IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
Apple Tree Life Sciences, Inc., *et al*.,[1]	Case No. 25-12177 (LSS)
Debtors.	(Jointly Administered)
	Re: Docket No. 1270

OPPOSITION TO DEBTOR ATP LIFE SCIENCE VENTURES, L.P.'S MOTION TO DISQUALIFY QUINN EMANUEL URQUHART & SULLIVAN, LLP FROM REPRESENTING APERTOR PHARMACEUTICALS, INC.; EVERCRISP BIOSCIENCES, INC.; INITIAL THERAPEUTICS, INC.; MARLINSPIKE THERAPEUTICS, INC.; NEREID THERAPEUTICS INCORPORATED; NINE SQUARE THERAPEUTICS, INC.; RED QUEEN THERAPEUTICS, INC.; AND ATP III GP, LTD.

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number include: Apple Tree Life Sciences, Inc. (4506); ATP Life Science Ventures, L.P. (8224); ATP III GP, Ltd. (6091); Apertor Pharmaceuticals, Inc. (3161); Initial Therapeutics, Inc. (2453); Marlinspike Therapeutics, Inc. (4757); Red Queen Therapeutics, Inc. (8563); Evercrisp Biosciences, Inc. (4437); Nine Square Therapeutics, Inc. (4503); and Nereid Therapeutics Incorporated (8493). The location of the Debtors' service address in these chapter 11 cases is 230 Park Avenue, Suite 2800, New York, NY 10169.

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Apertor Pharmaceuticals, Inc., Evercrisp Biosciences, Inc., Initial Therapeutics, Inc., Marlinspike Therapeutics, Inc., Nereid Therapeutics Incorporated, Nine Square Therapeutics, Inc., Red Queen Therapeutics, Inc. (collectively, the "Portfolio Debtors") and ATP III GP, Ltd. (the "GP Debtor"), through their counsel Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel"), hereby file this opposition (the "Opposition") to the *Debtor ATP Life Science Ventures, L.P.'s Motion to Disqualify Quinn Emanuel Urquhart & Sullivan, LLP from Representing Apertor Pharmaceuticals, Inc.; Evercrisp Biosciences, Inc.; Initial Therapeutics, Inc.; Marlinspike Therapeutics, Inc.; Nereid Therapeutics Incorporated; Nine Square Therapeutics, Inc.; Red Queen Therapeutics, Inc.; and ATP III GP, Ltd.* [Docket No. 1270] (the "DQ Motion"), filed by debtor ATP Life Science Ventures, L.P. (the "Fund" or "Fund Debtor"), acting through its joint officeholders, Alexander Lawson and Barry Lynch (the "Officeholders").[2] In support of this Opposition, the GP Debtor and Portfolio Debtors respectfully state the following:

PRELIMINARY STATEMENT

1. The Officeholders took over direction of the Fund Debtor in July 2026.[3] For nearly three months, the Officeholders treated and expressly acknowledged Quinn Emanuel as counsel to

[2] Exhibits to the *Declaration of David Litterine-Kaufman* [Docket No. 1271] are cited by exhibit letter (e.g., "Ex. A"). Capitalized terms not otherwise defined herein have the meanings given to them in the DQ Motion.

[3] Though they were appointed by a Cayman court, they are not liquidators, chapter 11 trustees, or any form of receivers for the Fund Debtor. The Fund Debtor cannot be placed into liquidation or a winding-up in the Cayman court. And every time the Officeholders act, they do so in their capacities as fiduciaries for the Fund Debtor as debtor-in-possession and subject to the United States Bankruptcy Code (and every order of this Court). *See* Docket No. 1000 ¶ 2 ("The Officeholders are making decisions for the [Fund Debtor], which is a debtor and debtor-in-possession under chapter 11 of title 11 of the United States Bankruptcy Code. To the extent the Officeholders choose to exercise the general power and authority conferred in Paragraph 4 of the Appointment Order or the specific powers enumerated in Paragraph 5 of the Appointment Order, the Officeholders must exercise such authority and powers consistent with the [Fund Debtor]'s obligations as a debtor and a debtor-in-

the GP Debtor and the Portfolio Debtors. The Officeholders repeatedly asked Quinn Emanuel to consent to orders on the Portfolio Debtors' behalf, negotiated with Quinn Emanuel over the Third Funding Motion, and agreed that Quinn Emanuel would continue to represent the GP Debtor in the Delaware Supreme Court to uphold the Chancery Court Judgment, which directly benefits the Fund Debtor. The Officeholders understood that Quinn Emanuel was representing all Debtors (other than the Fund Debtor) defending orders of this Court in Rigmora's appeals from this Court's orders. Their counsel has expressed gratitude the times that Quinn Emanuel has pointed out, privately, that the Officeholders were seemingly ignoring their duties in a chapter 11 case when they appeared to act as if the chapter 11 cases were chapter 15 ancillary cases necessitating deference to the foreign court that appointed them.

2. The Officeholders did not demand that Quinn Emanuel withdraw until October 19, 2026. They filed the DQ Motion eight days later and, three days after that, filed the DIP Motion and the PSA Motion (each, as further defined below), which committed the Fund Debtor to a plan timeline with a November 23, 2026, Portfolio Debtor PSA opt-in deadline, and an early 2027 confirmation date, that the GP Debtor and the Portfolio Debtors had never been afforded the opportunity to discuss or consider with the Officeholders. The sequence of events tells the Court what it needs to know about the DQ Motion, which is tactical rather than substantive. Disqualification provides a drastic remedy reserved for cases of absolute necessity, and the Officeholders, acting for the Fund Debtor, cannot meet that standard here.

3. To start, Rule 1.9 applies only if the present matter is the same as, or substantially related to, one in which Quinn Emanuel represented the Fund Debtor, and only if the interests of

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possession and consistent with and subject to the dictates of the United States Bankruptcy Code.").

the GP Debtor and the Portfolio Debtors materially diverge from the Fund Debtor's. The DQ Motion shows neither. The one matter actually in dispute, the Governance Motion, concerns a matter on which Quinn Emanuel never advised the Fund Debtor. The Governance Motion itself emanates from this Court's orders on Rigmora's Stay Relief Motion and this Court's clarification of that order, not any matter on which Quinn Emanuel "switched sides."

4. The DQ Motion rests instead on Quinn Emanuel's general familiarity with the Debtors' affairs, a fact which the Model Rules and the case law hold insufficient to warrant disqualification. The adversity alleged by the Fund Debtor, a nominal party acting through the Officeholders, also disappears on inspection. The objection to the Governance Motion sought to enforce the Clarification Order that the Fund Debtor itself agreed to before the Officeholders were appointed and was expressly intended to constrain the Officeholders in directing the Fund Debtor. The deposition preparation and competing Recognition Order that the DQ Motion cites occurred before July 30, 2026, when the Officeholders did not yet act for the Fund Debtor and when Quinn Emanuel was still representing the Fund Debtor.

5. Moreover, the Fund Debtor, acting through the Officeholders, waived any objection by their conduct. A party that knows of a potential conflict must move to disqualify promptly, and the Officeholders, acting for the Fund Debtor, did not. From the day they were put in place, they knew of potential conflicts between the Fund Debtor and the GP Debtor and/or Portfolio Debtors. Yet they continued to ask Quinn Emanuel, as counsel to the GP Debtor and the Portfolio Debtors, to consent to extensions of the deadline for the Fund Debtor to assert claims against those very Debtors. They litigated the Third Funding Motion and the employment of Vernon Flynn against all Debtors, with Quinn Emanuel representing, without asserting a conflict, and they consented to its continued representation of the GP Debtor on the Delaware Supreme Court appeal. Their first

written demand for withdrawal came only after the Portfolio Debtors opposed the Governance Motion and, as it now appears, after they had reached agreement with Rigmora that has Rigmora as the favored bidder and allows Rigmora's claims (in contravention of orders of this Court) via a settlement that they negotiated without the involvement of the very counsel that defeated Rigmora's claims and contentions. Delay of that kind, followed by a motion filed three days later to set plan confirmation milestones, forms a pattern of conduct that proves both waiver and tactical motivation.

6. Undeniably, disqualification would prejudice the GP Debtor and the Portfolio Debtors and would hand the PSA parties (the Fund Debtor acting through the Officeholders and Rigmora) a tactical advantage. The PSA contemplates confirmation by February 22, 2027. It allows Rigmora's claims (while at the same time causing dismissal with prejudice of appeals of orders that necessarily disallow such claims) despite this Court's prior rulings on those claims. Asking the GP Debtor and the Portfolio Debtors to find, retain, and educate new counsel on that schedule would cost them exorbitant amounts of time and money, and would remove counsel who knows the record from participating in the confirmation process. The Fund Debtor identifies no corresponding harm to itself and identifies no attorney confidences at risk. And the Court has also already addressed the single concern about inter-debtor claims by approving M&K (as defined below) to act for the Portfolio Debtors on any matter in which they are in conflict with either the Fund Debtor or the GP Debtor. Therefore, even if the Court found a violation, disqualification is discretionary, and the balance of prejudice weighs against it.

7. The DQ Motion's alternative reliance on Section 327(a) does not warrant a different result. The DQ Motion identifies only the potential for inter-debtor claims under the SPAs (as defined below). However, Rigmora raised that issue when it objected to Quinn Emanuel's

retention, the parties briefed it, and the Court resolved it when it approved Quinn Emanuel's retention with M&K in place as a conflicts backstop. The DQ Motion identifies no actual conflict that has arisen since that ruling, and the DQ Motion cites no actual conflict at all as to the GP Debtor.

8. Finally, the DQ Motion's longshot argument that Rule 1.7 requires disqualification fails because the Fund Debtor, acting through the Officeholders, consented in writing to Quinn Emanuel's continued representation in the Syntimmune Litigation and has not withdrawn that consent.

9. For these reasons, the Court should deny the DQ Motion.

SPECIFIC BACKGROUND

A. The Debtors' Business

10. The Debtors comprise a biotechnology venture capital enterprise. The Fund Debtor, a Cayman Islands exempted limited partnership, is a "venture capital fund that was established for the 'sole purpose' of investing in 'pharmaceutical, medical and other medically-related business projects.'" *Memorandum Opinion* at 4 [Docket No. 548] (the "Dismissal Opinion").

11. Until July 2026, the Fund's affairs were managed by ATP III GP, Ltd. (the "GP" or "GP Debtor"), including in connection with the limited partners' investments in fifteen portfolio companies (the "Portfolio Companies"), seven of which are currently debtors. Generally, the Fund made investments in its portfolio companies through the purchase of preferred stock as memorialized in stock purchase agreements (the "SPAs"). Docket No. 548 at 6-7.

B. In 2020, Quinn Emanuel Starts Representing The Fund In The Syntimmune Litigation

12. In May 2020, Dr. Harrison, as Director of the GP, signed an engagement letter (the "2020 Engagement Letter") pursuant to which Quinn Emanuel would provide legal services in connection with potential claims the Fund may have had against Alexion Pharmaceuticals ("Alexion" and "Syntimmune Litigation"). Ex. A. The Fund, acting through the GP, subsequently brought litigation against Alexion, and obtained a judgment, the value of which, with pre- and post-judgement interest, was worth approximately $350 million as of the Petition Date. The Officeholders, speaking for the Fund, agreed to have Quinn Emanuel continue to represent the Fund in the Syntimmune Litigation while representing the GP Debtor in the Cayman Islands, and the GP Debtor and Portfolio Debtors in these chapter 11 cases. Ex. E at 2.

C. Quinn Emanuel Represents The GP Debtor In the Chancery Action

13. In May 2025, the GP Debtor, in its capacity as general partner of the Fund Debtor, filed suit (the "Chancery Action") in the Delaware Court of Chancery (the "Chancery Court"), seeking specific performance of capital contribution obligations of Rigmora under the First Amended and Restated Limited Partnership Agreement (as amended, the "LPA"). Docket No. 18 at ¶ 66; *id.*, Ex. B at 36-37.

14. On December 5, 2025, the Chancery Court found that Rigmora had breached its capital contribution obligations under the LPA and issued a final judgment ordering Rigmora to transfer approximately $97 million to the Fund Debtor (the "Chancery Court Judgment"). *See* Docket No. 18, Ex. B at 67.

15. Rigmora appealed that decision to the Delaware Supreme Court on January 9, 2026. Quinn Emanuel represents the GP Debtor, acting in its capacity as general partner of the Fund Debtor, in the appeal. During the time that they have directed the Fund Debtor, the Officeholders

never requested a presentation from Quinn Emanuel on the merits of Rigmora's Delaware Supreme Court appeal.

D. The Court Approves Quinn Emanuel's Retention Over Rigmora's Objection

16. In December 2025, the Debtors retained Quinn Emanuel to act as their counsel in connection with these Chapter 11 Cases. Ex. B at 1 n.1. On January 8, 2026, the Debtors applied to retain Quinn Emanuel as general bankruptcy counsel to all Debtors. Docket No. 132.

17. At the same time, the Debtors sought to retain Murphy & King, PC ("M&K") "to act as bankruptcy counsel for the seven Debtor Portfolio Companies, including with respect to any matters in conflict with [the Fund Debtor, the GP Debtor, and ATLS]." Docket No. 316 ¶ 17; *see also* Docket No. 134. M&K's mandate expressly includes negotiations with affiliates, prosecution of claims, and preparation of objections to claims. Docket No. 316 ¶ 17 n.16 (citing Docket No. 134 at ¶ 17). On February 12, 2026, the Court approved M&K's retention. Docket No. 301; *see also* Docket No. 1270 ¶ 25.

18. Rigmora objected to Quinn Emanuel's retention application, asserting conflicts between the Fund Debtor and the GP Debtor, as well as between the Fund Debtor and the GP Debtor, on one side, and the Portfolio Debtors, on the other. Docket No. 224 ¶ 19, 22. As relevant here, Rigmora argued that the intercompany obligations arising from the SPAs precluded Quinn Emanuel from representing all of the Debtors. *See id.* ¶ 22. Rigmora later abandoned that argument. Docket No. 589 ¶ 3(c). Rigmora instead argued that Quinn Emanuel was conflicted as a potential Cayman-law preference target based on a $20 million prepetition retainer that Quinn Emanuel had disclosed in its retention application. *Id.*; *see also* Docket No. 621 (Letter Ruling) at 1-2.

19. On May 5, 2026, the Court approved Quinn Emanuel's retention as counsel to all Debtors, overruling Rigmora's objection. Docket Nos. 621, 623. The Court found that there was

"not presently a facially valid, substantial claim against the Firm" with respect to the $20 million retainer and declined to disqualify Quinn Emanuel. Docket No. 621 at 4-5. The same day, the Court entered an order authorizing the Debtors to employ Quinn Emanuel as co-counsel in the Chapter 11 Cases. Docket No. 623 ¶ 2. In doing so, the Court found that Quinn Emanuel "does not represent or hold any interest adverse to the Debtors as to the matters upon which Quinn Emanuel has been and is to be employed" and is a "disinterested person." *Id.* at 1-2.

E. The Court Denies Rigmora's Motion To Dismiss And Partially Grants Relief From Stay

20. On January 23, 2026, Rigmora filed its amended motion to dismiss the chapter 11 cases of the Fund Debtor and the GP Debtor [Docket Nos. 204-05] (the "Motion to Dismiss"). Rigmora contended that the Fund Debtor was not eligible to be a debtor under section 109 of the Bankruptcy Code because it does not qualify as a "person" under the Code, given that a Cayman exempted limited partnership ("ELP") "has no legal personality separate from its partners." Docket Nos. 204-05 ¶ 82. Rigmora also sought relief from the automatic stay to proceed with winding up the Fund Debtor in the Cayman Court (the "Stay Motion"). Docket No. 125.

21. On April 14, 2026, the Court entered its Dismissal Opinion, denying Rigmora's request to dismiss the chapter 11 cases of the Fund and GP Debtors. Docket No. 548. The Court granted "limited relief from stay to permit [Rigmora] to proceed with certain aspects of the winding up proceedings," namely, "so that the Grand Court can determine: (i) whether the Rigmora LPs can prove that they have justifiably and irretrievably lost all trust and confidence in the General Partner's ability to manage the Fund and (ii) whether the Fund has lost its substratum." Dismissal Opinion at 3. The Court permitted Rigmora to "seek to have Joint Official Liquidators appointed to act in the stead of the General Partner if they are successful on one of the two grounds above,

but did not permit Rigmora to seek any other relief, including causing a winding-up of the Fund Debtor or proceeding in any fashion in the Grand Court. *Id.*

F. The Debtors Obtain The Clarification Order, Which Prohibits Officeholders From Replacing Board Members Of The Portfolio Companies Without Court Order Or The GP Debtor's Consent

22. On April 27, 2026, all of the Debtors filed a motion to clarify the Dismissal Order with respect to stay relief. Docket Nos. 590 (Debtors' clarification motion). On June 24, 2026, the Court entered the *Order Clarifying Order Granting, in part, Motion for Relief from Stay* (the "Clarification Order"), Docket No. 823, which stated:

> Notwithstanding anything else contained herein, in the event an Officeholder is appointed by the Grand Court, and notwithstanding any language in any order appointing such Officeholder, upon such appointment the scope of such Officeholder's authority with respect to the Fund or any assets of the Fund shall be subject to all applicable requirements of the Bankruptcy Code and any order of this Court. For the avoidance of doubt, any Officeholders appointed by the Grand Court may not replace the members of the board of directors or senior executives of the portfolio companies without consent of the General Partner or further Order of this Court.

Clarification Order ¶ 4. Paragraph 4 of the Clarification Order confined the Officeholders' authority over the Portfolio Companies to the requirements of the Bankruptcy Code and any order of this Court. It also foreclosed the Officeholders from replacing the Portfolio Debtors' directors and senior executives without the consent of the GP Debtor or further order of the Court.

23. The DQ Motion asserts that Quinn Emanuel invoked the Clarification Order "against the Fund Debtor." Docket 1270 ¶ 4; *see also id.* ¶ 27. But all of the Debtors, including the Fund Debtor, agreed to the Clarification Order, and paragraph 4 protects the Portfolio Debtors and the GP Debtor from having governance used as an end-run around the requirements of the Bankruptcy Code. If the Officeholders decided to cause the Fund Debtor to change the board of directors of any Portfolio Company, they had two paths to do so: either obtain consent from the

GP Debtor or seek an order of this Court approving the change. Indeed, until the filing of the Governance Motion, the Officeholders did ask for GP Debtor consent (and it was in fact given in some instances, which is why a new independent director sits at each Portfolio Debtor). The Officeholders never sought to vacate the Clarification Order and did not seek to disqualify Quinn Emanuel from representing either the Portfolio Debtors or the GP Debtor.

G. The Debtors File The Third Funding Motion

24. Funding the portfolio companies throughout these Chapter 11 Cases has been a common objective of the Debtors because it preserves and maximizes the value and marketability of the Portfolio Companies, and in turn, the Fund Debtor. In April 2026, the Court approved the Debtors' second funding request, holding that the Debtors could use the $97 million transferred by Rigmora "notwithstanding a lack of separate legal personality" of the Fund Debtor. Docket No. 585 (Apr. 22, 2026 Tr.) at 7:18-8:1. The Court also found that (i) the LPA and the Exempted Limited Partnership Act "put conducting the business [of the Fund Debtor] in the purview of the general partner," *id.* at 9:17-24; and (ii) in connection with the challenged funding, the "debtors ha[d] properly exercised their business judgment," also "not[ing] that [such funding was] an operational decision, which the general partner is charged with making under the limited partnership agreement and the Exempted Limited Partnership Act," *id.* at 15:21-16:2.

25. On June 29, 2026, the Debtors filed the Third Funding Motion, seeking authority to use approximately $53 million in additional funding. Docket No. 852 ¶¶ 6-7. That amount included approximately $32.6 million to flow to the Portfolio Companies. *Id.* The Third Funding Motion reflected, once again, the business judgment of the GP Debtor, according to which the funding would "preserve and enhance the value of the Portfolio Companies and the overall enterprise, and the related hundreds of millions of dollars of existing investments." *Id.* ¶¶ 2, 38.

26. After the entry of the Recognition Order (*see infra*), the Officeholders sought to implement "phased funding" and filed its position papers without first consulting with Portfolio Debtor management. Docket No. 1044 (Officeholders' supplement). The Portfolio Debtors formally objected and the GP Debtor added its own concerns. The Officeholders ultimately conceded their initial position was flawed.

27. The Court's final order ("Third Funding Order") provided for a phased funding structure, but it authorized the full amount the Third Funding Motion requested for each of the relevant Portfolio Companies and extended funding "through the end of any sales or transaction process," rather than only through September 30, 2026, as the Officeholders had proposed initially. Docket No. 1088 ¶¶ 2, 3(c). Again, the Officeholders did not seek to disqualify Quinn Emanuel during this period.

H. The Cayman Court Issues The Appointment Order And The Court Enters The Recognition Order

28. On July 10, 2026, the Cayman Court, having determined that the Fund Debtor had lost its substratum, issued an order (the "Appointment Order"), appointing the Officeholders "to act in the stead of and to the exclusion of ATP III GP Ltd as general partner of the Partnership on the terms of this Order." Docket No. 926-2. The Appointment Order conferred on the Officeholders the "power to manage the [Fund Debtor] for the benefit of the limited partners." *Id*. The Appointment Order did not require that the powers of the Officeholders be exercised in compliance with the Bankruptcy Code or the Court's Clarification Order.

I. The Court Enters the Recognition Order

29. On July 30, 2026, the Court entered the Recognition Order, which recognized the Officeholders' appointment. Docket No. 1000. Paragraph 2 of the Recognition Order states:

> To the extent the Officeholders choose to exercise the general power and authority conferred in Paragraph 4 of the Appointment Order or the specific powers

> enumerated in Paragraph 5 of the Appointment Order, the Officeholders must exercise such authority and powers consistent with the [Fund Debtor]'s obligations as a debtor and debtor-in-possession and consistent with and subject to the dictates of the United States Bankruptcy Code.

Docket No. 1000 ¶ 2. The Recognition Order did not vacate or amend paragraph 4 of the Clarification Order.

J. Quinn Emanuel Seeks the Officeholders' Direction on the Day of Recognition

30. On July 30, 2026, the day the Recognition Order was entered, Quinn Emanuel wrote to the Officeholders' counsel "to ask for directions" regarding the Fund Debtor's professionals, noting that a conflict would arise if the Officeholders reversed the Fund Debtors' position on the Third Funding Motion (the "July 30 Letter"). Ex. D at 1.

K. The Officeholders Terminated Quinn Emanuel's Chapter 11 Engagement for the Fund Debtor But Acknowledged Quinn Emanuel's Continuing Representation of the Other Debtors In the Chapter 11 Cases And Elsewhere

31. In the August 10 Letter, the Officeholders terminated Quinn Emanuel's engagement for the Fund Debtor "in connection with the Chapter 11 proceedings, any proceedings in the Cayman Islands, or in connection with the broader historical dispute between the Rigmora LPs and the Fund." Ex. E ¶ 2.[4] The August 10 Letter did not object to Quinn Emanuel's continuing representation of the other Debtors, and acknowledged Quinn Emanuel's separate role for the GP Debtor:

[4] Though the August 10 Letter did not say it, by its terms the letter would have precluded Quinn Emanuel from representing the interests of the Fund Debtor in the two appeals from orders of this Court, the Delaware Supreme Court, or objecting to any proofs of claim filed by Rigmora. Given that Quinn Emanuel had prevailed and had deep institutional knowledge, one would have expected the Officeholders to want to save costs and have Quinn Emanuel available versus bringing in new counsel that would have to get up to speed. Indeed, at least for the two appeals from orders of this Court, it does not appear that counsel representing the Officeholders (and now the Fund Debtor) spent any time working on appellate briefs. *See* Docket Nos. 1243, 1276.

- "We would be grateful if your firm could please identify the clients for which it does continue to act in connection with this matter. We understand that may include the non-Fund debtors in the Bankruptcy Court proceedings and would appreciate having clarity around this point." *Id.* at ¶ 5.
- "We understand that your firm, along with Walkers, continues to represent the GP in its personal capacity in connection with the Cayman Islands winding up petition." *Id.* at ¶ 6.

The Officeholders closed the August 10 Letter by thanking Quinn Emanuel "for the constructive discussions on many of these issues as we transition into the new role for both our clients." *Id.* at 3.

32. On August 21, 2026, the Officeholders' counsel sent another letter to Quinn Emanuel (the "August 21 Letter"). Ex. F. The August 21 Letter again treated the GP Debtor as a distinct party with its own legal position, acknowledging that the GP Debtor "may claim to still have certain rights to be indemnified from the Partnership's property under LPA," and that "the GP is entitled to defend the Cayman winding up proceeding in its personal capacity." Ex. F at 2. Nowhere in the August 21 Letter is there a request for Quinn Emanuel to withdraw from representing the GP Debtor or the Portfolio Debtors. Instead, the August 21 Letter acknowledged that Quinn Emanuel "intend[ed] to continue acting for the General Partner and ATLS." *Id.* at 2-3.

33. Nor was the September 4, 2026, email from the Officeholders' counsel a demand that Quinn Emanuel cease representing the GP Debtor or the Portfolio Debtors. Docket No. 1270 ¶¶ 7, 34; *id.*, Ex. G.[5] That email concerned a dispute over the imaging of a server containing historical records, as to which Quinn Emanuel had raised a privilege argument on behalf of the GP Debtor. Ex. G ¶¶ 2-6. Far from challenging the GP Debtor's privilege position, the Officeholders'

[5] Just one day before, the Officeholders' counsel wrote to Quinn Emanuel: "Third, on the retention issues we discussed, we are continuing to address those issues and will hopefully follow up in greater detail next week." Ex. 1 (Sept. 3, 2026 email from M. Craig to P. Tomasco *et al.*)

counsel proposed that no one access the server image while the issue was addressed. *Id.* ¶ 3. And its suggestion that the GP Debtor use other counsel was expressly limited to any position adverse to the Fund Debtor "on this point." *Id.* ¶ 6. The GP Debtor's defense of its privilege rights was legitimate, considering that the Recognition Order explicitly preserves the automatic stay as to each Debtor and its estate. *See* Docket No. 1000 ¶ 4 ("The automatic stay of 11 U.S.C. § 362 remains in place with respect to each of the Debtors[] and their estates unless and until any relief from stay is granted in one or more of the bankruptcy cases.").

L. For Ten Weeks, The Officeholders Treat Quinn Emanuel As Counsel To The GP Debtors And The Portfolio Debtors Without Objection

34. Following the August 10 Letter, the Officeholders continuously engaged with Quinn Emanuel as counsel to the Portfolio Debtors and the GP Debtor, including in matters in which those Debtors and the Fund Debtor were potentially adverse, without ever taking the position that Quinn Emanuel could not continue to represent any of the non-Fund Debtors:

Dealings Between The Officeholders And Quinn Emanuel As Counsel To The GP Debtor And The Portfolio Companies	
Consent requests, including claims bar date extensions	After August 10, 2026, the Officeholders' counsel asked Quinn Emanuel several times to consent to proposed orders on behalf of the GP Debtor and the Portfolio Debtors, including two extensions of the claims bar date for the Fund Debtor and the Officeholders to assert claims against non-Fund Debtors. Exs. 2, 3.
Third Funding Motion	In connection with the Third Funding Motion and the Officeholders' supplement, Quinn Emanuel argued on behalf of the Portfolio Debtors and GP Debtor. In that respect, the Officeholders did not assert a disabling conflict and the Officeholders ultimately compromised in a manner favorable to the Portfolio Debtors.[6]

[6] *See* 8/25/2026 Hr'g Tr. 25:19-26:3 (by Mr. Martin): "The next item on the agenda is the funding motion; "third funding motion," it's been called variously throughout time. And the parties did – have met and conferred. We met and conferred with Murphy & King, Quinn Emanuel, the Creditors Committee, Rigmora, and we have a redline from what we originally

Dealings Between The Officeholders And Quinn Emanuel As Counsel To The GP Debtor And The Portfolio Companies	
Employment of Vernon Flynn	When the Officeholders objected to the employment of Vernon Flynn on behalf of all Debtors, Quinn Emanuel responded, and the Court agreed that Mr. Flynn's work was properly performed on behalf of all Debtors. Docket Nos. 1058-59, 1084. There, again, the Officeholders did not contend that Quinn Emanuel was disqualified.
Delaware Supreme Court Appeal	The Officeholders consented to Quinn Emanuel arguing on behalf of the GP Debtor before the Delaware Supreme Court, and that consent has not been withdrawn.
Appeals from This Court's Orders	The Officeholders acknowledged that Quinn Emanuel would continue to represent the GP Debtor and the Portfolio Debtors in two appeals from this Court's orders denying Rigmora's Motion to Dismiss and approving the second funding motion. The Officeholders' counsel also acknowledged that defending this Court's orders was in the best interests of all debtors. Ex. 4.

M. The Officeholders File The Governance Motion

35. On September 30, 2026, the Officeholders caused the Fund Debtor to file the Governance Motion, seeking authority to replace the members of the boards of directors of the Portfolio Debtors and the other portfolio companies without court oversight. Docket No. 1188. The Governance Motion's premise was that the Recognition Order by implication superseded the Clarification Order such that the Officeholders did not need to justify replacing any individual Portfolio Company Board members to this Court. Docket No. 1188 ¶¶ 2-3, 5, 28, 37-38, 40-41.

36. On October 13, 2026, the Portfolio Debtors, through Quinn Emanuel and M&K, responded that doing so in the middle of a sales process risked eroding value (i.e., why cause a change in Portfolio Company governance in the middle of a bidding process for the ownership of

proposed to our statement, with respect to the third funding order that we just resolved this morning ….”

such Portfolio Companies)[7] and that such authority contradicted the Clarification Order. Docket No. 1209 ¶¶ 1-3.

37. The next day, the Officeholders caused the Fund Debtor to file a reply, attaching a declaration from one of the Officeholders and the Chief Restructuring Officer of the Portfolio Debtors. Docket No. 1210. No Portfolio Debtor gave consent.

N. The Officeholders Demand Withdrawal For The First Time In Late October

38. The DQ Motion argues that the Officeholders "objected in writing to the adversity" in a letter dated October 13, 2026 (the "October 13 Letter"), Docket No. 1270 ¶ 39; *see also* Ex. H. But that characterization is incorrect because the October 13 Letter does not assert any disqualifying conflict, let alone ask Quinn Emanuel to withdraw from any representation.

39. The first written demand that Quinn Emanuel withdraw from representing the Portfolio Debtors came on October 19, 2026, ten weeks after the August 10 Letter. *See* Ex. I at 3. That letter was sent on the day of the (now continued) hearing on the Governance Motion.

40. On October 23, 2026, Quinn Emanuel responded, explaining why no disabling conflict exists. Ex. K. Quinn Emanuel also noted that, at the October 19, 2026 chambers conference, the Officeholders had agreed, through their counsel, that "rather than escalating disputes, they would work with QEUS to use the time between the next hearing and November 10 to discuss the situation and see if cooler heads might prevail." *Id.* at 5. The Officeholders did not dispute any specific part of the October 23 Letter, but had acknowledged their agreement to "de-

[7] Unless a bidder was demanding such a change. Based on the indicative bids received, no third party bidder made such demand, leaving open the question of why the Officeholders filed the Governance Motion if not to eliminate effective opposition to the PSA.

escalate." Ex. 6.[8] The DQ Motion directly contradicts that agreement and represents an escalation designed to eliminate effective advocacy for potential opponents of the PSA.

41. On October 27, 2026, the parties met and conferred, and Quinn Emanuel advised that it would discuss its continued representation with the Portfolio Debtors' boards of directors. Docket No. 1270 ¶ 11 n.2. The Officeholders refused to wait and filed the DQ Motion the same day.

O. The Officeholders Agree To A Plan Support Agreement With Rigmora At The Same Time They Move to Disqualify Quinn Emanuel

42. Three days after moving to disqualify Quinn Emanuel, the Officeholders, acting for the Fund, filed motions to approve debtor-in-possession financing and a plan support agreement with Rigmora [Docket Nos. 1280 and 1282] (the "DIP Motion" and "PSA Motion"). Apparently, the Officeholders have concluded it is not worth waiting for the second round of bidding before selecting Rigmora as their preferred bidder—ignoring that the Exit Financing Procedures were filed by all Debtors and contemplated that the Debtors would make decisions jointly, particularly the Portfolio Debtors.

43. The DIP Motion seeks the Court's permission to obtain financing from Rigmora in the aggregate principal amount of up to $24,790,000 (the "DIP Loan"). The PSA Motion seeks approval of a Plan Support Agreement ("PSA") negotiated between the Fund Debtor, acting through the Officeholders, and Rigmora. The PSA designates four of the Portfolio Debtors as "Sale Debtor Portcos" that may join the PSA by completing a sale process of substantially all of their assets, including allowance of a Stalking Horse Bid in the form of a credit bid from Rigmora.

[8] The October 23 letter asked for assurances that the Fund Debtor would continue to defend the orders of this Court that Rigmora had appealed. The Officeholders to this day have not responded.

Docket No. 1282 ¶ 4. The PSA Motion asserts that its terms are the result of careful consideration of all bids submitted through the Debtors' exit financing process, which had been received only days earlier and which the Officeholders never discussed with the Portfolio Debtors or the GP Debtor in contravention of the Exit Financing Procedures which contemplates that all Debtors would participate in the decision-making process.[9] *Id.* ¶ 19. The PSA includes a number of milestone, including a deadline of November 23, 2026, for Portfolio Debtors to opt in to the PSA, a disclosure statement and plan filing deadline of December 7, 2026, and a plan confirmation deadline of February 22, 2027. *Id.* ¶ 20.

LEGAL STANDARD

44. "A party seeking to disqualify opposing counsel bears a heavy burden" because "[d]isqualification of a party's chosen counsel is a 'drastic' and 'extreme' remedy." *In re HRB Winddown, Inc.,* 2023 WL 3294623, at *3 (Bankr. D. Del. May 5, 2023); *see In re ProEducation Int'l, Inc.*, 587 F.3d 296, 299 (5th Cir. 2016) (stating that disqualification motions, often brought for tactical reasons, are subject to scrutiny and not to be granted cavalierly); *United States v. Crowder*, 313 F. Supp. 3d 135, 141 (D.D.C. 2018) ("[D]isqualification is highly disfavored, and any motion to disqualify counsel is therefore examined with a skeptical eye."); *Konarski v. Donovan*, 763 F. Supp. 2d 128, 135-36 (D.D.C. 2011) (disqualification "is a drastic measure that is disfavored by the courts." (quotations omitted)); *Visa U.S.A., Inc. v. First Data Corp.*, 241 F. Supp. 2d 1100, 1104 (N.D. Cal. 2003) (denying motion to disqualify and enforcing future conflict

[9] *See* Docket No. 1080 ("In the event a party submits an LOI to acquire equity of any individual Portfolio Company or a subset of the Portfolio Companies, the Officeholders will consult with the management of such Portfolio Company or Portfolio Companies as if such management were a Consultation Party (in addition to the Committee as a Consultation Party."). The Officeholders never consulted with any Portfolio Debtor's management, nor any of the Non-Fund Debtors.

waiver, stating that "[m]otions to disqualify counsel are strongly disfavored."); *CrossFit Inc v. JB&AP CFLA BIZ LLC*, 2013 WL 12142635 at *2 (C.D. Cal. Oct. 24, 2013) ("motions to disqualify are strongly disfavored" as they "are often tactically motivated" and therefore "should be subjected to particularly strict judicial scrutiny" and "only be imposed when absolutely necessary").

45. Such motions are "a drastic measure which courts should hesitate to impose except when of absolute necessity." *In re Marvel*, 251 B.R. 869, 871-72 (Bankr. N.D. Cal. 2000) (sanctioning counsel for filing non-meritorious motion to disqualify). When ruling on a motion to disqualify, courts must "[keep] in mind that disqualification usually imposes a substantial hardship on the disqualified attorney's innocent client, who must bear the monetary and other costs of finding a replacement." *Oracle Am., Inc. v. Innovative Tech. Distr., LLC*, 2011 WL 2940313, at *3-4 (N.D. Cal. 2011) (internal quotations omitted). "Because of [the] potential for abuse, disqualification motions should be subjected to 'particularly strict judicial scrutiny.'" *Optyl Eyewear Fashion Int'l Corp. v. Style Companies, Ltd.*, 760 F.2d 1045, 1050 (9th Cir. 1985) (denying motion to disqualify). Thus, "unless an attorney's conduct tends to 'taint the underlying trial,' by disturbing the balance of the presentations … courts should be quite hesitant to disqualify an attorney." *Koller By & Through Koller. v. Richardson- Merrell Inc.*, 737 F.2d 1038, 1056 (D.C. Cir. 1984), *vacated on other grounds*, 472 U.S. 424 (1985) (quotations omitted).

46. "The moving party, therefore carries a heavy burden and must satisfy a high standard of proof." *Marvel*, 251 B.R. at 871; *Cauderlier & Assocs., Inc. v. Zambrana*, 2006 WL 3445493, at *2 (D.D.C. Oct. 6, 2006) (motions to disqualify face an "extraordinarily high burden"); *Talecris Biotherapeutics, Inc. v. Baxter Int'l Inc.*, 491 F. Supp. 2d 510, 513 (D. Del. 2007) ("The party seeking disqualification must clearly demonstrate that 'continued representation

would be impermissible.'"); *In re Onejet, Inc.*, 614 B.R. 522, 530-31 (Bankr. W.D. Pa. 2020) ("The burden is an exceptionally heavy one as motions to disqualify are viewed with disfavor within our Circuit because of the potential for abuse as a litigation tactic."); *see also*, *Macheca Transp. Co. v. Phila. Indem. Co.*, 463 F.3d 827, 833 (8th Cir. 2006) ("A party's right to select its own counsel is an important public right and a vital freedom that should be preserved; the extreme measure of disqualifying a party's counsel of choice should be imposed only when absolutely necessary.").

ARGUMENT

I. THE OFFICEHOLDERS HAVE NOT MET THEIR HEAVY BURDEN TO DEMONSTRATE DISQUALIFICATION IS APPROPRIATE UNDER RULE 1.9

47. Model Rule 1.9(a) (and Delaware Lawyers' Rules of Professional Conduct 1.9) state that: "[a] lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing."

48. To establish a violation of Rule 1.9, the party seeking disqualification must show that: (1) "the attorney accused of the violation is a 'former attorney' with respect to a party presently before the court;" (2) "the subject matter of the former representation is the same as, or substantially related to, the present matter on which the alleged violation of Rule 1.9 is based"; (3) "the interests of the former client are adverse to the interests of the party represented by the attorney who is accused of violating Rule 1.9;" and (4) the former client has not given informed consent, confirmed in writing. *See, e.g.*, *GEO Specialty Chems., Inc. v. Husisian*, 951 F. Supp. 2d 32, 41 (D.D.C. 2013) (citation omitted). The moving party's failure to meet its high burden on any one of these elements requires denial of the DQ Motion.

49. Here, the Fund Debtor, acting through the Officeholders, has not demonstrated that the matters are the same or substantially related, and that the interests of the Fund Debtor are adverse to the interests of the GP or Portfolio Debtors.[10]

A. The Fund Debtor, Acting Through The Officeholders, Has Not Demonstrated That The Matters Are The Same Or Substantially Related

50. A determination of whether matters are the "same" depends "on the facts of a particular situation of transaction." Model Rule 1.9 cmt. [2]. "The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question." *Id.* Similarly, "[t]o determine whether two matters are 'substantially related,' courts look to "both the facts and the legal issues involved." *Headfirst Baseball LLC v. Elwood*, 999 F. Supp. 2d 210-11 (D. D.C. 2013) (quotations omitted);

[10] The DQ Motion devotes significant attention to *Commodity Futures Trading Commission v. Weintraub*, 471 U.S. 343, 349 (1985). The Fund Debtor, through the Officeholders, argues that the Fund was Quinn Emanuel's former client citing *Weintraub* stands for the principle that "when control of a corporation passes to new management, the authority to assert and waive the corporation's attorney-client privilege passes as well," and asserting that "[t]he same principle applies to identify the former client under Model Rule 1.9." Docket No. 1270 ¶ 46. The DQ Motion also cites *In re I Successor Corp.*, 321 B.R. 640, 652, 654 (Bankr. S.D.N.Y. 2005) as an application of *Weintraub* to a determination of whether a client is a "former client." *Weintraub*, however, did not discuss disqualification, or Rule 1.9. Ex. 5 (*Debtor's Objection to the Missouri Liquidating Trustee's Omnibus Motion to Disqualify All of Debtor's Counsel*, Case No. 16-10446 (Bankr. D. Kan. Nov. 9, 2017). Indeed, counsel for the Officeholders has previously and successfully argued to a bankruptcy court that *Weintraub* "did not rule that a successor trustee is a former client, but rather that the trustee has control over the attorney-client privilege of its predecessor" and distinguished *I Successor Corp.* on that basis. *Id.*; *see In re Abengoa Bioenergy Biomass of Kansas, LLC*, No. 16-10446, 2018 WL 1321951, at *9 (Bankr. D. Kan. Mar. 13, 2018). Importantly here, Quinn Emanuel never represented the Officeholders either before or after the Recognition Order, and has opposed them in both capacities without prior objection. The Officeholders occupy a position that does not exist in Cayman law, but instead act "in the stead of" the GP Partner on behalf of the Fund Debtor which lacks a "legal personality." Particularly here, whether or not the Officeholders control the privilege of the Fund Debtor entirely misses the point—the succession to the privilege does not require disqualification unless counsel possesses privileged information that could be used adversely to the former client. *Id.*

see Model Rule 1.9 cmt. [3] ("Matters are 'substantially related' for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter."). Information disclosed to counsel may be "rendered obsolete by the passage of time, a circumstance that may be relevant in determining whether two representations are substantially related." Model Rule 1.9 cmt. [3]. Additionally, "[i]n the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation." *Id.*

51. To determine whether matters are substantially related, courts engage in the following analysis: (1) the court must "make a factual reconstruction of the scope of the prior legal representation"; (2) "[i]f the factual contexts overlap, the court then has to determine whether it is reasonable to infer that the confidential information allegedly given would have been given to a lawyer representing a client in those [prior] matters; and (3) "if such [confidential] information apparently was available to counsel in the prior representation, the court has to determine whether it is relevant to the issues raised in the litigation pending against the former client." *Headfirst Baseball*, 999 F. Supp. 2d at 211 (quotations omitted). The relevance to the new representation of the information obtained in the prior representation is alone insufficient to warrant disqualification where the matters are not actually the same transaction or legal dispute. *Id.*; *see* Model Rule 1.9 cmt. [3]. Rather, there must be a "substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter." *Headfirst Baseball*, 999 F. Supp. 2d at 211.

52. The facts of this case more closely resemble those of the successor liquidating trustee in a trio of cases in which the prior law firm for the debtor continued to represent the debtor

after the appointment of a liquidating trustee or other successor to the debtor's estate. *In re Abengoa Bioenergy Biomass of Kansas, LLC*, No. 16-10446, 2018 WL 1321951, at *9-10 (Bankr. D. Kan. Mar. 13, 2018), a liquidating trustee moved to disqualify counsel for an affiliated debtor in a separate case. The liquidating trustee of Missouri attempted to collect an intercompany debt by filing a competing plan of liquidation in the Kansas bankruptcy. The bankruptcy court denied the motion finding that "[t]he [liquidating trustee] did not spring into legal existence until the liquidating plan was confirmed … At that point, [the liquidating trustee] became the post-confirmation designated representative of the estate, making it a separate and distinct entity from the [debtors]." *Id.* at *7.

53. *Abengoa* informed the bankruptcy court's decision in *Las Uvas Valley Dairies*, 648 B.R. 260 (Bankr. D.N.M. 2022) where a law firm represented the debtor as general bankruptcy counsel both pre- and post-confirmation. The confirmed liquidating plan transferred all of the debtor's assets to a liquidating trust to be managed and sold by a liquidating trustee. Several months post-confirmation, the liquidating trustee moved to disqualify A&W from representing a creditor, arguing that its prior representation of the debtor in the Chapter 11 case created a disqualifying conflict of interest. The court disagreed, noting that a liquidating trustee may succeed the debtor but does not *become* it.

54. More recently, Judge Shannon adopted the reasoning of *Abengoa and Las Uvas* and declined to disqualify former counsel to the debtors in *In re HRB Winddown, Inc.*, No. 19-12689 (BLS), 2023 WL 3294623, at *6 (Bankr. D. Del. May 5, 2023). Like *Las Uvas* and *Abengoa*, the court found that succeeding to the privilege does not make the post-confirmation entity the same as the debtor for conflict purposes. Judge Shannon ruled that "[t]his Court agrees with the reasoning in both *Abengoa* and *Las Uvas* and finds that the Liquidating Trustee here is not the former client of Debevoise." *Id.*

55. Here, the Fund Debtor lacks a "legal personality" under Cayman law and acts solely through the Officeholders whose appointment remains subject to certain fundamental constraints in the Court's Recognition Order, not the least of which is the continuation of the automatic stay with respect to all matters not contained in the Stay Order and, in all respects, with respect to the Portfolio Debtors. Further, the Officeholders concede that the matter at issue—the Governance Motion—forms a discrete "matter" about which Quinn Emanuel never advised the Fund Debtor and certainly not the Officeholders.[11] Motion ¶ 53. Indeed, it is impossible for Quinn Emanuel to have advised the Fund Debtor on the Governance Motion because the Fund Debtor filed that motion functioning through the Officeholders who have not retained Quinn Emanuel in these chapter 11 cases. Accordingly, the single "matter" actually at issue—the Governance Motion—is not one on which Quinn Emanuel represented the Fund Debtor, rendering Rule 1.9 inapplicable.

56. Unable to defeat this basic argument, the Fund Debtor, acting through the Officeholders, instead argues the Court must look at the Quinn Emanuel's prior general bankruptcy retention, which, according the DQ Motion, "covered a broad swath of topics, including corporate governance, financing and cash collateral, and relief from the automatic stay." Motion ¶ 53. To the extent this argument is, at its essence, that Quinn Emanuel cannot take any position adverse to the Fund Debtor because it learned information about the Fund Debtor's practices and policies in its prior representation, the Model Rule itself forecloses this argument. Model Rule 1.9(a), cmt. [3] ("In the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation."). Moreover, whatever knowledge Quinn Emanuel has of the Fund Debtor's prior practices and policies is now "obsolete," Model Rule

[11] Indeed, there are "two basic forms of adversary process within a bankruptcy case: "contested matters" and "adversary proceedings." *D-1 Enters., Inc. v. Comm. State Bank*, 864 F.2d 36, 39-40 (5th Cir. 1989).

1.9(a), cmt. [3], as Quinn Emanuel's representation was when the Fund was operating at the direction of the GP Debtor, not the Officeholders. In addition, for reasons also discussed in Part II below (at paragraphs 75-78), the Fund Debtor fails to satisfy its burden to demonstrate that the information allegedly obtained from the prior representation provides a "material advantage" in the instant situation.

57. The Fund Debtor, acting through the Officeholders, fails to articulate any relevant overlap in the factual context of the prior representation and the current posture of the chapter 11 cases. *See Headfirst Baseball*, 999 F. Supp. 2d at 210-12. Nor does it explain how any confidential information available in the prior representation informs the issues now before the Court. *Id.* Instead, it makes generic, vague arguments about Quinn Emanuel's general "knowledge of the Debtors' business, financial, and litigation affairs." Motion ¶ 55. It baldly asserts that because Quinn Emanuel previously advised the Fund Debtor, acting through the GP Debtor, on a potential plan, it knows "which lines to pursue" against a different plan that the Fund Debtor via the Officeholders may pursue. Courts routinely hold that these types of vague allegations are insufficient to show a prior representation is substantially related to the current one. *See Headfirst Baseball*, 999 F. Supp. 2d at 213 ("These vague allegations are insufficient. Given the lack of evidence, and bearing in mind that the defendants have the heavy burden of persuading the Court that the alleged prior representation is substantially related to the present litigation, it would be inappropriate on this record to find that Rule 1.9 has been violated and to disqualify Williams & Connolly as the plaintiffs' counsel on that basis at this time.") (citation omitted); *see, e.g.*, *GEO Specialty Chemicals, Inc. v. Husisian*, 951 F. Supp. 2d 32, 43 (D.D.C. 2013) (denying motion to disqualify under Rule 1.9 where the moving party "never even hints at how the information learned in the [prior] representation might be useful to [the non-moving party] in [the latter case]"); *Fenzel*

v. Group2 Software, LLC, 2014 WL 7404575, at *8 (D. Md. Dec. 29, 2014) (denying motion to disqualify defendant's firm under analogous Maryland ethics law where defendant did not proffer "any facts establishing that … [defendant's firm] obtained any confidential information during that representation that would materially advance Defendants' position in this matter"); *G.D. Searle & Co. v. Nutrapharm Inc.*, 1999 WL 249725, at *3 (S.D.N.Y. Apr. 28, 1999) (denying motion to disqualify plaintiff's counsel in trademark infringement action, finding the "current trademark dispute is not substantially related to [the] prosecution of the patents" and that "general assertions, without any specifics, that relevant and confidential information was provided … in the course of the previous representation are insufficient"); *Herrera-Shorthouse v. La Cubana Bail Bonds, Inc.*, 1999 WL 33266031, at *4 (S.D. Fla. July 14, 1999) ("The standard for disqualification is not met merely by alleging that two actions share a general subject matter—for example, trademarks. Nor does the fact that Mr. Faibisch received general legal advice concerning trademark issues make the two actions 'substantially related.'"). This Court should do the same and reject the argument.

B. Rule 1.9 Does Not Apply Because The Fund Debtor's Interests Are Not Materially Adverse To The Interests Of The GP Debtor And The Portfolio Debtors

58. The Fund Debtor, acting through the Officeholders, next argues that the Portfolio Debtors and the GP Debtor have materially adverse interests to the Fund Debtor. Motion ¶ 57. This argument relies on an inaccurate timeline and omits several relevant facts that defeat the Fund Debtor's argument.

59. The Officeholders first argue that Quinn Emanuel took a position adverse to the Fund Debtor because it prepared to depose one of the Officeholders in July 2026 and submitted a competing Recognition Order. Motion ¶ 59. Of course, this argument ignores that the Officeholders did not displace the GP Debtor for the Fund Debtor until July 30, 2026, when the Court entered the Recognition Order. Accordingly, Quinn Emanuel, when preparing for such a

deposition and submitting a competing Recognition Order, *was acting for the Fund Debtor, not adverse to it*. Indeed, the Recognition Order that was entered by this Court is very different than the one submitted by the Officeholders, and expressly imposes an obligation on the Officeholders that ***if they choose to exercise managerial powers*** they must comply with duties as a debtor and debtor in possession and the Bankruptcy Code. Docket No. 1000 ¶ 2.[12]

60. The Officeholders' second argument is that the GP Debtor and Portfolio Debtors objected to the Governance Motion. Motion ¶ 59. They fail to acknowledge, however, the substance of that objection, in which the GP Debtor and Portfolio Debtors sought to enforce the Clarification Order that they previously championed along with the Fund Debtor. Accordingly, the objection to the Governance Motion definitionally could not have been adverse to the Fund Debtor, as it sought to enforce an order that the Fund Debtor had itself advocated for and obtained.

61. The Officeholders' last argument is that the Debtors are adverse to each other due to the proofs of claim certain Portfolio Debtors filed against the Fund Debtor. Motion ¶ 60. But the DQ Motion fails to explain how this can be disqualifying; the existence of such claims was disclosed as part Quinn Emanuel's retention process, Docket No. 226 ¶ 14, and the Court approved the employment of M&K in the event that there is any conflict between the Portfolio Debtors and any other Debtor on this front.

62. The DQ Motion does not identify any other adversity. It vaguely asserts that Dr. Harrison is an active participant in the sales process, but acknowledges that he has retained his own personal counsel. The DQ Motion therefore has to speculate that Dr. Harrison's position on the boards of directors of the Portfolio Companies means that Quinn Emanuel will "misuse" the

[12] The DQ Motion cites this paragraph but omits the reference to the Bankruptcy Code. Docket No. 1270 ¶ 29.

Fund Debtor's "client confidences." Motion ¶ 62. But it does not, and cannot, identify any such "client confidences," how they could possibly be "misused," and most importantly, how Dr. Harrison's position as a director of certain Portfolio Debtors has created any actual adversity. Case law holds that "[m]erely point[ing] to a superficial resemblance," *Duncan*, 646 F.2d at 1029, is insufficient, and that knowledge of general practices and procedures does not warrant disqualification, *id*. The DQ Motion therefore fails to meet its heavy burden of showing adversity. *See Finalrod IP, LLC v. John Crane, Inc.*, 2016 WL 866930, at *3 (W.D. Tex. Mar. 3, 2016).

C. The Fund Debtor Has Waived Any Conflict Because The Officeholders, While Directing The Fund Debtor, Have Repeatedly Engaged With Quinn Emanuel As Counsel To The Portfolio Debtors And The GP Debtor, And Now Only Seek Disqualification Because They Have Reached A Deal With Rigmora

63. In addition, the Fund Debtor, acting through the Officeholders, has waived any objection to Quinn Emanuel's continued representation of the GP and Portfolio Debtors. "As a general matter, a client may expressly or *impliedly* waive his objection and consent to an adverse representation." *In re Muma Servs., Inc.*, 286 B.R. 583, 587–88 (Bankr. D. Del. 2002) (emphasis in original). Such a waiver is found when a party seeking disqualification "fail[s] to raise such an objection promptly when the opportunity availed itself." *In re Trevino*, 78 B.R. 29, 40 (Bankr. M.D. Pa. 1987); *see Trust Corp. of Montana v. Piper Aircraft Corp.,* 701 F.2d 85, 87 (9th Cir. 1983) (holding that waiver is appropriate where a former client has a valid ground for disqualification but "knowingly refrains from asserting it promptly"). Indeed, motions to disqualify must be made with "reasonable promptness after the party seeking the disqualification learns of the conflict of interest," *Etkin & Co. v. SBD LLC*, 2012 WL 5398966, at *5 (S.D. Fla. Nov. 5, 2012), and courts routinely reject untimely motions to disqualify. *See, e.g.*, *Enslein v. Di Mase*, 2018 WL 1426361, at *4 (W.D. Mo. Mar. 22, 2018) (denying motion to disqualify based on undue delay); *Marks Const. Co. v. Huntington Nat'l Bank*, 2010 WL 1404590, at *4 (N.D.

W.Va. Apr. 2, 2010) (rejecting motion to disqualify where "every essential fact which underlies this motion was known to the defendants from the start of the litigation").

64. Courts can and should deny late motions to disqualify because they exemplify strategies that opponents "use[] as 'procedural weapon[]' to advance purely tactical purposes.'"[13] *Ambush*, 282 F. Supp. 3d at 61-62 (quoting *In re Rail Freight*, 965 F. Supp. 2d at 110). *In re Trevino*, 78 B.R. at 41 ("delay may bar the presentation of a motion to disqualify if that delay reflects an attempt by the moving party to use the disqualification issue merely to gain a tactical advantage"); *see In re AroChem Corp.*, 176 F.3d 610, 625 (2d Cir. 1999) ("[C]ourts must be sensitive to the possibility of strategic abuse of disqualification motions"). This rule reflects the unfortunate reality that motions to disqualify "are often tactically motivated; they tend to derail the efficient progress of litigation." *In re Marvel*, 251 B.R. 869, 871 (Bankr. N.D. Cal. 2000) (sanctioning counsel for filing non-meritorious motion to disqualify). Judges recognize that "attorneys now commonly use disqualification motions for purely strategic purposes," and "often pose the very threat to the integrity of the judicial process that they purport to prevent." *Gregori v. Bank of Am.*, 207 Cal. App. 3d 291, 300–01 (1989). The reason litigants employ motions to disqualify as part of their litigation strategy is clear—"disqualification usually imposes a substantial hardship on the disqualified attorney's innocent client." *Oracle*, 2011 WL 2940313, at *3-4.

65. Here, the Officeholders have actively participated in the Chapter 11 Cases since June, and only now that they have a deal with Rigmora and are hurtling towards confirmation of a Rigmora plan do they seek to deprive the GP and Portfolio Debtors of their chosen counsel. For

[13] The DQ Motion acknowledges that a former client can waive a conflict "by delay only when it fails raise the issue within a reasonable time, in a way that suggests it is using disqualification as a litigation tactic." Motion ¶ 65.

starters, the Officeholders, acting for the Fund Debtor, affirmatively consented to Quinn Emanuel continuing to represent the Fund Debtor in the Syntimmune Litigation while knowing that Quinn Emanuel represented the GP Debtor and Portfolio Debtors in these chapter 11 cases. Regardless of what "reservations of rights" they included in the August 10 Letter, they did not seek to disqualify Quinn Emanuel until they apparently reached a deal with Rigmora and only then devised a way to disenfranchise all potential opposition to it.

66. The DQ Motion points to numerous times in which the possibility of a conflict has been raised. Motion ¶ 65. These discussions of hypothetical conflicts that never materialized do nothing to establish an existing conflict here, but they do show that for months, the Officeholders have known that following their appointment, decisions they make regarding the Fund's participation in these cases could force the Portfolio Debtors to take a position adverse to the Fund. Yet, the Officeholders did not seek to disqualify Quinn Emanuel until they reached a deal with Rigmora. *See In re Muma Servs., Inc.*, 286 B.R. 583, 588–89 (Bankr. D. Del. 2002) (finding waiver when "instead of promptly objecting to [attorney's] representation, [Movant] sought to have [Attorney] perform more work for it…"). In short, the fact that the Fund Debtor, acting through the Officeholders, was aware of the possibility of conflicts for months, and did nothing to actually disqualify Quinn Emanuel until it reached a deal with Rigmora, demonstrates that their present argument has been waived and that the DQ Motion is being used purely for tactical, litigation purposes.

67. Moreover, the Officeholders, while acting for the Fund Debtor, engaged on numerous instances with Quinn Emanuel as counsel to the GP and Portfolio Debtors, including on matters that could create adversity between the Fund Debtor and the GP Debtor and/or Portfolio Debtors. For example, on several occasions, the Officeholders, acting for the Fund, asked Quinn

Emanuel as counsel for the GP Debtor and Portfolio Debtors to consent to extensions of the claims bar date for the Fund Debtor to assert claims against the GP Debtor and Portfolio Debtors. Exs. 2, 3. The Officeholders, again acting for the Fund Debtor, responded to the employment of Vernon Flynn, where Quinn Emanuel had responded for the GP Debtor and Portfolio Debtors, without any conflict-based objection. Docket Nos. 1058, 1059. The Officeholders also consented to Quinn Emanuel arguing before the Delaware Supreme Court on behalf of the GP Debtor. And, most tellingly, they also consented to Quinn Emanuel continuing to represent the GP Debtor and Portfolio Debtors in Rigmora's appeals of the Dismissal Order and order approving the Second Funding Motion. *See* Ex. 4.

68. The timing of the DQ Motion is no accident; it is a clear strategy to obtain a tactical advantage by removing the Portfolio Debtors' chosen counsel. That the Officeholders now seek to disqualify Quinn Emanuel only after reaching a deal with Rigmora demonstrates that this Motion has nothing to do with any conflict, but instead, is an attempt to facilitate the deal they have struck with Rigmora and to head off any scrutiny of that deal. In other words, this is a litigation tactic.

D. Disqualification Will Unfairly Prejudice The GP And Portfolio Debtors, While Quinn Emanuel's Continued Representation Of The GP And Portfolio Debtors Will Cause No Prejudice To The Fund Debtor

69. As the DQ Motion concedes, even if there is a violation of Rule 1.9 (which there is not), "the decision whether to disqualify is discretionary and 'never is automatic.'" *HRB Winddown*, 2023 WL 3294623, at *3. "The Bankruptcy Court ha[s] 'wide discretion' with regard to disqualification." *In re Boy Scouts of Am.*, 630 B.R. 122, 134 (D. Del. 2021), *aff'd*, 35 F.4th 149 (3d Cir. 2022). Indeed, any concern over potential conflicts must be balanced against the substantial prejudice Quinn Emanuel's removal would cause to the GP and Portfolio Debtors. *Trevino*, 78 B.R. at 41 ("[T]he potential prejudice of the party whose counsel is disqualified must

be addressed."). Courts will also consider the ability of litigants to obtain counsel of their choice and the use of disqualification as a litigation strategy. *In re Boy Scouts of Am.,* 35 F.4th at 160.

70. To start, the DQ Motion does not even attempt to argue lack of prejudice to the GP Debtor. Motion ¶¶ 67-70. It does not because it is abundantly clear that disqualification will prejudice the GP Debtor, particularly given the abbreviated plan timeline that Rigmora and the Fund Debtor, acting through the Officeholders, have agreed to pursue. It is not feasible to suggest that the GP Debtor will be able to retain new counsel to evaluate a plan that the PSA contemplates must be confirmed by February 22, 2027. If anything, the cascade of confirmation milestones, paired with this Motion, suggests that the DQ Motion's true intent is to prevent counsel that knows the underlying facts from participating in the plan confirmation process. Given this obvious prejudice, and the lack of any actual conflict or adversity, the Court should deny the DQ Motion with respect to the GP Debtor.

71. The DQ Motion's only argument with respect to the Portfolio Debtors is that the Portfolio Debtors are not prejudiced because they are already represented by M&K. This argument too requires denial of the DQ Motion. The Court approved the employment of both Quinn Emanuel and M&K for the Portfolio Debtors long ago, with M&K retained to act for the Portfolio Debtors in the event of any actual conflict between the Portfolio Debtors and the Fund Debtor. This division of labor is a common bankruptcy practice and entirely moots the DQ Motion.

72. There is no question that the disqualification of Quinn Emanuel—a firm that specializes in complex and high-stakes bankruptcy litigation—would grant the Officeholders a tactical advantage. Indeed, three days after filing this Motion, the Fund Debtor, acting through the Officeholders, filed the DIP and PSA Motions, where the GP and Portfolio Debtors learned for the first time that the Officeholders and Rigmora had agreed to a plan structure and timeline without

any input from the Portfolio Debtors—in contravention of the Exit Procedures Order. Depriving the GP and Portfolio Debtors of counsel familiar with the underlying facts is undoubtedly tactically advantageous to the Officeholders and Rigmora (the PSA parties), but the law forecloses such a tactical reason to disqualify. Disqualification at this stage would require substantial duplication of efforts and an increase in costs, where no actual prejudice has been identified, and where the Court has *already* addressed the potential for conflicts with the appointment of conflicts counsel for the Portfolio Debtors. *See FlatWorld Interactives LLC v. Apple Inc.*, 2013 WL 4039799, at *9 (N.D. Cal. Aug. 7, 2013) (denying disqualification motion in part due to the "substantial hardship" in "the replication of expended efforts, and [] the delay disqualification would cause").

73. In contrast, the Fund Debtors, acting through the Officeholders, face no prospect of hardship or prejudice, and there is no threat to their confidential information if this Motion is denied. The Fund Debtor has not attempted to argue or make any showing of prejudice such as the betrayal of privileged communications. *See UMG Recordings, Inc. v. MySpace, Inc.*, 526 F. Supp. 2d 1046, 1063 (C.D. Cal. 2007) ("[E]ven when counsel has been shown to have committed an ethical rule infraction the court retains discretion to decline to order disqualification, and, in many cases, courts have done just that."); *Edwards v. CoreCivic of Tennessee, LLC*, 2021 WL 5303406, at *2 (S.D. Cal. Nov. 15, 2021) ("Since the purpose of a disqualification order must be prophylactic, not punitive, the significant question is whether there exists a genuine likelihood that the status or misconduct of the attorney in question will affect the outcome of the proceedings before the court."); *Nat'l Oilwell Varco, L.P. v. Omron Oilfield & Marine, Inc.*, 60 F. Supp. 3d 751, 769 (W.D. Tex. 2014) ("[I]t is [the moving party's] burden to show why disqualification, a severe remedy, is called for in these circumstances, and [defendant] does not even suggest what harm might occur.").

74. For these reasons, the Court should deny the DQ Motion.

II. QUINN EMANUEL CAN CONTINUE TO REPRESENT THE GP AND PORTFOLIO DEBTORS AS A MATTER OF BANKRUPTCY LAW

75. The Fund Debtor, acting through the Officeholders, next argues that Quinn Emanuel cannot continue as counsel to the GP and Portfolio Debtors under section 327(a) because its duties to the Fund Debtor give it an interest adverse to the Portfolio Debtors' estates. Motion § II. This arguments fails for multiple reasons.

76. *First*, the only "conflict" that the DQ Motion identifies are the Portfolio Debtors' claims against the Fund Debtor under the SPAs. Motion ¶¶ 75, 79. But the parties in the bankruptcy cases already briefed this exact argument, and the Court approved Quinn Emanuel's retention. In January 2026, Rigmora objected to Quinn Emanuel's retention, arguing among other things that Quinn Emanuel could not represent both the Fund Debtor and the Portfolio Debtors due to the existence of disputed intercompany claims arising from the SPAs. Docket Nos. 226, 445-1 ¶¶ 14, 25. The Debtors responded, explaining that inter-debtor claims are not disabling under section 327(a) and that M&K "can take all necessary actions to protect and preserve the Debtor Portfolio Companies in the hypothetical scenario that their interests conflict with those of the Corporate Debtors, including in connection with the [SPAs]." Docket No. 316 ¶¶ 29, 34. Rigmora then abandoned that argument and on May 5, 2026, the Court issued a letter ruling and order approving Quinn Emanuel's employment. Docket Nos. 621, 623. Therefore, Quinn Emanuel's retention by the Portfolio Debtors, with M&K's retention as a backstop in case any potential conflicts concerning inter-debtor claims ripen into actual conflicts, was fully disclosed and briefed, and the section 327(a) retention order is law of the case. *See, e.g.*, *In re Radnor Holdings Corp.*, 564 B.R. 467, 477 (D. Del. 2017) ("The Bankruptcy Court further determined that it was the law

of the case that (1) the Skadden Retention Order resolved Skadden's purported conflict of interest and failure to disclose ….").

77. *Second*, even if the possibility of inter-debtor claims was not already disclosed, briefed, and addressed, the DQ Motion does not identify any "actual" conflict with respect to such claims. As far as the Portfolio Debtors are concerned, their interests are aligned with those of the Fund Debtor, as all want to preserve and maximize the value of all of the estates. To the extent that there is litigation concerning intercompany claims, such litigation can be handled by M&K, as Quinn Emanuel agreed long ago. Docket No. 316 ¶ 34. That one counsel can handle a discrete issue when a conflict actually arises does not mean that general bankruptcy counsel must immediately be disqualified entirely from every other aspect of the case. *See, e.g.*, *In re Adelphia Communications Corp.*, 342 B.R. 122, 128 (S.D.N.Y. 2006) ("Due to the substantial cost of requiring additional trustees or counsel in cases where individual debtors have claims against each other, courts have taken a wait and see, fact-driven, approach, to determine the extent to which additional professionals are necessary.") (cleaned up)).

78. *Third*, the DQ Motion identifies no other "actual" conflict of interest. The Fund Debtor, acting through the Officeholders, imagines a situation where "to negotiate a plan, [counsel] must take or oppose positions on funding and structure it developed while representing the Fund Debtor." Motion ¶ 79. But the DQ Motion does not explain, or even attempt to explain, how any position from six months ago could be remotely relevant to any funding or plan structure decision that the Officeholders make now for the Fund Debtor. It does not even state what the Fund Debtor's current positions "funding and structure" decisions are. Therefore, the DQ Motion provides no information for either the undersigned or the Court to evaluate whether Quinn Emanuel "will be placed in a position permitting it to favor one interest over an impermissibly

conflicting interest." *In re Boy Scouts of Am.*, 35 F.4th at 158. In other words, the DQ Motion does not come close to meeting its high burden of demonstrating the necessity of disqualification.

79. *Fourth*, the DQ Motion does not identify any conflict at all—whether actual or potential—with respect to Quinn Emanuel's continued representation of the GP Debtor. Therefore, the DQ Motion does not even attempt to meet the high burden of demonstrating disqualification is appropriate, and should be denied.

80. *Last*, as this Court has recognized, because there is only a potential conflict of interest with respect to inter-debtor claims (and because the DQ Motion identifies no other potential conflict of interest), the Court's decision is discretionary. Docket No. 621 at 4. There is no reason to disqualify Quinn Emanuel here. Quinn Emanuel has already disclosed and resolved any potential conflict of interest with respect to inter-debtor claims, and as discussed above, it appears that the Officeholders and Rigmora are moving to quickly confirm a plan for these chapter 11 cases. No doubt the Officeholders and Rigmora would like to remove counsel most familiar with the underlying facts of these cases from the plan confirmation process, but tactical, litigation-driven motions to disqualify are hugely disfavored. *In re Golden Guernsey Dairy, LLC*, 2015 WL 3669932, at *2 (Bankr. D. Del. June 12, 2015); *see also In re Harold & Williams Dev Co.*, 977 F.2d 906, 910 (4th Cir. 1992) (court's discretion must be exercised with a view to the "protection of the interests of the bankruptcy estate and its creditors, and the efficient, expeditious, and economical resolution of the bankruptcy proceeding"). Disqualification at this stage would require substantial duplication of efforts and an increase in costs for both the GP and Portfolio Debtors, where no actual conflict has been identified, and the sole potential conflict identified was addressed long ago.

81. For these reasons, the Court should deny the Motion.

III. MODEL RULE 1.7 DOES NOT APPLY

82. The DQ Motion's final argument is that Model Rule 1.7 prevents Quinn Emanuel from representing the Fund Debtor. Motion ¶ 88. This arguments fails, and it is obvious from the DQ Motion that the Fund Debtor does not even believe it.

83. As the DQ Motion notes, Model Rule 1.7 states that a lawyer shall not represent a client if its representation "will be directly adverse to another client" unless the client gives informed consent, confirmed in writing. Here, the Fund Debtor, acting through the Officeholders, affirmatively consented in writing to have Quinn Emanuel represent the Fund Debtor in the Syntimmune Litigation because of Quinn Emanuel's superior knowledge of its facts having won the case below. Ex. E at 2. Accordingly, there is no violation of Rule 1.7.

CONCLUSION

For the reasons stated above, the GP and Portfolio Debtors request that the Court deny the DQ Motion.

Dated: November 3, 2026
Wilmington, Delaware

By: */s/ Patricia B. Tomasco*

Andrew M. Berdon, Esq. (admitted *pro hac vice*)
Patricia B. Tomasco, Esq. (admitted *pro hac vice*)
Rachel E. Epstein, Esq. (admitted *pro hac vice*)
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-and-

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
Apple Tree Life Sciences, Inc., *et al.,*[1]	Case No. 25-12177 (LSS)
Debtors.	(Jointly Administered)

DECLARATION OF PATRICIA TOMASCO IN SUPPORT OF OPPOSITION TO DEBTOR ATP LIFE SCIENCE VENTURES, L.P.'S MOTION TO DISQUALIFY QUINN EMANUEL URQUHART & SULLIVAN, LLP FROM REPRESENTING APERTOR PHARMACEUTICALS, INC.; EVERCRISP BIOSCIENCES, INC.; INITIAL THERAPEUTICS, INC.; MARLINSPIKE THERAPEUTICS, INC.; NEREID THERAPEUTICS INCORPORATED; NINE SQUARE THERAPEUTICS, INC.; RED QUEEN THERAPEUTICS, INC.; AND ATP III GP, LTD.

Patricia Tomasco, hereby declares, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a partner of the law firm of Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel"), which maintains offices at various locations including, 700 Louisiana Street, Suite 3900, Houston, TX 77002. I am an attorney duly admitted to practice in the States of Texas and New York.

2. I submit this Declaration in support of the *Opposition to Debtor ATP Life Science Ventures, L.P.'s Motion to Disqualify Quinn Emanuel Urquhart & Sullivan, LLP from Representing Apertor Pharmaceuticals, Inc.; Evercrisp Biosciences, Inc.; Initial Therapeutics, Inc.; Marlinspike Therapeutics, Inc.; Nereid Therapeutics Incorporated; Nine Square Therapeutics, Inc.; Red Queen Therapeutics, Inc.; and ATP III GP, Ltd*. (the "Objection").[2]

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number include: Apple Tree Life Sciences, Inc. (4506); ATP Life Science Ventures, L.P. (8224); ATP III GP, Ltd. (6091); Apertor Pharmaceuticals, Inc. (3161); Initial Therapeutics, Inc. (2453); Marlinspike Therapeutics, Inc. (4757); Red Queen Therapeutics, Inc. (8563); Evercrisp Biosciences, Inc. (4437); Nine Square Therapeutics, Inc. (4503); and Nereid Therapeutics Incorporated (8493). The location of the Debtors' service address in these chapter 11 cases is 230 Park Avenue, Suite 2800, New York, NY 10169.

[2] All terms not otherwise defined herein have the same meanings as defined in the Objection.

Unless otherwise stated in this Declaration, I have personal knowledge of the facts sets forth herein.

3. Attached hereto as **Exhibit 1** is a true and correct copy of the email sent by the Officeholders' counsel dated September 3, 2026.

4. Attached hereto as **Exhibit 2** is a true and correct copy of the email sent by the Officeholders' counsel dated September 14, 2026.

5. Attached hereto as **Exhibit 3** is a true and correct copy of the email sent by the Officeholders' counsel dated October 30, 2026.

6. Attached hereto as **Exhibit 4** is a true and correct copy of the email sent by the Eric Winston to the Officeholders' counsel dated August 25, 2026.

7. Attached hereto as **Exhibit 5** is a true and correct copy of *Debtor's Objection to the Missouri Liquidating Trustee's Omnibus Motion to Disqualify All of Debtor's Counsel*, Case No. 16-10446 (Bankr. D. Kan. Nov. 9, 2017).

8. Attached hereto as **Exhibit 6** is a true and correct copy of the email sent by the Officeholders' counsel on October 21, 2026.

I hereby declare under the penalty of perjury that the foregoing statements made by me are true and correct to the best of my knowledge, information and belief.

Dated: November 3, 2026

/s/ Patricia Tomasco
Patricia Tomasco, Esq.

EXHIBIT 1

From: Martin, Craig <craig.martin@us.dlapiper.com>
Sent: Thursday, September 3, 2026 5:26 PM
To: Patty Tomasco; Andrew Berdon; Alberto, Justin; Harry B. Murphy; Eric Winston; L. Katherine Good; Andrew G. Lizotte; Reilley, Patrick
Cc: Juell, Gregory; Eulmessekian, Shant
Subject: ATP - Follow up

[EXTERNAL EMAIL from craig.martin@us.dlapiper.com]



All,

I write to follow up on our Wednesday phone call. First, I understand that wires have been or will be initiated tomorrow for the outstanding fees. Please let us know if there are any issues/questions that arise in that process as I have seen that many of you were asked for wire confirmations, even though you had already provided that information. I hope that you all already have or will receive tomorrow the wires that were communicated to you.

Secondly, as mentioned, the directors of ATLS have determined that it is in the best interests of ATLS that ATLS' documents be preserved. As mentioned, a forensic team at A&M plans on starting that process tomorrow. In an effort to avoid unnecessary concern, our clients are willing to agree to hold the server image in escrow, as Patty mentioned, and not to access its contents until September 17, 2026. Between now and then, we would ask for you to provide any concern that your non-Fund, non-ATLS clients might have to allow for our clients to hear and consider any concerns any of you may have in connection with the contents of the server. From there, we will consider your concerns and work in good faith to find solutions to them in an agreed time period.

While my phone call yesterday and this email is a courtesy as our clients believe that in fulfilling their duties under the recognized appointment order, they are entitled to review ATLS's records in their capacity as acting for the GP with respect to the Fund, the Officeholders are offering this to allow a constructive discussion around to any valid points your client wishes to raise and will otherwise reserve their rights on these issues while the documents are in escrow.

Third, on the retention issues we discussed, we are continuing to address those issues and will hopefully follow up in greater detail next week.

Finally, we provided a copy of the Motion to Extend Exclusivity on behalf of all Debtors and we just want to make sure that we have all parties permission to affix signatures from Potter Anderson for the non-Fund.

I apologize for this being a bit late in the evening, but I was in a hearing today that instead of lasting an hour it lasted six hours. But, I did want to get this out before the long holiday week.

Wishing you all a good labor day weekend,

R. Craig Martin
Partner

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DLA Piper LLP (US)
dlapiper.com

-----Original Appointment-----
From: Patty Tomasco <pattytomasco@quinnemanuel.com>
Sent: Sunday, August 30, 2026 5:12 PM
To: Patty Tomasco; Andrew Berdon; Alberto, Justin; Martin, Craig; Harry B. Murphy; Eric Winston; L. Katherine Good; Andrew G. Lizotte; Reilley, Patrick
Subject: ATP - third funding motion/LPA matters
When: Wednesday, September 2, 2026 8:30 AM-9:00 AM (UTC-06:00) Central Time (US & Canada).
Where:

⚠ EXTERNAL MESSAGE

Patty Tomasco's Personal Meeting Room

Join Zoom Meeting
https://quinnemanuel.zoom.us/j/6486315792

Meeting ID: 648 631 5792

One tap mobile
+16699009128,,6486315792# US (San Jose)
+16465588656,,6486315792# US (New York)

Dial by your location
+1 669 900 9128 US (San Jose)
+1 646 558 8656 US (New York)
Meeting ID: 648 631 5792

Alternate Dial-in Numbers: https://quinnemanuel.zoom.us/u/ackKaRJ8YP

Join by SIP
6486315792@zoomcrc.com

From: Martin, Craig <craig.martin@us.dlapiper.com>

Sent: Sunday, August 30, 2026 3:29 PM
To: Eric Winston <ericwinston@quinnemanuel.com>; Alberto, Justin <JAlberto@coleschotz.com>; Harry B. Murphy <hmurphy@murphyking.com>; Patty Tomasco <pattytomasco@quinnemanuel.com>; Andrew G. Lizotte <alizotte@murphyking.com>; Andrew Berdon <andrewberdon@quinnemanuel.com>; L. Katherine Good <kgood@potteranderson.com>; Reilley, Patrick <PReilley@coleschotz.com>
Subject: Re: ATP - third funding motion/LPA matters

[EXTERNAL EMAIL from craig.martin@us.dlapiper.com]

Let's do 830 CT/9:30 ET as that seems in your window.

R. Craig Martin
Partner

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F +1 302 778 7834
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craig.martin@us.dlapiper.com

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1201 North Market Street
Suite 2100
Wilmington, DE 19801-1147

DLA PIPER

dlapiper.com

From: Eric Winston <ericwinston@quinnemanuel.com>
Sent: Sunday, 30 August 2026 16:17:23
To: Alberto, Justin <JAlberto@coleschotz.com>; Martin, Craig <craig.martin@us.dlapiper.com>; Harry B. Murphy <hmurphy@murphyking.com>; Patty Tomasco <pattytomasco@quinnemanuel.com>; Andrew G. Lizotte <alizotte@murphyking.com>; Andrew Berdon <andrewberdon@quinnemanuel.com>; L. Katherine Good <kgood@potteranderson.com>; Reilley, Patrick <PReilley@coleschotz.com>
Subject: RE: ATP - third funding motion/LPA matters

⚠ EXTERNAL MESSAGE

I am in a depo starting at 10 a.m. Central on Wednesday. If we can schedule for 8 a.m. Central to 9:30 Central, I can make that work.

Eric Winston
Partner
Quinn Emanuel Urquhart & Sullivan, LLP
865 S. Figueroa Street, 10th Floor
Los Angeles, CA 90017
213-443-3602 Direct
213-443-3000 Main Office Number
213-443-3100 Fax
ericwinston@quinnemanuel.com
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NOTICE: The information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. This message may be an attorney-client communication and/or work product and as such is privileged and confidential. If the reader of this message is not the intended recipient or agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by e-mail, and delete the original message.

From: Alberto, Justin <JAlberto@coleschotz.com>
Sent: Sunday, August 30, 2026 1:16 PM
To: Martin, Craig <craig.martin@us.dlapiper.com>; Eric Winston <ericwinston@quinnemanuel.com>; Harry B. Murphy <hmurphy@murphyking.com>; Patty Tomasco <pattytomasco@quinnemanuel.com>; Andrew G. Lizotte <alizotte@murphyking.com>; Andrew Berdon <andrewberdon@quinnemanuel.com>; L. Katherine Good <kgood@potteranderson.com>; Reilley, Patrick <PReilley@coleschotz.com>
Subject: RE: ATP - third funding motion/LPA matters

[EXTERNAL EMAIL from jalberto@coleschotz.com]

Works for me.

JUSTIN ALBERTO
MEMBER

OFFICE 302.651.2006
CELL 203.512.4390
EMAIL jalberto@coleschotz.com

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Legal Practice Assistant: Cynthia Stiles | 302.295.3299 | cstiles@coleschotz.com

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From: Martin, Craig <craig.martin@us.dlapiper.com>
Sent: Sunday, August 30, 2026 4:15 PM
To: Alberto, Justin <JAlberto@coleschotz.com>; Eric Winston <ericwinston@quinnemanuel.com>; Harry B. Murphy <hmurphy@murphyking.com>; Patty Tomasco <pattytomasco@quinnemanuel.com>; Andrew G. Lizotte <alizotte@murphyking.com>; Andrew Berdon <andrewberdon@quinnemanuel.com>; L. Katherine Good <kgood@potteranderson.com>; Reilley, Patrick <PReilley@coleschotz.com>
Subject: ATP - third funding motion/LPA matters

All,

My apologies, but could we reschedule this for Wednesday? I can still do the call at 11 that day.

R. Craig Martin
Partner

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* * * * * *

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Microsoft Teams meeting

Join:

https://teams.microsoft.com/meet/296177830911611?p=GbbVk6RZ1oUmuUrFa6

Meeting ID: 296 177 830 911 611

Passcode: 4Hw9gV36

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EXHIBIT 2

From: Eulmessekian, Shant <shant.eulmessekian@us.dlapiper.com>
Sent: Monday, September 14, 2026 12:55 PM
To: Good, L. Katherine; Andrew G. Lizotte; Harry B. Murphy; Eric Winston; Patty Tomasco; Andrew Berdon
Cc: Martin, Craig; Juell, Gregory; Sulik, Ethan H.; Forshay, Shannon; Dannemiller, Halley S.; Haywood, Brett M.
Subject: ATP - CnO re Proposed Order Extending Bar Date for Officeholders
Attachments: ATP - Certificate of No Objection to Motion to Extend Exclusivity 9-14-26.docx

[EXTERNAL EMAIL from shant.eulmessekian@us.dlapiper.com]

All,

Please find attached the draft certificate of no objection regarding the exclusivity extension motion filed at Docket No. 1118.

While we are still awaiting Craig's sign-off, we wanted to share the draft in the meantime so that we can incorporate any comments you may have.

We plan to file this today and would appreciate your prompt review, confirmation, and approval to affix your e-signatures.

Thanks,
Shant

Shant K. A. Eulmessekian
Associate

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F +1 310 943 2356
shant.eulmessekian@us.dlapiper.com

DLA Piper LLP (US)
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EXHIBIT 3

From: Eulmessekian, Shant <shant.eulmessekian@us.dlapiper.com>
Sent: Wednesday, September 30, 2026 12:04 PM
To: Good, L. Katherine; Andrew G. Lizotte; Harry B. Murphy; Eric Winston; Patty Tomasco; Andrew Berdon; Reilley, Patrick; Alberto, Justin
Cc: Martin, Craig; Juell, Gregory; Sulik, Ethan H.; Forshay, Shannon; Dannemiller, Halley S.; Haywood, Brett M.
Subject: RE: ATP - CoC re Order Further Extending Bar Date
Attachments: ATP - Certification of Counsel re Further Order Extending Bar Date.docx; ATP - Proposed Order Further Extending Bar Date [DRAFT 9.28.26].docx

[EXTERNAL EMAIL from shant.eulmessekian@us.dlapiper.com]

All,

Please see attached for a certificate of counsel and proposed order further extending the Appointee and Fund Debtor Bar Date by an additional 60 days. Please note that the attached remains subject to review and comment.

The deadline to file is **October 8, 2026**, so please let us know at your earliest convenience whether you agree to the requested relief or have any questions or comments.

Thanks,
Shant

Shant K. A. Eulmessekian
Associate

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EXHIBIT 4

From: Eric Winston
Sent: Tuesday, August 25, 2026 11:57 AM
To: Martin, Craig
Cc: Andrew Berdon; Patty Tomasco; Good, L. Katherine
Subject: Fw: In re Apple Tree Life Sciences, Inc., et al., Case No. 25-12177
Attachments: 2026.08.25 Draft Stipulation Extending Briefing Schedule.docx

Craig,

The stipulation generally looks ok but is paragraph 5 correct to say that the Officeholders are parties to the appeals? They certainly direct the Fund Debtor, which is an appellee. But in light of Judge Silverstein's commentary today not sure if you want to phrase it this way.

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From: O'Byrne, Stephanie <Stephanie.OByrne@us.dlapiper.com>
Sent: Tuesday, 25 August 2026 14:49:20
To: Alberto, Justin <JAlberto@coleschotz.com>; Eric Winston <ericwinston@quinnemanuel.com>; Martin, Craig <craig.martin@us.dlapiper.com>; Taft, William <whtaft@debevoise.com>; Selden, Shannon R. <srselden@debevoise.com>; Matthew B. McGuire (mcguire@lrclaw.com) <mcguire@lrclaw.com>; landis@lrclaw.com <landis@lrclaw.com>; Good, L. Katherine <kgood@potteranderson.com>; Sulik, Ethan H. <esulik@potteranderson.com>; Forshay, Shannon <sforshay@potteranderson.com>; Reilley, Patrick <PReilley@coleschotz.com>; Patty Tomasco <pattytomasco@quinnemanuel.com>; Andrew Berdon <andrewberdon@quinnemanuel.com>
Cc: Juell, Gregory <Gregory.Juell@us.dlapiper.com>; Eulmessekian, Shant <shant.eulmessekian@us.dlapiper.com>
Subject: RE: In re Apple Tree Life Sciences, Inc., et al., Case No. 25-12177

[EXTERNAL EMAIL from stephanie.obyrne@us.dlapiper.com]

All,

We are still reviewing this draft Stipulation, but forwarding it here for your review in tandem in the interest of time. We would like to be in a position to file today. Please let us know if you have any comments, or if we can /s/ for you, at your earliest convenience. We will create a second stipulation with the -495 number for filing in that action, mirroring the final.

Thanks in advance.

Stephanie O'Byrne
Of Counsel

T +1 302 468 5645
F +1 302 691 4745
stephanie.obyrne@us.dlapiper.com

DLA Piper LLP (US)
dlapiper.com

From: Alberto, Justin <JAlberto@coleschotz.com>
Sent: Tuesday, August 25, 2026 7:57 AM
To: Eric Winston <ericwinston@quinnemanuel.com>; Martin, Craig <craig.martin@us.dlapiper.com>; Taft, William <whtaft@debevoise.com>; Selden, Shannon R. <srselden@debevoise.com>; Matthew B. McGuire (mcguire@lrclaw.com) <mcguire@lrclaw.com>; landis@lrclaw.com; Good, L. Katherine <kgood@potteranderson.com>; Sulik, Ethan H. <esulik@potteranderson.com>; Forshay, Shannon <sforshay@potteranderson.com>; Reilley, Patrick <PReilley@coleschotz.com>; Patty Tomasco <pattytomasco@quinnemanuel.com>; Andrew Berdon <andrewberdon@quinnemanuel.com>
Cc: O'Byrne, Stephanie <Stephanie.OByrne@us.dlapiper.com>; Juell, Gregory <Gregory.Juell@us.dlapiper.com>; Eulmessekian, Shant <shant.eulmessekian@us.dlapiper.com>
Subject: Re: In re Apple Tree Life Sciences, Inc., et al., Case No. 25-12177

⚠ EXTERNAL MESSAGE

As does the committee.

JUSTIN ALBERTO
MEMBER

OFFICE 302.651.2006
CELL 203.512.4390
EMAIL jalberto@coleschotz.com

500 Delaware Avenue | Suite 600 | Wilmington, DE 19801

NEW JERSEY NEW YORK DELAWARE MARYLAND TEXAS FLORIDA WASHINGTON, D.C.
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Legal Practice Assistant: Cynthia Stiles | 302.295.3299 | cstiles@coleschotz.com

From: Eric Winston <ericwinston@quinnemanuel.com>
Sent: Tuesday, 25 August 2026 07:15:58
To: Martin, Craig <craig.martin@us.dlapiper.com>; Taft, William <whtaft@debevoise.com>; Selden, Shannon R. <srselden@debevoise.com>; Matthew B. McGuire (mcguire@lrclaw.com) <mcguire@lrclaw.com>; landis@lrclaw.com <landis@lrclaw.com>; Good, L. Katherine <kgood@potteranderson.com>; Sulik, Ethan H. <esulik@potteranderson.com>; Forshay, Shannon <sforshay@potteranderson.com>; Alberto, Justin <JAlberto@coleschotz.com>; Reilley, Patrick <PReilley@coleschotz.com>; Patty Tomasco <pattytomasco@quinnemanuel.com>; Andrew Berdon <andrewberdon@quinnemanuel.com>
Cc: O'Byrne, Stephanie <Stephanie.OByrne@us.dlapiper.com>; Juell, Gregory <Gregory.Juell@us.dlapiper.com>; Eulmessekian, Shant <shant.eulmessekian@us.dlapiper.com>
Subject: Re: In re Apple Tree Life Sciences, Inc., et al., Case No. 25-12177

We support the request.

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From: Martin, Craig <craig.martin@us.dlapiper.com>
Sent: Monday, 24 August 2026 22:18:42
To: Taft, William <whtaft@debevoise.com>; Selden, Shannon R. <srselden@debevoise.com>; Matthew B. McGuire (mcguire@lrclaw.com) <mcguire@lrclaw.com>; landis@lrclaw.com <landis@lrclaw.com>; Good, L. Katherine <kgood@potteranderson.com>; Sulik, Ethan H. <esulik@potteranderson.com>; Forshay, Shannon <sforshay@potteranderson.com>; Alberto, Justin <jalberto@coleschotz.com>; preilley@coleschotz.com <preilley@coleschotz.com>; Patty Tomasco <pattytomasco@quinnemanuel.com>; Eric Winston <ericwinston@quinnemanuel.com>; Andrew Berdon <andrewberdon@quinnemanuel.com>
Cc: O'Byrne, Stephanie <Stephanie.OByrne@us.dlapiper.com>; Juell, Gregory <Gregory.Juell@us.dlapiper.com>; Eulmessekian, Shant <shant.eulmessekian@us.dlapiper.com>
Subject: FW: In re Apple Tree Life Sciences, Inc., et al., Case No. 25-12177

[EXTERNAL EMAIL from craig.martin@us.dlapiper.com]

Counsel,

Now that we have filed the Notice of extended dates (service link below), I wanted to ask all of you for your consent to further delay the opening brief schedule on the following:

- *Rigmora Biotech Investor One LP*, et al., *v. ATP Life Science Ventures, L.P. (In re Apple Tree Life Sciences, Inc.*, et al.), Case No. 26-cv 495 (JLH), pending in the District Court for the District of Delaware.
- *Rigmora Biotech Investor One LP*, et al., *v. ATP Life Science Ventures, L.P. (In re Apple Tree Life Sciences, Inc.*, et al.), Case No. 26-cv 593 (JLH), pending in the District Court for the District of Delaware.

The current schedule for these appeals is as follows:

- The Rigmora parties have filed their opening brief and at our request, the briefing was delayed so that the deadline for the Debtors, including the Fund, to file an Answering Brief is August 28, 2026, with Rigmora's reply brief due on September 11, 2026.

We want to push back our opening brief and the reply brief by at least 60 more days. We are prepared draft a letter to the District Court requesting this extension and wanted to reach out to see if anyone opposed the request.

Please let us know,

R. Craig Martin
Partner

T +1 302 468 5655
F +1 302 778 7834
M +1 267 975 7962
craig.martin@us.dlapiper.com

DLA Piper LLP (US)
dlapiper.com

From: Nuno Cardoso <ncardoso@veritarestructuring.com>
Sent: Monday, August 24, 2026 9:54 PM
To: !NA Verita Apple Tree Life Sciences <appletreeinfo@veritaglobal.com>
Subject: In re Apple Tree Life Sciences, Inc., et al., Case No. 25-12177

⚠ EXTERNAL MESSAGE

Please find below a link to the following document recently filed in the bankruptcy proceedings of Apple Tree Life Sciences, Inc., et al., Case No. 25-12177 (United States Bankruptcy Court, District of Delaware):

- Notice Regarding Amendments to the Debtors' Approved Exit Financing Solicitation Procedures [Docket No. 1080]

For additional documents and information related to this case, please visit https://www.veritaglobal.net/AppleTree. Please click here to submit an email inquiry or to request to be unsubscribed from future email services.

Nuno Cardoso
Consultant
Corporate Restructuring
222 N. Pacific Coast Highway, 3rd Floor | El Segundo, CA 90245
ncardoso@veritaglobal.com

Verita
veritaglobal.com

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EXHIBIT 5

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In re: ABENGOA BIOENERGY BIOMASS OF KANSAS, LLC, Debtor.	Chapter 11 Case No. 16-10446 **Ref. Docket No. 1120**

DEBTOR'S OBJECTION TO THE MISSOURI LIQUIDATING TRUSTEE'S OMNIBUS MOTION TO DISQUALIFY ALL OF DEBTOR'S COUNSEL

NOW COMES Abengoa Bioenergy Biomass of Kansas, LLC ("**ABBK**" or the "**Debtor**"), and hereby objects (the "**Objection**") to the *Motion of the Missouri Liquidating Trustee for Reconsideration of the Court's October 18, 2017 Order Granting Application to Retain Drinker, Biddle & Reath LLP as Co-Counsel for Debtor Abengoa Bioenergy Biomass of Kansas LLC and to Disqualify DLA Piper LLP (US) and Armstrong Teasdale LLP as Counsel for the Debtor* [Docket No. 1146], seeking to disqualify all of the Debtor's attorneys in this case (the "**Disqualification Motion**"). In support of this Objection, the Debtor represents as follows:

PRELIMINARY STATEMENT

1. The primary premise of the Disqualification Motion is that Drivetrain, LLC ("**Drivetrain**") has not consented to the Debtor's professionals representing the Debtor because those Professionals were counsel to the corporate entities for which Drivetrain now acts as liquidating trustee and that were previously debtors in possession in chapter 11 cases in the Eastern District of Missouri (the "**Missouri Debtors**"). Drivetrain states that neither DLA Piper LLP (US) ("**DLA**") nor Armstrong Teasdale LLP ("**AT**" and, collectively with DLA, the "**Firms**") "offered any evidence that they attempted to secure any waiver at any time prior to [Drivetrain] stepping into the shoes of the Missouri Debtors." (Disq. Mot. at 15.) This statement reflects a phenomenal lack of due diligence, is misleading, and is not truthful. In Drivetrain's

zeal to delay a confirmation trial after the spectacular failure of its own proposed plan and the resulting waste of who-knows-how-many hundreds of thousands of dollars (or perhaps more) that would otherwise have been distributed to creditors of the Missouri Debtors, Drivetrain reverted to the age-old trick of attacking counsel. Had Drivetrain performed even the most rudimentary due diligence, it would have discovered an engagement letter between DLA and the Missouri Debtors wherein the latter not only waived any present conflict as a result of DLA simultaneously acting for various entities in the corporate group of Abengoa, S.A., but also expressly agreed (i) not to revoke the consent to the multiple representation and any associated conflicts, and (ii) not to seek to disqualify DLA as a result of the agreed-to multiple representation. *See Declaration of R. Craig Martin In Support of Debtor's Objection to Missouri Liquidating Trustee's Motion to Disqualify Debtor's Counsel* (the "**Martin Decl.**"), Ex. A.

2. This engagement letter, especially when coupled with the disclosures DLA filed in this Court and the bankruptcy courts in Delaware and St. Louis, should end this Court's consideration of Drivetrain's Disqualification Motion. There is no dispute that the Debtor's professionals did not represent Drivetrain in Missouri; and any rights of the Missouri Debtors to which Drivetrain succeeded were necessarily limited by the Missouri Debtors' prior waiver of any conflict, and by their agreement not to withdraw such waiver or move to disqualify DLA on account of the waived conflict.[1] (AT, too, secured appropriate engagement letters from both the Missouri Debtors and ABBK and made specific and complete disclosures of counsel referencing the relationships now complained of in retention applications executed by Mr. Bland. [*See*

[1] Drivetrain has breached the engagement letter and should be sanctioned or held liable to the Debtor's estate for its breaches of the Engagement Letter, specious allegations of attorney misconduct, and unreasonable multiplication of these proceedings. For now, the Debtor simply reserves its rights so that any successor to the Debtor such as the future liquidating trustee may seek damages against Drivetrain for its conduct in connection with these disqualification proceedings.

Docket No. 138].) The argument that Mr. Bland gave this waiver and that he was not authorized to do so is hardly worth a response, as Mr. Bland was the signatory on behalf of the Missouri Debtors who engaged DLA, and it was those corporate entities—not Mr. Bland in his individual capacity—who granted the waiver.

3. The secondary premise of the Disqualification Motion is Drivetrain's assertion that there is a conflict because DLA and AT formerly represented the Missouri Debtors in preparing and filing proofs of claim, but are now "seeking to defeat those very claims." (Disq. Mot. at 20.) Drivetrain has fallen into the oft-abused rhetorical device of a pedantic lawyer, as it seems to think that if it says something over and over (and over) it will somehow become true. As has been stated numerous times in these proceedings with respect to the *Debtor's Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* (Docket No. 801) (the "**ABBK Plan**"), DLA and AT are not seeking to "defeat" the Missouri Debtors' claims, but instead to continue to prosecute the ABBK Plan, which was filed in April 2017 with the full knowledge and consent of the Missouri Debtors. As previously argued with respect to the proposed retention of Drinker, Biddle & Reath LLP ("**DBR**"), the complained-of adversity—that DLA would litigate proofs of claim either that the Missouri Debtors have filed in this case, or that this Debtor filed in the Missouri cases—does not exist, as claim allowance is not an issue relevant to confirmation of the ABBK Plan, and the Court has granted the Debtor's Official Committee of Unsecured Creditors (the "**ABBK Committee**") standing to assert claim objections in this case and to litigate the proofs of claim filed in Missouri. [*See* Docket No. 1048.] Indeed, when the Missouri Debtors' Official Committee of Unsecured Creditors (the "**Missouri Committee**") was granted standing to object to the ABBK Plan, that standing was by consent with respect to the ABBK Plan as then filed so that the Missouri Committee could object to the ABBK Plan. The grant of standing to the respective committees was an ordinary, prudent, prophylactic measure

undertaken by DLA and AT in anticipation of the potential for future claim litigation—nothing more.

4. Drivetrain's suggestion that its ascension to the role of liquidating trustee in the Missouri cases somehow changed the ethical landscape is not plausible, given that Drivetrain's law firm, Hogan Lovells US LLP ("**Hogan Lovells**"), was going to represent the Missouri Committee in connection with the ABBK Plan with full knowledge that DLA and AT would represent the Debtor in prosecuting the ABBK Plan.[2] And if Drivetrain's appointment as liquidating trustee in the Missouri cases did change anything, Drivetrain had more than ample opportunity to raise the issue, and need not have waited until 36 hours before the confirmation hearing on the ABBK Plan to file the Disqualification Motion. Indeed, the Disqualification Motion is particularly inappropriate given this Court's well-reasoned decision finding that Drivetrain was too late in its *first* attempt to disqualify DBR a week prior to the filing of the Disqualification Motion. *See generally* Tr., Oct. 18, 2017 at 17:7-14. The additional delay in seeking disqualification of DLA and TA is likewise fatal absent reconsideration of the Court's prior decision, which is now the law of the case as discussed below.

5. Of course, there is no basis for the Court to reconsider its ruling on the DBR application, as discussed further below. No doubt recognizing this, Drivetrain now attempts to re-frame the issues and rewrite history as to the positions it previously took. For instance, despite previously arguing that the so-called "triggering event" for the putative conflict was the filing of a joinder on September 28 by the Debtor, Drivetrain now argues that DLA and AT should have withdrawn from acting for the Debtor in April or May of 2017. (*See* Disq. Mot. at

[2] Against this backdrop, that portion of this Court's ruling on DBR's retention application holding that Drivetrain is a continuation of the Missouri Committtee (and as such, is a representative of the Missouri Debtors' creditors rather than the Missouri Debtors as such) is certainly correct, and itself justifies denial of the Disqualification Motion. *See* Transcript of Proceeding, Oct. 18, 2017 at 11:25-12:9 and 15:1-9.

3.) However, deeper in its Disqualification Motion, Drivetrain again asserts that the triggering event was the September 28 joinder, which was withdrawn.[3] (*See id.* at 13 (stating that Drivetrain did not perceive adversity until September 28).) Drivetrain's inconsistency as to the basis of its own argument is telling.

6. The final thrust of Drivetrain's argument is its contention that under Kansas Rule of Professional Conduct 1.7, the concurrent representation of ABBK and the Missouri Debtors by DLA and AT (and by imputation, DBR) was non-waivable, and that under Kansas Rule of Professional Conduct 1.9 Drivetrain is a former client that has not given informed consent in writing, requiring disqualification of DLA and AT. Drivetrain is wrong on both points.

7. As this Court noted in the October 18 ruling, "the idea that these hundred [Abengoa] entities should each have separate representation is, frankly, difficult to fathom." (Tr. Oct. 18, 2017, at 9:15-18.) This concept is well-supported by modern bankruptcy jurisprudence. Moreover, three separate federal bankruptcy courts have approved DLA's concurrent representation, and two have approved AT's, in connection with these complex global cases. Indeed, Comment 22 to Rule 1.7 provides that future waivers are permissible where the waiving client can reasonably understand the risks associated with it, and is a sophisticated consumer of legal services capable of understanding what a future waiver means. Here both of those

[3] In an amazing display of mendacity, Drivetrain states in footnote 3 of the Disqualification Motion that this joinder was withdrawn "without explanation." How Drivetrain can make this statement in light of the actual facts as found by this Court on October 18, raises serious questions. (*See* Tr. Oct. 18, 2017 at 16:13-19 ("I note parenthetically that while the debtor's joinder in the Kansas committee's objection to the confirmation of Drivetrain's Plan may raise concerns, the Court notes that the debtor indicated at the October 2nd, 2017 status conference that it would withdraw that joinder, and did so on the record on October 16th.").) These types of misstatements in these proceedings demonstrate Drivetrain is continuing to proceed in bad faith.

conditions existed at the time of the waiver; thus, the Court can enforce the waiver the Missouri Debtors gave DLA. *See* KRPC 1.7, Cmt. 22. Drivetrain's Rule 1.7 argument fails.[4]

8. Drivetrain's Rule 1.9 argument also fails because Drivetrain is not DLA's or AT's former client, and none of the policy concerns that Rule seeks to protect are implicated. However, even if the Rule applied and the relevant former client is the Missouri Debtors (in whose shoes Drivetrain now stands) as Drivetrain argues, Drivetrain's predecessors in interest consented in writing to DLA's and AT's joint and dual representation and, at least in DLA's case, agreed not to withdraw that consent or use the dual representation to move to disqualify DLA. Moreover, Drivetrain's point that the matter that creates the conflict is related to the claims filed is (i) too narrow because DLA's and AT's representation of the Missouri Debtors was not really about those claims, but rather was about selling over a half-billion dollars in assets and proposing a liquidating plan, and (ii) of no moment as regards the ABBK Plan, since such claims were not objected to (and if they were to be objected to, it would be by the Committee or by the ABBK liquidating trustee, not ABBK or the Firms).

9. DLA and AT are not asserting a position materially adverse to their former clients' position because when DLA and AT were representing the Missouri Debtors as debtors in possession, those Missouri Debtors endorsed the position DLA and AT set out in the ABBK Plan. It was not until the Missouri Debtors' plan was confirmed, and the Missouri Debtors were dissolved and their assets transferred to Drivetrain, that the purported position of the Missouri Debtors swiveled 180 degrees. It is only Drivetrain's bad faith, tactical use of ethical rules that

[4] Drivetrain also fails to explain how its own logic would not bar Hogan Lovells from participating in these cases since at one point, as this Court is aware, the Debtor was a debtor in Delaware where Hogan Lovells represented the Delaware committee and, as such, owed duties to ABBK's creditors. If Drivetrain's understanding of Rule 1.7 were correct, then Hogan Lovells would also have to be disqualified unless Hogan Lovells came forward with written consent of ABBK's creditors that it could represent Drivetrain in a matter adverse to its former client.

has led it to assert some supposed conflict after months of engaging in a process everyone contemplated the following: that ABBK, represented by DLA and AT (and now DBR), would prosecute the ABBK Plan, including the separate classification and treatment of intercompany claims, while the Missouri Committee or the Missouri Debtors' liquidating trustee would oppose that proposed classification and treatment.

10. In sum, the Court has already properly reviewed this situation in its October 18, 2017, ruling on the DBR retention application, and for the reasons stated in that decision and in this Objection, the Disqualification Motion should be denied forthwith.

FACTUAL BACKGROUND

11. On April 8 2016, the Debtor converted an involuntary proceeding filed against it in this Court into a voluntary proceeding. [Docket No.33]. On April 6, 2016, the Debtor also filed a voluntary petition in the United States Bankruptcy Court for the District of Delaware. *See In re Abengoa Bioenergy Biomass of Kansas, LLC*, Case No. 16-10876 (KJC).

12. The Debtor is part of a larger corporate group of companies operating a bioenergy business, which manufactures ethanol at a number of plants. The Debtor was part of a second-generation business line focusing on new approaches to making ethanol out of non-food based product (e.g., out of corn husks, rather than out of corn). In general terms, the first-generation bioenergy companies were the debtors in chapter 11 proceedings in St. Louis, Missouri (the "**Missouri Debtors**"), while the second-generation companies filed voluntary chapter 11 petitions in Delaware (the **"Delaware Debtors**").

13. The same law firm, Hogan Lovells, represented the Missouri Committee and the official committee appointed in the Delaware Debtors' cases. That firm now represents Drivetrain, which (i) serves in multiple trustee roles in Delaware, including as liquidating trustee

for the Delaware Debtors that make up the affiliated companies of this Debtor and (ii) is also now the liquidating trustee for the Missouri Debtors.

14. In connection with the bioenergy companies' retention of DLA Piper, on March 24, 2016, the Missouri Debtors entered into an Engagement and Conflict Waiver letter for Legal Services. In that letter, there was a provision in which DLA disclosed that it was engaging in a concurrent representation of the Missouri Debtors as well other group companies. With respect to ABBK, the Missouri Engagement Letter recognized that there was a present conflict between the Debtor and Abener Teyma Hugoton General Partnership, an entity DLA was also representing. (*See* Martin Decl., Ex. A.) The Engagement Letter also contained a detailed discussion of the impact of a multiple representation, including that any information received by DLA during the course of representing the Missouri Debtors could be shared with the other parties subject to the joint representation. Similarly, in paragraph 4 of the Terms of Service attached to the Missouri Engagement Letter and Conflict Waiver, the Missouri Debtors agreed that DLA could act presently or in the future in matters adverse to the Missouri Debtors including in "restructuring or bankruptcy matters" and that these would be considered "Allowed Adverse Representations." (*Id*.) With respect to these Allowed Adverse Representations, the Missouri Debtors agreed that they

> Will not, for [them]self, or any other entity or person, assert the Firm's representation of you or any of its current or future affiliates as a basis for disqualifying the Firm from representing another party in an Allowed Adverse Representation. You further agree that an Allowed Adverse Representation does not breach any duty that the Firm owes to your or any of your affiliates.

(*Id*. at Terms of Service, ¶ 4.)

15. Also significant is the Engagement Letter's provision that DLA would not take inconsistent positions for different members of the group, and that if one member of the group elected in the future to pursue a position or term with respect to the matter in a manner adverse to

a position or term being advocated, then DLA would withdraw from representing the company with the adverse interest. (*Id*. at 3.) As part of this agreement, the Missouri Debtors waived all conflicts of interest arising out of such adverse representation and consented to DLA's representation of the remaining companies under such circumstances and further agreed not to attempt to revoke that waiver and consent at a later date, or to seek to disqualify DLA from such representation of the remaining companies on the basis that DLA has represented the Missouri Debtors with respect to the matter. (*Id*.)

16. The Debtor filed an application to employ DLA Piper as its counsel in this case. [*See* Docket No. 143.] In support of that application, DLA made the following disclosure:

> DLA has been engaged by Abengoa, S.A., the ultimate parent company of the Debtor, for an extensive period of time prior to the Petition Date. DLA has historically represented Abengoa, S.A. and certain of its subsidiaries in connection with various international legal issues, including the representation of US affiliates with respect to matters in the United States. In November 2015, DLA was retained by the ultimate US parent of the Debtor, Abengoa US Holding, LLC, to provide restructuring advice to Abengoa, S.A.'s US affiliates, including the Debtor, in connection with the commencement of the 5bis proceedings in Spain. This engagement ultimately expanded to include additional restructuring advice, including the preparation of the Delaware Cases (including this Chapter 11 Case), the Missouri Cases, and the preparation of the Chapter 15 cases of Abengoa, S.A. and its foreign affiliates. DLA was also engaged to provide dedicated services to Abengoa Bioenergy US Holding, LLC (the "Bioenergy Parent"), an indirect subsidiary of Abengoa, S.A. and certain of its subsidiaries (the "Bioenergy Debtors") in connection with responding to the involuntary cases commenced against certain of the Bioenergy Parent's subsidiaries and taking those steps necessary to prepare the Chapter 11 cases of the Bioenergy Parent and its affiliates currently pending in the United States Bankruptcy Court for the Eastern District of Missouri. Given that the interests of Abengoa, S.A., its affiliated Chapter 15 debtors, the Bioenergy Debtors, the Delaware Debtors, and the Debtor in this Chapter 11 Case are firmly aligned in the context of Abengoa's global restructuring, I do not believe that DLA's concurrent representation of Abengoa, S.A., the foreign representative in the Chapter 15 cases, or any of the Debtor's non-debtor affiliates and

> the Debtor would cause DLA to represent an interest adverse to the Debtor's estate or render DLA not disinterested under the Bankruptcy Code.

17. DLA filed similar disclosures in the Missouri Debtors' cases and in the Delaware Debtors' cases (which at the time of the disclosure included ABBK, which was a debtor in both the Delaware cases and in this Court). (*See* Martin Decl., Group Ex. B. at page 2 of Declaration of Richard A. Chesley of each employment application.)

18. In connection with the various cases, the debtors filed schedules that identified intercompany claims, but thereafter entered into stipulations in the cases to extend the time by which the related intercompany claims would have to be filed against other debtor groups.[5] The idea behind this was to avoid intercompany claim disputes in an environment in which the various companies had or were likely to agree that they would not receive distributions on account of intercompany claims. In this regard, all of the Abengoa debtors proposed plans that would not provide distributions to intercompany claims from any liquidating debtor.

19. From a timing standpoint, the Delaware bioenergy debtors' liquidation plan was confirmed first, in December 2016, and it did not go effective until March 31, 2017. The Missouri Debtors' plan was confirmed next in June 2017, with a July 7, 2017 effective date. The ABBK plan, proposed in April 2017, was consistent with these other plans.

20. When the Debtor sought to enter into a further intercompany claim stipulation after the Missouri Plan was confirmed, the Missouri Committee objected and the Debtors had to file a motion to vacate the order approving that stipulation. Thereafter, the Missouri Debtors filed amended schedules, as did ABBK, and each filed proofs of claim against the other. The

[5] This Court, along with the Delaware and Missouri Courts approved these intercompany claim stipulations. *See* the following Docket Entries in Delaware: 573, 727, 1032, 1127, 1227, 1299, 1383, Missouri Docket Nos. 691, 753, 847, 948, 1116, 1374, 1388, and Docket Nos. 456, 511, 624, 694, 772, 829, 843, 849 in this case.

Missouri Committee was involved in and consulted about the schedule amendments in the Missouri cases and the proofs of claim filed by the Missouri Debtors in this case. Indeed, the ABBK Disclosure Statement contained an insert, at the specific request of the Missouri Committee made to DLA in mid-May, indicating that the Missouri Committee intended to object to the proposed treatment of the intercompany claims in the ABBK Plan.

21. In late June 2017, the Missouri Debtors consented to the Missouri Committee being granted standing to permit it to address any intercompany issues between the Missouri Debtors and ABBK. [*See* MO Docket Nos. 1452 and 1454.] Drivetrain then filed an objection to the Debtor's Plan and ultimately submitted a competing plan (the "**Drivetrain Plan**"). Thereafter, the Debtor, through DLA, informed this Court that if there were to be any claims litigation in this Court regarding the Missouri Debtors' claims, that that litigation would be handled by the ABBK Committee. Likewise, in Missouri, the Debtor's counsel at AT advised the Missouri court that, with respect to a claim objection Drivetrain had filed against ABBK, that claim objection would be addressed by the ABBK Committee. While Drivetrain accuses DLA and AT of reneging on this arrangement, the record does not bear that out.

22. The ABBK Plan was originally scheduled for a confirmation hearing on August 8, 2017 and this date was delayed to permit Drivetrain to solicit its Plan. By October 5, 2017, the Drivetrain Plan had failed, and Drivetrain pivoted to a new strategy based on a contention that the ABBK Plan, which had been on file and pending since April, implicated a conflict of interest and that DLA could not represent ABBK in prosecution of the Plan. Drivetrain implemented this strategy by first challenging the employment of DBR, which the Debtor sought to retain due to the fact that ABBK desired to have the continuing involvement of Mr. Vince Slusher, who had withdrawn from DLA and joined DBR on about September 27, 2017.

23. On October 2, 2017, the Court held a status conference on the confirmation of the various plans. At that status conference, the Debtor indicated that Drivetrain had raised an issue over DLA's retention related to a joinder filed by the Debtor to an objection lodged by the ABBK Committee. The Debtor indicated it would withdraw that joinder to address the issue raised by Drivetrain, notwithstanding the Debtor's and DLA's view that DLA had not engaged in any conduct giving rise to a conflict. The Debtor then withdrew that joinder on October 16, 2017. [*See* Docket No. 1115.]

24. On October 12, 2017, the Debtor filed an application to retain DBR (the "**DBR Application**"). [Docket No. 1099.] Drivetrain then filed an objection to that retention (the "**Objection**"). [Docket No. 1104.] The gist of Drivetrain's argument in its objection was that Mr. Slusher's representation of the Debtor in connection the prosecution of the ABBK Plan would be in violation of his duties to a former client under Rule 1.9, and thus would create a conflict, imputed to DBR, that precluded DBR's retention. The Court held a hearing on October 16, 2017, and heard argument on the DBR Application and Drivetrain's objection thereto. Later that day, the Debtor filed a reply to Drivetrain's objection (the "**Reply**"). [Docket No. 1119.] The following day, Drivetrain filed a sur-reply without prior leave of the Court (the "**Sur-Reply**") [Docket No. 1120], and the Debtor filed a motion to strike the Sur-Reply (the "**Motion to Strike**") [Docket No. 1121].

25. On October 18, 2017, the Court issued a bench ruling overruling the Objection, granting the DBR Application, and denying the Motion to Strike as moot since the Court had disregarded the Sur-Reply. The Court held that Drivetrain was not a former client of DBR (or DLA or TA) as contemplated by Rule 1.9, but, even if it was: (i) there was no "material adversity" implicating Rule 1.9; (ii) prosecution of the ABBK Plan (as opposed to claim litigation) was not the "same or a substantially related matter" as the Missouri Debtors' claims

against the Debtor; (iii) the Missouri Debtors had long ago consented to the joint representation with this Debtor, and such consent was binding upon Drivetrain; and (iv) Drivetrain delayed too long in raising the alleged conflict to warrant disqualification. The Court incorporated its bench ruling into an order granting the DBR Application on October 24, 2017. [Docket No. 1155.]

26. The Court's ruling on the DBR Application applies perforce to the proposed bases for disqualification of DLA and AT. The Court has thus already addressed the issues raised in the Disqualification Motion, and because there is no basis to reconsider that ruling, the Disqualification Motion must be denied under the "law of the case" doctrine.

ARGUMENT AND AUTHORITY[6]

I. THERE IS NO BASIS FOR THIS COURT TO RECONSIDER THE ORDER APPROVING THE DEBTOR'S RETENTION OF DBR.

27. Drivetrain's statement of the legal standard governing reconsideration is directionally correct, but incomplete. A motion for reconsideration filed within 10 days of judgment[7] is considered a motion to alter or amend judgment under Fed. R. Civ. P. 59(e). *Hatfield v. Bd. of County Comm'rs for Converse County*, 52 F.3d 858, 861 (10th Cir. 1995). A Rule 59(e) motion "should be granted only to correct manifest errors of law or to present newly

[6] Many of the evidentiary facts that support Debtor's arguments were elicited or offered at the recent confirmation hearing on the ABBK Plan. Rather than conduct a separate and different evidentiary hearing (and indeed, the Court indicated at the conclusion of the confirmation hearing that it did not think it needed a separate evidentiary hearing on Disqualification Motion, and the parties agreed), the Debtor requests that the Court take judicial notice of the evidence submitted at that hearing, and consider it in its evaluation of the Disqualification Motion. *See Randy's Studebaker Sales, Inc. v. Nissan Motor Corp. in U.S.A.*, 533 F.2d 510, 521 (10th Cir. 1976) (the "court may take judicial notice of its own records, especially in the same case."); *St. Louis Baptist Temple, Inc. v. Federal Deposit Ins. Corp.*, 605 F.2d 1169, 1172 (10th Cir. 1979) ("Judicial notice is particularly applicable to the court's own records of prior litigation closely related to the case before it."); *In re Davis Mfg.*, 95 F. Supp. 200, 203 (D. Kan. 1951) (on petition to vacate order confirming plan of reorganization, "[t]he court, of course, takes notice of the various orders made by it during the course of, and preceding, the reorganization of the corporate debtor and it would serve no useful purpose to summarize them.").

[7] Drivetrain's Motion was filed on October 23, 2017, five days after the Court's transcript ruling (and one day prior to entry of the Court's order) approving DBR's retention.

discovered evidence." *Phelps v. Hamilton*, 122 F.3d 1309. And as observed by the *Taylor v. Principi* court, in denying the motion for reconsideration before it:

> A losing party should not use a motion for reconsideration as a vehicle to rehash arguments previously considered and rejected. Nor does a party's failure to present her strongest case in the first instance entitle her to a second chance in the form of a motion for reconsideration.

No. 02-4083-JAR, 2004 WL 432254 at *1 (D. Kan. Mar. 4, 2004) (footnotes omitted).

28. Drivetrain offers three separate rationales in support of reconsideration of the court's order, but they are unavailing. The first rationale is that the Court should consider the "new evidence" and "new facts" offered by Drivetrain in its Motion, which it contends it attempted to offer in its Sur-Reply. (*See* Disq. Mot. at 13.) To support reconsideration, however, the evidence must be newly *discovered*, not newly *offered*. *See Comm. for the First Amendment v. Campbell*, 962 F.2d 1517, 1523 (10th Cir. 1992) (affirming denial of reconsideration motion where movant's alleged "new evidence" constituted "largely historical evidence" which movant failed to demonstrate was "newly discovered"). And this is simply not the case. The Debtor filed the DBR Application, in response to which Drivetrain filed its Objection. The Debtor then filed its Reply. In violation of this Court's local rules regarding briefing in contested matters, Drivetrain then filed its Sur-Reply without prior leave of the Court. The Court appropriately disregarded the Sur-Reply. Granting Drivetrain reconsideration now on the basis of any "new evidence" or "new facts" set forth in the Sur-Reply would effect an end-run around the Court's procedural rules, and would be inconsistent with the bright-line rule limiting reconsideration under Rule 59(e) to situations involving "newly discovered" evidence.

29. In any event, the putative "new evidence" and "new facts" are cumulative of evidence and facts already before the Court when it made its ruling, and they in no way contradict that ruling. In its Reply, the Debtor openly acknowledged that Drivetrain succeeded

to the Missouri Debtors' claims against the Debtor, as well as the attorney-client privilege of the Missouri Debtors with respect to such claims. (Reply ¶¶ 6-7.) The various provisions of the Liquidating Trust Agreement proffered by Drivetrain simply implement these acknowledged features of the Missouri Plan. (Sur-Reply at 1-3; Disq. Mot. at 7-8.) And these features of the Missouri Plan were expressly addressed by the Court in its ruling, which went on to distinguish between the attorney-client privilege and the attorney-client relationship:

> The[Missouri Debtors'] assets and rights have conveyed to Drivetrain as liquidating trustee of the trust.
>
> Under the Missouri Debtor[s'] Plan at Article 4, Part F on Page 22 of Docket 1022, *the trustee is granted powers and duties to exercise "all power and authority" and "take all actions" that might be taken by any officer, director, or shareholder of the debtors as if they had done so unanimously*.[8] Thus, Drivetrain has the power to invoke attorney/client privilege just as the defunct companies would have had and [Drivetrain], in fact, ha[s] done so during discovery in this matter.
>
> This does not, however, make Drivetrain a "former client."
>
> Drivetrain's interests are the creditors' interests as a group. That group has always been separately represented by Hogan Lovells, while the Missouri [D]ebtor[s'] interests as represented by DLA and Armstrong Teasdale in attempting to accomplish a reorganization of these companies, along with the reorganization of other Abengoa entities, differ from the liquidating trustee's interests.
>
> Drivetrain is not Mr. Slusher's former client in a way that Rule 1.9 contemplates.

(Tr. Oct. 18, 2017 at 11:11 12:9 (emphasis added).) The provisions of the Liquidating Trust Agreement cited by Drivetrain are perfectly consistent with this reasoning, and would in no way alter it.

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[8] (*Compare with* Liq. Tr. Agmt. ¶ 2.1(a) (trustee may "[e]xercise all power and authority that may or could have been exercised, . . . and take all actions that may be our could have been taken, by any officer, director or shareholder of the Liquidating Debtors or their Estates with like effect as if duly authorized, exercised and taken by unanimous action of such officers, directors and shareholders").)

30. Drivetrain's second rationale for reconsideration is the Court's findings on the allegedly "unbriefed" issue of Drivetrain's delay in raising the putative conflict of interest with Mr. Slusher or the Court. (Disq. Mot. at 13.) Drivetrain contends the issue was "first raised" in the Debtor's Reply, and complains that its attempt to respond to this issue was "disregarded" by the Court. (*Id.*) This is counter-factual. The delay issue was first raised by Mr. Slusher on the record of the October 16, 2017, hearing: "[T]hey assert that the conflict arose . . . in May of this year when proofs of claim were filed by ABBK in the Missouri [D]ebtor[s'] cases. . . . [I]t just seems really odd that this objection . . . get[s] asserted the week before the confirmation hearing." (Tr. Oct. 16, 2017 at 43:8 16.) Mr. Dunn then responded for Drivetrain. (*Id.* at 45:12 46:10). Then Mr. Boyer, in response to the Court's question as to when the alleged conflict was discovered, *further* responded for Drivetrain. (*Id.* at 48:13-51:24.) Then Mr. Dunn, in response to the Court's observation that the alleged conflict had existed at least since Drivetrain entered the case on July 7, 2017, responded *even further* for Drivetrain. (*Id.* at 52:5 54:13.) Mr. Slusher and Mr. Avraham made some additional observations for the Debtor. (*Id.* at 54:17 55:22.) And finally, Mr. Snyder weighed in on the issue on behalf of the Office of the United States Trustee. (*Id.* at 56:5-7 ("This case has been pending a long time and it would seem that if there were some issue here it should have been raised a long time ago.").) In its ruling on DBR's retention, the Court agreed with the Debtor and the U.S. Trustee on the delay issue, and rejected Drivetrain's proposed explanations for the delay. (Tr. Oct. 18, 2017 at 15:1 17:12.) The Court did not "misapprehend" Drivetrain's position, or "mistakenly . . . decide[] an issue not presented for determination" as suggested by Drivetrain. (*See* Disq. Mot. at 12 (*quoting Taylor*, 2004 WL 432254, at *1 (internal quotation marks, citation omitted)).) Rather, the Court *disagreed* with Drivetrain's position, in the course of ruling on an issue that was *squarely presented* for determination—i.e., the timeliness (and relatedly, *bona fides*) of Drivetrain's disqualification

request. If Drivetrain truly believed it was ambushed on this issue at the October 16, 2017, hearing or in the Reply,[9] then it should have sought leave to file the Sur-Reply on that basis. But it did not. And having failed to avail itself of the proper procedural remedy, it should not now get a "do over" to rehabilitate its case under the auspices of reconsideration.

31. As its third and final rationale for reconsideration, Drivetrain asserts the Court "committed clear factual and legal error" in holding that the Missouri Debtors had waived any conflict of interest prior to Drivetrain's appointment as liquidating trustee. (Disq. Mot. at 14.) Drivetrain first takes issue with the Court's raising the issue *sua sponte* without briefing by the parties. (*Id.*) But the Bankruptcy Code expressly permits the Court to "tak[e] any action or mak[e] any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." 11 U.S.C. § 105(a). So the fact that the Court raised the waiver issue *sua sponte* cannot, in itself, warrant reconsideration. Reconsideration is appropriate only if the Court's waiver holding was (i) a "manifest error of law," *Phelps*, 122 F.3d at 1342 (internal quotation marks, citation omitted), and (ii) was "material" to the Court's disposition of DBR's retention application, *see Rhoten v. Dickson*, 2006 WL 2949530, *2 (D. Kan. Sept. 19, 2006) (court denied reconsideration despite acknowledging it had made factual errors, where the errors were "immaterial to the analysis" and thus "d[id] not constitute manifest injustice which warrants reconsideration of the court's decision"). Neither requirement is met here. As discussed further below, the Court's conclusion that the conflict was previously waived by the Missouri Debtors is both legally and factually valid. And because the waiver issue was but one of several alternative grounds on which the Court overruled Drivetrain's objection to DBR's retention application, the Court need not even revisit the correctness of its waiver ruling, because

[9] It is difficult to fathom how this would be the case, as even a modicum of legal research regarding Rule 1.9 disqualification requests would reveal that the timeliness and *bona fides* of the request are often subject to challenge.

it was immaterial to the disposition of DBR's retention application. To warrant reconsideration, the Court would need to conclude that it had committed a "manifest error of law" on each of the following independent grounds articulated by the Court for overruling Drivetrain's objection to DBR's retention:

- **No "former client" status:** "Drivetrain is not Mr. Slusher's former client in a way that Rule 1.9 contemplates." (Tr. Oct. 18, 2017 at 12:8-9.)

- **Not the "same" or "a substantially related" matter:** "To decide this motion, I must first identify and describe the matter that is in question. What is before us in next week's trial is the confirmation of ABBK's Plan and Drivetrain's objection. The validity of Drivetrain's claims in this case is not in dispute. They are presumed to be allowed." (*Id.* at 8:12-17.) "[T]he Court will have to determine whether ABBK's proposal to discriminate against Drivetrain's and the other intercompany claims is fair. I.e., whether it has a reasonable basis; whether it is necessary to the success of the Plan; whether it is in good faith; and whether it is reasonable in light of its rationale." (*Id.* at 8:24-9:5 (citation omitted).) "It is also important to distinguish multiple debtor and multiple petition bankruptcy cases which house many different matters within their bounds from typical two-party or three-party litigation. DLA represented Abengoa debtors in Delaware, Missouri, and Kansas. All of these debtors were a part of and played some role in a global business enterprise. It should be no surprise that many of these entities had business and credit relationships with one another. The idea that these hundred[s] of entities should each have had separate representation is, frankly, difficult to fathom." (*Id.* at 9:7-18.) "It would be one thing had the Kansas debtor acting through Mr. Slusher objected to Drivetrain's proofs of claim, which are actually the Missouri [D]ebtor[s'] proofs of claim, or otherwise sought to thwart their allowance in this case but that didn't happen. In fact, DLA filed proofs of claim on behalf of four of the Missouri [D]ebtors in this case to which no one has objected. . . . These claims are accordingly presumed allowed as a matter of law under Section 502. Only their classification and treatment is in question, not their substance. Much has been made of ABBK's claims that were filed in the Missouri cases but it's notable that those claims were not filed by either DLA or Armstrong Teasdale. [Gers]on Santos Leon executed them. DLA Piper's name appears nowhere on these Proofs of Claim." (*Id.* at 13:14-14:10.)

- **No "material adversity":** "The similarity of treatment [of intercompany claims under the Missouri Debtors' chapter 11 plan and the Debtor's chapter 11 plan] leads me to question whether the technically adverse interests of these several debtors in this case is even 'material.'" (*Id.* at 14:19-21.)

- **Equitable estoppel:** "Only now that [Mr. Slusher] has changed firms and the debtor has applied to have his new firm employed days before trial has Drivetrain raised the specter of conflict . . . . But Drivetrain is too late." (*Id.* at 17:7-12.)

32. In sum, the burden for Drivetrain to obtain reconsideration is insurmountable. As discussed further below, the Court made the right ruling for the right reasons. But even if the Court had somehow erred in the margins, such error would not warrant reconsideration of the Court's disposition of DBR's retention application under the standard applicable to Rule 59(e) motions in this Circuit. Accordingly, the reconsideration request must be denied. And if the Court agrees, then it need not consider the remainder of the relief sought in the Disqualification Motion, other than to deny it based on the "law of the case" doctrine. *See In re Gracy*, 555 B.R. 767, 770 (D. Kan. 2016) ("The law of the case doctrine posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." (*quoting United States v. Alvarez*, 142 F.3d 1243, 1247 (10th Cir. 1998)); *First Savings Bank, F.S.B. v. U.S. Bancorp*, 117 F. Supp. 2d 1078, 1091 (D. Kan. 2000) (same, and further stating: "This rule promotes the finality and efficiency of the judicial process by protecting against the agitation of settled issues." (citation omitted)).

II. DRIVETRAIN IS NOT DLA'S AND AT'S FORMER CLIENT.

33. Drivetrain argues that it is DLA's and AT's former client, focusing largely on cases that address the issues that arise in an adversary proceeding where the counsel's prior role is used to prevent a successor trustee from adequately prosecuting its claims against that party. These rationales do not apply here.

34. For example, in *Post-Confirmation Comm. Of Unsecured Creditors of I Successor Corp. v. The Feld Grp., Inc. (In re I Successor Corp.)*, 321 B.R. 640 (Bankr. S.D.N.Y 2005), cited by Drivetrain, the concern that led to disqualification was that prior counsel would have a duty of loyalty to its new client to reveal the old client's confidences, which would "tear aside" the "protective cloak" of the attorney-client relationship. *Id*. 648. This rationale does not apply here, since the Missouri Debtors agreed in the engagement letter with DLA that any information they shared with DLA could and would be shared with other affiliated companies. The various disclosures made with the employment applications filed in this case further disclose that DLA and AT were acting for other companies affiliated with the Debtor. Thus, as initially held by this Court in its October 18 ruling, Drivetrain is not a former client of DLA or AT (or by imputation, DBR) in the way contemplated by Rule 1.9. (Tr. Oct. 18, 2017 at 11-12.)

35. *In re Jaeger*, 213 B.R. 578 (Bankr. C.D. Cal. 1997), cited by Drivetrain, is also distinguishable from the instant case, as the law firm there had not obtained the type of informed consent that DLA and AT obtained here. *See id*. at 586. Further, the *Jaeger* court noted that the right to assert a conflict of interest against former counsel is not a "property interest" of the estate, *id*. at 590 n.15—a point directly contrary to the argument Drivetrain makes in reliance on that case, (*see* Disq. Mot. at 20). This oversight demonstrates Drivetrain's *modus operandi*, which is to cherry-picks quotes from cases without any context or detailed analysis, and present an argument to this Court riddled with doctrinal inconsistency and logical flaws.

36. Also notable is that the rationale in *I Successor Corp.* turned on a Supreme Court decision that did not rule that a successor trustee is a former client, but rather that the trustee has control over the attorney-client privilege of its predecessor. 321 B.R. at 653 (citing *Commodity Futures Trading Comm'n v. Weintraub*, 471 US 343 (1985)). The reasoning in *I Successor Corp.* was that because the trustee controlled the privilege and whether to waive it, it had the

ability to tell its predecessor's former counsel not to disclose that information to a new client adverse to the trustee. But the *Weintraub* court did not even express a view on whether (much less hold that) a trustee is a former client, presumably because no one in the case even argued that point. To the contrary, the Solicitor General, advocating for the Commodity Futures Trading Commission, expressly disavowed such a proposition as a step too far. *See* Petitioner's Opening Brief at 22 (arguing that the question is not "technically whether the trustee replaces the company as an entity" or succeeds to positions as a director or officer, but who has sufficient enough management responsibility to decide what happens with the attorney-client privilege). Like *I Successor Corp.*, the *Jaeger* court's analysis relied on *Weintraub* but noted that the principles articulated there should yield if they "would be inconsistent with polices of the bankruptcy law." *Jaeger*, 213 B.R. at 592.

37. Thus, the logic of *I Successor Corp.* and *Jaeger* simply does not apply to the facts presented here, and the Supreme Court precedent on which that reasoning relies does support the ruling Drivetrain requests. Instead, Drivetrain, to the extent it is a former client, should be treated like any former client and held to the waiver that was previously granted. This Court should not blindly accept the assertion from Drivetrain that, because it does not like the treatment under the ABBK Plan that was proposed six months before it filed the Disqualification Motion, there is some absolute requirement that DLA and AT must be disqualified. The proposition of *per se* disqualification is not supported by law, because there is no requirement that a violation of any disciplinary rules mandate disqualification. *See Koch v. Koch Indus.*, 798 F.2upp. 1525, 1531 (D. Kan. 1992) ("An ethical violation does not automatically trigger disqualification."). Instead, the Court is permitted to analyze the issues, balance the competing interests presented by the parties, and use its discretion that flows from that analysis to reach a proper outcome based

on the facts and timing of the motion. *See generally Redd v. Shell Oil Co.*, 518 F.2d 311, 314-15 (10th Cir. 1975).

38. A case which is more instructive for this Court and that addresses the same model rules of professional conduct raised by Drivetrain is *Stanziale v. MILK072011 (In re Golden Guernsey Dairy, LLC),* which is discussed below.

III. ALTERNATIVELY, IF DRIVETRAIN IS CONSIDERED DLA'S AND AT'S FORMER CLIENT, THEN IT IS BOUND BY THE CONSENT PROVISIONS IN THE MISSOURI DEBTORS' ENGAGEMENT LETTER OR THE WAIVERS IN THE PRIOR RETENTION APPLICATIONS, WHICH IT CANNOT NOW REVOKE.

39. The Missouri Debtors previously consented to DLA and AT acting as counsel to both the Missouri Debtors and this Debtor, and the Court ruled accordingly in its October 18 ruling. Additionally, as is clear from the DLA engagement letter with the Missouri Debtors, the Missouri Debtors waived any conflicts, agreed to permit "Allowed Adverse Representations," and specifically agreed not to pursue disqualification. Thus, if Drivetrain is acting "in the shoes of" the Missouri Debtors, rather than as a new and separate entity that is not DLA and AT's former client, then it should be bound by the Missouri Debtors' prior informed consent, which was confirmed in writing. Indeed, the Declarations provided by Drivetrain do not demonstrate that Drivetrain ever effectively withdrew any consent from DLA and AT, and Mr. Daileader's Declaration indicates he spoke only to AT. And there is no other evidence in the record of an attempted formal withdrawal of the consent previously granted to DLA and AT. While it is apparent from the Disqualification Motion that Drivetrain *now* seeks to withdraw this consent, such withdrawal is obviously tactical, as there is no indication of how DLA and AT prosecuting the ABBK Plan is contrary to anyone's expectations or harmful to the Missouri Debtors. Indeed, Drivetrain has had unprecedented access to information in these cases, including much of the work that DLA shared with Hogan Lovells in the plan process in Missouri, which included

information regarding ABBK.[10] Thus, there can be no concern that somehow DLA's and AT's continued representation of ABBK results in some confidential-information asymmetry prejudicial to Drivetrain, which has been given access to all the information it could possibly need, and any information shared with DLA by the Missouri Debtors prior to July 7, 2017, was expressly allowed to be shared with parties to the multiple representation group.

40. Even if Drivetrain could revoke the consent to DLA's and AT's joint representation, which it cannot, this Court would not be obligated to impose such a revocation on DLA and AT so as to disqualify them. Comment 21 to Kansas Rule of Professional Conduct 1.7 provides, in pertinent part, as follows: "A client who has given consent to a conflict may revoke the consent . . . . Whether revoking consent to the client's own representation precludes the lawyer from continuing to represent other clients depends on the circumstances, including the nature of the conflict, whether the client revoked consent because of a material change in circumstances, the reasonable expectations of the other client and whether material detriment to the other clients or the lawyer would result." KRPC 1.7, Cmt. 21. In its October 18 ruling, the Court evaluated the facts and circumstances to determine whether the revocation of the consent should be recognized, as it was permitted to do under the Kansas Rules of Professional Conduct, and determined that in the balancing of the various issues, the consent would remain effective. This was an imminently reasonable decision that should not be reconsidered or second-guessed. *See, e.g., Occidental Hotels Mgmt. B.V. v. Westbrook Allegro L.L.C.*, 440 F.Supp.2d 303, 313 (S.D.N.Y. 2006) (denying request to disqualify a former counsel because such disqualification

[10] Not only has Drivetrain had access to all of the Missouri Debtors' books and records since confirmation of the plan in Missouri, but it has had access to all information regarding ABBK that the Missouri Debtors produced to the Missouri Committee. (*See* GUC Liquidating Trust Agreement (Ex. CC from the Confirmation Hearing) at § 1.3(c) (providing that the Missouri Committee and its advisors can share the Missouri Committee's confidential and privileged information with Drivetrain, including those rights obtained in connection with Rule 2004 examinations, orders, and agreements).)

was not necessary under the facts and circumstances to protect against the misuse of privileged information and did not implicate the duty of loyalty or "side-switching" by counsel).

41. Additionally, here, the filing of the Disqualification Motion a mere day before a trial, and an attempt to schedule the Disqualification Motion for the same time as the trial was to start demonstrates that the Disqualification Motion was a tactical motion designed to delay trial and that it is thus worthy of summary disposition. *See Redd*, 518 F.2d at 315.

42. In short, DLA and AT have represented the Debtor in this case and the Missouri cases (and in DLA's case, the Delaware cases) from the outset. In that capacity, they advised the Debtor regarding the ABBK Plan and proposed it with the full knowledge and consent of the Missouri Debtors. The situation that usually gives rise to former client conflict concerns is simply not present here. DLA and AT did not "drop" the Missouri Debtors as clients so they could take on the more interesting or lucrative role of representing ABBK in a dispute with the Missouri Debtors' estates. Instead, the Missouri Debtors were dissolved at a time when they and all other parties expected DLA and AT to act for ABBK in the prosecution of the ABBK Plan, and there was a change in control over the Missouri Debtors' claims against the Debtor (by virtue of their vesting in Drivetrain, as liquidating trustee). This change of control has actually allowed for a presentation of the issues to the Court on the ABBK Plan in a full and meaningful way, through the presentation of evidence and argument in a truly adversarial process. DLA and AT's involvement has not prejudiced Drivetrain, which has had virtually unprecedented access to information and its adversary, having even hired as consultants individuals from the Missouri Debtors' accounting department that were directly involved in management of ABBK's financial operations. There is no basis to grant the Disqualification Motion, and it should be denied.

IV. IF THERE IS A CONFLICT BETWEEN ABBK AND THE MISSOURI DEBTORS, IT HAS BEEN ADEQUATELY ADDRESSED AND DOES NOT PROHIBIT DLA'S AND AT'S CONTINUING REPRESENTATION OF ABBK IN THIS CASE.

43. As a general matter, while federal courts that consider disqualification motions look to state disciplinary rules for guidance, not every violation of a state disciplinary rule mandates disqualification or will even lead to disqualification. *See Occidental Hotels Mgmt. B.V. v. Westbrook Allegro L.L.C.*, 440 F.Supp.2d 303, 309 (S.D.N.Y. 2006). These motions for disqualification require a high standard of proof. *Id*. The burden of proof with respect to motion to disqualify under Rule 1.9(a) is on the party alleging conflict and moving for disqualification. *See Chrispens v. Coastal Refining & Marketing, Inc.*, 897 P.2d 104, 114 (Kan. 1995).

44. In bankruptcy cases, especially where there are numerous separate legal entities in a jointly administered case, courts often craft sensible solutions to address issues that may arise among debtors' estates. For example, in *In re Adelphia Comm'ns Corp.*, 336 B.R. 610 (Bankr. S.D.N.Y. 2006), the court was faced with a situation where, like here, circumstances changed with respect to a multi-debtor estate where there were intercompany claims between various debtors. Indeed, as the *Adelphia* court noted,

> The presence of intercompany claims between debtors represented by the same counsel does not automatically warrant the disqualification of that counsel. Rather, the Second Circuit and the lower courts, recognizing the substantial cost of requiring additional trustees or counsel in cases where individual debtors have claims against each other, have taken a "wait and see," fact-driven, approach, to determine the extent to which such is necessary.

Id. at 672. *See also id*. at 672 n.168 (citing cases noting it is quite common to have a single law firm represent a parent and its subsidiaries); *In re Global Marine, Inc.*, 108 B.R. 998 (Bankr. S.D. Tex. 1987) (same, and overruling fee objections based on alleged conflict). The *Adelphia* court thus imposed neutrality with respect to specific inter-debtor disputes and allowed creditors

representatives of each estate, such as various ad hoc committees of bondholders, to advocate for their respective estates. The court specifically denied a request that the debtors' counsel be disqualified from prosecuting any substantive consolidation request in the debtors' plan noting that the court was "unaware of any instance in which counsel for a debtor proponent of a plan has been disqualified, as an ethical matter, from proposing substantive consolidation of the debtors in a multi-debtor case" even though as the court noted such a proposed plan helps some creditors and hurts other and arguably hurts some of the debtors themselves. *Adelphia*, 336 B.R. at 671 n.164.

45. The *Adelphia* decision is persuasive authority here. When the various disputes began to arise between the Missouri Debtors and this Debtor (driven by the Missouri Committee, and not by the Missouri Debtors themselves), the Missouri Debtors gave standing to the Missouri Committee on a consent basis to permit it to take any steps it needed to take prior to Drivetrain being formally installed as trustee on the plan effective date. Similarly, this Debtor granted the ABBK Committee standing to prosecute the claims filed in the Missouri Debtors' cases (and both committees were consulted in connection with the submission of these proofs of claim—any contrary narrative is simply incorrect). At that point, as in *Adelphia*, DLA and AT remained clear with all parties at all times that they would continue to represent the Debtor in the prosecution of the ABBK Plan.

V. NEITHER DLA NOR AT (OR BY IMPUTATION, DBR) HAS VIOLATED KANSAS RULES OF PROFESSIONAL CONDUCT.

46. The gravamen of the Disqualification Motion is that the Debtor's lawyers have violated Kansas Rule of Professional Conduct 1.9 because the "current dispute" involves the "same or substantially related matter" to the prior representation. Drivetrain is less than clear what the "current dispute" is. It is vaguely (and self-referentially) described as the "very dispute

that is the subject of the upcoming confirmation hearing[]" or as the Firms seeking to "defeat those very claims" filed. (*See* Disq. Mot. at 20.) Drivetrain then argues that it has not consented (even though it has, through its predecessors in interest), and that as a result of this non-consent, disqualification of DLA and AT is mandatory. Many of these concepts have been rebutted above already; however, the positions are clear: Drivetrain is not a former client; if it is, it is bound by its predecessors' consent in the engagement letters and employment applications; its last-minute effort to revoke that consent for a trial advantage justifies a summary denial of its position; and DLA and AT are not involved on both sides of a claim before a tribunal as the claim litigation is being prosecuted and defended by intermediaries, and the *Adelphia* decision instructs that prosecution of the terms of a plan typically do not create a disabling conflict. All of this is consistent with the law as applied in bankruptcy courts and in Kansas state courts.

47. A recent decision in Delaware dealt with similar rules professional conduct and arguments not unlike those made by Drivetrain. *See Stanziale v. MILK072011*, et al. (*In re Golden Guernsey Dairy, LLC)*, Adv. Pro. No. 14-50953 (KG), 2015 WL 3669932 (Bankr. D. Del. June 12, 2015).

48. In the *Golden Guernsey* case, a chapter 7 trustee sued a group of defendants affiliated with a private equity firm that had acquired the debtor, alleging that the defendants breached certain fiduciary duties. *Id.* at *1. The defendants engaged a firm (Clark Hill) to defend them in the adversary proceeding, which firm had represented the debtor both in connection with the private equity firm's acquisition and post-acquisition, providing the debtor with direct legal services related to legal issues arising out of its day-to-day operations; it continued to represent the debtor up to days before the filing of the bankruptcy petition, and even exchanged some e-mails related to WARN Act liability. *Id.* at *1-2. The firm did not provide advice regarding the bankruptcy filing. *Id.* at *2.

49. The defendants filed a motion to dismiss the complaint and in answering that motion, the chapter 7 trustee moved to disqualify defense counsel. *Id.* The court first examined whether counsel could be disqualified under Model Rule 1.7. *Id.* at *2-3. The chapter 7 trustee argued that the dual representation pre-petition violated the rule and served as grounds for disqualification. *Id.* The court disagreed and determined that no concurrent representation was ongoing and thus, notwithstanding that the debtor was Clark Hill's former client, Model Rule 1.7 would not serve to disqualify them as defense counsel. *Id.* at *4. This analysis applies here in that there is no dispute that as of July 7, 2017, Drivetrain became the liquidating trustee of the Missouri Debtors and retained Hogan Lovells. As of that date, DLA and AT ceased representing the Missouri Debtors and thus Kansas Rule of Professional Responsibility 1.7 does not prohibit them from continuing to represent the Debtor. *Id*. at *2-4.

50. The *Golden Guernsey* court next turned to Model Rule 1.9 and set out the policy behind the rule, namely to prevent use of a client's secrets against it, to maintain confidence in the bar, and to protect the loyalty of an attorney in the matter in which legal services were obtained. *Id*. *4. The court observed that one main issue is to ensure that the prior representation did not unnecessarily advantage the new client. *Id*. The court found that the chapter 7 trustee had not identified any harm that would befall to the chapter 7 trustee by virtue of the firm's prior representation of the debtor. *Id.* at *5. Additionally, because the defendants were affiliated with the private equity firm and would have had access to much, if not more, of the debtor's information, the court found there was no a "convincing case" for disqualification. *Id*.

51. The situation here is similar. Drivetrain identifies no prejudice to it or the Debtor as a result of the firms' prior representation of the Missouri Debtors. And, in light of the prior representation, there is no evidence to suggest (and Drivetrain itself does not suggest) that any of

the firms engaged in any relevant wrongdoing, other than to allege that the Debtor reneged on its promise to not object to the claims of the Missouri Debtors. This is all pretext, however, for Drivetrain, after the failure of its own proposed chapter 11 plan, to seek to delay the confirmation hearing on the ABBK Plan that Drivetrain's predecessor in interest supported as far back as April. In short, the Firms did not "change sides" on the Missouri Debtors; rather, Drivetrain is attempting retroactively to change the position of the now-defunct Missouri Debtors so as to put the Firms on the opposite of their former client for conflict purposes. This is both contrived and unavailing, for the reasons set forth above.

CONCLUSION

52. The Debtor's counsel have been approved by this Court to act in these cases in a manner consistent with normal practice in bankruptcy courts across the country. They have imposed appropriate procedures and granted appropriate intermediaries standing to address any arguable conflict issues. Disqualifying them, particularly at this point in this case, would be excessively punitive on the Debtor and not in the best interest of its estate. This is all especially true where Drivetrain has failed to carry its burden that the continued involvement of DLA and AT (or DBR) has resulted in the breach of any of the Missouri Debtors' confidences, any harm to the public trust in the judicial system, or any disloyalty by DLA and AT to the wishes of their former clients, who in fact were supportive of the positions DLA and AT ultimately took in prosecution of the ABBK Plan.

53. For these reasons and those set forth in the prior filings by DBR on these issues and in the Court's October 18 ruling, the Disqualification Motion should be denied.

Dated: November 9, 2017

Respectfully submitted,

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Co-Counsel for the Debtor

CERTIFICATE OF SERVICE

The undersigned certifies that on this 9th day of November, 2017, a true and correct copy of the *Debtor's Objection to the Missouri Liquidated Trustee's Omnibus Motion to Disqualify all of Debtor's Counsel* was electronically filed with the Court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF system, and was forwarded via U.S. Mail, first class, postage prepaid, and properly addressed to those parties who have requested notice but are not participating in the ECF System, pursuant to instructions appearing on the Electronic Filing Receipt received from the U. S. Bankruptcy Court.

s/ *Christine L. Schlomann*

EXHIBIT 6

From: Litterine-Kaufman, David <dlitterinekaufman@orrick.com>
Sent: Wednesday, 21 October 2026 18:49:33
To: Andrew Berdon <andrewberdon@quinnemanuel.com>; Patty Tomasco <pattytomasco@quinnemanuel.com>; Eric Winston <ericwinston@quinnemanuel.com>; Christopher Tayback <christayback@quinnemanuel.com>
Cc: Lawson, Alexander <alawson@alvarezandmarsal.com>; Lynch, Barry <blynch@alvarezandmarsal.com>; ProjectATP <projectatp@alvarezandmarsal.com>; Sabatino, Nicholas <nsabatino@orrick.com>; AppleTree_OHS@orrick.com <AppleTree_OHS@orrick.com>; Martin, Craig <craig.martin@us.dlapiper.com>
Subject: RE: In re Apple Tree Life Sciences, Inc. et al.

[EXTERNAL EMAIL from dlitterinekaufman@orrick.com]

Andrew,

We invited a conversation precisely in the hope that it can help to de-escalate. But of course the Officeholders cannot simply ignore what is now clearly a disabling conflict in Quinn's ongoing representation of the other debtors adverse to the Fund. If you or your General Counsel believe that conflict can somehow be resolved we remain willing to have that conversation, but it will need to happen soon because the Officeholders cannot have conflicted counsel representing the objectors adverse to the Fund at the hearing on November 10. We understand from Craig that is entirely consistent with the parties' conversation with Judge Silverstein.

If you would like to discuss this further please propose some times this week when you are available.

Regards,

David Litterine-Kaufman
Partner
Orrick
New York
T 212-506-3540
dlitterinekaufman@orrick.com

From: Andrew Berdon <andrewberdon@quinnemanuel.com>
Sent: Wednesday, October 21, 2026 5:09 PM
To: Sabatino, Nicholas <nsabatino@orrick.com>; Patty Tomasco <pattytomasco@quinnemanuel.com>; Eric Winston <ericwinston@quinnemanuel.com>; Christopher Tayback <christayback@quinnemanuel.com>
Cc: Martin, Craig <craig.martin@us.dlapiper.com>; alawson@alvarezandmarsal.com; Lynch, Barry <blynch@alvarezandmarsal.com>; ProjectATP <projectatp@alvarezandmarsal.com>; AppleTree_OHS@orrick.com
Subject: Re: In re Apple Tree Life Sciences, Inc. et al.

[EXTERNAL]

Dear Mr. Sabatino:

Please let Mr. Litterine-Kaufman know that we received his letters and that we have referred them to our General Counsel for consideration.

You should be aware that the Court adjourned the hearing on the Officeholders' motion to November 10. You should also be aware that during a Chambers conference on Monday, the Court, Mr. Martin, and I all agreed that the time between now and November 10 would be best used to de-escalate the issues of contention between us, including the issues raised in your first letter. We ask that Orrick honor Mr. Martin's statement to the Court as if it was made by Mr. Litterine-Kaufman himself. Please let me know if that presents a problem.

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From: Sabatino, Nicholas <nsabatino@orrick.com>
Sent: Tuesday, October 20, 2026 6:22:16 PM
To: Andrew Berdon <andrewberdon@quinnemanuel.com>; Patty Tomasco <pattytomasco@quinnemanuel.com>; Eric Winston <ericwinston@quinnemanuel.com>
Cc: Martin, Craig <craig.martin@us.dlapiper.com>; alawson@alvarezandmarsal.com <alawson@alvarezandmarsal.com>; Lynch, Barry <blynch@alvarezandmarsal.com>; ProjectATP <projectatp@alvarezandmarsal.com>; AppleTree_OHS@orrick.com <AppleTree_OHS@orrick.com>
Subject: In re Apple Tree Life Sciences, Inc. et al.

[EXTERNAL EMAIL from nsabatino@orrick.com]

All,

Attached please find correspondence from David Litterine-Kaufman, engaged to represent ATP Life Sciences Ventures, L.P. acting through its court-recognized Officeholders.

Best,
Nick

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