

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

	X	
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In re:	:	Chapter 11
	:	
PhaseBio Pharmaceuticals, Inc., ¹	:	Case No. 22-10995 (LSS)
	:	
Debtor.	:	Re: Docket No. 249
	:	
	X	

**RESPONSE AND RESERVATION OF RIGHTS OF BIOVECTRA INC. TO
DEBTOR’S MOTION FOR ENTRY OF AN ORDER PURSUANT TO SECTIONS 105,
363, AND 365 OF THE BANKRUPTCY CODE, AND BANKRUPTCY RULES 2002, 6004,
6006, AND 9019 (A) APPROVING THE SETTLEMENT/SALE TRANSACTION
BETWEEN THE DEBTOR AND SFJ PHARMACEUTICALS X, LTD., INCLUDING,
AMONG OTHER THINGS, THE SALE AND TRANSFER OF SUBSTANTIALLY ALL
OF THE DEBTOR’S BENTRACIMAB ASSETS FREE AND CLEAR OF LIENS,
CLAIMS, AND ENCUMBRANCES TO SFJ PHARMACEUTICALS X, LTD., AND
(B) GRANTING RELATED RELIEF**

BioVectra Inc. (“BioVectra”), by and through its undersigned counsel, hereby submits its response and reservation of rights regarding the motion [D.I. 249] (the “Motion”)² filed by the debtor and debtor in possession (the “Debtor”) seeking, *inter alia*, approval of a settlement and related sale transaction (the “Settlement”) with SFJ Pharmaceuticals X, Ltd. (“SFJ”). In support hereof, BioVectra respectfully represents as follows:

¹ The last four digits of the Debtor’s federal tax identification number are 5697. The Debtor’s principal office is located at 1 Great Valley Parkway, Suite 30, Malvern, Pennsylvania 19355.

² Capitalized terms used but not defined herein have the meaning ascribed in the Motion.

ADDITIONAL BACKGROUND

1. BioVectra and the Debtor entered into a Supply Agreement as of March 10, 2021 (the “Bentricimab Supply Agreement”), pursuant to which BioVectra supplies bentricimab product to the Debtor.
2. BioVectra also supplies other (non-bentricimab) product to the Debtor.
3. The Debtor commenced this voluntary chapter 11 case on October 23, 2022 (the “Petition Date”).
4. As of the Petition Date, the Debtor owed BioVectra not less than \$13,914,666 for bentricimab product, plus an additional \$1,445,610 for other (non-bentricimab) product, excluding any credit for unapplied advance deposits.
5. As of December 31, 2022, BioVectra calculates that the Debtor will owe BioVectra an additional \$15,927,122 for bentricimab product supplied from and after the Petition Date.
6. Thus, if the Bentricimab Supply Agreement was to be included as one of the Assumed and Assigned Contracts in connection with the Settlement, BioVectra would be owed a Cure Amount of not less than \$29,841,788 (excluding any credit for unapplied advance deposits), which would nearly double the total cash outlay required by SFJ under the Settlement.
7. However, although the Motion indicates that the Assumed and Assigned Contracts may include “all agreements with BioVectra as designated by SFJ in its sole discretion,” the Motion further provides that:

“SFJ intends to negotiate and enter into a new commercial supply agreement”
with BioVectra; and

In addition to the \$32.9 million in SJF Consideration, “SFJ shall negotiate and agree to pay any administrative claim asserted by BioVectra for manufacturing conducted during the post-petition period to the extent allowed by the Court or agreed to by BioVectra and SFJ. Terms for payment to BioVectra shall be negotiated between SFJ and BioVectra; *provided, however*, that the negotiation of such new terms shall not be a condition to closing of the Settlement/Sale Transaction.”

RESPONSE

8. BioVectra does not oppose the Settlement as it currently stands as between the Debtor and SFJ. BioVectra recognizes that the Settlement may be the only way to avoid a chapter 7 liquidation that likely would be highly value-destructive for all parties in interest.

9. However, the Settlement as it currently stands lacks clarity regarding at least two key issues involving BioVectra and the putative impact of the Settlement on the Debtor’s estate: (a) how BioVectra’s claims under the Supply Agreement of nearly \$30 million will be treated; and (b) what impact will SFJ’s intention to negotiate new terms with BioVectra have on the value of the royalty proposed under the Settlement.

10. BioVectra has attempted to engage with SFJ to obtain additional clarity regarding the treatment of the BioVectra claims and SFJ’s intent to negotiate new supply terms, but thus far no material progress has been made. SFJ has indicated that it would prefer to defer these issues until after the Settlement has been approved by the Court.

11. BioVectra files this Response in order to be sure that the Court and other parties in interest have relevant information to consider the merits of the Settlement. BioVectra will

continue to engage with SFJ and other key constituents regarding these matters, and BioVectra's counsel will be prepared to address questions from the Court at the hearing on the Settlement.

RESERVATION OF RIGHTS

12. The Debtor previously listed BioVectra with a total cure amount of \$22,678,666.00 [D.I. 218].

13. Although BioVectra disputes this amount (as reflected above), to date BioVectra has not filed a formal cure objection because: (a) the Settlement as BioVectra understands it does not currently contemplate SFJ taking an assignment of the Supply Agreement; and (b) out of an abundance of caution, BioVectra obtained from the Debtor an extension through January 11, 2023 of its deadline to file any cure objection, should one become relevant and necessary.

14. Therefore, BioVectra does not waive and expressly reserves all rights regarding the treatment of the Supply Agreement (whether via assumption, rejection or otherwise), the treatment of BioVectra's claims (whether arising prepetition or postpetition, and whether related to the supply of bentracimab product or otherwise), the application of any unapplied advance deposit(s) under the Supply Agreement, and all related matters.

Dated: December 28, 2022
Wilmington, Delaware

A.M. SACCULLO LEGAL, LLC

/s/ Anthony M. Saccullo
Anthony M. Saccullo (No. 4141)
27 Crimson King Drive
Bear, DE 19701
Telephone: (302) 836-8877
Email: ams@saccullolegal.com

– and –

LAW OFFICE OF NATHAN A. SCHULTZ, P.C.

Nathan A. Schultz (*Pro Hac Vice* pending)

10621 Craig Road

Traverse City, MI 49686

Telephone: (310) 429-7128

Email: nschultzesq@gmail.com

Counsel to BioVectra Inc.