IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	**Chapter 11**
deCODE genetics, Inc.[1]	**Case No. 09-14063 (PJW)**
Debtor.	**Re: Docket No. 28**

OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO MOTION OF DEBTOR AND DEBTOR IN POSSESSION FOR ENTRY OF ORDERS (I) APPROVING BIDDING PROCEDURES FOR THE SALE OF CERTAIN ASSETS OF THE DEBTOR FREE AND CLEAR OF ALL LIENS, CLAIMS AND INTERESTS PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE, (II) APPROVING CERTAIN BIDDING PROTECTIONS, (III) APPROVING THE FORM AND MANNER OF NOTICE OF THE SALE AND ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (IV) SCHEDULING AN AUCTION AND SALE HEARING AND (V) APPROVING SUCH SALE

The Official Committee of Unsecured Creditors (the "Committee") appointed in the above-captioned case of deCODE genetics, Inc. (the "Debtor"), by its undersigned proposed counsel, hereby submits this objection to the Motion of Debtor and Debtor in Possession for Entry of Orders (I) Approving Bidding Procedures for the Sale of Certain Assets of the Debtor Free and Clear of All Liens, Claims and Interests Pursuant to Section 363 of the Bankruptcy Code, (II) Approving Certain Bidding Protections, (III) Approving the Form and Manner of Notice of the Sale and Assumption and Assignment of Executory Contracts and Unexpired Leases, (IV) Scheduling an Auction and Sale Hearing and (V) Approving Such Sale (the "Motion"), and in support of this objection, respectfully states as follows:

---

1 The Debtor in this chapter 11 case, along with the last four (4) digits of its federal tax identification number, is deCODE genetics, Inc. (6704).

Preliminary Statement

1. The auction and sale procedures described in the Motion are unfair to the Debtor's creditors and should not be approved in their current form. The Motion reveals that this case has been filed not to benefit the Debtor's creditors, but to allow original investors in the Debtor, that have long-standing relationships with the Debtor's board and management, to acquire substantially all of the Debtor's assets in a "fire-sale" at a price that would yield an inconsequential recovery for unsecured creditors.

2. Polaris Venture Partners ("Polaris") and ARCH Venture Partners ("ARCH"), two initial investors in the Debtor, joined forces to create Saga Investments, LLC ("Saga") to acquire the Debtor's most-valued assets. A third party, Illumina, Inc. ("Illumina"; together with Polaris and ARCH, the "Investors"), later committed to join Saga in its purchase of the Debtor's assets. Upon information and belief, Illumina is a creditor and licensing partner of the Debtor's only operating subsidiary, Islensk erfdagreining ehf ("ehf").

3. The Investors are joined in their effort to acquire the Debtor's assets at a bargain sale price by current and former officers, directors and key employees of the Debtor who expect to keep their positions or assume newly-created positions upon the consummation of the sale transaction described in the Motion (the "Transaction") and memorialized in the Asset Purchase Agreement, dated November 16, 2009, between the Debtor and Saga (the "Purchase Agreement").

4. The Debtor may assert that the proposed stalking horse arrangement (and the related debtor-in-possession financing agreement) with Saga presents the only viable alternative to liquidation. If this assertion is true, then it is due to the inadequate actions of the Debtor and its officers and directors in seeking strategic alternatives. The Debtor has been

discussing a transaction with Saga for approximately one year. For most of that period, the Debtor had no financial or restructuring advisor. Its efforts to find a buyer other than Saga were insufficient (and possibly compromised by conflicts of interest), and its efforts to reduce costs and restructure non-existent. The Debtor's current financial advisor started its work only after management had agreed upon a term sheet – and granted a brief negotiating exclusivity period – to Saga. Unsecured creditors should not fall victim to the Debtor's questionable strategic decisions that have left the estate with one unpalatable alternative from which creditors will recover less than five percent of their claims. Instead, creditors should be given more time – at least 60 days from the date of approval of any stalking horse bid – to evaluate whether there are alternatives to the Saga bid.

5. As discussed in greater detail below, the Committee respectfully asserts that the relief requested in the Motion should be denied for the following reasons:

a) Timing. The Debtor's proposed sale timeline is prejudicial to the Debtor's creditors. The timeline appears designed to (i) inhibit potential bidders from gathering enough information to become comfortable with submitting a competing bid and (ii) prevent creditors from fully understanding the Transaction and the marketing process that preceded the execution of the Purchase Agreement.

b) Insiders. The terms of the Purchase Agreement suggest that the Investors, together with certain board members and employees of the Debtor, colluded to formulate a deal that would allow them to maintain and profit from their direct and indirect interests in the Debtor free and clear of claims held by the Debtor's unsecured creditors.

c) Marketing. The Debtor's past marketing efforts provide no assurance that the Debtor's assets have been appropriately marketed, or that an alternative to the proposed transaction with Saga was unavailable. As discussed below, the Debtor engaged in virtually no marketing of its core assets during 2009. The Debtor's first financial advisor focused on selling the assets that are *not* part of the proposed transaction with Saga, and the special committee of the board that oversaw the Debtor's so-called restructuring efforts for most of 2009 does not appear to have pursued any alternative to a Saga deal. The little marketing that took place in the second half of 2009 was crammed into the month preceding the Debtor's bankruptcy filing, as an afterthought to the deal the Debtor had in principle with Saga. The Debtor's marketing process did nothing to ensure the maximization of value to the Debtor's estate or validate that Saga's bid warrants stalking horse protections.

d) Purchase Price. The purchase price indicated in the Motion is unverifiable, illusory and based on terms that likely violate provisions of the Bankruptcy Code. In particular, the purchase price gives full credit to the Bridge Loan (as defined herein), which appears to be voidable in whole or part as a preference or fraudulent transfer under sections 547 or 548 of title 11 of the United States Code (the "Bankruptcy Code") and applicable non-bankruptcy law. Moreover, that price is far greater than the amount Saga is likely to actually pay under the Purchase Agreement. As a result, if the proposed bidding procedures are approved, Saga would be able to chill competitive bidding by setting an artificially high threshold for competing bids.

e) Bid Protections. The Debtor and Saga cannot justify the bid protections requested in the Motion. Saga proposes to pay only $3 million in cash for the Debtor's assets and at the same time requests bid protections of at least $885,000. On top of these fees, a qualifying bidder must agree to an overbid amount of at least $250,000. Thus, any qualifying bidder must be prepared to enter a starting bid of approximately $15.25 million. Not only are the bid protections based upon an illusory Estimated Purchase Price (as defined herein), they are also unnecessary to preserve the value of the Debtor's estate.

f) Purchase Agreement. The Purchase Agreement contains terms and conditions that are highly prejudicial to the Debtor, its creditors and any potential bidder. Among other things, under the Purchase Agreement, the Debtor has no control over the ability to close the deal with Saga, and the Debtor will be forced to pay transfer taxes and give indemnities in an unknown amount in exchange for a cash purchase price that may be no more than $3 million. These one-sided provisions are unnecessary to ensure Saga's continued interest in the Debtor and should be denied by the Court.

g) Consumer Privacy. Given the highly sensitive and private nature of individual genetic material, the Committee believes that the Court may consider the appointment of a consumer privacy ombudsman ("Ombudsman") pursuant to sections 332 and 363 of the Bankruptcy Code. An Ombudsman would need time to review the privacy policies of Saga and the Debtor to ensure the protection of private consumer data. Therefore, in the event that the Court appoints an Ombudsman, the Debtor will need to adjust the proposed sale timeline to allow the Ombudsman an adequate opportunity to fulfill its duties.

Background

6. On November 16, 2009 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

7. The Debtor continues to operate its business and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this case.

8. The Debtor was incorporated in 1996 and is a Delaware corporation

headquartered in Reykjavik, Iceland. The Debtor, through ehf, an Icelandic private limited company, is engaged in gene discovery with the goal of bringing to market DNA-based reference laboratory tests and consumer genome analysis services to assess individual risk of common diseases. ehf also provides genomics services to third-parties. In 2002, the Debtor acquired MediChem Life Sciences, Inc. ("MediChem"). Through MediChem's subsidiaries, deCODE Chemistry, Inc. ("Chemistry"), deCODE Biostructures, Inc. ("Biostructures") and Emerald BioSystems, Inc. ("Emerald"), the Debtor expanded its business to include the discovery and commercialization of novel therapeutics designed against certain targets identified in its population based gene discovery work. In addition, these subsidiaries offer drug discovery services and products to third-party customers. In September 2009, the Debtor terminated operations of Chemistry and, in November 2009, it sold Biostructures and Emerald to an unrelated third party.

9. The Debtor has developed and is marketing six DNA-based diagnostic tests for assessing individual risk of disease. It also operates deCODEme, a consumer genetics analysis service. The Debtor's lead drug development programs include DG041 for the prevention of arterial thrombosis, G051 and DG031 for the prevention of heart attack and DG071 for Alzheimer's and other cognitive disorders, the intellectual property underlying which is held substantially by ehf. These compounds are in clinical development and the Debtor purportedly sought licensing or other collaborative arrangements for ehf to advance the development of these programs or, alternatively, an outright sale of one or more of the compounds.

10. In or around August 2008, the Debtor hired The Stanford Group Company ("Stanford") to serve as its financial advisor and assist it in evaluating strategic alternatives

including a potential sale of its *non-core* assets to an interested buyer. Stanford received no meaningful offers during its engagement and ceased providing services upon its collapse in February 2009.

11. Upon information and belief, in March 2009, the Debtor, through the special committee (and without the assistance of a financial advisor), commenced discussions with Saga, an entity formed by Polaris and ARCH to acquire the Debtor. In August 2009, Saga indicated an interest in the transaction that was ultimately memorialized in the Purchase Agreement.

12. In September 2009, the Debtor, MediChem and Biostructures entered into a $700,000 bridge loan with Saga (the "Bridge Loan"). Biostructures, ehf, Chemistry and Emerald guaranteed the Bridge Loan through a promissory note, dated September 11, 2009. Biostructures and Emerald were released from their guarantee upon their sale in November 2009. The Bridge Loan was amended nine times to increase the loan amount to a total of $5.424 million. The Bridge Loan, as amended, is purportedly secured by liens on substantially all of the prepetition borrowers' and guarantors' assets. Under the terms of the Bridge Loan, Saga is entitled to interest at a rate of 8%. On September 23, 2009, Saga and the Debtor entered into a non-binding term sheet containing provisions for a proposed sale, extension of the Bridge Loan, debtor-in-possession financing including a roll-up of the Bridge Loan (the "DIP Loan"), and a binding exclusive dealings agreement that remained in effect until October 8, 2009.

13. Around the time of the Bridge Loan, the Debtor engaged the firm of PricewaterhouseCoopers ("PwC") to evaluate the proposed transaction with Saga, and purportedly to find alternative transactions that may be available. Due to the exclusive dealings agreement with Saga, however, PwC was prohibited from marketing the Debtor's assets until

October 8, 2009. Upon information and belief, once PwC was permitted to start the marketing process, it contacted just a small subset of the parties who originally had been targeted by Stanford.

14. PwC's one-month long marketing effort yielded no competing bidders, and the Debtor and Saga entered into the Purchase Agreement on November 16, 2009, the same day as the Debtor's chapter 11 filing.

15. On December 1, 2009, the United States Trustee for the District of Delaware (the "UST") appointed the Committee.

Argument

I. The Proposed Bidding Procedures Will Chill Bidding, Harm the Debtor's Estate and its Stakeholders, and Serve to Benefit Only Insiders

A. The Expedited Nature of the Proposed Bidding Procedures and Sale Process Will Unnecessarily Chill Bidding

16. The Committee respectfully requests a reasonable delay in the proposed sale timeline, which currently is designed to benefit solely Saga and the other insiders of the Debtor and will harm the Debtor's estate and other potential bidders by chilling competitive bids. A reasonably paced sale process will afford all interested parties – including the Committee, the UST as well as the Court – the opportunity to ensure the integrity of the sale process.

17. The Committee was appointed in this case on December 1, 2009. The Committee and its advisors have had approximately seven days, among other things, to review, understand, perform due diligence on and consider a transaction that the Debtor and Saga contemplated and negotiated for nearly a year.

18. The Committee currently has very little information regarding the Debtor's marketing process, possible alternatives to the sale proposed by the Purchase

Agreement and the Investors. Similarly, notwithstanding that the Debtor negotiated the Purchase Agreement for nearly a year with Saga (a party that was intimately familiar with the Debtor's business and its assets), the Motion proposes that interested bidders submit competing bids by December 17, 2009. This leaves potential bidders with only seven business days after the hearing on the Motion to: (a) execute a confidentiality agreement; (b) conduct due diligence (which is severely limited by the terms of the Motion); (c) submit a bid and demonstrate its financial ability to consummate a transaction by, among other things, making a good faith deposit; and (d) prepare an alternative purchase agreement.

19. The Debtor has proposed a sale timeline that is highly prejudicial to interested parties. The proposed timeline appears designed to (a) inhibit potential bidders from gathering enough information to become comfortable with submitting a competing bid and (b) prevent creditors from fully understanding the faults of the sale contemplated by the Purchase Agreement.[2] For these reasons, the proposed bidding and sale timelines described in the Motion should be revised or, alternatively, denied.

B. The Proposed Bidding Procedures Appear Designed to Benefit the Debtor's Insiders to the Detriment of the Debtor's Creditors

20. ARCH and Polaris were each initial investors in the Debtor. Their employees and affiliates are current equity owners of the Debtor. Upon information and belief, Illumina is a creditor and licensing partner of ehf. Until recently, Terry McGuire, a general partner of Polaris, was a member of the Debtor's board of directors. Earl M. (Duke) Collier, a former member of the Debtor's board of directors, is now or will become the Chief Executive Officer of Saga. Dr. Kari Stefansson, the founder, Chief Executive Officer and President of the

Debtor, is slated to become the Chief Scientific Officer and Executive Chairman of Saga upon consummation of the Transaction.

21. These facts, when considered together with the terms and timing of the Motion and the Purchase Agreement, suggest that the Investors, together with certain current and former board members and employees of the Debtor, may have colluded to create a deal that will ensure their continued profit from their direct and indirect interests in the Debtor free and clear of claims held by the Debtor's unsecured creditors. The proposed timeline should be rejected to allow the Committee time to investigate this possibility and determine that the sale is in the best interests of the Debtor's estate and maximizes recovery for the Debtor's creditors.

C. The Debtor's Marketing Process was Insufficient

22. The Debtor's M&A process to date provides no comfort that the Debtor's assets have been appropriately marketed, or that an alternative to the proposed transaction with Saga was unavailable. Through discussions with the Debtor's advisors, the Committee has learned that between September 2008 through February 2009, the Debtor's marketing efforts were focused primarily on the Debtor's *non-core* assets, *i.e.*, assets that are *not* part of the proposed transaction with Saga. After Stanford, the Debtor's initial financial advisor, imploded in February 2009, a special committee of the board of directors changed focus and pursued the sale of the Debtor's core assets. The special committee did so, however, without the assistance of a financial advisor. This meant that the members of the special committee – who have no known mergers and acquisitions expertise – could not have conducted an adequate search for a buyer because during most of 2009, because they were focused on meeting ehf's liquidity needs.

---

2 The proposed sale process is further complicated by the fact that all of these dates fall during a time of year when many parties, including potential bidders, are likely to be engaged in scheduled holidays and vacations.

Not surprisingly, the special committee's efforts emphasized investors known to it, and particularly the investors in Saga. In addition, two principal proponents of the deal, Dr. Kari Stefansson and Earl M. (Duke) Collier, each has been promised a position with Saga following the sale.

23. By September 2009, the Debtor and Saga had agreed on the broad terms of the proposed sale transaction that included a brief exclusivity period for Saga. It was only after that agreement-in-principle was negotiated that PwC began an effort to find an alternative transaction. PwC only had approximately one month prior to the Petition Date in which to market the Debtor's assets. During this marketing process, PwC appears to have made meaningful contact with only a small subset of the parties Stanford had solicited, and disregarded the rest based on their initial lack of interest. The Committee believes that certain parties' initial lack of interest may have been due to the unparalleled financial crisis unfolding at the time of Stanford's solicitation and the worst M&A market in recent memory. Moreover, many of those parties contacted by PwC are large corporations that need a significant amount of time to consider acquisitions. Had these potential buyers been contacted earlier in 2009, they might have considered a strategic transaction with the Debtor. But given the special committee's failure to employ a financial advisor, and to focus on alternative bidders, for most of 2009, it is not surprising that PwC failed to find any alternative bidder during its brief search window.

24. Due to the insufficient nature of the Debtor's past marketing efforts, the Committee and its advisors need additional time to determine whether viable alternatives to the Transaction exist. Until the Committee has had time to make due inquiries, there can be no assurance that the proposed deal is in the best interests of the estate.

II. The Proposed Sale Structure, Price and Bid Protections are Inappropriate and are Also Designed to Chill Bidding

25. The Committee respectfully submits that the proposed bidding procedures and sale terms are inappropriate and should be rejected by the Court for the reasons set forth below.

A. The Proposed Purchase Price Indicated in the Motion is Illusory and Creates an Artificially High Threshold for Competing Bids

26. Section 3.2 of the Purchase Agreement indicates that the purchase price is estimated to be $14,117,928 (the "Estimated Purchase Price"). The Estimated Purchase Price includes a number of variables that cannot be adequately predicted without a thorough valuation of the Debtor's assets and an examination of the Debtor's books and records. Specifically, the Estimated Purchase Price is comprised of: (a) the greater of (i) $11 million or (ii) the DIP Loan amount (subject to at least $3 million being paid in cash) (the "Cash Price"); (b) 25% of the net cash proceeds from the sale, license or other monetization of certain assets received within 24 months after the closing of the sale minus $3 million (the "Additional Cash Price"); and (c) certain preferred shares in Saga (the "Non-Cash Price").

27. At this time, it is impossible to determine whether the Estimated Purchase Price is accurate. Neither the Committee nor potential bidders can know or even estimate the amount of the Additional Cash Price or adequately value the Non-Cash Price. Moreover, the amount of recovery for the Debtor's estate through the Additional Cash price is wholly within Saga's control and is subject to hold-back for potential indemnity obligations, as discussed further below. Finally, the monetary value of the preferred stock is not only impossible to determine, the Debtor has failed to demonstrate that it would be distributable pursuant to a plan of liquidation or a plan of reorganization under section 1145 of the Bankruptcy Code.

28. Saga's proposed credit bid is also inappropriate. Section 363(k) of the

Bankruptcy Code allows the holder of a lien securing an allowed claim to bid in a non-ordinary course of business sale, and if successful, to offset its claim against the purchase price of the assets at issue. The ability to credit bid, however, is limited to holders of "allowed claims." Thus, the holder of a purported lien that has not been examined or determined may not bid that lien. *See, e.g., Nat'l Bank of Commerce of ElDorado v. McMullan (In re McMullan)*, 196 B.R. 818, 835 (Bankr. W.D. Ark. 1996); King *et al.*, 3 Collier on Bankruptcy ¶363.09, n.1 (15th ed. rev. 2002).

29. Courts have held that the intent of section 363(k) is "to permit only those persons with a valid security interest in property to be sold to claim a setoff. And the issue of whether a security interest actually existed was obviously intended to be resolved prior to the date of the sale of the property." *Bank of Nova Scotia v. St. Croix Hotel Corp.*, 44 B.R. 277, 279 (Bankr. D. V.I. 1984); *see also, In re Miami Gen. Hosp., Inc.*, 81 B.R. 682, 688 (S.D. Fla. 1988) (noting that a bankruptcy court should adjudicate a lien prior to permitting its use in credit bidding).

30. In this case, Saga seeks to credit bid a purportedly secured loan that may very well be voidable under sections 547 or 548 of the Bankruptcy Code and applicable non-bankruptcy law. Therefore, the proposed credit bid may well not be an "allowed claim" that can be credit bid under section 363(k) of the Bankruptcy Code.

31. The Estimated Purchase Price is unverifiable and the adequacy of the Cash Price, the Additional Cash Price and the Non-Cash Price cannot be determined at this time, especially without an opportunity to perform a full valuation of the Debtor and its assets. Moreover, the Estimated Purchase Price includes a purported credit bid of claims that have yet to be allowed under the Bankruptcy Code. Because the Estimated Purchase Price is far greater than

the amount Saga is likely to actually pay under the Purchase Agreement, and is based on terms that are likely inappropriate under the Bankruptcy Code, Saga has set an artificially high threshold for competing bids. For these reasons, the Court should modify or, alternatively, deny the bidding procedures proposed in the Motion.

B. The Proposed Bid Protections are Inappropriate and Unnecessary

32. The Debtor and Saga cannot justify the bid protections requested in the Motion. Specifically, section 7.1(c)(iii) of the Purchase Agreement requires that a qualifying bidder must agree to pay a Break-Up Fee of at least $385,000 and up to $500,000 of expense reimbursements. Thus, if the Cash Price is composed of a credit bid, Saga proposes to pay only $3 million in cash for the Debtor's assets and at the same time requests bid protections of at least $885,000. On top of these fees, a qualifying bidder must agree to an overbid amount of at least $250,000. Thus, any qualifying bidder must be prepared to enter a starting bid of approximately $15.25 million.

33. Not only are these bid protections based upon an illusory Estimated Purchase Price, they are also unnecessary to preserve the value of the Debtor's estate. Although a break-up fee may be used to induce a party to research a company and place a stalking horse bid, the facts clearly show that Saga needed no inducement to pursue an acquisition of the Debtor and its assets. Indeed, Saga and its stakeholders have pursued an acquisition of the Debtor in earnest for more than one year and have long been familiar with the Debtor's business and its assets due to their insider status.

34. In this circuit, bid protections such as a break-up fee can be awarded only where they are an appropriate expense of administration under section 503(b) of the Bankruptcy Code. Here, the proposed break-up fee is neither a benefit to the estate nor "actually necessary

to preserve the value of the estate." *Calpine Corp. v. O'Brien Envtl., Inc.*, 181 F.3d 527, 538 (3d Cir. 1999). Under *Calpine*, denial of a break-up fee is appropriate where a bidder has "strong financial incentives to undertake the cost of submitting a bid . . . even in the absence of reimbursement. *Id.* at 537. Saga was created for the sole purpose of submitting a bid and acquiring the Debtor and its valuable assets. There is no evidence to suggest that Saga ever required a Break-Up Fee as a precondition to acting as the stalking horse bidder.

35. The Debtor cannot demonstrate that the bid protections create a benefit for the estate. Proposed bid protections in the amount of at least $885,000 to protect a bidder who proposes to pay as little as $3 million in cash for the Debtor's assets are unprecedented. Further, the bid protections do not serve to create a ground level bid and catalyze higher bids, as required under the *O'Brien* standard. Rather, the bid protections serve to protect the Debtor's insiders from competitive bids. As a result, the Motion, as currently drafted, should be denied.

C. **The Terms of the Purchase Agreement are One-Sided and Prejudicial to the Debtor's Estate**

36. The Purchase Agreement is fraught with terms that could not have resulted from arm's-length bargaining. For example, Section 10.1(d)(ix) of the Purchase Agreement gives Saga the right to walk away from the deal at any time prior to closing in exchange for liquidated damages in the amount of $1 million. The Debtor, on the other hand, is granted no right to terminate the Purchase Agreement in the event of Saga's breach. Section 3.4 of the Purchase Agreement requires the Debtor to pay all transfer taxes related to the Transaction (presumably from the cash consideration in the Transaction). Section 3.5 of the Purchase Agreement requires the Debtor to transfer the proceeds of insurance over any of the Debtor's purchased assets to Saga. Section 7.2 contains a long list of closing conditions that the Debtor must fulfill in order to avoid breach of the Purchase Agreement. Many of these closing

conditions, such as continued employment of certain individuals, are not within the control of the Debtor.

37. The Purchase Agreement abounds with terms and conditions that are highly prejudicial to the Debtor, its creditors and any potential bidder. Under the Purchase Agreement, the Debtor has no control over the ability to close the deal with Saga and the Debtor will be forced to pay taxes and reserve for indemnities in an unknown amount in exchange for a cash purchase price that may amount to no more than $3 million. These one-sided provisions are unnecessary to ensure Saga's continued interest in the Debtor, minimize recovery for the Debtor's estate and should be denied by the Court.

III. A Consumer Privacy Ombudsman May Require More Time to Ensure that Sensitive Third-Party Information is Adequately Protected

38. Under the terms of the proposed sale order, Saga will hold genetic records collected by the Debtor in the ordinary course of its business. While the Motion indicates that this data will remain subject to the Debtor's privacy policy, which prevents disclosure of the data to third-parties, it is conceivable that Saga will attempt to maximize its return by marketing the data to third-parties such as researchers and pharmaceutical companies. Given the highly sensitive and private nature of individual genetic material, the Committee believes that the Court may consider the appointment of an Ombudsman pursuant to sections 332 and 363 of the Bankruptcy Code.

39. If appointed, an Ombudsman would need time to review the privacy policies of Saga and the Debtor to ensure the protection of private consumer data. Thus, in the event that the Court appoints an Ombudsman, the Debtor will need to adjust the proposed sale timeline to allow the Ombudsman appropriate opportunity to fulfill its duties.

Reservation of Rights

40. The Committee reserves all of its rights to supplement this objection and to object to the Motion.

Notice

41. Notice of this Objection has been provided to (a) counsel to the Debtor, (b) counsel to Saga, (c) the UST and (d) all other persons who have requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure. In light of the nature of the relief requested, the Committee submits that no other or further notice is necessary.

Conclusion

WHEREFORE, based upon the foregoing, the Committee respectfully requests that the Court deny the relief requested in the Motion.

Dated: December 8, 2009
Wilmington, Delaware

Respectfully submitted,

SHEARMAN & STERLING LLP
Andrew V. Tenzer
Solomon J. Noh
599 Lexington Avenue
New York, New York 10022
Telephone: (212) 848-4000
Facsimile: (212) 848-7179

YOUNG CONAWAY STARGATT &
TAYLOR, LLP

<u>/s/ Pauline K. Morgan</u>
Pauline K. Morgan (No. 3650)
The Brandywine Building
1000 West Street, 17th Floor
P.O. Box 391
Wilmington, DE 19899-0391
Telephone: (302) 571-6707
Facsimile: (302) 576-3318

Proposed Counsel for the Committee