

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: TELIGENT, INC., <i>et al.</i> , ¹ Debtors.	Chapter 11 Case No. 21-11332 (BLS) (Jointly Administered) RE: Doc. No. 307
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**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF
EVERSANA LIFE SCIENCE SERVICES, LLC TO NOTICE OF POSSIBLE
ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND
UNEXPIRED LEASES IN CONNECTION WITH SALE**

EVERSANA Life Science Services, LLC (hereafter “EVERSANA”) by and through counsel, files this Limited Objection and Reservation of Rights (the “Objection”) to the *Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with Sale* [Docket No. 307] (the “Cure Notice”) filed by the above-captioned Debtors and Debtors-in-Possession (collectively, “Debtors”), and respectfully represents as follows:

PRELIMINARY STATEMENT²

1. EVERSANA files this Objection to preserve its right: 1) to receive the benefit of its bargains and have all Outstanding Obligations cured before the Contracts are assumed; and B) to receive adequate assurance before any of the Agreements are assigned..

2. First, the Cure Notice mistakenly underestimates the amount necessary to cure the Outstanding Obligations. The Cure Notice identifies the Proposed Cure Amount for the Contracts as \$522,649.85. Based on EVERSANA’s records, however, the amount necessary to

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, are: Teligent, Inc. (5758); Igen, Inc. (7443); Teligent Pharma, Inc. (1639); and TELIP, LLC (8395). The Debtors’ mailing address is: c/o Portage Point Partners LLC, 300 North LaSalle Drive, #1420, Chicago, Illinois 60654.

² All capitalized terms used but not defined in this Preliminary Statement shall have the same meaning ascribed to them as used *infra*.

cure the Outstanding Obligations is not less than \$707,576.72 (“Cure”). Accordingly, EVERSANA files this Objection to preserve the right to receive all amounts owed under the Contracts.

3. Second, the Debtors have not provided evidence of adequate assurance of future performance as required for assumption of an executory contract by Section 365(b)(1)(A) of the Bankruptcy Code. Before the Debtors may assume the Contracts, the Court should direct the Debtors to provide evidence of adequate assurance of future performance to EVERSANA.

BACKGROUND

A. PROCEDURAL HISTORY

4. On October 14, 2021 (the “Petition Date”), each of the Debtors filed a voluntary petition (collectively, “Petitions”) for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

5. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

6. The Petitions are being jointly administered. [Doc. No. 37].

7. On October 15, 2020, this Honorable Court entered the *Order (A) Approving Bidding Procedures in Connection with Sale of Assets of the Debtors, (II) Approving Form and Manner of Notice, (III) Scheduling Auction and Sale Hearing, (IV) Authorizing Procedures Governing Assumption and Assignment of Certain Contracts and Unexpired Leases, and (V) Granting Related Relief* [Doc. No. 290] (“Bid Procedures Order”), which, among other things, approved the procedures for providing notice to contract counterparties of possible assumption

and assignment of executory contracts. Of relevance to this Objection, the Sale Order authorized contract counter-parties to file an objection to the cure amount identified by the Debtors.

8. On December 20, 2021, the Debtors filed the *Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with Sale* [Doc. No. 307] (“Cure Notice”), which underestimates the amount necessary to cure the Debtors’ contracts with EVERSANA by approximately \$185,000.³

9. EVERSANA files this Objection to reserve its right to be paid pursuant to its agreements with the Debtors.

B. EXECUTORY CONTRACTS BETWEEN DEBTORS AND EVERSANA

10. Teligent, Inc. (“Teligent”), one of the Debtors, markets and sells generic pharmaceutical products in the United States and Canada. To assist Teligent in fulfilling and distributing pharmaceutical products, EVERSANA and the Debtor entered into a Services Agreement dated October 31, 2018 and a Quality Agreement dated December 28, 2018 (collectively with all purchase orders, change orders, statements of work, price increases and other related documents, as well as amendments thereto, the “Contracts”).

11. To date, the Contracts have not been rejected by the Debtor and remain in full force and effect.

12. In exchange for receiving the services provided by EVERSANA pursuant to the Agreements, the Debtors are required to remit periodic payments to EVERSANA, among other things.

³ The Proposed Cure Amount in the Cure Notice is \$522,649.85, but the amount necessary to cure the Outstanding Lease Obligations is not less than \$707,576.72 as of January 10, 2022.

13. Pursuant to the terms of the Contracts, the Debtors will owe EVERSANA more \$770,000.00 by the time the sale closes and the Contracts are assumed(collectively with all other amounts and obligations owed under the Agreements the “Outstanding Obligations”).

14. Accordingly, EVERSANA files this Cure Notice to preserve its right to collect all Outstanding Obligations for each Contract that the Debtors seek to assume and assign through the Sale.

ARGUMENT

A. THE DEBTORS’ CURE NOTICE UNDERESTIMATES THE AMOUNT NECESSARY TO CURE.

15. Section 365(b) provides in pertinent part as follows:

If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default. . .

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default;

11 U.S.C. § 365(b)(1).

16. Simply put, the Debtors must cure all defaults of the Contracts or provide adequate assurance of prompt cure before it may be assumed. *See In re Thane Int’l, Inc.*, 586 B.R. 540, 546 (Bankr. D. Del. 2018).

17. EVERSANA objects to the Debtors’ proposed cure amount (the “Proposed Cure Amount”) because it fails to accurately reflect all of the Outstanding Obligations due under the Contracts.

18. Moreover, EVERSANA has continued to provide post-petition services to the Debtor. Thus, EVERSANA further objects to the assumption of the Contracts absent payment of all amounts owed under the Contracts, including any Outstanding Obligations, owed from January 10, 2022, through the effective date of assumption.

B. THE DEBTORS MUST PROVIDE ADEQUATE ASSURANCE OF FUTURE PERFORMANCE

19. Section 365(b)(1)(C) of the Bankruptcy Code requires that if there has been a default in an executory contract or lease, before it may be assumed, the Debtor must provide adequate assurance of future performance under such contract. 11 U.S.C. § 365(b)(1)(C).

20. The Bankruptcy Code does not provide a definition of adequate assurance. *In re DBSI, Inc.*, 405 B.R. 698, 708 (Bankr. D. Del. 2009) (holding that adequate assurance of future performance was not provided on an unexpired lease, where the debtor-landlord would only have \$485,900.11 to fund future expenses, would not receive rent under the terms of the lease for 14 months, and the interest rate on the debtor's loan amounted to \$780,000.00 per year).

21. However, based on the legislative history, courts have turned to the Uniform Commercial Code (“UCC”) for guidance. *Id.* The UCC considers the adequacy of assurance to be based on commercial reasonableness, as such courts have held that the term adequate assurance was intended to be given a practical pragmatic construction. *Id.* What constitutes adequate assurance of future performance must be determined by consideration of the facts of the proposed assumption. *In re Fleming Companies, Inc.*, 499 F.3d 300, 307 (3d Cir. 2007).

22. Separate from the Outstanding Obligations owed under the Contracts, EVERSANA also objects to any assignment of its Contracts to an unknown purchaser. In this case, the Debtors seek to potentially assume and assign the Contracts to Lieters, Inc., SteriMax

Inc. and/or PAI Holdings, LLC (collectively, “Stalking Horse Bidders”). EVERSANA reserves the right to amend this Objection if the identity of the assignee changes.

23. Additionally, the Debtors have yet to provide evidence of adequate assurance of future performance for the Stalking Horse Bidders. The Court should direct the Debtors to provide evidence of adequate assurance of future performance, which should include, but is not limited to, evidence of the creditworthiness of the Stalking Horse Bidders or evidence of sufficient available funds to make future payments due under the Contracts.

24. In the alternative, the Court should deny Debtors’ request to assume the Contracts. Adequate assurance is a standard determined on a case by case basis, however, to date, the Debtors have failed to provide EVERSANA with evidence of adequate assurance of future performance. For this reason, regardless of what constitutes adequate assurance in this case, it is appropriate for the court to direct Debtors to provide evidence of adequate assurance of future performance or deny the Debtors’ request to assume the Contracts.

RESERVATION OF RIGHTS

25. EVERSANA hereby reserves its rights to file supplementary cure objections and make such other and further objections as may be appropriate, including, but not limited to, objections regarding adequate assurance of future performance under Section 365.

CONCLUSION

26. For the reasons set forth above, EVERSANA objects (a) to any assumption of the Contracts without a complete cure of all Outstanding Contracts Obligations upon assumption and (b) to any assignment of the Contracts to an entity that has not been disclosed without adequate assurances of future performance in form and substance satisfactory to EVERSANA.

27. Accordingly, EVERSANA respectfully requests that this Court (i) sustain this Objection; (ii) require the Debtors to pay all amounts accrued or accruing up until the date of the assumption; (iii) require the Debtors to notify EVERSANA of any changes in the assignee; (iv) require the Debtors to provide adequate assurance of future performance; and (v) grant such further relief as it deems proper.

Dated: January 11, 2022
Wilmington, Delaware

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