

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:

AMPLIFYBIO, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 25-52140

Judge Mina Nami Khorrami

(Jointly Administered)

**OBJECTION AND RESERVATION OF RIGHTS OF ENVIGO RMS LLC AND INOTIV,
INC. TO THE DEBTORS' NOTICE OF POTENTIAL ASSUMPTION AND
ASSIGNMENT OF EXECUTORY CONTRACTS OR UNEXPIRED LEASES AND
CURE COSTS**

Envigo RMS LLC (“Envigo”) and Inotiv, Inc. (“Inotiv” and collectively with Envigo, the “Counterparties”), by its undersigned counsel, Frost Brown Todd LLP, submits this Objection and Reservation of Rights (this “Objection”) to the above-captioned debtors’ (the “Debtors”) *Notice of Potential Assumption and Assignment of Executory Contracts or Unexpired Leases and Cure Costs* [Docket No. 152] (the “Notice”).² In support of this Objection, the Counterparties respectfully state:

BACKGROUND

1. On May 16, 2025 (the “Petition Date”), the Debtors filed voluntary 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 Southern District of Ohio (this “Court”).

2. Upon information and belief, the Debtors are operating their business and

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: AmplifyBio, LLC (1671); and ADOC SSF, LLC (3792). The corporate headquarters and the mailing address for the Debtors is 1425 NE Plain City-Georgesville Road, West Jefferson, Ohio 43162.

² Terms used but not otherwise defined herein shall have the meanings ascribed to them in the Notice.

managing their properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. The Counterparties are leading contract research organizations that provide non-clinical and analytical drug discovery and development services, research models, and related products and services. Prior to the Petition Date, the Debtors and the Counterparties entered into those certain agreements (collectively, the “Agreements”).³ Pursuant to the Agreements, the Counterparties provided certain services to the Debtor in connection with the Claimant’s pharmaceutical research and manufacturing operations.

4. On June 27, 2025, this Court entered the *Order (I) Scheduling a Hearing on the Approval of the Sale of All or Substantially All of the Debtors Assets Free and Clear of All Encumbrances Other Than Assumed Liabilities and Permitted Exceptions, and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (II) Approving Certain Bidding Procedures and Assumption and Assignment Procedures, and the Form and Manner of Notice Thereof, (III) Approving Break-up Fee, and (IV) Granting Related Relief* [Docket No. 149] (the “Bidding Procedures Order”) that, among other things, approved certain Bidding Procedures along with procedures for the assumption and assignment of certain executory contracts and unexpired leases.

5. As contemplated by the Bidding Procedures Order, on June 30, 2025, the Debtors filed the Notice, which identifies certain unexpired contracts that the Debtors may assume and assign in connection with any proposed sale, including the Agreements.⁴ The Debtors identified

³ The Agreements contain confidential business terms; upon information and belief the Debtors have copies of the Agreements.

⁴ For the avoidance of doubt, it does not appear that the Debtors, pursuant to the Notice, seek to assume and assign that certain Primate Sale and Board Agreement dated July 30, 2021 (the “Primate Agreement”) by and between Envigo Global Services, Inc. and the Debtors. The Primate Agreement was terminated by agreement of the parties prior to the Petition Date.

Inotiv with a proposed cure amount of \$17,516.86 (the “Inotiv Proposed Cure Amount”) and Envigo with a proposed cure amount of \$69,709.19 (the “Envigo Proposed Cure Amount” and together with the Inotiv Proposed Cure Amount, the “Proposed Cure Amount”).

OBJECTION

6. Although the Counterparties do not object to the Debtors’ right to sell substantially all of the Debtors’ assets, the Counterparties do object to any proposed Sale to the extent such sale seeks to impair, limit and/or modify the Counterparties’ rights under the Agreements, the Bankruptcy Code and applicable law. Moreover, any assumption of the Agreements must be conditioned on the Debtors’ compliance with the requirements of section 365 of the Bankruptcy Code and the Agreements, including, but not limited to, paying all amounts due and owing under the Agreements through the effective date of the assumption of the Agreements and providing adequate assurance of future performance information to the Counterparties in accordance with the terms of the Bidding Procedures Order.

A. The Proposed Cure Amounts Must Provide for Payment of all Obligations due Under the Agreements

7. As of the date of this Objection, the aggregate cure amount owed to Envigo pursuant to the Agreements is \$93,140.48 and the aggregate cure amount owed to Inotiv pursuant to the Agreements is \$1,154.42. Accordingly, the aggregate cure amount owed to the Counterparties is not less than \$94,294.90 (the “Cure Amount”).

8. In connection with the proposed assumption and assignment of the Agreements, all rights of the Counterparties under the Agreements (including defenses thereto) must be preserved. As such, any order approving the proposed Sale should specify that the Counterparties’ setoff, recoupment, and additional rights under the Agreements are preserved.

9. In addition, the Counterparties request that any order approving the assumption and

assignment of the Agreements provide that the Debtors, or any subsequent assignee, remain responsible for all accrued but unbilled amounts owed under the Agreements regardless of when such charges become due in accordance with the terms of the Agreements. This result is mandated by the requirement that the Debtors cure all arrears and that the Debtors or any subsequent assignee provide adequate assurance of future performance of the Agreements. *See* 11 U.S.C. § 365(b)(1).

10. The proposed order approving the Sale or any order approving the assumption and assignment of the Agreements must provide, among other things, that the Debtors, the Successful Bidder or the proposed assignee promptly pay to the Counterparties all amounts due and owing under the Agreements through the effective date of assumption and assignment of the Agreements (*i.e.*, the Cure Amount), as the same may increase to reflect other amounts that become due or are determined to be due after the date of this Objection.

11. Ultimately, any order approving the Sale and the assumption and assignment of the Agreements should specify that Counterparties' setoff, recoupment, and subrogation rights are preserved, and that the Debtors and any proposed assignee remain liable to the Counterparties for (i) any accrued but unbilled charges under the Agreements; (ii) any non-monetary defaults; and/or (iii) any insurance, indemnification and other contractual obligations under the Agreements regardless of when such obligations accrued.

B. The Debtors Must Demonstrate Adequate Assurance of Future Performance

12. In accordance with section 365 of the Bankruptcy Code, the Counterparties must be provided with sufficient information with respect to adequate assurance of future performance prior to the potential assumption and assignment of the Agreements to the Successful Bidder or proposed assignee.

13. The Counterparties demand proof of the Successful Bidder's or the proposed

assignee's ability to establish adequate assurance of future performance with respect to the Agreements. The Counterparties are entitled to the full benefit of their bargain under the Agreements. The Counterparties are further entitled to the full protections provided by Section 365 of the Bankruptcy Code. Any assumption and assignment of the Agreements must be in accordance with all provisions of the Agreements and the Bankruptcy Code. *See, e.g., In re Entertainment, Inc.*, 223 B.R. 141, 151 (Bankr. N.D. Ill. 1998).

C. The Debtors Cannot Assume and Assign the Primate Agreement that was terminated prior to the Petition Date

14. To the extent that the Debtors do seek to assume and assign the Primate Agreement, the Counterparties hereby expressly object to such assumption and assignment. It is undisputed that the Primate Agreement was terminated by agreement of the parties prior to the Petition Date. A contract terminated prior to a debtor's bankruptcy filing is not a part of the debtor's bankruptcy estate and, accordingly, cannot be assumed and assigned pursuant to Section 365 of the Bankruptcy Code. *Moody v. Amoco Oil Co.*, 734 F.2d 1200, 1212–13 (7th Cir. 1984) (finding that the filing of chapter 11 petition cannot resuscitate rights under a contract that was validly terminated prior to the petition date); *see also In re Welcome Grp. 2, LLC*, 660 B.R. 874, 879 (Bankr. S.D. Ohio 2024) (noting that contracts terminated prior to the petition date are not part of the debtor's bankruptcy estate). Accordingly, the Primate Agreement may not be assumed and assigned in connection with the proposed Sale.

RESERVATION OF RIGHTS

15. Nothing in this Objection is intended to be, or should be construed as, a waiver by the Counterparties of any of their rights under the Agreements, the Bankruptcy Code, or applicable law. The Counterparties expressly reserve all such rights, including, without limitation, the right to: (a) supplement and/or amend this Objection; (b) amend the Cure Amount; (c) assert any

nonmonetary defaults under the Agreements; (d) assert any rights for indemnification or contribution against the Debtors arising under the Agreements; and (e) assert any necessary objections as it deems necessary or appropriate, including as to the ability of the Successful Bidder to perform under the agreements.

WHEREFORE, the Counterparties respectfully request that this Court: (a) require that any order authorizing the assumption of the Agreements affirmatively require the Debtors or the Successful Bidder to pay as a cure all amounts accrued and owing through the effective date of any assumption and assignment of the Agreements; (b) affirmatively require the Debtors and the Successful Bidder to comply with each and every term, condition and obligation set forth in the Agreements; (c) find that the Primate Agreement is not subject to assumption and assignment; and (d) grant the Counterparties such other and further relief as this Court deems just and appropriate under the circumstances.

Dated: August 21, 2025

Respectfully submitted,

FROST BROWN TODD LLP

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