IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
SANGAMO THERAPEUTICS, INC.	)	Case No. 26-10989 (CTG)
Debtor.[1]	)	**Re: Docket Nos. 13, 122, 270, 290, 308, 310 & 326**

DEBTOR'S OMNIBUS REPLY IN SUPPORT
OF THE SALE OF THE MEROPE ASSETS

Sangamo Therapeutics, Inc., the above-captioned debtor and debtor in possession (the "**Debtor**"),[2] through its undersigned counsel, submits this omnibus reply (this "**Reply**") in support of 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/or 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* [Docket No. 13] (the "**Sale Motion**") and in response to (i) the objections (the "**Timely Objections**") filed by (a) Genentech, Inc. ("**Genentech**"), F. Hoffmann-La Roche Ltd, and Hoffmann-La Roche Inc. (collectively, "**Roche**") [Docket No. 270] and(b) Astellas Gene

[1] The Debtor and the last four digits of its taxpayer identification number are: Sangamo Therapeutics, Inc. (9556). The Debtor's mailing address is 501 Canal Blvd., Ste A100, Richmond, CA 94804.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Sale Motion (as defined below) or the Bidding Procedures Order (as defined below), as applicable.

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Therapies, Inc. ("**Astellas**") [Docket No. 308] and (ii) the late-filed joinder and objection to the limited objection filed by Alexion Pharmaceuticals, Inc. (the "**Late Objection**" and, collectively with the Timely Objections, the "**Objections**")[3] filed by Shire Human Genetic Therapies, Inc. ("**Takeda**" and, collectively with Genentech, Roche, and Astellas, the "**Objectors**") [Docket No. 331]. In support of this Reply, the Debtor relies on the *Declaration of Geoffrey Richards in Support of the Sale of the Merope Assets* [Docket No. 326], and respectfully states as follows:

PRELIMINARY STATEMENT

1. Pursuant to the Sale Motion, the Debtor seeks approval of the Sale of the Merope Assets to the Merope Stalking Horse Bidder for $50 million plus the assumption of certain liabilities. The Sale is in the best interests of the Debtor's estate and all stakeholders involved, and is supported by the Consultation Parties and the Official Committee of Equity Holders (the "**Equity Committee**").

2. The only outstanding objections are those of the Objectors, who are licensees of intellectual property proposed to be sold to the Merope Stalking Horse Bidder, and whose license agreements the Debtor proposes to reject. They object to certain findings of fact and conclusions of law in the proposed Merope Sale Order (defined below) which establish that the Noncompete Provisions (defined below) in the Outbound License Agreements are not binding on the Merope Stalking Horse Bidder or its affiliates (the "**Noncompete Findings**"). They principally argue that their right to enforce the Noncompete Provisions is preserved by their election to retain rights under section 365(n)(1)(B) of the Bankruptcy Code, such that those provisions are binding on Merope, and may not be extinguished by section 363(f) of the Bankruptcy Code.

[3] Alexion Pharmaceuticals, Inc. ("**Alexion**") also filed an objection to the Sale. [Docket No. 310] (the "**Alexion Objection**"). As discussed below, Merope and Alexion engaged in negotiations regarding an amendment to Alexion's outbound license agreement (the "**Alexion License Agreement**") and reached an agreement on an amended Alexion License Agreement resolving Alexion's objection.

3. The Objections should be overruled. The Noncompete Findings are entirely consistent with section 365(n)(1)(B), do not strip the Objectors of their entitled license rights thereunder, and are critical to facilitating the Sale of the Merope Assets. The proposed Noncompete Findings recognize that the Objectors retain rights to the licensed intellectual property that section 365(n) preserves following rejection. Under section 365(n), a licensee may elect to retain its rights to licensed intellectual property, as the Objectors have done. Section 365(n) allows a licensee to retain its rights to the intellectual property licensed to it and, to the extent provided in the license agreement, to obtain the embodiment of that licensed intellectual property. But the Objectors ask for more than what section 365(n) allows: they seek to preserve a non-competition provision that does not afford any right in intellectual property at all, but instead acts as a constraint on the Debtor's conduct and business activities. Underscoring that the Noncompete Provisions are not rights to licensed intellectual property, the Noncompete Provisions restrict the Debtor's commercial conduct by preventing it from using the Debtor's other intellectual property that has not been licensed to anyone, and its corporate resources, to develop technology that could compete with a licensee.

4. To further focus the distinction: an exclusivity provision in a license agreement determines who may exercise specified rights to the licensed intellectual property. In contrast, a noncompete covenant, such as those at issue here, restricts a party's ability to engage in specified competitive conduct, even where such conduct does not involve the Licensed IP.

5. The definition of "Noncompete Provisions" used in the Noncompete Findings in the proposed Merope Sale Order faithfully and directly follows section 365(n) and makes this distinction clear. As defined, Noncompete Provisions are:

> [A]ny "noncompete", "commercial exclusivity" or similar provision in any Outbound License Agreement, however characterized, including as set forth in

> Article 6 of the Genentech Agreement, Section 3.4 of the Astellas Agreement, Sections 8.4 and 8.5 of the Takeda Agreement, the last sentence of Section 3.6 of the Roche Agreement, and the last sentence of Section 2.1 of the OMT Agreement, which purports to restrict the Debtor or any of its Affiliates from conducting activities that are outside the scope of the exclusive Intellectual Property license granted to the applicable Outbound Licensee under an Outbound License Agreement (such provisions, collectively, the "**Noncompete Provisions**"), is not binding on the Buyer or any of its Affiliates following the Closing.

Proposed Merope Sale Order, ¶ DD (emphasis added).

6. By expressly capturing only contractual restrictions "that are outside the scope of the exclusive Intellectual Property license granted to the applicable Outbound Licensee," the Noncompete Provisions fall unambiguously outside the text and purpose of section 365(n)'s protections, which Congress enacted only to protect the actual intellectual property licensed by the debtor. Congress did not preserve other contractual provisions that a licensee believes enhances the value of its bargain, and in fact made clear that specific performance of other contractual provisions was barred. The Objectors' sweeping interpretation would expand section 365(n) far beyond its actual scope and should not be accepted by this Court.

7. In addition, to the extent applicable, section 363(f) authorizes the Sale of the Merope Assets free and clear of the Noncompete Provisions. The Noncompete Provisions are not rights preserved by section 365(n) and accordingly are not interests requiring a "free and clear" basis under section 363(f). However, if section 363(f) were implicated as to the Noncompete Provisions, there are multiple independent grounds supporting approval of the Sale free and clear thereof.

8. The Debtor, Merope, and certain counterparties to the Outbound License Agreements have engaged in discussions regarding resolutions of issues raised with counterparties with respect to the Merope Sale Order and proposed Noncompete Findings. Those efforts have already resulted in meaningful progress. Prior to the objection deadline, Merope and Open

Monoclonal Technology, Inc. ("**OMT**") reached an agreement on an amended and restated Outbound License Agreement, resolving OMT's concerns before an objection was filed. In addition, the Debtor understands that negotiations between Alexion and Merope have culminated in an amended and restated Alexion License Agreement, and agreement on a form of the Merope Sale Order acceptable to Alexion, and that Alexion's Objection has been resolved on that basis.

9. The Objectors, Merope, and the Debtor, as applicable, have engaged and continue to engage in discussions regarding consensual resolutions of the Objections. The Debtor understands that Merope is presently negotiating amendments or separate agreements with Genentech, Roche, and Astellas with respect to the Licensed IP under their respective Outbound License Agreements toward reaching agreements that will resolve those Objections. *See* Genentech & Roche Obj. ¶ 6; Astellas Obj. ¶ 2. Since the Late Objection was filed, the Debtor has also engaged in discussions with Takeda regarding a potential resolution.[4] Although the Debtor is hopeful that these discussions will result in consensual resolutions of some or all of the Objections, as of the filing of this Reply, no agreements have been executed with Genentech, Roche, or Astellas, and discussions with Takeda remain ongoing.

10. For these reasons and the reasons set forth in greater detail below, this Court should reject the Objectors' effort to expand section 365(n) beyond what Congress enacted, overrule the Objectors' Objections, and enter the Merope Sale Order, including the proposed Noncompete Findings.

[4] Pursuant to paragraphs 8 and 9 of the Bidding Procedures Order, any objection to the Sale or entry of the Merope Sale Order was required to be filed by the Sale Objection Deadline of August 4, 2026, at 4:00 p.m. (prevailing Eastern Time), and failure to do so "shall forever bar the assertion of any objection" to the Sale and related relief. Takeda filed its Late Objection on August 18, 2026, 14 days after the objection deadline, and without seeking an extension of such deadline or leave of Court. Although the Debtor addresses the Late Objection in this Reply and continues to engage in discussions with Takeda regarding a potential consensual resolution thereof, the Debtor expressly reserves all rights with respect to the Late Objection and, to the extent the issues raised therein are not otherwise resolved, submits that the Late Objection should not be considered in light of its untimely filing and Takeda's failure to demonstrate cause for such untimely filing.

BACKGROUND

A. The Outbound License Agreements

11. As more fully described in the First Day Declaration, prior to the Petition Date, the Debtor entered into various outbound license agreements pursuant to which it granted counterparties (each, an "**Outbound Licensee**") rights to use certain intellectual property in exchange for upfront consideration, milestone payments, and royalties (each an "**Outbound License Agreement**").[5] Relevant here are the Outbound License Agreements with the Objectors, which grant such parties licenses to certain of the Debtor's intellectual property and separately contain certain contractual Noncompete Provisions that restrict the Debtor's conduct. As discussed below, the Objectors elected to retain their rights to the licensed intellectual property under section 365(n). That protection does not extend to the Noncompete Provisions.

1. The Genentech License Agreement

12. On August 2, 2024, the Debtor and Genentech entered into that certain License Agreement (the "**Genentech License Agreement**"). [redacted] of the Genentech License Agreement, [redacted] Genentech License Agreement §§ [redacted] Section [redacted] Genentech License Agreement § [redacted]

[5] Other than the Objections and Joinder addressed in this Reply, no other party to an Outbound License Agreement filed an objection to the Sale or the Noncompete Findings (defined below) and, accordingly, the Court should enter the Merope Sale Order and Noncompete Findings as to these parties.

(emphasis added). The Genentech License Agreement further provides that [redacted] Genentech License Agreement § [redacted]

13. The intellectual property [redacted] (the "**Genentech Licensed IP**") consists of [redacted] Genentech License Agreement §§ [redacted] The licensed rights do not constitute all of the Debtor's intellectual property, nor do they encompass all future technologies that the Debtor may develop.

14. Separate from the [redacted] in [redacted] of the Genentech License Agreement [redacted] Going beyond that, [redacted] of the Genentech License includes [redacted] (the "**Genentech Noncompete Provisions**") that [redacted] Genentech License Agreement §§ [redacted]

15. Critically, the Genentech Noncompete Provisions [redacted] The Noncompete Provisions [redacted] The Noncompete Provisions [redacted]

2. The Roche License Agreement

16. On July 2, 2008, the Debtor and Roche entered into that certain Research and License Agreement (the "**Roche License Agreement**"). Under the Roche License Agreement, the Debtor [redacted] Roche License Agreement §§ [redacted] Like the Genentech License Agreement, the Roche License Agreement [redacted] Roche License Agreement § [redacted]

17. The intellectual property [redacted] (the "**Roche Licensed IP**") consists of [redacted] Roche License Agreement §§ [redacted]

18. Separate from the [redacted] to the Roche Licensed IP, the Roche License Agreement contains [redacted] (the "**Roche Noncompete Provisions**"), which [redacted] Roche License Agreement § [redacted] Like the Genentech Noncompete Provisions, the Roche Noncompete Provisions [redacted]

[redacted]

3. The Astellas License Agreement

19. On December 18, 2024, the Debtor and Astellas entered into that certain License Agreement (the "**Astellas License Agreement**"). Under the Astellas License Agreement, the Debtor [redacted] (the "**Astellas Licensed IP**"). Astellas License Agreement §§ [redacted]

20. The intellectual property [redacted] includes [redacted] Astellas License Agreement §§ [redacted] As with the Genentech and Roche License Agreements, the licensed rights do not constitute all of the Debtor's intellectual property.

21. In addition to the [redacted] under Sections [redacted] and [redacted] Section [redacted] of the Astellas License Agreement contains [redacted] (the "**Astellas Noncompete Provisions**") that [redacted] Specifically, Section [redacted] prohibits the Debtor from [redacted] Astellas License Agreement § [redacted] § [redacted] Like the Genentech and Roche License Agreements, the Astellas Noncompete Provisions restrict [redacted]

[redacted]

Sections [redacted] and [redacted]

4. The Takeda License Agreement

23. On January 31, 2012, the Debtor and Takeda entered into that certain Collaboration and License Agreement, as amended, restated, and supplemented from time to time (the "**Takeda License Agreement**," and collectively with the Genentech License Agreement, the Roche License Agreement, and the Astellas License Agreement, the "**Objectors' Outbound License Agreements**"). Under the Takeda License Agreement, the Debtor [redacted] Takeda License Agreement § [redacted] The intellectual property [redacted] (the "**Takeda Licensed IP**," and collectively with the Genentech Licensed IP, the Roche Licensed IP, and the Astellas Licensed IP, the "**Licensed IP**"). Takeda License Agreement §§ [redacted]

24. In addition [redacted] the Debtor also agreed [redacted] (the "**Takeda Noncompete Provision**," and collectively with the Genentech Noncompete Provisions, the Roche Noncompete Provision, and the Astellas Noncompete Provisions, the "**Noncompete Provisions**"). Takeda License Agreement § [redacted] Specifically, the Debtor [redacted] Section [redacted] *Id.* As with the Noncompete Provisions in the other Objectors' Outbound License Agreements, the Takeda Noncompete Provision [redacted]

B. The Chapter 11 Case

25. As more fully set forth in the First Day Declaration, the Debtor commenced this Chapter 11 Case to consummate one or more value-maximizing sales of its assets for the benefit of the Debtor, its estate, its creditors, and other stakeholders. Accordingly, prior to the Petition Date, Merope and the Debtor engaged in arm's-length, good faith negotiations that culminated in the execution of the Merope Stalking Horse APA, pursuant to which Merope agreed to serve as the stalking horse bidder for the Merope Assets for aggregate consideration comprising (i) a cash payment of $50 million and (ii) the assumption of certain liabilities.

26. On the Petition Date, the Debtor filed the Sale Motion,[6] which, among other things, sought entry of an order approving the Bidding Procedures for the marketing and sale process of the Debtor's assets and entry by the Debtor into the Merope Stalking Horse APA. The Sale Motion was approved by the Court on July 14, 2026 [Docket No. 122] (the "**Bidding Procedures Order**").

27. In accordance with the Bidding Procedures Order, on July 17, 2026, the Debtor filed the *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* [Docket No. 139] (the "**Assumption/Rejection Notice**"), which identified, among other contracts, the Objectors' Outbound License Agreements as contracts proposed for rejection and established procedures for counterparties seeking to make elections under section 365(n) to file and serve their

[6] The "**Sale Motion**" means 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/or 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* [Docket No. 13].

election (each a "**Notice of Election**"). Each of the Objectors filed and served their Notices of Election. Docket Nos. 233, 234, 235, 243.

28. As more fully set forth in the Richards Declaration, on August 10, 2026, the Debtor commenced the Auction for the sale of its assets in accordance with the Bidding Procedures. At the Auction, the Debtor disclosed on the record that the Debtor had not received any Qualified Bids for the Merope Assets other than the Merope Stalking Horse Bid, and, in consultation with the Consultation Parties and the Equity Committee, provided all Qualified Bidders with a final opportunity to submit a competing bid for the Merope Assets by soliciting bids on the record. After no overbids were received at the Auction, on August 11, 2026, the Debtor, in consultation with the Consultation Parties and the Equity Committee, closed the Auction for the Merope Assets and designated Merope as the Successful Bidder for the Merope Assets in accordance with the Merope Stalking Horse APA.

29. On August 12, 2026, in accordance with the Bidding Procedures Order, the Debtor filed a notice designating Merope as the Successful Bidder with respect to the Merope Assets, which notice attached a revised proposed form of sale order for the Merope Assets (the "**Merope Sale Order**") as Exhibit B-1 thereto. Docket No. 290.[7]

30. Under the Merope Stalking Horse APA, the rejection of the Objectors' Outbound License Agreements and the inclusion of the Noncompete Findings in the Merope Sale Order is a specific condition to Closing. Merope Stalking Horse APA § 6.1(g).

[7] Included as Exhibit B-2 to Docket No. 290 is a redline comparison of the Merope Sale Order against the proposed form of sale order that was filed with the Sale Motion.

REPLY

I. THE NONCOMPETE PROVISIONS FALL OUTSIDE THE RIGHTS PRESERVED BY SECTION 365(N)

31. Section 365(n) of the Bankruptcy Code provides that, if the Debtor rejects any Outbound License Agreement, the Outbound Licensee thereunder is entitled to elect either to "treat such contract as terminated" in accordance with section 365(n)(1)(A) of the Bankruptcy Code or, as relevant here:

> (B) 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) under such contract and under any agreement supplementary to such contract, to such intellectual property (including any embodiment of such intellectual property to the extent protected by applicable nonbankruptcy law), as such rights existed immediately before the case commenced, for—
>
> > (i) the duration of such contract; and
> >
> > (ii) any period for which such contract may be extended by the licensee as of right under applicable nonbankruptcy law.

11 U.S.C. §365(n)(1)(B) (emphases added).

32. Section 365(n)'s limited purpose is to permit a licensee to retain its rights "to such intellectual property," including any exclusivity provision relating to "such intellectual property." 11 U.S.C. § 365(n)(1)(B). However, section 365(n) does not preserve other contractual protections contained in a license agreement and expressly excludes "any other right" to "specific performance of such contract" once rejected. "[R]ejection will not deprive the licensee of the use of the intellectual property, as happened in the *Lubrizol* case, but the licensor/debtor will, consistent with the general goal of section 365, be relieved of the burdens of complying with the rejected agreement." H.R. Rep. No. 100-1012, at 6–7 (1988). Among the "other rights" that section 365(n) excludes are limitations on a licensor's ability to use its corporate resources in ways that are competitive to the licensee.

33. As discussed below, the text, legislative history, and purpose of section 365(n), as well as the terms of the Outbound License Agreements themselves, all confirm that the Noncompete Provisions are not among the rights Congress protected from the impacts of rejection.

A. Section 365(n)'s Limited Protections Only Preserve a Licensee's Rights to "Such Intellectual Property"

34. Section 365(n)(1)(B) provides that, following rejection, a licensee may retain its "rights . . . under such contract and under any agreement supplementary to such contract, *to such intellectual property*." 11 U.S.C. § 365(n)(1)(B) (emphasis added). Those retained rights include "a right to enforce any exclusivity provision of such contract" as to "such intellectual property" but exclude "any other right under applicable nonbankruptcy law to specific performance of such contract." *Id.* Critically, the "rights" that may be retained under section 365(n), including "any exclusivity provision," are limited in all cases to the licensee's rights "to such intellectual property." *Id*.

35. The statute's legislative history and purpose confirm the meaning behind the plain language. Congress enacted section 365(n) "to make clear that the rights of an intellectual property licensee to use the licensed property cannot be unilaterally cut off" as a result of rejection. S. Rep. No. 100-505, at 1 (1988). The House Report explains that, following rejection, "the debtor/trustee will essentially have no obligation to the licensee after rejection other than to turn over existing technology and permit the licensee to use the technology." H.R. Rep. No. 100-1012, at 9 (1988). Congress enacted section 365(n) for the limited purpose of preserving the licensee's ability to continue exercising its rights to use the licensed intellectual property, not other contractual rights or restrictions that do not themselves grant rights to the intellectual property itself.

36. The Objectors resist the plain reading of the statute, arguing that a distinction between the license grants and the Noncompete Provisions is "artificial" because the Noncompete

Provisions purportedly "give the grant meaning" and, without the Noncompete Provisions, the license would supposedly be "exclusive in name only." *See* Genentech & Roche Obj. ¶ 38. However, the Objectors retain the rights of an exclusive license: the right to exclusively use and exploit specified, licensed intellectual property within the scope of their respective license grants, even as to the Debtor (and as to Merope or its affiliates as buyer). Moreover, section 365(n) makes precisely the distinction the Objectors characterize as artificial: it only protects the licensee's ability to retain its rights "to such intellectual property," including the exclusive right to use the specifically licensed intellectual property. 11 U.S.C. § 365(n)(1)(B).

37. The Objectors also place substantial weight on section 365(n)(1)(B)'s reference to "any exclusivity provision." But that phrase cannot be divorced from the restrictive clause defining the rights that section 365(n) permits a licensee to retain. The statute protects a licensee's rights "to such intellectual property," which is limited to the intellectual property for which a debtor actually granted a license. The right to enforce "any exclusivity provision" is similarly limited to that specific, licensed intellectual property. The statute includes the term "exclusivity provision" to protect exclusive as well as non-exclusive licenses. H.R. 100-1012 at 6 (1988) ("Under the legislation, any right in the license agreement giving the licensee an exclusive license will still be enforceable by the licensee, but other rights of the licensee cannot be specifically enforced."). The word "any" is subject to the threshold requirement that the exclusivity provision must first be "to such intellectual property." 11 U.S.C. § 365(n)(1)(B).

38. The Noncompete Provisions are not rights "to such intellectual property" because they do not say who has the right to use the Licensed IP or impose conditions on how that intellectual property is used. They say instead that the Debtor cannot use its other commercial resources in ways that compete with the licensee, which is not a contractual provision that falls

within the scope of section 365(n). That the Noncompete Provisions may have formed part of the parties' contractual bargain is irrelevant, and does not transform them into rights "to such intellectual property" protected by section 365(n).

39. Section 365(n)'s express exclusion of "any other right under applicable nonbankruptcy law to specific performance" further confirms the limited scope of section 365(n). 11 U.S.C. § 365(n). That exclusion demonstrates that section 365(n) does not protect a contractual right outside the scope of the express rights protected merely because its enforcement may be important to a licensee's continued use of the licensed intellectual property. *See In re Tempnology, LLC*, 879 F.3d 389, 397 (1st Cir. 2018), *rev'd on other grounds*, 587 U.S. 370 (2019) ("[S]ubsection (n)(1)(B) protects, for example, an exclusive license to use a patent, but does not protect an exclusive right to sell a product merely because that right appears in a contract that also contains a license to use intellectual property.").

40. Accordingly, in determining whether a right is protected under section 365(n)(1)(B), the relevant inquiry is not, as the Objectors contend, whether a contractual obligation can be characterized as an "exclusivity provision" in some abstract sense. It is instead whether the asserted right, exclusivity or otherwise, is "to such intellectual property" itself.

B. The Noncompete Provisions Are Not Part of the Objectors' License Grants and Therefore Are Beyond Rights Protected by Section 365(n).

41. The Objectors' Outbound License Agreements demonstrate that the Noncompete Provisions are contractual covenants distinct from the Objectors' license grants. In the Roche License Agreement, the Debtor [redacted] *See* Roche License Agreement §§ [redacted] In the Genentech License Agreement, the Debtor [redacted] *See* Genentech License

Agreement §§ [redacted] In the Astellas License Agreement, the Debtor [redacted] *See* Astellas License Agreement §§ [redacted] In the Takeda License Agreement, the Debtor [redacted] *See* Takeda License Agreement § [redacted] These provisions define the Objectors' "rights . . . under such contract[s] . . . to such intellectual property" protected under section 365(n) and represent the outer limit of section 365(n)'s protections. *See* 11 U.S.C. § 365(n)(1)(B).

42. The Noncompete Provisions under these Outbound License Agreements are contained in different sections than the sections granting the licenses and do not provide the Objectors' rights to use the intellectual property. Instead, [redacted] In the Roche License Agreement, [redacted] In the Astellas License Agreement, [redacted] *See* Astellas License Agreement §§ [redacted] Finally, [redacted]

[redacted]

[redacted] *See* Takeda License Agreement §§ [redacted]

43. The license grants and the Noncompete Provisions confer fundamentally different rights, and the Objectors' respective arguments acknowledge the critical distinction. They argue not that the Noncompete Provisions are themselves a license grant to licensed intellectual property but instead only that those provisions protect or reinforce the value of the license grants. Genentech & Roche Obj. ¶ 39 (arguing that the Noncompete provisions under Article [redacted] of the Genentech License Agreement [redacted]

[redacted]

44. The license grants under the Outbound License Agreements are therefore the source of the Objectors' rights to use the Licensed IP, while the Noncompete Provisions provide only contractual protection from specified competitive conduct by the Debtor or others, separate from and beyond the grant of the exclusive license (which the Noncompete Provisions assume for their existence). However, section 365(n) protects only rights "to such intellectual property," meaning only to the intellectual property actually licensed to the Objectors. *See In re Tempnology*, *LLC*, 879 F.3d at 398 (a right "clearly not included within the statute's definition of intellectual property" will not be "treat[ed] as such merely because of a coincidental practical effect it may have in limiting the scope of the manner in which a [nonexclusive] patent might be exploited."). It provides no protection for these separate contractual provisions even if they may enhance the value of the license rights. *See id.* at 399 ("[I]f those rights lacked meaningful value, that hardly becomes a reason for turning rights that are not intellectual property rights into intellectual property rights.").

45. The Objectors' reliance on *SIMA International*—which did not involve a sale of intellectual property, and therefore did not consider or address the extent to which provisions of

this nature could bind an unaffiliated purchaser in a free and clear sale under section 363(f)—is misplaced. There, the debtor had granted MHI an exclusive license to its SIMA® technology to develop "Adaptations" of the technology, and agreed not to sell, or enter agreements to make, "competing products" defined in relation to those Adaptations, *In re SIMA Int'l, Inc.*, 17-21761 (JJT), 2018 WL 2293705, at *3, *9 (Bankr. D. Conn. May 17, 2018), and MHI acknowledged that any competing products would necessarily "incorporate SIMA® technology." *Id.* (Bankr. D. Conn. Jan. 26, 2018), Docket No. 38 at 3. The court held such covenant was protected under section 365(n)(1)(B), concluding that it "embodies precisely the kind of exclusive intellectual property rights" that the statute protects. *Id.* at *10. Critically, however, the debtor in *SIMA International* had licensed to MHI "*inter alia*, all intellectual property associated with SIMA®." *Id.* at *1 (emphasis original). It had no unlicensed intellectual property left with which it could compete. The Noncompete Provisions at issue here restrict the Debtor's conduct beyond the scope of the intellectual property actually licensed to the Objectors, and, if binding on the Buyer and its Affiliates, could prevent them from using their own, unlicensed intellectual property.

C. The Objectors' Interpretation Would Impermissibly Expand Section 365(n) Beyond Rights to "Such Intellectual Property"

46. The consequences of the Objectors' interpretation extend well beyond the Noncompete Provisions at issue here. Under their reading, a counterparty could use section 365(n) to compel a debtor's continued compliance with and performance of contractual obligations separate from the underlying license grant merely because those restrictions appear as competitive restrictions in a contract that grants a license to intellectual property. *See, e.g.*, Genentech & Roche Obj. ¶ 38 (arguing that the Noncompete Provisions and license grants are both "rights of the licensee under the license" purportedly protected by section 365(n)).

47. That result would undermine the fundamental distinction between assumption and rejection under section 365. Section 365 permits a debtor to determine whether continued performance under an executory contract benefits the estate. *See In re Extraction Oil & Gas*, 622 B.R. 608, 614–15 (Bankr. D. Del. 2020) (business judgment satisfied where debtor shows rejection benefits estate). A debtor may assume a contract and remain bound by all of its obligations or reject the contract and treat its nonperformance as a breach. *See id.* at 623 (rejection effectuates "a breach of the contracts, and the covenants therein"). While section 365(n) modifies the consequences of rejection to a limited extent by permitting an intellectual property licensee to retain certain rights to continue to use the licensed intellectual property, it does not require a debtor to honor separate contractual obligations that extend beyond the limited protected rights. Only when a debtor assumes a contract must it take all of a contract's benefits and obligations *cum onere*.

48. The Objectors' interpretation would therefore substantially diminish the relief afforded by rejection by impermissibly expanding the rights protected under section 365(n). If a licensee could compel continued compliance with separate covenants notwithstanding rejection, the licensee would receive not only the license rights to intellectual property that Congress expressly permitted it to retain, but also continued adherence and performance by the debtor to additional contractual obligations, leaving a debtor's estate burdened by ongoing contractual obligations that it elected to reject and not to assume.

49. The effect of the Objectors' interpretation is particularly significant here. Merope has proposed to acquire the Debtor's assets subject to the Objectors' retained rights in the licensed intellectual property. The Debtor does not seek through rejection to revoke those rights or to recover intellectual property rights previously granted to the Objectors. Under the Merope

Stalking Horse APA, the proposed Noncompete Findings under the Merope Sale Order are a condition precedent to closing. Merope Stalking Horse APA § 6.1(g). Thus, the effect of the Objectors' interpretation is not the preservation of their existing rights to licensed intellectual property, which Merope does not dispute, but the imposition of independent noncompete obligations on Merope through section 365(n).

50. Further, as the Noncompete Findings affirm, neither Merope nor its affiliates are parties to any of the rejected Outbound License Agreements, and they cannot be bound by the sweeping Noncompete Provisions under any circumstances. *See Cardiovascular Sys., Inc. v. Cardio Flow, Inc.*, 498 F.Supp.3d 1080, 1089–90 (D. Minn. 2020) (contractual provisions in patent licensing contract cannot bind nonparty). Accordingly, the proposed Merope Sale Order includes Noncompete Findings that, among other things, establish that the Noncompete Provisions are not binding on Merope or its affiliates.

51. Genentech and Roche argue that a court in the future should decide the scope of the Noncompete Provisions. Genentech & Roche Obj. ¶ 40. However, the Objectors misconstrue the Debtor's request. The Debtor is not asking this Court to prospectively determine whether certain actions Merope or its affiliates may take do or do not violate the Noncompete Provisions. Instead, the Debtor is asking this Court to find that such provisions go beyond the reach of section 365(n), and therefore Merope (and its affiliates) are not bound by such provisions in the first place. Given the express closing condition under the Merope Stalking Horse APA of the inclusion of Noncompete Findings in the Merope Sale Order, these issues are not only ripe for this Court's immediate determination but necessarily must be resolved in connection with the Sale of the Merope Assets. *See In re Caribbean Petroleum Corp.*, 444 B.R. 263, 267–68 (Bankr. D. Del. 2010) (section 365 rejection of franchise agreements prior to a proposed sale was not premature

and was ripe for determination given impact on the sale process and the debtor's ability to maximize value); *NE Hub Partners, L.P. v. CNG Transmission Corp.*, 239 F.3d 333, 343 (3d Cir. 2001) (holding that a dispute was ripe where "the process itself is the alleged harm").

52. Nor does section 365(n) require deferral of such determination because, as the Objectors contend, the Debtor may not "interfere with the rights of" a licensee "unless and until" the applicable license agreement is rejected. *See* Astellas Obj. ¶ 11. The Debtor does not seek to alter, amend, modify, or terminate any rights before rejection. The counterparties, including the Objectors, to the Outbound License Agreements were afforded an opportunity to make elections under section 365(n) in accordance with the Bidding Procedures Order, and those counterparties that sought to retain their rights did so. The Merope Sale Order preserves those licensees' rights under section 365(n) while the Noncompete Findings make clear that the Noncompete Provisions are not among those rights.

53. This Court should decline to stretch 365(n) beyond its own words, which protect a licensee's rights "to such intellectual property," that which has actually been licensed. The Objectors' desire to specifically enforce unprotected noncompete provisions governing the Debtor's use of its other corporate resources and to impose those restrictions on Merope is not an objective that the Bankruptcy Code will assist the Objectors to fulfill. Accordingly, the Objections should be denied and the Sale Motion should be approved as the value maximizing option for the estate and all stakeholders involved.

II. SECTION 363(f) DOES NOT BAR THE PROPOSED NONCOMPETE FINDINGS AND, IN ANY EVENT, PERMITS THE SALE FREE AND CLEAR OF THE NONCOMPETE PROVISIONS

54. The Objectors' reliance on section 363(f) is misplaced. As an initial matter, the proposed Noncompete Findings do not extinguish any rights preserved by section 365(n) and therefore do not require the Debtor to satisfy section 363(f). Even assuming that the Noncompete

Provisions are rights preserved by section 365(n), section 363(f) permits the Sale of the intellectual property free and clear of those provisions given that the Noncompete Provisions are subject to a bona fide dispute under section 363(f)(4) and, separately, the Objectors could be compelled to accept monetary satisfaction of those rights under section 363(f)(5). Accordingly, section 363(f) provides no basis to deny the proposed Noncompete Findings.

A. Section 363(f) Is Not Implicated Because the Noncompete Provisions Are Not Rights Preserved by Section 365(n) or Interests That Survive Rejection

55. Objectors devote numerous paragraphs arguing that section 363(f) cannot be used to sell the underlying intellectual property free and clear of their license rights and Noncompete Provisions. As explained above, however, the Noncompete Provisions are not among the rights preserved by section 365(n), the Debtor does not seek to terminate, modify, or narrow any rights to the licensed intellectual property that the Objectors elected to retain under section 365(n), and the Debtor does not seek to eliminate the Objectors' exclusivity as to such licensed intellectual property. Instead, the Debtor seeks the Noncompete Findings that the Noncompete Provisions are not enforceable given the rejection of the Outbound License Agreements. Section 363(f) need not be invoked to sell assets free and clear of such rejected contractual provisions because the Noncompete Provisions do not constitute a surviving "interest" requiring compliance with section 363(f) for the sale to be free and clear.

56. Following their section 365(n) election, the Objectors remain exclusive, or non-exclusive, licensees, and may continue to enforce their respective exclusivity as to the licensed intellectual property under the applicable Outbound License Agreement. The Debtor's position is entirely consistent with the *Tower IPCO*, *Massie*, and *Silsby* cases cited by the Objectors, which cases all involve only exclusive license rights and not noncompete provisions. Genentech & Roche

Obj. ¶ 20 (citing cases). However, the Noncompete Provisions are not protected by section 365(n) and do not represent an "interest" for purposes of section 363(f).

57. The proposed Noncompete Findings simply recognize and implement the distinction between license rights preserved by section 365(n) and those that are not and confirm that the latter, including the Noncompete Provisions, do not survive rejection. Accordingly, the proposed Noncompete Findings do not require the Court to approve the sale of the Merope Assets pursuant to section 363(f) free and clear of any rights properly preserved by section 365(n).

B. Even if Section 363(f) Applies, the Sale May Be Approved Free and Clear of the Noncompete Provisions

58. Even if the Court determines that section 365(n) somehow protects the Noncompete Provisions such that section 363(f) must be satisfied with respect to them, section 365(n) does not insulate protected license rights from a sale free and clear under section 363(f). *See Compak Cos., LLC v. Johnson*, 415 B.R. 334, 342 (N.D. Ill. 2009) ("§ 365(n) would not prevent the trustee or debtor-in-possession from extinguishing a license in a sale of intellectual property free and clear of interests provided that one of § 363(f)'s conditions was satisfied.").

59. Section 363(f) permits a debtor to sell property "free and clear of any interest in such property of an entity other than the estate" if: (1) applicable nonbankruptcy law permits a sale free and clear of the interest; (2) the holder of the interest consents; (3) the interest is a lien and the sale price exceeds the aggregate value of all liens on the property; (4) the interest is in bona fide dispute; or (5) the holder "could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest." 11 U.S.C. § 363(f)(1)–(5). Because section 363(f) is written in the disjunctive, satisfaction of any one of these conditions is sufficient. *See In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002) ("Section 363(f) is written in the disjunctive,

not the conjunctive, and if any of the five conditions are met, the debtor has the authority to conduct the sale free and clear of all liens.").

60. Here, sections 363(f)(4) and 363(f)(5) each provide a basis for approving the Sale of the intellectual property free and clear of the Noncompete Provisions.

1. Objectors' Rights Are Subject to a Bona Fide Dispute

61. The Debtor may sell assets free and clear of liens, claims, interests and encumbrances if "such interest is in bona fide dispute." 11 U.S.C. § 363(f)(4). An interest is subject to a bona fide dispute where there is an "objective basis—either in law or fact—to cast doubt on the validity" of the asserted interest. *In re Revel AC, Inc.*, 802 F.3d 558, 573 (3d Cir. 2015). The purpose of section 363(f)(4) is to permit the sale of estate property without awaiting final resolution of disputed rights asserted against that property. *See In re Gulf States Steel, Inc.*, 285 B.R. 497, 507 (Bankr. N.D. Ala. 2002). Accordingly, this Court need not finally resolve the underlying dispute before authorizing the sale; it need only determine that an objective basis for the dispute exists. *See In re Gaylord Grain LLC*, 306 B.R. 624, 627 (B.A.P. 8th Cir. 2004).

62. That standard is satisfied here. The Debtor does not dispute that the Outbound License Agreements are valid agreements. Thus, the Objectors' contention that there is no bona fide dispute because the Debtor does not "cast doubt on the validity of" the Outbound License Agreements misses the point. Astellas Obj. ¶ 12(d). Instead, the Objectors and the Debtor squarely dispute whether the Noncompete Provisions are among the rights preserved by section 365(n) following rejection of the Outbound License Agreements.

63. Indeed, Genentech and Roche acknowledge that dispute but merely contend that the Debtor's position "lacks merit." Genentech & Roche Obj. ¶ 25. Section 363(f)(4), however, requires only a bona fide dispute. Its entire purpose is to avoid the resolution on the merits of a disputed issue before the Sale may proceed on a free and clear basis. The relevant inquiry is

whether there is an objective legal basis for disputing the continued enforceability of the Noncompete Provisions, not whether that dispute has already been resolved in the Debtor's favor. *See Revel*, 802 F.3d at 573. The arguments set forth above provide, at minimum, an objective legal basis for the Debtor's position that section 365(n) does not preserve the Noncompete Provisions. Accordingly, even if the Court were to conclude that the Noncompete Provisions constitute rights protected by section 365(n), the strength of the Debtor's argument and the recognition that the Debtor "may appeal that ruling and that any final resolution of that dispute could be years away" allows the Sale to be approved free and clear of those disputed, alleged rights under section 363(f)(4). *See In re Nine Point Energy Holdings, Inc.*, No. 21-10570 (MFW), 2021 WL 2212007, at *7 (Bankr. D. Del. June 1, 2021), *aff'd*, 633 B.R. 124 (D. Del. 2021).

2. The Objectors Could Be Compelled to Accept a Money Satisfaction of the Noncompete Provisions

64. Section 363(f)(5) also provides a basis for approving the Sale of the intellectual property free and clear of the Noncompete Provisions. Section 363(f)(5) applies where the holder of an interest "could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest." 11 U.S.C. § 363(f)(5). The inquiry is whether there exists a legal or equitable proceeding in which the holder could be required to accept monetary satisfaction of its interest; it does not require that such a proceeding already have occurred. *See In re MMH Automotive Group, LLC*, 385 B.R. 347, 370–71 (Bankr. S.D. Fla. 2008), as amended (Mar. 18, 2008). Consistent with the Third Circuit's broad construction of section 363(f), contractual obligations connected to property being sold may be extinguished where the resulting rights are capable of monetary satisfaction. *See In re Trans World Airlines, Inc.*, 322 F.3d 283, 290–91 (3d Cir. 2003). Even where a contract counterparty has the choice, in a non-bankruptcy context, to

elect between an equitable and monetary remedy, the existence of the monetary remedy permits the assets to be sold free and clear. *In re Nine Point Energy*, 2021 WL 2212007 at *7–8.

65. Delaware courts have applied that principle to contractual restrictions on the disposition of property. In *In re American Home Mortgage Holdings, Inc.*, the court concluded that a contractual counterparty could be compelled, in lieu of enforcement of its contractual consent right, "to accept money satisfaction of any damages resulting from an assignment without its consent." 402 B.R. 87, 102 (Bankr. D. Del. 2009). Likewise, *In re Southland Royalty Co. LLC* explains that section 363(f)(5) is satisfied where the asserted obligation is subject to monetary valuation and applicable law does not exclude monetary damages. 623 B.R. 64, 97–98 (Bankr. D. Del. 2020).

66. Rejection further confirms that the Objectors could be compelled to accept monetary satisfaction of any rights arising from the Noncompete Provisions. Rejection constitutes a breach of the Outbound License Agreements and, as a consequence, deprives the nondebtor counterparty of a right to compel the Debtor's continued performance through specific performance. *See In re CB Holding Corp.*, 448 B.R. 684, 689–90 (Bankr. D. Del. 2011) (holding that rejection precludes specific performance against the debtor and converts the counterparty's remedy into a claim for damages); COLLIER ON BANKRUPTCY § 365.10[1], at 365–78 ("the effect of a rejection is that a breach is deemed to have occurred, which in the ordinary case will give rise to a claim for damages"); *see also In re Cont'l Airlines*, 125 F.3d 120, 132 (3d Cir. 1997) ("[u]nder section 101(5), an equitable remedy can be deemed a 'claim' if that remedy 'gives rise to a right of payment'"). The Objectors' assertion about specific performance being available under nonbankruptcy law is therefore unavailing. Genentech & Roche Obj. ¶ 26; Astellas Obj. ¶ 12(e). Thus, even assuming the Objectors retain enforceable rights arising from the Noncompete

Provisions following rejection, those rights do not entitle them to compel the Debtor's continued performance of the covenants and instead give rise to a monetary remedy capable of satisfaction under section 363(f)(5).

67. Genentech's and Roche's contention that the Noncompete Provisions are "unique" and that damages would not "adequately substitute enforcement" of such rights does not alter that conclusion. Genentech & Roche Obj. ¶ 26. Section 363(f)(5) asks whether the holder could be compelled to accept monetary satisfaction of its interest, not whether monetary relief would be the holder's preferred remedy or provide the precise economic equivalent of continued performance. *See Southland Royalty*, 623 B.R. at 98; *American Home Mortgage*, 402 B.R. at 102.

68. Nor does section 363(f)(5) require payment of the full asserted value of the right as a condition to a free and clear sale. Courts construing the provision have rejected such a limitation because it would substantially duplicate section 363(f)(3). *See Clear Channel Outdoor, Inc. v. Knupfer (In re PW, LLC)*, 391 B.R. 25, 42–43 (B.A.P. 9th Cir. 2008) (concluding that section 363(f)(5) contemplates proceedings in which an interest holder "could be compelled to take less than the value of the claim secured by the interest," because requiring full payment would render section 363(f)(5) largely duplicative of section 363(f)(3)); *In re Healthco Int'l, Inc.*, 174 B.R. 174, 176–78 (Bankr. D. Mass. 1994). Therefore, section 363(f)(5) is available regardless of Objectors' contention that monetary damages may not fully compensate them for the asserted loss of the Noncompete Provisions.

69. Furthermore, none of the Objectors' Outbound License Agreements provide that [redacted] Accordingly, the Objectors could be compelled to accept monetary satisfaction of those rights, and the Sale may therefore be approved

free and clear of the Noncompete Provisions pursuant to section 363(f)(5). This remains true even if the Noncompete Provisions were rights preserved by section 365(n), which as discussed above they are not. *Compak Cos., LLC v. Johnson*, 415 B.R. at 342.

III. REJECTION DOES NOT REQUIRE CONTINUED PERFORMANCE OF THE NONCOMPETE PROVISIONS

70. Genentech and Roche alternatively argue that, even if section 365(n) does not protect the Noncompete Provisions, *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 587 U.S. 370, 381–82 (2019), requires their continued enforcement because rejection constitutes a breach rather than a rescission. Genentech & Roche Obj. ¶¶ 41–42. This alternative argument misses the mark. The Objectors again conflate their license rights to intellectual property with the Debtor's obligations under the Noncompete Provisions. The Debtor does not contend that rejection rescinds the intellectual property licenses previously granted to the Objectors. However, the Noncompete Provisions are not license rights to intellectual property that the Debtor seeks to revoke or "take back." They are instead contractual obligations restricting the Debtor's conduct that, through rejection, the Debtor is no longer required to perform.

71. *Mission Product* does not alter this analysis. The Supreme Court held that rejection "constitutes a breach" and therefore has the same consequences as a breach outside bankruptcy. *Mission Prod. Holdings,* 587 U.S. at 381–82. Thus, rights previously granted by a debtor that would survive a breach remain intact notwithstanding rejection. *Id.* But that principle does not convert the debtor's own unperformed contractual obligations into vested rights immune from rejection. Following rejection, "[t]he debtor can stop performing its remaining obligations under the agreement." *Mission Prod. Holdings*, 587 U.S. at 381. Otherwise, rejection would cease to serve its basic function of permitting the debtor to decline further performance under a burdensome

executory contract. And even if the Noncompete Provisions somehow did continue to burden the Debtor post-rejection, nothing suggests they would burden Merope or its affiliates.

72. This distinction is dispositive here. The Objectors may retain the rights to the licensed intellectual property that the Debtor previously granted them following rejection. The Debtor is not required, however, to continue complying with and performing under the Noncompete Provisions. Any remedy arising from the Debtor's breach of those covenants must be determined under the Bankruptcy Code and applicable nonbankruptcy law. *Mission Product* does not transform those continuing performance obligations into irrevocable rights merely because they appear in the same agreements as the Objectors' license rights.

73. Genentech & Roche's reliance on *Exide* does not support a different result. Judge Ambro's concurrence addressed whether rejection could extinguish a trademark licensee's already-granted right to use the licensed mark. *In re Exide Techs.*, 607 F.3d 957, 965–68 (3d Cir. 2010) (Ambro, J., concurring). The concurrence did not hold that rejection requires a debtor-licensor to continue performing separate contractual covenants. To the contrary, in describing the operation of section 365(n), Judge Ambro explained that the statute permits a licensee "to retain its licensed rights . . . absent any obligations owed by the debtor-licensor," therefore leaving the debtor-licensor without continuing obligations. *Id.* at 966. The "rights [the Debtor] bargained away" referenced by the Objectors thus were the trademark rights already granted to the licensee in *Exide*, not separate promises by the debtor-licensor to refrain from future conduct. *Id.* at 967–68. Here, the Debtor does not seek to claw back the Objectors' licensed intellectual property rights. It seeks to reject the Outbound License Agreements and with them the continuing Noncompete Provisions that restrict the Debtor's own conduct. That is a proper use of section 365 by a debtor

as a shield to reject burdensome future obligations, not a sword, and *Exide* does not equate the two.

74. The adequate protection arguments by Astellas and Takeda fare no better. They contend that, even if the Noncompete Provisions are not preserved by section 365(n), "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 [the Objectors'] interests." Astellas Obj. ¶ 13 Takeda Obj. ¶ 9. Here, the Objectors' only protected interests are their rights in the licensed intellectual property. The Noncompete Provisions are not interests in that intellectual property, but instead separate contractual restrictions on the Debtor's conduct. The Objectors have failed to meet their burden of proof under section 363(p)(2) to establish the validity, priority, or extent of their purported interest based on the Noncompete Provisions. 11 U.S.C. § 363(p)(2). Accordingly, because the Noncompete Provisions are not rights "to such intellectual property" protected by section 365(n), the Debtor is not required to provide adequate protection for the Noncompete Provisions as a condition of the Sale under section 363(e).

CONCLUSION

WHEREFORE, for the reasons set forth herein, the Debtor respectfully requests that the Court overrule the Objections and enter the Merope Sale Order.

Dated: August 19, 2026
Wilmington, Delaware

Respectfully submitted,

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