Court File No. CV-22-00685631-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

AND IN THE MATTER OF PALADIN LABS CANADIAN HOLDING INC. AND PALADIN LABS INC.

APPLICATION OF PALADIN LABS INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Applicant

MOTION RECORD
(Motion for Third Supplemental Order
Returnable November 29, 2022)

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ONTARIO
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Applicant

NOTICE OF MOTION
Motion for Third Supplemental Order
(Returnable November 29, 2022)

Paladin Labs Inc. ("**Paladin**"), in its capacity as the foreign representative (the "**Foreign Representative**") in respect of the proceedings commenced by Endo International plc ("**Endo Parent**") and certain of its affiliates, including Paladin and Paladin Labs Canadian Holding Inc. (together with Paladin, the "**Canadian Debtors**"), under chapter 11 of the United States Code (the "**Chapter 11 Cases**"), will make a motion before Chief Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on November 29, 2022, at 11:00 a.m. or as soon thereafter as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard:

☐ In writing under subrule 37.12.1 (1);
☐ In writing as an opposed motion under subrule 37.12.1(4);
☐ In person;
☐ By telephone conference;
☒ By video conference;

at a Zoom link to be provided on CaseLines in these proceedings.

THE MOTION IS FOR:

1. An Order (the "**Third Supplemental Order**") substantially in the form contained in the Motion Record of the Applicant, among other things, recognizing and enforcing certain orders entered by the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**") in the Chapter 11 Cases, pursuant to section 49 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("**CCAA**"), and granting certain related relief; and

2. Such further and other relief as counsel may request and this Court may permit.

THE GROUNDS FOR THE MOTION are as follows:

The Chapter 11 Cases and the Canadian Proceedings

3. On August 16, 2022, Endo Parent and certain of its affiliates, including the Canadian Debtors (collectively, the "**Debtors**"), commenced the Chapter 11 Cases by filing voluntary petitions with the Bankruptcy Court.[1]

4. The Debtors are pursuing a restructuring under the terms of a restructuring support agreement with the Ad Hoc First Lien Group that contemplates a credit bid acquisition of substantially all of the Debtors' assets by an entity formed by the Ad Hoc First Lien Group, which will serve as the Stalking Horse Bid in a post-petition bidding and auction process to be conducted in the Chapter 11 Cases.

[1] Capitalized terms used and not defined herein, unless otherwise indicated, have the meanings given to them in the Affidavit of Andrew Harmes sworn November 23, 2022 (the "**Harmes Affidavit**") or the affidavit of Daniel Vas sworn August 17, 2022.

5. Following a hearing on August 18, 2022 in respect of the various "First Day Motions" filed by the Debtors, the Bankruptcy Court granted certain interim and/or final orders (the "**First Day Orders**"), including an order authorizing Paladin to act as the Foreign Representative for the purpose of these Canadian recognition proceedings.

6. On August 19, 2022, Chief Justice Morawetz granted: an Initial Recognition Order (Foreign Main Proceedings) (the "**Initial Recognition Order**"), among other things, recognizing Paladin as the "foreign representative" and the Chapter 11 Cases as a "foreign main proceeding" as those terms are defined in section 45 of the CCAA, and (ii) a Supplemental Order (Foreign Main Proceedings), among other things, (a) granting recognition to ten First Day Orders, (b) ordering a stay of proceedings in respect of the Canadian Debtors and certain of their affiliates that are named as defendants in Canadian litigation proceedings, and (c) appointing KSV Restructuring Inc. as information officer in respect of the Canadian recognition proceedings (the "**Information Officer**").

7. On October 13, 2022, this Court granted a Second Supplemental Order recognizing and enforcing certain "Second Day Orders", entered by the Bankruptcy Court following a hearing held on September 28, 2022.

8. Since the granting of the Second Supplemental Order in these proceedings, the Bankruptcy Court has entered the following orders which the Foreign Representative seeks to have recognized by this Court pursuant to the Third Supplemental Order:

(a) *Order (I) Authorizing and Approving Procedures For (A) The Use, Sale, Transfer, or Abandonment of De Minimis Assets Free and Clear of Liens, Claims, Interests, and Encumbrances Without Further Order of Court, and (B) The Acquisition of De Minimis Assets; (II) Authorizing Payment of Related Fees and Expenses; and (III) Granting Related Relief* (the "**De Minimis Assets Order**");

(b) *Errata Order Regarding Memorandum Decision and Order Granting in Part the Motion of the Debtors for an Order (I) Waiving the Requirement That Each Debtor Files a Separate List of its 20 Largest Unsecured Creditors; (II) Authorizing the Debtors to File a Single Consolidated List of Their 50 Largest Unsecured, Non-Insider Creditors; (III) Authorizing the Debtors and the Claims and Noticing Agent to Redact Personally Identifiable Information for Individuals; (IV) Authorizing the Claims and Noticing Agent to Withhold Publication of Claims Filed by Individuals Until Further Order of the Court; (V) Establishing Procedures for Notifying Creditors of the Commencement of the Debtors' Chapter 11 Cases; and (VI) Granting Related Relief* (the "**Creditor Listing Order**");

(c) *Amended Final Order (I) Authorizing Debtors to Use Cash Collateral; (II) Granting Adequate Protection to Prepetition Secured Parties; (III) Modifying Automatic Stay; and (IV) Granting Related Relief* (the "**Final Cash Collateral Order**");

(d) *Combined Third and Final Order (I) Authorizing Debtors to (A) Pay Prepetition Wages, Salaries, Employee Benefits and Other Compensation and (B) Continue Employee Benefit Programs and Pay Related Administrative Obligations; (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers; and (III) Granting Related Relief* (the "**Combined Wages Order**"); and

(e) *Final Order (I) Authorizing Debtors to (A) Pay Prepetition Wages, Salaries, Employee Benefits and Other Compensation and (B) Continue Employee Benefit Programs and Pay Related Administrative Obligations; (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers; and (III) Granting Related Relief* (the "**Final Wages Order**").

Recognition of the Orders is Appropriate

9. Section 49 of the CCAA provides that, if an order recognizing a foreign proceeding is made, the Court may make any order that it considers appropriate if it is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors.

10. The proposed De Minimis Assets Order authorizes the Debtors to, among other things: (a) use, sell, transfer or abandon assets or business lines of *de minimis* value that are not included in the Stalking Horse Bid (the "**De Minimis Assets**") to a single party or group of related parties with an aggregate sale price of not more than US$2 million, free and clear of liens and without the

need for further Court approval, with such liens attaching to the applicable proceeds; and (b) acquire De Minimis Assets in any individual transaction or series of related transactions with an aggregate sale prices of not more than US$2 million without the need for further Court approval.

11. The proposed De Minimis Assets Order prescribes De Minimis Asset Transaction Procedures governing the use, sale, acquisition or transfer of De Minimis Assets by the Debtors, and De Minimis Asset Abandonment Procedures governing the abandonment of De Minimis Assets by the Debtors.

12. Paragraph 5 of the Initial Recognition Order provides that, except with leave of the Court, each of the Canadian Debtors is prohibited from selling or otherwise disposing of (a) outside of the ordinary course of its business, any of its property in Canada that relates to the business, and (b) any of its other property in Canada.

13. The proposed Third Supplemental Order grants recognition to the De Minimis Assets Order and authorizes the Canadian Debtors to deal with their Property in accordance with the De Minimis Assets Order notwithstanding paragraph 5 of the Initial Recognition Order, provided that a Canadian Debtor shall provide not less than seven days' advance notice to the Information Officer prior to taking any action with respect to its Property pursuant to the De Minimis Assets Order.

14. Recognition of the De Minimis Assets Order pursuant to the foregoing approach is consistent with the principles of comity and the recognition of Bankruptcy Court orders granted in a foreign main proceeding; appropriate to enable the Canadian Debtors to deal with any De Minimis Assets in an efficient manner; and protective of the rights of Canadian stakeholders by virtue of the requirement for advance notice to the Information Officer.

15. The Creditor Listing Order and the Corrected Memorandum Decision authorize the Debtors, including the Canadian Debtors, to redact certain personally identifiable information of individual creditors and stakeholders from papers made publicly available in connection with the Chapter 11 Cases.

16. The Final Cash Collateral Order authorizes the Debtors, including the Canadian Debtors, to use their cash collateral to fund their business operations and restructuring process, subject to the terms of the Final Cash Collateral Order and the Approved Budget (as defined therein).

17. The Combined Wages Order authorizes the Debtors, including the Canadian Debtors, on a final basis, to pay all amounts required under or related to the Compensation and Benefits Program and Corporate IC Plan and Sales IC Plan, subject to certain interim restrictions.

18. The Final Wages Order authorizes the Debtors, including the Canadian Debtors, to continue to honour their obligations arising under their Compensation and Benefits Programs and other specified incentive, retention and severance programs, subject to the terms of the Final Wages Order.

19. Recognition of the foregoing orders by this Court pursuant to the Third Supplemental Order is appropriate to preserve the value of the Canadian Debtors, enable the continued operation of the Canadian business in the ordinary course, and ensure judicial coordination and comity while the Endo group pursues a global restructuring in the Chapter 11 Cases.

General

20. The provisions of the CCAA, including Part IV and section 49 thereof.

21. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

22. The Harmes Affidavit;

23. The Second Report of the Information Officer; and

24. Such further and other evidence as counsel may advise and this Court may permit.

Date: November 23, 2022

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Court File No. CV-19-00628233-00CL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

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Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

NOTICE OF MOTION
(Returnable November 29, 2022)

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ONTARIO
SUPERIOR COURT OF JUSTICE
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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

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Applicant

AFFIDAVIT OF ANDREW HARMES

(Sworn November 23, 2022)

I, Andrew Harmes, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am lawyer with the law firm Goodmans LLP, counsel to Paladin Labs Inc. ("**Paladin**") and Paladin Labs Canadian Holding Inc. (together with Paladin, the "**Canadian Debtors**"), in the above noted proceedings. As such, I have knowledge of the matters deposed to herein. Capitalized terms used and not defined in this affidavit have the meanings given to them in the Affidavit of Daniel Vas sworn August 17, 2022, a copy of which is attached (without exhibits) to this affidavit as Exhibit "A".

2. On August 16, 2022 (the "**Petition Date**"), Endo International plc and certain of its affiliates, including the Canadian Debtors (collectively, the "**Debtors**") commenced cases (the "**Chapter 11 Cases**") under chapter 11 of the United States Code (the "**Bankruptcy Code**") by

filing voluntary petitions in the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**").

3. Paladin, in its capacity as the foreign representative of the Chapter 11 Cases (the "**Foreign Representative**"), brought an application before the Ontario Superior Court of Justice (Commercial List) (the "**Court**") for recognition of the Chapter 11 Cases under Part IV of the *Companies' Creditors Arrangement Act* (the "**CCAA**"). On August 19, 2022, Chief Justice Morawetz granted:

(a) an Initial Recognition Order (Foreign Main Proceeding) (the "**Initial Recognition Order**"), *inter alia*, recognizing the Chapter 11 Cases as a "foreign main proceeding" pursuant to section 45 of the CCAA; and

(b) a Supplemental Order (Foreign Main Proceeding) (the "**First Supplemental Order**"), *inter alia*, ordering a stay of proceedings in respect of the Canadian Debtors and the Canadian Litigation Defendants and appointing KSV Restructuring Inc. as information officer in respect of these Canadian recognition proceedings (the "**Information Officer**").

4. Copies of the Initial Recognition Order and the First Supplemental Order (without schedules other than Schedule "A") are attached hereto as Exhibits "B" and "C", respectively.

5. On October 13, 2022, this Court granted a Second Supplemental Order recognizing and enforcing certain "Second Day Orders" entered by the Bankruptcy Court following a hearing held on September 28, 2022 (the "**Second Day Hearing**").

6. This affidavit is filed in support of a motion made by the Foreign Representative for an Order (the "**Third Supplemental Order**") recognizing and enforcing in Canada the following orders entered by the Bankruptcy Court in the Chapter 11 Cases:

(a) *Order (I) Authorizing and Approving Procedures For (A) The Use, Sale, Transfer, or Abandonment of De Minimis Assets Free and Clear of Liens, Claims, Interests, and Encumbrances Without Further Order of Court, and (B) The Acquisition of De Minimis Assets; (II) Authorizing Payment of Related Fees and Expenses; and (III) Granting Related Relief* (the "**De Minimis Assets Order**");

(b) *Errata Order Regarding Memorandum Decision and Order Granting in Part the Motion of the Debtors for an Order (I) Waiving the Requirement That Each Debtor Files a Separate List of its 20 Largest Unsecured Creditors; (II) Authorizing the Debtors to File a Single Consolidated List of Their 50 Largest Unsecured, Non-Insider Creditors; (III) Authorizing the Debtors and the Claims and Noticing Agent to Redact Personally Identifiable Information for Individuals; (IV) Authorizing the Claims and Noticing Agent to Withhold Publication of Claims Filed by Individuals Until Further Order of the Court; (V) Establishing Procedures for Notifying Creditors of the Commencement of the Debtors' Chapter 11 Cases; and (VI) Granting Related Relief* (the "**Creditor Listing Order**");

(c) *Amended Final Order (I) Authorizing Debtors to Use Cash Collateral; (II) Granting Adequate Protection to Prepetition Secured Parties; (III) Modifying Automatic Stay; and (IV) Granting Related Relief* (the "**Final Cash Collateral Order**");

(d) *Combined Third and Final Order (I) Authorizing Debtors to (A) Pay Prepetition Wages, Salaries, Employee Benefits and Other Compensation and (B) Continue Employee Benefit Programs and Pay Related Administrative Obligations; (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers; and (III) Granting Related Relief* (the "**Combined Wages Order**"); and

(e) *Final Order (I) Authorizing Debtors to (A) Pay Prepetition Wages, Salaries, Employee Benefits and Other Compensation and (B) Continue Employee Benefit Programs and Pay Related Administrative Obligations; (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers; and (III) Granting Related Relief* (the "**Final Wages Order**").

7. The De Minimis Assets Order, the Creditor Listing Order, the Final Cash Collateral Order, the Combined Wages Order and the Final Wages Order are each described below.

A. De Minimis Assets Order

8. The De Minimis Assets Order is described at paragraphs 52 to 56 of the affidavit of Daniel Vas sworn October 7, 2022. The Debtors' motion for the De Minimis Assets Order was granted by the Bankruptcy Court at the Second Day Hearing, but the De Minimis Assets Order had not yet been entered by the Bankruptcy Court at the time that this Court granted the Second Supplemental Order.

9. The Bankruptcy Court entered the De Minimis Assets Order on November 16, 2022, a copy of which is attached hereto as Exhibit "D".

10. The De Minimis Assets Order authorizes the Debtors to, among other things: (a) use, sell, acquire, invest or transfer assets or business lines of *de minimis* value that are not included in the Stalking Horse Bid (the "**De Minimis Assets**") in any individual transaction or series of related transactions to a single party or group of related parties with an aggregate sale price of not more than US$2 million, free and clear of Liens (as defined in the De Minimis Assets Order) and without the need for further Court approval, with such Liens attaching to the applicable proceeds with the same validity and priority as had attached to the De Minimis Assets immediately prior to the use, sale, or transfer; (b) acquire De Minimis Assets in any individual transaction or series of related transactions from a single seller or a group of related sellers with an aggregate sale prices of not more than US$2 million without the need for further Court approval; (c) abandon a De Minimis Asset to the extent that a sale thereof cannot be consummated at a value greater than the cost of liquidating such De Minimis Asset; and (d) pay the reasonable and necessary fees and expenses incurred in connection with the use, sale, transfer or acquisition of De Minimis Assets.

11. The De Minimis Assets Order defines and prescribes (a) De Minimis Asset Transaction Procedures governing the use, sale, transfer or acquisition of De Minimis Assets by the Debtors, and (b) De Minimis Asset Abandonment Procedures governing the abandonment of De Minimis Assets by the Debtors. These procedures provide certain consultation rights in favour of the Ad Hoc First Lien Group, the Official Committee of Unsecured Creditors (the "**UCC**") and the Official Committee of Opioid Claimants (the "**OCC**") and, in the case of (a) the use, sale, acquisition, investment or transfer of De Minimis Assets with a transaction value greater than US$500,000, or (b) the abandonment of De Minimis Assets, the Debtors are required to provide prescribed advance notice to certain notice parties set out in the De Minimis Assets Order prior to taking such actions.

12. Paragraph 5 of the Initial Recognition Order provides that, except with leave of the Court, each of the Canadian Debtors is prohibited from selling or otherwise disposing of (a) outside of the ordinary course of its business, any of its property in Canada that relates to the business, and (b) any of its other property in Canada.

13. The proposed Third Supplemental Order grants recognition of the De Minimis Assets Order and authorizes the Canadian Debtors to deal with their Property in accordance with the De Minimis Assets Order notwithstanding paragraph 5 of the Initial Recognition Order, provided that a Canadian Debtor shall provide not less than seven days' advance notice to the Information Officer prior to taking any action with respect to its Property pursuant to the De Minimis Assets Order. This will provide the Information Officer with the opportunity to review and consider any such transaction and, if necessary, raise any objections with the Canadian Debtors or this Court prior to the completion of the applicable transaction.

B. Creditor Listing Order

14. At the First Day Hearing, the Office of the United States Trustee (the "**U.S. Trustee**") expressed concerns with respect to certain of the relief sought in the Debtors' motion for the Creditor Listing Order (the "**Creditor Listing Motion**"), a copy of which is attached as Exhibit "E" to the affidavit of Nargis Fazli sworn August 18, 2022 filed in these proceedings. In particular, the U.S. Trustee objected to the scope of the Debtors' proposed redactions to personally identifiable information ("**PII**") in various lists, schedules and other documents to be made publicly available in the Chapter 11 Cases.

15. On August 24, 2022, the Bankruptcy Court entered an order granting certain unopposed relief requested by the Debtors in the Creditor Listing Motion.

16. In response to the concerns raised by the U.S. Trustee, the Debtors subsequently narrowed the relief requested pursuant to the Creditor Listing Motion with respect to the redaction of PII. A copy of the Debtors' Reply dated September 26, 2022 in support of the Creditor Listing Motion is attached hereto as Exhibit "E".

17. I understand that the U.S. Trustee objected to the Creditor Listing Order at the Second Day Hearing on the issue of whether it was appropriate for the Debtors to publicly redact the home and email addresses of individual stakeholders (such as creditors and employees) and the names and home and email addresses of individual litigation claimants. The OCC supported the redaction of PII as sought by the Debtors in the Creditor Listing Motion. The Bankruptcy Court reserved its decision at the Second Day Hearing.

18. On November 2, 2022, Judge Garrity issued a Memorandum Decision and Order (the "**Memorandum Decision**") granting the relief sought by the Debtors in the revised Creditor

Listing Motion. The Creditor Listing Order was issued by the Bankruptcy Court on November 11, 2022 to revise the Memorandum Decision (as revised, the "**Corrected Memorandum Decision**") to address the inadvertent omission of Individual Litigation Claimants in Canada from the scope of authorized redactions in the Memorandum Decision. A copy of the Creditor Listing Order is attached hereto as Exhibit "F". The Corrected Memorandum Decision is attached as Exhibit "A" to the Creditor Listing Order.

19. The Creditor Listing Order and the Corrected Memorandum Decision authorize the Debtors and Kroll Restructuring Administration LLC, as claims and noticing agent (the "**Claims and Noticing Agent**"), to:

(a) redact the home addresses and email addresses of Individual Non-Litigation Claimants and Equity Holders (as those terms are defined in the Creditor Listing Motion) located in the United States, Canada, the United Kingdom and the European Union from any paper filed with the Bankruptcy Court and/or otherwise made publicly available by the Debtors and the Claims and Noticing Agent; and

(b) redact the names, home addresses, and email addresses of the Individual Litigation Claimants located in the United States, Canada, the European Union and the United Kingdom, and the Named Individual Australian Litigation Claimants (as those terms are defined in the Creditor Listing Motion), from any paper filed with the Bankruptcy Court and/or otherwise made publicly available by the Debtors and the Claims and Noticing Agent.

20. The Creditor Listing Order and Corrected Memorandum Decision provide that the Debtors will provide unredacted filings to (x) the Bankruptcy Court, the U.S. Trustee, the UCC, the OCC

and any other party designated by further order of the Bankruptcy Court, and (y) any other party in interest upon request made to the Debtors that the Debtors determine in good faith is reasonably related to the Chapter 11 Cases.

C. Final Cash Collateral Order

21. The Final Cash Collateral Order was entered by the Bankruptcy Court on October 20, 2022 following a hearing on October 19, 2022, and was amended on October 27, 2022. A copy of the Final Cash Collateral Order (as amended) is attached hereto as Exhibit "G".

22. The Final Cash Collateral Order was entered on an unopposed basis, after objections of the UCC, the OCC and certain lenders holding first lien obligations of the Debtors who were not signatories to the RSA were resolved through consensual amendments agreed to by the Debtors and the Ad Hoc First Lien Group in advance of the hearing. Capitalized terms used in this Section C and not otherwise defined have the meanings given to them in the Final Cash Collateral Order.

23. The Final Cash Collateral Order authorizes the Debtors' use of Cash Collateral (consisting of substantially all of the Debtors' cash and as further defined in the Final Cash Collateral Order), during the period beginning on the Petition Date and ending on a Termination Date, in a manner consistent with the Final Cash Collateral Order and the Approved Budget. The Approved Budget may be modified from time to time by the Debtors with the prior written consent of the Ad Hoc First Lien Group, on reasonable notice to the Administrative Agent, the Ad Hoc Cross-Holder Group, the Committee Advisors, and the FCR Advisors. The Debtors are required to use Cash Collateral in accordance with the Approved Budget, subject to Permitted Variances tested bi-weekly (every other Friday), one week in arrears. The Debtors shall not permit: (a) for each applicable Budget Period, aggregate Actual Disbursements (excluding certain specified

disbursements) to be more than 120% of the projected disbursements set forth in the Approved Budget; and (b) the Debtors' unrestricted cash and cash equivalents to be less than US$600 million at the end of any week (the "**Minimum Liquidity Amount**").

24. To protect their rights in the Prepetition Collateral to the extent of any Diminution in Value as a result of the Debtors' use of Cash Collateral, the Final Cash Collateral Order grants adequate protection to the Prepetition First Lien Secured Parties and the Prepetition Second Lien Notes Secured Parties. The rights of all parties, including the Committees, with respect to whether there has been or will be any Diminution in Value of the Prepetition Collateral (including Cash Collateral), including how Diminution in Value is to be measured or determined, are fully reserved and preserved pursuant to the Final Cash Collateral Order.

25. The adequate protection granted in favour of the Prepetition First Lien Secured Parties includes:

(a) the granting of first-priority security interests (defined as the "**First Lien Adequate Protection Liens**") for the benefit of the Prepetition First Lien Secured Parties in (i) the Prepetition Collateral, and (ii) all of the Debtors' present and after-acquired real and personal property and rights of any kind or nature, wherever located (with certain exceptions and as defined collectively in the Final Cash Collateral Order as the "**Collateral**"), subject only to the Permitted Prior Liens and the Carve Out;

(b) the granting of allowed superpriority administrative expense claims senior to any and all other administrative expense claims in the Chapter 11 Cases to the extent of any Diminution in Value (defined as the "**First Lien Adequate Protection Superpriority Claims**"), junior only to the Carve Out;

(c) First Lien Adequate Protection Payments, on the terms and conditions set forth in the Final Cash Collateral Order, consisting of cash payments by the Debtors of (i) all accrued and unpaid interest under the Credit Agreement and the First Lien Indentures to the date of the Interim Order, and (ii) on the last business day of each calendar month following entry of the Interim Order, all accrued and unpaid interest under the Credit Agreement (at the contractual rate plus 200 basis points) and under the First Lien Indentures (at the contractual rate plus 100 basis points); and

(d) payment of the pre-petition and post-petition reasonable and documented fees and expenses of the Administrative Agent, the First Lien Indenture Trustee, the First Lien Collateral Trustee, and the Ad Hoc First Lien Group, on the terms and conditions set forth in the Final Cash Collateral Order.

26. The adequate protection granted in favour of the Prepetition Second Lien Notes Secured Parties includes:

(a) the granting of security interests (defined as the "**Second Lien Adequate Protection Liens**") on the Prepetition Collateral and the Collateral, junior only to the Permitted Prior Liens, the Carve Out, the First Lien Adequate Protection Liens and the Prepetition First Liens;

(b) the granting of allowed superpriority administrative expense claims senior to any and all other administrative expense claims in the Chapter 11 Cases to the extent of any Diminution in Value, junior to the Carve Out and the First Lien Adequate Protection Superpriority Claims; and

(c) payment of the pre-petition and post-petition reasonable and documented fees and expenses of the Second Lien Indenture Trustee, the Second Lien Collateral Trustee, and the Ad Hoc Cross-Holder Group, on the terms and conditions set forth in the Final Cash Collateral Order.

27. The Final Cash Collateral Order provides that the Carve Out is senior and in priority to all liens and claims securing the Prepetition Secured Indebtedness, the Adequate Protection Liens, the Adequate Protection Superpriority Claims, any claims arising under section 507(b) of the Bankruptcy Code, and any and all other forms of adequate protection, liens, or claims securing the Prepetition Secured Indebtedness.

28. As set out in additional detail in the Final Cash Collateral Order, the Carve Out is the sum of: (a) the fees and expenses of the Clerk of the Bankruptcy Court, the Office of the U.S. Trustee and any appointed trustee, in each case in accordance with applicable Bankruptcy Code provisions; (b) the allowed unpaid fees and expenses of the Debtor Professionals, the Committee Professionals and the FCR Professionals (collectively, the "**Professional Persons**") at any time before or on the first business day following delivery by the Ad Hoc First Lien Group of a Carve Out Trigger Notice (which notice may be delivered following the occurrence and during the continuation of a Termination Event); (c) the allowed fees and expenses of the Professional Persons in an aggregate amount not to exceed US$25 million incurred after the first business day following delivery by the Ad Hoc First Lien Group of a Carve-Out Trigger Notice; and (d) all amounts required to be paid by the Debtors to their investment banker, PJT Partners LP, and the transaction fees (if any) earned by the Committee Professionals or the FCR Professionals and payable under applicable Bankruptcy Code provisions.

29. The Debtors' right to use Cash Collateral pursuant to the Final Cash Collateral Order shall automatically cease (except for purposes of funding the Carve Out as described in the Final Cash Collateral Order) on the Termination Date, being the earlier of (a) the effective date of any chapter 11 plan with respect to the Debtors confirmed by the Bankruptcy Court, and (b) five business days from the date on which written notice of the occurrence of any Termination Event is given by the Ad Hoc First Lien Group to the Debtors' counsel, each Committee's counsel, the FCR's counsel and the U.S. Trustee. The Termination Events set forth in the Final Cash Collateral Order include, among other things:

(a) the Debtors' failure to comply with an Approved Budget (except with respect to Permitted Variances) or to maintain the Minimum Liquidity Amount;

(b) the Debtors file a chapter 11 plan that is not acceptable to the Ad Hoc First Lien Group; or

(c) the RSA between the Debtors and the Ad Hoc First Lien Group is terminated in accordance with its terms.

30. The Final Cash Collateral Order includes many other terms and provisions, including those providing that:

(a) the respective rights of all parties with respect to the use and application of any Unencumbered Cash, if any, toward, among other things, the payment of administrative expense claims and claims from and after the Petition Date, are reserved;

(b) the stipulations, admissions and waivers contained in the Final Cash Collateral Order, including the Debtors' Stipulations, shall be binding upon all parties in interest unless an adversary proceeding or contested matter is filed by (i) any Committee or the FCR on or prior to January 20, 2023, or (ii) any other party in interest with proper standing within 75 calendar days of the entry of the Final Cash Collateral Order, provided that the Committees and the FCR will not object to entry of any bidding procedures order on the basis that the Challenge Period is pending;

(c) none of the Collateral, the Prepetition Collateral or the Carve Out may be used for certain prescribed activities, including, without limitation, to investigate or pursue certain claims against any of the Prepetition Secured Parties or to invalidate or subordinate the Prepetition Secured Indebtedness or the Prepetition Liens, provided that no more than (i) US$1 million of the proceeds of the Collateral or the Prepetition Collateral (including the Cash Collateral) in the aggregate may be used by any Committee, and (ii) US$50,000 of the proceeds of the Collateral or the Prepetition Collateral (including the Cash Collateral) in the aggregate may be used by the FCR, in each case to investigate, during the Challenge Period, the validity and enforceability of the claims, liens or interest held by the Prepetition Secured Parties related to the Prepetition Secured Indebtedness; and

(d) the First Lien Collateral Trustee and the Second Lien Collateral Trustee may credit bid up to the full amount of their applicable secured claims, in each case subject to and in accordance with the Prepetition Documents and the Intercreditor Agreements, provided that all rights of the Committees and the FCR with respect

to credit bidding and/or any credit bid are fully reserved as described in the Final Cash Collateral Order.

D. Combined Wages Order and Final Wages Order

31. The *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Pay Prepetition Wages, Salaries, Employee Benefits, and Other Compensation, and (B) Continue Employee Benefits Programs and Related Administrative Obligations; (II) Authorizing Financial Institutions to Honor and Process Related Check and Transfers; and (III) Granting Related Relief* (the "**Wages Motion**") is attached as Exhibit "F" to the affidavit of Nargis Fazli sworn August 18, 2022 filed in these proceedings. Capitalized terms used in this Section D and not otherwise defined have the meanings given to them in the Wages Motion.

32. The Interim Wages Order entered by the Bankruptcy Court on August 19, 2022 was recognized by this Court pursuant to the First Supplemental Order. The Debtors obtained further interim relief from the Bankruptcy Court pursuant to three interim orders, including the Combined Wages Order, while they engaged in discussions with stakeholders to resolve various objections with respect to the granting of all requested relief in the Wages Motion on a final basis.

33. The Combined Wages Order was entered by the Bankruptcy Court on October 18, 2022. A copy of the Combined Wages Order is attached hereto as Exhibit "H".

34. The Combined Wages Order granted certain interim relief with respect to the Debtors' LTIP, Non-Insider Retention Programs, and Severance Plan, and final relief with respect to the other relief requested in the Wages Motion. The Combined Wages Order authorizes the Debtors to, among other things and subject to the Cash Collateral Order:

(a) on a final basis, pay all amounts required under or related to the Compensation and Benefits Programs, including any Prepetition Employee Obligations, provided that the LTIP, Non-Insider Retention Programs and Severance Plan are approved on a further interim basis and payments thereunder during the Third Interim Period (as defined in the Combined Wages Order) ending November 10, 2022 are limited to US$93,156 in the aggregate as set forth on a schedule to the Combined Wages Order;

(b) on a final basis, pay all amounts required under or related to the Corporate IC Plan and Sales IC Plans, including any related Prepetition Employee Obligations associated therewith; and

(c) on a final basis, subject to the interim restrictions set forth above in respect of the LTIP, Non-Insider Retention Programs, and Severance Plan, continue to pay and honour their obligations arising under or related to their Compensation and Benefits Programs as such Compensation and Benefits Programs were in effect as of the Petition Date and, upon notice to counsel to the Ad Hoc First Lien Group and counsel to any statutory committee appointed in the Chapter 11 Cases, to amend, renew, replace, modify, revise, supplement and/or terminate such Compensation and Benefits Programs in the ordinary course of business, provided that the Debtors

shall consult with the Ad Hoc First Lien Group and any statutory committees prior to implementing any material modifications.

35. The Bankruptcy Court conducted a hearing on November 10, 2022 to hear the Debtors' motion for the Final Wages Order. In advance of the hearing, the Debtors were able to reach agreement with the UCC and the OCC on the revised form of Final Wages Order. The U.S. Trustee continued to object to final relief with respect to each of the LTIP, the Non-Insider Retention Programs, and the Severance Plan. On November 14, 2022, Judge Garrity rendered a *Memorandum Decision Authorizing Debtors to Continue Certain Employee Benefit Programs and Related Administrative Obligations* (the "**Wages Motion Decision**") overruling the objections of the U.S. Trustee and approving the Final Wages Order in the form sought by the Debtors.

36. A copy of the Wages Motion Decision is attached hereto as Exhibit "I". A copy of the Final Wages Order entered by the Bankruptcy Court on November 15, 2022 is attached hereto as Exhibit "J".

37. The Final Wages Order authorizes the Debtors to, among other things and subject to the Cash Collateral Order:

(a) continue to pay and honour their obligations arising under or related to their Compensation and Benefits Programs as such Compensation and Benefits Programs were in effect as of the Petition Date and, upon notice to counsel to the Ad Hoc First Lien Group and counsel to any statutory committee appointed in the Chapter 11 Cases, to amend, renew, replace, modify, revise, supplement and/or terminate such Compensation and Benefits Programs in the ordinary course of

business, provided that the Debtors shall consult with the Ad Hoc First Lien Group, the UCC and the OCC prior to implementing any material modifications;

(b) pay all amounts required under or related to the LTIP, provided that LTIP grants issued in calendar year 2023 may not exceed US$40 million in the aggregate and shall be awarded and paid consistently with historical practices;

(c) pay all amounts required under or related to the Non-Insider Retention Programs, provided that payments made pursuant to the 2022 Retention Program shall be made on the later of (i) September 15, 2023 or (ii) the closing of a sale or sales of substantially all of the Debtors' assets pursuant to section 363 of the Bankruptcy Code (the "**Sale Closing**"), provided, however, that if the Sale Closing has not occurred by December 29, 2023, the Debtors are authorized to make such payments as of December 30, 2023;

(d) pay all amounts required under or related to the Severance Plan, including any related Severance Obligations, provided that payments made pursuant to the Severance Plan through the end of calendar year 2023 shall not exceed US$17 million in the aggregate, and provided further that the Debtors shall consult with the UCC and OCC prior to making any decision with respect to their businesses that would result in payments pursuant to the Severance Plan in excess of US$5 million; and

(e) forward any unpaid amounts on account of deductions or payroll taxes to the appropriate third-party recipients or taxing authorities in accordance with the Debtors' prepetition practices and policies.

38. The Final Wages Order also provides that, to the extent any specifically identified employee is determined by a final order of any court of competent jurisdiction to have (a) knowingly participated in any criminal misconduct in connection with their employment with the Debtors, or (b) been aware, other than from public sources, of acts or omissions of others that such specifically identified employee knew at the time were fraudulent or criminal with respect to the Debtors' commercial practices in connection with the sale of opioids and failed to report such fraudulent or criminal acts or omissions internally or to law enforcement authorities at any time during their employment with the Debtors, such specifically identified employee shall not be eligible to receive any payments approved by the Final Wages Order or any related interim orders.

SWORN BEFORE ME over videoconference by Andrew Harmes stated as being located in the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario on November 23, 2022, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.

Erik Axell

Commissioner for Taking Affidavits
(or as may be)

Erik Axell
LSO# 85345O

Andrew Harmes

THIS IS EXHIBIT "A"
TO THE AFFIDAVIT OF ANDREW HARMES
SWORN BEFORE ME
THIS 23RD DAY OF NOVEMBER, 2022

Erik Axell

Commissioner for Taking Affidavits

Court File No. _____

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF PALADIN LABS CANADIAN HOLDING INC. AND PALADIN LABS INC.

APPLICATION OF PALADIN LABS INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Applicant

AFFIDAVIT OF DANIEL VAS
(Sworn August 17, 2022)

Court File No. _____

ONTARIO
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Applicant

AFFIDAVIT OF DANIEL VAS
(Sworn August 17, 2022)

I, Daniel Vas, of the City of Pincourt, in the Province of Quebec, MAKE OATH AND SAY:

1. I am a director of Paladin Labs Inc. ("**Paladin**") and Paladin Labs Canadian Holding Inc. ("**Holding**s" and, together with Paladin, the "**Canadian Debtors**"). I am also the Executive Director of Finance of Paladin and have served in that position since 2020. I have been employed by Paladin since 2008 and have served in a number of finance roles prior to becoming Executive Director of Finance. As such, I have knowledge of the matters deposed to herein, save where I have obtained information from others or public sources. Where I have obtained information from others or public sources I have stated the source of that information and believe it to be true. The Debtors do not waive or intend to waive any applicable privilege by any statement herein.

2. This affidavit is sworn in support of an application made by Paladin, in its capacity as the proposed foreign representative, for the following relief pursuant to Part IV of the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the "**CCAA**"):

(a) an order (the "**Interim Order**"), among other things, granting a stay of proceedings (the "**Interim Stay**") in respect of the Canadian Debtors and certain affiliates that are named as defendants in litigation proceedings in Canada (the "**Canadian Litigation Defendants**") pending the determination of the relief set out below;

(b) an order (the "**Initial Recognition Order**"), among other things:

(i) recognizing Paladin as the foreign representative (in such capacity, the "**Foreign Representative**") in respect of the cases (the "**Chapter 11 Cases**") commenced by Endo International plc and certain of its affiliates, including the Canadian Debtors (collectively, the "**Debtors**") in the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**") pursuant to chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"); and

(ii) recognizing the Chapter 11 Cases as a "foreign main proceeding" in respect of the Canadian Debtors; and

(c) an order (the "**Supplemental Order**"), among other things:

(i) recognizing certain First Day Orders (as defined below) issued by the Bankruptcy Court in the Chapter 11 Cases;

(ii) granting a stay of proceedings in respect of the Canadian Debtors and the Canadian Litigation Defendants;

(iii) appointing KSV Restructuring Inc. ("**KSV**") as information officer in respect of these proceedings (in such capacity, the "**Information Officer**"); and

(iv) granting an Administration Charge over the assets and property of the Canadian Debtors in favour of Canadian counsel to the Canadian Debtors, the Information Officer and counsel to the Information Officer.

I. BACKGROUND

3. The Canadian Debtors are part of a global specialty pharmaceutical group ("**Endo**" or the "**Company**") that produces and sells both generic and branded products. Endo International plc ("**Endo Parent**"), the ultimate parent of Endo's global enterprise, is an Irish publicly-traded company headquartered in Dublin, Ireland. Endo Parent trades on NASDAQ under the ticker "ENDP".

4. While Endo's global headquarters is in Ireland, the majority of its business is conducted in the United States. In 2021, Endo earned approximately 97% of its total consolidated revenue from customers in the United States. The Company's United States headquarters is located in Malvern, Pennsylvania and its primary U.S. manufacturing facility is located in Rochester, Michigan. Endo's executive leadership team is based at the Company's U.S. headquarters in Pennsylvania and the vast majority of the Company's workforce is based in the United States.

5. Paladin is Endo's Canadian operating company. Paladin sells specialty pharmaceutical products that it owns, licences or distributes to a variety of customers, including wholesalers, hospitals, governmental entities and pharmacies. Holdings is a holding company that owns all of the shares of Paladin. Both Paladin and Holdings are incorporated pursuant to the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 (the "**CBCA**"). Corporate profile reports for each of the Canadian Debtors are attached hereto as Exhibit "A".

6. An organizational chart of the Company is attached hereto as Exhibit "B".

7. The Canadian Debtors are integrated members of the broader Endo corporate group. Endo's senior leadership located in the United States exercises overarching strategic management and control of the entire corporate group, including the Canadian Debtors. The Canadian Debtors are guarantors of the Company's approximately $8.15 billion in secured and unsecured existing funded indebtedness, which indebtedness I understand will be a primary focus of the Company's restructuring efforts in the Chapter 11 Cases.

8. Endo's financial performance has been negatively impacted by a confluence of factors necessitating a comprehensive restructuring solution. The Company has experienced a recent significant decline in revenues as a result of an adverse litigation outcome and increased generic competition relating to Vasostrict, the Company's single largest product by revenue in 2021. In light of its current financial performance, Endo's highly-leveraged capital structure and related debt servicing costs have become unsustainable. In addition, there is a significant litigation overhang on the Company from the thousands of lawsuits related to its marketing and sale of prescription opioids, including the Canadian Opioid Lawsuits (as defined and described below).

9. In an effort to preserve the Company's value and effect a comprehensive restructuring solution, on August 16, 2022 (the "**Petition Date**"), the Debtors filed voluntary petitions for relief (the "**Petitions**") under chapter 11 of the Bankruptcy Code.

10. Copies of the Petitions of Paladin and Holdings filed with the Bankruptcy Court are attached hereto as Exhibits "C" and "D", respectively.

11. The Debtors' objective in the Chapter 11 Cases is to maximize value for stakeholders and ensure that Endo's business emerges as a strong and viable company. The Debtors have entered into a restructuring support agreement with the Ad Hoc First Lien Group (as defined below) that contemplates a credit bid acquisition of substantially all of the Debtors' assets by an entity formed by the Ad Hoc First Lien Group, which will serve as a stalking horse bid in a post-petition bidding and auction process to be conducted in the Chapter 11 Cases.

12. The Debtors have filed "First Day Motions" seeking various relief from the Bankruptcy Court, including administrative orders, orders necessary to continue the Company's business operations in the ordinary course, and the entry of an order authorizing Paladin to act as the Foreign Representative of the Chapter 11 Cases for the purpose of these Part IV recognition proceedings (the "**Foreign Representative Order**").

13. A hearing of the Bankruptcy Court in respect of the First Day Motions (the "**First Day Hearing**") is expected to be heard by the Bankruptcy Court in the coming days. If the Bankruptcy Court grants the requested orders, including the Foreign Representative Order, the orders are expected to be available shortly thereafter.

14. The Canadian Debtors are integrated members of the Endo corporate group and seek recognition of the Chapter 11 Cases in Canada to preserve the value of the Canadian Business (as defined below) while the Debtors pursue a global restructuring solution in the Chapter 11 Cases. To preserve the value of the Canadian Business until Paladin can be duly appointed as Foreign Representative by the Bankruptcy Court and return before this Court to seek the Initial Recognition Order and the Supplemental Order, Paladin is first seeking the proposed Interim Order. If granted, the proposed Interim Order will provide the Interim Stay in favour of the Canadian Debtors and the Canadian Litigation Defendants, and in doing so give effect to the stay of proceedings in the Chapter 11 Cases.

15. I am not aware of any foreign proceeding (as defined in subsection 45(1) of the CCAA) in respect of the Canadian Debtors other than the Chapter 11 Cases.

16. The Declaration of Mark Bradley, the Chief Financial Officer of Endo Parent, filed in support of the Chapter 11 Cases (the "**First Day Declaration**") is attached hereto (without exhibits) as Exhibit "E". The First Day Declaration provides a comprehensive overview of the Company and the events leading up to the commencement of the Chapter 11 Cases. This affidavit includes information with respect to the Company and its current circumstances of which I am informed as a result of reviewing the First Day Declaration. This affidavit provides a more general overview of the Company and the Chapter 11 Cases and focuses on providing this Court with information pertaining to the Canadian Debtors and the relief requested by Paladin on this application.

17. Capitalized terms used and not defined in this affidavit have the meanings given to them in the First Day Declaration.

18. Unless otherwise indicated, dollar amounts referenced in this affidavit are references to United States Dollars.

II. OVERVIEW OF THE COMPANY

19. Endo commenced operations in 1997 by acquiring certain pharmaceutical products, related rights, and assets from The DuPont Merck Pharmaceutical Company. Today, Endo develops, manufactures, and sells life-enhancing branded and generic products to customers in a wide range of medical fields, including endocrinology, orthopedics, urology, oncology, neurology, and other specialty areas.

20. Collectively, the Debtors have operations in the United States (which accounts for the vast majority of Endo's consolidated revenue), Canada, Ireland, the United Kingdom, and Luxembourg. Endo's non-debtor affiliates also have operations in India.

A. The Company's Business Segments

21. Endo has four principal operating segments: (a) Branded Pharmaceuticals, (b) Sterile Injectables, (c) Generic Pharmaceuticals, and (d) International Pharmaceuticals. All products, except for those in the International Pharmaceuticals segment, are sold in the U.S. only. A brief description of each segment is set forth below.

(i) Branded Pharmaceuticals

22. The Branded Pharmaceutical segment focuses on products that have inherent scientific, regulatory, legal, and technical complexities. Endo markets such products under recognizable brand names that are trademarked.

23. The Branded Pharmaceuticals segment includes a variety of branded products to treat and manage conditions in the areas of urology, orthopedics, endocrinology, and bariatrics, among others. The Branded Pharmaceuticals segment also includes Endo's medical aesthetics products portfolio and established products portfolio, which includes treatment offerings primarily related to pain management and urology.

(ii) *Sterile Injectables*

24. The Sterile Injectables segment includes a portfolio of more than 30 product families. The Company's portfolio includes several products that are protected by certain patent rights, as well as other generic products that are difficult to formulate or manufacture or face complex legal and regulatory challenges. Endo's sterile injectables products are manufactured in sterile facilities and are administered at hospitals, clinics and long-term care facilities.

(iii) *Generic Pharmaceuticals*

25. Endo's Generic Pharmaceuticals segment is focused on first-to-file or first-to-market opportunities that are difficult to formulate or manufacture. Generic products are the pharmaceutical and therapeutic equivalents of branded products and are generally marketed under their generic (chemical) names rather than their brand names. This segment includes over 130 generic product families. Endo's generic portfolio also contains certain authorized generics, which are generic versions of branded products licensed by brand drug companies.

(iv) *International Pharmaceuticals*

26. The International Pharmaceuticals segment relates to the sale of specialty pharmaceutical products outside of the United States, primarily in Canada. This business segment is carried on

primarily by Paladin (as described below). In 2021, Endo generated approximately 3% of its total revenue from customers outside of the United States.

B. The Company's Major Customers

27. The vast majority of Endo's sales are to three wholesale distributors – AmerisourceBergen Corporation, McKesson Corporation, and Cardinal Health, Inc. – which for the 2021 fiscal year and the first half of fiscal 2022 accounted for approximately 90% of Endo's revenues. In the U.S. market, these three distributors, in turn, sell Endo products to retail drug store chains, pharmacies, managed care organizations, and other end users.

C. Workforce

28. As of the Petition Date, the Debtors had approximately 1,560 employees in the United States. The Debtors also employ approximately 190 people outside of the United States. With the exception of certain production personnel at the Debtors' Rochester, Michigan manufacturing facility, Endo's employees are generally not represented by unions.

D. Regulatory Matters

29. In the United States, the Debtors are subject to regulatory oversight by numerous governmental entities, including, among others, the Food and Drug Administration (the "**FDA**"), the Department of Health and Human Services, the Drug Enforcement Agency, the Bureau of Customs and Border Protection, and state boards of pharmacy.The Debtors are also subject to numerous U.S. federal and state statutes and regulations, including the Federal Food, Drug, and Cosmetic Act and the Controlled Substances Act (the "**CSA**").

30. Certain of the Debtors' subsidiaries sell products that are "controlled substances" as defined in the CSA and implementing regulations. Consequently, the manufacture, shipment, storage, sale and use of such products are subject to a high degree of regulation.

III. THE CANADIAN DEBTORS AND THE CANADIAN BUSINESS

A. The Canadian Debtors

31. The Canadian Debtors are Paladin and Holdings. Each of the Canadian Debtors is incorporated under the CBCA. The registered head office of each of the Canadian Debtors is Suite 600, 100 Boulevard Alexis-Nihon, Montreal, Quebec. The directors of each of the Canadian Debtors are myself and Livio Di Francesco.

32. Paladin and its predecessors have operated a pharmaceutical business in Canada for 25 years. Paladin was acquired by the Company in 2014 pursuant to a CBCA plan of arrangement. Prior to being acquired by Endo, Paladin was a public company listed on the Toronto Stock Exchange.

33. Holdings is a holding company that does not carry on business. Its principal asset is its ownership interest in Paladin. All of the shares of Holdings are owned by Endo Luxembourg Finance Company I S.à.r.l. ("**Endo Luxembourg**"), a Luxembourg entity.

B. The Canadian Business

34. Paladin operates a specialty pharmaceutical business in Canada (the "**Canadian Business**") that is focused on the sale of branded pharmaceuticals to Canadian customers. Paladin has a portfolio of approximately 50 pharmaceutical branded products that address various

therapeutic needs, including those relating to attention deficit hyperactivity disorder, pain, women's health, oncology, neurology and transplantation.

35. Paladin is the owner of many of the branded products sold by the Canadian Business, including the related patents, trademarks and other intellectual property. The remainder of the products sold by the Canadian Business are either distributed by Paladin on behalf of other Endo entities, or licenced by Paladin from third party pharmaceutical companies. For third party licensors, Paladin provides "turnkey access" to the Canadian market through its customer relationships and regulatory compliance, marketing and sales, pricing, distribution, and customer service capabilities.

36. Paladin sells pharmaceutical products to a range of customers that act as intermediaries for end consumers. Paladin's customers include wholesalers, hospitals and hospital buying groups, governmental entities, pharmacies, and other purchasers. Ontario is Paladin's largest market based on both revenue and number of customers.

37. Paladin does not manufacture the pharmaceutical products sold by the Canadian Business. Endo Ventures Limited and other Endo entities manage the supply of, and provide Paladin with, products distributed by Paladin in Canada on behalf of such entities. With respect to products owned by Paladin or licensed from third parties, Paladin typically purchases such products from various contract manufacturing organizations ("**CMOs**") that manufacture products under contract with Paladin. In cases where Paladin licenses a particular product from a third party, the CMO is often the licensor of that product. The CMOs that manufacture the products sold by the Canadian Business are mostly located in Canada.

38. Paladin's business relationships with the CMOs are critical to managing the supply of pharmaceutical products sold in the Canadian Business. Paladin depends on a predictable and readily-available supply of pharmaceutical products to service customer demand, earn revenue and maintain and grow market share. Given their specialized manufacturing systems and the regulatory environment (which requires that CMOs be qualified to manufacture specific products), the CMOs cannot be readily changed or replaced.

39. Paladin has business relationships with a range of vendors who provide products, materials and services necessary for the operation of the Canadian Business. Paladin's vendors are primarily located in Canada, though Paladin also does business with vendors located outside of Canada. Approximately 50% of Paladin's Canadian purchases (by total dollar value) are from Ontario vendors.

40. Paladin uses the services of Accuristix, a third-party logistics service provider, for all product distribution aspects of the Canadian Business. Accuristix receives and warehouses Paladin's inventory at its Vaughan, Ontario warehouse and delivers products to Paladin's customers across Canada. Accordingly, all or substantially all of the products sold by the Canadian Business are received in and shipped from Ontario. The services provided by Accuristix are critical to the ongoing operation of the Canadian Business without disruption.

41. I understand that that the Debtors have filed a motion with the Bankruptcy Court seeking interim and final orders authorizing the Debtors, including Paladin, to pay certain prepetition amounts owing in respect of "Specified Trade Claims", including prepetition claims of lienholder vendors, vendors that have delivered goods or materials to the Debtors within twenty (20) days of the Petition Date, foreign vendors and other critical vendors. Paladin, as proposed Foreign

Representative, intends to seek recognition of such orders if they are granted by the Bankruptcy Court.

C. Canadian Office and Employees

42. The registered head office of the Canadian Debtors is located at leased premises in Montreal, Quebec. The Canadian Debtors do not own or lease any other real property in Canada.

43. Paladin has approximately 98 employees in Canada, approximately 77 of whom are office workers and approximately 21 of whom are sales representatives and field employees. None of Paladin's employees are unionized.

44. Paladin uses a payroll service provider, Automatic Data Processing, Inc. ("**ADP**"), to facilitate payment of its payroll, which is paid bi-weekly on Wednesdays. On the Monday before each payroll date, ADP initiates a direct debit from Paladin's bank account in an amount equal to Paladin's gross payroll obligations, including deductions and withholdings. On the payroll date, ADP initiates direct deposits to Paladin's employees and remits the deductions and withholdings to the relevant third parties. Paladin's employees are paid one week in arrears.

45. Paladin provides its employees with healthcare insurance benefits (including medical, vision, and dental benefits), life insurance, and short- and long-term disability benefits. Paladin's healthcare insurance benefit programs are administered by Medavie Blue Cross ("**MBC**"). These healthcare insurance providers pay the insured employees' healthcare costs directly to the applicable provider where available or reimburse the employee directly, in each case less any deductibles or similar payments. A monthly premium, based on a fixed rate per type of coverage, is then paid by Paladin to the applicable healthcare insurance provider. Paladin's life insurance

and long-term disability programs are offered through MBC. Paladin's short-term disability program is fully self-insured.

46. Paladin offers its employees a defined contribution plan through Manulife, under which Paladin makes matching contributions up to 4% of an employee's salary. Paladin also makes required contributions in respect of its employees to the Canada Pension Plan and the Quebec Pension Plan, as applicable.

47. Paladin participates in the Company's short-term performance based incentive compensation plan (the "**Corporate IC Plan**") and long-term incentive program (the "**LTIP**"). The Corporate IC Plan rewards eligible employees with annual bonuses, set as a percentage of an employee's base salary, based on Endo's consolidated financial performance and individual achievement on an annual basis. The LTIP is designed to align the interests of eligible employees and the Company through the grant of compensation that vests over a period of time. Historically, LTIP compensation was granted in the form of Endo Parent equity-based awards that would vest over a three or four year period. More recently, a majority of the Company's LTIP awards have been issued in cash, which cash awards vest in six tranches bi-annually over a three year period. The Company manages all aspects of the Corporate IC Plan and LTIP on behalf of Paladin, including the design of the plans and establishing compensation metrics.

48. Paladin also participates in certain of the Company's retention programs that provide supplemental compensation to certain eligible non-insider employees, including the 2021 Retention Program and the 2022 Retention Program that include scheduled payments in December 2022, June 2023 and September 2023.

49. I understand that the Debtors have filed a motion with the Bankruptcy Court seeking interim and final orders authorizing the Debtors, including Paladin, to pay prepetition wages, salaries, and other compensation and to continue employee benefits programs in the ordinary course of their business, subject to certain exceptions. Paladin, as proposed Foreign Representative, intends to seek recognition of such orders if they are granted by the Bankruptcy Court.

D. Cash Management System and Intercompany Transactions

50. The Company utilizes a centralized cash management system for the collection, concentration, management, disbursement and investment of funds used in its global operations (the "**Cash Management System**"). The Cash Management System facilitates the Debtors' cash monitoring, forecasting and reporting, enables the Debtors to streamline use of their cash and invested funds, and allows the Debtors to facilitate tracking between entities and business units. The entire Cash Management System is overseen by Endo's treasury team, which operates out of the Company's U.S. headquarters in Pennsylvania.

51. Paladin is an integrated participant in Endo's Cash Management System, though its bank accounts are not subject to the cash pooling arrangements involving the Company's U.S.-based entities. Paladin maintains four bank accounts with the Bank of America. Three of the accounts are operating accounts denominated in Canadian dollars, United States dollars, and Euros, respectively. The fourth account is a Canadian dollar savings account. On a daily basis, cash received in Paladin's operating accounts is swept into its savings account.

52. Paladin is typically able to satisfy all of its ordinary course operating expenses from the revenue generated by the Canadian Business. Payments to vendors of the Canadian Business are processed weekly and on an ad hoc basis as required. Payments are processed through the Cash Management System by Endo's treasury team in the United States after payment requests are initiated and approved by Paladin.

53. In the ordinary course of business, Endo funds a portion of its international operations through a system of interest bearing and non-interest bearing intercompany loans (the "**Intercompany Loans**") and engages in transactions between Company entities (the "**Intercompany Transactions**") that may result in claims as between different entities in the corporate group (the "**Intercompany Claims**"). The Intercompany Loans and Intercompany Transactions provide substantial benefit to the Company, including managing the cash needs and resources of the corporate group and achieving tax efficiency.

54. Paladin and Holdings are each borrowers and lenders under various Intercompany Loans and Paladin engages in Intercompany Transactions in the ordinary course of the Canadian Business., giving rise to Intercompany Claims. As at June 30, 2022, on a net basis:

(a) Paladin had a net payable position of approximately CDN$259 million to Holdings and approximately CDN$4 million to other entities in the Endo group; and

(b) Holdings owed approximately CDN$599 million to Endo Luxembourg (its immediate parent) and had a net receivable position of approximately CDN$259 million from Paladin.

55. Substantially all of the Intercompany Claims between Paladin and Holdings relate to Intercompany Loans, while the Intercompany Claims between Paladin and other entities in the Endo group relate primarily to Intercompany Transactions.

56. I understand that the Debtors have filed a motion with the Bankruptcy Court seeking interim and final orders, among other things, (a) authorizing the Debtors, including Paladin, to continue using the Cash Management System and effectuating Intercompany Transactions in the ordinary course of business, and (b) granting superpriority administrative expense status to all Intercompany Claims arising after the Petition Date in order to preserve the relative values of the Debtors' estates. Paladin, as proposed Foreign Representative, intends to seek recognition of such orders if they are granted by the Bankruptcy Court.

E. Financial Position of the Canadian Debtors

57. Other than unaudited financial statements prepared annually for Canadian income tax purposes, financial statements have not historically been prepared for the Canadian Debtors. Paladin's finance and accounting team reports on Paladin's financial position and results through an unaudited, internal trial balance. Attached hereto as Exhibit "F" are summarized balance sheets for Paladin derived from unaudited, internal trial balances as at June 30, 2022 and December 31, 2021, which balance sheets exclude Paladin's obligations in respect of Endo's funded indebtedness.

58. For the year ended December 31, 2021, Paladin generated aggregate net revenue of approximately CDN$106 million. As of June 30, 2022, Paladin had total assets of approximately CDN$491 million and total liabilities of approximately CDN$667 million, excluding its

obligations as a guarantor of Endo's approximately $8.15 billion of funded indebtedness (as described below).

F. Regulatory Environment

59. The Canadian Business operates within a highly-regulated environment overseen by Health Canada, whose Health Products and Food Branch regulates and monitors the therapeutic and diagnostic products available to Canadians. Prior to receiving market authorization, a manufacturer must present substantive scientific evidence of a product's safety, efficacy and quality as required by the *Food and Drugs Act*, R.S.C. 1985, c. F-27 (the "**Food and Drugs Act**") and its regulations. Once a product is approved, it must comply with regulations, guidelines and policies under the Food and Drugs Act umbrella that pertain to various product types, including drugs, natural health products, medical devices and cosmetics.

60. Paladin has a regulatory affairs team that performs a range of regulatory activities relating to the products sold by the Canadian Business, including those owned by Paladin and those licensed from third parties. These regulatory activities include the registration of new products through new drug submissions and ownership transfers, and maintenance and support activities necessary to ensure ongoing compliance with regulatory requirements.

G. Integration of Canadian Debtors and Canadian Business

61. Since its acquisition by the Company in 2014, Paladin has become an integrated member of the broader Endo corporate group that is centrally managed by its senior leadership team in the United States.

62. From an operational perspective, the day-to-day operation of the Canadian Business is conducted by Paladin and overseen by Paladin's executive management team resident in Canada. Paladin has its own finance, sales, marketing and regulatory compliance teams that manage their own functional areas in Canada, with regular reporting to and oversight from Endo's centralized function areas at the Company's U.S. headquarters.

63. While day-to-day business operations are generally conducted in Canada, the Canadian Debtors are managed from an overall strategic and financial perspective on a consolidated basis with the rest of the Endo corporate group. The following elements of the Canadian Debtors and Canadian Business, among others, are integrated with the Endo corporate group:

(a) the Canadian Debtors are indirect, wholly-owned subsidiaries of Endo Parent, which is a public company listed on NASDAQ;

(b) Endo's senior leadership located in the United States exercises overarching strategic management and control of the entire corporate group, including the Canadian Debtors;

(c) in 2021, the Canadian Business accounted for approximately 3% of the Company's consolidated worldwide revenue;

(d) the Canadian Business employs approximately 5% of the Company's global workforce;

(e) the Company's overall capital structure, including its publicly-listed common shares and its funded indebtedness, is centrally managed by the Company;

(f) the Canadian Debtors are guarantors of the Company's $8.15 billion in principal amount of funded indebtedness and have granted liens on all of their assets and property to secure the payment of the Company's secured indebtedness;

(g) the Company's overall financial position is managed on a consolidated basis from Endo's corporate office in the United States. For financial reporting purposes, Endo reports the financial results of the entire corporate group, including the Canadian Debtors, on a consolidated basis. Other than unaudited financial statements for tax reporting purposes, the Canadian Debtors do not prepare standalone financial statements;

(h) the Canadian Debtors are integrated into the Company's system of Intercompany Loans and Intercompany Transactions to allocate cash resources and ensure tax efficiency within the entire corporate group. As at June 30, 2022, Holdings owed approximately CDN$599 million to its immediate parent company, Endo Luxembourg, in connection with such Intercompany Loans;

(i) Paladin's cash management system is integrated with the Company's Cash Management System, and Endo exercises oversight of Paladin's cash collections and disbursements from its U.S. headquarters. Payments to vendors of the Canadian Business are processed by Endo in the United States;

(j) Paladin utilizes Endo's enterprise resource planning (ERP) software in the operation of the Canadian Business, including utilizing shared services for the management and processing of accounts payable and accounts receivable;

(k) Paladin participates in the Company's short-term and long-term incentive plans, which are centrally managed by the Company in the United States;

(l) Paladin distributes products in the Canadian market on behalf of other Endo entities. Such products are provided to Paladin by the Company. Corporate decisions with respect to the licensing of Endo products to Paladin are made centrally by the Company; and

(m) the Company centrally manages all aspects of litigation involving Endo entities, including the Canadian Litigation involving Paladin and the Canadian Litigation Defendants.

64. In summary, the Canadian Debtors are integrated members of the broader Endo corporate group that is centrally managed from an overall strategic and financial perspective by its senior leadership team in the United States. Accordingly, Paladin submits that the centre of main interests of each of the Canadian Debtors is the United States.

IV. THE COMPANY'S PREPETITION CAPITAL STRUCTURE AND CANADIAN SECURITY

A. The Company's Debt Structure

65. The funded debt obligations of the Company as of the Petition Date are summarized in the table below and described in detail in the First Day Declaration.

Debt Instrument (as defined herein)	Facility Type/Notes Series	Maturity Date	Approximate Outstanding Principal Amount (in USD$ millions)
Revolving Credit Facility	Revolver	Various	$277.2
Term Loan Facility	Term loan	Mar. 2028[1]	$1,975.0
First Lien Notes	5.875% Senior Secured Notes due 2024	Oct. 2024	$300.0
	7.500% Senior Secured Notes due 2027	Apr. 2027	$2,015.5
	6.125% Senior Secured Notes due 2029	Apr. 2029	$1,295.0
Second Lien Notes	9.500% Senior Secured Second Lien Notes due 2027	July 2027	$940.6
Unsecured Notes	5.375% Senior Notes due 2023	Jan. 2023	$6.1
	6.00% Senior Notes due 2028	June 2028	$1,260.4
	6.00% Senior Notes due 2025	Feb. 2025	$21.6
	6.00% Senior Notes due 2023	July 2023	$56.4
		Total:	**$8,147.8**

66. As of the Petition Date, the Company's consolidated long-term debt obligations totalled approximately $8.15 billion arising under:

(a) a senior secured revolving credit facility (the "**Revolving Credit Facility**") and a senior secured term loan facility (the "**Term Loan Facility**" and, together with the Revolving Credit Facility, the "**Credit Facilities**") pursuant to a credit agreement dated as of April 27, 2017 (as amended and restated from time to time, the "**Credit Agreement**");

(b) three series of first lien notes (collectively, the "**First Lien Notes**");

[1] Subject to an earlier springing maturity if the aggregate principal amount outstanding of the 2027 Senior Secured Notes and the Second Lien Notes, in each case, is greater than or equal to $500 million and such notes are not refinanced or repaid prior to the date that is 91 days prior to the stated maturity thereof.

(c) one series of second lien notes (the "**Second Lien Notes**"); and

(d) four series of unsecured notes (collectively, the "**Unsecured Notes**").

67. The Credit Facilities and the First Lien Notes are secured on a *pari passu* basis by first-priority liens on and security interests in substantially all of the Company's assets, including all proceeds thereof (the "**Prepetition Collateral**").

68. The Second Lien Notes are secured by a second-priority lien on, and on a junior basis with respect to, the Prepetition Collateral.

B. Canadian Guarantees and Security

69. The Canadian Debtors are guarantors of, and have granted security interests in their present and future property and assets to secure, the obligations under the Credit Facilities, the First Lien Notes and the Second Lien Notes. The Canadian Debtors are also guarantors, on an unsecured basis, of the obligations under the Unsecured Notes.

(i) First Lien Guarantees and Security

70. The Company's Revolving Credit Facility and Term Loan Facility are governed pursuant to the Credit Agreement among Endo Parent, Endo Luxembourg, as borrower, Endo LLC, as co-borrower, the lenders from time to time party thereto, and JPMorgan Chase Bank, N.A., as administrative agent. After giving effect to an Amendment and Restatement Agreement dated as of March 25, 2021 (as more fully described in the First Day Declaration), the Credit Agreement provides for a $1 billion Revolving Credit Facility (in total availability) and a $2 billion Term Loan Facility.

71. The Canadian Debtors guaranteed the obligations under the Credit Agreement pursuant to a New York law governed Subsidiary Guaranty dated as of April 27, 2017, as reaffirmed pursuant to an acknowledgment and confirmation dated as of March 28, 2019 and an acknowledgment and confirmation dated as of March 25, 2021.

72. As more fully described in the First Day Declaration, certain of the Debtors issued the following First Lien Notes, with Computershare Trust Company, National Association acting as indenture trustee for each:

(a) 6.125% Senior Secured Notes due 2029 issued by Endo Luxembourg and Endo U.S. Inc. and guaranteed by the guarantors pursuant to an indenture dated March 25, 2021;

(b) 7.500% Senior Secured Notes due 2027 issued by Par Pharmaceuticals, Inc. and guaranteed by the guarantors pursuant to an indenture dated March 28, 2019; and

(c) 5.875% Senior Secured Notes due 2024 issued by Endo Designated Activity Company ("**Endo DAC**"), Endo Finance LLC ("**Endo Finance**") and Endo Finco Inc. ("**Endo Finco**") and guaranteed by the guarantors pursuant to an indenture dated April 27, 2017.

73. The Canadian Debtors are parties to each of the foregoing indentures as guarantors.

74. Wilmington Trust, National Association acts as collateral trustee in respect of the collateral securing the Credit Facilities and the First Lien Notes (in such capacity, the "**First Lien Collateral Trustee**") pursuant to a Collateral Trust Agreement dated as of April 27, 2017 (the "**First Lien**

Collateral Trust Agreement"). The First Lien Collateral Trust Agreement governs, among other things, the respective rights, interests and obligations of the Prepetition First Lien Secured Parties with respect to the Prepetition Collateral and covers certain other matters relating to the administration of security interests.

75. As security for the Credit Facilities and the First Lien Notes, the Canadian Debtors granted the following security to the First Lien Collateral Trustee:

(a) the Canadian Debtors granted the First Lien Collateral Trustee a security interest in all of their present and future property and assets (subject to certain typical exceptions) pursuant to an Ontario law governed Canadian Pledge and Security Agreement dated as of April 27, 2017;

(b) the Canadian Debtors hypothecated their present and future property and assets (subject to certain typical exceptions) in favour of the First Lien Collateral Trustee pursuant to a Quebec law governed Deed of Hypothec dated April 26, 2017;

(c) Paladin delivered a short form, Ontario law governed Confirmatory Grant of Security Interest in Trademarks dated as of April 27, 2017 granting the First Lien Collateral Trustee a security interest in all of its trademarks and related assets; and

(d) Paladin delivered a short form, Ontario law governed Confirmatory Grant of Security Interest in Patents dated as of April 27, 2017 granting the First Lien Collateral Trustee a security interest in all of its patents, patent applications and related assets.

(ii) *Second Lien Notes Guarantees and Security*

76. The Second Lien Notes are governed pursuant to an indenture dated as of June 16, 2020 (the "**Second Lien Indenture**") among Endo DAC, Endo Finance and Endo Finco, as issuers, Endo Parent, the guarantors party thereto, and Wilmington Savings Fund Society, FSB, as trustee. The Canadian Debtors are parties to the Second Lien Indenture as guarantors.

77. Wilmington Trust, National Association acts as collateral trustee in respect of the collateral securing the Second Lien Notes (in such capacity, the "**Second Lien Collateral Trustee**") pursuant to a Second Lien Collateral Trust Agreement dated as of June 16, 2020 (the "**Second Lien Collateral Trust Agreement**"). The Second Lien Collateral Trust Agreement governs, among other things, the interests and obligations of the holders of Second Lien Notes and the Second Lien Collateral Trustee with respect to the Prepetition Collateral and covers certain other matters relating to the administration of security interests.

78. As security for the Second Lien Debt, the Canadian Debtors granted the following security to the Second Lien Collateral Trustee:

(a) the Canadian Debtors granted the Second Lien Collateral Trustee a security interest in all of their present and future property and assets (subject to certain typical exceptions) pursuant to an Ontario law governed Second Lien Canadian Pledge and Security Agreement dated as of June 16, 2020;

(b) the Canadian Debtors hypothecated their present and future property and assets (subject to certain typical exceptions) in favour of the Second Lien Collateral

Trustee pursuant to a Quebec law governed Second Lien Deed of Hypothec dated June 15, 2020;

(c) Paladin delivered a short form, Ontario law governed Confirmatory Grant of Security Interest in Trademarks dated as of June 16, 2020 granting the Second Lien Collateral Trustee a security interest in all of its trademarks and related assets; and

(d) Paladin delivered a short form, Ontario law governed Confirmatory Grant of Security Interest in Patents dated as of June 16, 2020 granting the Second Lien Collateral Trustee a security interest in all of its patents, patent applications and related assets.

79. The First Lien Collateral Trustee, the Second Lien Collateral Trustee, the Prepetition Loan Parties, the Prepetition First Lien Notes Parties and the Prepetition Second Lien Notes Parties are parties to a New York law governed Intercreditor Agreement dated as of June 16, 2020 (the "**1L-2L Intercreditor Agreement**") governing the relative rights, interests, obligations and priority of the Prepetition First Lien Secured Parties the Prepetition Second Lien Notes Secured Parties with respect to the Prepetition Collateral. The 1L-2L Intercreditor Agreement provides, among other things, that the First Priority Representative (as defined in the 1L-2L Intercreditor Agreement) will have the exclusive right to exercise rights and remedies with respect to the Prepetition Collateral on behalf of the First Priority Secured Parties. If the First Priority Representative consents to the use of Cash Collateral, then the Second Priority Representative (as defined in the 1L-2L Intercreditor Agreement) is deemed to agree, on behalf of itself and the other Second Priority Secured Parties, to the use of Cash Collateral.

(iii) *Registry Searches*

80. I am advised by Mr. Chadwick of Goodmans that lien searches were conducted under the applicable personal property lien registries in Ontario on August 9, 2022 and Quebec on August 12, 2022 (the "**Registry Searches**"). Goodmans has provided me with a summary of the Registry Searches, which is attached hereto as Exhibit "G".

81. The Ontario and Quebec Registry Searches each disclose registrations against each of the Canadian Debtors in favour of the First Lien Collateral Trustee and the Second Lien Collateral Trustee. In addition, the Quebec Registry Searches disclose registrations against Paladin in favour of Element Fleet Lease Receivables L.P. (originally registered October 28, 2008) and CBSC Capital Inc. (originally registered November 29, 2017).

(iv) *Unsecured Notes*

82. Certain of the Debtors have issued the following Unsecured Notes with Wells Fargo Bank, N.A. acting as indenture trustee for each:

(a) 5.375% Senior Notes due 2023 issued by Endo Finance and Endo Finco and guaranteed by the guarantors, pursuant to an indenture dated June 30, 2014;

(b) 6.000% Senior Notes due 2025 issued by Endo DAC, Endo Finance and Endo Finco and guaranteed by the guarantors, pursuant to an indenture dated January 27, 2015;

(c) 6.00% Senior Notes due 2023 issued by Endo DAC, Endo Finance and Endo Finco and guaranteed by the guarantors, pursuant to an indenture dated July 9, 2015; and

(d) 6.00% Senior Notes due 2028 issued by Endo DAC, Endo Finance and Endo Finco and guaranteed by the guarantors, pursuant to an indenture dated June 16, 2020.

83. The Canadian Debtors are parties to the indentures and have guaranteed, on an unsecured basis, the Company's obligations under the Unsecured Notes.

84. As of the Petition Date, approximately $1.345 billion was outstanding under the Unsecured Notes.

V. EVENTS PRECIPITATING THE CHAPTER 11 CASES

85. A confluence of factors has put downward pressure on the Company's financial performance and necessitated a comprehensive solution that may be achieved only through the Chapter 11 Cases and corresponding CCAA recognition proceedings. Principal among these factors are: (a) an adverse litigation outcome relating to Vasostrict – one of the Company's leading revenue generators over the last several years – that resulted in the early termination of federal patent protection for the product and the subsequent loss of substantial revenue; (b) a slower than expected growth for Xiaflex due to, among other factors, the COVID-19 pandemic; and (c) the litigation overhang on the Company from the thousands of lawsuits related to its marketing and sale of prescription opioids, including the Canadian Opioid Lawsuits (as described below).

A. Declining Business Performance Leads to Overleveraged Capital Structure

86. The Company's recent financial performance has deteriorated. In connection with the Company's second quarter public filings, it reported an approximately 20% year-over-year decline in revenue and an approximately 53% decline in adjusted EBITDA. This decline was largely due

to the precipitous drop in sales of Vasostrict, which accounted for approximately 30% of the Company's 2021 revenue.

87. The drop in Vasostrict sales is primarily attributable to increased generic competition as a result of the Company losing a recent lawsuit in the U.S. District Court for the District of Delaware. The Company has appealed this ruling.

88. During the first quarter of 2022, multiple competitive generic alternatives to Vasostrict were launched. These third-party launches began to significantly impact both the Company's market share and product price toward the middle of the first quarter of 2022. The Company expects competition to continue to increase in the second half of 2022 and beyond. Further, beginning late in the first quarter of this year, COVID-19-related hospital utilization levels began to decline, resulting in significantly decreased market volumes for both branded and competing generic alternatives to Vasostrict.

89. Consequently, the revenue from Vasostrict declined significantly. For the first half of this year, Vasostrict revenue declined 55% year-over-year. In the second quarter of this year, Vasostrict revenue declined by nearly 82% year-over-year. On a long-term basis, the Company expects Vasostrict sales to continue to fall.

90. Certain of the Company's physician administered products, including Xiaflex (the Company's flagship product in its Branded Pharmaceuticals' portfolio), have also experienced lower-than-expected sales volumes due to, among other things, the lower number of in-person patient office visits resulting from the COVID-19 pandemic, as well as and medical administrative

staff shortages in physicians' offices. These more recent trends have also dampened the future growth expectation for Xiaflex.

91. Due largely to the foregoing issues and those discussed below, the Debtors' existing capital structure has become unsustainable. As of June 30, 2022, the Company had approximately $8.15 billion of funded debt outstanding, which is approximately 7-times its last twelve months of adjusted EBITDA and greater than 10-times its anticipated 2022 EBITDA, excluding capitalization of contingent liabilities that could potentially significantly increase such leverage figures. The Company's expected decline in profitability will further exacerbate the leverage issues facing the Company.

92. Additionally, the cost to service the Company's existing debt balance has constrained its ability to reinvest in its business. The Company currently spends over $550 million per year on cash interest expense, and an additional $20 million on mandatory debt amortization (excluding maturities). The cost of servicing such debt has limited the Company's free-cash flow available for operations and capital expenditures. In addition to the Company's already prohibitive debt service costs, approximately 28% of its debt is tied to floating interest rates. In an increasing interest rate environment, these floating interest rates further add to the Company's already elevated cash interest expense.

93. The Company operates in a highly competitive pharmaceutical space in which its competitors are constantly pursuing internal R&D, external acquisitions, and business development opportunities. Over the past couple of years, the Company's elevated leverage has constrained its ability to invest in its pipeline and pursue value enhancing development opportunities. As this is the lifeblood of any pharmaceutical company, the Company needs to

reduce its debt service burden and leverage in order to effectively compete for future opportunities. Thus, to emerge as a strong and sustainable enterprise that is able to compete, the Company must address the issues related to its overleveraged capital structure in a focused and constructive manner without disruption to its operations.

B. Unsustainable Litigation

(i) Opioid Lawsuits

94. Certain of the Debtors, including the Canadian Debtors, have been named as defendants in over 3,500 lawsuits seeking to hold such Debtors liable for their marketing and sale of certain FDA-approved opioid products (the "**Opioid Lawsuits**"), including, without limitation, Opana® and Opana® ER (together, the "**Opana Medications**"), which were approved by the FDA in 2006.

95. In 2016, the Company ceased promoting the Opana Medications and all other opioid products to healthcare providers in the U.S., eliminated its entire pain U.S. salesforce, and discontinued all research and development of new opioid products. Since June 2019, the Debtors have not sold any Opana Medications. Certain of the Debtors manufacture and sell generic opioid medication.

96. The majority of the Opioid Lawsuits are filed on behalf of governmental entities, including states, counties, municipalities and other political subdivisions; plaintiffs also include private hospitals, individuals seeking damages for alleged personal injuries, and third-party payors seeking damages for alleged economic injuries (collectively, the "**Opioid Plaintiffs**"). The overwhelming majority of the Opioid Lawsuits have been filed in the United States; eight have been filed in Canada as proposed class actions, which are described in further detail below. The Opioid

Lawsuits are primarily directed at the Company's historical marketing and sale of the Opana Medications, but some complaints include allegations about other products and/or opioid medications generally. The Opioid Plaintiffs assert a variety of claims, including, without limitation, statutory and/or common law claims for public nuisance, alleged violations of consumer protection or unfair trade practices law, racketeering, and common law fraud and negligence, among other claims (collectively, the "**Opioid Claims**"). The Opioid Plaintiffs allege that the defendant Debtors' misleading marketing led health care providers to prescribe opioids inappropriately, which in turn led to addiction, misuse, and abuse.

97. The Company denies the claims asserted by the Opioid Plaintiffs for reasons described in detail in the First Day Declaration. In the eight years since the first opioid suit was filed against the Company: no verdicts have been rendered against any of the Debtors on the merits; there have been around a dozen settlements; and the one case against the Company that did reach judgment on the merits was rendered in the Company's favor. The remaining Opioid Lawsuits against the Company are at various stages of development and the very few that have advanced close to the trial stage settled for vastly less than the amount of alleged damages or other monetary relief sought.

98. Since 2019, the Company and/or its subsidiaries have executed 12 settlement agreements to resolve Opioid Claims brought by Opioid Plaintiffs. As of the Petition Date, the Company has paid approximately $242 million pursuant to certain of its opioid-related settlements. However, the Debtors still face more than 3,100 Opioid Lawsuits. Given the immense number of lawsuits, the complexity of the issues involved, the various stages of development of each case, and the cost

to defend each one to judgment, the Debtors determined that they needed to utilize the tools afforded by the Bankruptcy Code to bring some level of resolution to these matters.

99. To date, the Company estimates it has incurred expenses of approximately $344 million in defending the Opioid Lawsuits.

(ii) *Other Material Litigation*

100. The Debtors also face other litigation unrelated to the Opioid Lawsuits. Most of these lawsuits fall within four major categories: claims related to (a) generic pricing; (b) transvaginal mesh; and (c) other antitrust; and (d) ranitidine.

(a) **Generic Pricing Claims**

101. Private plaintiffs (specifically, direct purchasers, end-payers, and indirect purchaser resellers), state attorneys general and other governmental entities have filed complaints against certain Debtors, as well as other pharmaceutical manufacturers, alleging price-fixing and other anticompetitive conduct with respect to a variety of generic pharmaceutical products. The various complaints generally assert claims under: (1) federal and/or state antitrust law, (2) state consumer protection statutes, and/or (3) state common law, and seek damages, treble damages, civil penalties, disgorgement, declaratory and injunctive relief, and costs and attorneys' fees. These lawsuits, which include putative class actions as well as non-class action lawsuits, have been filed in various federal and state courts in the U.S. There is also a proposed class action in Canada (as described below).

(b) **Mesh Claims**

102. The Company and certain of its subsidiaries, including American Medical Systems Holdings, Inc. (which subsequently converted to Astora Women's Health Holding LLC and merged into Astora Women's Health LLC), have been named as defendants in multiple lawsuits in various state and federal courts in the U.S and internationally. These lawsuits generally allege personal injury resulting from the use of transvaginal surgical mesh products designed to treat pelvic organ prolapse or stress urinary incontinence.

103. As of June 30, 2022, various master settlement agreements and other agreements have resolved approximately 71,000 filed and unfiled U.S. mesh claims. As of June 30, 2022, the Company had made approximately $3.6 billion of payments related to its mesh liabilities, $67.5 million of which remained in qualified settlement funds related to these liabilities.

(c) **Other Antitrust Claims**

104. 61. In addition to the generic pricing cases described above, the Company also faces various other antitrust and related claims under Sections 1 and 2 of the *Sherman Act*, Section 5 of the *Federal Trade Commission Act*, state antitrust and consumer protection statutes, and/or state common law. These cases generally seek monetary relief (e.g., damages, treble damages, disgorgement of profits, restitution, attorneys' fees and costs), equitable relief, and/or injunctive relief.

(d) **Ranitidine Claims**

105. The Company's subsidiary, Par Pharmaceutical, Inc. ("**PPI**") was named in a multidistrict litigation ("**MDL**") pending in the U.S. District Court for the Southern District of Florida along with numerous other manufacturers and distributors of branded and generic ranitidine. The

lawsuits generally allege that under certain conditions the active ingredient in ranitidine medications can break down to form an alleged carcinogen. The complaints assert a variety of claims, including but not limited to various product liability, breach of warranty, fraud, negligence, statutory and unjust enrichment claims. The MDL court has dismissed all claims against PPI and other generic manufacturers, but appeals remain pending in the U.S. Court of Appeals for the Eleventh Circuit. PPI has also been named in similar complaints filed in certain state courts.

106. In the aggregate, the Company spends approximately $21 million on litigation-related fees and expenses per month. The foregoing litigation, in addition to the Opioid Lawsuits, creates even more uncertainty over the Company's ability to resolve its litigation exposure, either consensually or by litigating each lawsuit through judgment and all levels of appeal.

(iii) *The Canadian Litigation*

107. Paladin, along with the Canadian Litigation Defendants who are affiliated entities in the Endo corporate group, are subject to various litigation claims in Canada (the "**Canadian Litigation**").[2] The Canadian Litigation consists principally of eight proposed class action lawsuits initiated in various provinces across Canada relating to the manufacturing, distribution and marketing of opioid products (the "**Canadian Opioid Lawsuits**") and one proposed class action lawsuit initiated in Federal Court alleging a price-fixing scheme relating to generic drugs (the "**Canadian Price-Fixing Lawsuit**").

[2] The current Canadian Litigation Defendants are: Endo Parent, Endo Ventures Limited, Endo Pharmaceuticals Inc., Par Pharmaceutical, Inc., Par Pharmaceutical Companies Inc., Generics Bidco I, LLC and DAVA Pharmaceuticals, LLC

108. Each of the proposed class action lawsuits comprising the Canadian Litigation has been brought against a broad group of industry defendants. None of the proposed class action lawsuits have been certified or have advanced to trial. Many of the lawsuits are at early stages and have been largely inactive since being initiated.

109. Paladin and the Canadian Litigation Defendants deny the claims asserted by the plaintiffs in the Canadian Litigation, including for the reasons set forth in the First Day Declaration. To date, there have been no findings of liability against Paladin or the Canadian Litigation Defendants in the Canadian Litigation.

(a) The Canadian Opioid Lawsuits

110. The Canadian Opioid Lawsuits allege various causes of action against purported manufacturers, distributors and marketers of opioid products, including breach of the *Competition Act*, misrepresentation, deceit, negligence, unjust enrichment, and fraudulent concealment.

111. Paladin is a named defendant in each of the Canadian Opioid Lawsuits. In addition, Endo Parent, Endo Ventures Limited, an Irish public limited company ("**EVL**"), and Endo Pharmaceuticals Inc., a Delaware corporation ("**EPI**") are named defendants in certain of the Canadian Opioid Lawsuits.

112. The following table summarizes the eight Canadian Opioid Lawsuits involving Paladin and/or the Canadian Litigation Defendants:

Jurisdiction	Claim Filed	Proposed Representative Plaintiff	Endo Defendants
British Columbia	August 2018	Her Majesty the Queen in Right of the Province of British Columbia (the "**Province of British Columbia**") as representative plaintiff on behalf of all federal, provincial and territorial governments and agencies	Paladin Endo Parent EPI EVL
British Columbia	December 2019	The individual "MW"	Paladin EPI
Alberta	June 2020	The City of Grande Prairie and the City of Brantford as representative plaintiffs on behalf of all local or municipal governments in Canada	Paladin Endo Parent EPI
Saskatchewan	March 2021	Peter Ballantyne Cree Nation and Lac La Ronge Indian Band as representative plaintiffs on behalf of all First Nations communities and local or municipal governments in Canada	Paladin Endo Parent EPI
Ontario	May 2019	Darryl Gebien	Paladin Endo Parent EPI
Manitoba	December 2021	Darryl Gebien	Paladin Endo Parent EPI
Manitoba	February 2022	Karen Tryon	Paladin Endo Parent EPI
Quebec	May 2019	Jean-François Bourassa	Paladin

113. A certification hearing in the proposed class action brought by the Province of British Columbia is currently scheduled for November 2023. A class authorization hearing in the proposed class action brought by Jean-François Bourassa in Quebec is currently scheduled for November

2022. The other Canadian Opioid Lawsuits are either inactive or have not yet proceeded to the certification stage.

(b) The Canadian Price-Fixing Lawsuit

114. The Canadian Price-Fixing Lawsuit is a proposed class action commenced in Federal Court (Toronto) in June 2020 by Kathryn Eaton as representative plaintiff on behalf of a proposed class of Canadian purchasers of generic drugs. The proposed class action alleges that the defendants violated the *Competition Act* by conspiring to allocate the market, fix prices and maintain the supply of generic drugs in Canada. The Canadian Price-Fixing Lawsuit has been largely inactive since the lawsuit was filed and there has been no application for class certification.

115. The Canadian Price-Fixing Lawsuit was brought against more than 50 purported generic drug manufacturers, including four Debtors in the Chapter 11 Cases: Par Pharmaceutical, Inc., a New York corporation; Par Pharmaceutical Companies, Inc., a Delaware corporation; Generics Bidco I, LLC, a Delaware limited liability company; and DAVA Pharmaceuticals, LLC, a Delaware limited liability company. Paladin is not a named defendant in the action.

VI. PREPETITION NEGOTIATIONS

116. In January 2018, the Company retained Skadden, Arps, Slate, Meagher & Flom LLP as its legal advisor in connection with potential strategic alternatives to address the Opioid Lawsuits. Thereafter, the Company also engaged other restructuring advisors, retaining PJT Partners in February 2018 and Alvarez & Marsal in May 2021 as their financial advisors.

117. Over the last few years, the Company's restructuring efforts have evolved. Until the beginning of this year, the Company was principally focused on attempting to negotiate an

out-of-court settlement with the governmental Opioid Plaintiffs, as the thousands of Opioid Lawsuits represented enterprise-threatening litigation. The Company believed a broad-based resolution with these plaintiffs was necessary to provide clarity to stakeholders by removing the uncertainty around this litigation, including the associated risk of one or more large adverse judgments.

118. As the Company's financial condition continued to deteriorate and little headway was being made towards a consensual comprehensive resolution with the governmental Opioid Plaintiffs, the Company more actively started exploring strategic alternatives to its capital structure and other contingent liabilities. In September 2021, the Company began discussions with advisors to an ad hoc group consisting primarily of holders of Second Lien Notes and Unsecured Notes (the "**Ad Hoc Cross-Holder Group**").

119. The Company also authorized PJT to launch a formal sales process at this time. After preparing robust marketing materials and contacting approximately 76 parties, the Company ultimately received indications of interest from eight potential bidders. The Company determined to pause this sale process in January 2022 to expand its exploration of strategic alternatives with the Ad Hoc Cross-Holder Group and a Plaintiffs' Executive Committee ("**PEC**") and an executive committee of state attorneys' general (the "**State AG Committee**" and together with the PEC, the "**Opioid Committees**").

120. In April 2022, the Company began discussions with advisors to an ad hoc group consisting primarily of Prepetition First Lien Lenders and Prepetition First Lien Noteholders (the "**Ad Hoc First Lien Group**" and together with the Ad Hoc Cross-Holder Group, the "**Ad Hoc Groups**").

A. Prepetition Opioid Settlement Negotiations

121. Since 2019, the Company has at various times been actively negotiating with the Opioid Committees to attempt a broad-based resolution of the Opioid Claims. Despite extensive efforts by both sides as described in the First Day Declaration, the parties have been unable to reach an agreement on settlement value and other terms of a potential settlement.

122. The negotiations with the Opioid Committees slowed around the time when the Company announced its 2022 first quarter earnings. Based on the Company's financial performance, it became clear that (a) the Company's unsecured creditors may not be entitled to any recovery in chapter 11, (b) the Company would burn a substantial portion of its approximately $1 billion in cash over the next 24 months, and (c) the Company may be unable to refinance its debt in the future as it becomes due, especially when considering the need to address its contingent liabilities. This confluence of factors—namely, among others, the inability to reach agreement with the Opioid Committees on an out-of-court resolution, numerous upcoming trials, discoveries and associated legal expenditures, deteriorating financial performance, and a burdensome capital structure – led the Company to further explore its Chapter 11 alternatives.

B. Negotiations with the Ad Hoc Groups

123. Beginning in late 2021, the Company commenced active discussions regarding potential restructuring frameworks with the Ad Hoc Cross-Holder Group. However, as the Company's circumstances changed and its prospects and profitability deteriorated, and taking into account the Company's nearly $7 billion of indebtedness secured by liens on substantially all of the Company's assets, the Company ramped up diligence efforts in late April 2022 with the Ad Hoc First Lien Group. Since that time, the Company and its advisors have worked tirelessly with the

Ad Hoc First Lien Group, engaging in substantial diligence efforts and exploring various strategic alternatives. During this period, the Company also continued to engage with, and provide diligence to, the Ad Hoc Cross-Holder Group.

124. During the first half of 2022, advisors to the Company and the Ad Hoc Groups exchanged various proposals regarding the implementation of a potential transaction. During these negotiations, while the Company discussed a chapter 11 plan of reorganization proposal with the Ad Hoc Cross-Holder Group, the Company reached the conclusion that pursuing a plan pathway presented unique challenges for the Company in light of the composition of its creditor constituencies, the lack of necessary consensus to achieve a feasible plan, and the nature of its contingent liabilities.

125. As a result, by July 2022, the Company determined to focus on a sale of its business through section 363 of the Bankruptcy Code (a "**363 Sale**") as the most viable path forward. Thereafter, the Company evaluated 363 Sale proposals received from both the Ad Hoc First Lien Group and the Ad Hoc Cross-Holder Group, and ultimately determined to pursue a restructuring support agreement with the Ad Hoc First Lien Group (the "**RSA**") memorializing the terms of a 363 Sale that would provide other bidders, including the Ad Hoc Cross-Holder Group, with the opportunity to submit higher or better bids.

C. The RSA and the Stalking Horse Bid

126. Once the Debtors' path towards a 363 Sale came into focus, the Debtors and the Ad Hoc First Lien Group worked to develop and negotiate the RSA, a sale term sheet (the "**Term Sheet**") and bidding procedures. A copy of the RSA is attached hereto as Exhibit "H". The centrepiece of

the RSA is a stalking horse bid (the "**Stalking Horse Bid**") to be provided by one or more entities formed in a manner acceptable to the Ad Hoc First Lien Group (the "**Stalking Horse Bidder**" or the "**Purchaser**") to purchase substantially all of the Company's assets. The Stalking Horse Bid will provide a value "floor" to entice further bidding.

127. The Debtors determined that moving forward with the Stalking Horse Bid represents the best available path to address the Debtors' challenges. The Stalking Horse Bid, if consummated, would ensure that the Debtors' business continues as a going concern, save over a thousand jobs, and enable the Purchaser to fund over time hundreds of millions of dollars of consideration to be placed in trusts for certain Opioid Plaintiffs who elect to voluntarily participate in such trusts.

128. As more fully set forth in the RSA, the Stalking Horse Bid includes an offer to purchase substantially all of the Debtors' assets for an aggregate purchase price composed of (a) a credit bid in full satisfaction of the Prepetition First Lien Indebtedness (approximately $6 billion), (b) $5 million in cash on account of certain unencumbered Transferred Assets (as defined in the RSA), (c) $122 million to wind-down the Debtors' operations following the sale closing date (the "**Wind-Down Amount**"), (d) pre-closing professional fees, and (e) the assumption of certain liabilities. As part of the Stalking Horse Bid, the Stalking Horse Bidder will also make offers of employment to all of the Company's active employees.

129. To ensure that the Stalking Horse Bid is the highest or otherwise best offer for the Company's assets, the Debtors have developed bidding and auction procedures (the "**Bidding Procedures**") that will facilitate a competitive process for the Company's assets. As set forth in the Term Sheet, the Stalking Horse Bidder is not entitled to a break-up fee and is only entitled to reimbursement for reasonable and documented fees and expenses incurred by it in connection with,

among other things, the negotiation and execution of the Sale Transaction (as defined in the RSA) not to exceed $7 million, to the extent not otherwise provided under the Cash Collateral Order. Furthermore, the Stalking Horse Bidder has agreed to act as the "back-up" bidder in the event it is not selected as the successful bidder pursuant to the Bidding Procedures. The Debtors plan to leverage the fulsome marketing materials that were previously prepared as they commence the 363 Sale process as soon as practicable after the Petition Date.

130. As described more fully in the First Day Declaration, the RSA contemplates that the Purchaser will furnish an avenue for certain holders of opioid-related claims against the Company (the "**Opioid Claimants**") to voluntarily elect to receive consideration. The Ad Hoc First Lien Group has committed to cause the Purchaser, following the sale closing, to establish and fund trusts (comprised of a public opioid trust and private opioid trust) in the aggregate amount of $550 million in cash consideration over ten years for the benefit of certain public and private Opioid Claimants (the "**Voluntary Opioid Trusts**"), which Opioid Claimants can voluntarily participate in at their election. Eligible Opioid Claimants who elect to participate in the Voluntary Opioid Trusts will affirmatively agree to release their opioid-related claims against, among others, the Debtors and the Prepetition First Lien Secured Parties and their released parties. As of the Petition Date, a total of 34 States (including the States comprising the State AG Committee) and the District of Columbia reached an agreement with the Ad Hoc First Lien Group regarding the terms of the Voluntary Opioid Trust for the benefit of governmental Opioid Claimants (the "**Public Trust**").

131. The RSA and related transaction documents also require the Stalking Horse Bidder to provide the Wind-Down Amount to implement an orderly wind down of the Debtors' operations following the closing of the transaction, subject to a budget. The Wind-Down Amount assumes a

nine month wind-down process and includes funding for various items such as director fees, professional fees, liquidation proceedings in non-U.S. jurisdictions, and other post-closing administrative expenses.

132. Following intensive negotiations, the Ad Hoc First Lien Group, the Ad Hoc Cross-Holder Group, and other secured party representatives have consented to the Debtors' use of Cash Collateral in accordance with an agreed form of order. Consensual use of cash collateral will facilitate the Debtors' Chapter 11 Cases and lay the groundwork for a robust marketing and sale process.

VII. THE DEBTORS' PATH FORWARD

133. The Debtors' objective in the Chapter 11 Cases is to complete an open and transparent sale and auction process that will allow them to maximize the value of their business. To achieve this objective, the Debtors will seek to forge as much consensus as possible among their stakeholders and take certain actions designed to clear a path toward a successful sale.

134. For example, as to the Ad Hoc Cross-Holder Group, the Debtors have attempted to facilitate the group's participation in the Debtors' process by (a) providing extensive diligence and access to management and the Debtors' professionals over numerous months, (b) negotiating at the outset of the Chapter 11 Cases a fair adequate protection package for the holders of Second Lien Notes, and (c) establishing an auction process with substantial runway for the Ad Hoc Cross-Holder Group, if it so desires, to prepare and submit its own bid.

135. As to the Opioid Plaintiffs, the Debtors have been engaged in focused and constructive discussions with the State AG Committee regarding consensual injunctive terms (the "**Voluntary**

Operating Injunction") that would govern the conduct of the Debtors' and their successors as it relates to opioid products. As of the Petition Date, the Ad Hoc First Lien Group, the Debtors and 34 States and the District of Columbia (the same parties that have reached an agreement on the terms of the Public Trust) reached an agreement with respect to the terms of the Voluntary Operating Injunction.

136. In addition, shortly after the Petition Date the Debtors intend to seek relief from the Bankruptcy Court to enjoin all Opioid Lawsuits filed against the Debtors by governmental plaintiffs (the "**Preliminary Injunction**"). The Preliminary Injunction against the Opioid Lawsuits is critical to the success of the Chapter 11 Cases as certain of the non-settling Opioid Plaintiffs may attempt to argue that their actions may be subject to the "police powers" exception to the Bankruptcy Code's automatic stay. However, allowing such litigation to continue would significantly erode the Debtors' liquidity throughout the Chapter 11 Cases and would distract management's attention away from pursuing the sale process and managing the Debtors' day-to-day operations.

137. Finally, the Debtors intend to file a motion seeking Bankruptcy Court approval to launch their 363 Sale process as embodied in the RSA. In this regard, the Debtors will request a bidding procedures hearing during which the Debtors will seek the Bankruptcy Court's approval of the Debtors' proposed sale process and the Stalking Horse Bid. The Debtors intend to conduct an open, transparent and fulsome sale and marketing process to ensure that the Debtors and their stakeholders receive the maximum value possible for their assets while preserving the Debtors' business as a going concern (as a whole or in parts).

VIII. RELIEF SOUGHT IN THE CANADIAN RECOGNITION PROCEEDINGS

A. Interim Order

138. Paladin is seeking the Interim Order to provide for the Interim Stay in Canada. By operation of the Bankruptcy Code, the Debtors (including the Canadian Debtors) obtained the benefit of an automatic stay of proceedings upon the filing of the Petitions with the Bankruptcy Court. The Debtors are seeking entry of certain First Day Orders, including the Foreign Representative Order, at the First Day Hearing to be heard by the Bankruptcy Court in the coming days. If the Bankruptcy Court grants the requested orders, the orders are expected to be available shortly thereafter.

139. The Interim Stay provides for a stay of proceedings in favour of the Canadian Debtors, the Canadian Litigation Defendants and their respective directors and officers. The Interim Stay will give effect to the stay of proceedings in the Chapter 11 Cases and preserve the value of the Canadian Business in Canada until Paladin can be duly appointed as Foreign Representative by the Bankruptcy Court and return before this Court to seek the Initial Recognition Order and the Supplemental Order.

140. Since the Canadian Business is conducted primarily in Canada with counterparties located in Canada or other non-United States jurisdictions, it is important for the Canadian Debtors to be protected by a stay of proceedings and from enforcement rights in Canada pursuant to a Canadian court order. Many of Paladin's contracts and agreements contain "*ipso facto*" clauses that purport to provide the counterparty with a termination right in the event of a bankruptcy or insolvency involving Paladin or its affiliates. The termination of critical agreements would impair Paladin's ability to carry on the Canadian Business in the ordinary course. It is critical to the preservation of

the value of the Canadian Business and Endo's broader restructuring efforts that the Interim Stay is granted to protect against the exercise of rights or remedies against the Canadian Debtors.

141. Under the proposed Interim Order and proposed Supplemental Order, Paladin is also seeking a stay of proceedings in Canada against the Canadian Litigation Defendants. The current Canadian Litigation Defendants are seven Debtors that are named as defendants in the Canadian Litigation. A stay of the Canadian Litigation in respect of the Canadian Litigation Defendants is necessary to preserve the value of the Company, ensure a level playing field among all creditors, reduce the ongoing costs incurred by the Company in defending the Canadian Litigation, and enable the company to focus its resources on pursuing a comprehensive restructuring in the Chapter 11 Cases.

142. Furthermore, Paladin is a defendant in each of the Canadian Opioid Lawsuits and it would be prejudicial and inefficient to permit the Canadian Opioid Lawsuits to continue against the other Canadian Litigation Defendants when the underlying claims against such entities are closely related to the claims against Paladin. The granting of a stay in favour of the Canadian Litigation Defendants is complimentary to and in furtherance of the stay of proceedings in favour of the Canadian Litigation Defendants as Debtors in the Chapter 11 Cases.

B. Recognition of Foreign Main Proceedings

143. Pursuant to the proposed Initial Recognition Order, the Canadian Debtors seek recognition of the Chapter 11 Cases as a "foreign main proceeding" in respect of the Canadian Debtors under Part IV of the CCAA. The Chapter 11 Cases have been commenced to preserve the value of the Company and provide a forum for the completion of a restructuring of the entire Endo group. The

Canadian Debtors are integrated members of the Endo group and seek recognition of the Chapter 11 Cases to preserve and protect the value of the Canadian Business in Canada while the Debtors pursue a global restructuring in the Chapter 11 Cases.

C. Recognition of First Day Orders

144. The Debtors are seeking a number of interim and final orders (the "**First Day Orders**") at the First Day Hearing with respect to the administration of the Chapter 11 Cases and the continued operation of the Debtors' business during the Chapter 11 Cases.

145. The Debtors have filed six "administrative" motions that seek to (a) jointly administer the Chapter 11 Cases for procedural purposes only, (b) authorize the Debtors to file a consolidated list of creditors, (c) authorize the Debtors to retain Kroll Restructuring Administration LLC as claims and noticing agent, (d) authorize case management procedures, (e) extend the time period by which the Debtors must file their schedules and statements, and (f) enforce the automatic stay and related notice to non-debtor stakeholders.

146. The Debtors have filed ten "operational" motions that seek to (a) authorize the Debtors to continue using their Cash Management System, (b) authorize the Debtors to pay employees, (c) authorize the Debtors to maintain insurance coverage and pay related obligations, (d) authorize the Debtors to pay taxes and fees, (e) authorize the Debtors to pay utility providers and provide adequate assurance of payment to those utility providers, (f) authorize the Debtors to continue to maintain their customer programs, (g) authorize the Debtors to pay certain vendor claims, (h) establish procedures for trading in the Debtors' equity securities, (i) authorize the Debtor's foreign

representatives to act on their behalf in certain foreign proceedings, including the Canadian recognition proceedings; and (j) authorize the Debtors to use Cash Collateral.

147. I understand that the First Day Orders, if granted, will be attached to a subsequent affidavit to be filed with this Court. Paladin intends to seek recognition of the following First Day Orders if granted by the Bankruptcy Court:

(a) *Order (I) Directing Joint Administration of the Chapter 11 Cases Pursuant to Bankruptcy Rule 1015(b); (II) Waiving the Requirements of Section 342(c)(1) of the Bankruptcy Code and Bankruptcy Rule 2002(n); and (III) Granting Related Relief*;

(b) *Order (I) Extending the Time to File Schedules and Statements of Financial Affairs; (II) Extending the Time to File Reports of Financial Information Required Under Bankruptcy Rule 2015.3; (III) Waiving Requirement to File List of Equity Security Holders and Provide Notice of Commencement to Equity Security Holders; and (IV) Granting Related Relief*;

(c) *Order (I) Enforcing and Restating Sections 362, 365, 525, and 541 of the Bankruptcy Code; (II) Approving Form and Manner of Notice to Non-U.S. Customers, Suppliers, and Other Stakeholders of the Debtors; (III) Approving Form and Manner of Notice to Non-U.S. Customers, Suppliers, and Other Stakeholders of the Non-Debtor Affiliates; and (IV) Granting Related Relief*;

(d) *Interim Order (I) Prohibiting Utilities from Altering, Refusing or Discontinuing Service, (II) Deeming Utilities Adequately Assured of Future Performance and (III) Establishing Procedures for Determining Requests for Additional Adequate Assurance*;

(e) *Order (I) Waiving the Requirement That Each Debtor Files a Separate List of its 20 Largest Creditors; (II) Authorizing the Debtors to File a Single Consolidated List of Their 20 Largest Unsecured, Non-Insider Creditors; (III) Authorizing the Debtors and the Claims and Noticing Agent to Redact Personally Identifiable Information for Individuals; (IV) Authorizing the Claims and Noticing Agent to Withhold Publication of Claims Filed by Individuals Until Further Order of the Court; (V) Establishing Procedures for Notifying Creditors of the Commencement of the Debtors' Chapter 11 Cases, and (VI) Granting Related Relief*;

(f) *Interim Order (I) Authorizing Debtors to (A) Pay Prepetition Wages, Salaries, Employee Benefits and Other Compensation and (B) Continue Employee Benefits Programs and Pay Related Administrative Obligations; (II) Authorizing Financial*

Institutions to Honor and Process Related Checks and Transfers; and (III) Granting Related Relief;

(g) *Order (I) Authorizing the Foreign Representatives to Act for the Debtors in Foreign Proceedings and (II) Granting Related Relief*.

(h) *Order Authorizing the Establishment of Certain Notice, Case Management, and Administrative Procedures*;

(i) *Interim Order (I) Authorizing Debtors to Honor Prepetition Obligations to Customers and Related Third Parties and to Otherwise Continue Customer Programs; (II) Granting Relief from Stay to Permit Setoff in Connection with the Customer Programs; (III) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers; and (IV) Granting Related Relief*;

(j) *Interim Order (I) Authorizing Payment of Certain Prepetition Specified Trade Claims; (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers; and (III) Granting Related Relief*;

(k) *Interim Order Authorizing (I) Debtors to Pay Certain Prepetition Taxes, Governmental Assessments, and Fees; and (II) Financial Institutions to Honor and Process Related Checks and Transfer Utilities Motion*;

(l) *Interim Order Authorizing (I) the Debtors to Continue and Renew Their Insurance Programs and Honor all Obligations in Respect Thereof; (II) Financial Institutions to Honor and Process Related Checks and Transfers; and (III) the Debtors to Modify the Automatic Stay With Respect to Workers' Compensation Claims*;

(m) *Order (I) Appointing Kroll Restructuring Administration LLC as Claims and Noticing Agent Nunc Pro Tunc to the Petition Date; and (II) Granting Related Relief*;

(n) *Interim Order (I) Establishing Notice and Objection Procedures for Transfers of Equity Securities; and (II) Granting Related Relief*;

(o) *Interim Order (I) Authorizing the Debtors to (A) Continue Using Existing Cash Management Systems, Bank Accounts, and Business Forms and (B) Implement Changes to Their Cash Management System in the Ordinary Course of Business; (II) Granting Administrative Expense Priority for Postpetition Intercompany Claims; (III) Granting a Waiver With Respect to the Requirements of 11 U.S.C. § 345(b); and (IV) Granting Related Relief*; and

(p) *Interim Order (I) Authorizing Debtors' Use of Cash Collateral; (II) Granting Adequate Protection to Prepetition Secured Parties; (III) Modifying the Automatic Stay; and (IV) Granting Related Relief*.

D. Appointment of Information Officer

148. Paladin seeks the appointment of KSV as the Information Officer in this proceeding pursuant to the proposed Supplemental Order. KSV is a licensed trustee in bankruptcy in Canada with expertise in, among other things, cross-border restructuring proceedings, including acting as information officer in Canadian recognition proceedings under the CCAA.

149. KSV has consented to acting as Information Officer in this proceeding. I understand that a copy of the written consent will be included in Paladin's Application Record.

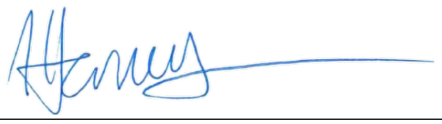
E. Administration Charge

150. The proposed Supplemental Order provides that Goodmans LLP, as Canadian counsel to the Canadian Debtors, the Information Officer and counsel to the Information Officer will be granted a charge in the maximum amount of CDN$200,000 (the "**Administration Charge**") over the assets and property of the Canadian Debtors in Canada to secure the fees and disbursements of such professionals incurred in respect of these proceedings. For certainty, the proposed Administration Charge does not extend to the assets or property of any Debtors other than the Canadian Debtors. The Administration Charge is proposed to rank in priority to all other encumbrances in respect of the Canadian Debtors. I believe that the amount of the Administration Charge is reasonable in the circumstances, having regard to the size and complexity of these proceedings and the roles that will be required of Canadian counsel to the Canadian Debtors and the proposed Information Officer and its counsel.

IX. CONCLUSION

151. I believe that the relief sought in the proposed Interim Order, Initial Recognition Order and Supplemental Order is necessary to protect the Canadian Debtors and preserve the value of the Canadian Business for the benefit of a broad range of stakeholders. The requested relief will provide the Endo group, including the Canadian Debtors and the Canadian Litigation Defendants, with the opportunity to pursue a comprehensive restructuring in the Chapter 11 Cases with a view to emerging as a strong and sustainable enterprise.

SWORN BEFORE ME by videoconference on this 17th day of August, 2022. This affidavit was commissioned remotely in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely. The affidavit was located in the City of Pincourt in the Province of Quebec and I was located in the City of Toronto in the Province of Ontario.



Commissioner for Taking Affidavits
(or as may be)

Andrew Harmes
LSO#73221A

Digitally signed by
Daniel Vas
Date: 2022.08.17
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Daniel Vas

THIS IS EXHIBIT "B"
TO THE AFFIDAVIT OF ANDREW HARMES
SWORN BEFORE ME
THIS 23RD DAY OF NOVEMBER, 2022

Erik Axell

_____

Commissioner for Taking Affidavits

Electronically issued / Délivré par voie électronique : 23-Aug-2022
Toronto Superior Court of Justice / Cour supérieure de justice

Court File No. CV-22-00685631-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

THE HONOURABLE CHIEF	)	FRIDAY, THE 19TH
	)	
JUSTICE MORAWETZ	)	DAY OF AUGUST, 2022

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

AND IN THE MATTER OF PALADIN LABS CANADIAN HOLDING INC. AND PALADIN LABS INC.

APPLICATION OF PALADIN LABS INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Applicant

INITIAL RECOGNITION ORDER
(FOREIGN MAIN PROCEEDING)

THIS APPLICATION, made pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") and section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, by Paladin Labs Inc. ("**Paladin**") in its capacity as the foreign representative (the "**Foreign Representative**") of the proceedings commenced on August 16, 2022 in the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**") pursuant to chapter 11 of title 11 of the United States Code (the "**Foreign Proceeding**") for an Order substantially in the form enclosed in the Application Record, was heard this day by judicial videoconference in Toronto, Ontario.

ON READING the Notice of Application, the affidavit of Daniel Vas sworn August 17, 2022 (the "**Vas Affidavit**") and the affidavits of Nargis Fazli sworn August 18, 2022 and August

19, 2022, each filed, and upon being provided with copies of the documents required by section 46 of the CCAA,

AND UPON BEING ADVISED by counsel for the Foreign Representative that in addition to this Initial Recognition Order, a Supplemental Order (Foreign Main Proceeding) (the "**Supplemental Order**") is being sought,

AND UPON HEARING the submissions of counsel for the Foreign Representative, counsel for KSV Restructuring Inc., in its capacity as the proposed information officer (the "**Information Officer**"), and counsel for such other parties as were present and wished to be heard:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

FOREIGN REPRESENTATIVE

2. **THIS COURT ORDERS AND DECLARES** that the Foreign Representative is the "foreign representative" as defined in section 45 of the CCAA in respect of the Foreign Proceeding.

CENTRE OF MAIN INTEREST AND RECOGNITION OF FOREIGN PROCEEDING

3. **THIS COURT DECLARES** that the centre of its main interests for each of Paladin and Paladin Labs Canadian Holding Inc. (collectively, the "**Canadian Debtors**" and each a "**Canadian Debtor**") is the United States of America and that the Foreign Proceeding is hereby recognized as a "foreign main proceeding" as defined in section 45 of the CCAA in respect of the Canadian Debtors.

STAY OF PROCEEDINGS

4. **THIS COURT ORDERS** that until otherwise ordered by this Court:

(a) all proceedings taken or that might be taken against any Canadian Debtor under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* are stayed;

(b) further proceedings in any action, suit or proceeding against any Canadian Debtor are restrained; and

(c) the commencement of any action, suit or proceeding against any Canadian Debtor is prohibited.

NO SALE OF PROPERTY

5. **THIS COURT ORDERS** that, except with leave of this Court, each of the Canadian Debtors is prohibited from selling or otherwise disposing of:

(a) outside the ordinary course of its business, any of its property in Canada that relates to the business; and

(b) any of its other property in Canada.

GENERAL

6. **THIS COURT ORDERS** that within five (5) business days from the date of this Order, or as soon as practicable thereafter, the Foreign Representative, with the assistance of the Information Officer, shall cause to be published, once a week for two consecutive weeks, a notice substantially in the form attached to this Order as Schedule "A" in the Globe and Mail (National Edition) in English and in Le Devoir (or such other French-language newspaper as the Foreign Representative may determine in consultation with the Information Officer) in French.

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, or regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Canadian Debtors, the Foreign Representative, the Information Officer and their respective counsel and agents in carrying out the terms of this Order.

8. **THIS COURT ORDERS AND DECLARES** that the Interim Order (Foreign Proceeding) of this Court dated August 17, 2022 (the "**Interim Order**") shall be of no further force and effect once this Order and the Supplemental Order become effective, and that this

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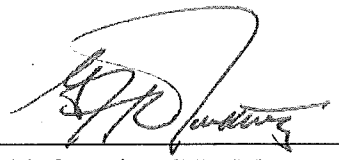
Toronto Superior Court of Justice / Cour supérieure de justice

Order shall be effective as of 12:01 a.m. on the date of this Order without the need for entry or filing of this Order, provided that nothing herein shall invalidate any action taken in compliance with the Interim Order prior to the effectiveness of this Order and the Supplemental Order.

9. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days' notice to the Canadian Debtors, the Foreign Representative, the Information Officer and their respective counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.



Chief Justice G.B. Morawetz

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Toronto Superior Court of Justice / Cour supérieure de justice

Court File No./N° du dossier du greffe : CV-22-00685631-00CL

Schedule "A" – Notice of Recognition Orders

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF PALADIN LABS CANADIAN HOLDING INC. AND PALADIN LABS INC. (COLLECTIVELY, THE "CANADIAN DEBTORS")

NOTICE OF RECOGNITION ORDERS

PLEASE BE ADVISED that this Notice is being published pursuant to an Initial Recognition Order (Foreign Main Proceeding) of the Ontario Superior Court of Justice (Commercial List) (the "**Canadian Court**") granted on August 19, 2022 (the "**Initial Recognition Order**").

PLEASE TAKE NOTICE that on August 16, 2022, Endo International plc and certain of its subsidiaries and affiliates, including the Canadian Debtors, commenced voluntary reorganization proceedings (the "**Chapter 11 Proceedings**") pursuant to chapter 11 of title 11 of the United States Code with the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**"). In connection with the Chapter 11 Proceedings, Paladin Labs Inc. was appointed to act as a representative (the "**Foreign Representative**") in respect of the Chapter 11 Proceedings. The Foreign Representative's address is Suite 600, 100 Boulevard Alexis-Nihon, Montreal, Quebec.

AND TAKE NOTICE that the Initial Recognition Order and a Supplemental Order (Foreign Main Proceeding (collectively with the Initial Recognition Order, the "**Recognition Orders**") have been issued by the Canadian Court in proceedings (the "**Canadian Recognition Proceedings**") under Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), among other things: (i) declaring that the Chapter 11 Proceedings are recognized as a "foreign main proceeding", as defined in section 45 of the CCAA, in respect of the Canadian Debtors; (ii) granting a stay of proceedings against the Canadian Debtors and any subsidiary, affiliate or related party of Endo International plc or any Canadian Debtor that is a defendant in litigation proceedings in Canada (collectively, the "**Canadian Litigation Defendants**") and their respective directors and officers in Canada; (iii) prohibiting the commencement of any proceedings against the Canadian Debtors, the Canadian Litigation Defendants or their respective directors and officers in Canada absent further order of the Canadian Court; (iv) recognizing certain orders granted by the Bankruptcy Court in the Chapter 11 Proceedings; and (v) appointing KSV Restructuring Inc. as the information officer with respect to the Canadian Recognition Proceedings (the "**Information Officer**").

AND TAKE NOTICE that motions, orders and notices filed with the Bankruptcy Court in the Chapter 11 Proceedings are available at: https://restructuring.ra.kroll.com/endo and that the Recognition Orders, and any other orders that may be granted by the Canadian Court in the Canadian Recognition Proceedings, are available at: https://www.ksvadvisory.com/experience/case/endo.

Electronically issued / Délivré par voie électronique : 23-Aug-2022
Toronto Superior Court of Justice / Cour supérieure de justice

AND TAKE NOTICE that counsel for the Foreign Representative is:

Goodmans LLP
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Attention: Endo/Paladin Canadian Recognition Proceedings
Phone: (416) 979-2211
Email: endocanadianrecognition@goodmans.ca

PLEASE FINALLY TAKE NOTICE that if you wish to receive copies of the Recognition Orders or obtain further information in respect of the matters set forth in this Notice, you may contact the Information Officer:

KSV Restructuring Inc.
150 King Street West, Suite 2308
Toronto, Ontario M5H 1J9
Attention: Jordan Wong
Phone: 416-932-6025
Email: jwong@ksvadvisory.com

DATED AT TORONTO, ONTARIO this ● day of ●, 2022.

Court File No. CV-22-00685631-00CL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF PALADIN LABS CANADIAN HOLDING INC. AND PALADIN LABS INC.

APPLICATION OF PALADIN LABS INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

INITIAL RECOGNITION ORDER
(FOREIGN MAIN PROCEEDING)

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Fax: 416.979.1234

Lawyers for the Applicant

THIS IS EXHIBIT "C"
TO THE AFFIDAVIT OF ANDREW HARMES
SWORN BEFORE ME
THIS 23RD DAY OF NOVEMBER, 2022

Erik Axell
_____
Commissioner for Taking Affidavits

Court File No. CV-22-00685631-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

THE HONOURABLE CHIEF	)	FRIDAY, THE 19TH
	)	
JUSTICE MORAWETZ	)	DAY OF AUGUST, 2022

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

AND IN THE MATTER OF PALADIN LABS CANADIAN HOLDING INC. AND PALADIN LABS INC.

APPLICATION OF PALADIN LABS INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Applicant

SUPPLEMENTAL ORDER
(FOREIGN MAIN PROCEEDING)

THIS APPLICATION, made pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") and section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, by Paladin Labs Inc. ("**Paladin**") in its capacity as the foreign representative (the "**Foreign Representative**") in respect of the proceedings commenced on August 16, 2022 in the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**") pursuant to chapter 11 of title 11 of the United States Code (the "**Foreign Proceeding**") for an Order substantially in the form enclosed in the Application Record, was heard this day by judicial videoconference in Toronto, Ontario.

ON READING the Notice of Application, the affidavit of Daniel Vas sworn August 17, 2022 (the "**Vas Affidavit**") and the affidavits of Nargis Fazli sworn August 18, 2022 and August 19, 2022, each filed,

AND ON HEARING the submissions of counsel for the Foreign Representative, counsel for KSV Restructuring Inc. ("**KSV**"), in its capacity as the proposed Information Officer (as defined below), and counsel for such other parties as were present and wished to be heard, and on reading the consent of KSV to act as the Information Officer:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

INITIAL RECOGNITION ORDER

2. **THIS COURT ORDERS** that any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Initial Recognition Order (Foreign Main Proceeding) of this Court dated August 19, 2022 (the "**Initial Recognition Order**").

3. **THIS COURT ORDERS** that the provisions of this Supplemental Order shall be interpreted in a manner complementary and supplementary to the provisions of the Initial Recognition Order, provided that in the event of a conflict between the provisions of this Supplemental Order and the provisions of the Initial Recognition Order, the provisions of the Initial Recognition Order shall govern.

RECOGNITION OF FOREIGN ORDERS

4. **THIS COURT ORDERS** that the following orders (collectively, the "**Foreign Orders**") of the Bankruptcy Court made in the Foreign Proceeding, copies of which are attached hereto as Schedules "B" to "K", are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 49 of the CCAA:

(a) *Order (I) Authorizing the Foreign Representatives to Act for the Debtors in Foreign Proceedings and (II) Granting Related Relief* (the "**Foreign Representative Order**");

(b) *Order (I) Directing Joint Administration of the Chapter 11 Cases Pursuant to Bankruptcy Rule 1015(b); (II) Waiving the Requirements of Section 342(c)(1) of the Bankruptcy Code and Bankruptcy Rule 2002(n); and (III) Granting Related Relief* (the "**Joint Administration Order**);

(c) *Order (I) Enforcing and Restating Sections 362, 365, 525, and 541 of the Bankruptcy Code; (II) Approving Form and Manner of Notice to Non-U.S. Customers, Suppliers, and Other Stakeholders of the Debtors; (III) Approving Form and Manner of Notice to Non-U.S. Customers, Suppliers, and Other Stakeholders of the Non-Debtor Affiliates; and (IV) Granting Related Relief* (the "**Notice of Stay Order**");

(d) *Interim Order (I) Authorizing Debtors to (A) Pay Prepetition Wages, Salaries, Employee Benefits and Other Compensation and (B) Continue Employee Benefits Programs and Pay Related Administrative Obligations; (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers; and (III) Granting Related Relief* (the "**Interim Wages Order**");

(e) *Interim Order (I) Authorizing Debtors to Honor Prepetition Obligations to Customers and Related Third Parties and to Otherwise Continue Customer Programs; (II) Granting Relief from Stay to Permit Setoff in Connection with the Customer Programs; (III) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers; and (IV) Granting Related Relief* (the "**Interim Customer Programs Order**");

(f) *Interim Order (I) Authorizing Payment of Certain Prepetition Specified Trade Claims; (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers; and (III) Granting Related Relief* (the "**Interim Vendor Order**");

(g) *Interim Order Authorizing (I) Debtors to Pay Certain Prepetition Taxes, Governmental Assessments and Fees; and (II) Financial Institutions to Honor and Process Related Checks and Transfers* (the "**Interim Taxes Order**");

(h) *Interim Order Authorizing (I) the Debtors to Continue and Renew Their Insurance Programs and Honor all Obligations in Respect Thereof; (II) Financial Institutions to Honor and Process Related Checks and Transfers; and (III) the Debtors to Modify the Automatic Stay With Respect to Workers' Compensation Claims* (the "**Interim Insurance Order**");

(i) *Interim Order (I) Authorizing the Debtors to (A) Continue Using Existing Cash Management Systems, Bank Accounts, and Business Forms and (B) Implement Changes to Their Cash Management System in the Ordinary Course of Business; (II) Granting Administrative Expense Priority for Postpetition Intercompany Claims; (III) Granting a Waiver With Respect to the Requirements of 11 U.S.C. § 345(b); and (IV) Granting Related Relief* (the "**Interim Cash Management Order**"); and

(j) *Interim Order (I) Authorizing Debtors' Use of Cash Collateral; (II) Granting Adequate Protection to Prepetition Secured Parties; (III) Modifying the Automatic Stay; and (IV) Granting Related Relief* (the "**Interim Cash Collateral Order**"),

provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to Property (as defined below) in Canada.

APPOINTMENT OF INFORMATION OFFICER

5. **THIS COURT ORDERS** that KSV (the "**Information Officer**") is hereby appointed as an officer of this Court, with the powers and duties set out herein and in any other Order made in these proceedings.

STAY OF PROCEEDINGS

6. **THIS COURT ORDERS** that until such date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal in Canada (each, a "**Proceeding**") shall be commenced or continued against or in respect of (a) Paladin or Paladin Labs Canadian Holding Inc. (collectively, the "**Canadian Debtors**" and each a "**Canadian Debtor**") or affecting their business (the "**Business**") or their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"), or (b) any subsidiary, affiliate or related party of Endo International plc or any Canadian Debtor that is a defendant in the Canadian Litigation (as defined in the Vas Affidavit) or subject to any other Proceeding in Canada (collectively, the "**Canadian Litigation Defendants**"), including without limitation those entities listed on Schedule "A" hereto, except with the written consent of the applicable Canadian Debtor or Canadian Litigation Defendant and the Information Officer, or with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Canadian Debtors or the Canadian Litigation Defendants or affecting the Business or the Property, including, but not limited to, the Canadian Litigation, are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

7. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities or person (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in

respect of the Canadian Debtors or the Canadian Litigation Defendants, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the applicable Canadian Debtor or Canadian Litigation Defendant and the Information Officer, or with leave of this Court, provided that nothing in this Order shall (i) prevent the assertion of or the exercise of rights and remedies in the Foreign Proceeding, (ii) empower any Canadian Debtor or Canadian Litigation Defendant to carry on any business in Canada which such Canadian Debtor or Canadian Litigation Defendant is not lawfully entitled to carry on, (iii) affect such investigations or Proceedings by a regulatory body as are permitted by section 11.1 of the CCAA, (iv) prevent the filing of any registration to preserve or perfect a security interest, or (v) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

8. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, licence or permit in favour of or held by any of the Canadian Debtors and affecting the Business or Property in Canada, except with leave of this Court.

ADDITIONAL PROTECTIONS

9. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Canadian Debtors or statutory or regulatory mandates for the supply of goods and/or services in Canada, including without limitation all licencing arrangements, manufacturing arrangements, computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services provided in respect of the Property or Business of the Canadian Debtors, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Canadian Debtors, and that the Canadian Debtors shall be entitled to the continued use in Canada of their current premises, bank accounts, telephone numbers, facsimile numbers, internet addresses and domain names.

10. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Canadian Debtors or the Canadian Litigation Defendants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Canadian Debtors or the Canadian Litigation Defendants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

11. **THIS COURT ORDERS** that no Proceeding shall be commenced or continued against or in respect of the Information Officer, except with leave of this Court. In addition to the rights and protections afforded the Information Officer herein, or as an officer of this Court, the Information Officer shall have the benefit of all of the rights and protections afforded to a Monitor under the CCAA, and shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

OTHER PROVISIONS RELATING TO INFORMATION OFFICER

12. **THIS COURT ORDERS** that the Information Officer:

(a) is hereby authorized to provide such assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request;

(b) shall report to this Court at such times and intervals that the Information Officer considers appropriate with respect to the status of these proceedings and the status of the Foreign Proceeding, which reports may include information relating to the Property, the Business, or such other matters as may be relevant to the proceedings herein;

(c) shall have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial

documents of the Canadian Debtors, to the extent that is necessary to perform its duties arising under this Order; and

(d) shall be at liberty to engage independent legal counsel or such other persons as the Information Officer deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order.

13. **THIS COURT ORDERS** that the Canadian Debtors and the Foreign Representative shall (i) advise the Information Officer of all material steps taken by the Canadian Debtors or the Foreign Representative in these proceedings or in the Foreign Proceeding, (ii) co-operate fully with the Information Officer in the exercise of its powers and discharge of its obligations, and (iii) provide the Information Officer with the assistance that is necessary to enable the Information Officer to adequately carry out its functions.

14. **THIS COURT ORDERS** that the Information Officer shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

15. **THIS COURT ORDERS** that the Information Officer (i) shall post on its website all Orders of this Court made in these proceedings, all reports of the Information Officer filed herein, and such other materials as this Court may order from time to time, and (ii) may post on its website any other materials that the Information Officer deems appropriate.

16. **THIS COURT ORDERS** that the Information Officer may provide any creditor of a Canadian Debtor with information provided by the Canadian Debtors in response to reasonable requests for information made in writing by such creditor addressed to the Information Officer. The Information Officer shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Information Officer has been advised by a Canadian Debtor is privileged or confidential, the Information Officer shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Information Officer, the Foreign Representative and the applicable Canadian Debtor may agree.

17. **THIS COURT ORDERS** that Goodmans LLP, as Canadian counsel to the Canadian Debtors ("**Canadian Counsel**"), the Information Officer and counsel to the Information Officer shall be paid by the Canadian Debtors their reasonable fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts. The Canadian Debtors are hereby authorized and directed to pay the accounts of Canadian Counsel, the Information Officer and counsel for the Information Officer on a monthly basis or on such terms as such parties may agree.

18. **THIS COURT ORDERS** that the Information Officer and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Information Officer and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice, and the accounts of the Information Officer and its counsel shall not be subject to approval in the Foreign Proceeding.

19. **THIS COURT ORDERS** that Canadian Counsel, the Information Officer and counsel to the Information Officer shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property in Canada, which charge shall not exceed an aggregate amount of CDN$200,000, as security for their professional fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order. The Administration Charge shall have the priority set out in paragraph 21 hereof.

VALIDITY AND PRIORITY OF CHARGE CREATED BY THIS ORDER

20. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge shall not be required, and that the Administration Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Administration Charge coming into existence, notwithstanding any such failure to file, register, record or perfect the Administration Charge.

21. **THIS COURT ORDERS** that the Administration Charge (as constituted and defined herein) shall constitute a charge on the Property in Canada and such Administration Charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances,

claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

22. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Canadian Debtors shall not grant any Encumbrances over any Property in Canada that rank in priority to, or *pari passu* with, the Administration Charge, unless the Canadian Debtors also obtain the prior written consent of the beneficiaries of the Administration Charge (collectively, the "**Chargees**").

23. **THIS COURT ORDERS** that the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not otherwise be limited or impaired in any way by (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy or receivership order(s) issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") or otherwise, or any orders made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds any Canadian Debtor, and notwithstanding any provision to the contrary in any Agreement:

(a) the creation of the Administration Charge shall not create or be deemed to constitute a breach by a Canadian Debtor of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Administration Charge; and

(c) the payments made by the Canadian Debtors to the Chargees pursuant to this Order, and the granting of the Administration Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue,

oppressive conduct, or other challengeable or voidable transactions under any applicable law.

24. **THIS COURT ORDERS** that any charge created by this Order over leases of real property in Canada shall only be a charge in the applicable Canadian Debtor's interest in such real property leases.

SERVICE AND NOTICE

25. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: https://www.ksvadvisory.com/experience/case/endo.

26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Canadian Debtors, the Foreign Representative, the Information Officer, and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or electronic transmission to the Canadian Debtors' creditors or other interested parties at their respective addresses (including e-mail addresses) as last shown on the records of the applicable Canadian Debtor and that any such service or distribution shall be deemed to be received (a) in the case of delivery by personal delivery, facsimile or electronic transmission, on the date of delivery or transmission, (b) in the case of delivery by prepaid ordinary mail, on the third business day after mailing, and (c) in the case of delivery by courier, on the next business day following the date of forwarding thereof.

27. **THIS COURT ORDERS** that the Canadian Debtors, the Foreign Representative, the Information Officer, and their respective counsel are at liberty to serve or distribute this Order, the Initial Recognition Order, and any other materials and Orders as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding true copies thereof by electronic message to the Canadian Debtors' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations,* Reg. 81000-2-175 (SOR/DORS).

GENERAL

28. **THIS COURT ORDERS** that the Information Officer may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

29. **THIS COURT ORDERS** that nothing in this Order shall prevent the Information Officer from acting as an interim receiver, a receiver, a receiver and manager, a monitor, a proposal trustee, or a trustee in bankruptcy of any Canadian Debtor, the Business or the Property.

30. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, or regulatory or administrative body having jurisdiction in Canada, the United States of America or any other foreign jurisdiction, to give effect to this Order and to assist the Canadian Debtors, the Foreign Representative, the Information Officer, and their respective counsel and agents in carrying out the terms of this Order. All courts, tribunals, and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Canadian Debtors, the Foreign Representative, and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Canadian Debtors, the Foreign Representative, and the Information Officer and their respective agents in carrying out the terms of this Order.

31. **THIS COURT ORDERS** that each of the Canadian Debtors, the Foreign Representative and the Information Officer shall be at liberty and is hereby authorized and empowered to apply to any court, tribunal, or regulatory or administrative body, wherever

located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

32. **THIS COURT ORDERS** that the Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters issued by the Judicial Insolvency Network and adopted by this Court and the Bankruptcy Court and attached as Schedule "L" hereto are hereby adopted by this Court for the purposes of these recognition proceedings.

33. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days' notice to the Canadian Debtors, the Foreign Representative, the Information Officer and their respective counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

34. **THIS COURT ORDERS** that this Order shall be effective as of 12:01 a.m. on the date of this Order without the need for entry or filing of this Order.

Chief Justice G.B. Morawetz

SCHEDULE "A"
CANADIAN LITIGATION DEFENDANTS

1. Endo International plc
2. Endo Ventures Limited
3. Endo Pharmaceuticals Inc.
4. Par Pharmaceutical Companies, Inc.
5. Par Pharmaceutical, Inc.
6. DAVA Pharmaceuticals, LLC
7. Generics Bidco I, LLC

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF PALADIN LABS CANADIAN HOLDING INC. AND PALADIN LABS INC.

APPLICATION OF PALADIN LABS INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

SUPPLEMENTAL ORDER
(FOREIGN MAIN PROCEEDING)

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Tel: 416.979.2211
Fax: 416.979.1234

Lawyers for the Applicant

THIS IS EXHIBIT "D"
TO THE AFFIDAVIT OF ANDREW HARMES
SWORN BEFORE ME
THIS 23RD DAY OF NOVEMBER, 2022

Erik Axell

Commissioner for Taking Affidavits

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	**Chapter 11**
ENDO INTERNATIONAL plc, *et al.*,	**Case No. 22-22549 (JLG)**
Debtors.[1]	**(Jointly Administered)**
	Related Docket No. 165, 227, 267

ORDER (I) AUTHORIZING AND APPROVING PROCEDURES FOR (A) THE USE, SALE, TRANSFER, OR ABANDONMENT OF DE MINIMIS ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES WITHOUT FURTHER ORDER OF COURT AND (B) THE ACQUISITION OF DE MINIMIS ASSETS; (II) AUTHORIZING PAYMENT OF RELATED FEES AND EXPENSES; AND (III) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the debtors and debtors in possession (collectively, the "Debtors") in the above-captioned cases (the "Chapter 11 Cases") for an order (a) authorizing and approving procedures to use, sell, invest, or transfer certain assets, collections of assets, or business lines, including any rights or interests therein, of *de minimis* value of the Debtors that are not included in the Stalking Horse Bid (as defined in the Motion) (the "De Minimis Assets") in any individual transaction or series of related transactions (each, a "De Minimis Asset Transaction") to a single party or group of related parties with an aggregate sale price equal to or less than $2 million as calculated within the Debtors' good faith judgment, free and clear of liens, claims, and interests (collectively, the "Liens"), without the need for further

[1] The last four digits of Debtor Endo International plc's tax identification number are 3755. Due to the large number of debtors in these chapter 11 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at https://restructuring.ra.kroll.com/Endo. The location of the Debtors' service address for purposes of these chapter 11 cases is: 1400 Atwater Drive, Malvern, PA 19355.

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.

Court approval and with Liens attaching to the proceeds of such use, sale, or transfer with the same validity, extent, and priority as had attached to the De Minimis Assets immediately prior to the use, sale, or transfer; (b) acquire certain De Minimis Assets in any individual transaction or series of related transactions from a single seller or a group of related sellers with an aggregate sale price equal to or less than $2 million as calculated within the Debtors' good faith judgment without the need for further Court approval; (c) abandon a De Minimis Asset to the extent that a sale thereof cannot be consummated at a value greater than the cost of liquidating such De Minimis Asset and; (d) to pay those reasonable and necessary fees and expenses (if any) incurred in connection with the use, sale, transfer, or acquisition of De Minimis Assets, including, but not limited to, commission fees to agents, brokers, auctioneers, and liquidators, with the amount of proposed commission fees to be paid to be disclosed in the Transaction Notice; and (e) granting related relief, all as more fully set forth in the Motion; and the Court having reviewed the Motion and having heard the statements of counsel regarding the relief requested in the Motion at a hearing before the Court (the "Hearing"); and the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a)–(b) and 1334(b) and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); (ii) this is a core proceeding pursuant to 28 U.S.C. §§ 157 (b) and 1334(b); (iii) venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and (iv) due and proper notice of the Motion and the Hearing was sufficient under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all other parties-in-interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor; it is hereby,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED solely to the extent set forth herein.

2. Pursuant to section 363(b) of the Bankruptcy Code, the Debtors are authorized to use, sell, acquire, invest, or transfer De Minimis Assets in accordance with the following procedures (the "De Minimis Asset Transaction Procedures"):

a. *Transaction Value Less Than or Equal to USD $500,000*. With regard to uses, sales, acquisitions, investments, or transfers of the De Minimis Assets in any individual transaction or series of related transactions to a single party or group of related parties with a total transaction value less than or equal to $500,000, with such transaction value being the greater of (i) the actual price being paid for such De Minimis Assets or (ii) the gross book value of the De Minimis Assets subject to the sale, the Debtors are authorized to consummate such transaction(s) if the Debtors determine in the exercise of their business judgment that such transactions are in the best interest of the estates, without further order of the Court, with notice to be provided as follows:

i. The Debtors shall, at least seven days in advance of the proposed transaction, provide written notice (email shall suffice) to (i) Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166 Attn: Scott J. Greenberg (sgreenberg@gibsondunn.com), Michael J. Cohen (mcohen@gibsondunn.com), and Joshua K. Brody (jbrody@gibsondunn.com), counsel to the Ad Hoc First Lien Group (as defined in the First Day Declaration), (ii) Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036 Attn: Rachael Ringer (rringer@kramerlevin.com) and Megan Wasson (mwasson@kramerlevin.com), proposed counsel to the Official Committee of Unsecured Creditors (the "UCC"), (iii) proposed counsel to the opioid claimant committee (the "OCC"), Cooley LLP, 55 Hudson Yards, New York, NY 10001 (Attn: Cullen D. Speckhart, Esq. (cspeckhart@cooley.com), Summer M. McKee, Esq. (smckee@cooley.com), and Evan Lazerowitz, Esq. (elazerowitz@cooley.com); (iv) McElroy, Deutsch, Mulvaney & Carpenter, LLP, 225 Liberty Street, 36th floor, New York, NY 10281, counsel to The Hartford Fire Insurance Company, The Hartford Financial Services Group, and their Affiliated Sureties, Attn: Michael R. Morano (mmorano@mdmc-law.com); and (v) any applicable surety bond beneficiaries, which notice shall: (a) identify the De Minimis Assets being used, sold, acquired, or transferred, (b) identify the transaction counterparty, (c) state the transaction amount, (d) identify any known Liens on De Minimis Assets to be

sold, (e) state the significant terms of the transaction documents, including, but not limited to, any payments to be made by the Debtors on account of commission fees to agents, brokers, auctioneers, and liquidators, and (f) disclose any relationships with the proposed sale counterparties.

b. *Transaction Value Greater Than USD $500,000 but Less Than or Equal to USD $2 Million*. With regard to uses, sales, acquisitions, investments, or transfers of the De Minimis Assets in any individual transaction or series of related transactions to a single party or group of related parties with a total transaction value of greater than $500,000 and up to or equal to $2 million, with such transaction value being the greater of (i) the actual price being paid for such De Minimis Assets or (ii) the gross book value of the De Minimis Assets subject to the sale:

i. The Debtors are authorized to consummate such transaction(s) if the Debtors determine, in the exercise of their business judgment and in consultation with the Ad Hoc First Lien Group, the UCC, and the OCC that such transaction(s) are in the best interests of the estates, subject to the procedures set forth in the Order;

ii. The Debtors shall give written notice by first class mail (or email, where applicable) of each such transaction, substantially in the form attached to the Proposed Order as **Exhibit 1** (the "Transaction Notice"), to: (a) the U.S. Trustee, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, NY 10014, Attn: Paul Schwartzberg, Susan Arbeit, Andy Velez-Rivera, and Tara Tiantian; (b) Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036 Attn: Rachael Ringer (rringer@kramerlevin.com) and Megan Wasson (mwasson@kramerlevin.com), proposed counsel to the UCC; (c) counsel to the administrative agent under the Debtors' prepetition credit agreement; (d) counsel to the indenture trustee under each of the Debtors' outstanding bond issuances; (e) Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166 Attn: Scott J. Greenberg (sgreenberg@gibsondunn.com), Michael J. Cohen (mcohen@gibsondunn.com), and Joshua K. Brody (jbrody@gibsondunn.com), attorneys for the Ad Hoc First Lien Group; (f) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, NY 10019 Attn: Andrew N. Rosenberg (arosenberg@paulweiss.com), Alice B. Eaton (aeton@paulweiss.com), Andrew Parlen (aparlen@paulweiss.com), and Alexander Woolverton (awoolverton@paulweiss.com), attorneys for the Ad Hoc Cross-Holder Group (as defined in the First Day Declaration); (g) Cooley LLP, 55 Hudson Yards, New York, NY 10001, Attn: Cullen D. Speckhart, Esq. (cspeckhart@cooley.com), Summer McKee, Esq.

(smckee@cooley.com), and Evan Lazerowitz, Esq. (elazerowitz@cooley.com), proposed counsel to the OCC, (h)(1) Roger Frankel (rfrankel@frankelwyron.com), Frankel Wyron, LLP, 2101 L Street, NW, Suite 800, Washington DC 20037, the Proposed FCR and (2) Frankel Wyron, LLP, 2101 L Street, NW, Suite 800, Washington, DC 20037 Attn: Richard H. Wyron, (rwyron@frankelwyron.com) and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: James L. Patton, Jr. (jpatton@ycst.com), attorneys for the Proposed FCR; (i) McElroy, Deutsch, Mulvaney & Carpenter, LLP, 225 Liberty Street, 36th floor, New York, NY 10281, counsel to The Hartford Fire Insurance Company, The Hartford Financial Services Group, and Their Affiliated Sureties, Attn: Michael R. Morano (mmorano@mdmc-law.com); (j) any applicable surety bond beneficiaries; (k) any other party as required by applicable law; and (l) any known affected creditor asserting a Lien on the De Minimis Asset subject to sale (collectively, the "Notice Parties");

iii. The Transaction Notice shall (a) identify of the De Minimis Assets being used, sold, acquired, or transferred, (b) identify the transaction counterparty, (c) state the transaction amount, (d) identify any known Liens on De Minimis Assets to be sold, (e) state the significant terms of the transaction documents, including, but not limited to, any payments to be made by the Debtors on account of commission fees to agents, brokers, auctioneers, and liquidators, and (f) disclose any relationships with the proposed sale counterparties;

iv. The Debtors shall take any additional actions that may be required under applicable laws and regulations to consummate the transaction.

v. If no written objections from any of the Notice Parties are filed with the Court and served on (a) proposed counsel to the Debtors, Skadden, Arps, Slate, Meagher & Flom LLP, One Manhattan West, New York, New York 10001 Attn: Evan A. Hill (Evan.Hill@skadden.com) and 500 Boylston Street, Boston, Massachusetts 02116 Attn: Liz Downing (Elizabeth.Downing@skadden.com) and (b) proposed co-counsel to the Debtors, Togut, Segal & Segal LLP, One Penn Plaza, Suite 3335, New York, New York 10119 Attn: Kyle J. Ortiz (kortiz@teamtogut.com) and Amy M. Oden (aoden@teamtogut.com) within seven (7) days after service of such Transaction Notice, then the Debtors are authorized to immediately consummate such sale or transfer; and

vi. If any Notice Party files and serves on counsel to the Debtors a written objection to any such transaction with the Court within fourteen (14) days after service of such Transaction Notice, then the relevant De Minimis Asset transaction shall only be consummated, after consulting with the Ad Hoc First Lien Group, the UCC, and the OCC, upon submission of a consensual form of order resolving the objection as between the Debtors and the objecting party or further order of the Court after notice and a hearing.

c. Pursuant to Bankruptcy Code section 363(f), all sales of De Minimis Assets pursuant to the Order shall be free and clear of all Liens, if any, with any and all such valid and perfected Liens to attach to proceeds of the sales with the same validity, priority, force, and effect such Liens had on the property immediately prior to the sale, subject to the rights, claims, defenses, and obligations, if any, of the Debtors and all interested parties with respect to any such asserted Liens.

d. Each purchaser of a De Minimis Asset will be afforded the protections of section 363(m) of the Bankruptcy Code as a good faith purchaser.

e. *Transaction Value Greater Than USD $2 Million*. With regard to uses, sales, acquisitions, investments, or transfers of the De Minimis Assets in any individual transaction or series of related transactions to a single party or group of related parties with a total transaction of greater than USD $2 million, with such transaction value being the greater of (i) the actual price being paid for such De Minimis Assets or (ii) the gross book value of the De Minimis Assets subject to the sale, these De Minimis Asset Transaction Procedures shall not apply, and the Debtors shall file an appropriate motion with the Court requesting approval of the transaction.

3. Pursuant to section 554(a) of the Bankruptcy Code, the Debtors are authorized to abandon De Minimis Assets which the Debtors determine, in their good faith judgment and in consultation with the Ad Hoc First Lien Group, cannot be sold at a price greater than the cost of liquidating such assets, in accordance with the following procedures (the "De Minimis Asset Abandonment Procedures"):

a. The Debtors shall, after consultation with the Ad Hoc First Lien Group, the UCC, and the OCC give written notice of the abandonment, substantially in the form attached to the Proposed Order as **Exhibit 2** (the "Abandonment Notice"), to the Notice Parties;

b. The Abandonment Notice shall contain a (i) reasonably detailed description of the De Minimis Assets to be abandoned, (ii) the Debtors' reasons for such

abandonment, and (iii) any payments to be made by the Debtors in connection with such abandonment including, but not limited to, commission fees to agents, brokers, auctioneers, and liquidators;

c. If no written objections from any of the Notice Parties are filed with the Court and served on counsel to the Debtors within seven (7) days after the date of service of such Abandonment Notice, then the Debtors are authorized to immediately proceed with the abandonment; and

d. If a written objection from any Notice Party is filed with the Court and served on counsel to the Debtors within seven (7) days after service of such Abandonment Notice, then the relevant De Minimis Assets shall only be abandoned, after consulting with the Ad Hoc First Lien Group, the UCC, and the OCC, upon either the consensual resolution of the objection by the parties in question or further order of the Court after notice and a hearing.

4. Local Rules 6004-1 and 6005-1 are hereby waived with respect to any transaction undertaken pursuant to the De Minimis Asset Transaction Procedures.

5. The De Minimis Asset Transaction Procedures satisfy section 363(f) of the Bankruptcy Code, subject to the right of applicable Notice Parties to object on the ground that the applicable sale does not satisfy section 363(f) of the Bankruptcy Code.

6. Sales, uses, acquisitions, investments, or transfers to "insiders," as that term is defined in section 101(31) of the Bankruptcy Code, are excluded from this Order.

7. Upon request, the Debtors will provide the Notice Parties with supporting documentation of any transactions undertaken pursuant to the order.

8. If, following filing of an Abandonment Notice or Transaction Notice, the Debtors receive a higher and better offer from a third party regarding the assets to be sold or abandoned, nothing in this Order shall prevent the Debtors from pursuing such higher and better offer.

9. No objection to the relief requested in the Motion combined with no timely objection to the sale or transfer of De Minimis Assets in accordance with the terms of this Order

shall be determined to be "consent" to such use, sale, or transfer within the meaning of section 363(f)(2) of the Bankruptcy Code.

10. Sales and transfers of De Minimis Assets are, without need for any action by any party, free and clear of all Liens, with such Liens attaching to the proceeds of such sale or transfer with the same validity, extent, and priority and subject to the same defenses as had attached to such De Minimis Assets immediately prior to such sale or transfer. The holder of any valid lien, claim, encumbrance, or interest on such De Minimis Assets shall, as of the effective date of such sale or transfer, be deemed to have waived and released such lien, claim, encumbrance, or interest, without regard to whether such holder has executed or filed any applicable release, and such lien, claim, encumbrance, or interest shall automatically, and with no further action by any party, attach to the proceeds of such sale.

11. Purchasers that purchase De Minimis Assets pursuant to the De Minimis Asset Transaction Procedures and their transferees are entitled to the protections afforded to good-faith purchasers under section 363(m) of the Bankruptcy Code.

12. During the Chapter 11 Cases, the Debtors will provide a written report, within 30 days after each calendar quarter (to the extent any transactions of De Minimis Assets were consummated or effectuated or any De Minimis Assets were abandoned pursuant to this Order for the relevant quarter) concerning any such transactions or abandonments made pursuant to the relief requested herein (including the names of the transaction parties and the types and amounts of the transactions) to the Notice Parties and those parties requesting notice pursuant to Bankruptcy Rule 2002; *provided, however,* that the Debtors shall file a report thirty (30) days after confirmation of a chapter 11 plan of reorganization or liquidation, and following such filing, the

Debtors shall have no additional or further reporting obligations with respect to De Minimis Asset transactions or abandonments.

13. Service of the Transaction Notice is sufficient notice of the use, sale, or transfer of such De Minimis Assets.

14. With respect to all sale transactions consummated pursuant to this Order, this Order shall be sole and sufficient evidence of the transfer of title to any particular buyer, and the sale transactions consummated pursuant to this Order shall be binding upon and shall govern the acts of all persons and entities who may be required by operation of law, the duties of their office, or contract to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the property sold pursuant to this Order, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, administrative agencies, governmental departments, secretaries of state, and federal, state, and local officials, and each of such persons and entities is hereby directed to accept this Order as sole and sufficient evidence of such transfer of title and shall rely upon this Order in consummating the transactions contemplated hereby.

15. The Debtors are authorized to pay those reasonable and necessary fees and expenses incurred in the use, sale, transfer, or acquisition of De Minimis Assets, including commission fees to agents, brokers, auctioneers, and liquidators.[3]

16. Nothing contained herein shall prejudice the rights of the Debtors to seek authorization for the use, sale, acquisition, or transfer of any asset under 11 U.S.C. § 363.

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[3] The Debtors will not pay fees and expenses of estate-retained professionals in connection with such use, sale, transfer, or acquisition, however, other than in accordance with the *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals* dated October 12, 2022 [Docket No. 378].

17. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the rights of the Debtors or any statutory committee appointed in the Chapter 11 Cases, to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Order or the Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights or the rights of any other person under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

18. Notwithstanding anything to the contrary in this Order or the De Minimis Asset Transaction Procedures, none of the Debtors' insurance policies and/or any related agreements shall be sold, assigned, or otherwise transferred pursuant to any De Minimis Asset Transaction except in compliance with the terms of such insurance policies, any related agreements, and/or applicable nonbankruptcy law.

19. Notwithstanding anything to the contrary contained herein, any payment to be made or authorization contained hereunder shall be subject to the requirements imposed on the Debtors under any order regarding the use of cash collateral ("Cash Collateral Order"), or budget in connection therewith, approved by the Court in these Chapter 11 Cases. This Order shall not limit or be deemed to waive any rights of the UCC or the OCC under the Cash Collateral Order.

20. Nothing in this Order shall be deemed to allow the Debtors to abandon real or personal property in violation of applicable state or federal laws or regulations, including, but not limited to, environmental laws and regulations.

21. The De Minimis Asset Transaction Procedures and the De Minimis Asset Abandonment Procedures satisfy Bankruptcy Rules 2002 and 6007 and Local Rule 6007-1.

22. Notice of the Motion satisfies the requirements of Bankruptcy Rule 6004(a).

23. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

24. The Debtors are authorized and empowered to take all actions necessary and appropriate to implement the relief granted in this Order, including, without limitation, entering into sale agreements, executing all other appropriate sale related documents, paying fees and expenses incurred in the sale or transfer of De Minimis Assets, and taking any and all steps necessary to effectuate any approved sale or abandonment.

25. The Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: November 15, 2022
New York, New York

/s/ *James L. Garrity, Jr.*
THE HONORABLE JAMES L. GARRITY, JR.,
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Transaction Notice

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Paul D. Leake
Lisa Laukitis
Shana A. Elberg
Evan A. Hill
One Manhattan West
New York, New York 10001
Telephone: (212) 735-3000
Fax: (212) 735-2000

Counsel to Debtors and Debtors in Possession

TOGUT, SEGAL & SEGAL LLP
Albert Togut
Frank A. Oswald
Kyle J. Ortiz
One Penn Plaza, Suite 3335
New York, New York 10119
(212) 594-5000

Co-Counsel for Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	**Chapter 11**
ENDO INTERNATIONAL plc, *et al.*,	**Case No. 22-22549 (JLG)**
Debtors.[1]	**(Jointly Administered)**

**LIMITED NOTICE OF [___] WITH [___]
IN ACCORDANCE WITH THE ORDER (I) AUTHORIZING AND APPROVING PROCEDURES FOR (A) THE USE, SALE, TRANSFER, OR ABANDONMENT OF DE MINIMIS ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES WITHOUT FURTHER ORDER OF COURT AND (B) THE ACQUISITION OF DE MINIMIS ASSETS; (II) AUTHORIZING PAYMENT OF RELATED FEES AND EXPENSES; AND (III) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that, on [__], 2022, the United States Bankruptcy Court for the Southern District of New York (the "Court") entered the order [Docket No. ___] (the "Order") granting the motion (the "Motion")[2] of the Debtors for an order, pursuant to sections 105(a), 363, and 554 of the Bankruptcy Code, Bankruptcy Rule 2002, and Local Rules

[1] The last four digits of Debtor Endo International plc's tax identification number are 3755. Due to the large number of debtors in these chapter 11 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at https://restructuring.ra.kroll.com/Endo. The location of the Debtors' service address for purposes of these chapter 11 cases is: 1400 Atwater Drive, Malvern, PA 19355.

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

6006-1, 6007-1, and 9013-1 (a) authorizing and approving procedures to use, sell, invest, or transfer certain assets, collections of assets, or business lines, including any rights or interests therein, of *de minimis* value of the Debtors that are not included in the Stalking Horse Bid (the "De Minimis Assets") in any individual transaction or series of related transactions to a single party or group of related parties with an aggregate sale price equal to or less than $2 million as calculated within the Debtors' good faith judgment, free and clear of liens, claims, and interests (collectively, the "Liens"), without the need for further Court approval and with Liens attaching to the proceeds of such use, sale, or transfer with the same validity, extent, and priority as had attached to the De Minimis Assets immediately prior to the use, sale, or transfer; (b) acquire certain De Minimis Assets in any individual transaction or series of related transactions from a single seller or a group of related sellers with an aggregate sale price equal to or less than $2 million as calculated within the Debtors' good faith judgment without the need for further Court approval; (c) abandon a De Minimis Asset to the extent that a sale thereof cannot be consummated at a value greater than the cost of liquidating such De Minimis Asset and; (d) to pay those reasonable and necessary fees and expenses (if any) incurred in connection with the use, sale, transfer, or acquisition of De Minimis Assets, including, but not limited to, commission fees to agents, brokers, auctioneers, and liquidators; and (e) granting related relief.

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Order and by this written limited notice of transaction (this "Transaction Notice"), the Debtors propose to enter into the transaction (the "Limited Notice Transaction") described below, which involves the [use / sale / transfer / acquisition] of De Minimis Assets to a single party or group of related parties with a gross selling price between $500,000 and $2 million in the aggregate.

(1) **Identification of the property being used, sold, acquired, or transferred**: The Debtors intend to [__]. This De Minimis Asset is located at [__].

(2) **Identification of the transaction counterparty**: The counterparty is [__], a third party.

(3) **Identification of any parties known to the Debtors as holding Liens on the property being sold and a statement indicating whether (i) all such Liens are capable of monetary satisfaction, or (ii) the holders of such Liens have consented to the sale**: [__].

(4) **Transaction amount**: The Debtors intend to [__] for $[__].

(5) **Any other significant terms of the transaction**: [There are no other significant terms of the transaction.] / [__].

(6) **Debtors' Relationships with Counterparties**: [__].

(7) **Date and time within which objections must be filed and served on the Debtors**: Parties seeking to object to the De Minimis Asset Transaction described in this Transaction Notice must file and serve a written objection, so that such objection is filed with the Court and is ***actually received*** no later than seven (7) calendar days after the date that the Debtors served this Transaction Notice, upon (a) counsel to the Debtors, Skadden, Arps, Slate, Meagher & Flom LLP, One Manhattan West, New York, New York 10001 Attn: Evan A. Hill (Evan.Hill@skadden.com) and 500 Boylston Street, Boston, Massachusetts 02116 Attn: Liz Downing (Elizabeth.Downing@skadden.com) and (b) co-counsel to the Debtors, Togut, Segal & Segal LLP, One Penn Plaza, Suite 3335, New York, New York 10119 Attn: Kyle J. Ortiz (kortiz@teamtogut.com) and Amy M. Oden (aoden@teamtogut.com).

PLEASE TAKE FURTHER NOTICE that, absent an objection to this Transaction Notice being timely filed, the Debtors are authorized to immediately consummate the Limited Notice Transaction as described herein without further notice, hearing, or order of this Court.

PLEASE TAKE FURTHER NOTICE that, if an objection to this Transaction Notice is timely filed and not withdrawn or resolved, the Debtors shall file a notice of hearing to consider the unresolved objection.

PLEASE TAKE FURTHER NOTICE that, any objection may be resolved without a hearing by an order of the Court submitted on a consensual basis by the Debtors and the objecting party.

Dated: _____
New York, New York

*/s/*_____
TOGUT, SEGAL & SEGAL LLP
Albert Togut
Frank A. Oswald
Kyle J. Ortiz
One Penn Plaza, Suite 3335
New York, New York 10119
Telephone: (212) 594-5000
Fax: (212) 967-4258

Co-Counsel for the Debtors
and Debtors in Possession

Exhibit 2

Abandonment Notice

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Paul D. Leake
Lisa Laukitis
Shana A. Elberg
Evan A. Hill
One Manhattan West
New York, New York 10001
Telephone: (212) 735-3000
Fax: (212) 735-2000

Counsel to Debtors and Debtors in Possession

TOGUT, SEGAL & SEGAL LLP
Albert Togut
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One Penn Plaza, Suite 3335
New York, New York 10119
(212) 594-5000

Co-Counsel for Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	**Chapter 11**
ENDO INTERNATIONAL plc, *et al.*,	**Case No. 22-22549 (JLG)**
Debtors.[1]	**(Jointly Administered)**

LIMITED NOTICE OF ABANDONMENT OF DE MINIMIS ASSETS LOCATED AT [__] IN ACCORDANCE WITH THE ORDER (I) AUTHORIZING AND APPROVING PROCEDURES FOR (A) THE USE, SALE, TRANSFER, OR ABANDONMENT OF DE MINIMIS ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES WITHOUT FURTHER ORDER OF COURT AND (B) THE ACQUISITION OF DE MINIMIS ASSETS; (II) AUTHORIZING PAYMENT OF RELATED FEES AND EXPENSES; AND (III) GRANTING RELATED RELIEF

PLEASE TAKE NOTICE that, on [__], 2022, the United States Bankruptcy Court for the Southern District of New York (the "Court") entered the order [Docket No. ___] (the "Order") granting the motion (the "Motion")[2] of the Debtors for an order, pursuant to sections 105(a), 363, and 554 of the Bankruptcy Code, Bankruptcy Rule 2002, and Local Rules

[1] The last four digits of Debtor Endo International plc's tax identification number are 3755. Due to the large number of debtors in these chapter 11 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at https://restructuring.ra.kroll.com/Endo. The location of the Debtors' service address for purposes of these chapter 11 cases is: 1400 Atwater Drive, Malvern, PA 19355.

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

6006-1, 6007-1, and 9013-1 (a) authorizing and approving procedures to use, sell, invest, or transfer certain assets, collections of assets, or business lines, including any rights or interests therein, of *de minimis* value of the Debtors that are not included in the Stalking Horse Bid (the "De Minimis Assets") in any individual transaction or series of related transactions to a single party or group of related parties with an aggregate sale price equal to or less than $2 million as calculated within the Debtors' good faith judgment, free and clear of liens, claims, and interests (collectively, the "Liens"), without the need for further Court approval and with Liens attaching to the proceeds of such use, sale, or transfer with the same validity, extent, and priority as had attached to the De Minimis Assets immediately prior to the use, sale, or transfer; (b) acquire certain De Minimis Assets in any individual transaction or series of related transactions from a single seller or a group of related sellers with an aggregate sale price equal to or less than $2 million as calculated within the Debtors' good faith judgment without the need for further Court approval; (c) abandon a De Minimis Asset to the extent that a sale thereof cannot be consummated at a value greater than the cost of liquidating such De Minimis Asset and; (d) to pay those reasonable and necessary fees and expenses (if any) incurred in connection with the use, sale, transfer, or acquisition of De Minimis Assets, including, but not limited to, commission fees to agents, brokers, auctioneers, and liquidators; and (e) granting related relief.

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Order and by this written limited notice of abandonment (this "Abandonment Notice"), the Debtors propose to abandon certain De Minimis Assets as described below (the "Limited Notice Abandonment"), for which the Debtors determine in their good faith judgment, and in consultation with the Ad Hoc First Lien Group, that such De Minimis Assets cannot be sold at a price greater than the cost of liquidating such assets.

(1) **Description of the De Minimis Assets to be abandoned**: The Debtors intend to abandon [__]. This De Minimis Assets are located at [__].

(2) **Reasons for abandonment**: [__].

(3) **Any payments to be made by the Debtors in connection with such abandonment including**: [There are no payments to be made by the Debtors in connection with such abandonment.] / [__].

(4) **Date and time within which objections must be filed and served on the Debtors**: Parties seeking to object to the Debtors' abandonment of the De Minimis Asset described in this Transaction Notice must file and serve a written objection, so that such objection is filed with the Court and is ***actually received*** no later than seven (7) calendar days after the date that the Debtors served this Transaction Notice, upon (a) proposed counsel to the Debtors, Skadden, Arps, Slate, Meagher & Flom LLP, One Manhattan West, New York, New York 10001 Attn: Evan A. Hill (Evan.Hill@skadden.com) and 500 Boylston Street, Boston, Massachusetts 02116 Attn: Liz Downing (Elizabeth.Downing@skadden.com) and (b) proposed co-counsel to the Debtors, Togut, Segal & Segal LLP, One Penn Plaza, Suite 3335, New York, New York 10119 Attn: Kyle J. Ortiz (kortiz@teamtogut.com) and Amy M. Oden (aoden@teamtogut.com).

PLEASE TAKE FURTHER NOTICE that, absent an objection to this Abandonment Notice being timely filed, the Debtors are authorized to immediately consummate the Limited Notice Abandonment as described herein without further notice, hearing, or order of this Court.

PLEASE TAKE FURTHER NOTICE that, if an objection to this Abandonment Notice is timely filed and not withdrawn or resolved, the Debtors shall file a notice of hearing to consider the unresolved objection.

PLEASE TAKE FURTHER NOTICE that, any objection may be resolved without a hearing by an order of the Court submitted on a consensual basis by the Debtors and the objecting party.

Dated: _____
New York, New York

*/s/*_____
TOGUT, SEGAL & SEGAL LLP
Albert Togut
Frank A. Oswald
Kyle J. Ortiz
One Penn Plaza, Suite 3335
New York, New York 10119
Telephone: (212) 594-5000
Fax: (212) 967-4258

Co-Counsel for the Debtors
and Debtors in Possession

THIS IS EXHIBIT "E"
TO THE AFFIDAVIT OF ANDREW HARMES
SWORN BEFORE ME
THIS 23RD DAY OF NOVEMBER, 2022

Erik Axell

Commissioner for Taking Affidavits

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Paul D. Leake
Lisa Laukitis
Shana A. Elberg
Evan A. Hill
One Manhattan West
New York, New York 10001
Telephone: (212) 735-3000
Fax: (212) 735-2000

Proposed Counsel to Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	**Chapter 11**
ENDO INTERNATIONAL plc*, et al.*,	**Case No. 22-22549 (JLG)**
Debtors.[1]	**(Jointly Administered)**
	Related Docket No. 6, 107, 176

THE DEBTORS' REPLY IN SUPPORT OF THE MOTION OF THE DEBTORS FOR AN ORDER (I) WAIVING THE REQUIREMENT THAT EACH DEBTOR FILES A SEPARATE LIST OF ITS 20 LARGEST UNSECURED CREDITORS; (II) AUTHORIZING THE DEBTORS TO FILE A SINGLE CONSOLIDATED LIST OF THEIR 50 LARGEST UNSECURED, NON - INSIDER CREDITORS; (III) AUTHORIZING THE DEBTORS AND THE CLAIMS AND NOTICING AGENT TO REDACT PERSONALLY IDENTIFIABLE INFORMATION FOR INDIVIDUALS; (IV) AUTHORIZING THE CLAIMS AND NOTICING AGENT TO WITHHOLD PUBLICATION OF CLAIMS FILED BY INDIVIDUALS UNTIL FURTHER ORDER OF THE COURT; (V) ESTABLISHING PROCEDURES FOR NOTIFYING CREDITORS OF THE COMMENCEMENT OF THE DEBTORS' CHAPTER 11 CASES; AND (VI) GRANTING RELATED RELIEF

The above-captioned debtors and debtors in possession (collectively, the "Debtors") file this reply (this "Reply") to the *United States Trustee Objection to the Debtors'*

[1] The last four digits of Debtor Endo International plc's tax identification number are 3755. Due to the large number of debtors in these chapter 11 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at https://restructuring.ra.kroll.com/Endo.

Motion for an Order (I) Waiving the Requirement That Each Debtor Files a Separate List of its 20 Largest Unsecured Creditors; (II) Authorizing the Debtors to File a Single Consolidated List of Their 50 Largest Unsecured, Non-Insider Creditors; (III) Authorizing the Debtors and the Claims and Noticing Agent to Redact Personally Identifiable Information for Individuals; (IV) Authorizing the Claims and Noticing Agent to Withhold Publication of Claims Filed by Individuals Until Further Order of the Court; (V) Establishing Procedures for Notifying Creditors of the Commencement of the Debtors Chapter 11 Cases; and (VI) Granting Related Relief [Docket No. 176] (the "Objection") and in further support of the *Motion of The Debtors For An Order (I) Waiving The Requirement That Each Debtor Files A Separate List Of Its 20 Largest Unsecured Creditors; (II) Authorizing The Debtors To File A Single Consolidated List Of Their 50 Largest Unsecured, Non-Insider Creditors; (III) Authorizing The Debtors And The Claims And Noticing Agent To Redact Personally Identifiable Information For Individuals; (IV) Authorizing The Claims And Noticing Agent To Withhold Publication Of Claims Filed By Individuals Until Further Order Of The Court; (V) Establishing Procedures For Notifying Creditors Of The Commencement Of The Debtors' Chapter 11 Cases; and (VI) Granting Related Relief* [Docket No. 6] (the "Motion"). The Debtors respectively submit the *Declaration of Eve-Christie Vermynck in Support of the Motion of the Debtors for an Order (I) Waiving the Requirement That Each Debtor Files a Separate List of its 20 Largest Unsecured Creditors; (II) Authorizing the Debtors to File a Single Consolidated List of Their 50 Largest Unsecured, Non-Insider Creditors; (III) Authorizing the Debtors and the Claims and Noticing Agent to Redact Personally Identifiable Information for Individuals; (IV) Authorizing the Claims and Noticing Agent to Withhold Publication of Claims*

The location of the Debtors' service address for purposes of these chapter 11 cases is: 1400 Atwater Drive, Malvern, PA 19355.

Filed by Individuals Until Further Order of the Court; (V) Establishing Procedures for Notifying Creditors of the Commencement of the Debtors Chapter 11 Cases; and (VI) Granting Related Relief, attached hereto as **Exhibit A** (the "Vermynck Declaration") and the *Declaration of David McCredie in Support of the Motion of the Debtors for an Order (I) Waiving the Requirement That Each Debtor Files a Separate List of its 20 Largest Unsecured Creditors; (II) Authorizing the Debtors to File a Single Consolidated List of Their 50 Largest Unsecured, Non-Insider Creditors; (III) Authorizing the Debtors and the Claims and Noticing Agent to Redact Personally Identifiable Information for Individuals; (IV) Authorizing the Claims and Noticing Agent to Withhold Publication of Claims Filed by Individuals Until Further Order of the Court; (V) Establishing Procedures for Notifying Creditors of the Commencement of the Debtors Chapter 11 Cases; and (VI) Granting Related Relief*, attached hereto as **Exhibit B** (the "McCredie Declaration"), and state the following in support of the Motion and this Reply:

PRELIMINARY STATEMENT

1. There is no dispute that public access to court records is a cornerstone of U.S. jurisprudence. Nevertheless, courts in this, and other, districts have rejected the premise that information disclosure takes precedence over all other concerns, including the legitimate privacy interests of individuals and applicable non-U.S. privacy laws.

2. The disclosure of personally identifiable information can have harmful effects on individuals who—through no fault of their own—become involved in a chapter 11 case. For example, individuals who have their names and home addresses involuntarily published on the Bankruptcy Court docket—in a format easy to "data-mine" and readily accessible from anywhere in the world at a keystroke—will be more susceptible to identity theft and could jeopardize the safety of those who, unbeknownst to the Debtors or their respective agents, may be survivors of

intimate partner violence or stalking. Moreover, the disclosure of an individual's status as an opioid claimant could subject the individual to stigma, discrimination, and unfair treatment.[2]

3. In addition, the Debtors are subject to privacy legislation in the United Kingdom (the "UK"), the European Union (the "EU"), and Australia that places restrictions on the use and disclosure of individuals' personal information. As further set forth in the Vermynck Declaration and McCredie Declaration, the Debtors have performed a fulsome evaluation of their obligations under such legislation. In this regard, the Debtors also have considered the potential applicability of any exceptions to the use and disclosure restrictions under each relevant legal regime. As a result of their evaluation, the Debtors have thoughtfully tailored their requested relief to remain in compliance with applicable law (which places a particular emphasis on withholding information relating to health data) while also seeking to honor U.S. principles of transparency in court proceedings.

4. As further discussed below, the Debtors have (a) significantly narrowed the relief requested pursuant to the Motion, (b) specifically identified the information that the Debtors propose to redact for each category of individual, (c) articulated with specificity why such information should be redacted, and (d) proposed safeguards pursuant to which parties in interest may request access to unredacted documents, with any decision by the Debtors to grant or withhold unredacted documents to be subject to prior notice provided to the U.S. Trustee and the official committees formed in these Chapter 11 Cases.

5. Specifically, the Debtors are seeking authority under section 107(c) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 1007(j) of the Federal Rules of

[2] The Debtors understand that the Official Committee of Opioid Claimants formed in these Chapter 11 Cases intends to submit a statement in support of the Debtors' requested relief as it relates to the redaction of opioid claimants' personal information.

Bankruptcy Procedure (the "Bankruptcy Rules") (solely with respect to information contained in the filings described in Bankruptcy Rule 1007), to make the following redactions:

<table>
<tr><th>Type of Individual</th><th>Proposed Redactions</th></tr>
<tr><td>1. Individual Equityholders, Vendors and Contract Counterparties</td><td>
Scope of Requested Relief:
Redact the individual's home address and email address and instead notate "Address on File".

Basis for Requested Relief:
(1) Disclosure of such personal information would create an undue risk of identity theft and safety risks; and
(2) With respect to individuals located in the UK and the EU, legal constraints imposed on the Debtors (and their respective agents) in "processing" of "personal data" under the United Kingdom Data Protection Act of 2018 and the United Kingdom General Data Protection Regulation (collectively, the "UK GDPR") and the European General Data Protection Regulation (the "EU GDPR," together with the UK GDPR, the "GDPR").

Example of Redaction:
<table>
<tr><td colspan="5">Master Mailing Service List</td></tr>
<tr><td>Name</td><td>Address</td><td>City</td><td>State</td><td>Country</td></tr>
<tr><td>Jane Doe</td><td>Address on File</td><td></td><td></td><td></td></tr>
</table>
Recipients of Unredacted Filings:
The Debtors will provide unredacted filings to the Court, the U.S. Trustee, the official committee of unsecured creditors (the "UCC"), the official committee of opioid claimants (the "OCC"), and any other party designated by further order of the Court, subject to applicable foreign law. The Debtors will also provide any other party in interest unredacted filings upon request made to the Debtors that the Debtors determine in good faith is reasonably related to the Chapter 11 Cases, subject to applicable foreign law. The Debtors shall provide five (5) days' advance notice to the U.S. Trustee, the UCC, and the OCC, prior to determining whether to deny or grant any request for such unredacted filing.
</td></tr>
<tr><td>2. Former Employees</td><td>
Scope of Requested Relief:
Redact the individual's home address and email address and instead notate the Debtors' address of service.

Basis for Requested Relief:
(1) Disclosure of such personal information would create an undue risk of identity theft and safety risks; and
(2) With respect to individuals located in the UK and the EU, legal constraints imposed on the Debtors (and their respective agents) in "processing" of "personal data" under the GDPR.

Example of Redaction:
<table>
<tr><td colspan="6">Master Mailing Service List</td></tr>
<tr><td>Name</td><td>Address</td><td>City</td><td>State</td><td>Zip Code</td><td>Country</td></tr>
<tr><td>Jane Doe</td><td>c/o Endo International plc
Attn: General Counsel
1400 Atwater Drive</td><td>Malvern</td><td>PA</td><td>19355</td><td>USA</td></tr>
</table>
</td></tr>
</table>

<table>
<tr><th>Type of Individual</th><th>Proposed Redactions</th></tr>
<tr><td></td><td><u>Recipients of Unredacted Filings:</u>
The Debtors will provide unredacted filings to the Court, the U.S. Trustee, the OCC, the UCC, and any other party designated by further order of the Court, subject to applicable foreign law. The Debtors will also provide any other party in interest unredacted filings upon request made to the Debtors that the Debtors determine in good faith is reasonably related to the Chapter 11 Cases, subject to applicable foreign law. The Debtors shall provide five (5) days' advance notice to the U.S. Trustee, the UCC, and the OCC, prior to determining whether to deny or grant any request for such unredacted filing.</td></tr>
<tr><td>3. Current Employees</td><td><u>Scope of Requested Relief:</u>
Redact the individual's home address and email address and instead notate the individual's applicable business address.

<u>Basis for Requested Relief:</u>
(1) Disclosure of such personal information would create an undue risk of identity theft and safety risks; and
(2) With respect to individuals located in the UK and the EU, legal constraints imposed on the Debtors (and their respective agents) in "processing" of "personal data" under the GDPR.

<u>Example of Redaction:</u>
<table>
<tr><th colspan="6">Master Mailing Service List</th></tr>
<tr><td>Name</td><td>Address</td><td>City</td><td>State</td><td>Zip Code</td><td>Country</td></tr>
<tr><td>Jane Doe</td><td>Attn: Jane Doe
Endo International plc,
1400 Atwater Drive</td><td>Malvern</td><td>PA</td><td>19355</td><td>USA</td></tr>
</table>
<u>Recipients of Unredacted Filings:</u>
The Debtors will provide unredacted filings to the Court, the U.S. Trustee, the OCC, the UCC, and any other party designated by further order of the Court, subject to applicable foreign law. The Debtors will also provide any other party in interest unredacted filings upon request made to the Debtors that the Debtors determine in good faith is reasonably related to the Chapter 11 Cases, subject to applicable foreign law. The Debtors shall provide five (5) days' advance notice to the U.S. Trustee, the UCC, and the OCC, prior to determining whether to deny or grant any request for such unredacted filing.</td></tr>
<tr><td>4. Individual Litigation Claimants</td><td><u>Scope of Requested Relief:</u>
Redact the individual's name, home address, and email address and instead notate the address of the individual's counsel, and if the individual has no counsel of record, notate "Address on File."[3]

<u>Basis for Requested Relief:</u>
(1) Disclosure of individual's status as an opioid claimant could subject the individual to detrimental stigmas and discrimination;
(2) Disclosure of individual's status as an other personal injury claimant could result in the unnecessary public disclosure of individual's health information;</td></tr>
</table>

[3] In the event that an Individual Litigation Claimant files a letter on the Debtors' docket that contains personally identifiable information (e.g., name, home address or email address), or submits such letter directly to the Bankruptcy Court and which is thereafter filed on the Debtors' docket, the Debtors shall have authority in consultation with the OCC to remove such letter from the docket in order to remove personally identifiable information and to refile a redacted copy of such letter on the Debtors' docket.

<table>
<tr><th>Type of Individual</th><th>Proposed Redactions</th></tr>
<tr><td></td><td>
(3) Disclosure of such personal information would create an undue risk of identity theft and safety risks;
(4) With respect to individuals located in the UK and the EU, legal constraints imposed on the Debtors (and their respective agents) in "processing" of "personal data" and health-related data under the GDPR; and
(5) With respect to certain class action members located in Australia, the Debtors do not have access to the claimants' personal information.[4]

Example of Redaction (No Counsel of Record):
<table>
<tr><th colspan="6">Master Mailing Service List</th></tr>
<tr><td>Name</td><td>Address</td><td>City</td><td>State</td><td>Zip Code</td><td>Country</td></tr>
<tr><td>Name on File</td><td>Address on File</td><td></td><td></td><td></td><td></td></tr>
</table>
Example of Redaction (Counsel of Record):
<table>
<tr><th colspan="6">Master Mailing Service List</th></tr>
<tr><td>Name</td><td>Address</td><td>City</td><td>State</td><td>Zip Code</td><td>Country</td></tr>
<tr><td>Name on File</td><td>Attn: Joe Smith, Esq.
Smith Law Firm
18 Beach Drive</td><td>Sydney</td><td></td><td>NSW
2000</td><td>Australia</td></tr>
</table>
Recipients of Unredacted Filings:
The Debtors will provide unredacted filings to the Court, the U.S. Trustee, the OCC, the UCC, and any other party designated by further order of the Court, subject to applicable foreign law. The Debtors will also provide any other party in interest unredacted filings upon request made to the Debtors that the Debtors determine in good faith is reasonably related to the Chapter 11 Cases, subject to applicable foreign law. With respect to any requests concerning opioid litigation claimants' redacted information, the Debtors shall consult with the OCC, prior to determining whether to deny or grant such request. The Debtors shall provide five (5) days' advance notice to the U.S. Trustee, the UCC, and the OCC, prior to determining whether to deny or grant any request for such unredacted filing.
</td></tr>
</table>

6. Separately, in the event that the Debtors seek entry of an order establishing deadlines for filing proofs of claim and granting related relief (the "Bar Date Order"), the Debtors intend to seek approval of a tailored individual claim form and specific procedures designed to prevent the unintentional disclosure of sensitive personal health information. To avoid inadvertent

[4] As further described in the McCredie Declaration, an application is pending before the Australian Court with respect to a potential grant of authority for the Debtors to disclose information relating to the Australian Additional Litigation Claimants to the Bankruptcy Court, U.S. Trustee, UCC and OCC. However, at this time, the Debtors do not have authority under Australian law to access or disclose such information to any party.

disclosure of such information in any proofs of claim that may be filed by personal injury claimants before entry of any Bar Date Order, the Debtors respectfully request that the Debtors' claims and noticing agent ("Kroll" or the "Claims and Noticing Agent") be authorized to withhold publication of claims filed by such claimants until entry of any Bar Date Order. The Debtors will provide unredacted proofs of claim to the Court, the U.S. Trustee, the OCC, the UCC, and any other party designated by further order of the Court.

THE DEBTORS' INDIVIDUAL CLAIMANTS AND EQUITYHOLDERS

7. The Debtors are aware of the identity and contact details of thousands of claimants and equityholders, which are listed on the Debtors' master mailing service list (the "MSL"). Of this, only the names and contact information of the individual claimants and equityholders are at issue here.

I. Non-Litigation Claimants and Equityholders

8. The Debtors are aware of the identity and contact details of approximately 8,600 non-litigation individual claimants and equityholders located in the United States, Canada, the UK, and the EU (collectively, the "Non-Litigation Claimants and Equityholders").[5] The Non-Litigation Claimants and Equityholders consist of approximately:

(i) 185 current employees located in the UK and the EU (the "UK/EU Current Employees") and 1,550 current employees located in the United States and Canada (together with the UK/EU Current Employees, the "Current Employees");

(ii) 100 former employees, who were employed within six years prior to August 16, 2022 (the "Petition Date"), located in the UK and the EU (the "UK/EU Former Employees") and 6,600 former employees, who were employed within six years prior to the Petition Date, located in the United States and

[5] During the Chapter 11 Cases, the Debtors may become aware of additional claimants and, therefore, the numbers of individuals referenced herein may be subject to change.

Canada (together with the UK/EU Former Employees, the "Former Employees");

(iii) 10 individual equityholders located in the UK and the EU (the "UK/EU Individual Equityholders") and 60 individual equityholders located in the United States and Canada (together with the UK/EU Individual Equityholders, the "Individual Equityholders"); and

(iv) 30 individual vendors and contract counterparties located in the UK and the EU (the "UK/EU Vendors and Contract Counterparties") and 1,200 individual vendors and contract counterparties located in the United States and Canada (together with the UK/EU Vendors and Contract Counterparties, the "Individual Vendors and Contract Counterparties").

II. Individual Litigation Claimants

9. As further discussed below, the Debtors are aware of the identity and contact details of thousands of individual litigation claimants located in the United States, Canada, the UK, the EU, and Australia (collectively, the "Individual Litigation Claimants").

A. U.S./ Canada Litigation Claimants

10. As described in further detail in the First Day Declaration, the Debtors, including Debtor Astora Women's Health LLC ("Astora"), face certain litigation in various courts located in the United States and Canada. The Debtors are aware of the identity and contact details of hundreds of individuals who either filed individual claims against the Debtors or are members of a class action, seeking damages for alleged personal injuries related to the (a) marketing and sale of certain FDA-approved opioid products, (b) usage of transvaginal surgical mesh products designed to treat pelvic organ prolapse or stress urinary incontinence, or (c) the usage of ranitidine medications (collectively, the "U.S./Canada Litigation Claimants").

B. UK/EU Litigation Claimants

11. The Debtors have been named as defendants in (a) 13 claims brought by individual claimants in England and Wales in the High Court in relation to injury suffered as a result of surgical mesh implants, (b) 56 separate claims brought by individual claimants in Scotland

in the Court of Session, and (c) a number of separate claims brought by individual claimants in the Netherlands and Ireland (collectively, the "UK/EU Litigation Claimants").

C. Named Australian Litigation Claimants

12. The Debtors have been named as defendants in a class action in the Federal Court of Australia (Proceeding NSD 35/2018) brought by two named individuals on their own right and on behalf of other woman relating to the usage of transvaginal surgical mesh products designed to treat pelvic organ prolapse or stress urinary incontinence (the "Australian Class Action Proceeding").

13. In addition, the Debtors also received notice pursuant to the *Personal Injuries Proceedings Act 2002* (Old) in respect of three claimants who have filed applications in the Supreme Court of Queensland seeking leave to start proceedings in that Court.

14. The Debtors have been informed by the solicitors acting for another individual that they: (a) are a defendant to proceedings brought by a recipient of a surgical mesh implant in the Federal Court of Australia; (b) have received a Notice of Claim pursuant to the *Personal Injuries Proceedings Act 2002* (Old) from a further individual; and (c) intends to issue a notice claiming contribution to the Debtors. No proceedings have been served on the Debtors in respect of this claim.

15. The Debtors are aware of the identity and contact details of the two named individuals in the Australian Class Action Proceeding, the three named plaintiffs in the Supreme Court of Queensland proceeding, and the one defendant in the Supreme Court of New South Wales proceeding (the names and contact details of these claimants and the solicitors who act for these claimants, the "Named Australian Litigation Claimants").

D. Additional Australian Litigation Claimants

16. The Debtors are aware of over 3,000 potential class members in the Australian Class Action Proceeding (the "Additional Australian Litigation Claimants"); however, the Debtors do not hold the names and contact details of the Additional Australian Litigation Claimants. The Debtors' Australian counsel, Baker McKenzie, holds the names and contact details of the Additional Australian Litigation Claimants. In relation to the Australian Class Action Proceeding, such information was received following a court ordered process by which potential class members submitted claimant registration forms and/or opt-out forms (the recipients of the notices having been identified via a court ordered subpoena process). Claimant registration forms were submitted by over 3,000 individuals, and copies of those forms are held by Baker McKenzie. Baker McKenzie also holds copies of opt-out forms, as well as many of the productions under subpoena by various health entities (pursuant to which the claimant registration and opt-out notices were distributed by either the Applicants' counsel or by the producing entity).

APPLICABLE FOREIGN LAW

I. The UK GDPR and the EU GDPR

17. The EU GDPR, which applies to all EU member countries and protects all European Union member countries' citizens, imposes significant constraints on the "processing" of "personal data" relating to these individuals. Compared to the EU GDPR, the UK GDPR, which applies to the UK and protects all UK citizens, imposes relevantly equivalent constraints on the "processing" of "personal data" relating to these individuals. Although the UK GDPR and the EU GDPR are separate legislative regimes applicable in each jurisdiction, they are addressed here together given provisions of the EU GDPR were incorporated directly into the UK law as the UK GDPR, following the UK's departure from the EU. As such, the term "GDPR" will be used to refer to both.

18. The GDPR applies to the processing of "personal data" in the context of an establishment of a "data controller" or "data processor" in the UK and the EU, regardless of where the processing takes place. The GDPR broadly defines "personal data" as "any information relating to an identified or identifiable living individual ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly[.]" "[P]rocessing" is also broadly defined as "any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of personal data by 'data controllers' or 'data processors[.]'"[6]

19. Any violation of the GDPR could result in proceedings or actions against the breaching organization by governmental entities or others, including class action privacy litigation in certain jurisdictions, significant fines, penalties, judgments, and reputational damages to such organization. If an organization is found to have processed information in breach of the UK GDPR, the organization may be subject to an administrative fine of to the higher of £17,500,000 or 4 percent of worldwide annual turnover—i.e., total annual revenues—of the preceding financial year. *See* United Kingdom Data Protection Act 2018, section 157(5)(a) (as amended by Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019). Similarly, for a breach of the EU GDPR, the organization may be fined up to the higher of €20,000,000 or 4 percent of worldwide annual turnover—i.e., total annual

[6] Under the GDPR, the data controller determines the purposes for which and the means by which "personal data" is processed and the data processor processes "personal data" only on behalf of the controller.

revenues—of the preceding financial year. *See* General Data Protection Regulation (EU) 2016/679, art. 83(5).

A. Article 6 of the GDPR Restricts the "Processing" of "Personal Data"

20. Here, the Debtors are "data controllers," having received "personal data" relating to citizens of the UK and the EU, and the Debtors' agents that hold and otherwise process such "personal data" solely on the Debtors' instructions and on behalf of the Debtors are "data processors." Under the GDPR, "processing" includes (a) the use of individual's name and contact details for the purpose of serving the UK/EU Current Employees, UK/EU Former Employees, UK/EU Individual Equityholders, UK/EU Vendors and Contract Counterparties, and UK/EU Litigation Claimants with any notice related to the Chapter 11 Cases, or (b) the Debtors or Kroll filing any unredacted or redacted paper in the Chapter 11 Cases or serving a limited number of parties a redacted version that contains the "personal data" of these individual claimants.

21. In order to allow the Debtors and their agents to process the "personal data" of these individuals, the Debtors would need to satisfy one of the six available legal bases under Article 6 of the GDPR.

22. Article 6 of the GDPR states:

> Processing shall be lawful only if and to the extent that at least one of the following applies:
>
> (i) the data subject has given consent to the processing of his or her personal data for one or more specific purposes;
>
> (ii) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
>
> (iii) processing is necessary for compliance with a legal obligation to which the controller is subject;
>
> (iv) processing is necessary in order to protect the vital interests of the data subject or of another natural person;

> (v) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller; or
>
> (vi) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

General Data Protection Regulation (EU) 2016/679, art. 6; *see also* United Kingdom Data Protection Act, 2019 No. 419.

i. *Article 6(1)(a),(b), (c), (d), and (e) of the GDPR Do Not Apply*

23. The UK/EU Former Employees, UK/EU Current Employees, UK/EU Individual Equityholders, UK/EU Vendors and Contract Counterparties, and UK/EU Litigation Claimants have not given consent for this purpose, nor is there a contract, vital interests, or public interest reason to process the data. As such subsections (a), (b), (d), and (e) of Article 6 of the GDPR do not apply to permit data processing in connection with the Chapter 11 Cases.

24. Article 6(1)(c) of the GDPR ("compliance with a legal obligation") is not applicable to the Chapter 11 Cases because the legal obligation must exist under the UK and the EU laws, which is not the case in the context of the Chapter 11 Cases.

ii. *Article 6(1)(f) of the GDPR May Apply*

25. The Debtors may process "personal data" in connection with the Chapter 11 Cases under Article 6(1)(f) of the GDPR, which permits processing where a data controller has a "legitimate interest" in doing so, and the processing is necessary for the relevant purpose of that legitimate interest. Processing will not be necessary where there is a less intrusive way of achieving that relevant purpose. This ground will also not apply if, when balanced against each other, the rights and freedoms of the relevant individuals override the identified legitimate interest.

26. Further, under Article 6(1)(f) of the GDPR, the assessment of such legitimate interest, and accordingly the lawfulness of processing "personal data" of such individuals, nevertheless remains subject to the data minimization principle under Article 5(1)(c) of the GDPR. Article 5(1)(c) of the GDPR provides that "personal data" must be "adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed." Article 5(1)(c) of the GDPR sits alongside the "purpose limitation" principle set out in Article 5(1)(b) of the GDPR, which states that the purpose for which an individual or entity collects and processes "personal data" must be "specified, explicit and legitimate." The GDPR does not define these terms, so to determine whether a data controller is able to use the information to accomplish the specified purpose and for nothing more, the data controller must conduct a legitimate interest assessment.

27. The Debtors have determined they have a legitimate interest in processing the names, home addresses, and email addresses of the UK/EU Former Employees, UK/EU Current Employees, UK/EU Individual Equityholders, and UK/EU Vendors and Contract Counterparties, for the purpose of serving these individuals with notice throughout the Chapter 11 Cases, listing them as creditors of the estate, if applicable, and otherwise complying with the requirements of the Bankruptcy Code. However, in line with the Debtors obligations to restrict data processing only to that which is necessary to achieve the permitted purpose and to balance the rights and freedoms of these individuals the Debtors are requesting to redact the home addresses and email addresses of these individuals in any paper filed with the Court. Absent such relief, the Debtors risk processing "personal data" without a legal basis and in breach of the GDPR and thereby exposing them to severe monetary penalties that could threaten the Debtors' operations during this sensitive stage of their restructuring.

B. Article 9 of the GDPR Restricts the "Processing" of Health-Related Data

i. *Disclosing the UK/EU Litigation Claimants' "Personal Data" in Unredacted Filings with the Court May Be Considered Health-Related Data*

28. Since each UK/EU Litigation Claimant has received a transvaginal surgical mesh product designed to treat pelvic organ prolapse or stress urinary incontinence, the Debtors are considered to hold health-related data (i.e., "special category data") relating to these claimants. The Debtor Astora has been named as a defendant in litigation relating to the usage of transvaginal surgical mesh products designed to treat pelvic organ prolapse or stress urinary incontinence. Consequently, it would be possible for someone reviewing a list of the Debtor Astora's creditors to infer with at least reasonable certainty that an individual listed as a disputed litigation creditor has received a pelvic mesh implant, thereby identifying health information related to that creditor, and further, that their processing of that creditor's name and contact details may be influenced by this inference. Accordingly, there is a high risk that "processing" the names, home addresses, and email addresses of the UK/EU Litigation Claimants for the purpose of filing unredacted documents in the Chapter 11 Cases would result in processing of health-related personal data of the UK/EU Litigation Claimants, which would be considered "special category data" under the GDPR.

29. Article 9 of the GDPR prescribes that certain "special category data," including health-related data, may only be processed where one of 10 following conditions is satisfied, in addition to falling under one of the legal grounds set out under Article 6 of the GDPR. The ten conditions set out in Article 9 of the GDPR are:

> (i) the data subject has given explicit consent to the processing of those personal data for one or more specified purposes, except where Union or Member State law provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject;

(ii) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law in so far as it is authorized by Union or Member State law or a collective agreement pursuant to Member State law providing for appropriate safeguards for the fundamental rights and the interests of the data subject;

(iii) processing is necessary to protect the vital interests of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent;

(iv) processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical, religious or trade union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the personal data are not disclosed outside that body without the consent of the data subjects;

(v) processing relates to personal data which are manifestly made public by the data subject;

(vi) processing is necessary for the establishment, exercise or defense of legal claims or whenever courts are acting in their judicial capacity;

(vii) processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject;

(viii) processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of Union or Member State law or pursuant to contract with a health professional and subject to the conditions and safeguards referred to in paragraph 3;

> (ix) processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices, on the basis of Union or Member State law which provides for suitable and specific measures to safeguard the rights and freedoms of the data subject, in particular professional secrecy; or
>
> (x) processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) based on Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.

General Data Protection Regulation (EU) 2016/679, arts. 85-91; *see also* United Kingdom Data Protection Act, 2019 No. 419, Schedule 1, ¶9.

30. Here, none of the ten conditions set out in Article 9 of the GDPR are satisfied in relation to the Debtors "processing" the health-related data of the UK/EU Litigation Claimants for the purpose of filing unredacted documents in the Chapter 11 Cases.

ii. ***Confidentially Disclosing the UK/EU Litigation Claimants' "Personal Data" to Certain Parties in the Chapter 11 Cases May Not Be Considered Health-Related Data***

31. However, "processing" the names, home addresses, and email addresses only of the UK/EU Litigation Claimants for the purpose of providing redacted documents in the Chapter 11 Cases to the Bankruptcy Court, the U.S. Trustee, the OCC, and the UCC would not result in "processing" health-related data of the UK/EU Litigation Claimants. This is because these limited parties can reasonably be expected to utilize such information solely for the purposes of the bankruptcy proceedings without giving consideration to the mesh product litigation and any possible inferences of health-related data such inference would not influence their processing in

any way. Accordingly, Article 9 of the GDPR would not apply, and the Debtors are only required to satisfy the conditions set out in Article 6 of the GDPR.

32. As stated above, to allow the Debtors and their agents to process the "personal data" of the UK/EU Litigation Claimants, the Debtors would need to satisfy one of the six available exceptions under Article 6 of the GDPR.

iii. *Article 6(1)(f) of the GDPR Is The Only Basis On Which The Debtors May Process "Personal Data" of the UK/EU Litigation Claimants*

33. As discussed above, the only basis on which the Debtors may process "personal data" of the UK/EU Litigation Claimants in connection with the Chapter 11 Cases is under Article 6(1)(f) of the GDPR, which permits processing where a data controller has a "legitimate interest" in doing so, the processing is necessary for the relevant purpose of that legitimate interest, and the rights and freedoms of the individuals concerned does not outweigh that legitimate interest. The Debtors have determined that they have a legitimate interest in processing the names, home addresses, and email addresses of the UK/EU Litigation Claimants, for the purpose of serving these claimants with notice throughout the Chapter 11 Cases, filing redacted documents with the Court, and providing unredacted documents to this Court, the U.S. Trustee, the OCC, and the UCC, in accordance with the terms of the Debtors' requested relief. Absent such relief, the Debtors would be required to risk breaching the GDPR and thereby exposing them to severe monetary penalties that could threaten the Debtors' operations during this sensitive stage of their restructuring.

C. Article 49 of the GDPR: Transfer of "Personal Data" to the U.S.

34. In accordance with the specific relief that the Debtors are seeking here, in order to "process" the names, home addresses, and email addresses of the UK/EU Former Employees, UK/EU Current Employees, UK/EU Individual Equityholders, UK/EU Vendors and

Contract Counterparties, and UK/EU Litigation Claimants, the Debtors may have to transfer the "personal data" of these individuals to the U.S.

35. The GDPR restricts transfers of "personal data" to "third countries." Such transfers may only be made on the basis of a valid data transfer mechanism, i.e., where (a) the country to which the data is transferred is covered by an "adequacy decision" pursuant to Article 45(3) of the GDPR, (b) the transfer is undertaken by way of an "appropriate safeguard" under Article 49 of the GDPR, or (c) the Debtor can rely on an exception under Article 49 of the GDPR. The United States is not covered by an "adequacy decision," and thus, this transfer would not be covered by an "appropriate safeguard."

36. Article 49 of the GDPR provides that "personal data" may only be transferred to a third country if one of the following seven conditions is met (and the processing of "personal data" is otherwise lawful, including as discussed above in relation to Articles 6 and 9 of the GDPR):

(i) the data subject has explicitly consented to the proposed transfer, after having been informed of the possible risks of such transfers for the data subject due to the absence of an adequacy decision and appropriate safeguards;

(ii) the transfer is necessary for the performance of a contract between the data subject and the controller or the implementation of pre-contractual measures taken at the data subject's request;

(iii) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the data subject between the controller and another natural or legal person;

(iv) the transfer is necessary for important reasons of public interest;

(v) the transfer is necessary for the establishment, exercise or defense of legal claims;

> (vi) the transfer is necessary in order to protect the vital interests of the data subject or of other persons, where the data subject is physically or legally incapable of giving consent; or
>
> (vii) the transfer is made from a register which according to Union or Member State law is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can demonstrate a legitimate interest, but only to the extent that the conditions laid down by Union or Member State law for consultation are fulfilled in the particular case.

General Data Protection Regulation (EU) 2016/679, art. 49; *see also* United Kingdom Data Protection Act, 2019 No. 419.

37. Here, the only applicable basis for transfer of "personal data" to the U.S. in the present case is Article 49(e) of the GDPR: where the transfer is "necessary" for the purpose of legal claims.

38. Although it is not a matter which has been finally determined by a UK or EU Court, the conduct of these proceedings, which involves the determination of the rights of creditors, arguably comprises the determination of legal claims. However, the Debtors nevertheless may not do more than is "necessary" for the purpose of determining such claims. Processing will not be necessary where there is a less intrusive way of achieving the identified purpose. Accordingly, the Debtors' requested relief is tailored to ensure that parties' ability to communicate with others is minimally affected while limiting the "personal data" transferring only to what is necessary, in order to limit the risk of the Debtors transferring "personal data" without a valid data transfer mechanism and so in breach of the GDPR.

II. The Australian "Harman Undertaking"

39. As discussed above, the Debtors' Australian counsel, Baker McKenzie, holds the names and contact details of the Additional Australian Litigation Claimants. Such information was received following a court ordered process by which potential class members

submitted claimant registration forms and/or opt-out forms (the recipients of the notices having been identified via a court ordered subpoena process).

40. Under Australian law, where information is received through compulsory process in the course of an Australian court proceeding, such as through a subpoena or court ordered production, that information is held subject to an implied undertaking that it will not be used for any purpose other than the conduct of that proceeding (the so-called "Harman Undertaking," after one of the leading cases addressing it). *See Harman v Secretary of State for Home Department* [1983] 1 AC 280 and *Hearne v Street* [2008] HCA 36; (2008) 235 CLR 125 at [107] to [108]. The Harman Undertaking would prohibit the Debtors from using the names and contact details of the Additional Australian Litigation Claimants for any purpose related to the Chapter 11 Cases, even providing notice to the Additional Australian Litigation Claimants.[7]

41. On September 9, 2022, The Debtor Astora filed an interlocutory application, annexed to McCredie Declaration as **Exhibit 5** (as further amended, the "Interlocutory Application"), in the Australian Class Action Proceeding, seeking orders that it be permitted to use the names and contact details of the Additional Australian Litigation Claimant for the purpose of serving such individuals with the notice of commencement of Astora's chapter 11 case and of other documents where such individuals are parties in interest. The Interlocutory Application was supported by an affidavit given by the Debtor Astora's Australian litigation solicitor, David McCredie, which is annexed to McCredie Declaration as **Exhibit 6**. The Debtor Astora has also

[7] In relation to the Named Australian Litigation Claimants, the Debtors are not subject to any form of Harman Undertaking such as that which applies in respect of the Additional Australian Litigation Claimants. The Debtors have determined that applicable Australian laws, including privacy laws, do not restrict it from disclosing the names and home addresses of the Named Australian Litigation Claimants and counsel address where required by the orders of this Bankruptcy Court. The Debtors seek permission to redact the names of the Named Australian Litigation Claimants for the same substantive reasons it seeks such permission in respect of the U.S./Canada Litigation Claimants as set out herein.

on September 9, 2022, filed an application for recognition of the Chapter 11 Case in respect of the Debtor Astora as a foreign main proceeding pursuant to the Cross-Border Insolvency Act 2008 (Cth) (Australia's legislation implementing the UNCITRAL Model Law on Cross-Border Insolvency) (the "Recognition Application").

42. The Debtor Astora has subsequently on two occasions amended its Interlocutory Application to broaden the terms of the relief sought from the Australian Court. Specifically, on September 24, 2022, the Debtor Astora amended the Interlocutory Application in the Australian Class Action Proceeding, so as to further widen the orders sought in order to grant the Debtor Astora a limited permission to disclose the names and contact details of the Additional Australian Litigation Claimants in the Chapter 11 Case, which is annexed to McCredie Declaration as **Exhibit 8**. However, until otherwise authorized by the Australian Court, the Debtors do not have access to the information because Baker McKenzie, in accordance with their professional duties as officers of the Australian Court, will not be permitted to provide such information to the Debtors.

43. The Australian Federal Court has listed the Interlocutory Application and the Recognition Application for hearing on September 28, 2022. The Australian Court may deliver judgment at that hearing or may reserve judgment. The Debtors will update this Court at or before the second day hearing scheduled for September 28, 2022.

44. While it remains a matter for the Australian Court, it is hoped that the Australian Court will consider it appropriate to grant the Debtor Astora (a) use of the Additional Australian Litigation Claimants' contact information for the purpose of serving such individuals with the notice of commencement of Astora's chapter 11 case and (b) a limited permission to disclose the names and contact details of the Additional Australian Litigation Claimants in the

Chapter 11 Case, in accordance with the Debtors' requested relief set forth in the chart above. Where the Australian Court requires additional limitations on the use or disclosure of the Additional Australian Litigation Claimants' information or additional protections for those individuals, the Debtor Astora will inform this Court and may make further application to this Court or the Australian Court as appropriate.

BASIS FOR RELIEF

I. Redaction of Certain Personally Identifiable Information of Certain Individuals is Warranted Under the Bankruptcy Code and the Bankruptcy Rules

45. Section 107(a) of the Bankruptcy Code provides that, with certain limitations, all papers "filed in a case under this title ... are public records and open to examination by an entity at reasonable times without charge." 11 U.S.C. § 107(a). "The policy of open inspection, codified generally in section 107(a) of the Bankruptcy Code, evidences [C]ongress's strong desire to preserve the public's right of access to judicial records in bankruptcy proceedings." *In re Borders Grp., Inc.*, 462 B.R. 42, 46 (Bankr. S.D.N.Y. 2011); *see also Video Software Dealers Ass'n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 26 (2d Cir. 1994) (stating that public access "helps safeguard 'the integrity, quality, and respect in our judicial system,' and permits the public 'to keep a watchful eye on the workings of public agencies'" (internal citations omitted)).

46. The public's right to access, though strong, is not absolute and in the bankruptcy context, certain statutory provisions and related rules either require or authorize a court to limit access through redaction or sealing. *In re Orion Pictures Corp.*, 21 F.3d 24, 27 ("Although the right of public access to court records is firmly entrenched and well supported by policy and

practical considerations, the right is not absolute."). Section 107(c)(1) of the Bankruptcy Code provides:

> The bankruptcy court, for cause, may protect an individual, with respect to the following types of information to the extent the court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual[:]
>
> (A) *Any* means of identification (as defined in section 1028(d) of title 18) contained in a paper filed, or to be filed, in a case under this title.
>
> (B) *Other information* contained in a paper described in subparagraph (A).

11 U.S.C. § 107(c)(1) (emphases added). Therefore, if a debtor can show that disclosure of "any means of identification" or some "other information" (a plainly broad term) creates "undue risk" of "identity theft or other unlawful injury," courts may intervene to curtail disclosure of that information.

47. Separately, a court, for cause, may also impound lists filed under Bankruptcy Rule 1007(j). Fed. R. Bankr. P. 1007(j). Similar to section 107(c)(1)(B) of the Bankruptcy Court which authorizes the court to protect a broad range of "any information" filed with the court, Bankruptcy Rule 1007(j) allows the court, after a "motion of a party in interest and for cause shown," to impound lists filed pursuant to Bankruptcy Rule 1007. These lists include schedules revealing the identities of all creditors, schedules of assets and liabilities, and statements of financial affairs. *Id*. 1007(b).

A. Section 107(c) Of The Bankruptcy Code Is Intended to Permit Redaction of Individuals' Names, Home Addresses, and Email Addresses

48. Section 107(c)(1) authorizes the court to protect "any means of identification" (as defined in section 1028(d) of title 18) contained in any paper filed in a chapter

11 case. 11 U.S.C. § 107(c)(1)(A). Section 1028(d) of title 18 provides a non-exhaustive list of personally identifiable information, including:

> (A) name, social security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number;
>
> (B) unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
>
> (C) unique electronic identification number, address, or routing code; or
>
> (D) telecommunication identifying information or access device (as defined in section 1029(e)).

18 U.S.C. § 1028(d)(7).

49. Bankruptcy courts have previously found that an individual's home address is a "means of identification," although not explicitly enumerated in section 1028(d) of title 18, because such information is listed on an individual's driver's license. 18 U.S.C. § 1028(d)(7)(A). *See also* Hr'g Tr. at 61:22-25, 62:1–3, *In re Forever 21, Inc.*, No. 19-12122 (KG) (Bankr. D. Del. Dec. 19, 2019) ("[w]hat is critical is that the residential address that appears on the driver's license, and that is why driver's licenses are protected, because of the driver's address. And further on in Section 1028, a means of identification, which is the term used in Section 107, specifically includes a driver's license, which, again, is material for containing a home address.").

50. Section 107(c)(1)(B) authorizes the court to protect a broad range of "any information," including, but not limited to, an individual's name, home address, email address, and sensitive health-related information. 11 U.S.C. § 107(c)(1)(B). "The types of information that can be protected by the court are unlimited," and go beyond the types of identification referenced in section 107(c)(1)(A). *See* 2 Collier on Bankruptcy ¶ 107.04 (16th ed. 2019).

B. The Proposed Redactions Relating to Individuals Located in the UK, the EU, and Australia are Appropriate and Should Be Approved

51. As set forth in the Vermynck Declaration, any violation of the GDPR could result in proceedings or actions against the breaching organization by governmental entities or others, including class action privacy litigation in certain jurisdictions, significant fines, penalties, judgments and reputational damages to such organization. If an organization is found to have processed information in breach of the UK GDPR, the organization may be subject to an administrative fine of to the higher of £17,500,000 or 4 percent of worldwide annual turnover—i.e., total annual revenues—of the preceding financial year. *See* United Kingdom Data Protection Act 2018, section 157(5)(a) (as amended by Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019). Similarly, for a breach of the EU GDPR, the organization may be fined up to the higher of €20,000,000 or 4 percent of worldwide annual turnover—i.e., total annual revenues—of the preceding financial year. *See* General Data Protection Regulation (EU) 2016/679, art. 83(5).

52. In addition, as discussed in the McCredie Declaration, the Debtors do not currently have possession of the names and addresses of certain class claimants located in Australia. In the event that the Debtors do receive such information, it is expected to be pursuant to an Australian court order that will prohibit the disclosure of such information other than to the Bankruptcy Court, the U.S. Trustee, and the advisors to the UCC and the OCC.

53. Bankruptcy Courts have recognized the potential consequences debtors for breaching non-U.S. privacy laws and have authorized redactions designed to ensure compliance therewith. For example, in *Forever 21*, Judge Gross of the Delaware Bankruptcy Court found that it was not necessary to the effective administration of the debtors' bankruptcy estates to disclose the personally identifiable information of the debtors' stakeholders who are citizens of the EU,

which created risk that debtors could be fined under the EU GDPR for unnecessary disclosures of personal information. Specifically, Judge Gross noted:

> But I'll say the GDPR contains a necessity test in its guidelines. Is disclosure necessary for the legal proceedings at hand?
>
> Clearly, disclosing home addresses is not necessary for the conduct of the bankruptcy case and the absence of the address does not prejudice anyone; indeed, there's been no objection from any creditor in this case.
>
> Finally, if a party needs home addresses for an employee and the foreign citizens and has a valid purpose, they can reach out to the debtors to seek authority from the Court, upon establishing their *bona fides*, and, accordingly, the debtors' motion will be granted to redact the home addresses.

Hr'g Tr. at 62:16-25, 63:1-3, *In re Forever 21, Inc., et al.*, No. 19-12122 (KG) (Bankr. D. Del. Dec. 19, 2019). Excerpts from the hearing transcript are annexed hereto as **Exhibit C**.

54. Bankruptcy courts in this District have authorized debtors, under section 107(c) of the Bankruptcy Code, to redact from the creditor matrix or similar documents filed with the court the addresses of individuals creditors' and/or the personal information of individual creditors protected by the GDPR. *See e.g.*, *SAS AB, et al.*, No. 22-10925 (MEW) (Bankr. S.D.N.Y. July 8, 2022) [Docket No. 50] (authorizing debtors to "redact the (i) home addresses of individuals listed on the Creditor Matrix and any other documents filed with the Court and (ii) name and address information in respect of individuals protected by the EU GDPR"); *In re Vewd Software USA, LLC, et al.*, No. 21-12065 (MEW) (Bankr. S.D.N.Y. Dec. 17, 2021) [Docket No. 40] (authorizing debtors to "redact (a) the home addresses of individuals listed on the Creditor Matrix, Schedules and Statements, or other documents filed with the Court; and (b) the name and address information in respect of individuals protected by the UK GDPR and EU GDPR."); *Jason Industries, Inc., et al.*, No. 20-22766 (RDD) (Bankr. S.D.N.Y. June 24, 2020) [Docket No. 132] (authorizing the debtors to "to redact (a) the home addresses of individuals listed on the Creditor

Matrix or other document filed with the Court…(b) names and address information in respect of individuals protected by the GDPR").[8]

55. Numerous bankruptcy courts in other districts have also expounded on the importance of authorizing debtors, under section 107(c) of the Bankruptcy Code, to redact from the creditor matrix or similar documents filed with the court the home addresses of individuals creditors and the names and addresses of individual creditors protected by the GDPR. While these rulings are not binding on this Court, they are persuasive and instructive. *See e.g.*, *Akorn, Inc., et al.*, No. 20-11177 (KBO) (Bankr. D. Del. Oct. 1, 2020) [Docket No. 74] (authorizing debtors to "redact (a) the home addresses of individuals listed on the Creditor Matrix, Schedules and Statements, or other document filed with the Court and (b) names and address information in respect of individuals protected by the GDPR").[9]

56. The Debtors' proposed redactions as they relate to individuals located in the UK, the EU, and Australia are consistent with precedent and should be approved so that the Debtors remain in accord with such individuals' privacy rights under applicable non-U.S. law and to mitigate the risk that the Debtors become subject to potentially significant post-petition fines and other costs.

C. Individuals' Home Addresses May Be Used By Perpetrators Of Identity Theft, Stalking, And Intimate Partner Violence

57. The U.S. Trustee alleges, without citing any relevant authority, that the Debtors "must make a clear showing by competent evidence that the disclosure of such information could lead to the standard of harm set forth in [section 107(c) of the Bankruptcy

[8] Copies of these orders are available upon request of the Debtors' counsel.

[9] Copies of these orders are available upon request of the Debtors' counsel.

Code.]"[10] Obj. pg. 8-9. The Debtors are not required under section 107(c) of the Bankruptcy Code to demonstrate a showing of "extraordinary circumstance or compelling need" or that identity theft or unlawful injury is likely. Instead, "[s]ection 107(c) references 'risk,' and assessment of risk is forward looking. While a specific *potential* harm must be identified, the standard does not require evidence of injury having occurred in the past or under similar circumstances." *In re Motions Seeking Access to 2019 Statements*, 585 B.R. 733, 751 (D. Del. 2018) (emphasis added) (citations omitted), *aff'd sub nom. In re A C & S Inc*, 775 F. App'x 78 (3d Cir. 2019).

58. Bankruptcy courts in this District, and others, have recognized the importance of keeping personal information from being disclosed on the public domain. Notably, in *Windstream*, Judge Drain of the Southern District of New York Bankruptcy Court noted that the consequences of releasing private information could be "very serious," and "[o]nce [private information is] out there, it's out there." Hr'g Tr. at 88:6-12, 89:5-8, *In re Windstream Holdings, Inc.*, No. 19-22312 (RDD) (Bankr. S.D.N.Y. Feb. 26, 2019). Excerpts from the hearing transcript are annexed hereto as **Exhibit D**.

59. In *GTT Commc'ns, Inc.*, overruling the U.S. Trustee's objection, Judge Wiles of the Southern District of New York Bankruptcy Court noted personally identifiable information, including addresses "has been misused in other cases, and I'll be darned if I'm going to let it be misused in one of mine." Hr'g Tr. at 78:12-19, *GTT Commc'ns., Inc.*, No. 21-11880

[10] The U.S. Trustee cites to *see, e.g., Joy v. North*, 692 F.2d 880, 894 (2d Cir. 1982) (report filed in court in connection with a shareholder derivative action could not be sealed based on "a naked conclusory statement that publication of the Report will injure the bank in the industry."); *In re Barney's, Inc.*, 201 B.R. 703, 708 (Bankr. S.D.N.Y. 1996) ("speculat[ion] that the public disclosure of ... letter will adversely impact debtors reorganization efforts" insufficient to justify sealing record); *In re Fibermark, Inc.*, 330 B.R. 480, 506 (Bankr. D. Vt. 2005) ("that information might 'conceivably' or 'possibly' fall within a protected category is not sufficient to seal documents"); *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1071-73 (3d Cir. 1059) (court must make "specific findings" as sealing cannot be based on speculation).

(MEW) (Bankr. S.D.N.Y Nov. 4, 2021).[11] Excerpts from the hearing transcript are annexed hereto as **Exhibit E**.

60. In *In re Art Van Furniture*, Chief Judge Sontchi of the Delaware Bankruptcy Court overruled the U.S. Trustee's objection, noting that redaction under section 107(c) of the Bankruptcy Code is not a "burden of proof" issue so "much as a common sense issue." Hr'g Tr. at 25:6–7, *In re Art Van Furniture, LLC*, No. 20-10533 (CSS) (Bankr. D. Del. Mar. 10, 2020). Excerpts from the hearing transcript are annexed hereto as **Exhibit F**. Judge Sontchi also found that "at this point and given the risks associated with having any kind of private information out on the internet, [redaction] has really become routine [and] I think obvious relief." *Id*. at 25:13–16.[12]

61. In *Clover Technologies Group,* Judge Owens of the Delaware Bankruptcy Court overruled the objection of the U.S. Trustee noting that:

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[11] The U.S. Trustee attempts to distinguish the relief granted in *GTT Commc'ns.* to the relief requested in the Motion. Obj. pg. 10-11. However, in *GTT Commc'ns.*, the court authorized the redaction of such "personally identifiable information" in any paper filed in the court, specifically the order states:

> The Debtors are authorized to redact from any paper filed or to be filed with the Court in these Chapter 11 Cases, including the Creditor List, the following personally identifiable information for individuals: (a) the home address and personal email address of any individual—including any of the Debtors' employees, contract workers, debtholders and equity security holders and (b) the name of any individual protected by the GDPR…

No. 21-11880 (MEW) (Bankr. S.D.N.Y Nov. 4, 2021) [Docket No. 67].

[12] Similarly, Judge Sontchi previously overruled the Delaware U.S. Trustee's objection to the redaction of individuals' information and found that "it's just plain common sense in 2019—soon-to-be 2020—to put as little information out as possible about people's personal lives to present [sic] scams . . . [Identity theft] is a real-life issue, and, of course, the issue of domestic violence is extremely important." Hr'g Tr. at 48:20–22, 49:3–5, *In re Anna Holdings*, No. 19-12551 (CSS) (Bankr. D. Del. Dec. 3, 2019). Excerpts from the hearing transcript are annexed hereto as **Exhibit G**.

Notably, Judge Sontchi acknowledged that "the world is very different from [the 1980s] when you and I started practice with the problems of identity theft" and that his perspective had evolved in that he was not previously aware of "the dangers with this kind of information becoming public." *See* Hr'g Tr. at 45:25-46:2, 47:22–24. The Debtors reserve the right to supplement the record with respect to such risks insofar as they are not self-evident in this instance.

> "[t]o me it is common sense. I don't need evidence that there is, at best, a risk of identity theft and worth a risk of personal injury from listing someone's name and address on the internet by way of the court's electronic case filing system and, of course, the claims agent's website. . . . The court can completely avoid contributing to the risk by redacting the addresses. And while there is, of course, an important right of access we routinely redact sensitive and confidential information for corporate entities and redact individual's home addresses."

Hr'g Tr. at 24:21–25, 25:9–10, *In re Clover Techs. Grp., LLC*, No. 19-12680 (KBO) (Bankr. D. Del. Jan. 22, 2020). Excerpts from the hearing transcript are annexed hereto as **Exhibit H**.

62. In *Forever 21*, Judge Gross of the Delaware Bankruptcy Court noted that "[w]e live in a new age in which the theft of personal identification is a real risk, as is injury to persons who, for personal reasons, seek to have their addresses withheld."[13] Hr'g Tr. at 60:22–25, *In re Forever 21, Inc.*, No. 19-12122 (KG) (Bankr. D. Del. Dec. 19, 2019).

63. The risks of identity theft, stalking, and intimate partner violence discussed in the above cases are not theoretical—the Debtors are aware of at least one incident where a

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[13] This ruling is consistent with Judge Gross' previous rulings on this issue. In *Hexion*, Judge Gross concluded that section 107(c) of the Bankruptcy Code protects home addresses because the term "means of identification" under 18 U.S.C. § 1028(d) includes a driver's license that contains the individual's home address. *See* Hr'g Tr. at 46-48, *In re Hexion Holdings LLC*, Case No. 19-10684 (KG) (Bankr. D. Del. June 24, 2019). Excerpts from the hearing transcript are annexed hereto as **Exhibit I**. Following the hearing, Judge Gross entered an order granting the relief requested in the motion. *See In re Hexion Holdings LLC*, Case No. 19-10684 (KG) (Bankr. D. Del. June 24, 2019) [Docket No. 900] (order granting debtors' motion seeking relief under section 107(c) of the Bankruptcy Code to file portions of the debtors' schedules and statements under seal).

Similarly, in the *Promise Healthcare* chapter 11 cases, the debtors filed a motion under section 107(c) of the Bankruptcy Code to redact a creditor matrix containing the addresses of individual creditors, which included many individuals who were employees of the debtor. The United States Trustee for Region 3 objected to that motion arguing that (i) the relief requested was "overbroad" and contrary to the policy favoring the right to public access to judicial records and (ii) the debtor did not demonstrate that the disclosure of individuals' addresses would "create any particular risk, let along undue risk of identity theft or other unlawful injury." Judge Sontchi overruled the States Trustee for Region 3's objection, observing that while the preservation of transparency is a bankruptcy is important, "identity theft is a very real threat" and "[Congress has] provided an ability for the Court to protect people when necessary." *See* Hr'g Tr. at 18-19, *In re Promise Healthcare Group, LLC*, Case No. 18-12491 (CSS) (Bankr. D. Del. Dec. 4, 2018). Excerpts from the hearing transcript are annexed hereto as **Exhibit J**.

survivor in hiding may have been located when her address was posted on the docket in a creditor matrix.[14] Moreover, in a report dated January 2019, the Department of Justice's Bureau of Justice Statistics estimated that 10 percent of persons 16 years of age and over reported being a victim of identity theft during a 12-month period, with total losses equaling $17.5 billion. *See* Erika Harrell, Victims of Identity Theft, 2016, Bureau of Justice Statistics 1 (Jan. 2019), https://www.bjs.gov/content/pub/pdf/vit16.pdf. The MSL filed on the docket is in the form of a text-recognized and text searchable pdf, a format that makes it very easy to extract addresses quickly. While many forms of identity theft can be swiftly and painlessly resolved, many cannot, and the results can be catastrophic to a person's financial stability.

64. Even more serious are the statistics on stalking and intimate partner violence. A report issued in November 2018 by the Centers for Disease Control (the "CDC Report"), attached hereto as **Exhibit K**, found that approximately 16 percent of women and 5.8 percent of men are victims of stalking at some point in their lifetime and approximately 1 in 3 people have experienced violence and/or stalking by an intimate partner during their lifetime. *See* Ex. K, CDC Report, pp. 5, 8-9. Due to the perils faced by survivors of stalking and intimate partner violence, any uncertainty that survivors may be among the Debtors' individual creditors weighs in favor of protection, rather than disclosure.

65. The facts in this instant case are no different. Home addresses constitute vital information to perpetrators of identity theft, stalking, and intimate partner violence alike. Publishing home addresses jeopardizes potentially thousands of individual creditors as it facilitates an identity thief's search for data and a stalker's or abuser's ability to find his or her target. Any

[14] The incident, which took place during the first Charming Charlie chapter 11 proceedings in 2017, is described in the "creditor matrix motion" filed in *In re Charming Charlie Holdings, Inc.*, No. 19-11534 (CSS) (Bankr. D. Del. Jul. 11, 2019) [Docket No. 4].

risk of physical violence or financial damage to the Debtors' individual creditors is ***undue*** risk, particularly where that risk can be effectively eliminated merely by providing access upon a request related to the Chapter 11 Cases. Moreover, home addresses may be used, in conjunction with an individual's name, to determine sensitive health-related information relating to the Individual Litigation Claimants listed on the MSL or other papers filed with the Court.[15]

D. The Disclosure Of Individuals As Opioid Claimants May Result In Serious Adverse Repercussions To Such Individuals

66. As noted in other chapter 11 cases, the disclosure of the names, home addresses, and email addresses, involuntarily, on the internet exposes the Individual Litigation Claimants, especially the opioid claimants, to negative stigma and other prejudice that they may face as a result of their prior association with opioid medications. For example, a journal article issued in 2019 by the National Academies of Sciences, Engineering, and Medicine found that negative attitudes towards individuals with prescription opioid drug use ("OUD") has been found to exceeded other medical condition stigmas, including mental illness.[16] These high levels of negative stigma toward individuals with OUD both among the general public and among professionals in key sectors that commonly interact with these individuals have detrimental effects on their psychological well-being.

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[15] By disclosing the names and addresses of these Individual Litigation Claimants, a third party can reasonably conclude that any individual listed on the MSL with an Australian, UK and EU address is an individual who has used transvaginal surgical mesh products designed to treat pelvic organ prolapse or stress urinary incontinence.

[16] *See Barriers to Broader Use of Medications to Treat Opioid Use Disorder*, National Academies of Sciences, Engineering, and Medicine; Health and Medicine Division; Board on Health Sciences Policy; Committee on Medication-Assisted Treatment for Opioid Use Disorder (2019) https://www.ncbi.nlm.nih.gov/books/NBK541389/#

67. Furthermore, society has generally classified these individuals with OUD as dangerous, unpredictable, and morally responsible for their condition.[17] Society's general classification of these individuals with OUD is evident in a national public opinion data report that indicated "that two-thirds of respondents were unwilling to have a person with a drug use disorder marry into their family, and a majority endorsed discriminatory measures, such as allowing employers to deny employment to a person with OUD."[18] Therefore, it is clear that absent the relief the Debtors are seeking, the disclosure of the opioid litigation claimants' names, home addresses, and email addresses, involuntarily, on the internet exposes such individuals to unnecessary repercussions in their daily lives that are outside of their control.

E. The Harm Caused by Filing Unredacted Personally Identifiable Information Outweighs the General Right of Public Access to Judicial Records

68. Although redaction is not mandatory, the court may protect private information in a judicial record upon an appropriate showing that the privacy interests outweigh the presumption of public access to the information and the judicial efficiencies realized through its use. In determining the weight to be accorded the asserted right of privacy, courts typically consider the degree to which the subject matter is traditionally considered private rather than public and the nature and degree of the injury in light of the sensitivity of the information, the subject and how someone seeking access could use it. Relevant factors that courts have considered in these common law cases included:

> . . . the type of record requested, the information it does or might contain, the potential for harm in any subsequent nonconsensual disclosure, the injury from disclosure to the relationship in which the record was generated, the adequacy of safeguards to prevent

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17 *See Stigma as a fundamental hindrance to the United States opioid overdose crisis response*. *PLoS* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6957118/

18 *See* National Academics of Science, supra 16.

> unauthorized disclosure, the degree of need for access, and whether there is an express statutory mandate, articulated public policy, or other recognizable public interest militating toward access.

In re Crawford, 194 F.3d 954, 959 (9th Cir. 1999). Although this standard was developed in cases that involved the common law presumption of public access, courts in this District typically apply this balancing test when deciding whether the party seeking redaction has shown cause under section 107 of the Bankruptcy Code.

69. Contrary to the U.S. Trustee's assertion that "[n]ame alone and residential addresses alone are public information," (Obj. pg. 9), home addresses are typically not readily available online or on websites. However, when an unredacted creditor matrix is published on a claim's agent website, a simple web search for an individual's name often quickly unearths their full home address on the creditor matrix. Therefore, the Debtors seek an alternative approach, as summarized in the chart above, that is narrowly tailored to ensure that parties' ability to communicate with others is minimally affected will creating safeguards to limit personally identifiable information from becoming public.

70. Bankruptcy courts in this District have found that similar relief requested in other chapter 11 cases did not restrict parties in interests' ability to communicate with one another. For example, in *GTT Commc'ns, Inc.*, the U.S. Trustee expressed concerns that redacting such information would restricts "the various parties, whether they be former employees, or equity holders, or other individuals," "access to or ability to communicate with one another[.]" Hr'g Tr. at 7:13-18, *GTT Commc'ns., Inc.*, No. 21-11880 (MEW) (Bankr. S.D.N.Y Nov. 4, 2021). Disagreeing with the U.S. Trustee, Judge Wiles noted that "I do not really think it's required to include what the debtors have described as personally identifiable information, including addresses." *Id.* at 78:12-19.

71. Lastly, the Debtors are not stating, nor have they ever stated, that the applicable foreign law, supersede the Bankruptcy Code.[19] The Debtors will make every effort to comply with the orders of this Court as they are required; however, until otherwise authorized by the Australian Court, the Debtors do not have access to the Additional Australian Litigation Claimants' information. Once the Australian Court delivers a judgment, the Debtors will inform this Court and may make further application to this Court or the Australian Court as appropriate.

II. Withholding Publication of Claims Filed by Individual Litigation Claimants Until Entry of The Bar Date Order Is Warranted Under Section 107(c) of the Bankruptcy Code

72. The Instructions to Official Form 410 provide that "[i]f the claim is based on delivering health goods or services," the filer bares the obligation to "not disclose confidential health information," and "must leave out or redact information that is entitled to privacy" both in the proof of claim form and any attached documents.

73. As disclosed on the Debtors' website, individual creditors are advised not to provide any medical records in the proof of claim:

> **Privacy of Information Collected**
>
> The information requested on the proof of claim form is being collected for the purposes of facilitating a debtor's voluntary petition for relief under the U.S. Bankruptcy Code and processing any claim you may have against the Debtors. Your proof of claim form must not contain medical records, complete social security numbers or tax identification numbers (only provide the last four digits), a complete birth date (only provide the year), the name of a

[19] Relying on inapposite case law, the U.S. Trustee misapplies the holdings in those cases and ignores the risks associated with violating applicable foreign law including, the GDPR. *See, e.g.*, *In re Blackwell*, 263 B.R. 505 (W.D. Tex. 2000) (finding that individual investors located in Mexico, but investing in a U.S. company, failed to demonstrate that redaction of their names was warranted for safety concerns and where no party, including governmental agency, was entitled to unredacted documents filed on the docket absent specific court order in a decision unrelated to the EU GDPR and UK GDPR); *In re Itel Corp.*, 17 B.R. 942 (9th Cir. B.A.P. 1982) (finding that a request to seal the entire list of debentures under section 107(b) on grounds that an unredacted list may result in competitors purchasing such debentures at a depressed price did not satisfy the requirements of confidential commercial information).

> minor (only provide the minor's initials) or a financial account number (only provide the last four digits of such financial account).
>
> PLEASE REVIEW YOUR PROOF OF CLAIM AND SUPPORTING DOCUMENTS AND REDACT ACCORDINGLY PRIOR TO UPLOADING THEM. PROOFS OF CLAIM AND ATTACHMENTS ARE PUBLIC DOCUMENTS THAT WILL BE AVAILABLE FOR ANYONE TO VIEW ONLINE.
>
> The information you provide on the proof of claim form will be retained by or on behalf of the Bankruptcy Court, the debtor and Kroll Restructuring Administration (formerly known as Prime Clerk) for as long as necessary for the purposes described above, as needed to resolve disputes or protect legal rights as they relate to such claim, or as otherwise required by law. Some or all of the information you provide on the proof of claim form will be displayed and/or accessible on the debtor's case website hosted by Kroll Restructuring Administration pursuant to applicable law and/or court order. Additionally, such information may be shared with certain third parties affiliated with this matter in furtherance of the bankruptcy case and process. Although you may have certain rights relating to the information provided on the proof of claim form under certain laws, applicable law or court order may prohibit the amendment or erasure of such information once it is submitted, including information displayed and/or accessible at the case website.

See https://restructuring.ra.kroll.com/endo/EPOC-Index.

74. Regardless of these notices, given the large number of potential Individual Litigation Claimants in this case, there is a substantial risk that these claimants will file proofs of claims without redacting sensitive health-related information or personally identifiable information. Absent an order of this Court, the Debtors and Claims and Noticing Agent are obligated to publish such claims without redaction. *See* Local Rule 5075-1 (requiring the claims agent to "provide public access to the Claims Registers, including complete proofs of claim with attachments, if any, without charge."). This Local Rule is without limitation, even where the proofs of claim contain sensitive health-related information or personally identifiable information.

75. There is minimal prejudice to any party resulting from withholding the publication of these proofs of claims. To date, the Debtors have not yet determined whether a

claims bar date will be established. In the event that the Debtors intend to seek a Bar Date Order, it would, among other things, approve a tailored individual claim form and specific procedures designed to prevent the unintentional disclosure of these types of sensitive health information.

76. In contrast, disclosure of an individual's prior association with opioid medications could subject that individual to detrimental stigmas and discrimination. In addition, disclosure of an individual's non-opioid personal injury-related circumstances could result in the unnecessary public disclosure of the individual's health information. Regardless of these disclosures, when an unredacted proof of claim is published on a claim's agent website, a simple web search for an individual's name often quickly unearths this proof of claim filed. This format makes it very easy to extract information, determinately effecting these individuals as anyone can discover the information disclosed on these documents. Therefore, the Debtors seek an alternative approach that is narrowly tailored to ensure that inadvertent disclosure of such information in any proofs of claim that may be filed by Individual Litigation Claimants before entry of any Bar Date Order are withheld from publication until entry of any Bar Date Order. The Debtors will provide unredacted proofs of claim to the Court, the U.S. Trustee, the OCC, the UCC, and any other party designated by further order of the Court. Accordingly, the Debtors respectfully submit that cause exists to authorize the Claims and Noticing Agent to withhold publication of claims filed by individuals subject to further order of the Court.

WHEREFORE the Debtors respectfully request that this Court grant such relief as may be just and proper.

Dated: September 26, 2022
New York, New York

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EXHIBIT A

Declaration of Eve-Christie Vermynck

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	**Chapter 11**
ENDO INTERNATIONAL plc, *et al.*,	**Case No. 22-22549 (JLG)**
Debtors.[1]	**(Jointly Administered)**

DECLARATION OF EVE-CHRISTIE VERMYNCK IN SUPPORT OF THE DEBTORS MOTION FOR AN ORDER (I) WAIVING THE REQUIREMENT THAT EACH DEBTOR FILES A SEPARATE LIST OF ITS 20 LARGEST UNSECURED CREDITORS; (II) AUTHORIZING THE DEBTORS TO FILE A SINGLE CONSOLIDATED LIST OF THEIR 50 LARGEST UNSECURED, NON - INSIDER CREDITORS; (III) AUTHORIZING THE DEBTORS AND THE CLAIMS AND NOTICING AGENT TO REDACT PERSONALLY IDENTIFIABLE INFORMATION FOR INDIVIDUALS; (IV) AUTHORIZING THE CLAIMS AND NOTICING AGENT TO WITHHOLD PUBLICATION OF CLAIMS FILED BY INDIVIDUALS UNTIL FURTHER ORDER OF THE COURT; (V) ESTABLISHING PROCEDURES FOR NOTIFYING CREDITORS OF THE COMMENCEMENT OF THE DEBTORS' CHAPTER 11 CASES; AND (VI) GRANTING RELATED RELIEF

I, Eve-Christie Vermynck, hereby declare as follows:

[1] The last four digits of Debtor Endo International plc's tax identification number are 3755. Due to the large number of debtors in these chapter 11 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at https://restructuring.ra.kroll.com/Endo. The location of the Debtors' service address for purposes of these chapter 11 cases is: 1400 Atwater Drive, Malvern, PA 19355.

1. I am a solicitor and Counsel at Skadden, Arps, Slate, Meagher & Flom (UK) LLP admitted to practice in England and Wales, Paris and New York. I focus my practice on data protection (including EU and UK GDPR), cybersecurity, technology and intellectual property matters.

2. The purpose of this declaration is to provide information for the Bankruptcy Court regarding the EU and UK GDPR provisions which affect the Debtors ability make use of such information for the purpose of these proceedings.

3. By making this affidavit, I do not intend, and have no authority, to waive privilege in any communication, or record of communication, that is the subject of legal professional privilege. Nothing in this affidavit should be construed as involving a waiver of privilege.

4. Except as otherwise indicated, the statements in this Declaration are based on my own knowledge of the United Kingdom ("UK") and the European Union ("EU") law or statements of fact regarding the Debtors operations. Where matters stated in this declaration are statements regarding law, such statements represent my views as a lawyer admitted and authorized to practice in England and Wales, Paris and New York. Where the matters stated in this affidavit are within my personal knowledge, they are true and, where I refer to a fact or circumstance based on my information and belief, I believe those facts and circumstances are true to the best of my information and belief. If called upon to testify, I can and will testify competently as to the facts set forth herein.

A. Background and Qualifications

5. I was admitted to practice in Paris in 2005, in New York in 2007 and in England in 2015 and, and am authorized to appear before the English, French and New York courts. I hold a law degree from the University of Law of Paris X Nanterre and an LL.M. from

Fordham University School of law. I have been a practicing lawyer in France since 2008. I advise clients in a variety of regulatory and litigation matters, including cross-border regulatory proceedings, privacy and cybersecurity issues.

B. Implicated the UK and the EU Individuals

6. I have been provided with and reviewed a copy of the Declaration of Mark Bradley dated August 18, 2022, filed by the Debtors in connection with the first day hearing in these chapter 11 cases ("First Day Declaration").

7. On instructions, I understand that the Debtors are aware of the identity and contact details of approximately:

(a) 185 current employees located in the UK and the EU (the "UK/EU Current Employees");

(b) 100 former employees, who were employed within six years prior to August 16, 2022 (the "Petition Date"), located in the UK and the EU (the "UK/EU Former Employees");

(c) 10 individual equityholders located in the UK and the EU (the "UK/EU Individual Equityholders"); and

(d) 30 individual vendors and contract counterparties located in the UK and the EU (the "UK/EU Vendors and Contract Counterparties").

8. On instructions, I understand that the Debtor Astora has been named as a defendant in (a) 13 claims brought by individual claimants in England and Wales in the High Court in relation to injury suffered as a result of surgical mesh implants, (b) 56 separate claims brought by individual claimants in Scotland in the Court of Session, and (c) a number of separate claims brought by individual claimants in the Netherlands and Ireland (collectively, the "UK/EU Litigation Claimants")

C. The UK GDPR and the EU GDPR

9. The EU GDPR, which applies to all EU member countries and protects all EU member countries' citizens, imposes significant constraints on the "processing" of "personal data" relating to these individuals. Compared to the EU GDPR, the UK GDPR, which applies to the UK and protects all UK citizens, imposes relevantly equivalent constraints on the "processing" of "personal data" relating to these individuals. Although the UK GDPR and the EU GDPR are separate legislative regimes applicable in each jurisdiction, they are addressed here together given provisions of the EU GDPR were incorporated directly into the UK law as the UK GDPR, following the UK's departure from the EU. As such, the term "GDPR" will be used to refer to both.

10. The GDPR applies to the processing of "personal data" in the context of an establishment of a "data controller" or "data processor" in the UK and the EU, regardless of where the processing takes place. The GDPR broadly defines "personal data" as "any information relating to an identified or identifiable living individual ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly[.]" "[P]rocessing" is also broadly defined as "any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of personal data by 'data controllers' or 'data processors[.]'"[2]

[2] Under the GDPR, the data controller determines the purposes for which and the means by which "personal data" is processed and the data processor processes "personal data" only on behalf of the controller.

11. Any violation of the GDPR could result in proceedings or actions against the breaching organization by governmental entities or others, including class action privacy litigation in certain jurisdictions, significant fines, penalties, judgments and reputational damages to such organization. If an organization is found to have processed information in breach of the UK GDPR, the organization may be subject to an administrative fine of to the higher of £17,500,000 or 4 percent of worldwide annual turnover—i.e., total annual revenues—of the preceding financial year. *See* United Kingdom Data Protection Act 2018, section 157(5)(a) (as amended by Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019). Similarly, for a breach of the EU GDPR, the organization may be fined up to the higher of €20,000,000 or 4 percent of worldwide annual turnover—i.e., total annual revenues—of the preceding financial year. *See* General Data Protection Regulation (EU) 2016/679, art. 83(5).

D. Article 6 of the GDPR Restricts the "Processing" of "Personal Data"

12. Here, the Debtors are "data controllers," having received "personal data" relating to citizens of the UK and the EU, and the Debtors' agents that hold and otherwise process such "personal data" solely on the Debtors' instructions and on behalf of the Debtors are "data processors." Under the GDPR, "processing" includes (a) the use of individual's name and contact details for the purpose of serving the UK/EU Current Employees, UK/EU Former Employees, UK/EU Individual Equityholders, UK/EU Vendors and Contract Counterparties and UK/EU Litigation Claimants with any notice related to the Chapter 11 Cases, or (b) the Debtors or Kroll filing any unredacted or redacted paper in the Chapter 11 Cases or serving a limited number of parties a redacted version that contains the "personal data" of these individual claimants.

13. In order to allow the Debtors and their agents to process the "personal data" of these individuals, the Debtors would need to satisfy one of the six available legal bases under Article 6 of the GDPR.

14. Article 6 of the GDPR states:

> Processing shall be lawful only if and to the extent that at least one of the following applies:
>
> (a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes;
>
> (b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
>
> (c) processing is necessary for compliance with a legal obligation to which the controller is subject;
>
> (d) processing is necessary in order to protect the vital interests of the data subject or of another natural person;
>
> (e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller; or
>
> (f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

General Data Protection Regulation (EU) 2016/679, art. 6; *see also* United Kingdom Data Protection Act, 2019 No. 419.

i. *Article 6(1)(a),(b), (c), (d), and (e) of the GDPR Do Not Apply*

15. The UK/EU Former Employees, UK/EU Current Employees, UK/EU Individual Equityholders, UK/EU Vendors and Contract Counterparties, and UK/EU Litigation Claimants have not given consent for this purpose, nor is there a contract, vital interests or public

interest reason to process the data. As such subsections (a), (b), (d) and (e) of Article 6 of the GDPR do not apply to permit data processing in connection with the Chapter 11 Cases.

16. Article 6(1)(c) of the GDPR ("compliance with a legal obligation") is not applicable to the Chapter 11 Cases because the legal obligation must exist under the UK and the EU laws, which is not the case in the context of the Chapter 11 Cases.

ii. ***Article 6(1)(f) of the GDPR May Apply***

17. The Debtors may process "personal data" in connection with the Chapter 11 Cases under Article 6(1)(f) of the GDPR, which permits processing where a data controller has a "legitimate interest" in doing so, and the processing is necessary for the relevant purpose of that legitimate interest. Processing will not be necessary where there is a less intrusive way of achieving that relevant purpose. This ground will also not apply if, when balanced against each other, the rights and freedoms of the relevant individuals override the identified legitimate interest.

18. Further, under Article 6(1)(f) of the GDPR, the assessment of such legitimate interest, and accordingly the lawfulness of processing "personal data" of such individuals, nevertheless remains subject to the data minimization principle under Article 5(1)(c) of the GDPR. Article 5(1)(c) of the GDPR provides that "personal data" must be "adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed." Article 5(1)(c) of the GDPR sits alongside the "purpose limitation" principle set out in Article 5(1)(b) of the GDPR, which states that the purpose for which an individual or entity collects and processes "personal data" must be "specified, explicit and legitimate." The GDPR does not define these terms, so to determine whether a data controller is able to use the information to accomplish the specified purpose and for nothing more, the data controller must conduct a legitimate interest assessment.

19. Based on discussions with Skadden, who have undertaken a legitimate interest assessment, they have determined that they have a legitimate interest in processing the names, home addresses, and email addresses of the UK/EU Former Employees, UK/EU Current Employees, UK/EU Individual Equityholders, and UK/EU Vendors and Contract Counterparties, for the purpose of serving these individuals with notice throughout the Chapter 11 Cases, listing them as creditors of the estate, if applicable, and otherwise complying with the requirements of the Bankruptcy Code. However, in line with the Debtors obligations to restrict data processing only to that which is necessary to achieve the permitted purpose and to balance the rights and freedoms of these individuals the Debtors are requesting to redact the home addresses and email addresses of these individuals in any paper filed with the Court. Absent such relief, the Debtors risk processing "personal data" without a legal basis and in breach of the GDPR and thereby exposing them to severe monetary penalties that could threaten the Debtors' operations during this sensitive stage of their restructuring.

E. Article 9 of the GDPR Restricts the "Processing" of Health-Related Data

i. Disclosing the UK/EU Litigation Claimants' "Personal Data" in Unredacted Filings with the Court May Be Considered Health-Related Data

20. Since each UK/EU Litigation Claimant has received a transvaginal surgical mesh product designed to treat pelvic organ prolapse or stress urinary incontinence, the Debtors are considered to hold health-related data (i.e., "special category data") relating to these claimants. I understand from the First Day Declaration that the Debtor Astora has been named as a defendant in litigation relating to the usage of transvaginal surgical mesh products designed to treat pelvic organ prolapse or stress urinary incontinence. I understand that consequently, it would be possible for someone reviewing a list of the Debtor Astora's creditors to infer with at least reasonable certainty that an individual listed as a disputed litigation creditor has received a pelvic mesh

implant, thereby identifying health information related to that creditor, and further, that their processing of that creditor's name and contact details may be influenced by this inference. Accordingly, based on my expertise regarding the GDPR, I consider that there is a high risk that "processing" the names, home addresses, and email addresses of the UK/EU Litigation Claimants for the purpose of filing unredacted documents in the Chapter 11 Cases would result in processing of health-related personal data of the UK/EU Litigation Claimants, which would be considered "special category data" under the GDPR.

21. Article 9 of the GDPR prescribes that certain "special category data," including health-related data, may only be processed where one of 10 following conditions is satisfied, in addition to falling under one of the legal grounds set out under Article 6 of the GDPR. The ten conditions set out in Article 9 of the GDPR are:

> (i) the data subject has given explicit consent to the processing of those personal data for one or more specified purposes, except where Union or Member State law provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject;
>
> (ii) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law in so far as it is authorized by Union or Member State law or a collective agreement pursuant to Member State law providing for appropriate safeguards for the fundamental rights and the interests of the data subject;
>
> (iii) processing is necessary to protect the vital interests of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent;
>
> (iv) processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical, religious or trade union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact

with it in connection with its purposes and that the personal data are not disclosed outside that body without the consent of the data subjects;

(v) processing relates to personal data which are manifestly made public by the data subject;

(vi) processing is necessary for the establishment, exercise or defense of legal claims or whenever courts are acting in their judicial capacity;

(vii) processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject;

(viii) processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of Union or Member State law or pursuant to contract with a health professional and subject to the conditions and safeguards referred to in paragraph 3;

(ix) processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices, on the basis of Union or Member State law which provides for suitable and specific measures to safeguard the rights and freedoms of the data subject, in particular professional secrecy; or

(x) processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) based on Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.

General Data Protection Regulation (EU) 2016/679, arts. 85-91; *see also* United Kingdom Data Protection Act, 2019 No. 419, Schedule 1, ¶9.

22. I consider it likely that, none of the ten conditions set out in Article 9 of the GDPR are satisfied in relation to the Debtors "processing" the health-related data of the UK/EU Litigation Claimants for the purpose of filing unredacted documents in the Chapter 11 Cases.

ii. Confidentially Disclosing the UK/EU Litigation Claimants' "Personal Data" to Certain Parties in the Chapter 11 Cases May Not Be Considered Health-Related Data

23. It is arguable, however, that "processing" the names, home addresses, and email addresses only of the UK/EU Litigation Claimants for the purpose of providing redacted documents in the Chapter 11 Cases to the Bankruptcy Court, the U.S. Trustee, the UCC, and the OCC would not result in "processing" health-related data of the UK/EU Litigation Claimants. This is because I am informed that these limited parties can reasonably be expected to utilize such information solely for the purposes of the bankruptcy proceedings without giving consideration to the mesh product litigation and any possible inferences of health-related data such inference would not influence their processing in any way. Accordingly, Article 9 of the GDPR would not apply, and the Debtors are only required to satisfy the conditions set out in Article 6 of the GDPR.

24. As stated above, in order to allow the Debtors and their agents to process the "personal data" of the UK/EU Litigation Claimants, the Debtors would need to satisfy one of the six available exceptions under Article 6 of the GDPR.

iii. Article 6(1)(f) Of The GDPR Is The Only Basis On Which The Debtors May Process "Personal Data" of the UK/EU Litigation Claimants

25. As discussed above, the only basis on which the Debtors may process "personal data" of the UK/EU Litigation Claimants in connection with the Chapter 11 Cases is

under Article 6(1)(f) of the GDPR, which permits processing where a data controller has a "legitimate interest" in doing so, the processing is necessary for the relevant purpose of that legitimate interest, and the rights and freedoms of the individuals concerned does not outweigh that legitimate interest. Based on my discussions with Skadden, the Debtors have determined that they have a legitimate interest in processing the names, home addresses, and email addresses of the UK/EU Litigation Claimants, for the purpose of serving these claimants with notice throughout the Chapter 11 Cases, filing redacted documents with the Court, and providing unredacted documents to this Court, the U.S. Trustee, the OCC, and the UCC, in accordance with the terms of the Debtors' relief requested.

F. Article 49 of the GDPR: Transfer of "Personal Data" to the U.S.

26. On instructions I understand that in accordance with the specific relief that the Debtors are seeking here, in order to "process" the names, home addresses, and email addresses of the UK/EU Former Employees, UK/EU Current Employees, UK/EU Individual Equityholders, UK/EU Vendors and Contract Counterparties, and UK/EU Litigation Claimants, the Debtors may have to transfer the "personal data" of these individuals to the U.S.

27. The GDPR restricts transfers of "personal data" to "third countries." Such transfers may only be made on the basis of a valid data transfer mechanism, i.e., where (a) the country to which the data is transferred is covered by an "adequacy decision" pursuant to Article 45(3) of the GDPR, (b) the transfer is undertaken by way of an "appropriate safeguard" under Article 49 of the GDPR, or (c) the Debtor can rely on an exception under Article 49 of the GDPR. The United States is not covered by an "adequacy decision," and on instructions, I understand that the transfer would not be covered by an "appropriate safeguard."

28. Article 49 of the GDPR provides that "personal data" may only be transferred to a third country if one of the following seven conditions is met (and the processing

of "personal data" is otherwise lawful, including as discussed above in relation to Articles 6 and 9 of the GDPR):

> (i) the data subject has explicitly consented to the proposed transfer, after having been informed of the possible risks of such transfers for the data subject due to the absence of an adequacy decision and appropriate safeguards;
>
> (ii) the transfer is necessary for the performance of a contract between the data subject and the controller or the implementation of pre-contractual measures taken at the data subject's request;
>
> (iii) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the data subject between the controller and another natural or legal person;
>
> (iv) the transfer is necessary for important reasons of public interest;
>
> (v) the transfer is necessary for the establishment, exercise or defense of legal claims;
>
> (vi) the transfer is necessary in order to protect the vital interests of the data subject or of other persons, where the data subject is physically or legally incapable of giving consent; or
>
> (vii) the transfer is made from a register which according to Union or Member State law is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can demonstrate a legitimate interest, but only to the extent that the conditions laid down by Union or Member State law for consultation are fulfilled in the particular case.

General Data Protection Regulation (EU) 2016/679, art. 49; see also United Kingdom Data Protection Act, 2019 No. 419.

29. Here, the only applicable basis for transfer of "personal data" to the U.S. in the present case is Article 49(e) of the GDPR: where the transfer is "necessary" for the purpose of legal claims.

30. Although it is not a matter which has been finally determined by a UK or EU Court, based on my expertise regarding the GDPR, I consider that the conduct of these proceedings, which involves the determination of the rights of creditors, arguably comprises the determination of legal claims. However, the Debtors nevertheless may not do more than is "necessary" for the purpose of determining such claims. Processing will not be necessary where there is a less intrusive way of achieving the identified purpose. Accordingly, I understand that the Debtors' requested relief is tailored to ensure that parties' ability to communicate with others is minimally affected while limiting the "personal data" transferring only to what is necessary, in order to limit the risk of the Debtors transferring "personal data" without a valid data transfer mechanism and so in breach of the GDPR.

[Remainder of Page Intentionally Left Blank]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: September 26, 2022
London, United Kingdom

By: /s/ Eve-Christie Vermynck
Eve-Christie Vermynck

EXHIBIT B

Declaration of David McCredie

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Paul D. Leake
Lisa Laukitis
Shana A. Elberg
Evan A. Hill
One Manhattan West
New York, New York 10001
Telephone: (212) 735-3000
Fax: (212) 735-2000

Proposed Counsel to Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	**Chapter 11**
ENDO INTERNATIONAL plc, *et al.*,	**Case No. 22-22549 (JLG)**
Debtors.[1]	**(Jointly Administered)**

DECLARATION OF DAVID MCCREDIE IN SUPPORT OF THE MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER (I) WAIVING THE REQUIREMENT THAT EACH DEBTOR FILES A SEPARATE LIST OF ITS 20 LARGEST UNSECURED CREDITORS; (II) AUTHORIZING THE DEBTORS TO FILE A SINGLE CONSOLIDATED LIST OF THEIR 50 LARGEST UNSECURED, NON - INSIDER CREDITORS; (III) AUTHORIZING THE DEBTORS AND THE CLAIMS AND NOTICING AGENT TO REDACT PERSONALLY IDENTIFIABLE INFORMATION FOR INDIVIDUALS; (IV) AUTHORIZING THE CLAIMS AND NOTICING AGENT TO WITHHOLD PUBLICATION OF CLAIMS FILED BY INDIVIDUALS UNTIL FURTHER ORDER OF THE COURT; (V) ESTABLISHING PROCEDURES FOR NOTIFYING CREDITORS OF THE COMMENCEMENT OF THE DEBTORS' CHAPTER 11 CASES; AND (VI) GRANTING RELATED RELIEF

I, David Cameron McCredie, hereby declare as follows:

1. I am an Australian solicitor and Partner of Baker McKenzie. I, together with certain of my partners at Baker McKenzie, act for Astora Women's Health, LLC ("Astora") in its defence of a class action proceeding in the Federal Court of Australia

[1] The last four digits of Debtor Endo International plc's tax identification number are 3755. Due to the large number of debtors in these chapter 11 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at https://restructuring.ra.kroll.com/Endo. The location of the Debtors' service address for purposes of these chapter 11 cases is: 1400 Atwater Drive, Malvern, PA 19355.

(Proceeding NSD 35/2018) ("Australian Class Action Proceeding"), and for Mark Bradley as foreign representative of Astora in relation to his application for recognition of Astora's chapter 11 case seeking relief under chapter 11 of the U.S. Bankruptcy Code, each as described in this declaration.

2. The purpose of this declaration is to provide information for the Bankruptcy Court regarding:

(a) certain information held by Baker McKenzie, in its capacity as counsel to Astora in the Australian Class Action Proceeding, regarding the identity and contact details of the Additional Australian Litigation Claimants (as defined below); and

(b) steps which Astora is taking in Australia in order to obtain permission to obtain, use, and disclose the identity and contact details of the Additional Australian Litigation Claimants.

3. By making this declaration, I do not intend, and have no authority, to waive privilege in any communication, or record of communication, that is the subject of legal professional privilege as a matter of the law of Australia or any of its states or territories, or of any other jurisdiction. Nothing in this affidavit should be construed as involving a waiver of privilege.

4. Except as otherwise indicated, the statements in this declaration are based on my own knowledge of Australian law or statements of fact regarding the Debtor Astora's operations or Australian litigation. Where matters stated in this declaration are statements regarding Australian law, such statements represent my view of Australian law as a lawyer admitted and authorized to practice in Australia. Where the matters stated in this affidavit are within my personal knowledge, they are true and, where I refer to a fact or circumstance based on my information and belief, I believe those facts and circumstances are

true to the best of my information and belief. If called upon to testify, I can and will testify competently as to the facts set forth herein.

BACKGROUND AND QUALIFICATIONS

5. I was admitted to practice in New South Wales, Australia in 1992 and am authorized to appear before Australian courts. I hold a law degree from the University of Sydney and, with the exception of a period in 1998-1999 when I worked in England, I have been a practising lawyer in Australia since 1993.

RECOGNITION APPLICATION

6. Following the commencement of Astora's chapter 11 case on August 16, 2022, and the appointment of Mark Bradley as foreign representative of Astora on August 18, 2022 [Docket No. 81], Baker McKenzie filed on Mr. Bradley's behalf an application in the Federal Court of Australia for recognition of the Astora chapter 11 pursuant to the Cross-Border Insolvency Act 2008.

7. Attached to this declaration are copies of:

(a) The Originating Process for Astora's recognition application dated September 9, 2022 (**Exhibit 1**);

(b) The Interlocutory Process for Astora's recognition application dated September 9, 2022 (**Exhibit 2**);

(c) The affidavit of Mark Bradley dated August 24, 2022, filed in support of the recognition application ("Bradley Affidavit") (excluding annexures) (**Exhibit 3**); and

(d) The affidavit of George Panagakis dated August 24, 2022, filed in support of the recognition application ("Panagakis Affidavit") (excluding the exhibit) (**Exhibit 4**).

AUSTRALIAN LITIGATION CLAIMANTS

8. As set out in the Bradley Affidavit, Astora is the Respondent to the Australian Class Action Proceeding, which was brought by two claimants (whom I will refer to as "JP" and "JS") in their own right and on behalf of other women in relation to alleged complications suffered as a result of surgical mesh implants implanted in Australia. *See* Exhibit 3, ¶ 48.

9. Baker McKenzie, as counsel to Astora in the Australian Class Action Proceeding, holds the names and contact details of women who may be class members in the Australian Class Action Proceeding (the "Additional Australian Litigation Claimants"). Such information was received following a court ordered process in the Australian Class Action Proceeding by which potential class members submitted claimant registration forms and/or opt-out notices (potential class members having been identified via a court ordered subpoena process). Claimant registration forms were submitted by over 3,000 individuals, and copies of those forms are held by Baker McKenzie. Baker McKenzie also holds copies of opt-out notices, as well as many of the productions under subpoena by various health entities (pursuant to which the claimant registration forms and opt-out notices were distributed to potential class members by either the applicants' counsel or by the producing entity).

10. Baker McKenzie's ability to use or disclose the names and contact details of the Additional Australian Litigation Claimants for the purpose of Astora's chapter 11 case is limited. Where information is received by a party (or its legal representatives) through compulsory process in the course of an Australian court proceeding, such as through a subpoena or court ordered production, that information is held subject to an implied undertaking that it will not be used for any purpose other than the conduct of that proceeding (the so-called "Harman undertaking," after one of the leading cases addressing it). Both the party and its legal representatives are bound by the implied undertaking. *See Harman v*

Secretary of State for Home Department [1983] 1 AC 280 and *Hearne v Street* [2008] HCA 36; (2008) 235 CLR 125 at [107] to [108].[2] Australia also has both state/territory and commonwealth legislative privacy regimes which would affect Astora's ability to make use of the Additional Australian Litigation Claimant details. I am not providing further descriptions of those legislative regimes because if Astora is granted permission and authorisation to use the Additional Australian Litigation Claimant details by the Australian Court following the application described below, the privacy regime will not restrict Astora's ability to act in compliance with the Australian Court's order.

11. Subject to these restrictions, I am instructed that Astora considers that it is appropriate to use the Additional Australian Litigation Claimant contact information in order to give the Additional Australian Litigation Claimants notice of Astora's chapter 11 case, and of other steps taken in the course of Astora's chapter 11 case.

12. On September 9, 2022, Astora filed an interlocutory application, attached hereto as **Exhibit 5** (as further amended, the "Interlocutory Application"), in the Australian Class Action Proceeding, seeking orders that it be permitted to use the Additional Australian Litigation Claimant contact details for the purpose of serving such individuals with the notice of commencement of Astora's chapter 11 case and of other documents where such individuals are parties-in-interest. On September 9, 2022, I swore and caused to be filed an affidavit in support of the Interlocutory Application, attached hereto as **Exhibit 6** (excluding exhibits but including annexures) ("McCredie Affidavit").

---

[2] Based on communications with the Debtor Astora and on documents filed in court proceedings, Astora (located outside of Australia) is aware of the identity, and the contact details of the legal representatives of, two named individuals in the Australian Class Action Proceeding, three claimants who have filed applications in the Supreme Court of Queensland seeking leave to commence proceedings in that Court, and one defendant in the Supreme Court of New South Wales proceeding that was transferred to the Federal Court of Australia (the names and contact details of these claimants and the solicitors who act for these claimants, the "Named Australian Litigation Claimants"). *See* Exhibit 3, ¶¶ 52-53. I do not address the Named Australian Litigation Claimants further in this declaration because the Harman Undertaking does not apply to their contact details, and the Debtor Astora expects to be able to comply with such orders as the Bankruptcy Court may make in relation to the Named Australian Litigation Claimants notwithstanding the Australian legislative privacy regimes.

13. On September 21, 2022, Astora filed an amendment to the Interlocutory Application in the Australian Class Action Proceeding, so as to widen the orders sought in order to be clear that once granted Astora would be able to proceed with service of the Additional Australian Litigation Claimants as planned in Astora's chapter 11 case, attached hereto as **Exhibit 7**.

14. On September 23, 2022, Astora filed a further amended interlocutory application in the Australian Class Action Proceeding, so as to further widen the orders sought in order to grant Astora a limited permission to disclose the names and contact details of the Additional Australian Litigation Claimants in Astora's chapter 11 case, attached hereto as **Exhibit 8**. Astora filed an affidavit of Evan Andrew Hill dated September 22, 2022, in support of the further amended Interlocutory Application, attached hereto as **Exhibit 9**.

MCCREDIE AFFIDAVIT

15. In Part A of the McCredie Affidavit, I set out the nature of the Additional Australian Litigation Claimant information held by Astora and how it was received in the course of the Australian Class Action Proceedings.

16. In Part B of the McCredie Affidavit, I provided a description, based on information provided to me by Astora's U.S. counsel, of the use which Astora was seeking to make of the contact information for the Additional Australian Litigation Claimants.

17. Without repeating what I said in the McCredie Affidavit, I note that the use which Astora originally proposed to make did not include any use which would result in the disclosure of the names and contact details of the Additional Australian Litigation Claimants in any paper filed with the Bankruptcy Court (redacted or unredacted) or provided to any third parties. In filing the further amended Interlocutory Application, Astora widened the relief sought so that it would permit Astora to redact the names and contact details of the Additional Australian Litigation Claimants from any papers filed with the Bankruptcy Court,

and which may become publicly available, and to provide unredacted copies of such documents to the Bankruptcy Court, the U.S. Trustee, the Official Committee of Unsecured Creditors and the Official Committee of Opioid Claimants.

18. The Australian Federal Court has listed the further amended Interlocutory Application and the Recognition Application for an initial hearing on September 28, 2022. The Court may decide the further amended Interlocutory Application on that date, or it may reserve judgment and then hand down judgment and make orders at a later time, or the application may be adjourned. If judgment in the further amended Interlocutory Application is reserved, I consider it likely that judgment would be delivered within a few weeks after the hearing.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: September 26, 2022
Sydney, Australia

By: 
Name: David McCredie
Title: Australian solicitor for Debtor Astora Women's Health, LLC

Exhibit 1

The Originating Process

Form 2 **Originating process**
(rules 2.2 and 15A.3)

No. NSD of 2022

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: NEW SOUTH WALES
DIVISION: COMMERCIAL AND CORPORATIONS

IN THE MATTER OF ASTORA WOMEN'S HEALTH, LLC

MARK THOMAS BRADLEY IN HIS CAPACITY AS FOREIGN REPRESENTATIVE OF ASTORA WOMEN'S HEALTH, LLC

Plaintiff

ASTORA WOMEN'S HEALTH, LLC

Defendant

A. DETAILS OF APPLICATION

This application is made under section 6 of the *Cross-Border Insolvency Act 2008* (Cth) and s 90-15 of *Schedule 2 - Insolvency Practice Schedule (Corporations)* to the *Corporations Act 2001* (Cth).

On the facts stated in the supporting affidavits, the Plaintiff claims the following orders:

1. Pursuant to Art 17(1) of the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law **(Model Law**) and s 6 of the Cross-Border Insolvency Act 2008 (Cth) (**Cross-Border Insolvency Act**), that Case No. 22-22594 (which is being jointly administered for procedural purposes only with Docket No. 22-22549) in the United States Bankruptcy Court for the Southern District of New York (**US Proceeding**) in relation to the Defendant, Astora Women's Health, LLC (**Astora LLC**) be recognised as a foreign proceeding.

Filed on behalf of (name & role of party) Mark Thomas Bradley in his capacity as Foreign Representative of Astora Women's Health, LLC, the Plaintiff
Prepared by (name of person/lawyer) Maria O'Brien
Law firm (if applicable) Baker McKenzie
Tel +61 2 8922 5222 Fax F +61 2 9225 1595
Email Maria.O'Brien@bakermckenzie.com
Address for service (include state and postcode) Tower One, Level 46, 100 Barangaroo Avenue, Sydney NSW 2000

2. Pursuant to Art 17(2)(a) of the Model Law, that the US Proceeding be recognised as a foreign main proceeding within the meaning of Art 2(b) of the Model Law.

3. The Plaintiff, Mark Thomas Bradley, be recognised as a foreign representative of Astora LLC within the meaning of Art 2(d) of the Model Law.

4. For the purposes of Article 20(2) of the Model Law and s 16 of the Cross-Border Insolvency Act, the scope, and the modification or termination, of the stay and suspension referred to in Article 20(1) of the Model Law with respect to Astora LLC be the same as would apply if the stay or suspension arose under Part 5.3A in Chapter 5 of the *Corporations Act 2001* (Cth) (**Corporations Act**), and as if:

   (a) Part 5.3A of the Corporations Act applied to Astora LLC (as a company subject to administration under that Part); and

   (b) references in Part 5.3A of the Corporations Act to the consent of the company's administrators are taken to be references to the consent of the Plaintiff as foreign representative.

5. Pursuant to Art 21(1)(e) of the Model Law, the administration and realisation of Astora LLC's assets located in Australia be entrusted to the Plaintiff as foreign representative.

6. The requirements of rule 15A.7(1) of the *Federal Court (Corporations) Rules 2000* (Cth) be dispensed with and in lieu thereof:

   (a) within 20 business days of the making of these orders, the Plaintiff publish a notice in the form appearing in the Schedule to these Orders (**Notice**) in *The Australian* and *Australian Financial Review* newspapers;

   (b) the Notice be distributed as follows:

      Applicants in Federal Court of Australia proceeding NSD35 of 2018 (Class Action)

      (i) within 20 business days of the making of these orders, the Plaintiff give the Notice to the applicants in the Class Action by sending a copy of the Notice to the applicants' solicitors, Shine Lawyers, once by way of email and once by ordinary post;

Other known claimants

(ii) within 20 business days of the making of these orders, the Plaintiff give the Notice to the individuals referred to as TP, KC and BK in the affidavit sworn by Mark Thomas Bradley in this proceeding on 24 August 2022 (**Bradley Affidavit**) by sending a copy of the Notice to their solicitors, AJB Stevens Lawyers, once by way of email and once by ordinary post;

(iii) within 20 business days of the making of these orders, the Plaintiff give the Notice to the individual identified as Professor AR in the Bradley Affidavit by sending the Notice to that person's solicitors, Moray & Agnew, once by way of email and once by ordinary post.

7. Any party affected by these orders is at liberty to apply upon five business days' notice.

8. Such further or other orders or directions as the Court deems fit.

Date: 9 September 2022

. . . . . .

Maria Coffill O'Brien
Solicitor for the Plaintiff

This application will be heard by . . . . . at [*address of Court*] at . . . . . *am/*pm on . . . .

B. NOTICE TO DEFENDANT

Astora Women's Health LLC, 1209 Orange St., Wilmington, DE 1980, United States

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

(a) the application may be heard and final relief given;
(b) directions may be given for the future conduct of the proceeding;
(c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the Plaintiff.

Note Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY

Not applicable

D. FILING

Date of filing:

. . . . . .

Registrar

This originating process is filed by Maria Coffill O'Brien of Baker McKenzie, solicitor for the Plaintiff.

E. SERVICE

The Plaintiff's address for service is:

C/- Baker McKenzie, Solicitors
Tower One - International Towers Sydney, Level 46, 100 Barangaroo Avenue
Barangaroo NSW 2000
DX 218 Sydney

Email: Maria.O'Brien@bakermckenzie.com

It is intended to serve a copy of this originating process on the Defendant.

Form 21 **Notice of making of order under the *Cross-Border Insolvency Act 2008* (rule 15A.7)**

IN THE FEDERAL COURT OF AUSTRALIA No. NSD of 2022

IN THE MATTER OF ASTORA WOMEN'S HEALTH, LLC

Mark Thomas Bradley in his capacity as Foreign Representative of Astora Women's Health, LLC

Plaintiff

Astora Women's Health, LLC

Defendant

TO all the creditors of Astora Women's Health, LLC (**Astora LLC**) TAKE NOTICE that:

1. An application under the *Cross-Border Insolvency Act 2008* (Cth) (**Act**) for recognition of Case No. 22-22594 (which is being jointly administered for procedural purposes only with Docket No. 22-22549) filed in the United States Bankruptcy Court for the Southern District of New York in relation to Astora LLC (**US Proceeding**) as a foreign proceeding was commenced by Mark Thomas Bradley in his capacity as Foreign Representative of Astora LLC on XX September 2022, and has proceeding number NSD [XXX] of 2022 (**Model Law Application**).

2. On XXXX 2022, the Federal Court of Australia made the following orders under the Act in the Model Law Application in relation to Astora LLC:

    a. [*Final form of OP orders as made to be inserted here*]

3. The address for service for Mark Thomas Bradley and for Astora LLC is: C/- Baker McKenzie, Solicitors, Tower One - International Towers Sydney, Level 46, 100 Barangaroo Avenue, Sydney NSW 2000 Email: Maria.O'Brien@bakermckenzie.com

PLEASE NOTE: You do not need to progress any claim you may have against Astora LLC in this proceeding or in communication with Baker McKenzie. If you have questions about the US Proceeding please contact Astora LLC's Claims

and Noticing Agent, Kroll Restructuring Administration LLC, at +1 (929) 284-1688, or by email at endoinquiries@ra.kroll.com. You may also find more information at https://restructuring.ra.kroll.com/Endo.

Date:

Baker McKenzie

Exhibit 2

The Interlocutory Process

Form 3 Interlocutory process

(rules 2.2, 15A.4, 15A.8 and 15A.9)

No. NSD of 2022

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: NEW SOUTH WALES

DIVISION: COMMERCIAL AND CORPORATIONS

IN THE MATTER OF ASTORA WOMEN'S HEALTH LLC

MARK THOMAS BRADLEY IN HIS CAPACITY AS FOREIGN REPRESENTATIVE OF ASTORA WOMEN'S HEALTH, LLC

Plaintiff

ASTORA WOMEN'S HEALTH LLC

Defendant

A. DETAILS OF APPLICATION

This application is made under section 6 of the *Cross-Border Insolvency Act 2008* (Cth) and s 90-15 of *Schedule 2 - Insolvency Practice Schedule (Corporations)* to the *Corporations Act 2001* (Cth) and rule 1.8 of the *Federal Court (Corporations) Rules 2000* (Cth) (**Rules**).

On the facts stated in the supporting affidavits, the Plaintiff applies for the following interim relief:

1. An order, pursuant to Art 19(1)(a) of the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law (**Model Law**), that until the application for relief under art 17 of the Model Law made in the originating process in this proceeding is decided, or until further order of the Court:

Filed on behalf of (name & role of party): Mark Thomas Bradley in his capacity as Foreign Representative of Astora Women's Health, LLC, the Plaintiff
Prepared by (name of person/lawyer): Maria O'Brien
Law firm (if applicable): Baker McKenzie
Tel +61 2 8922 5222 Fax F +61 2 9225 1595
Email Maria.O'Brien@bakermckenzie.com
Address for service (include state and postcode): Level 46, 100 Barangaroo Avenue, Sydney NSW 2000

(a) any and all execution against the assets of the Defendant, Astora Women's Health, LLC (**Astora LLC**) be stayed;

(b) no person within the jurisdiction of the Court other than Astora LLC may transfer, encumber or otherwise dispose of, or take possession of or otherwise recover, any assets of Astora LLC;

(c) no proceeding against Astora LLC, or in relation to any of its property, may be begun or proceeded with;

(d) no receiver may be appointed to any of the assets of Astora LLC, nor may any step be taken to enforce any security over any of the assets of Astora LLC in Australia.

2. An order that the requirements of Rules 15A.3(4)(a) and 15A.6(1) be dispensed with and in lieu thereof the Plaintiff:

(a) within 20 business days of the making of these orders, publish notice in the form appearing in the Schedule to these Orders (**Notice**) in *The Australian* and *Australian Financial Review* newspapers;

(b) distribute the Notice as follows:

Applicants in Federal Court of Australia Proceeding NSD35 of 2018 (Class Action)

(i) within 20 business days of the making of these orders, the Plaintiff give the Notice to the applicants in the Class Action by sending a copy of the Notice to the applicants' solicitors, Shine Lawyers, once by way of email and once by ordinary post;

Other known claimants

(ii) within 20 business days of the making of these orders, the Plaintiff give the Notice to the individuals referred to as TP, KC and BK in the affidavit sworn by Mark Thomas Bradley in this proceeding on 24 August 2022 (**Bradley Affidavit**) by sending a copy of the Notice to their solicitors, AJB Stevens Lawyers, once by way of email and once by ordinary post;

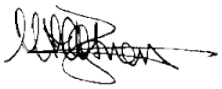
(iii) within 20 business days of the making of these orders, the Plaintiff give the Notice to the individual identified as Professor

AR in the Bradley Affidavit by sending the Notice to that person's solicitors, Moray & Agnew, once by way of email and once by ordinary post.

3. Any party affected by these orders is at liberty to apply upon five business days' notice.

4. Such further or other orders or directions as the Court deems fit.

Date: 9 September 2022



. . . . . .

Maria Coffill O'Brien

Solicitor for the Plaintiff

This application will be heard by . . . . . at [*address of Court*] at . . . . . *am/*pm on . . . .

B. NOTICE TO RESPONDENT

Astora Women's Health, LLC, 1209 Orange St., Wilmington, DE 1980, United States.

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence.

Before appearing before the Court, you must, except if you have already done so or you are the plaintiff in this proceeding, file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff in the originating process.

C. FILING

This interlocutory process is filed by Maria Coffill O'Brien of Baker McKenzie, solicitor for the Plaintiff.

D. SERVICE

The Plaintiff's address for service is:

C/- Baker McKenzie, Solicitors

Tower One - International Towers Sydney, Level 46, 100 Barangaroo Avenue

Barangaroo NSW 2000

DX 218 Sydney

Email: Maria.O'Brien@bakermckenzie.com

It is intended to serve a copy of this interlocutory process on the Defendant.

Form 20 Notice of filing of application for recognition of foreign proceeding (rule 15A.6)

Form 21 Notice of making of order under the Cross-Border Insolvency Act 2008 (rule 15A.7)

IN THE FEDERAL COURT OF AUSTRALIA No. NSD of 2022

IN THE MATTER OF ASTORA WOMEN'S HEALTH, LLC

Mark Thomas Bradley in his capacity as Foreign Representative of Astora Women's Health, LLC
Plaintiff

Astora Women's Health, LLC
Defendant

TO all the creditors of Astora Women's Health, LLC (**Astora LLC**) TAKE NOTICE that:

1. An application under the *Cross-Border Insolvency Act 2008* (Cth) (**Act**) for recognition of Case No. 22-22594 (which is being jointly administered for procedural purposes only with Docket No. 22-22549) in the United States Bankruptcy Court for the Southern District of New York in relation to Astora LLC (**US Proceeding**) as a foreign proceeding was commenced by Mark Thomas Bradley in his capacity as Foreign Representative of Astora LLC on XXXX 2022, and has proceeding number NSD [XXX] of 2022 (**Model Law Application**).

2. On XXXX the Federal Court of Australia made the following orders under the Act in the Model Law Application in relation to Astora LLC:

   (a) [*insert interim orders here*]

   (b) The Model Law Application be listed for final hearing on XXX 2022 at XXam (**Hearing**).

3. Copies of documents filed may be obtained from the Foreign Representative's address for service which is: C/- Baker McKenzie, Tower One - International Towers Sydney, Level 46, 100 Barangaroo Avenue Sydney NSW 2000 Email: maria.obrien@bakermckenzie.com.

4. Any person intending to appear at the Hearing must file a notice of appearance, in accordance with the prescribed form, together with any affidavit on which the person intends to rely, and serve a copy of the notice and any affidavit on the Plaintiff at the Plaintiff's address for service at least 3 days before the date fixed for the Hearing.

   PLEASE NOTE: You should only file an appearance in this proceeding or contact Baker McKenzie if you have any queries about, or want to be heard in relation to, the specific issue of the recognition pursuant to the Act in Australia being sought of the US Proceeding relating to Astora LLC. You do not need to progress any claim you may have against Astora in this proceeding or in communication with Baker McKenzie. If you have questions about the US Proceeding please contact Astora LLC's Claims and Noticing Agent, Kroll Restructuring Administration LLC, at +1 (929) 284-1688, or by email at endoinquiries@ra.kroll.com. You may also find more information at https://restructuring.ra.kroll.com/Endo.

5. If you are a foreign creditor intending to appear at the hearing you must file in the registry of the Court at the address mentioned in paragraph 3 an affidavit setting out the details of any claim, secured or unsecured, that you may have against the company above at least 3 days before the date fixed for the Hearing.

Dated

Baker McKenzie

Exhibit 3

Bradley Affidavit

Form 59
Rule 29.02(1)

Affidavit

No. NSD of 2022

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: NEW SOUTH WALES
DIVISION: COMMERCIAL AND CORPORATIONS

IN THE MATTER OF ASTORA WOMEN'S HEALTH, LLC

MARK THOMAS BRADLEY IN HIS CAPACITY AS FOREIGN REPRESENTATIVE OF ASTORA WOMEN'S HEALTH, LLC

Plaintiff

ASTORA WOMEN'S HEALTH, LLC

Defendant

Affidavit of:	Mark Thomas Bradley
Address:	1400 Atwater Drive, Malvern, Pennsylvania, USA
Occupation:	Chief Financial Officer
Date:	24 August 2022

Contents

Filed on behalf of (name & role of party) Mark Thomas Bradley in his capacity as Foreign Representative of Astora Women's Health LLC, the Plaintiff
Prepared by (name of person/lawyer) Maria O'Brien
Law firm (if applicable) Baker McKenzie
Tel +61 2 8922 5222 Fax F +61 2 9225 1595
Email Maria.O'Brien@bakermckenzie.com
Address for service (include state and postcode) Level 46, 100 Barangaroo Avenue, Sydney NSW 2000

[Version 3 form approved 02/05/2019]

Document number	Details	Paragraph	Page
2	Annexure "MB-1", being copy of the resolution of Astora LLC's member manager dated 15 August 2022.	11	14 - 20
3	Annexure "MB-2", being copy of the order of the Bankruptcy Court dated 18 August 2022.	12	23 - 27
4	Annexure "MB-3", being copy of the order of the First Day Declaration dated 16 August 2022	13	28 - 202
5	Annexure "MB-4", being a copy of the Endo Group's announcement of the transaction dated 20 June 2011	18	203 - 204
6	Annexure "MB-5", being a true copy of the Endo Group's announcement of the transaction dated 4 August 2015	25	205 - 206
7	Annexure "MB-6" being the Astora LLC Agreement dated 29 December 2015	41	207 - 213
8	Annexure "MB-7", being a true copy of the Astora LLC Noticing Motions	61	214 - 316
9	Annexure "MB-8", being a true copy of relevant sections of the hearing transcript for the 18 August 2022 hearing	72	317 - 329

I, **Mark Thomas Bradley** of 1400 Atwater Drive, Malvern, Pennsylvania, USA, Chief Financial Officer, say on oath:

1. I am the Chief Financial Officer of Endo International plc (**Endo plc**) and the Defendant (**Astora LLC**). I am authorised to make this affidavit as foreign representative of Astora LLC.

2. Astora LLC is an indirect subsidiary of Endo plc. Endo plc is an Irish public limited company and is the publicly-traded, ultimate parent of Endo plc's global enterprise headquartered in Dublin, Ireland. Endo plc operates a global specialty biopharmaceutical business that produces and sells both generic and branded products.

3. I joined Endo plc in January 2007 as a Finance Director and have held several prominent roles of increasing responsibility since joining Endo plc, including Senior Director of Finance, Senior Vice President of Corporate Development, and Treasurer. Prior to joining Endo plc, I spent nearly seven years as a management consultant, most

recently with Deloitte Consulting, providing a broad range of strategic and operational advice and services to senior executives across a number of industries. In addition, I served as a Finance Director for an industrial products company for approximately two years. I spent the first five years of my career in public accounting at Ernst & Young LLP and received my CPA in October 1993. I hold a Bachelor of Science degree in Accounting from Saint Joseph's University and a Master of Business Administration from The University of Texas at Austin.

4. I make this affidavit in support of the Originating Process and Interlocutory Process filed by Astora LLC dated on or about the date of this affidavit (**Application**) seeking, amongst other things:

   (a) an order pursuant to Article 17(1) of the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law (**Model Law**) and section 6 of the *Cross-Border Insolvency Act 2008* (Cth) (**Cross-Border Insolvency Act**), that (Case No. 22-22594, which is being requested to be jointly administered for procedural purposes only with Docket No. 22-22549) filed in the Bankruptcy Court for the Southern District of New York (**US Bankruptcy Court**) in respect of Astora LLC (**Astora Chapter 11 Proceeding**) be recognised as a foreign proceeding;

   (b) an order pursuant to Article 17(2)(a) of the Model Law, that the Astora Chapter 11 Proceeding be recognised as a foreign main proceeding within the meaning of Article 2(b) of the Model Law; and

   (c) an order that the Plaintiff be recognised as foreign representative within the meaning of Article 2(d) of the Model Law.

5. I note that Astora LLC intends also to seek to rely on this affidavit in respect of an Interlocutory Application (**Use Application**) expected to be filed in Federal Court of Australia Proceeding number NSD 35 of 2018, in which Astora LLC is the defendant, in relation to the use of information received by Astora LLC in that proceeding.

6. As a result of my time with Astora LLC and Endo plc, my review of documents relevant to the Application, and my discussions with other members of both Endo plc's and Astora LLC's management team, I am generally familiar with both Endo plc's and Astora LLC's day-to-day operations, business affairs, books and records, and the Astora Chapter 11 Proceeding.

7. Except as otherwise expressly stated, the following facts are within my own personal knowledge and/or are derived from: documents and information in the possession,

custody or power of Endo plc and/or Astora LLC to which I have access in my capacity as the Chief Financial Officer of Endo plc and Astora LLC; information provided to me by, or discussions with members of Endo plc's and Astora LLC's management team or their advisors; and/or my opinion based upon my experience. If called upon to give evidence, I would give evidence competently to the facts as set forth in this affidavit.

8. Where matters are deposed to on information and belief, I have set out the basis of that information and belief and I believe those matters to be true.

9. In the course of making this affidavit, it has been necessary for me to refer to matters which might concern legal advice that I or Astora LLC may have received or been party to. I do not intend to waive any privilege which may apply in respect of that advice.

Background to this Application

10. Astora LLC is a Delaware limited liability company which is operated and managed from Wilmington, Delaware, USA. Astora LLC has no on-going business operations or assets: the only function it currently performs being to defend personal injury claims brought against it by patients that received treatment with implantable surgical mesh products manufactured and distributed by it or its predecessor entities. The vast bulk of such litigation is in the United States, with a small number of cases that have been pending in Canada, Ireland, Australia, England, Wales, Scotland and the Netherlands.

11. On 16 August 2022, Astora LLC, along with its indirect parent company Endo plc and together with its direct and indirect subsidiaries (the **Endo Group**), and 76 members of the Endo Group (collectively, the **Debtors**) filed petitions in the US Bankruptcy Court to commence bankruptcy proceedings (collectively the **Chapter 11 Cases**) under chapter 11 of title 11 of the United States Bankruptcy Code (the **U.S. Bankruptcy Code**), including the Astora Chapter 11 Case.

12. I was appointed by resolution of the member manager of Astora LLC and by order of the US Bankruptcy Court as foreign representative in respect of the Astora Chapter 11 Case for the purpose of seeking recognition in Australia pursuant to the Cross-Border Insolvency Act 2008, as well as in other jurisdictions. Annexed to this affidavit and marked "**MB-1**" is a true copy of the resolution of Astora LLC's member manager dated 15 August 2022. Annexed to this affidavit and marked "**MB-2**" is a true copy of the order of the Bankruptcy Court dated 18 August 2022.

13. Recognition is sought in order to implement a stay of on-going litigation in Australia, with the intention that the plaintiffs in such cases can file claims in Astora LLC's bankruptcy instead of continuing with ongoing litigation. In essence, the purpose of the recognition

is to stay those proceedings, which would be more expensive and burdensome for Astora LLC's bankruptcy estate than the filing and handling of those claims as claims in the bankruptcy, and therefore would ultimately reduce the assets available to meet those claims.

Background in relation to Astora LLC

14. Astora LLC is and has at all times since its formation been an indirect wholly owned subsidiary of Endo plc and part of the Endo Group. The background to the Endo Group is set out in my declaration dated 16 August 2022 filed in the Chapter 11 Cases at Docket No. 22-22549 in support of the petitions and certain 'first day' motions (the **First Day Declaration**) which is summarised below along with the history of Astora LLC. Annexed to this affidavit and marked "**MB-3**" is a true copy of the First Day Declaration dated 16 August 2022.

Endo plc

15. Endo plc is an Irish incorporated and headquartered specialty pharmaceutical company which conducts its business through various operating subsidiaries within the Endo Group.

16. Up until February 2014, Endo plc was headquartered at 1400 Atwater Drive, Malvern, Pennsylvania, USA and the parent company of the group was Endo Health Solutions Inc. (**Endo Inc**), a Delaware incorporated company. In 2014, Endo plc was incorporated as an Irish company in connection with the Endo Group moving its corporate headquarters to Dublin, Ireland.

17. Following the move of the Endo Group's corporate headquarters to Dublin in 2014, the group continued to conduct the operation of a large portion of its business out of its Pennsylvania premises. Until 2017, Astora LLC operated out of Minnesota. From 2017 until December of 2019, the Astora LLC business (consisting solely of defending claims in the pelvic mesh litigation) was conducted out of the Endo Group's Pennsylvania premises. Thereafter, the principal place of business of Astora LLC changed to 1209 Orange Street, Wilmington, Delaware. Astora LLC has no ongoing operations other than to defend lawsuits brought against it by pelvic mesh claimants, which is conducted at its registered address: 1209 Orange St., Wilmington, DE.

18. Endo plc is currently listed on the NASDAQ Global Select Market under the ticker symbol "ENDP". However, on August 17, 2022, Endo plc received a letter from The Nasdaq Stock Market LLC stating that in accordance with Nasdaq Listing Rules 5101,

5110(b) and IM-5101-1, Nasdaq has determined that the Endo plc's common stock will be delisted from Nasdaq.

Acquisition of AMS Inc.

19. The AMS business was incorporated into Endo plc through a merger agreement in 2011. On 20 June 2011, a wholly-owned subsidiary of Endo Pharmaceuticals Inc., NIKA Merger Sub, Inc., entered into a merger agreement with American Medical Systems Holdings Inc. (**AMS Holdings**) for the acquisition of American Medical Systems, Inc. (**AMS Inc.**), a U.S. based pharmaceutical business which operated both a men's health and women's health business. AMS Inc.'s women's health business included the manufacture and supply of surgical mesh for the treatment of stress urinary incontinence and pelvic organ prolapse. AMS Inc.'s men's health business involved producing and distributing products for treating urologic conditions, including prostate hyperplasia, urinary incontinence and erectile dysfunction. The purchase price paid by the Endo Group for AMS Inc. was $2.9 billion in cash, which included the assumption and repayment of $312 million of AMS Inc.'s debt. Annexed to this affidavit and marked "**MB-4**" is a true copy of the Endo Group's announcement of that transaction dated 20 June 2011.

20. The acquisition of AMS Inc. was completed by a merger of AMS Inc.'s parent company AMS Holdings with a wholly owned subsidiary of Endo Inc, with AMS Holdings being the surviving entity.

21. Both the AMS Inc. women's and men's health businesses were, following their acquisition by the Endo Group, operated from Minnetonka, Minnesota until the sale of the men's health business to Boston Scientific in 2015 and the closure of the women's health business in 2016.

Developments between 2011 and 2018

22. Between the acquisition of AMS Inc. by the Endo Group in 2011 and 2018, there were a series of mergers and corporate transactions, which resulted in the position as at the date of this affidavit. While I do not understand such background to be directly relevant to the question of recognition of the Astora Chapter 11 Case, I set it out below in order to provide clarity on the current position.

23. On 17 December 2014, AMS Inc. converted into a Delaware limited liability company and changed its name to American Medical Systems, LLC (**AMS LLC**).

24. On 27 February 2015, a new Delaware entity, Aphrodite Women's Health, LLC, was formed as a subsidiary of AMS Holdings.

25. On 27 July 2015, in anticipation of the sale to Boston Scientific described below, AMS LLC assigned all of its assets and liabilities related to the women's health business to Aphrodite Women's Health, LLC.

26. On 3 August 2015, the Endo Group sold the AMS men's health business to Boston Scientific Corporation. The sale was implemented by a sale of the shares in AMS LLC and certain other subsidiaries. The acquisition price was USD 1.6 billion in cash, plus the potential for an additional USD 50 million based on a sales milestone that was not achieved. Annexed to this affidavit and marked "**MB-5**" is a true copy of the Endo Group's announcement of that transaction dated 4 August 2015.

27. On 29 September 2015:

(a) AMS Holdings changed its name to Astora Women's Health, Inc; and

(b) Aphrodite Women's Health, LLC changed its name to Astora Women's Health, LLC (ie Astora LLC, the subject of this Application).

28. At that time, Astora LLC was continuing to operate the former AMS Inc. women's health business.

29. On 22 December 2015, Astora Holdings LLC was formed as a wholly owned subsidiary of Endo Inc.

30. On 31 December 2015, Astora Women's Health, Inc. converted into a Delaware limited liability company and changed its name to Astora Women's Health Holdings, LLC.

31. As described in more detail below, by 2016 a substantial number of claims had been commenced against Astora LLC in relation to the surgical mesh products manufactured and distributed as part of the former AMS Inc.'s women's health business (**AMS Mesh Implants**). On 31 March 2016, Astora LLC terminated the operation of that business, and has not manufactured or distributed surgical mesh products, or any other products, since that time.

32. On 21 June 2017:

(a) Astora Women's Health Holdings, LLC merged with and into Astora Holdings, LLC (Astora Holdings, LLC was the surviving entity); and

(b) Astora Holdings LLC merged with and into Astora LLC (Astora LLC was the surviving entity).

33. On 26 June 2018, Astora LLC repurchased AMS LLC from Boston Scientific Corporation and subsequently merged AMS LLC into Astora LLC, with Astora LLC as the surviving corporation.

Surgical mesh litigation

34. A substantial part of the AMS women's health business comprised the production and distribution of transvaginal surgical mesh. Mesh implants were implanted as a treatment for certain conditions, including stress urinary incontinence and pelvic organ prolapse. Since 2008, Astora LLC has been subject to over 30,000 litigation claims brought by patients that had received an AMS Mesh Implant and a number of claims have been made but not filed in Court. The vast majority of such claims have been brought in the United States. Cases have also been brought in Canada, Ireland, Australia, Scotland, England, Wales and the Netherlands.

35. Astora LLC has paid in excess of USD $3 billion by way of settlement payments, funded from the proceeds of the sale of the AMS men's health business and credit provided by the Endo Group.

The Endo Group Bankruptcy

36. On 16 August 2022 Astora LLC, along with 76 other members of the Endo Group, filed the Chapter 11 Cases seeking relief under chapter 11 of title 11 of the U.S. Bankruptcy Code.

37. As described in the First Day Declaration (at [39]), the Chapter 11 Cases were precipitated by (a) an adverse litigation outcome relating to one of the Endo Group's highest revenue generating products, (b) slower than expected growth in certain other products, and (c) litigation overhang from thousands of lawsuits related to the sale and manufacture of opioids. Neither Astora LLC nor any of its predecessors were involved in the manufacture or sale of opioid products, and Astora LLC is not subject to any litigation in relation to such products. As described more fully in paragraphs 76 to 83 of the First Day Declaration, on 16 August 2022, shortly in advance of the chapter 11 filing, the Endo Group companies including Astora LLC entered into a Restructuring Support Agreement with a majority by value of the Group's senior secured lenders. The Restructuring Support Agreement contemplates a sale of the Group's business pursuant to section 363 of the U.S. Bankruptcy Code, with a "credit bid" from the Group's first lien secured lenders as a stalking horse bid.

38. As of the date on which the Chapter 11 Cases were commenced (the **Petition Date**), the Endo Group's consolidated long-term debt obligations totalled approximately US$8.15

billion arising under (a) one credit agreement, which consists of a revolving credit facility and a term loan facility; (b) four series of secured notes; and (c) four series of unsecured notes (First Day Declaration, [36]). The Endo Group's long-term debt obligations are guaranteed by the majority of the members of the Endo Group, including Astora LLC.

39. Although the Astora Chapter 11 Case has been filed in a coordinated process with all of the Chapter 11 Cases, and the US Bankruptcy Court has ordered that all of the Chapter 11 Cases be administered jointly, the cases have not been substantively consolidated. Accordingly, the Astora Chapter 11 Case remains a separate bankruptcy case in respect of Astora LLC.

Astora LLC

Centre of Main Interests

40. My understanding is that the 'centre of main interests' or COMI of Astora LLC is located in the United States. This is because Astora LLC is a Delaware incorporated entity and it is managed entirely from its principal place of business in Delaware, USA.

41. Astora LLC is a Delaware formed limited liability company, with a registered office at 1209 Orange Street, Wilmington, Delaware 19801, USA.

42. In accordance with Delaware law and the Astora LLC agreement, Astora LLC is managed by its 'member' and certain appointed officers. Annexed to this affidavit and marked "**MB-6**" is a true copy of the Astora LLC Agreement. The member of Astora LLC is Endo Pharmaceuticals Inc., a Delaware incorporated entity with a registered office at 1209 Orange Street, Wilmington, Delaware 19801, USA. Astora LLC has the following appointed officers, all based in Pennsylvania, USA:

(a) President – Blaise A. Coleman

(b) Executive Vice President & Chief Legal Officer & Secretary – Matthew J. Maletta

(c) Executive Vice President & Chief Financial Officer – Mark T. Bradley

(d) Senior Vice President, Corporate Development and Treasurer – John D. Boyle

(e) Senior Vice President, Tax – Thomas Neylon

(f) Vice President, Controller and Chief Accounting Officer - Frank B. Raciti

(g) Assistant Secretary - Deanna Voss

43. The directors of Endo Pharmaceuticals Inc. are Blaise Coleman and Patrick Barry. Mr Coleman is the Chief Executive Officer of the Endo Group, and is a resident of the

United States based in Pennsylvania. Mr Barry is President of the Endo Group, and is a resident of the United States based in Pennsylvania.

44. Astora LLC does not have business premises, staff or any business operations outside of the US. Astora LLC is not and has never been managed from Endo International's group head office in Ireland. Astora LLC's only business is defending litigation, which is conducted from its registered office in Delaware.

Activities and Assets

45. Since the closure of the women's health business in 2016, Astora LLC has had no on-going business operations. Since that time its operations have been limited to defending litigation in relation to surgical mesh products, primarily in the United States, and also in certain other jurisdictions including Australia.

46. Astora LLC has no assets and has been reliant on credit provided by the Endo Group to meet the cost of defending litigation, as well as the costs of settlements reached with claimants. While the Endo Group had been willing to continue to provide such funding prior to the commencement of the Astora Chapter 11 Case, it is not under any obligation to continue to do so. Astora LLC has to date paid out over $3 billion in settlement payments to mesh litigation claimants.

47. As at the date of this affidavit, Astora LLC's liabilities include its guarantee of the Endo Group's approximately USD $8.15 billion long term debt obligations, as well as intercompany debts owing to other Endo Group entities.

Litigation in Australia

48. Astora LLC is the Respondent to class action proceedings brought in the Federal Court of Australia (Proceeding NSD 35/2018) by two claimants (which I will refer to as "JP" and "JS") in their own right and on behalf of other women in relation to alleged complications suffered as a result of AMS Mesh Implants implanted in Australia (**Australian Proceeding**). Due to the sensitive and personal nature of these claims, and out of an abundance of caution, the description herein and schedules of litigation claimants include only initials and not the full names of claimants. If the Court requires the disclosure of full names, Astora LLC will aim to cooperate with this request in line with any applicable privacy legislation.

49. The Australian Proceeding was commenced in January 2018. Some interlocutory steps have been taken in the Australian Proceeding and two unsuccessful Court ordered mediations have taken place.

50. The Australian Proceeding is currently being case managed by the Honourable Justice Lee. A Case Management Conference was held on 8 August 2022 to consider (among other matters) questions that may be appropriate for inquiry and report by a referee.

51. The Australian Proceeding not been listed for trial, nor is there currently a timetable in place for the preparation of evidence for trial.

52. Astora LLC has also received Notices of Claim pursuant to the *Personal Injuries Proceedings Act 2002* (Qld) in respect of three claimants (which I will refer to as "*TP*", "*KC*" *and* "*BK*"). As noted above, I have not disclosed the names of these individuals due to privacy concerns, but could provide the names to the Court in accordance with any applicable privacy legislation if so required. As of 22 August 2022, two of these claimants have filed applications in the Supreme Court of Queensland seeking leave to start proceedings in that Court.

53. Astora LLC has also been informed by the solicitors acting for "AR" that:

(a) AR is a Defendant to proceedings filed by "RW" in the Supreme Court of New South Wales, which were subsequently transferred to the Federal Court of Australia and then stayed until further order;

(b) AR has subsequently received a Notice of Claim pursuant to the *Personal Injuries Proceedings Act 2002* (Qld) from RW; and

(c) AR intends to issue a notice claiming contribution to Astora LLC. No proceedings have been served on Astora LLC in respect of this claim.

Litigation in other jurisdictions

54. Astora LLC is the respondent in 13 claims brought by individual claimants in England and Wales in the High Court in relation to injury suffered as a result of surgical mesh implants, and 56 separate claims brought by individual claimants in Scotland in the Court of Session.

55. As noted above, Astora LLC is also subject to litigation in the Netherlands, Ireland and the United States. All litigation against Astora LLC is now stayed automatically, by operation of section 362 of the U.S. Bankruptcy Code. Litigants will instead be entitled to submit claims in the Astora Chapter 11 Case in due course.

56. Astora LLC intends to seek recognition of the Astora Chapter 11 Case in Great Britain under applicable legislation. I have been appointed foreign representative of the Astora Chapter 11 Case for that purpose.

57. Astora LLC and certain affiliates may also seek recognition of the Astora Chapter 11 Case in Ireland.

58. Astora LLC is not subject to any Australian litigation other than as deposed to above, nor is it subject to any insolvency proceedings, and in particular I am not aware of:

(a) any current proceedings in Australia under the *Corporations Act 2001* (Cth) (**Corporations Act**) in respect of Astora LLC;

(b) any current proceedings under the *Bankruptcy Act 1966* (Cth) in respect of Astora LLC;

(c) any appointment of a receiver (within the meaning of section 416 of the Corporations Act), or a controller or a managing controller (both within the meaning of section 9 of the Corporations Act), in relation to the property of Astora LLC; or

(d) any proceeding under Chapter 5 of the Corporations Act, section 601CL of the Corporations Act or Schedule 2 to the Corporations Act in respect of Astora LLC.

Appointment as Foreign Representative

59. As noted above, on 15 August 2022, Astora LLC passed a resolution appointing me as foreign representative for the purposes of acting as a representative in this proceeding. Astora LLC and its affiliated debtors then subsequently moved for the US Bankruptcy Court to approve my appointment as the foreign representative, which relief was granted on 18 August 2022.

Notice of this application

60. It is intended to give notice of this application for Model Law recognition in the form of the Notice annexed to the Interlocutory Process to each of the following:

(a) to each plaintiff in all current litigation against Astora LLC in Australia, such notice to be given in electronic form to the solicitors on the record for each plaintiff;

(b) to each claimant referred to in paragraphs 51 and 52 above;

in the manner specified in the Interlocutory Process, as well as by advertisement in *The Australian* and *Australian Financial Review*.

Notice in the Chapter 11 Case

61. I am informed by U.S. counsel that section 342 of the U.S. Bankruptcy Code requires that Astora LLC give notice of the bankruptcy to known creditors, which includes claimants that may have a disputed, unliquidated, contingent or unmatured claim.

62. I am informed by David McCredie of Baker McKenzie, Astora LLC's Australian counsel in the Australian Proceeding, and believe that in September 2021 orders were made in the Australian Proceeding as a result of which:

(a) class members in the Australian Proceeding had the opportunity to submit a claimant registration form;

(b) the parties' legal representatives were granted leave to copy claimant registration forms filed with the Court; and

(c) the parties' legal representatives were ordered to provide to their opposing legal representatives claimant registration forms that they received.

63. Persons who submitted claimant registration forms in the Australian Proceeding (**Australian Notice Parties**) may be creditors of Astora LLC and their rights could be affected by relief sought in the Astora Chapter 11 Case. To the extent any claimant registration forms received by Astora LLC's legal representatives contain contact details, Astora LLC wishes, if permitted by this Court to do so, to use the contact details to provide notice of the Astora Chapter 11 Case to the Australian Notice Parties.

64. Astora LLC has filed motions (**Noticing Motions**) with the US Bankruptcy Court to adopt a noticing and claims agent and to install certain case management procedures. Annexed to this affidavit and marked "**MB-7**" is a true copy of the Noticing Motions.

65. Pursuant to these motions, Astora LLC is seeking authorisation to provide notice of the Astora Chapter 11 Case to the Australian Notice Parties (among other parties-in-interest), to retain Kroll Restructuring Administration LLC (**Noticing Agent**) as a claims and noticing agent and additional relief related to the manner in which the debtors must publish their schedules, statements and a list of creditors.

66. Provided the Noticing Motions are granted, Kroll will be retained as Noticing Agent for Astora LLC for the purpose of keeping the debtors' list of creditors and providing notice to such creditors of relief sought in the Chapter 11 Cases where necessary. Save to the extent that the Bankruptcy Court orders otherwise, Astora LLC will be required to transfer the names and contact information for all creditors of Astora LLC to the Noticing

Agent for the purpose of providing notice to creditors in the Astora Chapter 11 Case where appropriate.

67. In order to comply with its noticing obligations and to ensure the Australian Notice Parties receive timely notice of matters in the Astora Chapter 11, it is intended, subject to this Court making the orders sought in the Use Application, to give notice of the commencement of the Chapter 11 Case, and such other notice as is required to be given to parties-in-interest in the Chapter 11 Case, to each of the following:

(a) to each plaintiff in all current litigation against Astora LLC in Australia, such notice to be given in the first instance by email to the solicitors on the record for each plaintiff;

(b) to each claimant against Astora LLC referred to in paragraphs 51 and 52 above, such notice to be given in the first instance by email to the solicitors acting for each claimant;

(c) to the Australian Notice Parties, to the extent the claimant registration forms Astora LLC's legal representatives hold for them contain their names and contact details, and only in the event that Astora LLC obtains leave from this Honourable Court to use such information for the purpose of giving notice to the Australian Notice Parties; such notice to be given by email to the Australian Notice Parties in the first instance and on a bounceback by ordinary mail;

as well as by advertisement in *The Australian* and *Australian Financial Review* and publication on various websites.

68. Astora LLC, and I as its Foreign Representative, believe that it is important for all of the Australian Notice Parties to be given notice of the Chapter 11 Cases, so that they have the opportunity to participate in the proceedings should they chose to do so, including by making any representations to the Bankruptcy Court, filing any claim for compensation they consider appropriate, and receiving any distribution to which they are entitled.

69. If permitted by this Honourable Court to do so, Astora LLC proposes to provide the contact information of the Australian Notice Parties to the Noticing Agent for the purpose of the Noticing Agent giving notice to the Australian Notice Parties, subject to this Honourable Court granting the orders sought in the Use Application.

Duty to file list of creditors in the Chapter 11 Cases

70. Without waiving privilege, I am informed by US counsel that section 521(a)(1) of the Bankruptcy Code requires a debtor to file a list of creditors, including their contact information, on the court docket which is publicly available. I am informed that one

purpose of this rule is to enable creditors of a Chapter 11 debtor to find each other, to organize and to negotiate together in their common interest.

71. In connection with the filing of the Astora Chapter 11 Case, the U.S. Bankruptcy Court heard the Noticing Motions at an urgent hearing held before the Honourable Judge Garrity on Thursday 18 August 2022.

72. Due to the sensitive nature of its litigation claims and personal information of claimants (including heath related information), and because non-U.S. laws do or may prohibit publication of such personal details, Astora LLC sought in the Noticing Motions an order from the US Bankruptcy Court for the names of litigation claimants to be excluded from the publicly filed version of the list of creditors in the Chapter 11 Case, so that Astora LLC can protect the privacy of its creditors.

73. The United States Trustee objected to the relief sought in the Noticing Motion which would permit redaction of personally identifiable information. A copy of an extract of the transcript from the First Day Hearing is attached, in which Ms Arbeit set out the U.S. Trustee's objection. Annexed to this affidavit and marked "**MB-8**" is a true copy of an excerpt of the transcript of the hearing held on 18 August 2022.

74. The Bankruptcy Court granted Astora LLC provisional relief from the obligation to file an unredacted list of creditors. However Judge Garrity has directed the Debtors to file a supplementary motion setting out with specificity the non-U.S. laws which would prohibit disclosure of creditor details.

75. I understand that Astora LLC's obligations in relation to contact details of the Australian Notice Parties may prohibit the inclusion of the names and addresses of the Australian Notice Parties on the list of creditors to be filed with the Bankruptcy Court.

76. Astora LLC's position in relation to the public disclosure of creditor information is that where it is required by the Bankruptcy Rules and permitted by applicable law it will give such disclosure, however for the reasons set out in the Noticing Motion Astora LLC considers that there are grounds to limit the public disclosure of personal creditor information in this case. Astora LLC considers that the protection of the privacy of creditors' personal information outweighs the potential benefit to the creditors of the public disclosure of all creditors' details. In this regard, I note that the Australian Notice Parties are already represented by the representative applicants in this case.

77. Nevertheless, in order to enable it to comply with the requirements of the Bankruptcy Code, Astora LLC has filed the Use Application and seeks permission to include contact details of the Australian Notice Parties in the list of creditors to be filed and made public.

If this Honourable Court grants the relief sought in the Use Application, Astora LLC will explain to the Bankruptcy Court in the supplementary brief that it is permitted to include the Australian Notice Parties in the list of creditors to be filed as a matter of Australian law.

78. If, however, this Honourable Court is not willing to grant permission to Astora LLC to use the Australian Notice Parties' contact details in a way which would result in them becoming public, Astora LLC will request that the U.S. Bankruptcy Court grant it permanent relief from the obligation to file an unredacted list of creditors in order that it can comply with any conditions imposed by this Honourable Court.

Sworn by Mark Thomas Bradley)
at Malvern)
in Pennsylvania, United Sates of America) Signature of Mark Thomas Bradley
on 24 August 2022)
Before me:)

Signature Ryan James Grant, NSW Solicitor

This document was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

14

Certificate of Annexure

No. NSD of 2022

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: NEW SOUTH WALES
DIVISION: COMMERCIAL AND CORPORATIONS

IN THE MATTER OF ASTORA WOMEN'S HEALTH, LLC

MARK THOMAS BRADLEY IN HIS CAPACITY AS FOREIGN REPRESENTATIVE OF ASTORA WOMEN'S HEALTH, LLC

Plaintiff

ASTORA WOMEN'S HEALTH, LLC

Defendant

This is the document referred to as Annexure MB-1 in the affidavit of Mark Thomas Bradley, sworn on 24 August 2022

Before me

Solicitor Ryan James Grant

Filed on behalf of (name & role of party) Mark Thomas Bradley in his capacity as Foreign Representative of Astora Women's Health LLC, the Plaintiff
Prepared by (name of person/lawyer) Maria O'Brien
Law firm (if applicable) Baker McKenzie
Tel +61 2 8922 5222 Fax F +61 2 9225 1595
Email Maria.O'Brien@bakermckenzie.com
Address for service (include state and postcode) Level 46, 100 Barangaroo Avenue, Sydney NSW 2000

Exhibit 4

Panagakis Affidavit

Form 59
Rule 29.02(1)

Affidavit

No. NSD of 2022

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: NEW SOUTH WALES
DIVISION: COMMERCIAL AND CORPORATIONS

IN THE MATTER OF ASTORA WOMEN'S HEALTH, LLC

MARK THOMAS BRADLEY IN HIS CAPACITY AS FOREIGN REPRESENTATIVE OF ASTORA WOMEN'S HEALTH, LLC

Plaintiff

ASTORA WOMEN'S HEALTH, LLC

Defendant

Affidavit of:	George Panagakis
Address:	155 N Upper Wacker Dr, Chicago, IL 60606, United States
Occupation:	Lawyer
Date:	24 August 2022

Contents

Filed on behalf of (name & role of party) Mark Thomas Bradley in his capacity as foreign representative of Astora Women's Health, LLC, the Plaintiff
Prepared by (name of person/lawyer) Maria O'Brien
Law firm (if applicable) Baker McKenzie
Tel +61 2 8922 5222 Fax F +61 2 9225 1595
Email Maria.O'Brien@bakermckenzie.com
Address for service (include state and postcode) Level 46, 100 Barangaroo Avenue, Sydney NSW 2000

4.	*Re Stanford International Bank Ltd & Ors* [2009] EWHC 1441 (Ch)	11	312 - 340
5.	*In re Uchitel, Case No.* 20-11585 (JLG) (Bankr. S.D.N.Y. Aug. 4, 2022)	14	341 - 382
6.	*Chimera Cap., L.P. v. Nisselson (In re MarketXT)*, 428 B.R. 579, 585 (S.D.N.Y. 2010)	14	383 - 393
7.	*In re Motors Liquidation*, 576 B.R. 761, 773 (Bankr. S.D.N.Y.2017)	18	394 - 409
8.	Rule 2002 – Commencement of Case – 2021 Federal Rules of Bankruptcy Procedure	19	410 - 421

I, George N. Panagakis of 155 N Upper Wacker Dr, Chicago, IL 60606, United States, say on oath:

1. I am a member of the Illinois bar and am partner in the Corporate Restructuring Group of Skadden, Arps, Slate, Meagher & Flom LLP (**Skadden**). Skadden are U.K. and U.S. lawyers for Astora Women's Health, LLC (**Astora LLC**) and certain of its related entities.

2. I make this affidavit in support of the application filed by Mark Thomas Bradley as foreign representative of Astora LLC (the **Application**), filed in this proceeding, seeking relief pursuant to the *Cross Border Insolvency Act 2008* (Cth) (**Act**). I am duly authorised by Astora LLC and by Mr Bradley to make this affidavit on their behalf.

3. This affidavit comprises matters that are statements of my view of US law or statements of fact. Where the matters stated in this affidavit are statements regarding US law, such statements represent my view of US law as a lawyer admitted and authorised to practice in Illinois. Where the matters stated in this affidavit are statements of fact that are within my personal knowledge, they are true. Where the matters stated in this affidavit are statements of fact not within my personal knowledge, they are true to the best of my knowledge, information and belief, and I identify the source of such information.

4. Now produced and shown to me at the time of making this affidavit and marked GP-1 is a bundle of documents to which I refer in this affidavit (**Exhibit**). Where I refer to documents throughout this affidavit, I am referring to the page numbers where those documents appear in the Exhibit.

Background and Qualifications

5. I was admitted to practice in Illinois in 1990 and am authorised to appear before the Illinois courts. I hold a Juris doctor from Northwestern University School of Law and have been a practicing lawyer in Chicago since 1990. I have advised debtors, creditors

and shareholders on various aspects of Chapter 11, US Bankruptcy law and cross-border insolvencies and restructurings.

Recognition of the Foreign Proceeding in Australia

6. As of the date of this affidavit, Astora LLC is subject to proceedings pursuant to chapter 11 of title 11 of the United States Code (**Chapter 11**, and title 11 of the United States code, the **Bankruptcy Code**), Case No. 22-22594 (which is being jointly administered for procedural purposes only with Docket No. 22-22549) (the **Chapter 11 Case**) pending before the United States Bankruptcy Court for the Southern District of New York (the **US Bankruptcy Court**). A copy of the US Code 2011 - Title 11 is at **pages 1 to 311** of the Exhibit.

7. The Application seeks recognition of the Chapter 11 Case as a foreign main proceeding under the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law (**Model Law**), which has the force of law in Australia pursuant to section 6 of the Act.

8. Article 17(1) of the Model Law states that, subject to Article 6, a foreign proceeding shall be recognized if, among other things, the foreign proceeding is a proceeding within the meaning of subparagraph (a) of article 2.

9. Article 2(a) of the Model Law states that "'foreign proceeding' means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation". I believe that Chapter 11 meets this definition for the following reasons.

10. The Bankruptcy Code is federal law of the United States. It provides various procedures for companies, individuals and municipalities which are or may become insolvent to restructure their liabilities, or to manage or liquidate their assets for the benefit of creditors. Chapter 11 is one such procedure, providing a route for individuals and entities to restructure their liabilities.

11. I understand that in *Re Stanford International Bank Ltd & Ors* [2009] EWHC 1441 (Ch) (03 July 2009), the Court described the essence of a proceeding as "acts and formalities set down in law so that courts, merchants and creditors can know them in advance, and apply them evenly in practice." A copy of the judgement in *Re Stanford International Bank Ltd & Ors* [2009] EWHC 1441 (Ch) is at **pages 312 to 340** of the Exhibit. I consider that the proceeding established by Chapter 11 of the Bankruptcy Code meets this definition for the following reasons:

(a) Chapter 11 is federal law applicable in the United States throughout its states and territories;

(b) the Federal Rules of Bankruptcy Procedure set out the procedure by which a debtor is to commence a Chapter 11 case, and the Bankruptcy Code sets forth the law applicable to Chapter 11 cases;

(c) the interpretation and application of the law has been and continues to be developed through decisions of the Bankruptcy Court and the relevant appeals courts up to and including the U.S. Supreme Court, which decisions are publicly available and which operate as a system of binding precedent; and

(d) the provisions of the Bankruptcy Code are supplemented by publicly available local rules implemented by the Bankruptcy Court within a particular district. The local rules applicable in the Southern District of New York are available at https://www.nysb.uscourts.gov/court-info/local-rules-and-orders.

12. I believe the Chapter 11 Case can be characterised as a "judicial proceeding" because:

(a) the Bankruptcy Courts are units of the United States District Courts established pursuant to Article I of the United States Constitution;

(b) conduct of a Chapter 11 case is in all respects subject to the supervision of the Bankruptcy Court;

(c) following the commencement of a Chapter 11 case the existing management of the debtor remains in place and unless the Court orders otherwise may continue to operate the debtor's business in the ordinary course. Actions outside of the ordinary course, including dispositions of property, may only be taken with approval of the Bankruptcy Court;

(d) a stay of enforcement actions against the debtor that is intended to operate extra-territorially applies upon commencement of the case, and may be enforced, varied or lifted by order of the Bankruptcy Court;

(e) the Bankruptcy Court may make orders regarding the debtor's use of secured property, including cash collateral, and protections to be provided to secured creditors in respect of such use;

(f) all creditors of the Company and the U.S. trustee have standing to appear before the Bankruptcy Court regarding orders relating to the conduct of the Chapter 11 case; and

(g) a restructuring of the debtor's liabilities can be implemented through a "Plan of Reorganisation", which will become binding upon confirmation by the Bankruptcy

Court (and if the relevant statutory requirements have been satisfied including those relating to creditor approval and protection).

13. I believe that Chapter 11 can be characterised as a 'collective' proceeding because:

(a) the purpose of Chapter 11 is to restructure the debtor's liabilities for the benefit of the debtor's creditors as a whole;

(b) all creditors are entitled to participate in the restructuring process, including by appearing and making representations to the Bankruptcy Court, voting in relation to a proposed Plan of Reorganisation (subject to certain presumptions regarding votes from classes of creditors that are unaffected, or fully compromised under the terms of the proposed Plan), and receiving distributions or new rights under any Plan or Reorganisation (in accordance with their rights as creditors and the applicable priorities); and

(c) creditors vote by class on any proposed Plan of Reorganisation, with a vote of 66 2/3 by value and a majority by number of those voting required for a class to approve a plan, and a Plan of Reorganisation may only be confirmed by the Court if it is approved by at least one class of impaired creditors and certain statutory rules are complied with.

14. The stay of enforcement which takes effect in Chapter 11 (the **Automatic Stay**) is established by section 362 of the Bankruptcy Code. A copy of Bankruptcy Code section 362 is at **pages 73 to 84** of the exhibit. Bankruptcy Courts, including the Bankruptcy Court for the Southern District of New York, have held that steps taken by creditors in violation of the Automatic Stay are void: see In re Uchitel, Case No. 20-11585 (JLG) (Bankr. S.D.N.Y. Aug. 4, 2022). This includes judgments or awards obtained while the Automatic Stay was in operation: see Chimera Cap., L.P. v. Nisselson (In re MarketXT), 428 B.R. 579, 585 (S.D.N.Y. 2010) in which the Court stated "The arbitration panel rendered the [arbitration award] while the stay was in effect. The Award, therefore, violated the stay and was void." A consequence of the judgment or award being void is that, unless the creditor can obtain an order from the Bankruptcy Court disapplying the Automatic Stay, a claim filed in a Chapter 11 based on a judgment obtained in breach of the Automatic Stay would be invalid. A copy of the judgements in In re Uchitel, Case No. 20-11585 (JLG) (Bankr. S.D.N.Y. Aug. 4, 2022) is at **pages 341 to 382** and Chimera Cap., L.P. v. Nisselson (In re MarketXT), 428 B.R. 579, 585 (S.D.N.Y. 2010) is at **pages 383 to 393** of the Exhibit.

Noticing creditors in a Chapter 11 case

15. The Bankruptcy Code and Bankruptcy Rules requires notice by mail to "parties-in-interest" upon a filing of a Chapter 11 petition and upon filing any motion in the chapter 11 case. "Parties-in-interest" include the debtor itself, creditors, the US Trustee and anyone who may have in interest in the Chapter 11 case or the particular motion.

16. It is not typical for all creditors to be given notice of every motion in a Chapter 11 case, as it is likely that many creditors are not 'parties in interest' in respect of procedural and other motions. It is, however, typical for all creditors to be notified of key points in the Chapter 11 cases including the commencement of the case, motions relating to bar dates, motions to sell assets outside of the ordinary course of business, and motions related to the approval or implementation of a Plan of Reorganization.

17. Sections 101(5) and 101(10) of the Bankruptcy Code provide that the term "creditor" includes "an entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor" and a "claim" includes "a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed contingent, matured, unmatured, disputed, undisputed, legal equitable, secured or unsecured". The statute does not limit or distinguish creditors based on their particular geographic location. A copy of Bankruptcy Code section 101 is at **pages 8 to 27** of the exhibit.

18. Debtors must use "reasonably diligent efforts" to identify known creditors, or those which are "reasonably ascertainable" in light of the specific facts of the case: see In re Motors Liquidation, 576 B.R. 761, 773. Debtors must "undertake more than a cursory review of [their] records and files to ascertain [...] known creditors," but "[e]fforts beyond a careful examination of these documents are generally not required." A search "need[] only focus on [the Debtor's] own books and records [and] schedules of assets and liabilities.": *Id.* A copy of the judgement in In re Motors Liquidation, 576 B.R. 761, 773 is at **pages 394 to 409** of the Exhibit.

19. The rules regarding notice to creditors are set out in Bankruptcy Rule 2002. A copy of Bankruptcy Rule 2022 is at **pages 410 to 421** of the exhibit. While the rule does not state expressly that foreign creditors are included and must be served, it is clear that this is how the rule is intended to operate because rule 2002(p) provides specifically for the method of service of creditors with a foreign address.

20. Large Chapter 11 debtors typically seek authorization to file consolidated lists of creditors and to furnish this list to their court appointed noticing agent to effect notice.

21. In addition to mailing a notice of commencement of a debtors case, large Chapter 11 debtors typically publish a notice of commencement in a national and / or international edition of a newspaper and on the website of their court appointed claims and noticing agent pursuant to Bankruptcy Rule 2002(*l*) which provides a court may "order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the notice."

22. It is common for large Chapter 11 debtors to request certain case management and noticing procedures that allow for service by email or other methods, which are approved if the US Bankruptcy Court determines such methods of notice are appropriate.

23. Parties-in-interest that receive notice in the manner approved by the Court are bound by the related orders that are entered.

Duty to file list of creditors in a Chapter 11 case

24. Section 521(a)(1)(A) of the Bankruptcy Code provides that "a debtor shall file a list of creditors". A copy of Bankruptcy Code section 521 is at **pages 121 to 125** of the exhibit.

25. Subject to certain exceptions enumerated in section 107 of the Bankruptcy Code and without relief from the US Bankruptcy Court, the list of creditors filed in a Chapter 11 case will be filed on the docket and will therefore be a public record and open to examination. A copy of Bankruptcy Code section 107 is at **pages 33 to 34** of the exhibit.

Sworn by George Panagakis
In Chicago, Illinois U.S.A.
on 24 August 2022
Before me:

Signature of George Panagakis

Signature

Ryan James Ernent

Solicitor

This document was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

Exhibit 5

Interlocutory Application

Form 35
Rule 17.01(1)

Interlocutory application

No. NSD 35 of 2018

Federal Court of Australia

District Registry: New South Wales

Division: General

Jodie Philipsen

First Applicant

Janice Seymour

Second Applicant

Astora Women's Health, LLC

Respondent

To the Applicants

The Respondent applies for the interlocutory orders set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

Time and date for hearing:
Place:

Filed on behalf of (name & role of party) Astora Women's Health, LLC, Respondent
Prepared by (name of person/lawyer) David McCredie, Solicitor for the Respondent
Law firm (if applicable) Baker McKenzie
Tel +61 2 8922 5358 Fax +61 2 9225 1595
Email David.McCredie@bakermckenzie.com
Address for service (include state and postcode) Level 46, 100 Barangaroo Avenue, Sydney NSW 2000

The Court ordered that the time for serving this application be abridged to

Date:

Signed by an officer acting with the authority
of the District Registrar

Interlocutory orders sought

1. Astora Women's Health, LLC (**Astora**) and its Foreign Representative Mark Thomas Bradley have leave to use the information contained in the documents listed in Annexure A to these orders for the purposes of:

    a. giving notice to parties-in-interest in Case No. 22-22594 (which is being requested to be jointly administered for procedural purposes only with Case No. 22-22549) in the United States Bankruptcy Court for the Southern District of New York (the **Bankruptcy Court**) filed pursuant to chapter 11 of the United States Bankruptcy Code on 16 August 2022 in relation to Astora; and

    b. giving notice to parties-in-interest in Case No. 22-22549 in the Bankruptcy Court filed pursuant to chapter 11 of the United States Bankruptcy Code on 16 August 2022 in relation to Endo International plc and in each case being jointly administered therewith.

2. Evidence in the proceeding commenced in this Court by Mark Thomas Bradley as Plaintiff in his capacity as the Foreign Representative of Astora, proceeding NSD of 2022, be evidence on this application.

3. Costs be reserved.

4. Any further orders this honourable Court sees fit.

Service on the Applicants

It is intended to serve this application on the Applicants.

Date: 9 September 2022

Signed by David McCredie
Solicitor for the Respondent

Annexure A

	Description
1.	All claimant registration forms in Proceeding No. NSD 35/2018
2.	All opt-out notices in Proceeding No. NSD 35/2018
3.	All documents produced on subpoena in Proceeding No. NSD 35/2018 by: 1. ACA Health Benefits Fund Limited 2. Albury Wodonga Health 3. Alexandra District Health 4. Alfred Health 5. Austin Health 6. Australian Unity Limited 7. Ballarat Health Services 8. Barossa Hills Fleurieu Local Health Network Incorporated 9. Barwon Health 10. Bass Coast Health 11. Bendigo Health Care Group 12. Bupa HI Pty Ltd 13. Calvary Health Care ACT Limited 14. Castlemaine Health 15. CBHS Corporate Health Pty Ltd 16. CBHS Health Fund Limited 17. Central Adelaide Local Health Network Incorporated 18. Central Coast Local Health District 19. Cessnock District Health Benefits Fund Limited 20. Cobram District Health 21. Colac Area Health 22. CUA Health Limited 23. Department of Infrastructure, Transport, Regional Development and Communications (Christmas Island Hospital) 24. Eastern Health 25. Echuca Regional Health 26. Eyre and Far North Local Health Network Incorporated 27. Flinders and Upper North Local Health Network Incorporated 28. Gippsland Southern Health Service 29. Goulburn Valley Health 30. HBF Health Limited 31. Health Care Insurance Ltd 32. Health Insurance Fund of Australia Limited 33. Health Partners Limited 34. Illawarra Shoalhaven Local Health District 35. Kerang District Health 36. Kilmore & District Hospital 37. Kyneton District Health Service 38. Latrobe Health Services Limited 39. Limestone Coast Local Health Network Incorporated 40. Mansfield District Hospital 41. Medibank Private Limited

	42. Mercy Hospitals Victoria Ltd 43. Mid North Coast Local Health District 44. Mildura Base Public Hospital 45. Mildura District Hospital Health Fund 46. Monash Health 47. National Health Benefits Australia Pty Ltd 48. Navy Health Ltd 49. Nepean Blue Mountains Local Health District 50. NIB Health Funds Ltd 51. Northeast Health Wangaratta 52. Northern Adelaide Local Health Network Incorporated 53. Northern Health 54. Northern Sydney Local Health District 55. Peninsula Health 56. Peoplecare Health Limited 57. Police Health Limited 58. Portland District Health 59. Queensland Country Health Fund Ltd 60. Riverland Mallee Coorong Local Health Network Incorporated 61. South Eastern Sydney Local Health District 62. South Gippsland Hospital 63. South Western Sydney Local Health District 64. Southern Adelaide Local Health Network Incorporated 65. Southern NSW Local Health District 66. St. Luke's Medical & Hospital Benefits Association 67. St Vincent's Hospital Sydney Ltd (previously St Vincent's Health Australia) 68. St Vincent's Private Hospitals Ltd (previously St Vincent's Health Australia Ltd) 69. Swan Hill District Health 70. Tasmanian Health Service 71. The Doctor's Health Fund Pty Ltd 72. The Hospitals Contribution Fund of Australia Limited 73. The Royal Womens Hospital 74. Western District Health Service (Hamilton Base Hospital) 75. Western NSW Local Health District 76. Westfund Limited 77. Women's and Children's Health Network Incorporated 78. Yorke and Northern Local Health Network Incorporated

Exhibit 6

McCredie Affidavit

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 9/09/2022 1:59:52 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged:	Affidavit - Form 59 - Rule 29.02(1)
File Number:	NSD35/2018
File Title:	JODIE PHILIPSEN & ANOR v ASTORA WOMEN'S HEALTH LLC
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA

SEAL OF THE FEDERAL COURT OF AUSTRALIA

Dated: 12/09/2022 3:15:50 PM AEST Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.

Form 59
Rule 29.02(1)

Affidavit

No. NSD 35 of 2018

Federal Court of Australia
District Registry: New South Wales
Division: General

Jodie Philipsen

First Applicant

Janice Seymour

Second Applicant

Astora Women's Health, LLC

Respondent

Affidavit of:	**David Cameron McCredie**
Address:	Level 46, 100 Barangaroo Avenue, Barangaroo NSW 2000
Occupation:	Solicitor
Date:	9 September 2022

Filed on behalf of (name & role of party) Astora Women's Health, LLC, the Respondent
Prepared by (name of person/lawyer) David Cameron McCredie
Law firm (if applicable) Baker McKenzie
Tel +61 2 8922 5358 Fax +61 2 9225 1595
Email David.McCredie@bakermckenzie.com
Address for service (include state and postcode) Level 46, 100 Barangaroo Avenue, Sydney NSW 2000

Contents

I, David Cameron McCredie of Level 46, 100 Barangaroo Avenue, Barangaroo NSW 2000, say on oath:

Introduction and purpose of affidavit

1. I am a Partner of Baker McKenzie and am the solicitor on the record for the Respondent, Astora Women's Health, LLC (**Astora**), in this proceeding.

2. By making this affidavit, I do not intend, and have no authority, to waive privilege in any communication, or record of communication, that is the subject of legal professional privilege. Nothing in this affidavit should be construed as involving a waiver of privilege. To the extent that anything may be construed as involving a waiver of privilege, I withdraw and do not rely on that part of this affidavit.

3. Unless otherwise stated, I make this affidavit on the basis of my own knowledge and, where I depose to a fact or circumstance based on my information and belief, I believe those facts and circumstances are true to the best of my information and belief.

4. I have been shown copies of affidavits sworn by Mark Thomas Bradley on 24 August 2022 (**Bradley Affidavit**) and George Panagakis on 24 August 2022 (**Panagakis Affidavit**) which are to be filed in a proceeding to be commenced in this Court by Mark

Thomas Bradley as foreign representative of Astora. I understand from the Bradley Affidavit that:

(a) Case No. 22-22594 (which is being requested to be jointly administered for procedural purposes only with Docket No. 22-22549) has been filed in the United States Bankruptcy Court for the Southern District of New York in respect of Astora pursuant to chapter 11 of the United States Bankruptcy Code (**Astora Chapter 11 Proceeding**);

(b) Mr Bradley has been appointed as foreign representative of Astora for the purposes of the Astora Chapter 11 Proceeding;

(c) Astora is required to give notice of the bankruptcy to known creditors, which includes claimants that may have a disputed, unliquidated, contingent or unmatured claim; and

(d) the Bankruptcy Code requires a debtor to, amongst other things, file a list of creditors, including their contact information, on the court docket which is publicly available.

5. The purpose of this affidavit is to provide information regarding:

(a) the process by which names and contact details of Australian individuals who are or claim to be creditors of Astora were received by Astora in the course of this proceeding (**Australian Claimant Information**). This is set out in Part A of this affidavit; and

(b) the use which Astora proposes to make of the Australian Claimant Information in the Astora Chapter 11 Proceeding, subject to this Court making orders which would permit it to do so. This is set out in Part B of this affidavit.

6. To the extent necessary, Astora seeks to be released from the obligations of the kind referred to in *Harman v Secretary of State for Home Department* [1983] 1 AC 280 and *Hearne v Street* [2008] HCA 36; (2008) 235 CLR 125 at [107] to [108] in respect of the names and contact details it has received in respect of individuals who have submitted a claimant registration form in this proceeding, for the purpose of enabling Astora and its foreign representative to give notice of the Astora Chapter 11 Proceeding and associated proceedings to such individuals.

Part A: Australian Claimant Information

7. As explained further in this affidavit, Astora holds names and contact details of group members in this proceeding, that it has received as a result of being granted access to

documents (including lists of patient contact details) produced on subpoena, and as a result of being provided with, or being granted access to, copies of claimant registration forms and opt-out notices pursuant to orders made in this proceeding.

8. The purpose of Part A of this affidavit is to provide information regarding the process by which patient information was produced on subpoena in this proceeding for the purpose of identifying potential group members to whom opt-out and claimant registration notices would be sent, and as a result of which Astora has received copies of opt-out and claimant registration notices containing names and contact details. That process has included:

(a) orders for the exchange of information regarding hospitals to which AMS mesh products the subject of these proceedings were supplied, as well as details regarding number of products supplied, number of individuals implanted with a product, and a list of hospitals where individuals were implanted;

(b) the issue of subpoenas to produce to approximately 130 health entities, including public and private hospitals and health funds, with those subpoenas seeking production of patient contact details;

(c) the production in answer to those subpoenas of documents containing patient contact information;

(d) the distribution of opt-out and claimant registration notices to potential group members, using the contact information obtained from the subpoena documents;

(e) persons receiving those notices having the opportunity to submit an opt-out notice or claimant registration form in this proceeding; and

(f) Astora being provided with copies of, or access to, the opt-out notices and claimant registration forms that were submitted, pursuant to orders made in this proceeding.

9. I set out below further detail regarding this process, and regarding the information that (if permitted) is proposed to be used for the purposes referred to above.

Orders for exchange of information

10. On 28 May 2021, the Honourable Justice Lee made orders in this proceeding requiring (amongst other things) the Applicants and the Respondent to exchange certain information by 11 June 2021, including:

(a) a list of public/private hospitals to which the AMS mesh products the subject of this proceeding were supplied in Australia at relevant times;

(b) the number of individuals implanted with those products (and, if available, the number of individuals with each type of product) who had given notice that they had suffered one or more of the pleaded complications; and

(c) a list of the hospitals where individuals were implanted with those products.

A copy of the orders dated 28 May 2021 is exhibited to me at the time of swearing this affidavit and marked "**DCM-5**".

11. On 11 June 2021, the Applicants and the Respondent exchanged information pursuant to those orders.

Orders for issue of subpoenas and distribution of registration and opt-out notices

12. On 3 September 2021, Justice Lee made orders (**3 September 2021 Orders**) in this proceeding, as well as in three other proceedings that were being jointly case-managed with this proceeding (*Schofield & Anor v TFS Manufacturing & Ors* (NSD 181/2020); *Fowkes v Boston Scientific Corporation & Anor* (NSD 244/2021); *Talbot v Ethicon Sarl & Ors* (NSD 310/2021)) (**Other Mesh Proceedings**), by which his Honour (amongst other things):

(a) granted leave for the issue of subpoenas to produce to each of the hospitals and other health entities listed in Annexure C to the 3 September 2021 Orders, seeking production of a list of patient contact details (including names, addresses, email addresses and telephone numbers) and the prosthesis code/s referable to each patient and the date of the implantation of the device, for patients who (in the case of this proceeding) underwent a procedure at any time before 31 July 2018 to implant one or more devices identified by the private health prostheses codes (or, in the case of the subpoena to Queensland Health, for women who underwent a procedure identified by the procedure codes in respect of diagnostic codes as annexed to the 3 September 2021 Orders at any time after 1 May 2001);

(b) approved opt-out and claimant registration notices for distribution:

i. to each person identified from the lists of patients produced in answer to the subpoenas referred to in (a) above;

ii. to each person on the database of class members held by the solicitors for the Applicants, Shine Lawyers (if a notice had not been otherwise provided to that person);

iii. by uploading copies of the notices on web pages of Shine Lawyers' website;

iv. by uploading an abridged form of notice on Shine Lawyers' Facebook, Instagram and Twitter pages; and

v. by requesting that the administrators of various Facebook groups post the abridged form of notice on their respective Facebook pages;

(c) ordered any class member wishing to opt-out of this proceeding (or the Other Mesh Proceedings) to file with the Federal Court's New South Wales Registry a completed opt-out notice by no later than 4:30 pm on 29 October 2021;

(d) granted leave to the parties' legal representatives to inspect the Court file in relation to the proceedings in which they are retained and to copy any opt-out or registration notice filed by or on behalf of any class member for that proceeding; and

(e) ordered that, if the legal representatives for the parties received a claimant registration notice of a class member referable to a proceeding in which they are retained, they must provide that notice to their opposing legal representatives within one week of receipt.

A copy of the 3 September 2021 Orders is exhibited to me at the time of swearing this affidavit and marked "**DCM-6**".

13. The form of the opt-out and claimant registration notices relevant to this proceeding are contained in the 3 September 2021 Orders at:

(a) Annexure J to those orders (to be issued to persons identified from the lists of patients produced on subpoena where an available prosthesis code meant that such persons could be sent a notice specific to this proceeding); and

(b) Annexure P to those orders (to be issued to persons identified from any list of patients produced on subpoena by Queensland Health, where a procedure code and/or diagnostic code meant that it was not possible to ascertain which implant an individual had received, with individuals to be sent a "general" form referring not only to this proceeding but also the Other Mesh Proceedings).

14. The claimant registration forms contained in those Annexures to the 3 September 2021 Orders:

(a) stated that *"Completed forms must be returned so that they are **received** by Shine Lawyers before 4.30pm on **29 October 2021**"* (15 October 2021 in the case of the notice to be issued to persons identified from a list produced by Queensland Health); and

(b) requested personal details (including name, address, date of birth, email, phone number, as well as provision for alternate contact details if the form was completed by another person on behalf of a group member), as well as details regarding implant(s) and complications and treatment, amongst other things.

15. Several supplementary or modifying orders were made on subsequent dates by Justice Lee or Registrar Gitsham, including:

(a) to set aside certain subpoenas, in circumstances where, for example, an incorrect entity had been issued with a subpoena;

(b) where producing entities opposed access to the lists of patient contact details they had produced being granted to the parties' representatives, to make orders for those entities to send opt-out and registration notices directly to the persons identified from their lists (similar to the regime provided for in respect of Queensland Health, as set out in the 3 September 2021 Orders);

(c) for the issue of certain new subpoenas seeking production of patient information on the basis of diagnostic codes, for example where subpoenaed entities did not have any information available on the basis of prosthesis codes; and

(d) where certain producing entities required extended deadlines to comply with the subpoenas, to extend the deadline for affected persons to submit their opt-out notice or registration form.

Production on subpoena and issue of opt-out and claimant registration notices

16. I am informed by Kathleen Jeremy, a Senior Associate employed by Baker McKenzie who has assisted with aspects of this proceeding relating to the subpoena process and opt-out and registration processes, of the matters set out in paragraphs 17 to 20 and 23 to 25 below.

17. Pursuant to the 3 September 2021 Orders, subpoenas to produce lists of patient contact details were issued to approximately 130 health entities from about 7 September 2021 onwards. Subpoenaed entities produced documents from about 17 September 2021 onwards.

18. Access orders that were made in respect of documents produced in answer to those subpoenas followed a regime agreed between the parties and approved by the Court, and depended on a variety of factors, including the manner in which documents were produced and whether access orders were opposed or not. For example:

(a) in some instances, subpoenaed entities produced documents containing information that was referable to one particular proceeding. If no objection to access was raised by the producing entity, the parties' representatives were jointly granted access to those documents. As far as I am aware, the information produced was used to identify persons to whom opt-out and claimant registration notices would be sent;

(b) in other instances, subpoenaed entities produced documents containing information that was not clearly referable to one particular proceeding. If no objection to access was raised by the producing entity, Shine Lawyers were given first access to the documents to review and sort the information by proceeding, with the representatives of the respondents in each relevant proceeding subsequently given access. Again, as far as I am aware, the information produced was used to identify persons to whom opt-out and claimant registration notices would be sent;

(c) in a small number of instances (approximately 12), producing entities opposed the parties' representatives having access to the patient contact information they had produced, in which case orders were made for those subpoenaed parties to send the opt-out and claimant registration notices directly to the persons identified from the patient contact information (as mentioned above, similar to the regime provided for in respect of Queensland Health).

19. Of approximately 130 subpoenas issued in total:

(a) approximately 97 entities produced documents under subpoena in respect of which some form of access order was made in this proceeding. Opt-out and claimant registration notices were distributed by Shine Lawyers to persons identified from those documents. Baker McKenzie, as Astora's legal representatives, were granted access to the documents produced by approximately 78 of those subpoenaed entities;

(b) a further approximately 12 entities produced documents under subpoena, but the producing entities opposed access being granted to the parties. Those producing entities were ordered to send the opt-out and claimant registration notices directly to persons identified from the documents produced; and

(c) certain subpoenas were set aside (as mentioned above) and certain subpoenaed entities advised that they had nothing to produce, or produced material referable only to one or more of the Other Mesh Proceedings.

Claimant registration forms and proposed method of notification

20. Baker McKenzie, on behalf of Astora, received from Shine Lawyers four tranches of claimant registration forms, on 8, 9, 12 and 16 November 2021 respectively. Those four tranches contained approximately 3,727 claimant registration forms.

21. As detailed at paragraph 14 above, the claimant registration form issued to those individuals identified via the patient lists produced under subpoena requested various

personal contact details (including name, address, date of birth, email, phone number), as well as details regarding implant(s) and complications and treatment, amongst other things. Copies of the "Personal Details" page from the claimant registration forms, which I have caused to be extracted from Annexures J and P to the 3 September 2021 Orders, are annexed to this affidavit and marked "A" and "B" respectively.

22. If the relief sought in the Interlocutory Application in support of which I make this affidavit is granted, Astora proposes to request Baker McKenzie to provide to Astora a copy of the "Personal Details" page of each of the approximately 3,727 claimant registration forms it holds, with the "Date of Birth", "Height", "Weight" and "Medicare Number" fields (as applicable) redacted (**Redacted Personal Details Pages**), for the purpose set out in the Interlocutory Application. Astora does not propose to ask Baker McKenzie to provide copies of other parts of the claimant registration forms to Astora.

23. In some cases, the claimant registration forms Baker McKenzie holds contain complete contact information: that is, all applicable contact information fields on the "Personal Details" page have been filled in.

24. In other cases, the contact information fields in the claimant registration forms are incomplete. In those cases, the contact details to be used for the purpose of giving notice in relation to the Astora Chapter 11 Proceeding - that is, email addresses and postal addresses - may be identifiable by cross-checking against the opt-out notices and/or the lists of patient contact details produced on subpoena that Baker McKenzie holds copies of as a result of the subpoena and opt-out and registration processes I have referred to in this affidavit.

25. For example, there are instances where a person has submitted both an opt-out notice and a claimant registration form. If, for example, the person's claimant registration form did not contain any contact information beyond the person's name, but their opt-out notice was submitted under cover of an email showing the email address for that person, that email address could be used (if its use is permitted) to facilitate notice being given to that person in relation to the Astora Chapter 11 Proceeding.

Part B: Proposed use of Australian Claimant Information in the Astora Chapter 11 Proceeding

26. Except where otherwise stated, I am informed of the matters set out in Part B of this affidavit by Astora's U.S. bankruptcy counsel (Skadden, Arps, Slate, Meagher & Flom LLP), and I believe them to be true.

27. The U.S. Bankruptcy Code and the U.S. Bankruptcy Rules prescribe certain actions which debtors are required to take during the course of a chapter 11 case. These requirements are summarised in the Panagakis Affidavit.

28. In the context of the Astora Chapter 11 Proceeding, there are two categories of requirement which implicate the Australian Claimant Information:

(a) first, Astora is required to give notice of the commencement of its chapter 11 case, and of certain other steps in the case, to known creditors;

(b) secondly, Astora is required to make certain filings in the Bankruptcy Court which would, absent leave of the Bankruptcy Court, include the Australian Claimant Information and which would be publicly available on the Bankruptcy Court Docket. These filings include:

i. a list of all known creditors;

ii. affidavit(s) of service given by Astora's Noticing Agent (Kroll Bankruptcy Administration) listing those creditors on whom certain documents have been served; and

iii. lists of "parties-in-interest" in respect of any motion filed in the Bankruptcy Court, which parties will be served with the motion.

29. The Bankruptcy Court has jurisdiction to relieve debtors from any or all of the requirements listed above, or to make orders regarding the manner of compliance, including steps to be taken to preserve creditors' confidentiality.

30. As set out in the Bradley Affidavit, at the first day hearing in the Astora Chapter 11 Proceeding, Astora sought an order from the Bankruptcy Court for the names of litigation claimants to be excluded from the publicly filed version of the list of creditors, in order to protect the privacy of creditors. The United States Trustee objected to the relief sought which would permit redaction of personally identifiable information. The Bankruptcy Court granted Astora provisional relief from the obligation to file an unredacted list of creditors, but directed the debtors to file a supplementary motion setting out, with specificity, the non-U.S. laws which would prohibit disclosure of creditor details.

31. By the Interlocutory Application in support of which this affidavit is made, Astora seeks permission only to use the Australian Claimant Information to give notice of:

(a) the Astora Chapter 11 Proceeding; and

(b) the chapter 11 case commenced in the Bankruptcy Court in relation to Endo International plc and each case being jointly administered therewith,

and of any applicable steps taken in those proceedings, to all individuals who have submitted a claimant registration form in this proceeding. Astora does not presently seek relief to use the Australian Claimant Information for any other purposes, including those listed at paragraph 28(b) above.

32. If this Court grants the orders sought in the Interlocutory Application, Astora intends to:

(a) instruct Baker McKenzie to provide copies of the Redacted Personal Details Pages, as described at paragraph 22 above, supplemented by a list of any required information identified via the cross-checking exercise described at paragraph 24 above, to Astora's Noticing Agent, Kroll;

(b) instruct Kroll to serve the Notice of Commencement of the Astora Chapter 11 Proceeding on the persons whose information is provided to Kroll in accordance with (a) above; and

(c) instruct Kroll to prepare an affidavit of service for submission to the Bankruptcy Court in respect of service of the Notice of Commencement on those individuals whose information is provided to Kroll in accordance with (a) above, but which will not include a list of individuals who have been served (which would otherwise be standard practice).

33. Astora also intends, in a supplementary motion to be filed in the Astora Chapter 11 Proceeding, to:

(a) explain that Astora holds the Australian Claimant Information and how it came to hold such information;

(b) explain the restrictions on Astora's use of that information arising from the *Harman* undertaking and from Australian privacy laws;

(c) explain that Astora has sought the orders set out in the Interlocutory Application to enable it to provide notice to all individuals who have submitted a claimant registration form in this proceeding, but that those orders will not permit Astora to use or disclose the Australian Claimant Information for any other purpose, including the purposes set out at paragraph 28(b) above;

(d) request that the U.S. Bankruptcy Court grant the relief sought at the first day hearing in relation to any Australian creditors, to the effect that Astora be permitted to redact its list of creditors and any other filings which would contain Australian Claimant Information.

34. Without waiving privilege, Astora considers it has a justifiable basis to request the relief

referred to in paragraph 33(d) above given the restrictions on disclosure of the Australian Claimant Information as a matter of Australian law, although whether such relief is granted is a matter for the U.S. Bankruptcy Court. If the U.S. Bankruptcy Court were to refuse to grant such relief, Astora would seek further provisional relief from the U.S. Bankruptcy Court to give it sufficient time to return to this Court to make such application as may be necessary to enable it to comply with Australian law.

Notification to other known claimants

35. It is also proposed that notice of the Astora Chapter 11 Proceeding, and any associated proceedings, be given (by sending notice to their solicitors) to other known litigation claimants in Australia (that is, persons known to Astora to be advancing claims against it in Australia outside this proceeding). Astora does not intend to use the information contained in the claimant registration forms, opt-out notices or subpoena documents referred to in this affidavit to give notice to those known litigation claimants.

Sworn by David Cameron McCredie)
at 100 Barangaroo Avenue, Barangaroo)
in New South Wales)
on 9 September 2022)
Before me:)

Signature of David Cameron McCredie

Signature of witness

Kathleen Alice Jeremy, Solicitor
Level 46, 100 Barangaroo Avenue, Barangaroo NSW 2000

Certificate of exhibit or annexure

No. NSD 35 of 2018

Federal Court of Australia

District Registry: New South Wales

Division: General

Jodie Philipsen

First Applicant

Janice Seymour

Second Applicant

Astora Women's Health, LLC

Respondent

This is the annexure marked "**A**" to the affidavit of David Cameron McCredie sworn before me on 9 September 2022.

Signature of witness

Kathleen Alice Jeremy, Solicitor

c/- Baker McKenzie, Level 46,
Tower 1, International Towers Sydney,
100 Barangaroo Avenue, Barangaroo NSW 2000

Filed on behalf of (name & role of party) Astora Women's Health, LLC, Respondent
Prepared by (name of person/lawyer) David Cameron McCredie
Law firm (if applicable) Baker McKenzie
Tel +61 2 8922 5358 Fax + 61 2 9225 1595
Email David.McCredie@bakermckenzie.com
Address for service (include state and postcode) Level 46, 100 Barangaroo Avenue, Sydney NSW 2000

"A"

REGISTRATION

The person identified below REGISTERS their claim, or the claim of another (for example, if you are claiming on behalf of a deceased estate) for compensation in relation to the Astora Class Action.

PART A: PERSONAL DETAILS

GROUP MEMBER DETAILS:

Salutation (Ms / Miss / Mrs / Dr / Other)

Name

Address

Date of Birth (dd/mm/yyyy)

Email

Phone Number

Medicare Number

If the group member is deceased and this form is registering a deceased estate, please tick this box ☐

CONTACT IF NOT GROUP MEMBER:

Relation to Group Member

Salutation (Ms / Miss / Mrs / Dr / Mr / Other)

Name

Address

Email

Phone Number

Completed forms must be returned so that they are **received** by Shine Lawyers before 4.30pm on **29 October 2021.**
Completed forms can returned by emailing them to prolapsemesh@shine.com.au or by posting the form to:
Shine Lawyers, PO Box 12011, George Street QLD 4003.
A copy of the form can also be completed online at www.australianmeshclassaction.com.au.
If you have any questions please telephone Shine Lawyers on 1800 884 139, or email us at prolapsemesh@shine.com.au.

Certificate of exhibit or annexure

No. NSD 35 of 2018

Federal Court of Australia

District Registry: New South Wales

Division: General

Jodie Philipsen

First Applicant

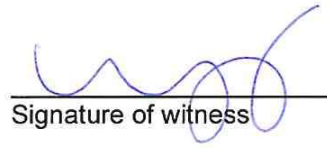
Janice Seymour

Second Applicant

Astora Women's Health, LLC

Respondent

This is the annexure marked "**B**" to the affidavit of David Cameron McCredie sworn before me on 9 September 2022.



Signature of witness

Kathleen Alice Jeremy, Solicitor

c/- Baker McKenzie, Level 46,
Tower 1, International Towers Sydney,
100 Barangaroo Avenue, Barangaroo NSW 2000

Filed on behalf of (name & role of party) Astora Women's Health, LLC, Respondent
Prepared by (name of person/lawyer) David Cameron McCredie
Law firm (if applicable) Baker McKenzie
Tel +61 2 8922 5358 Fax + 61 2 9225 1595
Email David.McCredie@bakermckenzie.com
Address for service (include state and postcode) Level 46, 100 Barangaroo Avenue, Sydney NSW 2000

"B"

REGISTRATION

The person identified below REGISTERS their claim, or the claim of another (for example, if you are claiming on behalf of a deceased estate) for compensation in relation to one or more of the PelvicMesh Implant Class Actions.

□ **PART A: PERSONAL DETAILS**

GROUP MEMBER DETAILS:

Salutation (Ms / Miss / Mrs / Dr / Other)

Name

Address

Date of Birth (dd/mm/yyyy)

Height (cms)

Weight (kgs)

Email

Phone Number

Medicare Number

If the group member is deceased and this form is registering a deceased estate, please tick this box □

CONTACT IF NOT GROUP MEMBER:

Relation to Group Member

Salutation (Ms / Miss / Mrs / Dr / Mr / Other)

Name

Address

Email

Phone Number

Completed forms must be returned so that they are **received** by Shine Lawyers before 4.30pm on **15 October 2021.**

Completed forms can returned by emailing them to prolapsemesh@shine.com.au or by posting the form to:Shine Lawyers, PO Box 12011, George Street QLD 4003.

A copy of the form can also be completed online at www.australianmeshclassaction.com.au.

If you have any questions please telephone Shine Lawyers on 1800 884 139, or email us atprolapsemesh@shine.com.au.

Exhibit 7

Amended Interlocutory Application

Form 35
Rule 17.01(1)

Amended Interlocutory application

No. NSD 35 of 2018

Federal Court of Australia

District Registry: New South Wales

Division: General

Jodie Philipsen

First Applicant

Janice Seymour

Second Applicant

Astora Women's Health, LLC

Respondent

To the Applicants

The Respondent applies for the interlocutory orders set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

Time and date for hearing:

Place:

Filed on behalf of (name & role of party) Astora Women's Health, LLC, Respondent
Prepared by (name of person/lawyer) David McCredie, Solicitor for the Respondent
Law firm (if applicable) Baker McKenzie
Tel +61 2 8922 5358 Fax +61 2 9225 1595
Email David.McCredie@bakermckenzie.com
Address for service (include state and postcode) Level 46, 100 Barangaroo Avenue, Sydney NSW 2000

The Court ordered that the time for serving this application be abridged to

Date:

Signed by an officer acting with the authority
of the District Registrar

Interlocutory orders sought

1. Astora Women's Health, LLC (**Astora**) ~~and its Foreign Representative Mark Thomas Bradley~~ be released from the implied undertaking in respect of the information ~~have leave to use the information~~ contained in the documents listed in Annexure A to these orders for the purposes of:

   a. giving notice to parties-in-interest in Case No. 22-22594 (~~which is being requested to be~~ jointly administered for procedural purposes only with Case No. 22-22549) in the United States Bankruptcy Court for the Southern District of New York (the **Bankruptcy Court**) filed pursuant to chapter 11 of the United States Bankruptcy Code on 16 August 2022 in relation to Astora; and

   b. giving notice to parties-in-interest in Case No. 22-22549 in the Bankruptcy Court filed pursuant to chapter 11 of the United States Bankruptcy Code on 16 August 2022 in relation to Endo International plc and in each case being jointly administered therewith

   (together, the **Permitted Purposes**).

2. Pursuant to Art 25(1) of the *Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law* and s 6 of the *Cross-Border Insolvency Act 2008* (Cth), Astora and its Foreign Representative Mark Thomas Bradley be authorised to use and disclose to Astora's agent, Kroll Restructuring Administration LLC, the information contained in the documents listed in Annexure A to these orders for the Permitted Purposes.

3. Evidence in the proceeding commenced in this Court by Mark Thomas Bradley as Plaintiff in his capacity as the Foreign Representative of Astora, proceeding NSD 752 of 2022, be evidence on this application.

4. Costs be reserved.

5. Any further orders this honourable Court sees fit.

Service on the Applicants

It is intended to serve this application on the Applicants.

Date: ~~9~~21 September 2022

Signed by David McCredie
Solicitor for the Respondent

Annexure A

	Description
1.	All claimant registration forms in Proceeding No. NSD 35/2018
2.	All opt-out notices in Proceeding No. NSD 35/2018
3.	All documents produced on subpoena in Proceeding No. NSD 35/2018 by: 1. ACA Health Benefits Fund Limited 2. Albury Wodonga Health 3. Alexandra District Health 4. Alfred Health 5. Austin Health 6. Australian Unity Limited 7. Ballarat Health Services 8. Barossa Hills Fleurieu Local Health Network Incorporated 9. Barwon Health 10. Bass Coast Health 11. Bendigo Health Care Group 12. Bupa HI Pty Ltd 13. Calvary Health Care ACT Limited 14. Castlemaine Health 15. CBHS Corporate Health Pty Ltd 16. CBHS Health Fund Limited 17. Central Adelaide Local Health Network Incorporated 18. Central Coast Local Health District 19. Cessnock District Health Benefits Fund Limited 20. Cobram District Health 21. Colac Area Health 22. CUA Health Limited 23. Department of Infrastructure, Transport, Regional Development and Communications (Christmas Island Hospital) 24. Eastern Health 25. Echuca Regional Health 26. Eyre and Far North Local Health Network Incorporated 27. Flinders and Upper North Local Health Network Incorporated 28. Gippsland Southern Health Service 29. Goulburn Valley Health 30. HBF Health Limited 31. Health Care Insurance Ltd 32. Health Insurance Fund of Australia Limited 33. Health Partners Limited 34. Illawarra Shoalhaven Local Health District 35. Kerang District Health 36. Kilmore & District Hospital 37. Kyneton District Health Service 38. Latrobe Health Services Limited 39. Limestone Coast Local Health Network Incorporated 40. Mansfield District Hospital 41. Medibank Private Limited

	42. Mercy Hospitals Victoria Ltd 43. Mid North Coast Local Health District 44. Mildura Base Public Hospital 45. Mildura District Hospital Health Fund 46. Monash Health 47. National Health Benefits Australia Pty Ltd 48. Navy Health Ltd 49. Nepean Blue Mountains Local Health District 50. NIB Health Funds Ltd 51. Northeast Health Wangaratta 52. Northern Adelaide Local Health Network Incorporated 53. Northern Health 54. Northern Sydney Local Health District 55. Peninsula Health 56. Peoplecare Health Limited 57. Police Health Limited 58. Portland District Health 59. Queensland Country Health Fund Ltd 60. Riverland Mallee Coorong Local Health Network Incorporated 61. South Eastern Sydney Local Health District 62. South Gippsland Hospital 63. South Western Sydney Local Health District 64. Southern Adelaide Local Health Network Incorporated 65. Southern NSW Local Health District 66. St. Luke's Medical & Hospital Benefits Association 67. St Vincent's Hospital Sydney Ltd (previously St Vincent's Health Australia) 68. St Vincent's Private Hospitals Ltd (previously St Vincent's Health Australia Ltd) 69. Swan Hill District Health 70. Tasmanian Health Service 71. The Doctor's Health Fund Pty Ltd 72. The Hospitals Contribution Fund of Australia Limited 73. The Royal Womens Hospital 74. Western District Health Service (Hamilton Base Hospital) 75. Western NSW Local Health District 76. Westfund Limited 77. Women's and Children's Health Network Incorporated 78. Yorke and Northern Local Health Network Incorporated

Exhibit 8

Further Amended Interlocutory Application

Form 35
Rule 17.01(1)

Further Amended interlocutory application

No. NSD 35 of 2018

Federal Court of Australia

District Registry: New South Wales

Division: General

Jodie Philipsen

First Applicant

Janice Seymour

Second Applicant

Astora Women's Health, LLC

Respondent

To the Applicants

The Respondent applies for the interlocutory orders set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

Time and date for hearing:
Place:

Filed on behalf of (name & role of party) Astora Women's Health, LLC, Respondent
Prepared by (name of person/lawyer) David McCredie, Solicitor for the Respondent
Law firm (if applicable) Baker McKenzie
Tel +61 2 8922 5358 Fax +61 2 9225 1595
Email David.McCredie@bakermckenzie.com
Address for service (include state and postcode) Level 46, 100 Barangaroo Avenue, Sydney NSW 2000

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The Court ordered that the time for serving this application be abridged to

Date:

Signed by an officer acting with the authority
of the District Registrar

Interlocutory orders sought

1. Astora Women's Health, LLC (**Astora**) be released from the implied undertaking in respect of the information contained in the documents listed in Annexure A (the **Australian Documents**) to these orders for the purposes of:

   a. through its agent Kroll Restructuring Administration LLC, giving notice to parties-in-interest in Case No. 22-22594 (jointly administered for procedural purposes only with Case No. 22-22549) in the United States Bankruptcy Court for the Southern District of New York (the **Bankruptcy Court**) filed pursuant to chapter 11 of the United States Bankruptcy Code on 16 August 2022 in relation to Astora (**Astora Chapter 11**); ~~and~~

   b. through its agent Kroll Restructuring Administration LLC, giving notice to parties-in-interest in Case No. 22-22549 in the Bankruptcy Court filed pursuant to chapter 11 of the United States Bankruptcy Code on 16 August 2022 in relation to Endo International plc and in each case being jointly administered therewith (together with the Astora Chapter 11, the **Endo Group Chapter 11**);

   c. preparing and filing a list of creditors and any other documents to be filed with the Bankruptcy Court in the Endo Group Chapter 11 (**Bankruptcy Filings**) in which any information contained in such documents which is sourced from the Australian Documents shall be redacted; and

   d. providing copies of the Bankruptcy Filings in which information obtained from the Australian Documents is not redacted, to the Bankruptcy Court, the United States Trustee, the Official Committee of Unsecured Creditors in the Endo Group Chapter 11, and the Official Committee of Opioid Claimants in the Endo Group Chapter 11, on the basis that such documents are held in confidence subject to the orders of the Bankruptcy Court

   (together, the **Permitted Purposes**).

2. Pursuant to Art 25(1) of the *Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law* and s 6 of the *Cross-Border Insolvency Act 2008* (Cth), Astora and its Foreign Representative Mark Thomas Bradley be authorised to use the Australian Documents and disclose the information contained in the Australian Documents for the Permitted Purposes.

3. Evidence in the proceeding commenced in this Court by Mark Thomas Bradley as Plaintiff in his capacity as the Foreign Representative of Astora, proceeding NSD 752 of 2022, be evidence on this application.

4. Costs be reserved.

5. Any further orders this honourable Court sees fit.

Service on the Applicants

It is intended to serve this application on the Applicants.

Date: 23 September 2022

Signed by David McCredie
Solicitor for the Respondent

Annexure A

	Description
1.	All claimant registration forms in Proceeding No. NSD 35/2018
2.	All opt-out notices in Proceeding No. NSD 35/2018
3.	All documents produced on subpoena in Proceeding No. NSD 35/2018 by: 1. ACA Health Benefits Fund Limited 2. Albury Wodonga Health 3. Alexandra District Health 4. Alfred Health 5. Austin Health 6. Australian Unity Limited 7. Ballarat Health Services 8. Barossa Hills Fleurieu Local Health Network Incorporated 9. Barwon Health 10. Bass Coast Health 11. Bendigo Health Care Group 12. Bupa HI Pty Ltd 13. Calvary Health Care ACT Limited 14. Castlemaine Health 15. CBHS Corporate Health Pty Ltd 16. CBHS Health Fund Limited 17. Central Adelaide Local Health Network Incorporated 18. Central Coast Local Health District 19. Cessnock District Health Benefits Fund Limited 20. Cobram District Health 21. Colac Area Health 22. CUA Health Limited 23. Department of Infrastructure, Transport, Regional Development and Communications (Christmas Island Hospital) 24. Eastern Health 25. Echuca Regional Health 26. Eyre and Far North Local Health Network Incorporated 27. Flinders and Upper North Local Health Network Incorporated 28. Gippsland Southern Health Service 29. Goulburn Valley Health 30. HBF Health Limited 31. Health Care Insurance Ltd 32. Health Insurance Fund of Australia Limited 33. Health Partners Limited 34. Illawarra Shoalhaven Local Health District 35. Kerang District Health 36. Kilmore & District Hospital 37. Kyneton District Health Service 38. Latrobe Health Services Limited 39. Limestone Coast Local Health Network Incorporated 40. Mansfield District Hospital 41. Medibank Private Limited

	42. Mercy Hospitals Victoria Ltd 43. Mid North Coast Local Health District 44. Mildura Base Public Hospital 45. Mildura District Hospital Health Fund 46. Monash Health 47. National Health Benefits Australia Pty Ltd 48. Navy Health Ltd 49. Nepean Blue Mountains Local Health District 50. NIB Health Funds Ltd 51. Northeast Health Wangaratta 52. Northern Adelaide Local Health Network Incorporated 53. Northern Health 54. Northern Sydney Local Health District 55. Peninsula Health 56. Peoplecare Health Limited 57. Police Health Limited 58. Portland District Health 59. Queensland Country Health Fund Ltd 60. Riverland Mallee Coorong Local Health Network Incorporated 61. South Eastern Sydney Local Health District 62. South Gippsland Hospital 63. South Western Sydney Local Health District 64. Southern Adelaide Local Health Network Incorporated 65. Southern NSW Local Health District 66. St. Luke's Medical & Hospital Benefits Association 67. St Vincent's Hospital Sydney Ltd (previously St Vincent's Health Australia) 68. St Vincent's Private Hospitals Ltd (previously St Vincent's Health Australia Ltd) 69. Swan Hill District Health 70. Tasmanian Health Service 71. The Doctor's Health Fund Pty Ltd 72. The Hospitals Contribution Fund of Australia Limited 73. The Royal Womens Hospital 74. Western District Health Service (Hamilton Base Hospital) 75. Western NSW Local Health District 76. Westfund Limited 77. Women's and Children's Health Network Incorporated 78. Yorke and Northern Local Health Network Incorporated

Exhibit 9

Hill Affidavit

1

1

Form 59
Rule 29.02(1)

Affidavit

No. NSD 35 of 2018

Federal Court of Australia
District Registry: New South Wales
Division: General

Jodie Philipsen

First Applicant

Janice Seymour

Second Applicant

Astora Women's Health, LLC

Respondent

Affidavit of: **Evan Andrew Hill**
Address: One Manhattan West, New York, NY 10001, United States
Occupation: Attorney
Date: 22 September 2022

Contents

Filed on behalf of (name & role of party) Astora Women's Health, LLC, the Respondent
Prepared by (name of person/lawyer) David Cameron McCredie
Law firm (if applicable) Baker McKenzie
Tel +61 2 8922 5358 Fax +61 2 9225 1595
Email David.McCredie@bakermckenzie.com
Address for service (include state and postcode) Level 46, 100 Barangaroo Avenue, Sydney NSW 2000

Document number	Details	Paragraph	Page
	the Respondent's U.S. Chapter 11 case by the U.S.Trustee.		

I, Evan Andrew Hill of One Manhattan West, New York, NY 10001, United States, say on oath:

Introduction and purpose of affidavit

1. I am a Counsel in the Corporate Restructuring Group of Skadden, Arps, Slate, Meagher & Flom LLP (**Skadden**) based in Skadden's New York office. I specialise in restructuring and bankruptcy, having practiced in that area for over 8 years.

2. I am a senior member of the team advising Endo International plc and its various subsidiaries (the "**Debtors**"), including Astora Women's Health, LLC, in connection with their U.S. chapter 11 bankruptcy (the **Endo Chapter 11**). I have responsibility for the preparation and presentation of the Debtors application to the U.S. Bankruptcy Court to be relieved of certain obligations in relation to the publication of the names and contact details of certain of its creditors (the **Consolidated Creditors Application**).

3. By making this affidavit, I do not intend, and have no authority, to waive privilege in any communication, or record of communication, that is the subject of legal professional privilege, or other equivalent privileges or doctrines, in either the U.S. or Australia. Nothing in this affidavit should be construed as involving a waiver of privilege. To the extent that anything may be construed as involving a waiver of privilege, I withdraw and do not rely on that part of this affidavit.

4. Unless otherwise stated, I make this affidavit on the basis of my own knowledge and, where I depose to a fact or circumstance based on my information and belief, I believe those facts and circumstances are true to the best of my information and belief.

5. I have been shown copies of affidavits sworn by Mark Thomas Bradley on 24 August 2022 (**Bradley Affidavit**) and George Panagakis on 24 August 2022 (**Panagakis Affidavit**) filed in proceeding NSD 752 of 2022, and David McCredie on 9 September 2022 (**McCredie Affidavit**), filed in this proceeding.

6. The purpose of this affidavit is to:

   (a) provide further detail regarding the U.S. chapter 11 bankruptcy process;

   (b) describe certain developments in the Endo Chapter 11 since the date of the Bradley Affidavit and the McCredie Affidavit; and

(c) explain why, in light of such developments, Astora and Mr Bradley are now seeking certain additional relief as set out in the Further Amended Interlocutory Application.

7. The Panagakis Affidavit describes the U.S. Chapter 11 process and the requirements that debtors in chapter 11 give notice of the commencement of the case and certain other steps in the process to all parties-in-interest, including creditors. As set out in that affidavit, absent relief from the Bankruptcy Court, a debtor is ordinarily required to file a list of creditors with the Bankruptcy Court, which list becomes publicly available on the docket.

8. As described in the Bradley Affidavit, in the Endo Chapter 11 the debtors filed the Consolidated Creditors' Motion seeking orders which would permit them to preserve the confidentiality of all individuals who would otherwise be listed on the list of creditors. The Debtors sought orders which would permit them to redact the names and addresses from all lists of creditors filed with the Bankruptcy Court, on condition that an unredacted list be made available confidentially to the Bankruptcy Court, the United States Trustee, counsel to any official committee appointed in the Endo Chapter 11 and any other party designated by order of the Bankruptcy Court.

9. The Consolidated Creditors Motion was heard at what we refer to as the "First Day Hearing". As is typical in U.S. chapter 11 cases, the Bankruptcy Court scheduled a hearing very shortly after the cases were commenced, at which the Debtors introduced the case and the company, and made a number of applications which related to the on-going conduct of the Debtors' business while in chapter 11 or the conduct of the case.

10. It is typical in chapter 11 cases for there to be a number of applications which cannot be finally determined at the First Day Hearing, either because they are too complex, are opposed by creditors who require time to fully formulate their objection, or for other reasons. In such situations, it is common for the Bankruptcy Court to grant provisional orders in order to maintain the status quo and minimise operational disruption and for the applications to be addressed again on a final basis at the "Second Day Hearing".

11. The Second Day Hearing is a hearing scheduled a number of weeks after the commencement of the case, at which "first day" applications can be addressed on a final basis and additional applications may be heard. In the Endo Chapter 11 the Second Day Hearing was initially scheduled on 21 September 2022, but was subsequently moved to 28 September 2022.

12. The U.S. Trustee objected to the Consolidated Creditors' Motion at the First Day Hearing. Based on my discussions with Astora's Australian counsel, I understand that the U.S. Trustee is an institution which does not have an exact corollary in Australian bankruptcy law. The U.S. Trustee Program is the component of the Department of

Justice responsible for overseeing the administration of bankruptcy cases and private trustees under Titles 11 and 28 of the United States Code. The website of the U.S. Trustee Program describes its mission as being "to promote the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders – debtors, creditors and the public" (https://www.justice.gov/ust, accessed 22 September 2022). The U.S. Trustee is entitled to appear before the Bankruptcy Court in all bankruptcy cases, and does so as a matter of course in all large cases. The U.S. Trustee will commonly advocate for positions which it believes are consistent with its mission, which may not otherwise be advanced by private creditors or litigants.

13. One of the key functions of the U.S. Trustee in all chapter 11 cases is to assist with the formation and management of official committees of creditors. The Bankruptcy Code prescribes (section 1102) that the U.S. Trustee shall appoint a committee of creditors holding unsecured claims and may appoint additional committees of creditors or of equity security holders as the U.S. Trustee deems appropriate. In the Endo Chapter 11 the U.S. Trustee formed the Official Committee of Unsecured Creditors (**UCC**) on 2 September 2022.

14. The role of the UCC is to advocate for the interests of all unsecured creditors, including any foreign creditors. In order to do so the UCC appointed Kramer Levin Naftalis & Frankel LLP as counsel, Lazard as investment banker and Dundon Advisers and Berkeley Research Group as financial advisers. The costs of such advisers are, subject to Bankruptcy Court approval, required to be paid by the Debtors.

15. In the Endo Chapter 11 the U.S. Trustee formed an additional official committee (the Official Committee of Opioid Claimants, or **OCC**) in order to advocate for the interests of creditors with claims based on the production or distribution by Endo companies of opioid based pain medication (**Opioid Claimants**). I understand that this was considered appropriate given the number of potential Opioid Claimants in the Endo Chapter 11. The OCC was also formed on 2 September 2022, and has appointed Cooley LLP as counsel, Akin Gump Strauss Hauer & Feld LLP as special counsel, Jefferies as investment banker and Province as financial adviser. The costs of such advisers are, subject to Bankruptcy Court approval, required to be paid by the Debtors.

16. In the Endo Chapter 11 following the commencement of the case and the First Day Hearing there has been a period of intense negotiations and consultation with interested parties, including the U.S. Trustee, the UCC and the OCC. As interested parties have gotten 'up to speed' on the status of the Debtors' proposals, they have been able to develop their positions in respect of the relief sought by the Debtors at the First Day Hearing, to be sought at the Second Day Hearing, or in respect of the Debtors' proposals in relation to the chapter 11 case generally. The Debtors' positions have also

during this period developed in response to engagement with interested parties. This is in my experience an entirely normal part of the chapter 11 process, particularly in large cases with many interested parties such as the Endo Chapter 11; debtors in chapter 11 are expected to engage with their stakeholders and to proactively seek solutions which are consistent with bankruptcy law and are in the interests of all parties.

17. As described in the Bradley Affidavit, at the First Day Hearing the Bankruptcy Court made preliminary orders which would permit redaction of all individual creditor names, but ordered that the Debtors file supplementary briefing prior to the Second Day Hearing addressing in detail the foreign law requirements which would impact their ability to comply with the ordinary requirement that lists of creditors be filed and be publicly available.

18. Since the First Day Hearing representatives of the Debtors have discussed the Consolidated Creditors Motion with representatives of the OCC, the UCC and the U.S. Trustee. The U.S. Trustee has filed an objection to the Consolidated Creditors Motion, a copy of which is annexed to this affidavit and marked "**EH-1**", and the U.S. Trustee has subsequently confirmed that it intends to continue to oppose the relief sought by the Debtors.

19. The Debtors are preparing and will file their Supplementary Consolidated Creditors' Briefing on Monday 26 September 2022. In that briefing the Debtors will address the Australian law restrictions which constrain their use of the information regarding Australian claimants (as described in the McCredie Affidavit, the **Australian Claimant Information**), and the application which has been made to this Court for orders authorising the use of such information.

20. The original Interlocutory Application filed in these proceedings sought authorisation only to use the Australian Claimant Information for the purposes of giving notice in the Endo Chapter 11 cases to parties-in-interest.

21. Having now had the opportunity to engage with the U.S. Trustee and other interested parties regarding this process, Astora intends to file the Further Amended Interlocutory Application in order to seek permission to make further use and disclosure of the Australian Claimant Information, including to be precise about the use and disclosure which is now proposed.

22. In particular, Astora requests that it be permitted to use the Australian Claimant Information for the purpose of preparing and filing a list of creditors and any other relevant filing in the Endo Chapter 11, on the basis that the Australian Claimant Information be redacted from the publicly filed version of such affidavits.

23. Further, Astora requests that it be permitted to provide a copy of the unredacted version of such affidavits to the U.S. Bankruptcy Court (such document to be sealed and not publicly available), and confidentially to the U.S. Trustee and the UCC and OCC.

24. This is consistent with the approach which the Debtors are seeking to take with individual litigant details in other jurisdictions, and the Debtors believe it is appropriate to enable the Australian Claimants to have the full protection of, and be fully able to participate in, the U.S. chapter 11 process.

25. In particular, the Debtors believe that it is appropriate that the unredacted list of Australian Claimants be able to be provided to the U.S. Bankruptcy Court, in order that the Debtors can be fully open and transparent with the Bankruptcy Court regarding their approach to any filings which impact the Australian Claimants.

26. Further, the Debtors believe that it is appropriate that the unredacted list of Australian Claimants be able to be provided to both the U.S. Trustee and the UCC and OCC.

(a) In the case of the U.S. Trustee, the Debtors consider it important for the U.S. Trustee to have access to unredacted creditor information in order that it can properly perform its functions in the interests of all stakeholders, including the Australian Claimants.

(b) In the case of the UCC, the role of the UCC (and their advisers) is to protect the interests of all unsecured creditors, including the Australian Claimants. The Debtors consider it important for the UCC, and in particular the UCC's legal and other advisers, to have access to full and unredacted lists of creditors in order that they can perform that role. This would enable them to contact creditors where necessary, to understand the scope and nature of the Debtors' creditors and to advocate for their interests. If full creditor information is not provided to the UCC there would be a risk that the interests of certain groups of creditors are not appropriately protected.

(c) In the case of the OCC, while the OCC does not represent the interests of the Australian Claimants (as they are not making opioid related claims), it is important that the OCC and its advisers have parity of information with the UCC and its advisers, in order that those bodies and the Debtor can effectively consult and negotiate together. It would also be an unnecessary administrative burden to the Debtors if they are required to take a differential approach between disclosure to the OCC, UCC and U.S. Trustee throughout the remainder of the Endo Chapter 11 Case.

27. The Debtors consider that the confidentiality of the Australian Claimant Information will be appropriately protected notwithstanding disclosure to these groups, because the

Debtors will seek orders from the U.S. Bankruptcy Court that the recipients of such unredacted documents receive them in confidence and maintain confidentially.

28. For these reasons Astora's position in relation to the appropriate relief to seek from this Court has developed. In relation to the procedural conduct of these proceedings and the Endo Chapter 11, I note also that it is now apparent that Astora's application to this Court, and the Second Day Hearing, are now listed for hearing on the same day (albeit the hearing before this Court will occur first due to the time zone differences). Astora had initially proposed (as set out in the McCredie Affidavit) that if the Bankruptcy Court required further use of the Australian Claimant Information beyond that which would have been permitted by the orders sought in the Interlocutory Application, Astora would make a further application to this Court. In light of the position taken by the U.S. Trustee and Astora's position as set out above, I consider that if this approach were maintained it would be likely that Astora would have to return to make a further application to this Court in terms consistent with the Further Amended Interlocutory Application, which would result in an inefficient use of the time of both this Court and the Bankruptcy Court.

29. While the need for a further application cannot be ruled out, if the Bankruptcy Court requires the Debtors to make further use of the Australian Claimant Information than described in this affidavit, I believe the most appropriate and efficient course is for Astora at this stage to seek the orders set out in the Further Amended Interlocutory Application.

Sworn by Evan Andrew Hill)
at Upper Saddle River)
in New Jersey, USA)
on 22 September 2022)

Signature of Evan Andrew Hill

Before me:

Signature of witness
Cal Anthony Diolúin, Solicitor
100 Barangaroo Avenue, Barangaroo NSW 2000

This document was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW)

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Certificate identifying annexure

(rule29.02)

No. NSD 35 of 2018

Federal Court of Australia
District Registry: New South Wales
Division: General

Jodie Philipsen

First Applicant

Janice Seymour

Second Applicant

Astora Women's Health, LLC
Respondent

Annexure "EH-1"

This is the document referred to as **Annexure "EH-1"** in the affidavit of Evan Andrew Hill, sworn on 22 September 2022.

Before me:.....
Cal Anthony Diolúin, Solicitor

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Hearing: September 21, 2022 (11:00 a.m.)
Objections: September 8, 2022 (4:00 p.m.)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re

ENDO INTERNATIONAL plc, *et al.*,[1]

Debtors.

Case No. 22-22549 (JLG)

Jointly Administered

UNITED STATES TRUSTEE'S OBJECTION TO DEBTORS' MOTION FOR ENTRY OF A FINAL ORDER (I) WAIVING THE REQUIREMENT THAT EACH DEBTOR FILE A SEPARATE LIST OF ITS 20 LARGEST UNSECURED CREDITORS; (II) AUTHORIZING THE DEBTORS TO FILE A SINGLE CONSOLIDATED LIST OF THEIR 50 LARGEST UNSECURED, NON-INSIDER DEBTORS; (III) AUTHORIZING THE DEBTORS AND THE CLAIMS AND NOTICING AGENT TO REDACT PERSONALLY IDENTIFIABLE INFORMATION FOR INDIVIDUALS; (IV) AUTHORIZING THE CLAIMS AND NOTICING AGENT TO WITHHOLD PUBLICATIONS OF CLAIMS FILED BY INDIVIDUALS UNTIL FURTHER ORDER OF THE COURT; (V) ESTABLISHING PROCEDURES FOR NOTIFYING CREDITORS OF THE COMMENCEMENT OF THE DEBTORS CHAPTER 11 CASES; AND (VI) GRANTING RELATED RELIEF

[1] The last four digits of Debtor Endo International plc's tax identification number are 3755. Due to the large number of debtors in these chapter 11 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at https://restructuring.ra.kroll.com/Endo.

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**TO THE HONORABLE JAMES L. GARRITY,
UNITED STATES BANKRUPTCY JUDGE:**

William K. Harrington, the United States Trustee for Region 2 ("United States Trustee"), by his undersigned counsel, respectfully files this objection to the *Motion of the Debtors for Entry of a Final Order (I) Waiving the Requirement That Each Debtor Files a Separate List of its 20 Largest Unsecured Creditors; (II) Authorizing the Debtors to File a Single Consolidated List of Their 50 Largest Unsecured, Non-Insider Creditors; (III) Authorizing the Debtors and the Claims and Noticing Agent to Redact Personally Identifiable Information for Individuals; (IV) Authorizing the Claims and Noticing Agent to Withhold Publication of Claims Filed by Individuals Until Further Order of the Court; (V) Establishing Procedures for Notifying Creditors of the Commencement of the Debtors Chapter 11 Cases; and (VI) Granting Related Relief* ("Consolidated Creditors Motion"), filed by the Endo International plc and affiliated debtors (collectively "Debtors"). ECF No. 6.

I. PRELIMINARY STATEMENT

The Debtors seek to redact information of an unprecedented scope – namely, all "personally identifiable information" of all individuals from all public filings. But the Debtors have left "personally identifiable information" undefined, without pointing to any established definition of that term. The Debtors propose to give their lawyers, claims agent and themselves unfettered, unsupervised discretion to decide what, when, who, and how to redact "personally identifiable information" during the entire life of these cases. The Bankruptcy Code, of course, has never stretched that far, and to allow the Debtors to use their discretion in deciding which, if any, identification parameters to disclose would create an end-run around the strict provisions of section 107(c).

Section 107(c) of the Bankruptcy Code permits the protection of certain information only

to the extent a debtor is able to show that the publication of such information "would create undue risk of identity theft or other unlawful injury to the individual or the individual's property." The Debtors have failed to make such a showing here.

Finding no precedent that supports granting the relief they seek, the Debtors have overstated and misconstrued this Court's rulings in other cases, where the redactions authorized were substantially narrower than what the Debtors ask for here. Having failed to meet the requirements of section 107, the Debtors also attempt to use foreign laws, such as the EU GDPR and other unspecified laws, to justify their impermissible, unprecedented request. But they have done so without analyzing whether those laws apply in their entirety to the Debtors' cases. The EU GDPR contains exceptions unexplored by the Debtors that allow them to fulfill their obligations under the U.S. Bankruptcy Code without running afoul that foreign law. In any event, to the extent U.S. bankruptcy law and the EU GDPR conflict, the application of U.S. law should prevail here, especially since the Debtors have consciously subjected themselves to American bankruptcy law over European insolvency law.

The Debtors' bankruptcy case is of tremendous public importance and will affect many ordinary American lives. The need for full disclosure and transparency, and the faith in the American judicial system that results from that, are particularly prominent here. Insofar as the Consolidated Creditors Motion seeks unbridled redaction of such an astonishing, unjustified, unprecedented nature, it should be denied.

II. BACKGROUND

1. The Debtors each commenced a chapter 11 bankruptcy case on August 16, 2022 (the "Petition Date"). ECF No. 1

2. The Debtors operate a global specialty biopharmaceutical business that produces and sells both generic and branded products. *See* Declaration of Mark Bradley. ECF No. 19, ¶

1.

3. The Debtors are authorized to continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. On September 2, 2022, the United States Trustee appointed an Official Committee of Unsecured Creditors, (ECF No. 161), and an Official Committee of Opioid Claimants, (ECF No. 163).

5. The Debtors' bankruptcy filing was caused by a confluence of factors, including (a) an adverse litigation outcome relating to Vasostrict—the Company's single largest product by revenue in 2021—that resulted in the early termination of federal patent protection and the subsequent loss of substantial revenue; (b) a slower than expected growth of Xiaflex resulting from, among other factors, the COVID-19 pandemic; and (c) the Company's litigation overhang, including, without limitation, the thousands of lawsuits related to its marketing and sale of prescription opioids. ECF No. 19, ¶ 39.

6. The Debtors commenced these cases with the intention to pursue a sale under section 363 of the Bankruptcy Code. *See* Notice of Filing of Restructuring Support Agreement, ECF No. 20.

7. On August 17, 2022, among other First Day Motions, the Debtor filed the Consolidated Creditors Motion. ECF No. 6.

8. Among the many forms of relief requested in the Consolidated Creditors Motion is the Debtors' request for authority "to redact the personally identifiable information—including, without limitation, the names and addresses—of any individual listed on, or appearing in, any document (a) made publicly available on the Debtors' case website, (b) filed with the

Court, or (c) otherwise submitted to the Claims and Noticing Agent, including the List of Creditors, the Claims Registers, and the Schedules." ECF No. 6, ¶ 15.

9. In the Proposed Order filed along with the Consolidated Creditors Motion, the Debtors have requested the entry of an order with the following sealing provision:

> The Debtors and the Claims and Noticing Agent are authorized to redact personally identifiable information of any individual listed on, or appearing in, any document filed with the Court or made publicly available by the Claims and Noticing Agent on the Debtors' case website; *provided that*, the Debtors shall provide, under seal, an unredacted version of any document (a) made publicly available on the Debtors' case website, (b) filed with the Court, or (c) otherwise submitted to the Claims and Noticing Agent, including the List of Creditors, the Claims Registers, and the Schedules to the Court, the U.S. Trustee, counsel to any official committee appointed in the Chapter 11 Cases, the Claims and Noticing Agent, and any other party designated by further order of the Court, provided that any receiving party shall not transfer or otherwise provide such unredacted document to any person or entity not party to the request. In each case, this would be subject to a review of whether such disclosure, on a case-by-case basis, would violate any obligation under the UK GDPR, EU GDPR, or any other privacy or data protection law or regulation applicable. The Debtors shall inform the U.S. Trustee promptly after denying any request for an unredacted document pursuant to this Order.

ECF No. 6, Exh. A, Proposed Order, ¶ 9.

10. At the First-Day Hearing on August 18, 2022, the Court agreed with the United States Trustee's assessment that the grounds set forth in the Consolidated Creditors Motion do not support the requested sealing, and suggested that the Debtors file a supplemental brief. The Court then entered an interim order approving the Consolidated Creditors Motion on August 24, 2022. ECF No. 107. To date, however, the Debtors have not supplemented their original submission.

III. LEGAL FRAMEWORK

A. The Debtors are Required to File Unredacted Schedules and Statements

Bankruptcy Code § 521 and its implementing rules impose a duty on all debtor to file schedules and statements. 11 U.S.C. § 521(a). Federal Rule of Bankruptcy Procedure ("Rule")

1007(b) requires the schedules and statements to be "prepared as prescribed by the appropriate Official Forms." Fed. R. Bankr. P. 1007(b). Official Form 206, the Schedules for non-individual debtors, requires complete disclosure of a creditor's name and mailing address, (Sch. E-F), and as to secured creditors, their email addresses as well (Sch. D). As applicable, Official Form 207, the Statement of Financial Affairs for non-individual debtors, also requires full disclosure of a creditor's or other individual's name, address, and email address, (Part 2, Part 3 (Item 4), Part 6 (Items 11 and 13), Part 11, Part 13 (Item 27-30).

Rule 9009 generally provides that: "[t]he Official Forms prescribed by the Judicial Conference of the United States shall be used without alteration, except as otherwise provided in these rules, in a particular Official Form, or in the national instructions for a particular Official Form." Rule 9009 further provides that: "Official Forms may be modified to permit minor changes not affecting the wording or the order of the presenting information, including changes that:

(1) expand the prescribed area for responses in order to permit complete responses;

(2) delete space not needed for responses; or

(3) delete items requiring detail in a question or category if the filer indicates – either by checking "no" or "none" or by stating in words – that there is nothing to report on that question or category."

Fed. R. Bankr. P. 9009.

B. <u>The Right of Public Access to Judicial Records</u>

In American jurisprudence, there is a long-standing, common law right of public access to court records. *See Nixon v. Warner Commc'ns Inc.*, 435 U.S. 589, 591 (1978) ([i]t is clear that the courts of this country recognize a general right to inspect and copy public records and

documents, including judicial records and documents.") This "right of public access is rooted in the public's First Amendment right to know about the administration of justice." *Motors Liquidation Co. Avoidance Action Trust v. JP Morgan Chase Bank, N.A. (In re Motors Liquidation Co.)*, 561 B.R. 36, 41 (Bankr S.D.N.Y. 2016). The Second Circuit has described this right as "firmly entrenched and well supported by policy and practical considerations." *Orion Pictures Corp. v. Video Software Dealers Assoc.*, 21 F.3d 24, 26 (2d Cir. 1994).

The right of public access has given rise to "a strong presumption and public policy in favor of public access to court records." *In re Borders Grp., Inc.*, 462 B.R. 42, 46 (Bankr. S.D.N.Y. 2011). This presumption "is based on the need for federal courts . . . to have a measure of accountability and for the public to have confidence in the administration of justice . . . [P]ublic monitoring is an essential feature of democratic control." *United States v. Amodeo*, 71 F.3d 1044, 1048 (2d Cir. 1995). The Second Circuit has issued this pointed guidance:

> There must be a strong presumption against sealing any document that is filed with the court. Our courts do not operate in secrecy. Except on rare occasions and for compelling reasons, everything that courts do is subject to public scrutiny. To hide from the public entire proceedings, or even particular documents or testimony forming a basis for judicial action that may directly and significantly affect public interests, would be contrary to the premises underling a free, democratic society.

City of Hartford v. Chase, 942 F.2d 130, 137 (2d Cir. 1991).

C. <u>The Right to Public Access is Codified in the Bankruptcy Code</u>

It is well-settled in our laws that the governmental interest is safeguarding public access to judicial records is "of special importance . . . , as unrestricted access to judicial records fosters confidence among creditors regarding fairness in the bankruptcy system." *In re Motors Liquidation*, 561 B.R. at 41, *quoting Gitto v. Worcester Telegram & Gazette Corp. (In re Gitto Global Corp.)*, 422 F.3d. 1, 7 (1st Cir. 2005) (*quoting In re Crawford*, 194 F.3d. 954, 960 (9th

Cir. 1999). Described as "fundamental to the operation of the bankruptcy system and . . . the best means of avoiding any suggestion of impropriety that might or could be raised," the policy of open inspection, as applied in this Court, cannot be underestimated. *Motors Liquidation*, 561 B.R. at 41-42, *quoting In re Bell & Beckwith*, 44 B.R. 661, 664 (Bankr. N.D. Ohio 1984).

The common law right of public access to judicial records has been codified in section 107(a) of the Bankruptcy Code. *Togut v. Deutsche Bank AG (In re Anthracite Capital Inc.)*, 492 B.R. 162, 170, 173 (Bankr S.D.N.Y. 2013); *see also Gitto Global*, 422 F.3d at 7-8 (section 107 supplants the common law of public access). Pursuant to § 107(a), papers filed in bankruptcy cases and the Court's dockets are "public records, open to examination by an entity at reasonable times without charge." 11 U.S.C. § 107(a); *Anthracite*, 492 B.R. at 170.[2]

IV. OBJECTIONS

A. The Debtors' Requested Relief Exceeds the Scope of 11 U.S.C. § 107(c), and They Have Failed to Show Undue Harm Would Ensue.

Section 107(c) of the Bankruptcy Code provides that:

> The bankruptcy court, ***for cause***, may protect an individual, with respect to the following types of information ***to the extent*** the court finds that disclosure of such information would create ***undue risk*** of identity theft or other unlawful injury to the individual or the individual's property:
>
> (A)Any means of identification (as defined in section 1028(d) of title 18)

[2] In relevant part, Federal Rule of Bankruptcy Procedure ("Rule") 1007(j) provides that: "for cause shown the court may direct the impounding of lists filed under this rule." Fed. R. Bankr. P. 1007(j). Because Rule 1007(j) is designed for only the limited protection of solely the lists filed pursuant to the other subdivisions of Rule 1007, it applies to only such specific documents filed by debtors and debtors in possession, and not to any documents filed by any other parties in interest. *Motors Liquidation Co.*, 561 B.R. at 36. Rule 1007(j), therefore provides no authority for the sealing of documents filed by creditors, such as the *ex-ante* sealing of proofs of claim ostensibly requested by the Debtors. *See* note 3 below.

In any event, to the extent Rule 1007(j) conflicts with section 107, it is subordinate to the statute, as a Bankruptcy Code provision "trumps" a bankruptcy rule. *Branchburg Plaza Assocs., L.P. v. Fesq (In re Fesq)*, 153 F.3d 113, 116 (3rd Cir. 1998); 28 U.S.C. § 2075 (the bankruptcy rules "shall not abridge, enlarge, or modify any substantive right.")

contained in a paper filed, or to be filed, in a case under this title.

(B)Other information contained in a paper described in subparagraph (A).

11 U.S.C. § 107(c)(1) (bold and italics added)

Substantially broadening what section 107(c) protects, the Debtors have requested the redaction of "***personally identifiable information*** of ***any individual*** listed on, or appearing in, ***any document*** filed with the Court or made publicly available by the Claims and Noticing Agent on the Debtors' case website." Proposed Order, ¶ 9 (bold and italics added).[3] But the Debtors have left the term "personally identifiable information" entirely undefined; nowhere do the Consolidated Creditors Motion or its Proposed Order explain exactly what that means. That provides the Debtors and their professionals with unilateral discretion to decide what information to redact, thereby rendering the parameters of section 107(c) and 18 U.S.C. § 1028(d) wholesale ineffective. *See* Consolidated Creditors Motion, ¶17 (stating section 107(c)(1)(B) allows a bankruptcy court to shield "[o]ther information" beyond "means of identification and the definition of "means of identification" under 18 U.S.C. § 1028(d)) provides a non-exhaustive list of personally identifiable information.).

Section 107(c) does not gift any party with a right of unsupervised, unfettered self-determination over what information can be protected in a bankruptcy case. Rather, under the statute, only information the disclosure of which would result in an undue risk of identity theft or unlawful injury to an individual or the individual's property is entitled to protection. And even then, the party seeking protection must make a clear showing by competent evidence that the

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[3] The Debtors state in the Consolidated Creditors Motion: "In the event that it is determined that there will be recovery available for general unsecured creditors, the Debtors intend to seek a Bar Date Order that would, among other things, ***approve a tailored individual claim form*** and specific procedures designed to prevent the unintentional disclosure of these types of sensitive information." Consolidated Creditors' Motion, ¶ 25. The United States Trustee expressly reserves his rights with respect to the Debtors' bar date motion.

disclosure of such information would lead to the standard of harm set forth in the statute, instead of speculating or making mere conclusory statements, as the Consolidated Creditors Motion does. *See, e.g.*, *Joy v. North*, 692 F.2d 880, 894 (2d Cir. 1982) (report filed in court in connection with a shareholder derivative action could not be sealed based on "a naked conclusory statement that publication of the Report will injure the bank in the industry."); *In re Barney's, Inc.*, 201 B.R. 703, 708 (Bankr. S.D.N.Y. 1996) ("speculat[ion] that the public disclosure of ... letter will adversely impact debtors reorganization efforts" insufficient to justify sealing record); *In re Fibermark, Inc.*, 330 B.R. 480, 506 (Bankr. D. Vt. 2005) ("that information might 'conceivably' or 'possibly' fall within a protected category is not sufficient to seal documents"); *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1071-73 (3d Cir. 1059) (court must make "specific findings" as sealing cannot be based on speculation).

In this case, the Debtors have failed to furnish competent evidence of undue risk of identity theft or any other unlawful injury to the individuals they seek to protect. *See In re Itel Corp.*, 17 B.R. 942, 944 (Bankr. 9th Cir. 1982) (information not properly sealed under section 107(b) when it merely was "conceivable" and "not likely" that it was confidential commercial information). They have instead only stated that they "do not know with sufficient certainty whether a release of [creditors'] personal information could potentially jeopardize their safety." Consolidated Creditors Motion, ¶ 18. By no measure is stating "we do not know" a sufficient showing to support any request for sealing under section 107, let alone the extraordinarily seals proposed by these Debtors. *See In re Motors Liquidation*, 561 B.R. at 44 (finding that "conclusory statements" and "statements made by lawyers in briefs are not evidence.").

Moreover, with respect to certain information, the Debtors have failed to even attempt to make the requisite competent showing or explore narrower alternatives. For example, as the

Court is aware, insofar as the business address of an individual creditor may already be public information, the address is not entitled to protection. Because the Debtors have not limited their requested redactions to residential addresses and have not defined "personally identifiable information," openly-public business addresses may well be redacted if the Court were to grant the Debtors' request. Another example is the unnecessary redaction of *both* names and addresses of individuals, even assuming their addresses are residential addresses. Names alone and residential addresses alone are public information; but when a name and residential address are paired together a risk of identity theft or injury my arise for purposes of the Debtors' request. Therefore, it may be unnecessary for the Debtors to redact both an individual's name and address (assuming residential addresses).

B. The Debtors Have Mischaracterized Other Court Rulings

The string citation on which the Debtors rely the most for support is seriously misleading. According to the Debtors:

> Courts in this jurisdiction have granted similar relief in other chapter 11 cases. *See, e.g., In re Celsius Network LLC, et al.*, No. 22-10964 (MG) (Bankr. S.D.N.Y. July 18, 2022) (authorizing the debtors to redact personally identifiable information of individuals listed on the creditor matrix and other documents filed with the court); *In re SAS AB, et. al.*, No. 22- 10964 (MEW) (Bankr. S.D.N.Y. July 8, 2022) (same); *In re GTT Commc'ns. Inc.*, No. 21-11880 (MEW) (Bankr. S.D.N.Y. Nov. 4, 2021) (same); *In re Grupo Posadas S.A.B. de C.V.*, No. 21- 11831 (SHL) (Bankr. S.D.N.Y. Oct. 27, 2021) (same) ....

Consolidated Creditors Motion, ¶ 23, at 10.

The Debtors, however, have misstated the Court's interim ruling in *Celsius Network*, then compounded the error by stating "same" in all other parentheticals in the string. This creates the impression that in all the chapter 11 cases cited in the string, including *Celsius Network*, the Court authorized the debtors to redact unlimited personally identifiable information of

individuals listed on the creditor matrix and other documents filed with the court on a final basis.

That, however, is simply not so. To refer to just a few, in *Celsius Network*, (No. 22-10964), the Court has ***not*** entered an order granting the redaction request on a final basis. Instead, the Court, on an interim basis, has allowed the redaction of only the home addresses of certain individuals and set limitations on what can be redacted under the GDPR – in sharp contrast to the Debtors' proposed sealing of undefined, unlimited "personally identifiable information" under both U.S. law and the GDPR. *See Celsius* Dkt. no. 55.[4] In *GTT Comm'ns*, (No. 21-11880), the Court has allowed the redaction of only the home addresses and personal email addresses of certain individuals and the names of individuals protected by GDPR – again, in marked contrast to the Debtors' proposed broad seals. *See GTT* Dkt. no. 67. And in *Grupo Posadas,* (No. 21-11831), the Court has allowed only the redaction from a restructuring support agreement of information pertaining to the identity of consenting noteholders, and names and titles of signatories for such consenting noteholders – which is by no means comparable to the Debtors' request here. *See Grupo Posadas* Dkt. no. 85.

The Debtors' request is broad and unprecedented. Lacking the necessary support for its proposed sealing, the Consolidated Creditors' Motion should be denied.

C. <u>Foreign Law May Allow Disclosure of Certain Personal Information</u>

Having failed to meet the requirements of section 107(c), the Debtors have attempted to use foreign laws to justify their overly-broad, impermissible request.

> United Kingdom Data Protection Act of 2018 and the United Kingdom General Data Protection Regulation (together, the "UK GDPR"), the European General Data Protection Regulation (the "EU GDPR"), and

[4] In *Celsius Network*, the United States Trustee has filed an objection to the debtors' *Debtors' Ex Parte Motion Pursuant to Section 107 of the Bankruptcy Code Seeking Entry of an Order (I) Authorizing the Debtors to Redact Certain Personally Identifiable Information from the Creditor Matrix, Schedules and Statements, and Related Documents and (II) Granting Related Relief. See Celsius* Dkt. no. 67. That motion remains pending as of this filing.

> similar laws in other jurisdictions impose significant constraints on the disclosure of "personally identifiable information," with severe penalties for violations. Therefore, the UK GDPR, EU GDPR, and similar laws in other foreign jurisdictions may restrict the Debtors' ability to process and disclose personal information relating to the Debtors' employees and individual claimants located in such foreign jurisdictions.

Consolidated Creditors Motion, ¶ 20, at 8-9.

Despite seeking broad relief for which a strong showing is required, the Debtors have failed to examine specific provisions of the UK GDPR[5] and EU GDPR, let alone identified the "similar laws in other jurisdictions" to which they refer. Also, according to the Debtors, these foreign laws "may" restrict the process and disclosure of personal information. *See id.* In other words, it is unclear what the constraints imposed by the foreign laws are, and how they apply to the Debtors' cases. The Debtors have not attempted to show that the information they seek to redact is indeed protected by foreign law, and that such information does not come within any exceptions or exemptions of such laws.

In any event, Article 6 of the GDPR provides that: "Processing [of personal data] shall be lawful only if and to the extent that at least one of the following applies: ... (c) processing is necessary for compliance with a legal obligation to which the controller is subject." GDPR, Art. 6(c); Art. 5. The term "controller" is defined as "the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data." GDPR, Art. 4, ¶ 7. It, therefore, appears in this instance that the Debtors qualify as a "controller." Because the Debtors have the duty to make public all information contained in their Court filings in these cases, it appears they may be able to

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[5] According to the UK's Information Commissioner's Office, "The provisions of the EU GDPR have been incorporated directly into UK law as the UK GDPR." The single term "GDPR" is therefore used throughout this document. https://ico.org.uk/for-organisations/dp-at-the-end-of-the-transition-period/overview-data-protection-and-the-eu/#:~:text=The%20EU%20GDPR%20is%20an,law%20as%20the%20UK%20GDPR.

"process" personal information within the meaning of the GDPR, without running afoul of that law. Also, the GDPR does not appear to protect the personal information of individuals who are non-EU residents located outside the EU, including U.S. citizens residing in the U.S. *See, e.g.*, GDPR Art. 3(2) ("This Regulation applies to the processing of personal data subjects who are in the Union by a controller or processor not established in the Union.").

Further, Article 49 of the GDPR permits a transfer or a set of transfers of personal data to a third country or an international organization if one of the enumerated conditions is met, and one of these conditions is "the transfer is necessary for the establishment, exercise or defense of legal claims" ("Legal Claim Exception"). GDPR Art. 49(1)(e). GDPR Recital 111, which interprets GDPR Art. 49, states that, "provision should be made for the possibility for transfers in certain circumstances ... where the transfer is occasional and necessary in relation to a contract or a legal claim, regardless of whether in a judicial procedure or whether in an administrative or any out-of-court procedure, including procedures before regulatory bodies." The European Data Protection Board ("EDPB") Guidelines[6] expressly provide that the Legal Claim Exception includes "actions by the data exporter to institute procedures in a third country[,] for example commencing litigation or seeking approval of a merger." EDPB Guidelines, § 2.5. According to the EDPB, such third-country procedures "must have a basis in law, including a formal, legal defined process," and "a close link is necessary between a data transfer and a specific procedure regarding the situation in question." *Id.*

Here, it cannot be disputed that the requirements imposed by the U.S. Bankruptcy Code, Rules and Official Forms all constitute and furnish a well-recognized, "formal, legal defined

[6] A copy of the *Guidelines on Derogations of the Article 49 Under Regulation* is available for download at https://edpb.europa.eu/sites/default/files/files/file1/edpb_guidelines_2_2018_derogations_en.pdf.

process" within the meaning of EDPB Guideline, § 2.5. It follows that because full disclosure of applicable personal information is required under Bankruptcy Code § 521, Rules 1007(b) and 9009, and applicable Official Forms, among others, the Debtors' transfers of personal data to a third country under the GDPR, *i.e.* – their filing of personal information in these U.S. bankruptcy cases – is unquestionably "necessary for the establishment [and] exercise" of the Debtors' "legal claims" in these U.S. bankruptcy cases. GDPR, Art. 49(1)(e). By virtue of having voluntarily requested relief under chapter 11 of the Bankruptcy Code, the Debtors subjected themselves to the non-discretionary disclosure requirements of Bankruptcy Code § 521, Rules 1007(b) and 9009, and the applicable Official Forms, among others. Thus, the Debtors' filing of unredacted personal information here, *i.e.* – their transfers of personal data to a third country under the GDPR – fulfills the requisite "necessary" standard of the Legal Claim Exception of GDPR, Art. 49(1)(e). For these same reasons, the filing of the personal information by the Debtors is "necessary" within the meaning of Recital 111 to GDPR, Art. 49(1)(e), and such filing fulfills the "close link" requirement of EDPB Guideline, § 2.5. Fulfilling the legal obligations under the Bankruptcy Code and Bankruptcy Rules with respect to public filing does not appear to cause the Debtors to violate the GDPR.

With respect to other unidentified foreign laws, *i.e.* the "similar laws in other jurisdictions," the Debtors have squarely failed to show they are entitled to redact any information thereunder.

D. <u>The Bankruptcy Code, Not the GDPR, is Controlling Here</u>

Despite being headquartered in Ireland – an EU member – the Debtors voluntarily chose to file for bankruptcy in the United States, and to subject themselves to our bankruptcy laws. Somewhat ironically, the Debtors now seek to effectively preempt a transparency law that lies at

the cornerstone of American jurisprudence. Now that the Debtors have made their choice of international venue, though, it is not for them to pick and choose the disclosure laws of their liking.

The Debtors' inference that foreign law should prevail over the well-settled principle of American law that bankruptcy proceedings are public is unfounded. For example, in *San Antonio Express-News v. Len. Blackwell (In re Blackwell)*, 263 B.R. 505 (W.D. Tex. 2000), the district court reversed and vacated the bankruptcy court's order that sealed the identities of the debtor's creditors, finding that "the parties' expectations under the laws of various other jurisdictions is not at issue here. [The broader investment group that the debtors were a part of] maintains its offices in the United States and thus it was foreseeable that the laws of the United States could be applied to at least some disputes these parties could have contemplated at the time they made their investments." *Id.*, 263 B.R. at 510.

The scope of the Debtors' proposed redactions in these cases means, not merely that the Debtors seek to avail themselves of the exceptions of section 107, but that they seek altogether to compromise a long-standing, fundamental American judicial disclosure policy. The EU laws on which the Debtors rely, however, do not trump U.S. law, and comity should not be extended. "It is well settled that [foreign] statutes do not deprive an American court of the power to order a party subject to its jurisdiction to produce evidence even though the act of production may violate that statute." *Societe National Industrielle Aerospatiale v. U.S. Dist. Ct. for the S. Dist. of Iowa*, 482 U.S. 522, 544 n.29 (1987). The decision whether to grant comity, moreover, is "within the court's discretion" and is reviewed only for abuse of discretion. *Gucci Am., Inc. v. Weixing Li*, 768 F.3d 122, 141 (2d Cir. 2014). Therefore, in *Laydon v. Mizuho Bank, Ltd.*, a district court denied certain European banks' objections to discovery based on 1995 EU

Directive 95/46/EC (part of the UK Data Protection Act), because as a matter of comity, the United States' national interests outweigh those of the U.K. *See* 183 F. Supp. 3d. 409, 422-25 (S.D.N.Y. 2016). Also, in *Royal Park Investments SA/NV v. HSBC Bank USA, N.A.*, a district court affirmed a Magistrate's conclusion that a plaintiff improperly withheld custodial information and substantially redacted individual names and email addresses in deference to the Belgian Data Privacy Act, which restricts the transfer of personal data to countries outside the EU. *See* Case No. 14-CV-8175 (LGS), 2018 WL 745994 (S.D.N.Y. Feb. 6, 2018).

The Debtors should not be allowed to eviscerate the long-standing disclosure laws of the Bankruptcy Code, the Rules and Official Forms, and the long-standing policies underlying those authorities. While the EU may have a legitimate interest in enforcing its own disclosure laws, this Court's interest in enforcing the Bankruptcy Code in these bankruptcy cases is undoubtedly superior. Especially in a case like this in which numerous parties' rights will be affected, including those of ordinary Americans who have allegedly suffered unspeakable harm from the Debtors' products, full disclosure and transparency are particularly important.

V. CONCLUSION

WHEREFORE, for the foregoing reasons, the United States Trustee respectfully requests that the Consolidated Creditors Motion, to the extent it seeks the redaction of information, be denied.

Dated: New York, New York
September 6, 2022

Respectfully submitted,

WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE, REGION 2

By: */s/ Tara Tiantian*
Paul K. Schwartzberg
Susan A. Arbeit
Andy Velez-Rivera

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Trial Attorneys
201 Varick Street, Room 1006
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EXHIBIT C

Excerpts from proceeding in *Forever 21, Inc*.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
	.	
	.	Case No. 19-12122 (KG)
FOREVER 21, INC., *et al.*,	.	
	.	Courtroom No. 3
	.	824 North Market Street
	.	Wilmington, Delaware 19801
	.	
Debtors.	.	December 19, 2019
. . . . .	.	10:00 A.M.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors:	Aparna Yenamandra, Esquire Rebecca Chaikin, Esquire Anne Wallice, Esquire Yates French, Esquire KIRKLAND & ELLIS 601 Lexington Avenue New York, New York 10022
For U.S. Trustee:	Juliet Sarkessian, Esquire OFFICE OF UNITED STATES TRUSTEE 844 King Street Wilmington, Delaware 19801
Audio Operator:	Tori Huff
Transcription Company:	Reliable 1007 N. Orange Street Wilmington, Delaware 19801 Email: gmatthews@reliable-co.com

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

APPEARANCES (Continued):

For the Committee: Robert Schmidt, Esquire
KRAMER LEVIN
1177 Avenue of the Americas
New York, New York 10036

from one relatively small piece of information.

Thank you, Your Honor.

THE COURT: Okay. All right.

Okay. Well, I'm really -- you know, I'm prepared to rule. I've given a lot of thought to this issue because it's come up before me before and I'm very sensitive to privacy concerns and I recognize that the objection that the Office of the United States Trustee has filed, perhaps, addresses the letter of the law, but I don't think that it takes into account present realities of where we all are in this world today of identity theft and the like and also risk to persons who have suffered harm from stalking and the like.

So, let me just -- you know, I've kind of prepared a ruling. I've waited to hear the arguments to see if that ruling would change, and I must say that my ruling that I think I prepared addresses the issues and is -- and holds fast.

The debtors seek the Court's permission to redact from their consolidated list of creditors, the addresses of their employees or former employees and the citizens of member countries of the European Union.

Bankruptcy Rule 1070 requires the debtors file a listing of creditors which contains, among other information, home addresses. The debtors asked the Court to remit them to redact the aforementioned home addresses and seek such

relief, pursuant to Bankruptcy Code Section 107(c), which provides that for cause, the Court may protect individuals from identity theft or other unlawful injury that may occur from disclosure of any means of identification -- and remember that term "means of identification" because I'll come to it in a bit.

Further, debtors seek the same relief for citizens of member countries of the European Union, pursuant to the European General Data Protection Regulation, GDPR. The GDPR severely restricts dissemination of personally identifiable information and imposes severe penalties on parties making such a disclosure inappropriately.

The Office of the United States Trustee argues generally, that one, there is a right of public access to judicial records; two, addresses are not listed as a means of identification, according to 18 United States Code § 1028, which I will also come to shortly; and, three, the GDPR permits the disclosure as a legal-claim exception and, in any event, the Bankruptcy Code takes priority here; the GDPR does not trump the Bankruptcy Code. * RULING

The Court rejects and overrules the objection of the Office of the United States Trustee. We live in a new age in which the theft of personal identification is a real risk, as is injury to persons who, for personal reasons, seek to have their addresses withheld.

In addition, the Court's concern with the disclosure of addresses is not speculative. The Court, for example, recently had a situation in which a former spouse in an abuse situation was able to locate his former spouse through the creditors' matrix. The Court has serious concerns with requiring disclosure of home addresses of employees and the violation of privacy and safety concerns. The threat to the employees is real.

Next, let's look at 18 U.S. Code § 1028, which imposes penalties on parties for disclosure of identification documents. Looking at the statute's definition of what are called "identification documents," which appears in Subsection D, it is obvious to the Court that the concern being addressed is the disclosure of addresses.

I say that because the definition of "identification document" includes, a document made or issued by a State, and that includes a driver's license. And what is the critical information contained in a driver's license?

The name -- no -- that's on the matrix. The height and weight of the driver -- that's not critical. The driver's license number -- that's not critical.

What is critical is the residential address that appears on the driver's license, and that is why driver's licenses are protected, because of the driver's address. And further on in Section 1028, a means of identification, which

is the term used in Section 107, specifically includes a driver's license, which, again, is material for containing a home address.

So, the Court is fully satisfied that Bankruptcy Code Section 107 authorizes debtors to redact home addresses for its employees from documents it files in the case; similarly, both, the Bankruptcy Code and the GDPR -- GDRP, provide protection from disclosure of home addresses of creditors. If the Office of the United States Trustee is who think and the GDRP prohibits the disclosure, debtors face enormous penalties and the Court is unwilling to place the debtors in such jeopardy.

In addition, the GD- -- I don't know if it's GDPR or GBRP at this point -- I'm sorry, I have it both ways now.

(Laughter)

THE COURT: But I'll say the GDPR contains a necessity test in its guidelines. Is disclosure necessary for the legal proceedings at hand?

Clearly, disclosing home addresses is not necessary for the conduct of the bankruptcy case and the absence of the address does not prejudice anyone; indeed, there's been no objection from any creditor in this case.

Finally, if a party needs home addresses for an employee and the foreign citizens and has a valid purpose, they can reach out to the debtors to seek authority from the

Court, upon establishing their *bona fides*, and, accordingly, the debtors' motion will be granted to redact the home addresses.

And I think the form of order is appropriate. Someone has to hand me the form of order.

(Laughter)

MS. WALLICE: Good afternoon, Your Honor.

For the record, Anne Wallice, on behalf of the debtors.

THE COURT: Yes.

MS. WALLICE: I will hand you the form of order, but I did want to make one clarification.

THE COURT: Please, yes.

MS. WALLICE: The proposed form of order does not include the ability for parties in interest to receive the unredacted creditors' matrix, upon a reasonable request related to the Chapter 11 cases --

THE COURT: All right.

MS. WALLICE: -- so, we will need to make that one change.

THE COURT: Okay. That's fine.

And then if you'll upload that form of order, we will get it on the docket.

MS. WALLICE: We will do that.

THE COURT: All right thank you, Ms. Wallice.

MS. WALLICE: Thank you.

THE COURT: Anything further today?

MR. YENAMANDRA: Thank you, Your Honor.

THE COURT: Ms. Yenamandra, yes?

MR. YENAMANDRA: Just one point of clarification. I think Your Honor entered the order appointing the fee examiner this morning.

THE COURT: I did.

MR. YENAMANDRA: Thank you very much for that.

I think it may have been inadvertently entered as the interim comp order --

THE COURT: Oh.

MR. YENAMANDRA: -- which Your Honor previously entered.

THE COURT: Okay.

MR. YENAMANDRA: So, I just -- they obviously work together, but they're standalone orders, so I just wanted to clarify that Your Honor didn't have any questions about that.

THE COURT: No, I understood what I was doing and I guess when we went to docket it, perhaps, it was associated with the wrong time.

MR. YENAMANDRA: Got it.

THE COURT: That's what I think might have happened.

Is it necessary to correct that, do you think?

EXHIBIT D

Excerpts from proceeding in *Windstream Holdings, Inc*.

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 19-22312-rdd

- x

In the Matter of:

WINDSTREAM HOLDINGS, INC.,

Debtor.

- x

United States Bankruptcy Court

300 Quarropas Street, Room 248

White Plains, NY 10601

February 26, 2019

2:08 PM

B E F O R E :

HON ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

ECRO: JUSTIN

already printed out these notices. KCC maintains a website, right?

MR. PETRIE: Yes.

THE COURT: And in addition to -- you're referring to Pacer, you know? If you haven't already run out the 12,000 copies of this notice, maybe you could add a reference to their website for the case, as well as the Pacer website?

MR. PETRIE: Yes, I'm happy to connect with the KCC team on that.

THE COURT: Okay, all right.

MR. PETRIE: And incorporate that to the extent it's possible.

THE COURT: Okay. Again, don't do it if you've already printed them all. But if you haven't, you could just add it in and then they could print it. With that change, I'll grant the relief. Again, this was a fairly expedited filing, a company that has -- well, we have over 200 debtors, extensive creditor relationships. And I'm assuming this may not be the only extension I'm going to be granting in this case --

MR. PETRIE: Thank you, Your Honor.

THE COURT: -- for this type of leave.

MR. PETRIE: Okay. So next is the creditor Matrix motion at docket #4.

THE COURT: Right.

MR. PETRIE: So we're seeking authority to file a consolidated list of creditors, instead of individual mailing agencies for each debtor entity and a consolidated list of the Debtors' top 50 creditors.

In addition, this motion authorizes the Debtors to redact certain personal identification information of individual creditors. Does Your Honor have any questions on this motion?

THE COURT: I don't. Does anybody have anything to say on this motion?

MR. SCHWARTZBERG: Your Honor, Paul Schwartzberg from the U.S. Trustee's Office.

THE COURT: Yes.

MR. SCHWARTZBERG: Just a limited concern, Your Honor, regarding the redaction portion. I believe from the version of my motion that they wanted to redact the mailing addresses of the individuals. Our concern about that is twofold: one, to the extent, for instance, if they're employees and they want to contact each other and organize, that would be made more difficult.

And second, the language that they cite to redact it, 107(c), specifically talks about means of identification; they left that out part of the motion. And it refers to Section 1028(d) of Title 18, and 1028(d) of

Title 18 doesn't talk about addresses; it's lists other things, but not addresses. So for that reason, we believe the addresses of the individuals should be.

THE COURT: I thought it was just addresses of minors, but maybe I missed that.

MR. SCHWARTZBERG: I read it as individual, which would include the employees.

THE COURT: No, no, I'm sorry. I thought that personal identifying information included the addresses of minors, but there are probably very few minor creditors or creditors who are minors.

MR. SCHWARTZBERG: I mean, I'd be surprised if there were.

THE COURT: Right. I think you just limit it to what's the defining term personally identifying information. So, you know, social security numbers, that sort of thing.

MR. SCHWARTZBERG: We have no problem with that, Your Honor.

THE COURT: Yeah. Well, I mean, that's required.

MR. PETRIE: Your Honor, we just seek to redact the addresses of the individual creditors, people like employees, to prevent them from identity theft. We'll offer an unredacted creditor Matrix to the Court, to the U.S. Trustee's office, to any committee that is actually appointed in these cases. But as far as just posting that

to the KCC website, which can be searched very easily on Google, it's a protective measure on behalf of those individuals.

MR. SCHWARTZBERG: Your Honor, as I said, the means of identification are a defined term, and they don't include addresses.

THE COURT: So why -- what's the concern? Who's -- I mean, you can get everyone's address off the internet basically, except me and my brother. For some reason, he's not on the internet, but his wife is.

MR. PETRIE: It was a protective measure that we were going to do.

THE COURT: I think, unless I'm missing something, I think the Trustee is probably right.

MR. PETRIE: Okay.

THE COURT: Yeah.

MR. SCHWARTZBERG: Thank you, Your Honor.

MR. PETRIE: Thank you, Your Honor. We'll make that change.

THE COURT: Okay.

MR. PETRIE: So next on the agenda is the Debtors' taxes motion at docket #11.

THE COURT: Yes.

MR. PETRIE: Under the tax motion, we seek the authority to pay certain sales, use, telecom and franchise

taxes. Failing to pay these taxes will materially disrupt the Debtors' business operations and have them lost their ability to conduct business in certain jurisdictions.

This motion has been previewed with the U.S. Trustee and is currently unopposed. Unless there's any questions, we ask Your Honor to enter this interim order.

THE COURT: Okay. Does anyone have anything t o say on this motion? All right, I'll grant this relief. The motion is clear that you're not accelerating any payments and you're just being authorized to make the payments; you're not being directed to make them.

I'm sure your -- part of the consultation that you're going to be having with your secured creditors is over things like this. But I think you need to be given the flexibility to make the payments, and even though they are prepetition because not making them would hurt the Debtor in the exercise of Debtors' judgment more than the savings of delaying payment. So I'll grant the motion.

MR. PETRIE: Thank you, Your Honor. What's next on the agenda is what we styled as our spectrum auction comfort motion. However, after -- it was originally filed at docket #10, and then as amended docket 41. But we're actually not going ask Your Honor to enter that motion today. The FCC attorney, Miss Levine, and I have been in contact and they'd just like a little bit more time with it.

We're happy to work with them so it's mutually acceptable to both parties.

And we may be -- we reserve all rights with regard to this motion, and we'd like to note that Section 525 is automatic upon the filing of a bankruptcy. But we're happy to work with them, give them more time with this to make them feel more comfortable with the way that it's styled. And we may ask Your Honor for another hearing on that motion between now and March 14th, but we're not doing that at this time.

THE COURT: Okay.

MS. LEVINE: Good afternoon, Your Honor. Danielle Levine from the United States Attorney's Office on behalf of the United States and the FCC. I spoke with counsel for Debtor earlier before this hearing. And we would ask them to withdraw the motion from the docket because there is confidential information that was filed even in the subsequent filing.

And as I discussed with counsel, we also would like time -- we don't believe that it's urgent to rule on this motion today, given that the next auction is not until March 14th.

THE COURT: That's not very far away.

MS. LEVINE: But even if we get a week, we can --

THE COURT: Okay, that's fine.

MS. LEVINE: We need time to review the substance because we don't agree with the substance necessarily.

THE COURT: I mean, it really is a comfort order. It just, in essence, restating Section 525; 525 speaks for itself. So I have no problem adjourning it because 525 speaks for itself. And the Debtor also has the ability to engage in any transaction in the ordinary course without court approval, so I'm fine with adjourning it.

I actually marked up the key paragraph myself, so I can see why people would want to wordsmith it. Paragraph 3, which I could give you for what it's worth, not that --

MS. LEVINE: And Paragraph 2 also has -- we have some issues with potentially Paragraph 2. It's a little unclear as well from a substantive point of view.

THE COURT: Okay.

MS. LEVINE: We weren't sure if that was directed at the FCC.

THE COURT: No, this is directed at the Debtor.

MS. LEVINE: Okay.

THE COURT: That's how I viewed it at least. It's not saying that the -- this is not telling the FCC, you know, under any circumstances to let the Debtor bid. I didn't even think of that. So I understand you're looking at it from a different position. It's all the more reason to adjourn it.

MS. LEVINE: Okay.

THE COURT: To make that clear.

MS. LEVINE: And with the substance of the motion, we may have some issues. And it's unclear whether 525, it applies to participating in future options or not. That's an issue, you know, we need to evaluate. And so, we'd ask for more time to address these issues.

THE COURT: Okay. Well, I won't give you my language then. I'll just reserve it here.

MR. PETRIE: Okay, Your Honor.

THE COURT: You know what? I will give you the language. I didn't want -- I thought this made it clear that it was just 525 and nothing more or less.

MS. LEVINE: Okay. Perhaps you can look at your language and we can evaluate that.

THE COURT: Yeah. And I understand your point on Paragraph 2.

MS. LEVINE: Okay. Thank you, Your Honor.

THE COURT: Okay.

MR. PETRIE: So thank you. With that, I'm going to turn the podium over to my colleague, Mr. Luze.

MR. HESSLER: Can I step in actually?

THE COURT: Yes.

MR. HESSLER: To the -- what was being discussed before about posting employee information.

THE COURT: Yes.

MR. HESSLER: We've actually had certain instances that have come up in recent cases where someone who is trying to, for personal protective reasons, like, for instance, an estranged spouse, and trying to keep --

THE COURT: A low profile?

MR. HESSLER: Yes. Well, no, just trying to keep their information private. Like, for instance, if there's a restraining order.

THE COURT: Right.

MR. HESSLER: That's probably a really, really, really narrow class of folks. But with nearly 12,000 employees, even if it's, you know, .01 percent.

THE COURT: You don't know who they are.

MR. HESSLER: Exactly. So what I just raised with Mr. Schwartzberg and, candidly, just raised it right now, so, you know, he needs time to talk to his client. Perhaps, we can come up with maybe some sort of opt-out mechanism that if there are folks who want to be in that category of not having their information posted.

THE COURT: Well, once it's out, it's out though.

MR. HESSLER: That's -- we may --

THE COURT: Can we -- you know, the other thing that I do with a series of motions is make it clear that it's subject to people requesting access. So if someone has

a legitimate need to contact people, I think they can ask for it.

MR. SCHWARTZBERG: Your Honor, I'm happy to work with Mr. Hessler and his opt-out, to the extent we reach -- they reach that point.

THE COURT: But the problem with opting out is they're supposed to send out the notice. Once it's out there, it's out there. So I guess my inclination is to change my mind, go back to what the Debtors had requested, but put in the order that nothing in this order precludes any party-in-interest from requesting access to the redacted information on appropriate notice.

And then if someone legitimately wants to get together as an employee group or something like that, they can say, we want to -- you know, we want to contact people.

MR. SCHWARTZBERG: My only concern is adding an extra hurdle for employees, and I don't know what they have to do. Do they have file a motion; do they have to hire attorneys to do that?

THE COURT: I think if they want to do that, they'll have an attorney, so I think that's okay. They can contact your office and you can do it for them.

MR. SCHWARTZBERG: Organize them, Your Honor?

THE COURT: No, not organizing, just asking to have the seal lifted for this group.

MR. SCHWARTZBERG: And then we'd come to the Court, Your Honor?

THE COURT: Yeah, yeah.

MR. SCHWARTZBERG: I mean, I --

THE COURT: I mean, look, at the risks of disclosing someone's address who really, you know, is off the grid for a really good reason, you know, that could be very serious, so I don't want to have that happen.

MR. SCHWARTZBERG: Well, could the Debtor -- they would, I assume, have all -- or email address of the people, send out an email asking those who'd like to either opt-in or opt-out of the --

THE COURT: But they got to get the notices out. I'd rather do it the other way.

MR. SCHWARTZBERG: Okay, Your Honor.

THE COURT: Unless you can come up with a solution, you know, before you submit the order to me, I think that that's how we should handle it.

MR. HESSLER: Thank you, Your Honor. Thank you, Mr. Schwartzberg. We raise this on (indiscernible). This really is motivated by concern for employee protection, not an alternative --

MR. SCHWARTZBERG: And just perhaps language in the -- to employees to the extent they wish to participate in some way.

THE COURT: I'm assuming the Debtor has some form of communication program. You can, one of the things you can communicate to employees is we're not trying to keep you from speaking to each other.

MR. SCHWARTZBERG: And that's my concern, Your Honor.

THE COURT: That's fine, okay.

MR. HESSLER: Thank you, Your Honor. Thank you, Mr. Schwartzberg.

THE COURT: Speaking of employees, I think we're turning to them now as far as the payment motion, which I guess would largely obviate their need to speak to each other, at least in the near term.

MR. LUZE: Yes, Your Honor. Jack Luze with Kirkland & Ellis on behalf of the Debtors. I will take Your Honor through the balance of the agenda, if it would please the Court, starting at agenda #14.

THE COURT: Okay. Well, let's do the wages motion.

MR. LUZE: Yeah, absolutely.

THE COURT: Since we're talking about employees. And then we can come back to --

MR. LUZE: Certainly, Your Honor. That is agenda #16. As Your Honor read in the motion, we have 13,000 employees, a standard set of wages and benefits, a range of

EXHIBIT E

Excerpts from proceeding in *GTT Commc'ns., Inc*.

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

- -x

In the Matter of:

GTT COMMUNICATIONS, INC., ET AL., Main Case No.

Debtors. 21-11880-mew

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

November 3, 2021

12:01 PM

B E F O R E:

HON. MICHAEL E. WILES

U.S. BANKRUPTCY JUDGE

this one. I was going to raise those two issues with you. I assume that the language will be acceptable. We'll let you know if we have any problems with it. But as long as those issues are addressed, I'm fine with it.

MR. SZYDLO: Thank you. And I believe that takes us to the last item on the agenda, which is the creditor matrix motion, which was filed at docket number 15. Pursuant to this motion, the debtors are seeking authorization to prepare and maintain a consolidated creditor list, in lieu of preparing separate mailing matrices for each debtor, and to file a consolidated list of their top thirty unsecured creditors in lieu of filing separate top-twenty lists for each debtor entity.

Given the affiliated nature of the debtors and the significant overlap in terms of the creditors at each debtor, the debtors believe that filing a consolidated list would be appropriate and would provide the U.S. Trustee with a more efficient means of review to the extent it is deemed necessary to appoint a creditors' committee.

In addition, the motion seeks to redact certain personally identifiable information for individuals included in the creditor matrix or in any filings in these Chapter 11 cases. Specifically, with respect to all individuals, the motion seeks to redact the home addresses and email addresses of these individuals in order to protect them from potential

harassment, which has been experienced in at least one recent case. Although we would be redacting that information, the names of these creditors would still be included in the interest of transparency. In addition, the debtors seek to redact the names of any individuals who are protected by the European General Data Protection Regulation.

Prior to the hearing, the debtors previewed this motion with the United States Trustee and incorporated certain limiting changes with respect to these redactions. And again, those can be found at docket number 38.

Finally, the debtors are seeking a waiver of the requirement to file a list of their equity security holders. GTT Communication, Inc., the debtors' parent company, is a publicly registered company with over fifty million shares of common stock outstanding. The debtors do not maintain a list of all the beneficial holders of their common stock and believe that it would be impractical to provide a list of all of these holders.

However, the debtors do maintain a list of their registered holders, and consistent with prior orders entered by this Court, the debtors propose to file a list of such registered holders on the docket within fourteen days of the petition date.

So unless there are any further questions, we would respectfully request that the Court grant the motion.

THE COURT: Okay. Are there any objections to the relief sought?

MR. MORRISSEY: Your Honor, Richard Morrissey for the U.S. Trustee.

We had several discussions on this motion with debtors' counsel. And our concern is balancing the privacy issue with the transparency issue that is always on the U.S. Trustee's front burner. But we do believe that a reasonable compromise is okay. But the information is not what Congress has defined as personally identifiable information, such as Social Security numbers, for example. This is home addresses. We are concerned about the expansion of this concept.

And the other concern we have, Your Honor, is ensuring that the various parties, whether they be former employees, or equity holders, or other individuals, have access to or ability to communicate with one another. We want to make sure that, by redacting this information, that there's no way for one interested party to reach out to another.

My understanding, Your Honor, is that Prime Clerk has all of the information, as counsel has just said, and also that, if someone requests information from the parties, for example, if someone reaches out to someone at the Akin law firm, that the Akin law firm can agree to provide that information upon request.

I guess my question, and perhaps counsel can answer

it, is what happens if Aiken says no? In other words, is there an avenue of appeal, either to perhaps the U.S. Trustee, or another party, or even the Court? I just want to make sure that the access to information issue does not become a problem during the pendency of the case.

MR. SZYDLO: Your Honor, we are happy to discuss further with the U.S. Trustee, but we are certainly concerned with protecting individuals against harassment, but yet we are -- but a compromise is certainly possible.

THE COURT: All right. Does anybody else wish to be heard with respect to this motion?

All right. Mr. Morrissey, I can't remember which case it was, but I know I made a ruling on this in one or two cases, probably a year or two ago. I do not really think it's required to include what the debtors have described as personally identifiable information, including addresses. That information has been misused in other cases, and I'll be darned if I'm going to let it be misused in one of mine. So I'll grant this motion.

MR. MORRISSEY: Thank you, Your Honor.

MR. SZYDLO: Thank you, Your Honor. And with that, I'd like to turn the podium back over to my colleague, Ms. Moss.

MS. MOSS: Thank you. For the record, Naomi Moss, Akin Gump, proposed counsel for the debtors.

This brings us to the conclusion of what we are seeking to accomplish today. So unless Your Honor has anything else, we'd like to thank Your Honor and your chambers, and we will submit revised proposed orders in accordance with the comments that Your Honor provided today.

THE COURT: Okay. Very good. Are there any of these orders that you absolutely need to be entered today as opposed to tomorrow, because I will be unavailable later today.

MS. MOSS: I think the only one is cash management, and we'll get that to your chambers as soon as possible.

THE COURT: Very good.

MS. MOSS: Thank you, Your Honor.

THE COURT: All right. Well, if there's nothing else, then we are adjourned.

MS. MOSS: Thank you.

THE COURT: You're welcome.

(Whereupon these proceedings were concluded at 1:40 PM)

EXHIBIT F

Excerpts from proceeding in *In re Art Van Furniture, LLC*

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	Chapter 11
ART VAN FURNITURE, LLC, *et al.*,	Case No. 20-10553 (CSS)
	Courtroom No. 6
	824 North Market Street
	Wilmington, Delaware 19801
Debtors.	March 10, 2020
	10:00 A.M.

TRANSCRIPT OF FIRST DAY HEARING
BEFORE THE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors: Gregory G. Werkheiser, Esquire
Michael J. Barrie, Esquire
Jennifer Hoover, Esquire
Kevin Capuzzi, Esquire
John C. Gentile, Esquire
BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP
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Email: gmatthews@reliable-co.com

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

(No verbal response)

THE COURT: Court will grant the motion.

MR. CAPUZZI: The other operational motion is the utilities motion which my colleague, Kate Harmon, will handle, but so that we don't wear out the carpet should we do creditor matrix now?

THE COURT: Sure.

MR. CAPUZZI: The creditor matrix motion, I believe, is Number 4 in the court's binder. Some of the relief sought in here is pretty generic and I don't believe there is an objection to it by the Office of the United States Trustee. That generally relates to filing a consolidated creditor's list and consolidated top 30 list. I believe that is not at issue here.

The aspect of the motion that's garnered some attention, as you can imagine, is the request to redact the home addresses of the employees and customer creditors of the debtors. There is about 4,000 employees and about 7,000 customer creditors; people who have deposits, or potential returns, or gift cards, things of that nature.

While I recognize that the relief sought is not routine it is becoming increasingly important and more commonly granted as issues of identity theft and safety of non-debtor individual's rise. The debtors respectfully assert that those issues that concern those individuals who

are not part of this bankruptcy by choice, but because they merely work for the debtor or have dealings with the debtor outweigh any transparency or public policy concerns that the Office of the United States Trustee may raise.

We recognize that those concerns are important, but redacting the home addresses, not the names of those creditors, will not impinge on the bankruptcy process. Those addresses will be made available to the court, to the Office of the United States Trustee, to any creditors committee. So, I see not prejudice in redacting them from the publicly filed versions of the creditor matrix.

Similar relief has been granted recently, as recent as last year in Loot Crate, THG Holdings, and the Achaogen cases, as well as older cases such a Model Reorg and Dex Media which are set forth in our motion. The debtors, therefore, assert that cause exists under 107(c)(1) to grant the relief requested.

THE COURT: All right.

MR. CAPUZZI: Thank you.

THE COURT: Any objection?

MS. RICHENDERFER: Your Honor, Linda Richenderfer for the Office of the United States Trustee.

Your Honor, I rise to object because I note for the record that there has been no attempt to make an evidentiary showing to meet the burden. We just have generic

comments regarding identity theft. There is nothing in the first day affidavit regarding this. So, I would just submit to Your Honor that the debtors have not met their burden of proof.

THE COURT: Okay. Well I disagree on that in that I really don't view it as a burden of proof as much as a common sense issue. I'm not sure what proof you would say other than to get a witness up and say just want counsel said.

In my experience this has become a serious issue and I have changed my thinking on this as I'm sure people who track these things know, based on experience in a previous case. In my mind, at this point and given the risks associated with having any kind of private information out on the internet, this has really become routine. I think obvious relief.

I don't ignore the plain meaning of the code or the rules lightly, but sometimes the code and the rules lag behind reality, and don't take into account the issues that face real life people every day. I can, from personal experience, tell you that identity theft happens, it happens all the time. It happened to my wife and I a few years ago. And I have had experience in other cases with people who have been subject to danger by estranged people in their lives who have been able to find out where they are. I take that

extremely seriously.

So, I will overrule the objection and grant the motion.

MR. CAPUZZI: Thank you, Your Honor. We will upload that order.

To round up the operation motions my colleague, Kate Harmon, will handle the utilities motion, then Mr. Werkheiser will be back for customer programs and cash collateral.

Thank you.

THE COURT: Now I know it's cold in here, but is that a scarf?

MS. HARMON: It is.

THE COURT: Okay.

(Laughter)

THE COURT: It's lovely, it's just its not that cold.

MS. HARMON: Always cold. Good morning, Your Honor. Kate Harmon, Benesch Friedlander Coplan & Aronoff, proposed counsel to the debtors.

As Mr. Capuzzi mentioned, I will be presenting the utilities motion which is Number 10 on the agenda and should be Number 10 in your binder.

As set forth more fully in our motion we are seeking interim relief today with respect to the utility

EXHIBIT G

Excerpts from proceeding in *In re Anna Holdings*

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	Chapter 11
ANNA HOLDINGS, INC., *et al.*,	Case No. 19-12551 (CSS)
	Courtroom No. 6
	824 Market Street
	Wilmington, Delaware 19801
Debtors.	December 3, 2019
	1:00 P.M.

TRANSCRIPT OF FIRST DAY HEARING
BEFORE THE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors:	Domenic E. Pacitti, Esquire Michael W. Yurkewicz, Esquire Sally E. Veghte, Esquire KLEHR HARRISON HARVEY BRANZBURG LLP 919 N. Market Street Suite 1000 Wilmington, Delaware 19801
Audio Operator:	Electronically Recorded by Leslie Murin, ECRO
Transcription Company:	Reliable 1007 N. Orange Street Wilmington, Delaware 19801 (302)654-8080 Email: gmatthews@reliable-co.com

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

MR. SUSSBERG: Yes.

MS. BORDI: Well, would --

MR. SUSSBERG: It's approving.

THE COURT: Okay. I've signed the order.

MS. DREISBACH: Thank you, Your Honor.

Turning to Item Number 13 on the agenda, it's the debtors' equity trading motion, filed at Docket Number 20. This motion seeks authority to establish notification requirements regarding Anna Holding common stock and establishing restrictions on certain transfers of the stock.

Your Honor, unless you have any questions, we respectfully request the Court to enter the order.

THE COURT: Does anybody wish to be heard?

(No verbal response)

THE COURT: Okay. Let's see.

(Pause)

THE COURT: Make sure you look at these orders when they're posted to make sure I didn't mess up any of the dates. I think I'm getting them right. If there are, just let us -- if there are mess-ups just let us know and we'll do a revised order.

MS. DREISBACH: Yes, Your Honor.

THE COURT: I've signed the order.

MS. DREISBACH: Thank you, Your Honor.

That brings us to the last item on today's agenda,

which is the debtors' motion to file a consolidated creditor matrix, and this is filed at Docket Number 21. By this motion, the debtors seek authority to file a consolidated creditor matrix and a top-30 list and redact certain personally identifiable information.

We have had conversations with Mr. Schepacarter regarding the redaction points and we understand the Office of the United States Trustee has an institutional objection to the redaction of information. We'd like to take this time to briefly set forth why we believe cause exists to do so.

THE COURT: Okay.

MS. DREISBACH: Courts in this jurisdiction have authorized the debtors to redact this personally identifiable information for individual creditors because they recognize that such information would render these individuals more susceptible to identity theft and could jeopardize the safety of these individuals who, unbeknownst to the debtors, may be survivors of domestic violence or stalking, by publicize their home addresses without any advanced notice.

In fact, we know in our firm's experience that this risk is not merely speculative. In Charming Charlie, closing argument case Your Honor presided over, we posted the address of a person who is hiding from an abuser. The abusive former partner exploited the publicly accessible creditor information to track this employee to her new home

address.

While we acknowledge that the policy interests and the public's access to court records is of special importance, we respectfully submit that the public's interests in the home addresses of employees is far outweighed by the dangers we might inflict on these people who are identified on a broad creditor matrix without any notice.

The debtors propose an unredacted version of this information will be made available to the Court, to the U.S. Trustee, and to other parties in interest upon reasonable request, but it will not be made easily available to the word through a simple Google search. The relief requested herein is especially appropriate in light of the pre-package nature of these Chapter 11 cases where unsecured creditors are being paid in full and their interests are riding through unimpaired.

As such, the debtors respectfully submit that our proposed solution appropriately balances the potential harm that would come with publishing this information with the public's access to the court records.

Unless Your Honor has any questions, I will turn the podium over to Mr. Schepacarter for the U.S. Trustee's view.

THE COURT: Thank you.

Mr. Schepacarter?

MR. SCHEPACARTER: Thank you, Your Honor.

Thank you, Ms. Dreisbach.

For the record, Richard Schepacarter for the United States Trustee. I'm not sure it's like an institutional objection --

(Laughter)

MR. SCHEPACARTER: -- but I think it's more of a statutory read in the objection based on the Code, Section 107, and what flows from that, with respect to this type of information having been redacted from the schedules or any other paper that's filed in this case.

I think we started the bedrock principle of transparency and disclosure. I know that when I first started practicing bankruptcy law back in 1980-something, that they always used to say, Oh, it's the fish bowl of bankruptcy, so once you file a bankruptcy petition, whether it be Chapter 11, 7, 13, 12, I guess even 9, that for the public, all the information is available to the public.

THE COURT: But the problem is that it's a fish bowl for the debtor. It's not a fish bowl for the debtors' employees and they're being put in a situation where they're not debtors, but their information --

MR. SCHEPACARTER: Right.

THE COURT: -- and the world is very different

from when you and I started practice with the problems of identity theft.

MR. SCHEPACARTER: Understood. I understand that argument very well.

THE COURT: If you wanted to look at the schedules in 1994 when I started practicing bankruptcy, you had to go to the Clerk's Office to look at the, you know -- now, you're two clicks away -- one click away.

MR. SCHEPACARTER: Understood.

THE COURT: But keep arguing. I'm just --

(Laughter)

THE COURT: -- we're just having a conversation.

(Laughter)

MR. SCHEPACARTER: I understand. And, basically, the Code has, I think, provided a little bit for that. In Section 107 it talks about that the Court can protect somebody from the undue risk of identity theft.

Here, we have speculation, we have the anticipation that there's the possibility that something could be -- have their name uncovered; although, it may be somewhere else in the web, which, again, didn't exist in 1980-something -- maybe it did and we just didn't know about it.

But having said that, the Code provides for that protection and the information in it boils down to where you

get to the identity theft in Title 18, and absent from that is those protected -- that protected information, some of which is like biomedical and stuff like that, things of that nature of. Absent from that is the home addresses of a person.

Now, I understand that they want to protect, basically, the employees in the case and I think that, perhaps, what has happened, unless you were in the first Charming Charlie, but I think in one of the Judge Walrath cases that she ruled the other way, which is basically to say that the information had to be published, but then had it redacted for anyone who was a minor, basically, somebody who's under the age of 18.

THE COURT: All right.

MR. SCHEPACARTER: Thank you, Your Honor.

THE COURT: I appreciate the concern, in particular, the statutory concern, involved here with fealty to the Code, of course, is important. But I really think -- and my mind is completely changed on this, so please ignore all previous rulings on this --

(Laughter)

THE COURT: -- frankly, I don't think I was aware as a citizen, as much about the dangers associated with this kind of information becoming public. Now, it's a balancing act, of course, and you have to disclose what you have to

disclose; however, the reality is that the employees are really creditors in name only. I mean, they're being paid -- virtually all of them are being paid in the interim order up to the statutory cap. Those that are above the statutory cap will have to -- for those about the statutory cap, they have to wait until the final order; of course, there might be other employee-related obligations of the debtor that would technically make them a creditor, but appropriately, we very quickly turn employees not into creditors, but into persons who are incentivized to promote the reorganization of the business. Every business enterprise relies on its employees for value, creation, and protection.

So -- and, again, here with a case where it's a pre-packaged case that may or may not, but appears it's headed to confirmation in two weeks, I think we can always revisit this issue if it turns out that there's a reason that these addresses need to be put in the public sphere -- if the case doesn't go well, if there's some issue with regard to employee-related claims -- we can revisit it.

But I think it's just plain common sense in 2019 -- soon-to-be 2020 -- to put as little information out as possible about people's personal lives to present scams.

I had a member of my family who had an identity-theft problem. I have an elderly member of my family who every time she answers the phone, I'm afraid she's going to

sell the house to somebody on the other end.

(Laughter)

THE COURT: So, you know, it's a real-life issue, and, of course, the issue of domestic violence is extremely important. So, I'm going to perhaps skirt the line of fealty to the Bankruptcy Code, being that I think it just makes common sense. I'm going to approve the order and overrule the objection.

MS. DREISBACH: Great. Thank you, Your Honor.

That concludes our agenda for today.

THE COURT: I'm sorry it's so warm in here. I -- we've been having trouble -- usually it's like an icebox, but we've been having trouble.

MR. SUSSBERG: Judge, thank you and your chambers, for accommodating us today on short notice. We very much appreciate it.

And we expect to be here on the 16th with as much consensus as we have today --

THE COURT: Okay.

MR. SUSSBERG: -- and just extend this two-week period of time for the company to stay in bankruptcy. Thank you.

THE COURT: Thank you very much.

We're adjourned.

COUNSEL: Thank you, Your Honor.

EXHIBIT H

Excerpts from proceeding in *In re Clover Techs. Grp., LLC*

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	Chapter 11
CLOVER TECHNOLOGIES GROUP, LLC, *et al.*,	Case No. 19-12680 (KBO)
Debtors.	Courtroom No. 3 824 North Market Street Wilmington, Delaware 19801 January 22, 2020 11:00 A.M.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE KAREN B. OWENS
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors:	Joshua Sussberg, Esquire Matthew Fagan, Esquire Francis Petrie, Esquire Dan Latona, Esquire KIRKLAND & ELLIS LLP 601 Lexington Avenue New York, New York 10022 - and - Dominic Pacitti, Esquire Michael Yurkewicz, Esquire KLEHR HARRISON HARVEY BRANZBURG 1835 Market Street, Suite 1400 Philadelphia, Pennsylvania 19103
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parties in interest. The form of proposed order has been circulated and filed publicly, and has garnered no objections. All of the changes in the redline reflect the fact that this is now on a final basis.

Does Your Honor have any questions?

THE COURT: I do not. Does anyone else wish to be heard in connection with the final cash collateral order?

(No verbal response)

THE COURT: All right. Hearing none I am prepared to -- I have reviewed the revised proposed form of order and based on the record that was made in connection with the first day hearing I am prepared to enter the revised proposed form of order. If it's been uploaded I will do so after the hearing today.

MR. PETRIE: Thank you, Your Honor.

So, Your Honor, with that we have reached the only contested matter on today's agenda and in these cases thus far which is the creditor matrix motion which we seek to have entered on a final basis.

That issue is only one component of the relief requested which is the redaction of the personal identifiable information on the publicly filed matrix. Your Honor, I will be quick with this. We filed a reply to the U.S. Trustees objection and we believe we have laid out our position in our papers in detail.

To summarize the debtor's position, through this relief the debtors are seeking to protect the physical and financial safety of their employees and other individuals by keeping their personal home addresses redacted exclusively on the public version of the creditor matrix under Section 107(c) and other privacy laws.

Consistent with the discussion at the first day hearing, through our reply, we sought to supplement the record with a description of the consequences of filing an un-redacted matric. In addition, we filed the declaration of Marc Liebman in support of the relief requested which is attached to our reply as Exhibit A, Docket Number 113. Mr. Liebman is present in the courtroom and at this point if it would please the court we'd like to ask Your Honor to admit the declaration of Mr. Liebman into evidence.

THE COURT: Does anyone object to the admission of the declaration of Mr. Liebman?

MS. LEAMY: No objection, Your Honor.

THE COURT: All right. It's entered into evidence subject to parties who wish to cross-examine.

MR. PETRIE: Thank you, Your Honor.

So, Your Honor, as demonstrated in our papers, the side effects of publishing home addresses on the internet are dangerous and real. We provided examples of the ways in which people are put at risk.

First, with a simple Google search a stalker or domestic abuser can locate their victim who likely has no idea that their information is now public. Identity thieves can official data mine information on thousands of people at once and there are commercial side effects for the company as well. First, there is the potential for poaching of the company's skilled employees as well as an enormous fine from the European Union if we compromise their citizens' personal information.

We have engaged in discussions with the U.S. Trustee and their stance surrounds transparency in the bankruptcy process. We'd like to emphasize that there is no dispute that transparency is essential to Chapter 11, but our requested relief does not compromise that goal.

An un-redacted version of the matrix was provide to the U.S. Trustee and to the court, and if any party in interest had made a request for an un-redacted matrix we would have sent one provided that it was related to these Chapter 11 cases and not for an improper purpose. Our proposed relief is very narrow and public access is preserved by the methods that we have utilized.

Our proposed order does this through a method that does not have dangerous side effects as well. These prepackaged Chapter 11 cases, which I note Your Honor has already confirmed, signify that every individual on the

matrix, whether they are employees or other creditors, are being paid in full or their interest will be riding through unimpaired. There is simply no reason now to put these people at risk.

Courts in this district regularly grant this relief and have recognized the danger of having personal information public and easily accessible in the year 2020. Your Honor has authorized redaction on a matrix in the past. The relief requested here is no broader then what this court granted in Celadon last month.

So, that summarizes the debtor's position. Does Your Honor have any questions?

THE COURT: Let me ask you this question, why aren't you seeking to redact all of the individual's home addresses?

MR. PETRIE: So, actually, I was going to say that as well. We would submit a revised proposed order that -- I understand that the order that was submitted to the court called out employees and European Union citizens I was going to suggest that we change the defined term to encompass all individuals including those who aren't active employees or former employees.

THE COURT: All right. So, that's the scope of the relief that you seek?

MR. PETRIE: Correct.

THE COURT: Okay.

MR. PETRIE: I --

THE COURT: Sorry to cut you off. Please continue.

MR. PETRIE: -- was going to ask if you had any other questions.

THE COURT: I do not.

MR. PETRIE: Okay. So, with that I will turn the podium over to Ms. Leamy.

THE COURT: Okay. Thank you.

MS. LEAMY: Good morning, Your Honor.

THE COURT: Ms. Leamy, how are you?

MS. LEAMY: Thank you. Jane Leamy for the U.S. Trustee.

Fortunately, we're the fly in the ointment here causing this to be a non-consensual hearing. In any event, Your Honor, we start with the presumption of public access to court records. The bankruptcy rules require a matrix be filed with the court at the start of the case containing the name and complete address of each creditor.

I acknowledge this is a prepack case. Creditors are being paid in full, but until they are paid in full I suppose they're still a creditor in the case. So, that is why we are here today.

The other issue Your Honor had just asked a

question about that, and I did want to address it. The motion that was filed in this case on the first day and the interim order that was entered only addressed employees. When I saw the debtor's reply it appeared that they were trying to expand the scope to all individual creditors and the declaration that was filed at Docket 113 with the reply, the declaration of Marc Liebman at Alvarez & Marsal, at Paragraph 5 indicates that the creditor matrix lists over 9,000 creditors including approximately 240 employees, so, it's a pretty limited scope of employees, approximately 7,000 individual creditors and interest holders, and approximately 10 individuals whose addresses are EU citizens.

So, it appears that the vast majority -- and if you look at the matrix that has been filed the addresses are redacted. So, it's not clear to me why the debtors seek to expand so greatly the scope of redactions. I am not sure that they have met their burden with respect to that.

Your Honor, 107 does allow sealing and specifically 107(c) provides that the court may protect an individual with respect to the following types of information to the extent the court finds disclosure of such information would create an undue risk of identity theft or other unlawful injury. And included in that is any means of identification. Section 102(a)(d)(7) of Title 18 defines what means of identification is. It doesn't exclude

addresses, but it specifically delineates names, social security number, date of birth, et cetera.

So, our position is that mailing addresses because they are not enumerated as a means of identification means that they can't be disclosed; although, we do acknowledge that Your Honor in prior cases and other judges have allowed redaction and have said that because its including it it's not exclusive.

A lot of this information is probably already in the public domain. Internet searches can find it especially with respect to the customers or an individual creditor as opposed to the employees. I think it's a little more attenuated. Parties or the debtors have made the argument that, you know, if there is a particular individual that, you know, may be at risk of identity theft or stalking they want to protect their address. And somebody may make the connection that they're employed by Clover, I'm going to look at the docket, I'm going to get the matrix. For a customer I think it's more attenuated. Somebody is not going to necessary know this person was a customer of Clover and I'm going to go look up their address on the docket. So, I think there is less reason for redaction for those individuals.

Again, Your Honor, we would ask you to focus on the undue risk. I don't think the debtors have identified here anything different from other cases where this

information has been disclosed. Certainly, we are not opposed to redaction for any one that they specifically identify where there is a risk. In other cases we have consented to, obviously, patient information being redacted due to HIPPA concerns, minors have also been permitted to be disclosed.

Your Honor, if I could just briefly address the European issue, European Union citizenship issue. I think it's very limited here. The declaration identifies probably only in the matrix 10 individuals. So, I don't want to spend a lot of time on it. I'm not an expert on the GDPR that is now the General Data Protection Regulation. I just want to highlight a few things.

The GDPR protects the disclosure of personal data which is any information relating to an identified or identifiable natural person. We acknowledge that the debtors are rightfully concerned that there is the risk of potential fines; however, we think that there are couple reasons why, you know, they shouldn't be concerned with that.

First, there is a legal claim exception where the transfer is necessary for establishment, exercise or defense of legal claims. Here, you know, the debtors have filed a bankruptcy case and they're required by the rules to file a matrix with the creditors name and address. So, we think that that protects them here.

Second, the bankruptcy code is the controlling law here not the GDPR. So, the court may not be bound by the GDPR and, you know, this court's interest in enforcing the bankruptcy code is superior to the GDPR.

So, Your Honor, we would request that the court decline the request to redact.

THE COURT: Okay.

MS. LEAMY: Thank you.

THE COURT: Thank you, Ms. Leamy.

MR. PETRIE: Your Honor, may I reply to some of those arguments?

THE COURT: Absolutely.

MR. PETRIE: Okay. Just in response to Ms. Leamy's arguments, first, the point that the means of identification doesn't contain mailing addresses it does contain -- the defined term, first, is not meant to be completely inclusive. Secondly, it does include a driver's license.

As noted in a prior case in front of Judge Gross, the real pertinent part of a driver's license that we want to keep from the public is not their height, weight or anything like that; it is their home address.

THE COURT: Speak for yourself. I don't want someone to know my weight.

(Laughter)

MR. PETRIE: Yes. That also not an inclusive list. We would like to keep that out the public sphere.

(Laughter)

MR. PETRIE: So, we don't believe that that argument really carries the day here.

Further, I do think that the argument that the creditors and individuals that aren't employees actually cuts the other way. They are attenuated relationship to the company actually makes it less likely that they're aware that their information is being publicly disclosed and we have gotten a lot of calls from stakeholders who are wondering about their relationship to these cases.

Further, these dockets -- while the creditor matrix on the claims agent website is search engine optimized, so Googling these people could just have it come up really regardless of whether somebody was specifically looking for the creditor matrix on the docket.

On the GDPR points, as noted by Ms. Leamy, none of us in the courtroom are experts on this. The danger for these fines, which are enormous up to 20 million euro, are not something that we think the estate should bear in some sort of risky experiment taking exercise.

Further, I know that there is a necessary test for this information to be released. I don't see how that test would be met here especially since we have completely

administered the entirety of this case and given notice. To say that this information needed to be in the public sphere in order to reach confirmation is an argument that I don't think would carry the day. Judge Gross actually noted in Forever 21 that he does not believe it to be necessary as well. Even the risk of those fines is not something that we hope that our stakeholders or these estates should bear.

So, for those reasons we ask you to enter the proposed form of order.

THE COURT: Okay. Well, I am prepared to enter the proposed form of order with a few minor modifications and I will overrule the U.S. Trustees objection as I have done in, at least, two cases thus far; West Lake, which was a Chapter 7 case, and you mentioned Celadon.

As I have held before I do find that names and/or addresses are a means of identification. The combination of a name and address to me is a means of identification under Section 107(c) -- excuse me, 28 U.S.C. 1028(d)(7). I do find there is an undue risk under 107(c) to redact the creditor's matrix.

To me it is common sense. I don't need evidence that there is, at best, a risk of identity theft and worse a risk of personal injury from listing someone's name and address on the internet by way of the court's electronic case filing system and, of course, the claims agent's website.

The idea that a person needs to connect Clover or the name of a debtor with an individual's name and then the address I think misses the mark on how internet searches work. If somebody wants information about someone they just type the person's name on the internet. If data miners want to collect address information they just simply pull the creditor's matrix. This occurs on a fairly frequent basis based on my understanding and experience.

The court can completely avoid contributing to the risk by redacting the addresses. And while there is, of course, an important right of access we routinely redact sensitive and confidential information for corporate entities and redact individual's home addresses. I find it quite puzzling that the Office of the United States Trustee -- and, Ms. Leamy, this is a comment not directed to yourself, but to the Office of the United States Trustee that they have chosen to challenge these requests targeted at protecting individuals.

As the Supreme Court has acknowledged, courts have the power over their records and files, and maybe deny access to those records and files to prevent them from being used for an improper purpose. To that end I am prepared to do so.

Individuals, of course, do not object and I don't believe they would ever object to the redaction of their addresses from the internet; that goes without saying. It

also goes without saying that they have not consented to the sharing of this information. If they submit a proof of claim that could be seen differently.

Moreover, where is the prejudice to the administration of these cases or to the participating parties. I cannot fathom a use or, excuse me, a meaningful bankruptcy use for this information other then, perhaps, a venue transfer motion and, of course, notice and solicitation, but given the debtor's representation that they would share the addresses if the requesting party wants them for a bankruptcy purpose then this concern to me is rendered moot.

Like I said, I am prepared to enter the debtor's request and I will expand it to all individuals addresses, not just employee addresses and those European Union citizens, but I do want you to build in a mechanism whereby parties are able to file a motion to request the information that's been redacted and given them the opportunity to tell me why they want it.

I think that strikes a fair balance between public access and the privacy concerns associated with such a far reaching public disclosure of the individual's name and address information.

MR. PETRIE: Thank you, Your Honor. We will build those procedures in and submit a revised proposed order to

the court. We will also run those past the Office of the U.S. Trustee to see if they have anything to contribute.

THE COURT: Thank you. I would appreciate that.

MR. PETRIE: Thank you, Your Honor.

That brings us to the end of today's agenda. We would like to just repeat a thank you to you and your Chamber staff for helping us with this and accommodating us on such short notice for this case, and for the truncated timeline that we had. For everyone in the courtroom we would just like to reiterate our thanks for helping us reach this outstanding conclusion.

THE COURT: Congratulations to you all.

MR. PETRIE: Thank you very much.

THE COURT: It seemed to be a momentous task and you accomplished it. You're my second confirmed case and it was a pleasure, a quick pleasure, but I'm sure I will see you again soon.

We will stand adjourned. Thank you.

(Proceedings concluded at 11:35 a.m.)

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/Mary Zajaczkowski January 22, 2020
Mary Zajaczkowski, CET**D-531

EXHIBIT I

Excerpts from proceeding in *In re Hexion Holdings LLC*

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	Chapter 11
HEXION HOLDINGS LLC, *et al.*,	Case No. 19-10684 (KG)
	Courtroom No. 3
	824 N. Market Street
	Wilmington, Delaware 19801
	June 24, 2019
Debtors.	10:00 A.M.

TRANSCRIPT OF HEARING
BEFORE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors:	Andrew Parlen, Esquire Hugh Murtagh, Esquire LATHAM & WATKINS LLP 885 Third Avenue New York, New York 10022 - and - Caroline Reckler, Esquire Jason Gott, Esquire Andrew Sorkin, Esquire 330 North Wabash Avenue Chicago, Illinois 60611
Audio Operator:	GINGER MACE
Transcription Service:	Reliable 1007 N. Orange Street Wilmington, Delaware 19801 Telephone: (302) 654-8080 E-Mail: gmatthews@reliable-co.com

Proceedings recorded by electronic sound recording: transcript produced by transcription service.

I have an order here? Ms. Ringer, yes, or --

MS. RINGER: Your Honor, we can upload an order --

THE COURT: Is it the same one?

MS. RINGER: It is. It is, Your Honor.

THE COURT: All right, then I will sign that order.

MS. RINGER: Thank you, Your Honor.

THE COURT: Thank you.

MR. CHESLEY: Thank you, Your Honor. May we be excused and we'll let the debtors get on with their confirmation?

THE COURT: Mr. Chesley, you may be excused, if you really want to be.

Thank you, Ms. Ringer.

MS. RINGER: Thank you, Your Honor.

THE COURT: Okay. And I think the second issue is the sealing of or not the sealing, but the use of the debtors' addresses for employees, is that right, in its statements?

MS. RECKLER: That is correct, Your Honor. Good morning, Your Honor, Caroline Reckler on behalf of the debtors.

THE COURT: Ms. Reckler, good morning. I'm sorry. Yes.

MS. RECKLER: And, Your Honor, that is correct.

It's agenda item number six, docket number 704. And, Your Honor, I will be brief.

This is a motion that I believe Your Honor has routinely seen in this jurisdiction.

THE COURT: Yes.

MS. RECKLER: A few things that I would like to point out. We filed on April 1st our creditor matrix and in that matrix the debtors used the place of employment for each of the employees instead of their home address. We did not use the corporate address for everybody. We used the unique work location if it was not the corporate location for every employee.

And, specifically, about this case in connection with the FTI matter, Your Honor heard again that this is a case where all employees are paid in full as are all unsecured creditors other than the financial debt that has agreed to other treatment.

This is also a case where there is no bar date. There is not any other anticipated notice other than a notice of the confirmation hearing and the notice of the effective date that will be sent to employees.

And, in fact, Your Honor, this is a case where there has been tremendous communication, direct communication with the employees of Hexion to keep them engaged, to keep them informed, to keep them motivated to work through these

cases as we hope to emerge shortly.

THE COURT: I can understand that, yes.

MS. RECKLER: And, Your Honor, to that end, I spoke again this morning with general counsel and the chief financial officer of the debtor and they informed me that there's, in fact, a global townhall meeting on Wednesday morning so we can hopefully share with them, if Your Honor approves the plan, that the plan has indeed been confirmed.

And that global townhall meeting is also recorded so if somebody cannot attend the townhall, they can listen to it and watch it afterwards.

But, Your Honor, this is not a case where we anticipate providing additional notices of consequence to our employees. And if there is, those notices will be sent to their place of location.

And, Your Honor, when we filed our schedules and statements and subsequently had our 341 Meeting, Ms. Casey asked us to file the instant motion, which we have done. And I believe the only open issue, and I've only addressed it speaks to the home addresses of the employees, not to the customer information.

THE COURT: Yes.

MS. RECKLER: And, Your Honor, it really comes down to a privacy issue, a security issue, and the risk of identity theft.

And, Your Honor, I have a couple of cases that we didn't cite in our papers, but the Supreme Court in the United States Department of Defense vs. Federal Labor Relations Authority, and the cite to that is 510 U.S. 487, noted and waived the privacy interest of employees in non-disclosure of the home addresses against public interest of access.

And the court found that the employee's interest in non-disclosure is not insubstantial and held

> "We are reluctant to disparage the privacy of the home which is accorded special consideration in our constitution laws and traditions."

And, Your Honor, similarly, the Third Circuit Court of Appeals in Quinn vs. Stone upheld as a violation of the Privacy Act 5 U.S.C. Section 552(a) that disclosure of an individual's home address, and the cite there is 978 F.2d 126. And the court noted,

> "The Third Circuit has recently reaffirmed that at the very least there is a meaningful privacy interest in home addresses."

And, Your Honor, I would submit that in this case and I'm not going to tell Your Honor that there should be a per se rule in every case the debtor should be allowed to keep the home addresses of their employees private. But I think Your Honor given the facts and circumstances of this

case and where we are and how it's pending that it is, indeed, appropriate here under Section 107 and 105 of the Bankruptcy Code.

THE COURT: All right.

MS. RECKLER: Thank you, Your Honor.

THE COURT: Thank you, Ms. Reckler.

Ms. Casey, yes.

MS. CASEY: Linda Casey, again, for the U.S. Trustee.

Your Honor, it's difficult to respond to cases that hadn't been cited to me beforehand.

THE COURT: I understand, yes.

MS. CASEY: I don't know what the Privacy Act says and what those facts and circumstances were.

I do know, however, that Congress has already spoken on this specifically in the context of the bankruptcy case. And where Congress said something is so personal, it should be rejected as a matter of course, it's done so. For example, Chapter 7 debtors do not have to disclose their social security numbers.

THE COURT: That's right.

MS. CASEY: And Congress said it. And Congress said specifically that there are certain means of identification that can be redacted "for cost." And there's two parts of this Section 107(c) that we need to focus on.

The first one is what does it mean by means of identification? Well, Congress spoke and Congress said we mean --

THE COURT: 28 U.S.C. 1028, yes.

MS. CASEY: 28 U.S.C. And you look there and personal addresses are not included, personal residential addresses are not included. So, Congress did not intend to have home addresses be ones that could be redacted for cause. Congress also did not say that it should be redacted as a matter of course. Chapter 7 debtors have to put their home addresses on their pleadings.

And then we have to look at the second part of 107(c) which is that even if Your Honor were to say well 28 U.S.C. or 18 U.S.C. 1028 is just a listing and it is not exhaustive.

THE COURT: It is 18. I'm sorry; yes.

MS. CASEY: That you still have to find cause. And one of the problems that we have in these cases is this idea of this generalized identity theft cannot be cause. Congress must have necessarily been aware of that and known made the decision not to say individual's home addresses can be regularly redacted. It requires there to be cause. And we don't see cause here to redact these individual addresses, other than this generalized threat of identity theft.

And we think Congress didn't do this in a vacuum.

I mean, you know, home addresses were in White Pages. You now Google yourself the first time this came to my attention and the first one I filed, I googled and I was surprised not only did my name and address come up, my name and my address and my last five addresses and my mom's and my dad's and my sister's name and their ages all came up for free in the very top one.

This is not something that is hidden information that people cannot find that this generalized ideal of potential identity theft is something there. But the key here is Congress has spoken. Congress has said what can and cannot happen. Congress requires transparency in these bankruptcy cases.

And then I'll just address one more thing is this idea of bad facts make bad law. To say that here you don't have to establish cause and to hear that we can say that not only are you not establishing cause, but we can take out the residential addresses which is not part of 1028(d) because the case is almost always over, because there's not going to be notices.

It is not just noticing, especially when it comes to the schedules. It's not just noticing, it's just transparency and information. And people can use that. The press might use that to see if they want to investigate anything. Other claimants could call up other claimants and

say hey have you gotten paid? They can form ad hoc committees.

There's reasons why this transparency is important. And there's a reason why Congress did not say addresses can be redacted as a matter of course.

We also noted that what they're seeking is a subset of individuals. They're not seeking all individuals. And if this idea of generalized identify theft that you could always be subject to this identify theft were sufficient, it should be all individuals and not just those that they don't want to provide the addresses for.

THE COURT: Well, can't employees call other employees at work, communicate with them at work as well as at home?

MS. CASEY: Well, there is that possibility. There's also the possibility they'd be afraid of retribution if they did so. And there's also the possibility that they want to reach out to people at other offices. There's also the idea of former employees. And are former employees being treated the same as current employees.

So, there are issues here. And it's not, quite frankly, for us to determine. It's for Congress for determine. And Congress has spoken and that's why we objected here.

And so, you know, this idea that again the case is

almost over. There's not going to be noticed, that's not cause. That's not cause. It might make it easier to say well we can let it go in this case, but it's not cause. And Congress spoke and Congress said that this should be included.

I will add one final thing where the matrix does include their work addresses. And, quite frankly, with the change in the local rules that as of February of 2019 if a party does not include the information required, they had to file a motion to redact. I mistakenly assumed that there was no redaction nor substitution of corporate addresses for residential addresses and that's why it had not been brought to your attention before, but we do, the U.S. Trustee also believes that those addresses should not be included for the creditor matrix.

And while water has gone under the bridge, part of the reason that we do that is notice is important. And a lot of employees do not have mailboxes at their places of employment. You know, it's easy for those of us who do have mailboxes to forget that many employees are not of the kind that they expect to get mail, that there's not a procedure for them getting mail at their places of employment. And there would be a delay in getting that to them. And, certainly, former employees putting places of employment address instead of residential addresses, certainly delays

even more getting the notice to them.

So, in conclusion, Congress has said that names and addresses need to be included in these documents. It requires cause to eliminate PII. We don't have cause. This isn't even PII and, quite frankly, it's not information that needs to be protected in the general accessibility to names and addresses in today's world.

Thank you, Your Honor.

THE COURT: Thank you, Ms. Casey.

Ms. Reckler, yes.

MS. RECKLER: Your Honor, just very briefly.

THE COURT: Yes, Ms. Reckler.

MS. RECKLER: I want to assure the court that we very much respect the transparency of this process. And, to that end, last week Mr. -- general counsel, reached out to me because some mail had been received at the headquarters for the former employees. And he said what should we do with these mailings.

And we checked with AlixPartners and with our claim's agent and, in fact, they were duplicative. Because any mailings going to the former employees are also going to their home addresses, as well. So, there should not be a concern there.

And, Your Honor, I also meant that this is very different than an individual debtor who comes to this court

and has to provide their home address. Our employees did not seek this Chapter 11 process. They have been patient. They have been working very hard. They are not -- it was not their choice to avail, for the company to avail themselves of this process. And they should not bear any risk or potential harm by having their home addresses made available on the docket where anybody can search Hexion and find their home addresses.

And, Your Honor, in this case, I just think I strongly encourage you to consider that the risk outweighs the benefit here to our employees any notice that will be received by these employees. And, in fact, Your Honor, Ms. Casey noted that the purpose of the schedules and statements is to inform the world, and they have a right to know, what claims are owed. But this is a case where as of the petition date, after Your Honor authorized our employee wage motion, all employee claims were paid in full, so nothing remains.

And, Your Honor, I don't imagine a scenario in which that will change. So with that, Your Honor, unless you have any questions, we'd respectfully request that you grant the motion.

THE COURT: All right, thank you, Ms. Reckler.

Yes, Ms. Casey, yes.

MS. CASEY: Just one point.

Individual creditors of the debtor also did not

seek to come before Your Honor. It's not just the employees. And individual creditor's addresses they're not being sought to be redacted here.

And I looked and I saw some individual names. I certainly can't say that they are, in fact, individuals because some people work with those. So, I can't make that representation, but I can say that the debtors are not seeking to redact their names. It's only the employee's names that are being sought to redact.

And, again, if there were a necessary need to protect this information, Congress would have protected it across the board. And I don't hear cause for these employees. Thank you.

THE COURT: All right. Thank you, Ms. Casey.

Well, you know, I have considered this matter and the fact these days we're all very sensitive to identify theft. And it's a matter of great concern and it's a matter of concern to the court.

And the United States Trustee has objected and I have to overrule the objection, yet again. And here's why.

Section 107 provides in pertinent part, and let me just read from the section, at least the pertinent part of it so that we aren't here all day.

"The Bankruptcy Court for cause may protect an individual with respect to the following types of

information to the extent the court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or the individual's property."

And under that subparagraph is yet another set of paragraphs which provides any means of identification.

And then when you look at 18 U.S.C. 1028(d), means of identification, here's what it says in -- I have a hole through the number, but I believe it's 7(a).

"The term means of identification means any name or number that may be used alone or in conjunction with any other information to identify a specific individual including any --"

They give name, social security number and they also say,

"Official state or government issued driver's license."

And what is the significance of a driver's license? What is the information on a driver's license? It's an address. It's a home address. So, it's strikes me that Section 107(c) does indeed protect this type of information and identify theft again is a significant problem.

So, here, the home address, plus the fact of employment by debtors in this day and age exposes employees

to identify theft. That is the court's strong view. That is why I uphold the motion or will sustain the motion and overrule the objection.

And I don't know if that's been uploaded or not, at this point.

MS. RECKLER: It has been, but, Your Honor, I have a copy fi that's easiest.

THE COURT: That's probably easier, yes.

MS. RECKLER: May I approach?

THE COURT: Yes, Ms. Reckler, you may. Thank you.

Mr. Parlen, yes.

MR. PARLEN: Okay. Your Honor, thank you very much. We are now onto agenda item seven, number seven which is called confirmation.

Your Honor, what I'd like to do, if it's okay with the court, is take this in five parts. I want to review the agenda, so we're all oriented on the same page of the status of objections and comments and the like. I want to make a short presentation about the plan, how we got here, what the plan provides for.

I want to allow Ms. Casey or others; Ms. Casey has some objections that are unresolved. I don't believe there are any other unresolved objections, but folks may want to make statements. There may be people on the phone or here in the gallery who have items they want to address. Then,

EXHIBIT J

Excerpts from proceeding in *In re Promise Healthcare Group, LLC*

UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

- -x

In the Matter of:

PROMISE HEALTHCARE GROUP, LLC, et al., Case No.

Debtors. 18-12491(CSS)

- -x

United States Bankruptcy Court

824 North Market Street

Wilmington, Delaware

December 4, 2018

11:19 AM

B E F O R E:

HON. CHRISTOPHER S. SONTCHI

CHIEF U.S. BANKRUPTCY JUDGE

ECR OPERATOR: LESLIE MURIN

Your Honor have any questions about any of those motions at this time?

THE COURT: No. I signed all the orders.

MR. BROWN: Thank you, Your Honor. Your Honor, the matters going forward start at agenda item 14; the first that we'd like to present out of order, if it's okay with Your Honor, is item number 18, for brief argument. Item number 18 is the debtors' motion to file portions of the matrix under seal, in order to protect personally identifiable information. We have an objection by the United States Trustee, and the debtor has filed a reply. Those documents are at docket 137 and the reply's at 175.

And if Your Honor is okay with taking that out of order, Ms. Keilson for the U.S. Trustee's office has consented to taking this out of order as well, and we thought maybe we'd just argue it and get it out of the way for the rest of the hearing.

THE COURT: Okay.

MR. BROWN: Your Honor, the debtors believe that Section 107(c)(A) and (b) -- (c)(1)(A) and (B) provide for the authority for the debtors to protect personal identifiably information from disclosure, using the opening words of (A), from any means of identification, and (B), and other information, as a sufficiently nonexhaustive approach to the question of whether putting employees' names and addresses in

the public forum together with, obviously, their employment information is information that collectively, together with the addition of other information for these people that may be out in the public sphere, will assist bad people in stealing the employees' identities. And the debtors think that it's the least that they can do for their employees, to take this very minimal step of seeking to protect their identities from theft, by sealing -- or putting under seal their addresses on the creditor matrix. Beyond that, Your Honor, we'll rely on our papers.

THE COURT: But the names will be --

MR. BROWN: Their names will appear, Your Honor.

THE COURT: -- be divulged? Okay.

MR. BROWN: As we've put in our papers, Your Honor, this is the same relief that was presented and granted in other matters before Your Honor and other courts in this district. Thank you, Your Honor. I'll yield to Ms. Keilson.

THE COURT: Okay.

MS. KEILSON: Good morning, Your Honor.

THE COURT: Good morning.

MS. KEILSON: Brya Keilson on behalf of the United States Trustee. As I've stood before you a few different times about sealing, as we all know well by now, the starting premise is that information must be publicly available in bankruptcy cases except if facts and circumstances warrant protection

under 107(b) or 107(c). In order for the mailing addresses to be sealed in this particular case, the debtors must show that including each and every one of the employees' addresses would create undue risk of identity theft or unlawful injury to each employee as required under 107(c). It is not enough to state that listing mailing addresses in this case would distract employees away from a successful reorganization, which is what the debtors state in their reply, which, by the way, I'm not sure whether reorganization is the goal here in the first place. But that concept is true for every bankruptcy case in general.

While I'm sensitive to concerns about identity theft, this concept alone cannot serve as a reason to seal addresses. Addresses are required to be produced -- or filed and publicly available in the creditor matrix. If identity theft alone could be a reason to seal them across the board with no other reason, then Congress would change the rules and not require that they be filed. But Congress has not done this.

While the debtors' motion and reply may be relevant to an appeal to Congress to change the requirements of publicly filing documents that include individuals' mailing addresses, it does not provide any evidence as to why in this particular case these particular individuals' addresses must be sealed to prevent identity theft or unlawful injury. Certainly if, for example, a particular employee had a domestic situation that

required their location to be protected, that would be a situation where the address might be appropriately sealed under 107(c). But that is not asserted here in any of the debtors' papers.

In addition, addresses are oftentimes public in the first instance, whether in a phone book or online. The debtors have not demonstrated that these addresses that they are seeking to seal are not otherwise publicly available and need to be sealed for a reason particular to each individual employee in order to protect them.

I also wanted to just address the debtors' reference to Searchmetrics. In that particular case, the debtors' motion to seal was unopposed. It's my understanding that it was unopposed due to particular facts and circumstances in that case. In particular, there was ongoing litigation that I think specifically may have involved customer lists. And so in that particular case, under those facts and circumstances, our office did not oppose that motion. But I don't think it's appropriate for the debtors to rely on that and say that this Court specifically authorized what they're seeking in this case since it was unopposed in that particular situation.

So in sum, I don't believe that the debtors have met their burden as to why these particular addresses in this particular case fall under 107(c).

THE COURT: Okay. Thank you.

MS. KEILSON: Thank you.

THE COURT: Response?

MR. BROWN: Your Honor, the appeal-to-Congress argument -- it has already been done. 107 specifically provides for this Court to permit the sealing of information that could give rise to personal-identity theft. Whether any employee of the thousands of the debtors' employees becomes victim to personal-identity theft, we won't know for some time. We're here trying to prevent a harm to individuals, which we would hope the Court would view as paramount to disclosure of information to the public. Any party who wants to serve the employees can certainly obtain the information to get the employees' addresses or can serve them at the debtor care of the employees. There're other means for the government and creditors and parties-in-interest in these cases to be fulfilled without exposing the employees to the risk of identity theft.

Once their theft (sic) is stolen, it's too late. We're trying to prevent harm to the individuals that have no power. No employee is here to speak their mind about whether they'd prefer to have this information sealed. The debtors believe that each, if they had a voice in this case and had the means to appear, would argue similar to the debtors and seek to have their identities sealed to the extent possible. Thank you, Your Honor.

THE COURT: All right, thank you. All right, I'm going to overrule the objection of the Office of the U.S. Trustee and grant the motion. I think that, first of all, the issue is not whether this promulgates or promotes a reorganization of the debtors. The issue is not one of morale; it is one of protection and protecting the identity of the employees.

And I think that it's different from just picking up a phone book, if those even exist anymore, and being able to go through and find someone's name and address in the phone book. I think the linking to an employment as well -- it's not just John Smith at 100 Bridge Road; it's John Smith at 100 Bridge Road who works for Providence (sic) Healthcare. And I think that's a -- Promise Healthcare; excuse me. I think that's a big difference.

And with responding -- Congress failing to act or would have acted, I think there're two things there. I think -- one, I think Mr. Brown's correct that they have acted; they've provided an ability for the Court to protect people when necessary. And two, maybe they haven't reacted, but the reality is that the world continues to change. Identity theft is a very real threat -- my family -- my wife was victim of it a couple years ago -- no matter how careful you are, and it can have a -- it can have a real adverse effect on someone. And we don't know until it's -- we don't know what we don't know; half

of us who probably already have our information in hands of bad guys and nothing has happened yet. But I think it's -- I think the world is different. And to the extent Congress hasn't acted specifically to deal with this, I think it should. But again, they already have, because there's a mechanism for protecting this information.

And to me, it becomes a balancing act: what are we trying to protect versus what are we trying to preserve. And certainly, preserving the transparency of a bankruptcy and the identity of the creditors being revealed is part of that. But especially we're talking about employees who are creditors only -- really only in name only, once the wage order is signed. And having them available to be reached is a very small priority for protection of the mechanism. And the other side of that, the risk to those employees, is quite high.

So I will -- my thinking on this has evolved, frankly, over the last two years; may be a result of my personal experience. But I will overrule the objection and sign the motion -- or sign the order.

MR. BROWN: Thank you, Your Honor. Your Honor, proceeding now through the rest of the agenda --

THE COURT: Do you have an order?

MR. BROWN: I'm sorry?

THE COURT: Order?

MR. BROWN: Oh.

(Pause)

MR. BROWN: Your Honor, we'll hand it up in a little bit so as not to delay the rest of the hearing, if that's okay.

THE COURT: All right.

MR. BROWN: Thank you, Your Honor.

Your Honor, the rest of the agenda -- we have various members of the debtors' team handling them. Item number 14 is the utility motion. Mr. Tishler will handle the utility motion. And his colleague, Mr. Layne, will handle the next two: cash management and the critical vendors, Your Honor.

Correction; Mr. Layne will handle those three items, Your Honor.

MR. LAYNE: Good morning, Your Honor. Tyler Layne on behalf of the debtors. The first item -- item number 14 on the docket is the -- or on the agenda, rather, is the debtors' motion for a final order authorizing the debtors' proposed adequate assurance to utility companies, establishing procedures for resolving objections by those utility companies, and prohibiting utility companies from altering, refusing, or discontinuing service.

An objection by a number of utility companies was filed at docket 142 and ultimately withdrawn at docket 204. The debtors have entered into a settlement agreement with those utility companies, and those utility companies are not subject to the final order. The order has not changed from what was

EXHIBIT K

Report issued in November 2018 by the Centers for Disease Control

NISVS
The National Intimate Partner and Sexual Violence Survey

National Intimate Partner and Sexual Violence Survey:

2015 Data Brief – Updated Release

National Center for Injury Prevention and Control
Division of Violence Prevention

The National Intimate Partner and Sexual Violence Survey:

2015 Data Brief – Updated Release

Sharon G. Smith, Xinjian Zhang, Kathleen C. Basile,
Melissa T. Merrick, Jing Wang, Marcie-jo Kresnow, Jieru Chen

Centers for Disease Control and Prevention
Robert R. Redfield, MD, Director

National Center for Injury Prevention and Control
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Division of Violence Prevention
James A. Mercy, PhD, Director

November 2018

National Center for Injury Prevention and Control
Centers for Disease Control and Prevention
Atlanta, Georgia

Suggested Citation:
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The National Intimate Partner and Sexual Violence Survey:

2015 Data Brief – Updated Release

Sexual violence, stalking, and intimate partner violence are serious public health problems affecting millions of people in the United States each year. These forms of violence are associated with chronic physical and psychological adverse health conditions, and violence experienced as a child or adolescent is a risk factor for repeated victimization as an adult. First launched in 2010 by CDC's National Center for Injury Prevention and Control, the National Intimate Partner and Sexual Violence Survey (NISVS) is an ongoing, nationally representative survey that assesses sexual violence, stalking, and intimate partner violence victimization among adult women and men in the United States.

This brief report presents the highlights from the 2015 data year of NISVS. Data tables are presented at the end of the report.

Recognition is given to the team of people that substantially contributed to the original development of the National Intimate Partner and Sexual Violence Survey: Kathleen C. Basile, Michele C. Black, Matthew J. Breiding, James A. Mercy, Linda E. Saltzman, and Sharon G. Smith (contributors listed in alphabetical order).

Sexual Violence

How NISVS Measured Sexual Violence

Four types of **sexual violence** are included in this brief report. These include rape, being made to penetrate someone else, sexual coercion, and unwanted sexual contact.

Rape is any completed or attempted unwanted vaginal (for women), oral, or anal penetration through the use of physical force (such as being pinned or held down, or by the use of violence) or threats to physically harm and includes times when the victim was drunk, high, drugged, or passed out and unable to consent. Rape is separated into three types: completed forced penetration, attempted forced penetration, and completed alcohol- or drug-facilitated penetration. Among women, rape includes vaginal, oral, or anal penetration by a male using his penis. It also includes vaginal or anal penetration by a male or female using their fingers or an object. Among men, rape includes oral or anal penetration by a male using his penis. It also includes anal penetration by a male or female using their fingers or an object.

Being made to penetrate someone else includes times when the victim was made to, or there was an attempt to make them, sexually penetrate someone without the victim's consent because the victim was physically forced (such as being pinned or held down, or by the use of violence) or threatened with physical harm, or when the victim was drunk, high, drugged, or passed out and unable to consent. Among women, this behavior reflects a female being made to orally penetrate another female's vagina or anus or another male's anus. Among men, being made to penetrate someone else could have occurred in multiple ways: being made to vaginally penetrate a female using one's own penis; orally penetrating a female's vagina or anus; anally penetrating a male or female; or being made to receive oral sex from a male or female. It also includes male and female perpetrators attempting to force male victims to penetrate them, though it did not happen.

Sexual coercion is unwanted sexual penetration that occurs after a person is pressured in a nonphysical way. In NISVS, sexual coercion refers to unwanted vaginal, oral, or anal sex after being pressured in ways that included being worn down by someone who repeatedly asked for sex or showed they were unhappy; feeling pressured by being lied to, being told promises that were untrue, having someone threaten to end a relationship or spread rumors; and sexual pressure due to someone using their influence or authority.

Unwanted sexual contact is unwanted sexual experiences involving touch but not sexual penetration, such as being kissed in a sexual way, or having sexual body parts fondled, groped, or grabbed.

Contact sexual violence is a combined measure that includes rape, being made to penetrate someone else, sexual coercion, and/or unwanted sexual contact.

1 in 5 women
experienced completed or attempted rape during her lifetime.

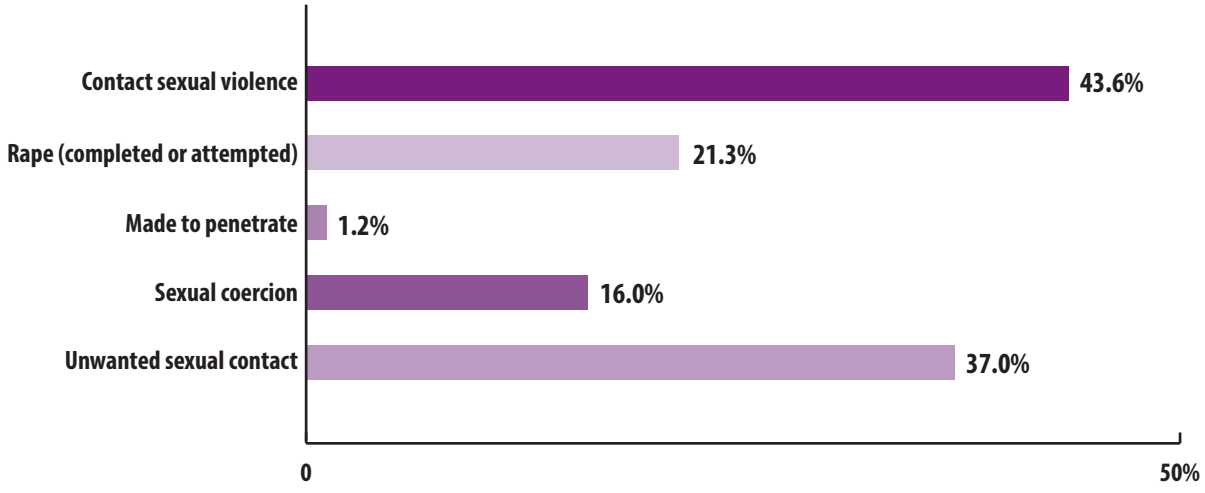
1 in 14 men
was made to penetrate someone (completed or attempted) during his lifetime.

Sexual Violence of Women

- In the U.S., 43.6% of women (nearly 52.2 million) experienced some form of contact sexual violence in their lifetime (Figure 1), with 4.7% of women experiencing this violence in the 12 months preceding the survey (Table 1).
- Approximately 1 in 5 (21.3% or an estimated 25.5 million) women in the U.S. reported completed or attempted rape at some point in their lifetime.
    - About 13.5% of women experienced completed forced penetration, 6.3% experienced attempted forced penetration, and 11.0% experienced completed alcohol/drug-facilitated penetration at some point in their lifetime.
- In the U.S., 1.2% of women (approximately 1.5 million) reported completed or attempted rape in the 12 months preceding the survey.
- Approximately 1.2% of women (nearly 1.4 million) have been made to penetrate someone else in their lifetime.
- Approximately 1 in 6 women (16.0% or an estimated 19.2 million women) experienced sexual coercion (e.g., being worn down by someone who repeatedly asked for sex, sexual pressure due to someone using their influence or authority) at some point in their lifetime.
- More than a third of women (37.0% or approximately 44.3 million women) reported unwanted sexual contact (e.g., groping) in their lifetime.

Figure 1

Lifetime Prevalence of Sexual Violence Victimization—U.S. Women, NISVS 2015[1,2]



[1] All percentages are weighted to the U.S. population.

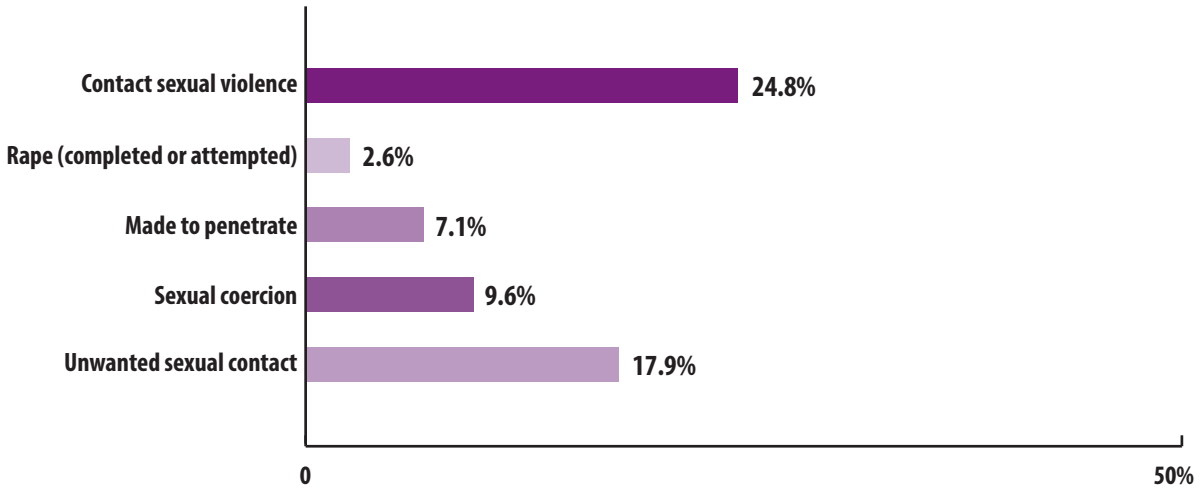
[2] Contact sexual violence includes rape, being made to penetrate someone else, sexual coercion, and/or unwanted sexual contact.

Sexual Violence of Men

- Nearly a quarter of men (24.8% or 27.6 million) in the U.S. experienced some form of contact sexual violence in their lifetime (Figure 2), with 3.5% of men experiencing contact sexual violence in the 12 months preceding the survey (Table 2).
- About 1 in 14 men (7.1% or nearly 7.9 million) in the U.S. was made to penetrate someone else (attempted or completed) at some point in their lifetime.
    - Approximately 1.6% of men were made to penetrate through completed forced penetration, 1.4% experienced situations where attempts were made to make them penetrate someone else through use of force, and 5.5% were made to penetrate someone else through completed alcohol/drug facilitation at some point in their lifetime.
- In the U.S., 0.7% of men (an estimated 827,000 men) reported being made to penetrate (attempted or completed) in the 12 months preceding the survey.
- About 2.6% of U.S. men (an estimated 2.8 million) experienced completed or attempted rape victimization in their lifetime.
- Approximately 1 in 10 men (9.6% or an estimated 10.6 million men) experienced sexual coercion (e.g., being worn down by someone who repeatedly asked for sex, sexual pressure due to someone using their influence or authority) in their lifetime.
- Almost one fifth of men (17.9% or approximately 19.9 million men) reported unwanted sexual contact (e.g., groping) at some point in their lifetime.

Figure 2

Lifetime Prevalence of Sexual Violence Victimization—U.S. Men, NISVS 2015[1,2]



[1] All percentages are weighted to the U.S. population.

[2] Contact sexual violence includes rape, being made to penetrate someone else, sexual coercion, and/or unwanted sexual contact.

Age at First Completed or Attempted Rape and Made to Penetrate

Females

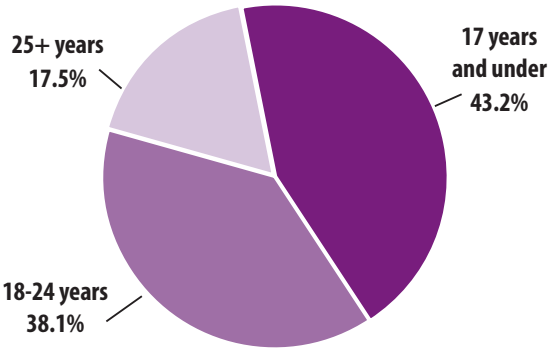
- A majority of female victims of completed or attempted rape first experienced such victimization early in life, with 81.3% (nearly 20.8 million victims) reporting that it first occurred prior to age 25 (Table 3).
- Among female victims of completed or attempted rape, 43.2% (an estimated 11.0 million victims) reported that it first occurred prior to age 18, with 30.5% (about 7.8 million victims) reporting that their first victimization occurred between the ages of 11 and 17, and 12.7% (an estimated 3.2 million victims) at age 10 or younger (Figure 3).

Males

- The majority of male victims (70.8% or an estimated 2.0 million) of completed or attempted rape reported that their first experience occurred prior to age 25 (Table 4).
- Among male victims of completed or attempted rape, 51.3% (about 1.5 million victims) first experienced such victimization prior to age 18, with 25.3% (718,000 victims) reporting that their first victimization occurred between the ages of 11 and 17 and 26.0% (738,000 victims) at age 10 or younger.
- The majority (65.5% or nearly 5.2 million) of male victims who were made to penetrate someone else (completed or attempted) first experienced this victimization before age 25.
- About a quarter of male victims (25.9%, or an estimated 2.0 million victims) of completed or attempted made to penetrate reported that their first victimization occurred before the age of 18, with 19.2% (1.5 million victims) reporting that it first occurred between the ages of 11 and 17 (Figure 4).

Figure 3

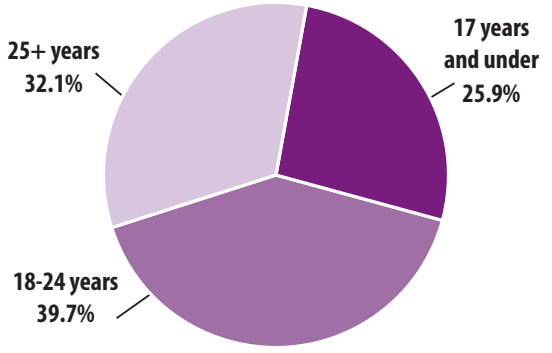
Age at First Completed or Attempted Rape Victimization in Lifetime Among Female Victims—NISVS 2015 [1,2,3,4]



[1] The reported age is the youngest age reported across all perpetrators.
[2] All percentages are weighted to the U.S. population.
[3] Victims with unknown age are not represented in the figure.
[4] A small subset of victims of completed or attempted rape could have also experienced completed or attempted being made to penetrate by the same perpetrator and the age at first could reflect those experiences.

Figure 4

Age at First Completed or Attempted Made to Penetrate Victimization in Lifetime Among Male Victims—NISVS 2015 [1,2,3,4]



[1] The reported age is the youngest age reported across all perpetrators.
[2] All percentages are weighted to the U.S. population.
[3] Victims with unknown age are not represented in the figure.
[4] A small subset of victims of completed or attempted made to penetrate could have also experienced completed or attempted rape by the same perpetrator and the age at first could reflect those experiences.

Stalking

Stalking of Women

- Nearly 1 in 6 women (16.0%, or 19.1 million) in the U.S. were victims of stalking at some point in their lifetime, during which she felt very fearful or believed that she or someone close to her would be harmed or killed (Figure 5, Table 5).
- An estimated 3.7% (about 4.5 million) of U.S. women were victims of stalking in the 12 months preceding the survey.

Stalking of Men

- About 1 in 17 (5.8% or 6.4 million) men in the U.S. were victims of stalking at some point in their lifetime, during which he felt very fearful or believed that he or someone close to him would be harmed or killed (Figure 5, Table 6).
- An estimated 1.9% (2.1 million) of U.S. men were victims of stalking in the 12 months preceding the survey.

How NISVS Measured Stalking

Stalking victimization involves a pattern of harassing or threatening tactics used by a perpetrator that is both unwanted and causes fear or safety concerns in the victim. For the purposes of this report, a person was considered a stalking victim if they experienced multiple stalking tactics or a single stalking tactic multiple times by the same perpetrator and felt very fearful, or believed that they or someone close to them would be harmed or killed as a result of the perpetrator's behavior.

Stalking tactics measured:

- Unwanted phone calls, voice or text messages, hang-ups
- Unwanted emails, instant messages, messages through social media
- Unwanted cards, letters, flowers, or presents
- Watching or following from a distance, spying with a listening device, camera, or global positioning system (GPS)
- Approaching or showing up in places, such as the victim's home, workplace, or school when it was unwanted
- Leaving strange or potentially threatening items for the victim to find
- Sneaking into victim's home or car and doing things to scare the victim or let the victim know the perpetrator had been there

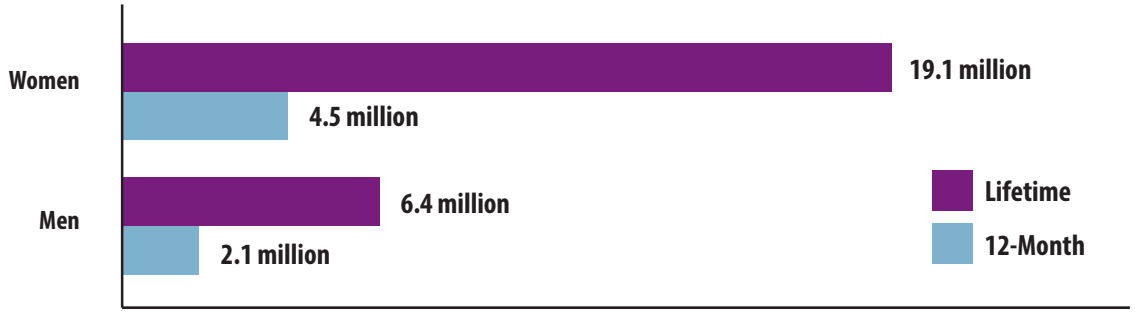
In follow-up questions, respondents who were identified as possible stalking victims were asked about their experiences of two additional tactics:

- Damaged personal property or belongings, such as in their home or car
- Made threats of physical harm

Millions of women and men have been stalked at some point in their lifetime.

Figure 5

Lifetime and 12-Month Estimated Number of Stalking Victims—NISVS 2015[1,2]



[1] Rounded to the nearest thousand.

[2] All estimated number of victims are weighted to the U.S. adult population.

Age at First Stalking

Females

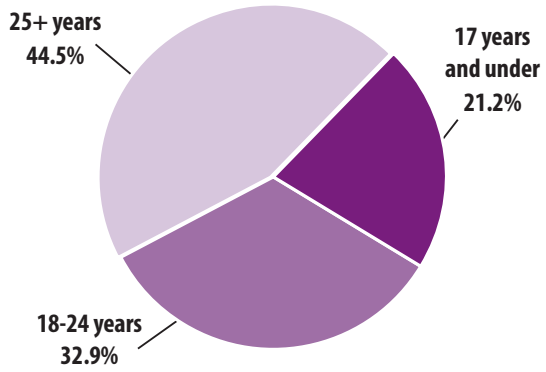
- Over half of female stalking victims reported that such victimization first occurred before the age of 25 (54.1% or about 10.4 million victims) including 21.2% who were first stalked before age 18 (Table 7).
- An estimated 44.5% of female stalking victims (or 8.5 million victims) were first victimized at age 25 or older (Figure 6).

Males

- Nearly 41% of male victims first experienced stalking before age 25 (40.5% or approximately 2.6 million victims) including 12.9% who were first stalked prior to age 18 (Table 8).
- Over half of male victims (58.8% or nearly 3.8 million victims) reported that their first stalking experience began at age 25 or older (Figure 7).

Figure 6

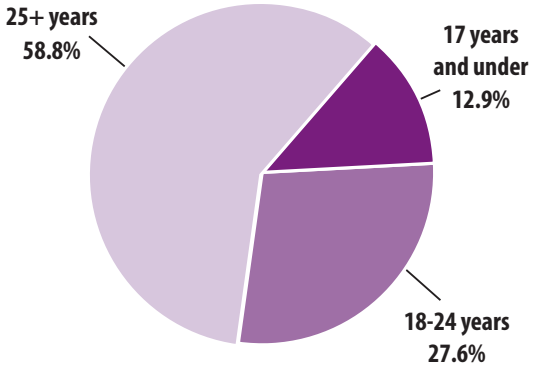
Age at Time of First Stalking Victimization in Lifetime Among Female Victims—NISVS 2015 [1,2,3]



[1] The reported age is the youngest age reported across all perpetrators.
[2] All percentages are weighted to the U.S. population.
[3] Victims with unknown age are not represented in the figure.

Figure 7

Age at Time of First Stalking Victimization in Lifetime Among Male Victims—NISVS 2015 [1,2,3]



[1] The reported age is the youngest age reported across all perpetrators.
[2] All percentages are weighted to the U.S. population.
[3] Victims with unknown age are not represented in the figure.

Intimate Partner Violence

How NISVS Measured Intimate Partner Violence

Four types of **intimate partner violence** are included in this report. These include sexual violence, stalking, physical violence, and psychological aggression. In NISVS, an intimate partner is described as a romantic or sexual partner and includes spouses, boyfriends, girlfriends, people with whom they dated, were seeing, or "hooked up."

Sexual violence includes rape, being made to penetrate someone else, sexual coercion, and unwanted sexual contact. Contact sexual violence is a combined measure that includes rape, being made to penetrate someone else, sexual coercion, and/or unwanted sexual contact.

Stalking victimization involves a pattern of harassing or threatening tactics used by a perpetrator that is both unwanted and causes fear or safety concerns in the victim.

Physical violence includes a range of behaviors from slapping, pushing or shoving to severe acts that include hit with a fist or something hard, kicked, hurt by pulling hair, slammed against something, tried to hurt by choking or suffocating, beaten, burned on purpose, used a knife or gun.

Psychological aggression includes expressive aggression (such as name calling, insulting or humiliating an intimate partner) and coercive control, which includes behaviors that are intended to monitor and control or threaten an intimate partner.

Intimate partner violence-related impact includes experiencing any of the following: being fearful, concerned for safety, injury, need for medical care, needed help from law enforcement, missed at least one day of work, missed at least one day of school. The following impacts were also included in the lifetime estimate only: any post-traumatic stress disorder symptoms, need for housing services, need for victim advocate services, need for legal services and contacting a crisis hotline. For those who experienced rape or made to penetrate by an intimate partner, it also includes a lifetime estimate of having contracted a sexually transmitted infection or having become pregnant (females only). Intimate partner violence-related impact questions were assessed among victims of contact sexual violence, physical violence, or stalking by an intimate partner either during the lifetime or in the last 12 months. The impacts were assessed for specific perpetrators and asked in relation to any form of intimate partner violence experienced in that relationship. By definition, all stalking victimizations result in impact because the definition of stalking requires the experience of fear or concern for safety. Because violent acts often do not occur in isolation and are frequently experienced in the context of other violence committed by the same perpetrator, questions regarding the impact of the violence were asked in relation to all forms of intimate partner violence experienced (sexual violence, physical violence, stalking, psychological aggression) by the perpetrator in that relationship.

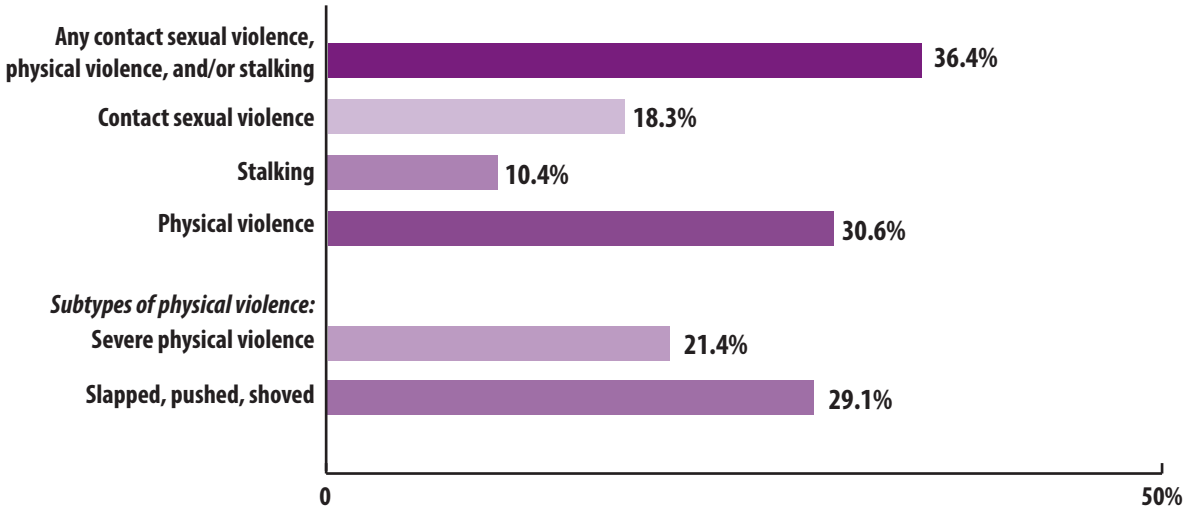
About 1 in 4 women and 1 in 10 men experienced contact sexual violence, physical violence, and/or stalking by an intimate partner and reported an IPV-related impact during their lifetime.

Intimate Partner Violence of Women

- In the U.S., over 1 in 3 (36.4% or 43.6 million) women experienced contact sexual violence, physical violence, and/or stalking by an intimate partner during their lifetime (Figure 8).
- About 1 in 4 women (25.1% or 30.0 million) in the U.S. experienced contact sexual violence, physical violence, and/or stalking by an intimate partner during their lifetime and reported some form of IPV-related impact (Table 9).
- Regarding specific subtypes of intimate partner violence, about 18.3% of women experienced contact sexual violence, 30.6% experienced physical violence (21.4% experienced severe physical violence), and 10.4% experienced stalking during their lifetime.
- An estimated 1 in 18 (5.5% or about 6.6 million) women in the U.S. experienced contact sexual violence, physical violence, and/or stalking by an intimate partner during the 12 months preceding the survey.
- Over one-third of women (36.4% or 43.5 million) experienced psychological aggression by an intimate partner during their lifetime (Table 10).

Figure 8

Lifetime Prevalence of Contact Sexual Violence,[1] Physical Violence, and/or Stalking Victimization by an Intimate Partner—U.S. Women, NISVS 2015[2]



[1] Contact sexual violence includes rape, being made to penetrate someone else, sexual coercion, and/or unwanted sexual contact.

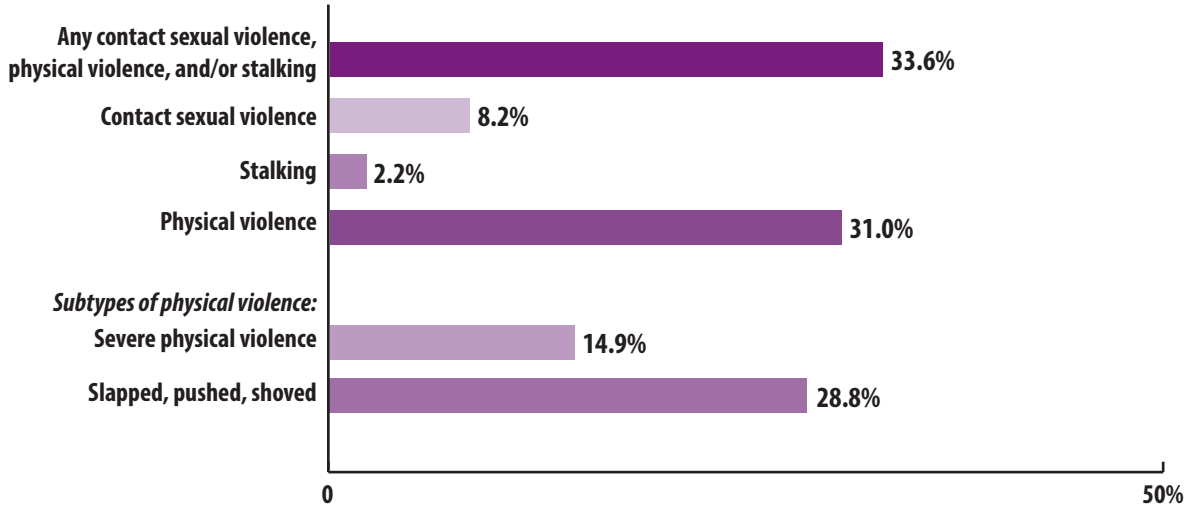
[2] All percentages are weighted to the U.S. population.

Intimate Partner Violence of Men

- In the U.S., about 1 in 3 (33.6% or 37.3 million) men experienced contact sexual violence, physical violence, and/or stalking by an intimate partner during their lifetime (Figure 9).
- Nearly 1 in 10 (10.9% or 12.1 million) men in the U.S. experienced contact sexual violence, physical violence, and/or stalking by an intimate partner during their lifetime and reported some form of IPV-related impact (Table 11).
- Regarding specific subtypes of intimate partner violence, 8.2% of men experienced contact sexual violence, 31.0% experienced physical violence (14.9% experienced severe physical violence), and 2.2% experienced stalking during their lifetime.
- About 1 in 20 (5.2% or 5.8 million) men in the U.S. experienced contact sexual violence, physical violence, and/or stalking by an intimate partner during the 12 months preceding the survey.
- Over one-third of men (34.2% or 38.1 million) experienced psychological aggression by an intimate partner during their lifetime (Table 12).

Figure 9

Lifetime Prevalence of Contact Sexual Violence,[1] Physical Violence, and/or Stalking Victimization by an Intimate Partner—U.S. Men, NISVS 2015[2]



[1] Contact sexual violence includes rape, being made to penetrate someone else, sexual coercion, and/or unwanted sexual contact.

[2] All percentages are weighted to the U.S. population.

Age at First Contact Sexual Violence, Physical Violence, and/or Stalking by an Intimate Partner

Females

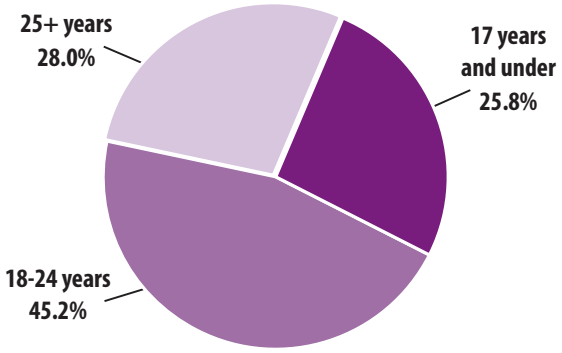
- The majority of women who were victims of contact sexual violence, physical violence, and/or stalking by an intimate partner first experienced these or other forms of violence by that partner before age 25 (71.1% or nearly 31.0 million victims), and 1 in 4 female victims (25.8% or about 11.3 million victims) first experienced intimate partner violence prior to age 18 (Figure 10, Table 13).

Males

- Over half of men who were victims of contact sexual violence, physical violence, and/or stalking by an intimate partner first experienced these or other forms of violence by that partner before age 25 (55.8% or 20.8 million victims), and 14.6% of male victims (5.4 million victims) first experienced intimate partner violence prior to age 18 (Figure 11, Table 14).

Figure 10

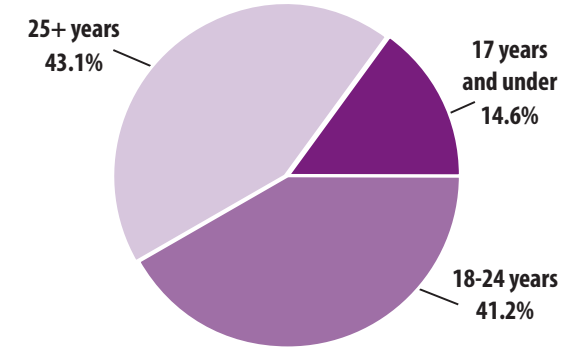
Age at First Intimate Partner Violence Among Female Victims of Lifetime Contact Sexual Violence, Physical Violence, or Stalking by an Intimate Partner—NISVS 2015 [1,2,3,4]



[1] The reported age is the youngest age reported across all perpetrators.
[2] All percentages are weighted to the U.S. population.
[3] Victims with unknown age are not represented in the figure.
[4] Represents the age at the first experience of IPV among women who experienced contact sexual violence, physical violence, and/or stalking by an intimate partner. IPV includes physical violence, all forms of sexual violence, stalking, and psychological aggression.

Figure 11

Age at First Intimate Partner Violence Among Male Victims of Lifetime Contact Sexual Violence, Physical Violence, or Stalking by an Intimate Partner—NISVS 2015 [1,2,3,4]



[1] The reported age is the youngest age reported across all perpetrators.
[2] All percentages are weighted to the U.S. population.
[3] Victims with unknown age are not represented in the figure.
[4] Represents the age at the first experience of IPV among men who experienced contact sexual violence, physical violence, and/or stalking by an intimate partner. IPV includes physical violence, all forms of sexual violence, stalking, and psychological aggression.

Summary

This report presents the prevalence of sexual violence, stalking, and intimate partner violence among adults and their age at first victimization. In the United States, the experience of sexual violence, stalking, and intimate partner violence is far too common, with millions of people reporting victimization during their lifetime. Both women and men experience these forms of violence, but a greater number of women experienced several types of violence examined. For instance, during their lifetime, 1 in 5 women experienced completed or attempted rape; 1 in 6 women were stalked; and 1 in 4 experienced contact sexual violence, physical violence, and/or stalking by an intimate partner and reported some form of intimate partner violence-related impact. Results indicate that many males are also experiencing these forms of violence. For example, during their lifetime, 1 in 14 men were made to sexually penetrate someone else; 1 in 17 men were stalked; and 1 in 10 experienced contact sexual violence, physical violence, and/or stalking by an intimate partner and reported some form of intimate partner violence-related impact. Furthermore, findings indicate that these forms of violence often begin early in life for both women and men. Across the majority of violence types measured, most first time victimization occurred prior to age 25, and many victims first experienced violence before age 18.

Sexual violence, stalking and intimate partner violence are serious public health problems that begin early in life and are preventable. Primary prevention of violence benefits from a comprehensive, multi-sectored approach that starts early in the lifespan. CDC has published technical packages for sexual violence, intimate partner violence, child abuse and neglect, youth violence and suicide prevention to assist communities and states in prioritizing prevention efforts. These technical packages describe prevention strategies based on the best available evidence. All of the technical packages are available at https://www.cdc.gov/violenceprevention/pub/technical-packages.html.

As described in the technical packages, it is important that prevention efforts address different levels of the social ecology (i.e., individual, relationship, community, and society) and emphasize the primary prevention of perpetration of these forms of violence (i.e., preventing the violence before it happens) to reduce future risk and the many costs associated with violence. NISVS serves as an important element of the prevention process by providing data that can be used to describe the burden of sexual violence, stalking, and intimate partner violence; these data can be used to inform public health action and response.

Limitations

The findings in this brief report are subject to a few limitations. First, random-digit-dial telephone surveys have unique challenges that may affect the representativeness of the sample, such as declining response rates and possible non-response bias. For 2015, the response rate was fairly low (26.4%) but the cooperation rate was very high (89.6%), meaning that once contact was made with selected adults and eligibility was confirmed, they usually agreed to participate in the survey. Efforts were made to reduce the potential of non-response bias and undercoverage. Specifically, in addition to utilizing both landline and cell-phone sampling frames, a non-response follow-up phase was conducted with randomly selected non-respondents in which participants were offered an increased incentive. Second, NISVS is designed as a household survey and does not reach populations such as those who are institutionalized or residing in healthcare facilities, shelters, military bases, etc. Third, estimates presented in this report are likely to be underestimates of the true prevalence. Although NISVS questions cover a range of victimization experiences, it is not possible to include all types of victimization. Additionally, some participants might not be comfortable disclosing their experiences to an interviewer due to stigma, ongoing trauma, or safety concerns (especially if currently involved in a violent relationship). Fourth, self-report data are vulnerable to recall bias and telescoping, in which respondents report incidents as having occurred closer in time than they actually did; such bias might affect 12-month estimates especially. However, allowing the respondent to report their lifetime victimization is likely to reduce the potential for telescoping. Fifth, the intimate partner violence impact questions were designed to capture the context of the victimization with specific perpetrators; therefore, the impacts of specific types of violence cannot be assessed. Finally, the age at first victimization was asked in relation to the perpetrator (i.e., the first time violence occurred with the specific perpetrator), thus it was not always possible to determine the age at first victimization for specific types of violence, especially when multiple forms of violence were committed by the same perpetrator.

We urge readers to exercise caution when comparing estimates to previous NISVS years or other population-based data sources for two reasons. First, there are differences in the NISVS survey instruments across data years, and these differences could impact the prevalence estimates. For example, the measurement of the 12-month IPV-related impact was revised in 2015 to capture impact that occurred during the past 12 months. In the previously published reports, estimates of victimization captured experiences occurring in the past 12 months but the impact could have happened at any point in that relationship and was not limited to the past 12 months. Second, there are differences in the methodology between NISVS and other surveys, such as the sampling design, the language and terminology used, and the context in which the victimization questions are presented to respondents. NISVS uses a variety of techniques to increase respondent comfort and disclosure of their experiences, such as a graduated informed consent process, a safety plan, and the use of interviewers who are trained in administering surveys of sensitive topics. These are described in more detail in the 2010 Summary Report, available at https://www.cdc.gov/violenceprevention/pdf/NISVS_Report2010-a.pdf.

Despite these limitations, population-based public health surveys using numerous behaviorally specific questions continue to be an important source of information on sexual violence, stalking, and intimate partner violence, in part because they can capture victimization that may not be viewed as a crime by the victim, or may not require health care treatment. Numerous behaviorally specific questions are important to adequately measure these complex forms of violence and to enable the interviewer to build rapport and trust with the respondent.

Methods

The National Intimate Partner and Sexual Violence Survey (NISVS) is an ongoing, nationally representative random-digit-dial (RDD) telephone survey of sexual violence, intimate partner violence, and stalking among adult women and men in the United States. Noninstitutionalized English- and/or Spanish-speaking persons aged 18 years and older are surveyed using a dual-frame strategy that includes landline and cell phones. Surveys are conducted in all 50 states and the District of Columbia.

The estimates presented in this brief report are based on a total of 10,081 completed interviews conducted between April and September 2015. Interviews were completed by 5,758 women and 4,323 men; 32% of the interviews were conducted by landline and 68% by cell phone. The overall weighted response rate was 26.4% (AAPOR RR4) with a weighted cooperation rate (AAPOR COOP4, AAPOR, 2015) of 89.6%. The NISVS 2015 survey followed the same methodology as in earlier years with the following exceptions:

(1) Elimination of State-specific estimates. Due to the reduced target sample size, the data collection effort for NISVS 2015 was not designed to produce state-specific estimates; therefore, state-level stratification of the sample was not included in the 2015 sampling. This approach led to the elimination of under- or oversampling of states.

(2) Use of a two-part sampling approach for cell phone numbers. Once sampled from the cell phone frame an activity code ("Active" vs. "Inactive/Unknown" working status) was appended to each telephone number sampled from the cell phone frame. Cellular numbers flagged as "Active" were dialed at 100%, whereas others were subsampled at a rate aimed to achieve a balance between statistical and cost efficiencies. This approach limited the effort placed on dialing numbers that may not be active.

(3) Increased Phase-2 calls. The call protocol was revised to shorten the Phase-1 number of calls while increasing the number of calls for Phase-2 (initial non-respondent subsampling phase), where a higher incentive was offered in an effort to obtain interviews from those initially reluctant to respond who might differ from early responders.

These changes in the sampling design for 2015 necessitated corresponding changes to the weighting methodology. These included (a) the elimination of unequal selection probability adjustment for states, and (b) an additional adjustment step to account for the double sampling approach used in the cellular frame. Other changes included the elimination of a propensity score method to adjust for nonresponse bias, a different method (Hartley, 1962) to combine the overlapping dual frame samples to form a national sample, and the inclusion of additional calibration dimensions (marital status, education, and Census division in addition to sex, age, and race/ethnicity). Additional methodological information about the sampling strategy and weighting for the earlier years can be found in the NISVS State Report 2010-2012 (Smith et al., 2017) available at https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf.

As NISVS 2015 is a complex sample survey, sampling weights are needed in statistical analyses in order to make inferences to the U.S. adult population. Prevalence estimates, produced separately for males and females, were derived by calculating the weighted percentage of victims among the respective subpopulations. Because some respondents were missing age at first victimization data for selected types of violence victimization, the percent distribution of victims by age at first may not sum to 100% for some forms of violence. All victims are included in the denominator without regard to age at first information, but victims with missing age at first victimization are not included in the estimated percentage of age at first victimization. For each estimated percentage, the number of victims in the population was also computed, along with 95% confidence intervals for each. All analyses were conducted using SUDAAN (version 11.01, Research Triangle Institute, 2013) statistical software to account for the various sample design features. For every estimate in this report, two statistical reliability criteria were considered jointly: the relative standard error (RSE), which is a measure of an estimate's statistical reliability, and the victim count for each form of violence. For any given estimate, if the RSE was greater than 30% or the victim count was 20 or less, the estimate was not reported. Matters that could

influence the width of a confidence interval may include the sample size, the confidence level desired, and the variability of the sample data. A relatively narrower confidence interval may be indicative of a less varied estimate whereas a wider confidence interval may be due to a small sample size or reflect a larger variability in the data, given the same level of confidence.

The survey instrument utilizes behaviorally specific questions to assess victimization of sexual violence, intimate partner violence, and stalking during the lifetime and 12 months prior to taking the survey. The survey development process is described more fully in the 2010 Summary Report (Black et al., 2011), available at https://www.cdc.gov/violenceprevention/pdf/NISVS_Report2010-a.pdf. A detailed description and list of the victimization questions from the survey are included in the NISVS State Report 2010-2012 (Smith et al., 2017) available at https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf.

The 2015 instrument included some modifications to the sexual violence, stalking, and intimate partner violence questions. First, the questions about unwanted sexual experiences that did not involve physical contact (i.e., noncontact unwanted sexual experiences) were removed. Second, the script introducing the stalking items was revised to include additional perpetrator examples (i.e., friend, teacher, co-worker, or supervisor, family member). Third, the script introducing the alcohol/drug-facilitated rape and made to penetrate items was reworded to say: "When you were unable to consent because you were too drunk, high, drugged, or passed out, how many people ever…?" Fourth, the psychological aggression items were reduced to the following five items: insulted, humiliated, or made fun of you in front of others; kept you from having your own money; tried to keep you from seeing or talking to your family or friends; kept track of you by demanding to know where you were and what you were doing; and made threats to physically harm you. Additionally, the perpetrator follow-up questions (i.e., collecting initials and specific perpetrator information) were removed for the psychological aggression items only. Furthermore, while not specifically described in this report, the following additional changes were made to the IPV impact section of the survey: three injury items were added to increase specificity (injury to any ligaments, muscles, or tendons; back or neck injury; and head injury) and were asked of respondents who reported having experienced injury; distinct questions were created for having missed at least one day of work or school (these items were previously combined into one question); seven questions were added that specifically assessed 12-month impact, in addition to lifetime impact, for the following impacts: being fearful, concerned for safety, injury, need for medical care, needed help from law enforcement, missed at least one day of work, and missed at least one day of school. Readers should be aware that this revision to the measurement of the 12-month IPV-related impact changes the interpretation of this construct from that of previous years. In previous NISVS reports, while estimates of victimization captured experiences that occurred during the previous 12 months, the IPV-related impact could have occurred at any point in the relationship and was not limited to the past 12 months. However, in the current measurement, 12-month IPV-related impact refers to the subset of impacts that did occur during the past 12 months. Finally, other changes were made to sections of the survey that are not used in this report.

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Tables

Table 1

Lifetime and 12-Month Prevalence of Sexual Violence Victimization — U.S. Women, NISVS 2015

	Lifetime			12-Month		
	Weighted %	95% CI	Estimated Number of Victims*	Weighted %	95% CI	Estimated Number of Victims*
Contact sexual violence[1]	43.6	(41.9, 45.2)	52,192,000	4.7	(4.0, 5.4)	5,600,000
Rape	21.3	(20.0, 22.7)	25,529,000	1.2	(0.9, 1.7)	1,484,000
Completed or attempted forced penetration	16.0	(14.8, 17.2)	19,142,000	0.6	(0.4, 1.0)	719,000
Completed forced penetration	13.5	(12.4, 14.7)	16,169,000	0.4	(0.2, 0.7)	517,000
Attempted forced penetration	6.3	(5.6, 7.2)	7,568,000	--	--	--
Completed alcohol/drug-facilitated penetration	11.0	(10.0, 12.1)	13,185,000	0.9	(0.6, 1.3)	1,026,000
Made to penetrate	1.2	(0.8, 1.6)	1,398,000	--	--	--
Sexual coercion	16.0	(14.9, 17.3)	19,194,000	2.4	(1.9, 3.0)	2,899,000
Unwanted sexual contact	37.0	(35.5, 38.6)	44,349,000	2.7	(2.2, 3.3)	3,260,000

Abbreviation: CI = confidence interval.
[1]Contact sexual violence includes rape, being made to penetrate someone else, sexual coercion, and/or unwanted sexual contact.
*Rounded to the nearest thousand.
--Estimate not reported; relative standard error > 30% or cell size ≤ 20.

Table 2

Lifetime and 12-Month Prevalence of Sexual Violence Victimization — U.S. Men, NISVS 2015

	Lifetime			12-Month		
	Weighted %	95% CI	Estimated Number of Victims*	Weighted %	95% CI	Estimated Number of Victims*
Contact sexual violence[1]	24.8	(23.2, 26.5)	27,608,000	3.5	(2.9, 4.3)	3,916,000
Rape	2.6	(2.0, 3.2)	2,839,000	--	--	--
Completed or attempted forced penetration	1.4	(1.0, 1.9)	1,526,000	--	--	--
Completed forced penetration	0.8	(0.6, 1.3)	943,000	--	--	--
Attempted forced penetration	0.5	(0.3, 0.8)	583,000	--	--	--
Completed alcohol/drug-facilitated penetration	1.6	(1.2, 2.2)	1,772,000	--	--	--
Made to penetrate	7.1	(6.2, 8.1)	7,876,000	0.7	(0.5, 1.1)	827,000
Made to penetrate - completed or attempted forced	2.7	(2.2, 3.4)	2,992,000	--	--	--
Made to penetrate - completed forced penetration	1.6	(1.2, 2.2)	1,826,000	--	--	--
Made to penetrate - attempted forced penetration	1.4	(1.1, 1.9)	1,576,000	--	--	--
Made to penetrate - completed alcohol/ drug-facilitated	5.5	(4.7, 6.4)	6,089,000	0.6	(0.4, 1.0)	648,000
Sexual coercion	9.6	(8.5, 10.7)	10,644,000	1.6	(1.2, 2.1)	1,769,000
Unwanted sexual contact	17.9	(16.5, 19.4)	19,883,000	2.0	(1.5, 2.5)	2,188,000

Abbreviation: CI = confidence interval.
[1]Contact sexual violence includes rape, being made to penetrate someone else, sexual coercion, and/or unwanted sexual contact.
*Rounded to the nearest thousand.
--Estimate not reported; relative standard error > 30% or cell size ≤ 20.

Table 3

Age at Time of First Completed or Attempted Rape Victimization Among Female Victims — NISVS 2015[1]

Age Group	Weighted %	95% CI	Estimated Number of Victims*
Under 18	43.2	(39.7, 46.8)	11,027,000
10 and under	12.7	(10.4, 15.3)	3,232,000
11 to 17	30.5	(27.3, 33.9)	7,794,000
Under 25	81.3	(78.3, 83.9)	20,752,000
18 to 24	38.1	(34.7, 41.6)	9,725,000
25 and older	17.5	(14.9, 20.4)	4,462,000
25 to 34	12.4	(10.1, 15.0)	3,154,000
35 to 44	3.5	(2.5, 5.0)	905,000
45 and older	1.6	(1.0, 2.6)	404,000

Abbreviation: CI = confidence interval.
[1]A small subset of victims of completed or attempted rape could have also experienced completed or attempted being made to penetrate by the same perpetrator, and the age at first could reflect those experiences.
*Rounded to the nearest thousand.

Table 4

Age at Time of First Rape and Made to Penetrate Victimization Among Male Victims — NISVS 2015[1,2]

	Rape (completed or attempted)[1]			Made to Penetrate (completed or attempted)[2]		
Age Group	Weighted %	95% CI	Estimated Number of Victims*	Weighted %	95% CI	Estimated Number of Victims*
Under 18	51.3	(39.5, 62.9)	1,456,000	25.9	(20.3, 32.3)	2,039,000
10 and under	26.0	(16.5, 38.4)	738,000	--	--	--
11 to 17	25.3	(16.1, 37.3)	718,000	19.2	(14.5, 25.0)	1,515,000
Under 25	70.8	(59.2, 80.3)	2,011,000	65.5	(58.5, 72.0)	5,163,000
18 to 24	19.6	(12.4, 29.4)	555,000	39.7	(33.2, 46.6)	3,124,000
25 and older	25.1	(16.3, 36.5)	713,000	32.1	(25.8, 39.1)	2,529,000
25 to 34	--	--	--	16.6	(12.0, 22.5)	1,307,000
35 to 44	--	--	--	10.4	(6.6, 16.0)	816,000
45 and older	--	--	--	--	--	--

Abbreviation: CI = confidence interval.
[1]A small subset of victims of completed or attempted rape could have also experienced completed or attempted being made to penetrate by the same perpetrator, and the age at first could reflect those experiences.
[2]A small subset of victims of completed or attempted made to penetrate could have also experienced completed or attempted rape by the same perpetrator, and the age at first could reflect those experiences.
*Rounded to the nearest thousand.
--Estimate is not reported; relative standard error > 30% or cell size ≤ 20.

Table 5

Lifetime and 12-Month Prevalence of Stalking Victimization — U.S. Women, NISVS 2015[1]

	Lifetime			12-Month		
	Weighted %	95% CI	Estimated Number of Victims*	Weighted %	95% CI	Estimated Number of Victims*
Stalking	16.0	(14.8, 17.2)	19,145,000	3.7	(3.1, 4.5)	4,466,000

Abbreviation: CI = confidence interval.
[1]Using a less conservative definition of stalking, which considers any amount of fear (i.e., a little fearful, somewhat fearful, or very fearful), 21.6% of women (25,812,000) were victims of stalking in their lifetime, and 5.0 (5,966,000) experienced stalking in the 12 months preceding the survey.
*Rounded to the nearest thousand.

Table 6

Lifetime and 12-Month Prevalence of Stalking Victimization — U.S. Men, NISVS 2015[1]

	Lifetime			12-Month		
	Weighted %	95% CI	Estimated Number of Victims*	Weighted %	95% CI	Estimated Number of Victims*
Stalking	5.8	(4.9, 6.7)	6,408,000	1.9	(1.4, 2.5)	2,104,000

Abbreviation: CI = confidence interval.
[1]Using a less conservative definition of stalking, which considers any amount of fear (i.e., a little fearful, somewhat fearful, or very fearful), 7.8% of men (8,727,000) were victims of stalking in their lifetime, and 2.6% (2,915,000) experienced stalking in the 12 months preceding the survey.
*Rounded to the nearest thousand.

Table 7

Age at Time of First Stalking Victimization Among Female Victims — NISVS 2015

Age Group	Weighted %	95% CI	Estimated Number of Victims*
Under 18	21.2	(18.0, 24.9)	4,065,000
10 and under	--	--	--
11 to 17	20.3	(17.1, 24.0)	3,895,000
Under 25	54.1	(49.9, 58.2)	10,356,000
18 to 24	32.9	(29.1, 36.9)	6,291,000
25 and older	44.5	(40.4, 48.7)	8,524,000
25 to 34	26.4	(22.9, 30.3)	5,060,000
35 to 44	10.5	(8.3, 13.2)	2,007,000
45 and older	7.6	(5.6, 10.2)	1,456,000

Abbreviation: CI = confidence interval.
*Rounded to the nearest thousand.
--Estimate is not reported; relative standard error > 30% or cell size ≤ 20.

Table 8

Age at Time of First Stalking Victimization Among Male Victims — NISVS 2015

Age Group	Weighted %	95% CI	Estimated Number of Victims*
Under 18	12.9	(8.4, 19.3)	826,000
10 and under	--	--	--
11 to 17	10.3	(6.3, 16.3)	658,000
Under 25	40.5	(33.0, 48.5)	2,595,000
18 to 24	27.6	(21.2, 35.1)	1,769,000
25 and older	58.8	(50.8, 66.3)	3,768,000
25 to 34	21.0	(15.5, 27.8)	1,345,000
35 to 44	22.6	(16.2, 30.7)	1,450,000
45 and older	15.2	(10.3, 21.8)	973,000

Abbreviation: CI = confidence interval.
*Rounded to the nearest thousand.
--Estimate is not reported; relative standard error > 30% or cell size ≤ 20.

Table 9

Lifetime and 12-Month Prevalence of Contact Sexual Violence,[1] Physical Violence, and/or Stalking Victimization by an Intimate Partner — U.S. Women, NISVS 2015

	Lifetime			12-Month		
	Weighted %	95% CI	Estimated Number of Victims*	Weighted %	95% CI	Estimated Number of Victims*
Any contact sexual violence,[1] physical violence, and/or stalking	36.4	(34.8, 38.0)	43,579,000	5.5	(4.8, 6.3)	6,584,000
Contact sexual violence[1]	18.3	(17.0, 19.6)	21,897,000	2.4	(2.0, 3.0)	2,932,000
Physical violence	30.6	(29.1, 32.2)	36,632,000	2.9	(2.3, 3.5)	3,455,000
Slapped, pushed, shoved	29.1	(27.6, 30.6)	34,828,000	2.6	(2.1, 3.3)	3,160,000
Any severe physical violence[2]	21.4	(20.0, 22.8)	25,570,000	1.9	(1.5, 2.5)	2,295,000
Stalking	10.4	(9.5, 11.5)	12,499,000	2.2	(1.7, 2.7)	2,591,000
Any contact sexual violence,[1] physical violence, and/or stalking with IPV-related impact[3]	25.1	(23.7, 26.5)	30,025,000	3.0	(2.5, 3.7)	3,635,000

Abbreviation: CI = confidence interval; IPV = intimate partner violence.
[1]Contact sexual violence includes rape, being made to penetrate someone else, sexual coercion, and/or unwanted sexual contact.
[2]Severe physical violence includes hit with a fist or something hard, kicked, hurt by pulling hair, slammed against something, tried to hurt by choking or suffocating, beaten, burned on purpose, used a knife or gun.
[3]Includes experiencing any of the following: being fearful, concerned for safety, injury, need for medical care, needed help from law enforcement, missed at least one day of work, missed at least one day of school. The following impacts were also included in the lifetime estimate only: any post-traumatic stress disorder symptoms, need for housing services, need for victim advocate services, need for legal services and contacting a crisis hotline. For those who experienced rape or made to penetrate by an intimate partner, it also includes a lifetime estimate of having contracted a sexually transmitted infection or having become pregnant. Intimate partner violence-related impact questions were assessed among victims of contact sexual violence, physical violence, or stalking by an intimate partner either during the lifetime or in the last 12 months. The impacts were assessed for specific perpetrators and asked in relation to any form of intimate partner violence experienced in that relationship. By definition, all stalking victimizations result in impact because the definition of stalking requires the experience of fear or concern for safety.
*Rounded to the nearest thousand.

Table 10

Lifetime Prevalence of Psychological Aggression by an Intimate Partner — U.S. Women, NISVS 2015[1]

	Weighted %	95% CI	Estimated Number of Victims*
Any psychological aggression	36.4	(34.8, 38.0)	43,546,000
Expressive aggression - Insulted, humiliated, made fun of in front of others	25.7	(24.3, 27.2)	30,770,000
Any coercive control	30.6	(29.1, 32.2)	36,654,000
Kept you from having your own money	9.6	(8.7 , 10.6)	11,501,000
Tried to keep from seeing or talking to family or friends	16.4	(15.2, 17.6)	19,622,000
Kept track of by demanding to know where you were and what you were doing	23.5	(22.2, 25.0)	28,185,000
Made threats to physically harm	19.7	(18.4, 21.0)	23,546,000

Abbreviation: CI = confidence interval.
[1]Represents a subset of the psychological aggression items that were included in previous administrations of the NISVS survey.
*Rounded to the nearest thousand.

Table 11

Lifetime and 12-Month Prevalence of Contact Sexual Violence,[1] Physical Violence, and/or Stalking Victimization by an Intimate Partner — U.S. Men, NISVS 2015

	Lifetime			12-Month		
	Weighted %	95% CI	Estimated Number of Victims*	Weighted %	95% CI	Estimated Number of Victims*
Any contact sexual violence,[1] physical violence, and/or stalking	33.6	(31.8, 35.4)	37,342,000	5.2	(4.4, 6.1)	5,786,000
Contact sexual violence[1]	8.2	(7.2, 9.2)	9,082,000	1.6	(1.2, 2.2)	1,833,000
Physical violence	31.0	(29.2, 32.7)	34,436,000	3.8	(3.2, 4.6)	4,255,000
Slapped, pushed, shoved	28.8	(27.1, 30.5)	31,983,000	3.4	(2.8, 4.1)	3,729,000
Any severe physical violence[2]	14.9	(13.6, 16.3)	16,556,000	2.0	(1.5, 2.6)	2,219,000
Stalking	2.2	(1.7, 2.8)	2,485,000	0.8	(0.5, 1.3)	918,000
Any contact sexual violence,[1] physical violence, and/or stalking with IPV-related impact[3]	10.9	(9.8, 12.1)	12,118,000	1.9	(1.4, 2.5)	2,101,000

Abbreviation: CI = confidence interval; IPV = intimate partner violence.
[1]Contact sexual violence includes rape, being made to penetrate someone else, sexual coercion, and/or unwanted sexual contact.
[2]Severe physical violence includes hit with a fist or something hard, kicked, hurt by pulling hair, slammed against something, tried to hurt by choking or suffocating, beaten, burned on purpose, used a knife or gun.
[3]Includes experiencing any of the following: being fearful, concerned for safety, injury, need for medical care, needed help from law enforcement, missed at least one day of work, missed at least one day of school. The following impacts were also included in the lifetime estimate only: any post-traumatic stress disorder symptoms, need for housing services, need for victim advocate services, need for legal services and contacting a crisis hotline. For those who experienced rape or made to penetrate by an intimate partner, it also includes a lifetime estimate of having contracted a sexually transmitted infection. Intimate partner violence-related impact questions were assessed among victims of contact sexual violence, physical violence, or stalking by an intimate partner either during the lifetime or in the last 12 months. The impacts were assessed for specific perpetrators and asked in relation to any form of intimate partner violence experienced in that relationship. By definition, all stalking victimizations result in impact because the definition of stalking requires the experience of fear or concern for safety.
*Rounded to the nearest thousand.

Table 12

Lifetime Prevalence of Psychological Aggression by an Intimate Partner — U.S. Men, NISVS 2015[1]

	Weighted %	95% CI	Estimated Number of Victims*
Any psychological aggression	34.2	(32.5, 36.0)	38,068,000
Expressive aggression - Insulted, humiliated, made fun of in front of others	17.4	(16.0, 18.9)	19,338,000
Any coercive control	29.8	(28.1, 31.5)	33,117,000
Kept you from having your own money	5.1	(4.4, 6.1)	5,725,000
Tried to keep from seeing or talking to family or friends	12.2	(11.0, 13.5)	13,543,000
Kept track of by demanding to know where you were and what you were doing	24.9	(23.3, 26.6)	27,698,000
Made threats to physically harm	10.1	(9.0, 11.3)	11,235,000

Abbreviation: CI = confidence interval.
[1]Represents a subset of the psychological aggression items that were included in previous administrations of the NISVS survey.
*Rounded to the nearest thousand.

Table 13

Age at Time of First Victimization of Contact Sexual Violence,[1] Physical Violence, and/or Stalking by an Intimate Partner[2] Among Female Victims — NISVS 2015

Age Group	Weighted %	95% CI	Estimated Number of Victims*
Under 18	25.8	(23.5, 28.4)	11,264,000
10 and under	--	--	--
11 to 17	25.6	(23.2, 28.1)	11,140,000
Under 25	71.1	(68.6, 73.5)	30,978,000
18 to 24	45.2	(42.5, 48.0)	19,713,000
25 and older	28.0	(25.6, 30.5)	12,193,000
25 to 34	19.0	(16.9, 21.2)	8,259,000
35 to 44	6.5	(5.4, 8.0)	2,854,000
45 and older	2.5	(1.8, 3.4)	1,080,000

Abbreviation: CI = confidence interval.
[1]Contact sexual violence includes rape, being made to penetrate someone else, sexual coercion, and/or unwanted sexual contact.
[2]Represents the age at the first experience of IPV among women who experienced contact sexual violence, physical violence, and/or stalking by an intimate partner. IPV includes physical violence, all forms of sexual violence, stalking, and psychological aggression.
*Rounded to the nearest thousand.
--Estimate is not reported; relative standard error > 30% or cell size ≤ 20.

Table 14

Age at Time of First Victimization of Contact Sexual Violence,[1] Physical Violence, and/or Stalking by an Intimate Partner[2] Among Male Victims — NISVS 2015

Age Group	Weighted %	95% CI	Estimated Number of Victims*
Under 18	14.6	(12.4, 17.0)	5,444,000
10 and under	--	--	--
11 to 17	14.4	(12.3, 16.9)	5,394,000
Under 25	55.8	(52.5, 59.0)	20,832,000
18 to 24	41.2	(38.0, 44.5)	15,388,000
25 and older	43.1	(39.9, 46.3)	16,087,000
25 to 34	26.0	(23.3, 28.9)	9,713,000
35 to 44	10.4	(8.6, 12.6)	3,883,000
45 and older	6.7	(5.2, 8.5)	2,491,000

Abbreviation: CI = confidence interval.
[1]Contact sexual violence includes rape, being made to penetrate someone else, sexual coercion, and/or unwanted sexual contact.
[2]Represents the age at the first experience of IPV among men who experienced contact sexual violence, physical violence, and/or stalking by an intimate partner. IPV includes physical violence, all forms of sexual violence, stalking, and psychological aggression.
*Rounded to the nearest thousand.
--Estimate is not reported; relative standard error > 30% or cell size ≤ 20.

Centers for Disease Control and Prevention
National Center for Injury Prevention and Control
Division of Violence Prevention

4770 Buford Highway NE, MS-F64
Atlanta, Georgia 30341-3742
www.cdc.gov/violenceprevention

National Center for Injury Prevention and Control
Division of Violence Prevention

AK2018

THIS IS EXHIBIT "F"
TO THE AFFIDAVIT OF ANDREW HARMES
SWORN BEFORE ME
THIS 23RD DAY OF NOVEMBER, 2022

Erik Axell

Commissioner for Taking Affidavits

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Case No. 22-22549 (JLG)
	:	Chapter 11
Endo International plc, *et al.*,	:	Related Doc # 567
	:	
Debtors.[1]	:	(Jointly Administered)

ERRATA ORDER REGARDING MEMORANDUM DECISION AND ORDER GRANTING IN PART THE MOTION OF THE DEBTORS FOR AN ORDER (I) WAIVING THE REQUIREMENT THAT EACH DEBTOR FILES A SEPARATE LIST OF ITS 20 LARGEST UNSECURED CREDITORS; (II) AUTHORIZING THE DEBTORS TO FILE A SINGLE CONSOLIDATED LIST OF THEIR 50 LARGEST UNSECURED, NON-INSIDER CREDITORS; (III) AUTHORIZING THE DEBTORS AND THE CLAIMS AND NOTICING AGENT TO REDACT PERSONALLY IDENTIFIABLE INFORMATION FOR INDIVIDUALS; (IV) AUTHORIZING THE CLAIMS AND NOTICING AGENT TO WITHHOLD PUBLICATION OF CLAIMS FILED BY INDIVIDUALS UNTIL FURTHER ORDER OF THE COURT; (V) ESTABLISHING PROCEDURES FOR NOTIFYING CREDITORS OF THE COMMENCEMENT OF THE DEBTORS' CHAPTER 11 CASES; AND (VI) GRANTING RELATED RELIEF

This matter having come up on the Court's own motion, it is hereby ORDERED:

1. The Court's Memorandum Decision and Order Granting in Part the Motion of the Debtors for an Order (I) Waiving the Requirement That Each Debtor Files a Separate List of Its 20 Largest Unsecured Creditors; (II) Authorizing the Debtors to File a Single Consolidated List of Their 50 Largest Unsecured, Non-Insider Creditors; (III) Authorizing the Debtors and the Claims and Noticing Agent to Redact Personally Identifiable Information for Individuals; (IV) Authorizing the Claims and Noticing Agent to Withhold Publication of Claims Filed by Individuals Until Further Order of the Court; (V) Establishing Procedures for Notifying Creditors of the Commencement of the Debtors' Chapter 11 Cases; and (VI) Granting Related Relief, dated November 2, 2022, Case No. 22-22549, ECF No. 567 (the "Memorandum Decision"), is corrected in the manner described below:

    a. The following sentence on page 28 of the Memorandum Decision:

    > Accordingly, pursuant to section 107(c), the Court authorizes the Debtors to redact the names, home addresses, and email addresses of the Individual

[1] The last four digits of Debtor Endo International plc's tax identification number are 3755. Due to the large number of debtors in these Chapter 11 Cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at https://restructuring.ra kroll.com/Endo. The location of the Debtors' service address for purposes of these Chapter 11 Cases is: 1400 Atwater Drive, Malvern, PA 19355.

> Litigation Claimants located in the US, EU, and UK and of the Named Individual Australian Litigation Claimants from any paper filed with the Court and/or otherwise made publicly available by the Debtor and the Claims and Noticing Agent, and to notate instead "Name on File" and "Address on File."

shall be corrected to read as follows:

> Accordingly, pursuant to section 107(c), the Court authorizes the Debtors to redact the names, home addresses, and email addresses of the Individual Litigation Claimants located in the US, Canada, EU, and UK and of the Named Individual Australian Litigation Claimants from any paper filed with the Court and/or otherwise made publicly available by the Debtor and the Claims and Noticing Agent, and to notate instead "Name on File" and "Address on File."

b. The following sentence on page 34 of the Memorandum Decision:

> To redact the names, home addresses, and email addresses of the Individual Litigation Claimants located in the US, EU, and UK, and the Named Individual Australian Litigation Claimants, from any paper filed with the Court and/or otherwise made publicly available by the Debtor and the Claims and Noticing Agent, and to notate instead "Name on File" and "Address on File."

shall be corrected to read as follows:

> To redact the names, home addresses, and email addresses of the Individual Litigation Claimants located in the US, Canada, EU, and UK, and the Named Individual Australian Litigation Claimants, from any paper filed with the Court and/or otherwise made publicly available by the Debtor and the Claims and Noticing Agent, and to notate instead "Name on File" and "Address on File."

2. Future references to the Memorandum Decision shall be to the Memorandum Decision as corrected hereby, a copy of which is attached hereto as Exhibit A.

Dated: New York, New York
November 11, 2022

/s/ *James L. Garrity, Jr.*
Hon. James L. Garrity, Jr.
U.S. Bankruptcy Judge

EXHIBIT A

(CORRECTED MEMORANDUM DECISION)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

NOT FOR PUBLICATION

In re:	Case No. 22-22549 (JLG)
Endo International plc, *et al.*,	Chapter 11
Debtors.[1]	(Jointly Administered)

MEMORANDUM DECISION AND ORDER GRANTING IN PART THE MOTION OF THE DEBTORS FOR AN ORDER (I) WAIVING THE REQUIREMENT THAT EACH DEBTOR FILES A SEPARATE LIST OF ITS 20 LARGEST UNSECURED CREDITORS; (II) AUTHORIZING THE DEBTORS TO FILE A SINGLE CONSOLIDATED LIST OF THEIR 50 LARGEST UNSECURED, NON-INSIDER CREDITORS; (III) AUTHORIZING THE DEBTORS AND THE CLAIMS AND NOTICING AGENT TO REDACT PERSONALLY IDENTIFIABLE INFORMATION FOR INDIVIDUALS; (IV) AUTHORIZING THE CLAIMS AND NOTICING AGENT TO WITHHOLD PUBLICATION OF CLAIMS FILED BY INDIVIDUALS UNTIL FURTHER ORDER OF THE COURT; (V) ESTABLISHING PROCEDURES FOR NOTIFYING CREDITORS OF THE COMMENCEMENT OF THE DEBTORS' CHAPTER 11 CASES; AND (VI) GRANTING RELATED RELIEF

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[1] The last four digits of Debtor Endo International plc's tax identification number are 3755. Due to the large number of debtors in these Chapter 11 Cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at https://restructuring.ra.kroll.com/Endo. The location of the Debtors' service address for purposes of these Chapter 11 Cases is: 1400 Atwater Drive, Malvern, PA 19355.

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HON. JAMES L. GARRITY, JR.
U.S. BANKRUPTCY JUDGE

Introduction[2]

The Debtors have filed a motion seeking various forms of relief relating to the noticing of creditors in these Chapter 11 Cases (the "Motion").[3] Part of the relief that the Debtors are seeking in the Motion is the Court's authorization (i) to redact the home addresses and email addresses of certain Individual Non-Litigation Claimants and Equity Holders located in the United States (the "US"), Canada, the United Kingdom ("UK"), and the European Union ("EU"); and (ii) to redact the names, home addresses, and email addresses of certain Individual Litigation Claimants located in the US, Canada, the UK, the EU, and Australia, from any document filed with the Court and/or otherwise made publicly available by the Debtors and the Claims and Noticing Agent, including the List of Creditors, the Claims Registers and Schedules and Statements.

Those aspects of the Motion are now before the Court. The Office of the United States Trustee (the "UST") filed an objection to the Motion (the "UST Objection").[4] The Debtors filed

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[2] Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion and in the Declaration of Mark Bradley in Support of Chapter 11 Petitions and First Day Orders, ECF No. 38 (the "Bradley Decl."). References to "ECF No. ___" are references to documents filed on the electronic docket in case number 22-22549.

[3] *Motion of the Debtors for an Order (I) Waiving the Requirement That Each Debtor Files a Separate List of Its 20 Largest Creditors; (II) Authorizing the Debtors to File a Single Consolidated List of Their 50 Largest Unsecured Non-Insider Creditors; (III) Authorizing the Debtors and the Claims and Noticing Agent to Redact Personally Identifiable Information for Individuals; (IV) Authorizing the Claims and Noticing Agent to Withhold Publication of the Claims Filed by Individuals Until Further Order of the Court; (V) Establishing Procedures for Notifying Creditors of the Commencement of the Chapter 11 Cases; and (VI) Granting Related Relief*, ECF No. 6.

[4] *United States Trustee's Objection to Debtors' Motion for Entry of a Final Order (I) Waiving the Requirement That Each Debtor File a Separate List of Its 20 Largest Unsecured Creditors; (II) Authorizing the Debtors to File a Single Consolidated List of Their 50 Largest Unsecured, Non-Insider Debtors; (III) Authorizing the Debtors and the Claims and Noticing Agent to Redact Personally Identifiable Information for Individuals; (IV) Authorizing the Claims and Noticing Agent to Withhold Publications of Claims Filed by Individuals Until Further Order of the Court; (V) Establishing Procedures for Notifying Creditors of the Commencement of the Debtors' Chapter 11 Cases; and (VI) Granting Related Relief*, ECF No. 176.

a reply to the UST Objection (the "Reply").[5] The Official Committee of Opioid Claimants filed a statement in response to the UST Objection and in support of the Motion (the "OCC Statement").[6] The Ad Hoc Committee of NAS Children[7] and the Ad Hoc Group of Personal Injury Victims[8] each joined in the OCC Statement. On September 28, 2022, the Court heard argument on the Motion.

To the extent set forth herein, the Court GRANTS the Motion.

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[5] *The Debtors' Reply in Support of the Motion of the Debtors for an Order (I) Waiving the Requirement That Each Debtor Files a Separate List of Its 20 Largest Unsecured Creditors; (II) Authorizing the Debtors to File a Single Consolidated List of Their 50 Largest Unsecured, Non-Insider Creditors; (III) Authorizing the Debtors and the Claims and Noticing Agent to Redact Personally Identifiable Information for Individuals; (IV) Authorizing the Claims and Noticing Agent to Withhold Publication of Claims Filed by Individuals Until Further Order of the Court; (V) Establishing Procedures for Notifying Creditors of the Commencement of the Debtors' Chapter 11 Cases; and (VI) Granting Related Relief*, ECF No. 274. The Debtors support the Reply with the Declaration of Eve-Christie Vermynck, who is a solicitor and attorney admitted to practice in England, Wales, Paris, and New York (the "Vermynck Decl."). *Declaration of Eve-Christie Vermynck*, Reply, Ex. A. Additionally, the Debtors also attach to their Reply the Declaration of David McCredie, who is a solicitor admitted in Australia (the "McCredie Decl."). *Declaration of David McCredie*, Reply, Ex B.

[6] *Statement of the Official Committee of Opioid Claimants in Support of Motion of the Debtors for Entry of a Final Order Authorizing (I) the Debtors and the Claims and Noticing Agent to Redact Personally Identifiable Information for Individuals and (II) the Claims and Noticing Agent to Withhold Publication of Claims Filed by Individuals Until Further Order of the Court*, ECF No. 277.

[7] *Joinder of the Ad Hoc Committee of NAS Children in Support of the Statement of the Official Committee of Opioid Claimants in Support of Motion of the Debtors for Entry of a Final Order Authorizing (i) the Debtors and the Claims and Noticing Agent to Redact Personally Identifiable Information for Individuals and (ii) the Claims and Noticing Agent to Withhold Publication of Claims Filed by Individuals Until Further Order of the Court*, ECF No. 290 (the "NAS Joinder"). The NAS Committee is comprised of parents and guardians advocating on behalf of children born with Neonatal Abstinence Syndrome ("NAS"), a medical diagnosis that irises from testing and observation of conditions associated with opioid use and its sudden withdrawal, which in turn is commonly known as neonatal opioid withdrawal syndrome. *Verified Statement of the Ad Hoc Committee of NAS Children Pursuant to Bankruptcy Rule 2019*, ECF No. 134 at 2 & n.2.

[8] *Joinder of the Ad Hoc Group of Personal Injury Victims in Support of the Statement of the Official Committee of Opioid Claimants in Support of Motion of the Debtors for Entry of a Final Order Authorizing (I) the Debtors and the Claims and Noticing Agent to Redact Personally Identifiable Information for Individuals and (II) the Claims and Noticing Agent to Withhold Publication of Claims Filed by Individuals Until Further Order of the Court*, ECF No. 292 (the "Ad Hoc Group Joinder"). The Ad Hoc Group of Personal Injury Victims is comprised of five individuals, each of whom holds one or more unsecured, unliquidated, opioid-related personal injury claims against one or more of the Debtors. *Verified Statement of the Ad Hoc Group of Personal Injury Victims Pursuant to Bankruptcy Rule 2019*, ECF No. 285.

Jurisdiction

The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* dated January 31, 2012 (Preska, C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

Background

On August 16, 2022 (the "Petition Date"), Endo International plc ("Endo Parent") and each of its debtor affiliates (collectively, the "Debtors" and, together with their non-debtor affiliates, the "Company" or "Endo") commenced voluntary chapter 11 cases in this Court (the "Chapter 11 Cases") by filing petitions for relief under chapter 11 of the Bankruptcy Code. On August 17, 2022, the Court entered an order authorizing the joint administration and procedural consolidation of the Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b).[9] The Debtors are authorized to continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On September 2, 2022, the UST appointed an Official Committee of Unsecured Creditors (the "UCC")[10] and an Official Committee of Opioid Claimants (the "OCC")[11] in the Chapter 11 Cases. No trustee or examiner has been appointed in the Chapter 11 Cases.

Endo is a leading specialty pharmaceutical company. It operates a global biopharmaceutical business that produces and sells both generic and branded products. Endo Parent, the lead Debtor, is an Irish public limited company headquartered in Dublin, Ireland, and

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[9] *Order (I) Directing Joint Administration of the Chapter 11 Cases Pursuant to Bankruptcy Rule 1015(b); (II) Waiving the Requirements of Section 342(c)(1) of the Bankruptcy Code and Bankruptcy Rule 2002(n); and (III) Granting Related Relief*, ECF No. 45.

[10] *Appointment of Official Creditors' Committee of Unsecured Creditors*, ECF No. 161.

[11] *Appointment of Official Committee of Opioid Claimants*, ECF No. 163.

is the publicly traded parent of Endo's global enterprise. Bradley Decl. ¶¶ 1, 6. It is a holding company that conducts business through its operating subsidiaries. Collectively, the Debtors operate in five countries, including the US, Canada, Ireland, the UK, and Luxembourg. The non-debtor affiliates also have material operations in India. *Id*. ¶¶ 22, 106.

Certain of the Debtors have been named as defendants in over 3,500 lawsuits (the "Opioid Lawsuits") filed by plaintiffs (the "Opioid Claimants"), seeking to hold such Debtors liable for their marketing and sale of certain FDA-approved opioid products, including, without limitation, Opana® and Opana® ER. *Id*. ¶ 49. An "overwhelming majority" of these Opioid Lawsuits have been filed in the US, with only a "handful" having been filed as proposed class actions in Canada. *Id.* ¶ 51. The Opioid Claimants include individuals seeking damages for alleged personal injuries (the "Opioid PI Claimants"). *Id.* In addition to the Opioid Lawsuits, the Company and certain of its subsidiaries, including Astora Women's Health LLC ("Astora"),[12] have been named as defendants in multiple lawsuits in various state and federal courts in the US, as well as in Canada, Australia, and unspecified other countries. *Id.* ¶ 60. These lawsuits assert claims for personal injuries resulting from the use of transvaginal surgical mesh products designed to treat pelvic organ prolapse or stress urinary incontinence. The plaintiffs (the "Surgical Mesh PI Claimants") generally allege that the products caused extensive personal injury, including chronic pain, incontinence, inability to control bowel function, and permanent deformities. *Id.* The Company's subsidiary, Par Pharmaceutical, Inc. ("PPI"), was named in a multidistrict-litigation case pending in the United States District Court for the Southern District of Florida along with numerous other manufacturers and distributors of branded and generic ranitidine. *Id.* ¶ 63. PPI has also been

[12] American Medical Systems Holdings, Inc. converted to Astora Women's Health Holding LLC and merged into Astora.

named in similar complaints filed in certain state courts, including California, Pennsylvania, and Illinois (collectively, the "Ranitidine PI Claims"). *Id.*

The Motion

Under the Motion, as filed, the Debtors seek authorization pursuant to section 107(c)(1) of the Bankruptcy Code to redact personally identifiable information, including, without limitation, the names and addresses of any individual listed on, or appearing in, any document: (a) made publicly available on the Debtors' case website; (b) filed with the Court; or (c) otherwise submitted to the Claims and Noticing Agent, including the List of Creditors, the Claims Registers, and the Schedules. Motion ¶ 15. The Debtors propose to provide, under seal, unredacted copies of filings to the Court, the UST, official committees, and any other party designated by the Court, subject to a case-by-case review as to whether disclosure would violate any foreign data-protection regime. *Id.* ¶ 21.

The Debtors contend that the Court should grant them such relief because, given the nature of the Chapter 11 Cases, they are unfamiliar with the personal circumstances of each of their creditors to know with sufficient certainty whether a release of their personal information could potentially jeopardize their safety or violate any foreign jurisdictions' privacy data protection regulations. *Id.* ¶ 18. As to the latter, they note that certain of their employees and individual litigation claimants are located in the EU, the UK, Australia, and other countries, which closely regulate the disclosure of personal information. *Id.* ¶ 20. They contend that the United Kingdom Data Protection Act of 2018 and the United Kingdom General Data Protection Regulation (together, the "UK GDPR"), the European General Data Protection Regulation (the "EU GDPR," together with the UK GDPR, the "GDPR"),[13] and similar laws in other jurisdictions impose

[13] The UK GDPR and the EU GDPR are separate legislative regimes applicable in each jurisdiction. The Court will address them together, as the provisions of the EU GDPR were incorporated directly into the UK law as the UK

significant constraints on the disclosure of "personally identifiable information" that may restrict their ability to process and disclose personal information relating to the Debtors' employees and individual claimants located in such foreign jurisdictions. *Id.* They also contend that, as with any large employer, certain employees' personal circumstances, including circumstances unrelated to their employment, would be negatively impacted by the disclosure of their residential addresses, and that disclosure of personal addresses would likely hinder the Debtors' efforts to attract and retain the employees necessary to preserve the value of the Debtors' estates for the benefit of their creditors and other parties-in-interest. *Id.* ¶ 19.

The UST Objection

The UST raises three points in support of its objection. First, it contends that the relief that the Debtors are seeking in the Motion runs afoul of section 107(c) because, among other things, the Debtors do not define or otherwise limit the scope of "personally identifiable information." UST Obj. at 1, 8. It also asserts that the Debtors failed to submit competent evidence of undue risk of identity theft or other unlawful injury to the individuals they seek to protect via redaction under section 107(c) and have not explored narrower alternative relief. *Id.* at 9–10. It notes that "insofar as the business address of an individual creditor may already be public information, the address is not entitled to protection," and because the Debtors did not limit their requested redactions to residential addresses, public business addresses could be redacted. *Id.* at 10.

Next, the UST contends, in substance, that the Debtors overstate the scope of the constraints on the disclosure of "personally identifiable information" under the GDPR. Article 6

GDPR, following the UK's departure from the EU. Vermynck Decl., ¶ 9. As such, the Court will use the term "GDPR" to refer to both regulations.

of the GDPR provides that personal-data processing is lawful where, among other things, "processing is necessary for compliance with a legal obligation to which the controller is subject." UST Obj. at 12 (quoting EU GDPR, Art. 6(c)). The UST concedes that the Debtors qualify as a "controller" under the GDPR but contends that, since the Debtors assertedly "have the duty to make public all information contained in their Court filings in these cases," they may process personal information under the exceptions at Article 6(c) of the GDPR. *Id.* at 12–13.[14] The UST also asserts that Article 49(1)(e) of the GDPR permits a data controller to transfer personal data to a third country or an international organization where, among other things, "the transfer is necessary for the establishment, exercise or defense of legal claims." *Id.* at 13 (quoting EU GDPR, art. 49(1)(e)). It contends that, because the Debtors' initiation of these Chapter 11 Cases subjects them to the disclosure requirements of section 521 of the Bankruptcy Code, Rules 1007(b) and 9009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and the applicable official forms, the Debtors' filing of unredacted personal information meets the "necessary" standard of Article 49(1)(e). *Id.* at 14.

Finally, the UST contends that despite being headquartered in Ireland—an EU member state—the Debtors chose to file the Chapter 11 Cases in the US, and, as such, the Bankruptcy Code, not the GDPR, or other foreign law, controls the scope of the disclosure of personally identifiable information for individuals in these Chapter 11 Cases. *Id.* at 14. The UST maintains that section 107 of the Bankruptcy Code codifies the long-standing US common law right of public access to court records and that the scope of the privacy restrictions under the GDPR far exceeds

[14] The UST also asserts that "the GDPR does not appear to protect the personal information of individuals who are non-EU residents located outside the EU, including U.S. citizens residing in the U.S." *Id.* at 13. The UST cites to Article 3(2) of the EU GDPR Art. 3(2), which states, "This Regulation applies to the processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union . . . ."

those contained in section 107(c). *Id.* at 7, 14–16. For that reason, it asserts that the Court should exercise its discretion and deny the Debtors' request that it recognize the GDPR and apply it in these Chapter 11 Cases. *Id.* at 14–16.

The Debtors' Reply

In their Reply to the UST Objection, the Debtors provide additional information regarding the number and location of individuals that are impacted by the Motion, limit the scope of the relief they are seeking under the Motion, and elaborate on their request that the Court give effect to foreign law in these cases.

The Debtors are aware of the identity and contact details of approximately 8,600 individual non-litigation claimants and equity holders located in the US, Canada, the UK, and the EU (collectively, the "Individual Non-Litigation Claimants and Equity Holders"), as follows:

> (i) 185 current employees located in the UK and the EU (the "UK/EU Current Employees") and 1,550 current employees located in the US and Canada (together with the UK/EU Current Employees, the "Current Employees");
>
> (ii) 100 former employees who were employed within six years prior to the Petition Date, located in the UK and the EU (the "UK/EU Former Employees") and 6,600 former employees who were employed within six years prior to the Petition Date, located in the US and Canada (together with the UK/EU Former Employees, the "Former Employees");
>
> (iii) 10 individual equity holders located in the UK and the EU (the "UK/EU Individual Equity Holders") and 60 individual equity holders located in the US and Canada (together with the UK/EU Individual Equity Holders, the "Individual Equity Holders"); and
>
> (iv) 30 individual vendors and contract counterparties located in the UK and the EU (the "UK/EU Individual Vendors and Contract Counterparties") and 1,200 individual vendors and contract counterparties located in the US and Canada (together with the UK/EU Individual Vendors and Contract Counterparties, the "Individual Vendors and Contract Counterparties").

Reply ¶ 8.

The Debtors also are aware of the identity and contact information for thousands of individual litigation claimants located in the US, Canada, the UK, the EU, and Australia (collectively, the "Individual Litigation Claimants"). Reply ¶¶ 9–16. The Court briefly discusses those claimants below.

Individual US/Canada Litigation Claimants

The Debtors, including Astora, are aware of the identity and contact details of hundreds of individuals who either filed individual claims against the Debtors or are members of a class action, seeking damages for alleged personal injuries in their capacities as: (a) Opioid PI Claimants, (b) Surgical Mesh PI Claimants, or (c) Ranitidine PI Claimants (collectively, the "Individual US/Canada Litigation Claimants"). Reply ¶ 10.

Individual UK/EU Litigation Claimants

The Debtors, including Astora, have been named as defendants by (a) 13 Surgical Mesh PI Claimants in actions brought in the High Court of England and Wales, (b) 56 Surgical Mesh PI Claimants in actions brought in Scotland's Court of Session, and (c) a number of Surgical Mesh PI Claimants in actions in the Netherlands and Ireland (collectively, the "Individual UK/EU Litigation Claimants"). They are aware of the identity and contact information of each of the Individual UK/EU Litigation Claimants. *Id.* ¶ 11.

Individual Australian Litigation Claimants

The Debtors are aware of the identity and contact details of:

> (i) two Surgical Mesh PI Claimants named in a class action that they have commenced on their own right and on behalf of other women in the Federal Court of Australia (Proceeding NSD 35/2018) (the "Australian Court") asserting Surgical Mesh PI Claims against Astora (the "Australian Class Action Proceeding");

(ii) three Surgical Mesh PI Claimants who have filed applications in the Supreme Court of Queensland seeking leave to commence proceedings against Astora in that court; and

(iii) one Surgical Mesh PI Claimant in a proceeding against Astora in the Supreme Court of New South Wales.

Id. ¶¶ 12–15. Hereinafter, the Court shall refer to the foregoing Surgical Mesh PI Claimants and the solicitors who act for them as the "Named Individual Australian Litigation Claimants."

Baker McKenzie acts as Astora's Australian counsel in the Australian Class Action Proceeding. In that capacity, it holds the names and contact details of more than 3,000 women who may be class members in the Australian Class Action Proceeding (the "Additional Individual Australian Litigation Claimants") in certain documents (the "Australian Documents") subject to an implied undertaking under Australian law (the "*Harman* Undertaking") that they will not use that information for any purpose other than the conduct of the Australian Class Action Proceeding, and subject to state/territory and commonwealth privacy regimes that limit Astora's ability to make use of the Additional Individual Australian Litigation Claimant details. *See* McCredie Decl. ¶¶ 9–10.[15] On September 9, 2022, Astora filed an interlocutory application (as further amended, the "Interlocutory Application"), in the Australian Class Action Proceeding, seeking orders from the Australian Court that it be permitted to use the Additional Individual Australian Litigation Claimant contact details for the purpose of serving such individuals with the notice of commencement of Astora's chapter 11 case and of other documents where such individuals are parties-in-interest, and to disclose the names and contact details of the Additional Individual

[15] In relation to the Named Individual Australian Litigation Claimants, the Debtors are not subject to any form of undertaking such as that which applies in respect of the Additional Individual Australian Litigation Claimants. The Debtors advise that applicable Australian laws, including privacy laws, do not restrict Astora from disclosing the names and home addresses of the Named Individual Australian Litigation Claimants and counsel address where required by the orders of this Bankruptcy Court. Reply at 22 n.7. The Debtors seek authorization from the Court to redact the names of the Named Individual Australian Litigation Claimants for the same substantive reasons it seeks such permission in respect of the U.S./Canada Litigation Claimants as set out herein. *Id.*

Australian Litigation Claimants in Astora's chapter 11 case. *Id.* ¶¶ 12–14. In an order dated September 28, 2022 (the "Australian Court Order"),[16] the Australian Court specifically released Astora from the *Harman* Undertaking for the purposes of (i) providing notice to parties-in-interest in these Chapter 11 Cases, (ii) preparing and filing a list of creditors and any other documents to be filed in the Bankruptcy Court in these Chapter 11 Cases (the "Bankruptcy Filings") "in which any information contained in such documents which is sourced from the Australian Documents shall be redacted," and (iii) "providing copies of the Bankruptcy Filings in which information obtained from the Australian Documents is not redacted, to the Bankruptcy Court, the United States Trustee, and the Official Committee of Unsecured Creditors in the Endo Group Chapter 11 on the basis that such documents are held in confidence subject to the orders of the Bankruptcy Court." Australian Court Order ¶ 1(a)–(d).

Modified Request for Relief

In response to the UST Objection, the Debtors refined their request for relief. Pursuant to the Motion, as modified, they are seeking authority under section 107(c) of the Bankruptcy Code and Bankruptcy Rule 1007(j) (solely with respect to information contained in the filings described in Bankruptcy Rule 1007), to make the following redactions:

> Individual Equity Holders, Vendors and Contract Counterparties
>
> Redact the individual's home address and email address and notate "Address on File" instead.
>
> Former Employees
>
> Redact the individual's home address and email address and notate the Debtors' address of service instead.

[16] *See Notice of Order Entered by Federal Court of Australia*, Ex. 2, ECF No. 320.

> Current Employees
>
> Redact the individual's home address and email address and instead notate the individual's applicable business address.
>
> Individual Litigation Claimants
>
> Redact the individual's name, home address, and email address and instead notate the address of the individual's counsel, and if the individual has no counsel of record, notate "Address on File."

The Debtors assert that, for the redacted documents filed with respect to the Individual Equity Holders, Vendors and Counterparties, and the Current and Former Employees, they will

> (i) provide unredacted filings to the Court, the UST, the UCC, the OCC and any other party designated by further order of the Court, subject to applicable foreign law;
>
> (ii) provide any other party in interest unredacted filings upon request made to the Debtors that the Debtors determine in good faith is reasonably related to the Chapter 11 Cases, subject to applicable foreign law; and
>
> (iii) provide five days' advance notice to the UST, the UCC, and the OCC, prior to determining whether to deny or grant any request for such unredacted filing.

Reply at 5–6. They say that they will do the same for the redacted documents filed with respect to the Individual Litigation Claimants[17] and that they also will consult with the OCC prior to determining whether to deny or grant any requests concerning opioid litigation claimants' redacted information. *Id.* at 6–7.

The Debtors contend that the Court should authorize them to make the requested redactions because disclosure of such personal information is protected under section 107(c) and, as to the Additional Individual Australian Litigation Claimants, such disclosure would violate the Australian Court Order. They also contend that disclosure of such personally identifiable

[17] However, the Debtors do not seek authorization to disclose the contact information of the Additional Individual Australian Litigation Claimants to the OCC. *Transcript Regarding Hearing Held on 9/28/2022*, ECF No. 336 at 82:5–83:23.

information with respect to individuals located in the UK and EU would violate the GDPR. Reply ¶¶ 20–32, 39–44, 48–71. The GDPR applies to the processing of "personal data" in the context of an establishment of a "data controller" or "data processor" in the UK and the EU, regardless of where the processing takes place. Vermynck Decl. ¶ 10.[18] Under the GDPR, the data controller determines the purposes for which and the means by which "personal data" is processed, and the data processor processes "personal data" only on behalf of the controller. There is no dispute that the Debtors are "data controllers"—since they have received "personal data" relating to citizens of the UK and the EU—and that their agents that hold and otherwise process such "personal data" solely on the Debtors' instructions and on behalf of the Debtors are "data processors." *Id.* ¶ 12. Article 6 of the GDPR restricts the "processing" of "personal data." The Debtors maintain that for purposes of this case, such "processing" includes (a) the use of names and contact information of the Individual Non-Litigation Claimants and Equity Holders not located in the US, as well as the UK/EU Individual Litigation Claimants for the purpose of serving them with any notice related to the Chapter 11 Cases, and (b) the Debtors or Noticing Agent filing any unredacted or redacted paper in the Chapter 11 Cases or serving a limited number of parties a redacted version that contains the "personal data" of these individual claimants. *Id.* ¶¶ 12, 25. The Debtors contend

[18] The EU GDPR applies to all EU member countries and protects all European Union member countries' citizens, imposes significant constraints on the "processing" of "personal data" relating to these individuals. Vermynck Decl. ¶ 9. The EU GDPR also applies to the three European Economic Area member states that are not in the EU: Liechtenstein, Iceland, and Norway. Erin Hilliard, *The GDPR: A Retrospective and Prospective Look at the First Two Years*, 35 BERKELEY TECH. L.J. 1245, 1267 (2020); *In re Celsius Network LLC*, No. 22-10964, 2022 WL 4492928, at *10 (Bankr. S.D.N.Y. Sept. 28, 2022). The UK GDPR applies to the UK and protects all UK citizens, and it imposes relatively equivalent constraints on the "processing" of these individuals' "personal data." Vermynck Decl. ¶ 9. For these purposes, the term "personal data" means "any information relating to an identified or identifiable living individual ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly[.]" *Id.* (quoting EU GDPR Art. 4(1)). The term "processing" means "any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of personal data by 'data controllers' or 'data processors.'" *Id.* (quoting EU GDPR Art. 4(2)).

that Article 6(1)(f) may apply to the processing of the personal data of the Individual Non-Litigation Claimants and Equity Holders located in the UK and EU and the UK/EU Individual Litigation Claimants. *Id.* ¶¶ 17–19; 23–25.[19] They assert that, consistent with their obligations under the GDPR to restrict data processing only to that which is necessary to achieve the permitted purpose and to balance the rights and freedoms of these individuals, to comply with Article 6(1)(f), in any paper filed with the Court, they must (a) redact the home addresses and email addresses of the Individual Non-Litigation Claimants and Equity Holders located in the UK and EU, and (b) the names and home addresses and email addresses of the UK/EU Litigation Claimants. *Id.* ¶¶ 19, 25. They contend that, absent such relief, they risk processing "personal data" without a legal basis and in breach of the GDPR and thereby exposing themselves to severe monetary penalties that could threaten the Debtors' operations during this sensitive stage of their restructuring. *Id.*[20]

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[19] Article 6(1)(f) of the GDPR states that the "processing" of "personal data" is lawful when:

> (f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

This provision is subject to Article 5(1) of the GDPR. Article 5(1)(c) provides that "personal data" must be "adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed." Article 5(1)(b) states that the purpose for which an individual or entity collects, and processes "personal data" must be "specified, explicit and legitimate." Vermynck Decl. ¶ 18. The Debtors assert that, contrary to the UST's assertions, Article 6(1)(c) of the GDPR ("compliance with a legal obligation") is not applicable to the Chapter 11 Cases because the legal obligation must exist under the UK and the EU laws, which is not the case in the context of the Chapter 11 Cases. *Id.* ¶ 16.

[20] A violation of the GDPR could result in proceedings or actions against the breaching organization by governmental entities or others, including class action privacy litigation in certain jurisdictions, significant fines, penalties, judgments, and reputational damages to such organization. Vermynck Decl., ¶ 11. If an organization is found to have processed information in breach of the UK GDPR, the organization may be subject to an administrative fine up to the higher of £17,500,000 or 4 percent of worldwide annual turnover—i.e., total annual revenues—of the preceding financial year. *See* United Kingdom Data Protection Act 2018, section 157(5)(a) (as amended by Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019). Similarly, for a breach of the EU GDPR, the organization may be fined up to the higher of €20,000,000 or 4 percent of worldwide annual turnover—i.e., total annual revenues—of the preceding financial year. *See* General Data Protection Regulation (EU) 2016/679, art. 83(5); Vermynck Decl. ¶ 11.

Applicable Legal Principles

Bankruptcy Code § 521 and its implementing rules impose a duty on all debtors to file schedules and statements. 11 U.S.C. § 521(a). Bankruptcy Rule 1007(b) requires the schedules and statements to be "prepared as prescribed by the appropriate Official Forms." FED. R. BANKR. P. 1007(b). Official Form 206, the Schedules for non-individual debtors, requires complete disclosure of a creditor's name and mailing address, (Sch. E-F), and as to secured creditors, their email addresses as well (Sch. D). As applicable, Official Form 207, the Statement of Financial Affairs for non-individual debtors, also requires full disclosure of a creditor's or other individual's name, address, and email address, (Part 2, Part 3 (Item 4), Part 6 (Items 11 and 13), Part 11, Part 13 (Items 27–30). As relevant, Bankruptcy Rule 9009 states:

> The Official Forms prescribed by the Judicial Conference of the United States shall be used without alteration, except as otherwise provided in these rules, in a particular Official Form, or in the national instructions for a particular Official Form. Official Forms may be modified to permit minor changes not affecting wording or the order of presenting information, including changes that:
>
> > (1) expand the prescribed areas for responses in order to permit complete responses;
> >
> > (2) delete space not needed for responses; or
> >
> > (3) delete items requiring detail in a question or category if the filer indicates—either by checking "no" or "none" or by stating in words—that there is nothing to report on that question or category.

FED. R. BANKR. P. 9009(a).

There is a strong presumption and public policy in favor of public access to court records. *See, e.g.*, *Nixon v. Warner Commc'n, Inc.*, 435 U.S. 589, 597–98 (1978); *Neal v. The Kansas City Star (In re Neal)*, 461 F.3d 1048, 1053 (8th Cir.2006); *Gitto v. Worcester Telegram & Gazette Corp. (In re Gitto Global Corp.)*, 422 F.3d 1, 6 (1st Cir.2005); *In re Borders Grp., Inc.*, 462 B.R. 42, 46 (Bankr. S.D.N.Y. 2011); *In re Food Mgmt. Grp., LLC*, 359 B.R. 543, 553 (Bankr. S.D.N.Y.

2007). The right of public access is "rooted in the public's First Amendment right to know about the administration of justice." *Video Software Dealers Ass'n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 26 (2d Cir.1994) (stating that public access "helps safeguard 'the integrity, quality, and respect in our judicial system,' and permits the public 'to keep a watchful eye on the workings of public agencies'" (first quoting *In re Analytical Sys.*, 83 B.R. 833, 835 (Bankr. N.D. Ga. 1987); and then quoting *Nixon*, 435 U.S. at 598)). "The public interest in openness of court proceedings is at its zenith when issues concerning the integrity and transparency of bankruptcy court proceedings are involved." *In re Food Mgmt. Grp., LLC*, 359 B.R. at 553; *see also In re Gitto Global Corp.*, 422 F.3d at 7 ("This governmental interest is of special importance in the bankruptcy arena, as unrestricted access to judicial records fosters confidence among creditors regarding the fairness of the bankruptcy system."); *In re Bell & Beckwith*, 44 B.R. 661, 664 (Bankr. N.D. Ohio 1984) ("This policy of open inspection, established in the Bankruptcy Code itself, is fundamental to the operation of the bankruptcy system and is the best means of avoiding any suggestion of impropriety that might or could be raised.").

Section 107(a) of the Bankruptcy Code codifies the common law right of public access to judicial records. *Togut v. Deutsche Bank AG (In re Anthracite Capital Inc.)*, 492 B.R. 162, 170, 173 (Bankr S.D.N.Y. 2013); *see also Gitto Global*, 422 F.3d at 7–8 (noting that section 107 supplants the common law right of public access). Pursuant to section 107(a), papers filed in bankruptcy cases and the Court's dockets are "public records, open to examination by an entity at reasonable times without charge." 11 U.S.C. § 107(a); *Anthracite Capital*, 492 B.R. at 170. Section 107(c)(1) provides a limited exception to that general rule. It states that:

> The bankruptcy court, for cause, may protect an individual, with respect to the following types of information to the extent the court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or the individual's property:

> (A) Any means of identification (as defined in section 1028(d) of title 18) contained in a paper filed, or to be filed, in a case under this title.
>
> (B) Other information contained in a paper described in subparagraph (A).

11 U.S.C. § 107(c)(1); *see also In re French*, 401 B.R. 295, 306 (Bankr. E.D. Tenn. 2003) (noting "that the sole purpose [of] § 107(c) was to establish public access to court documentation with very limited exceptions.") Section 1028(d) of title 18 provides a non-exhaustive list of personally identifiable information, including:

> (A) name, social security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number;
>
> (B) unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
>
> (C) unique electronic identification number, address, or routing code; or
>
> (D) telecommunication identifying information or access device (as defined in section 1029(e)).

18 U.S.C. § 1028(d)(7). Bankruptcy Rule 1007(j) provides:

> On motion of a party in interest and for cause shown the court may direct the impounding of the lists filed under this rule, and may refuse to permit inspection by any entity. The court may permit inspection or use of the lists, however, by any party in interest on terms prescribed by the court.

FED. R. BANKR. P. 1007(j). These lists include schedules revealing the identities of all creditors, schedules of assets and liabilities, and statements of financial affairs. *Id*. 1007(b). Bankruptcy Rule 1007(j) permits the Court to protect information "from disclosure to competitors or others who might make inappropriate or unfair use of the information." 9 COLLIER ON BANKRUPTCY P 1007.10 (16th ed. 2022). By its terms, Bankruptcy Rule 1007(j) does not set forth the standard for an order impounding a list, nor does it explain when redaction rather than

wholesale sealing is appropriate. *In re Celsius Network LLC*, No. 22-10964, 2022 WL 4492928, at *10 (Bankr. S.D.N.Y. Sept. 28, 2022).

The Debtors carry the burden of showing there is a sufficient basis to overcome the presumption of ready access to legal records and public policy in favor of public access to court records. *See In re Food Mgmt. Grp., LLC*, 359 B.R. at 561. When, as here, the Debtors are seeking protection under section 107(c), they cannot meet their burden simply by speculating "that disclosure 'may,' as opposed to 'would' as the statutory language requires, create undue risk of identity theft or other unlawful injury." *In re Celsius Network LLC*, 2022 WL 4492928 at *10. However, "[s]ection 107(c) references 'risk,' and assessment of risk is forward looking. While a specific potential harm must be identified, the standard does not require evidence of injury having occurred in the past or under similar circumstances." *In re Motion Seeking Access to 2019 Statements*, 585 B.R. 733, 751 (D. Del. 2018) (citations omitted), *aff'd sub nom. In re A C & S Inc*, 775 F. App'x 78 (3d Cir. 2019).

Discussion

In the Motion, as modified by the Reply, the Debtors seek authority pursuant to section 107(c) of the Bankruptcy Code and Bankruptcy Rule 1007(j) to redact the following information from any paper filed with the Court and/or otherwise made publicly available by the Debtors and their Claims and Noticing Agent:

> (i) the home addresses and email addresses of Individual Non-Litigation Claimants and Equity Holders located in the US, Canada, the UK, and the EU; and
>
> (ii) the names, home addresses and email addresses of Individual Litigation Claimants located in the US, Canada, the UK, the EU and Australia.

Reply at 5–7. They contend such relief is warranted under section 107(c) and Rule 1007(j) because the disclosure of an individual's home address heightens that individual's risk of being a victim of

identity theft or stalking and intimate partner violence, and because the disclosure of an individual's status as an Individual Litigation Claimant could result in serious adverse repercussions to such individual. They also ask the Court to recognize and give effect to the Australian Court Order[21] and the GDPR. The Court considers those matters below.

Home Addresses and Email Addresses of Individual Non-Litigation Claimants and Equity Holders Located in the US, Canada, the UK, and the EU

The type of information protected from disclosure under section 107(c) includes information "that may be used, alone or in conjunction with other information to identify a specific individual." *In re Barbaran*, No. 06-00457-ELG, 2022 WL 1487066, at *4 (Bankr. D.D.C. May 9, 2022) (citing *In re Motions Seeking Access to 2019 Statements*, 585 B.R. at 748 (citing 18 U.S.C. § 1028(d))). Home addresses fall within that category of information, as it is taken as a "given" that they constitute personally identifiable information that is vital information to perpetrators of

[21] The Debtors filed the Motion and Reply while the Interlocutory Application was pending and before the Australian Court entered the Australian Court Order. The Australian Court entered its Reasons for Judgment on October 6, 2022. *See Notice of Order and Reasons for Judgment Entered by Federal Court of Australia*, ECF No. 381. In the Reply, the Debtors discussed the proceedings before the Australian Court (Reply ¶¶ 39-44) and advised that

> While it remains a matter for the Australian Court, it is hoped that the Australian Court will consider it appropriate to grant the Debtor Astora (a) use of the Additional Australian Litigation Claimants' contact information for the purpose of serving such individuals with the notice of commencement of Astora's chapter 11 case and (b) a limited permission to disclose the names and contact details of the Additional Australian Litigation Claimants in the Chapter 11 Case, in accordance with the Debtors' requested relief set forth in the chart above. Where the Australian Court requires additional limitations on the use or disclosure of the Additional Australian Litigation Claimants' information or additional protections for those individuals, the Debtor Astora will inform this Court and may make further application to this Court or the Australian Court as appropriate.

Id. ¶ 44. The Australian Court Order gives Astora the relief that the Debtors sought. Although the Debtors have not expressly requested that the Court recognize and give effect to the Australian Court Order, the Court finds that the Debtors have satisfactorily raised the issue, and it is therefore appropriate to engage in a comity analysis for the limited purpose of determining whether to grant redaction relief consistent with the Australian court's ruling. *CSL Australia Party Ltd. v. Britannia Bulkers PLC*, No. 08 Civ. 8290, 2009 WL 2876250, *3 (S.D.N.Y. Sept. 8, 2009) (noting that, in the bankruptcy context, the burden of establishing that international comity exists rests on the party asserting it, but the decision whether to grant international comity ultimately lies within the court's discretion); *cf. Maersk, Inc. v. Neewra, Inc.*, No. 05 Civ. 4356, 2008 WL 1986046, *2 (S.D.N.Y. May 7, 2008) (determining that a magistrate judge inappropriately raised the issue of international comity sua sponte in granting preclusive effect to a Kuwaiti judgment of $1,860,000).

identity theft, stalking, and intimate partner violence alike, and that publishing such information facilitates an identity thief's search for data and a stalker's or abuser's ability to find his or her target. *See, e.g.*, Hearing Transcript, *In re Art Van Furniture, LLC*, No. 20-10553 (Bankr. D. Del. Mar. 10, 2020) ("at this point and given the risks associated with having any kind of private information out on the internet, [redaction] has really become routine [and] I think obvious relief.") (ECF No. 82 at 25:13-16);[22] *see also* Hearing Transcript at 60:22–25, *In re Forever 21, Inc.*, No. 19-12122 (Bankr. D. Del. Dec. 19, 2019), ECF No. 605 ("We live in a new age in which the theft of personal identification is a real risk, as is injury to persons who, for personal reasons, seek to have their addresses withheld.").

Moreover, there is good reason for authorizing the Debtors to redact the home addresses and email addresses as requested herein, as the Debtors have demonstrated that the risks of identity theft, stalking, and intimate partner violence are real, not theoretical.[23] In a report dated January 2019, the Department of Justice's Bureau of Justice Statistics estimated that 10 percent of persons 16 years of age and over reported being a victim of identity theft during a 12-month period, with total losses equaling $17.5 billion.[24] Moreover, a report issued in November 2018 by the Centers for Disease Control found that approximately 16 percent of women and 5.8 percent of men are victims of stalking at some point in their lifetime, and approximately 1 in 3 people have

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[22] In that light, Chief Judge Sontchi noted that consideration of a request to redact under redactions under section 107(c) is not a "burden of proof" issue so "much as a common sense issue." Hearing Transcript at 25:6–7, *In re Art Van Furniture, LLC*, No. 20-10533 (Bankr. D. Del. Mar. 10, 2020), ECF No. 82.

[23] In *In re Windstream*, Judge Robert Drain of this Court noted that the consequences of releasing private information could be "very serious," and "[o]nce [private information is] out there, it's out there." Hearing Transcript at 88:6-12, 89:5-8, *In re Windstream Holdings, Inc.*, No. 19-22312 (Bankr. S.D.N.Y. Feb. 26, 2019). Likewise, in *GTT Commc'ns, Inc.*, my colleague Judge Michael Wiles noted that personally identifiable information, including addresses "has been misused in other cases, and I'll be darned if I'm going to let it be misused in one of mine." Hr'g Tr. at 78:12-19, *GTT Commc'ns., Inc.*, No. 21-11880 (Bankr. S.D.N.Y Nov. 4, 2021).

[24] *See* Erika Harrell, *Victims of Identity Theft, 2016*, 2019 BUREAU OF JUSTICE STATISTICS 1, https://www.bjs.gov/content/pub/pdf/vit16.pdf.

experienced violence and/or stalking by an intimate partner during their lifetime.[25] The Court can take judicial notice of the fact that identity theft is a world-wide problem. *See, e.g.*, Daniel F. Miller et al., *Negligence at the Breach: Information Fiduciaries and the Duty to Care for Data*, 54 CONN. L. REV. 105 (2022); *see also In re Celsius Network, LLC*, 2022 WL 4492928 at *12–13 (extending relief under section 107(c) to individuals located in the US, European Economic Area ("EEA"), and UK); *Cox v. City of Charleston*, 250 F. Supp. 2d 582, 591 (D.S.C. 2003) ("Moreover, this court can take judicial notice that identity theft is an increasing worldwide problem").

The Court finds that the Debtors have demonstrated cause under section 107(c) of the Bankruptcy Code to redact the home addresses and email addresses of Individual Non-Litigation Claimants and Equity Holders located in the US, Canada, the UK, and the EU from any paper filed with the Court and/or otherwise made publicly available by the Debtors and their Claims and Noticing Agent and instead, (x) notate "Address on File" (Individual Equity Holders, Vendors and Contract Counterparties), (y) notate the Debtors' address of service (Former Employees), and (z) notate the individual's applicable business address (Current Employees). In addition, the Debtors will (i) provide unredacted filings to the Court, the UST, the UCC, the OCC and any other party designated by further order of the Court; (ii) provide any other party in interest unredacted filings upon request made to the Debtors that the Debtors determine in good faith is reasonably related to the Chapter 11 Cases; and (iii) provide five (5) days' advance notice to the UST, the UCC, and the OCC, prior to determining whether to deny or grant any request for such unredacted filing.

[25] *See* SHARON G. SMITH ET AL., CDC, NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2015 DATA BRIEF—UPDATED RELEASE 5–6 (Nov. 2018). A copy of the report is annexed as Exhibit K to the Reply.

Names, Home Addresses and Email Addresses of Individual Litigation
Claimants Located in the US, Canada, the UK, the EU and Australia.

The Court recognizes that the right of public access to judicial records gives rise to a "strong presumption and public policy in favor of public access to court records." *In re Borders Grp.*, 462 B.R. at 46. But that right is not absolute. The court may protect private information in a judicial record upon an appropriate showing that the privacy interests outweigh the presumption of public access to the information and the judicial efficiencies realized through its use. Factors that courts consider in doing that test include:

> [T]he type of record requested, the information it does or might contain, the potential for harm in any subsequent nonconsensual disclosure, the injury from disclosure to the relationship in which the record was generated, the adequacy of safeguards to prevent unauthorized disclosure, the degree of need for access, and whether there is an express statutory mandate, articulated public policy, or other recognizable public interest militating toward access.

In re Crawford, 194 F.3d 954, 959 (9th Cir. 1999).

It is self-evident that "[i]ndividuals have privacy interests in their medical records." *In re Motions Seeking Access to 2019 Statements,* 585 B.R. at 752. The need to preserve those privacy interests is uniquely significant in "opioid" cases like these Chapter 11 Cases. The anecdotal evidence clearly demonstrates that Opioid PI Claimants, including those suffering from opioid use disorder ("OUD"), confront repercussions every day as a result of their affliction with OUD, since illicit drug use disorders are more likely to be viewed as a personal choice or a sign of weakness or "bad character." OCC Statement ¶ 3. "People with opioid use disorders are often perceived as dangerous and unpredictable, subject to high levels of social exclusion and may be considered unworthy of receiving government assistance with food or housing." Ali Cheetham et al., *The*

Impact of Stigma on People with Opioid Use Disorder, Opioid Treatment, and Policy, 13 SUBSTANCE ABUSE & REHAB. Jan. 25, 2022, at 1.[26]

Moreover, as the OCC contends, the societal reaction—potentially leading to loss of jobs or housing situations—associated with being publicly revealed as suffering from OUD (or having loved ones who have died from opioid overdose) remains both a real and credible risk that many Opioid PI Claimants must consider in determining whether to participate in the Chapter 11 Cases. OCC Statement ¶ 3. The risk is particularly acute for mothers of children either diagnosed with NAS or presenting conditions associated with maternal opioid use.[27] That is because multiple states have enacted laws requiring the reporting of NAS diagnoses,[28] as well as instituting civil penalties for the use of opioids, among other drugs, during pregnancy.[29] Although Individual

[26] The United States Food and Drug Administration (the "FDA") reported that, in an FDA meeting with individuals suffering from OUD, "[m]ost participants shared experiencing stigma due to OUD. . . . A few participants also discussed the impact of stigma when securing housing or pursuing career opportunities due to criminal convictions on their record." CENTER FOR DRUG EVALUATION & RESEARCH, U.S. FOOD & DRUG ADMIN., THE VOICE OF THE PATIENT: OPIOID USE DISORDER 9 (2018), https://www.fda.gov/media/124391/download.

[27] *See* Rebecca Stone, *Pregnant Women and Substance Use: Fear, Stigma and Barriers to Care*, 3 HEALTH & J., Feb. 12, 2015, at 3 ("Contrary to claims that arresting and prosecuting pregnant women will encourage them to desist from substance use and thus improve maternal and fetal health, fear of detection and punishment presents a significant barrier to care for mothers and pregnant women. Women have reported that they delayed or avoided prenatal care altogether out of fear of punishment . . . ."); Andrea Weber et al., *Substance Use in Pregnancy: Identifying Stigma and Improving Care*, SUBSTANCE ABUSE & REHAB., Nov 23, 2021, at 113 ("Several studies have found that laws criminalizing substance use in pregnancy do not achieve intended outcomes (reduced substance use in pregnancy and reduced neonatal withdrawal syndromes) but rather people delay or avoid seeking prenatal care and substance use treatment altogether, due to fear of punishment such as involvement with [the child welfare system], loss [of] parental rights, or incarceration.").

[28] *See, e.g.*, GA. CODE ANN. § 31-12-2 ("The [Georgia Department of Public Health] shall require notice and reporting of incidents of neonatal abstinence syndrome. A health care provider, coroner, or medical examiner, or any other person or entity the department determines has knowledge of diagnosis or health outcomes related, directly or indirectly, to neonatal abstinence syndrome shall report incidents of neonatal abstinence syndrome to the department."); 12 VA. ADMIN. CODE § 5-90-80(E) (Within one month of diagnosis, "[n]eonatal abstinence syndrome shall be reported by physicians and directors of medical care facilities when a newborn has been diagnosed with neonatal abstinence syndrome, a condition characterized by clinical signs of withdrawal from exposure to prescribed or illicit drugs" through the state health department's "online Confidential Morbidity Report portal").

[29] *See State Laws and Policies: Substance Use During Pregnancy*, GUTTMACHER INST. (Aug. 1, 2022), https://www.guttmacher.org/state-policy/explore/substance-use-during-pregnancy ("24 states and the District of Columbia consider substance use during pregnancy to be child abuse under civil child-welfare statutes, and 3 consider it grounds for civil commitment.").

Litigation Claimants in the UK, Canada and EU, and the Named Individual Australian Litigation Claimants may not face civil penalties under local laws like those confronting the US Opioid PI Claimants, the disclosure of their names, including the names of the Surgical Mesh PI Claimants is every bit as prejudicial to those claimants. That is because in filing claims in these Chapter 11 Cases, those claimants necessarily would identify themselves as Opioid PI Claimants or Surgical Mesh PI Claimants and in doing so, run the risk of prejudice and embarrassment associated with being holders of such claims. Those factors clearly weigh against the unfettered disclosure of the identities of the Individual Litigation Claimants. So does the fact that such disclosure is not necessary to the orderly operation of these cases. As modified, the Motion is narrowly tailored to ensure that parties' ability to communicate with others is minimally affected while creating safeguards to limit personally identifiable information from becoming public.

"Under § 107(c), a bankruptcy court can deny access to even a person's name when that name appears in a filing that would necessarily associate them with an unfavorable medical condition." *In re Motions Seeking Access to 2019 Statements,* 585 B.R. at 752; *see also In re L.K.*, No. 05-13887, 2009 WL 1955455, at *2 (Bankr. E.D.N.Y. July 6, 2009) (redacting a debtor's full name and using initials under 11 U.S.C. § 107(b)(2) (limiting disclosure of scandalous matters) where an adversary proceeding contained medical and mental-health information). It is an

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The OCC also cites an online news article that asserts there are "dozens of states with laws on the books that criminalize drug use during pregnancy." Emma Coleman, *Many States Prosecute Pregnant Women for Drug Use. New Research Says That's a Bad Idea*, ROUTE FIFTY (Dec. 5, 2019), https://www.route-fifty.com/health-human-services/2019/12/pregnant-women-drug-use/161701/. For that claim, the article relies on a statistical analysis of a proposed correlation between NAS and the "punitive" policies (including reporting laws) described in the Guttmacher Institute report, *supra*, which found that the punitive policies "were not associated with a reduction in NAS rates, and in fact, these policies may have been associated with an increase in rates of NAS." Laura J. Faherty, MD, MPH, MS et al., *Association of Punitive and Reporting State Policies Related to Substance Use in Pregnancy with Rates of Neonatal Abstinence Syndrome*, JAMA NETW. OPEN (Nov. 13, 2019), https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2755304?utm_source=For_The_Media&amp%3butm_medium=referral&amp%3butm_campaign=ftm_links&amp%3butm_term=111319. While the characterization of civil child-welfare laws as criminal is not strictly accurate, the Court appreciates the arguments that punitive NAS policies can serve as a disincentive for mothers to file opioid claims, and that such punitive NAS policies (particularly reporting laws) may conceivably imply the threat of prosecution under separate, broader criminal statutes.

understatement to say that in identifying the Individual UK/EU/Canadian Litigation Claimants and the Named Individual Australian Litigation Claimants in filed documents, the Debtors will be associating them with an "unfavorable medical condition." For that reason, and because in this case, there is no need for proving unfettered access to the contact information of the Individual Litigation Claimants, the Court finds that the Debtors have demonstrated grounds under section 107(c) to redact the names, home addresses and email addresses of the Individual Litigation Claimants located in the US, the UK, Canada and the EU, and of the Named Individual Australian Litigation Claimants from any paper filed with the Court and/or otherwise made publicly available by the Debtors and their Claims and Noticing Agent.

There is an additional ground for granting such relief. In publishing the names of those claimants, the Debtors will heighten the risk to them of identity theft. *See Attias v. CareFirst, Inc.*, 865 F.3d 620, 628 (D.C. Cir. 2017) (describing the risk of medical information disclosures leading to "'medical identity theft' in which a fraudster impersonates the victim and obtains medical services in her name"); *see also* Gregory S. Gaglione, *The Equifax Data Breach: An Opportunity to Improve Consumer Protection and Cybersecurity Efforts in America*, 67 BUFF. L. REV. 1133, 1181 n.257 (2019) (noting that medical identity theft "can cause the victim to receive improper medical care, have his or her medical insurance depleted, become disqualified for health or life insurance, or even become disqualified for some jobs"). As the Debtors noted, publishing a list of claimants' names in a searchable format would further compound the risk of identity theft, since that format would render the claimants' information more susceptible to data mining. *See* Paul G. Stiles & Michael A. Fitts, *Research and Confidentiality: Legal Issues and Risk Management Strategies*, 17 PSYCH. PUB. POL. & L. 333, 337, 381 n.81 (2011) (noting that large data sets can be vulnerable "to data mining efforts for the purpose of identity theft").

Accordingly, pursuant to section 107(c), the Court authorizes the Debtors to redact the names, home addresses, and email addresses of the Individual Litigation Claimants located in the US, Canada, EU, and UK and of the Named Individual Australian Litigation Claimants from any paper filed with the Court and/or otherwise made publicly available by the Debtor and the Claims and Noticing Agent, and to notate instead "Name on File" and "Address on File." In addition, the Debtors will (i) provide unredacted filings to the Court, the UST, the UCC, the OCC, and any other party designated by further order of the Court; (ii) provide any other party in interest unredacted filings upon request made to the Debtors that the Debtors determine in good faith is reasonably related to the Chapter 11 Cases; (iii) with respect to any requests concerning opioid litigation claimants' redacted information, the Debtors shall consult with the OCC, prior to determining whether to deny or grant such request; and (iv) provide five (5) days' advance notice to the UST, the UCC, and the OCC, prior to determining whether to deny or grant any request for such unredacted filing.

Application of the GDPR

Having determined that the home addresses and email addresses of Individual Non-Litigation Claimants and Equity Holders located in the US, Canada, the UK, and the EU and the names, home addresses and email addresses of Individual Litigation Claimants located in the US, Canada, the UK, the EU are protected from disclosure under section 107(c) of the Bankruptcy Code, the Court need not, and will not, consider whether to give effect to the GDPR and apply it in these Chapter 11 Cases.[30]

[30] In *In re Celsius Network LLC*, 2022 WL 4492928, Chief Judge Martin Glenn considered whether to apply the UK GDPR and the EU GDPR in that chapter 11 case. In that case, the debtors ran an online platform wherein their customers could deposit different types of cryptocurrency assets into accounts associated with their email addresses, as opposed to the industry standard of assigning account numbers. The debtors sought leave under section 107 of the Bankruptcy Code to redact the following information from any paper filed with the Court:

The Court Will Extend Comity to the Australian Court Order

The Supreme Court has held that a foreign judgment should not be challenged in the US if the foreign forum provides: "[A] full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it [is] sitting . . . ." *Hilton v. Guyot*, 159 U.S. 113, 202–03 (1895); *see also In re Bd. of Dirs. of Hopewell Int'l Ins. Ltd.*, 238 B.R. 25, 60, 66–68 (Bankr. S.D.N.Y. 1999), *aff'd*, 275 B.R. 699 (S.D.N.Y. 2002) (concluding that comity should be accorded to foreign court orders as long as "it is shown that the foreign court is a court of competent jurisdiction, and that the laws and public policy of the forum state and the

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> (i) the home addresses and email addresses of any citizens of the US located in the US, including the Debtors' employees, individual shareholders, and individual customers, and
>
> (ii) the names, home addresses, and email addresses of any citizens of the UK or EEA member countries and any individual whose citizenship is unknown

Id. at *10. The Court rejected the debtors' contention that the home addresses and email addresses of their individual customers was commercial information under section 107(b)(1) of the Bankruptcy Code but authorized the redaction of such information for individual customers worldwide under section 107(c)(1) of the Code. In so ruling, Judge Glenn found that the debtors had demonstrated that "[s]uch information, in combination with [the customers'] names, could make individual account holders more vulnerable to identify theft and render account holders' crypto assets more susceptible to criminal theft." *Id.* at *13. He also found that the debtors had demonstrated that the public disclosure of the home addresses and email addresses of certain employees, directors, and officers would create undue risk of unlawful injury under section 107(c). *Id.* at *11–13. However, the Court found that standing alone, the disclosure of the names of the debtors' employees, individual shareholders, and individual customers did not create undue risk of unlawful injury to them for purposes of section 107(c). *Id.* at *12. In that light, Judge Glenn denied the debtors' request to redact the names of individual creditors located in the US and abroad. In so ruling, the Court "remain[ed] unconvinced, beyond speculation, that the disclosure of names alone (without email or physical addresses) presents an imminent risk of harm." *Id.* at *14. Moreover, the Court found no justification for affording greater protection to individuals in the EU and UK under the UK GDPR and the EU GDPR, than that afforded to their counterparts in the US. *Id.* at * 13 ("Ultimately, the Debtors provide no legal authority explicitly dictating why the UK GDPR and the EU GDPR should apply to the bankruptcy cases of the Debtors filed in the United States, or specifically, why the foreign laws would take precedence in a situation where United States law requires the disclosure of the information."). In contrast to *Celsius,* here the Court does not need to reach the issue of the applicability of the GDPR, because the Court has determined that application of section 107(c) of the Bankruptcy Code protects the disclosure of the names of the Individual UK/EU Litigation Claimants.

rights of its residents will not be violated" (quoting *In re Gee*, 53 B.R. 891, 901 (Bankr. S.D.N.Y. 1985))). In *Hilton*, the Supreme Court made clear that deference to a foreign court under principles of comity contemplates a clear and formal record:

> the foreign judgment appears to have been rendered by a competent court, having jurisdiction of the cause and of the parties, and upon due allegations and proofs, and opportunity to defend against them, and its proceedings are according to the course of a civilized jurisprudence, and are stated in a clear and formal record . . . unless some special ground is shown for impeaching the judgment, as by showing that it was affected by fraud or prejudice, or that, by the principles of international law, and by the comity of our own country, it should not be given full credit and effect.

Hilton v. Guyot, 159 U.S. at 113; *see also Lloyd v. Am. Exp. Lines, Inc.*, 580 F.2d 1179, 1189 (3d Cir. 1978) ("The test of acceptance . . . of foreign judgments for which domestic recognition is sought, is whether the foreign proceedings accord with civilized jurisprudence, and are stated in a clear and formal record.").

The Debtors filed the Australian Court Order and Reasons for Judgment, which establish a clear and formal record, that is consistent with the relevant factors and favors granting comity. The proceedings took place in the Federal Court of Australia, a competent court with jurisdiction of the cause and parties. The record demonstrates that the Australian Court's "proceedings are according to the course of a civilized jurisprudence and are stated in a clear and formal record." *In re PT Bakrie Telecom Tbk*, 628 B.R. 859, 879 (Bankr. S.D.N.Y. 2021). For example, in making its ruling, the Australian Court reviewed applicable US law and carefully outlined Australian legal principles that permit the Australian Court to use its discretion to release a party from the implied undertaking. *See* Reasons for Judgment ¶¶ 17–18, 24–27. Before granting the relief, the Australian Court also considered whether the individuals whose personal information was at stake would want to get notice of the Chapter 11 Cases. In concluding that they would, the Australian

Court determined that the creditors would be likely to accept the inclusion of their names in the list of creditors. *Id.* at ¶ 32.

Furthermore, granting comity to the Australian Court Order would not offend the public policies underlying the Bankruptcy Code. The record demonstrates that there are significant similarities between the US and Australian proceedings. Specifically, both countries' insolvency proceedings require notification to creditors, as well as the compilation of a list of creditors. The Australian Court observed, "[t]he closest Australian equivalent to a US Chapter 11 proceeding is voluntary administration," in which a voluntary administrator is appointed to oversee the bankruptcy. That administrator is required "to give notice of the existence of the administration, the rights as creditors, and creditors' meetings to as many of the company's creditors as reasonably practicable." Reasons For Judgment, ¶ 75. Additionally, the directors of a company are required to list all the company's creditors in a report to the administrator, which the administrator must then lodge with the Australian securities commission. *Id.* ¶ 76. The Australian Court noted that, because no external administrator is appointed under chapter 11, the company itself "has obligations in the US to notify creditors and to file a list of creditors that are analogous to an Australian voluntary administrator's duty to notify creditors and the company directors' obligations to prepare a [report], which the voluntary administrator then lodges with [the securities commission]." *Id.* ¶ 77. In sum, the Australian Court determined that there are "closely analogous obligations in Australia and the US" and thus concluded that it was appropriate for the Australian Court to cooperate with Astora's request "to comply with its US Chapter 11 obligations without breaching Australian privacy legislation." *Id.* ¶ 78. Accordingly, the Australian court has clearly expressed that American and Australian insolvency proceedings both contain important

notification requirements for the benefit of creditors, and its decision was made in accordance with that shared public policy. *See In re PT Bakrie Telecom Tbk*, 628 B.R. at 878.

At the crux of the matter, the Australian Court Order directly advances the privacy protections afforded by Section 107(c). The Australian Court reasoned that "Australian creditors of Astora would be likely to accept the inclusion of their names in the list of [chapter 11] creditors, noting that their names would be redacted in the public documents and held in confidence by those persons entitled to receive the unredacted versions." Reasons For Judgment, ¶ 32. However, it went on to reason, "Given the inherently personal nature of a date of birth and the ever-present risk of this information becoming the subject of identity theft [the Australian Court] determined that this information, together with information of height, weight and [Australian] Medicare numbers must not be included in any information disclosed for the Permitted Purposes." *Id.* ¶ 79. The Australian Court Order and Reasons for Judgment provide essentially the same relief this Court has granted to the EU and UK Surgical Mesh PI Claimants under Section 107(c). The Australian Court specifically considered the same protection against identity theft that Congress has enshrined in statute. *Cf.* 11 U.S.C. § 107(c) ("The bankruptcy court, for cause, may protect an individual, with respect to the following types of information to the extent the court finds that disclosure of such information would create undue risk of identity theft.") Likewise, the concern about the "inherently personal nature" of the restricted information mirrors the aforementioned American privacy interest in medical information, which is protected under Section 107(c). *In re Motion Seeking Access to 2019 Statements*, 585 B.R. at 752. Consistent with the foregoing, absent the Australian Court Order, this Court would grant essentially the same relief, requiring redaction of individual litigants' names under Section 107(c) in the ground that names would allow the public to infer that individual Astora claimants had received pelvic mesh implants. *See id.*

The only differences between the Australian Court Order and the relief this Court grants to the Individual Litigation Claimants in the EU and UK are the Australian Court's restriction on the disclosure of the contact information of the Additional Individual Australian Litigation Claimants to the OCC, and the restriction on the use of certain biographical information and Australian Medicare numbers. The Australian Court reasoned that, because none of the Astora creditors "have any claims based on the production of opioid based pain medication because they were not products manufactured or distributed by Astora," the OCC does not need to receive disclosure of those creditors' information. Reasons For Judgment, ¶ 80. That reasoning accords with the relevant American privacy interests. *See In re Motion Seeking Access to 2019 Statements*, 585 B.R. at 752. As for dates of birth, height, weight, and Australian Medicare numbers, the Australian Court properly reasoned that dissemination of that information might facilitate identity theft. *Cf.* 11 U.S.C. § 107(c). Moreover, no party has sought that information in these proceedings, and it does not bear on the issue of creditor notification. Thus, the Australian restrictions on the uses of personally identifiable information are proper and warrant the extension of comity.

As a final matter, the Australian decision was not fraudulently obtained, and the record contains nothing even remotely suggesting fraud. The Court finds that all the requirements for extending comity to the Australian Court Order are met here, and therefore the contact information of the Additional Individual Australian Litigation Claimants should be redacted consistent with that order. For the avoidance of doubt, the Additional Individual Australian Litigation Claimants' personally identifiable information may be used only in: (i) providing notice in this case; (ii) preparing any list of creditors and any documents to be filed in the Bankruptcy Court "in which any information contained in such documents which is sourced from the Australian Documents shall be redacted"; and (iii) providing unredacted copies to the Bankruptcy Court, the UST, and

the UCC, provided that date of birth, height, weight, and Australian Medicare numbers are not disclosed in any information. Australian Court Order ¶ 1(a)–(d). For purposes of redacting any list of creditors or any documents to be filed in this Court, the Debtors shall redact the Additional Individual Australian Litigation Claimants' contact information consistent with the redactions that the Court has authorized herein for the Individual Litigation Claimants.

To summarize, the Court GRANTS the Motion and, pursuant to section 107(c) of the Bankruptcy Code and Bankruptcy Rule 1007(j), authorizes the Debtors as follows:

> To redact the home addresses and email addresses of Individual Non-Litigation Claimants and Equity Holders located in the US, Canada, the UK, and the EU from any paper filed with the Court and/or otherwise made publicly available by the Debtors and their Claims and Noticing Agent and instead,
>
> > (x) notate "Address on File" (Individual Equity Holders, Vendors and Contract Counterparties),
> >
> > (y) notate the Debtors' address of service (Former Employees), and
> >
> > (z) notate the individual's applicable business address (Current Employees).
>
> In addition, the Debtors will (i) provide unredacted filings to the Court, the UST, the UCC, the OCC and any other party designated by further order of the Court; (ii) provide any other party in interest unredacted filings upon request made to the Debtors that the Debtors determine in good faith is reasonably related to the Chapter 11 Cases; and (iii) provide five (5) days' advance notice to the UST, the UCC, and the OCC, prior to determining whether to deny or grant any request for such unredacted filing.
>
> To redact the names, home addresses, and email addresses of the Individual Litigation Claimants located in the US, Canada, EU, and UK, and the Named Individual Australian Litigation Claimants, from any paper filed with the Court and/or otherwise made publicly available by the Debtor and the Claims and Noticing Agent, and to notate instead "Name on File" and "Address on File." In addition, the Debtors will (i) provide unredacted filings to the Court, the UST, the UCC, the OCC, and any other party designated by further order of the Court; (ii) provide any other party in interest unredacted filings upon request made to the Debtors that the Debtors determine in good faith is reasonably related to the Chapter 11 Cases; (iii) with respect to any requests concerning Opioid Litigation Claimants' redacted information, the Debtors shall consult with the OCC, prior to determining

> whether to deny or grant such request; and (iv) provide five (5) days' advance notice to the UST, the UCC, and the OCC, prior to determining whether to deny or grant any request for such unredacted filing.
>
> To redact the names, home addresses, and email addresses of the Additional Individual Australian Litigation Claimants from any paper filed with the Court and/or otherwise made publicly available by the Debtor and the Claims and Noticing Agent, and to notate instead "Name on File" and "Address on File." In addition, the Debtors will provide unredacted filings to the Court, the UST, and the UCC, except that those filings shall not include the date of birth, height, weight, and Medicaid Numbers of the Additional Individual Australian Litigation Claimants.

Withholding Publication of Certain Proofs of Claims

> In the Motion, the Debtors also requests the following form of relief:
>
> In the event that it is determined that there will be recovery available for general unsecured creditors, the Debtors intend to seek a Bar Date Order that would, among other things, approve a tailored individual claim form and specific procedures designed to prevent the unintentional disclosure of . . . sensitive information. To avoid inadvertent disclosure of such information in any proofs of claim that may be filed by individuals before entry of any Bar Date Order, the Debtors also respectfully request that the Claims and Noticing Agent be authorized to (a) withhold publication of claims filed by individuals until entry of any Bar Date Order . . . *provided* that such proofs of claims . . . shall, upon request, be provided under seal to the Court, the U.S. Trustee, counsel to any official committee appointed in the Chapter 11 Cases, and any other party designated by further order of the Court, as appropriate.

Motion ¶ 25. The UST responded to this requested relief in a footnote, expressly reserving its rights "with respect to the Debtors' bar date motion." UST Obj. at 8 n.3. The UST did not specifically respond to the Motion's request to withhold publication of individuals' proofs of claims. *Id.*

> The Debtors' Reply also refers to this contingent relief in a slightly modified fashion:
>
> Separately, in the event that the Debtors seek entry of an order establishing deadlines for filing proofs of claim and granting related relief (the "Bar Date Order"), the Debtors intend to seek approval of a tailored individual claim form and specific procedures designed to prevent the unintentional disclosure of sensitive personal health information. To avoid inadvertent disclosure of such information in any proofs of claim that may be filed by personal injury claimants before entry of any Bar Date Order, the Debtors respectfully request that the Debtors' claims

> and noticing agent . . . be authorized to withhold publication of claims filed by such claimants until entry of any Bar Date Order. The Debtors will provide unredacted proofs of claim to the Court, the U.S. Trustee, the OCC, the UCC, and any other party designated by further order of the Court.

Reply ¶ 6.

The Court grants the Debtors' request to withhold publication of individuals' proofs of claims to prevent the inadvertent disclosure of personally identifiable information, until such time as any bar date order is entered. Subject to terms of this Memorandum Decision and Order, the Debtors will provide unredacted versions of the proofs of claim to the Court, the UST, Trustee, the OCC, and the UCC.

Conclusion

The Court GRANTS the Motion to the extent set forth herein.

IT IS SO ORDERED.

Dated: New York, New York
November 2, 2022

/s/ *James L. Garrity, Jr.*
Hon. James L. Garrity, Jr.
U.S. Bankruptcy Judge

THIS IS EXHIBIT "G"
TO THE AFFIDAVIT OF ANDREW HARMES
SWORN BEFORE ME
THIS 23RD DAY OF NOVEMBER, 2022

Erik Axell

Commissioner for Taking Affidavits

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	**Chapter 11**
ENDO INTERNATIONAL plc, *et al.*,	**Case No. 22-22549 (JLG)**
Debtors.[1]	**(Jointly Administered)**
	Related Docket Nos. 17, 98, 488, 499

AMENDED FINAL ORDER (I) AUTHORIZING DEBTORS TO USE CASH COLLATERAL; (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES; (III) MODIFYING AUTOMATIC STAY; AND (IV) GRANTING RELATED RELIEF

Upon the motion (the "**Motion**") of the above-referenced debtors, as debtors in possession (collectively, the "**Debtors**") in the above-captioned cases (the "**Cases**"), pursuant to sections 105, 361, 362, 363, 503 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "**Bankruptcy Code**"), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rules 4001-2 and 9013-1 of the Local Bankruptcy Rules for the Southern District of New York (the "**Local Rules**"), seeking, among other things:

(a) authorization for the Debtors, pursuant to sections 105, 361, 362, 363, 503 and 507 of the Bankruptcy Code to (i) use cash collateral, as such term is defined in section 363(a) of the Bankruptcy Code, and all other Prepetition Collateral (as defined below), solely in accordance with the terms of this final order (together with all annexes and exhibits hereto, the "**Final Order**"), and (ii) grant adequate protection to the Prepetition Secured Parties (as defined below) as set forth herein;

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[1] The last four digits of Debtor Endo International plc's tax identification number are 3755. Due to the large number of debtors in these chapter 11 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at https://restructuring.ra.kroll.com/Endo. The location of the Debtors' service address for purposes of these chapter 11 cases is: 1400 Atwater Drive, Malvern, PA 19355.

(b) modification of the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Final Order;

(c) except to the extent of the Carve Out (as defined herein), the waiver of all rights to surcharge any Prepetition Collateral or Collateral (as defined herein) under section 506(c);

(d) to the extent set forth herein, for the "equities of the case" exception under Bankruptcy Code section 552(b) to not apply to any of the Prepetition Secured Parties with respect to the proceeds, products, offspring, or profits of any of the Prepetition Collateral or Collateral under section 552(b) of the Bankruptcy Code or any other applicable principle of equity or law;

(e) waiver of any applicable stay with respect to the effectiveness and enforceability of this Final Order (including a waiver pursuant to Bankruptcy Rule 6004(h)); and

(f) granting related relief;

and the interim hearing having been held by the Court on August 18, 2022 (the "**Interim Hearing**") and a final hearing having been held by the Court on October 19, 2022 (the "**Final Hearing**"); pursuant to Bankruptcy Rule 4001 and Local Rules 4001-2 and 9013-1, notice of the Motion and the relief sought therein having been given by the Debtors as set forth in this Final Order; and the Court having considered the *Declaration of Mark Bradley in Support of Chapter 11 Petitions and First Day Papers* (the "**Declaration**") and *Declaration of Ray Dombrowski in Support of Debtors' Motion for Interim and Final Orders pursuant to 11 U.S.C. §§ 105, 361, 362, 363, and 364 (I) Authorizing Use of Cash Collateral, (II) Granting Adequate Protection, (III) Scheduling a Final Hearing and (IV) Granting Related Relief*, the Approved Budget (as defined herein), offers of proof, evidence adduced, and the statements of counsel at the Interim Hearing and the Final Hearing; and the Court having considered the final relief requested in the Motion, and it appearing to the Court that granting the relief sought in the Motion on the terms and conditions herein contained is necessary and essential to enable the Debtors to preserve the value of the Debtors' businesses and assets and that such relief is fair and reasonable and that entry of

this Final Order is in the best interest of the Debtors and their respective estates and creditors; and due deliberation and good cause having been shown to grant the relief sought in the Motion;

IT IS HEREBY FOUND AND DETERMINED THAT:[2]

A. ***Petition Date***. On August 16, 2022 (the "**Petition Date**"), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of New York (the "**Court**").

B. ***Debtors in Possession***. Each Debtor has continued with the management and operation of its respective businesses and properties as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the chapter 11 cases.

C. ***Jurisdiction and Venue***. The Court has jurisdiction over the Motion, these Cases, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334 and *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.). Venue for these Cases is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This Court may enter a final order consistent with Article III of the United States Constitution. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

D. ***Committees***. On September 2, 2022 the United States Trustee (the "**U.S. Trustee**") for the Southern District of New York appointed, pursuant to section 1102 of the Bankruptcy Code: (a) an official committee of unsecured creditors in these Cases (the "**Unsecured Creditors Committee**"); and (b) an official committee of holders of opioid claims (the "**Official Committee of Opioid Claimants**" and, together with the Unsecured Creditors Committee, the "**Committees**" and each a "**Committee**").

[2] Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* Bankruptcy Rule 7052.

E. ***Debtors' Stipulations*** . Subject only to the rights of parties in interest specifically set forth in this Final Order (including in paragraph 19 of this Final Order, subject to the limitations thereon contained in such paragraph), the Debtors admit, stipulate and agree that (collectively, paragraphs E.1 through E.5 below are referred to herein as the "**Debtors' Stipulations**"):

1. *First Lien Facilities.*

(a) *First Lien Loans.*

i. Under that certain Credit Agreement, dated as of April 27, 2017 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, including, without limitation, by that certain Amendment and Restatement Agreement, dated as of March 25, 2021, the "**Credit Agreement**" and, together with all other documentation executed in connection therewith, including without limitation, the Collateral Documents and each other Loan Document (each as defined in the Credit Agreement) executed in connection therewith, the "**Credit Documents**"), among Endo International PLC ("**Parent**"), Endo Luxembourg Finance Company I S.à r.l. ("**Lux Borrower**"), Endo LLC ("**Co-Borrower**" and, together with Lux Borrower, the "**Borrowers**"), JPMorgan Chase Bank, N.A., as administrative agent (in such capacity as the "**Administrative Agent**"), issuing bank (in such capacity, the "**Issuing Bank**") and swingline lender and the lenders from time to time party thereto (such lenders immediately prior to the date hereof, the "**Prepetition First Lien Lenders**" and, together with the Administrative Agent, Issuing Bank, First Lien Collateral Trustee (as defined below), and each of the other Secured Parties (as defined in the Credit Agreement), the "**Prepetition First Lien Loan Secured Parties**"), certain of the Prepetition Loan Parties (as defined below) borrowed loans thereunder (the "**Prepetition First Lien Loans**") in the total aggregate principal amount outstanding of $2,259,400,000.00. As used herein, the "**Prepetition Loan Parties**" shall mean,

collectively, Parent, Lux Borrower, Co-Borrower, and other Loan Parties (as defined in the Credit Agreement).

ii. As of the Petition Date, the Prepetition Loan Parties were jointly and severally indebted to the Prepetition First Lien Loan Secured Parties pursuant to the Credit Documents, without objection, defense, counterclaim, or offset of any kind, (w) in the aggregate principal amount of not less than $277,200,000 on account of outstanding Revolving Loans (as defined in the Credit Agreement), (x) in the aggregate principal amount of not less than $1,975,000,000 on account of Term Loans (as defined in the Credit Agreement), (y) in the aggregate principal amount of not less than $7,234,457.85 on account of outstanding LC Exposure (as defined in the Credit Agreement) *plus* (z) in the case of each of the preceding clauses (w), (x), and (y), accrued and unpaid interest with respect thereto and any additional fees, costs, premiums, expenses (including any attorneys', accounts', consultants', appraisers', financial advisors', and other professionals' fees and expenses), reimbursement obligations, indemnification obligations, guarantee obligations, other contingent obligations, and other charges of whatever nature, whether or not contingent, whenever arising, due, or owing, in each case pursuant to the terms of the Credit Agreement and all other Obligations (as defined in the Credit Agreement) owing under or in connection with the Credit Documents (clauses (w), (x), (y), and (z), collectively, the "**Prepetition First Lien Secured Loan Indebtedness**").

(b) *First Lien Notes*.

i. Under that certain Indenture, dated as of April 27, 2017 (the "**5.875% Notes Indenture**" and, together with all other related documents, instruments, and agreements, in each case as supplemented, amended, restated, or otherwise modified from time to time, the "**5.875% Notes Documents**"), for the 5.875% Senior Secured Notes due 2024 (the

"**5.875% Notes**"), by and among Endo Designated Activity Company ("**Endo DAC**") Endo Finance LLC ("**Endo Finance**") and Endo Finco Inc. ("**Endo FinCo**"), as issuers (collectively, the "**5.875% Notes Issuers**"), each of the guarantors party thereto (the "**5.875% Notes Guarantors**"), and Computershare Trust Company, National Association, as trustee (in such capacity and including any predecessors and successors thereto, the "**5.875% Notes Indenture Trustee**" and, together with the holders of 5.875% Notes and the First Lien Collateral Trustee, the "**5.875% Notes Secured Parties**"), certain of the Prepetition 5.875% Note Parties (as defined herein) issued notes in the total aggregate principal amount outstanding of $300,000,000. As used herein, the "**Prepetition 5.875% Note Parties**" shall mean, collectively, Endo DAC, Endo Finance, Endo FinCo, and the 5.875% Notes Guarantors.

ii. Under that certain Indenture, dated as of March 28, 2019 (the "**7.500% Notes Indenture**" and, together with all other related documents, instruments, and agreements, in each case as supplemented, amended, restated, or otherwise modified from time to time, the "**7.500% Notes Documents**"), for the 7.500% Senior Secured Notes due 2027 (the "**7.500% Notes**"), by and among Par Pharmaceuticals, Inc., ("**Par Pharma**") as issuer (the "**7.500% Notes Issuer**"), each of the guarantors party thereto (the "**7.500% Notes Guarantors**"), and Computershare Trust Company, National Association, as trustee (in such capacity and including any predecessors and successors thereto, the "**7.500% Notes Indenture Trustee**" and, together with the holders of 7.500% Notes and the First Lien Collateral Trustee, the "**7.500% Notes Secured Parties**"), certain of the Prepetition 7.500% Note Parties (as defined herein) issued notes in the total aggregate principal amount outstanding of $2,015,479,000. As used herein, the "**Prepetition 7.500% Note Parties**" shall mean, collectively, Par Pharma and the 7.500% Notes Guarantors.

iii. Under that certain Indenture, dated as of March 25, 2021 (the "**6.125% Notes Indenture**" and, together with all other related documents, instruments, and agreements, in each case as supplemented, amended, restated, or otherwise modified from time to time, the "**6.125% Notes Documents**"; the 5.875% Notes Indenture, the 7.500% Notes Indenture, and the 6.125% Notes Indenture, collectively, the "**First Lien Indentures**"; and the 5.875% Notes Documents, the 7.500% Notes Documents, and the 6.125% Notes Documents, collectively, the "**First Lien Notes Documents**"), for the 6.125% Senior Secured Notes due 2029 (the "**6.125% Notes**" and together with the 5.875% Notes and the 7.500% Notes, the "**First Lien Notes**"), by and among Lux Borrower and Endo U.S. Inc. ("**Endo US**"), as issuers (collectively, in such capacities, the "**6.125% Notes Issuers**" and, together with the 5.875% Notes Issuers and the 7.500% Notes Issuer, the "**First Lien Notes Issuers**"), the guarantors party thereto (the "**6.125% Notes Guarantors**" and, together with the 5.875% Notes Guarantors and the 7.500% Notes Guarantors, the "**First Lien Notes Guarantors**"; the First Lien Notes Issuers and the First Lien Notes Guarantors, collectively, the "**Prepetition First Lien Notes Parties**"), and Computershare Trust Company, National Association, as trustee (in such capacity and including any predecessors and successors thereto, the "**6.125% Notes Indenture Trustee**" and in its capacities as the 5.875% Notes Indenture Trustee, the 7.500% Notes Indenture Trustee, and the 6.125% Notes Indenture Trustee, collectively, the "**First Lien Indenture Trustee**"; the 6.125% Notes Indenture Trustee and the holders of 6.125% Notes and the First Lien Collateral Trustee, collectively, the "**6.125% Notes Secured Parties**"; and the 5.875% Notes Secured Parties, the 7.500% Notes Secured Parties, and the 6.125% Notes Secured Parties, collectively, the "**Prepetition First Lien Notes Secured Parties**"), certain of the Prepetition 6.125% Note Parties (as defined herein) issued notes in the total aggregate principal amount outstanding of $1,295,000,000. As used herein, the

"**Prepetition 6.125% Note Parties**" shall mean, collectively, Lux Borrower, Endo US, and the 6.125% Notes Guarantors.

iv. As used herein, (a) the "**Prepetition First Lien Agents**" shall mean, collectively, the Administrative Agent and the First Lien Indenture Trustee; (b) the "**Prepetition Documents**" shall mean, collectively, the Credit Documents, the First Lien Notes Documents, and the Second Lien Notes Documents (as defined below); and (c) the "**Prepetition First Lien Secured Parties**" shall mean, collectively, the Prepetition First Lien Loan Secured Parties and the Prepetition First Lien Notes Secured Parties.

v. As of the Petition Date, the Prepetition First Lien Notes Parties were jointly and severally indebted to the Prepetition First Lien Notes Secured Parties pursuant to the First Lien Notes Documents, without objection, defense, counterclaim, or offset of any kind, (w) in the aggregate principal amount of not less than $300,000,000 on account of the 5.875% Notes, (x) in the aggregate principal amount of not less than $ 2,015,479,000 on account of the 7.500% Notes, (y) in the aggregate principal amount of not less than $1,295,000,000 on account of the 6.125% Notes, *plus* (z) in the case of each of the preceding clauses (w), (x), and (y), accrued and unpaid interest with respect thereto and any additional fees, premiums, costs, expenses (including any attorneys', accountants', consultants', appraisers', financial advisors', and other professionals' fees and expenses), reimbursement obligations, indemnification obligations, guarantee obligations, other contingent obligations, and other charges of whatever nature, whether or not contingent, whenever arising, due, or owing, and all other Secured Obligations (as defined in each of the First Lien Indentures) owing, in each case pursuant to the terms of the First Lien Notes Documents (collectively, the "**Prepetition First Lien Notes Indebtedness**" and, together

with the Prepetition First Lien Secured Loan Indebtedness, the "**Prepetition First Lien Indebtedness**").

(c) *First Lien Collateral*. As consideration for the loans and other financial accommodations made in the Credit Agreement and the First Lien Indentures, certain of the Debtors entered into certain of the Collateral Documents and the Security Documents (as defined in the First Lien Indentures). Pursuant to and in accordance with the Collateral Documents, Security Documents, and other Prepetition Documents, the Prepetition First Lien Indebtedness is secured by valid, binding, properly perfected, enforceable, and non-avoidable first-priority (other than liens permitted under the Credit Agreement and the First Lien Indentures) security interests in and liens (such security interests and liens, the "**Prepetition First Liens**") on the "Collateral" (as defined in the applicable Collateral Document and Security Document, and together with any other property of any of Debtors granted or pledged pursuant to any of the Collateral Documents or Security Documents to secure the Prepetition First Lien Indebtedness, the "**Prepetition Collateral**") consisting of substantially all of each Prepetition Loan Party's assets.

(d) *Validity, Perfection, and Priority of Prepetition First Liens and Prepetition First Lien Indebtedness*. Each of the Debtors acknowledges and agrees that, in each case as of the Petition Date, and pursuant to and in accordance with the Collateral Documents, Security Documents, and other Prepetition Documents: (i) the Prepetition First Liens encumber all of the Prepetition Collateral, as the same existed on the Petition Date; (ii) the Prepetition First Liens are valid, binding, properly perfected, enforceable, non-avoidable liens on and security interests in the Prepetition Collateral in favor of the First Lien Collateral Trustee and are senior to the security interests in and liens on the Prepetition Collateral granted to or for the benefit of the Prepetition Second Lien Notes Secured Parties (as defined below); (iii) the Prepetition First Liens

are subject and subordinate only to valid, perfected, enforceable, and nonavoidable prepetition liens (if any) that are senior to the liens or security interests of the First Lien Collateral Trustee as of the Petition Date by operation of law or permitted by the Prepetition Documents (such liens, the "**Permitted Prior Liens**"); (iv) the Prepetition First Liens were granted to the First Lien Collateral Trustee for the benefit of the Prepetition First Lien Secured Parties for fair consideration and reasonably equivalent value and were granted contemporaneously with, or covenanted to be provided as an inducement for, the making of the Prepetition First Lien Indebtedness; (v) the Prepetition First Lien Indebtedness constitutes legal, valid, binding, and non-avoidable obligations of the Debtors; (vi) no offsets, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition First Liens or Prepetition First Lien Indebtedness exist, and no portion of the Prepetition First Liens or Prepetition First Lien Indebtedness is subject to any challenge, cause of action, or defense, including impairment, set-off, right of recoupment, avoidance, attachment, disallowance, disgorgement, reduction, recharacterization, recovery, subordination (whether equitable or otherwise), attack, offset, contest, defense, counterclaims, cross-claims, or "claim" (as defined in the Bankruptcy Code), pursuant to the Bankruptcy Code or applicable nonbankruptcy law; and (vii) the Debtors and their estates have no claims, objections, challenges, causes of actions, recoupments, counterclaims, cross-claims, setoff rights, and/or choses in action, including "lender liability" causes of action or avoidance claims under chapter 5 of the Bankruptcy Code, whether arising under applicable state law or federal law (including any recharacterization, subordination, avoidance, disgorgement, recovery, or other claims arising under or pursuant to sections 105, 510, or 542 through 553 of the Bankruptcy Code), against the Prepetition First Lien Secured Parties or any of their respective affiliates, agents, representatives, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon, or

related to their obligations under the Credit Documents, the First Lien Notes Documents, the Prepetition First Lien Indebtedness or the Prepetition First Liens.

2. *Second Lien Notes.*

(a) Under that certain Indenture, dated as of June 16, 2020 (the "**Second Lien Indenture**" and, together with all other related documents, instruments, and agreements, in each case as supplemented, amended, restated, or otherwise modified from time to time, the "**Second Lien Notes Documents**"), for the 9.500% Senior Secured Second Lien Notes due 2027 (the "**Second Lien Notes**"), by and among Endo DAC, Endo Finance, and Endo FinCo, as issuers (collectively, in such capacities, the "**Second Lien Notes Issuers**"), the guarantors party thereto (the "**Second Lien Notes Guarantors**" and, together with the Second Lien Notes Issuers, the "**Prepetition Second Lien Notes Parties**"), and Wilmington Savings Fund Society, FSB, as trustee (in such capacity and including any predecessors and successors thereto, the "**Second Lien Indenture Trustee**" and, together with the holders of Second Lien Notes and the Second Lien Collateral Trustee (as defined below), the "**Prepetition Second Lien Notes Secured Parties**," and together with the Prepetition First Lien Secured Parties, the "**Prepetition Secured Parties**"). In connection with the Second Lien Indenture, certain of the Debtors entered into the Security Documents (as defined in the Second Lien Indenture).

(b) As of the Petition Date, the Prepetition Second Lien Notes Parties were jointly and severally indebted to the Prepetition Second Lien Notes Secured Parties pursuant to the Second Lien Notes Documents, without objection, defense, counterclaim, or offset of any kind, in the aggregate principal amount of not less than $940,590,000 *plus* accrued and unpaid interest with respect thereto and any additional fees, premiums, costs, expenses (including any attorneys', accountants', consultants', appraisers', financial advisors', and other professionals'

fees and expenses), reimbursement obligations, indemnification obligations, guarantee obligations, other contingent obligations, and other charges of whatever nature, whether or not contingent, whenever arising, due, or owing, in each case pursuant to the terms of the Second Lien Notes Documents and all other Obligations (as defined in the Second Lien Indenture) owing under or in connection with the Second Lien Notes Documents (collectively, the "**Prepetition Second Lien Notes Indebtedness**" and, together with the Prepetition First Lien Secured Loan Indebtedness and the Prepetition First Lien Notes Indebtedness, the "**Prepetition Secured Indebtedness**").

(c) *Second Lien Collateral*. As consideration for the financial accommodations made in connection with the Second Lien Indenture, certain of the Debtors entered into the Security Documents (as defined in the Second Lien Indenture and referred to herein as the "**Second Lien Collateral Documents**"). Pursuant to and in accordance with the Second Lien Collateral Documents and the other Second Lien Notes Documents, the Prepetition Second Lien Notes Indebtedness is secured by valid, binding, properly perfected, enforceable, and non-avoidable second-priority security interests in and liens (other than liens permitted under the Second Lien Indenture) on the Prepetition Collateral consisting of substantially all of each Prepetition Loan Party's assets in favor of the Second Lien Collateral Trustee pursuant to the Second Lien Collateral Documents (the "**Prepetition Second Lien Notes Liens**" and together with the Prepetition First Liens, the "**Prepetition Liens**").

(d) *Validity, Perfection, and Priority of Prepetition Second Lien Notes Liens and Prepetition Second Lien Notes Indebtedness*. Each of the Debtors acknowledges and agrees that, in each case as of the Petition Date, and pursuant to and in accordance with the Second Lien Collateral Documents and other Second Lien Notes Documents: (i) the Prepetition Second

Lien Notes Liens encumber all of the Prepetition Collateral, as the same existed on the Petition Date; (ii) the Prepetition Second Lien Notes Liens are valid, binding, properly-perfected, enforceable, and non-avoidable liens on and security interests in the Prepetition Collateral in favor of the Second Lien Collateral Trustee; (iii) the Prepetition Second Lien Notes Liens are subject and subordinate only to the Permitted Prior Liens and the Prepetition First Liens; (iv) the Prepetition Second Lien Notes Liens were granted to the Second Lien Collateral Trustee for the benefit of the Prepetition Second Lien Notes Secured Parties for fair consideration and reasonably equivalent value and were granted contemporaneously with, or covenanted to be provided as an inducement for, the making of the Second Lien Notes Indebtedness; (v) the Prepetition Second Lien Notes Indebtedness constitutes legal, valid, binding, and non-avoidable obligations of the Debtors; (vi) no offsets, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition Second Lien Notes Liens or Prepetition Second Lien Notes Indebtedness exist, and no portion of the Prepetition Second Lien Notes Liens or Prepetition Second Lien Notes Indebtedness is subject to any challenge, cause of action, or defense including impairment, set-off, right of recoupment, avoidance, attachment, disallowance, disgorgement, reduction, recharacterization, recovery, subordination (whether equitable or otherwise), attack, offset, contest, defense, counterclaims, cross-claims, or "claim" (as defined in the Bankruptcy Code), pursuant to the Bankruptcy Code or applicable nonbankruptcy law; and (vii) the Debtors and their estates have no claims, objections, challenges, causes of actions, recoupments, counterclaims, cross-claims, setoff rights, and/or choses in action, including "lender liability" causes of action or avoidance claims under chapter 5 of the Bankruptcy Code, whether arising under applicable state law or federal law (including any recharacterization, subordination, avoidance, disgorgement, recovery, or other claims arising under or pursuant to sections 105, 510,

or 542 through 553 of the Bankruptcy Code), against the Prepetition Second Lien Notes Secured Parties or any of their respective affiliates, agents, representatives, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon, or related to their loans under the Second Lien Notes Documents, the Prepetition Second Lien Notes Indebtedness, or the Prepetition Second Lien Notes Liens.

3. *Cash Collateral*. All of the Debtors' cash, including, without limitation, all of the (a) cash proceeds of accounts receivable, (b) cash proceeds of the Prepetition Collateral, (c) cash proceeds of Excluded Assets (as defined in the Credit Agreement) (to the extent such cash proceeds would not otherwise constitute Excluded Assets), and (d) cash (i) in the Debtors' Deposit Accounts (as defined in the Credit Agreement) pledged pursuant to any Collateral Document as of the Petition Date or (ii) pursuant to Bankruptcy Code section 552(b), deposited into the Debtors' Deposit Accounts after the Petition Date, constitutes cash collateral of the Prepetition Secured Parties within the meaning of Bankruptcy Code section 363(a) (the "**Cash Collateral**"); *provided that*, notwithstanding anything to the contrary in this paragraph 3, (x) cash or Deposit Accounts comprising Excluded Assets and (y) the Deposit Accounts owned by Debtors formed or incorporated in Luxembourg shall constitute Cash Collateral only to the extent that, in each case of clauses (x) and (y), the Prepetition Secured Parties have an interest in such cash or Deposit Accounts within the meaning of Bankruptcy Code section 363(a) or 552(b) of the Bankruptcy Code and/or applicable law.

4. *Bank Accounts.* The Debtors acknowledge and agree that, as of the Petition Date, none of the Debtors has either opened or maintains any bank accounts other than the accounts listed in the exhibit attached to any order authorizing the Debtors to continue to use the Debtors' existing cash management system.

5. *Intercreditor Agreements.*

(a) *First Lien Collateral Trust Agreement.* The Prepetition Loan Parties, the Prepetition First Lien Notes Parties, the Administrative Agent, the First Lien Indenture Trustee, and Wilmington Trust, National Association, as collateral trustee (in such capacity and including any successors thereto, the "**First Lien Collateral Trustee**") are parties to that certain Collateral Trust Agreement, dated as of April 27, 2017 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "**First Lien Collateral Trust Agreement**"). The First Lien Collateral Trust Agreement governs, among other things, the respective rights, interests and obligations of the Prepetition First Lien Secured Parties with respect to the Prepetition Collateral.

(b) *Second Lien Collateral Trust Agreement.* The Prepetition Second Lien Notes Parties, the Second Lien Indenture Trustee, and Wilmington Trust, National Association, as collateral trustee (in such capacity and including any successors thereto, the "**Second Lien Collateral Trustee**") are parties to that certain Second Lien Collateral Trust Agreement, dated as of June 16, 2020 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Second Lien Collateral Trust Agreement**" and, together with the First Lien Collateral Trust Agreement, the "**Collateral Trust Agreements**").

(c) *1L-2L Intercreditor Agreement*. The First Lien Collateral Trustee, the Second Lien Collateral Trustee, the Prepetition Loan Parties, the Prepetition First Lien Notes Parties, and the Prepetition Second Lien Notes Parties are parties to that certain Intercreditor Agreement, dated as of June 16, 2020 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**1L-2L Intercreditor Agreement**" and together with the Collateral Trust Agreements, the "**Intercreditor Agreements**"), which governs, among other

things, the relative rights, interests, obligations, priority and positions of the Prepetition First Lien Secured Parties on the one hand, and the Prepetition Second Lien Notes Secured Parties on the other hand.

(d) Each of the Prepetition Loan Parties, the Prepetition First Lien Notes Parties, and the Prepetition Second Lien Notes Parties acknowledged and agreed to, and are bound by, the Intercreditor Agreements. Pursuant to section 510 of the Bankruptcy Code, the Intercreditor Agreements, and any other applicable intercreditor or subordination provisions contained in any of the Prepetition Documents or any other Secured Debt Documents (as defined in each Collateral Trust Agreement) shall (i) remain in full force and effect, (ii) continue to govern the relative obligations, priorities, rights and remedies, as applicable, of (x) the Prepetition First Lien Secured Parties in the case of the First Lien Collateral Trust Agreement, (y) the Prepetition Second Lien Notes Secured Parties in the case of the Second Lien Collateral Trust Agreement, and (z) the Prepetition First Lien Secured Parties and the Prepetition Second Lien Notes Secured Parties in the case of the 1L-2L Intercreditor Agreement and (iii) not be deemed to be amended, altered or modified by the terms of this Final Order.

F. ***Adequate Protection.*** Pursuant to sections 105, 361, 362 and 363(e) of the Bankruptcy Code, the Prepetition Secured Parties are entitled to adequate protection of their respective interests in the Prepetition Collateral, including the Cash Collateral, to the extent of any postpetition diminution in value of their respective interests in the Prepetition Collateral for any reason for which adequate protection may be granted under the Bankruptcy Code ("**Diminution in Value**"). The foregoing shall not, nor shall any other provision of this Final Order be construed as, a determination or finding that there has been or will be any Diminution in Value of the Prepetition Collateral (including Cash Collateral) and the rights of all parties, including, without

limitation, the Committees as to such issues (including how Diminution in Value is to be measured or determined) are hereby fully reserved and preserved.

G. ***Need to Use Cash Collateral***. The Debtors have requested entry of this Final Order pursuant to Bankruptcy Rule 4001(b)(2) and Local Rule 4001-2 and have an immediate need to obtain use of the Prepetition Collateral, including the Cash Collateral (subject to and in compliance with the Approved Budget (as defined below)) in order to, among other things, (A) permit the orderly continuation of their businesses, (B) pay certain First Lien Adequate Protection Payments (as defined below), and (C) pay the costs of administration of their estates and satisfy other working capital and general corporate purposes of the Debtors. An immediate and critical need exists for the Debtors to use the Cash Collateral, consistent with the Approved Budget, for working capital purposes, other general corporate purposes of the Debtors, and the satisfaction of costs and expenses of administering the Cases. The ability of the Debtors to obtain liquidity through the use of the Cash Collateral is vital to the Debtors and their efforts to maximize the value of their estates. Absent entry of this Final Order, the Debtors' estates and reorganization efforts will be immediately and irreparably harmed.

H. ***Notice***. In accordance with Bankruptcy Rules 2002, 4001(b) and (c), and 9014, and the Local Rules, notice of the Interim Hearing, the Final Hearing, and the final relief requested in the Motion has been provided by the Debtors. Under the circumstances, the notice given by the Debtors of the Motion, the relief requested herein, and of the Interim Hearing and Final Hearing complies with Bankruptcy Rules 2002, 4001(b) and (c), and 9014 and Local Rules 4001-2 and 9013-1.

I. ***Consent by Prepetition Secured Parties***. The Prepetition First Lien Secured Parties have consented and the Prepetition Second Lien Notes Secured Parties have consented under the

applicable Intercreditor Agreements to the Debtors' use of Cash Collateral, in accordance with and subject to the terms and conditions provided for in this Final Order.

J. ***Relief Essential; Best Interest***. The Debtors have requested entry of this Final Order pursuant to Bankruptcy Rule 4001(b)(2) and Local Rule 4001-2. The relief requested in the Motion (and as provided in this Final Order) is necessary, essential and appropriate for the continued operation of the Debtors' businesses and the management and preservation of the Debtors' assets and the property of their estates. It is in the best interest of the Debtors' estates that the Debtors be allowed to use the Cash Collateral under the terms hereof. The Debtors have demonstrated good and sufficient cause for the relief granted herein.

K. ***Arm's Length, Good Faith Negotiations***. The terms of this Final Order were negotiated in good faith and at arm's length between the Debtors and the Prepetition Secured Parties. The Prepetition Secured Parties have acted without negligence or violation of public policy or law in respect of all actions taken by them in connection with or related in any way to negotiating, implementing, documenting, or obtaining requisite approvals of the use of Cash Collateral, including in respect of the granting of the Adequate Protection Liens (as defined below) and all documents related to and all transactions contemplated by the foregoing.

Now, therefore, upon the record of the proceedings heretofore held before this Court with respect to the Motion, the evidence adduced at the Interim Hearing and Final Hearing, and the statements of counsel thereat, and based upon the foregoing findings and conclusions,

IT IS HEREBY ORDERED THAT:

1. ***Motion Granted.*** The Motion is granted on a final basis as set forth herein, and the use of Cash Collateral on a final basis is authorized, subject to the terms of this Final Order.

2. ***Objections Overruled.*** Any objections to the Motion with respect to the entry of this Final Order that have not been withdrawn, waived or settled and all reservations of rights included therein, are hereby denied and overruled with prejudice.

3. ***Authorization to Use Cash Collateral; Budget.***

(a) *Authorization*. Subject to the terms and conditions of this Final Order, the Court hereby authorizes the Debtors' use of Cash Collateral during the period beginning with the Petition Date and ending on a Termination Date (as defined below), in each case, solely and exclusively in a manner consistent with this Final Order and the Approved Budget (as defined below), and for no other purposes.

(b) *Approved Budget; Budget Period*. As used in this Final Order: (i) "**Approved Budget**" means the last budget delivered to the Administrative Agent, the First Lien Indenture Trustee and the First Lien Collateral Trustee, and delivered and agreed with the Ad Hoc First Lien Group (as defined below) prior to the Petition Date, including for the 13-week period reflected on the budget attached as **Exhibit 1** hereto, as such Approved Budget may be modified from time to time by the Debtors with the prior written consent of the Ad Hoc First Lien Group, which consent shall not be unreasonably withheld, conditioned, or delayed, and to the extent modified, reasonable notice is given to the Administrative Agent, the Ad Hoc Cross-Holder Group, the Committee Advisors (as defined below), and the FCR Advisors (as defined below); and (ii) "**Budget Period**" means the cumulative period from the first day of the Approved Budget through the Testing Date (as defined below).

(c) *Budget Testing*. The Debtors may use Cash Collateral strictly in accordance with the Approved Budget, subject to Permitted Variances (as defined below). Beginning with the period ending on the second (2nd) Friday following the Petition Date, Permitted Variances shall

be tested every other Friday for the Budget Period ended on the preceding Friday (each such date, a "**Testing Date**"). On or before 5:00 p.m. (prevailing Eastern time) on each Testing Date, the Debtors shall prepare and deliver to the Prepetition First Lien Agents, the Administrative Agent's Advisors,[3] the First Lien Indenture Trustee's Advisors (defined below), the First Lien Collateral Trustee's Advisors (defined below), the Ad Hoc First Lien Group, the Ad Hoc First Lien Advisors (as defined below), and the Ad Hoc Cross-Holder Advisors (as defined below), Kramer Levin Naftalis & Frankel LLP, Dundon Advisers LLC, Berkeley Research Group, LLC, Lazard Frères & Co. LLC, Cooley LLP, Akin Gump Strauss Hauer & Feld LLP, Jefferies Group, and Province (collectively, the "**Committee Advisors**"), the FCR (as defined below), and Young Conaway Stargatt & Taylor LLP, Frankel Wyron LLP, and Ducera Partners LLC (collectively, the "**FCR Advisors**") in form and substance reasonably satisfactory to the Ad Hoc First Lien Group, a variance report (the "**Variance Report**") setting forth: (i) the Debtors' actual disbursements (the "**Actual Disbursements**"), on a line-by-line and aggregate basis during the applicable Budget Period (including, for the avoidance of doubt, actual disbursements to any non-Debtor entity, subject to, and in accordance with, paragraph 3(f) of this Final Order); (ii) the Debtors' actual cash receipts (the "**Actual Cash Receipts**") on a line-by-line and aggregate basis during the applicable Budget Period; (iii) a comparison (whether positive or negative, in dollars and expressed as a percentage) for the applicable Budget Period of the Actual Cash Receipts (and each line item thereof) and the Actual Disbursements (and each line item thereof) to the amount of the Debtors'

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[3] The "**Administrative Agent's Advisors**" shall mean (a) Simpson Thacher & Bartlett LLP and (b) a financial advisor to represent the interests of the Administrative Agent and assist the Administrative Agent and Simpson Thacher & Bartlett LLP in connection with the Cases, subject in all respects to the Administrative Agent's and Debtors' reservations of rights regarding such retention and the reimbursement of reasonable fees and expenses as set forth in paragraph 4(g); *provided, however*, notwithstanding anything to the contrary herein, information shall only be shared under this Final Order to the financial advisor of the Administrative Agent (if any) to the extent such party is bound by obligations of confidentiality pursuant to a confidentiality agreement with the Debtors.

projected cash receipts (and each line item thereof) set forth in the Approved Budget for such applicable Budget Period and the Debtors' projected disbursements (and each line item thereof), respectively, set forth in the Approved Budget for such applicable Budget Period; (iv) a cumulative comparison (whether positive or negative, in dollars and expressed as a percentage) covering the Budget Period as of the applicable Testing Date setting forth the Actual Cash Receipts (and each line item thereof) and the Actual Disbursements (and each line item thereof) for the applicable portion of such Budget Period and a comparison thereof to the amount of the Debtors' projected cash receipts (and each line item thereof) set forth in the Approved Budget for the applicable portion of such Budget Period and the Debtors' projected disbursements (and each line item thereof), respectively, set forth in the Approved Budget for the applicable portion of such Budget Period; and (v) as to each variance contained in the Variance Report, use reasonable efforts to indicate whether such variance is temporary or permanent and an analysis and explanation in reasonable detail for any variance in excess of 5% and $1 million. Notwithstanding anything to the contrary herein, the Variance Report shall only be shared with the Prepetition First Lien Agents and the Ad Hoc First Lien Group to the extent such parties are bound by obligations of confidentiality pursuant to (x) the Credit Agreement with respect to the Administrative Agent and Private Side Lenders (as defined below) or (y) a confidentiality agreement with the Debtors; *provided* the Variance Report shall be shared with the Administrative Agent's Advisors, the First Lien Indenture Trustee's Advisors, the First Lien Collateral Trustee's Advisors, the Ad Hoc First Lien Advisors, and the Ad Hoc Cross-Holder Advisors, the Committee Advisors, the FCR, and the FCR Advisors, and, pursuant to the confidentiality provisions of the Credit Agreement, with the Private Side Lenders.

(d) *Permitted Variances and Minimum Liquidity Amount*. The Debtors shall not permit (i) aggregate Actual Disbursements to be more than 120% of the projected disbursements set forth in the Approved Budget, in each case, for the relevant Budget Period (such deviation up to 120% in the aggregate for a Budget Period, the "**Permitted Variances**"); *provided* that the cash disbursements considered for determining compliance with this covenant shall exclude the Debtors' disbursements in respect of (x) the restructuring professional fees (including, without limitation, fees and expenses of the advisors to the Debtors, any committees appointed under Bankruptcy Code section 1102, the future claims representative ("**FCR**") (including, for the avoidance of doubt, the representative itself), the Prepetition Secured Parties on account of professional fees under paragraphs 4(g) and 5(e) of this Final Order, and professional fee payments to other creditors or creditor groups), (y) cash outflows for customer chargebacks, rebates and fees, prompt pay discounts, product returns, co-pay reduction rebates and other customer programs, and (z) U.S. Trustee's fees; and (ii) the Debtors' unrestricted cash and cash equivalents ("**Liquidity**") to be less than $600,000,000 at the end of any week (such amount, the "**Minimum Liquidity Amount**"); *provided, however*, the $85 million in the Company's Bank of America account ending in *2027 shall be included in the calculation of the Minimum Liquidity Amount.

(e) *Proposed Budget Reporting*. By no later than 5:00 p.m. (prevailing Eastern Time) on the Friday of each fourth calendar week following entry of the *Interim Order (I) Authorizing Debtors Use of Cash Collateral; (II) Granting Adequate Protection to Prepetition Secured Parties; (III) Modifying the Automatic Stay; and (IV) Granting Related Relief* [Docket No. 98] (the "**Interim Order**"), the Debtors shall deliver to the Administrative Agent, the Administrative Agent's Advisors, the First Lien Indenture Trustee, the First Lien Indenture Trustee's Advisors, the Ad Hoc First Lien Group, the Ad Hoc First Lien Advisors, the Ad Hoc

Cross-Holder Group, the Ad Hoc Cross-Holder Advisors, the Committee Advisors, the FCR, and the FCR Advisors a rolling 13-week cash flow forecast of the Debtors in a form consistent with the initial Approved Budget or otherwise agreed to by the Ad Hoc First Lien Group (each, a "**Proposed Budget**"), which Proposed Budget (including any subsequent revisions to any such Proposed Budget), solely upon written approval by the Ad Hoc First Lien Group, which approval shall not be unreasonably withheld, conditioned, or delayed, shall become the Approved Budget. In the event the conditions for the most recently delivered Proposed Budget to constitute the Approved Budget are not met as set forth herein, the prior Approved Budget shall remain in full force and effect; *provided, however*, in the event the Ad Hoc First Lien Group does not approve of a Proposed Budget within ten (10) business days of its delivery, upon five (5) business days' written notice to the Ad Hoc First Lien Advisors, the Administrative Agent, the Ad Hoc Cross-Holder Advisors, the Committee Advisors, the FCR, and the FCR Advisors, the Debtors may request an immediate hearing with the Court to seek Court approval of the Proposed Budget to be deemed an Approved Budget for purposes of this Final Order. Notwithstanding anything to the contrary herein, the Proposed Budget shall only be shared with those members of the Ad Hoc First Lien Group and the Ad Hoc Cross-Holder Group that are bound by obligations of confidentiality pursuant to a confidentiality agreement with the Debtors; *provided* the Proposed Budget shall be shared with the Ad Hoc First Lien Advisors and the Ad Hoc Cross-Holder Advisors that are bound by confidentiality obligations to the Debtors and with the Administrative Agent, the Administrative Agent's Advisors, First Lien Indenture Trustee, First Lien Indenture Trustee's Advisors, First Lien Collateral Trustee, First Lien Collateral Trustee's Advisors, the Committee Advisors, the FCR, the FCR Advisors, and, pursuant to the confidentiality provisions of the Credit Agreement, with the Private Side Lenders.

(f) *Miscellaneous*. For the avoidance of doubt, except as otherwise set forth in the Approved Budget, Cash Collateral may not be used (i) directly by any non-Debtor entity, or (ii) to pay any fees, costs, or expenses on behalf of any non-Debtor entity, in each case, except as necessary to fund the non-Debtors' manufacturing, research and development, general operations, and capital expenditures on a monthly basis in the ordinary course of the Debtors' and non-Debtors' business and consistent with the historical practices of such entities and solely in accordance with the Approved Budget. For the avoidance of doubt, nothing in this Order shall permit or authorize the Debtors to violate any restrictions in any order regarding cash management. Notwithstanding anything to the contrary herein, the Debtors shall obtain either (1) consent from the Unsecured Creditors Committee, the Official Committee of Opioid Claimants, the FCR, and the Ad Hoc First Lien Group or (2) relief from the bankruptcy court before (i) effectuating Intercompany Transactions between a Debtor and a Non-Debtor Affiliate that is not an Indian Non-Debtor Affiliate or (ii) engaging in Intercompany Transactions between Debtors and Indian Non-Debtor Affiliates in excess of amounts set forth in the Approved Budget. All Intercompany Claims arising after the Petition Date shall be granted a superpriority administrative expense claim pursuant to section 507(b) of the Bankruptcy Code, subject and junior to any claims, including adequate protection claims, granted in connection with the use of cash collateral in accordance with this Order.

4. ***Adequate Protection for the Prepetition First Lien Secured Parties.***

(a) Subject only to the Carve Out (as defined below) and the terms of this Final Order, pursuant to sections 361, 362, and 363(e) of the Bankruptcy Code, and in consideration of the stipulations and consents set forth herein, as adequate protection of the interests of the Prepetition First Lien Secured Parties in the Prepetition Collateral (including Cash Collateral), in

each case, to the extent of any Diminution in Value, each of the Administrative Agent, for the benefit of itself and the other Prepetition First Lien Loan Secured Parties, the First Lien Indenture Trustee, for the benefit of itself and the other Prepetition First Lien Notes Secured Parties, and the First Lien Collateral Trustee, for the benefit of itself and the other Prepetition First Lien Secured Parties, is hereby granted the following:

(b) *First Lien Adequate Protection Liens*. Pursuant to Bankruptcy Code sections 361(2) and 363(c)(2), to the extent of any Diminution in Value of the Prepetition First Lien Secured Parties' interests in the Prepetition Collateral and subject in all cases to the Carve Out, effective as of the Petition Date and in each case perfected without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or by possession or control, the Debtors are authorized to grant, and hereby deemed to have granted, to the Administrative Agent, for the benefit of itself and the other Prepetition First Lien Loan Secured Parties, to the First Lien Indenture Trustee, for the benefit of the Prepetition First Lien Note Secured Parties, and to the First Lien Collateral Trustee, for the benefit of itself and the other Prepetition First Lien Secured Parties, valid, binding, continuing, enforceable, fully-perfected, nonavoidable, first-priority senior (except as otherwise provided in this paragraph below with respect to the Permitted Prior Liens), additional and replacement security interests in and liens on (all such liens and security interests, the "**First Lien Adequate Protection Liens**") (i) the Prepetition Collateral and (ii) all of the Debtors' other now-owned and hereafter-acquired real and personal property, assets and rights of any kind or nature, wherever located, whether encumbered or unencumbered, including, without limitation, to the maximum extent permitted under applicable law (including Indian law), a 100% equity pledge of any first-tier foreign subsidiaries and

unencumbered assets of the Debtors, if any, and all prepetition property and post-petition property of the Debtors' estates, and the proceeds, products, rents and profits thereof, whether arising from section 552(b) of the Bankruptcy Code (subject to paragraph 24 of this Final Order) or otherwise, including, without limitation, all equipment, all goods, all accounts, cash, payment intangibles, bank accounts and other deposit or securities accounts of the Debtors (including any accounts opened prior to, on, or after the Petition Date), insurance policies and proceeds thereof, equity interests, instruments, intercompany claims, accounts receivable, other rights to payment, all general intangibles, all contracts and contract rights, securities, investment property, letters of credit and letter of credit rights, chattel paper, all interest rate hedging agreements, all owned real estate, real property leaseholds, fixtures, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, all commercial tort claims, and all claims and causes of action (including causes of action arising under section 549 of the Bankruptcy Code, claims arising on account of transfers of value from a Debtor to (x) another Debtor and (y) a non-Debtor affiliate incurred on or following the Petition Date), and any and all proceeds, products, rents, and profits of the foregoing (all property identified in this paragraph being collectively referred to as the "**Collateral**"), subject only to the Permitted Prior Liens, in which case the First Lien Adequate Protection Liens shall be immediately junior in priority to such Permitted Prior Liens and to the Carve Out; notwithstanding the foregoing, the Collateral shall exclude all claims and causes of action arising under any section of chapter 5 of the Bankruptcy Code (other than claims and causes of action arising under section 549 of the Bankruptcy Code) (the "**Avoidance Actions**"), and the Collateral shall include any and all proceeds of and other property that is recovered or becomes unencumbered as a result of (whether by judgment, settlement, or otherwise) any Avoidance Action; *provided*, *however*, that First Lien Adequate Protection Liens will be

granted on, and First Lien Adequate Protection Superpriority Claims (as defined below) will be paid from, (a) first, Collateral other than proceeds of Avoidance Actions, malpractice claims and proceeds thereof, prepetition insurance policies and proceeds thereof, and commercial tort claims and proceeds thereof (in each case, solely to the extent such Collateral is available) and (b) second, proceeds of Avoidance Actions, malpractice claims and proceeds thereof, prepetition insurance policies and proceeds thereof, and commercial tort claims and proceeds thereof.

(c) *First Lien Adequate Protection Superpriority Claims*. As further adequate protection, and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code, the Debtors are authorized to grant, and hereby deemed to have granted effective as of the Petition Date, to the Administrative Agent, for the benefit of itself and the other Prepetition First Lien Loan Secured Parties, to the First Lien Indenture Trustee, for the benefit of the Prepetition First Lien Note Secured Parties, and to the First Lien Collateral Trustee, for the benefit of itself and the other Prepetition First Lien Secured Parties, allowed superpriority administrative expense claims in each of the Cases ahead of and senior to any and all other administrative expense claims in such Cases to the extent of any Diminution in Value (the "**First Lien Adequate Protection Superpriority Claims**"), junior only to the Carve Out. Subject to the Carve Out, the First Lien Adequate Protection Superpriority Claims shall not be junior or *pari passu* to any claims and shall have priority over all administrative expense claims and other claims against each of the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113 and 1114 of the Bankruptcy Code.

(d) *First Lien Adequate Protection Payments*. As further adequate protection, the Debtors are authorized and directed to pay to the Administrative Agent for the ratable benefit of the Prepetition First Lien Loan Secured Parties and to the First Lien Indenture Trustee for the ratable benefit of the Prepetition First Lien Note Secured Parties, adequate protection payments in cash as follows: (i) no later than eight (8) business days after the date of the Interim Order, the first such adequate protection payment shall be paid in an amount in cash equal to the amount comprising all accrued and unpaid interest under (A) the Credit Agreement from the date of the last interest payment made by the Borrowers under the Credit Agreement through and including the date of the Interim Order and (B) each of the First Lien Indentures from the date of the last interest payment made by the First Lien Notes Issuers under the applicable First Lien Indenture through and including the date of the Interim Order, calculated based on a rate of (x) for the Credit Agreement, (1) if denominated in Dollars, ABR *plus* the Applicable Rate (each as defined in the Credit Agreement) or (2) if denominated in Canadian Dollars, the Canadian Prime Rate *plus* the Applicable Rate (each as defined in the Credit Agreement), and (y) for each First Lien Indenture, the applicable rate of interest set forth on the face of the Note (as defined in each of the First Lien Indentures); provided that for purposes of the First Lien Adequate Protection Payments (defined below) payable under the First Lien Indentures, and notwithstanding anything to the contrary in the First Lien Indentures, the record date to establish the holders of First Lien Notes receiving such payment shall be August 15, 2022; and (ii) on the last business day of each calendar month following entry of the Interim Order, each such adequate protection payment shall be paid in cash in an amount comprising all accrued and unpaid interest, calculated based on a rate of (A) for the Credit Agreement, (x) if denominated in Dollars, ABR *plus* the Applicable Rate *plus* 200 basis points or (y) if denominated in Canadian Dollars, the Canadian Prime Rate *plus* the Applicable

Rate *plus* 200 basis points, and (B) for each First Lien Indenture, the applicable rate of interest set forth on the face of the Note (as defined in each of the First Lien Indentures) *plus* 100 basis points (all payments referenced in this sentence, collectively, the "**First Lien Adequate Protection Payments**"); provided that for purposes of the First Lien Adequate Protection Payments payable under the First Lien Indentures, and notwithstanding anything to the contrary in the First Lien Indentures, the record date to establish the holders of First Lien Notes receiving such payments shall be, with respect to each payment date, the 25th day of the calendar month in which such payment is due. With respect to payments under the First Lien Indentures, any calculation of interest payable pursuant to this Paragraph 4(d) shall be computed on the basis of a 360-day calendar year of 12 30-day months. Upon receipt of the Adequate Protection Payments set forth in this paragraph, the Administrative Agent and the First Lien Indenture Trustee are authorized and directed, without further order of the Court, to distribute such payments to the Prepetition First Lien Loan Secured Parties and the Prepetition First Lien Notes Secured Parties, respectively in accordance with this Order. For the avoidance of doubt, the payment of adequate protection payments pursuant to paragraph 4 of this Final Order shall be without prejudice to (x) the rights of any of the Prepetition First Lien Secured Parties to assert claims for payment of make-whole, prepayment premium, or similar amount set forth in the Credit Agreement or the First Lien Indentures, as applicable and the rights of the Debtors or any other party in interest to object to or otherwise contest such claims, and (y) whether any such payments should be recharacterized or reallocated pursuant to the Bankruptcy Code as payments of principal, interest or otherwise. All First Lien Adequate Protection Payments made to or for the benefit of the Prepetition First Lien Secured Parties shall be subject in all respects to the terms of the 1L-2L Intercreditor Agreement.

(e) *Right to Seek Additional Adequate Protection*. This Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of any of the Prepetition First Lien Secured Parties to request further or alternative forms of adequate protection at any time or the rights of the Debtors or any other party to contest such request. Subject to the Carve Out, nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition First Lien Secured Parties is insufficient to compensate for any Diminution in Value of their interests in the Prepetition Collateral during the Cases. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgment by any of the Prepetition First Lien Secured Parties that the adequate protection granted herein does in fact adequately protect any of the Prepetition First Lien Secured Parties against any Diminution in Value of their respective interests in the Prepetition Collateral (including the Cash Collateral), or a finding by the Court, or an acknowledgement by any party, that any Diminution in Value has occurred.

(f) *Other Covenants*. The Debtors shall maintain their cash management arrangements in a manner consistent with this Court's order(s) granting the Debtors' cash management motion. The Debtors shall comply with the covenants contained in Sections 5.03 and 5.05 of the Credit Agreement regarding conduct of business, including, without limitation, preservation of rights, qualifications, licenses, permits, privileges, franchises, governmental authorizations and intellectual property rights material to the conduct of its business and the maintenance of properties and insurance.

(g) *Fees and Expenses*. As additional adequate protection, the Debtors shall, and are authorized and directed to pay in full in cash and in immediately available funds: (i) within eight (8) business days after the Debtors' receipt of invoices thereof (with a copy to the Committee

Advisors, the FCR Advisors, and the United States Trustee), the reasonable and documented professional fees and expenses, arising before the Petition Date, of (A) (x) one (1) legal counsel and (y) other third-party consultants and financial advisors solely to the extent required by the terms of an executed engagement letter with the Debtors for each of (i) the Administrative Agent (including the Administrative Agent's Advisors; *provided*, *that* the Administrative Agent reserves all rights with respect to the retention of a financial advisor in connection with the cases; and *provided further* that the Debtors have not agreed to reimburse the fees and expenses of any Administrative Agent Advisors other than Simpson Thacher & Bartlett LLP and the Debtors reserve their rights with respect to the reimbursement of fees and expenses of any Administrative Agent Advisor other than Simpson Thacher & Bartlett LLP), (ii) the First Lien Indenture Trustee (including reasonable and documented fees and expense of ArentFox Schiff LLP), and (iii) the First Lien Collateral Trustee (including reasonable and documented fees and expenses of Alston & Bird LLP, solely in its capacity as counsel to the First Lien Collateral Trustee), respectively, and (B) the ad hoc group of Prepetition First Lien Lenders and holders of First Lien Notes, acting as an ad hoc group (the "**Ad Hoc First Lien Group**") (including, without limitation, the reasonable and documented fees and expenses incurred by Evercore Group, LLC, Gibson, Dunn & Crutcher LLP, FTI Consulting, Inc., Arthur Cox LLP, Stikeman Elliott LLP, Loyens & Loeff, S&R Associates, any conflicts counsel or co-counsel, and, from and after the Petition Date, one local legal counsel in each non-U.S. based jurisdiction the Debtors are incorporated and/or domiciled to the extent such professionals are reasonably necessary to represent the interests of the Ad Hoc First Lien Group in connection with the Cases) (collectively, the "**Ad Hoc First Lien Advisors**") which, solely as to any financial advisor or investment banker, are subject to the terms of any engagement letter or reimbursement agreement previously agreed to by the Debtors in writing

(*provided, that*, for the avoidance of doubt, the Debtors cannot revoke or modify their consent after entry of this Final Order so long as this Final Order is in effect) or Prepetition Document, *provided, however*, individual Prepetition First Lien Lenders and the individual holders of the First Lien Notes shall not be entitled to reimbursement for fees and expenses of their own advisors pursuant to this Final Order; and (ii) subject to paragraph 26 and the limitations set forth in this paragraph 4(g)(i), on a monthly basis, within eight (8) business days of the Debtors' receipt of invoices thereof, the reasonable and documented fees and expenses, arising subsequent to the Petition Date, incurred by the Administrative Agent (including the reasonable and documented fees and expenses of Simpson Thacher & Bartlett LLP), the First Lien Indenture Trustee (including the reasonable and documented fees and expenses of ArentFox Schiff LLP (the "**First Lien Indenture Trustee's Advisors**")), the First Lien Collateral Trustee (including reasonable and documented fees and expenses of Alston & Bird LLP (the "**First Lien Collateral Trustee's Advisors**"), solely in its capacity as counsel to the First Lien Collateral Trustee), and the Ad Hoc First Lien Group, acting as an ad hoc group ((including, but not limited to, the reasonable and documented fees and expenses of the Ad Hoc First Lien Advisors) which, solely as to any financial advisor or investment banker, are subject to the terms of any engagement letter or reimbursement agreement previously agreed to by the Debtors in writing (*provided, that*, for the avoidance of doubt, the Debtors cannot revoke or modify their consent after entry of this Final Order so long as this Final Order is in effect) or Prepetition Document, *provided, however*, individual Prepetition First Lien Lenders and the individual holders of the First Lien Notes shall not be entitled to reimbursement for fees and expenses of their own advisors pursuant to this Final Order). None of the foregoing fees and expenses shall be subject to separate approval by this Court or require compliance with the *U.S. Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses*

Filed under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases, effective November 1, 2013 (the "**U.S. Trustee Guidelines**"), and no recipient of any such payment shall be required to file any interim or final fee application with respect thereto or otherwise seek the Court's approval of any such payments.

(h) *Reporting Requirements*. As additional adequate protection, the Debtors shall (x) for so long as Parent is required to file periodic reports with the U.S. Securities and Exchange Commission (the "**SEC**") pursuant to Section 13 or 15(d) of the Exchange Act, promptly provide the Administrative Agent's Advisors, the First Lien Indenture Trustee's Advisors, the Ad Hoc First Lien Advisors, the Committee Advisors, the FCR, and the FCR Advisors with a copy of any such report that Parent files with the SEC (it being understood that the filing of such report with the SEC on EDGAR or any successor platform being sufficient), (y) for so long as Parent is not required to file periodic reports with the SEC pursuant to Section 13 or 15(d) of the Exchange Act (as defined in the First Lien Indentures), comply with the reporting requirements in sections 5.01(a) and (b) of the Credit Agreement and section 4.03(c) of each of the First Lien Indentures with copies to the Committee Advisors, the FCR, and the FCR Advisors, *provided*, *however*, in no event shall such reporting provided under clauses (x) or (y) be required to (i) contain any consolidating and other financial statements and data that would be required by Sections 3-10, 3-16, 13-01 and 13-02 of Regulation S-X under the Securities Act (as defined in the First Lien Indentures), (ii) include any certifications that would be required under the Sarbanes Oxley Act of 2002, (iii) comply with Regulation G under the Exchange Act or Item 10(e) of Regulation S-K with respect to any "non-GAAP" financial information contained therein, (iv) contain any information and data required by Item 402(b) of Regulation S-K under the Securities Act and information regarding executive compensation and related party disclosure related to SEC Release

Nos. 33-8732A, 34-54302A and IC-27444A), and (v) include any unqualified auditor opinion in respect of any financial statements contained therein; and (z) provide, subject to any applicable limitations set forth below, to the Administrative Agent's Advisors, the First Lien Indenture Trustee's Advisors, the First Lien Collateral Trustee's Advisors, and the Ad Hoc First Lien Advisors (*provided*, that any reporting provided to the Ad Hoc First Lien Advisors under this paragraph 4(h) shall only be shared with those members of the Ad Hoc First Lien Group that are bound by obligations of confidentiality pursuant to a confidentiality agreement with the Debtors; *provided further*, that any reporting provided to the Administrative Agent's Advisors under this paragraph 4(h) may be shared only with the Administrative Agent and other Prepetition First Lien Lenders that have identified themselves as "private side" lenders and not Public Lenders (under and as defined in the Credit Agreement) (the "**Private Side Lenders**") and are bound by obligations of confidentiality pursuant to the Credit Agreement), the Committee Advisors subject and pursuant to the protective order, the FCR, and the FCR Advisors:

i. bi-weekly (i.e., every other week) (or more frequently as may be agreed to between the Debtors' advisors and the Ad Hoc First Lien Group) calls with the Ad Hoc First Lien Advisors, the Administrative Agent's Advisors, the First Lien Indenture Trustee's Advisors, the First Lien Collateral Trustee's Advisors, and the Debtors' advisors, which shall be in form and scope reasonably agreed to by the Debtors and the Ad Hoc First Lien Advisors;

ii. at the times specified in paragraph 3(c) hereof, the Variance Report required by paragraph 3(c) hereof;

iii. a copy of each update to the Debtors' business plan as soon as reasonably practicable after it is presented to the board of directors of the Parent;

iv. in-person or teleconference meetings between (a) the Debtors and, to the extent appropriate, their advisors, including any consultant, turnaround management, broker or financial advisory firm retained by any Debtor in any of the Cases, (b) the Administrative Agent's Advisors, (c) the First Lien Indenture Trustee's Advisors, (d) the First Lien Collateral Trustee's Advisors, and (e) the Ad Hoc First Lien Advisors, at such time as the Ad Hoc First Lien Advisors may reasonably request, but in the case of any meetings involving the Debtors' management, to be limited to one such in-person or teleconference meeting per month (or more frequently as the Debtors may agree in their reasonable discretion), and at places reasonably acceptable to the Debtors (to the extent such presentations are in-person);

v. timely delivery of each Proposed Budget as set forth in this Final Order;

vi. notice of the occurrence of the Debtors' Liquidity falling below the Minimum Liquidity Amount at the end of any week and the amount of such Liquidity as of such time;

vii. within 45 days after each month end, beginning with the quarter ended September 30, 2022, on a consolidated basis for Debtors and non-Debtors combined, a quarterly and year-to-date income statement and balance sheet;

viii. the Debtors will grant access to any data room established in connection with third-party diligence commenced in connection with any restructuring of one or more of the Debtors on a professional eyes' only basis to the Administrative Agent's Advisors, the First Lien Indenture Trustee's Advisors, the First Lien Collateral Trustee's Advisors, the Ad Hoc First Lien Advisors, the Committee Advisors, the FCR, and the FCR Advisors; and

ix. as soon as reasonably practicable after written request from the Ad Hoc First Lien Advisors, the Debtors will, to the extent appropriate and acting reasonably, provide the Ad Hoc First Lien Advisors with reasonable access to any consultant, turnaround management, broker or financial advisory firm retained by any Debtor in any of the Cases;

provided that nothing in this paragraph 4(h) shall require the Debtors (or any of their advisors) to take any action that would conflict with any applicable requirements of law or any binding agreement, or that would waive any attorney-client or similar privilege (it being understood and agreed that (i) the Debtors shall use commercially reasonable efforts to take any such action required under this paragraph 4(h) in a way that would not conflict with any applicable requirements of law or any binding agreement, or that would waive any attorney-client or similar privilege and (ii) if any such Debtor (or any such advisor), in reliance on this proviso, elects to withhold any information that would otherwise be required to be provided pursuant to this paragraph 4(h), the Debtors shall provide written notice to the Ad Hoc First Lien Advisors of such election and specify in such notice the basis for the Debtors' (or the applicable advisor's) election to withhold such information and identify in such notice the type of information it has elected to withhold to the extent not prohibited by applicable law).

(i) *Miscellaneous*. Except for (i) the Carve Out and (ii) as otherwise provided in paragraph 4, the First Lien Adequate Protection Liens and First Lien Adequate Protection Superpriority Claims granted to the Prepetition First Lien Secured Parties pursuant to paragraph 4 of this Final Order shall not be subject, junior, or *pari passu* to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under the Bankruptcy Code, including, without limitation, pursuant to section 551 or otherwise, and shall not be subordinated

to or made *pari passu* with any lien, security interest or administrative claim under the Bankruptcy Code, including, without limitation, pursuant to section 364 or otherwise.

5. ***Adequate Protection for the Prepetition Second Lien Notes Secured Parties.***

(a) Subject only to the Carve Out and the terms of this Final Order, pursuant to sections 361, 362, and 363(e) of the Bankruptcy Code, and in consideration of the stipulations and consents set forth herein, as adequate protection of the interests of the Prepetition Second Lien Notes Secured Parties in the Prepetition Collateral (including Cash Collateral), in each case, to the extent of any Diminution in Value of such interests, the Second Lien Indenture Trustee, for the benefit of the Prepetition Second Lien Notes Secured Parties and the Second Lien Collateral Trustee, for the benefit of itself and the other Prepetition Second Lien Notes Secured Parties, is hereby granted the following:

(b) *Second Lien Adequate Protection Liens*. Pursuant to Bankruptcy Code sections 361(2) and 363(c)(2), to the extent of any Diminution in Value of the Prepetition Second Lien Notes Secured Parties' interests in the Prepetition Collateral and subject in all cases to the Carve Out, effective as of the Petition Date and in each case perfected without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or by possession or control, the Debtors are authorized to grant, and hereby deemed to have granted, to the Second Lien Indenture Trustee, for the benefit of the Prepetition Second Lien Notes Secured Parties, and to the Second Lien Collateral Trustee, for the benefit of itself and the other Prepetition Second Lien Notes Secured Parties, valid, binding, continuing, enforceable, fully-perfected, nonavoidable, senior (except as otherwise provided in this paragraph), additional and replacement security interests in and liens on (all such liens and security interests, the "**Second Lien Adequate**

Protection Liens" and, together with the First Lien Adequate Protection Liens, the "**Adequate Protection Liens**") (i) the Prepetition Collateral and (ii) the Collateral, which Second Lien Adequate Protection Liens shall be junior only to the Permitted Prior Liens, the Carve Out, the First Lien Adequate Protection Liens, and the Prepetition First Liens; *provided*, *however*, that Second Lien Adequate Protection Liens will be granted on, and Second Lien Adequate Protection Superpriority Claims (as defined below) will be paid from, (a) first, Collateral other than proceeds of Avoidance Actions, malpractice claims and proceeds thereof, prepetition insurance policies and proceeds thereof, and commercial tort claims and proceeds thereof (in each case, solely to the extent such Collateral is available) and (b) second, proceeds of Avoidance Actions, malpractice claims and proceeds thereof, prepetition insurance policies and proceeds thereof, and commercial tort claims and proceeds thereof. For the avoidance of doubt, the Second Lien Adequate Protection Liens shall be junior in priority, first, to the Permitted Prior Liens; second, to the Carve Out; third, to the First Lien Adequate Protection Liens; and, fourth, to the Prepetition First Liens.

(c) *Second Lien Adequate Protection Superpriority Claims*. As further adequate protection, and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code, the Debtors are authorized to grant, and hereby deemed to have granted, effective as of the Petition Date, to the Second Lien Indenture Trustee, for the benefit of the Prepetition Second Lien Notes Secured Parties, and to the Second Lien Collateral Trustee, for the benefit of itself and the other Prepetition Second Lien Notes Secured Parties, allowed superpriority administrative expense claims in each of the Cases ahead of and senior to any and all other administrative expense claims in such Cases to the extent of any Diminution in Value (the "**Second Lien Adequate Protection Superpriority Claims**" and together with the First Lien Adequate Protection Superpriority Claims, the "**Adequate Protection Superpriority Claims**"), but junior to the Carve Out and the

First Lien Adequate Protection Superpriority Claims. Subject to the Carve Out and the First Lien Adequate Protection Superpriority Claims, the Second Lien Adequate Protection Superpriority Claims will not be junior to any claims and shall have priority over all administrative expense claims and other claims against each of the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113 and 1114 of the Bankruptcy Code. The Second Lien Adequate Protection Superpriority Claims may be paid under any plan of reorganization in any combination of cash, debt, equity or other property having a value on the effective date of such plan equal to the allowed amount of such claims.

(d) *Right to Seek Additional Adequate Protection*. This Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of any of the Prepetition Second Lien Notes Secured Parties to request further or alternative forms of adequate protection at any time or the rights of the Debtors or any other party to contest such request which rights shall, in all cases, be subject to the Second Lien Collateral Trust Agreement and the 1L-2L Intercreditor Agreement. Subject to the Carve Out, nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition Second Lien Notes Secured Parties is insufficient to compensate for any Diminution in Value of their interests in the Prepetition Collateral during the Cases. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgment by any of the Prepetition Second Lien Notes Secured Parties that the adequate protection granted herein does in fact adequately protect any of the Prepetition Second Lien Notes Secured Parties against any Diminution in Value of their respective interests in the Prepetition Collateral (including the Cash

Collateral), or a finding by the Court, or an acknowledgement by any party, that any Diminution in Value has occurred.

(e) *Fees and Expenses*. As additional adequate protection, the Debtors shall, and are authorized and directed, subject in all respects to the conditions and limitations set forth in this paragraph, to pay in full in cash and in immediately available funds: (i) within eight (8) business days after the Debtors' receipt of invoices thereof (with a copy to the Committee Advisors, the FCR Advisors, and the United States Trustee), the reasonable and documented professional fees and expenses, arising before the Petition Date, of (A) one (1) legal counsel and (B) other third-party consultants and financial advisors solely to the extent required by the terms of an executed engagement letter with the Debtors for each of (x) the Second Lien Indenture Trustee (including the reasonable and documented fees and expenses incurred by Wilmer Cutler Pickering Hale and Dorr LLP, solely in its capacity as counsel to the Second Lien Indenture Trustee ("**WilmerHale**"), (y) the Second Lien Collateral Trustee (including the reasonable and documented fees of Alston & Bird, LLP, solely in its capacity as counsel to the Second Lien Collateral Trustee), and (z) the ad hoc group of holders of Prepetition First Lien Indebtedness, Second Lien Notes and Unsecured Notes (as defined in the Motion), acting as an ad hoc group and, for purposes of this Order, acting in its capacity as a secured creditor (the "**Ad Hoc Cross-Holder Group**"), (including, without limitation, the reasonable and documented fees and expenses incurred by Paul, Weiss, Rifkind, Wharton & Garrison LLP, AlixPartners LLP, Perella Weinberg Partners L.P., Matheson LLP, IQVIA, Inc., Epstein Becker & Green P.C., NautaDutilh, and, from and after the Petition Date, one local legal counsel in each non-U.S. based jurisdiction the Debtors are incorporated and/or domiciled to the extent such professionals are reasonably necessary to represent the interests of the Ad Hoc Cross-Holder Group in connection with the Cases, in each

case, solely in their capacity as advisors to the Ad Hoc Cross-Holder Group, with each member acting in its capacity as a secured creditor (collectively, the "**Ad Hoc Cross-Holder Advisors**")) which, solely as to any financial advisor or investment banker, are subject to the terms of any engagement letter or reimbursement agreement previously agreed to by the Debtors in writing (*provided, that*, for the avoidance of doubt, the Debtors cannot revoke or modify their consent after entry of this Final Order so long as this Final Order is in effect) or Prepetition Document, *provided, however*, the individual holders of the Second Lien Notes shall not be entitled to reimbursement for fees and expenses of their own advisors pursuant to this Final Order; and (ii) subject to paragraph 26 and the limitations set forth in this paragraph 5(e)(i), on a monthly basis, within eight (8) business days of the Debtors' receipt of invoices thereof, the reasonable and documented fees and expenses, arising subsequent to the Petition Date, incurred by the Second Lien Indenture Trustee (including the reasonable and documented fees and expenses of WilmerHale), the Second Lien Collateral Trustee (including the reasonable and documented fees and expenses of Alston & Bird LLP, solely in its capacity as counsel to the Second Lien Collateral Trustee), and the Ad Hoc Cross-Holder Group, acting as an ad hoc group ((including, but not limited to, the reasonable and documented fees and expenses of the Ad Hoc Cross-Holder Advisors) which, solely as to any financial advisor or investment banker, are subject to the terms of any engagement letter or reimbursement agreement previously agreed to by the Debtors in writing (*provided, that*, for the avoidance of doubt, the Debtors cannot revoke or modify their consent after entry of this Final Order so long as this Final Order is in effect) or Prepetition Document, *provided, however*, the individual holders of the Second Lien Notes shall not be entitled to reimbursement for fees and expenses of their own advisors) solely for so long as, and only to the extent that, the Ad Hoc Cross-Holder Advisors and the Ad Hoc Cross-Holder Group, or any member thereof (as to the Ad Hoc

Cross-Holder Advisors' fees and expenses), the Second Lien Indenture Trustee or the Second Lien Indenture Trustee acting on behalf of any other party (as to WilmerHale's fees and expenses), and the Second Lien Collateral Trustee or the Second Lien Collateral Trustee acting on behalf of any other party (as to Alston & Bird, LLP's fees and expenses), (1) does not take any action in violation of the 1L-2L Intercreditor Agreement, (2) does not encourage, solicit, or support any third party to take any action that would violate the 1L-2L Intercreditor Agreement if such action were taken by the Ad Hoc Cross-Holder Group or any member thereof, the Second Lien Indenture Trustee, the Second Lien Collateral Trustee, or any other Prepetition Second Lien Notes Party including, without limitation, in each case of (1) and (2), any direct or indirect challenge of the Prepetition First Lien Secured Parties' right to credit bid or pursue a transaction pursuant to which the First Lien Collateral Trustee credit bids up to the full amount of the Prepetition First Lien Secured Parties' respective claims, (3) does not object, or encourage, solicit, or support any third party to object, to any bidding procedures order (as long as such bidding procedures order (i) has a timeline that is not materially shorter than the timeline set forth in the bidding procedures previously provided to the Ad Hoc Cross-Holder Advisors, (ii) does not provide for the payment of any break-up fee or similar fee (other than any expense reimbursement) that other bidders are required to overbid, (iii) does not require cash payments from the Prepetition Second Lien Notes Secured Parties to the Prepetition First Lien Secured Parties in an amount in excess of the First Priority Obligations (as defined in the 1L-2L Intercreditor Agreement), and (iv) does not impose unduly burdensome requirements on the Prepetition Second Lien Notes Secured Parties' or their designee's ability to participate in the sale process as a potential purchaser of the Debtors' assets as compared to other bidders (other than the Stalking Horse Bidder), or any sale order, in each case, supported by the Debtors and the Ad Hoc First Lien Group or the entry of the Interim Order

or this Final Order, (4) does not take any position in or out of court in furtherance of, or to advance the interests of, any holder of Unsecured Notes or unsecured claims (including, without limitation, any Ad Hoc Cross-Holder Group member in its capacity as a holder of Unsecured Notes or unsecured claims) that would be prohibited by the 1L-2L Intercreditor Agreement if such position were taken by a holder of Second Lien Notes, and (5) does not file, or encourage, solicit, or support any third party to file, any Challenge (as defined below). None of the foregoing fees and expenses shall be subject to separate approval by this Court or require compliance with the U.S. Trustee Guidelines, and no recipient of any such payment shall be required to file any interim or final fee application with respect thereto or otherwise seek the Court's approval of any such payments. Any payments made pursuant to this paragraph shall be without prejudice to whether any such payments should be recharacterized or reallocated pursuant to section 506(b) of the Bankruptcy Code as payments of principal, interest or otherwise.

(f) *Reporting Requirements*. As additional adequate protection, the Debtors shall (x) for so long as Parent is required to file periodic reports with the SEC pursuant to Section 13 or 15(d) of the Exchange Act, promptly provide the Ad Hoc Cross-Holder Advisors with a copy of any such report that Parent files with the SEC (it being understood that the filing of such report with the SEC on EDGAR or any successor platform being sufficient), (y) for so long as Parent is not required to file periodic reports with the SEC pursuant to Section 13 or 15(d) of the Exchange Act (as defined in the First Lien Indentures), comply with the reporting requirements in section 4.03(c) of the Second Lien Indenture with copies to the Committee Advisors, the FCR, and the FCR Advisors, *provided, however,* in no event shall such reporting provided under clauses (x) or (y) be required to (i) contain any consolidating and other financial statements and data that would be required by Sections 3-10, 3-16, 13-01, and 13-02 of Regulation S-X under the Securities Act

(as defined in the First Lien Indentures), (ii) include any certifications that would be required under the Sarbanes Oxley Act of 2002, (iii) comply with Regulation G under the Exchange Act or Item 10(e) of Regulation S-K with respect to any "non-GAAP" financial information contained therein, (iv) contain any information and data required by Item 402(b) of Regulation S-K under the Securities Act and information regarding executive compensation and related party disclosure related to SEC Release Nos. 33-8732A, 34-54302A, and IC-27444A, and (v) include any unqualified auditor opinion in respect of any financial statements contained therein; and (z) provide, subject to any applicable limitations set forth below, the following additional reporting to the Second Lien Indenture Trustee, the Second Lien Collateral Trustee, and the Ad Hoc Cross-Holder Advisors (*provided*, that any reporting provided to WilmerHale, and the Ad Hoc Cross-Holder Advisors under this paragraph 5(f) shall only be shared with those advisors that are bound by obligations of confidentiality pursuant to a confidentiality agreement entered into with the Debtors):

i. at the times specified in paragraph 3(c) hereof, the Variance Report required by paragraph 3(c) hereof;

ii. timely delivery of each Proposed Budget as set forth in this Final Order;

iii. notice of the occurrence of the Debtors' Liquidity falling below the Minimum Liquidity Amount at the end of any week and the amount of such Liquidity as of such time;

iv. within 45 days after each month end, beginning with the quarter ended September 30, 2022, on a consolidated basis for Debtors and non-Debtors combined, a quarterly and year-to-date income statement and balance sheet; and

provided that nothing in this paragraph 5(f) shall require the Debtors (or any of their advisors) to take any action that would conflict with any applicable requirements of law or any binding agreement, or that would waive any attorney-client or similar privilege (it being understood and agreed that (i) the Debtors shall use commercially reasonable efforts to take any such action required under this paragraph 5(f) in a way that would not conflict with any applicable requirements of law or any binding agreement, or that would waive any attorney-client or similar privilege and (ii) if any such Debtor (or any such advisor), in reliance on this proviso, elects to withhold any information that would otherwise be required to be provided pursuant to this paragraph 5(f), the Debtors shall provide written notice to the Ad Hoc Cross-Holder Advisors of such election and specify in such notice the basis for the Debtors' (or the applicable advisor's) election to withhold such information and identify in such notice the type of information it has elected to withhold to the extent not prohibited by applicable law).

(g) *Miscellaneous*. Except for (i) the Carve Out, (ii) the First Lien Adequate Protection Liens, (iii) First Lien Adequate Protection Superpriority Claims, and (iv) as otherwise provided in paragraph 5, and subject to the Intercreditor Agreements, the Second Lien Adequate Protection Liens, and Second Lien Adequate Protection Superpriority Claims granted to the Prepetition Second Lien Notes Secured Parties pursuant to paragraph 5 of this Final Order shall not be subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under the Bankruptcy Code, including, without limitation, pursuant to section 551 or otherwise, and shall not be subordinated to any lien, security interest or administrative claim under the Bankruptcy Code, including, without limitation, pursuant to section 364 or otherwise.

6. ***Carve Out***

(a) *Priority of Carve Out*. Each of the Prepetition Liens, Adequate Protection Liens, and Adequate Protection Superpriority Claims shall be subject and subordinate to payment of the Carve Out (as defined below).

(b) *Definition of Carve Out*. As used in this Final Order, the "**Carve Out**" means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to $250,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (the "**Allowed Professional Fees**") incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (collectively, the "**Debtor Professionals**") and any Committee pursuant to section 328 or 1103 of the Bankruptcy Code (collectively, the "**Committee Professionals**") and the FCR and persons or firms retained by the FCR pursuant to an order of the Court (collectively, the "**FCR Professionals**" and, together with the Debtor Professionals and the Committee Professionals, the "**Professional Persons**"), including the reasonable and documented out-of-pocket expenses of any member of any Committee (but not including fees and expenses of any counsel or advisor to such member), at any time before or on the first business day following delivery by the Ad Hoc First Lien Group of a Carve Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice, (the amounts set forth in clauses (i) through (iii), the "**Pre-Carve Out Trigger Notice Cap**"); (iv) Allowed Professional Fees of Professional Persons, including the reasonable and documented out-of-pocket

expenses of any member of any Committee (but not including fees and expenses of any counsel or advisor to such member), in an aggregate amount not to exceed $25 million incurred after the first business day following delivery by the Ad Hoc First Lien Group of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise; and (v) all amounts required to be paid to (x) PJT Partners LP on account of any transaction fees earned at any time under that certain engagement letter between PJT Partners LP and the Debtors, dated as of September 21, 2021, and (y) transaction fees (if any) earned at any time by the Committee Professionals or the FCR Professionals, payable under sections 328, 330, and/or 331 of the Bankruptcy Code, to the extent not yet paid or due as of the delivery of a Carve Out Trigger Notice and allowed by a separate order of this Court at any time (the amounts set forth in clause (iv) above and this clause (v) being the "**Post-Carve Out Trigger Notice Cap**"). For purposes of the foregoing, "**Carve Out Trigger Notice**" shall mean a written notice delivered by email (or other electronic means) by the Ad Hoc First Lien Group to the Debtors, their lead restructuring counsel (Skadden, Arps, Slate, Meagher & Flom LLP), the U.S. Trustee, and counsel to any Committee, which notice may be delivered following the occurrence and during the continuation of a Termination Event (as defined below) stating that the Post-Carve Out Trigger Notice Cap has been invoked.

(c) *Carve Out Reserves*. Notwithstanding the occurrence of a Termination Event (as defined below), on the day on which a Carve Out Trigger Notice is given by the Ad Hoc First Lien Group (the "**Termination Declaration Date**"), the Carve Out Trigger Notice shall constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the then unpaid amounts of the Allowed Professional Fees plus reasonably estimated fees and expenses not yet allowed for

the period through and including the Termination Declaration Date (the "**Allowed and Estimated Professional Fees**"). The Debtors shall deposit and hold such amounts in a segregated account in trust to pay the Allowed and Estimated Professional Fees (the "**Pre-Carve Out Trigger Notice Reserve**") prior to any and all other claims. On the Termination Declaration Date, the Carve Out Trigger Notice shall also constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor, after funding the Pre-Carve Out Trigger Notice Reserve, to fund a reserve in an amount equal to the Post-Carve Out Trigger Notice Cap. The Debtors shall deposit and hold such amounts in a segregated account in trust to pay such Allowed Professional Fees benefiting from the Post-Carve Out Trigger Notice Cap (the "**Post-Carve Out Trigger Notice Reserve**" and, together with the Pre-Carve Out Trigger Notice Reserve, the "**Carve Out Reserves**") prior to any and all other claims. All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in the Pre-Carve Out Trigger Notice Cap (the "**Pre-Carve Out Amounts**"), but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap, until paid in full, and then, to the extent the Pre-Carve Out Trigger Notice Reserve has not been reduced to zero, any such excess shall be paid to the Prepetition First Lien Secured Parties in accordance with their respective rights and priorities as of the Petition Date. All funds in the Post-Carve Out Trigger Notice Reserve shall be used first to pay all the amounts set forth in the Post-Carve Out Trigger Notice Cap (the "**Post-Carve Out Amounts**"), and then, to the extent the Post-Carve Out Trigger Notice Reserve has not been reduced to zero, any such excess shall be used first to pay any unpaid Pre-Carve Out Amounts until paid in full, and then paid to the Prepetition First Lien Secured Parties in accordance with their respective rights and priorities as of the Petition Date. Notwithstanding anything to the contrary in the Prepetition Documents or this Final Order: (i) following delivery of a Carve Out

Trigger Notice, the First Lien Collateral Trustee shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve Out Reserves, with any excess paid to the First Lien Collateral Trustee for application in accordance with the Prepetition Documents and Intercreditor Agreements; (ii)(A) disbursements by the Debtors from the Carve Out Reserves shall not increase or reduce the Prepetition Secured Indebtedness, (B) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out, and (C) in no way shall the Approved Budget, Proposed Budget, Carve Out, Post-Carve Out Trigger Notice Cap, Carve Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors; and (iii) the Carve Out shall be senior to all liens and claims securing the Prepetition Secured Indebtedness, the Adequate Protection Liens, the Adequate Protection Superpriority Claims, any claims arising under section 507(b) of the Bankruptcy Code, and any and all other forms of adequate protection, liens, or claims securing the Prepetition Secured Indebtedness. Notwithstanding anything to the contrary herein, if either of the Carve Out Reserves is not funded in full in the amounts set forth herein, then any excess funds in one of the Carve Out Reserves following the payment of the Pre-Carve Out Amounts and Post-Carve Out Amounts, respectively, shall be used to fund the other Carve Out Reserve, up to the applicable amount set forth herein, prior to making any payments to the Prepetition Secured Parties. Unless otherwise ordered by the Court, the automatic stay provisions of Bankruptcy Code section 362 are hereby modified to permit the Prepetition First Lien Secured Parties to retain and apply all collections or remittances from any Carve Out Reserve subject to and in accordance with this Final Order, the Credit Documents, the First Lien Notes Documents, and the Intercreditor Agreements

to the extent the Prepetition First Lien Secured Parties are entitled to any excess from the Carve Out Reserves.

(d) *Professional Fee Reserve Account.* Upon entry of this Final Order, the Debtors shall establish a separate segregated account not subject to the control or liens of any party, which shall be for the sole purpose of paying unpaid Allowed Professional Fees (the "**Professional Fee Reserve Account**"). Within ten (10) business days of a Professional Person submitting an invoice to the Debtors for professional fees, the Debtors shall fund the Professional Fee Reserve Account in an amount equal to 20% of the professional fees set forth in such invoice, including, without limitation, any additional amounts required to be held back pursuant to an order of the Court (such professional fees, expenses, and additional amounts, the "**Reserve Amounts**"). Upon release of any Reserve Amounts from the Professional Fee Reserve Account and payment thereof to the applicable Professional Person, the Professional Fee Reserve Account shall be decreased on a dollar-for-dollar basis for the amount paid to such Professional Person. Upon the delivery of a Carve Out Trigger Notice, all funds in the Professional Fee Reserve Account shall be used first to pay the Pre-Carve Out Amounts. If, after payment in full of all amounts included in the Pre-Carve Out Trigger Notice Cap and Post-Carve Out Trigger Notice Cap, the Professional Fee Reserve Account has not been reduced to zero, all remaining funds shall be returned to the Prepetition Secured Parties. For the avoidance of doubt, the Debtors' obligations to pay Allowed Professional Fees shall not be limited or deemed limited to funds held in the Professional Fee Reserve Account.

(e) *No Direct Obligation To Pay Allowed Professional Fees*. Subject to the terms of the restructuring support agreement, dated August 16, 2022, by and between the Debtors and certain of the Prepetition First Lien Secured Parties (the "**RSA**"), the Prepetition Secured

Parties reserve the right to object to the allowance of any fees and expenses, whether or not such fees and expenses were incurred in accordance with the Approved Budget. Except for permitting the funding of the Carve Out Reserves as provided herein, none of the Prepetition Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person or any fees or expenses of the U.S. Trustee or Clerk of the Court incurred in connection with the Cases or any successor cases under any chapter of the Bankruptcy Code ("**Successor Cases**"). Nothing in this Final Order or otherwise shall be construed to obligate the Prepetition Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(f) *Payment of Carve Out After the Termination Declaration Date*. Any payment or reimbursement made after the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall permanently reduce the Carve Out on a dollar for-dollar basis; *provided, however*, if the Debtor Professionals use their retainers to pay such Allowed Professional Fees, such payments shall not reduce the Carve Out.

7. ***Access and Information***. Subject to the Prepetition Documents, upon reasonable prior written notice (as applicable, including via acknowledged electronic mail) during normal business hours, the Debtors shall permit the Ad Hoc First Lien Advisors, to (a) have reasonable access to information regarding the operations, business affairs, and financial condition of the Debtors, (b) have reasonable access to and inspect the Debtors' properties, and (c) discuss the Debtors' affairs, finances, and condition with the Debtors' advisors; it being understood that nothing in this paragraph shall require the Debtors (or any of their advisors) to take any action that

would conflict with any applicable requirements of law or any binding agreement, or that would waive any attorney-client or similar privilege.

8. ***Termination.*** Subject to the Remedies Notice Period (as defined below) and paragraph 6, the Debtors' right to use the Cash Collateral pursuant to this Final Order shall automatically cease without further court proceedings on the Termination Date (as defined herein). As used herein, "Termination Events" means any of the events set forth in paragraphs 8(a) through (p) of this Final Order (each such events a "**Termination Event**"):

(a) A Final Order acceptable to the Debtors and the Ad Hoc First Lien Group is not entered by the Court by 11:59 p.m. on October 21, 2022;

(b) The violation of any material term of this Final Order or the material violation of this Final Order by the Debtors that is not cured within five (5) business days of receipt by the Debtors of notice, with a copy to counsel to any Committee and counsel to the FCR, from the Ad Hoc First Lien Group of such default, violation or breach (which may be provided to the Debtors by e-mail);

(c) Entry of any order modifying, reversing, revoking, staying for a period in excess of four (4) business days, rescinding, vacating, or amending this Final Order in a manner materially adverse to the rights, interests, priorities, or entitlements of the Prepetition First Lien Secured Parties or that materially modifies any of the Debtors' obligations to the Prepetition First Lien Secured Parties, in each case, without the express written consent of the Ad Hoc First Lien Group;

(d) Any of the Cases is dismissed or converted to a case under chapter 7 of the Bankruptcy Code, or without the express written consent of the Ad Hoc First Lien Group, a trustee under chapter 11 of the Bankruptcy Code, an examiner with expanded powers is appointed in any

of the Cases, or the Cases are transferred or there is a change of venue outside of the Second Circuit or Third Circuit, or any Debtor files any motion, pleading, or proceeding (or solicits, supports, or encourages any other party to file any motion, pleading, or proceeding) seeking or consenting to the granting of, or an order is entered granting, any of the foregoing, except where a dismissal or conversion is for a Debtor that, at the time of such dismissal, has dormant business activities and a fair market value of less than $250,000;

(e) Any Debtor files any motion, pleading, or proceeding seeking or consenting to the granting of, or an order is entered granting, any claim, lien (except for the Permitted Prior Liens) or other interest that is *pari passu* with or senior to any of the Prepetition First Liens, First Lien Adequate Protection Liens or First Lien Adequate Protection Superpriority Claims;

(f) Any Debtor files any motion, pleading, or proceeding (or solicits, supports, or encourages any other party to file any motion, pleading, or proceeding) seeking or consenting to the granting of, or an order is entered granting, (i) the invalidation, subordination, or other challenge to the Prepetition Secured Indebtedness, the Prepetition Liens, Adequate Protection Liens, the Adequate Protection Superpriority Claims or (ii) any relief under sections 506(c) or 552 of the Bankruptcy Code with respect to any Prepetition Collateral or any Collateral, including the Cash Collateral, or against any of the Prepetition Secured Parties, *provided* that if the Debtors provide any response to any discovery request or make a witness available for deposition in connection with the foregoing, such action shall not be a violation of this clause;

(g) Any Debtor files any motion, pleading, or proceeding that would, if the relief sought therein were granted, result in a Termination Event (other than a Termination Event under this paragraph 8(g)), and such motion, pleading, or proceeding is not dismissed or withdrawn (as applicable) within three (3) business days after receipt by the Debtors of notice (which may be

by e-mail), with a copy to counsel to any Committee and counsel to the FCR, that the Ad Hoc First Lien Group has determined that such motion, pleading, or proceeding, if the relief sought therein were granted, would give rise to such a Termination Event;

(h) The entry by this Court of an order granting relief from the automatic stay imposed by section 362 of the Bankruptcy Code to any entities other than the Prepetition Secured Parties with respect to any material portion of the Collateral (except for the Permitted Prior Liens), *provided, however,* this clause shall only be triggered if at least three (3) business days before the hearing to approve such order, the Ad Hoc First Lien Group provides written notice to the Debtors (which may be provided to the Debtors by e-mail), with a copy to counsel to any Committee and counsel to the FCR, that the Ad Hoc First Lien Group objects to such relief under the circumstances described in this paragraph 8(h);

(i) The entry of a subsequent order of the Court authorizing the use of Cash Collateral by any Debtor that is not a Prepetition Loan Party in violation of this Final Order without the written consent of the Ad Hoc First Lien Group;

(j) The failure by the Debtors to make any payment required pursuant to this Final Order when due; *provided* that such failure remains uncured for at least three (3) business days following a written notice (which may be provided to the Debtors by e-mail), with a copy to counsel to any Committee and counsel to the FCR, from the Ad Hoc First Lien Group;

(k) The failure by the Debtors to deliver to the First Lien Indenture Trustee, First Lien Collateral Trustee, Ad Hoc First Lien Group, or the Ad Hoc First Lien Advisors any of the documents or other information reasonably required to be delivered to such applicable party pursuant to this Final Order within five (5) business days following a request thereof from the First

Lien Indenture Trustee, First Lien Collateral Trustee, Ad Hoc First Lien Group, or the Ad Hoc First Lien Advisors pursuant to the terms of this Final Order;

(l) The Debtors' failure to (i) comply with an Approved Budget as set forth in this Final Order except with respect to Permitted Variances or (ii) at the end of any week, maintain Liquidity in an amount equal to or greater than the Minimum Liquidity Amount;

(m) The entry of an order of this Court approving the terms of any debtor in possession financing for any of the Debtors that is entered into without the written consent of the Ad Hoc First Lien Group;

(n) The Debtors shall file a chapter 11 plan that is not acceptable to the Ad Hoc First Lien Group or shall seek to modify, amend or waive any provision of a chapter 11 plan previously deemed acceptable by the Ad Hoc First Lien Group without the written consent of the Ad Hoc First Lien Group;

(o) Any Debtor files any motion, pleading, or proceeding (or solicits, supports, or encourages any other party to file any motion, pleading, or proceeding) seeking or consenting to the granting of, or a final non-appealable order (i.e., no appeal has been filed within 14 days after entry of such order) is entered granting, any termination and/or shortening, reduction of the Debtors' exclusive periods to file and/or solicit a chapter 11 plan pursuant to the Bankruptcy Code (collectively, the "**Exclusive Periods**") or the Debtors otherwise do not seek to extend the Exclusive Periods if and when applicable, in each case, unless otherwise agreed in writing by the Ad Hoc First Lien Group; and

(p) Termination of the RSA in accordance with its terms.

9. ***Remedies after a Termination Date.***

(a) Notwithstanding anything contained herein, the Debtors' authorization to use Cash Collateral hereunder shall automatically terminate (except for purposes of funding the Carve Out, as provided in paragraph 6) on the date (such date, the "**Termination Date**") that is the earlier of (i) the effective date of any chapter 11 plan with respect to the Debtors confirmed by the Court or (ii) five (5) business days from the date (the "**Termination Declaration Date**") on which written notice of the occurrence of any Termination Event is given by the Ad Hoc First Lien Group (which notice may be given by electronic mail (or other electronic means)) to Debtors' counsel, each Committee's counsel, the FCR's counsel, and the U.S. Trustee (the "**Termination Declaration**," and such period commencing on the Termination Declaration Date and ending five (5) business days later, the "**Remedies Notice Period**"); *provided* that, until expiration of the Remedies Notice Period, the Debtors may (a) continue to use Cash Collateral to make payments in respect of expenses reasonably necessary to keep the business of the Debtors operating, solely in accordance with the Approved Budget and this Final Order, (b) contest or cure any alleged Termination Date, and (c) seek other relief as provided for in this paragraph; and *provided*, *further*, that the Debtors may continue to use Cash Collateral during or after expiration of the Remedies Notice Period solely to the extent necessary to fund the Carve Out Reserves subject to paragraph 6 hereof. Upon the expiration of the Remedies Notice Period, the First Lien Collateral Trustee (with the prior written approval of the Ad Hoc First Lien Group) and the other Prepetition First Lien Secured Parties shall be entitled to move on five (5) days' notice to modify the automatic stay to allow them to exercise all rights and remedies in accordance with the Prepetition Documents, Intercreditor Agreements, and this Final Order with respect to the Debtors' use of Cash Collateral;

provided, however that nothing herein shall prejudice the right of any party-in-interest to object to such relief.

(b) During the Remedies Notice Period, if applicable, the Debtors, the Committees, and/or any party in interest shall be entitled to seek an emergency hearing with the Court to (i) contest the existence of a Termination Event, and/or (ii) seek nonconsensual use of Cash Collateral and continue the automatic stay; *provided* that if a hearing to consider the foregoing is requested to be heard before the end of the Remedies Notice Period but is scheduled for a later date by the Court, the Remedies Notice Period shall be automatically extended to the date of a ruling in respect of such hearing. Upon expiration of the Remedies Notice Period, if applicable, the First Lien Collateral Trustee (with the prior written approval of the Ad Hoc First Lien Group), and the other Prepetition First Lien Secured Parties shall be permitted to exercise all rights and remedies in accordance with the Prepetition Documents, Intercreditor Agreements, and this Final Order, and as otherwise available at law or in equity without further order of or application or motion to this Court consistent with this Final Order, in each case, subject to the automatic stay provisions of the Bankruptcy Code.

(c) Nothing herein shall alter the burden of proof set forth in the applicable provisions of the Bankruptcy Code at any hearing regarding modification or imposition of the automatic stay under Bankruptcy Code section 362(a), use Cash Collateral, or to obtain any other injunctive relief. Any delay or failure of the First Lien Collateral Trustee and/or the other Prepetition First Lien Secured Parties to exercise rights under the Prepetition Documents, the Intercreditor Agreements, or this Final Order shall not constitute a waiver of its respective rights hereunder, thereunder or otherwise. The occurrence of the Termination Date or a Termination Event shall not affect the validity, priority, or enforceability of any and all rights, remedies,

benefits, and protections provided to any of the Prepetition Secured Parties under this Final Order, which rights, remedies, benefits, and protections shall survive the Termination Date or the delivery of a Termination Declaration.

10. ***Payments Free and Clear***. Any and all payments or proceeds remitted to the Prepetition First Lien Secured Parties and the Prepetition Second Lien Notes Secured Parties pursuant to the provisions of this Final Order or any subsequent order of this Court shall be irrevocable (subject to the limitations in this Final Order, including paragraphs 4(d), 4(g), 5(e), and 19 of this Final Order), received free and clear of any claim, charge, assessment or other liability, including without limitation, any such claim or charge arising out of or based on, directly or indirectly, Bankruptcy Code sections 506(c) (whether asserted or assessed by, through or on behalf of the Debtor) or 552(b).

11. ***Limitation on Charging Expenses Against Collateral.*** All rights to surcharge the interests of the Prepetition Secured Parties in any Prepetition Collateral or any Collateral under section 506(c) of the Bankruptcy Code or any other applicable principle or equity or law shall be and are hereby finally and irrevocably waived (subject to the rights reserved in paragraph 24 hereof), and such waiver shall be binding upon the Debtors and all parties in interest in the Cases.

12. ***Reservation of Rights of the Prepetition Secured Parties***. Except as expressly set forth in this Final Order, the entry of this Final Order is without prejudice to, and does not constitute or operate as a waiver of, expressly or implicitly, or otherwise impair any rights or remedies of any of the Prepetition First Lien Secured Parties or the Prepetition Second Lien Notes Secured Parties arising under or related to any of the Credit Documents, the First Lien Notes Documents, and/or the Second Lien Notes Documents, applicable law, these Cases (and any issue or dispute arising therein), or otherwise. This Final Order and the transactions contemplated

hereby shall be without prejudice to (a) the rights of any of the Prepetition Secured Parties to, subject to the Intercreditor Agreements, seek additional or different adequate protection, move to vacate the automatic stay, move for the appointment of a trustee or examiner, move to dismiss or convert the Cases, or to take any other action in the Cases and to appear and be heard in any matter raised in the Cases, or any party in interest from contesting any of the foregoing and (b) any and all rights, remedies, claims and causes of action which the Prepetition Secured Parties may have against any non-Debtor party. For all adequate protection purposes throughout the Cases, each of the Prepetition Secured Parties shall be deemed to have requested relief from the automatic stay and adequate protection for any Diminution in Value from and after the Petition Date and, for the avoidance of doubt, such request will survive termination of this Final Order. Without limiting the foregoing, any delay in, or failure of, the Administrative Agent, any of the Prepetition First Lien Loan Secured Parties, the First Lien Indenture Trustee, the First Lien Collateral Trustee, and/or any of the Prepetition First Lien Notes Secured Parties, or the Second Lien Indenture Trustee, the Second Lien Collateral Trustee, and/or any of the Prepetition Second Lien Notes Secured Parties to seek relief or otherwise assert or exercise any of their rights or remedies shall not constitute a waiver of any right or remedy and all such rights and remedies are reserved and preserved in all respects. Notwithstanding anything to the contrary in the Prepetition Documents or this Final Order, the respective rights of all parties with respect to the Debtors' use and application of any Unencumbered Cash (as defined below), if any, (including the timing of such use and/or application, including from and after the Petition Date) toward, among other things, the payment of administrative expenses claims and claims from and after the Petition Date in accordance with the Bankruptcy Code are hereby reserved, and the consents granted herein or in connection with any agreement with respect to the terms of this Final Order by the Prepetition

Secured Parties (including the Ad Hoc First Lien Group) and the Debtors are not a waiver or admission with respect to any of the foregoing issues and matters and shall not be construed as a waiver or an admission on such issues and matters.

13. ***Modification of Automatic Stay***. The Debtors are authorized to perform all acts and to make, execute, and deliver any and all instruments as may be reasonably necessary to implement the terms and conditions of this Final Order and the transactions contemplated hereby. Subject to Paragraph 9(a) of this Final Order, the stay of section 362 of the Bankruptcy Code is hereby modified to permit the parties to accomplish the transactions contemplated by this Final Order.

14. ***Survival of Final Order***. The provisions of this Final Order shall be binding upon any trustee appointed during the Cases or upon a conversion to cases under chapter 7 of the Bankruptcy Code, and any actions taken pursuant hereto shall survive entry of any order which may be entered converting the Cases to chapter 7 cases, dismissing the Cases under section 1112 of the Bankruptcy Code or otherwise, confirming or consummating any plan(s) of reorganization or liquidation or otherwise, or approving or consummating any sale of any Prepetition Collateral or Collateral, whether pursuant to section 363 of the Bankruptcy Code or included as part of any plan. The terms and provisions of this Final Order, as well as the priorities in payments, liens, and security interests granted pursuant to this Final Order shall continue notwithstanding any conversion of the Cases to chapter 7 cases under the Bankruptcy Code, dismissal of the Cases, confirmation or consummation of any plan(s) of reorganization or liquidation, approval or consummation of any sale, or otherwise. Subject to the limitations described in this Final Order, including in paragraphs 4(d), 4(g), 5(e), and 19 of this Final Order, the adequate protection payments made pursuant to this Final Order shall not be subject to counterclaim, setoff,

subordination, recharacterization, defense or avoidance in the Cases or any subsequent chapter 7 cases or other proceeding (other than a defense that the payment has actually been made).

15. ***No Third-Party Rights***. Except as explicitly provided for herein, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect, or incidental beneficiary.

16. ***Release***. Subject to the rights and limitations set forth in paragraph 19 of this Final Order, effective upon entry of the Interim Order, each of the Debtors and the Debtors' estates, on its own behalf and on behalf of each of their predecessors, their successors, and assigns, shall, to the maximum extent permitted by applicable law, unconditionally, irrevocably, and fully forever release, remise, acquit, relinquish, irrevocably waive, and discharge each of the Prepetition Secured Parties (each in their respective roles as such), and each of their respective affiliates, former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, assigns, agents, and predecessors in interest, each in their capacity as such, of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened, including, without limitation, all legal and equitable theories of recovery, arising under common law, statute, or regulation or by contract, of every nature and description that exist on the date hereof with respect to or relating to the Prepetition First Lien Loans, the First Lien Notes, the Prepetition Second Lien Notes, the Prepetition Liens, the Prepetition Secured Indebtedness, the Prepetition Documents, the Intercreditor Agreements,

the Interim Order, or this Final Order, as applicable, and/or the transactions contemplated hereunder or thereunder including, without limitation, (i) any so-called "lender liability" or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code, and (iii) any and all claims and causes of action regarding the validity, priority, extent, enforceability, perfection, or avoidability of the liens or claims of the Prepetition Secured Parties; *provided, however,* no such parties will be released to the extent determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted primarily from such parties' gross negligence, fraud, or willful misconduct.

17. ***Binding Effect***. The terms of this Final Order shall be valid and binding upon the Debtors, all creditors of the Debtors and all other parties in interest from and after the entry of this Final Order by this Court. Notwithstanding anything in this Final Order or any other agreement or document to the contrary, upon entry of this Final Order, the Ad Hoc First Lien Advisors shall provide written confirmation (the "**Requisite Group Notice**") to the Debtors, the First Lien Indenture Trustee, and the First Lien Collateral Trustee that (a) the Ad Hoc First Lien Group represents the holders of more than 50% of the sum of the aggregate outstanding principal amount of Secured Debt (as defined in the First Lien Collateral Trust Agreement) (including the face amount of outstanding letters of credit whether or not available or drawn) (the "**Required Holders**") and (b) each member of the Ad Hoc First Lien Group consents to the delivery by the Ad Hoc First Lien Advisors of any consents and waivers as a block on behalf of each member of the Ad Hoc First Lien Group pursuant to this Final Order. The Debtors, the Administrative Agent, the First Lien Indenture Trustee and the First Lien Collateral Trustee shall be permitted to rely upon the Requisite Group Notice. The Ad Hoc First Lien Advisors shall promptly provide written notice to the Debtors, the Administrative Agent, the First Lien Indenture Trustee, and the First

Lien Collateral Trustee if, at any time, the Ad Hoc First Lien Group no longer constitutes Required Holders (a "**Subsequent Group Notice**"). In the event the Ad Hoc First Lien Advisors provide a Subsequent Group Notice, consent and waiver rights under this Final Order in favor of the Ad Hoc First Lien Group shall be deemed to be in favor of the Required Holders (which consent or waiver may be provided by the First Lien Collateral Trustee, acting pursuant to an Act of Required Secured Parties (as defined in the First Lien Collateral Trust Agreement)), unless and until the Ad Hoc First Lien Advisors provide a Requisite Group Notice providing written confirmation that the Ad Hoc First Lien Group constitutes holders representing Required Holders. Notwithstanding anything to the contrary in this Final Order, nothing in this Final Order prejudices the Prepetition First Lien Secured Parties' respective rights under the First Lien Collateral Trust Agreement.

18. ***Reversal, Stay, Modification or Vacatur***. In the event the provisions of this Final Order are reversed, stayed, modified or vacated by court order following notice and any further hearing, such reversals, modifications, stays or vacatur shall not affect the rights and priorities of the Prepetition Secured Parties granted pursuant to this Final Order, subject to Paragraph 19 hereof. Notwithstanding any such reversal, stay, modification or vacatur by court order, any indebtedness, obligation or liability incurred by the Debtors pursuant to this Final Order arising prior to the First Lien Collateral Trustee's or Second Lien Collateral Trustee's receipt of notice of the effective date of such reversal, stay, modification or vacatur shall be governed in all respects by the original provisions of this Final Order, and the Prepetition Secured Parties shall continue to be entitled to all of the rights, remedies, privileges and benefits, including any payments authorized herein and the security interests and liens granted herein, with respect to all such indebtedness, obligation or liability, and the validity of any payments made or obligations owed or credit extended or lien or

security interest granted pursuant to this Final Order is and shall remain subject to the protection afforded under the Bankruptcy Code.

19. ***Reservation of Certain Third-Party Rights and Bar of Challenge and Claims***.

(a) Subject to the Challenge Period (as defined herein), the stipulations, admissions, waivers, and releases contained in this Final Order, including the Debtors' Stipulations, shall be binding upon the Debtors, their estates, and any of their respective successors in all circumstances and for all purposes, and the Debtors are deemed to have irrevocably waived and relinquished all Challenges (as defined below) as of the Petition Date. The stipulations, admissions, and waivers contained in this Final Order, including, the Debtors' Stipulations, shall be binding upon all other parties in interest, including any Committee and any other person acting on behalf of the Debtors' estates, unless and to the extent that a party in interest with proper standing granted by order of the Court (or other court of competent jurisdiction) has timely and properly filed an adversary proceeding or contested matter under the Bankruptcy Rules (i) by (A) except as to any Committee or the FCR, seventy-five (75) calendar days after entry of this Final Order, and (B) in the case of any such adversary proceeding or contested matter filed by any Committee or the FCR, on or prior to January 20, 2023; *provided*, *further,* that either Committee and/or the FCR may file a standing motion seeking to commence any Challenge and an adversary proceeding seeking to prosecute such Challenge in parallel without having to first obtain standing to pursue such adversary proceeding (and for the avoidance of doubt, the foregoing shall impact only the timing of filing of such standing motion and/or adversary proceeding and shall have no effect on the merits of granting such standing motion or the prosecution of such adversary proceeding), subject to further extension by written agreement of the Debtors and the Ad Hoc First Lien Group (which may be by email) or further extension by the Court for cause shown upon a

motion filed and served within the applicable period (in each case, a "**Challenge Period**" and, the date of expiration of each Challenge Period, a "**Challenge Period Termination Date**"); *provided*, *however*, that the Committees and the FCR (i) agree not to object to entry of any bidding procedures order on the basis that the Challenge Period is pending and (ii) shall agree on a Challenge litigation schedule that provides for a hearing or trial on any such Challenge to be sufficiently in advance of the sale hearing to be held in accordance with the RSA and any bidding procedures order (subject to the availability of the Court); *provided*, *further*, *however*, that if, prior to the end of the Challenge Period, (x) the cases convert to chapter 7, or (y) a chapter 11 trustee is appointed, then, in each such case, the Challenge Period shall be extended by the later of (I) the time remaining under the Challenge Period plus ten (10) days or (II) such other time as ordered by the Court solely with respect to any such trustee, commencing on the occurrence of either of the events discussed in the foregoing clauses (x) and (y); (ii) seeking to avoid, object to, or otherwise challenge the findings, stipulations, admissions, or releases, or Debtors' Stipulations regarding: (A) the validity, enforceability, extent, priority, or perfection of the mortgages, security interests, and liens of the Prepetition Secured Parties; or (B) the validity, enforceability, allowability, priority, secured status, or amount of the Prepetition Secured Indebtedness (any such claim, a "**Challenge**"); and (iii) in which the Court enters a final order in favor of the plaintiff sustaining any such Challenge in any such timely filed adversary proceeding or contested matter.

(b) Upon the expiration of the Challenge Period without the filing of a Challenge (or if any such Challenge is filed and overruled): (i) any and all such Challenges by any party (including, without limitation, any Committee, the FCR, any chapter 11 trustee, and/or any examiner or other estate representative appointed or elected in these Cases, and any chapter 7 trustee and/or examiner or other estate representative appointed or elected in any Successor Case)

shall be deemed to be forever barred; (ii) the Prepetition Secured Indebtedness shall constitute allowed claims, not subject to counterclaim, setoff, recoupment, reduction, subordination, recharacterization (other than as set forth in this Final Order), defense, or avoidance for all purposes in the Debtors' Cases and any Successor Cases; (iii) the Prepetition Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, and perfected secured claims, not subject to recharacterization (other than as set forth in this Final Order), subordination, or avoidance; and (iv) all of the Debtors' stipulations and admissions contained in this Final Order, including the Debtors' Stipulations, and all other waivers, releases, admissions, and other stipulations as to the priority, extent, and validity as to the Prepetition Secured Parties' claims, liens, and interests contained in this Final Order shall be in full force and effect and forever binding upon the Debtors, the Debtors' estates, and all creditors, interest holders, and other parties in interest in these Cases and any Successor Cases.

(c) If any such adversary proceeding or contested matter is timely and properly filed under the Bankruptcy Rules, the stipulations and admissions contained in this Final Order, including the Debtors' Stipulations, shall nonetheless remain binding and preclusive on any Committee and any other person or entity except to the extent that such stipulations and admissions were expressly challenged in such adversary proceeding or contested matter prior to the Challenge Period Termination Date. Nothing in this Final Order vests or confers on any person (as defined in the Bankruptcy Code), including, without limitation, any Committee appointed in the Cases, standing or authority to pursue any cause of action belonging to the Debtors or their estates, including, without limitation, any challenges (including a Challenge) with respect to the Prepetition Documents, the Intercreditor Agreements, the Prepetition Liens, the Prepetition Secured Indebtedness, and a separate order of the Court conferring such standing on any

Committee or other party-in-interest shall be a prerequisite for the prosecution of a Challenge by such Committee or such other party-in-interest, *provided* that the Challenge Period with respect to a Committee or the FCR shall be tolled by the simultaneous filing of a standing motion seeking to commence any Challenge and an adversary proceeding seeking to prosecute such Challenge by that Committee or the FCR as applicable, in accordance with paragraph 19(a) hereof.

20. ***Limitation on Use of Collateral and Cash Collateral.*** Notwithstanding anything to the contrary set forth in this Final Order, except as expressly permitted by this Final Order, or any other document, none of the Collateral, the Prepetition Collateral, including Cash Collateral, or the Carve Out or proceeds of any of the foregoing may be used: (a) to investigate (including by way of examinations or discovery proceedings), initiate, assert, prosecute, join, commence, support, or finance the initiation or prosecution of any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense, adversary proceeding, or other litigation of any type (i) against any of the Prepetition Secured Parties (in their capacities as such), and each of their respective affiliates, officers, directors, employees, agents, representatives, attorneys, consultants, financial advisors, affiliates, assigns, or successors, with respect to any transaction, occurrence, omission, action, or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, any so-called "lender liability" claims and causes of action, or seeking relief that would impair the rights and remedies of the Prepetition Secured Parties under the Prepetition Documents, Intercreditor Agreements, the Interim Order, this Final Order or any other applicable document or agreement, including, without limitation, for the payment of any services rendered by the professionals retained by the Debtors or any Committee appointed in these Cases in connection with the assertion of or joinder in any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense,

adversary proceeding, or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment, determination, declaration, or similar relief that would impair the ability of any of the Prepetition Secured Parties to recover on the Prepetition Collateral or the Collateral or seeking affirmative relief against any of the Prepetition Secured Parties related to the Prepetition Secured Indebtedness; (ii) invalidating, setting aside, avoiding, or subordinating, in whole or in part, the Prepetition Secured Indebtedness or the Prepetition Secured Parties' respective Prepetition Liens or security interests in the Prepetition Collateral or the Collateral, as applicable; or (iii) for monetary, injunctive, or other affirmative relief against any of the Prepetition Secured Parties or the Prepetition Secured Parties' respective liens on or security interests in the Prepetition Collateral or the Collateral that would impair the ability of any of the Prepetition Secured Parties to assert or enforce any lien, claim, right, or security interest or to realize or recover on the Prepetition Secured Indebtedness, to the extent applicable; (b) for objecting to or challenging in any way the legality, validity, priority, perfection, or enforceability of the claims, liens, or interests (including, without limitation, the Prepetition Liens) held by or on behalf of each of the Prepetition Secured Parties related to the Prepetition Secured Indebtedness; (c) for asserting, commencing, or prosecuting any claims or causes of action whatsoever, including, without limitation, any Avoidance Actions related to or in connection with the Prepetition Secured Indebtedness or the Prepetition Liens; or (d) for prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of: (i) any of the Prepetition Liens or any other rights or interests of any of the Prepetition Secured Parties related to the Prepetition Secured Indebtedness or the Prepetition Liens, *provided* that no more than (A) $1,000,000 of the proceeds of the Collateral, or the Prepetition Collateral, including the Cash Collateral, in the aggregate, may be used solely by any

Committee appointed in these Cases and (B) $50,000 of the proceeds of the Collateral, or the Prepetition Collateral, including the Cash Collateral, in the aggregate, may be used solely by the FCR, in each case, to investigate, within the Challenge Period, the claims, causes of action, adversary proceedings, or other litigation against the Prepetition Secured Parties concerning the legality, validity, priority, perfection, enforceability or extent of the claims, liens, or interests (including, without limitation, the Prepetition Liens) held by or on behalf of each of the Prepetition Secured Parties related to the Prepetition Secured Indebtedness, including as otherwise described in this paragraph; *provided*, *further*, that nothing in this Final Order shall prejudice or limit the Committees from asserting an administrative expense claim against the Debtor for any fees and expenses incurred in connection with any action described in this paragraph 20 in excess of $1,000,000 and nothing in this Final Order shall prejudice any party in interest from objecting to the allowance of any such asserted administrative expense claim under sections 330 and 331 of the Bankruptcy Code (or any other section pursuant to which such administrative expense claims described in this paragraph 20 are asserted); and *provided, further*, that nothing in this paragraph shall prohibit the Debtors from exercising rights conferred to them in this Final Order.

21. ***Enforceability; Waiver of Any Applicable Stay***. This Final Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rule 6004(h), 6006(d), 7062 or 9014 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Final Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Final Order.

22. ***Proofs of Claim***. Notwithstanding anything to the contrary contained in any prior or subsequent order of the Court, including, without limitation, any order establishing a deadline

for the filing of proofs of claim or requests for payment of administrative expenses under section 503(b) of the Bankruptcy Code, (i) the Prepetition Secured Parties shall not be required to file any proof of claim or request for payment of administrative expenses with respect to any of the Prepetition Secured Indebtedness, the Adequate Protection Liens, or the Adequate Protection Superpriority Claims; and the failure to file any such proof of claim or request for payment of administrative expenses shall not affect the validity, priority, or enforceability of any of the Prepetition Documents or of any other indebtedness, liabilities, or obligations arising at any time thereunder or under the Interim Order or this Final Order or prejudice or otherwise adversely affect the Prepetition Secured Parties' rights, remedies, powers, or privileges under any of the Prepetition Documents, the Interim Order, this Final Order, or applicable law, (ii) the First Lien Collateral Trustee and the Prepetition First Lien Agents (on behalf of themselves and the other Prepetition First Lien Secured Parties) are hereby authorized and entitled, in their sole discretion, but not required, to file (and amend and/or supplement, as they see fit) in the applicable Debtor's Case, a single master proof of claim in the Cases for any and all claims of the Prepetition First Lien Secured Parties arising from the applicable Credit Documents and/or First Lien Notes Documents, and (iii) the Second Lien Collateral Trustee and Second Lien Indenture Trustee (on behalf of themselves and the other Prepetition Second Lien Notes Secured Parties) are hereby authorized and entitled, in their sole discretion, but not required, to file (and amend and/or supplement, as they see fit) in the applicable Debtor's Case, a single master proof of claim in the Cases for any and all claims of the Prepetition Second Lien Notes Secured Parties arising from the applicable Second Lien Notes Documents; *provided*, that nothing herein shall waive the right of any Prepetition Secured Party to file its own proofs of claim against any of the Debtors. The provisions set forth in this paragraph are intended solely for the purpose of administrative convenience and

shall not affect the substantive rights of any party-in-interest or their respective successors-in-interest.

23. ***Intercreditor Agreements***. Pursuant to section 510 of the Bankruptcy Code, the Intercreditor Agreements and any other applicable intercreditor, subordination and/or turnover provisions contained in any of the Prepetition Documents or any of the Secured Debt Documents (as defined in each Collateral Trust Agreement), shall (a) remain in full force and effect, (b) continue to govern the relative obligations, priorities, rights and remedies of (i) the Prepetition First Lien Secured Parties in the case of the First Lien Collateral Trust Agreement, (ii) the Prepetition Second Lien Notes Secured Parties in the case of the Second Lien Collateral Trust Agreement, and (iii) the Prepetition First Lien Secured Parties and the Prepetition Second Lien Notes Secured Parties in the case of the 1L-2L Intercreditor Agreement, and (c) not be deemed to be amended, altered or modified by the terms of this Final Order.

24. ***Section 552(b) of the Bankruptcy Code***. The (i) Prepetition Secured Parties shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, subject to section 552(b) of the Bankruptcy Code, and (ii) the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to any of the Prepetition Secured Parties with respect to proceeds, products, offspring or profits of any of the Prepetition Collateral or the Collateral, *provided, however,* that notwithstanding the foregoing (a) nothing in this Final Order shall in any way restrict the Court from considering or applying the "equities of the case" exception under section 552(b) of the Bankruptcy Code *sua sponte*, and (b) either Committee may raise with the Court the Court's consideration of the application of the equities of the case exception under section 552(b) of the Bankruptcy Code, following proper notice and a hearing, in the event of (1) a successful Challenge, (2) a legal determination of the existence of material unencumbered Debtor

assets or a pending proceeding (other than a Challenge) seeking a legal determination of the existence of material unencumbered Debtor assets, or (3) the existence of material unencumbered Debtor assets as agreed by the Debtors, the Prepetition Secured Parties, and the Committees, in each case of (1), (2) or (3), consistent with the "equities of the case" exception under section 552(b) of the Bankruptcy Code.

25. ***No Marshaling.*** The Prepetition Secured Parties shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the Prepetition Collateral or the Collateral, except to the extent otherwise provided in this Final Order.

26. ***Expense Invoices; Disputes; Indemnification***.

(a) Any of the Debtors' obligations to pay, in accordance with this Final Order, the principal, interest, fees, payments, expenses, or any other amounts described in the Prepetition Documents or this Final Order as such amounts become due, shall not require the Debtors or any party to obtain further Court approval. For the avoidance of doubt, such payments include, without limitation, subject to the conditions and limitations set forth in this Final Order, the Administrative Agent's fees, including the fees of Simpson Thacher & Bartlett LLP, each First Lien Indenture Trustee's fees, the First Lien Collateral Trustee's fees, the Ad Hoc First Lien Group's fees, including the Ad Hoc First Lien Advisor fees, the Second Lien Indenture Trustee's fees, the Second Lien Collateral Trustee's fees, the Ad Hoc Cross-Holder Group's fees, including the Ad Hoc Cross-Holder Advisor fees, and the reasonable and documented fees and expenses of counsel and other professionals and any other principal, interest, fees, payments, expenses as set forth in

paragraphs 4 and 5 of this Final Order, whether or not such fees arose before or after the Petition Date, all to the extent provided in this Final Order.

(b) The Prepetition Loan Parties shall be jointly and severally obligated to pay all reasonable and documented fees and expenses described above, which obligations, subject to Paragraph 19 hereof solely to the extent inconsistent with the Prepetition Documents, shall constitute Prepetition Secured Indebtedness. The Debtors shall pay the reasonable and documented professional fees and expenses of professionals to the extent provided for in paragraphs 4 and 5 of this Final Order without the necessity of filing formal fee applications or complying with the U.S. Trustee Guidelines, including such amounts arising before the Petition Date; *provided, that* copies of invoices for such professional fees, expenses and disbursements (the "**Invoiced Fees**") shall be served by email on the Debtors, the U.S. Trustee, counsel to any Committee, and counsel to the FCR who shall have five (5) business days (the "**Review Period**") to review and assert any objections thereto. Invoiced Fees shall be in the form of an invoice summary for professional fees and categorized expenses incurred during the pendency of the Cases, and such invoice summary shall not be required to contain time entries, but shall include a list of professionals providing services, with rates and hours worked, and a general, brief description of the nature of the matters for which services were performed, and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any work product doctrine, privilege or protection, common interest doctrine privilege or protection, any other evidentiary privilege or protection recognized under applicable law, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege, work product doctrine, privilege or protection, common interest doctrine privilege or protection, or any other evidentiary privilege or protection recognized under

applicable law. The Debtors, any Committee, or the U.S. Trustee may dispute the payment of any portion of the Invoiced Fees (the "**Disputed Invoiced Fees**") if, within the Review Period, a Debtor, any Committee that may be appointed in these Cases, or the U.S. Trustee notifies the submitting party in writing setting forth the specific objections to the Disputed Invoiced Fees (to be followed by the filing with the Court, if necessary, of a motion or other pleading, with at least ten (10) business days' prior written notice to the submitting party of any hearing on such motion or other pleading). For avoidance of doubt, the Debtors shall promptly pay in full all Invoiced Fees other than the Disputed Invoiced Fees.

(c) Subject to any restrictions imposed by applicable law, nothing in this Final Order shall abrogate the indemnification provisions set forth in any of the Credit Documents or any of the First Lien Notes Documents.

27. ***Letters of Credit under the Credit Agreement.*** Following entry of this Final Order, the Debtors shall be authorized, but not directed, to request that the Issuing Banks (as defined in the Credit Agreement) extend, renew, or otherwise amend letters of credit issued under the Credit Agreement ("**Letters of Credit**"), in accordance with the practices and procedures in the Credit Agreement, and to take all actions reasonably appropriate with respect thereto (including seeking that the applicable beneficiaries of such letters of credit approve the same), and the Issuing Banks in their discretion are each authorized to extend, renew, or otherwise amend the Letters of Credit in accordance with the terms of the Credit Agreement, *provided* that no Issuing Bank or any other Prepetition First Lien Loan Secured Party shall have any obligation to extend, renew, or otherwise amend the Letters of Credit and the obligations of the parties with respect to the Letters of Credit, including, without limitation, the continued payment of Letters of Credit fees as they come due, shall not be modified by this Final Order.

28. ***Credit Bidding and Sale Provisions***. Subject to paragraph 19 of this Final Order and the last sentence of this paragraph, pursuant to and subject to section 363(k) of the Bankruptcy Code, (i) the First Lien Collateral Trustee may, subject to and in accordance with the Prepetition Documents and Intercreditor Agreements, credit bid, up to the full amount of the Prepetition First Lien Secured Parties' respective claims, including, for the avoidance of doubt, any secured claims arising under the Interim Order or this Final Order in favor of the Prepetition First Lien Secured Parties (including, without limitation, any claim secured by any Adequate Protection Lien, other than any Adequate Protection Lien secured by proceeds of Avoidance Actions, malpractice claims and proceeds thereof, prepetition insurance policies and proceeds thereof, and commercial tort claims and proceeds thereof), and (ii) subject to the terms of the 1L-2L Intercreditor Agreement, the Second Lien Collateral Trustee may, subject to and in accordance with the Prepetition Documents and Intercreditor Agreements, credit bid, up to the full amount of the Prepetition Second Lien Notes Secured Parties' respective claims, including, for the avoidance of doubt, any secured claims arising under the Interim Order or this Final Order in favor of the Prepetition Second Lien Notes Secured Parties (including, without limitation, any claim secured by any Adequate Protection Lien, other than any Adequate Protection Lien secured by proceeds of Avoidance Actions, malpractice claims and proceeds thereof, prepetition insurance policies and proceeds thereof, and commercial tort claims and proceeds thereof), in each case, in any sale of all or any portion of the Prepetition Collateral or the Collateral, including, without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any chapter 11 plan; *provided, however,* that any credit bid by the Second Lien Collateral Trustee shall comply in all respects with the 1L-2L Intercreditor Agreement and the terms set forth in any bidding procedures and bidding procedures order entered by the Court; *provided*, *further,* that any and all

rights of the Committees and FCR with respect to credit bidding and/or any credit bid, including by the First Lien Collateral Trustee or Second Lien Collateral Trustee (in each case, either directly or through one or more acquisition vehicles), bidding procedures (except as otherwise expressly provided under paragraph 19(a) of this Final Order) or sale, are hereby fully reserved and preserved. No Debtor shall object to, or solicit, support, or encourage any objection to, any rights set forth in this paragraph and all relevant provisions of any Intercreditor Agreement or any of the Prepetition Documents shall apply and be binding with respect to any and all rights set forth in this paragraph. Subject to paragraph 5(e) of this Final Order, the Intercreditor Agreements, the Prepetition Documents and applicable law, any and all rights of any Prepetition First Lien Secured Party are fully reserved and preserved with respect to credit bidding and/or any credit bid (including by the First Lien Collateral Trustee or Second Lien Collateral Trustee (in each case, either directly or through one or more acquisition vehicles)), bidding procedures, or sale.

29. ***Information Sharing.*** Notwithstanding anything to the contrary herein, to the extent that information is required to or requested to be shared pursuant to this Final Order to parties that are subject to a confidentiality agreement with the Debtors (including, without limitation, pursuant to paragraphs 3(c), 3(e), 4(h), and 5(f)), such information is not required to be shared until the Debtors and the relevant recipients have, acting in good faith, agreed as to the application or non-application of any cleansing or blowout provision, if any, in any such confidentiality agreement, and until any such agreement has been reached, the Debtors reserve the right not to disclose any such information; *provided* that the foregoing restrictions do not apply to the Administrative Agent and Private Side Lenders to the extent they receive confidential information hereunder pursuant to the confidentiality provisions of the Credit Agreement. Notwithstanding anything to the contrary herein, the information shared pursuant to this Final

Order with the Committee Advisors (1) shall be subject, in all respects, to the terms of any applicable protective order, including the designation of certain information as highly confidential or professional eyes only pursuant to the terms thereof and (2) may be shared with members of the Committees subject, in all respects, to the terms of any applicable protective order, and only to the extent it is not designated as highly confidential or professional eyes only pursuant to the terms thereof. Notwithstanding anything to the contrary herein, the information shared pursuant to this Final Order with the FCR and FCR Advisors shall be subject, in all respects, to the terms of any applicable confidentiality arrangement.

30. ***Wholesaler Reservation of Rights.*** Notwithstanding any contrary provision of this Final Order, the Debtors' wholesalers retain all of (a) their rights, if any, under section 9-404 of the Uniform Commercial Code; and (b) their contractual defenses, if any, and the rights and defenses retained in each of clauses (a) and (b) are solely with respect to and in accordance with their respective agreements with the Debtors.

31. ***Texas Taxing Authorities.*** Notwithstanding any other provisions included in the Interim Order or this Final Order, or any agreements approved hereby, any statutory liens (collectively, the "**Bexar County Tax Liens**"), including business personal property liens, of Bexar County, Texas ("**Bexar County**") shall not be primed by nor made subordinate to any liens granted to any party hereby solely to the extent such Bexar County Tax Liens are valid, senior, perfected, and unavoidable, and all parties' respective rights to object to the priority, validity, amount, and extent of the claims and liens asserted by Bexar County are fully preserved.

32. ***Hartford Fire Insurance Company.*** Nothing in the Cash Collateral Motion or this Final Order (or any interim cash collateral order) shall in any way prime, if applicable, or affect the rights, if any, of The Hartford Fire Insurance Company or any of its affiliates ("**Surety**") as to:

a) any funds it is holding and/or being held for it presently or in the future, whether in trust, as security, or otherwise, including any proceeds due or to become due any of the Debtors or their non-debtor affiliates in relation to contracts bonded by the Surety; (b) any substitutions or replacements of said funds including accretions to and interest earned on said funds; (c) any letter of credit relating to any indemnity, collateral trust, bond (or similar instrument) or agreements between or involving the Surety and any of the Debtors or any of the Debtors' non-debtor affiliates; (d) any indemnity or indemnity-related agreement in favor of the Surety; (e) any collateral or collateral-related agreement in favor of the Surety; or (f) any bond or similar instrument issued by the Surety on behalf of any of the Debtors or their non-debtor affiliates (collectively (a) to (f), ("**Surety Assets**"). Nothing in the Cash Collateral Motion or this Final Order (or any interim cash collateral order) shall affect the rights, if any, of the Surety under any current or future indemnity, collateral trust, or related agreements between or involving the Surety and any of the Debtors or any of the Debtors' non-debtor affiliates as to the Surety or otherwise. In addition, nothing in the Cash Collateral Motion or this Final Order (or any interim cash collateral order) shall prime or otherwise impact, in each case, as applicable, and solely to the extent of any rights: (x) current or future setoff and/or recoupment rights or trust fund claims and/or the lien rights of the Surety or of any party to whose rights the Surety has or may become subrogated; and/or (y) any existing or future subrogation or other common law rights of the Surety. In addition, notwithstanding anything in the Cash Collateral Motion or this Final Order (or any interim cash collateral order) to the contrary, the rights, claims and defenses of the Surety, if any, including but not limited to, rights under any properly perfected liens and claims and/or claim for equitable rights of subrogation, are fully preserved. Nothing herein is an admission by the Surety or the Debtors, or a determination

by the Bankruptcy Court, regarding any claims under any bonds, and the Surety and the Debtors reserve any and all rights, remedies and defenses in connection therewith.

33. ***Headings***. The headings in this Final Order are for purposes of reference only and shall not limit or otherwise affect the meaning of this Final Order.

34. ***Retention of Jurisdiction.*** The Court has and will retain jurisdiction to enforce this Final Order and with respect to all matters arising from or related to the implementation of this Final Order.

Dated: October 27, 2022
New York, New York

/s/ *James L. Garrity, Jr.*
HONORABLE JAMES L. GARRITY, JR
U.S. BANKRUPTCY JUDGE

THIS IS EXHIBIT "H"
TO THE AFFIDAVIT OF ANDREW HARMES
SWORN BEFORE ME
THIS 23RD DAY OF NOVEMBER, 2022

Erik Apell

Commissioner for Taking Affidavits

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	**Chapter 11**
ENDO INTERNATIONAL plc, *et al.*,	**Case No. 22-22549 (JLG)**
Debtors.[1]	**(Jointly Administered)**
	Related Docket Nos. 7, 91, 279, 325

COMBINED THIRD INTERIM AND FINAL ORDER (I) AUTHORIZING DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES, EMPLOYEE BENEFITS AND OTHER COMPENSATION AND (B) CONTINUE EMPLOYEE BENEFITS PROGRAMS AND PAY RELATED ADMINISTRATIVE OBLIGATIONS; (II) AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS; AND (III) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the debtors and debtors in possession (collectively, the "Debtors" and together with their non-debtor affiliates, the "Company") in the above-captioned cases (the "Chapter 11 Cases") for an interim order and a final order (a) authorizing, but not directing, the Debtors, in their sole discretion, to (i) pay Prepetition Employee Obligations and related Processing Costs arising under or related to Compensation and Benefits Programs and (ii) continue their Compensation and Benefits Programs in effect as of the Petition Date (and as may be amended, renewed, replaced, modified, revised, supplemented and/or terminated from time to time in the ordinary course of business) and pay related administrative

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1 The last four digits of Debtor Endo International plc's tax identification number are 3755. Due to the large number of debtors in these chapter 11 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at https://restructuring.ra.kroll.com/endo/. The location of the Debtors' service address for purposes of these chapter 11 cases is: 1400 Atwater Drive, Malvern, PA 19355.

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

obligations; (b) authorizing and directing the Banks to honor and process related checks and transfers; and (c) granting related relief, all as more fully set forth in the Motion; and upon the Debtors' request for (a) additional interim relief with respect to the Debtors' long-term incentive plan, retention bonus plans, and severance plans for the period ranging from October 13, 2022 through November 10, 2022 (the "Third Interim Period"), and (b) final relief with respect to all other relief requested by the Motion, each as set forth in this combined third interim and final order (the "Combined Order") and the Court having reviewed the Motion and the First Day Declaration and held hearings to consider the relief requested in the Motion and granted the first interim order (the "Interim Order") and second interim order (the "Second Interim Order"); and the Court having found that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); (b) this is a core proceeding pursuant to 28 U.S.C. § 157(a)-(b) and 1334(b); (c) venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and (d) due and proper notice of the Motion has been provided to the Notice Parties (as defined below) and it appearing that no other or further notice need be provided; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates and is in the best interests of the Debtors, their estate, creditors, and other parties-in-interest after taking into account the priority scheme of the Bankruptcy Code; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on a third interim or final basis as set forth herein.

2. Subject to the proviso at the end of this paragraph, the Debtors are hereby authorized, but not directed, on a final basis and in their sole discretion, to pay all amounts required under or related to the Compensation and Benefits Programs, including any Prepetition Employee Obligations and any prepetition Processing Costs associated therewith; *provided, however* that, notwithstanding the foregoing, the LTIP, Non-Insider Retention Programs, and Severance Plan are approved on a further interim basis and payments thereunder during the Third Interim Period shall be limited to $93,156 in the aggregate as set forth in the Schedule of Third Interim Payments attached hereto as **Exhibit 1**.

3. For the avoidance of doubt, the Debtors are hereby authorized, but not directed, on a final basis and in their sole discretion, to pay all amounts required under or related to the Corporate IC Plan and Sales IC Plans, including any related Prepetition Employee Obligations and any prepetition Processing Costs associated therewith; *provided* that the Debtors shall consult with counsel to the Official Committee of Unsecured Creditors and Official Committee of Opioid Claimants regarding the development of any future Sales IC Plan to be established by the Debtors during the pendency of the Chapter 11 Cases, including with respect to the development of the amounts and metrics applicable to such plans; *provided, however,* that the Debtors' Senior Vice President & Associate General Counsel, Litigation and Vice President, Corporate Financial Planning & Analysis shall not be eligible for payments pursuant to the Corporate IC Plan pending further order of this Court.

4. Subject to paragraph 2 of this Combined Order, the Debtors are authorized, but not required, in their sole discretion, (a) to continue to pay and honor their obligations arising under or related to their Compensation and Benefits Programs as such Compensation and Benefits Programs were in effect as of the Petition Date and (b) upon notice to counsel to the Ad Hoc First

Lien Group and counsel to any statutory committee appointed in the Chapter 11 Cases, to amend, renew, replace, modify, revise, supplement and/or terminate such Compensation and Benefits Programs in the ordinary course of business; *provided, however,* that the Debtors shall consult with the Ad Hoc First Lien Group and statutory committees prior to implementing any material modifications to the Compensation and Benefits Programs; *provided, further,* that this Combined Order does not authorize any action that is otherwise prohibited by the Bankruptcy Code, and, beginning on the date that is seven days after entry of this Combined Order and on a weekly basis thereafter, the Debtors shall provide a report describing any payments on account of any prepetition Reimbursable Expenses to counsel to the Ad Hoc First Lien Group, counsel to the Ad Hoc Cross-Holder Group, counsel to the U.S. Trustee, and counsel to any statutory committee appointed in the Chapter 11 Cases (collectively, the "Notice Parties"), including the name and job title of each employee to be reimbursed and a description of each expense. The Debtors shall confer with any Notice Party who objects to such payments to make any adjustments necessary to resolve such objection.

5. The Debtors shall, following consultation with the Ad Hoc First Lien Group, provide seven days' notice to the Notice Parties of any proposed Spot Awards, including the name and job title of each employee to be paid or awarded. The Debtors shall not make any such payment pending the resolution of a timely objection from any Notice Party, including, without limitation, the Ad Hoc First Lien Group and any statutory committees. Notwithstanding the foregoing, the Debtors shall not make any payments of Spot Awards or under any Employee Bonus Plans or Retention Programs, including the Corporate IC Plan and Sales IC Plans, to insiders (as defined in section 101(31) of the Bankruptcy Code) without further order of this Court; provided that to the extent that any Employee who participates in Employee Bonus Plans or

Retention Programs, including the Corporate IC Plan, Sales IC Plans, LTIP, Non-Insider Retention Programs, or Severance Plan is later determined by the Debtors or by this Court to be an Insider, such Employee will no longer be eligible to participate in any such programs absent further order from the Court and all rights of parties in interest, including any statutory committees appointed in these Chapter 11 Cases and the U.S. Trustee, to seek clawback or disgorgement of payments made to such Insiders are reserved. For the avoidance of doubt, all claims relating to any prepetition payments made under any Compensation and Benefits Programs to Insiders (including the Insider Payments (as defined below)) are expressly preserved.

6. Following entry of this Combined Order and on a monthly basis thereafter, the Debtors shall provide a report describing any payments made pursuant to the relief granted in the Motion, including an aggregate total of such payments as compared to the applicable caps established by this Combined Order, to the Notice Parties.

7. The Debtors are authorized, but not directed, in their sole discretion, to (a) continue utilizing third parties for certain services solely as described in the Motion and to pay or cause to be paid such claims as and when such obligations are due and (b) pay prepetition amounts owing in the ordinary course of business to third parties in connection with administering and maintaining the Compensation and Benefits Programs.

8. The Debtors are authorized to forward any unpaid amounts on account of deductions or payroll taxes to the appropriate third-party recipients or taxing authorities in accordance with the Debtors' prepetition practices and policies.

9. All Banks are (a) authorized and directed to receive, process, honor, and pay any and all checks, drafts, electronic transfers, and other forms of payment used by the Debtors on account of the Compensation and Benefits Programs, whether presented before, on, or after the

Petition Date; and (b) prohibited from placing any hold on, or attempting to reverse, any automatic transfer on account of the Compensation and Benefits Programs. The Banks shall rely on the representations of the Debtors as to which checks and fund transfers should be honored and paid pursuant to this Combined Order without any duty of further inquiry and without liability for following the Debtors' instructions.

10. Any party receiving payment from the Debtors is authorized and directed to rely on the representations of the Debtors as to which payments are authorized by this Combined Order.

11. Notwithstanding anything to the contrary contained herein, any payment to be made hereunder, and any authorization contained herein, shall be subject to and in accordance with any interim and final orders, as applicable, approving the use of cash collateral (the "Cash Collateral Order") and any budget in connection with any such use of cash collateral. To the extent there is any inconsistency between the terms of the Cash Collateral Order and any action taken or proposed to be taken hereunder, the terms of the Cash Collateral Order shall control.

12. As directed in the Interim Order and the Second Interim Order, the Debtors shall maintain a matrix/schedule of payments made pursuant to this Combined Order, including the following information: (a) the names of the payee; (b) the nature, date and amount of the payment; (c) the category or type of payment as characterized in the Motion; and (d) the Debtor or Debtors that made the payment. As directed in the Interim Order and the Second Interim Order, the Debtors shall provide a copy of such matrix/schedule to the U.S. Trustee, counsel to the Ad Hoc First Lien Group, counsel to the Ad Hoc Cross-Holder Group, and any statutory committee appointed in the Chapter 11 Cases every 30 days beginning upon entry of the Interim Order. The Debtors will also provide the U.S. Trustee and counsel to any statutory committees with a quarterly

report with respect to the prepetition incentive and retention payments described in paragraph 41, footnote 17 of the Motion (the "Insider Payments"), including (i) whether any recipients of Insider Payments have departed from the Debtors and the date of such departure, and (ii) the status and amount of any clawback of the Insider Payments.

13. For the avoidance of doubt, to the extent that any employee is determined by a final order of this Court or any court of competent jurisdiction to have: (a) knowingly participated in any criminal misconduct in connection with his or her employment with the Debtors or (b) been aware, other than from public sources, of acts or omissions of others that such employee knew at the time were fraudulent or criminal with respect to the Debtors' commercial practices in connection with the sale of opioids and failed to report such fraudulent or criminal acts or omissions internally at the Debtors or to law enforcement authorities at any time during his or her employment with the Debtors, such employee shall not be eligible to receive any payments approved by the Interim Order, the Second Interim Order, or this Combined Order. All parties' rights, if any, to seek disgorgement of payments following the entry of such final order are reserved. Nothing in this paragraph shall, or shall be deemed to, create, expand, or otherwise modify any party's rights, standing, authority, or ability, statutory or otherwise, to (a) investigate, pursue, assert, prosecute, or settle any claims or causes of action of any kind or nature (including but not limited to disgorgement), or (b) object to, or seek to unwind or undo, the Interim Order, the Second Interim Order, or this Combined Order and the relief granted pursuant to each.

14. In accordance with the Court's comments at the hearing held on September 28, 2022, the Debtors expressly reserve all rights to seek modifications to the provisions of the foregoing paragraph (the "Misconduct Clawback Language") at any subsequent hearing before the Court at which any relief requested pursuant to the Motion is considered. Any such modifications

approved by the Court shall apply retroactively and shall supersede the Misconduct Clawback Language contained in the Second Interim Order and this Combined Order. The rights of all parties in interest to contest any such modifications are expressly reserved.

15. Nothing contained in the Motion or this Combined Order, nor any payment made pursuant to the authority granted by this Combined Order, shall constitute or be construed as (a) an admission as to the validity of any claim against the Debtors, (b) a waiver of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (c) a waiver of any claims or causes of action that may exist against any creditor or interest holder, (d) promise to pay any claim, (e) an approval, assumption, adoption, or rejection of any agreement, contract, program, policy, or lease between the Debtors and any third party under section 365 of the Bankruptcy Code, or (f) otherwise affecting the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease.

16. Nothing in the Motion or this Combined Order, nor anything that results from any payment made pursuant to this Combined Order, shall be deemed or construed as a waiver of the right of the Debtors or any party in interest, or shall impair the ability of the Debtors or any party in interest, to contest the validity and amount of any payment made pursuant to this Combined Order.

17. Nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by any party.

18. The rights of all parties in interest, including any statutory committees appointed in these Chapter 11 Cases and the U.S. Trustee, to object to payments that the Debtors have made or are seeking to make, upon entry of the Final Order, under the Employee Bonus Plans,

Non-Insider Retention Programs, or Severance Plan, or in excess of the Employee Cap, are expressly preserved.

19. Notwithstanding Bankruptcy Rule 6004(h), this Combined Order shall be effective and enforceable immediately upon entry.

20. The Debtors are authorized and empowered to take all action necessary to effectuate the relief granted in this Combined Order.

21. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Combined Order.

Dated: October 18, 2022
New York, New York

/s/ *James L. Garrity, Jr.*
HONORABLE JAMES L. GARRITY, JR
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Schedule of Third Interim Payments

Schedule of Third Interim Payments

3RD INTERIM ORDER TO PAY WAGES, SALARIES, EMPLOYEE BENEFITS, AND OTHER COMPENSATION					
Wage Relief Group [1]	**Count [2]**	**Amount**	**Administrative**	**Priority Unsecured**	**General Unsecured**
LTIP	3	$60,316	$60,316		
PTO	2	27,427		18,768	8,659
Severance	1	5,413	5,413		
Total	**6**	**$93,156**	**$65,729**	**$18,768**	**$8,659**

1 Additional Spot and Sign-On bonuses may be awarded and payable during the period. Such amounts are not quantified here.
2 Employees may be in multiple groups

THIS IS EXHIBIT "I"
TO THE AFFIDAVIT OF ANDREW HARMES
SWORN BEFORE ME
THIS 23RD DAY OF NOVEMBER, 2022

Erik Axell

Commissioner for Taking Affidavits

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

NOT FOR PUBLICATION

In re:	:	Case No. 22-22549 (JLG)
Endo International plc, *et al.*,	:	Chapter 11
Debtors.[1]	:	

MEMORANDUM DECISION AUTHORIZING DEBTORS TO CONTINUE CERTAIN EMPLOYEE BENEFIT PROGRAMS AND RELATED ADMINISTRATIVE OBLIGATIONS

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[1] The last four digits of Endo International plc's tax identification number are 3755. Due to the large number of debtors in these Chapter 11 Cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at https://restructuring rakroll.com/Endo. The location of the Debtors' service address for purposes of these Chapter 11 Cases is: 1400 Atwater Drive, Malvern, PA 19355.

HON. JAMES L. GARRITY, JR.
U.S. BANKRUPTCY JUDGE

Introduction[2]

The Debtors have filed a motion in these Chapter 11 Cases seeking authorization to pay prepetition wages, salaries, and employee benefits, to continue certain employee benefit programs, and to pay related administrative obligations under those programs (the "Motion").[3] As relevant, in the Motion, the Debtors seek authority to honor, pay, satisfy, or remit all claims and prepetition and post-petition obligations to rank-and-file, non-insider[4] eligible Employees under three programs: (1) the Long-Term Incentive Plan (the "LTIP"), (2) the Severance Plan, and (3) the Retention Programs (collectively, the "Contested Benefit Plans").[5]

In support of the Motion, as filed, the Debtors relied on the declaration of Mark Bradley, the Debtors' Chief Financial Officer, filed in support of the Chapter 11 Cases (the "Bradley Declaration").[6] The Debtors have since filed the declarations of Mark G. Barberio, the Chairman of the Board of Directors (the "Board") and a member of the Debtors' Compensation & Human Capital Committee (the "Compensation Committee") (the "Barberio Declaration"),[7] and Brian L.

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2 Capitalized terms not defined herein shall have the meanings ascribed to them in the Bradley Declaration.

3 *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Pay Prepetition Wages, Salaries, Employee Benefits, and Other Compensation and (B) Continue Employee Benefits, and Other Compensation and (B) Continue Employee Benefits Programs and Pay Related Administrative Obligations; (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers; and (III) Granting Related Relief*, ECF No. 7. Hereinafter, references to "ECF No. ___" are references to documents filed on the electronic docket in case number 22-22549.

4 For these purposes the term "insiders" is as defined in section 101(31) of title 11 of the United States Code (the "Bankruptcy Code").

5 These programs are distinct from the incentive/retention programs that the Debtors maintain on behalf of potential insiders. The Debtors have not sought any relief with respect to those programs in the Motion, and no relief is granted to them herein with respect to those programs.

6 *Declaration of Mark Bradley in Support of Chapter 11 Petitions and First Day Papers*, ECF No. 38.

7 *Declaration of Mark G. Barberio in Support of Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Pay Prepetition Wages, Salaries, Employee Benefits, and Other Compensation and*

Cumberland, a managing director at Alvarez & Marsal North America, LLC, a global consulting and restructuring advisory services firm, who has served as financial advisor to the Debtors since May 2021 (the "Cumberland Declaration"),[8] in support of the Motion.

The Office of the United States Trustee (the "U.S. Trustee") filed an objection to the Motion (the "Objection")[9] and a supplement to the Objection that focuses on the Contested Benefit Plans (the "UST Supplement").[10] The Debtors filed a reply to the Objection,[11] and a reply to the UST Supplement (the "Reply").[12] In support of the Reply, the Debtors submitted a supplemental declaration of Tracy Basso, the Debtors' Chief Human Resources Officer (the "Basso Declaration.").[13]

(B) Continue Employee Benefits Programs and Pay Related Administrative Obligations; (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers; and (III) Granting Related Relief, ECF No. 536.

[8] *Declaration of Brian L. Cumberland in Support of Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Pay Prepetition Wages, Salaries, Employee Benefits, and Other Compensation and (B) Continue Employee Benefits Programs and Pay Related Administrative Obligations; (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers; and (III) Granting Related Relief*, ECF No. 537.

[9] *United States Trustee's Objection to Debtors' Motion for Entry of a Final Order (I) Authorizing Debtors to (A) Pay Prepetition Wages, Salaries, Employee Benefits, and Other Compensation and (B) Continue Employee Benefits Programs and Pay Related Administrative Obligations; (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers; and (III) Granting Related Relief*, ECF No. 207.

[10] *United States Trustee's Supplement to Objection to Debtors' Motion for Entry of Orders (I) Authorizing Debtors to (A) Pay Prepetition Wages, Salaries, Employee Benefits, and Other Compensation and (B) Continue Employee Benefits Programs and Pay Related Administrative Obligations; (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers; and (III) Granting Related Relief*, ECF No. 574.

[11] *Debtors' Reply to the Objections to Debtors' Motion for Entry of Orders (I) Authorizing Debtors to (A) Pay Prepetition Wages, Salaries, Employee Benefits, and Other Compensation and (B) Continue Employee Benefits Programs and Pay Related Administrative Obligations; (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers; and (III) Granting Related Relief*, ECF No. 275.

[12] *Debtor's Reply to the United States Trustee's Supplement to Objection to Debtors' Motion for Entry of Final Orders (I) Authorizing Debtors to (A) Pay Prepetition Wages, Salaries, Employee Benefits, and Other Compensation and (B) Continue Employee Benefits Programs and Pay Related Administrative Obligations; (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers; and (III) Granting Related Relief*, ECF No. 603.

[13] (*Supplemental Declaration of Tracy Basso in Support of Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Pay Prepetition Wages, Salaries, Employee Benefits, and Other Compensation and (B) Continue Employee Benefits Programs and Pay Related Administrative Obligations; (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers; and (III) Granting Related Relief*), Reply, Ex. A.

The Court heard argument on the Motion. For the reasons set forth herein, the Court overrules and denies the Objection and authorizes the Debtors to honor, pay, satisfy, or remit all claims and prepetition obligations to non-insider eligible Employees under the Contested Benefit Plans, to the extent set forth in the Debtors' Proposed Final Order.[14]

Jurisdiction

The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* dated January 31, 2012 (Preska, C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

Background

On August 16, 2022 (the "Petition Date"), Endo International plc ("Endo Parent") and each of its debtor affiliates (collectively, the "Debtors" and, together with their non-debtor affiliates, the "Company" or "Endo") commenced voluntary chapter 11 cases in this Court (the "Chapter 11 Cases") by filing petitions for relief under chapter 11 of the Bankruptcy Code. On August 17, 2022, the Court entered an order authorizing the joint administration and procedural consolidation of the Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b).[15] The Debtors are authorized to continue to operate their businesses and to manage their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On September 2, 2022, the U.S. Trustee appointed an Official Committee of Unsecured Creditors

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[14] (Proposed *Final Order (I) Authorizing Debtors to (A) Pay Prepetition Wages, Salaries, Employee Benefits and Other Compensation and (B) Continue Employee Benefits Programs and Pay Related Administrative Obligations; (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers; and (III) Granting Related Relief*), Reply, Ex. B.

[15] *Order (I) Directing Joint Administration of the Chapter 11 Cases Pursuant to Bankruptcy Rule 1015(b); (II) Waiving the Requirements of Section 342(c)(1) of the Bankruptcy Code and Bankruptcy Rule 2002(n); and (III) Granting Related Relief*, ECF No. 45.

(the "UCC")[16] and an Official Committee of Opioid Claimants (the "OCC")[17] in the Chapter 11 Cases. No trustee or examiner has been appointed in the cases.

Endo is a leading global specialty pharmaceutical company that develops and delivers branded and generic products to customers in the U.S. and abroad. Bradley Declaration ¶ 1. As of the Petition Date, the Debtors employ approximately 1,560 employees (the "Employees"), of which approximately 170 are engaged in research and development, as well as clinical and regulatory work; 480 are in sales, marketing, and business development; 450 are in manufacturing; 200 are in quality assurance; and 260 are employed in general and administrative roles and other capacities. *Id.* ¶ 145. The vast majority of the Debtors' workforce is based in the United States (the "U.S."), with approximately 100 Employees located in Canada, and approximately 90 in England, Ireland, and Luxembourg. *Id.*

In November 2020, the Debtors announced plans to optimize the Company's retail generics business cost structure by, among other things, exiting their manufacturing sites in Irvine, California and Chestnut Ridge, New York (the "2020 Restructuring Initiative"). *Id.* ¶ 173. Sales of the Debtors' Irvine and Chestnut Ridge facilities closed in the fourth quarter of 2021. *Id.* In April of 2022, the Debtors announced further plans to streamline and simplify certain functions, including their commercial organization, to increase their overall organizational effectiveness and better align with current and future needs (the "2022 Restructuring Initiative"). *Id.* In taking those actions, the Company expected to generate cost savings, a portion of which was to be reinvested in 2022 to support the Company's key strategic priority to expand and enhance its product portfolio. *Id.* In connection with the 2020 Restructuring Initiative and the

[16] *Notice of Appointment of Official Committee of Unsecured Creditors*, ECF No. 161.

[17] *Notice of Appointment of Official Committee of Opioid Claimants*, ECF No. 163.

2022 Restructuring Initiative, the Debtors recognize ongoing, phased reductions in their Employee workforce, and have incurred certain corresponding obligations. *Id.*

Historically, the Debtors have maintained various incentive programs to bring value to the Debtors' estates by encouraging Employees to achieve company-side, business segment and/or individual goals and targets. *Id.* ¶ 163. Approximately 1,540 of the Debtors' Employees are eligible for awards under the Contested Benefit Plans. *Id.* The Court briefly describes the Contested Benefit Plans at issue herein.

Long-Term Incentive Plan

The Company's current LTIP is designed to align the interests of eligible Employees with the Company's long-term goals, attract and motivate talented Employees by offering a comprehensive compensation package that is in line with the market, and recognize Employees' substantial contributions to the Company's overall performance. Bradley Declaration ¶ 165. Historically, through the LTIP, the Debtors issued Endo Parent equity-based awards to participating Employees, including stock options ("Options"), restricted stock units ("RSUs"), and performance share units ("PSUs" and, together with Options and RSUs, "Equity Compensation") that would then vest over a three- or four-year period. In February 2020, the Company changed to an all-cash LTIP. Barberio Declaration ¶ 11. At that time, compensating employees with Equity Compensation had become problematic because the Company's share price had fallen from a high of $96 per share in 2015 to approximately $6 per share. Many Employees had already paid income tax on and lost significant value on their existing shares and share-related holdings and were skeptical of non-cash compensation as an effective incentive. *Id.* Moreover, because maintaining Endo's historic compensation levels required ever-larger grants

of Equity Compensation, Endo's shareholders expressed concerns regarding share usage and dilution resulting from Endo's reduced share price. *Id.*

As of the Petition Date, the Debtors had an aggregate of approximately $36,000,000 in outstanding, unvested cash awards under the LTIP, payable in installments typically in March and September of each year through 2024. Bradley Declaration ¶ 166. Further, the Debtors have historically issued approximately $38,370,000 in cash awards under the LTIP per year and anticipate issuing approximately $370,000 in cash awards to approximately 40 Employees for the rest of year 2022. *Id.* By this Motion, the Debtors request authority to continue honoring and paying any granted but unvested cash awards pursuant to the LTIP. The Debtors further request authority to continue issuing cash awards under the LTIP in the ordinary course of business as part of their annual and new hire compensation review processes. For the avoidance of doubt, no payments will be made to insiders under the LTIP. Motion ¶ 34.

Non-Insider Retention Programs

The Debtors have historically instituted several retention programs to provide supplemental compensation to certain eligible non-insider Employees (collectively, the "Retention Programs"). Bradley Declaration ¶ 174. The awards are generally set as a percentage of the recipient's annual salary, based on various factors such as the recipient's seniority, performance, criticality to the Debtors' businesses, and retention risk. *Id.*

In the aggregate, the outstanding awards under the Retention Programs described herein total approximately $35,385,000. *Id.* ¶ 179. By this Motion, the Debtors request authority to make any outstanding payments under the programs as they come due in the ordinary course. *Id.* Eligibility for payments under all of the Retention Programs is subject to the condition that the participating Employee does not terminate voluntarily or is not terminated by the Debtors for

cause before such date, and no payments under the Retention Programs will be made to insiders. *Id.*

The Debtors' Retention Programs include the following:

2020 Retention Programs

In connection with the 2020 Restructuring Initiative, in November 2020, the Debtors implemented a retention program (the "2020 Retention Program") to ensure a smooth transition of the Company's manufacturing operation in Irvine, California and Chestnut Ridge, New York, and to accomplish the overall goals of the 2020 Restructuring Initiative. Bradley Declaration ¶ 175. The Debtors assert that the majority of the retention payments relating to the 2020 Retention Program have already been made, but that approximately 5 employees have outstanding awards under the 2020 Retention Program, totaling approximately $145,000 through April of 2023. *Id*.

2021 Retention Program

The Debtors say that in response to "the overwhelmingly competitive nature of the pharmaceutical industry," they implemented a program to provide "generally equal scheduled payments in June 2022, December 2022, and June 2023" (the "2021 Retention Program"). *Id.* ¶ 176. They report that approximately 300 Employees have outstanding awards under the 2021 Retention Program, totaling approximately $17,500,000, through June of 2023. *Id.*

2022 Retention Program

In connection with the 2022 Restructuring Initiative, in July 2022, the Debtors implemented an additional retention program (the "2022 Retention Program") with a scheduled payout in September 2023. The 2022 Retention Program includes payments of approximately $17,100,000 to 390 employees. *Id.* ¶ 177.

Other Retention Programs

Historically, the Debtors have issued a variety of additional retention awards on an ad hoc basis for various purposes, including as a new hire incentive, for accepting a particular work assignment, or as a bonus for completion of a special project (the "Other Retention Programs"). *Id.* ¶ 178. These awards were granted at the discretion of an employee's supervisor or Company management, and they generally include lump sums payable in installments if the Employee remains with the Company as of the applicable retention date. The Debtors have granted awards under other retention programs, including incentive awards, sign-on bonuses, and other retention awards. *Id.* Approximately 30 Employees have outstanding awards

under the Other Retention Programs, totaling approximately $640,000, and the applicable payout and retention dates range through December 2025. *Id.*

Severance Plan

In 2015, the Company memorialized certain aspects of its past practice of providing severance payments and benefits under certain circumstances by putting in place a written severance policy applicable to Employees that are not subject to individual employment agreements with the Company. Bradley Declaration ¶ 211. In 2020 and 2021, the Company amended, restated, and modified its existing severance plan to account for certain changes affecting the Company in the ordinary course of business (the "Severance Plan"). *Id.* In the ordinary course, under the Severance Plan, the Debtors make a lump-sum payment to a terminated Employee through the Debtors' bi-weekly, weekly, or monthly payroll process after the terminated Employee executes a release of claims against the Debtors and certain other conditions are satisfied. *Id.* ¶ 212. Generally, that payment includes an amount based on the Employee's annual base salary or annualized regular rate of compensation that varies depending upon the Employee's position and length of service, any unpaid annual bonus earned for the fiscal year preceding the year in which the Employee was terminated, and accrued but unused vacation time. *Id*. Terminated Employees may also be entitled to payment of their COBRA premiums upon signing a release and separation agreement and electing continuing coverage, as well as certain outplacement services (collectively, the "Severance Obligations"). *Id.*

In connection with the 2020 Restructuring Initiative and the 2022 Restructuring Initiative, the Debtors have incurred certain additional Severance Obligations with respect to Employees that were terminated in connection with the corresponding reductions in force. *Id.* ¶ 213. In

addition to the benefits afforded to eligible Employees under the Severance Plan, individuals scheduled for termination prior to a pending incentive plan vesting event are entitled to receive:

> (i) a cash in-lieu-of payment for Corporate Incentive Compensation Plan participants terminated on or after October 1st of the plan year, and prior to March 1st of the payment year, and
>
> (ii) accelerated vesting of select tranches of outstanding awards previously issued to certain terminated Employees under the LTIP, depending on the relevant date of their respective terminations.

See id.

The Debtors assert that having the authority to maintain the Severance Plan, along with the additional Severance Obligations incurred as part of the 2020 Restructuring Initiative and the 2022 Restructuring Initiative, is essential to their business in order to retain, motivate, and provide security to their Employees. *Id.* ¶ 214. They assert that the majority of the Severance Obligations relating to the 2020 Restructuring Initiative have already been paid, and that currently, there are no former non-insider Employees who have outstanding payments due under the non-insider Severance Plan. Bradley Declaration ¶ 215; Motion ¶ 86. Under a settlement that the Debtors reached with the UCC and the OCC, any payments pursuant to the Severance Plan will be capped at $17 million through December 2023, with certain reporting requirements triggered prior to incurring any aggregate Severance Obligations in excess of $5 million. Reply ¶ 17. By this Motion, the Debtors are seeking authority to continue the Severance Plan solely with respect to the Debtors' non-insider Employees in the ordinary course of business. Motion ¶ 86.

The Motion

The Debtors contend that the Court should grant the Motion because the Contested Benefit Plans are part of the ordinary course of their business and because they have

demonstrated sound business judgment in seeking authorization to make any outstanding payments under those programs as they come due in the ordinary course. *See* Motion ¶¶ 95-97. Alternatively, they contend that to the extent that the Court finds that any of the Contested Benefit Plans were not devised in the ordinary course of business, each is clearly and unequivocally justified under section 503(c)(3) of the Bankruptcy Code since each plan is "justified by the facts and circumstances of the case." *See* Reply ¶ 19.

The U.S. Trustee contends that the payments called for under the Contested Benefit Plans and at issue in the Motion are not ordinary course payments because "the Long-Term Incentive Plan recently switched from equity-based awards to cash payments, the Debtors only recently implemented the Retention Plans in contemplation of their bankruptcy filings, and the Debtors recently modified their Severance Plan to add additional cash benefits to severed employees." UST Supplement at 2. The U.S. Trustee argues that the Debtors cannot demonstrate that the Contested Benefit Plans are "justified by the facts and circumstances of the case" because (i) the Restructuring Support Agreement contemplates zero payment to general unsecured creditors, (ii) a private opioid settlement trust to pay certain opioid victims would be funded only with $85 million ten years from the Closing Date, or as little as $27,367,725.11 if funded on the Closing Date, and (iii) the Debtors made over $94 million in payments to insiders in the nine months prior to commencing these cases (with $35 million coming in the month prior to the Petition Date). *Id.* at 2-3. The U.S. Trustee also asserts that the Debtors have not disclosed sufficient information regarding the Contested Benefit Plans. It maintains that, for example, the Debtors have not disclosed the metrics for their LTIPs, and that without that information, the Court, the U.S. Trustee, and the parties in interest are not able to determine if such plans are reasonable and justified by the facts and circumstances of the case. *Id*. at 3.

The Court considers those matters below.

Discussion

Section 363(b)(1) of the Bankruptcy Code permits a debtor to use estate property "other than in the ordinary course of business" after notice and a hearing. 11 U.S.C. § 363(b)(1). This provision is designed to allow a debtor in possession "the flexibility to engage in ordinary transactions without unnecessary creditor and bankruptcy court oversight, while protecting creditors by giving them an opportunity to be heard when transactions are not ordinary." *In re Roth Am., Inc.*, 975 F.2d 949, 952 (3d Cir. 1992); *see also United States ex rel. Harrison v. Est. of Deutscher (In re H & S Transp. Co.)*, 115 B.R. 592, 599 (M.D. Tenn. 1990) ("Section 363 is designed to strike [a] balance, allowing a business to continue its daily operations without excessive court or creditor oversight and protecting secured creditors and others from dissipation of the estate's assets.").

Neither the Bankruptcy Code nor the legislative history defines the term "ordinary" under section 363. *See, e.g.*, *In re Roth Am.*, 975 F.2d at 952. However, "[t]he term 'ordinary course of business' generally has been accepted 'to embrace the reasonable expectations of interested parties of the nature of transactions that the debtor would likely enter in the course of its normal, daily business.'" *Med. Malpractice Ins. Ass'n v. Hirsch (In re Lavigne)*, 114 F.3d 379, 384 (2d Cir. 1997) (quoting *In re Watford*, 159 B.R. 597, 599 (M.D. Ga.1993), *aff'd*, 61 F.3d 30 (11th Cir. 1995) (unpublished table decision)); *see also Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 394 (S.D.N.Y. 1983) ("The touchstone of 'ordinariness' is thus the interested parties' reasonable expectations of what transactions the debtor in possession is likely to enter in the course of its business."). Thus, the "key" to assessing whether a transaction is an ordinary course transaction is "to distinguish

between routine operations (which a debtor can pursue without the need for individualized court approval) and transactions that are sufficiently unusual, unique or significant from the perspective of creditors that they require court approval." *In re Vill. Red Rest. Corp.*, No. 18-10960, 2021 WL 3889793, at *17 (Bankr. S.D.N.Y. Aug. 31, 2021). !

The evidence demonstrates, and the Court finds, that the Debtors manage and fund the Contested Benefit Plans as part of their routine operations, and thus, in the ordinary course of their business. It is undisputed that "[e]mployee compensation is considered and set on an annual basis, with updates made as necessary in response to developments to the Company's economic and financial outlook." Barberio Declaration ¶ 6. In undertaking that exercise, the Debtors employ "a comprehensive and measured approach to Employee compensation intended to yield total Employee compensation around the 50th percentile relative to Endo's market peers, inclusive of base salary and bonus opportunities, with long-term incentives used to align Employee and Company goals and reward outstanding Employee performance with additional compensation." *Id.* On an annual basis, the Debtors review and update their compensation programs "as necessary in response to developments to the Company's economic and financial outlook." *Id.*[18] In undertaking that exercise, Endo

> aims to (i) pay Employees commensurate with the market in which Endo operates, with compensation updated yearly based on detailed and multi-layered review of

[18] Mr. Barberio summarizes the very comprehensive and thorough process that Endo employs in fixing Employee compensation, as follows:

> The compensation review begins in Endo's Human Resources department, which reviews Endo's past and current compensation practices, compensation surveys produced by reputable third parties, and other available data to produce compensation proposals that are then considered and approved by the Compensation Committee of the Board, which meets quarterly.
>
> Each year, Endo's Human Resources professionals begin with existing compensation detail and then review updated survey information. Each year, Endo participates in and acquires the results of fulsome compensation surveys produced by Mercer Life Sciences, for Employees based in the United States, and Willis Towers Watson, for Employees based in the United States, Canada, and Ireland. The Mercer Life Sciences surveys provide Endo with data from 51 different companies in the pharmaceutical industry, reflected in three different surveys—All Industries, Life Sciences—

> extensive industry data for each geographical area where Employees are located, and (ii) reward outstanding Employees who align their own goals and performance with those of the Company.

Id. ¶ 10.

The Debtors have maintained the LTIP since 2015 in order to offer "a comprehensive compensation package that is in line with the market and recognize Employees' substantial contributions to the Company's overall performance." Bradley Declaration ¶ 165. *See also* Barberio Declaration ¶ 29 ("We use the LTIP to align Employee incentives with those of the Company—if Employees take outstanding action to help the Company outperform its competitors, we allow them to out-earn their peers."). For eligible Employees, the LTIP is part of ordinary course, total direct compensation, along with their base salary and applicable bonus under either the Corporate Incentive Compensation Plan or Sales Incentive Compensation Plan, both of which have already been approved on a final basis by this Court. Basso Declaration ¶ 7. Currently, the LTIP is used and historically has been used by the Debtors to incentivize and reward the development of high-potential Employees across all departments, and it does not depend on Company-wide performance. *Id*. ¶ 9. The record reflects that the LTIP is a necessary

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> Pharmaceutical, and Endo Pharma Selected Market—that provide salary data for over 5,000 job titles each. The Willis Towers Watson U.S. surveys provide data from 1,042 different companies across all sectors, with salary data provided for over 13,000 job titles, and 102 companies in the pharmaceutical and health sciences industries, with salary data provided for nearly 8,000 job titles.
>
> The data supplied by these surveys is taken and analyzed by Employees in Endo's Human Resources department, who compare Endo's employee job descriptions and titles to related job descriptions and titles in the surveys and produce detailed proposals that are ultimately reviewed and approved by Endo's Chief Human Resources Officer. Additional consideration is given to factors such as an Employee's time of service at the Company and annual performance reviews.
>
> After approval from the Chief Human Resources Officer, proposed Employee compensation is sorted into bands and a summary is presented to the Compensation Committee for final approval.

Barberio Declaration ¶¶ 6-9.

part of the Debtors' ordinary course compensation, is highly individualized, is intended to incentivize the development of high potential Employees, and, excepting incidental overlap for certain sales Employees, does not overlap with either the Corporate Incentive Compensation Plan or Sales Incentive Compensation Plan. *Id*. ¶ 10.[19]

The evidence also shows that in February 2020, in the wake of the precipitous loss in Endo equity value, the Compensation Committee, in the ordinary course of its review of Employee compensation matters, and after considering a range of other options, authorized the Debtors to use cash-based long-term incentives to (i) address shareholder concerns regarding share usage and dilution resulting from Endo's reduced share price and (ii) serve as a separate mechanism to allow for predictable, realizable value opportunities for all LTIP-eligible Employees. Endo had previously used cash-based long-term incentives for a small subset of Employees but expanded the practice to align incentives for additional Employees with those of the Company. Barberio Declaration ¶ 11.

In 2015, the Debtors acquired Par Pharmaceutical ("Par"), a company which already had a universal severance policy for its employees before being acquired by Endo. After the acquisition, the Company created the Severance Plan for all of its Employees, "memorializ[ing] certain aspects of the Company's past practice and adopt[ing] other aspects of the newly

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[19] Ms. Basso explains that "[t]he metrics pursuant to which LTIP grants are awarded are highly individualized" and that the Debtors employ the following process in fixing the amount of the payments:

> [D]uring each year's compensation planning cycle, managers meet with the individual Employees under their supervision for annual performance reviews. The performance reviews look backward and forward: for the backward portion, the manager reviews the Employee's performance against the previous year's goals, in response to which the manager will recommend a corresponding level of LTIP grant, which will then vest in six month increments over the next three years; for the forward portion, the manager and Employee work together to help the Employee set goals for development over the coming year. In other words, during the 2023 compensation planning cycle which is anticipated to take place from December 2022 – March 2023, eligible Employees will receive LTIP grants for 2022 performance and set goals for 2023 performance.

Basso Declaration ¶ 9.

acquired company's historical practice." *Id.* ¶ 21. Thus, the Severance Plan has been part of the Debtors' ordinary course of business for at least seven years. Additionally, "[i]n 2020 and 2021, in connection with the Company's general practice of updating its corporate policies, the Company amended, restated, and modified its existing Non-Insider Severance Plan to account for certain changes affecting the Company in the ordinary course of business." *Id.*

The Company has used the Retention Programs to maintain its workforce through the 2020 and 2022 Restructuring Initiatives and the Chapter 11 Cases. The Company explains that human capital is a critical asset, and workforce continuity is crucial. Endo cannot function without its Employees, and attracting and training new talent is both more expensive and less effective than keeping the talent already in house. Barberio Declaration ¶ 13. Indeed, over the last four years, the Company has experienced an annual turnover rate of 10% in its workforce, with the number rising to 11.5% in 2021, but the turnover has not been evenly distributed Company-wide. The departments closest to the Company's contingency planning efforts have been hit hardest, with certain U.S. departments losing so many Employees that it threatened their ability to function effectively. *Id.* In the view of Company leadership, this meant that as the Company approached a chapter 11 filing and more Employees became aware of these plans, retaining internal talent and attracting high caliber external talent would only grow more difficult. *See id.*

The Company implemented the 2020 Retention Program—in the ordinary course of its business—to counter the projected increase in attrition in connection with the 2020 Restructuring Initiative. In doing so, the Company learned that retention payments serve a valuable retentive purpose and can help the Company maintain workforce continuity in the face of challenges and uncertainty, and, if anything, future retention programs needed to be more broadly applicable.

See id. ¶ 14. In 2021, Endo began to focus additional resources on contingency planning efforts in connection with a possible financial restructuring of its businesses. The Company was in an uncertain position in both reality and perception, and such uncertainty was and is deeply damaging to Employee morale. *See id.* ¶ 15.

In 2021, as Endo considered the possibility of a bankruptcy filing and subsequent sales process, the Company, as part of its Employee-related planning, approved the 2021 Retention Program. That program is intended to incentivize Endo's Employees to remain with the Company through June 2023, with payments spaced at regular intervals in December 2021, June 2022, December 2022, and June 2023. *Id.* ¶ 17. As (i) Endo's timeline for a restructuring shifted and it became clear that any chapter 11 process might not be completed by June 2023 and (ii) the Company's attrition rates among Employees included those receiving payments under the 2021 Retention Program, the Company decided to implement an additional retention program on a broader basis. *See id.* ¶ 18. The Company approved the 2022 Retention Program in July 2022, just over a month prior to the commencement of the Chapter 11 Cases. Under the 2022 Retention Program, up to 390 Employees may receive payouts in the approximate aggregate amount of $17,100,000 on the timeline agreed to with the UCC and OCC, with the goal being that affected Employees stay with the Company through the closing of the sale of Endo's assets by September 2023. *See id.* ¶ 19; *see also* Reply ¶ 27.

Where, as here, the Debtors have demonstrated that they maintain the Contested Benefit Plans in the ordinary course of their business, the Court must determine whether the Debtors have met their burden of demonstrating that their decision to continue funding those plans is supported by their reasonable exercise of business judgment. *See, e.g.*, *In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992); *see also Comm. of Equity Sec. Holders v. Lionel Corp. (In re*

Lionel Corp.), 722 F.2d 1063, 1070-71 (2d Cir. 1983) (holding that the application of section 363(b) must be supported by "some articulated business justification, other than appeasement of major creditors" and that "a judge determining a § 363(b) application [must] expressly find from the evidence presented before him at the hearing a good business reason to grant such an application"); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) ("[T]he debtor must articulate some business justification, other than mere appeasement of major creditors . . . ."). The Debtors plainly have met that burden. In seeking authorization to continue to fund the Contested Benefit Plans, the Debtors are not seeking to appease "major creditors." Rather, they are seeking leave to fund benefit programs that they correctly determined are vital to the Debtors' operations. It is settled that a debtor can satisfy the business judgment standard if "the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)). The Debtors easily satisfy that standard.

Section 503(b)(1)(A) of the Bankruptcy Code provides that there shall be allowed administrative expenses for "the actual, necessary costs and expenses of preserving the estate." *See* 11 U.S.C. 503(b)(1)(A). As explained above, maintaining the Contested Benefit Plans is necessary to preserve the value of the Debtors' estates. The Debtors have demonstrated that any cessation of payments under those plans could irreparably impair the Debtors' relationships with their employees and sink employee morale at a time when employee confidence in the business is undoubtedly critical. Accordingly, the Court finds that the payments contemplated under the Contested Benefit Plans constitute actual and necessary costs of preserving the Debtors' estates under section 503(b)(1)(A).

Moreover, and in any event, the Debtors have demonstrated that the relief they are seeking with respect to the Contested Business Plans passes muster under section 503(c)(3) of the Bankruptcy Code. The terms of that section are conjunctive, prohibiting payments outside of the ordinary course of business only if the payments are "not justified by the facts and circumstances of the case . . . ." 11 U.S.C. 503(c)(3); *see In re Aralez Pharms. US Inc.*, No. 18-12425, 2018 WL 6060356, at *3 (Bankr. S.D.N.Y. Nov. 19, 2018) (citing *In re Borders Grp., Inc.*, 453 B.R. 459, 474 (Bankr. S.D.N.Y. 2011)). Even assuming, *arguendo*, that some or all of the payments at issue under the Contested Benefit Plans fall outside the ordinary course of the Debtors' business, the Debtors have demonstrated that all the payments called for under those plans are "justified by the facts and circumstances of the case" as required under section 503(c)(3).

The "facts and circumstances" justification test "creates a standard no different than the business judgment standard under section 363(b) of the Bankruptcy Code." *In re Velo Holdings, Inc.*, 472 B.R. 201, 209 (Bankr. S.D.N.Y. 2012); *In re Dana Corp.*, 358 B.R. 567, 576-77 (Bankr. S.D.N.Y. 2006) (describing six factors that courts may consider when determining whether the structure of a compensation proposal meets the "sound business judgment test" in accordance with section 503(c)(3) of the Bankruptcy Code). The business judgment standard is satisfied if the proposal is "within the fair and reasonable business judgment of the [d]ebtors and thus within the zone of acceptability," *In re Dana*, 358 B.R. at 572, and "[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

In *Dana,* this Court (Lifland, J.) listed the following factors that courts consider when determining if the structure of a compensation proposal and the process for its development meet the business judgment test:

> (1) Is there a reasonable relationship between the plan proposed and the results to be obtained?
>
> (2) Is the cost of the plan reasonable in the context of the debtor's assets, liabilities and earning potential?
>
> (3) Is the scope of the plan fair and reasonable; does it apply to all employees; does it discriminate unfairly?
>
> (4) Is the plan or proposal consistent with industry standards?
>
> (5) What were the due diligence efforts of the debtor in investigating the need for a plan; analyzing which key employees need to be incentivized; what is available; what is generally applicable in a particular industry?
>
> (6) Did the debtor receive independent counsel in performing due diligence and in creating and authorizing the incentive compensation?

See In re Dana, 358 B.R. at 576-77; *see also In re Borders Grp., Inc.*, 453 B.R. 459, 474 (Bankr. S.D.N.Y. 2011) (citing *Dana* factors in assessing whether compensation plan was justified by the facts and circumstances of the case); *In re Glob. Home Prods., LLC*, 369 B.R. 778, 786 (Bankr. D. Del. 2007) ("The court [in *Dana*], citing numerous cases, listed the factors courts use to determine . . . if the structure of a compensation proposal and the process for developing the proposal meet the 'sound business judgment' test . . . ."). As explained below, application of the *Dana* factors to the evidence before the Court demonstrates that the development of the Contested Benefit Plans is "justified by the facts and circumstances of the case" since they are the product of the Debtors' sound business judgment.

There is a reasonable relationship between the Contested Benefit Plans and the Debtors' goal of fairly compensating their Employees. The LTIP is designed to align the interests of

eligible Employees with the Company's long-term goals, as well as to attract and motivate talented employees. Barberio Declaration ¶ 29. As discussed above, the program was achieving that goal until 2020, when the "Equity Compensation" component of the LTIP lost so much value that the provision of that compensation as part of the LTIP did not benefit either the Employees or the Debtors. At that point, the Board, after considering a range of options, in the exercise of its sound business judgment, authorized the use of cash-based long-term incentives to (i) address shareholder concerns regarding share usage and dilution resulting from Endo's reduced share price and (ii) serve as a separate mechanism to allow for predictable, realizable value opportunities for all LTIP-eligible Employees. Endo had previously used cash-based long-term incentives for a small subset of Employees but expanded the practice to align incentives for additional Employees with those of the Company. *See id.* ¶ 11. As noted previously, the Debtors' leadership implemented the non-insider Retention Programs in order to retain talent in the face of increasing turnover rates amidst the Company's distressed financial situation. As Mr. Cumberland noted, the 2020 Retention Program "achieved its objective of retaining key Employees, resulting in a lower than projected voluntary turnover rate for covered Employees." Cumberland Declaration ¶ 13. This in turn fostered the implementation of the 2021 and 2022 Retention Programs. Finally, the Debtors have demonstrated that the Severance Plan and the additional Severance Obligations incurred in connection with the Restructuring Initiatives each serve an important purpose in helping the Company retain and attract talent. Employees—and potential new hires—are aware of the Company's distressed situation. They are aware that the Company has considered and taken and will continue to consider and take action to position the Company for the future—actions that may involve involuntary terminations. "What is in the best interest of the Company is not always in the best interest of individual Employees, and [Endo's]

Employees must know that they are protected if their role is made redundant by a decision of which they had no part." Barberio Declaration ¶ 24.

The Court finds that the cost of the plan is reasonable in the context of the Debtors' assets, liabilities, and earning potential. In reaching that conclusion, the Court notes that Debtors have worked closely with the UCC and OCC to address their questions and respond to diligence requests regarding, among other things, the Contested Benefit Plans. Reply ¶ 5. Through that process, the Debtors have made concessions to the committees and have agreed to cap payments under the plans to amounts acceptable to the committees. *See, e.g.*, *id.* ¶¶ 9, 17. The Court finds it significant that the committees, as parties in interest with economic stakes in these Chapter 11 Cases, do not object to the Motion as modified to address their concerns with the cost of the programs.

The scope of the Contested Benefit Plans is fair and reasonable, as they apply to all non-insider Employees. The LTIP is awarded based on "Employees' substantial contributions to the Company's overall performance." Bradley Declaration ¶ 165. The non-insider Retention Programs are granted for "various purposes, including as a new hire incentive, for accepting a particular work assignment, or as a bonus for completion of a special project." *Id.* ¶ 178. Additionally, "[t]he Debtors issue retention awards to Employees the Debtors believe are essential to achieving the goals and objectives of the organization and maximizing value for all stakeholders." *Id.* ¶ 174.

The Contested Benefit Plans are consistent with industry standards. Mr. Cumberland reviewed each Contested Benefit Plan alongside market surveys, indicating that such plans are consistent with industry standards. Mr. Cumberland found that the LTIP's grants "equal 31% of base salary on average, with a median of 19% . . . [,]" which is "reasonably sized as a percentage

of base salary and of target total direct compensation" after comparing it with incentive pay practices at other public companies, based on a WorldatWork survey. Cumberland Declaration ¶ 17, 18. In reviewing the Retention Programs, Mr. Cumberland found that "the cost per participant across the two programs is between the 50th and 75th percentile relative to the Peer Group." *Id.* ¶ 15. Even though the programs fall on the slightly higher end among the Peer Group and that "the percentage of employees eligible for the 2021 and 2022 Retention Programs is greater than the majority of comparable programs," Mr. Cumberland found "the Company's decision to expand the covered Employee population [and the programs, in general, to be] reasonable in light of the Company's significant retention challenges . . . and [are] consistent with steps that other companies experiencing long periods of distress have taken." *Id.* Finally, Mr. Cumberland concluded that the Severance Plan is "generous, but aligned with market standards at every level of Employee seniority, both in severance pay and outplacement of benefits." *Id.* ¶ 20. Since January 1, 2016, Endo has paid out approximately $159.4 million in severance to 2,131 former Employees. *Id.* ¶ 21.

The Debtors engaged in significant due diligence efforts in investigating the need for the Contested Benefit Plans. Every year, the Debtors' Human Resources department and Compensation Committee review Endo's compensation practices and update them as necessary in response to developments to the Company's economic and financial outlook. Barberio Declaration ¶ 6. Thus, as noted previously, each Contested Benefit Plan and subsequent corresponding update has been implemented as a result of the Company's diligence in assessing the economic challenges facing the Company. For example, the Debtors amended the LTIP to award cash payments instead of stock in response to the precipitous drop of its stock price. *Id.* ¶ 11. The non-insider Retention Programs were implemented in response to the 2020 and 2022

Restructuring Initiatives and to significant turnover rates. *Id.* ¶ 13. Finally, the Severance Plan was implemented subsequent to the Company's acquisition of Par, and the subsequent updates in 2020 and 2021 occurred in connection with terminations made as a result of the 2020 and 2022 Restructuring Initiatives. *Id.* ¶¶ 21-22. Thus, each plan was implemented and has been maintained as a result of the Debtors' significant diligence and rigorous process for maintaining its compensation programs.

Finally, in 2021, the Debtors retained Mr. Cumberland as an independent financial advisor, in part, "to opine on the reasonableness" of the Contested Benefit Plans. Cumberland Declaration ¶ 11. As reflected in his thorough and unchallenged analysis, the plans are reasonable and in line with market standards. *See id.* ¶ 8.

To summarize, the Court finds that the Debtors have demonstrated that the Contested Benefit Plans, and the payments called for thereunder, are "justified by the facts and circumstances of the case." Accordingly, to the extent section 503(c)(3) is relevant to the Motion, the Debtors have established grounds for relief under that section.

In reaching this conclusion, the Court finds no merit to the U.S. Trustee's contention that the Court should deny the Debtors' request to maintain and fund the Contested Benefit Plans because (i) the Restructuring Support Agreement contemplates zero payment to general unsecured creditors, (ii) a private opioid settlement trust to pay certain opioid victims would only be funded with $85 million ten years from the Closing Date, or as little as $27,367,725.11 if funded on the Closing Date, and (iii) the Debtors made over $94 million in payments to insiders in the nine months prior to commencing these cases (with $35 million coming in the month prior to the Petition Date). UST Supplement at 2-3.

There is no merit to the first two points because the evidence is clear that without providing the Employees the benefits under the Contested Benefit Plans, there is a high likelihood that the Debtors will not be able to retain their work force and, as such, will have difficulties attempting to implement the exit strategy for the Chapter 11 Cases contemplated in the Restructuring Support Agreement, including the establishment and funding of opioid settlement trusts for the benefit of opioid victims. It is telling that although neither the UCC nor OCC has "signed on" to the transactions contemplated by the Restructuring Support Agreement (and reserve all their rights with respect thereto), both support the relief that the Debtors are seeking with respect to the Contested Benefit Plans.

Moreover, in filing the Motion, the Debtors are not seeking approval of the $94 million in prepetition payments to alleged insiders, or of any other transactions relating to insiders. Indeed, in the Motion, the debtors repeatedly assert that they are seeking approval of the payments for non-insiders only. Motion ¶ 3.[20]

Conclusion

Based on the foregoing, the Court overrules and denies the Objection and authorizes the Debtors to honor, pay, satisfy, or remit all claims and prepetition obligations to non-insider eligible Employees under the Contested Benefit Plans, to the extent set forth in the Debtors' Proposed Final Order.

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[20] The Debtors assert the following:

> By this Motion, the Debtors also seek the authority, solely upon the entry of the Proposed Final Order, to (a) honor, pay, satisfy, or remit all claims and prepetition obligations related to the following Compensation and Benefits Programs: Retention Programs (for non-insider Employees only) . . . Employee Bonus Plans other than the Spot Awards (for non-insider Employees only), and the Severance Plan (for non-insider Employees only).

Motion ¶ 3.

The Debtors are directed to submit the Proposed Final Order.

Dated: New York, New York
November 14, 2022

/s/ *James L. Garrity, Jr.*
Hon. James L. Garrity, Jr.
U.S. Bankruptcy Judge

THIS IS EXHIBIT "J"
TO THE AFFIDAVIT OF ANDREW HARMES
SWORN BEFORE ME
THIS 23RD DAY OF NOVEMBER, 2022

Erik Axell
_____
Commissioner for Taking Affidavits

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	**Chapter 11**
ENDO INTERNATIONAL plc, *et al.*,	**Case No. 22-22549 (JLG)**
Debtors.[1]	**(Jointly Administered)**
	Related Docket Nos. 7, 91, 325, 489, 544, 603, 682

FINAL ORDER (I) AUTHORIZING DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES, EMPLOYEE BENEFITS AND OTHER COMPENSATION AND (B) CONTINUE EMPLOYEE BENEFITS PROGRAMS AND PAY RELATED ADMINISTRATIVE OBLIGATIONS; (II) AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS; AND (III) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the debtors and debtors in possession (collectively, the "Debtors" and together with their non-debtor affiliates, the "Company") in the above-captioned cases (the "Chapter 11 Cases") for an interim order and a final order (a) authorizing, but not directing, the Debtors, in their sole discretion, to (i) pay Prepetition Employee Obligations and related Processing Costs arising under or related to Compensation and Benefits Programs and (ii) continue their Compensation and Benefits Programs in effect as of the Petition Date (and as may be amended, renewed, replaced, modified, revised, supplemented and/or terminated from time to time in the ordinary course of business) and pay related administrative

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1 The last four digits of Debtor Endo International plc's tax identification number are 3755. Due to the large number of debtors in these chapter 11 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at https://restructuring.ra.kroll.com/endo/. The location of the Debtors' service address for purposes of these chapter 11 cases is: 1400 Atwater Drive, Malvern, PA 19355.

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

obligations; (b) authorizing and directing the Banks to honor and process related checks and transfers; and (c) granting related relief, all as more fully set forth in the Motion; and upon the Debtors' request for final relief with respect to the Debtors' long-term incentive plan, retention bonus plans, and severance plans, each as set forth in this final order (the "Final Order") and the Court having reviewed the Motion, the First Day Declaration, the *Declaration of Mark G. Barberio in Support of Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Pay Prepetition Wages, Salaries, Employee Benefits, and Other Compensation and (B) Continue Employee Benefits Programs and Pay Related Administrative Obligations; (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers; and (III) Granting Related Relief*, and the *Declaration of Brian L. Cumberland in Support of Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Pay Prepetition Wages, Salaries, Employee Benefits, and Other Compensation and (B) Continue Employee Benefits Programs and Pay Related Administrative Obligations; (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers; and (III) Granting Related Relief* and held hearings to consider the relief requested in the Motion and granted the first interim order (the "Interim Order"), the second interim order (the "Second Interim Order"), the combined third interim and final order (the "Combined Order"), and the modifying order (the "Modifying Order"); and the Court having found that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); (b) this is a core proceeding pursuant to 28 U.S.C. § 157(a)-(b) and 1334(b); (c) venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and (d) due and proper notice of the Motion has been provided to the Notice Parties (as defined below) and it appearing that no other or further notice need be provided; and the Court having determined that the legal

and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates and is in the best interests of the Debtors, their estate, creditors, and other parties-in-interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on a final basis as set forth herein.

2. The Debtors are hereby authorized, but not directed, on a final basis and in their sole discretion, to pay all amounts required under or related to the LTIP; *provided* that LTIP grants issued in calendar year 2023 may not exceed $40,000,000 in the aggregate; *provided, further*, that grants issued under the LTIP for the calendar year 2023 will be awarded and paid consistently with historical practices; *provided, further*, that upon completion of the Debtors' annual compensation planning cycle and, for the avoidance of doubt, no later than March 31, 2023, the Debtors shall provide a report describing all grants issued and distributed pursuant to the 2023 LTIP to counsel to the Ad Hoc First Lien Group, counsel to the Ad Hoc Cross-Holder Group, counsel to the Official Committee of Unsecured Creditors (the "UCC"), counsel to the Official Committee of Opioid Claimants (the "OCC"), and counsel to the U.S. Trustee (collectively, the "Notice Parties").

3. The Debtors are hereby authorized, but not directed, on a final basis and in their sole discretion, to pay all amounts required under or related to the Non-Insider Retention Programs; *provided* that payments made pursuant to the 2022 Retention Program shall be made on the later of (i) September 15, 2023 or (ii) the closing of a sale or sales of substantially all of the Debtors' assets pursuant to section 363 of the Bankruptcy Code (the "Sale Closing"); *provided, however*, that if the Sale Closing has not occurred by December 29, 2023, the Debtors shall be

authorized to make such payments as of December 30, 2023. For the avoidance of doubt, the Debtors are solely authorized under this Final Order to continue the existing Non-Insider Retention Programs, and not to implement any new retention programs.

4. The Debtors are hereby authorized, but not directed, on a final basis and in their sole discretion, to pay all amounts required under or related to the Severance Plan, including any related Severance Obligations; *provided* that payments made pursuant to the Severance Plan through the end of calendar year 2023 shall not exceed the aggregate total of $17,000,000; *provided, further*, that the Debtors shall consult with counsel to the UCC and OCC prior to making any decision with respect to their businesses that would result in payments pursuant to the Severance Plan in excess of $5,000,000.

5. The Debtors are authorized, but not required, in their sole discretion, (a) to continue to pay and honor their obligations arising under or related to their Compensation and Benefits Programs as such Compensation and Benefits Programs were in effect as of the Petition Date and (b) upon notice to counsel to the Ad Hoc First Lien Group and counsel to any statutory committee appointed in the Chapter 11 Cases, to amend, renew, replace, modify, revise, supplement and/or terminate such Compensation and Benefits Programs in the ordinary course of business; *provided, however,* that the Debtors shall consult with the Ad Hoc First Lien Group, UCC, and OCC prior to implementing any material modifications to the Compensation and Benefits Programs; *provided, further,* that this Final Order does not authorize any action that is otherwise prohibited by the Bankruptcy Code.

6. As directed in the Combined Order, the Debtors shall provide a weekly report describing any payments on account of any prepetition Reimbursable Expenses to the Notice Parties, including the name and job title of each employee to be reimbursed and a description of

each expense. The Debtors shall confer with any Notice Party who objects to such payments to make any adjustments necessary to resolve such objection.

7. Beginning upon the date that is seven days following entry of this Final Order and on a monthly basis thereafter, the Debtors shall provide a report to the Notice Parties describing any Spot Awards issued to or redeemed by Employees, including the name and job title of each employee paid or awarded; *provided* that for any Spot Awards in excess of $2,500 per individual and $50,000 in the aggregate or such other amounts as agreed to by the Debtors and the Notice Parties, the Debtors shall, following consultation with the Ad Hoc First Lien Group, provide seven days' notice to the Notice Parties of any such proposed Spot Awards. Notwithstanding the foregoing, the Debtors shall not make any payments of Spot Awards or under any Employee Bonus Plans or Retention Programs, including the LTIP, Non-Insider Retention Programs, or Severance Plan, to insiders (as defined in section 101(31) of the Bankruptcy Code) without further order of this Court; provided that to the extent that any Employee who participates in Employee Bonus Plans or Retention Programs, including the LTIP, Non-Insider Retention Programs, or Severance Plan is later determined by the Debtors or by this Court to be an Insider, such Employee will no longer be eligible to participate in any such programs absent further order from the Court and all rights of parties in interest, including any statutory committees appointed in these Chapter 11 Cases and the U.S. Trustee, to seek clawback or disgorgement of payments made to such Insiders are reserved. For the avoidance of doubt, all claims relating to any prepetition payments made under any Compensation and Benefits Programs to Insiders (including the Insider Payments (as defined below)) are expressly preserved.

8. Following entry of this Final Order and on a monthly basis thereafter, the Debtors shall provide a report describing any payments made pursuant to the relief granted in the

Motion, including an aggregate total of such payments as compared to the applicable caps established by this Final Order, to the Notice Parties.

9. The Debtors are authorized, but not directed, in their sole discretion, to (a) continue utilizing third parties for certain services solely as described in the Motion and to pay or cause to be paid such claims as and when such obligations are due and (b) pay prepetition amounts owing in the ordinary course of business to third parties in connection with administering and maintaining the Compensation and Benefits Programs.

10. The Debtors are authorized to forward any unpaid amounts on account of deductions or payroll taxes to the appropriate third-party recipients or taxing authorities in accordance with the Debtors' prepetition practices and policies.

11. All Banks are (a) authorized and directed to receive, process, honor, and pay any and all checks, drafts, electronic transfers, and other forms of payment used by the Debtors on account of the Compensation and Benefits Programs, whether presented before, on, or after the Petition Date; and (b) prohibited from placing any hold on, or attempting to reverse, any automatic transfer on account of the Compensation and Benefits Programs. The Banks shall rely on the representations of the Debtors as to which checks and fund transfers should be honored and paid pursuant to this Final Order without any duty of further inquiry and without liability for following the Debtors' instructions.

12. Any party receiving payment from the Debtors is authorized and directed to rely on the representations of the Debtors as to which payments are authorized by this Final Order.

13. Notwithstanding anything to the contrary contained herein, any payment to be made hereunder, and any authorization contained herein, shall be subject to and in accordance with the final order approving the use of cash collateral (the "Cash Collateral Order") and any

budget in connection with any such use of cash collateral. To the extent there is any inconsistency between the terms of the Cash Collateral Order and any action taken or proposed to be taken hereunder, the terms of the Cash Collateral Order shall control.

14. As directed in the Interim Order, the Second Interim Order, and the Combined Order, the Debtors shall maintain a matrix/schedule of payments made pursuant to this Final Order, including the following information: (a) the names of the payee; (b) the nature, date and amount of the payment; (c) the category or type of payment as characterized in the Motion; and (d) the Debtor or Debtors that made the payment. As directed in the Interim Order, the Second Interim Order, and the Combined Order, the Debtors shall provide a copy of such matrix/schedule to the U.S. Trustee, counsel to the Ad Hoc First Lien Group, counsel to the Ad Hoc Cross-Holder Group, and any statutory committee appointed in the Chapter 11 Cases every 30 days beginning upon entry of the Interim Order. The Debtors will also provide the U.S. Trustee and counsel to any statutory committees and the Multi-State Endo Executive Committee with a quarterly report with respect to the prepetition incentive and retention payments described in paragraph 41, footnote 17 of the Motion (the "Insider Payments"), including (i) whether any recipients of Insider Payments have departed from the Debtors and the date of such departure, and (ii) the status and amount of any clawback of the Insider Payments.

15. For the avoidance of doubt, to the extent that any specifically identified employee is determined by a final order of this Court or any court of competent jurisdiction to have: (a) knowingly participated in any criminal misconduct in connection with his or her employment with the Debtors or (b) been aware, other than from public sources, of acts or omissions of others that such specifically identified employee knew at the time were fraudulent or criminal with respect to the Debtors' commercial practices in connection with the sale of opioids

and failed to report such fraudulent or criminal acts or omissions internally at the Debtors or to law enforcement authorities at any time during his or her employment with the Debtors, such specifically identified employee shall not be eligible to receive any payments approved by the Interim Order, the Second Interim Order, the Combined Order, or this Final Order. All parties' rights, if any, to seek disgorgement of payments following the entry of this Final Order are reserved. Nothing in this paragraph shall, or shall be deemed to, create, expand, or otherwise modify any party's rights, standing, authority, or ability, statutory or otherwise, to (a) investigate, pursue, assert, prosecute, or settle any claims or causes of action of any kind or nature (including but not limited to disgorgement), or (b) object to, or seek to unwind or undo, the Interim Order, the Second Interim Order, the Combined Order, or this Final Order and the relief granted pursuant to each.

16. Nothing contained in the Motion or this Final Order, nor any payment made pursuant to the authority granted by this Final Order, shall constitute or be construed as (a) an admission as to the validity of any claim against the Debtors, (b) a waiver of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (c) a waiver of any claims or causes of action that may exist against any creditor or interest holder, (d) promise to pay any claim, (e) an approval, assumption, adoption, or rejection of any agreement, contract, program, policy, or lease between the Debtors and any third party under section 365 of the Bankruptcy Code, or (f) otherwise affecting the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease.

17. Nothing in the Motion or this Final Order, nor anything that results from any payment made pursuant to this Final Order, shall be deemed or construed as a waiver of the

right of the Debtors or any party in interest, or shall impair the ability of the Debtors or any party in interest, to contest the validity and amount of any payment made pursuant to this Final Order.

18. Nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by any party.

19. Notwithstanding Bankruptcy Rule 6004(h), this Final Order shall be effective and enforceable immediately upon entry.

20. The Debtors are authorized and empowered to take all action necessary to effectuate the relief granted in this Final Order.

21. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Final Order.

Dated: November 15, 2022
New York, New York

/s/ *James L. Garrity, Jr.*
HONORABLE JAMES L. GARRITY, JR
UNITED STATES BANKRUPTCY JUDGE

Court File No. CV-22-00685631-00CL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF PALADIN LABS CANADIAN HOLDING INC. AND PALADIN LABS INC.

APPLICATION OF PALADIN LABS INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF ANDREW HARMES
(Sworn November 23, 2022)

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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE CHIEF	)	TUESDAY, THE 29TH
	)	
JUSTICE MORAWETZ	)	DAY OF NOVEMBER, 2022

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C 36, AS AMENDED

AND IN THE MATTER OF PALADIN LABS CANADIAN HOLDING INC. AND PALADIN LABS INC.

APPLICATION OF PALADIN LABS INC. UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

Applicant

THIRD SUPPLEMENTAL ORDER

THIS MOTION, made pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") by Paladin Labs Inc. in its capacity as the foreign representative (the "**Foreign Representative**") of the proceedings commenced by Endo International plc and certain of its affiliates on August 16, 2022 in the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**") pursuant to chapter 11 of title 11 of the United States Code (the "**Foreign Proceeding**"), for an Order, among other things, recognizing certain orders made in the Foreign Proceeding, was heard this day by videoconference.

ON READING the Notice of Motion, the affidavit of Andrew Harmes sworn November 23, 2022, and the second report of KSV Restructuring Inc., in its capacity as information officer (the "**Information Officer**"), dated November ●, 2022, filed,

AND UPON HEARING the submissions of counsel for the Foreign Representative, counsel for the Information Officer, and counsel for such other parties as were present and wished to be heard:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Supplemental Order (Foreign Main Proceeding) of this Court dated August 19, 2022.

RECOGNITION OF FOREIGN ORDERS

3. **THIS COURT ORDERS** that the following orders (collectively, the "**Foreign Orders**") of the Bankruptcy Court made in the Foreign Proceeding are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 49 of the CCAA:

(a) *Errata Order Regarding Memorandum Decision and Order Granting in Part the Motion of the Debtors for an Order (I) Waiving the Requirement That Each Debtor Files a Separate List of its 20 Largest Unsecured Creditors; (II) Authorizing the Debtors to File a Single Consolidated List of Their 50 Largest Unsecured, Non-Insider Creditors; (III) Authorizing the Debtors and the Claims and Noticing Agent to Redact Personally Identifiable Information for Individuals; (IV) Authorizing the Claims and Noticing Agent to Withhold Publication of Claims Filed by Individuals Until Further Order of the Court; (V) Establishing Procedures for Notifying Creditors of the Commencement of the Debtors' Chapter 11 Cases; and (VI) Granting Related Relief* (the "**Creditor Listing Order**"), a copy of which is attached as Schedule A hereto;

(b) *Amended Final Order (I) Authorizing Debtors to Use Cash Collateral; (II) Granting Adequate Protection to Prepetition Secured Parties; (III) Modifying*

Automatic Stay; and (IV) Granting Related Relief (the "**Final Cash Collateral Order**"), a copy of which is attached as Schedule B hereto;

(c) *Combined Third and Final Order (I) Authorizing Debtors to (A) Pay Prepetition Wages, Salaries, Employee Benefits and Other Compensation and (B) Continue Employee Benefit Programs and Pay Related Administrative Obligations; (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers; and (III) Granting Related Relief* (the "**Combined Wages Order**"), a copy of which is attached as Schedule C hereto; and

(d) *Final Order (I) Authorizing Debtors to (A) Pay Prepetition Wages, Salaries, Employee Benefits and Other Compensation and (B) Continue Employee Benefit Programs and Pay Related Administrative Obligations; (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers; and (III) Granting Related Relief* (the "**Final Wages Order**"), a copy of which is attached as Schedule D hereto,

provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to Property in Canada.

RECOGNITION OF DE MINIMIS ASSETS ORDER

4. **THIS COURT ORDERS** that the *Order (I) Authorizing and Approving Procedures For (A) The Use, Sale, Transfer, or Abandonment of De Minimis Assets Free and Clear of Liens, Claims, Interests, and Encumbrances Without Further Order of Court, and (B) The Acquisition of De Minimis Assets; (II) Authorizing Payment of Related Fees and Expenses; and (III) Granting Related Relief* (the "**De Minimis Assets Order**") of the Bankruptcy Court made in the Foreign Proceeding, a copy of which is attached as Schedule E hereto, is hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 49 of the CCAA.

5. **THIS COURT ORDERS** that Paladin Labs Inc. and Paladin Labs Canadian Holding Inc. (each a "**Canadian Debtor**") are authorized, notwithstanding paragraph 5 of the Initial Recognition Order (Foreign Main Proceedings) of this Court granted August 19, 2022, to use, sell, acquire, invest, transfer or abandon their Property in accordance with the De Minimis Assets Order, provided that a Canadian Debtor shall provide not less than seven (7) days' advance notice to the Information Officer prior to taking any action with respect to its Property pursuant to the De Minimis Assets Order.

GENERAL

6. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, or regulatory or administrative body having jurisdiction in Canada, the United States of America or any other foreign jurisdiction, to give effect to this Order and to assist the Canadian Debtors, the Foreign Representative, the Information Officer, and their respective counsel and agents in carrying out the terms of this Order. All courts, tribunals, and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Canadian Debtors, the Foreign Representative and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Canadian Debtors, the Foreign Representative, the Information Officer, and their respective counsel and agents in carrying out the terms of this Order.

7. **THIS COURT ORDERS** that each of the Canadian Debtors, the Foreign Representative and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, or regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

8. **THIS COURT ORDERS** that this Order shall be effective as of 12:01 a.m. (Toronto time) on the date of this Order without the need for entry or filing of this Order.

Chief Justice G.B. Morawetz

SCHEDULE A
CREDITOR LISTING ORDER

[Attached]

SCHEDULE B
FINAL CASH COLLATERAL ORDER

[Attached]

SCHEDULE C
COMBINED WAGES ORDER

[Attached]

SCHEDULE D
FINAL WAGES ORDER

[Attached]

SCHEDULE E
DE MINIMIS ASSETS ORDER

[Attached]

Court File No. CV-22-00685631-00CL

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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

THIRD SUPPLEMENTAL ORDER

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MOTION RECORD
(Returnable November 29, 2022)

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