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21
22
23 **UNITED STATES BANKRUPTCY COURT**
24
25 **SOUTHERN DISTRICT OF CALIFORNIA**

26 In re)
27)
28)

CASE NO. 06-00510-LA11

)
Chapter 11 Proceedings

29 SERACARE LIFE SCIENCES, INC.,)
30 A California Corporation)

**SUPPLEMENTAL OBJECTION OF AD HOC
EQUITY COMMITTEE TO DEBTOR'S
MOTION FOR ORDER (1) APPROVING
BREAKUP FEE, (2) PAYMENT OF LEGAL
FEES AND DUE DILIGENCE EXPENSES,
AND (3) SETTING HEARING ON MOTION
FOR APPROVAL OF SECURED FINANCING
PURSUANT TO SECTION 364**

31 Debtor and Debtor-in-)
32 Possession)
33)
34)

Date: August 31, 2006
Time: 3:00 p.m.
Dept: 2
Judge: Hon. Louise DeCarl Adler

1 eliminated the Breakup Fee provisions, and reduced the due diligence requirements. The
2 AHC LOI also added a caveat that alternative plan proposals may be pursued, which could
3 include a rights offering that would allow all current shareholders to participate in any
4 financing needed by the Debtor to exit from bankruptcy.

5
6 4. As the Ad Hoc Committee has been advocating to this Court, the Ad Hoc
7 Committee believes that any financing alternative other than a rights offering would be
8 dilutive to shareholders, and would, therefore, be prejudicial to shareholders.

9 5. By pleading dated August 28, 2006, Gateway Capital Management, LLC
10 (Gateway”) submitted to this Court a proposal for an alternative to the financing proposed
11 pursuant to the Allegiant LOI. Among other distinctions, the Gateway proposal included a
12 breakup fee of \$500,000, intended to be more attractive than the reduced \$750,000
13 breakup fee proposed by the Allegiant Investors.

14
15 6. On August 30, 2006, the Allegiant Investors filed with this Court a supplemental
16 submission (the “Allegiant Supplement”). The Allegiant Supplement stated that the
17 Allegiant Investors have (i) dropped their request for any breakup fee (subject to their
18 reservation to seek such a request in the future), and (ii) agreed to allow current
19 shareholders to participate in up to two-thirds of the Allegiant Investors’ proposed equity
20 participation. In addition, the Allegiant Supplement suggests that the intended loan
21 proceeds will be placed in escrow upon the Court’s approval of the Breakup Fee Motion.

22
23 7. On August 29, 2006, the Debtor filed its Debtor-in-Possession Monthly Operating
24 Report for the Month of July 2006 (the “July Operation Report”). Pursuant to the data
25 presented in the July Operation Report, the Debtor was not in need of immediate new
26 financing, as of July 31, 2006. No financial information regarding the Debtor’s financial
27 needs have been filed with the Court for the period subsequent to July 31, 2006.
28

1 8. On August 28, 2006, the Debtor's senior secured lenders (the Lenders") filed a
2 reservation of rights regarding the Breakup Fee Motion (the "Lenders' Reservation"). In
3 the Lenders' Reservation, the Lenders note that the current cash collateral stipulation is set
4 to expire at the end of September 2006, and that no discussions have been held regarding
5 an extension of the current cash collateral stipulation.
6

7 **ARGUMENT**

8 9. The Ad Hoc Committee is extremely gratified by the concessions of the Allegiant
9 Investors set forth in the Allegiant Supplement. These concessions, for the first time,
10 acknowledge that the participation of current shareholders in any distribution of new
11 equity is critical to preserving the rights of current shareholders and in eliminating
12 shareholder dilution.
13

14 10. Based upon the concessions set forth in the Allegiant Supplement, the Court is no
15 longer requested to consider approval of a breakup fee. The Court is requested, however,
16 to consider approval of the payment to the Allegiant Investors of legal fees and due
17 diligence expenses, as well as to set the date for a hearing on approval of proposed
18 financing. The Ad Hoc Committee asserts that the Debtor has failed to identify yet the
19 financing proposal that is most attractive to the estate, and thus, it is currently premature
20 for the Court to approve any party's expenses or to set a hearing on approval of financing
21 pursuant to Bankruptcy Code section 364.
22

23 11. It is now clear that at least three groups are prepared to propose to the Debtor
24 financing alternatives, the Allegiant Investors, Gateway and the members of the Ad Hoc
25 Committee. The Ad Hoc Committee is likely prepared to improve on the current proposal
26 by the Allegiant Investors, even as modified by the Allegiant Supplement. No doubt, it is
27 incumbent on the Debtor to identify the most attractive financing alternative prior to
28

1 seeking Court approval of any financing alternative. Lest the Debtor fear that by delaying
2 Court approval of a proposed financing the Debtor will ultimately have no financing
3 available, the Ad Hoc Committee members are prepared to extend their commitment, set
4 forth in the ACH LOI, for a reasonable and necessary period of time. Perhaps the
5 Allegiant Investors, as well, would be prepared to extend their commitment under the
6 Allegiant LOI, as amended by the Allegiant Supplement.
7

8 12. As described below, the Allegiant LOI, as modified by the Allegiant Supplement,
9 contains many provisions prejudicial to shareholders, and that can be greatly improved
10 upon.

11 13. As noted above, the Debtor is not in dire need of immediate financing for
12 operations. In fact, absent the anticipated expiration of the cash collateral stipulation, the
13 Debtor would not require any financing prior to exiting from bankruptcy. In the event that
14 the Lenders are not prepared to extend their cash collateral stipulation through the end of
15 the bankruptcy case, the cash collateral stipulation should be merely extended for the brief
16 period of term that would be necessary for the Debtor to identify and secure the financing
17 structure that would be in the best interests of the estate and its shareholders. This estate
18 can certainly tolerate such a brief delay without prejudicing the recoveries of either
19 secured or unsecured creditors.
20

21 14. The Allegiant LOI, as adjusted by the Allegiant Supplement, includes many
22 provisions that could be improved upon by a bidding process. Such provisions include:
23

- 24 • the per share conversion price
- 25 • the percentage of the conversion shares made available to current shareholders
- 26 • the entitlement of current shareholders to participate in the shares allocated to
27 current shareholders but not subscribed to by current shareholders (referred to
28 as the “backstop”)
- the reduction or elimination of the make-whole provisions

- 1 • the reduction or elimination of the premium referenced in the Allegiant
- 2 Investors' LOI as the "return on sale"
- 3 • the term of the loan
- 4 • the default terms

5 A process must be introduced immediately to allow parties to bid on these provisions.

6 15. There are other benefits that would result from the Debtor allowing all potential
7 funders to compete for the submission of the best financing offer. Should the Debtor
8 pursue a process of identifying the most attractive alternative in an orderly fashion, there
9 is an increased likelihood that the resulting structure will be sufficiently attractive so as to
10 dissuade parties from filing a plan of reorganization competing with the Debtor's selected
11 bid.

12 16. As such, it is clearly in the best interests of the Debtor, the estate and the
13 shareholders for this Court to decline to approve any party's expenses, and to defer setting
14 a hearing on the approval of any party's proposed financing, until the Debtor completes a
15 rapid, yet orderly, process by which the preferred financing proposal has been selected.
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CONCLUSION

17. The Ad Hoc Committee, therefore, requests that this Court deny the Breakup Fee Motion at this time.

Dated: August 30, 2006

AD HOC COMMITTEE OF EQUITYHOLDERS

By its attorneys

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