecting the parties' mutual understanding that the intellectual property license rights at issue were precisely the type of interests Congress enacted section 365(n) to protect.

3. Now in bankruptcy, the Debtor proposes to sell its IP assets to Lilly free and clear of Objectors' license rights and to reject both License Agreements. The APA (defined herein) with Lilly goes further still, conditioning closing on a "Non-Compete Finding" by the Court that the exclusivity provisions in the Genentech License Agreement are not binding on Lilly. In substance, the Debtor and Lilly ask this Court to strip Genentech and Roche of the very rights that they bargained and paid for and that the Bankruptcy Code was specifically amended to protect.

4. The Bankruptcy Code does not permit this result. The Debtor's ownership of the Sangamo Technology was never unqualified. From the moment the License Agreements were executed, the Debtor's rights were burdened by and subject to the license rights it granted to Genentech and Roche. The estate cannot sell what the Debtor does not have.

[3] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the License Agreements or the Sale Motion, as applicable.

5. Nor can the Debtor use Bankruptcy Code section 363(f) to sell the Subject IP Assets free-and-clear of Objectors' rights because none of the five statutory prerequisites are met. Objectors' license rights are specifically enforceable property interests that are unique and irreplaceable. Money cannot adequately substitute for the loss of specific development and commercialization rights under worldwide licenses. Nor can rejection accomplish what section 363(f) cannot: Bankruptcy Code section 365(n) was enacted to protect licensees against the loss of intellectual property rights they bargained and paid for in the event of a licensor's bankruptcy, which are precisely the circumstances presented here.

6. Objectors have been engaged in active, good-faith discussions with Lilly regarding potential amendments to the License Agreements that could address the parties' respective interests in connection with the proposed sale. Those discussions are ongoing, and Objectors remain willing to continue working toward a consensual resolution. However, because those negotiations have not yet concluded and the objection deadline has arrived, Objectors file this Objection to preserve their rights in the event a consensual resolution is not reached. In the absence of such a resolution, the Subject IP Assets cannot be sold to Lilly free and clear of Objectors' rights. Any sale order must expressly recognize that Lilly takes the intellectual property subject to Objectors' surviving license interests.

BACKGROUND

7. Genentech is an affiliate of Roche and member of the Roche Group, a Swiss multinational healthcare organization that is one of the world's foremost biotechnology companies.

8. Genentech and Roche are each parties to the License Agreements with the Debtor. Under its License Agreement, Genentech [redacted]. Under its License Agreement, Roche

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I. The Genentech License Agreement

9. Pursuant to that certain License Agreement, dated [redacted] (the "Genentech License Agreement"), the Debtor [redacted].

10. Under the Genentech License Agreement,

11. [redacted].

II. The Roche License Agreement

12. Pursuant to that certain License Agreement, dated July 2, 2008 (the "Roche License Agreement"), the Debtor [redacted].

13. Under the Roche agreement, [redacted].

14. [redacted].

III. The Debtor's Proposed IP Sale to Lilly

15. Pursuant to the Sale Motion, the Debtor proposes to sell certain of its assets, including the Subject IP Assets, to Lilly as stalking horse purchaser. The sale purports to be free and clear of all interests, including the Objectors' rights under the License Agreements. *See* Merope Stalking Horse Asset Purchase Agreement (the APA), dated June 22, 2026 [D.I. 13-2], § 2.1. The APA conditions closing on the inclusion by the Court in the order approving the sale of a ruling that the exclusivity provisions in Article 6 of the Genentech License are not binding on Lilly with respect to activities outside the scope of Genentech's license (referred to in the APA as the "Non-Compete Finding"). *Id.*, § 6.1.

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[4] [redacted].

[5] [redacted].

16. The Debtor has designated both License Agreements for rejection in connection with the proposed sale to Lilly. *See Notice of Cure Amounts and Potential Assumption and Assignment and/or Rejection of Executory Contracts and Unexpired Leases in Connection with Sale of Substantially All Assets* [D.I. 139-2] (the "Rejection Notice"), at 2.

ARGUMENT

17. The License Agreements grant Objectors valid and enforceable interests in the Subject IP Assets, which cannot be sold free and clear of Objectors' license rights. Though Objectors understand the Debtor intends to reject the License Agreements, Bankruptcy Code section 365(n) protects Objectors' rights in the Subject IP Assets notwithstanding rejection, including the right to enforce the exclusivity provisions of the License Agreements. To the extent section 365(n) is held not to apply, Objectors' rights are still preserved because rejection does not terminate the License Agreements but merely constitutes a material breach thereof. In either case, the Court should decline to enter the proposed sale order to the extent it would abrogate Objectors' license rights to the Subject IP Assets.

I. Sangamo Cannot Sell the IP Free and Clear of Objectors' License Rights

18. Bankruptcy Code section 363(f) provides that debtors may sell property "free and clear of any interest in such property . . . only if" one of the five following conditions are met:

> (1) applicable non-bankruptcy law permits sale of such property free and clear of such interest;
>
> (2) such entity consents;
>
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> (4) such interest is in bona fide dispute; or
>
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). The Debtors have not satisfied any of the conditions of section 363(f) to sell the Subject IP Assets free and clear of Objectors' license rights.

A. Applicable Law Does Not Permit the Sale of the Subject IP Assets Free and Clear of Objectors' License Rights

19. The Debtor has not pointed to any applicable non-bankruptcy law that would permit the sale of the Subject IP Assets free and clear of Objectors' rights, and Objectors are unaware of any such law. *See* 11 U.S.C. § 363(f)(1).

20. To the contrary, [redacted] prohibit the sale of licensed property free and clear of license rights (including any exclusivity rights) without the applicable licensee's consent. *See Tower IPCO Co. Ltd. v. EcoInteriors Corp.*, 2021 WL 1207813, at *3–4 (Del. Super. Ct. Mar. 29, 2021) (licensor precluded from selling the product that it had exclusively licensed to the licensee, within the licensee's exclusive territory, without the licensee's consent); *Massie v. Asbestos Brake Co.*, 126 A. 669, 670-71 (N.J. 1923) (finding that a licensor who covenanted to protect an exclusive right granted to a licensee—and allowed others to exercise the exclusively licensed right—breached the underlying covenant); *Silsby v. Trotter*, 29 N.J. Eq. 228, 228 (N.J. Ch. 1878) (where, even by implication, the parties mutually agreed to make a license exclusive, the parties to the license may prevent the other from acting inconsistently therewith); *see generally* Del. Code Ann. tit. 6, §§ 9-317, 9-321; N.J. Stat. Ann. §§ 12A: 9-317, 9-408; [redacted].

21. Because no provision of applicable non-bankruptcy law would permit the sale of the Subject IP Assets free and clear of Objectors' rights under the License Agreements, the Debtor cannot meet the requirements of Bankruptcy Code section 363(f)(1).

B. Objectors Do Not Consent to the Sale of the Subject IP Assets Free and Clear of Their Rights

22. As demonstrated by this Objection, neither Genentech nor Roche consents to a sale of the Subject IP Assets free and clear of their license rights. Accordingly, Bankruptcy Code section 363(f)(2) has not been met.

C. Objectors' Interests in the Subject IP Assets Are Not Liens

23. Objectors' rights under the License Agreements are not liens, and the Debtor has not contended otherwise. Bankruptcy Code section 363(f)(3) is therefore inapplicable by its own terms. *See* 11 U.S.C. § 363(f)(3) (requiring that "the price at which such property is to be sold is greater than the aggregate value of all liens on such property").

D. Objectors' Rights Are Not Subject to a Bona Fide Dispute

24. Objectors' rights under the License Agreements are not subject to bona fide dispute. *See* 11 U.S.C. § 363(f)(4). A "bona fide dispute exists 'if there is a genuine issue of a material fact that bears upon the debtor's liability, or a meritorious contention as to the application of law to undisputed facts . . . .'" *In re Scimeca Found., Inc.*, 497 B.R. 753, 773 (Bankr. E.D. Pa. 2013) (*quoting B.D.W. Assocs., Inc. v. Busy Beaver Bldg. Centers, Inc.*, 865 F.2d 65, 66–67 (3d Cir.1989) (interpreting the phrase "bona fide dispute" as used in section 303(h)(1))).

25. The Debtor has acknowledged the existence of both License Agreements (*see* Rejection Notice, at 2), and both agreements were entered into at arm's length for substantial consideration. There is no basis upon which the Debtor or Lilly can contend that a bona fide dispute exists regarding these interests. To the extent that the Debtor contends that the Non-Compete Finding sought in the proposed form of sale order constitutes a bona fide dispute as to the validity and scope of Objectors' interests in the Subject IP Assets, then for the reasons set forth below, such dispute lacks merit. *See* ¶¶ 36-40, *infra*.

E. Objectors Could Not Be Compelled to Accept Money Damages in Satisfaction of Their License Interests

26. The Debtor cannot sell the Subject IP Assets pursuant to Bankruptcy Code section 363(f)(5) because Objectors could not be compelled to accept money in satisfaction of their license rights. Money is an inadequate remedy for the evisceration of Objectors' interests granted by the Debtor under the License Agreements, which License Agreements are specifically enforceable under applicable non-bankruptcy law. *See, e.g.*, *Mantell v. Int'l Plastic Harmonica Corp.*, 49 A.2d 290, 296 (N.J. Ch. 1946), *decree modified*, 141 N.J. Eq. 379, 55 A.2d 250 (1947) (granting partial injunction for patent infringement and further concluding that, based on the terms of the underlying arrangement, the "subject matter . . . and the nature of is terms are such as to render it impossible to arrive at a legal measure of damages with any degree of certainty, and accordingly any remedy at law is legally inadequate."). The License Agreements [redacted]. Indeed, the inherent uncertainty in calculating damages renders such a remedy inadequate—money cannot adequately substitute for [redacted].

* * *

27. Because none of the five conditions of Bankruptcy Code section 363(f) is met, the proposed sale cannot proceed free and clear of Objectors' rights in the Subject IP Assets.

II. The License Agreements Are IP Licenses Protected by Section 365(n), and Rejection Cannot Circumvent Those Protections

28. The License Agreements are licenses of intellectual property protected by Bankruptcy Code section 365(n). Accordingly, though the Debtor may reject the License Agreements, Objectors will nonetheless retain all rights to the Subject IP Assets previously granted to them by the Debtor.

A. Section 365(n) Protects Licensees of Intellectual Property

29. Section 365(n) of the Bankruptcy Code provides that, when a trustee rejects an executory contract "under which the debtor is a licensor of a right to intellectual property," the licensee may elect to retain its rights under the contract, "as such rights existed immediately before the case commenced." 11 U.S.C. § 365(n)(1)(B). The term "intellectual property" is defined to include, among other things, trade secrets, inventions, processes, patents, and patent applications. 11 U.S.C. § 101(35A).

30. Congress enacted Bankruptcy Code section 365(n) in 1988 in direct response to the Fourth Circuit's decision in *Lubrizol Enterprises, Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043 (4th Cir. 1985), which had permitted a debtor-licensor to use rejection to strip a technology licensee of its rights. The legislative history makes clear that section 365(n) was enacted to ensure that "the rights of an intellectual property licensee to use the licensed property cannot be unilaterally cut off as a result of the rejection of the license pursuant to Section 365 [of the Bankruptcy Code]." *See* S. Rep. No. 100-505, at 5 (1988).

31. A licensee that elects to retain its rights under section 365(n) does not retain merely a bare right to use the licensed technology but rather is entitled to continue exercising all "its rights . . . under such contract." *See Mission Product Holdings, Inc. v. Tempnology, LLC*, 587 U.S. 370, 384–85 (2019) (discussing the history of section 365(n)); *Sunbeam Products, Inc. v. Chicago Am. Mfg., LLC*, 686 F.3d 372, 377–78 (7th Cir. 2012) (rejection does not strip the counterparty of rights under the contract). That is because a debtor-licensor that accepted the benefits of the license (which may include substantial upfront payments, milestones, and royalties) cannot use rejection to claw back the rights it granted in exchange for that consideration. *See In re Exide Technologies*, 607 F.3d 957, 967–68 (3d Cir. 2010) (Ambro, J., concurring) (permitting a debtor to use rejection

to "take back . . . rights it bargained away . . . makes bankruptcy more a sword than a shield, putting debtor-licensors in a catbird seat they often do not deserve").

B. The License Agreements Are Subject to Section 365(n)

32. The License Agreements are licenses of rights to "intellectual property" within the meaning of Bankruptcy Code sections 365(n) and 101(35A) and are therefore subject to section 365(n)'s protections.

33. Both License Agreements contain express provisions confirming that the licenses granted thereunder constitute licenses of "intellectual property" for purposes of the Bankruptcy Code [redacted]. These provisions were bargained-for terms that reflect the parties' mutual understanding at the time the agreements were executed. The Debtor should not be permitted to disavow its own contractual admissions to the detriment of the counterparties who relied on them.

34. The Genentech License Agreement [redacted]. The Roche License Agreement similarly [redacted]. The subject matter of each License Agreement clearly falls within the statutory definition of "intellectual property."

35. To the extent the License Agreements are rejected, Objectors are filing concurrently herewith, a notice of election to exercise all rights under Bankruptcy Code section 365(n) in accordance with the procedures set forth in the *Order (A) Approving Bidding Procedures for the Sale of the Debtor's Assets, (B) Approving the Debtor's Entry into the Stalking Horse APAs and Granting Bid Protections, (C) Authorizing the Debtor to Designate Additional Stalking Horse Bidders and Granting Bid Protections, (D) Approving Assumption and Rejection Procedures, (E) Scheduling an Auction and Sale Hearing and Approving Forms and Manner of Notice Thereof, and (F) Granting Certain Related Relief* (the "Bidding Procedures Order") [D.I. 122].

C. The "Non-Compete Finding" Contravenes Section 365(n)

36. The "Non-Compete Finding" sought by Lilly as a condition of closing contravenes Bankruptcy Code section 365(n) and the Court should decline to include it in any order approving the sale of the Subject IP Assets. The Debtor and Lilly cannot through rejection of the Genentech License Agreement abrogate the exclusivity provisions thereof, including without limitation [redacted].

37. As explained above, section 365(n) preserves a non-debtor licensee's rights under an intellectual property license, notwithstanding the rejection of the license agreement by the debtor. The statute expressly includes the right to enforce exclusivity provisions among those rights that survive rejection. *See* 11 U.S.C. § 365(n)(1)(B) (licensee may elect to "retain its rights [] including a right to enforce any exclusivity provision" under the rejected license). When the contract grants an exclusive license and includes exclusivity covenants that protect the scope and value of that exclusivity, those covenants are among the licensee's "rights under such contract." *See id.*; *Tempnology*, 587 U.S. at 384–85; *Sunbeam*, 686 F.3d at 377–78.

38. Despite the plain text of the statute, the Debtor and Lilly nonetheless seek a "Non-Compete Finding" in the proposed sale order that [redacted]. But the statute draws no distinction between the grant of [redacted]. Both are rights of the licensee under the license, and both are protected by Bankruptcy Code section 365(n). To hold otherwise would create an artificial differentiation between the license grant and the covenants that give the grant meaning. An "exclusive" license stripped of the exclusivity protections that prevent the licensor (or its successors) from competing is exclusive in name only.

39. The [redacted] are exactly the type of provisions Bankruptcy Code section 365(n) is designed to protect. Congress enacted section 365(n) to prevent licensors from using bankruptcy to strip licensees of the rights for which they bargained and paid. *See* S. Rep. No. 100-505, at 1–5 (1988). [redacted]. Stripping them would undermine the core of

Section 365(n). *See In re Exide Technologies*, 607 F.3d at 967–68 (Ambro, J., concurring). The instant proposed transaction is structured to prohibitively strip Genentech of the rights protected by Section 365(n).

40. If and when there is a concrete dispute that arises between Lilly and Genentech as to [redacted] undertaken by Lilly are within the scope of [redacted]. In the absence of any live case or controversy, however, it is inappropriate—and contrary to the letter and spirit of Bankruptcy Code section 365(n)—to prejudge [redacted] applicability to a broad swath of ill-defined activities. *See Plains All Am. Pipeline L.P. v. Cook*, 866 F.3d 534, 539 (3d Cir. 2017) (quoting *Toll Bros., Inc. v. Twp. of Readington*, 555 F.3d 131, 137 (3d Cir. 2009) (Third Circuit enforces standing "through the several justiciability doctrines that cluster about Article III," including "standing, ripeness, mootness, the political-question doctrine, and the prohibition on advisory opinions." (internal quotation marks omitted))).

III. Even If Section 365(n) Were Found Inapplicable, Rejection Would Not Permit the Debtor to Revoke Objectors' License Rights

41. To the extent the Court were to find that the License Agreements (contrary to the intention of the parties thereto and the explicit provisions thereof) were not licenses of "intellectual property" subject to the protections of Bankruptcy Code section 365(n), rejection of the License Agreements still would be ineffective to strip Objectors of their rights thereunder. That is because rejection of a contract "breaches . . . but does not rescind it." *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 587 U.S. at 372 (2019). That "means all the rights that would ordinarily survive a contract breach . . . remain in place." *Id.* Rejection does not permit a debtor to "take back . . . rights it bargained away. This makes bankruptcy more a sword than a shield, putting [debtors] in a catbird seat they often do not deserve." *In re Exide Tech.*, 607 F.3d at 967–968 (3d Cir. 2010) (Ambro, J., concurring).

42. Courts have held that, as applied to intellectual property licenses, a breaching debtor-licensor cannot use rejection to claw back license rights already granted to the non-debtor party. *Tempnology*, 587 U.S. at 382 (holding that permitting a debtor-licensor to utilize bankruptcy in order to avoid—as opposed to reject—a contract "would subvert everything the Code does to keep avoidances cabined—so they do not threaten the rule that the estate can take only what the debtor possessed before filing."). Further, both [redacted] provide that a material breach does not divest the non-breaching party of rights granted to it under the contract. *See Genencor Int'l, Inc. v. Novo Nordisk A/S*, 766 A.2d 8, 11 (Del. 2000) ("It is a basic principle of contract law that remedy for a breach should seek to give the nonbreaching the party the benefit of its bargain by putting that party in the position it would have been but for the breach."); *Young Travelers Day Camps, Inc. v. Felsen*, 118 N.J. Super. 304, 306 (1972) (holding that a non-breaching party may elect to treat a materially breached contract "as terminated and refuse to render continued performance.") (internal citation omitted).

43. Here, the Debtor granted Genentech and Roche their respective license rights, which rights vested fully upon execution of the License Agreements. *See* [redacted]. The Debtor's rejection of the License Agreements would not render the Agreements void or rescind the rights granted to Objectors thereunder. Instead, it would merely constitute a breach of the License Agreements by the Debtor, after which Objectors as the non-breaching parties would continue to hold enforceable license rights thereunder. *See* Jay Westbrook, *A Functional Analysis of Executory Contracts*, 74 MINN. L. REV. 227, 308 (1989) ("[C]ontract doctrine would not permit the breacher *to benefit from its own breach* by revoking the license.") (emphasis in original).

RESERVATION OF RIGHTS

44. Objectors are making an election under Bankruptcy Code section 365(n) in accordance with the procedures set forth in the Bidding Procedures Order [D.I. 122]. Objectors further reserve all rights in connection with any such election, including but not limited to the right to [redacted] pending resolution of this Objection. Further, Objectors reserve all rights with respect to any proposed form of sale order, and object to any order to the extent inconsistent with Objectors' rights under the License Agreements, the Bankruptcy Code, and applicable non-bankruptcy law or equity.

CONCLUSION

45. For the reasons set forth herein, Objectors respectfully request that the Court enter an order (i) denying the approval of the Sale Motion, and (ii) granting such other and further relief as this Court deems appropriate.

Dated: August 4, 2026
Wilmington, Delaware

/s/ *Stephanie Slater Ward*

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[6] [redacted].