

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

In re:

Recombinetics, Inc., *et al.*,

Debtors.¹

Chapter 11 (Subchapter V)

Case No. 24-12593 (____)

(Joint Administration Requested)

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING THE DEBTORS TO (A) PAY PRE-PETITION EMPLOYEE
OBLIGATIONS, (B) MAINTAIN AND CONTINUE EMPLOYEE BENEFIT
PROGRAMS AND PAY ADMINISTRATIVE OBLIGATIONS RELATED THERETO,
(II) MODIFYING THE AUTOMATIC STAY WITH RESPECT TO THE WORKERS'
COMPENSATION PROGRAM; (III) AUTHORIZING BANKS TO HONOR AND
PROCESS CHECKS AND ELECTRONIC TRANSFER REQUESTS RELATED
THERETO; AND (IV) GRANTING RELATED RELIEF**

Recombinetics, Inc. and its above-captioned affiliates (collectively, the “Debtors”), the debtors and debtors in possession in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), hereby file this motion (this “Motion”) for the entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** (the “Proposed Interim Order”) and **Exhibit B** (the “Proposed Final Order,” and together with the Proposed Interim Order, the “Proposed Orders”), (i) authorizing, but not directing, the Debtors, in accordance with their stated policies and in their discretion, to (a) pay prepetition employee wages, salaries, and other accrued compensation; (b) make contributions to prepetition benefit programs and continue such programs in the ordinary course of their business; (c) honor workers’ compensation obligations; (d) make payments for which prepetition payroll deductions were made; (e) pay processing costs and administrative expenses relating to the foregoing payments and contributions; and (f) make

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Recombinetics, Inc. (1470), Acceligen, Inc. (N/A), Regenevida, Inc. (N/A), Surrogen, Inc. (N/A), and Therillume, Inc. (4995). The mailing address for each of the Debtors is 3388 Mike Collins Drive, Eagan, Minnesota 55121.

payments to third parties incident to the foregoing payments and contributions (collectively, the “Employee Wages and Benefits”); (ii) modifying the automatic stay if necessary to permit the Debtors’ employees to proceed with any claims they may have under the Workers’ Compensation Program (as defined below); (iii) authorizing banks and other financial institutions (collectively, the “Banks”) to honor and process checks and electronic transfer requests related to the foregoing; and (iv) granting related relief. In support of the Motion, the Debtors rely upon and incorporate by reference the *Declaration of Rocco Morelli in Support of Debtors’ Chapter 11 Petitions and First Day Motions and Applications* (the “First Day Declaration”).² In further support of this Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012 (the “Amended Standing Order”). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution.³ Venue is proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory and legal predicates for the relief sought herein are sections 105(a), 363(b), 507(a)(4), 507(a)(5), and 541 of the United States Bankruptcy Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

² Capitalized terms used but not defined herein shall have the meaning ascribed to them in the First Day Declaration.

³ Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtors consent to the Court’s entry of a final judgment or order with respect to this Motion if it is determined that the Court, absent consent of the parties, cannot enter a final order consistent with Article III of the United States Constitution.

GENERAL BACKGROUND

3. On the date hereof (the “Petition Date”), each of the Debtors filed with the Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are authorized to operate their businesses and manage their properties as debtors and debtors in possession pursuant to section 1184 of the Bankruptcy Code. No request has been made for the appointment of a trustee or an examiner. The Debtors have requested that the Chapter 11 Cases be jointly administered for procedural purposes only pursuant to Bankruptcy Rule 1015(b).

4. The Debtors have elected to proceed as subchapter V debtors and, accordingly, a Subchapter V Trustee will be appointed in these Chapter 11 Cases on or shortly after the Petition Date.

5. As set forth in the First Day Declaration, the Debtors are a gene editing company that focuses on the editing of animal cells and embryos for strategic commercial applications worldwide, with the aim of improving human health outcomes as well as the sustainability of animal agriculture and aquaculture. Additional information regarding the Debtors’ businesses, capital structure, and the circumstances leading to the filing of the Chapter 11 Cases is set forth in the First Day Declaration.

BACKGROUND RELATING TO THE MOTION

A. The Debtors’ Workforce

6. As of the Petition Date, the Debtors directly employ a total of 18 employees in the United States (the “Employees”).

7. None of the Debtors employees are represented by unions or are party to a collective bargaining agreement.

B. Obligations on Account of Employee Wages and Other Compensation, Deductions, and Payroll Taxes

8. Each of the components of the Employee Wages and Benefits is described in further detail below. As of the Petition Date, the Debtors estimate that they owe approximately \$13,700 in the aggregate on account of prepetition Employee Wages and Benefits, \$12,700 of which will come due prior to the Final Hearing (the “Interim Period”). By this Motion, the Debtors are not seeking authority to pay any amount in excess of the statutory priority caps imposed by section 507(a)(4) and (5) of the Bankruptcy Code (the “Statutory Cap”).

i. Wages and Other Basic Compensation

9. The Employees are generally paid wages and salaries semi-monthly via direct deposit. The Debtors’ most recent payroll payment to the Employees was for the period ending on November 15, 2024, in the aggregate amount of \$103,554.55, which amount does not include withholdings for employee 401(k) contributions of \$7,974. As of the Petition Date, the Debtors believe there are no unpaid wages and salaries currently outstanding.

10. The Debtors utilize ADP TotalSource, Inc. (“ADP” or the “Payroll Processor”) as their third-party payroll administrator for payroll, human capital management, time reporting, and talent and workforce management services. Generally, three (3) business days before each payroll date, the Payroll Processor directly debits funds from the Debtors’ bank account and electronically transfers the funds via direct deposit to the Employees’ personal bank accounts. The Payroll Processor’s services are essential to ensure the continuity of Debtors’ payroll system. The Payroll Processor is responsible for ensuring that the Employees are paid on time, that deductions are appropriately determined, that payroll reporting is accurate, and that all relevant and applicable standards are adhered. The Debtors pay the Payroll Processor approximately \$1,852 per month

for these services (“Payroll Maintenance Fees”). As of the Petition Date, the Debtors believe there are no accrued but unpaid amounts owed on account of Payroll Maintenance Fees.

ii. Reimbursable Expenses

11. The Debtors offer certain eligible Employees the use of company debit cards (the “Credit Card Program”) for work-related expenses, the payment of which would otherwise be the responsibility of the Debtors, to include certain operating expenses, work-related travel expenses and other office expenses. Historically, the Debtors monthly payments with respect to the Credit Card Program average approximately \$45,000 per month. As of the Petition Date, there are no amounts currently outstanding in connection with the Credit Card Program.

12. Additionally, the Debtors reimburse Employees for business-related expenses (the “Employee Expenses”). The Employee Expenses typically include payments for travel and entertainment. The Debtors have historically paid approximately \$2,000–5,000 per month on account of the Employee Expenses.

13. As of the Petition Date, the Debtors estimate that they owe approximately \$3,000 on behalf of accrued but unreimbursed Employee Expenses, all of which will come due in the Interim Period. The Debtors seek authority, but not direction, to continue paying the Employee Expenses during the pendency of the Chapter 11 Cases.

iii. Incentive Plans

a. Bonus Plan

14. In addition to paying Employee wages, the Debtors historically maintained a milestone based bonus program for certain of its Employees (the “Bonus Program”). The Debtors do not anticipate any amounts coming due under the Bonus Program during the Chapter 11 Cases and thus are not seeking authority to make any payments under the Bonus Program at this time.

b. Equity Incentive Plan

15. The Debtors offer their Employees a stock-based incentive compensation plan (the “Equity Incentive Plan”), which provides for the grant of options, stock appreciation rights, restricted stock, stock units, and other stock-based awards.

The Debtors do not have any outstanding payment obligations under the Equity Incentive Plan as of the Petition Date and are not seeking to make any further awards under the Equity Incentive Plan but reserve the right to seek such authority at a later date.

iv. Wage Deductions, Trust Fund Taxes, and Payroll Taxes

16. During each applicable pay period, the Debtors routinely deduct certain amounts from the Employees’ pay, including, without limitation, (i) garnishments, child support, and similar deductions and (ii) other pre-tax and after-tax deductions payable pursuant to certain of the Employee benefit plans discussed herein, such as the Employee’s share of health care benefits, insurance premiums, 401(k) contributions, legally ordered deductions, and other miscellaneous deductions (collectively, the “Wage Deductions”), and forward those amounts to various third-party recipients. On average, the Debtors have historically deducted approximately \$7,974 in the aggregate in Wage Deductions from the Employees’ pay per month. As of the Petition Date, the Debtors have not yet remitted approximately \$3,600 with respect to the Employees to the various third-party recipients on account of the Wage Deductions, all of which will come due in the Interim Period.

17. Furthermore, the Debtors are required by law to withhold from the Employees’ pay certain amounts related to, among other things, federal, state, and local income taxes and social security and Medicare taxes (collectively, the “Trust Fund Taxes”) for remittance to the appropriate federal, state, or local taxing authorities. The Debtors must then match from their own

funds for social security and Medicare taxes and pay, based upon a percentage of gross payroll, additional amounts for state and federal unemployment insurance (the “Payroll Taxes”, and together with Wage Deductions and Trust Fund Taxes, the “Employee Withholdings”). Historically, on a monthly basis, the Debtors remit approximately \$5,295 in Employee Withholdings. As of the Petition Date, the Debtors have not yet remitted approximately \$5,100 on account of Employee Withholdings, all of which will come due in the Interim Period.

18. The Debtors seeks authority to forward such prepetition Employee Withholding (and to continue to forward Employee Withholding on a post-petition basis whether or not related to the prepetition period) to the Payroll Processor, for payment, or to the applicable third-party recipients in the ordinary course of business and consistent with past practice.

C. Employee Benefits

19. The Debtors provide their Employees, directly or indirectly, and in the ordinary course of business, with a number of employee benefits, including, but not limited to: (i) medical, dental, and vision insurance; (ii) paid time off and leave of absence; (iii) a 401(k) retirement savings plan; and (iv) certain other miscellaneous employee benefits, including, but not limited to, basic life and accidental death and dismemberment insurance, disability benefits, health savings accounts, flexible spending accounts, and an employee assistance program (collectively, the “Employee Benefits”).

i. Health Benefits

20. The Debtors sponsor several health benefit plans, including medical, dental, and vision insurance (collectively, the “Health Benefits”) for their Employees.

21. The Debtors offer medical benefits through United HealthCare Services, Inc. (“UHC”) and offer their Employees four plan options: Premium Designated, HSA with \$3,200

deductible, HSA with \$2,000 deductible, and HSA with \$5,000 deductible. The Debtors pay a percentage of the premiums associated with medical benefits for participating Employees. The portion of monthly premiums associated with the medical benefits, and paid by the Debtors, is approximately \$16,103.

22. The Debtors offer dental benefits through Delta Dental Insurance Company and offer their Employees one plan option. The Debtors pay a percentage of the premiums associated with vision benefits for participating Employees. The portion of monthly premiums associated with the vision benefits, and paid by the Debtors, is approximately \$866.

23. The Debtors offer vision benefits through Vision Service Plan and offer their Employees one plan option. The Debtors pay the full amount of the premiums associated with the vision benefits on behalf of the participating Employees. The total monthly premiums associated with the vision benefits is approximately \$188, all of which is the Debtors' responsibility.

24. The Debtors pay an aggregate amount of approximately \$17,157 per month on account of the Health Benefits for participating Employees. As of the Petition Date, there are currently no unpaid amounts owed on account of the Health Benefits.

ii. Paid Time Off and Leave of Absence

25. The Debtors provide various forms of paid time off, including vacation, sick, personal, and other forms of leave to their Employees ("Paid Time Off"). Paid Time Off covers scheduled vacation or personal time as well as unscheduled situations such as unexpected illness and emergencies. On January 1st of each year each Employee is granted a predetermined amount of Paid Time Off to be used during that calendar year. Any unused Paid Time Off from the current calendar year, up to a maximum of five days (forty hours), can be rolled over into the following calendar year.

26. In addition to the Paid Time Off, the Debtors also offer their Employees specified periods for leave of absence. For example, the Debtors provide, *inter alia*, paid time off for bereavement leave (“Bereavement Leave”), paid time off for jury duty and witness leave for ten days of jury service per calendar year (“Jury Duty Leave”), unpaid time off for leave related to being a crime victim, unpaid time off for leave related to being a member of a volunteer fire department or volunteer rescue squad, and paid time off for parental leave (“Parental Leave”). The Debtors do not pay out Bereavement Leave, Jury Duty Leave, or Parental Leave to any Employees upon termination and, thus, these do not represent cash obligations of the Debtors.

27. Upon termination, the Employees are not entitled to a cash payment for accrued and unused Paid Time Off, and the Debtors do not operate in any states where such a payout is required by state law. The Debtors estimate that, as of the Petition Date, approximately 1,640 hours in Paid Time Off has accrued but not yet been used. This amount, however, does not equate to a current cash payment obligation. Accordingly, the Debtors seek authority, but not direction, to honor, at their discretion, accrued prepetition Paid Time Off in the ordinary course.

iii. Severance Benefits

28. Prior to the Petition Date, the Debtors offered certain executives severance pay in the event of change-of-control and non-change-of-control events. Through this Motion, the Debtors do not seek authority to continue to honor these contractual severance obligations in the ordinary course of business; however, the Debtors reserve the right to seek, through another motion, approval of any incentive, retention, or severance programs.

iv. Additional Employee Benefits

a. 401(k) Plan

29. The Debtors offer a 401(k) plan for the benefit of their eligible Employees (the “401(k) Plan”). The program permits eligible Employees to defer a portion of their wages into the 401(k) Plan. To be considered eligible for the 401(k) Plan, Employees must be at least eighteen years of age and earn W-2 wages. Historically, on an annual basis, the Debtors withhold from wages of participating Employees contributions to the 401(k) Plan of approximately \$191,000. The Debtors also contribute matching contributions to the 401(k) Plan each pay period, which varies per participating Employee, based on that Employee’s elected contribution. Employees must meet a service requirement of one year in order for the matched amounts to fully vest. For the 2023 calendar year, the Debtors’ total safe harbor contributions totaled approximately \$82,000. As of the Petition Date, the Debtors have remitted to the 401(k) Plan all amounts withheld from the applicable Employees’ wages on account of 401(k) contributions.

30. The Debtors utilize CCH Incorporated, d/b/a ftwilliam.com (the “401(k) Service Provider”) for administrative services in connection with the 401(k) Plan. The Debtors pay quarterly fees related to the 401(k) Plan administration to the 401(k) Service Provider in the approximate amount of \$975 (*i.e.*, \$3,900 annually). As of the Petition Date, the Debtors estimate that approximately \$2,000 remain unpaid and due and owing to the 401(k) Service Provider, approximately \$1,000 of which will come due and owing in the Interim Period.

b. Basic Life Insurance, AD&D Insurance, and Disability

31. The Debtors offer basic life and accidental death and dismemberment insurance (“Life and AD&D Insurance”), as well as long-term disability (“Disability Benefits”), to their Employees through Metropolitan Life Insurance Company (“MetLife”). The Debtors pay the full

amount of the premiums associated with the Life and AD&D Insurance and Disability Benefits on behalf of the participating Employees. The total monthly premiums associated with Life and AD&D Insurance and Disability Benefits is approximately \$149, all of which is the Debtors' responsibility. As of the Petition Date, there are currently no unpaid amounts owed on account of Life and AD&D Insurance and Disability Benefits.

32. The Employees may also elect to purchase supplemental life, accidental death and dismemberment insurance, and short-term disability benefits at no cost to the Debtors.

c. COBRA Benefits

The Debtors seek to continue to perform any obligations under Section 4980B of the Internal Revenue Code to administer Continuation Health Coverage (26 U.S.C. § 4980B) ("COBRA") in respect of former Employees and their covered dependents. ADP administers the Debtors' COBRA obligations. ADP collects any costs and fees associated with the COBRA program for Employees from the Employees that utilize the COBRA benefit. Those amounts are deposited in the Debtors bank accounts for remittance to the appropriate benefits provider.

d. Flexible Spending Account

33. The Debtors offer the Employees the use of flexible spending accounts ("FSAs") for various health, dependent care, and other limited purpose expenses. Optum Bank, through ADP, administers the FSAs, and the Debtors withhold funds from Employees' paychecks and disburse the funds monthly for reimbursement of claims. There is no fee to the Debtors for the administration of the FSAs by ADP. Additionally, none of the Employees currently participate in the FSAs.

34. The Debtors seek authority, but not direction, to continue to remit funds for reimbursement of claims during the pendency of the Chapter 11 Cases.

e. Health Savings Accounts

35. The Debtors offer the Employees the use of health savings accounts (“HSAs”) for various medical, dental, prescription, and visions expenses. Optum Bank administers the HSAs, and the Debtors withhold funds from Employees’ paychecks and disburse the funds monthly for reimbursement of claims. The Debtors pay a nominal fee (*i.e.*, \$1 per month) per month to Optum Bank for administration of the HSAs. As of the Petition Date, all disbursements for reimbursement of claims have been made.

36. The Debtors seek authority, but not direction, to continue to remit funds for reimbursement of claims during the pendency of the Chapter 11 Cases.

D. Workers’ Compensation Program

37. Under applicable state law, the Debtors are required to maintain workers’ compensation insurance programs to provide their Employees with workers’ compensation insurance coverage (the “Workers’ Compensation Program”) for claims arising from or related to their employment with the Debtors (the “Workers’ Compensation Claims”). The Debtors maintain a fully insured workers’ compensation policy through ADP’s master policy and coverage for the Employees is part of ADP’s offering. Thus, the annual premium cost for the Workers’ Compensation Program is paid as part of the Payroll Maintenance Fees and the specific amount of the premium is unable to be delineated.

38. To ensure that any claims incurred under the Workers’ Compensation Program are resolved, the Debtors must pay outstanding prepetition liabilities associated with the Workers’ Compensation Program, as well as outstanding policy premiums, as such amounts become due and owing. For the claims administration process in the Chapter 11 Cases to operate as efficiently as possible, and to ensure that the Debtors comply with state law requirements, the Workers’

Compensation Program must continue in the ordinary course of business. To facilitate the ordinary course handling of Workers' Compensation Claims, the Debtors further request authority, in their sole discretion, to lift the automatic stay of section 362 of the Bankruptcy Code to allow Employees holding valid Workers' Compensation Claims to proceed under the Workers' Compensation Program and to allow the Debtors, and New Hampshire, as applicable, to negotiate, settle, and litigate Workers' Compensation Claims, and pay resulting amounts, whether such claims arose before or after the Petition Date.

RELIEF REQUESTED

39. By this Motion, the Debtors request that the Court enter the Proposed Orders, (i) authorizing, but not directing, the Debtors, in accordance with their stated policies and in their discretion, to (a) pay prepetition amounts outstanding in respect of the Employee Wages and Benefits; (b) continue to honor and provide the Employee Wages and Benefits in the ordinary course of business; and (c) pay processing costs and administrative expenses relating to the Employee Wages and Benefits; (ii) modifying the automatic stay if necessary to permit the Debtors' Employees to proceed with any claims they may have under the Workers' Compensation Program; (iii) authorizing the Banks to honor and process check and electronic transfer requests associated therewith; and (iv) granting related relief.

BASIS FOR RELIEF

A. Satisfying or Otherwise Honoring the Employee Wages and Benefits Is Justified

40. Section 363(b) of the Bankruptcy Code provides, in relevant part, that the debtor, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Under section 363(b) of the Bankruptcy Code, a court may authorize a debtor to pay certain prepetition claims if a sound business purpose exists for so doing. *See In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999)

(requiring that the debtor show a “sound business purpose” to justify its actions under section 363 of the Bankruptcy Code); *see also In re Phoenix Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987). Moreover, if “the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (stating that “[o]vercoming the presumptions of the business judgment rule on the merits is a near-Herculean task”).

41. In addition, the Court has the authority, pursuant to its equitable powers under section 105(a) of the Bankruptcy Code, to authorize the relief requested herein under the doctrine of necessity. Section 105(a) of the Bankruptcy Code empowers bankruptcy courts to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”

42. Under section 105(a) and the doctrine of necessity, the bankruptcy court may exercise its broad grant of equitable powers to permit the payment of prepetition obligations when such payment is essential for the orderly administration of the debtor’s chapter 11 case. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section 105(a) of the Bankruptcy Code provides a statutory basis for the payment of prepetition claims under the doctrine of necessity and noting that “[t]he Supreme Court, the Third Circuit and the District of Delaware all recognize the court’s power to authorize payment of prepetition claims when such payment is necessary”); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (confirming that the doctrine of necessity is the standard in the Third Circuit for enabling a court to authorize the payment of prepetition claims prior to the confirmation of a reorganization plan).

43. The relief requested by this Motion represents a sound exercise of the Debtors' business judgment, is necessary to avoid immediate and irreparable harm to the Debtors' estates and is justified under sections 105(a) and 363(b) of the Bankruptcy Code. The Debtors seek the relief requested herein because any delay in paying or otherwise honoring the Employee Wages and Benefits could severely disrupt the Debtors' relationship with the Employees and irreparably impair the Employees' morale at a time when their continued dedication, confidence, and cooperation are most critical to the Debtors and the success of the Chapter 11 Cases.

44. The Employees perform a variety of critical functions for the Debtors, and their knowledge, skills, and understanding of the Debtors' infrastructure, business operations, and vendor and customer relations are essential to the success of the Chapter 11 Cases. Without the continued service and dedication of the Employees, it will be difficult, if not impossible, to operate the Debtors' businesses without an unexpected or inopportune interruption, and to prosecute the Chapter 11 Cases in a manner that will maximize the value of the Debtors' estates.

45. The Debtors cannot risk the substantial disruption of their business and affairs that would, in all likelihood, accompany any decline in workforce morale attributable to the Debtors' failure to pay the Employee Wages and Benefits in the ordinary course of business. Absent the requested relief, the Employees would suffer great hardship and, in many instances, financial difficulties, since the Employees need the monies requested herein to enable them to meet their personal obligations. Thus, to successfully accomplish the foregoing, to minimize the personal hardship that the Employees will suffer if prepetition employee-related obligations are not paid when due or as otherwise expected, and to maintain employee morale and a focused workforce during this critical time, it is necessary and in the best interest of their estates and all stakeholders to seek the relief requested herein. Additionally, without the requested relief, the potential threat

that otherwise loyal Employees at all levels would seek other employment would undermine the Debtors' stability.

46. Pursuant to section 507(a)(4) of the Bankruptcy Code, each Employee may be granted a priority claim for up to \$15,150 for any "wages, salaries, or commissions, including vacation, severance, and sick leave pay" that was earned within 180 days prior to the Petition Date. *See* 11 U.S.C. § 507(a)(4). And under section 507(a)(5) of the Bankruptcy Code, the Employees may be granted a priority claim for unpaid "contributions to an employee benefit plan" arising from services rendered within 180 days prior to the Petition Date, in an amount up to \$15,150, *less* the amount of any allowed priority claim under section 507(a)(4). *See* 11 U.S.C. § 507(a)(5).

47. To the extent that sections 507(a)(4) and (5) of the Bankruptcy Code would entitle any claims for Employee Benefits to priority status, the Debtors would be required to pay these claims in full to confirm any chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(B) (requiring payment of certain allowed unsecured claims for wages, salaries, and commissions, and certain allowed unsecured claims for contributions to an employee benefit plan). Thus, granting the relief requested herein would only affect the timing, and not the amount, of the payment of such amounts to the extent that they constitute priority claims.

48. Moreover, the vast majority of the Employees rely exclusively on their full compensation or reimbursement of their wages or expenses to continue to pay their daily living expenses, and these Employees will be exposed to significant financial difficulties if the Debtors were not permitted to satisfy and continue to provide the Employee Wages and Benefits. Additionally, if the Debtors were unable to honor such obligations, the morale and loyalty of the Employees would be jeopardized at a time when such support is critical to, among other things, effectively prosecute the Chapter 11 Cases.

49. Additionally, the Employee Withholding principally represents portions of the Employees' pay that governments (in the case of the Trust Fund Taxes and Payroll Taxes), the Employees (in the case of any voluntary Wage Deductions), and certain authorities (in the case of the involuntarily Wage Deductions) have designated for deduction from the Employees' pay. The Debtors' failure to pay these amounts could result in hardship to certain Employees and an administrative burden for the Debtors. Indeed, the Debtors would expect inquiries from garnishors regarding any failure by the Debtors to submit, among other things, child support and alimony payments that are not the Debtors' property but, rather, the Debtors have withheld from the Employees' pay on such parties' behalf. And in any event, those deductions that the Debtors have withheld from Employees' paychecks on another party's behalf are not property of the Debtors' estates. *See* 11 U.S.C. § 541(b)(7) and (d). Further, federal and state laws require the Debtors and their officers to remit certain tax payments that the Debtors have withheld from their Employees' paychecks. *See* 26 U.S.C. § 6672 and 7501(a); *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95–97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes); *DuCharmes & Co., Inc. v. State of Mich. (In re DuCharmes & Co.)*, 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes). Moreover, if the Debtors cannot remit these amounts, the Employees may face legal action due to the Debtors' failure to submit such payments.

B. Modification of the Automatic Stay as to the Workers' Compensation Claims Is Warranted

50. Section 362(a)(1) of the Bankruptcy Code operates to stay:

the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action

or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title

11 U.S. C. § 362(a)(1). Section 362(d)(1), however, permits a debtor or other party in interest to request a modification or termination of the automatic stay for “cause.” 11 U.S.C. § 362(d)(1).

51. Pursuant to section 362(d) of the Bankruptcy Code, and to the extent any Employees hold valid Workers’ Compensation Claims, the Debtors seek authority to modify the automatic stay to permit those employees to proceed with such claims in the appropriate judicial or administrative forum and waive corresponding notice requirements under Bankruptcy Rule 4001(d). The Debtors further request that any recovery on account of such claims be limited solely to the proceeds under the Debtors’ Workers’ Compensation Program and proceeds from non-Debtor sources.

52. Maintaining the Workers’ Compensation Program is justified because applicable state law mandates this coverage. The Debtors submit that cause exists to modify the automatic stay because, with respect to any claims related to the Workers’ Compensation Program, the risk that eligible claimants will not receive timely payments with respect to employment-related injuries could have a devastating effect on the financial well-being and morale of the Employees and their willingness to remain in the Debtors’ employ. Entry of the Proposed Orders will alleviate any such concerns, as it will allow the Debtors to avoid any unexpected or inopportune interruptions to their business operations and enable them to maximize the value of the estates for the benefit of all stakeholders. Accordingly, the Debtors request that the Court modify the automatic stay as it relates to valid Workers’ Compensation Claims to allow employees holding any such claims to pursue resolution and collection in accordance with the Workers’ Compensation Program and any other non-Debtor sources.

C. Authorizing the Banks to Honor and Process the Debtors' Payments on Account of the Employee Wages and Benefits Is in the Best Interest of the Debtors' Estates

53. The Debtors also request that the Court authorize the Banks, when requested by the Debtors, in their discretion, to honor and process checks or electronic fund transfers drawn on the Debtors' bank accounts to pay prepetition obligations described herein, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Debtors further request that all of the Banks be authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved pursuant to this Motion.

54. For the reasons set forth above, the Debtors submit that the relief requested herein is necessary, prudent, and in the best interests of the Debtors, their estates, and any party in interest.

SATISFACTION OF BANKRUPTCY RULE 6003(b)

55. Pursuant to Bankruptcy Rule 6003(b), any motion seeking to use property of the estate pursuant to section 363 of the Bankruptcy Code or to satisfy prepetition claims within twenty-one days of the Petition Date requires the Debtors to demonstrate that such relief "is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003(b). As set forth throughout this Motion, the success of the Chapter 11 Cases will require the continued focus and dedication of the Employees, as any deterioration in employee morale or significant loss in workforce will have an adverse impact on the Debtors' ability, among other things, to continue to operate their business without any unexpected or inopportune interruption and to successfully prosecute the Chapter 11 Cases. Thus, if the relief requested herein is not granted, the failure to satisfy the Employee Wages and Benefits would cause the Debtors' estates immediate and irreparable harm by detracting from, and potentially derailing, the Debtors' chapter 11 efforts.

56. For this reason and those set forth above, the Debtors respectfully submit that Bankruptcy Rule 6003(b) has been satisfied and the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

WAIVER OF STAY UNDER BANKRUPTCY RULES 4001(a)(3) AND 6004(h)

57. Pursuant to Bankruptcy Rule 6004(h), “An order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). Further, Bankruptcy Rule 4001(a)(3) provides that “[a]n order granting a motion for relief from the automatic stay. . . is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 4001(a)(3). As set forth throughout this Motion, any delay in paying the Employee Wages and Benefits would be detrimental to the Debtors, their estates, and their creditors. Indeed, the Debtors’ ability to operate their business without any unexpected or inopportune interruption requires, in large part, an able and willing workforce, which the Debtors currently have in the Employees.

58. For this reason and those set forth above, the Debtors submit that ample cause exists to justify a waiver of the fourteen-day stay imposed by Bankruptcy Rules 4001(a)(3) and 6004(h) to the extent applicable to the Proposed Orders.

RESERVATION OF RIGHTS

59. Nothing in the Proposed Orders or this Motion (i) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates; (ii) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to the

validity, priority, or amount of any claim against the Debtors and their estates; or (iii) shall be construed as a promise to pay a claim.

NOTICE

60. The Debtors will provide notice of this Motion to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the Office of the United States Attorney for the District of Delaware; (iii) the Subchapter V Trustee appointed in these Chapter 11 Cases, (iv) the Internal Revenue Service; (v) the Debtors' twenty (20) largest unsecured creditors (excluding insiders); (vi) counsel to the Prepetition and DIP Lender; and (vii) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Rule 9013-1(m) of the Local Rules. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

[Remainder of page intentionally left blank]

CONCLUSION

WHEREFORE, the Debtors respectfully request entry of the Proposed Orders, granting the relief requested herein and such other and further relief as is just and proper.

Dated: November 11, 2024
Wilmington, Delaware

FAEGRE DRINKER BIDDLE & REATH LLP

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*Proposed Counsel to the Debtors and
Debtors in Possession*

EXHIBIT A

Proposed Interim Order

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

In re:

Recombinetics, Inc., *et al.*,

Debtors.¹

Chapter 11 (Subchapter V)

Case No. 24-12593 (___)

(Jointly Administered)

Ref. D.I. __

**INTERIM ORDER (I) AUTHORIZING THE
DEBTORS TO (A) PAY PRE-PETITION EMPLOYEE OBLIGATIONS
AND (B) MAINTAIN AND CONTINUE EMPLOYEE BENEFIT PROGRAMS AND
PAY ADMINISTRATIVE OBLIGATIONS RELATED THERETO; (II) MODIFYING
THE AUTOMATIC STAY WITH RESPECT TO THE WORKERS' COMPENSATION
PROGRAM; (III) AUTHORIZING BANKS TO HONOR AND PROCESS CHECKS
AND ELECTRONIC TRANSFER REQUESTS RELATED THERETO; AND
(IV) GRANTING RELATED RELIEF**

Upon consideration of the motion (the "Motion")² of the Debtors for the entry of interim and final orders, pursuant to sections 105(a), 363(b), 507(a)(4), 507(a)(5), and 541 of the Bankruptcy Code and Bankruptcy Rules 4001, 6003, and 6004, (i) authorizing, but not directing, the Debtors, in accordance with their stated policies and in their discretion, to pay, honor, or otherwise satisfy the Employee Wages and Benefits, including amounts and obligations related to the period prior to the Petition Date, (ii) modifying the automatic stay if necessary to permit the Debtors' employees to proceed with any claims they may have under the Workers Compensation Program; (iii) authorizing the Banks to honor and process check and electronic transfer requests related to the foregoing, and (iv) granting related relief; and upon consideration of the Motion and all pleadings related thereto, including the First Day Declaration; and the Court having found that

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are Recombinetics, Inc. (1470), Acceligen, Inc. (N/A), Regenevida, Inc. (N/A), Surrogen, Inc. (N/A), and Therillume, Inc. (4995). The mailing address for each of the Debtors is 3388 Mike Collins Drive, Eagan, Minnesota 55121.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

due and proper notice of the Motion has been given and no other or further notice of the Motion is required under the circumstances; and the Court having found that it has jurisdiction to consider the Motion under 28 U.S.C. §§ 1334 and 157, and the Standing Order; and the Court having found that its consideration of the Motion and the relief requested therein is a core proceeding under 28 U.S.C. § 157(b) and that it may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of these proceedings and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found and determined that the relief requested in the Motion and provided for herein is in the best interest of the Debtors, their estates, and their creditors; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis as set forth herein.
2. A final hearing on the relief sought in the Motion shall be conducted on _____, 2024, at _____ (ET) (the “Final Hearing”). Any party-in-interest objecting to the relief sought at the Final Hearing or the Proposed Final Order shall file and serve a written objection, which objection shall be served upon proposed counsel for the Debtors, in each case no later than _____, 2024, at 4:00 p.m. (ET). If no objections to the entry of the Proposed Final Order are timely filed, this Court may enter the Proposed Final Order without further notice or a hearing. The Debtors shall file a notice of the Final Hearing within two business days after entry of this Order.
3. The Debtors are authorized, in their discretion, to pay, honor, or otherwise satisfy amounts and obligations on account of the Employee Wages and Benefits in the ordinary course of their business, including, without limitation, any amounts and obligations related to the period prior to the Petition Date; provided, however, that the Debtors shall not pay any prepetition

obligations on account of Employee Wages and Benefits in excess of \$12,700 in the aggregate; provided, further, that any payment made by the Debtors pursuant to the authority granted herein shall be in accordance with the terms and conditions of the DIP Financing, including the DIP Budget, and DIP Order and any other or subsequent orders approving debtor-in-possession financing or use of cash collateral by this Court in these Chapter 11 Cases.

4. Subject to Paragraph 3 of this Order, the Debtors are authorized, in their discretion, in the ordinary course of their business, to (i) withhold and remit to the applicable third-parties Employee Withholding, and (ii) continue to pay, honor, and otherwise satisfy the Employee Benefits and the obligations under the Workers' Compensation Program.

5. For the avoidance of doubt, the Debtors are authorized, but not directed, to pay all processing and administrative fees associated with and all costs and expenses incidental to payment of the Employee Wages and Benefits.

6. The Debtors are authorized, but not directed, to continue to honor, at their discretion, accrued pre-petition Paid Time Off in the ordinary course. However, notwithstanding any other provisions of this Interim Order, absent further order of the Court, the Debtors are not authorized to "cash out" unpaid Paid Time Off upon the termination or resignation of an Employee unless applicable state law requires such payment.

7. Nothing in this Order shall be deemed to authorize the payment of any amounts subject to section 503(c) of the Bankruptcy Code.

8. The automatic stay is modified solely to the extent necessary to permit the Debtors' employees to proceed with any valid Workers' Compensation Claims they may have under the Workers' Compensation Program and to allow the Debtor, and New Hampshire, as applicable, to negotiate, settle, and litigate such claims and pay resulting amounts, whether such claims arose

before or after the Petition Date, provided that any recovery on account of such claims is limited solely to the proceeds under the Debtors' applicable Workers' Compensation Program and proceeds from non-Debtor sources that do not have any recourse against the Debtors.

9. The Banks are authorized, when requested by the Debtors, in the Debtors' discretion, to honor and process checks or electronic fund transfers drawn on the Debtors' bank accounts to pay prepetition obligations authorized to be paid hereunder, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Banks may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Interim Order, and any such Bank shall not have any liability to any party for relying on such representations by the Debtors, as provided for in this Interim Order.

10. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests in connection with any of the Employee Wages and Benefits described herein that are dishonored or rejected.

11. Nothing in this Interim Order (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates, (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority, or amount of any claim against the Debtors and their estates, (c) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to any and all claims or causes of action against any person, or (d) shall be construed as a promise to pay a claim.

12. The Debtors are authorized to take any and all actions necessary to effectuate the relief granted herein.

13. The requirements of Bankruptcy Rule 6003(b) are satisfied.

14. Notwithstanding any applicability of Bankruptcy Rules 4001(a)(3) and 6004(h), the terms and conditions of this Interim Order shall be effective and enforceable immediately upon its entry.

15. Notice of the Motion as provided therein satisfies the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

16. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

EXHIBIT B

Proposed Final Order

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

In re:

Recombinetics, Inc., *et al.*,

Debtors.¹

Chapter 11 (Subchapter V)

Case No. 24-12593 (____)

(Jointly Administered)

Ref. D.I. ____ & ____

**FINAL ORDER (I) AUTHORIZING THE
DEBTORS TO (A) PAY PRE-PETITION EMPLOYEE OBLIGATIONS
AND (B) MAINTAIN AND CONTINUE EMPLOYEE BENEFIT PROGRAMS AND
PAY ADMINISTRATIVE OBLIGATIONS RELATED THERETO; (II) MODIFYING
THE AUTOMATIC STAY WITH RESPECT TO THE WORKERS' COMPENSATION
PROGRAM; (III) AUTHORIZING BANKS TO HONOR AND PROCESS CHECKS
AND ELECTRONIC TRANSFER REQUESTS RELATED THERETO; AND
(IV) GRANTING RELATED RELIEF**

Upon consideration of the motion (the "Motion")² of the Debtors for the entry of interim and final orders, pursuant to sections 105(a), 363(b), 507(a)(4), 507(a)(5), and 541 of the Bankruptcy Code and Bankruptcy Rules 4001, 6003, and 6004, (i) authorizing, but not directing, the Debtors, in accordance with their stated policies and in their discretion, to pay, honor, or otherwise satisfy the Employee Wages and Benefits, including amounts and obligations related to the period prior to the Petition Date, (ii) modifying the automatic stay if necessary to permit the Debtors' employees to proceed with any claims they may have under the Workers Compensation Program; (iii) authorizing the Banks to honor and process check and electronic transfer requests related to the foregoing, and (iv) granting related relief; and upon consideration of the Motion and all pleadings related thereto, including the First Day Declaration; and the Court having found that

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² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

due and proper notice of the Motion has been given and no other or further notice of the Motion is required; and the Court having found that it has jurisdiction to consider the Motion under 28 U.S.C. §§ 1334 and 157, and the Standing Order; and the Court having found that its consideration of the Motion and the relief requested therein is a core proceeding under 28 U.S.C. § 157(b) and that it may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of these proceedings and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found and determined that the relief requested in the Motion and provided for herein is in the best interest of the Debtors, their estates, and their creditors; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized, in their discretion, to pay, honor, or otherwise satisfy amounts and obligations on account of the Employee Wages and Benefits in the ordinary course of their business, including, without limitation, any amounts and obligations related to the period prior to the Petition Date; provided, however, that the Debtors shall not pay any prepetition obligations on account of Employee Wages and Benefits in excess of \$13,700 in the aggregate.
3. Subject to Paragraph 2 of this Order, the Debtors are authorized, in their discretion, in the ordinary course of their business, to (i) withhold and remit to the applicable third-parties Employee Withholding, and (ii) continue to pay, honor, and otherwise satisfy the Employee Benefits and the obligations under the Workers' Compensation Program.
4. For the avoidance of doubt, the Debtors are authorized, but not directed, to pay all processing and administrative fees associated with and all costs and expenses incidental to payment of the Employee Wages and Benefits.

5. The Debtors are authorized, but not directed, to continue to honor, at their discretion, accrued pre-petition Paid Time Off in the ordinary course. However, notwithstanding any other provisions of this Final Order, absent further order of the Court, the Debtors are not authorized to “cash out” unpaid Paid Time Off upon the termination or resignation of an Employee unless applicable state law requires such payment.

6. Nothing in this Order shall be deemed to authorize the payment of any amounts subject to section 503(c) of the Bankruptcy Code.

7. The automatic stay is modified solely to the extent necessary to permit the Debtors’ employees to proceed with any valid Workers’ Compensation Claims they may have under the Workers’ Compensation Program, and to allow the Debtor, and New Hampshire, as applicable, to negotiate, settle, and litigate such claims and pay resulting amounts, whether such claims arose before or after the Petition Date, provided that any recovery on account of such claims is limited solely to the proceeds under the Debtors’ applicable Workers’ Compensation Program and proceeds from non-Debtor sources that do not have any recourse against the Debtors.

8. The Banks are authorized, when requested by the Debtors, in the Debtors’ discretion, to honor and process checks or electronic fund transfers drawn on the Debtors’ bank accounts to pay prepetition obligations authorized to be paid hereunder, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Banks may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Final Order, and any such Bank shall not have any liability to any party for relying on such representations by the Debtors, as provided for in this Final Order.

9. The Debtors are authorized, but not directed, to issue post-petition checks, or to effect post-petition fund transfer requests, in replacement of any checks or fund transfer requests in connection with any of the Employee Wages and Benefits described herein that are dishonored or rejected.

10. Nothing in this Final Order (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates; (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority, or amount of any claim against the Debtors and their estates; (c) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to any and all claims or causes of action against any person; or (d) shall be construed as a promise to pay a claim.

11. The Debtors are authorized to take any and all actions necessary to effectuate the relief granted herein.

12. Notwithstanding any applicability of Bankruptcy Rules 4001(a)(3) and 6004(h), the terms and conditions of this Final Order shall be effective and enforceable immediately upon its entry.

13. Notice of the Motion as provided therein satisfies the requirements of Bankruptcy Rule 6004(a) and the Local Rules.

14. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.