IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: WEST MARINE, INC., *et al.*,[1] Debtors.	Chapter 11 Case No. 26-10794 (KBO) (Jointly Administered) **Re: Docket No. 56** **Hearing Date: June 18, 2026, at 1:00 p.m. (ET)** **Objection Deadline: June 12, 2026 at 4:00 p.m. (ET)**[2]

OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) CONDITIONALLY APPROVING THE ADEQUACY OF THE DISCLOSURE STATEMENT AND (II) APPROVING THE SOLICITATION AND VOTING PROCEDURES WITH RESPECT TO CONFIRMATION OF THE DEBTORS' JOINT CHAPTER 11 PLAN

The Official Committee of Unsecured Creditors (the "Committee") of West Marine, Inc., *et al.*, the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), by and through its proposed undersigned counsel, hereby files this objection (the "Objection") to the *Debtors' Motion for Entry of an Order (I) Conditionally Approving the Adequacy of the Disclosure Statement, (II) Approving the Solicitation and Voting Procedures with Respect to Confirmation of the Debtors' Joint Chapter 11 Plan, (III) Approving the Forms of Ballots and Notices in Connection Therewith, (IV) Scheduling a Combined Hearing and Setting Related Dates and Deadlines, and (V) Granting Related Relief* (the "Motion").[3] In support of this Objection, the Committee respectfully states as follows:

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1 The Debtors in these chapter 11 cases are: West Marine, Inc.; Marine One Holdco, LLC; Marine One Parent, Inc.; Rising Tide Holdings Inc.; Rising Tide Parent Inc.; Seascapes, Inc.; W Marine Management Company, Inc.; and West Marine Products, Inc.

2 Extended for the Committee by consent of the Debtors.

3 Docket No. 56.

PRELIMINARY STATEMENT[4]

1. The Debtors commenced these cases to implement a RSA that will hand ownership of the company to their prepetition term loan lenders who are also equity cross-holders, while leaving unsecured creditors with next to nothing. The RSA allows the Debtors to pivot to a sale, but only in the unlikely event that the term loan lenders, who would otherwise own the company, consent. Unsurprisingly, the Plan will also deliver full releases to the prepetition lenders, equity holders, and all current and former directors and officers.

2. The Debtors are currently running a perfunctory marketing process with bids due by the end of June. The Committee has already aired its concerns with the sale process in its Bid Procedures objection and will not rehash those arguments here.[5] Instead, the Committee files this Objection to the woefully inadequate Disclosure Statement for the Plan that fails to provide fair treatment.

3. As an initial matter, the solicitation timeline does not provide adequate time for creditors to submit informed votes or for the Committee to conduct its investigation. The Committee retained counsel last week and immediately served document requests. Production has only just begun and the Committee's investigation into the events leading to these chapter 11 cases has just begun. To compound matters, the Special Committee of disinterested directors has been investigating the claims being released since mid-April. That investigation is ongoing and the Committee has no visibility into the conclusions, preliminary or otherwise. Yet, as set forth in the Committee's objection to cash collateral filed contemporaneously herewith, the Debtors seek to improperly limit the Committee's Challenge Period in contravention of the Local

[4] Capitalized terms used but not defined in this Preliminary Statement shall have the meaning ascribed to them elsewhere in this Objection.

[5] Docket No. 168.

Rules. Against this backdrop, the Debtors ask general unsecured creditors to take them at their word – nothing to see here – and seek authority to solicit a Plan with broad releases while proposing distributions of, at most, 0.2%, and only if they vote to accept the plan.

4. Among other flaws, the Disclosure Statement is devoid of detail regarding: (i) the claims that are being released by the estates and the value provided by the released parties, (ii) projected recoveries for unsecured creditors, (iii) the valuation supporting the proposed RSA deal and creditor recoveries, and (iv) the Debtors' desire to select the plan administrator in a sale and wind down scenario.

5. The releases are particularly troubling because claims against insiders may be a meaningful a source of value for unsecured creditors. In support, the Disclosure Statement recites decidedly terse and general statements, including that the releases are an "integral part of the Debtors' overall restructuring efforts." These assertions without more are not adequate. While the Committee does not seek to litigate the propriety of the releases now, it contends that the Disclosure Statement must be revised to reflect the nature and value of the released claims and the consideration and contributions of each released party given in exchange for the releases. If the Debtors need more time to make these disclosures, they should extend the solicitation timeline.

6. Similarly, the Disclosure Statement does not disclose projected recoveries for holders of term loan claims and general unsecured claims purportedly under the guise of protecting the sale process. But these amounts are public and disclosure of creditor recoveries is a fundamental purpose of disclosure statements. Perhaps more importantly, the Debtors fail to provide any support for the valuation that underpins the equitization of term claims. Instead, the Disclosure Statement contains a single paragraph that posits that the outcome of the sale process

will serve as the best available valuation, thus obviating the need for an independent valuation analysis. The entire RSA hinges on the ability of the term loan lenders to exchange $250 million in debt for 100% of equity. The Committee has requested but not received additional support for the Debtors' valuation of the company. The Debtors must, at a minimum, explain the basis for ascribing this value to the company.

7. For creditors to submit informed votes on a Plan that is designed to benefit the lenders, the Disclosure Statement must be revised as requested herein.

BACKGROUND

A. General Background

8. On May 17, 2026 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with this Court. Since the Petition Date, the Debtors have remained in possession of their assets and have continued to operate and manage their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed.

9. On May 29, 2026, the Office of the United States Trustee for Region 3 appointed a seven-member Committee consisting of: (i) Realty Income Corporation; (ii) Facility Solutions Group, Inc.; (iii) Modern Recreational Technologies, Inc.; (iv) East Penn Manufacturing Co.; (v) Virtual Supply, Inc.; (vi) Lippert Components, Inc.; and (vii) Garmin USA, Inc.[6]

10. On June 1, 2026, the Committee selected Kelley Drye & Warren LLP as its lead counsel and, on June 2, selected Ice Miller LLP as its Delaware co-counsel and Province, Inc. as its financial advisor.

[6] Docket No. 103.

B. The RSA, Plan, and Disclosure Statement

11. By early 2026, the Debtors' secured debt had become unsustainable and the Debtors retained financial advisors and restructuring counsel.[7] On May 17, the Debtors and a majority of their lenders and equity holders (the "Consenting Stakeholders") executed the Restructuring Support Agreement (the "RSA").[8] Per the RSA, the Debtors filed these cases to pursue a Recapitalization Transaction whereby: (i) $250 million in Term Loan claims will be exchanged for 100% of the reorganized company's equity; (ii) $178 million in ABL and FILO claims will either be paid in full or converted into an exit facility; and (iii) general unsecured creditors owed more than $120 million in the aggregate will receive a *pro rata* share of $250,000—representing an approximate 0.2% recovery—provided the class votes to accept the Plan.[9] The RSA authorizes the Debtors to toggle to a sale of the business if the Required Consenting Term Loan Lenders consent.

12. To implement the RSA, on May 18, the Debtors filed the (i) Motion, (ii) *Joint Plan of Reorganization of West Marine, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the "Plan"), and (iii) *Disclosure Statement for the Joint Plan of Reorganization of West Marine, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the "Disclosure Statement").[10] On June 5, the Debtors filed their Liquidation Analysis and Financial Projections.[11]

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7 *See Declaration of Paulee Day, Chief Executive Officer of West Marine, Inc., in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* (the "First Day Declaration"), Docket No. 15, ¶ 11.

8 First Day Declaration, Ex. A (the RSA). Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Plan or Disclosure Statement, as applicable.

9 *See* Plan, Art. IV.C.

10 Docket Nos. 46, 47, and 56.

11 Docket No. 170.

13. The Motion seeks, among other things, approval of solicitation procedures and a timeline that includes a July 20 deadline to vote and object to confirmation and a July 30 combined disclosure statement and confirmation hearing.

14. The Disclosure Statement does not provide the projected claim amounts and recoveries for holders of Term Loan Claims and General Unsecured Claims. The Debtors contend that the amounts are not disclosed to avoid prejudicing the sale process and directs creditors to the "Valuation Analysis" section of the Disclosure Statement.[12] The "Valuation Analysis" section provides that the Debtors did not conduct a "book-based" valuation analysis because the outcome of the marketing and sale process will serve as the valuation analysis.[13]

15. Consistent with the RSA, the Debtors also filed a motion to approve, among other things, bid procedures and the sale timeline (the "Bid Procedures Motion").[14] The Bid Procedures authorize the secured lenders to credit bid all or a portion of its claims against the Debtors and, by virtue thereof, such lender is automatically deemed a Qualified Bidder.[15] If the Debtors toggle to a sale and the required lenders consent, the Plan provides that the Debtors have sole discretion to select a Plan Administrator to wind-down the Debtors' estates post-sale, including monetizing remaining assets and making distributions.[16]

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12 Disclosure Statement, Art. III.H.n.5.

13 *Id.*, Art. X.F.

14 Docket No. 49. The Committee objected to the Bid Procedures Motion and, following a consensual resolution of the Committee's procedural issues, the Court entered an order approving the Bid Procedures Motion on June 10, 2026. Docket No. 225 (the "Bid Procedures Order").

15 Bid Procedures Order, ¶ 32.

16 Plan, Art. I.A.97; Article IV.D.6.

16. The dual track process outlined in the RSA will be funded by the use of cash collateral. Per the *Local Rules of the United States Bankruptcy Court for the District of Delaware* (the "Local Rules"), the Committee's Challenge Period (as defined in the proposed final order granting the Cash Collateral Motion) should expire on August 3, 2026.[17] As set forth in the *Objection of the Official Committee of Unsecured Creditors to the Debtors' Motion for Entry of a Final Order Authorizing the Use of Cash Collateral* filed contemporaneously herewith, the Debtors, however, improperly seek to shorten the Challenge Period.

C. The Special Committee's Investigation And The Proposed Releases

17. Prior to the Petition Date, on April 13, the Debtors established a special committee (the "Special Committee") comprised of two disinterested directors to, among other things, investigate the claims being released and determine whether the Debtors' release of such claims is appropriate.[18] The Special Committee is represented by Young Conaway Stargatt & Taylor LLP, who is also co-counsel to the Debtors.[19] If the Special Committee determines that the Debtors' releases are improper, the Consenting Stakeholders may terminate the RSA.[20]

18. The Plan provides for the Debtors' release of a broad range of parties, including the lenders, equity holders, current and former officers, directors, employees, advisory board members, professionals, and current and former affiliates of each entity (collectively, the "Released Parties").[21] The releases would insulate the Released Parties from any and all claims and causes of action (including any and all direct and derivative Claims) held by the Debtors and

17 Local Rule 4001-2(a)(i)(Q).

18 Disclosure Statement, Art. VI.C.2.

19 *Id.*, Art VII.F.

20 *Id.*

21 *See* Plan, Art. I.A.126-127.

their estates for no consideration. The Debtors also propose broad third party releases, subject to an opt out right.[22] This blanket opt-out mechanism seeks to bind a broad range of creditors to third-party releases, including holders of claims that: (i) vote to accept the Plan and fail to affirmatively opt out of the releases; (ii) are entitled to vote but abstain from voting and fail to affirmatively opt out of the releases; and (iii) are unimpaired creditors who receive a Notice of Non-Voting Status and neither opt out of the releases nor object to confirmation of the Plan.[23]

19. According to the Debtors, the releases are "an integral part of the Debtors' overall restructuring efforts and were an essential element of the negotiations between the Debtors and the Consenting Stakeholders."[24] The Disclosure Statement provides no other detail on the contributions provided by the Released Parties in exchange for the releases.

20. The Special Committee's investigation commenced two months ago and remains ongoing. The Committee has no transparency into the Special Committee's investigation or findings and the Disclosure Statement is devoid of detail. The Committee has requested that it be included in the Special Committee's interviews but that request has gone unanswered. Moreover, the Special Committee's findings will not be included in the Disclosure Statement because the deadline to conclude the investigation is the same date as the hearing on the Motion.

D. <u>The Committee's Investigation</u>

21. The Committee immediately commenced its investigation into the released claims upon retaining counsel. On June 4, the Committee requested the Debtors and the Special

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22 *Id.*, Art. I.A.128.

23 *Id.*

24 Disclosure Statement, Art. III.S.

Committee produce documents relevant to: (a) a potential Challenge to the prepetition lenders' liens and claims; and (b) the events and transactions that precipitated the Debtors' chapter 11 cases since the Debtors became a private company in 2017. To date, production is ongoing and the Debtors and the Special Committee only recently produced certain limited documents. As such, for purposes of this Objection, the factual background below is limited to publicly available information.

22. The Committee's review of publicly available filings in 2016 reveals that the Debtors' business generated approximately $703.4 million in net revenue, had no material outstanding secured debt and generated over $34 million of EBITDA.[25]

23. In September 2017, private equity firm Monomoy Capital Partners ("Monomoy") acquired the company in a take private leveraged buyout.[26] The transaction value was approximately $338 million and resulted in significant debt being incurred by the Debtors to fund the LBO.

24. In April 2021, Monomoy sold the company to private equity firm L. Catterton.[27] Upon information and belief, the transaction substantially increased the company's secured debt, which ultimately ballooned to more than $800 million.[28]

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[25] West Marine, Inc., Annual Report (Form 10-K) (2017), for the fiscal year ended December 31, 2016, pp. 19, 25.

[26] First Day Declaration ¶ 29; GlobeNewswire, *West Marine Inc. to be Acquired by Monomoy Capital Partners for $12.97 Per Share* (2017), https://www.globenewswire.com/news-release/2017/06/29/1035237/0/en/west-marine-inc-to-be-acquired-by-monomoy-capital-partners-for-12-97-per-share.html.

[27] Monomoy Capital Partners, *Monomoy Capital Partners Agrees to Sell West Marine, Inc.* (2021), https://www.mcpfunds.com/news/monomoy-capital-partners-agrees-to-sell-west-marine-inc/.

[28] First Day Declaration, ¶ 58.

25. In March 2023, West Marine completed the first of two liability management transactions with L. Catterton and the existing lenders that restructured its debt into multiple new super-senior and junior tranches ("March LMT").[29] Only six months later, West Marine completed the second LMT in which approximately $660 million of funded debt was exchanged for equity (the "September LMT" and, together with the March LMT, the "2023 LMTs").[30] Although the 2023 LMTs purportedly stabilized operations and improved the company's balance sheet, neither provided the Debtors sufficient liquidity nor reduced the overall debt to a level that the company could sustain.[31]

26. The Committee intends to conduct a fulsome investigation into the circumstances surrounding the corrosion of a healthy debt-free company in 2017—with over $700 million in revenue and approximately $34 million of EBITDA—into an overleveraged chapter 11 debtor burdened with more than $400 million in secured debt and approximately $120 million in unsecured debt.

OBJECTION

I. The Disclosure Statement Lacks Adequate Information

27. Section 1125(b) of the Bankruptcy Code requires that a disclosure statement contain "adequate information" regarding a plan before it may be sent to creditors for the purpose of soliciting votes to accept or reject the plan.[32] "Adequate information" means:

> information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the

[29] *Id.* ¶ 56; Boat Blurb, West Marine Files for Chapter 11 Bankruptcy Protection (2026), https://www.boatblurb.com/post/west-marine-files-for-chapter-11-bankruptcy-protection.

[30] First Day Declaration ¶¶ 58-59.

[31] *Id.* ¶ 60.

[32] 11 U.S.C. § 1125(b).

> potential material Federal tax consequences of the plan to . . . a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan[.][33]

28. The Third Circuit has emphasized the importance of adequate disclosure, stating that, given the reliance creditors and bankruptcy courts place on disclosure statements, "we cannot overemphasize the debtor's obligation to provide sufficient data to satisfy the Code standard of adequate information."[34]

29. At a minimum, a disclosure statement must contain all factors presently known to the plan proponent "that bear upon the success or failure of the proposals contained in the plan"[35] and should be assessed from the perspective of the creditors and interest holders with the ability to vote.[36] The determination of what constitutes adequate information is subjective and made on a case-by-case basis.[37] Courts have found that a disclosure statement must provide sufficient information for a creditor to make an informed decision on the proposed plan, including information regarding the debtor's assets, liabilities, an estimate of allowed claims, a range of potential recoveries for creditors, risks associated with the plan or recoveries, and litigation that may impact recoveries, among other things.[38] Specifically, courts have considered

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33 *Id.*

34 *Oneida Motor Freight Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988); *see also Ryan Operations G.P. v. Santiam-Midwest Lumber Co.*, 81 F.3d 355, 362 (3d Cir. 1996) ("the importance of full and honest disclosure cannot be overstated.").

35 *In re Beltrami Enters., Inc.*, 191 B.R. 303, 304 (Bankr. M.D. Pa. 1995) (quoting *In re Stanley Hotel, Inc.*, 13 B.R. 926, 929 (Bankr. D. Colo. 1981)).

36 *See In re Phoenix Petroleum Co.*, 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001) (citing *In re Monroe Well Servs., Inc.*, 80 B.R. 324, 330 (Bankr. E.D. Pa. 1987)).

37 *In re Cajun Elec. Power Co-op, Inc.*, 150 F.3d 503, 518 (5th Cir. 1998).

38 *In re Fierman*, 21 B.R. 314, 315 (Bankr. E.D. Pa. 1982) (ruling the disclosure statement lacked adequate information because it lacked specificity regarding litigation and a partnership that impacted creditor recoveries and failed to provide factual support for the value of assets).

whether a plan provides information regarding the value of claims released by the plan in connection with the parties being released.[39]

A. The Timeline is Not Sufficient to Allow Informed Voting

30. The current timeline artificially compresses the plan supplement, voting, and objection deadlines to the detriment of the Committee and its stakeholders. As currently proposed, creditors have only one week between the plan supplement deadline (July 13) and the voting and objection deadline (July 20). Not only is this timeline insufficient, it truncates the Committee's Challenge Deadline as mandated by the Local Rules from August 3 to July 20. The timeline also does not allow the Committee sufficient time to conduct a valuation analysis and, if needed, to challenge the proposed valuation underpinning the equitization of $250 million in Term Loan Claims into 100% of the Reorganized Debtors' equity.

31. To strike a balance between the Committee's need for additional time and the Debtors' desire to swiftly exit chapter 11, the Committee has proposed the below timeline. Among other things, the revised timeline: (i) affords creditors two weeks between the plan supplement deadline and the voting and objection deadline; (ii) affords the Committee time to complete its investigation, and (iii) allows the Debtors to confirm the Plan and go effective by the August 20 date contemplated by the RSA.

Confirmation Event	Current Date	Proposed Date
Voting Record Date	June 4	June 18
Solicitation Commencement Deadline	June 18	June 26
Plan Supplement Deadline	July 13	July 16
Voting Deadline	July 20	August 3

[39] *In re Lower Bucks Hosp.*, 471 B.R. 419, 456-57 (Bankr. E.D. Pa. 2012) (concluding that the disclosure statement was defective because it failed to provide information regarding the value of third party claims released by the plan), *aff'd*, 488 B.R. 303 (E.D. Pa. 2013), *aff'd*, 571 Fed. Appx. 139 (3d Cir. 2014); *Monroe Well*, 80 B.R. at 332 (ruling the disclosure statement lacked adequate information because it omitted, among other things, conditions to plan funding and the assets of a non-debtor guarantor against whom creditors' claims were to be released).

Confirmation Event	Current Date	Proposed Date
Confirmation Objection Deadline	July 20	August 3
Reply Deadline/File Voting Report	July 27	August 7
Confirmation Hearing	July 30	August 13
Effective Date	August 20	August 20

32. The Committee respectfully submits that the timeline must be modified to allow creditors to submit informed votes and to allow the Committee time to complete its investigation and to evaluate the propriety of the negligible distributions to unsecured creditors.

B. Inadequate Information Regarding Releases

(1) The Debtors' Releases

33. The Plan provides for the Debtors' release of the Released Parties (the "Debtors' Releases"). If approved, the Debtors' Releases will eliminate all claims against the Released Parties, including all current and former directors and officers.

34. The Third Circuit standard in determining the propriety of debtor releases is governed by five non-exclusive factors:

> (1) identity of interest between the debtor and non-debtor;
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> (2) contribution to the plan by the non-debtor;
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> (3) the necessity of the release to the plan;
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> (4) overwhelming acceptance of the plan and release by creditors and interest holders; and
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> (5) payment of all or substantially all of the claims of the creditors and interest holders.[40]

[40] *See In re Washington Mut., Inc.*, 442 B.R. 314, 346 (Bankr. D. Del. 2011) (*citing In re Zenith Elecs. Corp.*, 241 B.R. 92, 110 (Bankr. D. Del. 1999) and *In re Master Mortgage. Inv. Fund, Inc.*, 168 B.R. 930, 937 (Bankr. W.D. Mo. 1994)) (often regarded as the *Zenith* or *Master Mortgage* factors, courts in the Third Circuit consider five factors in analyzing the propriety of the debtor granting releases of claims it holds against various third parties); *In re One2One Communs.*, No. 13-1675, 2016 WL 3398580 at *6 (D.N.J. June 13, 2016) (citations omitted).

35. As several courts have found, if a debtor release could potentially bar an entity from pursuing colorable claims, such releases may not be appropriate given that unsecured creditors would be foreclosed from pursuing viable causes of action that could increase their recovery.[41] In support of the Debtors' Releases, the Debtors provide only terse, generic and conclusory statements without providing any detail on the nature of the claims being released and the value provided in exchange by the Released Parties.

36. Whether the Debtors' Releases are appropriate and can be approved by this Court is a matter for confirmation and the Committee does not seek to litigate that issue here. Instead, for purposes of approval of the Disclosure Statement and solicitation procedures, the Committee submits that the Disclosure Statement should contain the following information: (a) the nature of the claims existing against the Released Parties; (b) the potential value of those claims; (c) identification of the consideration provided by each of the Released Parties to the Debtors' estates in exchange for the Releases; and (d) the contributions of each of the Released Parties to the Plan and creditor recoveries under the Plan. Creditors cannot make an informed decision with respect to whether to grant releases of unknown claims for unknown value.

37. In addition to the claims to be released, the Committee is also investigating the secured lenders' purported claims, liens, security interests, and possible affirmative claims. Depending on the results of that investigation, the Committee may ultimately seek standing to pursue a challenge against the secured lenders. The Disclosure Statement should be revised to reflect the pendency of the Committee's Challenge rights.

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41 *See In re Exide Technologies*, 303 B.R. 48, 73 (Bankr. D. Del. 2003) (acknowledging that the Debtors' releases would, among other things, bar continuation of the Creditors Committee's Adversary Proceeding, especially considering a majority of the released claims were derivative).

38. The Disclosure Statement should also be revised to reflect the status of the Special Committee's investigation, which should be completed by the time the Disclosure Statement is solicited. Even if the investigation is delayed, the Special Committee has existed for two months and the Debtors should be required to provide a robust explanation of the work performed since mid-April.

39. This additional information is necessary for unsecured creditors to assess the risk that the Plan may not be confirmed upon a successful challenge and whether greater recoveries could be available if the Debtors' Releases are denied and the released claims are pursued.

(2) The Third-Party Releases

40. The Committee echoes the concerns raised by the United States Trustee in its objection to the Motion with respect to the opt-out third-party releases.[42] With the exception of creditors deemed to reject the Plan, the Plan imposes third-party releases on (i) creditors in voting classes who do not opt out or object to confirmation, and (ii) creditors that are not entitled to vote and do not opt out or object.[43] Failure to opt out or object to confirmation is deemed a consensual release.

41. In *Purdue*, the Supreme Court held that bankruptcy courts cannot involuntarily alter relationships between non-debtors by imposing nonconsensual releases of, or injunctions barring, claims between them.[44] The Court did not prohibit chapter 11 plans from memorializing consensual third-party releases, and it did not "express a view on what qualifies

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42 Docket No. 209.

43 Plan, Art.I.A.128. Creditors that are deemed to reject the Plan are being given the ability to opt in to the releases.

44 *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 209 (2024).

as a consensual release."[45] Since *Purdue*, Delaware bankruptcy judges have disagreed about whether "opt-out" releases are permitted as consensual releases.[46] The Committee understands that this Court has approved "opt-out" third party releases in previous circumstances only insofar as there was "sufficient manifestation of affirmative consent."[47] Such consent has generally been found only where parties returned a ballot voting in favor of a plan.[48] The Court has also emphasized, however, that "opt-in" third-party releases are the "gold standard."[49]

42. As discussed above, creditors are being asked to release potentially valuable claims against the Released Parties despite receiving minimal recovery and essentially no information, let alone adequate information, regarding the releases. Under these circumstances, the Debtors should modify the releases to an "opt-in" structure.

C. Inadequate Information Regarding the Claims Pool and Projected Recoveries

43. The Debtors claim they cannot disclose estimated recoveries for general unsecured creditors to avoid disrupting the ongoing sale process. The Debtors' First Day

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45 *Id.* at 226.

46 *See In re Smallhold, Inc*., 665 B.R. 704, 719–20 (Bankr. D. Del. 2024) (CTG) ("[T]he third-party release is no longer a potentially permissible plan provision. Accordingly, it is no longer appropriate to require creditors to object or else be subject to (or be deemed to 'consent' to) such a third-party release.")

47 *See In re True Value Company, L.L.C.*, No. 24-12337 (KBO), February 11, 2025 Hr'g Tr. 12:14-13:1 ("Here, as I have held in *Jambys* and other cases, parties that return a ballot, vote in favor, affirmatively act to vote in favor of the plan, do not opt out, sign the ballot and return the ballot, is sufficient for me to determine that there has been manifestation of affirmative consent.") Transcripts are not attached hereto but can be provided to the Court or parties in interest upon request.

48 *See In re Jambys, Inc.*, No. 24-10913 (KBO), September 10, 2024 Hr'g Tr. 58:16-59:6 (explaining that abstaining from voting and not taking affirmative action is "insufficient manifestation of consent" where an opt-in would be required, but finding that affirmatively checking a box to vote on the plan and not opting out is "sufficient manifestation of consent to the release").

49 *See In re First Mode Holdings Inc.*, Case No. 24-12794 (KBO) (Bankr. D. Del. Feb. 6, 2025), Dkt. No. 266.

Declaration provides that general unsecured creditors are owed over $120 million.[50] The Liquidation Analysis provides that general unsecured creditor claims range between $165 million to $175 million. The RSA explicitly provides for a distribution of $250,000 to general unsecured creditors if the class votes to accept the plan. This publicly available information leads to the inevitable conclusion that recoveries for general unsecured creditors will be, at most, 0.2%. There is no rational or logical basis not to disclose this information to creditors in a straightforward manner.

D. Inadequate Information Regarding Valuation

44. Full disclosure of the Debtors' assets and their value is fundamental to evaluating a proposed plan.[51] The Debtors are converting $250 million in Term Loan Claims into 100% of equity and leaving next to nothing for general unsecured creditors. As the Committee asserted in its Bid Procedures objection, the Debtors have provided no support for this valuation and will likely point to the flawed sale process as the best indicator of value.

45. The Committee has already requested all valuations concerning the Debtors since 2021. To date, the Committee has not received the Debtors' underlying support for the Recapitalization Transaction or the treatment of unsecured creditors.

46. Given the lack of underlying data and the lack of information available to the Committee to date, reliability of the Debtors' purported valuation is impossible to test at this stage. The Committee was not at the negotiating table when the RSA was negotiated. The Committee suspects that many of the assumptions underlying the valuation analysis could be skewed in a manner to arrive at an artificially low valuation. To contain adequate information,

50 First Day Declaration, ¶ 43.

51 *See, e.g.*, *Krystal Cadillac-Oldsmobile GMC Truck*, 337 F.3d 314, 321-22 (3d Cir. 2003).

the Disclosure Statement should include additional information to support the valuation or disclose that there is no supporting valuation to allow creditors to cast an informed vote.

E. Inadequate Information Regarding Plan Administrator and Liquidating Trust

47. The Disclosure Statement fails to explain why the Debtors believe they, and not the Committee, should select the Plan Administrator if the Debtors pursue a Sale Transaction and liquidation of the remaining assets. If a Sale Transaction occurs, the Debtors will not be reorganizing, the Debtors' operations will have ceased, and the estates will be winding down for the benefit of unsecured creditors. The Debtors provide no justification for their interest in selecting the entity to control the liquidation and distribution process.

II. Other Aspects of the Disclosure Statement and Solicitation Procedures Must Be Modified Before Approval

48. The Solicitation Procedures and Disclosure Statement Order, as applicable, must be revised to address the following issues:

- Severability of Contracts and Leases. The Disclosure Statement improperly provides that, to the extent the Debtors determine that Executory Contracts or Unexpired Leases rejected pursuant to the Plan are severable from contracts or leases assumed pursuant to the Plan, counterparties must object to contest that determination.[52] This procedure improperly shifts the burden to contract counterparties. If the Debtors want to argue that certain Executory Contracts and Unexpired Leases are severable, it is the Debtors' burden to affirmatively establish such relief under applicable state law through a separate motion on regular notice.[53]

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52 *See, e.g.*, *Buffets Holdings*, 387 B.R. 115, 119 (Bankr. D. Del. 2008) ("[Debtors] cannot accept one [contract] and reject the other.") (citations omitted); *In re Metro Transp. Co.*, 87 B.R. 338, 342 (Bankr. E.D. Pa. 1988) (assumption or rejection is an all-or-nothing determination).

53 *See, e.g.*, *Buffets Holdings*, 387 B.R. at 124 (noting there is no federal policy requiring severance of a lease condition solely because it makes a debtor's reorganization more feasible, and that determination of severability depends on the application of state law); *In re Am. Home Mortg. Holdings, Inc.*, 402 B.R. 87, 94 (Bankr. D. Del. 2009) (evaluating severability based on evidentiary record and applicable state law); *In re Foothills Texas, Inc.*, 476 B.R. 143, 153 (Bankr. D. Del. 2012) (discussing that debtors did not assert any

- Resolution of Disputed Claims for Voting Purposes. The Solicitation Procedures should be revised to provide that all creditors in Voting Classes will receive a ballot. The Debtors must object to proofs of claims filed by creditors in Voting Classes at least 14 days prior to the Voting Deadline. If the Debtors object to a claim in a Voting Class and prevail on such objection the vote will not be counted (other than a "reduce and allow" objection). This approach ensures creditors have sufficient time to vote and protects the estates if the Debtors' claim objection is successful.[54]

- Committee Consultation Rights. The Debtors should grant the Committee customary consultation rights with respect to the Debtors' decision to (i) waive any of the requirements for completing, submitting, and tabulating ballots, and (ii) make any material amendments to the Plan, Disclosure Statement, and related documents.

- Timing for Assumption/Rejection Decisions. All decisions to assume or reject Unexpired Leases must be made in accordance with section 365(d)(4) of the Bankruptcy Code.

- Plan Supplement. The Plan improperly provides that the plan supplement documents will be filed either "prior to the confirmation hearing" or "prior to the effective date," as applicable.[55] The Plan Supplement must be filed by a date certain and at least 2 weeks prior to the Voting Deadline.

- Lenders' Liens: The Disclosure Statement should explain the scope of the prepetition lenders' liens, including whether such liens extend to goodwill and value created postpetition.

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facts to support intention of the parties as to the divisibility of the applicable agreements); *In re Rachels Indus., Inc.*, 109 B.R. 797, 802 (Bankr. W.D. Tenn. 1990) (the party moving to assume a lease has the ultimate burden of persuasion that the lease is one subject to assumption and that all requirements for assumption have been met).

54 *See* Solicitation Procedures, § C.3.

55 Plan, Art.I.A.98.

CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court deny the Motion unless modified as set forth herein and grant such other and further relief as the Court deems just and proper.

Dated: June 12, 2026
Wilmington, Delaware

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CERTIFICATE OF SERVICE

I, Sarah R. Gladieux, do hereby certify that on June 12, 2026, a copy of the foregoing **Objection of the Official Committee of Unsecured Creditors to the Debtors' Motion for Entry of an Order (I) Conditionally Approving the Adequacy of the Disclosure Statement and (II) Approving the Solicitation and Voting Procedures with Respect to Confirmation of the Debtors' Joint Chapter 11 Plan** was served on the parties listed on the attached service list via email.

/s/ Sarah R. Gladieux
Sarah R. Gladieux (No. 7404)

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