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THIRD-PARTY RELEASES POST-*PURDUE*

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Speakers:

Honorable Michael B. Kaplan, Chief Judge
U.S. Bankruptcy Court, District of New Jersey

Honorable Meredith Jury (Ret.)
U.S. Bankruptcy Court, Central District of California

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*This outline was prepared by Leonard Gumport. The statements made in this outline don't reflect the views of anyone else, including his fellow panelists (who provided valuable comments), the members of the ABI, and the ABI.

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THIRD-PARTY RELEASES AFTER *PURDUE PHARMA**

[I] INTRODUCTION

[A] This outline discusses the impact on third-party releases in bankruptcy cases of the 5-4 divided decision of the United States Supreme Court in *Harrington v. Purdue Pharma, L.P.*, 603 U.S. __, 219 L.Ed.2d 721, 144 S. Ct. 2071 (2024) (*Purdue*).

[B] In *Purdue,* the majority opinion, authored by Justice Gorsuch, joined by Justices Thomas, Alito, Barrett, and Jackson, held that the Bankruptcy Code "does not authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seeks to discharge claims against a nondebtor without the consent of affected claimants." *Id.*, 219 L.Ed.2d at 739.

[C] In *Purdue,* the dissent, authored by Justice Kavanaugh, joined by Chief Justice Roberts and Justices Sotomayor and Kagan, states: "With the current plan now gone and non-debtor releases categorically prohibited, the consequences will be severe. Without releases, there will be no $5.5 to $6 billion settlement payment to the estate, and 'there will be no viable path to any victim recovery.'" *Id.*, at 741 (quoting Tr. of 12/4/23 Oral Arg. ("12/4/23 Tr.")).

[II] SUMMARY OF *PURDUE*

[A] Pre-*Purdue*

[1] Purdue's Plan: The chapter 11 plan ("Plan") of Purdue Pharma L.P. ("Purdue") and its affiliates contained nonconsensual releases and an injunction that extinguished the claims of Purdue's creditors against Sackler family members (the "Sacklers"). *See Purdue,* 219 L.Ed.2d at 730-32. The releases and injunction barred all claims for which Purdue's conduct was a "legally relevant factor." *Id.*, at 735 n.3.

[2] *Grande Prairie*: In *Purdue Pharma, L.P. v. City of Grande Prairie (In re Pharma L.P.),* 69 F.4th 45 (2d Cir. 2023) (*Grande Prairie*), in a 2-1 divided decision, the Second Circuit decided that 11 U.S.C. § 524(e) did not prohibit the Plan's nonconsensual third-party releases and injunction because they did not "discharge" the Sacklers. *See id.*, at 70-71 ("While the Bankruptcy Code forbids a *discharge* of a non-debtor's claim under 11 U.S.C. § 524(e), the releases at issue on appeal do not constitute a discharge of debt for the Sacklers because the releases neither offer umbrella protection against liability nor extinguish all claims.") (italics in original). In *Grande Prairie,* the panel majority also decided that 11 U.S.C. §§ 105(a) and 1123(b)(6), in tandem, authorized the Plan's nonconsensual third-party releases and injunction. *Id.*, at 72-73.

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*This outline was prepared by Leonard Gumport of Gumport Law Firm, PC. This outline doesn't reflect the views of anyone else. The views stated (and any errors contained) in this outline are exclusively my responsibility. Valuable comments were provided to me by the Hon. Meredith A. Jury (Ret.) and the Hon. Michael B. Kaplan.

[3] The Circuit Split on Nonconsensual 3rd-Party Releases: Pre-*Purdue*, the Second, Third, Fourth, Sixth, Seventh, and Eleventh Circuits decided that the Bankruptcy Code authorizes a court to confirm a chapter 11 plan containing nonconsensual third-party releases in certain circumstances. The Fifth, Ninth, and Tenth Circuits prohibited such nonconsensual third-party releases. *See Purdue*, at 731 n.1; *Grande Prairie*, 69 F.4th at 74; *but see Blixseth v. Credit Suisse,* 961 F.3d. 1074, 1085 (9th Cir. 2020) (11 U.S.C. § 524(e) did not prohibit exculpation clause that covered "only liabilities arising from the bankruptcy proceedings and not the discharged debt").

[4] Consensual 3rd-Party Releases: Pre-*Purdue,* even in circuits that prohibited nonconsensual third-party releases, "consensual third-party releases were permissible." *In re Smallhold, Inc.,* 2024 Bankr. LEXIS 2332, at *25 n.36 (Bankr. D. Del. 2024) (*Smallhold*) (citing *In re PG & E Corp.,* 617 B.R. 671, 683 (Bankr. N.D. Cal. 2020)).

[B] *Purdue*

[1] The Holding: *Purdue* reversed *Grande Prairie.* In *Purdue*, the majority opinion states: "Confining ourselves to the question presented, we hold only that the bankruptcy code does not authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seeks to discharge claims against a nondebtor without the consent of affected claimants." *Id.,* at 739.

[2] The Discharge: *Purdue* states that the Plan's nonconsensual third-party releases and injunction were "essentially" a "discharge" of the Sacklers. *Id.,* at 732 ("The Sacklers have not filed for bankruptcy and have not placed virtually all their assets on the table for distribution to creditors, yet they seek what essentially amounts to a discharge."). The Plan's proponents argued that the "Sacklers seek a 'release,' not a 'discharge.'" *Id.,* at 737. "But word games cannot obscure the underlying reality." *Ibid.* The Sacklers did not "seek a traditional release, for they hope to have a court extinguish claims of opioid victims without their consent." *Ibid.*

[3] The Discharge Bargain: *Purdue* states: "The bankruptcy code contains hundreds of interlocking rules about the relations between a debtor and [its] creditors. But beneath that complexity lies a simple bargain: A debtor can win a discharge of its debts if it proceeds with honesty and places virtually all its assets on the table for its creditors." *Id.,* at 728 (internal quotations and citations omitted). The Plan's proposed nonconsensual third-party releases did not comply with that bargain: "The Sacklers have not filed for bankruptcy and have not placed virtually all their assets on the table for distribution to creditors, yet they seek what essentially amounts to a discharge." *Id.,* at 732.

[4] Section 524(e): *Purdue* relies in part on 11 U.S.C. § 524(e), which provides: "Except as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any entity for, such debt." Citing § 524(e), *Purdue* states: "Generally, however, a discharge operates only for the benefit of the debtor against its creditors and 'does not affect the liability of any other entity.' § 524(e)." *Id.,* at 732.

[5] Section 524(g): *Purdue* states: "For asbestos-related bankruptcies – and only for such bankruptcies – Congress has provided that, '[n]otwithstanding' the usual rule that a debtor's discharge does not affect the liabilities of others on that same debt, § 524(e), courts may issue 'an injunction . . . bar[ring] any action against a third party' under specified circumstances." *Id.*, at 736-37 (citing 11 U.S.C. § 524(g)(4)(A)(ii)).

[6] Section 523(a): In addition to relying on 11 U.S.C. § 524(e), *Purdue* relies on 11 U.S.C. § 523(a). Citing § 523(a), *Purdue* states that a discharge "does not reach claims based on 'fraud' or those alleging 'willful and malicious injury.' §§ 523(a)(2), (4), (6). And it cannot 'affect any right to trial by jury' a creditor may have with regard to a personal injury or wrongful death tort claim.' 28 U.S.C. §1411(a)." *Id.,* at 736. The Plan's proposed discharge of the Sacklers exceeded those limits. *Id.,* at 737 ("Once more, the Sacklers seek greater relief than a bankruptcy discharge normally affords, for they hope to extinguish even claims for wrongful death and fraud, and they seek to do so without putting anything close to all their assets on the table.").

[7] Section 105(a): 11 U.S.C. § 105(a) provides in part: "The court may issue any order, process, or judgment that is necessary or appropriate to carry the provisions of this title." *Purdue* states that § 105(a), standing alone, did not authorize the Plan's discharge of the Sacklers. "As the Second Circuit recognized, however, '§ 105(a) alone cannot justify' the imposition of nonconsensual third-party releases because it serves only to 'carry out' authorities expressly conferred elsewhere in the code." *Purdue,* 219 L.Ed.2d at 733 n.2 (quoting *Grande Prairie*, 69 F.4th at 73 (quoting 11 U.S.C. § 105(a)).

[8] Section 1123(b)(6): 11 U.S.C. § 1123(b)(6) provides that a plan may "include any other appropriate provision not inconsistent with the applicable provisions of this title." *Purdue* states that § 1123(b)(6) did not authorize the Plan's discharge of the Sacklers. Section 1123(b)(6) is a "catchall phrase" tacked on at the end of a long and detailed list of specific directions." *Purdue,* 219 L.Ed.2d at 733. "But the catchall cannot be fairly read to endow a bankruptcy court with the radically different power to discharge the debts of a nondebtor without the consent of affected nondebtor claimants." *Id.,* at 734.

[9] Limited scope of holding: *Purdue* states: "Nothing in what we have said should be construed to call into question *consensual* third-party releases. . . . Nor do we have occasion today to express a view on what qualifies as a consensual release or pass upon a plan that provides for full satisfaction of claims against a third-party nondebtor. Additionally, because this case involves only a stayed reorganization plan, we do not address whether our reading of the bankruptcy code would justify unwinding reorganization plans that have already become effective." *Id.,* at 739 (emphasis in original). *Purdue* also does not decide any constitutional issues, including the Due Process and Seventh Amendment issues discussed by Justice Gorsuch during oral argument. (12/4/23 Tr., pp. 73-74.)

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[III] CONSENSUAL RELEASES OF CREDITORS' 3RD-PARTY CLAIMS

[A] *Purdue* does not question the validity of consensual releases of third-party claims. *See id.,* 219 L.Ed.2d at 739 ("Nothing in what we have said today should be construed to call into question *consensual* third-party releases in connection with a bankruptcy reorganization plan; those sorts of releases pose different questions and may rest on different legal grounds than the nonconsensual release at issue here. See, *e.g., In re Specialty Equipment Cos.,* 3 F.3d 1043, 1047 (CA 7 1993).)" (emphasis in original).

[B] *Purdue* does not decide what constitutes a valid consent and does not decide whether a creditor's mere passive failure to opt out from a plan's third-party release qualifies as a valid consent. *See Purdue,* 219 L.Ed.2d at 739 ("Nor do we have occasion today to express a view on what qualifies as a consensual release . . . .").

[C] *Purdue* cites to (but does not quote from or discuss) page 1047 of *Specialty Equip. Cos.,* 3 F.3d 1043 (7th Cir. 1993). *See Purdue,* at 739. In *Specialty Equipment*, the Seventh Circuit stated: "But section 524(e) provides only that a discharge does not affect the liability of third parties. . . . Accordingly, courts have found releases that are *consensual* and *non-coercive* to be in accord with the strictures of the Bankruptcy Code. [Citations omitted.] Unlike the injunction created by the discharge of a debt, a consensual release does not inevitably bind individual creditors. It binds only those creditors *voting in favor of the plan.*" *Id.,* at 1047 (emphases added).

[D] In a different context, the Supreme Court decided that consent to adjudication by a bankruptcy court may be express or implied but must be voluntary and knowing. *See Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 669 (2015) ("We hold that Article III is not violated when the parties knowingly and voluntarily consent to adjudication by a bankruptcy judge."). *Wellness* found implied consent where the party voluntarily appeared: "*Roell* makes clear that the key inquiry is whether the litigant or counsel was made aware of the need for consent and the right to refuse it, and still voluntarily appeared to try the case before the non-Article III adjudicator." *Wellness,* at 685 (quoting *Roell v. Withrow,* 538 U.S. 580, 590 (2013)).

[E] Pre-*Purdue,* courts were divided on whether a creditor's failure to opt-out from a release was a valid consent. *See In re Astria Health,* 623 B.R. 793, 803 (Bankr. E.D. Wash. 2021) ("[C]ourts are split about whether creditors must affirmatively 'opt in' to such releases or whether it is sufficient to give creditors a chance to 'opt out.'"); *see also In re Arsenal Intermediate Holdings, LLC,* 2023 Bankr. LEXIS 752, at *2 (Bankr. D. Del. 2023) (*Arsenal*) (Goldblatt, J.) ('This Court concludes that in the typical case, so long as the disclosure is prominent and conspicuous, and impaired creditors are given the ability to opt out simply by marking their ballot or by some other comparable device, it is appropriate to infer consent from a creditor's failure to opt out."); *Patterson v. Mahwah Bergen Retail Grp., Inc.,* 636 B.R. 641, 687 (E.D. Va. 2022) (*Patterson*) ("Third-party releases in bankruptcy actions [sic] based only on a failure to opt out also raise serious due process concerns, because they lack the critical due process protections of Rule 23 [of the Federal Rules of Civil Procedure].").

[F] Post-*Purdue,* in *Smallhold,* Judge Goldblatt overruled his *Arsenal* decision, and courts remain divided on whether opt-out consents are valid consent. *Compare Smallhold*, 2024 Bankr. LEXIS 2332, at *35 ("While the undersigned had previously been comfortable, for the reasons described in *Arsenal*, concluding that creditors that failed to opt out may be deemed to consent to a plan's third-party release, the Court no longer believes it is appropriate to do so.") (overruling *Arsenal*)), *with In re Robertshaw US Holding Corp.*, 662 B.R. 300, 2024 Bankr. LEXIS 1958, at *52 (Bankr. S.D. Tex., Aug. 16, 2024) (*Robertshaw*) ("There is nothing improper with an opt-out feature for consensual third-party releases.") (Lopez, J.). In *Smallhold*, Judge Goldblatt explained: "The rationale of *Arsenal* was that creditors that did not object to or opt out of a third-party release could essentially be 'defaulted,' with the release being imposed on them, despite their silence, on that basis. After *Purdue Pharma,* that relief is no longer appropriate under the ordinary principles that govern when a default may be entered. While a number of courts have reached a contrary conclusion even after [*Purdue*], this Court does not find their reasoning persuasive." *Smallhold,* at *23.

[G] Discussing *Robertshaw,* Judge Goldblatt stated: "The decision in that case emphasized that under Rule 23, opt outs are permissible in class action cases involving claims for damages. *Robertshaw* at 28 n120. While that is true, the critical difference is that in the class action context, a class is only certified after a court makes a factual finding that the named representative is an appropriate representative of the unnamed class members. In the plan context, there is no named plaintiff, found by the court to be an adequate representative, whose actions may presumptively bind others." *Smallhold*, at *36 n.53.

[H] In *Smallhold,* Judge Goldblatt decided: "As to those creditors in class 2 who voted *in favor* of the plan and elected not to opt out, the Court is satisfied that the plan releases are valid and appropriate as a matter of ordinary contract law. Creditors who returned their ballots and voted in favor of the plan after being informed that doing so, unless they checked the box to opt out, have not been silent. They have taken an affirmative step. And under ordinary contract principles, what they have done is sufficient to hold them to the terms of the release." *Id.,* at *40. In addition, Judge Goldblatt decided that creditors who voted against the plan but did not check the opt-out box had consented to the third-party releases. Disagreeing with *In re Chassix Holdings,* 533 B.R. 64, 79 (Bankr. S.D.N.Y. 2015), Judge Goldblatt stated: "A vote against the plan serves as evidence that the creditor was on notice and actively engaged, and thus has taken an affirmative step such that consent can be established to bind the party to the terms of the release." *Smallhold,* at *42. *See also Patterson,* 636 B.R. at 674 ("Here, the Court cannot discern any actions undertaken by the Releasing Parties to support a finding that they knowingly and voluntarily consented to Article I adjudication of the claims that they released.")

[I] The attachments to this outline include copies of ballots from *Smallhold*, *Robertshaw*, and *In re Red Lobster Management LLC,* No. 6:24-bk-02486-GER (Bankr. M.D. Fla.). The ballot in *Red Lobster* expressly provides that a creditor who votes against the chapter 11 plan automatically opts out from the proposed third-party release.

[IV] RELEASES OF CREDITORS' 3RD-PARTY DERIVATIVE CLAIMS

[A] *Purdue* does not prohibit courts from confirming chapter 11 plans that release the derivative claims of creditors without their consent. *See Purdue,* 219 L.Ed. 2d at 735 ("And no one questions that Purdue may address in its own bankruptcy plan claims 'wherever located and by whomever held,' §541(a) – including those claims derivatively asserted by another on its behalf, see §1123(b)(3).").

[B] In *Purdue*, the Plan's nonconsensual third-party releases were invalid because they released claims that did not belong to Purdue's bankruptcy estate. *See id.,* 219 L.Ed.2d at 735 ("Rather than seek to resolve claims that *substantively belong* to Purdue, it seeks to extinguish claims against the Sacklers that belong to their victims. And precisely nothing in §1123(b) suggests that those claims can be bargained away without the consent of those affected, as if the claims were somehow Purdue's own property." *Id.* at 735 (emphasis added; footnote omitted).

[C] In *Purdue*, it was undisputed that creditors' fraudulent conveyance claims against the Sacklers were derivative claims that belonged Purdue's estate. During oral argument, the Deputy Solicitor General, on behalf of the United States Trustee, stated: "The difference between a derivative claim and a direct claim is whether it's a claim that is being recovered on behalf of all of the – on behalf of the corporation as a whole. And so that's why the fraudulent conveyance claims, if anyone brought an individual fraudulent conveyance action against the Sacklers here, those all become property of the estate because the benefit of bringing that asset back into the estate goes to the entire corporation. So Purdue takes over those claims. [¶] Purdue doesn't take over personal injury claims. Those are not brought on behalf of the corporation. If somebody gets a money judgment or some sort of relief for their individual claim, that's not something that accrues to every other creditor for the corporation." (12/4/23 Tr., p. 120.)

[D] "Derivative claims are property of the bankruptcy estate." *In re Genger,* 2024 Bankr. LEXIS 2460, at *69 (Bankr. S.D.N.Y. 2024) (*Genger*) (citing *Tronox Inc. v. Kerr-McGee Corp. (In re Tronox Inc.),* 855 F.3d 84, 99 (2d Cir. 2017)). Applying Second Circuit precedent, a New York bankruptcy court recently stated: "The reason is that derivative and duplicative claims are based on injuries to the debtor that affected all creditors collectively, rather than particularized injuries to specific creditors." *Genger,* at *69 (citing *Marshall v. Picard (In re Bernard L. Madoff Inv. Sec. LLC),* 740 F.3d 81, 89 (2d Cir. 2014)); *see Genger,* at *79 ("Both *Madoff* and *Tronox* emphasize that the crux of determining whether a claim is direct or derivative lies in the nature of the injury and who suffered it.").

[E] *Purdue* does not address whether creditors' alter ego or successor liability claims are direct claims (belonging to creditors) or derivative or general claims (vested in the bankruptcy estate). *Compare Stadtmauer v. Tulis (In re Nordlicht),* 115 F.4th 90, 105, 109-110 (2d Cir. 2024) (creditors' alter ego claim was a general claim that was property of debtor's bankruptcy estate) *with Ahcom, Ltd. v. Smeding,* 623 F.3d 1248, 1249 (9th Cir. 2010) (rejecting argument that creditors' alter ego claim belonged to debtor's

bankruptcy estate); *see also Emoral, Inc. v. Diacetyl (In re Emoral, Inc.)*, 740 F.3d 875, 882 (3d Cir. 2014) (creditors' cause of action for successor liability against third party was property of debtor's bankruptcy estate); *Whittaker, Clark & Daniels, Inc. v. Brenn AG (In re Whittaker, Clark, & Daniels),* 2024 Bankr. LEXIS 1913, at *38, 663 B.R. 1 (Bankr. D.N.J. 2024) ("Accordingly, the Debtors in the instant case have standing to assert the Successor Liability Claims and creditors are precluded from pursuing them until they have been abandoned or upon further order of the court."); *Whittaker, Clark & Daniels, Inc. v. Brenntag (In re Whittaker, Clark & Daniels, Inc.),* 2024 Bankr. LEXIS 2608, at *14 (Bankr. D. N.J. 2024) (*Whittaker*) ("For the reasons expressed in this Court's Summary Judgment Opinion (ECF No. 268), Successor Liability Claims are property of the bankruptcy estate and, thus, subject to the automatic stay."); *see also Smallhold,* 2024 Bank. LEXIS 2332, at *9 (*Purdue* "does not . . . prevent a debtor in appropriate circumstances from releasing estate causes of action, which under Third Circuit law would eliminate veil-piercing liability.") (footnote omitted).

[V] FULL SATISFACTION PLANS

[A] *Purdue* expressly refrains from deciding whether the Code authorizes nonconsensual releases of third-party claims when the chapter 11 plan provides for full satisfaction. *Id.*, 219 L.Ed.2d at 739 ("Nor do we have occasion today to . . . pass upon a plan that provides for the full satisfaction of claims against a third-party nondebtor.").

[B] There is a difference between plans that (1) temporarily stay creditors' claims pending their receipt of full payment and (2) permanently extinguish creditors' claims based on an estimate that creditors will eventually be paid in full on their claims. A temporary stay does not extinguish (or discharge) creditors' claims.

[C] Full satisfaction plans are controversial. In an editorial, Professor Melissa Jacoby wrote: "The Boy Scouts of America predicted full compensation for survivors of child sex abuse when it sought approval of its Chapter 11 plan. Yet it was later made clear that survivors almost certainly will not recover at that level. To ensure the trust does not run out of money and shortchange later claimants, initial payouts to Boy Scouts survivors are set at just 1.5 percent of claim values; claimants should collect more later, but no one can say how much more or when." Melissa B. Jacoby, "The Moral Limits of Bankruptcy Law," New York Times, June 4, 2024.

[VI] NONCONSENSUAL 3RD-PARTY RELEASES - CHAPTERS 7, 9, 11-13, & 15

Purdue's holding is limited to nonconsensual third-party releases that are contained in chapter 11 plans. *Purdue's* reasoning, however, relies in part on 11 U.S.C. § 524(e). To the extent that *Purdue* relies on § 524(e), *Purdue*'s reasoning does not apply to the Bankruptcy Code chapters that are excepted from § 524(e).

[A] Chapter 7: Section 524(e) applies in chapter 7 cases. 11 U.S.C. § 103(a). In a recent chapter 7 case, a New York bankruptcy court decided that the Bankruptcy Code did not authorize a chapter 7 trustee's settlement releasing creditors' claims against third

parties. The bankruptcy court stated that *Purdue* permitted such relief only in the context of asbestos-related bankruptcy cases. *Genger,* 2024 Bankr. LEXIS 2460, at *68-69 n.32. Further, "even prior to the Supreme Court's ruling, nonconsensual nondebtor releases were permitted in some circumstances as necessary for a plan of reorganization, but the statutory basis for this authority could not have extended to a settlement agreement in a case under chapter 7 of the Bankruptcy Code." *Id.,* at *69 n.32.

[B] Chapter 9: Section 524(e) does not apply in chapter 9 (municipal reorganization) cases. *See* 11 U.S.C. § 901(a); *see In re City of San Bernardino,* 566 B.R. 46, 57 (Bankr. C.D. Cal. 2017) ("Section 524(e), however, is inapplicable in chapter 9 cases, and thus the holdings of *American Hardwoods, Inc.* [*v. Deutsche Credit Corp. (In re American Hardwoods, Inc.,* 885 F.2d 621 (9th Cir. 1989)] and its progeny do not control the outcome here.").

[C] Chapter 11: Subchapter V is part of chapter 11, and § 524(e) applies in chapter 11 cases. *See* 11 U.S.C. § 103(a); *see, e.g., Smallhold, Inc.,* 2024 Bankr. LEXIS 2332, at *4-5 (applying *Purdue* in Subchapter V case). *Purdue* does not question the validity of nonconsensual third-party releases in asbestos-related chapter 11 cases; such releases are authorized by 11 U.S.C. § 524(g). *See Purdue*, 219 L.Ed. 2d at 736-37 ("For asbestos-related bankruptcies – and only for such bankruptcies – Congress has provided that, '[n]otwithstanding' the usual rule that a debtor's discharge does not affect the liabilities of others on that same debt, §524(e), courts may issue 'an injunction . . . bar[ring] any action directed against a third party' under certain statutorily specified circumstances. §524(g)(4)(A)(ii). That the code *does* authorize courts to enjoin claims against third parties without their consents, but does so in only *one* context, makes it all the more unlikely that §1123(b)(6) is best read to afford courts that same authority in *every* context.") (italics in original). The asbestos exception in § 524(g) has a complex definition. *See In re Quigley Co.,* 676 F.3d 45, 59 (2d Cir. 2012) (discussing "by reason of" language in 11 U.S.C. § 524(g)(4)(A)(ii)).

[D] Chapters 12 and 13: Section 524(e) applies in chapter 12 and chapter 13 cases. *See* 11 U.S.C. § 103(a).

[E] Chapter 15: Section 524(e) does not apply in chapter 15 cases. *See* 11 U.S.C. § 103(a). Post-*Purdue*, courts in chapter 15 cases will decide its impact on § 1506 of the Code. Section 1506 provides: "Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States." In addition, post-*Purdue*, courts in chapter 15 cases will decide *Purdue*'s impact on §§ 1507(b)(4) and 1521(a)(7) of the Code. Section 1507(b)(4) requires a court to consider whether the assistance requested by a foreign representative will reasonably assure "distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by" the Code. Section 1521(a)(7), a catchall, authorizes a court, upon recognition of a foreign proceeding, "where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors," to "grant any appropriate relief, including . . . any additional relief that may be available to a trustee," except for specified exceptions.

For examples of pre-*Purdue* chapter 15 cases, *see, e.g., Ad Hoc Group of Vitro Noteholders v. Vitro SAB De CV (In re Vitro SAB De CV)*, 701 F.3d 1031, 1065 (5th Cir. 2012) (affirming bankruptcy court's denial of assistance to foreign reorganization containing nonconsensual third-party releases); *In re PT Bakrie Telecom Tbk,* 628 B.R. 859, 881 (S.D.N.Y. 2021) ("Courts in the Second Circuit have permitted a third-party release in Chapter 15 cases after analyzing the circumstances for the grant of such relief in the foreign proceeding."); *id.,* at 884 ("The Court must next consider whether such a third-party release is appropriate when viewed through the prism of comity. That is more problematic."); *In re Avanti Communs. Grp., PLC,* 582 B.R. 603, 618 (Bankr. S.D.N.Y. 2018) (enforcing nonconsensual third-party releases granted in UK proceedings where "creditors had a full and fair opportunity to be heard in a manner consistent with US due process standards.").

[VII] BAR ORDERS & SECTION 502(e) INDEMNITY CLAIMS

[A] Bar Orders: Non-bankruptcy law authorizes courts to grant orders barring joint tortfeasors from asserting claims for indemnity and contribution against a settling joint tortfeasor. *See, e.g., In re Heritage Bond Litig. v. U.S. Trust Corp.,* 546 F.3d 667, 676 (9th Cir. 2008) (*Heritage Bond*) ("We have already acknowledged the authority of a district court under federal common law to issue bar orders barring future claims for contribution and indemnity as part of its approval of a proposed class action securities case, once it has found that the settlement satisfies the requirements of Rule 23."); *see also* 15 U.S.C. § 78u-4(f)(7)(A); Cal. Code Civ. Proc. § 877.6.

In the Ninth Circuit, nonconsensual bar orders in favor of a settling joint tort-feasor are generally limited to extinguishing the nonsettling tortfeasors' claims for indemnity and contribution (and disguised claims for such relief), not independent claims. *Heritage Bond*, 546 F.3d at 679 ("Similarly, interpreting the PLSRA to bar disguised claims for contribution and indemnity prevents non-settling defendants from engaging in an end-run around a settlement agreement and an accompanying contribution and indemnity bar, while allowing them to pursue genuinely independent claims."); *id.,* at 680 ("By barring future claims for contribution and indemnity arising out a partial settlement, section 877.6 [of the Code of Civil Procedure] seeks to encourage settlement and prevent settling and non-settling parties from bearing more than their proportionate share of liability."); *see also Papas v. Buchwald Capital Advisors, LLC (In re Greektown Holdings, LLC),* 728 F.3d 567, 579 (6th Cir. 2013) ("[W]hen the bar order is limited to claims for contribution or indemnity, the court can compensate the non-settling defendants for the loss of those claims by reducing any future judgment against them.").

[B] Section 502(e): *Purdue* does not decide whether the Sacklers' indemnification claims against Purdue under a pre-petition indemnity agreement were valid or would deplete Purdue's bankruptcy estate. Citing 11 U.S.C. §§ 502(e)(1)(B) and 510(c)(1), *Purdue* notes (without deciding), the Deputy Solicitor General's argument that "bankruptcy courts have a variety of statutory tools at their disposal to disallow or equitably subordinate any potential indemnification claims the Sacklers might pursue." *Id.*, 219 L.Ed.2d at 739 fn.7.

Section 502(e)(1)(B) of the Bankruptcy Code disallows a "contingent" claim for "reimbursement" or "contribution" to the extent such claim is "contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution." In addition, § 502(e)(2) allows a claim for reimbursement or contribution "that becomes fixed after the commencement of the case . . . the same as if such claim had become fixed before the filing of the petition." 11 U.S.C. § 502(e)(2); *see, e.g., In re Mylife.com, Inc.*, 2023 Bankr. LEXIS 2264, at *12-13 (Bankr. C.D. Cal. 2023) ("Because the Debtor's liability to Tinsley under the Indemnification Agreement, if any, most likely arose prior to the Petition Date, such liability most likely constitutes a general unsecured claim.").

[VIII] EXCULPATION CLAUSES

[A] *Purdue* does not address the validity of exculpation clauses. In *Purdue*, the dissent defines exculpation clauses as follows: "Exculpation clauses shield the estate's fiduciaries and other professionals (non-debtors) from liability for their work on the reorganization plan." *Id.*, 219 L.Ed.2d at 762 (Kavanaugh, J., dissenting).

[B] During oral argument of *Purdue*, Justice Sotomayor asked a question about exculpation clauses. The Deputy Solicitor General responded: "And so I – I take the point in the amicus briefs that third-party releases come in lots of flavors. As we've already made clear today, that we do think that consensual ones we think [sic] are okay, even though nonconsensual ones are not. [¶] And we think that derivative claims are okay, direct claims are not, because the derivative claims are property of the estate. . . . [¶] . . . . There's also a common law immunity doctrine floating around in the context of exculpation clauses." (12/4/23 Tr., pp. 38-39.)

[C] Shortly after deciding *Purdue*, the Supreme Court denied a certiorari petition challenging the Fifth Circuit's partial invalidation of an exculpation clause. *See Nextpoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.),* 48 F.4th 419 (5th Cir. 2022) (*Highland Capital*), *cert. denied,* 2024 U.S. LEXIS 2913 (U.S., July 2, 2024). In *Highland Capital*, the Fifth Circuit disagreed with *Blixseth v. Credit Suisse,* 961 F.3d 1074 (9th Cir. 2019) (*Blixseth*), *cert. denied,* 141 S. Ct. 1394 (2021).

[D] In *Highland Capital*, the Fifth Circuit stated: "Our court along with the Tenth Circuit hold [that] § 524(e) categorically bars third-party exculpations absent express authority in another provision of the Bankruptcy Code. By contrast, the Ninth Circuit joins the Second, Third, Fourth, Sixth, Seventh, and Eleventh Circuits in reading § 524(e) to allow varying degrees of limited third-party exculpations." *Highland Capital*, 48 F.4th at 436 (citations omitted); *but see In re Rocking M Media, LLC,* 2024 Bankr. LEXIS 1786, at *5 (Bankr. D. Kansas 2024) (*Rocking M*) ("The Tenth Circuit has not addressed the validity of exculpation clauses in a Chapter 11 plan or liquidating trust agreement.") In *Highland Capital*, the Fifth Circuit upheld an exculpation clause to the extent it exculpated the debtor's independent directors and creditors' committee members for actions within the scope of their duties and that fell short of gross negligence. *Id.*, 48 F.4th at 437.

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[E] In *Rocking M*, the Kansas bankruptcy court stated: "The basis for such exculpation is the general law of fiduciaries. For example, outside of bankruptcy, a term of an express trust may relieve a trustee of liability for breach of trust, except for a breach committed in bad faith or with reckless indifference to the purpose of the trust or the interests of the beneficiaries. In bankruptcy, exculpation clauses applicable to estate fiduciaries are approved when they reflect this general law of fiduciary liability, by providing general immunity for acts or omissions within the scope of the fiduciaries' duties but preserving liability for willful acts taken other than in performance of duties in the case. In other words, exculpation clauses generally express the standard to which estate fiduciaries are held in Chapter 11 cases." *Id.*, 2024 Bankr. LEXIS 1786, at *4-5 (internal quotations and footnotes omitted).

[F] *Rocking M* cited with approval authority that an exculpation clause may provide "for immunity of the debtor, its officers and directors, the committee and its individual members, and representatives, the liquidating trustee, and the liquidating trustee committee [sic], subject to two limitations." *Id.*, at *5 (footnote omitted). "The first limitation is that the acts and omissions within the scope of the exculpation be limited to acts or omissions in connection with the Chapter 11 case. Second, such immunity must be qualified by exclusion of willful or gross misconduct, and fraud." *Id.*, at *5 (footnote omitted).

[G] In *Blixseth,* the Ninth Circuit decided that an exculpation clause in a chapter 11 plan was valid "because the Clause covers only liabilities arising from the bankruptcy proceedings and not the discharged debt." *Id.*, at 1085. The clause was valid because it: (1) did not exculpate pre-petition claims, only claims that arose during the bankruptcy proceedings; (2) did not release claims for willful misconduct or gross negligence; and (3) only exculpated parties closely involved in drafting the chapter 11 plan. *Id.*, at 1081-1082. *See id.* at 1082 ("We conclude, however, that § 524(e) does not bar a narrow exculpation clause of the kind here at issue – that is, one focused on actions of various participants in the Plan approval process and relating only to that process."); *see also In re Astria Health*, 623 B.R. 793, 798 (Bankr. E.D. Wash. 2021) ("Nothing in the Bankruptcy Code forbids (or otherwise addresses) inclusion of an exculpation provision in a chapter 11 plan. As such, section 1123(b)(6) permits the inclusion of an appropriately tailored exculpation provision. Indeed, in [*Blixseth*], the Ninth Circuit Court of Appeals recently affirmed confirmation of a plan with an exculpation clause similar to the one at issue here.") (footnote omitted).

[H] In *Patterson,* the district court stated: "In contrast to third-party releases that offer protection to non-debtors for pre-confirmation liability, an exculpation provision serves to protect court professionals who act reasonably while carrying out their responsibilities in connection with the bankruptcy case. Exculpation clauses do not release parties, but instead raise the liability standard of fiduciaries for their conduct during [the] case." The district court explained: "Exculpation clauses have their origin in two sources: the *Barton* Rule and Section 1103(c) of the Bankruptcy Code." *Patterson,* 636 B.R. at 700 (citing, *inter alia, Barton v. Barbour,* 104 U.S. 126 (1881)).
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[IX] GATEKEEPING CLAUSES

[A] *Purdue* does not discuss the validity of gatekeeping clauses. Gatekeeping clauses require a claimant to obtain leave from the bankruptcy court prior to filing post-confirmation litigation against persons and entities protected by the gatekeeping clause.

[B] "Under the doctrine of *Barton v. Barbour,* 104 U.S. 126, 26 L.Ed. 672 (1881), a party must first obtain leave of the bankruptcy court before it initiates an action in another forum against a bankruptcy trustee or other officer appointed by the bankruptcy court for acts done in the officer's official capacity." *In re Gen. Growth Props.,* 426 B.R. 71, 74 (Bankr. S.D.N.Y. 2010) (internal quotations and citation omitted); *see id.* ("Under the circumstances of this case, an action against the Board, whose members act as officers of the court, implicates the *Barton* doctrine.").

[C] "Courts have long recognized bankruptcy courts can perform a gatekeeping function." *Highland Capital,* 48 F.4th at 439. "Consistent with its purpose, the *Barton* doctrine has been applied to lawsuits against trustees, counsel for trustees, and other officers appointed or approved by the bankruptcy court." *Akhlaghpour v. Orantes,* 86 Cal.App. 5th 232, 243 (2022) (citing, *inter alia, In re VistaCare Group, LLC,* 678 F.3d 218, 224 (3d Cir. 2012)).

[D] In *Highland Capital*, the Fifth Circuit invalidated a chapter 11 plan's exculpation clause to the extent its scope violated 11 U.S.C. § 524(e) and "otherwise affirm[ed] the inclusion of the injunction and the gatekeeper provisions" in the plan. *Id.*, 48 F.4th at 439 (bracketed text added; footnote omitted); *see also In re Highland Cap. Mgmt., L.P.,* 2023 Bankr. LEXIS 2104, at *72 (Bankr. N.D. Texas 2023) ("In determining whether HMIT should be granted leave, pursuant to the Gatekeeper Provision of the Plan and the court's prior Gatekeeper Orders, to pursue the Proposed Claims, the court must address the issue of whether HIMT would have standing to bring the Proposed Claims in the first instance. If so, the next question is whether the Proposed Claims are 'colorable.'"); *see id.,* at *134 ("The court concludes that the appropriate standard to be applied in making its 'colorability' determination in *this* bankruptcy case, in the exercise of its gatekeeping function pursuant to the two Gatekeeper Orders and the Gatekeeper Provision in *this* Plan, is a broader standard than the 'plausibility' standard applied to Rule 12(b)(6) motions to dismiss.") (emphasis in original).

[X] STAYS OF LITIGATION AGAINST THIRD PARTIES

[A] *Purdue* does not question the validity of preliminary injunctions that grant temporary stays of creditors' claims against non-debtor third parties. *See Coast to Coast Leasing, LLC v. M&T Equip. Fin. Corp. (In re Coast to Coast Leasing, LLC),* 2024 Bankr. LEXIS 1662, at *7 (Bankr. N.D. Ill. 2024) (*Coast to Coast*) ("Here, the guarantors are not seeking a release of claims against them, unlike in [*Purdue*]. The guarantors, nondebtor third parties, are seeking a temporary restraining order to enjoin creditors from bringing claims against them until August 13, 2024.").

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[B] Under Supreme Court precedent, the traditional standard for a preliminary injunction is a four-factor test. *See Starbucks Corp. v. McKinney,* 219 L.Ed. 2d 99, 105, 107 (June 13, 2024) (*Starbucks*). "The default rule is that a plaintiff seeking a preliminary injunction must make a clear showing that 'he is likely to succeed on the merits, that he is likely to suffer irreparable irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.'" *Id.,* at 107 (quoting *Winter v. Nat. Res. Def. Council, Inc.,* 555 U.S. 7, 20, 22 (2008)).

[C] After *Purdue,* chapter 11 debtors will not be able to satisfy the likelihood of success factor by arguing that there is a likelihood of confirming a plan containing nonconsensual third-party releases. *See, e.g., Coast to Coast,* 2024 Bankr. LEXIS 1662, at *11 (granting temporary stay because, among other things, debtors' principals showed a reasonable likelihood of a successful reorganization); *In re Parlement Techs., Inc.,* 2024 Bankr. LEXIS 1627, at *2 (Bankr. D. Del. 2024) (*Parlement*) ("Following [*Purdue*], 'success on the merits' cannot be based on the likelihood that the non-debtor would be entitled to a non-consensual third-party release through the plan process.").

[D] Denying a preliminary injunction, *Parlement* stated: "But a preliminary injunction may still be granted if the Court concludes that (a) providing the debtor's management a breathing spell from the distraction of other litigation is necessary permit the debtor to focus on the reorganization of its business *or* (b) because it believes the parties may ultimately be able to negotiate a plan that includes a consensual resolution of the claims against the non-debtors. Both of those outcomes may be viewed as 'success on the merits' for this purpose."). *Id.,* at *2-3.

[E] The Ninth Circuit has stated that "a debtor seeking to stay an action against a non-debtor must show a reasonable likelihood of a successful reorganization." *Solidus Networks, Inc. v. Excel Innovations, Inc. (In re Excel Innovations, Inc.),* 502 F.3d 1086, 1095 (9th Cir. 2007) (*Excel Innovations*); *see id.,* at 1089 ("We hold that when a debtor applies for a 11 U.S.C. § 105(a) preliminary injunction to stay a proceeding in which the debtor is not a party, the bankruptcy court must balance the debtor's likelihood of success in reorganization against the relative hardship of the parties, as well as consider the public interest if warranted."). "In the Ninth Circuit, courts may apply an alternative 'serious questions' test, which allows for a preliminary injunction where a plaintiff shows that 'serious questions going to the merits' were raised and the balance of hardships tips sharply in the plaintiff's favor, assuming the other two elements of the *Winter* test are met." *Gilley v. Stabin,* 2024 U.S. Dist. LEXIS 129571, at *3 (D. Or. 2024) *see id.* at *3 fn.3 ("Defendants have not convinced the Court that *Starbucks* invalidated the 'serious questions' test, which applies the *Winters* factors.").

[F] In the Third Circuit, the automatic stay can be extended to nondebtor third-parties when there are "unusual circumstances." *See Whittaker,* 2024 Bankr. LEXIS 2608, at *18 (Bankr. D. Del. 2024) ("As the parties recognize, Third Circuit jurisprudence permits extension of the automatic stay to nonbankrupt codefendants where 'unusual circumstances' exist."). In the Ninth Circuit, however, the availability of relief by extending the automatic stay under the "unusual circumstances" standard is "at best

uncertain." *In re Mariner Health Cent., Inc.*, 2023 Bankr. LEXIS 95, at *24 (Bankr. N.D. Cal. 2023) (*Mariner Health*). "Rather, the Ninth Circuit has stated its clear preference that debtors pursue extraordinary relief in favor of non-debtors through the more traditional and well settled remedy of injunctive relief." *Id.*, at *24 (citing *Excel Innovations*, 502 F.3d at 1096.

[G] Debtors seeking a non-debtor stay should make a detailed showing. *See Mariner Health*, at *28 ("Rather, all too often, debtors seek an injunction against further prosecution of claims against non-debtors based on generic claims that failure to enjoin these claims will prevent or frustrate the reorganization efforts, and will essentially allow the prosecution of claims against the debtors, frustrating the automatic stay.").

[H] In deciding whether a non-debtor stay should be granted, the non-debtor's rights to indemnity should be considered. In addition, the impact of 11 U.S.C. § 502(e) on the non-debtor's indemnity rights should be considered. *See, e.g., Whittaker,* 2024 Bankr. LEXIS 2608, at *28 ("The Court is unpersuaded by the TCC's argument that any indemnification obligation would not cause irreparable harm because it would result in a contingent prepetition claim disallowable under 11 U.S.C. § 502(e)(1)(B). This contention effectively concedes that continued litigation of the Direct Claims could result in liquidation of a claim against the Debtors – which is a violation of the automatic stay and certainly harmful to the Debtors' reorganizational efforts."). In contrast, in *In re Mylife.com Inc.,* 2023 Bankr. LEXIS 2264 (Bankr. C.D. Cal. 2023), the California bankruptcy court decided that the debtor's obligations under a pre-petition indemnification agreement did not show irreparable harm justifying a preliminary injunction. *Id.,* at *11-12 ("[W]hatever obligations the Debtor may (or may not) have to Tinsley would most be relegated to the status of a general unsecured claims.").

[I] Chapters 9, 12, and 13 provide for automatic stays of actions against third parties under specified circumstances. *See* 11 U.S.C. §§ 922(a)(1), 1201(a), and 1301(a).

[XI] EQUITABLE MOOTNESS & RES JUDICATA

[A] *Purdue* does not decide the scope or validity of the equitable mootness doctrine. *Id.*, 219 L.Ed.2d at 739 ("Additionally, because this case involves only a stayed reorganization plan, we do not address whether our reading of the bankruptcy code would justify unwinding reorganization plans that have already become effective and been substantially consummated.").

[B] Equitable mootness "has been accepted as a concept in virtually every circuit in the United States, yet all the while the very courts that have implemented this concept have cautioned against its widespread use." *In re ConvergeOne Holdings, Inc.,* 2024 U.S. Dist. LEXIS 192875, at *7 (S.D.N.Y. Texas 2024) (footnote and citation omitted).

[C] *Purdue* does not question (or discuss) the rule that third-party releases in a confirmed reorganization plan are not subject to collateral attack by parties who received adequate notice. *Travelers Indem. Co. v. Bailey,* 557 U.S. 137, 152, 155 (2009); *In re*

FFS Data, Inc., 776 F.3d 1299, 1306-1309 (11th Cir. 2015) (third-party release of debtor's guarantor in in chapter 11 plan had *res judicata* effect); *see also United Student Aid Funds, Inc. v. Espinosa,* 559 U.S. 260, 269-270 (2010) (order confirmed chapter 13 plan that unlawfully discharged student loan was not void); *In re Le. Ctr. on Fourth, LLC,* 17 F.4th 1326 (11th Cir. 2021) (applying *Espinosa* in chapter 11 case).

[D] In *Corestates Bank, N.A. v. Huls Am., Inc.,* 176 F.3d 187 (3d Cir. 1999), the Third Circuit decided that "an order rejecting an objection to a reorganization plan has a claim preclusive effect on a claim that could have been brought in that proceeding by the objector, even if only under the non-core 'related' bankruptcy jurisdiction. Our conclusion in this regard is consistent with those of the Second, Sixth and Ninth Circuits." *Id.,* at 197 (rejecting contrary Fifth and Seventh Circuit precedent). The Third Circuit stated that "the restrictions on a bankruptcy judge's judicial power with respect to non-core-'related' claims do not limit the effect of the doctrine of claim preclusion." *Ibid.*

[E] In *Harbinger Capital LL v. Ergen,* 103 F.Supp. 3d 1251 (D. Colo. 2015), the district court stated: "On appeal to the Tenth Circuit, the debtor argued a position taken by the Fifth and Seventh Circuits, both of which reasoned that non-core proceedings in bankruptcy cannot be given [claim preclusive] effect because under 28 U.S.C. § 157 bankruptcy courts cannot hear non-core proceedings absent consent of the parties without being subject to de novo review by the district court. The Tenth Circuit, however, rejected this reasoning and instead agreed with the Second, Sixth and Ninth Circuits that the bankruptcy court's power to hear non-core claims suffices for claim preclusion purposes." *Id.,* at 1261 (internal quotations and citations omitted; brackets in original).

[XII] CONSTITUTIONAL ISSUES

[A] *Purdue* did not decide any constitutional issues, including Due Process and Seventh Amendment issues that were discussed at oral argument.

[B] During oral argument of *Purdue*, the Deputy Solicitor stated: "This release [in Purdue's Plan] extinguishes personal property rights, the creditors' state law chose[s] in action, that do not belong to the bankruptcy estate. That result is not supported by any historical analogue in equity, and its raises significant constitutional questions that should be avoided in the absence of a clear command from Congress." (12/4/23 Tr., p. 5.)

[C] During oral argument, Justice Gorsuch stated: "And then, on the constitutional question, we have serious questions. We don't normally say that a nonconsenting party can have its claim for property eliminated in this fashion without consent or any process of court other than, you know what – you know, the procedure here. This would defy what we do in class action contexts. It would raise serious due process concerns and Seventh Amendment concerns, as the government highlighted." (12/4/23 Tr., pp. at 73-74.)

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[D] During oral argument, Purdue's counsel stated: "[Section] 524(g), Your Honor, a situation where Congress specifically allowed these sorts of releases, if these constitutional concerns are real, then [section] 524(g) is unconstitutional, and this Court, frankly, is going to take a wrecking ball to the bankruptcy code given the situations in which bankruptcy courts are allowed to dispose of, eliminate, defeat, stand in the way of property interests that you don't see outside of bankruptcy. There's no question about that. [¶] And I think, with respect to a lot of these constitutional questions, they really ought to be dealt with on an as-applied basis. The only issue before this Court is one of statutory authority . . . ." (12/4/23 Tr., pp. 76-77.)

[E] On June 27, 2024, the Court filed its decision in *Purdue*, which was decided on statutory grounds. The Court's decision did not discuss the Seventh Amendment concerns discussed at oral argument. On the same day, the Court filed its opinion in *SEC v. Jarkesy*, 603 U.S. __, 144 S. Ct. 2117, 219 L.Ed.2d 650 (June 27, 2024), concerning the Seventh Amendment right to jury trial.

[* * * *]

CLASS 4 BALLOT IN *IN RE RED LOBSTER MANAGEMENT LLC*, NO. 6:24-bk-02486-GER (BANKR. M.D. FLA.)

EXHIBIT A

UNIQUE E-BALLOT ID#: _____

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

IN RE:	Chapter 11 Cases
RED LOBSTER MANAGEMENT LLC,[1]	Case No. 6:24-bk-02486-GER
	Jointly Administered with
RED LOBSTER RESTAURANTS LLC,	Case No. 6:24-bk-02487-GER
RLSV, INC.,	Case No. 6:24-bk-02488-GER
RED LOBSTER CANADA, INC.,	Case No. 6:24-bk-02489-GER
RED LOBSTER HOSPITALFITY LLC,	Case No. 6:24-bk-02490-GER
RL KANSAS LLC,	Case No. 6:24-bk-02491-GER
RED LOBSTER SOURCING LLC,	Case No. 6:24-bk-02492-GER
RED LOBSTER SUPPLY LLC,	Case No. 6:24-bk-02493-GER
RL COLUMBIA LLC,	Case No. 6:24-bk-02494-GER
RL OF FREDERICK, INC.,	Case No. 6:24-bk-02495-GER
RED LOBSTER OF TEXAS, INC.,	Case No. 6:24-bk-02496-GER
RL MARYLAND, INC.,	Case No. 6:24-bk-02497-GER
RED LOBSTER OF BEL AIR, INC.,	Case No. 6:24-bk-02498-GER
RL SALISBURY, LLC,	Case No. 6:24-bk-02499-GER
RED LOBSTER INTERNATIONAL HOLDINGS LLC,	Case No. 6:24-bk-02500-GER
Debtors.	

_____/

BALLOT FOR ACCEPTING OR REJECTING
THE JOINT CHAPTER 11 PLAN FOR
RED LOBSTER MANAGEMENT LLC AND ITS DEBTOR AFFILIATES

CLASS 4: GENERAL UNSECURED CLAIMS

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1 The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number are Red Lobster Management LLC (6889); Red Lobster Sourcing LLC (3075); Red Lobster Supply LLC (9187); RL Kansas LLC (2396); Red Lobster Hospitality LLC (5297); Red Lobster Restaurants LLC (4308); RL Columbia LLC (7825); RL of Frederick, Inc. (9184); RL Salisbury, LLC (7836); RL Maryland, Inc. (7185); Red Lobster of Texas, Inc. (1424); Red Lobster of Bel Air, Inc. (2240); RLSV, Inc. (6180); Red Lobster Canada, Inc. (4569); and Red Lobster International Holdings LLC (4661). The Debtors' principal offices are located at 450 S. Orange Avenue, Suite 800, Orlando, FL 32801.

EXHIBIT A

PLEASE READ AND FOLLOW THE ENCLOSED INSTRUCTIONS FOR COMPLETING BALLOTS CAREFULLY BEFORE COMPLETING THIS BALLOT.

IN ORDER FOR YOUR VOTE TO BE COUNTED TOWARD CONFIRMATION OF THE PLAN, THIS BALLOT MUST BE COMPLETED, EXECUTED, AND RETURNED SO THAT IT IS ACTUALLY RECEIVED BY EPIQ CORPORATE RESTRUCTURING, LLC ("EPIQ" OR THE "SOLICITATION AGENT") ON OR BEFORE AUGUST 28, 2024, AT 4:00 P.M. (PREVAILING EASTERN TIME) (THE "VOTING DEADLINE"), UNLESS EXTENDED BY THE DEBTORS.

FOR THE AVOIDANCE OF DOUBT, THIS BALLOT IS TO BE USED TO CAST A VOTE ON THE PLAN.

The above-captioned debtors and debtors in possession (collectively, the "**Debtors**") are soliciting votes with respect to the *Joint Chapter 11 Plan of Red Lobster Management LLC and Its Debtor Affiliates* [ECF No. 733] (including any exhibits and schedules thereto and as may be modified, amended, or supplemented, the "**Plan**") as set forth in the *Disclosure Statement for the Joint Chapter 11 Plan of Red Lobster Management LLC and Its Debtor Affiliates* [ECF No. 734] (including any exhibits and schedules thereto and as may be modified, amended, or supplemented, the "**Disclosure Statement**"). Conditional approval of the Disclosure Statement by the Bankruptcy Court does not indicate final approval of the Disclosure Statement or approval of the Plan by the Bankruptcy Court. Capitalized terms used but not otherwise defined herein shall have the meanings set forth in, as applicable, the Plan, the Disclosure Statement or the Disclosure Statement Order (defined herein).

You are receiving this ballot (this "**Ballot**") because you are a holder of a Claim as of July 28, 2024 (the "**Voting Record Date**"). Accordingly, you have a right to execute this Ballot and to vote to accept or reject the Plan.

YOUR VOTE ON THIS BALLOT WILL BE APPLIED TO EACH DEBTOR AGAINST WHOM YOU HAVE *GENERAL UNSECURED CLAIMS*.

Your rights are described in the Disclosure Statement, which is included in the package you are receiving with this Ballot that also contains the Plan, the Disclosure Statement, the order conditionally approving the Disclosure Statement [ECF No. [●]] (the "**Disclosure Statement Order**") and certain other materials (the "**Solicitation Package**"). If you received Solicitation Package materials in electronic format and desire paper copies, or if you need to obtain additional Solicitation Packages, you may obtain them (i) for a fee at PACER at http://www.flmb.uscourts.gov; or (ii) from the Solicitation Agent by: (a) calling the Solicitation Agent at (888) 754-0507 (toll free) or (971) 257-5614 (international), (b) emailing RedLobsterInfo@epiqglobal.com, and referencing "Red Lobster Management LLC" in the subject line, (c) visiting the Debtors' website at https://dm.epiq11.com/case/redlobster/info, and/or (d) writing to the Solicitation Agent at Red Lobster Management LLC., c/o Epiq Ballot Processing, P.O. Box 4422, Beaverton, OR 97076-4422.

This Ballot may not be used for any purpose other than for casting votes to accept or reject the Plan and making certain certifications with respect to the Plan. If you believe you have received this Ballot in error, or if you believe you have received the wrong Ballot, please contact the Solicitation Agent immediately at the address, telephone number, or email address set forth above.

EXHIBIT A

You should review the Disclosure Statement, the Plan, and the instructions contained herein before you vote. You may wish to seek legal advice concerning the Plan and the Plan's classification and treatment of your Claim. Your *General Unsecured Claim* has been placed in *Class 4* under the Plan. If you hold Claims in more than one Class, you will receive a Ballot for each Class in which you are entitled to vote.

You should review the Disclosure Statement and the Plan in their entirety before you vote. You may wish to seek independent legal advice concerning the Plan and your classification and treatment under the Plan.

THE PLAN CONTAINS RELEASES BY HOLDERS OF CLAIMS. ONLY THOSE HOLDERS OF CLAIMS THAT VOTE TO ACCEPT THE PLAN WILL BE DEEMED TO HAVE EXPRESSLY, UNCONDITIONALLY, GENERALLY, INDIVIDUALLY, AND COLLECTIVELY CONSENTED TO THE RELEASES CONTAINED IN ARTICLE VIII.A.3 OF THE PLAN.

If you have any questions on how to properly complete this Ballot, please email the Solicitation Agent at RedLobsterInfo@epiqglobal.com with a reference to "Red Lobster Management LLC" in the subject line. **THE SOLICITATION AGENT IS NOT AUTHORIZED TO, AND WILL NOT, PROVIDE LEGAL ADVICE.**

This Ballot should not be sent to the Debtors, the Bankruptcy Court, or the Debtors' financial or legal advisors.

This Ballot is solely for purposes of voting to accept or reject the Plan and not for the purpose of allowance or disallowance of, or distribution on account of, *General Unsecured Claims* in *Class 4*.

SUMMARY OF TREATMENT OF ALLOWED GENERAL UNSECURED CLAIMS IN CLASS 4

As set forth in the Plan, on the Plan Effective Date, each holder of an Allowed Class 4 General Unsecured Claim (except for deficiency Claims held by a holder of a Prepetition Term Loan Claim) shall receive, in accordance with the GUC Trust Documents, its Pro Rata Share of the beneficial interests in the GUC Trust and the right to receive its respective Pro Rata Share of any available GUC Litigation Proceeds or other GUC Trust Assets, if any. Holders of Allowed General Unsecured Claims against more than one Debtor shall be treated as having a single Allowed General Unsecured Claim solely for purposes of any Distribution. The treatment set forth herein with respect to the holders of Allowed Class 4 Claims (except for deficiency Claims held by a holder of a Prepetition Term Loan Claim) shall be in full and final satisfaction of the Allowed Class 4 Claims. Notwithstanding anything to the contrary contained in the Plan, no Distributions shall be made to Prepetition Term Loan Lenders on account of Allowed Class 4 Claims. Except as set forth in Article VIII of the Plan, nothing contained in the Plan, the Confirmation Order, or Definitive Documents shall compromise, modify, or affect the rights of the Prepetition Term Loan Agent and the Prepetition Term Loan Lenders to pursue additional recoveries from any Person or entity that is not a Debtor in these Chapter 11 Cases.

INSTRUCTIONS FOR COMPLETING THE BALLOT

This Ballot is submitted to you to solicit your vote to accept or reject the Plan. The terms of the Plan are described in the Disclosure Statement, including all exhibits thereto. **PLEASE READ THE PLAN AND THE DISCLOSURE STATEMENT CAREFULLY BEFORE COMPLETING THIS BALLOT.**

I. Please Submit Your Ballot By One of the Two Following Methods:

a. **Via Paper Ballot**. Complete, sign, and date this Ballot and return it (with a signature) promptly, either (i) *via* the enclosed pre-paid, pre-addressed return envelope, (ii) *via* first-class mail to the address below, or (iii) *via* overnight courier or hand delivery to the address below. If you wish to coordinate hand delivery of your Ballot, please notify the Solicitation Agent *via* e-mail at RedLobsterInfo@epiqglobal.com (with "Red Lobster Management LLC" in the subject line) at least 24 hours in advance of the anticipated date and time of your delivery.

The Solicitation Agent's Address for Receipt of Ballots
If by First Class Mail
Red Lobster Management LLC **c/o Epiq Ballot Processing** **P.O. Box 4422** **Beaverton, OR 97076-4422**
If by Hand Delivery or Overnight Mail
Red Lobster Management LLC **c/o Epiq Ballot Processing** **10300 SW Allen Boulevard** **Beaverton, OR 97005**

-OR-

b. **Via E-Ballot Portal**. You also have the right to submit a Ballot electronically. To properly submit your Ballot electronically, you must electronically complete, sign, and return this customized electronic Ballot by utilizing the E-Ballot platform *via* the online portal of the Solicitation Agent by visiting https://dm.epiq11.com/case/redlobster/, click on the E-Ballot link under the Case Actions section of the website and follow the instructions set forth on the website (the "**E-Ballot Portal**"). HOLDERS ARE STRONGLY ENCOURAGED TO SUBMIT THEIR BALLOTS VIA THE E-BALLOT PORTAL. The Solicitation Agent's E Ballot Portal is the sole manner in which ballots will be accepted *via* electronic or online transmission. Ballots submitted by facsimile, e-mail or other means of electronic transmission will not be counted.

- **IMPORTANT NOTE: In order to retrieve and submit your customized electronic Ballot using the E-Ballot Portal, you will need the Unique E-Ballot ID# reflected at the top of the first page of this Ballot form.**
- **UNIQUE E-BALLOT ID#:_____**
- **Each E-Ballot ID# is to be used solely for voting only those Claims described in Item 1 of your electronic Ballot. Please complete and submit an electronic Ballot for each E-Ballot ID# you receive, as applicable.**

EXHIBIT A

If you are unable to use the E-Ballot platform or need assistance in completing and submitting your Ballot, please contact the Solicitation Agent. If you are a holder of a Claim who is entitled to vote on the Plan and did not receive a Ballot, received a damaged Ballot, or lost your Ballot, or if you have any questions concerning the Disclosure Statement, the Plan, the Ballot, or the procedures for voting on the Plan, please contact the Solicitation Agent at the phone numbers or email address listed above.

Holders who cast a Ballot using the Solicitation Agent's "E-Ballot Portal" should NOT also submit a paper Ballot.

IF THE SOLICITATION AGENT DOES NOT ACTUALLY RECEIVE THIS BALLOT ON OR BEFORE THE VOTING DEADLINE OF AUGUST 28, 2024 AT 4:00 P.M. (PREVAILING EASTERN TIME), AND IF THE VOTING DEADLINE IS NOT EXTENDED, YOUR VOTE TRANSMITTED BY THIS BALLOT MAY BE COUNTED TOWARD CONFIRMATION OF THE PLAN ONLY IN THE DISCRETION OF THE DEBTORS.

PLEASE DO NOT DIRECT ANY INQUIRIES TO THE BANKRUPTCY COURT. THE SOLICITATION AGENT IS NOT AUTHORIZED TO, AND WILL NOT, PROVIDE LEGAL ADVICE.

II. Procedures for Completing Ballots.

To complete the Ballot, you must follow the procedures described below:

a. Make sure that the information contained in Item 1 is correct;

b. If you have a Claim in *Class 4 – General Unsecured Claims*, cast one vote to accept or reject the Plan by checking the appropriate box in Item 2;

c. **HOLDERS OF CLAIMS WHO ACCEPT THE PLAN MAY NOT OPT OUT OF THE RELEASES CONTAINED IN ARTICLE VIII.A.3 OF THE PLAN. IF YOU VOTE TO ACCEPT THE PLAN BY CHECKING THE "ACCEPT" BOX IN ITEM 2, YOUR VOTE IN FAVOR OF THE PLAN SHALL BE DEEMED A CONSENT TO THE RELEASES SET FORTH IN ARTICLE VIII.A.3 OF THE PLAN TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW;**

d. If you are completing this Ballot on behalf of another Person, indicate your relationship with such Person and the capacity in which you are signing on the appropriate line in Item 3. By submitting the Ballot you are certifying that you have actual authority to so act and agree to provide documents evidencing such authority upon request (e.g., a power of attorney or a certified copy of board resolutions authorizing you to so act);

e. If you hold other *Class 4 – General Unsecured Claims*, you may receive more than one Ballot. Your vote will be counted in determining acceptance or rejection of the Plan by a particular Class of Claims only if you complete, sign, and return the Ballot labeled for such Class of Claims in accordance with the instructions on that Ballot. Each Ballot votes only your Claims indicated on that Ballot. Please complete and return each Ballot you receive;

f. If more than one timely, properly completed Ballot is received, only the last properly completed Ballot received by the Solicitation Agent will be counted, unless the holder of the Claim receives Bankruptcy Court approval otherwise;

g. If you believe that you have received the wrong Ballot, please contact the Solicitation Agent immediately;

h. Provide your name, mailing address, and any remaining information requested;

i. Sign and date your Ballot; and

j. Return your Ballot with a signature to the Solicitation Agent.

No Ballot shall constitute or be deemed a proof of Claim or an assertion of Claim.

Unless your Claim has been disallowed by a prior Order of the Court or your Claim is subject to a pending objection, your Claim has been temporarily allowed solely for purposes of voting to accept or reject the Plan in accordance with the tabulation rules approved by the Bankruptcy Court in the Disclosure Statement Order (collectively, and as defined in the Disclosure Statement Order, the "**Voting & Tabulation Procedures**").

The temporary allowance of your Claim for voting purposes does not constitute an allowance of your Claim for purposes of receiving distributions under the Plan and is without prejudice to the rights of the Debtors in any other context, including the right of the Debtors to contest the amount, validity or classification of any Claim for purposes of allowance and distribution under the Plan. If you wish to challenge (i) the classification of your Claim or (ii) the allowance of your Claim for voting purposes in accordance with the Voting & Tabulation Procedures, you must file a motion, pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure, for an order temporarily allowing your Claim in a different amount or classification for purposes of voting to accept or reject the Plan (as defined in the Disclosure Statement Order, a "**Rule 3018(a) Motion**") and serve such motion on the Debtors so that it is received on or before **August 26, 2024 at 4:00 p.m. (Prevailing Eastern Time)** (as defined in the Disclosure Statement Order, the "**Rule 3018(a) Motion Deadline**"). Such Rule 3018(a) Motion will, to the extent necessary, be heard at or prior to the Confirmation Hearing. Unless the Bankruptcy Court orders otherwise, your Claim will not be counted for voting purposes in excess of the amount determined in accordance with the Voting & Tabulation Procedures.

The following Ballots will not be counted in determining the acceptance or rejection of the Plan: (a) any Ballot that is illegible or contains insufficient information to permit the identification of the beneficial Claim holder; (b) any Ballot cast by an Entity or Person that does not hold a Claim in a Class that is entitled to vote on the Plan; (c) any Ballot submitted by a party not entitled to cast a vote with respect to the Plan; (d) any Ballot not marked to accept or reject the Plan, or marked both to accept and reject the Plan; (e) any unsigned Ballot; (f) any Ballot that does not contain a signature; and (g) any Ballot transmitted to the Solicitation Agent by facsimile, or electronic transmission, other than through the Solicitation Agent's E-Ballot Portal.

In the event that (a) the Debtors revoke or withdraw the Plan, or (b) the Confirmation Order is not entered or consummation of the Plan does not occur, this Ballot shall automatically be null and void and deemed withdrawn without any requirement of affirmative action by or notice to you.

III. **Other.**

a. **PLEASE RETURN YOUR BALLOT PROMPTLY.**

b. **THE SOLICITATION AGENT IS NOT AUTHORIZED TO, AND WILL NOT,**

PROVIDE LEGAL ADVICE.

c. **THE VOTING DEADLINE TO ACCEPT OR REJECT THE PLAN IS AUGUST 28, 2024 AT 4:00 PM (PREVAILING EASTERN TIME).**

d. **ALL BALLOTS MUST BE PROPERLY EXECUTED, COMPLETED, AND DELIVERED ACCORDING TO THE VOTING INSTRUCTIONS SO THAT THE BALLOTS ARE ACTUALLY RECEIVED BY THE SOLICITATION AGENT NO LATER THAN THE VOTING DEADLINE.**

* * * * *

IMPORTANT INFORMATION REGARDING THE INJUNCTION, RELEASES, AND EXCULPATION IN THE PLAN[2]

Select Plan Provisions

Select Defined Terms

"Exculpated Parties" means (a) the directors and officers of each of the Debtors and the members of any board of managers or directors of each Debtor, and in each case, who served the Debtors in such capacities at any time between the Petition Date and the Plan Effective Date; (b) all Professionals and agents retained by the Debtors in the Debtors' Chapter 11 Cases; (c) the Committee and those individual members of the Committee who vote to accept the Plan; (d) all Professionals and agents retained by the Committee in the Debtors' Chapter 11 Cases; (e) the Plan Administrator and GUC Trustee; and (f) with respect to each Person described in clauses (a) through (e) of this definition, each of such Person's employees, directors, managers, partners, committee members, attorneys, representatives, successors, assigns, heirs, executors, estates, and nominees, solely in their capacity as such.

"Released Party" means, in its capacity as such, each of: (a) the Debtors' Professionals; (b) the current officers of each of the Debtors and the Debtors' current manager and/or director, Mr. Lawrence Hirsch; (c) the DIP Lenders and the DIP Agent and their respective Related Parties; (d) the Prepetition Term Loan Parties and their respective Related Parties; (e) the Purchaser; (f) the Committee and those individual members of the Committee, solely in their capacities as such, who vote to accept the Plan; (g) the Committee's Professionals; (h) the Plan Administrator and GUC Trustee; and (i) in each case, the respective Related Party of each of the foregoing Persons.

"Releasing Parties" means, in its capacity as such, each of: (a) the DIP Lenders and the DIP Agent; (b) the Prepetition Term Loan Parties; (c) all holders of Claims eligible to vote on the Plan that vote to accept the Plan; (d) the Purchaser; (e) the Committee and those individual members of the Committee, solely in their capacities as such, who vote to accept the Plan; and (g) the Plan Administrator and GUC Trustee.

Article VIII.D of the Plan: Term of Injunctions or Stays

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court in effect on the applicable Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order), shall remain in full force and effect until the Plan Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and

[2] The provisions herein are qualified in their entirety by reference to the Plan.

EXHIBIT A

effect in accordance with their terms.

Article VIII.A.5 of the Plan: Injunction

Except as otherwise expressly provided in the Plan or the Confirmation Order with respect to the Plan, all Persons who have held, hold, or may hold any Claims or Causes of Action against, or Interests in, any of the Debtors that have been released, discharged, or are subject to release or exculpation hereunder are permanently enjoined, from and after the Plan Effective Date, from taking any of the following actions against any of the Debtors, the Reorganized Debtors, the Wind-Down Debtor(s), the GUC Trustee, as applicable, or any of the other Exculpated Parties or any of the Released Parties: (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with any such Claim, Cause of Action or Interest; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against any of the Exculpated Parties or Released Parties on account of or in connection with any such Claim, Cause of Action or Interest; (3) creating, perfecting, or enforcing any Lien or encumbrance of any kind against any of the Exculpated Parties, Released Parties or their property on account of or in connection with or with respect to any such Claim, Cause of Action or Interest; and (4) asserting any right of setoff or subrogation against any obligation due from any of the Exculpated Parties, Released Parties or against their property on account of or in connection with any such Claim, Cause of Action or Interest unless, with respect to setoff, such holder has Filed a motion requesting the right to perform such setoff on or before the Plan Effective Date or Filed a Proof of Claim that asserts or preserves any such right, and until such motion has been granted or the Filed Proof of Claim is Allowed.

Upon entry of the Confirmation Order with respect to the Plan, all holders of Claims and Causes of Action against, and Interests in, any of the Debtors and their respective Related Parties shall be enjoined from taking any actions to interfere with the implementation of the Plan or the Sale Transaction.

Article VIII.A.2 of the Plan: Releases by the Debtors

Notwithstanding anything in the Plan to the contrary, pursuant to section 1123(b) of the Bankruptcy Code, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, on and after the Plan Effective Date, each Released Party is, and is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released by each of the Debtors, their respective Estates, and any Person seeking to exercise the rights of any of the Debtors or their Estates (including any successors to any of the Debtors or their Estates or any Estate representatives appointed or selected pursuant to section 1123(b)(3) of the Bankruptcy Code), in each case, on behalf of themselves and their respective successors, assigns, and representatives, and any and all other Persons who may purport to assert any Cause of Action, derivatively, by, through, for, or because of any of the foregoing Persons, from any and all Claims and Causes of Action, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, contingent or non-contingent, in law, equity, contract, tort or otherwise, that any of the Debtors, their Estates, the Reorganized Debtors or Wind-Down Debtor(s), as applicable, or any successors to or representatives of the foregoing appointed or selected pursuant to section 1123(b)(3) of the Bankruptcy Code, would have been legally entitled to assert in their own right (whether individually or collectively) or that any holder of any Claim against or any Interests in, any of the Debtors could have asserted on behalf of any of the Debtors or their Estates, based on, relating to, or in any manner arising from, in whole or in part: any of the Debtors (including the capital structure, management,

ownership, or operations thereof); any Security of any of the Debtors; the subject matter of, or the transactions or events giving rise to, any Claim, Cause of Action or Interest; the business or contractual arrangements between any Debtor and a Released Party; any of the Debtors' restructuring efforts; any Avoidance Actions held by any of the Debtors or their Estates; any intercompany transactions performed by any of the Debtors; the Debtors' Chapter 11 Cases (including the Filing thereof and any relief obtained by the Debtors therein); the formulation, preparation, dissemination, negotiation, or Filing of the Plan, the Plan Supplement, the DIP Facility, the Disclosure Statement, or the Bidding Procedures Order (and the procedures approved thereby); any Restructuring Transaction, contract, instrument, release, or other agreement or document (including any legal opinion requested by any Person regarding any transaction, contract, instrument, document or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order with respect to the Plan in lieu of such legal opinion) created or entered into in connection with the Plan or the Bidding Procedures Order; the solicitation of votes on the Plan, the pursuit of Confirmation of the Plan, the pursuit of Consummation of the Plan, the implementation of the Plan, including the issuance or distribution of Securities or any other property pursuant to the Plan; or any other act or omission, transaction, agreement, event, or other occurrence related or relating to any of the foregoing taking place on or before the Plan Effective Date other than Claims and liabilities resulting therefrom arising out of or relating to any act or omission of a Released Party that constitutes actual fraud, willful misconduct, or gross negligence, in each case, solely to the extent determined by a Final Order of a court of competent jurisdiction.

Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (i) any post-Plan Effective Date Claims or obligations of any Person under the Plan, the Confirmation Order with respect to the Plan, any Restructuring Transaction, any Definitive Document, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan or (ii) the Equityholder Litigation Claims.

Article VIII.A.3 of the Plan: Releases by Holders of Claims Against the Debtors

Except as otherwise expressly set forth in the Plan or the Confirmation Order, on and after the Plan Effective Date, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party is, and is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably and forever, released by each Releasing Party from any and all Causes of Action, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, contingent or non- contingent, in law, equity, contract, tort, or otherwise, including any derivative claims asserted on behalf of the Debtors, that such Person would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part: any of the Debtors (including the capital structure, management, ownership, or operation thereof); any security of any of the Debtors or any of the Reorganized Debtors; the subject matter of, or the transactions or events giving rise to, any Claim that is treated in the Plan; the business or contractual arrangements between any Debtor and any Released Party; the assertion or enforcement of rights and remedies against any of the Debtors; the Debtors' in- or out-of- court restructuring efforts; any Avoidance Actions held by any of the Debtor(s) or their Estates; intercompany transactions between or among a Debtor and another Debtor; the Chapter 11 Cases; the Canadian Proceeding; the formulation, preparation, dissemination, negotiation, or Filing of the Disclosure Statement, the Bidding Procedures Order, the Plan, or the Plan Supplement; any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the DIP Facility, the Disclosure Statement, the Bidding Procedures Order, the Plan, or the Plan Supplement; the Filing of the Debtors' Chapter 11 Cases; the Filing of the Canadian Proceeding; the Disclosure Statement, the Plan, the solicitation of votes with respect to the Plan, the pursuit of Confirmation of the Plan, the pursuit of Consummation of the Plan, the

EXHIBIT A

administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, the distribution of property under the Plan or any other related agreement, or any cancellation of debt income realized in connection with the Plan; or upon any other act or omission, transaction, agreement, event, or other occurrence related or relating to any of the foregoing taking place on or before the Plan Effective Date, other than Claims and liabilities resulting therefrom arising out of or relating to any act or omission of a Released Party that constitutes actual fraud, willful misconduct, or gross negligence, each solely to the extent as determined by a Final Order of a court of competent jurisdiction. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (i) any party of any obligations related to customary banking products, banking services or other financial accommodations (except as may be expressly amended or modified by the Plan or any other financing document under and as defined therein), (ii) the Equityholder Litigation Claims, or (iii) any post-Plan Effective Date obligations of any Person under the Plan, the Confirmation Order, any Stand-Alone Restructuring Transaction, any Definitive Document or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, including the Purchase Agreement or any Claim or obligation arising under the Plan.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the third party release, which includes by reference each of the related provisions and definitions contained in the Plan, and, further shall constitute the Bankruptcy Court's finding that the third party release by those creditors or interest holders who vote to accept the Plan is: (I) the good and valuable consideration and substantial contributions provided by the Released Parties; (II) a good faith settlement and compromise of the Claims released by the third party release; (III) in the best interests of the Debtors and all holders of Claims and Interests; (IV) fair, equitable and reasonable; (V) given and made after due notice and opportunity for a hearing; and (IV) a bar to any of the Releasing Parties asserting any Claim released pursuant to the third party release.

Article VIII.A.4 of the Plan: Exculpation from Claims Relating to the Plan

Except as otherwise specifically provided in the Plan or the Confirmation Order with respect to the Plan, no Exculpated Party shall have or incur liability for, and each Exculpated Party is hereby exculpated from, any Claims and Causes of Action related to any act or omission occurring between and including the Petition Date and the Plan Effective Date in connection with, relating to, or arising out of: the Debtors' Chapter 11 Cases (including the Filing thereof); the Canadian Proceeding (including the Filing thereof); the formulation, preparation, dissemination, negotiation, Filing, or termination of the Plan, the Disclosure Statement, the Bidding Procedures Order, the DIP Facility, or any contract, instrument, release or other agreement or document created or entered into in connection with the Debtors' Chapter 11 Cases or Canadian Proceeding, whether or not included in the Plan Supplement or constituting a Definitive Document; the Restructuring Transactions contemplated by the Plan and any prepetition transactions relating to any of the foregoing; the pursuit of Confirmation of the Plan, the pursuit of Consummation of the Plan, the administration and implementation of the Plan, including the issuance and distribution of Securities pursuant to the Plan, or the distribution of property under the Plan; the Purchase Agreement; or any other related act or omission, transaction, event, or other occurrence taking place on or before or in connection with the Plan Effective Date, except for Claims and liabilities resulting therefrom related to any act or omission that is determined in a Final Order by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence by an Exculpated Party.

The Exculpated Parties shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan in all respects.

EXHIBIT A

PLEASE COMPLETE ALL APPLICABLE ITEMS BELOW. PLEASE FILL IN ALL OF THE INFORMATION REQUESTED UNDER ITEM 3. IF THIS BALLOT HAS NOT BEEN PROPERLY SIGNED IN THE SPACE PROVIDED, YOUR VOTE MAY NOT BE VALID OR COUNTED AS HAVING BEEN CAST

Item 1. Amount of *Class 4 – General Unsecured Claims*. For purposes of voting to accept or reject the Plan, the undersigned certifies that as of **July 28, 2024**, the undersigned holds a *Class 4 – General Unsecured Claim* against the Debtors listed below in the aggregate amount set forth below. Except as otherwise provided in the Plan, to the extent you hold a Claim that may be asserted against more than one Debtor, your vote in connection with such Claims will be counted as a vote of such Claim against each Debtor against which you have a Claim.

Claim Amount:[3] **$**_____

All Applicable Debtor(s): _____

Item 2. Vote on the Plan. You may vote to accept or reject the Plan. Please note that you must vote all of your Claims in *Class 4* either to accept or reject the Plan. You may not split your vote. If you do not indicate that you either accept or reject the Plan by checking the applicable box below, your vote in *Class 4* will not be counted. If you indicate that you both accept and reject the Plan for your *Class 4* Claims by checking both boxes below, your *Class 4* vote will not be counted. The Plan, though proposed jointly, constitutes a separate Plan proposed by each Debtor. Accordingly, your vote cast below will be applied in the same manner and in the same amount against each applicable Debtor. You must check the applicable box below to "accept" or "reject" the Plan for *Class 4* in order to have your vote counted.

The undersigned holder of a *Class 4 – General Unsecured Claim* in the amount set forth in Item 1 above hereby votes to (please check one):

☐ **ACCEPT** (vote FOR) the Plan ☐ **REJECT** (vote AGAINST) the Plan

IMPORTANT INFORMATION REGARDING CERTAIN RELEASES BY HOLDERS OF CLAIMS:

IF YOU VOTE TO *ACCEPT* THE PLAN, YOU WILL BE DEEMED TO GRANT THE RELEASES SET FORTH IN ARTICLE VIII.A.3 OF THE PLAN (REPRODUCED ABOVE).

IF YOU VOTE TO *REJECT* THE PLAN, YOU WILL NOT BE DEEMED TO CONSENT TO THE RELEASES SET FORTH IN ARTICLE VIII.A.3 OF THE PLAN.

IF YOU *ABSTAIN* FROM VOTING ON THE PLAN, YOU WILL NOT BE DEEMED TO CONSENT TO THE RELEASES SET FORTH IN ARTICLE VIII.A.3 OF THE PLAN.

IF YOU *FAIL TO SUBMIT* A BALLOT, YOU WILL NOT BE DEEMED TO HAVE CONSENTED TO THE RELEASES SET FORTH IN ARTICLE VIII.A.3 OF THE PLAN.

[3] The amount indicated here is only for voting purposes and subject to the Voting & Tabulation Procedures.

EXHIBIT A

* * * * *

Item 3. Acknowledgements and Certification. By signing this Ballot, the undersigned acknowledges and certifies to the Court and to the Debtors that:

a. it has the power and authority to vote to accept or reject the Plan;

b. as of the Voting Record Date, the undersigned was the holder (or authorized signatory for a holder) of the Claims in the Voting Class as set forth in Item 1;

c. the holder has reviewed a copy of the Disclosure Statement, the Plan, and the remainder of the Solicitation Package and acknowledges that the solicitation is being made pursuant to the terms and conditions set forth therein;

d. the holder has not relied on any statement made or other information received from any person with respect to the Plan other than the information contained in the Solicitation Package or other publicly available materials;

e. the holder has cast the same vote with respect to all of the holder's Claims in each particular Voting Class;

f. the holder understands and acknowledges that if multiple Ballots are submitted voting the Claims set forth in Item 1, only the last properly completed Ballot voting the Claims and received by the Solicitation Agent before the Voting Deadline shall be deemed to reflect the voter's intent and thus to supersede and revoke any prior Ballots received by the Solicitation Agent; and

g. the holder understands and acknowledges that all authority conferred or agreed to be conferred pursuant to this Ballot, and every obligation of the holder hereunder, shall be binding upon the transferees, successors, assigns, heirs, executors, administrators, and legal representatives of the holder and shall not be affected by, and shall survive, the death or incapacity of the holder.

The undersigned further acknowledges that the Debtors' solicitation of votes is subject to all terms and conditions set forth in the Disclosure Statement, the Disclosure Statement Order, and the procedures for the solicitation of votes to accept or reject the Plan contained therein.

Print or Type Name of Holder: _____

Signature: _____

If by Authorized Agent, Title of Agent: _____

Institution: _____

Street Address: _____

City, State, Zip Code: _____

Telephone Number: _____

E-mail Address: _____

Date Completed: _____

Please check one or both of the below boxes if the above address is a change of address for the purpose(s) of:

- ☐ **Future notice mailings in these Chapter 11 Cases; and/or**
- ☐ **Distributions, if any, upon your Claim in these Chapter 11 Cases.**

CLASS 2 BALLOT IN *IN RE SMALLHOLD, INC.*,
NO. 1:24-bk-10267-CTG (BANKR. D. DEL.)

EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
Smallhold, Inc.	Case No. 24-10267 (CTG)
Debtor.[1]	

BALLOT FOR ACCEPTING OR REJECTING
CHAPTER 11 PLAN OF REORGANIZATION OF SMALLHOLD, INC.

CLASS 2 – GENERAL UNSECURED CLAIM HOLDER

PLEASE READ AND FOLLOW THE ENCLOSED INSTRUCTIONS FOR COMPLETING BALLOTS CAREFULLY BEFORE COMPLETING THE BALLOT

THIS BALLOT MUST BE ACTUALLY RECEIVED BY EPIQ CORPORATE RESTRUCTURING, LLC (THE "ADMINISTRATIVE ADVISOR" OR "EPIQ") BY JULY 3, 2024 AT 5:00 P.M. (EASTERN TIME) (THE "VOTING DEADLINE")

PLEASE BE ADVISED THAT SECTION 6.11 OF THE PLAN CONTAINS CERTAIN RELEASE, EXCULPATION, AND INJUNCTION PROVISIONS, INCLUDING THOSE SET FORTH BELOW.

PLEASE BE ADVISED THAT UNDER THE PLAN YOU ARE DEEMED TO GIVE RELEASES UNLESS YOU OPT OUT OR OBJECT TO THE PLAN. PLEASE READ THIS NOTICE IN ITS ENTIRETY AND PLEASE SEE PAGE 3 BELOW FOR MORE DETAILS ON THE RELEASES. SECTION 6.11 CONTAINS A THIRD-PARTY RELEASE.

YOU ARE ADVISED AND ENCOURAGED TO CAREFULLY REVIEW AND CONSIDER THE PLAN, INCLUDING THE RELEASE, EXCULPATION, AND INJUNCTION PROVISIONS SET FORTH IN SECTION 6.11 OF THE PLAN AS YOUR RIGHTS MAY BE AFFECTED.

The Debtor has sent this Ballot to you because its records indicate that you are a holder of a Class 2 Claim, and accordingly, you have a right to vote to accept or reject the *Subchapter V Debtor's*

[1] The last four digits of the Debtor's federal tax identification number are 8880. The Debtor's mailing address is 285 Nostrand Avenue #1066, Brooklyn, NY 11216.

EXHIBIT B

First Amended Plan of Reorganization (the "Plan") [D.I. 179],[2] including all exhibits thereto and as amended, supplemented, or otherwise modified from time to time.

You were previously served with a copy of the Plan. Additional copies of the Plan may be obtained by contacting the Administrative Advisor retained by the Debtor in this chapter 11 case by: (a) calling the Administrative Advisor at 833-367-0043 (Toll Free) or +1 503-241-7618 (International); (b) e-mailing the Administrative Advisor at smallhold@epiqglobal.com with a reference to "In re: Smallhold, Inc. - Solicitation Inquiry" in the subject line; or (c) writing to the Administrative Advisor at Smallhold Inquiries, c/o Epiq Ballot Processing,10300 SW Allen Blvd, Beaverton, OR 97005. You may also obtain copies of any pleadings filed with the Court for free by visiting the Debtors' restructuring website, https://dm.epiq11.com/case/smallhold/info, or for a fee via PACER at: http://pacer.psc.uscourts.gov. Please be advised that the Debtor's counsel Pashman Stein Walder Hayden, P.C. or the Administrative Advisor cannot provide you with legal advice, and you should consult with an attorney to provide any legal advice you may need. If you believe you have received this Ballot in error, please contact Epiq as set forth above.

You should review the Plan before you vote. You may wish to seek legal advice concerning the Plan and the Plan's classification and treatment of your Claim. Your Claim has been placed in Class 2 (General Unsecured Claims) under the Plan.

If the Administrative Advisor does not receive your Ballot on or before the Voting Deadline, July 3, 2024, at 5:00 p.m. (Eastern Time) your vote as either an acceptance or rejection of the Plan will not count. If the Bankruptcy Court confirms the Plan, it will bind you regardless of whether you vote.

Item 1. Principal Amount of Class 2 – General Unsecured Claims.

As of the Record Date, May 28, 2024, the undersigned was the holder of Class 2 – General Unsecured Claims against the Debtor in the aggregate principal amount set forth below:

$_____

Item 2. Acceptance or Rejection of the Plan.

The holder of the Class 2 – General Unsecured Claims set forth in the Item 1 votes to (please check one):

☐ ACCEPT THE PLAN ☐ REJECT THE PLAN

[2] Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Plan or the *Order (I) Scheduling a Hearing on Plan Confirmation and Deadlines Related Thereto; (II) Approving the Solicitation, Notice and Tabulation Procedures and the Forms Related Thereto; and (III) Granting Related Relief*, as applicable.

EXHIBIT B

ANY BALLOT THAT IS EXECUTED BY THE HOLDER OF A CLAIM BUT THAT INDICATES BOTH AN ACCEPTANCE AND A REJECTION OF THE PLAN OR DOES NOT INDICATE EITHER AN ACCEPTANCE OR REJECTION OF THE PLAN WILL NOT BE COUNTED.

Item 3. (ONLY APPLICABLE IF VOTED TO REJECT THE PLAN) Release Opt-Out Election.

PLEASE BE ADVISED THAT THE PLAN CONTAINS CERTAIN RELEASE, INJUNCTION, AND EXCULPATION PROVISIONS, INCLUDING THE FOLLOWING:

Section 6.11 of the Plan provides as follows:

On the Effective Date, except as otherwise provided herein and except for the right to enforce this Plan, all persons (i) who voted to accept this Plan or who are presumed to have voted to accept this Plan and (ii) who voted to reject this Plan but did not affirmatively mark the box on the ballot to opt out of granting the releases provided under this Plan, under section 1126(f) of the Bankruptcy Code shall, to the fullest extent permitted by applicable law, be deemed to forever release, and waive the Released Parties of and from all liens, claims, causes of action, liabilities, encumbrances, security interests, interests or charges of any nature or description whatsoever based or relating to, or in any manner arising from, in whole or in part, the Chapter 11 Case or affecting property of the Estate, whether known or unknown, suspected or unsuspected, scheduled or unscheduled, contingent or not contingent, unliquidated or fixed, admitted or disputed, matured or unmatured, senior or subordinated, whether assertable directly or derivatively by, through, or related to any of the Released Parties and their successors and assigns whether at law, in equity or otherwise, based upon any condition, event, act, omission occurrence, transaction or other activity, inactivity, instrument or other agreement of any kind or nature occurring, arising or existing prior to the Effective Date in any way relating to or arising out of, in whole or in part, the Debtor, the Debtor's prepetition operations, governance, financing, or fundraising, the purchase or sale of the Debtor's securities, the Chapter 11 Case, the pursuit of Confirmation of this Plan, the consummation of this Plan or the administration of this Plan, including without limitation, the negotiation and solicitation of this Plan, the DIP Loan, and the DIP Loan Documents, all regardless of whether (a) a Proof of Claim or Equity Interest has been filed or is deemed to have been filed, (b) such Claim or Equity Interest is allowed, or (c) the Holder of such Claim or Equity Interest has voted to accept or reject this Plan, except for willful misconduct, gross negligence, fraud or criminal misconduct; *provided, however*, that the Debtor shall not be a Released Party until the Last Distribution Date if the Plan is confirmed under section 1191(b) of the Bankruptcy Code. Nothing contained herein shall impact the right of any Holder of an Allowed Claim or interest to receive a Distribution on account of its Allowed Claim or Allowed Interest in accordance with this Plan.

Under the Plan, "Released Party" means each of the following: (a) the Debtor (but only if the Plan is confirmed under section 1191(a) of the Bankruptcy Code); (b) the Debtor's prepetition attorneys and professionals; (d) the Debtor's Professionals; (e) the DIP Lender; (f) the DIP Lender's attorneys; and (g) the Representatives of (a) through (f) hereof. If the

Plan is confirmed under section 1191(b), the Debtor shall be a Released Party only on the Last Distribution Date.

Check this box if you elect not to grant the releases contained in Section 6.11 of the Plan. Election to withhold consent is at your option. If you exercise your right to not grant the releases by checking the box below, you will not be a Released Party. If you submit your Ballot without this box checked, you will be deemed to consent to the releases set forth in Section 6.11 of the Plan and the related injunction to the fullest extent permitted by applicable law.

☐ **OPT OUT** The undersigned elects not to grant the releases contained in Section 6.11 of the Plan.

Item 4. Certifications

By signing this Ballot, the undersigned certificates to the Bankruptcy Court and to the Debtor:

a. that either: (i) the Entity is the holder of the Class 2 Claim being voted; or (ii) the Entity is an authorized signatory for an Entity that is a holder of the Class 2 Claim being voted;

b. that the Entity has received a copy of the Plan and acknowledges that the solicitation is being made pursuant to the terms and conditions set forth therein;

c. that the Entity has cast the same vote with respect to all Class 2 Claims that it holds or for which it is the authorized signatory; and

d. that no other Ballots with respect to the amount of the Class 2 Claims identified in Item 1 have been cast or, if any other Ballots have been cast with respect to such Claims, then any such Ballots dated earlier are hereby revoked.

Name of holder: _____
(Print or Type)

Signature: _____
Name of Signatory: _____
(If other than holder)

Title: _____
Address: _____
City, State, Zip _____
Date Completed: _____

EXHIBIT B

THE BALLOT MUST BE COMPLETED AND SUBMITTED, ON OR BEFORE THE VOTING DEADLINE, BY ANY OF THE FOLLOWING APPROVED SUBMISSION METHODS:

By first class mail, overnight courier, or hand-delivery to:

If by First Class Mail:

Smallhold, Inc.
c/o Epiq Ballot Processing
P.O. Box 4422
Beaverton, OR 97076-4422

If by Overnight Courier or Hand Delivery:

Smallhold, Inc.
c/o Epiq Ballot Processing
10300 SW Allen Blvd.
Beaverton, OR 97005

or

Via the online voting portal at https://dm.epiq11.com/Smallhold.

(Click on the "E-Ballot" link under the Case Actions section of the website and follow the instructions to submit your Ballot.)

BALLOTS OTHERWISE SUBMITTED BY FACSIMILE, TELECOPY, OR ANY ELECTRONIC MEANS OTHER THAN EXPRESSLY PROVIDED IN THESE SOLICITATION PROCEDURES WILL NOT BE ACCEPTED.

YOUR BALLOT MUST BE RECEIVED BY THE VOTING DEADLINE, WHICH IS JULY 3, 2024 AT 5:00 P.M. (ET).

EXHIBIT B

INSTRUCTIONS FOR COMPLETING BALLOTS

1. The Debtor is soliciting the votes of holders of Claims with respect to the Plan. Capitalized terms used in the Ballot or in these instructions but not otherwise defined in the Ballot or these instructions shall have the meanings set forth in the Plan, a copy of which also accompanies the Ballot.

2. The Bankruptcy Court may confirm the Plan and thereby bind you by the terms of the Plan if, among other things, the Plan is confirmed.

3. To ensure that your vote is counted, you must: (a) complete the Ballot; (b) indicate your decision either to accept or reject the Plan in the boxes provided in Item 2 of the Ballot; and (c) submit the Ballot to the address set forth on the enclosed pre-addressed envelope or via Epiq's online voting portal as described more fully below. The Voting Deadline for the receipt of Ballots by Epiq is **July 3, 2024 at 5:00 p.m. (ET)**. Your completed Ballot must be received by Epiq on or before the Voting Deadline.

   To submit your Ballot via the online voting portal, please visit https://dm.epiq11.com/case/Smallhold, click on the E-Ballot link under Case Actions, and follow the instructions to submit your Ballot.

   IMPORTANT NOTE: You will need the following information to retrieve and submit your customized E-Ballot:

   Unique E-Ballot ID#: _____

   Epiq's online voting platform is the sole manner in which Ballots will be accepted via electronic or online transmission. Ballots submitted by facsimile, e-mail, or other means of electronic transmission will not be counted.

   Each E-Ballot ID# is to be used solely for voting only those Claims described in Item 1 of your Ballot. Please complete and submit a Ballot for each E-Ballot ID# you receive, as applicable. Creditors who cast a Ballot using the Administrative Agent's online voting portal should NOT also submit a hard copy Ballot.

4. If a Ballot is received after the Voting Deadline, it will not be counted unless the Debtor determines otherwise. **The method of delivery of Ballots to the Administrative Advisor is at the election and risk of each holder of a Claim.** Delivery will be deemed made only when the Administrative Advisor **actually receives** the originally executed Ballot. If a holder of a Claim chooses effecting delivery by mail, it is recommended, though not required, that holders use an overnight or hand delivery service to assure timely delivery.

5. Delivery of a Ballot to the Administrative Advisor by facsimile, telecopy, or any electronic means other than expressly provided in these Solicitation Procedures will not be valid.

6. If multiple Ballots are received from the same holder of a Claim with respect to the same Claim prior to the Voting Deadline, the last dated valid Ballot timely received will supersede and revoke any earlier dated Ballots.

7. The Ballot is not a letter of transmittal and may not be used for any purpose other than to vote to accept or reject the Plan. Accordingly, at this time, holders of Claims should not surrender certificates or instruments representing or evidencing their Claims, and neither the Debtor nor the Administrative Agent will accept delivery of any such certificates or instruments surrendered together with a Ballot.

8. This Ballot does not constitute and shall not be deemed to be a Proof of Claim.

9. Please be sure to sign and date your Ballot. If you are signing a Ballot in your capacity as a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity, you should indicate such capacity when signing and, if requested by the Debtor's counsel, the Administrative Advisor, the Debtor, or the Bankruptcy Court, must submit proper evidence to the requesting party to so act on behalf of such holder. In addition, please provide your name and mailing address if it is different from that set forth on the attached mailing label or if no such mailing label is attached to the Ballot.

10. The following Ballots shall not be counted in determining the acceptance or rejection of the Plan: (a) any Ballot that is illegible or contains insufficient information to permit the identification of the holder of the Claim; (b) any Ballot cast by a party that does not hold a Claim in a Class that is entitled to vote on the Plan; (c) any unsigned Ballot; (d) any Ballot not marked to accept or reject the Plan or any Ballot marked both to accept and reject the Plan; and (e) any Ballot submitted by any Entity not entitled to vote pursuant to the Solicitation Procedures.

PLEASE SUBMIT YOUR BALLOT PROMPTLY!
IF YOU HAVE ANY QUESTIONS REGARDING THIS BALLOT OR THE VOTING PROCEDURES, PLEASE CONTACT EPIQ AT +1 833-367-0043 (TOLL FREE) OR +1 503-241-7618 (INTERNATIONAL).

CLASS 5 BALLOT IN *IN RE ROBERTSHAW US HOLDING CORP.*, NO. 4:24-bk-900052-CML (BANKR. S.D. TEXAS)

EXHIBIT C

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	:	Chapter 11
ROBERTSHAW US HOLDING CORP., *et al.*,	:	Case No. 24-90052 (CML)
Debtors.[1]	:	(Jointly Administered)

BALLOT TO ACCEPT OR REJECT THE DEBTORS' PLAN

Class 5: General Unsecured Claims

The voting deadline to accept or reject the Plan is 4:00 p.m. (prevailing Central Time), on July 26, 2024 (the "Voting Deadline"), unless extended by the Debtors

Please be advised that Article X of the Plan contains release, exculpation and injunction provisions. These provisions are included in the Ballot. You are advised to review and consider the Plan carefully because your rights might be affected thereunder even if you abstain from voting. If you (a) abstain from voting or (b) vote to reject the Plan and, in each case, do not check the box in Item 3 below, you will be deemed to have consented to the release provisions set forth in Article X.C of the Plan.

Please be advised that your decision to opt out does not affect the amount of distribution you will receive under the Plan. Specifically, your recovery under the Plan will be the same if you opt out.

This ballot (the "Ballot") is provided to you to solicit your vote to accept or reject the *First Amended Joint Plan of Liquidation of Robertshaw US Holding Corp. and Its Affiliated Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. [●]] (as may be amended from time to time, the "Plan") for Robertshaw US Holding Corp. ("Robertshaw") and certain of its affiliates (such affiliates, together with Robertshaw, the "Debtors").[2]

[1] The debtors in these cases, along with the last four digits of each debtor's federal tax identification number, are as follows: Range Parent, Inc. (7956); Robertshaw US Holding Corp. (1898); Robertshaw Controls Company (9531); Burner Systems International, Inc. (8603); Robertshaw Mexican Holdings LLC (9531); Controles Temex Holdings LLC (9531); Universal Tubular Systems, LLC (8603); and Robertshaw Europe Holdings LLC (8843). The primary mailing address used for each of the foregoing debtors is 1222 Hamilton Parkway, Itasca, Illinois 60143.

[2] Capitalized terms used in this Ballot or the attached instructions that are not defined herein have the meanings given to them in the Plan.

EXHIBIT C

Please use this Ballot to cast your vote to accept or reject the Plan if you are, as of June 20, 2024 (the "Voting Record Date"), a holder of a General Unsecured Claim (a "Holder") against the Debtors.

PLEASE NOTE THAT IF YOU ARE A COUNTERPARTY TO AN EXECUTORY CONTRACT OR UNEXPIRED LEASE YOU ARE RECEIVING THIS BALLOT BECAUSE YOU MAY HAVE A CLASS 5 CLAIM AGAINST ONE OR MORE OF THE DEBTORS. RECEIPT OF THIS BALLOT DOES NOT REFLECT THE INTENDED TREATMENT OF THE EXECUTORY CONTRACT(S) OR UNEXPIRED LEASE(S) TO WHICH YOU ARE A PARTY AND DOES NOT MEAN THAT SUCH EXECUTORY CONTRACT OR UNEXPIRED LEASE WILL OR WILL NOT BE ASSUMED OR ASSUMED AND ASSIGNED TO THE PURCHASER.

The Plan is attached as **Exhibit A** to the *Disclosure Statement for First Amended Joint Plan of Liquidation of Robertshaw US Holding Corp. and Its Affiliated Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No [●]] (as amended, modified, or supplemented from time to time, the "Disclosure Statement"), which was included in the package (the "Solicitation Package") you received with this Ballot. The Disclosure Statement provides information to assist you in deciding whether to accept or reject the Plan. The recoveries described in the Disclosure Statement are subject to confirmation of the Plan. If you do not have the Solicitation Package, you may obtain a copy (a) from Kroll Restructuring Administration LLC (the "Balloting Agent") at no charge by: (i) visiting the Balloting Agent's website at https://cases.ra.kroll.com/Robertshaw, (ii) calling (646) 777-2308 (international) or (844) 536-2001 (U.S./Canada, toll free), or (iii) sending an electronic message to robertshawinfo@ra.kroll.com with "**Robertshaw Solicitation Inquiry**" in the subject line and requesting a copy be provided to you; or (b) for a fee via PACER at https://www.txs.uscourts.gov/bankruptcy. You should review the Disclosure Statement and the Plan before you vote. You may wish to seek independent legal, financial or tax advice concerning the Plan and your classification and treatment under the Plan. If you believe you have received this Ballot in error, or if you believe that you have received the wrong Ballot or a Ballot in the wrong amount, please contact the Balloting Agent **immediately** at the address, telephone number, or email address set forth below.

On February 15, 2024, the Debtors commenced voluntary cases under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"). The Plan can be confirmed by the Bankruptcy Court and thereby made binding on you if it is accepted by the Holders of at least two-thirds of the aggregate principal amount and more than one-half in number of the Claims voted in each Voting Class, and if the Plan otherwise satisfies the applicable requirements of section 1129(a) under the Bankruptcy Code. **If the requisite acceptances are not obtained, the Bankruptcy Court may nonetheless confirm the Plan if it finds that the Plan (a) provides fair and equitable treatment to, and does not unfairly discriminate against, the Class or Classes rejecting the Plan, and (b) otherwise satisfies the requirements of section 1129 of the Bankruptcy Code. If the Plan is confirmed by the Bankruptcy Court, it will be binding on you whether or not you vote or if you vote to reject the Plan.** To have your vote counted, you must complete, sign, and return this Ballot to the Balloting Agent by the Voting Deadline.

EXHIBIT C

PLEASE READ THE ATTACHED VOTING INFORMATION AND INSTRUCTIONS BEFORE COMPLETING THIS BALLOT.

PLEASE COMPLETE ALL APPLICABLE ITEMS BELOW. PLEASE FILL IN ALL OF THE INFORMATION REQUESTED UNDER ITEM 4. IF THIS BALLOT HAS NOT BEEN PROPERLY SIGNED IN THE SPACE PROVIDED, YOUR VOTE MAY NOT BE VALID OR COUNTED AS HAVING BEEN CAST.

Item 1. Principal Amount of Claim. The undersigned hereby certifies that as of the Voting Record Date, the undersigned was the Holder (or authorized signatory of such Holder) of a General Unsecured Claim in the aggregate unpaid **principal** amount inserted into the box below, without regard to any accrued but unpaid interest.

$

Item 2. Votes on Plan. Please vote below either to accept or to reject the Plan with respect to your Claims in Class 5. Any Ballot not marked either to accept or reject the Plan, or marked both to accept and to reject the Plan, shall not be counted in determining acceptance or rejection of the Plan.

Before voting on the Plan, please note the following:

If you vote to accept the Plan, you shall be deemed to have consented to the release, injunction, and exculpation provisions set forth in Article X of the Plan.

If you (a) abstain from voting or (b) vote to reject the Plan and, in each case, do not check the box in Item 3 below, you shall be deemed to have consented to the release provisions set forth in Article X.C of the Plan.

The Disclosure Statement and the Plan must be referenced for a complete description of the release, injunction, and exculpation provisions in Article X of the Plan.

Please be advised that your decision to opt out does not affect the amount of distribution you will receive under the Plan. Specifically, your recovery under the Plan will be the same if you opt out.

Vote of Holder of General Unsecured Claim on the Plan. The undersigned Holder of a Class 5 General Unsecured Claim votes to (check one box):

□ **Accept** the Plan □ **Reject** the Plan

THE DEBTORS RECOMMEND THAT YOU VOTE TO ACCEPT THE PLAN.

Item 3. Optional Release Election. If you voted to reject the Plan in Item 2 above or if you abstained from voting on the Plan, check this box if you elect not to grant the release contained in Article X.C of the Plan. Election to withhold consent to the releases contained in Article X.C of the Plan is at your option. **If you submit your Ballot without this box checked, or if you do**

EXHIBIT C

not submit your Ballot by the Voting Deadline, you will be deemed to consent to the releases contained in Article X.C of the Plan to the fullest extent permitted by applicable law. If you voted to accept the Plan in Item 2 above, (i) you will be deemed to consent to the releases contained in Article X.C of the Plan to the fullest extent permitted by applicable law and (ii) if you checked this box, your election not to grant the releases will not be counted.

□ The undersigned elects **not** to grant the releases contained in Article X.C of the Plan.

PLAN RELEASE, EXCULPATION AND INJUNCTION PROVISIONS

If you are entitled to vote on the Plan and you submit a Ballot and do not check the box in Item 3 above, you shall be deemed to have consented to the release provisions set forth in Article X.C of the Plan. The Disclosure Statement and the Plan must be referenced for a complete description of the release, injunction, and exculpation.

Defined Terms

"**Exculpated Parties**" means collectively: (a) the Debtors; (b) each independent director of the Debtors; and (c) the Committee and each of the members of the Committee.

"**Released Parties**" means collectively: (a) each Debtor and Post-Effective Date Debtor; (b) the Debtors' current and former officers, directors, and managers; (b) the Ad Hoc Group, (c) ORC, (d) Delaware Trust; (e) the DIP Secured Parties; (f) the Plan Administrator; (g) the GUC Administrator; (h) the Committee and its members; and (i) with respect to each of the Debtors, the Post-Effective Date Debtors, and each of the foregoing Entities in clauses (a) through (h), such Entity and its current and former Affiliates, and such Entities' and their current and former Affiliates' current and former directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly), interest holders, predecessors, participants, successors, and assigns, subsidiaries, affiliates, managed accounts or funds, and each of their respective current and former equity holders, officers, directors, managers, principals, shareholders, members, management companies, fund advisors, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals.

"**Releasing Parties**" means, collectively: (a) the Released Parties; (b) all Holders of Claims that vote to accept or are deemed to accept the Plan; (c) all Holders of Claims that abstain from voting on the Plan and who do not affirmatively opt out of the releases provided by the Plan by checking the box on the applicable form indicating that they opt not to grant the releases provided in the Plan; (d) all Holders of Claims and Interests that vote to reject the Plan or are deemed to reject the Plan and who do not affirmatively opt out of the releases provided by the Plan by checking the box on the applicable form indicating that they opt not to grant the releases provided in the Plan in accordance with the procedures set forth in the Solicitation Procedures Order; and (e) with respect to each of the Debtors, the Post-Effective Date Debtors, and each of the foregoing Entities in clauses (a) through (d), such Entity and its current and former Affiliates, and such Entities' and their current and former Affiliates' current and former directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly), interest holders, predecessors, successors, and assigns, subsidiaries, affiliates, managed accounts or funds, and each of their

respective current and former equity holders, officers, directors, managers, principals, shareholders, members, management companies, fund advisors, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such collectively.

Article X.B Debtor Release

As of the Effective Date, except for the rights that remain in effect from and after the Effective Date to enforce this Plan and the obligations contemplated by this Plan and the documents in the Plan Supplement, or as otherwise provided in any order of the Bankruptcy Court, on and after the Effective Date, the Released Parties will be deemed conclusively, absolutely, unconditionally, irrevocably, and forever released, to the maximum extent permitted by law, by the Debtors, the Post-Effective Date Debtors, and the Estates, in each case on behalf of themselves and their respective successors, assigns, and Representatives and any and all other Persons that may purport to assert any Causes of Action derivatively, by or through the foregoing Persons, from any and all Claims and Causes of Action (including any derivative claims, asserted or assertable on behalf of the Debtors, the Post-Effective Date Debtors, or the Estates), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, accrued or unaccrued, existing or hereinafter arising, whether in law or equity, whether sounding in tort or contract, whether arising under federal or state statutory or common law, or any other applicable international, foreign, or domestic law, rule, statute, regulation, treaty, right, duty, requirement or otherwise, that the Debtors, the Post-Effective Date Debtors, the Estates, or their affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest or other Person (collectively, the "Debtor Released Claims"), based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' capital structure, the Post-Effective Date Debtors, or their Estates, the Chapter 11 Cases, the purchase, sale, or rescission of the purchase or sale of any asset or security of the Debtors or the Post-Effective Date Debtors, the December Transaction, the May Transaction, the Prepetition Super-Priority Credit Agreement (including, for the avoidance of doubt, the first through fifth amendments related thereto), the Sixth Out Credit Documents, the Seventh Out Credit Documents (including any intercreditor agreements related to the foregoing), the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in this Plan, the Debtors' in or out-of-court restructuring and recapitalization efforts, the restructuring of any Claim or Interest before or during the Chapter 11 Cases, the Restructuring Support Agreement, the documents in the Plan Supplement, the Asset Purchase Agreement, the Bidding Procedures Order, the Sale Transaction, the Sale Order, the Committee Settlement, the Disclosure Statement, the DIP Order and the DIP Documents, this Plan, and related agreements, instruments, and other documents, and the negotiation, formulation, preparation, dissemination, filing, pursuit of consummation, or implementation thereof, the solicitation of votes with respect to this Plan, or any other act or omission; provided, however, that the foregoing "Debtor Release" shall not operate to waive or release, and the "Debtor Released Claims" shall not include, any Cause of Action of any Debtor or its Estate: (1) against a Released Party arising from any obligations owed to the Debtors pursuant to an Executory Contract or Unexpired Lease that is not otherwise rejected by the Debtors pursuant to section 365 of the Bankruptcy Code before, after, or as of the Effective

EXHIBIT C

Date; (2) expressly set forth in and preserved by this Plan or related documents; (3) that is of a commercial nature and arising in the ordinary course of business, such as accounts receivable and accounts payable on account of goods and services being performed; (4) against a Holder of a Disputed Claim to the extent necessary to administer and resolve such Disputed Claim solely in accordance with this Plan; or (5) arising from an act or omission that is judicially determined by a Final Order to have constituted actual fraud, gross negligence, willful misconduct or criminal conduct (other than with respect to or relating to the Adversary Actions). Notwithstanding anything to the contrary in the foregoing, the "Debtor Release" set forth above does not release any post-Effective Date obligations of any Entity under this Plan or any document, instrument or agreement executed in connection with this Plan with respect to the Debtors, the Post-Effective Date Debtors, or the Estates.

Article X.C Releases by Holders of Claims and Interests

As of the Effective Date, except for the rights that remain in effect from and after the Effective Date to enforce this Plan, and the obligations contemplated by this Plan and the documents in the Plan Supplement, or as otherwise provided in any order of the Bankruptcy Court, on and after the Effective Date, the Released Parties will be deemed conclusively, absolutely, unconditionally, irrevocably, and forever released, to the maximum extent permitted by law, by the Releasing Parties, in each case from any and all Claims and Causes of Action whatsoever (including any derivative claims, asserted or assertable on behalf of the Debtors, the Post-Effective Date Debtors, or their Estates), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, accrued or unaccrued, existing or hereinafter arising, whether in law or equity, whether sounding in tort or contract, whether arising under federal or state statutory or common law, or any other applicable international, foreign, or domestic law, rule, statute, regulation, treaty, right, duty, requirement or otherwise, that such Holders or their estates, affiliates, heirs, executors, administrators, successors, assigns, managers, accountants, attorneys, Representatives, consultants, agents, and any other Persons claiming under or through them would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest or other Person (collectively, the "Third Party Released Claims"), based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' capital structure, the Post-Effective Date Debtors, or their Estates, the Chapter 11 Cases, the purchase, sale, or rescission of the purchase or sale of any asset or security of the Debtors or the Post-Effective Date Debtors, the December Transaction, the May Transaction, the Prepetition Super-Priority Credit Agreement (including, for the avoidance of doubt, the first through fifth amendments related thereto), the Sixth Out Credit Documents, the Seventh Out Credit Documents (including any intercreditor agreements related to the foregoing), the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in this Plan, the Debtors' in or out-of-court restructuring and recapitalization efforts, intercompany transactions between or among a Debtor and another Debtor, the restructuring of any Claim or Interest before or during the Chapter 11 Cases, the documents in the Plan Supplement, the Asset Purchase Agreement, the Bidding Procedures Order, the Sale Transaction, the Committee Settlement, the Sale Order, the Disclosure Statement, the DIP Order and the DIP Documents, this Plan, and related agreements, instruments, and other documents, and the negotiation, formulation, preparation, dissemination, filing,

pursuit of consummation, or implementation thereof, the solicitation of votes with respect to this Plan, or any other act or omission; provided, however, that the foregoing Third-Party Release shall not operate to waive or release, and the "Third-Party Released Claims" shall not include, any Cause of Action of any Releasing Party: (1) against a Released Party arising from any obligations owed to the Releasing Party that are wholly unrelated to the Debtors or the Post-Effective Date Debtors; (2) expressly set forth in and preserved by this Plan or related documents; or (3) arising from an act or omission that is judicially determined by a Final Order to have constituted actual fraud, gross negligence, willful misconduct or criminal conduct (other than with respect to or relating to the Adversary Actions). Notwithstanding anything to the contrary in the foregoing, the "Third-Party Release" set forth above does not release any post-Effective Date obligations of any Entity under this Plan or any document, instrument or agreement executed in connection with this Plan.

Article X.D Exculpation

To the fullest extent permitted by applicable law, and without affecting or limiting the releases set forth in Article X.B. or Article X.C. of this Plan, effective as of the Effective Date, the Exculpated Parties shall neither have nor incur any liability to any Person or entity for any claims, causes of action or for any act taken or omitted to be taken on or after the Petition Date and prior to or on the Effective Date in connection with or arising out of: the administration of the Chapter 11 Cases, commencement of the Chapter 11 Cases, pursuit of Confirmation and consummation of this Plan, making Distributions, implementing the Wind-Down, the Disclosure Statement, the Sale Transaction, the Asset Purchase Agreement, the Committee Settlement, the Sale Order, or the solicitation of votes for, or Confirmation of, this Plan; the occurrence of the Effective Date; the administration of this Plan or the property to be distributed under this Plan; the issuance of securities under or in connection with this Plan; the purchase, sale, or rescission of the purchase or sale of any asset or security of the Debtors; or the transactions in furtherance of any of the foregoing; provided, however, that none of the foregoing provisions shall operate to waive or release (i) any Claims or Causes of Action arising out of or related to any act or omission of an Exculpated Party that constitutes intentional fraud, criminal conduct, or willful misconduct, as determined by a Final Order, and (ii) the Exculpated Parties' rights and obligations under this Plan, the Plan Supplement documents, and the Confirmation Order, but in all respects such Persons will be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to this Plan. The Exculpated Parties have acted in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation of votes on this Plan and, therefore, are not, and will not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of this Plan or Distributions made pursuant to this Plan. The Exculpation will be in addition to, and not in limitation of, all other releases, indemnities, exculpations, and any other applicable law or rules protecting such Exculpated Parties from liability.

Article X.E Permanent Injunction.

The Confirmation Order shall permanently enjoin the commencement or prosecution by any Person, whether directly, derivatively, or otherwise, of any Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, losses, or liabilities released

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pursuant to the plan, including the Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, and liabilities released or exculpated in the plan or the Confirmation Order.

No Person or Entity may commence or pursue a Claim or Cause of Action, as applicable, of any kind against the Debtors, the Reorganized Debtors, the Exculpated Parties, or the Released Parties, as applicable, that relates to or is reasonably likely to relate to any act or omission in connection with, relating to, or arising out of a Claim or Cause of Action, as applicable, subject to Article X.B, Article X.C, Article X.D, and Article X.E hereof, without the Bankruptcy Court (i) first determining, after notice and a hearing, that such Claim or Cause of Action, as applicable, represents a colorable Claim of any kind, and (ii) specifically authorizing such Person or Entity to bring such Claim or Cause of Action, as applicable, against any such Debtor, Reorganized Debtor, Exculpated Party, or Released Party, as applicable. At the hearing for the Bankruptcy Court to determine whether such Claim or Cause of Action represents a colorable Claim of any kind, the Bankruptcy Court may, or shall if any Debtor, Reorganized Debtor, Exculpated Party, Released Party, or other party in interest requests by motion (oral motion being sufficient), direct that such Person or Entity seeking to commence or pursue such Claim or Cause of Action file a proposed complaint with the Bankruptcy Court embodying such Claim or Cause of Action, such complaint satisfying the applicable Rules of Federal Procedure, including, but not limited to, Rule 8 and Rule 9 (as applicable), which the Bankruptcy Court shall assess before making a determination. For the avoidance of doubt, any party that obtains such determination and authorization and subsequently wishes to amend the authorized complaint or petition to add any claims or causes of action not explicitly included in the authorized complaint or petition must obtain authorization from the Bankruptcy Court before filing any such amendment in the court where such complaint or petition is pending. The Bankruptcy Court reserves jurisdiction to adjudicate any such claims to the maximum extent provided by applicable law.

Item 4. Acknowledgments. By signing this Ballot, the Holder (or authorized signatory of such Holder) acknowledges receipt of the Plan, the Disclosure Statement, and the other applicable solicitation materials, and certifies that

(i) it has the power and authority to vote to accept or reject the Plan;

(ii) it was the Holder (or is entitled to vote on behalf of such Holder) of the Claims described in Item 1 as of the Voting Record Date;

(iii) it has cast the same vote with respect to all of its Claims in the same Class as the Claims described in Item 1;

(iv) no other Ballots with respect to the Claims identified in Item 1 have been cast or, if any other Ballots have been cast with respect to such Claims, then any such earlier received Ballots are hereby revoked;

(v) all authority conferred or agreed to be conferred pursuant to this Ballot, and every obligation of the undersigned hereunder, shall be binding on the transferees,

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successors, assigns, heirs, executors, administrators, trustees in bankruptcy, and legal representatives of the undersigned, and shall not be affected by, and shall survive, the death or incapacity of the undersigned; and

(vi) the undersigned understands that an otherwise properly completed, executed, and timely returned Ballot failing to indicate either acceptance or rejection of the Plan, or indicating both acceptance and rejection of the Plan, will not be counted.

_____
Name of Holder

_____
Signature

_____
Name of Signatory and Title

_____
Name of Institution (if different than Holder)

_____
Street Address

_____
City, State, Zip Code

_____
Telephone Number

_____
E-mail Address

_____
Date Completed

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PLEASE COMPLETE, SIGN, AND DATE THIS BALLOT AND RETURN IT (WITH AN ORIGINAL SIGNATURE) *PROMPTLY* VIA FIRST CLASS MAIL (OR IN THE ENCLOSED REPLY ENVELOPE PROVIDED), OVERNIGHT COURIER, OR HAND DELIVERY TO:

Robertshaw Ballot Processing Center
c/o Kroll Restructuring Administration LLC
850 Third Avenue, Suite 412
Brooklyn, NY 11232

If you would like to coordinate hand delivery of your Ballot, please send an email to robertshawinfo@ra.kroll.com with "Robertshaw Ballot Delivery" in the subject line) at least 24 hours before your arrival at the address above and provide the anticipated date and time of your delivery.

OR

Submit your Ballot via the Balloting Agent's online portal at https://cases.ra.kroll.com/Robertshaw. Click on the "Submit E-Ballot" section of the website and follow the instructions to submit your Ballot.

IMPORTANT NOTE: You will need the following information to retrieve and submit your customized electronic Ballot:

Unique E-Ballot ID#: _____

The Balloting Agent's online portal is the sole manner in which Ballots will be accepted via electronic or online transmission. Ballots submitted by facsimile, email or other means of electronic transmission will not be counted.

Each Unique E-Ballot ID# is to be used solely for voting only those Claims described in Item 1 of your electronic Ballot. Please complete and submit an electronic Ballot for each Unique E-Ballot ID# you receive, as applicable.

Holders of Claims who cast a Ballot using the Balloting Agent's online portal should NOT also submit a paper Ballot.

IF THE BALLOTING AGENT DOES NOT *ACTUALLY RECEIVE* THIS BALLOT ON OR BEFORE JULY 26, 2024, AT 4:00 P.M., (PREVAILING CENTRAL TIME), (AND IF THE VOTING DEADLINE IS NOT EXTENDED), YOUR VOTE TRANSMITTED BY THIS BALLOT MAY BE COUNTED TOWARD CONFIRMATION OF THE PLAN ONLY IN THE DISCRETION OF THE DEBTORS.

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IF YOU HAVE ANY QUESTIONS REGARDING THIS BALLOT OR THE VOTING PROCEDURES, PLEASE CONTACT THE BALLOTING AGENT BY CALLING (646) 777-2308 (INTERNATIONAL) OR (844) 536-2001 (U.S./Canada, TOLL FREE) OR BY SENDING AN EMAIL TO ROBERTSHAWINFO@RA.KROLL.COM WITH **"ROBERTSHAW SOLICITATION INQUIRY"** IN THE SUBJECT LINE.

VOTING INFORMATION AND INSTRUCTIONS FOR COMPLETING THE BALLOT

1. Complete the Ballot by providing all of the information requested. Any Ballot that is illegible, contains insufficient information to identify the Holder, does not contain an original signature, or is unsigned will not be counted. You may return the Ballot by either of the following two methods:

   Use of Hard Copy Ballot. To ensure that your hard copy Ballot is counted, you must: (a) complete your Ballot in accordance with these instructions; (b) clearly indicate your decision either to accept or reject the Plan in the boxes provided in Item 2 of the Ballot; and (c) clearly sign and return your original Ballot in the enclosed pre-addressed, pre- paid envelope or via first class mail, overnight courier, or hand delivery to the following address:

   Robertshaw Ballot Processing Center
   c/o Kroll Restructuring Administration LLC
   850 Third Avenue, Suite 412
   Brooklyn, NY 11232

   Use of Online Ballot Portal. To ensure that your electronic Ballot is counted, please follow the instructions on the Debtors' case administration website at https://cases.ra.kroll.com/Robertshaw. You will need to enter your unique E-Ballot identification number indicated above. The online balloting portal is the sole manner in which Ballots will be accepted via electronic or online transmission. **Ballots will not be accepted by email or other electronic means (other than the online portal).**

   The Balloting Agent will tabulate all properly completed Ballots received on or before the Voting Deadline.

2. The following Ballots will not be counted in determining the acceptance or rejection of the Plan: (a) any Ballot that is illegible or contains insufficient information to permit the identification of the Holder; (b) any Ballot cast by a Person or Entity that does not hold a Claim or Interest in a Class that is entitled to vote on the Plan; (c) any unsigned Ballot; (d) any Ballot not marked to accept or reject the Plan, or marked both to accept and reject the Plan; or (e) any Ballot submitted by a party not entitled to cast a vote with respect to the Plan.

3. You must vote all your Class 5 General Unsecured Claims under the Plan either to accept or reject the Plan. Accordingly, if you return more than one Ballot voting different Class 5 General Unsecured Claims in a different manner than one another and you do not correct this before the Voting Deadline, none of your Class 5 Ballots will be counted. An otherwise

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properly executed Ballot that attempts to partially accept and partially reject the Plan will likewise not be counted.

4. If you elect not to grant the releases contained in Article X.C of the Plan, check the box in Item 3. Election to withhold consent to the releases contained in Article X.C of the Plan is at your option. If you submit your Ballot without the box in Item 3 checked, you will be deemed to consent to the releases set forth in Article X.C of the Plan to the fullest extent permitted by applicable law. If you voted to accept the Plan in Item 2 above, (i) you will be deemed to consent to the releases contained in Article X.C of the Plan to the fullest extent permitted by applicable law and (ii) if you checked this box, your election not to grant the releases will not be counted.

5. The Ballot does not constitute, and shall not be deemed to be, a proof of claim or interest or an assertion or admission of a Claim or Interest.

6. The Ballot is not a letter of transmittal and may not be used for any purpose other than to vote to accept or reject the Plan.

7. If you cast more than one Ballot voting the same Claim before the Voting Deadline, the last received, properly executed Ballot submitted to the Balloting Agent will supersede and revoke any prior Ballot, provided that, if a Holder timely submits a both a paper Ballot and electronic Ballot on account of the same Claim, the electronic Ballot shall supersede the paper Ballot.

8. If a Holder holds a Claim in a Class against multiple Debtors, a vote on their Ballot will apply to all Debtors against whom such Holder has a Claim in that Class.

9. For purposes of the numerosity requirement of section 1126(c) of the Bankruptcy Code, separate Claims held by a single Holder in a particular Class will be aggregated and treated as if such Holder held one Claim in such Class, and all votes related to such Claim will be treated as a single vote to accept or reject the Plan; *provided, however*, that if separate affiliated entities hold Claims in a particular Class, these Claims will not be aggregated and will not be treated as if such Holder held one Claim in such Class, and the vote of each affiliated entity will be counted separately as a vote to accept or reject the Plan.

10. In the event that (i) the Debtors revoke or withdraw the Plan, or (ii) the Confirmation Order is not entered or consummation of the Plan does not occur, this Ballot shall automatically be null and void and deemed withdrawn without any requirement of affirmative action by or notice to you.

11. There may be changes made to the Plan that do not cause material adverse effects on an accepting Class. If such non-material changes are made to the Plan, the Debtors will not resolicit votes for acceptance or rejection of the Plan.

12. NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR ADVICE, OR TO MAKE ANY REPRESENTATION, OTHER THAN WHAT IS CONTAINED IN THE MATERIALS MAILED WITH THIS BALLOT OR OTHER MATERIALS AUTHORIZED BY THE BANKRUPTCY COURT.

13. PLEASE RETURN YOUR BALLOT PROMPTLY TO THE BALLOTING AGENT IN THE ENVELOPE PROVIDED.

14. IF YOU HAVE RECEIVED A DAMAGED BALLOT OR HAVE LOST YOUR BALLOT, OR IF YOU HAVE ANY QUESTIONS CONCERNING THIS BALLOT OR THE VOTING PROCEDURES, PLEASE CALL THE BALLOTING AGENT AT (646) 777-2308 (INTERNATIONAL) OR (844) 536-2001 (U.S./CANADA, TOLL FREE) OR BY SENDING AN EMAIL TO ROBERTSHAWINFO@RA.KROLL.COM WITH "ROBERTSHAW SOLICITATION INQUIRY" IN THE SUBJECT LINE. PLEASE DO NOT DIRECT ANY INQUIRIES TO THE BANKRUPTCY COURT.

15. THE BALLOTING AGENT IS NOT AUTHORIZED TO AND WILL NOT PROVIDE LEGAL ADVICE.

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