

1 Thomas E. Patterson, Esq. (SBN 130723)
Martin R. Barash (SBN 162314)
2 **KLEE, TUCHIN, BOGDANOFF & STERN LLP**
2121 Avenue of the Stars, 33rd Floor
3 Los Angeles, California 90067
Telephone: (310) 407-4000
4 Telecopy: (310) 407-9090

5 Mark Bane (MB-4883)
ROPES & GRAY LLP
6 45 Rockefeller Plaza
New York, New York 10111
7 Telephone: (212) 841-5700
Telecopier: (212) 841-5725

8 D. Ross Martin (BBO#629853)
9 **ROPES & GRAY LLP**
One International Place
10 Boston, Massachusetts 02110
Telephone: (617) 951-7000
11 Telecopier: (617) 951-7050

12 Counsel for the Ad Hoc Committee of Equityholders

13
14
15 **UNITED STATES BANKRUPTCY COURT**
16 **SOUTHERN DISTRICT OF CALIFORNIA**
17

18
19 In re

20 SERACARE LIFE SCIENCES, INC.,
21 A California Corporation

22 Debtor and Debtor-in-
23 Possession

) **CASE NO. 06-00510-LA11**

) Chapter 11 Proceeding

) **MOTION OF AD HOC**
) **COMMITTEE OF**
) **EQUITYHOLDERS FOR**
) **APPOINTMENT OF AN OFFICIAL**
) **COMMITTEE OF**
) **EQUITYHOLDERS**

24
25 **DATE:** April 13, 2006 (OST Pending)
TIME: 2:30 p.m. (OST Pending)
26 **PLACE:** Dept. 2
27
28

1 The Ad Hoc Committee of Equityholders (the "Ad Hoc Committee"),¹ by its attorneys
2 Ropes & Gray LLP, hereby moves this Court, pursuant to Bankruptcy Code Section 1102(b), to
3 order the appointment of an official committee of equityholders in this Chapter 11 case. This
4 Motion is based on the within Memorandum of Points and Authorities, certain matters of record
5 in this chapter 11 case and public filings made with the Securities and Exchange Commission (of
6 which judicial notice may be taken) and such other evidence as this Court may see fit to consider
7 at a hearing on this matter.
8

9
10 AD HOC COMMITTEE OF EQUITYHOLDERS

11 By its Attorneys

12 /s/ Thomas E. Patterson

13 Thomas E. Patterson, Esq. (SBN 130723)
14 Martin R. Barash (SBN 162314)
15 KLEE, TUCHIN, BOGDANOFF & STERN LLP
2121 Avenue of the Stars, 33rd Floor
16 Los Angeles, California 90067
Telephone: (310) 407-4000
Telecopy: (310) 407-9090
Email: tpatterson@ktbslaw.com

17 Of counsel (pro hac vice motions pending)

18 /s/ Mark Bane

19 Mark Bane (MB-4883)
20 ROPES & GRAY LLP
45 Rockefeller Plaza
New York, New York 10111
21 Telephone: 212-841-5700
Telecopier: 212-841-5725
22 Email: mark.bane@ropesgray.com

23 -and-

24 D. Ross Martin (BBO#629853)
25 ROPES & GRAY LLP
One International Place
Boston, Massachusetts 02110
26 Telephone: 617-951-7000
Telecopier: 617-951-7050
27 Email: ross.martin@ropesgray.com

28

¹ The members of the Ad Hoc Committee comprise at least 27% of the outstanding equity of the Debtor.

1 they own or control. In fact, Robert J. Cresci, then chairman of the Audit Committee of the
2 Board of Directors, sold or caused to be sold at least 276,000 shares, for gross proceeds of
3 \$3.381 million. Shortly prior to the Debtor's bankruptcy filing, Mr. Cresci became chairman of
4 the Board of Directors.

5
6 4. During the past year, the Debtor's common shares have traded at a price of as
7 high as \$23.50/share. More recently, even after the announcement of auditor concerns about
8 SeraCare's financials, the Debtor's shares were trading at approximately \$8/share. Only with the
9 announcement of the Debtor's bankruptcy filing did the price of shares further decline, but even
10 post-petition remain at prices of over \$2/share.

11 5. With 14 million shares outstanding, the market capitalization of SeraCare, as of
12 the date of the filing of this Motion, is \$49.77 million.

13
14 6. At least one class action complaint has been filed arising out of the alleged
15 improper financial reporting by SeraCare. Named as defendants in the class action complaint are
16 SeraCare, as well as Mr. Cresci, and certain of the recently terminated officers of the Debtor.

17 7. SeraCare's Board of Directors appointed a Committee of Independent Directors
18 (the "Committee") comprised of the allegedly independent members of the Board. It is unclear
19 what degree of authority is held by this Committee, and whether its members are actually
20 independent.

21
22 8. On or about March 15, 2006, the Committee dismissed SeraCare's entire senior
23 management team, including the chairman, the CEO and the CFO. The company announced that
24 Mr. Cresci, formerly chair of the Audit Committee of the Board, was being named chairman of
25 the Board of Directors.

1 Shareholders committees should be appointed when equity holders
2 establish that there is a substantial likelihood that they will receive
3 a meaningful distribution in the case and the existing committee(s)
4 do not adequately represent their interests.

5 *Id.* at 140. See also *In re Williams Communication Group, Inc.*, 281 B.R. 216, 220 (Bankr.
6 S.D.N.Y. 2002) (considering the solvency of the debtor, the cost of the additional committee, the
7 number of shareholders and the complexity of the case as factors in determining whether to
8 appoint a shareholders committee); *In re Kavlar Microfilm, Inc.*, 195 B.R. 599, 600 (Bankr. D.
9 Del. 1996) (same). The standard articulated by this Court is plainly met in this case.

10 14. There is no question that there is a substantial likelihood of a meaningful
11 distribution to equity holders. Every method of valuation of the Debtor's assets and business
12 confirms that the Debtors' estate includes significant equity for shareholders. The Debtor's own
13 chapter 11 bankruptcy petition, filed on March 20, 2006, concedes the enormous value available
14 to shareholders. Indeed, the Debtor's bankruptcy petition states that the Debtor's assets are
15 worth over \$100 million while its debts are only \$35 million. Upon information and belief, this
16 Debtor continues to hold cash on hand of at least \$25 million, and unlike most chapter 11
17 debtors, SeraCare is not experiencing operating losses (net of expenses that should cease in
18 bankruptcy, due to the automatic stay). To the contrary, this Debtor is an operating business that
19 is generating at least \$5 million of free cash flow, annually. Even using an incredibly
20 conservative valuation method of a 4-times multiple-of-cash-flow, which would assume no
21 growth potential for this business, the operating business must be worth at least \$20 million.
22 Most public companies in this industry, however, are valued at multiples of twenty times
23 earnings, or higher. When added to the cash on hand, it is absolutely clear that there is material
24 value for equity in this case.
25

26 15. The availability of value for shareholders of SeraCare is confirmed by market
27 valuations of exactly the type considered by this Court in the *Leap Wireless* case. The common
28

1 shares of SeraCare are publicly traded, and even after the bankruptcy filing they are trading at
2 just over \$2/share. Even after the SeraCare announced that it was confronting accounting issues
3 and had replaced the leadership of its management team, the stock price was, just one day prior
4 to the bankruptcy filing, approximately \$8/share. And most tellingly, as the market has digested
5 this news, including the news of the bankruptcy filing, the market price of SeraCare common
6 stock actually quadrupled from approximately 55¢/share in the immediate wake of the
7 bankruptcy filing, to over \$2/share, as of the date of this pleading. The market plainly
8 understands that this Debtor is solvent and that there is a very substantial likelihood of a
9 meaningful recovery to SeraCare shareholders.
10

11 16. Based in significant part on market valuations of publicly traded securities, in the
12 *Leap Wireless* case, this Court denied formation of an equity committee because the Court
13 concluded that the *Leap Wireless* debtor was “hopelessly insolvent.” No one could rationally
14 make the claim that SeraCare is hopelessly insolvent. In fact, SeraCare (i) has nearly enough
15 cash in its bank accounts to pay creditors in full, (ii) has a cash-flow-positive operating business,
16 (iii) has a business that clearly has growth potential, as evidenced by share prices as high as
17 \$23.50 in the past year, and (iv) enjoys a significant market in its shares. This is not a
18 bankruptcy case in which equity holders are trying to scratch for a few cents a share. There is
19 little doubt that shareholders will enjoy a meaningful recovery from this estate. In fact, this case
20 is all about maximizing recovery for equity holders, while creditors have, essentially, no risk at
21 all.
22

23
24 17. The procedural stage in the maturation of the chapter 11 process was another
25 factor considered by this Court in the *Leap Wireless* decision. In *Leap Wireless*, the motion for
26 the appointment of an equity committee was filed in the midst of the plan confirmation process,
27 and the Court was understandably concerned about the impact on the confirmation process of the
28

1 introduction of a new committee. By contrast, here, the members of the Ad Hoc Committee
2 have made this motion at the earliest stage of this chapter 11 case so that, from the outset, all
3 aspects of the case can be considered in an orderly manner, with effective representation for
4 equity holders.

5
6 18. The existence of a large number of equity holders also militates in favor of
7 formation of an official equity holders' committee. As noted above, the Debtor's own
8 bankruptcy petition states that there are 235 equity holders, and there may be many more because
9 the stock is publicly traded.²

10 19. The final factor noted by this Court in *Leap Wireless* that is to be considered is
11 whether equity holders will be adequately represented by other committees in the case. For
12 example, in *Leap Wireless*, this Court concluded that unsecured creditors were also striving to
13 maximize their recovery (since full recovery for creditors was extremely unlikely), and so the
14 interests of the creditors' committee was aligned with the equity holders. The SeraCare
15 bankruptcy case offers precisely the opposite situation. In the SeraCare bankruptcy case,
16 creditors will be paid in full, and have little motivation to explore fully alternative opportunities
17 to maximize the value of this estate beyond the recoveries needed to satisfy creditors. Only
18 equity holders will be ultimately affected by the degree and nature of the values realized by this
19 estate.
20

21
22 20. There are several other very significant reasons why a separate committee for
23 equity holders is warranted here. First, the circumstances of this bankruptcy filing are highly
24 suspect. Subsequent to the December 2005 announcement that there were some accounting errors
25 in SeraCare's financial statements, the Committee terminated the incumbent senior management
26 team, just one week prior to the bankruptcy filing. Moreover, the special committee that
27
28

1 terminated management was chaired by Mr. Cresci, then the chairman of the Board's Audit
2 Committee, who, himself, had direct responsibility for the oversight of the financial statements
3 that allegedly justified the termination of the management team. Moreover, Mr. Cresci has
4 essentially had himself appointed as chairman of the Board immediately prior to the bankruptcy
5 filing, notwithstanding his possible involvement, over years, with what are apparently
6 questionable financial statements of the Debtor.
7

8 21. Second, these issues relating to the ongoing management of the debtor-in-
9 possession may be addressed far differently by creditors and equity holders. For example, at
10 some point it may be that appointment of a chapter 11 trustee is appropriate, which is typically
11 the creditors' remedy regarding management of a debtor-in-possession.³ At the same time,
12 equity holders may call a special meeting of shareholders to address the governance of this
13 Debtor, and could remove directors and thereby replace management. *See In re Marvel*
14 *Entertainment Gp., Inc.*, 209 B.R. 832 (D. Del. 1997) (automatic stay does not prevent
15 shareholder action to change management of debtor-in-possession, and ordinary corporate
16 governance continues during chapter 11).
17

18 22. Finally, there are substantial questions about the authenticity of the bankruptcy
19 filing itself, and equity holders may have unique views as to the proper course of action, that
20 may differ from the views of creditors or management. The corporate resolutions purportedly
21 authorizing this bankruptcy filing are not resolutions of the Board of Directors. The resolutions
22 are instead only resolutions of the Committee of the Board of Directors. There may be reasons
23 for the bankruptcy petition to be deemed invalid, and creditors may be unaffected by such issues,
24 leaving equity holders as the sole, true parties in interest.
25
26

27 ² It is typically the case that one "holder" is the depositary that holds publicly traded stock, with numerous beneficial
owners having the actual economic interest, as individual shareholders.

28 ³ The Ad Hoc Committee and its members expressly reserve the right to seek a chapter 11 trustee, or dismissal of the
case, including on an emergency basis if the debtor-in-possession seeks to take any precipitous action.

1 Conclusion

2 23. Rare is the chapter 11 case that has as compelling a reason for the appointment of
3 an equity holders' committee. The Debtor, itself, acknowledges that the estate is solvent, the
4 estate is cash rich, the Debtor's business is cash flow positive, and the strategic alternatives
5 available to the estate will impact only the degree of recovery to shareholders, not creditors.
6 Moreover, management has been terminated immediately prior to the bankruptcy filing, leaving
7 control of the estate in the hands of a portion of the Board of Directors, chaired by the person
8 who sat as chair of the Audit Committee during a period of alleged financial improprieties.
9 There is no doubt that this Court should direct the appointment of an equity holders' committee
10 in this case.
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 NOW THEREFORE, the Ad Hoc Committee submits that this Court should order the
2 appointment of an official equityholder committee.

3 AD HOC EQUITY HOLDERS COMMITTEE

4 By its Attorneys

5
6 /s/ Thomas E. Patterson

7 Thomas E. Patterson, Esq. (SBN 130723)
8 Martin R. Barash (SBN 162314)
9 KLEE, TUCHIN, BOGDANOFF & STERN LLP
10 2121 Avenue of the Stars, 33rd Floor
11 Los Angeles, California 90067
12 Telephone: (310) 407-4000
13 Telecopy: (310) 407-9090
14 Email: tpatterson@ktbslaw.com

15 Of counsel (pro hac vice motions pending)

16 /s/ Mark Bane

17 Mark Bane (MB-4883)
18 ROPES & GRAY LLP
19 45 Rockefeller Plaza
20 New York, New York 10111
21 Telephone: 212-841-5700
22 Telecopier: 212-841-5725
23 Email: mark.bane@ropesgray.com

24 -and-

25 D. Ross Martin (BBO#629853)
26 ROPES & GRAY LLP
27 One International Place
28 Boston, Massachusetts 02110
Telephone: 617-951-7000
Telecopier: 617-951-7050
Email: ross.martin@ropesgray.com