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*Proposed Co-Counsel to the Debtors and  
Debtors in Possession*

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Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

In re:

INVITAE CORPORATION, *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 24-11362 (MBK)

(Jointly Administered)

**NOTICE OF HEARING ON DEBTORS’  
MOTION FOR ENTRY OF AN ORDER APPROVING  
(I) THE ADEQUACY OF THE DISCLOSURE STATEMENT,  
(II) THE SOLICITATION AND VOTING PROCEDURES,  
(III) THE FORMS OF BALLOTS AND NOTICES IN CONNECTION  
THEREWITH, AND (IV) CERTAIN DATES WITH RESPECT THERETO**

<sup>1</sup> The last four digits of Debtor Invitae Corporation’s tax identification number are 1898. A complete list of the Debtors in these chapter 11 cases and each such Debtor’s tax identification number may be obtained on the website of the Debtors’ claims and noticing agent at [www.kccollc.net/invitae](http://www.kccollc.net/invitae). The Debtors’ service address in these chapter 11 cases is 1400 16<sup>th</sup> Street, San Francisco, California 94103.



**PLEASE TAKE NOTICE** that a hearing on the *Debtors' Motion for Entry of an Order Approving (I) the Adequacy of the Disclosure Statement, (II) the Solicitation and Voting Procedures, (III) the Forms of Ballots and Notices in Connection Therewith, and (IV) Certain Dates with Respect Thereto* (the "Disclosure Statement Motion") will be held on **June 11, 2024 at 10 a.m. (prevailing Eastern Time)** or as soon thereafter as counsel may be heard (the "Hearing"), before the Honorable Chief Judge Michael B. Kaplan, Clarkson S. Fisher United States Courthouse, 402 East State Street, Second Floor, Courtroom 8, Trenton, NJ 08608.

**PLEASE TAKE FURTHER NOTICE** that the Disclosure Statement Motion sets forth the relevant factual bases upon which the relief requested should be granted. A proposed Order granting the relief requested in the Disclosure Statement Motion is also submitted herewith.

**PLEASE TAKE FURTHER NOTICE** that Objections, if any, to the relief requested in the Disclosure Statement Motion shall: (a) be in writing; (b) state with particularity the basis of the objection; and (c) be filed with the Clerk of the United States Bankruptcy Court electronically by attorneys who regularly practice before the Bankruptcy Court in accordance with the General Order Regarding Electronic Means for Filing, Signing, and Verification of Documents dated March 27, 2002 (the "General Order") and the Commentary Supplementing Administrative Procedures dated as of March 2004 (the "Supplemental Commentary") (the General Order, the Supplemental Commentary and the User's Manual for the Electronic Case Filing System can be found at [www.njb.uscourts.gov](http://www.njb.uscourts.gov), the official website for the Bankruptcy Court) and, by all other parties-in-interest, on CD-ROM in Portable Document Format (PDF), and shall be served in accordance with the General Order and the Supplemental Commentary, so as to be received on or before **June 6, 2024 at 4:00 p.m. (prevailing Eastern Time)**.

**PLEASE TAKE FURTHER NOTICE** that only those responses or objections that are timely filed, served, and received will be considered at the Hearing. Failure to file a timely objection may result in entry of a final order granting the Motion as requested by the Debtors.

**PLEASE TAKE FURTHER NOTICE** that unless objections are timely filed and served, the Disclosure Statement Motion shall be decided on the papers in accordance with D.N.J. LBR 9013-3(d) and the relief requested may be granted without further notice or hearing.

**PLEASE TAKE FURTHER NOTICE** that copies of all documents filed in these chapter 11 cases may be obtained free of charge by visiting the website of Kurtzman Carson Consultants LLC at [www.kcellc.net/invitae](http://www.kcellc.net/invitae). You may also obtain copies of any pleadings by visiting the Court's website at <https://www.njb.uscourts.gov> in accordance with the procedures and fees set forth therein.

**If you have any questions regarding this notice,  
please call (866) 967-0263 (domestic) or +1 (310) 751-2663 (international),  
or submit an inquiry via [www.kcellc.net/invitae/inquiry](http://www.kcellc.net/invitae/inquiry).**

Dated: May 9, 2024

*/s/ Michael D. Sirota*

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**UNITED STATES BANKRUPTCY COURT  
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In re:  
  
INVITAE CORPORATION, *et al.*,  
  
Debtors.<sup>1</sup>

Chapter 11  
  
Case No. 24-11362 (MBK)  
  
(Jointly Administered)

<sup>1</sup> The last four digits of Debtor Invitae Corporation’s tax identification number are 1898. A complete list of the Debtors in these chapter 11 cases and each such Debtor’s tax identification number may be obtained on the website of the Debtors’ claims and noticing agent at [www.kccllc.net/invitae](http://www.kccllc.net/invitae). The Debtors’ service address in these chapter 11 cases is 1400 16<sup>th</sup> Street, San Francisco, California 94103.

**DEBTORS' MOTION FOR  
ENTRY OF AN ORDER APPROVING (I)  
THE ADEQUACY OF THE DISCLOSURE STATEMENT,  
(II) THE SOLICITATION AND VOTING PROCEDURES,  
(III) THE FORMS OF BALLOTS AND NOTICES IN CONNECTION  
THEREWITH, AND (IV) CERTAIN DATES WITH RESPECT THERETO**

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TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state the following in support of this motion (the “Motion”):<sup>2</sup>

**Relief Requested**

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Order”), granting the following relief:

- a. ***Adequacy of the Disclosure Statement.*** Approving the *Disclosure Statement Relating to the Joint Plan of Invitae Corporation and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the “Disclosure Statement”), filed contemporaneously herewith, as containing “adequate information” pursuant to section 1125 of the Bankruptcy Code;
- b. ***Solicitation and Voting Procedures.*** Approving procedures for (i) soliciting, receiving, and tabulating votes to accept or reject the Plan, (ii) voting to accept or reject the Plan, and (iii) filing objections to confirmation of the Plan (the “Solicitation and Voting Procedures”), substantially in the form attached to the Order as Exhibit 1;
- c. ***Notices of Non-Voting Status.*** Approving: (i) the form of notice to (a) Holders of Claims that are Unimpaired under the Plan and who are, pursuant to section 1126(f) of the Bankruptcy Code, conclusively presumed to accept the Plan; (b) Holders of Claims or Interests that are Impaired under the Plan and who are, pursuant to section 1126(g) of the Bankruptcy Code, conclusively deemed to reject the Plan; (c) Holders of Claims or Interests that are subject to a pending objection by the Debtors and who are not entitled to vote the disputed portion of such Claims or Interests (the “Notices of Non-Voting Status”), substantially in the form attached to

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<sup>2</sup> A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in the *Declaration of Ana Schrank, Chief Financial Officer of Invitae Corporation, in Support of Chapter 11 Filing, First Day Motions, and Access to Cash Collateral* (the “First Day Declaration”) [Docket No. 21]. Capitalized terms used but not immediately defined are defined later in this Motion, the First Day Declaration, or the *Joint Plan of Invitae Corporation and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the “Plan”).

the Order as Exhibit 2 and (ii) applicable opt-out forms (the “Opt Out Forms,” collectively, the “Notices of Non-Voting Status and Opt Out Forms”), substantially in the forms attached to the Order as Exhibit 2A, Exhibit 2B, and Exhibit 2C, including the Convenience Claim Election therein;

- d. **Ballots.** Approving the forms of ballots that the Debtors will send to Holders of Claims entitled to vote to accept or reject the Plan, substantially in the forms attached to the Order as Exhibit 3A and Exhibit 3B (the “Ballots”);
- e. **Cover Letter.** Approving the form of letter (the “Cover Letter”) that the Debtors will send to Holders of Claims entitled to vote to accept or reject the Plan recommending that such parties vote in favor of the Plan, substantially in the form attached to the Order as Exhibit 4;
- f. **Confirmation Hearing Notice.** Approving the form and manner of notice (the “Confirmation Hearing Notice”) of the Confirmation Hearing and the procedures for objecting thereto, substantially in the form attached to the Order as Exhibit 5;
- g. **Plan Supplement Notice.** Approving the notice related to the filing of the Plan Supplement, substantially in the form attached to the Order as Exhibit 6 (the “Plan Supplement Notice”);
- h. **Assumption Notice.** Approving the form of notice to counterparties to Executory Contracts and Unexpired Leases that will be assumed by the Debtors (the “Assumption Notice”), substantially in the form attached to the Order as Exhibit 7;
- i. **Solicitation Packages.** Finding that the solicitation materials and documents included in the solicitation packages (the “Solicitation Packages”) that will be sent to Holders of Claims entitled to vote to accept or reject the Plan comply with rules 2002(b) and 3017(d) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); and
- j. **Confirmation Timeline.** Establishing the following dates and deadlines with respect to Confirmation of the Plan, subject to modification as necessary (the “Confirmation Timeline”):

Event	Date	Description
Voting Record Date	June 6, 2024	The date to determine which Holders of Claims are entitled to vote to accept or reject the Plan (the “ <u>Voting Record Date</u> ”).

Event	Date	Description
Solicitation Mailing Deadline	Three (3) business days following entry of the Order (or as soon as reasonably practicable thereafter)	The deadline by which the Debtors must distribute (i) Solicitation Packages, including Ballots, to Holders of Claims entitled to vote to accept or reject the Plan and (ii) Notices of Non-Voting Status and Opt Out Forms (the “ <u>Solicitation Mailing Deadline</u> ”).
Publication Deadline	Three (3) business days following entry of the Order (or as soon as reasonably practicable thereafter)	The date by which the Debtors will submit the Confirmation Hearing Notice in a format modified for publication (such notice, the “ <u>Publication Notice</u> ,” and such date, the “ <u>Publication Deadline</u> ”).
Plan Supplement Filing Deadline	The date that is no later than seven (7) days prior to the Voting Deadline	The date by which the Debtors shall file the Plan Supplement (the “ <u>Plan Supplement Filing Deadline</u> ”).
Voting Deadline	July 15, 2024, at 4:00 p.m., prevailing Eastern Time	The deadline by which all Ballots and Opt Out Forms must be properly executed, completed, and submitted so that they are <b>actually received</b> by Kurtzman Carson Consultants LLC (the “ <u>Claims and Noticing Agent</u> ”).
Plan Objection Deadline	July 15, 2024, at 4:00 p.m., prevailing Eastern Time	The deadline by which parties in interest may file objections to confirmation of the Plan (the “ <u>Plan Objection Deadline</u> ”).
Deadline to File Voting Report	July 18, 2024	The date by which the report tabulating the voting on the Plan (the “ <u>Voting Report</u> ”) shall be filed with the Court.
Confirmation Brief and Plan Objection Reply Deadline	July 18, 2024	The deadline by which the Debtors shall file their brief in support of confirmation of the Plan and reply to objections to confirmation of the Plan.
Confirmation Hearing Date	July 22, 2024, or such other date as may be scheduled by the Court	The date of the Confirmation Hearing (the “ <u>Confirmation Hearing Date</u> ”).

**Jurisdiction and Venue**

2. The United States Bankruptcy Court for the District of New Jersey (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11*, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.). The Debtors confirm their consent to the Court entering a final order in connection with this Motion to the extent that it is later determined that the Court,



absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105, 363, 502, 1123(a), 1125, 1126, and 1128 of the Bankruptcy Code, rules 2002, 3001, 3016, 3017, 3018, 3020, 6004, and 9006 of the Bankruptcy Rules, and rules 3016-1, 3018-1, and 9013-1 of the Local Bankruptcy Rules for the District of New Jersey (the “Local Rules”).

### **Background**

5. On February 13, 2024 (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. A detailed description of the Debtors, their businesses, and the facts and circumstances supporting the Debtors’ chapter 11 cases are set forth in greater detail in the First Day Declaration and incorporated by reference herein.

6. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On February 16, 2024, the Court entered an order [Docket No. 54] authorizing procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). On March 1, 2024, the United States Trustee for the District of New Jersey (the “U.S. Trustee”) appointed an official committee of unsecured creditors (the “Unsecured Creditors’ Committee”) [Docket No. 131] pursuant to section 1102 of the Bankruptcy Code.

### **Summary of the Plan**

7. The Plan classifies Holders of Claims and Interests into the following Classes of Claims or Interest for all purposes, including with respect to voting and distributions under the Plan:

Class	Claim/Interest	Treatment of Claim/ Interest	Status	Voting Rights
1	Other Secured Claims	Except to the extent that a Holder of an Allowed Other Secured Claim agrees to a less favorable treatment, on the Effective Date, each Holder of an Allowed Other Secured Claim shall receive, at the Debtors' option with the consent of the Required Consenting Stakeholders (not to be unreasonably withheld, conditioned or delayed): (i) payment in full in cash in an amount equal to its Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, or (iii) such other treatment rendering its Allowed Other Secured Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code.	Unimpaired	Not Entitled to Vote (Presumed to Accept)
2	Other Priority Claims	Except to the extent that a Holder of an Allowed Other Priority Claim agrees to a less favorable treatment, each Holder of an Allowed Other Priority Claim shall be paid in full in Cash on the Effective Date, or otherwise receive treatment consistent with the provisions of section 1129(a) of the Bankruptcy Code reasonably acceptable to the Required Consenting Stakeholders.	Unimpaired	Not Entitled to Vote (Presumed to Accept)
3	2028 Senior Secured Notes Claims	Except to the extent that a Holder of an Allowed 2028 Senior Secured Notes Claim agrees to a less favorable treatment, each Holder of an Allowed 2028 Senior Secured Notes Claim (which shall include interest, fees and all other amounts due and owing under the 2028 Senior Secured Notes Indenture) shall receive on the Effective Date (or such other applicable date) its Pro Rata share of Distributable Value (including Residual Cash) following payment in full of Claims in Classes 1, 2, 4, and 5.	Impaired	Entitled to Vote
4	Convenience Class Claims	Except to the extent that a Holder of an Allowed Convenience Class Claim by amount or election agrees to a less favorable treatment, on the Effective Date or as soon as reasonably practicable thereafter, each Holder of an Allowed Convenience Class Claim shall be paid full in Cash; <i>provided</i> , that to the extent that a Holder of a Convenience Class Claim against a Debtor holds any joint and several liability claims, guaranty claims, or other similar claims against any other Debtor arising from or relating to the same obligations or liability as such Convenience Class Claim, such Holder shall only be entitled to a distribution on one Convenience Class Claim against the Debtors in full and final satisfaction of all such Claims.	Unimpaired	Not Entitled to Vote (Presumed to Accept)

Class	Claim/Interest	Treatment of Claim/ Interest	Status	Voting Rights
5	Subsidiary Unsecured Claims	Except to the extent that a Holder of an Allowed Subsidiary Unsecured Claim agrees to a less favorable treatment, on the Effective Date or as soon as reasonably practicable thereafter, each Holder of a Subsidiary Unsecured Claim that is Allowed as of the Effective Date shall be paid in full in Cash, or otherwise receive treatment consistent with the provisions of section 1129(a) of the Bankruptcy Code; <i>provided</i> , that to the extent that a Holder of a Subsidiary Unsecured Claim against a Debtor holds any joint and several liability claims, guaranty claims, or other similar claims against any other Debtor arising from or relating to the same obligations or liability as such Subsidiary Unsecured Claim, such Holder shall only be entitled to a distribution on one Subsidiary Unsecured Claim against the Debtors in full and final satisfaction of all such Claims; <i>provided further</i> , that to the extent that a Holder of a Subsidiary Unsecured Claim against a Debtor holds any joint and several liability claims, guaranty claims, or other similar claims that constitute a Parent Unsecured Claim, such Holder shall only be entitled to a distribution on account of its Subsidiary Unsecured Claim after reduction on account of any distribution on account of its Parent Unsecured Claim.	Unimpaired	Not Entitled to Vote (Presumed to Accept)
6	Parent Unsecured Claims	Except to the extent that a Holder of an Allowed Parent Unsecured Claim agrees to a less favorable treatment, on the Effective Date or as soon as reasonably practicable thereafter, each Holder of a Parent Unsecured Claim shall receive its Pro Rata share of any Distributable Value following payment in full of Classes 1, 2, 3, 4, and 5 Claims, or such other treatment as agreed to by such Holder subject to the consent (not to be unreasonably withheld, delayed or conditioned) of the Required Consenting Stakeholders.	Impaired	Not Entitled to Vote (Deemed to Reject)
7	Intercompany Claims	On the Effective Date, Allowed Intercompany Claims shall be (i) reinstated or (ii) set off, settled, distributed, contributed, cancelled, or released, or otherwise addressed at the option of the Debtors (with the consent (not to be unreasonably withheld, delayed, or conditioned) of the Required Consenting Stakeholders), without any distribution on account of such Claims, or such other treatment as reasonably determined by the Debtors and the Required Consenting Stakeholders.	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept) / Not Entitled to Vote (Deemed to Reject)

Class	Claim/Interest	Treatment of Claim/ Interest	Status	Voting Rights
8	Intercompany Interests	On the Effective Date, Allowed Intercompany Interests shall be (i) reinstated or (ii) set off, settled, distributed, contributed, cancelled, or released, or otherwise addressed at the option of the Debtors (with the consent (not to be unreasonably withheld, delayed or conditioned) of the Required Consenting Stakeholders), without any distribution on account of such Intercompany Interests, or such other treatment as reasonably determined by the Debtors and the Required Consenting Stakeholders.	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept) / Not Entitled to Vote (Deemed to Reject)
9	Section 510(b) Claims	On the Effective Date, any Claims arising under section 510(b) of the Bankruptcy Code shall be discharged without any distribution.	Impaired	Not Entitled to Vote (Deemed to Reject)
10	Equity Interests	On the Effective Date, all Equity Interests shall be cancelled, released, extinguished, and discharged and will be of no further force or effect. Each holder of an Equity Interest shall receive no recovery or distribution on account of such Equity Interest.	Impaired	Not Entitled to Vote (Deemed to Reject)
11	Contingent Subsidiary Unsecured Claims	Except to the extent that a Holder of a Contingent Subsidiary Unsecured Claim agrees to a less favorable treatment, on the Effective Date or as soon as reasonably practicable thereafter, each Holder of a Contingent Subsidiary Unsecured Claim shall receive its Pro Rata share of any Distributable Value allocable to the applicable Debtor subsidiary following payment in full of Classes 1, 2, 3, 4, and 5 Claims, or such other treatment as agreed to by such Holder subject to consent (not to be unreasonably withheld, conditioned, or delayed) of the Required Consenting Stakeholders; <i>provided</i> , that to the extent that a Holder of a Contingent Subsidiary Unsecured Claim against a Debtor holds any joint and several liability claims, guaranty claims, or other similar claims against any other Debtor arising from or relating to the same obligations or liability as such Contingent Subsidiary Unsecured Claim, such Holder shall only be entitled to a distribution on one Contingent Subsidiary Unsecured Claim against the Debtors in full and final satisfaction of all such Claims; <i>provided further</i> , that to the extent that a Holder of a Contingent Subsidiary Unsecured Claim against a Debtor holds any joint and several liability claims, guaranty claims, or other similar claims that constitute a Parent Unsecured Claim, such Holder shall only be entitled to a distribution on account of its Contingent Subsidiary Unsecured Claim after reduction on account of any	Impaired	Not Entitled to Vote (Deemed to Reject)

Class	Claim/Interest	Treatment of Claim/ Interest	Status	Voting Rights
		distribution on account of its Parent Unsecured Claim.		

8. Based on the foregoing (and as discussed in detail herein), the Debtors are proposing to solicit votes to accept or reject the Plan from Holders of Claims in Class 3 (the “Voting Class”). The Debtors are **not** proposing to solicit votes from Holders of Claims or Interests in Classes 1, 2, 4, 5, 6, 7, 8, 9, 10, and 11 (each a “Non-Voting Class” and collectively, the “Non-Voting Classes”). Accordingly, Holders of Claims or Interests in the Non-Voting Classes will not receive a Solicitation Package but instead will receive a Notice of Non-Voting Status and Opt Out Form, except for Classes 7 and 8, which will receive neither a Solicitation Package nor a Notice of Non-Voting Status, as discussed below.

9. The Disclosure Statement provides adequate information with respect to the Plan, ensuring that Holders of Claims entitled to vote on the Plan will receive information of a kind and in sufficient detail to make an informed judgment regarding acceptance or rejection of the Plan. The proposed schedule and procedures to confirm and consummate the Plan will move these Chapter 11 Cases forward in a timely manner, in accordance with the TSA milestones, while ensuring due process and providing for the procedural safeguards mandated under the Bankruptcy Code, Bankruptcy Rules, and Local Rules. Accordingly, the Debtors respectfully submit the relief requested in this Motion should be approved.

**Basis for Relief**

**I. The Court Should Approve the Disclosure Statement.**

**A. The Standard of Approval of the Disclosure Statement.**

10. Pursuant to section 1125 of the Bankruptcy Code, the proponent of a proposed chapter 11 plan must provide “adequate information” regarding that plan to holders of impaired

claims and interests entitled to vote on the plan. 11 U.S.C. § 1125. Specifically, section 1125(a)(1) of the Bankruptcy Code provides, in relevant part, as follows:

“[A]dequate information” means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan.

11 U.S.C. § 1125(a)(1).

11. Courts in several circuits have stated that the primary purpose of a disclosure statement is to provide adequate information such that creditors and interest holders affected by a proposed plan can make an informed decision regarding whether or not to vote for the plan. *See, e.g., Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. Gen. Motors Corp.*, 337 F.3d 314, 321–22 (3d Cir. 2003) (providing that a disclosure statement must contain “adequate information to enable a creditor to make an informed judgment about the Plan” (internal quotations omitted)); *Century Glove, Inc. v. First Am. Bank of N.Y.*, 860 F.2d 94, 100 (3d Cir. 1988) (“[Section] 1125 seeks to guarantee a minimum amount of information to the creditor asked for its vote.”); *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985) (“The primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan.”); *In re Phoenix Petrol., Co.*, 278 B.R. 385, 392 (Bankr. E.D. Pa. 2001) (“[T]he general purpose of the disclosure statement is to provide ‘adequate information’ to enable ‘impaired’ classes of creditors and interest holders to make an informed judgment about the proposed plan and determine whether to vote in favor of or against that plan.”); *In re A. H. Robins Co., Inc.*, 880 F.2d 694, 696 (4th Cir. 1989) (stating that the disclosure statement must provide “information of a kind, and in sufficient detail . . . that would enable a hypothetical reasonable investor typical of

holders of claims or interests of the relevant class to make an informed judgment about the plan.”); *In re Unichem Corp.*, 72 B.R. 95, 97 (Bankr. N.D. Ill. 1987) (“The primary purpose of a disclosure statement is to provide all material information which creditors and equity security holders affected by the plan need in order to make an intelligent decision whether to vote for or against the plan.”). Congress intended that such informed judgments would be needed to both negotiate the terms of, and vote on, a chapter 11 plan. *See Century Glove*, 860 F.2d at 100.

12. “Adequate information” is a flexible standard, based on the facts and circumstances of each case. 11 U.S.C. § 1125(a)(1) (“[A]dequate information’ means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records . . . .”); *see Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988) (“From the legislative history of § 1125 we discern that adequate information will be determined by the facts and circumstances of each case.”); *In re Lisanti Foods, Inc.*, 329 B.R. 491, 507 (Bankr. D.N.J. 2005) (“The information required will necessarily be governed by the circumstances of the case.”); *In re River Vill. Assoc.*, 181 B.R. 795, 804 (E.D. Pa. 1995) (“[T]he Bankruptcy Court is thus given substantial discretion in considering the adequacy of a disclosure statement.”); *In re Phx. Petrol. Co.*, 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001) (same); *First Am. Bank of N.Y. v. Century Glove, Inc.*, 81 B.R. 274, 279 (D. Del. 1988) (noting that adequacy of disclosure for a particular debtor will be determined based on how much information is available from outside sources); S. Rep. No. 95-989, at 121 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5907 (“The information required will necessarily be governed by the circumstances of the case.”).

13. In making a determination as to whether a disclosure statement contains adequate information as required by section 1125 of the Bankruptcy Code, courts typically look for disclosures related to topics such as:

- a. the events that led to the filing of a bankruptcy petition;
- b. the relationship of the debtor with its affiliates;
- c. a description of the available assets and their value;
- d. the debtor's anticipated future performance;
- e. the source of information stated in the disclosure statement;
- f. the debtor's condition while in chapter 11;
- g. claims asserted against the debtor;
- h. the estimated return to creditors under a chapter 7 liquidation of the debtor;
- i. the future management of the debtor;
- j. the chapter 11 plan or a summary thereof;
- k. financial information, valuations, and projections relevant to a creditor's decision to accept or reject the chapter 11 plan;
- l. information relevant to the risks posed to creditors under the plan;
- m. the actual or projected realizable value from recovery of preferential or otherwise avoidable transfers;
- n. litigation likely to arise in a nonbankruptcy context; and
- o. tax attributes of the debtor.

*See In re U.S. Brass Corp.*, 194 B.R. 420, 424–25 (Bankr. E.D. Tex. 1996); *see also In re Scioto Valley Mortg. Co.*, 88 B.R. 168, 170–71 (Bankr. S.D. Ohio 1988) (listing the factors courts have considered in determining the adequacy of information provided in a disclosure statement); *In re Metrocraft Pub. Serv., Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984) (same). Disclosure regarding all topics is not necessary in every case. *See U.S. Brass*, 194 B.R. at 424; *see also Phx.*



*Petrol.*, 278 B.R. at 393 (“[C]ertain categories of information which may be necessary in one case may be omitted in another; no one list of categories will apply in every case.”).

**B. The Disclosure Statement Contains Adequate Information in Accordance with Section 1125 of the Bankruptcy Code.**

14. The Disclosure Statement provides “adequate information” to allow Holders of Allowed Claims in the Voting Class to make informed decisions about whether to vote to accept or reject the Plan. Specifically, the Disclosure Statement contains information that courts consider “adequate information,” including:

- a. ***Overview of the Plan.*** A summary of key provisions of the Plan, which are described in detail in Article III of the Disclosure Statement;
- b. ***Questions and Answers Regarding the Disclosure Statement and the Plan.*** A list commonly asked questions regarding the Disclosure Statement, Plan, and Chapter 11 Cases, which are described in detail in Article IV of the Disclosure Statement.
- c. ***Release, Injunction, and Exculpation Provisions of the Plan.*** A description of the entities subject to an injunction under the Plan and the acts that they are enjoined from pursuing, including bolded language related to the Debtors’ Release, Third-Party Release, Exculpation, and Injunction, and a description of the completed Investigation the conclusions in connection therewith, which are described in Article IV.M of the Disclosure Statement;
- d. ***Solicitation and Voting Procedures.*** A description of the procedures for soliciting votes to accept or reject the Plan and voting on the Plan, which are described in Article V of the Disclosure Statement;
- e. ***Confirmation of the Plan.*** Confirmation procedures and statutory requirements for Confirmation and Consummation of the Plan, which are described in Article VI of the Disclosure Statement;
- f. ***The Debtors’ Business Operations and Capital Structure.*** An overview of the Debtors’ corporate history, business operations, assets, organizational structure, and capital structure, which are described in detail in Article VII of the Disclosure Statement;
- g. ***Events Leading to these Chapter 11 Cases.*** An overview of the events leading to the commencement of the Debtors’ Chapter 11 Cases, which are described in detail in Article VIII of the Disclosure Statement;

- h. *Events of the Chapter 11 Cases.* An overview of key components of the Debtors’ restructuring and Chapter 11 Cases, which are described in detail in Article IX of the Disclosure Statement;
- i. *Risk Factors.* Certain risks associated with the Debtors’ businesses, as well as certain risks associated with forward-looking statements and an overall disclaimer as to the information provided by and set forth in the Disclosure Statement, which are described in Article X of the Disclosure Statement;
- j. *Certain United States Federal Tax Consequences of the Plan.* A description of certain U.S. federal income tax law consequences of the Plan, which are described in Article XI of the Disclosure Statement;
- k. *Recommendation of the Debtors.* A recommendation by the Debtors that Holders of Claims in the Voting Class should vote to accept the Plan, stated in Article XII of the Disclosure Statement; and
- l. *Liquidation Analysis.* A liquidation analysis is attached to the Disclosure Statement as Exhibit C.

15. Based on the foregoing, the Debtors submit, that the Disclosure Statement complies with all aspects of section 1125 of the Bankruptcy Code and addresses the information set forth above in a manner that provides adequate information to Holders of Claims entitled to vote to accept or reject the Plan. Accordingly, the Debtors submit that the Disclosure Statement contains “adequate information” and therefore should be approved.

**C. The Disclosure Statement Provides Sufficient Notice of Release, Exculpation, and Injunction Provisions in the Plan.**

16. Bankruptcy Rule 3016(c) requires that, if a plan provides for an injunction against conduct not otherwise enjoined under the Bankruptcy Code, the plan and disclosure statement must describe, in specific and conspicuous language, the acts to be enjoined and the entities subject to the injunction. Fed. R. Bankr. P. 3016(c).

17. Article VIII of the Plan and Article IV.M of the Disclosure Statement describe in detail the entities that may be subject to an injunction under the Plan and Disclosure Statement and the acts that they may be enjoined from pursuing including bolded language related to the Debtor

Release, Third-Party Release, Exculpation, and Injunction. Further, the language in Article VIII.B-F of the Plan and Article IV.M of the Disclosure Statement is in bold, making it conspicuous to anyone who reads it. Accordingly, the Debtors respectfully submit that the Disclosure Statement complies with Bankruptcy Rule 3016(c) by conspicuously describing the conduct and parties that may be enjoined by the Plan.

**D. The Disclosure Statement Provides for Sufficient Notice of the Convenience Claim Election.**

18. The Plan provides treatment for Convenience Class Claims for (a) all Allowed General Unsecured Claims in an amount less than \$250,000 that is not a (i) 2024 Convertible Notes Claim, (ii) 2028 Convertible Notes Claim, or (iii) Contingent Subsidiary Unsecured Claim, and (b) all Allowed General Unsecured Claims where a Holder of such Claim elects on its Opt Out Form to treat their Claim as a Convenience Class Claim, including, if applicable, reducing its Allowed General Unsecured Claim to \$250,000. As set forth in the Plan and described in Article IV.G of the Disclosure Statement, the Plan provides that Holders of Convenience Class Claims will receive a one-time Cash payment of their Allowed Convenience Class Claims (the “Convenience Class Claim Recovery”) and will be treated as a Class 4 Convenience Class Claim (the “Convenience Class Claim Election”). Holders of Allowed Convenience Class Claims and Holders making the Convenience Claim Election will not be entitled to additional distributions and may not revoke their Convenience Class Claim Election.

**II. The Court Should Approve the Ballots, the Confirmation Timeline, and the Forms of Notices Related to Solicitation.**

**A. The Court Should Approve the Voting Record Date, Solicitation Mailing Deadline, and Voting Deadline.**

19. Bankruptcy Rule 3017(d) provides that, for the purposes of soliciting votes in connection with the confirmation of a plan, “creditors and equity security holders shall include

holders of stocks, bonds, debentures, notes, and other securities of record on the date the order approving the disclosure statement is entered or another date fixed by the court, for cause, after notice and a hearing.” Fed. R. Bankr. P. 3017(d). Bankruptcy Rule 3018(a) contains a similar provision regarding determination of the record date for voting purposes. Fed. R. Bankr. P. 3018(a). Additionally, Bankruptcy Rule 3017(c) provides that before approving the disclosure statement, the Court must fix a time within which the holders of claims and interests may accept or reject a plan and may fix a date for the hearing on confirmation of a plan. *See* Fed. R. Bankr. P. 3017(c).

20. The Debtors request that the Court exercise its authority under Local Rule 3018-1 and Bankruptcy Rules 3017(c), 3017(d), and 3018(a) to establish, subject to the Court’s availability, (i) **June 6, 2024**, as the Voting Record Date; (ii) **three (3) business days following the entry of the Order** (or as soon as reasonably practicable thereafter), as the Solicitation Mailing Deadline; and (iii) **July 15, 2024 at 4:00 p.m., prevailing Eastern Time**, as the Voting Deadline. Moreover, the Debtors propose that, with respect to any transferred Claim, the transferee shall be entitled to receive a Solicitation Package and, if the Holder of such Claim is entitled to vote with respect to the Plan, cast a Ballot on account of such Claim only if: (a) all actions necessary to effectuate the transfer of the Claim pursuant to Bankruptcy Rule 3001(e) have been completed by the Voting Record Date or (b) the transferee files by the Voting Record Date (i) the documentation required by Bankruptcy Rule 3001(e) to evidence the transfer and (ii) a sworn statement of the transferor supporting the validity of the transfer. In the event a Claim is transferred after the Voting Record Date, the transferee of such Claim shall be bound by any vote on the Plan made by the Holder of such Claim as of the Voting Record Date.

21. The Debtors request that, after the Debtors distribute Solicitation Packages to Holders of Claims entitled to vote on the Plan, the Court require that all Holders of Claims entitled to vote on the Plan complete and submit their Ballots so that they are **actually received** by the Claims and Noticing Agent on or before the Voting Deadline. Similarly, Holders of Claims or Interests who wish to opt out of the Third-Party Release must complete and submit the Opt Out Form so that it is **actually received** by the Claims and Noticing Agent on or before the Voting Deadline.

22. The foregoing timing and materials will afford Holders of Claims entitled to vote on the Plan at least twenty-eight (28) days to review and analyze such materials and subsequently make an informed decision as to whether to vote to accept or reject the Plan before the Voting Deadline consistent with the requirements of the applicable Bankruptcy Rules.<sup>3</sup> Accordingly, the Debtors request that the Court approve the form of, and the Debtors' proposed procedures for distributing, the Solicitation Packages to the Holders of Claims in the Voting Class and the deadline for Holders of Claims and Interests to vote to accept or reject the Plan and/or return Opt Out Forms, as applicable.

**B. The Court Should Approve the Forms of the Ballots.**

23. Bankruptcy Rule 3018(c) requires that “[a]n acceptance or rejection shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security holder or an authorized agent, and conform to the appropriate Official Form.” Fed. R. Bankr. P. 3018(c). In accordance with Bankruptcy Rule 3018(c), the Debtors have

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<sup>3</sup> See Fed. R. Bankr. P. 3017(d) (after approval of a disclosure statement, the debtor must transmit the plan, the approved disclosure statement, a notice of the time within which acceptances and rejections of such plan may be filed, and any other information that the court may direct to certain holders of claims). Nonetheless, the Debtors request authority to extend the Voting Deadline in their sole discretion and without further order of the Court.

prepared and customized the Ballots. Although based on Official Form B 314, the Ballots have been modified to (a) address the particular circumstances of these Chapter 11 Cases and (b) include certain additional information that is relevant and appropriate for Claims in the Voting Class. The proposed Ballot for the Voting Class are annexed as Exhibit 3A and Exhibit 3B to the Order. The Debtors respectfully submit that the forms of the Ballot comply with Bankruptcy Rule 3018(c) and, therefore, should be approved.

**C. The Court Should Approve the Form and Distribution of the Solicitation Packages to Holders of Claims Entitled to Vote on the Plan.**

24. Bankruptcy Rule 3017(d) specifies the materials to be distributed to holders of allowed claims and/or equity interests upon approval of a disclosure statement, including the court-approved plan and disclosure statement and notice of the time within which acceptances and rejections of the plan may be filed. Fed. R. Bankr. P. 3017(d).

25. In accordance with this requirement, the Debtors propose to send the Solicitation Packages to provide Holders of Claims in the Voting Class with the information they need to be able to make informed decisions with respect to how to vote on the Plan. Specifically, on or before the Solicitation Mailing Deadline, the Debtors will cause the Solicitation Packages to be distributed by e-mail, where available, and/or first-class mail through the Claims and Noticing Agent to such Holders of Claims in the Voting Class.

26. Each Solicitation Package will include the following materials, as applicable:

- a. a copy of the Solicitation and Voting Procedures, substantially in the form attached to the Order as Exhibit 1;
- b. the applicable forms of Ballots, substantially in the forms attached to the Order as Exhibit 3A and Exhibit 3B together with detailed voting instructions and instructions on how to submit the Ballots;
- c. the Cover Letter, substantially in the form attached to the Order as Exhibit 4, which describes the contents of the Solicitation Package and urges Holders of Claims in the Voting Class to vote to accept the Plan;

- d. the Confirmation Hearing Notice, substantially in the form attached to the Order as Exhibit 5;
- e. the Disclosure Statement (and exhibits thereto, including the Plan);
- f. the Order granting the relief requested herein (without exhibits, except for the Solicitation and Voting Procedures);
- g. a pre-addressed, postage pre-paid reply envelope;<sup>4</sup> and
- h. any additional documents that the Court has ordered to be made available to Holders of Claims in the Voting Class.

27. The Debtors request that they be authorized to distribute the Plan, the Disclosure Statement, and the Order (without exhibits, except for the Solicitation and Voting Procedures) to Holders of Claims entitled to vote on the Plan in electronic format (*i.e.*, via e-mail, hyperlink and/or on a flash drive, as applicable). The Ballot, the Cover Letter, the Solicitation and Voting Procedures, and the Confirmation Hearing Notice will be provided in electronic format for those parties receiving service by e-mail, and paper format for those parties receiving service by first-class mail. Distribution in this manner will translate into significant monetary savings for the Debtors' estates (the Plan, the Disclosure Statement, and the proposed Order, collectively, are over 150 pages) by reducing printing and postage costs. Bankruptcy courts in this district have permitted debtors to transmit solicitation documents in electronic format in other large chapter 11 cases in the interest of saving printing and mailing costs. *See, e.g., In re WeWork, Inc., No. 23-19865* (JKS) (Bankr. D.N.J. April 29, 2024) (authorizing the debtors to distribute solicitation packages in electronic format by e-mail on a conditional basis); *In re Thrasio Holdings, Inc., No. 24-11840* (CMG) (Bankr. D.N.J. Apr. 18, 2024) (authorizing the debtors to distribute solicitation packages in electronic format by e-mail); *In re Caresmatic Brands, LLC, No. 24-10561* (VFP)

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<sup>4</sup> The Debtors will provide pre-addressed, postage pre-paid reply envelopes only to those holders who receive a Ballot directly from the Debtors and shall not be responsible for ensuring individual Beneficial Holders receive pre-addressed, postage pre-paid reply envelopes from their respective Nominees.

(Bankr. D.N.J. Apr. 18, 2024) (same); *In re Rite Aid Corp.*, No. 23-18993 (MBK) (Bankr. D.N.J. Mar. 18, 2024) (same); *In re Cyxtera Techs., Inc.*, No. 23-14853 (JKS) (Bankr. D.N.J. Sept. 26, 2023) (same). Accordingly, the Debtors believe that their proposed notice and service procedures are in the best interest of the Debtors and their stakeholders and maximize recoveries under the Plan.

28. Additionally, the Debtors will provide complete Solicitation Packages (excluding the Ballots) to the U.S. Trustee (in paper format) and all parties on the Master Service List (in electronic form) as of the Voting Record Date. Any party that receives the materials in electronic format but would prefer paper format may contact the Claims and Noticing Agent and request paper copies of the corresponding materials previously received in electronic format (to be provided at the Debtors' expense). The Debtors will not provide Solicitation Packages to: (a) Holders of Claims that have already been paid in full during the Chapter 11 Cases or that are otherwise paid in full in the ordinary course of business pursuant to an order previously entered by this Court; (b) any party to whom the notice of the Motion was sent but was subsequently returned as undeliverable without a forwarding address by the Voting Record Date; (c) the holders of Class 7 (Intercompany Claims) and Class 8 (Intercompany Interests); or (d) parties that received a Notice of Non-Voting Status, as applicable.

29. The Debtors respectfully request that the Claims and Noticing Agent be authorized (to the extent not authorized by another order of the Court) to assist the Debtors in: (a) distributing the Solicitation Packages; (b) receiving, tabulating, and reporting on Ballots cast to accept or reject the Plan by Holders of Claims against the Debtors; (c) responding to inquiries from Holders of Claims or Interests and other parties-in-interest relating to the Disclosure Statement, the Plan, the Ballots, the Solicitation Packages, the Notices of Non-Voting Status and Opt Out Forms, and all



other related documents and matters related thereto, including the procedures and requirements for voting to accept or reject the Plan and for objecting to confirmation of the Plan; (d) soliciting votes on the Plan; and (e) if necessary, contacting creditors who submit incomplete or otherwise deficient Ballots to make a reasonable effort to cure such deficiencies, as the Debtors and/or the Claims and Noticing Agent deem necessary and applicable; *provided that* neither the Debtors nor any other Person or Entity will be under any duty to provide notification of defects or irregularities with respect to delivered Ballots other than as provided in the Voting Report.

30. The Debtors also request a waiver of: (i) any requirement to re-mail undeliverable Solicitation Packages or other undeliverable solicitation-related notices that were returned marked “undeliverable,” “moved—no forwarding address,” or otherwise returned; and (ii) any obligation for the Debtors or the Claims and Noticing Agent to conduct any additional research for updated addresses based on undeliverable Solicitation Packages or other undeliverable solicitation-related notices.

31. Given the timing considerations associated with tabulating Ballots, in addition to accepting hard copy Ballots via first-class mail, overnight courier, and hand delivery, the Debtors request authorization to accept Master Ballots submitted by brokers, banks, or other nominees holding the claims for which there are Master Ballots on behalf of the underlying Beneficial Holders via e-mail to [InvitaeBallots@kccllc.com](mailto:InvitaeBallots@kccllc.com). Parties may electronically sign and submit Master Ballots instantly. Instructions for electronic, online transmission of Ballot are set forth on the forms of Ballot. The encrypted ballot data and audit trail created by such electronic submission shall become part of the record of any Ballot submitted in this manner and the creditor’s electronic signature will be deemed to be immediately legally valid and effective.

32. All votes to accept or reject the Plan must be cast by using the appropriate Ballots. All Master Ballots must be properly executed, completed, and delivered according to their applicable voting instructions by: (a) first-class mail, in the return envelope provided with each Ballot; (b) overnight delivery; (c) personal delivery; or (d) e-mail to [InvitaeBallots@kccllc.com](mailto:InvitaeBallots@kccllc.com), so that the Ballots are **actually received** by the Claims and Noticing Agent no later than the Voting Deadline at the return address set forth in the applicable Ballot. Each Ballot contains detailed instructions that describe the appropriate means of Ballot submission. Beneficial Holder Ballots shall be returned directly to the applicable Nominee not to the Claims and Noticing Agent.

33. Certain banks, brokers, and other financial institutions (each, a “Nominee”) hold certain of the Debtors’ claims in “street name” on behalf of the individual Holders themselves (collectively, the “Beneficial Holders”). To ensure proper tabulation of votes for such Claims, the Claims and Noticing Agent will deliver Solicitation Packages to such Nominees or such Nominees’ mailing agent, with instructions to forward the material to their Beneficial Holder clients. Additionally, along with Solicitation Packages, the Claims and Noticing Agent will distribute master ballots, substantially in the form attached to the Order as Exhibit 3A (the “Master Ballot”) and ballots for Beneficial Holders (the “Beneficial Holder Ballots”), substantially in the form attached to the Order as Exhibit 3B, to Nominees (or Nominees’ mailing agent). The Nominee will deliver the Beneficial Holder Ballots to such Beneficial Holders in the Voting Class and the Beneficial Holder Ballots will instruct each Beneficial Holder to return the Beneficial Holder Ballot to the appropriate Nominee (or Nominee’s mailing agent) in sufficient time for such Nominee (or Nominee’s mailing agent) to timely submit a Master Ballot on behalf of the Beneficial Holders. If it is a Nominee’s (or Nominee’s agent’s) customary and accepted practice to forward the Solicitation Packages to (and collect votes) Beneficial Holders by voter information form,

email, telephone, or other customary means of communication, as applicable, the Nominee (or Nominee's agent) may employ that method of communication in lieu of sending the paper Solicitation Package and/or Beneficial Holder Ballot. Moreover, if it is a Nominee's (or Nominee's agent's) customary internal practice to provide to Beneficial Holders an electronic link to solicitation materials (including, but not limited to, the Plan, Disclosure Statement and Order), the Nominee (or Nominee's agent) can follow such customary practice in lieu of forwarding the flash drive or paper copies of the Solicitation Package and/or Beneficial Holder Ballot. Beneficial Holders must follow the instructions of their Nominees for the purpose of conveying such Beneficial Holders' votes to their Nominee with sufficient time for the Nominees to, in turn, complete and submit a timely Master Ballot so that such Master Ballot is **actually received** by the Claims and Noticing Agent on or before the Voting Deadline.

**D. The Court Should Approve the Confirmation Hearing Notice.**

34. The Confirmation Hearing Notice includes the following: (a) instructions as to how to view or obtain copies of the Disclosure Statement (including the Plan and the other exhibit attached thereto), the Order, and all other materials in the Solicitation Package (excluding Ballots) from the Claims and Noticing Agent's and/or the Court's website via PACER; (b) notice of the Voting Deadline; (c) notice of the date by which the Debtors will file the Plan Supplement; (d) notice of the Plan Objection Deadline; and (e) notice of the Confirmation Hearing Date and information related thereto. The Debtors will serve the Confirmation Hearing Notice on all known Holders of Claims or Interests and the 2002 List (regardless of whether such parties are entitled to vote on the Plan) no later than the Solicitation Mailing Deadline.

35. Bankruptcy Rule 2002(l) permits the Court to "order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the notice." Fed. R. Bankr. P. 2002(l). Therefore, in addition to the foregoing distribution of the Confirmation

Hearing Notice, the Debtors will publish the Publication Notice in the *New York Times* (national edition) no later than the Publication Deadline. The Debtors believe that the Publication Notice will provide sufficient notice of, among other things, the entry of the Order, the Voting Deadline, the Plan Objection Deadline, and the Confirmation Hearing to parties who did not otherwise receive notice thereof by mail. Additionally, service of the Confirmation Hearing Notice and publication of the Publication Notice comports with the requirements of Bankruptcy Rule 2002 and should be approved.

**E. The Court Should Approve the Plan Supplement Notice.**

36. The Plan defines “Plan Supplement” to mean the compilation of documents and forms of documents, schedules, and exhibits to the Plan to be Filed by the Debtors no later than **seven (7) days prior to the Voting Deadline**, or such later date as may be approved by the Court on notice to parties in interest.<sup>5</sup> The Plan Supplement will include the following materials in connection with confirmation, as applicable: (a) the Schedule of Retained Causes of Action; (b) the Schedule of Assumed Executory Contracts and Unexpired Leases; (c) the Schedule of Rejected Executory Contracts and Unexpired Leases; (d) the Plan Administrator Agreement and the identity of the Plan Administrator; (e) the Asset Purchase Agreement; (f) the Wind-Down Budget; and (g) additional documents Filed with the Bankruptcy Court prior to the Effective Date as amendments to the Plan Supplement, in each case in form and substance reasonably acceptable to the Required Consenting Stakeholders.

37. To ensure that all Holders of Claims or Interests receive notice of the Debtors’ filing of the Plan Supplement, the Debtors propose to send the Plan Supplement Notice on the date the

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<sup>5</sup> See Disclosure Statement at Art.V.F

Debtors file the Plan Supplement, or as soon as practicable thereafter. Accordingly, the Plan Supplement Notice should be approved.

**F. The Court Should Approve the Forms of Notices to Non-Voting Classes and Opt Out Forms.**

38. As discussed above, the Non-Voting Classes are not entitled to vote on the Plan. As a result, they will not receive Solicitation Packages and, instead, the Debtors propose that such parties receive a Notice of Non-Voting Status and Opt Out Form. Specifically, in lieu of solicitation materials, the Debtors propose to provide the following to Holders of Claims or Interests in Non-Voting Classes:

Class	Status	Treatment
Class 1, Class 2, Class 4, and Class 5	Unimpaired—Presumed to Accept	Holders of Claims that are presumed to accept the Plan are not entitled to vote. As such, Holders of such Claims, will receive a Notice of Non-Voting Status, substantially in the form attached to the Order as <u>Exhibit 2</u> , and the applicable Opt Out Form, in lieu of a Solicitation Package.
Class 6, Class 9, Class 10, and Class 11	Impaired—Deemed to Reject <sup>6</sup>	Holders of Claims that are deemed to reject the Plan are not entitled to vote. As such, Holders of such Claims, will receive a Notice of Non-Voting Status, substantially in the form attached to the Order as <u>Exhibit 2</u> , and the applicable Opt Out Form, in lieu of a Solicitation Package.
N/A	Disputed Claims	Holders of Claims or Interests that are subject to a pending objection filed by the Debtors are not entitled to vote the disputed portion of their Claim or Interest. As such, Holders of such Claims, will receive a Notice of Non-Voting Status, substantially in the form attached to the Order as <u>Exhibit 2</u> , and applicable Opt Out Form, in lieu of a Solicitation Package.

<sup>6</sup> To the extent a Proof of Claim is filed that is based solely on a Holder’s equity Interests or the losses thereto, such Holder will be classified as a Class 9 or Class 10 claimant and such Claim will be treated in accordance with Class 9 or Class 10 and not entitled to vote on the Plan.

39. In light of the fact that the Intercompany Claims and Intercompany Interests are all held by the Debtors or affiliates of the Debtors, the Debtors will not provide the Holders in Class 7 (Intercompany Claims) or Class 8 (Intercompany Interests) with a Solicitation Package or any other type of notice in connection with the solicitation.

40. The Notices of Non-Voting Status and Opt Out Forms will include, among other things: (a) instructions as to how to view or obtain copies of the Disclosure Statement (including the Plan and the other exhibits attached thereto), the Order, and all other materials in the Solicitation Package (excluding Ballots) from the Claims and Noticing Agent and/or the Court's website via PACER; (b) notice to recipients of their status as Holders or potential Holders of Claims or Interests in non-voting classes; (c) a disclosure regarding the settlement, release, exculpation, and injunction language set forth in Article VIII of the Plan; and (d) the Opt Out Form by which Holders could elect to opt out of the Third-Party Release set forth in Article IV.L of the Plan.

41. Given the attendant timing considerations associated with tabulating Opt Out Forms, in addition to accepting hard copy Opt Out Forms via first-class mail, overnight courier, and hand delivery, the Debtors request authorization to accept Opt Out Forms (i) electronically through electronic Ballots ("E-Ballots") via electronic, online transmissions through a customized online balloting portal on the Debtors' case website maintained by the Claims and Noticing Agent (the "E-Ballot Portal"), as applicable, or (ii) via e-mail to [InvitaeBallots@kcellc.com](mailto:InvitaeBallots@kcellc.com), as applicable. Parties may electronically sign and submit the Opt Out Forms instantly. Instructions for electronic, online transmission of Opt Out Forms are set forth on the Opt Out Forms. The encrypted audit trail created by such electronic submission shall become part of the record of any Opt Out Form submitted in this manner and the creditor's electronic signature will be deemed to

be immediately legally valid and effective. Beneficial Holder Opt Out Forms shall be returned directly to the applicable Nominee not to the Claims and Noticing Agent.

42. To ensure proper tabulation of Opt Out Forms for Claims held by Nominees of Beneficial Holders who are not allowed to vote, the Claims and Noticing Agent will deliver Notices of Non-Voting Status to such holders of record as of the Voting Record Date, including Nominees, with instructions to forward the material to their Beneficial Holder clients. Additionally, along with delivery of the Notice of Non-Voting Status to Nominees, the Claims and Noticing Agent will distribute master opt out forms (the “Master Opt Out Form”), substantially in the form attached to the Order as Exhibit 2A and the opt out forms for Beneficial Holders (the “Beneficial Holder Opt Out Forms”), substantially in the form attached to the Order as Exhibit 2B, to Nominees (or Nominee’s mailing agent). Nominees shall distribute such Beneficial Holder Opt Out Forms to the Beneficial Holders and the Beneficial Holder Opt Out Forms will instruct each Beneficial Holder to return the Beneficial Holder Opt Out Form to the appropriate Nominee in sufficient time for such Nominee to timely submit the Master Opt Out Form on behalf of the Beneficial Holders so that it is **actually received** by the Claims and Noticing Agent on or before the Voting Deadline.

43. If it is a Nominee’s (or Nominee’s agent’s) customary and accepted practice to forward the Beneficial Opt Out Form to (and collect elections from) Beneficial Holders by voter information form, email, telephone, or other customary means of communication, as applicable, the Nominee (or Nominee’s agent) can employ that method of communication in lieu of sending the paper copies of Notice of Non-Voting Status and Beneficial Holder Opt Out Form. Moreover, if it is the Nominee’s (or Nominee’s agent’s) customary internal practice to provide to beneficial owners an electronic link to opt out materials (including, but not limited to, the Notice of Non-

Voting Status and Beneficial Holder Opt Out Form), the Nominee (or Nominee's agent) could follow such customary practice in lieu of forwarding paper copies of the Notice of Non-Voting Status and Beneficial Holder Opt Out Form.

44. All Allowed General Unsecured Claims in Class 6 Parent Unsecured Claims and Class 11 Contingent Subsidiary Unsecured Claims will be provided the opportunity to make an election to have their Claims treated as a Class 4 Convenience Class Claim and, if applicable, have such Claims reduced to \$250,000, and be treated as a Class 4 Convenience Class Claim, through a validly submitted Opt Out Form. Each Opt Out Form will contain the election option and will only be accepted for the eligible Holders of Class 6 Parent Unsecured Claims and Holders of Class 11 Contingent Subsidiary Unsecured Claims who make such election by checking the appropriate box on the applicable Opt Out Form.

45. The Debtors believe that mailing the Notices of Non-Voting Status and Opt Out Forms in lieu of Solicitation Packages satisfies the requirements of Bankruptcy Rule 3017(d). Accordingly, unless the Court orders otherwise, the Debtors do not intend to distribute Solicitation Packages to Holders of Claims or Interests in the Non-Voting Classes.

**G. The Court Should Approve Notices to Contract and Lease Counterparties.**

46. Article V of the Plan provides that each of the Debtors' Executory Contracts and Unexpired Leases shall be deemed automatically rejected, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, as of the Effective Date under section 365 of the Bankruptcy Code, unless such Executory Contract and Unexpired Lease: (a) is identified on the Schedule of Assumed Executory Contracts and Unexpired Leases; (b) has been previously assumed or rejected by the Debtors pursuant to a Bankruptcy Court order; (c) is the subject of a Filed motion to assume, assume and assign, or reject such Executory Contract or Unexpired Lease (or of a Filed objection with respect to the proposed assumption and assignment of such contract)



that is pending on the Effective Date; (d) is a contract, release, or other agreement or document entered into in connection with the Plan; (e) is the Asset Purchase Agreement; or (f) is to be assumed by the Debtors and assigned to the Purchaser in connection with the Sale Transaction and pursuant to the Purchase Agreement.

47. To ensure that counterparties to Executory Contracts and Unexpired Leases receive notice of the assumption of their Executory Contract or Unexpired Lease, if any, pursuant to the Plan, the Debtors will mail the Assumption Notice, as provided herein. Accordingly, the Assumption Notice should be approved.

### **III. The Court Should Approve the Solicitation and Voting Procedures.**

48. Section 1126(c) of the Bankruptcy Code provides that:

A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designed under subsection (e) of this section, that have accepted or rejected such plan.

11 U.S.C. § 1126(c).

49. Additionally, Bankruptcy Rule 3018(c) provides, in part, that “[a]n acceptance or rejection [of a plan] shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security holder or an authorized agent, and conform to the appropriate Official Form.” Fed. R. Bankr. P. 3018(c). Consistent with these requirements, the Debtors propose using the Solicitation and Voting Procedures. The Solicitation and Voting Procedures include specific voting and tabulation requirements and procedures, as described below.

#### **A. Completion of Ballots.**

50. To ease and clarify the process of tabulating all votes received, the Debtors propose that a Ballot be counted in determining the acceptance or rejection of the Plan only if it satisfies

certain criteria. Specifically, the Solicitation and Voting Procedures provide that the Debtors will not count a Ballot if it is, among other things, submitted by a Holder of a Claim or Interest that is not entitled to vote on the Plan or incomplete. Further, the Debtors may waive any defects or irregularities as to any particular Ballot at any time, either before or after the close of voting, and any such waivers shall be documented in the Voting Report.

**B. General Ballot Tabulation and Voting Procedures.**

51. The proposed Solicitation and Voting Procedures set forth specific criteria with respect to the general tabulation of Ballots, voting procedures applicable to Holders of Claims, and tabulation of such votes. The Debtors believe that the proposed Solicitation and Voting Procedures will facilitate the Plan confirmation process. Specifically, the procedures will clarify any obligations of Holders of Claims entitled to vote to accept or reject the Plan and will create a straightforward process by which the Debtors can determine whether they have satisfied the numerosity and amount requirements of section 1126(c) of the Bankruptcy Code. Accordingly, the Debtors submit that the Solicitation and Voting Procedures are in the best interests of the Debtors' Estates, Holders of Claims or Interests, and other parties in interest, and that good cause supports the relief requested herein.

52. The Debtors respectfully request that the Claims and Noticing Agent be authorized (to the extent not authorized by another order of the Court) to assist the Debtors in: (a) distributing the Solicitation Package and Notices of Non-Voting Status and Opt Out Forms; (b) receiving, tabulating, and reporting on Ballots cast to accept or reject the Plan by Holders of Claims against the Debtors; (c) responding to inquiries from Holders of Claims or Interests and other parties in interest relating to the Disclosure Statement, the Plan, the Ballots, the Solicitation Packages, Notices of Non-Voting Status and Opt Out Forms, and all other documents and matters related thereto, including the procedures and requirements for voting to accept or reject the Plan and for

objecting to confirmation of the Plan; (d) soliciting votes on the Plan; and (e) if necessary, contacting creditors who submit incomplete or otherwise deficient Ballots to make a reasonable effort to cure such deficiencies, as the Debtors and/or the Claims and Noticing Agent deem necessary and applicable; *provided that* neither the Debtors nor any other Person or Entity will be under any duty to provide notification of defects or irregularities with respect to delivered Ballots other than as provided in the Voting Report.

**IV. The Court Should Approve the Procedures for Confirming the Plan.**

**A. The Confirmation Hearing Date.**

53. Section 1128 of the Bankruptcy Code provides that “[a]fter notice, the court shall hold a hearing on confirmation of a plan” and provides that parties in interest can object to confirmation. 11 U.S.C. § 1128. Bankruptcy Rule 3017(a) also requires that the court “hold a hearing on at least 28 days’ notice to the debtor, creditors, equity security holders and other parties in interest . . . to consider the disclosure statement and any objections or modifications thereto.” Fed. R. Bankr. P. 3017(a). Additionally, Bankruptcy Rule 3017(c) provides that, on or before approval of a disclosure statement, a court shall fix a time for the hearing on confirmation of a plan. Fed. R. Bankr. P. 3017(c). Further, Bankruptcy Rule 2002(b) provides that notice shall be given to “the debtor, the trustee, all creditors and indenture trustees not less than 28 days . . . by mail of the time fixed . . . for filing objections and the hearing to consider approval of a disclosure statement or, under § 1125(f), to make a final determination whether the plan provides adequate information so that a separate disclosure statement is not necessary.” Fed. R. Bankr. P. 2002(b).

54. In accordance with Bankruptcy Rules 2002 and 3017 and section 1128 of the Bankruptcy Code, the Debtors request that the Court establish **July 22, 2024**, as the Confirmation Hearing Date. The Debtors further request that the Confirmation Hearing may be continued from time to time by the Court or the Debtors without further notice to parties in interest other than

announcement of such adjournment in open court and/or filing a notice of adjournment with the Court and serving such notice on the 2002 List.

**B. The Court Should Approve the Procedures for Filing Objections to Confirmation of the Plan.**

55. Bankruptcy Rule 2002 requires no less than twenty-eight days' notice to all Holders of Claims of the time fixed for filing objections to the hearing on confirmation of a Chapter 11 plan. Fed. R. Bankr. P. 2002(b), (d). The Debtors request that the Court establish **July 15, 2024, at 4:00 p.m. prevailing Eastern Time**, as the Plan Objection Deadline.

56. The Debtors also request that the Court direct the manner in which parties in interest may object to confirmation of the Plan. Pursuant to Bankruptcy Rule 3020(b)(1), objections to confirmation of a plan must be filed and served "within a time fixed by the court." Fed. R. Bankr. P. 3020(b)(1). The Confirmation Hearing Notice will require that objections to confirmation of the Plan or requests for modifications to the Plan, if any, must:

- a. be in writing;
- b. conform to the Bankruptcy Rules, the Local Rules, and any orders of the Court;
- c. state, with particularity, the legal and factual basis for the objection and, if practicable, a proposed modification to the Plan (or related materials) that would resolve such objection; and
- d. be filed with the Court and served upon the notice parties so as to be **actually received** on or before the Plan Objection Deadline.

57. The Debtors believe that the Plan Objection Deadline for filing and service of objections (and proposed modifications, if any) will afford the Court, the Debtors, and other parties in interest reasonable time to consider the objections and proposed modifications prior to the Confirmation Hearing.

58. Moreover, the Confirmation Hearing and any dates on the Confirmation Timeline may be adjourned or continued from time to time by the Court or the Debtors, without further notice other than adjournments announced in open court or as indicated in any notice of adjournment filed by the Debtors with the Court.

**Non-Substantive Modifications**

59. The Debtors request authorization to make changes to the Plan, Disclosure Statement, Solicitation and Voting Procedures, Ballots, Solicitation Packages, Notices of Non-Voting Status and Opt Out Forms, Confirmation Hearing Notice, Publication Notice, Cover Letter, Plan Supplement Notice, Assumption Notice, and any notice attached to the Order, and any related documents without further order of the Court, including formatting changes, changes to correct typographical and grammatical errors, if any, and to make conforming changes to the Disclosure Statement, the Plan, and any other materials (including the appendices thereto) in the Solicitation Packages before distribution.

**Waiver of Memorandum of Law**

60. The Debtors respectfully request that the Court waive the requirement to file a separate memorandum of law pursuant to Local Rule 9013-1(a)(3) because the legal basis upon which the Debtors rely is set forth herein and the Motion does not raise any novel issues of law.

**Reservation of Rights**

61. Nothing contained in this Motion or any order granting the relief requested in this Motion, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with any such order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount of, basis for, priority of, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise

or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in this Motion or any order granting the relief requested by this Motion, except as otherwise provided in the Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

**Notice**

62. The Debtors will provide notice of this Motion to the following parties and/or their respective counsel, as applicable: (a) the office of the United States Trustee for the District of New Jersey; (b) counsel to the Committee; (c) counsel to the agent to the Secured Notes; (d) the indenture trustee to the 2024 Convertible Notes; (e) the indenture trustee to the 2028 Convertible Notes; (f) Sullivan & Cromwell LLP, as counsel to the Required Holders; (g) Wollmuth Maher & Deutsch LLP, as counsel to the Required Holders; (h) counsel to the 2028 Convertible Noteholders; (i) the U.S. Securities and Exchange Commission; (j) the United States Attorney's Office for the District of New Jersey; (k) the attorneys general in the states where the Debtors conduct their business operations; (l) the Internal Revenue Service; and (m) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**No Prior Request**

63. No prior motion for the relief requested herein has been made to this Court or any other court.

*[Remainder of page intentionally left blank.]*

**WHEREFORE**, the Debtors respectfully request that the Court enter the Order, substantially in the form attached hereto as **Exhibit A** granting the relief requested herein.

Dated: May 9, 2024

*/s/ Michael D. Sirota*

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