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LEGAL SERVICES

Fill in this information to identify the case:

Debtor 1 Zymergen Inc. et al

Debtor 2 Lodo Therapeutics Corporation, enEvolv and Genesis Acquisition Sub, LLC
(Spouse, if filing)

United States Bankruptcy Court for the: District of Delaware

Case number 23-11661

Filed: USBC - District of Delaware
Zymergen Inc., et al
23-11661 (KBO)

(CLM)

ZYM



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Official Form 410

Proof of Claim

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

| | | |
|--|---|---|
| 1. Who is the current creditor? | <u>BRE-BMR 5300 Chiron LP, a Delaware limited partnership</u> Name of the current creditor (the person or entity to be paid for this claim) | |
| | Other names the creditor used with the debtor _____ | |
| 2. Has this claim been acquired from someone else? | <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____ | |
| 3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g) | Where should notices to the creditor be sent? <u>BRE-BMR 5300 Chiron LP</u> Name <u>4570 Executive Drive, Suite 400</u> Number Street <u>San Diego</u> <u>CA</u> <u>92121</u> City State ZIP Code Contact phone <u>(858) 207-5967</u> Contact email <u>marie.lewis@biomedrealty.com</u> | Where should payments to the creditor be sent? (if different) <u>BRE-BMR 5300 Chiron LP</u> Name <u>4570 Executive Drive, Suite 400</u> Number Street <u>San Diego</u> <u>CA</u> <u>92121</u> City State ZIP Code Contact phone <u>(858) 207-2499</u> Contact email <u>ankit.patel@biomedrealty.com</u> |
| Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____ | | |
| 4. Does this claim amend one already filed? | <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ | |
| | | Filed on _____ MM / DD / YYYY |
| 5. Do you know if anyone else has filed a proof of claim for this claim? | <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____ | |

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? ☒ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ 31,453,625.31. Does this amount include interest or other charges?
☒ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
Rent under lease and other damages (see attached rider)

9. Is all or part of the claim secured? ☒ No
☐ Yes. The claim is secured by a lien on property.
Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
☐ Motor vehicle
☐ Other. Describe: _____
Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____ %
☐ Fixed
☐ Variable

10. Is this claim based on a lease? ☐ No
☒ Yes. Amount necessary to cure any default as of the date of the petition. \$ See attached rider

11. Is this claim subject to a right of setoff? ☒ No
☐ Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No

☐ Yes. Check one:

- ☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).
- ☐ Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).
- ☐ Wages, salaries, or commissions (up to \$15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).
- ☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).
- ☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).
- ☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

Amount entitled to priority

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- ☐ I am the creditor.
- ☒ I am the creditor's attorney or authorized agent.
- ☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- ☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 11/30/2023
MM / DD / YYYY

Signature

Print the name of the person who is completing and signing this claim:

Name Marie Elizabeth Lewis
First name Middle name Last name

Title Executive Vice President and General Counsel

Company BRE-BMR 5300 Chiron LP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 4570 Executive Drive, Suite 400
Number Street

San Diego CA 92121
City State ZIP Code

Contact phone (858) 207-5967 Email marie.lewis@biomedrealty.com

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

In re:

ZYMERGEN INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 23-11661

Jointly Administered under Case No. 23-11661

**RIDER TO PROOF OF CLAIM FILED ON BEHALF OF
BRE-BMR 5300 CHIRON LP**

1. The undersigned, Marie Lewis, in her capacity as Executive Vice President and General Counsel, files this proof of claim (the “*Proof of Claim*”) on behalf of BRE-BMR 5300 Chiron LP, a Delaware limited partnership (“*BMR*”), whose business and mailing address is 4570 Executive Drive, Suite 400, San Diego, California 92121, against Zymergen Inc., a Delaware corporation (“*Zymergen*” or the “*Debtor*”), in respect of any claims BMR has against the Debtor arising out of or relating to that certain Lease dated as of October 1, 2019, as amended by that certain First Amendment to Lease dated as of June 4, 2020 and that certain Second Amendment to Lease dated as of July 24, 2023 (collectively, as amended, the “*Lease*”),² between BMR, as landlord, and the Debtor, as tenant, with respect to premises located at 5300 Chiron Way in Emeryville, California 94608 (the “*Premises*”). As set forth more fully below, Landlord’s aggregate claim as of the Debtor’s petition date of October 3, 2023 (the “*Petition Date*”) is not less than \$31,453,625.31, after applying the cap required by Section 502(b)(6) of the United States

¹ The Debtors in these Chapter 11 cases, along with the last four digits of the Debtors’ federal tax identification numbers, are Zymergen Inc. (2439), Lodo Therapeutics Corporation (8730), enEvolv (2402), and Genesis Acquisition Sub, LLC (3640), as set forth in the Voluntary Petition for Non-Individuals Filing for Bankruptcy filed with the Court on October 3, 2023. The corporate headquarters and the mailing address for the Debtors is 1440 Stanford Avenue, Emeryville, California 94608.

² The Debtor has a copy of this Lease. However, BMR would be willing to furnish a copy upon written request.

Bankruptcy Code (the “**Bankruptcy Code**”), as interpreted by the United States Bankruptcy Court for the District of Delaware (this “**Court**”).³

2. Pursuant to the First Omnibus Order (I) Authorizing the Debtors to (A) Reject Certain Unexpired Leases *Nunc Pro Tunc* to the Petition Date, and (B) Abandon Any Personal Property that Remains at Leased Premises, and (II) Granting Related Relief, which was issued by this Court on October 31, 2023, the Debtor rejected the Lease, effective retroactively as of the Petition Date.

3. Pursuant to Section 3 of the Lease, the term of the Lease was 150 months. As set forth in the Acknowledgement of Term Commencement Date and Term Expiration Date dated as of March 26, 2021, executed by BMR and the Debtor, the term of the Lease commenced on February 22, 2021 and was scheduled to expire on August 21, 2033. Approximately 119 months remained in the term of the Lease as of the Petition Date.

4. Pursuant to Section 2.9 and Section 11 of the Lease, BMR was the beneficiary of a letter of credit in the amount of \$5,934,297.60 issued by Silicon Valley Bank to secure the Debtor’s obligation to pay Rent under the Lease (the “**Letter of Credit**”). The Debtor defaulted in its obligation to pay the September 2023 and October 2023 installments of Rent under the Lease. On September 25, 2023, BMR drew an amount equal to \$1,838,659.32 under the Letter of Credit, leaving a remaining balance of \$4,095,638.28 under the Letter of Credit (the “**Remaining Letter of Credit Amount**”). On October 5, 2023, BMR drew the Remaining Letter of Credit Amount under the Letter of Credit.

³ Section 503(b)(6) of the Bankruptcy Code provides that landlords’ rejection damages under a lease shall not exceed the rent reserved by such lease, without acceleration, for the greater of one year, or fifteen percent (15%), not to exceed three years, of the remaining term of such lease. BMR has been advised that this Court has adopted the “time approach,” meaning that the fifteen percent (15%) threshold refers to the time remaining under the lease term, rather than the aggregate rent payable for the remaining lease term.

5. As of the Petition Date, the monthly Rent (as defined in Section 7.3 of the Lease) payable by the Debtor under the Lease was \$1,837,850.00, consisting of (a) monthly Base Rent (as defined in Section 2.6 of the Lease) in the amount of \$1,573,924.00, plus (b) Additional Rent (as defined in Section 7.2 of the Lease) in the amount of \$263,926.00, including insurance, property tax and operating expense recoveries, property management fees and parking fees payable under Section 7, Section 9 and Section 13.5 of the Lease.⁴ The Base Rent was subject to an annual upward adjustment of three percent (3%) per year. As of the Petition Date, the aggregate amount of Rent (including Base Rent and Additional Rent) that would have been payable by the Debtor under the Lease for the remaining lease term was \$258,058,834.20, which amount constitutes BMR's aggregate rejection damages under the Lease.

6. Applying the cap required under Section 503(b)(6) of the Bankruptcy Code, fifteen percent (15%) of the remaining lease term is approximately 17.85 months. The Rent that would have been payable by the Debtor under the Lease for the 17.85-month period after the Petition Date is equal to \$34,151,378.77 (the "***Capped Lease Rejection Damages***"), consisting of (a) \$28,767,817.60 in monthly Base Rent, plus (b) and \$5,383,561.17 in Additional Rent. After deducting the Remaining Letter of Credit Amount, the Capped Lease Rejection Damages are \$30,055,740.49 (the "***Net Capped Lease Rejection Damages***").

7. In addition, BMR suffered other damages in the amount of \$1,397,884.82 (the "***Additional Damages***"), which are comprised of (a) repair and maintenance costs in the amount of \$481,321.00 to perform repairs and maintenance of the Premises that the Debtor was obligated to complete under the Lease but failed to do so, (b) restoration costs in the amount of \$95,993.27 to restore the Premises to the condition in which the Debtor was obligated

⁴ BMR will provide supporting documentation for the Additional Rent amounts if requested.

to leave the Premises under the Lease but failed to do so, (c) costs in the amount of \$28,900.00 to remove the Debtor's personal property from the Premises, and (d) utility costs in the amount of \$791,670.55 that the Debtor would have been obligated to pay for the 17.85-month period commencing on the Petition Date.⁵

8. Therefore, BMR has and asserts a valid claim against Zymergen in an amount that is not less than \$31,453,625.31, which is the sum of the Net Capped Lease Rejection Damages, plus the Additional Damages.

9. To the knowledge of BMR as of the date hereof, the claims set forth in this Proof of Claim are not subject to any valid set-off or counterclaim and are not subject to subordination under any provisions of the Bankruptcy Code or applicable laws.

10. No judgment has been rendered on the claims set forth in this Proof of Claim.

11. BMR reserves the right to amend, modify or supplement this Proof of Claim in any manner and for any purpose and to assert and file any and all additional claims of whatever kind or nature that it has or may hereinafter have against the Debtor.

12. This Proof of Claim is filed to protect BMR from potential forfeiture of its claims. BMR reserves all rights it has or may have in the future against the Debtor and any other party and reserves the right to assert claims against other non-Debtor entities outside of this Court. By filing this Proof of Claim, BMR does not waive, and specifically reserves, its procedural and substantive defenses to any claim that may be asserted against it by any Debtors, by any trustee of their respective estates, by any official committee in these bankruptcy cases, or by any other party. This Proof of Claim is not intended to be and shall not be construed as (a) a waiver or release of

⁵ BMR will provide supporting documentation for the Additional Damages if requested.

the rights of BMR against the Debtor or any other party, (b) a consent by BMR to the jurisdiction of this Court with respect to the subject matter of the claims set forth in this Proof of Claim, (c) a waiver of the right of BMR to a trial by jury in any proceedings so triable in this case or any controversy or proceeding relating to this case or (d) an election of remedies.

13. All notices concerning this Proof of Claim shall be sent to:

BRE-BMR 5300 Chiron LP
4570 Executive Drive, Suite 400
San Diego, California 92121
Attn: Marie Lewis, Executive Vice President and General Counsel

ORIGIN ID: RBLA (858) 485-9840
BIOMED REALTY, LP - CORPORATE
BIOMED REALTY LP
4570 EXECUTIVE DR, SUITE 400

SAN DIEGO, CA 92121
UNITED STATES US

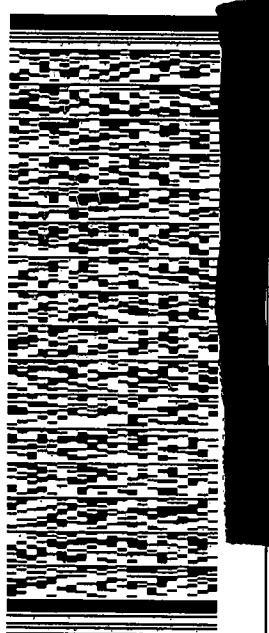
SHIP DATE: 01DEC23
ACTWGT: 1.00 LB
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BILL SENDER

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ZYMERGEN INC. CLAIMS PROCESSING CEN
10300 SW ALLEN BLVD

BEAVERTON OR 97005

REF (855) 631-1178
INV: PO: DEPT:



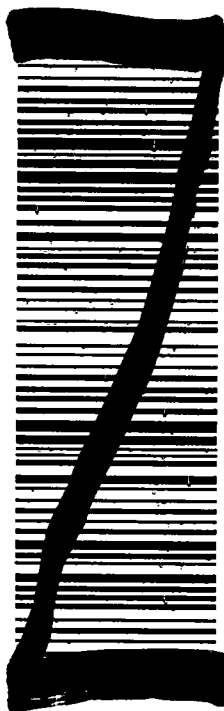
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