IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

LIMITED OBJECTION OF ASTELLAS GENE THERAPIES, INC. TO DEBTOR'S PROPOSED SALE OF CERTAIN OF ITS ASSETS TO THE MEROPE STALKING HORSE BIDDER FREE AND CLEAR OF ALL ENCUMBRANCES

Astellas Gene Therapies, Inc. ("Astellas") submits this Limited Objection to the *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] ("Sale Motion"), pursuant to sections 105, 363, 364, 365, 503, and 507 of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq*. ("Bankruptcy Code"), Rules 1005, 2002, 6004, 6006, and 9007 and 9008 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules"), and Rules 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District

[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 Boulevard, Suite A100, Richmond, CA 94084.

of Delaware, which seeks entry of an order authorizing the sale of certain of the Debtor's assets ("Merope Assets") free and clear of all liens, claims and encumbrances ("Sale Order"). Astellas objects to the proposed sale of certain of the Merope Assets to the extent the Sale Order provides for the sale of such assets free and clear of the rights and interests held by Astellas in the Licensed Technology[2] pursuant to the License Agreement between Astellas and Sangamo Therapeutics, Inc. ("Debtor"), dated as of December 18, 2024 (as amended, the "License Agreement").[3]

PRELIMINARY STATEMENT

1. The Merope Assets include certain patents and other intellectual property (the "IP Assets") that cannot be sold free and clear of Astellas' intellectual property rights and interests without its consent. The IP Assets are subject to the exclusive license rights granted by the Debtor to Astellas under the License Agreement, which constitute licenses of "intellectual property" under section 365(n) of the Bankruptcy Code. *See* License Agreement §§ 3.1.2; 3.4. Under sections 365(n) and 363(e), the sale of the IP Assets is prohibited unless (a) Astellas consents, and (b) this Court, pursuant to section 363(e) of the Bankruptcy Code, conditions any sale of the Licensed Technology on the adequate protection of Astellas' license rights, including the rights afforded to Astellas under section 365(n) of the Bankruptcy Code. Astellas does not consent to the Debtor's sale of the IP Assets absent the protections that Astellas is entitled to under sections 363(e) and 365(n) of the Bankruptcy Code.

2. Astellas and the Merope Stalking Horse Bidder continue to discuss potential mutually satisfactory terms upon which the License Agreement may be amended and restated in connection

[2] Capitalized terms used, but not defined, herein shall have the meanings given to them in the License Agreement (defined below) and the Sale Motion.

[3] A copy of the License Agreement is attached as **Exhibit A** to the Declaration of Abigail V. O'Brient ("O'Brient Decl."), which has been filed under seal to protect the highly confidential and proprietary information therein.

with the assumption and assignment of the License Agreement to the Merope Stalking Horse Bidder, as contemplated by the Merope Stalking Horse APA and the Bidding Procedures Order. Although Astellas remains hopeful that an agreement will be reached with the Merope Stalking Horse Bidder on mutually satisfactory terms, Astellas is uncertain whether such an agreement will be reached prior to the Sale Hearing. Therefore, in light of the objection deadline, Astellas files this Limited Objection to preserve its rights and out of an abundance of caution.

BACKGROUND

3. On December 18, 2024, the Debtor and Astellas entered into the License Agreement. Under the License Agreement, the Debtor granted Astellas "an exclusive license . . . [redacted]" pursuant to the terms of the License Agreement. License Agreement § 3.1.2. The License Agreement specifically states that the license granted to Astellas therein does "[redacted]." *Id.* Licensed Technology includes "[redacted]." License Agreement § 1.112.

4. The License Agreement further provides that the Debtor "[redacted]" License Agreement § 3.4.1. It defines "[redacted]" to mean "[redacted]." *Id.* § 3.4.1 (emphasis added).

5. On June 23, 2026, the Debtor filed a voluntary case under Chapter 11 of the Bankruptcy Code. On the same day, the Debtor filed the Sale Motion seeking to sell the Merope Assets to the Merope Stalking Horse Bidder following a bidding and auction process. The Debtor

seeks (a) authorization to sell the Merope Assets "free and clear of all liens, of all Claims and Interest, including [Astellas'] rights provided by section 365(n) of the Bankruptcy Code" and (b) a finding (the "Noncompete Finding") that Section 3.4 of the License Agreement (and potentially other provisions of the License Agreement)[4] "is not binding on the [Merope Stalking Horse Bidder] or any of its Affiliates." Sale Motion 47–52; Merope Proposed Sale Order ¶ 24; *id*. ¶ CC.

6. In support of the Noncompete Finding, the Debtor asserts that the exclusivity covenant under Section 3.4 of the License Agreement is not protected under section 365(n) because it "restrict[s] the Debtor's ability to research, develop or commercialize competing product . . . even if the Debtor *uses intellectual property it did not license to [Astellas]*." *See* Sale Motion ¶¶ 57–59. However, as demonstrated by the plain language of Section 3.4 quoted in paragraph 4 above, the Debtor is restricted only from using intellectual property that is exclusively licensed to Astellas. *Compare* License Agreement § 3.4 *with* Sale Motion ¶ 59 (discussing "Noncompete Provisions"). The Debtor also argues in the Sale Motion that the exclusivity covenant does not constitute an "interest" that precludes a free and clear sale under section 363(f). *See* Sale Motion ¶ 64.

7. On July 14, 2026, the Court entered its Order [D.I. 122] ("Bidding Procedures Order") in connection with, among other things, the Debtor's proposed sale of the Merope Assets to the Merope Stalking Horse Bidder on the terms set forth in the Merope Stalking Horse APA. Under the Merope Stalking Horse APA, the License Agreement is designated as an "Outbound

[4] The Sale Motion and proposed Sale Order are ambiguous as to whether Section 3.4 is the only Noncompete Provision in the License Agreement. *See* Sale Motion, n. 9 ("The Noncompete Provisions . . . ***include*** . . . Section 3.4 of the Astellas Agreement . . ."); Sale Order, ¶ CC (Noncompete Provisions "***including*** as set forth in . . . Section 3.4 of the Astellas Agreement . . .") (emphases added). To the extent the Court finds the Noncompete Provisions are not protected under section 365(n), the Sale Order should be revised to clarify that Section 3.4 of the License Agreement is the only Noncompete Provision.

License Agreement" that may be rejected in accordance with the terms of the Merope Stalking Horse APA and the Bidding Procedures Order.

8. On July 17, 2026, the Debtor filed the Contract Assumption/Rejection Notice [D.I. 139], indicating that the License Agreement will be rejected. On August 4, 2026, in compliance with the Bidding Procedures Order, Astellas filed a notice electing to retain its rights under the License Agreement under section 365(n)(1)(B) [D.I. 233].

ARGUMENT

A. The IP Assets Cannot be Sold Free and Clear of Astellas' Rights Under Section 365(n)

9. A debtor's estate is vested only with the same property rights the debtor held prior to its bankruptcy filing and no more. 11 U.S.C. § 541(a)(1). Prior to the filing of the Chapter 11 Case, the Debtor had already conveyed to Astellas certain rights in its intellectual property as set forth in the License Agreement. Any estate interest remaining in such licensed intellectual property is thus subject to Astellas' rights under the License Agreement. *See*, *e.g.*, *In re Access Beyond Techns., Inc.*, 237 B.R. 32, 38 at n. 5 (Bankr. D. Del. 1999) (patent assignments remain "subject to the conditions of any licenses or other rights previously conferred by the patent holders").

10. In the event of rejection of the License Agreement, Astellas has already elected to retain its rights to use the Licensed Technology, including the right to enforce the exclusive nature of the license granted in the License Agreement. *See* 11 U.S.C. § 365(n)(1)(B); [D.I. 233]. The Licensed Technology comprises "intellectual property" protected under section 365(n) of the Bankruptcy Code. 11 U.S.C. §§ 101(35A), 365(n). Astellas' rights under section 365(n) are not superseded by section 363(f) and it cannot be stripped of those rights by a sale of the IP Assets to the Merope Stalking Horse Bidder under section 363(b). *See In re Crumbs Bake Shop, Inc.*, 522 B.R. 766, 777 (Bankr. D.N.J. 2014) ("[I]n the absence of consent, nothing in § 363(f) trumps, supersedes, or otherwise overrides

the rights granted to Licensees under § 365(n)."); *see also In re CellNet Data Sys., Inc.*, 327 F.3d 242, 249 n.2 (3d Cir. 2003) (noting that Bankruptcy Court had modified proposed sale order to "account for [licensee's] rights under section 365(n)").

11. Nor can the Debtor strip Astellas of its rights under section 365(n) by selling the IP Assets prior to the rejection of the License Agreement, to the extent the Merope Stalking Horse APA permits the Merope Stalking Horse Bidder to designate the License Agreement for assumption or rejection post-closing. Under section 365(n)(4), the Debtor cannot "interfere with the rights of" Astellas "unless and until [it] rejects" the License Agreement. 11 U.S.C. § 365(n)(4)(B). Thus, nothing in the Sale Order should alter, amend, or modify Astellas' rights to the Licensed Technology prior to any rejection of the License Agreement. Any such provisions would contravene section 365(n)(4)(B). *See In re Particle Drilling Techs., Inc.*, No. 09-33744, 2009 WL 2382030, at *4 (Bankr. S.D. Tex. July 29, 2009) (sale of intellectual property subject to license that had not been rejected was subject to licensee's rights under section 365(n)(4)).

12. Section 363(f) sets forth the limited conditions under which a debtor may sell assets free and clear of a third party's interests. Here, the Debtor cannot satisfy any of the conditions under section 363(f):

a. Applicable nonbankruptcy law does not permit the sale of the IP Assets free and clear of Astellas' rights. *See In re SIMA Int'l, Inc.*, No. 17-21761 (JJT), 2018 WL 2293705, at *10 (Bankr. D. Conn. May 17, 2018) (intellectual property could not be sold free and clear of a provision in a license agreement that prohibited the parties to the license from selling or entering into agreements with others for "developing, manufacturing or selling a 'competing product.'"). *See* 11 U.S.C. § 363(f)(1).

b. Astellas expressly does not consent to a sale free and clear of its license rights and interests. *See* 11 U.S.C. § 363(f)(2).

c. Astellas' rights under the License Agreement are not a lien interest that can be replaced with the proceeds of a sale of the IP Assets. *See* 11 U.S.C. § 363(f)(3).

d. The License Agreement and the rights of Astellas thereunder are not subject to a *bona fide* dispute. The Debtor has scheduled the License Agreement as an agreement subject to rejection and thereby acknowledged it is a valid obligation. *See* Contract Assumption/Rejection Notice, Schedule 2 [D.I. 139]; 11 U.S.C. § 363(f)(4). Because the Debtor does not "cast doubt on the validity of" Astellas' interest, there is no "bona fide dispute" under section 363. *In re Revel AC, Inc*., 802 F.3d 558, 573 (3d Cir. 2015).

e. Astellas cannot be compelled to accept money satisfaction of its rights and interests under the License Agreement because section 365(n) explicitly authorizes any right to specific performance. *See* 11 U.S.C. § 363(f)(5).

Therefore, any sale of the IP Assets to the Merope Stalking Horse Bidder remains subject to Astellas' rights under the License Agreement. *See In re Crumbs Bake Shop, Inc.*, 522 B.R. at 778-79 (buyer was required to take assets subject to the interests of the debtors' licensees); *In re Dynamic Tooling Sys., Inc.*, 349 B.R. 847, 856 (Bankr. D. Kan. 2006) (holding that proposed transfer of debtor's intellectual property to a competitor of debtor's licensee was "subject to whatever license rights [licensee] may have under the Agreement.").

13. There is no legal or factual basis to sell the Debtor's interests in its intellectual property free of Astellas' rights under the License Agreement. But even if such a basis existed, this Court would be required under the terms of section 363(e) to prohibit or condition the sale as is necessary to provide adequate protection of Astellas' interests. *See In re Delaware & Hudson Railway Co.*, 124 B.R. 169, 175 (D. Del. 1991) ("At the request of any party in interest in the property to be sold, the Bankruptcy Court shall prohibit the sale or condition the sale as necessary to provide for adequate protection of the party's interest."); *see also* 3 COLLIER ON BANKRUPTCY ¶ 363.05[2] at 363-39 (16th ed. 2016) ("the requirement of adequate protection in section 363(e) is mandatory"). Neither the Debtor nor the Merope Stalking Horse Bidder has offered adequate protection of Astellas' interests.

B. Astellas' Exclusivity Rights Under Section 3.4 of the License Agreement Are Enforceable Under Section 365(n)(1)(B)

14. Contrary to the Debtor's assertion, section 365(n) explicitly protects exclusivity provisions like Section 3.4 of the License Agreement. Under section 365(n)(1)(B), upon rejection, Astellas is authorized "to retain its rights (*including a right to enforce any exclusivity provision of such contract*, but excluding any other right under applicable nonbankruptcy law to specific performance of such contract)." *See also* H.R. Rep. No. 100-1012, 100th Cong., 2d Sess. (1988) ("[A]n exclusive license will still be enforceable by the licensee . . . ."). An exclusivity provision, like Section 3.4 of the License Agreement, that restricts the development of products by the debtor that compete with licensed products "embodies precisely the kind of exclusive intellectual property rights that are protected by 11 U.S.C. § 365(n)(1)(B)." *In re SIMA Int'l, Inc.*, 2018 WL 2293705, at *10.

CONCLUSION

For the foregoing reasons, Astellas respectfully requests (a) that the transaction documents and any order approving the sale of the Merope Assets expressly provide that the sale is subject to and without prejudice to the rights of Astellas under the License Agreement, including, in the event of the rejection of such agreement, Astellas' rights under section 365(n) of the Bankruptcy Code, including its rights to enforce an exclusivity provision, and (b) that any Noncompete Finding shall not apply to the License Agreement.

Dated: August 17, 2026

/s/ Kate Roggio Buck

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: SANGAMO THERAPEUTICS, INC., Debtor.[1]	Chapter 11 Case No. 26-10989 (CTG)

CERTIFICATE OF SERVICE

I, Kate R. Buck, Esquire, hereby certify that on this 17th day of August 2026, one (1) redacted copy of the foregoing *Limited Objection of Astellas Gene Therapies, Inc. to Debtor's Proposed Sale of Certain of its Assets to the Merope Stalking Horse Bidder Free and Clear of all Encumbrances* and *Declaration of Abigail V. O'Brient in Support of the Limited Objection of Astellas Gene Therapies, Inc. to Debtor's Proposed Sale of Certain of its Assets to the Merope Stalking Horse Bidder Free and Clear of all Encumbrances* was served (I) on counsel of record via the Electronic Case Filing System for the United States Bankruptcy Court for the District of Delaware and (II) upon the following individuals by electronic mail:

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[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 Boulevard, Suite A100, Richmond, CA 94084.

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: SANGAMO THERAPEUTICS, INC. Debtor.[1]	Chapter 11 Case No. 26-10989 (CTG)

DECLARATION OF ABIGAIL V. O'BRIENT IN SUPPORT OF THE LIMITED OBJECTION OF ASTELLAS GENE THERAPIES, INC. TO DEBTOR'S PROPOSED SALE OF CERTAIN OF ITS ASSETS TO THE MEROPE STALKING HORSE BIDDER FREE AND CLEAR OF ALL ENCUMBRANCES

I, Abigail V. O'Brient, make the following declaration under 28 U.S.C. § 1746:

1. I am a partner of the law firm Covington & Burling LLP, counsel for Astellas Gene Therapies, Inc. in this case. I submit this declaration in support of the *Limited Objection of Astellas Gene Therapies, Inc. to Debtor's Proposed Sale of Certain of its Assets to the Merope Stalking Horse Bidder Free and Clear of all Encumbrances* filed contemporaneously herewith.

2. The information contained in this declaration is based on my review of the relevant records in the matter, as well as my personal knowledge, and is true and correct to the best of my knowledge and belief. If called upon as a witness, I could and would competently testify to the statements made herein.

3. Attached as **Exhibit A** hereto is a true and correct copy of the License Agreement between Astellas Gene Therapies, Inc. and Sangamo Therapeutics, Inc. dated December 18, 2024.

Dated: August 17, 2026

/s/ Abigail V. O'Brient
Abigail V. O'Brient

[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 Boulevard, Suite A100, Richmond, CA 94084.

EXHIBIT A

Document Submitted Under Seal