IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
GRITSTONE BIO, INC.,[1]	Case No. 24-12305 (KBO)
Debtor.	**Related Docket Nos. 12, 414**

DEBTOR'S REPLY TO THE UNITED STATES TRUSTEE'S OBJECTION TO THE AMENDED DEBTOR'S MOTION FOR AN ORDER (I) APPROVING THE DISCLOSURE STATEMENT; (II) SCHEDULING CONFIRMATION HEARING; (III) APPROVING FORM AND MANNER OF NOTICE OF CONFIRMATION HEARING; (IV) ESTABLISHING PROCEDURES FOR SOLICITATION AND TABULATION OF VOTES TO ACCEPT OR REJECT PLAN, INCLUDING (A) APPROVING FORM AND CONTENT OF SOLICITATION MATERIALS; (B) ESTABLISHING RECORD DATE AND APPROVING PROCEDURES FOR DISTRIBUTION OF SOLICITATION MATERIALS; (C) APPROVING FORMS OF BALLOTS; (D) ESTABLISHING VOTING DEADLINE FOR RECEIPT OF BALLOTS AND (E) APPROVING PROCEDURES FOR VOTE TABULATIONS; (V) APPROVING FORM AND MANNER OF NOTICE OF PLAN RELEASES; (VI) ESTABLISHING DEADLINE AND PROCEDURES FOR FILING OBJECTIONS TO CONFIRMATION OF PLAN; AND (VII) GRANTING RELATED RELIEF

Gritstone bio, Inc., debtor and debtor in possession in the above-captioned chapter 11 case, respectfully submits this reply (the "Reply") to the *United States Trustee's Objection to Amended Debtor's Motion for an Order (I) Approving the Disclosure Statement; (II) Scheduling Confirmation Hearing; (III) Approving Form and Manner of Notice of Confirmation Hearing; (IV) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject Plan, Including (A) Approving Form and Content of Solicitation Materials; (B) Establishing Record Date and Approving Procedures for Distribution of Solicitation Materials; (C) Approving Forms of Ballots; (D) Establishing Voting Deadline for Receipt of Ballots and (E) Approving Procedures for Vote Tabulations; (V) Approving Form and Manner of Notice of Plan Releases;*

[1] The Debtor's mailing address is 4698 Willow Road, Pleasanton, CA 94588, and the last four digits of the Debtor's federal tax identification number is 9534.

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(VI) Establishing Deadline and Procedures for Filing Objections to Confirmation of Plan; and (VII) Granting Related Relief [Docket No. 414] (the "Objection") to the *Amended Debtor's Motion for an Order (I) Approving the Disclosure Statement; (II) Scheduling Confirmation Hearing; (III) Approving Form and Manner of Notice of Confirmation Hearing; (IV) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject Plan, Including (A) Approving Form and Content of Solicitation Materials; (B) Establishing Record Date and Approving Procedures for Distribution of Solicitation Materials; (C) Approving Forms of Ballots; (D) Establishing Voting Deadline for Receipt of Ballots and (E) Approving Procedures for Vote Tabulations; (V) Approving Form and Manner of Notice of Plan Releases; (VI) Establishing Deadline and Procedures for Filing Objections to Confirmation of Plan; and (VII) Granting Related Relief* [Docket No. 387] (the "Motion") seeking, among other things, approval of the Disclosure Statement.

PRELIMINARY STATEMENT

The Debtor's *Chapter 11 Plan of Reorganization* [D.I. 354] (the "Plan") and its related disclosure statement [D.I. 355] (the "Disclosure Statement")[2] reflect a global resolution that was heavily negotiated among the Debtor, the Official Committee of Unsecured Creditors (the "Committee"), the Debtor's Prepetition Lenders, and DIP Lenders. At the previous hearing before the Court, the Debtor announced that it had reached a resolution on the economic terms of a plan but that certain trust governance issues remained unresolved between the Committee and the Prepetition Lenders, who hold a substantial unsecured deficiency claim. The trust governance issues have since been resolved and the terms of the global resolution among all the parties have been embodied in the Plan. Contemporaneous with filing the Reply, the Debtor is filing redlined

[2] Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Motion, Plan and Disclosure Statement, as applicable.

versions of the Plan and Disclosure Statement showing the changes regarding the global resolution as well as other conforming changes. The Plan provides a recovery for unsecured creditors beyond what would be distributed in a liquidation and, importantly, reorganizes the Debtor, thereby preserving important scientific advances.

The Office of the United States Trustee (the "U.S. Trustee") is the only party that objected to the Debtor's Disclosure Statement. The principal issue raised by the U.S. Trustee is to the third-party release that applies *only* to creditors who affirmatively vote to accept the Plan and do not make an election to opt out of the release. Courts have consistently held that an express manifestation of consent is shown by a creditor who affirmatively votes to accept a plan and does not elect to opt out of the release. Notwithstanding the precedent in this District and before this Court, the U.S. Trustee attempts to redefine "consent" in these circumstances.

In the Preliminary Statement of its Objection, the U.S. Trustee argues, incorrectly, that the Plan is unconfirmable on its face because it believes that treating a vote in favor of the Plan as a consent to a release is inconsistent with state law and that an injunction enforcing the third-party release and exculpation is unsupportable. To the contrary, the third-party release proposed in the Plan -- which is *only* applicable to Holders who vote to accept the Plan and also elect not to opt out -- is consensual and consistent with rulings made in in courts in this District and other districts. To be clear, Holders that vote to accept the Plan are not required to provide a release. Any such Holder is free to vote to accept the Plan and also make an election on the ballot to opt out of the release. The U.S. Trustee attempts to redefine consent in a manner that is not consistent with rulings in this District and others. In fact, there is no ruling in this District of which the Debtor is aware that has adopted the U.S. Trustee's approach on this issue.

Additionally, courts approving third-party releases have determined that a plan injunction is a necessary corollary to such relief.

The Plan and, in particular, the narrowly crafted consensual third-party release, comply with appliable law. The Plan, in its current form, is confirmable. All parties that have an economic stake in this Chapter 11 Case have agreed on a path forward. No creditor has objected to the Disclosure Statement. The U.S. Trustee's Objection should be overruled.

ARGUMENT

I. THE THIRD-PARTY RELEASES ARE CONSENSUAL AND COMPLY WITH APPLICABLE LAW

Prior to the filing of the Objection, the Debtor and the U.S. Trustee engaged in constructive dialogue regarding the Disclosure Statement Order, the Plan, and Disclosure Statement. Throughout this case, the parties have been able to consensually resolve certain disputed issues.[3] However, the Debtor has been unable to come to terms with the U.S. Trustee regarding the process through which the Plan may implement a consensual third-party release.

The U.S. Trustee objects to the Plan with respect to the releases by Holders of Claims and Interests (the "Third-Party Release") provided thereunder upon the occurrence of the Effective Date. Holders of Claims are not required to give a Third-Party Release. Holders of Claims that vote to accept the Plan are free to opt out of the Third-Party Release by making a simple election on the ballot form in the exact same manner when voting to accept the Plan (i.e., by checking a box). The U.S. Trustee calls the Third-Party Release non-consensual when, in

[3] The Debtor filed an *Amended Debtor's Motion for an Order (I) Approving the Disclosure Statement; (II) Scheduling Confirmation Hearing; (III) Approving Form and Manner of Notice of Confirmation Hearing; (IV) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject Plan, Including (A) Approving Form and Content of Solicitation Materials; (B) Establishing Record Date and Approving Procedures for Distribution of Solicitation Materials; (C) Approving Forms of Ballots; (D) Establishing Voting Deadline for Receipt of Ballots and (E) Approving Procedures for Vote Tabulations; (V) Approving Form and Manner of Notice of Plan Releases; (VI) Establishing Deadline and Procedures for Filing Objections to Confirmation of Plan; and (VII) Granting Related Relief* [Filed: 01/29/25] (Docket No. 387) to clarify certain issues.

fact, this Court and other courts have found releases implemented through similar means to be consensual.

Under the Plan, a vote to accept the Plan constitutes acceptance of the Third-Party Release unless the Holder elects to opt out of the Third-Party Release by checking a box on the ballot. This structure is not novel and is a common feature of chapter 11 plans filed in this District and elsewhere. Notwithstanding applicable precedent, the U.S. Trustee states that providing an opt-out to Holders who vote in favor of the Plan renders the Third-Party Release nonconsensual even when such Holders are free to opt out by checking a box. The U.S. Trustee's position is that only an opt-in process would make a plan's releases consensual. However, there is no requirement under the Bankruptcy Code, the Bankruptcy Rules, or other applicable law that creditors who are affirmatively voting for a Plan be given such an opportunity when they are free to opt out as they are here.

The proposed Third-Party Release is narrowly structured and only applies to parties who vote in favor of the Plan and elect not to opt out by simply checking a box on the face of the ballot. All nonvoting Classes are exempt from the Third-Party Release. Any party who is entitled to vote and who does not return a ballot is ***not*** subject to the Third-Party Release. Voting creditors are provided with clear and conspicuous information about the effect of voting in favor of the Plan and with a clear and conspicuous opportunity to make an election to opt out of the Third-Party Release. This format – which clearly informs creditors of the nature and extent of the release and the election mechanism for opting out of such release -- has been determined to be consensual by this Court and others. The Debtor has structured the releases in the Plan carefully, mindful of this Court's view and applicable precedent.

Applicable law provides that a chapter 11 plan is a binding contract with respect to those who vote in favor of it. *In re Coram Healthcare Corp.*, 315 B.R. 321, 336 (Bankr. D. Del. 2004) ("[T]o the extent creditors or shareholders voted in favor of the [plan], which provides for the release of claims they may have against the Noteholders, they are bound by that."); *see also In re Indianapolis Downs, LLC*, 486 B.R. 286, 305 (Bankr. D. Del 2013) ("Courts in this jurisdiction have consistently held that a plan may provide for a release of third-party claims against a non-debtor upon consent of the party affected."). The Debtor's proposed ballots prominently and conspicuously display in bold, capital letters that acceptance of the Plan is also an acceptance of the release of the Released Parties identified in the Plan and Disclosure Statement, and if a creditor votes to reject the Plan or does not return a ballot, it will not be subject to any such release. The ballots also provide creditors with the opportunity to make an election to opt out of the Third-Party Release even if they vote to accept the Plan. Accordingly, creditors who vote in favor of the Plan (a) will be fully aware of the consequences of that decision and will have provided their consent, and (b) have an opportunity to make an election to opt out of the Third-Party Release.

The U.S. Trustee argues that the Third-Party Release is now disallowed by the Supreme Court's recent decision in *Harrington v. Purdue Pharma, L.P.*, 144 S. Ct. 2071 (2024), because it is not consensual. To reach this conclusion, the U.S. Trustee misinterprets and misapplies *Purdue*, asserting that the decision mandates revisiting what constitutes "consent." Specifically, the U.S. Trustee contends that a Releasing Party's failure to opt out of the Third-Party Release is insufficient to demonstrate consent, arguing that an affirmative act with respect to the release (not just the plan vote) is required.

Contrary to the U.S. Trustee's assertions, the Supreme Court expressly did not opine on consensual third-party releases in *Purdue* and only addressed whether a bankruptcy court may approve a plan of reorganization with a release and injunction that extinguishes claims against non-debtor third parties ***without the consent of affected claimants***, holding that it may not. *Purdue,* 144 S. Ct. at 2088. The Supreme Court could not have been clearer: "Nothing in what we have said should be construed to call into question consensual third-party releases offered in connection with a bankruptcy reorganization plan." *Id*. at 2087–88.

Courts in this District have permitted third party releases like those contained in the Plan prior to the Supreme Court's decision in *Purdue. See, e.g., In re Clovis Oncology, Inc.*, Case No. 22-11292 (JKS) (Bankr. D. Del. June 16, 2023) (D.I. 904); *In re Alpha Latam Mgmt., LLC,* Case No. 21-11109 (JKS) (Bankr. D. Del. Mar. 16, 2022) (D.I. 652); *In re Mallinckrodt plc*, 639 B.R. 837, 879-80 (Bankr. D. Del. 2022); *In re Indianapolis Downs, LLC*, 486 B.R. 286, 304-05 (Bankr. D. Del. 2013). By its express terms, *Purdue* did not change the law on consensual third-party releases.

Since the *Purdue* decision, courts in this District have permitted opt-out releases virtually identical to the limited opt-out releases proposed here, finding that such releases are consensual. *See, e.g., In re True Value Company, L.L.C. et al.,* Case No. 24-12337(KBO); (Bankr. D. Del. Feb, 11, 2025); *In re Number Holdings, Inc.*, Case No. 24-10719 (JKS) (Bankr. D. Del. Dec. 20, 2024) (D.I. 1612); *In re Fisker, Inc.*, Case No. 24-11390 (TMH) (Bankr. D. Del. Oct. 16, 2024) (D.I. 722); *In re Wheel Pros, LLC,* Case No. 24-11939 (JTD) (Bankr. D. Del. Oct. 15, 2024) (D.I. 255); *In re FTX Trading Ltd.*, Case No. 22-11068 (JTD) (Bankr. D. Del. Oct. 8, 2024) (D.I. 26404); *In re Smallhold, Inc*., 665 B.R. 704, 720 (Bankr. D. Del. Sept. 25, 2024) (affirmative act of voting, coupled with clear and conspicuous disclosure and instructions about the

consequences of the vote and a simple mechanism for opting out, is a sufficient expression of consent to bind the creditor to the release under ordinary contract principles); *In re Jambys, Inc., et al*, No. 24-10913 (KBO) (Bankr. D. Del. Sept. 10, 2024), Hr'g Tr. Sept. 10, 2024, 57:17-58:15 ("The question here is narrow, I submit, and it's whether a vote in favor of the plan and the creditor who voted in favor of the plan's failure to check the box to opt out of the release is ***sufficient manifestation of affirmative consent*** . . . [t]hey took affirmative steps here.") (emphasis added); *In re GigaMonster Networks, LLC*, Case No. 23-10051 (JKS) (Bankr. D. Del. Aug. 30, 2024) (D.I. 830). *In re AeroCision Parent LLC, et al.*, Case No. 23-11032 (KBO) (Bankr. D. Del. March 4. 2024) (D.I. 357). (holders of claims and interests who vote to accept the plan were releasing parties); *In re Pennsylvania Real Estate Investment Trust*, Case No. 23-11974 (KBO) (Bankr. D. Del. Jan. 23, 2024)(D.I. 193). (voting creditors who returned a ballot, accepted the plan and failed to opt out of the release consented to the release); *In re Lucky Bucks, LLC, et al.* Case No. 23-10758 (KBO) (Bankr. D. Del. Jul 28, 2023)(D.I. 214)(opt-out release was consensual).

The U.S. Trustee argues that "silence cannot manifest consent." Objection at 13. The Plan and proposed solicitation procedures honor that principal – those that vote to reject the Plan, do not vote, or do not return a ballot are not required to make an election to opt out of the release. But what is proposed here is not silence – an accepting creditor must take the affirmative act of reading the ballot, making the choices on the ballot that include whether to accept or reject the Plan and whether to make an election to opt out of the Third-Party Release. Only those that vote to accept and do not elect to opt out by actively checking a box on the ballot are providing consent to the release. The voting process requires each Holder to make an affirmative decision to accept and to opt out, neither of which are required.

Finally, the U.S. Trustee argues that "merely voting to approve a plan is not an expression of consent to a non-debtor release." Objection at 15. The Plan also honors this principal – it is not the mere act of affirmatively voting for the Plan that is deemed consent here – it is voting ***combined*** with the choice to not opt out**.** The U.S. Trustee goes to great lengths to argue that Judge Goldblatt's well-reasoned decision in *Smallhold* on this issue is incorrect, relying principally on the Restatement of Contracts. What the Court approved in *Smallhold* goes beyond what is requested here (any voting creditor was bound if they returned a ballot and did not opt out). The U.S. Trustee fails to acknowledge that, in this case, Holders of Claims are presented with a conspicuous option to make an election to opt out of the Third-Party Release. The U.S. Trustee cites a number of cases where the act of voting on the Plan is the only operative act. Here, the act of ***accepting*** the Plan is the operative act, but the other act is choosing not to make an election to opt out– and the distinction is important. That distinction has been acknowledged by this Court in other recent cases in approving virtually identical releases and should likewise be approved here.

Based on the foregoing, the presence of the Third-Party Release as presently constituted does not render the Plan patently unconfirmable. The balloting process for the Third-Party Release is warranted under these circumstances, permitted by applicable law, and should be approved as proposed.

II. THE U.S. TRUSTEE'S OTHER OBJECTIONS SHOULD BE OVERRULED

The other objections raised by the U.S. Trustee should be overruled. First, like in other recent cases where the U.S. Trustee pursued nearly identical arguments, the U.S. Trustee also argues that the Court should not grant the injunction enforcing the Third-Party Release. *See* Objection ¶¶ 79-83. As this Court noted in *Gigamonster*, in the event the Third-Party Release is deemed to be valid and consensual, the injunction provision is a form of "belts and suspenders"

and merely provides practical support for the release and should be approved. *See In re Gigamonster*, Case No. 23-10051 (JKS) (Bankr. D. Del. Aug. 27, 2024), Hr'g Tr., Aug. 27, 2024, 38: 13-14; 67:12-15 ("With respect to the injunction, as proposed the injunction provision simply reinforces the third-party release. So, I will overrule the United States Trustee's objection."). Other recent rulings have reached the same conclusion and approved similar injunction provisions over objections from the U.S. Trustee. *See e.g. In re Wheel Pros, LLC*, Case No. 24-11939 (JTD) (Bankr. D. Del. Oct. 15, 2024) (D.I. 255) (approving injunction preventing actions against "Released Parties" over the objection of the U.S. Trustee); *In re Fisker, Inc*., Case No. 24-11390 (TMH) (Bankr. D. Del. Oct. 16, 2024) (D.I. 722) (same).

Finally, the U.S. Trustee argues that the Disclosure Statement and Plan do not identify all parties who will be the recipients of Third-Party Releases. To the contrary, the definition of "Released Parties" includes the Debtor, the Estate, the Committee, each of the DIP Lenders, the DIP Agent, each of the Prepetition Lenders, each of the Prepetition Agent and each of their respective successors and current and former control persons, trustees or beneficiaries, direct or indirect shareholders or members, officers, directors, employees, affiliates, principals and agents (and each of their respective attorneys, consultants, financial advisors, investment bankers, accountants, and other retained professionals), in each case solely in their capacities as such. *See* Objection ¶ 23. The Disclosure Statement and Plan clearly state that the Released Parties are being released and are granting consensual releases solely in their capacity as such. *See* Plan §§ X(C).

The Plan and Disclosure Statement are a result of arms-length negotiations among the Debtor, its lenders, and the Committee. The Debtor's DIP Lender, which is not being paid in full, is the plan sponsor and is providing value to the unsecured creditors that would not be

received in a liquidation. The consensual releases of the Released Parties are part of the overall global resolution.

The definition of Released Parties is not vague, and courts in this District have routinely approved third-party releases that apply to persons identified only by categories, such as agents, advisors, consultants, and other professionals. *See Gigamonster*, Hrg. Tr. 66:4–7 ("The scope for the third-party release limits the definition of related persons. The provision [of 'Released Parties,' which includes 'agents . . . attorneys, accountants, investment bankers, investment advisors, investment managers, consultants, representatives, and other professionals, advisors'] is consistent with definitions used in other cases in this district."); *In re Fisker, Inc*., Case No. 24-11390 (TMH) (Bankr. D. Del. Oct. 16, 2024) (D.I. 722); *In re NVN Liquidation, Inc.* (f/k/a NOVAN, INC.), Case No. 23-10937 (LSS) (Bankr. D. Del. Jan. 26, 2024) (D.I. 568); *In re Wheel Pros, LLC,* Case No. 24-11939 (JTD) (Bankr. D. Del. Oct. 15, 2024) (D.I. 255).

The Debtor is unaware of specific claims of individual creditors that would be subject to the Third-Party Release. In fact, the claims under the securities class action (which are subject to pending motions to dismiss) have been brought by shareholders that are not subject to the Third-Party Release as they are not voting parties. The derivative actions and any other claims against officers and directors (who are "Excluded Parties") held by the Debtor and its Estate, are each being preserved under the Plan for pursuit by the Liquidating Trustee.

III. PLAN MODIFICATIONS TO REFLECT GLOBAL RESOLUTION

As set forth above, the Debtor is filing, contemporaneous with the filing of this Reply, revised versions of the Plan and Disclosure Statement that reflect the global resolution reached among the parties. These revisions principally relate to the agreements between the Committee and the Prepetition Secured Lenders regarding trust governance. The revised Disclosure Statement also contains additional information about the Third-Party Release. The Debtor also

filed the Liquidation Analysis on February 7, 2025 [D.I. 413] and has included further information about plan feasibility in the revised Disclosure Statement and will include additional information in the Plan Supplement.

CONCLUSION

For the foregoing reasons, the Court should overrule the Objection in its entirety and approve the Disclosure Statement.

Dated: February 11, 2025

PACHULSKI STANG ZIEHL & JONES LLP

/s/ James E. O'Neill

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