

No. 23-124

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**In the Supreme Court of the United States**

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WILLIAM K. HARRINGTON, UNITED STATES TRUSTEE,  
REGION 2, PETITIONER

*v.*

PURDUE PHARMA L.P., ET AL.

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*ON WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT*

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**JOINT APPENDIX  
(Volume 1)**

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PETITION FOR WRIT OF CERTIORARI FILED: JULY 28, 2023  
CERTIORARI GRANTED: AUG. 10, 2023

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*State of New York*

*Department of State*

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on July 8, 2020.

/s/

BRENDAN C. HUGHES

BRENDAN C. HUGHES

Executive Deputy Secretary of State

Rev. 06/19

New York State Department of State  
Division of Corporations, State Records and Uniform Commercial Code  
One Commerce Plaza, 99 Washington Avenue  
Albany, NY 12231  
www.dos.ny.gov

CERTIFICATE OF CHANGE  
OF

PURDUE PHARMA INC.

*(Insert Name of Domestic Corporation)*

Under Section 805-A of the Business Corporation Law

FIRST: The name of the corporation is:

PURDUE PHARMA INC.

If the name of the corporation has been changed, the name under which it was formed is:

SECOND: The certificate of incorporation was filed by the Department of State on:

October 2, 1990

THIRD: The change(s) effected hereby are: *(Check appropriate statement(s))*

The county location, within this state, in which the office of the corporation is located, is changed to:

The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is changed to read in its entirety as follows:  
c/o United Corporate Services, Inc.  
10 Bank Street, Suite 560  
White Plains, NY 10606

The corporation hereby: *(Check one)*

Designates United Corporate Services, Inc.

as its registered agent upon whom process against the corporation may be served.

The street address of the registered agent is:  
10 Bank Street, Suite 560  
White Plains, NY 10606

Changes the designation of its registered agent to:

The street address of the registered agent is:

Changes the address of its registered agent to:

Revokes the authority of its registered agent.

FOURTH: The change was authorized by the board of directors.

/s/ Marc Kesselman  
(Signature)

Marc Kesselman  
(Name of Signer)

Senior Vice President, General Counsel  
(Title of Signer)

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CERTIFICATE OF CHANGE  
OF

PURDUE PHARMA INC.

(Insert Name of Domestic Corporation)

Under Section 805-A of the Business Corporation Law

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Filer's Name Norton Rose Fulbright US LLP

Address 1301 Avenue of the Americas

City, State and Zip Code New York, New York 10019

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U.S. Department of Justice  
Criminal Division

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*Washington, D.C. 20530*

Oct. 6, 2006

**INTERNAL MEMORANDUM**

**TO:** Steve R. Tyrell  
Chief  
Fraud Section

Paul E. Pelletier  
Principal Deputy Chief for Litigation  
Fraud Section

**FROM:** Kirk Ogrosky [KO]  
Deputy Chief  
Fraud Section

**SUBJECT:** Proposed Indictment of Purdue Pharma LP, The Purdue Frederick Company, Michael Friedman (COO), Howard R. Udell (EVP GC), Paul D. Goldenheim (EVP); Conference scheduled for October 11, 2006

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This memorandum summarizes my review of the proposed Indictment of the above named entities and individuals in preparation for a conference with defense counsel. It is my understanding that negotiations with the parties have continued and that a Deferred Prose-



cution Agreement (“DPA”) has been contemplated. My observations are based strictly on the line prosecutors summary of the evidence as articulated in the Prosecution Memorandum dated September 28, 2006. I have not been provided or reviewed testimony or documents, nor have I conducted independent legal research related to the legal analysis contained therein.

Based upon my review of the summary and cited testimonial and documentary evidence, and the material submitted to the government by the defendants on September 21 and 22, 2006, I concur with the recommendation that authorization be granted to charge the defendants with: (1) Conspiracy, in violation of 18 U.S.C. § 371; (2) Mail Fraud, in violation of 18 U.S.C. §§ 2 and 1341; (3) Wire Fraud, in violation of 18 U.S.C. §§ 2 and 1343; (4) Interstate Distribution of Misbranded Drug With Intent to Defraud, in violation of 18 U.S.C. § 2 and 21 U.S.C. §§ 21 U.S.C. §§ 331(a), 352(a), and 333(a)(2); (5) Conspiracy to Commit Money Laundering, in violation of 18 U.S.C. § 1956(h); and (6) Money Laundering, in violation of 18 U.S.C. § 1957.

There does not appear to be a reasonable basis for further delay in the prosecution. In addition, there are compelling reasons to move forward with indictment given public health considerations. Endangering public health has been and continues to be a strong factor for consideration in the criminal law enforcement process. *See generally* U.S.S.G 5K2.14 (authorizing sentencing enhancements for endangering public health). Courts frequently enhance the sentences of defendants that engage in criminal conduct that poses a significant threat to public health and safety. Perhaps no case in our history rivals the burden placed on public health and safety as that articulated by our line prosecutors in the West-

ern District of Virginia. OxyContin abuse has significantly impacted the lives of millions of Americans, and the fraudulent scheme and conduct articulated in this matter has a direct correlation to this threat.

With knowledge of the severe potential for abuse and addiction, the named defendants knowingly targeted and marketed OxyContin in a scheme designed to increase company profit by telling physicians throughout this country that OxyContin was less addictive than alternative medicines due to delayed absorption. Further, the defendants buttressed these false claims with additional false statements that patients could quickly stop taking the OxyContin without suffering significant withdrawal side-effects. Based on the evidence, these false statements were willingly and knowingly made to promote and market OxyContin and significantly contributed to the sales of approximately \$9 billion worth of OxyContin since 1996. I see no basis to delay this matter further unless new and compelling issues are raised on October 11, 2006.

A. FDA Approval of OxyContin

While not part of the proposed Indictment, Purdue's conduct in the early 1990s in seeking approval for OxyContin evidences criminal intent. The FDCA required Purdue to obtain FDA approval of a New Drug Application ("NDA") and all labeling or package insert ("PI") material prior to distribution of OxyContin. Purdue submitted applications on December 28, 1994 for its 10, 20, and 40 milligram tablets. In those applications, the evidence of OxyContin's safety and efficacy related on clinical studies comparing OxyContin to the Then current approved regiment of immediate-release oxycodone ("Roxicodone"). Within two months of submission,

Purdue learned that Roxycodone's dosing schedule had been changed and the clinical studies in their submission were no longer a valid basis for comparison. Despite significant internal discussion and evaluation, Purdue failed to alert the FDA to this change or the impact on its studies.

On December 12, 1995, the FDA approved the OxyContin NDA based on Purdue's application. The key consideration is whether this intentional failure to disclose was material to the FDA approval. While Purdue believed it material at the time, there is debate among individuals associated with the FDA approval process as to whether these facts, had they been known, would have derailed or impacted the approval process. Given conflicting evidence, WDVA and OCL have proposed to not pursue charges related to this misconduct. Nevertheless, it begins the story of how OxyContin gained approval and entered the market. As of today, OxyContin is one of the most widely abused products in the country and has generated approximately 9 billion in sales for Purdue.

B. Conspiracy to Defraud Through Marketing of OxyContin

The Indictment charges a multi-object conspiracy with the overall goal of maximizing the revenues from the sale of OxyContin through fraud, deceit, and false statement. The fraudulent marketing scheme was that the conspirators trained Purdue's sales force, and provided them with training and marketing materials, to sell OxyContin as better than other pain medications already in use, particularly immediate-release, or short-acting, medications. The primary claims of superiority were the OxyContin was less abusable, less addictive,

and less subject to diversion, caused fewer side effects, such as euphoria, and, that at low doses (20-60 mg), could be discontinued without tapering since patients would experience no withdrawal symptoms.

The clear evidence is that the FDA approval process was tainted with efforts to position OxyContin to be marketed as less addictive, less abuseable, and less divertable than other opioids. Once approved and the marketing scheme was underway, Purdue began receiving reports from providers and the media that indicated widespread abuse and diversion. Even at that time, the company took the position that it needed a strategy to contain negative press. Purdue told sales representatives that it was the company's position that the public debate about OxyContin abuse and diversion was "a direct result of the hysteria and fear created by exaggerated media coverage of this problem . . . ." Fearing further bad publicity and efforts by the government, including Congress, FDA, and DEA, to more stringently regulate OxyContin marketing and promotional activities, Purdue implemented a strategic plan to focus on voluntary efforts to limit access OxyContin to patients with a legitimate medical need so that the government would not interfere with the doctor-patient relationship. Given the data from the approval process, the ultimate question was whether there was any need for OxyContin at all given the data related to available products in the market. Consistent with this plan, defense counsel are still raising similar arguments today as a reason to discourage prosecution.

As a preliminary matter, Purdue publicly stated that it had no knowledge of the abuse and diversion of OxyContin until the first half of 2001. During their testimony in Congressional hearings on August 28, 2001, De-

ember 11, 2001, and February 12, 2002 the conspirators falsely and fraudulently told Congress that they had no knowledge of the extensive abuse and diversion of OxyContin before 2001.

The government has developed compelling evidence that defendants Friedman, Udell and Goldenheim, all senior executives at Purdue who had primary responsibility for running the company, reached an agreement to promote and market OxyContin through their sales force using marketing information containing known false and misleading information. These individuals also made false statements to Congress to further and conceal the extent of Purdue's prior knowledge of the underlying falsity.

To address its market research findings that physicians treating non-cancer pain were likely to hesitate in prescribing OxyContin due to concerns about addiction and abuse, the conspirators promoted OxyContin as superior to immediate-release pain medicines by claiming that it produced significantly less fluctuation, or "peaks and troughs," in oxycodone blood plasma concentrations than the immediate-release medicines.

The conspirators first sought to use this promotion angle in its OxyContin launch marketing materials, submitted to the FDA for review and approval. On October 12, 1995, PURDUE submitted some of its proposed launch marketing materials for review by FDA. The FDA responded on December 20, 1995, objecting to the "fewer peaks and valleys" claim suggested "that the blood levels for both dosage forms be presented" so that data could be accurately interpreted. Purdue replied that "[t]he comparative statement, 'Fewer peaks and valleys' than with immediate-release oxycodone' was

deleted.” Nevertheless, sales representatives were taught to tell physicians that OxyContin provided more favorable oxycodone blood levels than other pain medications, they were not taught to show physicians the graph of the actual comparison of blood levels.

On November 4, 1996, the Training & Development Department sent a memorandum to the entire field force advising them to tell healthcare providers that “OxyContin can provide pain relief to your patients allowing them to sleep through the night, while potentially creating less chances for addiction than immediate-release opioids.” Purdue knew that the FDA had opined that there was not enough evidence to claim that OxyContin was superior to other pain medications in adverse events, that there was actually a potential that OxyContin’s slower fall and slightly higher trough blood levels might result in greater development of tolerance and/or withdrawal, and that OxyContin had not been shown to have a significant advantage beyond reduction in frequency of dosing. Purdue’s top executives expressed the importance of marketing OxyContin as better than other medications because it was less addictive and less abusable. Evidence establishes that sales representatives did in fact promote OxyContin as having less euphoria, or buzz, than other pain medications, or as causing no euphoria at all.

The individual defendants appeared before House of Representatives, Committee on Energy and Commerce, Subcommittee on Oversight and Investigation, and gave false testimony in hearings chaired by Congressman Greenwood and entitled “OxyContin: Its Use and Abuse. One December 17, 2001, to further the strategy of claiming ignorance about the abuse of OxyContin, Friedman disseminated Goldheim’s false testi-

mony to the entire field force claiming no knowledge of OxyContin abuse and diversion before early 2000, and its false claim of OxyContin's superiority over short-acting analgesics.

C. Fraudulent Sales and Marketing Campaign Based on False Statement in FDA Applications and Labeling Materials

The FDA Medical Officer tasked with reviewing the OxyContin applications was Dr. Curtis Wright, IV. Dr. Wright's review included writing Medical Officer Reviews ("MOR") of the Integrated Summary of Safety ("ISS") and Integrated Summary of Efficacy ("ISE") submitted as part of the NDA. His MOR of the ISS was completed May 19, 1995, and signed October 16, 1995. In sum, he initially concluded that OxyContin was "as good as current therapy, but has not been shown to have a significant advantage beyond reduction in frequency of dosing." Based on this, he did not support claims that OxyContin was less likely to produce addiction. Nevertheless, two key and misleading statements were contained in the PI that became the basis of Purdue's aggressive OxyContin marketing campaigns. These statements were (1) "Delayed absorption, as provided by OxyContin tablets, is believed to reduce the abuse liability of a drug" ("the Delayed Absorption Statement"); and (2) "When that patient no longer requires therapy with OxyContin tablets, patients receiving doses of 20-60 mg/day can usually have the therapy stopped abruptly without incident" ("the Stop Therapy Abruptly Statement").

The origin of the Delayed Absorption Statement is unclear. As late as July 21, 1995, the draft OxyContin PI had no language like this. However, it first appeared

in an August 16, 1995 letter Purdue sent to the FDA. This language was amended and submitted to the FDA on September 13, 1995. Dr. Wright testified that this statement was included as a result of his request that Purdue include information in the PI about the abuse liability of OxyContin. An FDA employee questioned the accuracy of this statement on November 21, 1995, but deferred to Dr. Wright. The inclusion of the Delayed Absorption Statement is at odds with Wright's conclusions in his MORs of the ISE and ISS; however, he later testified that the PI language is "literally true." Ultimately, Purdue built its scheme to falsely and fraudulently market OxyContin around this false statement, among others, describing it as "so valuable and promotional that it easily served as principal selling tool."

The Stop Therapy Abruptly Statement has similarly mysterious origins. Dr. Wright originally stated that the data in his review of the ISS led him to conclude that "the reaction to abrupt withdrawal of oxycodone was typical for opioids analgesics." Again in apparent contradiction to the conclusions of the MOR of the ISS, the Stop Therapy Abruptly Statement was allowed to remain in the OxyContin PI. Dr. Wright could not recall when, how, or why that language was included in the PI.

Questions have been raised about Dr. Wright's dealings with Purdue. Purdue recorded the content of certain contacts with Dr. Wright. The records suggest that Wright solicited Purdue's help in writing his MORs. Further, Dr. Wright told Purdue that the NDA review could be accelerated if the company traveled to FDA's location in Rockville, Maryland. In January or February 1995, rented a room nearby, and spent three to five days helping him write the reviews of the clinical study reports and the integrated summaries of efficacy and



safety. This was done during January 31 through February 2, 1995. Interestingly, a March 24, 1995 email, within three months after the submission of the NDA and nearly nine months before it was actually approved, a Purdue employee advised Udell and others that Dr. Wright “has confirmed that we will receive and APPROVAL letter for OxyContin (NDA 20-553) by the end of December 1995.” On October 9, 1998, a year after he left the FDA, Purdue offered Dr. Wright a job as an Executive Medical Director, with a first year compensation package of at least \$379,000. Dr. Wright started in this position on December 1, 1998.

D. No Reason to Further Extend the SOL

The alleged conspiracy began in October of 1992 and continues to date. The proposed indictment is scheduled to be sought on October 25, 2006. It is my understanding that this date is based on the government’s prior accommodation of the Defendants requests for additional time. Given the scope of the investigation, there appears to be no valid reason to further extend the SOL. Given Purdue’s reported OxyContin revenue, a further delay will merely allow the continued fraudulent sales and marketing of OxyContin and substantial additional revenue to the Defendants. There is a direct financial incentive for seeking an extension—which appears to be in excess of 100 million per month.

Based upon the summary in the prosecution memorandum, it appears that the government has interviewed the key identified witnesses and has assembled the relevant documentary evidence. Given the nature of the alleged crimes, it is my opinion that the misguided investigation could continue for decades without adding any new or more valuable evidence to that already in

the possession of the government. While I have heard no factual proposition that appears to merit further investigation, I am always open to hearing from all parties as to the state of the evidence and whether more should be done. At this time, I simply see no reason to delay given the evidence and potential danger associated with OxyContin abuse.

MEMORANDUM OF UNDERSTANDING  
REGARDING JOINT DEFENSE AND COMMON  
INTEREST AGREEMENT

This Memorandum of Understanding (the “MOU”), dated as of May 15, 2018, is entered into by and between the undersigned counsel on behalf of (i) Heatheridge Trust Company Limited, in its capacity as trustee of a settlement dated December 31, 1993 and known as the Beacon Trust; (ii) Hillside Trust Company Limited, in its capacity as trustee of a settlement dated March 16, 1998 and known as the Milton Trust; (iii) Dame Theresa E. Sackler; (iv) Ms. Ilene Sackler Lefcourt; (v) Ms. Samantha Sackler Hunt; (vi) Dr. Kathe A. Sackler; (vii) Mr. Mortimer D. A. Sackler; (viii) Mr. Jacques Theurillat; (ix) Mr. Cecil Pickett; and (x) Purdue Pharma L.P., Purdue Pharma Inc. and The Purdue Frederick Company, Inc. (collectively, the “Parties”).

WHEREAS the United States District Court for the Northern District of Ohio has consolidated a group of actions naming Purdue Pharma L.P., Purdue Pharma Inc. and The Purdue Frederick Company, Inc. as defendants, among others, titled *In re: National Prescription Opiate Litigation*, No. 1:17-CV-2804, in which various parties have sought damages and other relief relating to alleged liability arising out of the design, approval, manufacture, sale, distribution and marketing of opioid medications by Purdue Pharma L.P., its affiliates and others; other cases related to such activities are also pending or may be filed in various courts around the United States in which the defendants include Purdue Pharma L.P., Purdue Pharma Inc. and The Purdue Frederick Company, Inc., Dr. Richard Sackler, Estate of Mortimer Sackler, Estate of Raymond Sackler; and federal and state regulatory and other enforcement

agencies have undertaken or may undertake investigations of such activities (collectively, the “Actions”);

WHEREAS, the undersigned believe and anticipate that, on the basis of currently available information, the nature of the Actions and the relationship among the undersigned will present various common legal and factual issues and a mutuality of interest in a joint defense in connection with the Actions, or any other claims, proceedings or investigations that may arise in relation to the Actions;

WHEREAS, the undersigned wish to continue to pursue their separate but common interests, and to avoid any suggestion of waiver of the confidentiality or immunity of communications and documents protected by the attorney-client privilege, the attorney’s work product doctrine or any other privilege or immunity vis-à-vis potentially adverse parties; and

WHEREAS, it is the intention and understanding of the undersigned that past and future communications among and between the undersigned are and shall remain confidential and shall continue to be protected from disclosure to any other party by applicable privileges and immunities, except as set forth herein; and

WHEREAS, in order to pursue a joint defense effectively, the undersigned have also each concluded that, from time to time, their interests will be best served by sharing documents, factual material, mental impressions, memoranda, interview reports, litigation strategies and other information, including the confidences of each client—all of which will hereafter be referred to as the “Defense Materials” (but only to the extent that such material or information was not already in the possession of the recipient before the communication of

such material or information by a signatory to this MOU or was thereafter independently obtained); and

WHEREAS, it is the purpose of this MOU to ensure that any exchange and/or disclosure of the Defense Materials contemplated herein does not diminish in any way the confidentiality of the Defense Materials and does not constitute a waiver of any privilege or immunity otherwise available,

NOW, THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Except as expressly stated in writing to the contrary, any and all Defense Materials obtained by any of the undersigned from each other are being provided solely for internal use of the undersigned and their counsel and shall remain confidential and shall be protected from disclosure to any third party by the joint-defense privilege, the clients' attorney-client privilege, the attorneys' work product doctrine and other applicable privileges and immunities. All Defense Materials shall be used solely in connection with the Actions.

2. Neither the undersigned nor their counsel shall disclose Defense Materials or the contents thereof to anyone not a signatory to this MOU (except the undersigned counsels' firms, employees or agents) without first obtaining the written consent of all counsel for all the Parties who have signed this MOU. It is expressly understood that nothing contained in this MOU shall limit the right of the undersigned to disclose to anyone as they see fit any of their own documents or information or any documents or information they obtained independently and not pursuant to this MOU.

3. All persons permitted access to Defense Materials shall be advised that the Defense Materials are privileged and subject to the terms of this MOU.

4. If any person or entity requests or demands, by subpoena or otherwise, any Defense Materials from the undersigned, counsel for that Party will immediately notify all counsel for Parties this Agreement who may have rights in said materials, and each counsel so notified will take all steps necessary to permit the assertion of all applicable rights, privileges and immunities with respect to such Defense Materials, including permitting the other affected Parties a reasonable opportunity to intervene and be heard, and otherwise cooperating fully with the other affected Parties in any judicial proceedings relating to the disclosure of Defense Materials.

5. Nothing contained herein shall be deemed to create an attorney-client relationship between any attorney and anyone other than the client of that attorney; the fact that any attorney has entered this MOU shall not in any way preclude that attorney from representing any interest that may be construed to be adverse to any other party to this MOU or be used as a basis for seeking to disqualify any counsel from representing any other party in this or any other proceeding; and no attorney who has entered into this MOU shall be disqualified from examining or cross-examining any client who testifies at any proceeding, whether under a grant of immunity or otherwise, because of such attorney's participation in this MOU.

6. The signatories to this MOU intend to share information and confer regarding strategies and information relating to the Actions, including at meetings at which some or all of the undersigned counsel are pre-

sent. Nonetheless, nothing in this MOU shall obligate any signatory to share or communicate any Defense Materials or independently obtained or created materials with any other signatory hereto.

7. Nothing in this MOU shall create a right in any signatory to prevent any other signatory from resolving or otherwise addressing any or all of the Actions against that other signatory according to its own assessment of its best interests. Nothing in this MOU shall prevent any signatory from cooperating with any federal, state, local or tribal agency in any investigation.

8. Should any Party choose to withdraw from this MOU or determine that he, she, or it no longer has, or no longer will have, a mutuality of interest in a joint defense, he or she or it shall provide prior written notice, in which case this MOU shall no longer be operative as to the withdrawing Party, but shall continue to protect all Defense Materials disclosed to the withdrawing Party prior to such withdrawal. The withdrawing Party or his or her counsel shall promptly return all Defense Materials and shall continue to be bound by the obligations of confidentiality with respect to Defense Materials previously furnished pursuant to this MOU.

9. This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes any prior oral understanding among the Parties or Counsel regarding the Common Interest Materials. This Agreement may be modified only by written agreement of the Parties.

10. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or un-

enforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

11. Each signatory to this Agreement hereby states and affirms that he or she has full authority to execute this Agreement on behalf of the Party for whom he or she executes the Agreement.

12. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors and assigns, and any corporation, partnership or other entity into or with which any Party hereto may merge, consolidate or reorganize,

13. Any notice required or contemplated by this Agreement shall be in writing and shall be deemed delivered if sent by hand, overnight delivery service, or electronic transmission to the attorneys at the addresses contained in the signature blocks below. Each Party may change the attorney and/or address for notice by providing notice to the other Party as set forth above.

14. Each Party to this Agreement acknowledges that this Agreement was drafted jointly by the Parties, that each Party has consulted with such Party's own attorneys and fully understands the terms hereof, and that each Party has received legal advice from such Party's own attorneys regarding the advisability of entering into this Agreement and is voluntarily executing the Agreement. This Agreement is not intended to, and shall not, create rights in any person or entity not a party hereto. Other parties may be added to this Agreement only with the prior unanimous written consent of all Parties.



15. This MOU may be executed in any number of counterparts, each counterpart constituting an original, but all together one and the same agreement.

16. Additional individuals or entities may become a Party to the Agreement by signing the form entitled "Agreement to Join the Joint Defense and Common Interest Agreement," attached hereto as Exhibit A, provided that each and every existing Party to the Agreement unanimously consent to said additional individual or entity joining the Agreement. In the event an individual or entity seeks to join the Agreement, he, she, or it must notify all existing Parties to the Agreement of their plans by sending a communication by email and letter via overnight courier to each of the Parties or their counsel at the addresses set forth below. If a Party to the Agreement does not respond to said notification within three business days of receipt of said notification, said notified Party shall be deemed to have consented to the additional individual or entity joining the Agreement. Any individual or entity which signs the "Agreement to Join the Joint Defense and Common Interest Agreement" shall have all the rights and obligations of existing Parties to the Agreement.

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*Hillside Trust Company Limited, in its capacity as trustee of a settlement dated 16 March 1998 and known as the Milton Trust*

*Dame Theresa E. Sackler*

*Ms. Ilene Sackler Lefcourt*

*Ms. Samantha Sackler Hunt*

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By: /s/ REGINALD BROWN  
REGINALD BROWN

*Counsel for:*

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**Exhibit A: Agreement to Join the Memorandum of Understanding Regarding Joint Defense and Common Interest Agreement**

1. The undersigned has reviewed the “Memorandum of Understanding Regarding Joint Defense and Common Interest Agreement” (the “MOU”) dated May 15, 2018 in its entirety and understands its terms.
2. The undersigned believes and anticipates that, on the basis of currently available information, the nature of the Actions, as that term is defined in the MOU, and the relationship amongst the undersigned and the Parties to the MOU will present various common legal and factual issues and a mutuality of interest in a joint defense in connection with the Actions, or any other claims, proceedings or investigations that may arise in relation to the Actions.
3. The undersigned therefore joins the MOU as a Party pursuant to Paragraph 16 of the MOU.
4. The undersigned agrees to abide by all the terms of the MOU and acknowledges that it will have the same rights and obligations as all other Parties to the MOU.

Dated: [June 5, 2018]

MORGAN LEWIS & BOCKIUS LLP  
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By: /s/ TIMOTHY J. SHEA  
TIMOTHY J. SHEA

*Counsel for:*

*Purdue Pharma L.P., Purdue  
Pharma Inc. and the Purdue Freder-  
ick Company, Inc.*

*In re Purdue Pharma L.P.*, Case No. 19-23469 (RDD)

**Plan Support Letter**

To all unsecured creditors of Purdue Pharma L.P. and its affiliated debtors and debtors in possession (collectively, the “Debtors” or “Purdue”):

We write this letter as lead counsel to, and on behalf of, the Official Committee of Unsecured Creditors (the “UCC”) appointed in Purdue’s bankruptcy cases (the “Chapter 11 Cases”). The UCC consists of the following nine members:

1. a personal injury victim who suffered from opioid use disorder;
2. a third party payor and trade association for 35 independent health insurance companies collectively insuring 110 million members;
3. a trade creditor and co-defendant in opioid litigation that has asserted indemnification claims;
4. the mother of a child who died of an opioid overdose;
5. the mother of a child diagnosed upon birth with Neonatal Abstinence Syndrome (“NAS”) due to fetal opioid exposure;
6. a trade creditor;
7. the federal entity responsible for insuring defined benefit pension plans;
8. the grandfather of a child diagnosed upon birth with NAS due to fetal opioid exposure; and
9. a hospital.

The purpose of this letter is to explain to all creditors the UCC's position with respect to the *Fifth Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and its Affiliated Debtors* [ECF No. 2982] (as amended, the "Plan").<sup>1</sup>

The UCC is an independent fiduciary for and represents the interests of *all creditors* in the Chapter 11 Cases. In their capacities as *unpaid* and *volunteer* members of the UCC, the above individuals and representatives of the above institutions have met, on average, twice weekly during these cases (approximately 160 times) and have reviewed and considered daily emails from counsel regarding the events that have occurred over the more than 600 days since the UCC's appointment. The UCC members have reviewed thousands of documents, listened to numerous hearings, attended presentations and reviewed analyses from their own advisors, as well as the advisors and principals of numerous other parties.

At the outset of their appointment, the UCC members agreed not to speak to the press or otherwise make public statements regarding Purdue's bankruptcy or the Sacklers, and instead determined to make their views known through the positions advanced by the UCC in Court. This self-imposed "gag order" has been, and continues to be, a hardship for many of the members of the UCC. This is particularly true for the victim advocates, who prior to their appointment to the UCC, had made it their lives' work to combat the opioid crisis and speak publicly on opioid issues. This situation was exacerbated by the decision made by certain other par-

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<sup>1</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Plan.

ties to speak through various forms of media in order to make their positions known. Indeed, it is in part because of the public silence of its members to date that the UCC is compelled to make the important and somewhat lengthy statements contained in this letter.

Below is a brief overview of the items covered in this letter.

<b>Section I</b>	A summary of the UCC’s conclusions and position regarding the Plan
<b>Section II</b>	An overview of certain background information regarding the Chapter 11 Cases
<b>Section III</b>	The UCC’s approach to the Chapter 11 Cases
<b>Section IV</b>	Phase I Mediation: determining allocation of value among creditor constituencies
<b>Section V</b>	The work the UCC and its advisors have done to understand, evaluate and prepare to prosecute the various potential causes of action against the Sacklers
<b>Section VI</b>	Phase II Mediation: the attempt to negotiate a settlement among the Sacklers, the Public Claimants, <sup>2</sup> the UCC and the Debtors

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<sup>2</sup> The term “Public Claimants” refers collectively to the States, both in the Consenting Committee and the NCSG, their political subdivisions, Native American Tribes and other entities defined in the Plan as the holders of “Non-Federal Domestic Governmental Claims.”



<b>Section VII</b>	The Emergency Relief Fund and Document Repository
<b>Section VIII</b>	The future of Purdue
<b>Section IX</b>	Concluding remarks about the Plan

***For the reasons explained in this letter, the UCC (i) has determined that it will not object to the Plan and (ii) encourages all creditors to vote to accept the Plan.***<sup>3</sup>

#### **I. SUMMARY OF THE UCC'S CONCLUSIONS**

Since its formation, the UCC has advocated for an outcome that (i) maximizes value for those harmed by the conduct of the Debtors and the members of the Sackler family and (ii) allocates such value fairly among numerous creditor constituencies, including personal injury victims (including children diagnosed upon birth with NAS), hospitals, insurance ratepayers, third-party payors (including employer and government-sponsored health insurance plans administered by these companies), States, municipalities, Native American Tribes, public schools and the Federal Government.

In an effort to maximize value available for creditors, the UCC and its advisors have thoroughly investigated

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<sup>3</sup> Although the UCC has determined to support the Plan, final documentation of the Sackler Settlement (as defined below), as well as certain other supplemental documents related to the Plan, remains subject to continued negotiation. As such, and for the avoidance of doubt, nothing contained in this letter is or should be construed as the UCC's agreement to any terms of the Sackler Settlement or the Plan that have not been filed publicly as of the date of this letter. To the extent these ongoing negotiations fail to result in consensus regarding open issues, the UCC will no longer be in a position to support the Plan and will disclose its views in a supplemental filing on the Court's docket.

and analyzed whether the approximately \$3 billion originally offered by the Sacklers, coupled with other contingent consideration and the value of Purdue itself, was sufficient to compensate creditors for (i) the harm caused by the Debtors' sale and marketing of opioid products and (ii) value and assets that Purdue caused to be distributed to the Sacklers or to entities under the Sacklers' control. As a result of this investigation (the "Investigation"), the UCC developed a detailed understanding of the value that could be recovered from the Sacklers in litigation. Armed with the results of this work, the UCC, along with the Debtors and the Consenting Committee (as defined below), participated in mediation ("Phase II Mediation") to reach resolution with the Sacklers over an increased contribution, which resulted in an additional \$1.275 billion in guaranteed value beyond the approximately \$3 billion initially offered.

With respect to ensuring that value is allocated fairly among various creditor constituencies, the UCC and its advisors worked closely with the Debtors, the Public Claimants and the various groups representing the Private Claimants,<sup>4</sup> in particular during mediation ("Phase I Mediation" and together with Phase II Mediation, "Mediation"). Ultimately, Phase I Mediation resulted in settlements in principle among certain of the Public Claimants and Private Claimants.

As a result of all of its work and the knowledge it has gained to date, the UCC has determined that the best

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<sup>4</sup> The term "Private Claimants" refers collectively to the holders of Hospital Claims, Third-Party Payor Claims, Ratepayer Claims, NAS Monitoring Claims and PI Claims, each as defined in the Plan.

path forward is confirmation of the Plan. Indeed, this is the only path that will ensure value can begin to make its way to creditors, who desperately need it as soon as practicable. To be clear, the UCC believes that the claims against the Sacklers and related parties could well be worth more than the \$4.275 billion (the “Settlement Amount”) contemplated by the settlement with members of the Sackler family (the “Sackler Settlement”). Nevertheless, two factors strongly favor acceptance of the Plan: (i) the significant risk, cost and delay (potentially years) that would result from pursuing the Sacklers and related parties through litigation; and (ii) the importance of preserving the agreements reached between Public Claimants and Private Claimants regarding allocation of value, absent which creditors would be forced to engage in time-consuming, messy and costly litigation.

The UCC therefore views the Plan as an imperfect solution that remains the *only* way to ensure that individuals, institutions and States and their political subdivisions start to receive the funds necessary to compensate them for their injuries (for individuals) and abate the opioid crisis (for every other party), which continues to take a staggering toll and has only been exacerbated by the COVID-19 pandemic.

*Therefore, with appropriate deference to M. de Voltaire, the UCC urges creditors not to let the perfect be the enemy of the good.*

## II. OVERVIEW AND BACKGROUND OF THE CHAPTER 11 CASES

Purdue’s bankruptcy has occurred against the backdrop of the opioid crisis, which is the single worst man-made epidemic—and other than the COVID-19 pan-

demic, the defining public health crisis—of this generation. It has resulted in half a million deaths and ruined countless other lives, in addition to leaving thousands of children suffering from fetal opioid exposure. Indeed, a few sentences could hardly do justice to the horrors of the opioid crisis and the human toll wrought by the Debtors’ past actions. Therefore, the UCC will not attempt to explain in this letter the widespread harm and devastation to individuals and families alike with which many readers of this letter are all too familiar. Suffice it to say that this tragic backdrop, coupled with the many complex legal issues to which it has given rise, have made these Chapter 11 Cases among the most complex, difficult, important, emotional and painful imaginable.

**A. *The Opioid Crisis Resulted in Extensive Litigation Against Purdue and Others***

In addition to the tragic human toll, the opioid epidemic has resulted in extensive litigation. More than a dozen opioid manufacturers, distributors and retail pharmacies have been named as defendants in thousands of lawsuits brought by numerous and varied plaintiff groups. These lawsuits seek to hold defendants responsible for creating or perpetuating the opioid crisis. In 2017, much of this litigation was centralized in the United States District Court for the Northern District of Ohio, in a single multi-district litigation entitled *In re National Prescription Opiate Litigation*, Case No. 17-2804 (the “MDL”). Even within this landscape of litigation, two things set Purdue apart from the other defendants.

*First*, Purdue manufactured OxyContin—a blockbuster “branded” opioid drug, which was sold to con-

sumers by name and marketed aggressively to doctors and patients alike. Purdue’s role in creating the opioid crisis through its marketing tactics placed it front and center in many of the complaints filed against multiple opioid defendants. *Second*, unlike any of the other defendants, Purdue was owned and operated for many years by members of a single family: the Sacklers. For their role in owning and operating Purdue, many members of the Sackler family were named individually as defendants in various litigations. Moreover, because Purdue was owned exclusively by the Sacklers, the Sacklers were able to cause Purdue to transfer assets out of the reach of Purdue’s creditors, to themselves and other entities they owned. Indeed, between 2008 and 2017, the Sacklers—as the owners and operators of Purdue—transferred *more than \$10 billion* from the company to their own personal accounts and trusts. These amounts were generated largely from the sales of OxyContin.

A wide variety of plaintiff groups have brought claims and causes of action against the Debtors and the Sacklers, including the following:

1. the United States Department of Justice (the “DOJ”);
2. the States (through their attorneys general);
3. political subdivisions of the States (including cities and counties);
4. Native American Tribes;
5. a putative class of independent public school districts (“Public Schools”);
6. personal injury victims;

7. mothers/guardians of children diagnosed at birth with NAS;
8. hospitals;
9. third party payors (including employer and government-sponsored health insurance plans administered by these companies);
10. a putative class of guardians for children diagnosed with NAS (the “NAS Monitoring Class”) seeking establishment of a medical monitoring program to monitor the effect of *in utero* exposure to opioids;
11. a putative class of purchasers of private health insurance (the “Ratepayers”) who allege that they were forced to pay increased premiums to account for the impact of the opioid crisis; and
12. a putative class of independent emergency room physicians.

Collectively, the damages asserted by these plaintiff groups amount to *trillions* of dollars. The various defendants do not have the means to pay these amounts in full. As a result, the media has reported that some of these defendants are in the process of negotiating settlements. Other defendants continue to litigate. And still others—Insys Therapeutics, Inc. (“Insys”), Purdue and Mallinckrodt plc (“Mallinckrodt”)—have filed for bankruptcy protection.

***B. Purdue and the Sacklers Attempted To Settle with a Subset of Plaintiffs and Filed for Chapter 11 To Implement Their Settlement Framework***

Before filing for chapter 11, Purdue attempted to settle with certain governmental plaintiffs. Specifically,

in August 2019, Purdue and the Sacklers reached an agreement with 23 States and what is referred to as the “Plaintiffs’ Executive Committee” or “PEC.”<sup>5</sup> Most notably, this settlement contemplated that the Sacklers would pay \$3 billion in fixed payments over seven years to settle all claims against them—not only those brought by the settling States and the PEC. In addition, the settlement provided that the Sacklers would give up their ownership interests in Purdue, including control of the Debtors’ cash, assets and insurance rights, to their creditors.

On September 15, 2019, Purdue filed for bankruptcy protection with this compromise—the so-called “Settlement Framework”—agreed to in principle by the settling States, the PEC, the Debtors and the Sacklers. At the outset of the Chapter 11 Cases, certain settling States and the PEC formed the Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants (the “Consenting Committee”).

The Settlement Framework was publicized at the outset of the cases as being worth between \$10 and \$12 billion. A portion of the perceived value of the Settlement Framework was rooted in the notion that Purdue would emerge from bankruptcy as a “public benefit

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<sup>5</sup> The PEC was appointed in the MDL to coordinate the efforts of the various plaintiffs, but largely consists of attorneys for municipalities and political subdivisions. A separate group of approximately 1,300 entities (mostly political subdivisions) referred to as the “Multi-State Governmental Entities Group” or “MSGEG,” was formed to represent the interests of its members, which sought an independent voice in the Chapter 11 Cases.

company,” in which the Sacklers would have no role,<sup>6</sup> which would manufacture and distribute addiction treatment and opioid overdose reversal drugs to the public for free or at cost. This program was called Purdue’s “Public Health Initiative”; and between \$4 and \$5 billion of the \$10 to \$12 billion in settlement value was attributed to the value of these free or at-cost drugs. In other words, Purdue would use roughly \$600 million of cash (which otherwise would be distributed to creditors) to manufacture these drugs, and then give away such drugs for free (or sell them at or below cost). Once this and other facts were considered, the UCC determined that the *Settlement Framework actually was worth somewhere between \$5 and \$6 billion in direct value to the litigants that had been harmed by the Sacklers and Purdue*. Moreover, while there can be no dispute that the Public Health Initiative was (and remains) a noble goal, the UCC is steadfast in the belief that the funds from Purdue’s estates should be distributed to the claimants that had been harmed by the Sacklers and Purdue.

The UCC was not the only constituency to express concerns regarding the Settlement Framework. 24 State attorneys general (and the attorney general for the District of Columbia) formed a group, known as the “Non-Consenting States” or “NCSG,” to advance their position that the Settlement Framework was not sufficient. Indeed, the NCSG has fought against the Settlement Framework throughout the Chapter 11 Cases, and continues to oppose the enhanced Sackler Settlement.

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<sup>6</sup> At least since the agreement on the Settlement Framework, the Sacklers have had no board or management role in Purdue.



### C. *Appointment of the UCC*

In all chapter 11 cases, the Office of the United States Trustee (the “U.S. Trustee”), an arm of the DOJ, is tasked with determining whether to appoint a fiduciary committee to represent the interests of all unsecured creditors.<sup>7</sup> Here, the U.S. Trustee appointed the UCC on September 26, 2019, 11 days after Purdue commenced the Chapter 11 Cases.

The UCC’s nine members (described on the first page of this letter) represent diverse interests. Importantly, the UCC does not include any governmental entities because the U.S. Trustee has taken the position that governmental entities cannot sit on official creditors’ committees. Nevertheless, the UCC owes fiduciary duties to *all* unsecured creditors, regardless whether such creditors are Public or Private Claimants.

During the first few months of the Chapter 11 Cases, four different parties requested to join the UCC in an *ex officio* (non-voting) capacity: (i) Cameron County, Texas (on behalf of the MSGEG); (ii) the Cheyenne and Arapaho Tribes (on behalf of an ad hoc group of Native American Tribes); (iii) Thornton Township High School District 205, a public school district in Illinois (on behalf of a putative class of independent public school districts); and (iv) the State of Maryland. The UCC voted to accept all four, but the State of Maryland subse-

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<sup>7</sup> An “unsecured” creditor is any creditor that does not have a lien, mortgage or similar security interest in a debtor’s assets. Purdue does not have any debt to banks or similar institutions in the form of loans, bonds or notes. As a result, the vast majority of the Debtors’ creditors are unsecured.

quently withdrew its request. The other three joined the UCC and remain *ex officio* members.

#### **D. *Intercreditor Dynamics***

Since the beginning of the Chapter 11 Cases, the interactions between the UCC and the two major Public Claimant groups (the Consenting Committee and the NCSG) has been complicated, as has the relationship between the Public Claimants and the Private Claimants generally. While all claimants are united in their desire to obtain the most value from the Sacklers and from Purdue's assets to fund creditor recoveries, the Public Claimants and Private Claimants have been at odds regarding where that value should go once it is received.

Specifically, the Public Claimants have expressed to the UCC and others their view that, as sovereigns, they are entitled to most of the value received through the Chapter 11 Cases to abate the opioid crisis and, further, they should be in control of how such value is allocated to other creditor groups and ultimately used. To be sure, it is commendable that the Public Claimants have been consistent in their desire to ensure that as much money as possible goes to abate the opioid crisis. Indeed one of the fundamental principles of the Plan is that the Public Claimants will use substantially all of the value they receive for abatement (and the Public Claimants have required that all Private Claimants other than personal injury claimants use substantially all of the money they receive for abatement) and the mishaps stemming from the oft-criticized use of the tobacco settlement money almost two decades ago will not

be repeated.<sup>8</sup> Consistent with this overall approach, the Public Claimants also viewed, and continue to view, themselves as the arbiter of the strength of all creditors' claims, including their own.

Many of the Private Claimants have taken the position that the Chapter 11 Cases should function as a vehicle to achieve an allocation of value among *all* of the various claimants, based on the strength and weakness of their respective claims (although, admittedly, each Private Claimant group tends to think its claims are the strongest) and the amount of harm each such constituency has suffered. Many Private Claimants have also expressed the view that there is no basis to require claimants to use the value they receive for specified opioid abatement purposes, or in any other particular way. Finally, certain of the Private Claimants have argued that many of the States and their subdivisions were aware of the magnitude of the opioid crisis for years before bringing litigation, but nevertheless continued to receive value from the opioid business through tax revenues—notwithstanding their ability to take action, in their sovereign capacity, to abate the opioid crisis and stop various opioid defendants from causing harm. Accordingly, these Private Claimants have taken the position that Public Claimant allocations should be reduced

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<sup>8</sup> Recently, certain States have been criticized for the manner in which they have used (or not used) settlement money from the recent multi-State opioid settlement with McKinsey & Co., and, therefore, the Plan represents a landmark achievement on behalf of the Public Claimants. *See, e.g.,* Mary Murphy, *Parents who lost children to opioids demand NYS settlement money for treatment*, PIX11News, (updated June 2, 2021 at 6:39 PM EDT) <https://pix11.com/news/local-news/parents-who-lost-children-to-opioids-demand-nys-settlement-money-for-treatment/>.

(and such value reallocated to other creditors), at least by the amount of the tax revenues they have received, and possibly more.

Because of its composition, the UCC often was viewed as the voice of the Private Claimants alone, rather than of all unsecured creditors. Aside from being incorrect as a matter of bankruptcy law, this perception has resulted in unfortunate tensions throughout the Chapter 11 Cases. Indeed, it is impossible to understand how the Plan was constructed—and why the UCC does not object to the Plan—without understanding these dynamics.

### III. THE UCC'S GENERAL APPROACH TO THE CHAPTER 11 CASES

From the outset, the UCC has made clear that it believes there are three pillars to a successful outcome in these cases.

1. ***Determining a Fair Allocation:*** Negotiating or otherwise determining a fair and appropriate allocation among all Private and Public Claimants, based on legal principles.
2. ***Maximizing Value:*** Increasing the total value available to *all* claimants, primarily by investigating the Settlement Framework and increasing the contribution from the Sacklers.
3. ***Furthering Public Health Objectives:*** Ensuring that the results of these cases are consistent with the urgent need to combat the opioid crisis and help those most in need.

Each of these goals is addressed in further detail below.

#### IV. DETERMINING A FAIR ALLOCATION AMONG OPIOID CLAIMANTS

The Debtors, the UCC and numerous other parties organized a six-month Mediation process to promote agreement between the Public and Private Claimants regarding the allocation of whatever value would eventually be received from the Sacklers and related parties, along with any value from the Debtors' estates. Without such an agreed resolution, creditors would compete against one another for value in costly and time-consuming litigation of all against all.

Perhaps even more significant than the uncertainty of any claimant's recovery was the uncertainty of timing that would have resulted from a failure to reach an allocation settlement. Without an agreement on allocation, the Debtors would be required to hold onto the value of their businesses and any value obtained from the Sacklers unless and until litigation regarding entitlement to such value among claimants was fully and finally resolved, a costly process that could take years. By contrast, a largely consensual mediated resolution of allocation issues would enable the Debtors to confirm a plan of reorganization and put their (and the Sacklers') value to work more quickly to compensate victims and abate the opioid crisis.

##### A. *The Scope and Participants for Phase I Mediation*

Following discussions regarding the appropriate scope of the mediation, the number of mediators and the participants in such mediation, the parties agreed that the Honorable Layn Phillips (Ret.) and Kenneth Feinberg would be appointed co-mediators (collectively, the

“Mediators”)<sup>9</sup> of Phase I Mediation. The parties then turned to negotiating and drafting a form of order that would govern the process. As reflected in the *Order Appointing Mediators* [ECF No. 895] (the “Mediation Order”), the parties agreed that the purpose of Phase I Mediation was solely to determine the relative allocation of the value of the Debtors’ estates as between Public Claimants, on the one hand, and Private Claimants, on the other hand, and *not* allocation among the claimants on each side. In addition, the Mediation Order contained provisions identifying the Phase I Mediation Parties,<sup>10</sup> the role of the DOJ in the mediation and heavily-negotiated provisions regarding confidentiality and what could and could not be disclosed publicly regarding the mediation.

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<sup>9</sup> Mr. Feinberg is a world-renowned mediator with whom almost all of the advisors to the Phase I Mediation Parties have had prior experience in other complex mass tort cases. Judge Phillips is another world-renowned mediator and former federal district court judge, who had mediated the Debtors’ \$275 million settlement with the State of Oklahoma prior to the Debtors filing for bankruptcy.

<sup>10</sup> Phase I Mediation involved representatives of nearly all significant creditor constituencies, including: (i) the Debtors; (ii) the UCC (including *ex officio* members); (iii) the Consenting Committee; (iv) the Ad Hoc Committee of NAS Babies; (v) the Ad Hoc Group of Hospitals; (vi) the Non-Consenting States; (vii) the MSGEG; (viii) the Ad Hoc Group of Individual Victims; (ix) counsel for the Blue Cross and Blue Shield Association, various third party payors and employer and government-sponsored health insurance plans administered by these companies; and (x) the Ratepayers (collectively, the “Phase I Mediation Parties”). In addition, certain other parties, including the DOJ, the Public Schools and the NAACP had varying levels of involvement in Phase I Mediation, but were not official Phase I Mediation Parties.

**B. *Keeping Phase I Mediation on the Right Track***

The UCC's objective for Phase I Mediation was to work with the other parties to help facilitate an outcome that was (i) fair and appropriate and (ii) the product of a fair and reasoned process.

Due to factors both within and outside the parties' control, Phase I Mediation progressed slowly at the outset. The start of the mediation in March 2020 coincided with the onset of the COVID-19 pandemic, which prevented in-person meetings with the Mediators and among the Phase I Mediation Parties. In addition, the Public Claimants chose to focus first on reaching agreement among themselves regarding how the value to be distributed to the Public Claimants would be allocated—a commendable goal. Only after the Public Claimants reached general agreement on this issue did negotiations regarding allocation of estate value *as between* Public Claimants and Private Claimants begin in earnest.

In July 2020, and with the parties still in negotiations, the Court imposed a deadline of August 31, 2020 for Phase I Mediation to conclude. As this deadline approached, it became clear that several issues appeared to be hindering progress, and the mediation likely would fail or result in an inappropriate outcome. Accordingly, on August 19, 2020, the UCC expressed to the Mediators and the Phase I Mediation Parties the UCC's views, including with respect to a viable path forward. Because of the confidentiality provisions of the Mediation Order, this letter cannot provide significant detail regarding the specifics of what occurred during Phase I Mediation or the nature of the UCC's specific views. Indeed, although certain developments during

the mediation were leaked to media outlets, the only “official” information regarding Phase I Mediation to be disclosed publicly was included in the *Mediators’ Report* [ECF No. 1716] filed with the Court on September 23, 2020 (the “1st Mediators’ Report”) and in the subsequent *Mediator’s Report* [ECF No. 2548] filed with the Court on March 23, 2021 following the conclusion of Phase II Mediation (the “2nd Mediators’ Report” and, together with the 1st Mediators’ Report, the “Mediators’ Reports”).

### **C. Phase I Mediation Results**

As described in the Mediators’ Reports, Phase I Mediation resulted in: (i) the Public Claimants’ agreement that all value they receive in the Chapter 11 Cases would be used to fund programs intended to abate the opioid crisis; (ii) an allocation of estate value, pursuant to fixed payment schedules, among four Private Claimant constituencies—Personal Injury Claimants,<sup>11</sup> Hospital Claimants,<sup>12</sup> Third-Party Payor Claimants and NAS Monitoring Claimants (with regard to abatement), as reflected in four separate term sheets agreed to by the Public Claimants and the specific Private Claimant group party to such term sheet (collectively, the “Phase I Mediation Settlements”); and (iii) the agreement of the Hospital Claimants, Third-Party Payor Claimants

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<sup>11</sup> Eight months after Phase I of Mediation had been substantially completed, the Personal Injury Claimants agreed to further subdivide their allocation as between NAS Personal Injury Claimants and Non-NAS Personal Injury Claimants.

<sup>12</sup> The Hospital Claimants are defined in the Plan to include claims held by “a provider of healthcare treatment services or any social services, in its capacity as such, that is not a Domestic Governmental Entity.”



and NAS Monitoring Claimants to use substantially all of the value they receive to fund programs to abate the opioid crisis.<sup>13</sup> Each of the Phase I Mediation Settlements was conditioned on confirmation of a plan of reorganization that included a contribution from the Sacklers. In other words, if no settlement ultimately was reached with the Sacklers, then there was no requirement that the Phase I Mediation Settlements be honored by the Public Claimants. Furthermore—and critically for the dynamics of Phase II Mediation—because each of the Phase I Mediation Settlements contemplated that the Private Claimants would receive a fixed recovery over a defined period of time, the Public Claimants would receive all of the upside that could result from litigating against or settling with the Sacklers, beyond the value required to pay the settling Private Claimants.

Phase I Mediation resulted in an approximate split of Purdue’s “nominal” or headline value of 79% to Public Claimants and 21% to Private Claimants (in the aggregate), which, after taking into account timing of payments, equals a 76% / 24% split on a “net present value” basis. These amounts were negotiated and agreed to by the Phase I Mediation Parties, and were not dictated, mandated or even proposed by the UCC. Certain creditors may believe that this outcome is unfair because it provides too much value to the Private Claimants; others may believe that Public Claimants received too much value. The UCC offers the following observations:

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<sup>13</sup> In addition, the Debtors and the ratepayers reached agreement on a sum to be paid over two years for dedicated abatement purposes.

1. The Public Claimants—in particular, the States and their political subdivisions, including the PEC—brought most of the pre-bankruptcy litigation against Purdue and the Sacklers. As a result, certain parties believe that the Public Claimants are most responsible for increasing the pot of value available to creditors, and as such, are entitled to receive most of Purdue’s available value.
2. The Debtors’ most significant assets are the causes of action against the Sacklers. The extent to which the Sacklers’ agreement to contribute \$4.275 billion to the estates as part of the Sackler Settlement was motivated by the strength of these causes of action (as opposed to a fear of defending against the direct causes of action of the States, their political subdivisions and the other Public and Private Claimants), however, is unclear. Analysis of both the estate causes of action and the direct causes of action is set forth later in this letter.
3. At its core, the opioid crisis involves harm to people. Indeed, there would be no crisis were it not for the individuals who have suffered immeasurable harm. Therefore, some believe that the more than 140,000 personal injury victims<sup>14</sup> who filed claims against the Debtors should have received a larger allocation.

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<sup>14</sup> Counsel to the UCC has responded to more than 200 personal injury victims who reached out directly and has communicated with a number of the approximately 100 additional individuals who filed letters on the Court’s docket.

4. With the exception of personal injury victims, each litigation creditor’s claim can be divided into three parts: (i) a “damages” claim to compensate for past harm; (ii) a “future damages” claim to compensate for future harm; and (iii) an “abatement” claim to pay for programs to combat the opioid crisis in the future. As noted above, the Public Claimants have stated that they believe all estate value (other than payments to address past damages suffered by personal injury victims) should be used exclusively for abatement. Moreover, the Public Claimants required in connection with the Phase I Mediation Settlements that Private Claimants, other than personal injury victims, forego compensation for past and future damages claims and use any recoveries solely for abatement purposes.
5. The UCC has observed that creditor constituencies—both public and private—believe that the claims of other creditor constituencies are not as strong as their own. In addition, certain constituencies believe that other constituencies were culpable, at least in part, for the opioid crisis.
6. As of the date of this letter, the treatment of the Public Schools’ claims remains unresolved. The UCC hopes that there will be further negotiation regarding such claims that will result in a resolution.

Despite an imperfect process and the foregoing observations, the UCC supports the resolutions reached in Phase I Mediation because: (i) funds are needed to address the opioid crisis *now*; (ii) the alternative to a mediated resolution—*i.e.*, litigation regarding the mer-

its of creditor constituency’s claims—would be costly and time-consuming and would further delay the use of funds to combat the opioid crisis; and (iii) the outcome has been agreed to by almost all of the Phase I Mediation Parties.

**V. THE UCC CONDUCTED A THOROUGH INVESTIGATION OF THE SACKLERS, INDEPENDENT FROM THE DEBTORS IN ORDER TO FULFILL ITS FIDUCIARY DUTIES AND MAXIMIZE VALUE<sup>15</sup>**

The UCC made clear immediately upon its appointment that it needed to conduct a thorough investigation into the proposed settlement before the UCC could consider supporting the Settlement Framework. Moreover, “prepetition” or pre-bankruptcy litigation presented serious allegations concerning the Debtors’ and the Sacklers’ role in the opioid epidemic. As such, numerous unsecured creditors informed the UCC that they believed a thorough investigation into the Debtors’ role in the opioid epidemic and massive transfers of wealth to or for the benefit of the Sackler family was itself a primary objective in the Chapter 11 Cases.

The UCC therefore set out to fulfill its fiduciary duties by investigating these issues. Among other things, the UCC’s Investigation:

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<sup>15</sup> This section contains references to various Court orders and filings submitted by the UCC and other parties in interest. For the sake of brevity, this letter does not include citations to every such filing. To the extent any claimant would like to review any of the cited materials, such claimant may find them on the public docket (*available at* <https://restructuring.primeclerk.com/purdue-pharma/Home-DocketInfo>) or should feel free to reach out to counsel to the UCC to obtain copies of such documents.

1. was designed to determine the *magnitude of the value recoverable from the Sacklers*, through litigation or otherwise;
2. involved an *evaluation of claims* (i) against the Sacklers and (ii) relating to the Debtors' prepetition marketing practices, transfers of value to the Sacklers and other potential misconduct; and
3. involved an *assessment of the Sacklers' ability to satisfy any judgment* rendered against them, and the *likelihood of successfully collecting upon* any such judgment.

All together, the Investigation encompassed document discovery of the Debtors, the Sacklers, more than 100 Sackler-owned entities in the United States and abroad (including the foreign independent associated companies ultimately owned by the Sackler families (the "IACs")) and the other entities owned and controlled by the Sackler families (the "Other II Way Entities" and together with the IACs, the "Sackler Entities"), the Debtors' insurance brokers, non-Sackler directors, certain financial institutions and the Debtors', the Sacklers' and Sackler Entities' long-time advisors at Norton Rose Fulbright US LLP ("NRF"). The UCC conducted 16 depositions of Sacklers, directors and executives of the Debtors, advisors to the Debtors or Sacklers and other key personnel. The UCC analyzed the Settlement Framework in light of the findings from this Investigation, and worked to maximize the estates' value by ensuring that the claims against the Sacklers would be prosecuted if the Settlement Framework was not sufficiently improved.

**A. *The UCC's Initial Discovery Efforts***

The UCC initially sought to conduct its Investigation through voluntary disclosures from the Debtors and the Sacklers. During the first days of the Chapter 11 Cases, the Debtors filed a motion with the Court seeking a preliminary injunction (the “Preliminary Injunction”) to enjoin cases relating to the Debtors’ opioid business from proceeding against the Debtors or the Sacklers. Due to, among other things, the Debtors’ and the Sacklers’ agreement to provide discovery to the UCC on a voluntary basis, the UCC supported the Preliminary Injunction. These commitments and obligations were memorialized in a stipulation (the “Case Stipulation”).

Beginning in October 2019, the UCC issued diligence requests to the Debtors and the Sacklers. The UCC sought categories of information that were relevant to potential estate causes of action against the Sacklers, including causes of action pertaining to the Sacklers’ ownership and control of the Debtors, misconduct of the Debtors while under the Sacklers’ control and the transfer of billions of dollars in value from the Debtors to the Sacklers and the Sackler Entities.

The UCC understood that the Debtors had formed a special committee (the “Special Committee”), which had been delegated full authority respecting all matters concerning the Sacklers and was overseeing investigations concerning the Sacklers. Starting in early November 2019, the UCC met with the Debtors in an effort to learn about the Special Committee’s investigatory process and seek to collaborate and coordinate the two investigations. The Debtors made available to the UCC and other parties certain documents, including the Transfer Reports (as defined below) detailing cash and

non-cash transfers made by the Debtors to and for the benefit of the Sacklers. The Debtors also made clear, however, that they did not intend to share much of the work product and analysis of the Special Committee with the UCC. Therefore, the UCC concluded that a thorough and vigorous investigation (independent of the Special Committee's investigation) would be necessary to fulfil the UCC's fiduciary duties.

The UCC was also committed to sharing the findings from its Investigation with its constituents to the greatest extent possible. Thus, the UCC entered into a comprehensive protective order that allowed the production of confidential material to a broad range of professionals for such groups. The UCC also negotiated a protocol that permitted sharing confidential information between and among certain groups of creditors.

***B. The UCC Investigation Was Rigorous and Exhaustive***

**The Sacklers:** Pursuant to the Case Stipulation, the UCC was not permitted to seek formal discovery from the Sacklers until first attempting to obtain disclosures voluntarily. Prior to the UCC's discovery efforts in these Chapter 11 Cases, minimal discovery had been taken from the Sacklers in any context, including the prepetition litigation.<sup>16</sup> The UCC issued its first diligence requests to the Sacklers in November 2019 and issued additional comprehensive requests in January 2020. Counsel for the UCC and the Sacklers met and conferred on many occasions in a good faith effort to

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<sup>16</sup> For instance, the only Sackler documents produced by any Sacklers in the MDL were fewer than 200 documents produced by Richard Sackler.

agree on the appropriate scope of discovery in response to the UCC's diligence requests. For example, between January and March 2020, the UCC's advisors conferred with representatives of the Sackler family concerning discovery by telephone on at least four occasions, and exchanged many more meet and confer letters and emails. The UCC also began the process of negotiating custodians and search terms with the Sacklers for purposes of obtaining Sackler family emails and other relevant electronically stored information, such as e-mails. Unfortunately, the Sacklers were not willing to provide (voluntarily) sufficient discovery from the perspective of the UCC.

On March 25, 2020, the UCC filed a motion with the Court under Rule 2004 of the Federal Rules of Bankruptcy Procedure, seeking authorization to conduct an examination of the Sacklers, including by serving formal subpoenas for documents and testimony. The Court granted the request, and the UCC served formal discovery demands on the Sacklers on March 31. The UCC continued to engage in multiple meet and confers with the Sacklers regarding the scope of its subpoenas, and the Sacklers continued to object to discovery requested by the UCC. On two more occasions, the UCC determined that it had reached an impasse with the Sacklers regarding the scope of discovery and thus sought assistance from the Court. Pursuant to the Court's instruction on June 8, the parties resumed their meet and confer efforts and finally reached agreements concerning the scope of the Sacklers' disclosures, which were set forth in publicly filed stipulations. In total, the Sacklers have produced more than 450,000 documents in response to the UCC's discovery demands.



**The IACs and Other II Way Entities:** The UCC also sought discovery from the IACs and Other II Way Entities, which received over a billion dollars in additional value from the Debtors in the form of cash and non-cash transfers over the past decade. The UCC at first sought to obtain diligence in the possession of these entities on a voluntary basis from the Sacklers. Early in these Chapter 11 Cases, the Sacklers' longtime advisors coordinated some initial responses to the UCC's requests concerning the IACs, but those advisors later stopped responding. Accordingly, the UCC sought assistance from the Court to require the Sacklers to order the IACs to cooperate. As a result, the IACs engaged new counsel, and the UCC met and conferred in good faith with the IACs' new counsel. The Other II Way Entities also engaged their own counsel to respond to diligence requests, with whom the UCC likewise met and conferred concerning voluntary disclosures.

The UCC ultimately determined that it would not be possible to reach agreement with either the IACs or the Other II Way Entities concerning voluntary disclosures, and sought and received authorization from the Court to serve formal subpoenas on the IACs and the Other II Way Entities. The UCC then sent a formal subpoena to the IACs on July 6 and served a subpoena on the Other II Way Entities on July 11. The UCC met and conferred with counsel to the IACs and the Other II Way Entities numerous times regarding the scope of their respective disclosures. The UCC also negotiated two stipulation (each of which was filed publicly) with the IACs concerning the scope of the IACs' disclosures. Ultimately, the IACs produced almost 800,000 documents and the Other II Way Entities produced approx-

imately 40,000 documents in response to the UCC's discovery demands.

**The Debtors:** The UCC issued its first voluntary diligence requests to the Debtors in October 2019, and later supplemented those requests with additional comprehensive requests in January 2020. The UCC sought corporate governance and formation documents, board materials, contracts, insurance documents, copies of prepetition productions and other materials necessary for the evaluation of claims. The UCC also requested that the Debtors obtain and review emails and documents of key custodians that were never produced in prepetition litigation, including the files of Sacklers and other directors and executives on company servers. The UCC met and conferred numerous times with the Debtors over the scope of its Investigation, and ultimately negotiated a stipulation (which was filed publicly) to govern the disclosures. To date, the Debtors have produced approximately 700,000 documents in response to the UCC's requests, and have also provided copies of approximately 12 million documents that had been produced in prepetition litigation or produced to the DOJ or Congress.

**NRF:** The law firm Norton Rose Fulbright served as long-time counsel to the Debtors, the Sacklers, the IACs and the Other II Way Entities. Moreover, Stuart Baker, a former partner at NRF, held numerous non-legal roles with the Debtors, the Sacklers and their trusts, the IACs and the Other II Way Entities, including roles as an executive, a director and a trustee. Accordingly, the UCC moved the Court for authorization to serve a formal subpoena on Mr. Baker, which the Court granted. The UCC also moved the Court for authorization to serve a formal subpoena on NRF, which

the Court also granted. The UCC met and conferred with the Debtors, the Sacklers, the IACs, the Other II Way Entities and Mr. Baker to ensure that the NRF's files were searched and reviewed for non-privileged documents responsive to the UCC's requests. NRF ultimately produced, directly or jointly with the Debtors, close to 200,000 documents in response to the UCC's requests.

**Other Related Parties:** The UCC also sought and was granted authority, through formal motion practice before the Court, to seek document productions from other parties, including non-Sackler directors of the Debtors and certain of the Debtors' insurers regarding policies and potential coverages. The insurance brokers produced more than 4,000 documents in response to the UCC's discovery requests.

**Financial Institutions:** Finally, the UCC joined in a motion by the NCSG for authorization to conduct an examination of financial institutions to obtain information in relation to the location and amount of the Sacklers' assets and transfers of those assets over time.

**Privileged Materials:** The Debtors, the Sacklers, the IACs and NRF withheld or redacted tens of thousands of documents from their productions, including as a result of claims of privilege asserted by the various parties. The UCC spent significant time and effort obtaining and analyzing privilege and redaction logs, and concluded that the grounds offered for withholding and/or redacting many of these documents were subject to challenge. Accordingly, the OCC engaged in extensive meet and confer meetings with the producing parties, and later moved the Court to compel the production of

such documents from the Debtors and the Sacklers.<sup>17</sup> Ultimately, the Debtors and the Sacklers voluntarily agreed to produce in full or to limit the redactions on more than 16,700 documents that were previously withheld and/or redacted.

**Agreement with the Debtors on Privileged Materials:**

In addition, the UCC reached consensual resolution of its motions directed to the Debtors, with the Debtors agreeing to produce to the UCC nearly 13,000 Debtor-privileged documents in exchange for the UCC withdrawing its motions. The privileged documents so-produced included every communication by and among the Sacklers and other directors or executives of the Debtors responsive to the UCC's document requests.<sup>18</sup> ***The UCC is aware of no other creditors' committee that has obtained comparable access to such a volume of privileged documents from a debtor in bankruptcy, and appreciates the Debtors' willingness to provide—and construc-***

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<sup>17</sup> See *Official Committee of Unsecured Creditors' Motion to Compel Production of Purportedly Privileged Documents or for In Camera Review, Based on Good Cause, Crime Fraud, and At Issue Exceptions to Claims of Privilege* [ECF No. 1753]; *Official Committee of Unsecured Creditors' Motion to Compel Production of Purportedly Privileged Documents, or for In Camera Review, Based on Failure of the Sacklers and the Debtors to Demonstrate Documents Identified on Logs Are Privileged* [ECF No. 1752].

<sup>18</sup> See *Notice of Agreement Between Debtors and Official Committee of Unsecured Creditors Regarding Privilege Motions and Adjournment of Hearing with Respect to Remaining Privilege Disputes as to the Sacklers* [ECF No. 1908]. The motions remain adjourned with respect to the Sacklers, and the UCC will proceed with its motions to compel privileged documents from the Sacklers in the event that a settlement with the Sacklers is not approved.

*tive cooperation in providing—these documents to the UCC in connection with its Investigation.*

The following chart summarizes the number of documents the UCC obtained that were produced either prior to or following the commencement of the Chapter 11 Cases.

Producing Party	Document Category	Approximate Document Count	Approximate Page Count
Sacklers	Documents produced in response to UCC's discovery requests	465,008	2,604,556
	Documents produced in prepetition litigation	152	634
IACs	Documents produced in response to UCC's discovery requests	782,252	7,896,339
Other II Way Entities	Documents produced in response to UCC's discovery requests	38,323	326,828
Debtors	Documents produced in prepetition litigation	9,865,317	71,120,741
	Documents produced to the DOJ	2,230,764	12,354,380
	Documents produced to Congress	7,951	92,617
	Documents produced in response to the UCC's requests	711,494	4,815,418
NRF	Documents produced in response to the UCC's requests	197,476	1,478,280
Insurance Broker	Documents produced in response to the UCC's requests	4,157	41,884
Non-Sackler Directors	Documents produced in prepetition litigation	2,157	17,230
Sacklers' Financial Institutions	Documents produced in response to NCSG's requests	3,540	94,429
<b>TOTAL</b>		<b>14,305,051</b>	<b>99,365,056</b>

***C. The UCC Obtained Critical Information Regarding Both the Claims Against the Sacklers and the Sacklers' Ability To Pay***

The documents that the UCC obtained from the Debtors, the Sacklers and others related to the merits of the claims against the Sacklers, including the Sacklers' ownership and control of the Debtors, knowledge of and involvement in misconduct and intent concerning prepetition transactions dating back to the 1990s, as well as documents relating to claims against the Sack-

lers and the Debtors arising out of Purdue's opioid businesses. The UCC also sought and obtained documents related to the Sacklers' ability to pay an eventual judgment, including documents concerning their wealth and investments, and documents concerning the intricate array of trusts through which the Sacklers own the Debtors and other assets.

The UCC obtained more than 14 million documents (comprising close to 100 million pages), including approximately 2 million documents that had not been produced previously in any litigation or in connection with a government investigation. The UCC utilized analytics and targeted searches to review the 12 million documents that had been produced prepetition efficiently and cost effectively. The UCC also relied on a dedicated team of contract attorneys and efficiency counsel to review the documents newly produced in the Chapter 11 Cases. Through this review, the UCC identified thousands of documents of great relevance to claims against Purdue and the Sacklers and other key issues.

The Case Stipulation also required the Sacklers to make presentations regarding the trusts through which they held their wealth, their assets and their asserted defenses. The UCC carefully analyzed these presentations and assessed them in the context of the extensive diligence it obtained in the Chapter 11 Cases.

The UCC also carefully reviewed the reports prepared by the Special Committee that detailed the cash and non-cash transfers made by the Debtors to the Sacklers and their entities (the "Transfer Reports"). The UCC relied on the accuracy of the Transfer Reports and generally did not seek to recreate that work beyond verifying the reasonableness of the information

contained therein through a variety of means. The UCC did obtain discovery from the Sacklers, however, in order to conduct additional analysis that was not addressed in the Transfer Reports.

In connection with the Investigation, the UCC conducted 16 depositions of key personnel (identified in coordination with the NCSG), including seven members of the Sackler family,<sup>19</sup> long-serving members of the Debtors' board,<sup>20</sup> the Debtors' current and past CEOs,<sup>21</sup> a former Vice President and Associate General Counsel at Purdue,<sup>22</sup> Stuart Baker and other Sackler family advisors.<sup>23</sup> When the UCC encountered difficulties in scheduling these depositions, the UCC moved the Court for authority to serve compulsory discovery demands to obtain the depositions, which the Court granted.

***D. The UCC Obtained Information Necessary To Evaluate the Strength of Estate Claims***

As a result of these discovery efforts, the UCC obtained and analyzed the information necessary to evaluate the strength and potential value of the Debtors' estates' claims against the Sacklers, held for the benefit of the Debtors' creditors.<sup>24</sup>

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<sup>19</sup> Richard Sackler, Mortimer D.A. Sackler, Kathe Sackler, Theresa Sackler, Ilene Sackler-Lefcourt, David Sackler and Marianna Sackler.

<sup>20</sup> Cecil Pickett and F. Peter Boer.

<sup>21</sup> Mark Timney, John Stewart and Craig Landau.

<sup>22</sup> Robin Abrams.

<sup>23</sup> Stephen Ives and Jonathan White.

<sup>24</sup> The UCC investigated, researched, and considered numerous potential claims. This letter does not purport to identify all of the

*First, the UCC obtained the information necessary to evaluate potential fraudulent transfer claims to claw back more than \$4.1 billion in non-tax U.S. partner cash distributions from the Debtors to the Sacklers through their trusts.* The UCC obtained documents, and conducted legal research, in order to investigate whether the transfers would be avoidable and recoverable as intentional or constructive fraudulent transfers. Among other things, this analysis required consideration of the Debtors' intent in approving the transfers and the Debtors' insolvency at the time of each transfer, taking into account the Debtors' contingent liabilities from opioid litigation. The UCC did not have access to the Special Committee's insolvency analysis described in the Disclosure Statement, and thus the UCC conducted an independent insolvency analysis, spanning 2008 through 2017. Such analysis tested whether the Debtors (i) had total liabilities that exceeded the total fair value of their assets, (ii) incurred debts beyond their ability to pay as they matured, or (iii) had unreasonably small capital to operate their business in the ordinary course and (iv) received reasonably equivalent value in exchange for cash and non-cash transfers. This analysis required the UCC to assess the Debtors': (a) research and development, strategic and business plans and budgets; (b) actual and projected financial position; and (c) operating results and cash flows. The UCC also performed extensive research and analysis of probable and reasonable estimable opioid liabilities at all relevant points in time, based on industry, scientific and economic studies and literature on opioid use and abuse (some of which included Purdue's own funded studies), findings from lit-

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claims considered, or all of the issues considered in connection with those claims.



igation filings, internal communications and other facts identified in support of allegations of misconduct as well as the Sacklers and Purdue's awareness of the forthcoming opioid litigation and resulting liability. Furthermore, the UCC assessed the applicable statutes of limitations, including the statutes of limitations available to any so-called "golden creditor," and the impact of prejudgment interest on the value of claims.

***Second, the UCC obtained information necessary to evaluate potential fraudulent transfer claims to claw back approximately \$4.7 billion in tax distributions made by the Debtors on behalf of the Sacklers and their trusts.*** The UCC sought extensive discovery concerning the purpose and context of these tax distributions, in order to investigate the intent behind those transfers and the Debtors' insolvency at the time of those transfers. The UCC also investigated the extent to which the Sacklers might argue that such tax distributions conferred any form of value on the Debtors.

***Third, the UCC obtained information necessary to identify and evaluate potential fraudulent transfer claims to claw back transfers to the Sackler Entities for the benefit of the Sacklers.*** These transfers included, among others: (i) cash of approximately \$1.5 billion; (ii) additional non-cash value, based on below-market royalty payments charged by the Debtors (when the Debtors were owned and controlled by the Sacklers) to the IACs for the international licensing and sale of OxyContin to an Other II-Way Entity; and (iii) stock and equity interests and other valuable intellectual property assets transferred to or for the benefit of the Sacklers and the Sackler Entities for no consideration. Among other things, the UCC investigated the intent of the Debtors and the particular circumstances of each of transfer of

value to the Sackler Entities by reviewing, among other things, the Debtors' related party agreements, board materials, presentations, transfer documents and financial information. The UCC also prepared analyses to assess the value of the non-cash property that was transferred to determine whether the Debtors had received reasonably equivalent value in exchange, and if not, an estimate of potential damages. The UCC examined the tax implications of all non-cash transactions, particularly those involving intellectual property rights, between the Debtors and the Sackler Entities and the effect that unwinding those transactions would have on any settlement. As part of this effort, the UCC prepared an analysis of the royalty rates that governed the Debtors' licensing agreements with the IACs.

***Fourth, the UCC obtained the diligence necessary to investigate potential breach of fiduciary duty claims.*** The UCC investigated the manner in which the Sacklers and other fiduciaries carried out, or breached, their fiduciary duties to the Debtors. This analysis required consideration of the Debtors' financial condition, taking into account their contingent liability from opioid marketing practices. This investigation also required consideration of the degree to which the Sacklers and others exposed the Debtors to liability through aggressive marketing tactics and/or enriched the Sacklers at the expense of the Debtors and the Debtors' creditors. Specifically, the UCC investigated the degree to which the Sacklers failed to exercise reasonable care as directors, failed to implement reasonable steps to monitor or address red flags related to the opioid businesses and otherwise breached their fiduciary duties. The UCC also investigated the extent to which the Sacklers overstepped the bounds of ordinary director behavior and

actively managed or micromanaged the Debtors' opioid marketing and other activities. The UCC also investigated the Sacklers' domination and control of the non-family directors who served on the Debtors' board. Finally, among other things, the UCC conducted extensive analysis regarding questions of standing, the strength of breach of fiduciary duty claims and the collectability of any judgment on such claims against the assets held in the Sacklers' trusts.

***Fifth, the UCC obtained the diligence necessary to evaluate claims to pierce the Debtors' corporate veil, or to argue that the Sacklers and the Sacklers' numerous trusts and other entities constituted alter egos of the Debtors.*** The UCC obtained discovery to investigate the extent to which the Debtors disregarded corporate formalities, shared resources, intermingled assets or otherwise were not separate from the Sacklers' trusts or other entities.

***Sixth, the UCC obtained the discovery necessary to investigate numerous other claims, including claims for unlawful dividends and unjust enrichment.***

***Finally, the UCC obtained the information necessary to evaluate the Sacklers' ability to satisfy potential judgments on claims.*** The UCC pursued extensive discovery to investigate the location, nature and ownership of the Sacklers' wealth. This included an investigation into a complex array of domestic and foreign trusts through which each side of the Sackler family holds its ownership of the Debtors and other assets. The UCC obtained and analyzed extensive information concerning the assets held in trust, the location of proceeds of potentially fraudulent transfers within the trust structures and the recoverability of trust assets in the event

a judgment was rendered. The Sacklers provided an analysis of flow of funds summarizing cash transfers received from Purdue and the proximate recipients of those funds. The UCC analyzed these presentations and performed related diligence, including meeting periodically with the Sacklers' financial advisors to request additional support related to certain holdings and transfers. The UCC also obtained discovery from the Sacklers to conduct its own tracing analysis on a sampling of cash distributions made by the Debtors. The UCC's analysis comprised detailed sample tracing of funds from the Debtors to and through the entities and holding companies above them, to the recipient Sackler trusts, individuals and Sackler Entities, as well as subsequent intra-trust/individual distributions and recoverability against each recipient. Additionally, the UCC sought to develop a holistic view of the primary historical funding sources of each trust's assets to estimate the proportion of value attributable to proceeds from Purdue distributions to determine the theoretical value of recoverable assets. The UCC also investigated whether the trusts were insufficiently independent from the Sacklers in their individual capacities, used for improper purposes or failed to follow formalities such that the assets held in one or more of the trusts would be available to satisfy a judgment against the Sacklers. Finally, the UCC analyzed international law concerning foreign trust structures as asset protection vehicles.

***E. The UCC Also Evaluated Third-Party Direct Claims Against the Sacklers To Assess the Impact of Third-Party Releases***

In addition to investigating potential estate causes of action, the UCC obtained discovery pertaining to the Debtors' role in the opioid epidemic and the Sacklers'

involvement in any misconduct. The UCC worked with creditor constituencies to ensure that search criteria utilized to obtain documents from the Debtors, the Sacklers, the IACs, the Other II Way Entities and NRF incorporated terms designed to capture evidence of potential misconduct and any Sackler involvement in the same.

**F. *The UCC's View of the Debtors' and the Sacklers' Liability and Related Motion Practice***

As noted above, the UCC moved to compel both the Debtors and the Sacklers to produce communications with their respective counsel and other documents that were withheld on privilege grounds. To that end, the UCC argued that the fiduciary, crime fraud and “at issue” exceptions to the privilege applied, and required the Sacklers and the Debtors to produce such withheld materials. In connection with these privilege motions, the UCC marshalled hundreds of pages of evidence gathered through its discovery efforts demonstrating that claims against the Debtors were “colorable,” and that there was “probable cause” to conclude that the Sacklers and the Debtors had engaged in intentional fraud and breaches of fiduciary duty in connection with transferring billions of dollars to the Sacklers between 2007 and 2017. To the extent Sackler transfers could be shown to be the product of actual fraud based on the extensive evidence unearthed, the UCC argued that the primary obstacles to Sackler liability (statutes of limitation arguments) and creditor recovery (transfers to spendthrift trusts) would fall away. The Debtors settled the motion as to them by supplying the UCC with unprecedented access to Debtor-privileged documents, as discussed above. The motion as against the Sacklers

is still pending, but will be withdrawn in the event the Plan is approved.

**VI. REACHING AGREEMENT OVER ADDITIONAL VALUE FROM THE SACKLERS THROUGH PHASE II MEDIATION**

Around the time Phase I Mediation concluded, the Debtors proposed that the Mediators continue to serve in an expanded capacity to mediate claims and causes of action that may be asserted by the Debtors' estates or creditors against members of the Sackler family and related parties. While the UCC did not object to mediating such disputes, it believed that commencing this second phase of mediation was premature in light of the significant work that still needed to be done in connection with its Investigation. Nonetheless, the key parties agreed to engage in Phase II Mediation, beginning in September 2020.

As noted, each of the Phase I Mediation Settlements was conditioned on confirmation of a chapter 11 plan that included a contribution from the Sacklers. Moreover, pursuant to the Phase I Mediation Settlements, Private Claimants would not receive the benefit of any increase in the value of a Sackler contribution. Further, because the Consenting Committee had already agreed to the Settlement Framework with the Sacklers, the views of the Non-Consenting States would, in many ways, drive negotiations with the Sacklers during Phase II Mediation. The UCC's efforts during Phase II Mediation focused on increasing the value of the Sackler contribution to ensure that the Phase I Mediation Settlements would be preserved and that other creditors—specifically the NCSG—ultimately would support a plan of reorganization. Specifically, the UCC focused on attempting to bridge the gap between the Sacklers and

the NCSG. In addition, the UCC (i) continued to conduct, in close coordination with the NCSG, its Investigation and (ii) presented its preliminary analysis of the value of estate claims—based on the incomplete discovery it had received at the time—to the Mediators and the Phase II Mediation Parties other than the Sacklers.

As the Court-imposed deadline for Phase II Mediation of January 31, 2021 neared, it became clear that the gap between the Sacklers and the Non-Consenting States would prove too great to be bridged. Given the importance of achieving a resolution with the Sacklers in order to preserve the Phase I Mediation Settlements, the UCC began working closely with the Debtors, the Consenting Committee and the MSGEG on the terms of a proposal to the Sacklers that each of the four parties would support.<sup>25</sup> After exchanging numerous proposals and counterproposals, the UCC, the Debtors, the Consenting Committee, the MSGEG and the Sacklers reached an agreement in principle on the broad economic terms of a settlement. Although the Private Claimants would not receive any of the upside of the increased Settlement Amount, the UCC understood (based on its discussions with the advisors to the various Private Claimant groups) that the Private Claimants also supported the Sackler Settlement.

To be clear, the UCC does not believe that the Sackler Settlement reflects the full value of the claims against the Sacklers and related parties before taking other factors into account. Moreover, the UCC acknowledges that many creditors—including those who

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<sup>25</sup> At the same time, all parties continued their efforts to encourage the NCSG to participate in the ongoing negotiations with the Sacklers.

have suffered the most harm as a result of the Sacklers' role in the opioid crisis—may view the proposed Sackler Settlement unfavorably. Indeed, the UCC understands why certain creditors believe the Sacklers should be forced to give up more, if not all, of their wealth in exchange for the releases proposed under the Plan. Notwithstanding the foregoing, the UCC views the Sackler Settlement as an imperfect solution that nevertheless is superior to any other available alternatives for the majority of Purdue's creditors.

## VII. THE PUBLIC HEALTH LANDSCAPE OF THE CHAPTER 11 CASES

Since the beginning of the Chapter 11 Cases, the UCC has been guided by an understanding of the ways in which the opioid crisis makes these cases different from all others. The public health and safety catastrophe caused in part by Purdue's past conduct required—and continues to require—immediate action. Thus, the costs of delay are far more severe than in most chapter 11 cases. The issues described in this section are part and parcel of the UCC's decision to not object to the Plan.

### A. *The UCC's Attempt To Establish an Emergency Relief Fund*

The first time counsel to the UCC spoke on the record in the Chapter 11 Cases, it articulated the UCC's vision for a \$200 million emergency relief fund (the "ERF"). The idea was as follows: because of the urgent need for front-line relief, the Debtors should use some of their value to provide *immediate* funding for organizations dedicated to fighting the opioid crisis. Various parties appeared receptive to this idea, and the Court explicitly disclaimed the notion that agreement on the



terms of an ERF would be “utopian.” The UCC therefore began work to establish an ERF to start to put the Debtors’ value to work in order to combat the opioid crisis.

The UCC, at the request of the Consenting Committee, drafted a term sheet. The term sheet proposed funding, through a grant process, primarily for underfunded entities, such as recovery community organizations, harm reduction centers, syringe exchange programs and family support services. The selection of these targets was based on two factors. *First*, such organizations were not the recipients of funding appropriated by the federal government for State programs. *Second*, such organizations were not already creditors in the Chapter 11 Cases, and, therefore, providing funding to such organizations would not function as a prepayment of any claims that should otherwise be treated in the Chapter 11 Cases. The cornerstone of the term sheet was an independent board for the ERF, which would have autonomous discretion to accept grant proposals. In addition, the term sheet was premised on the UCC’s view—in turn based on research and government statistics—that certain States had yet to use millions of dollars in federal opioid grants, due to various reasons.

The Consenting Committee (supported here by the DOJ) opposed three key foundations of the UCC’s ERF proposal. *First*, the Consenting Committee objected to the proposed quantum of the ERF. *Second*, the Consenting Committee would not agree in advance to any terms governing the types of organizations that would be the recipients of ERF funds. *Finally*, the Consenting Committee made clear that it would not support any ERF unless the money went directly to States, to be

channeled through existing State infrastructure, rather than being controlled by a neutral oversight board.

After several months of negotiations, the Debtors attempted to broker a compromise. Unfortunately, the States and the UCC were unable to reach agreement (largely due to the issues of scope and control). The UCC's proposal of two smaller ERFs—one along the lines supported by each group—was also rebuffed. In March 2020, in connection with the commencement of Phase I Mediation, the parties agreed to put discussions of an ERF off until such process was complete. The issue was never revisited.

The UCC believes that the failure to establish an ERF remains one of the greatest disappointments of the Chapter 11 Cases, but also provides essential color for why the UCC is not objecting to the Plan.

**B. *The Importance of a Document Repository***

One of the key public health objectives for the Debtors, the UCC and numerous other parties in the Chapter 11 Cases has been transparency. Indeed, ameliorating the opioid crisis and all of the harm the Debtors and the Sacklers have caused will require public access to a large volume of documents detailing the history of Purdue's actions. Only through this sort of unprecedented disclosure, can we shine a light on Purdue's tragic past and ensure that we are not condemned to repeat the conduct that gave rise to the worst man-made public health crisis of our generation.

Accordingly, the creation of a public document repository has been a central tenet for all parties, including, importantly, both Purdue itself and the Court, since the outset of the Chapter 11 Cases. In October 2019,

the Court explained, “[T]here’s a legitimate public interest in knowing what happened with Purdue.”<sup>26</sup> The UCC recognizes and appreciates that since the first day of the Chapter 11 Cases, Purdue has made this one of its most significant goals.

As set forth in the Disclosure Statement, the concept of a public document repository took a step forward when the Debtors included it as a binding obligation in connection with the DOJ Resolution, and the Debtors have committed that any order approving the Plan will contain a **requirement** that such a repository be established and that the parameters are acceptable to the Debtors and various creditor groups, including the UCC. The details and mechanics of the document repository have been the subject of numerous discussions among various parties, including, among others, State attorneys general, members of the UCC and the Debtors. As of the date of this letter, all parties continue to work on ironing out the repository’s parameters, terms and conditions, and the UCC is heartened by the efforts of all parties.

The UCC is hopeful that once established, the document repository will provide critical information to scholars, doctors and the general public alike and serve as a resource for generations to come.

**C. *The Future of Purdue and the Failed Attempt To Secure a Purchaser for Purdue’s Assets***

During the Chapter 11 Cases, a debate emerged regarding what should happen to Purdue’s business following emergence from bankruptcy. A wide range of

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<sup>26</sup> Transcript of October 11, 2019 Hearing at 65:2-3.

views was expressed to the UCC by various parties in interest, including the following.

1. OxyContin sales should cease entirely, and the non-OxyContin portions of the Purdue business should be liquidated, with the value distributed to creditors.
2. Creditors—primarily the States—should “own” reorganized Purdue (including the OxyContin business) and run it in a morally, ethically and socially responsible manner.
3. Purdue should become a “public benefit company” that can conduct its business to provide a broad range of monetary and non-monetary benefits to the American public, the profits of which would flow to the States.
4. Purdue should be sold to a third party that will agree to abide by the Voluntary Business Injunction<sup>27</sup> that has been in place during the Chapter 11 Cases to restrict the Debtors’ conduct surrounding the sale and marketing of opioid products.

This debate regarding the future of Purdue became a central focus during Mediation. To the UCC’s knowledge, both the Consenting Committee and the NCSG favored selling Purdue (rather than owning it themselves), but the NCSG wanted to sell it to a third party during the Chapter 11 Cases, while the Consenting

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<sup>27</sup> See *Order Pursuant to 11 U.S.C. § 105(a) Granting, in part, Motion for a Preliminary Injunction, Purdue Pharma L.P. v. Commonwealth of Mass.*, Adv. Pro. No. 19-08289 (Bankr. S.D.N.Y. Oct. 11, 2019) [ECF No. 82] (as amended from time to time, the “Voluntary Business Injunction”).

Committee appeared willing to hold onto the business after Purdue emerged from chapter 11, with certain divisions being sold promptly thereafter and others sold later. The Debtors preferred a longer-term ownership plan (perhaps through 2029) of the various business lines, with a significant portion of Purdue’s future revenue being used for the Public Health Initiative—*i.e.*, bringing to market opioid addiction reversal drugs for free or at cost for the benefit of the American public. And, finally, the DOJ appeared to be focused on ensuring a vast majority of future revenue was used for opioid crisis abatement purposes, and ultimately would require pursuant to the terms of their settlement the new owners of Purdue to transform Purdue into a “public benefit company or entity with a similar mission.”

In the summer of 2020—approximately one year after the commencement of the Chapter 11 Cases—an interested party (the “Potential Purchaser”) contacted the Debtors to explore purchasing the Debtors’ assets. The Potential Purchaser had experience working with opioid companies and was not a defendant (or affiliated with any defendant) in any opioid litigation. The parties agreed that it would be worthwhile to provide diligence to the Potential Purchaser to determine whether its interest would result in an actionable bid.

For almost four months, the Debtors provided the Potential Purchaser with a significant amount of diligence. As a result of that diligence, as well as feedback from various parties—including the NCSG, the Consenting Committee, the UCC and the Debtors—the Potential Purchaser worked to reformulate its proposal a number of times. In the UCC’s view, these various reformulations were indicative of the Potential Purchaser’s interest as well as its willingness to modify the

proposed transaction structure based on the feedback it received from various parties. Unfortunately, however, the Potential Purchaser was not able to increase materially the value of its proposal.

In connection with Phase II Mediation (in late January 2021), the parties in interest resumed discussions regarding the future of Purdue. It is fair to say that the parties had varying perspectives on this issue, including the proposals made by the Potential Purchaser. These discussions centered on whether Public Claimants should have either a direct or indirect ownership interest in reorganized Purdue, the value being offered by the Potential Purchaser, and whether the Potential Purchaser's proposal would still result in the Public Claimants as the economic beneficiaries of an opioid company. Ultimately, the Consenting Committee (and the Debtors) determined not to engage further with the Potential Purchaser absent dramatic (and infeasible) changes to the proposal.

The UCC understood and accepted that any decision regarding the future of Purdue ultimately rested with the Public Claimants, given the results of Phase I Mediation. Moreover, the UCC fully recognizes the complex and varied perspectives regarding the future of Purdue, and as such, does not object to the fact that the Plan does not contemplate the sale of Purdue. Under the Plan, not only will the Sacklers have no ownership or management role with Purdue, but also Purdue will continue to (i) be bound by the Voluntary Business Injunction and (ii) have an independent monitor whose role is to ensure that Purdue/NewCo follows public health and safety. It is hoped that Purdue/NewCo's competitors will be held to the same standards.

### VIII. THE UCC'S ASSESSMENT OF THE PLAN

Having experienced first-hand the events set forth in this letter, the UCC views the Plan as an imperfect solution that is, nonetheless, a better outcome for the majority of Purdue's creditors than any other available alternative. This view, and the decision not to object to the Plan, rest on three fundamental premises: (i) claimants need recoveries *now*, not at some uncertain time in the future; (ii) the ability to obtain such value for creditors would be uncertain without the various settlements contemplated by the Plan; and (iii) without the Plan, there is no clear mechanism to provide value to the creditors who need it.

#### ***A. Victims and Other Creditors Need Recoveries Now***

Creditors cannot wait for years of litigation to play out before they get value from the Debtors' estates. Indeed, the Debtors' creditors cannot wait any longer for relief. Individual victims require financial compensation *now*, and all other claimants require funds to abate the opioid crisis in the absence of federal funding. The situation could not be any more dire. After 20 months in bankruptcy, it is time for the Debtors to put their money to work compensating victims and abating the opioid crisis.

#### ***B. Litigating Claims Against the Sacklers Will Not Result in Immediate Payment***

The UCC has conducted an unprecedented Investigation of the claims against the Sacklers. The following critical points bear repeating in connection with the UCC's rationale for not objecting to the Plan:

1. The Sacklers likely are liable to the Debtors (and thus to their creditors) in amounts far in excess of the Settlement Amount, **but** obtaining judgments to establish that liability could take years; and there can be no guarantee of success.
2. The Sacklers have assets far in excess of the \$4.275 billion Settlement Amount, **but** obtaining a judgment against the Sacklers does not guarantee that either the Debtors or their creditors will be able to access those assets, many of which are in overseas trusts.
3. In addition to the Debtors' claims against the Sacklers, the UCC believes that the Debtors' creditors may well also hold direct claims against the Sacklers far in excess of their total assets. ***Without the Preliminary Injunction and settlement in place to restrain litigation against the Sacklers, however, the Sacklers are likely to exhaust their collectible assets fighting and/or paying ONLY the claims of certain creditors with the best ability to pursue the Sacklers in court.***

Against this backdrop, the benefits of a settlement are clear. Indeed, a settlement is the only way to bring value into the Debtors' estates now for the benefit of **all** creditors. Certainly, there is a chance—and not a small one—that litigating against the Sacklers could eventually lead to a judgment or multiple judgments greater than \$4.275 billion. But such judgment could be years in the future, and there is no guarantee that the proceeds of those judgments, if they can even be monetized, would be distributed to all creditors in an equal or fair manner.



**C. *The Plan Is the Only Way To Preserve the Phase I Mediation Settlements***

Many State attorneys general in the NCSG have stated publicly that the \$4.275 billion Settlement Amount is insufficient to pay for the damage and destruction wrought by the opioid crisis. ***This undoubtedly is true.*** As discussed above, the claims in these cases total in the trillions of dollars; and no amount of recovery could truly compensate victims for these immeasurable damages. But absent an agreement with the Sacklers, all of the work done in Phase I Mediation and the agreements reached could fall apart.

Once it became clear that the Sacklers would not pay the amount the NCSG desired, the creditors in these cases had a choice to either (i) not reach a settlement with the Sacklers and seek to lift the Preliminary Injunction that protected the Sacklers to permit the 3,000+ lawsuits to spring back to life or (ii) reach a settlement with the Sacklers that did not include the NCSG. If creditors could have agreed that pursuing (i) would have kept intact the Phase I Mediation Settlements (for example, by agreement among all parties to pay the first dollars obtained from the Sacklers in satisfaction of those settlements), then an entirely different plan could be before us—one that allowed the Public Claimants to continue pursuing their and the Debtors' claims against the Sacklers, while preserving the Phase I Mediation Settlements. But such a consensus could not be reached. Therefore, the only available path forward to preserve the Phase I Mediation Settlements (including the settlement among the Public Claimants regarding the division of assets amongst them) was to reach a reasonable settlement with the Sacklers.

In sum, although the UCC believes the claims against the Sacklers likely are worth more than \$4.275 billion, the Phase I Mediation Settlements would not hold without the Sackler Settlement. Moreover, under the current construct, ***any increase in the Settlement Amount would not benefit any Private Claimant***, in any event. Because there is no other path to intercreditor peace, the UCC supports the imperfect, but entirely necessary Sackler Settlement embodied in the Plan as it stands.

**D. *The Plan Represents a Reasonable Resolution of Claims Against the Sacklers and Related Parties***

As part of its Investigation, the UCC evaluated, among others, the following categories of claims and causes of action.

Claim	Issue
<i>Intentional Fraudulent Conveyance</i>	Did Purdue (at the direction of the Sacklers) intentionally transfer \$10 billion out of Purdue and to the Sacklers (including to their related trusts and the Sackler Entities) between 2008 and 2017, with an intent to “hinder, delay or defraud” Purdue’s creditors from being able to collect on their claims?
<i>Constructive Fraudulent Conveyance</i>	Did Purdue (at the direction of the Sacklers) transfer \$10 billion out of Purdue and to the Sacklers (including to their related trusts and the Sackler Entities) between 2008 and 2017 at a time when Purdue was insolvent (or rendered insolvent as a result of such transfers)

without Purdue receiving “reasonably equivalent value” in return?

*Breach of  
Fiduciary Duty*

In connection with the decisions contemplated above (or otherwise), did the Sacklers, as members of the Purdue Board of Directors, breach their fiduciary duties to Opioid Claimants?

*Unjust  
Enrichment*

Were the Sacklers and related parties unjustly enriched as a result of any of the transfers Purdue made to the Sacklers (including to their related trusts and the Sackler Entities)?

In considering the likelihood of success of each of the above categories of claims, the UCC thoroughly evaluated the following questions, among others:

1. What evidence, if any, exists to demonstrate that Purdue and the Sacklers engaged in intentional fraud?
2. To the extent there is evidence of intentional fraud, is that evidence stronger in respect of certain members or “sides” of the Sackler family (*i.e.*, Side A or Side B)?
3. Can all members of the Sackler family be held “jointly and severally liable” for any such claims?
4. Was Purdue insolvent (or rendered insolvent by relevant transfers) at any point from 2008 to 2017?

5. How is insolvency demonstrated based on actual and potential litigation claims?
6. Was Purdue more or less likely to be insolvent at different points in time from 2008 to 2017?
7. Given that Federal and State governments received \$4-5 billion in taxes throughout the applicable period, should those entities, as the ultimate recipient of the proceeds of a fraudulent transfer, be required to return such value to the Purdue estates?
8. To what extent can the proceeds of each transfer be traced, which may or may not be necessary to recover value from fraudulent transfers?
9. Which party has the burden of proof on tracing the proceeds of fraudulent transfers?
10. At what point in time did the Sacklers (and the Purdue Board) begin to owe fiduciary duties to Opioid Claimants?
11. What knowledge did the Sacklers have of the impending onslaught of litigation liability they would face and when did they have that knowledge?
12. What knowledge did the Sacklers have that Purdue had engaged in conduct that would lead to the onslaught of litigation liability they ultimately would face? When did they have that knowledge? Were they the architects of that conduct, or did they just receive reports from management?

13. Did the Sacklers micromanage the affairs of Purdue, such that they had full knowledge of all of Purdue's conduct?
14. If the allegations underlying these causes of action could be proved, would prejudgment interest apply to the judgments obtained? If so, what would the appropriate rate of such interest be?

Beyond these questions regarding the “estate” claims, the UCC conducted a thorough and balanced review of the strengths and weaknesses of the various “direct” legal claims made (or that could be made) against the Sacklers by the Public and Private Claimants outside of the bankruptcy, in order to determine whether the Settlement Amount was fair consideration for the releases that the Sacklers were seeking. The UCC considered several factors in assessing the viability of these claims, including: (i) statutes of limitations (whether the alleged wrongful acts took place too long ago); (ii) causation (whether the alleged wrongful acts caused the alleged harm); (iii) federal preemption (whether government involvement in approving the drugs and the drug labels was significant enough for Purdue and the Sacklers to avoid liability); and (iv) the municipal cost recovery rule (whether government efforts to deal with the opioid crisis fall within the government's normal duty of providing public services).

In addition, the UCC considered the potential damages available to the Public and Private Claimants for each of these types of claims, including but not limited to the potential recovery of: (i) remedial costs associated with addressing the opioid crisis; (ii) costs associated with abating the opioid crisis; (iii) disgorgement of profits or benefits that Purdue and the Sacklers re-

ceived; (iv) fines for state law violations; and (v) injunctive relief. The UCC also considered whether and how much the Public and Private Claimants might be able to obtain in court absent the bankruptcy setting. In considering the specific claims brought against the Sacklers, the UCC focused on the following claims, among others:

1. **Public Nuisance**—The UCC assessed both common law public nuisance and statutory public nuisance claims, which both the Public and Private Claimants included in various prepetition actions. In assessing these claims, the UCC considered numerous factors, including but not limited to the following:
  - a. to prove common law public nuisance claims, plaintiffs would need to demonstrate that Purdue and the Sacklers acted with intent to create the public nuisance;
  - b. whether it is possible to prove that the Sacklers acted together with the other defendants or that each individual defendant intended to create the public health and safety crisis (rather than intended to engage in general profit-seeking activities);
  - c. claimants may need to convince a trier of fact that it should ignore government approval of the product and its labeling, doctor prescriptions of the products and patient abuse of the product as potential intervening causes of the crisis; and
  - d. the only trial on this issue (against Johnson & Johnson) resulted in a ruling on behalf of

the plaintiffs, giving claimants precedent for their claims against Purdue and the Sacklers.

2. ***RICO***—The UCC assessed Public and Private Claimant claims under the RICO Act. In considering these claims, the UCC balanced the following factors:
  - a. the Ohio MDL court specifically upheld such claims on both a motion to dismiss and a subsequent summary judgment motion; and
  - b. RICO claims require a finding of intentional illegal acts conducted via mail or wires.
3. ***Consumer Protection***—The UCC contemplated Public and Private Claimant consumer protection claims focusing on, among other things, the evidentiary standard in many States for consumer protection claims (including the fact that many consumer protection statutes do not require that consumers were actually misled), as well as potential recoveries associated with such claims.
4. ***Deceptive Practices***—In evaluating these claims asserted by both Public and Private Claimants, focusing on arguments that the relevant statutes are generally broadly construed (such that neither intent nor actual deception are required), and also considering (i) to whom the allegedly deceptive practices claims were aimed and (ii) the proof of related damages/injury.

5. ***Unfair Trade Practices***—In evaluating these claims by both Public and Private Claimants, the UCC considered (i) plaintiffs’ allegations that Purdue and the Sacklers implemented marketing schemes that purportedly led to higher rates of opioid prescriptions and addiction (and ignored large volumes of product flooding the market and being diverted to the black market) as well as (ii) the difficulty of proving that the alleged actions caused opioid abuse and the opioid crisis.
6. ***Unjust Enrichment***—Public Claimants have asserted numerous types of unjust enrichment claims. Some allege Purdue and the Sacklers were unjustly enriched when the States paid Purdue for opioids through Medicaid and workers’ compensation programs. Others assert that Purdue was enriched by its failure to exercise due diligence in preventing diversion and by its deceptive marketing practices. The UCC considered the allegations and supporting evidence as well as whether the States/municipalities actually conferred a compensable benefit on Purdue/the Sacklers by remedying and mitigating the alleged harms and whether these claims would be difficult to prove.
7. ***Negligence***—In assessing these claims brought by both Public and Private Claimants, the UCC balanced the fact that the Ohio MDL court determined that the plaintiffs plausibly alleged that defendants had a duty not to act negligently in their marketing against the standard for negligence and the difficulty of proof on certain issues.



This letter is not the appropriate forum to address each of these issues regarding estate and third-party claims. This is particularly true in light of the structure of the Sackler Settlement, which provides that in the event the Sacklers breach their payment obligations, the Master Distribution Trust (the “MDT”)—which is responsible for making all payments to other creditor trusts for subsequent distribution—would take ownership of (and have the ability to pursue for creditors’ benefit) all estate claims and causes of action against the Sacklers and related parties; and further, that upon such “snapback,” all Public and Private Claimants would be free to re-commence (or commence) their direct causes of action. As such, it would be inappropriate for this letter to provide the UCC’s views on these issues.

The UCC can confirm, however, that (as discussed herein) the number and scope of issues considered by the UCC in connection with its Investigation was vast, its analysis thorough and the time spent immense. And the results of the Investigation—along with all of the other work the UCC and its advisors performed and the numerous other diverse factors at play—were the various settlements contained in the Plan, including the Sackler Settlement, the Phase I Mediation Settlements and numerous others. If the Sackler Settlement could be evaluated in a vacuum, the UCC almost certainly would have come to a different conclusion. But it cannot be.

The UCC is also aware that the Plan, and the Sackler Settlement in particular, have received significant criticism. Notwithstanding this criticism, and considering the requirements imposed by the bankruptcy process and the myriad competing interests at play, the UCC believes with conviction that the terms of the Plan rep-

resent the only viable conclusion to the Chapter 11 Cases. Indeed, confirmation of the Plan will ensure that funds are distributed promptly to begin to compensate victims and abate the opioid crisis that continues to grip this Country.

***Accordingly, the UCC urges every unsecured creditor to vote in favor of the Plan.***

UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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Chapter 11  
Case No. 19-23649 (RDD)  
(Jointly Administered)

IN RE: PURDUE PHARMA L.P., ET AL., DEBTORS<sup>1</sup>

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[Filed: Aug. 31, 2021]

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**NOTICE OF FILING OF SEVENTEENTH PLAN  
SUPPLEMENT PURSUANT TO THE ELEVENTH  
AMENDED JOINT CHAPTER 11 PLAN OF  
REORGANIZATION OF PURDUE PHARMA L.P.  
AND ITS AFFILIATED DEBTORS**

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's registration number in the applicable jurisdiction, are as follows: Purdue Pharma L.P. (7484), Purdue Pharma Inc. (7486), Purdue Transdermal Technologies L.P. (1868), Purdue Pharma Manufacturing L.P. (3821), Purdue Pharmaceuticals L.P. (0034), Imbrium Therapeutics L.P. (8810), Adlon Therapeutics L.P. (6745), Greenfield BioVentures L.P. (6150), Seven Seas Hill Corp. (4591), Ophir Green Corp. (4594), Purdue Pharma of Puerto Rico (3925), Avrio Health L.P. (4140), Purdue Pharmaceutical Products L.P. (3902), Purdue Neuroscience Company (4712), Nayatt Cove Lifescience Inc. (7805), Button Land L.P. (7502), Rhodes Associates L.P. (N/A), Paul Land Inc. (7425), Quidnick Land L.P. (7584), Rhodes Pharmaceuticals L.P. (6166), Rhodes Technologies (7143), UDF LP (0495), SVC Pharma LP (5717) and SVC Pharma Inc. (4014). The Debtors' corporate headquarters is located at One Stamford Forum, 201 Tresser Boulevard, Stamford, CT 06901.

**PLEASE TAKE NOTICE** that, on August 31, 2021, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed the *Eleventh Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and Its Affiliated Debtors* [D.I. 3706] (as modified, amended or supplemented from time to time, the “**Plan**”). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

**PLEASE TAKE FURTHER NOTICE** that, on June 3, 2021 the Debtors filed the solicitation version of the *Disclosure Statement for Fifth Amended Joint Chapter 11 Plan of* \* \* \*

\* \* \* \* \*

## **ARTICLE 2.**

### **SETTLEMENT PAYMENTS**

#### **Section 2.01 Required Settlement Payment.**

(a) Payment of the Outstanding Settlement Amount. Each Payment Party agrees, on a joint and several basis with the other Payment Parties within its Payment Group on the terms and subject to the limitations set forth herein, but on a several and not joint basis as among Payment Groups, to pay or cause to be paid, in the manner and at the times set forth in this Agreement (whether out of Net Proceeds pursuant to Section 2.02, by the applicable Funding Deadlines pursuant to this Section 2.01, as a result of a Payment Remedy, or otherwise) the Outstanding Settlement Amount of its Payment Group. Except as provided in Sections 2.01(i), 2.04, 2.05 or 2.10, the Payment Parties within a Payment Group shall have no further payment obligation under this Section 2.01 once (and for so long as) the

Outstanding Settlement Amount of such Payment Group has been reduced to (and remains) zero. For the avoidance of doubt, if, at any time, the Outstanding Settlement Amount of any Payment Group is reduced to zero and then subsequently becomes an amount greater than zero, from and after the date on which the Outstanding Settlement Amount becomes an amount greater than zero, such Payment Group shall comply with the obligations of this Section 2.01 until its Outstanding Settlement Amount is again reduced to (and for so long as it remains) zero.

(b) Minimum Required Settlement Payment.

(i) Subject to the terms and conditions set forth herein, the Aggregate Settlement Amount shall be paid by the Payment Parties in the amounts and on or before the deadlines set forth in the schedule below. Each such payment deadline set forth in the schedule below shall be referred to herein as a “Funding Deadline” and each amount set forth in the schedule below on each Funding Deadline shall be referred to herein as a “Minimum Required Settlement Payment”.

<u>#</u>	<u>Funding Deadline</u>	<u>Minimum Required Settlement Payment</u>
1.	Plan Effective Date	\$300 million
2.	June 30, 2022	\$350 million
3.	June 30, 2023	\$375 million
4.	June 30, 2024	\$375 million
5.	June 30, 2025	\$350 million
6.	June 30, 2026	\$300 million

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|-----|---------------|--|
| 7.  | June 30, 2027 | \$1,000 million  |
| 8.  | June 30, 2028 | \$475 million  |
| 9.  | June 30, 2029 | \$425 million, subject to adjustment as set forth in the proviso immediately below this schedule |
| 10. | June 30, 2030 | \$325 million, subject to adjustment as set forth in the proviso immediately below this schedule |
| 11. | June 30, 2031 | Up to \$200 million, as set forth in the proviso immediately below this schedule                 |

*provided* that (x) each dollar in excess of \$2.5 billion up to and including \$2.675 billion in the aggregate that the MDT actually receives pursuant to this Agreement on or prior to June 30, 2026 shall defer one dollar, up to a maximum aggregate amount of \$175 million, of the Minimum Required Settlement Payment otherwise payable on June 30, 2030 to instead become payable on June 30, 2031 and (y) each dollar in excess of \$2.675 billion that the MDT actually receives pursuant to this Agreement on or prior to June 30, 2026 shall defer one dollar, up to a maximum aggregate amount of \$25 million, of the Minimum Required Settlement Payment otherwise payable on June 30, 2029 to instead become payable on June 30, 2031; *provided, however*, that deferrals shall only be made pursuant to the foregoing proviso

if the aggregate amount available for deferral pursuant thereto equals or exceeds \$25 million.

(ii) Notwithstanding the foregoing clause (i), (A) for each month that the Plan Effective Date is delayed past February 28, 2022, the second Funding Deadline of June 30, 2022 shall be extended in increments of one calendar month (and due at the end of such month) such that there are no fewer than four calendar months between the Plan Effective Date and the second Funding Deadline, with all other Funding Deadlines remaining as set forth above, and (B) in the event any Funding Deadline is otherwise extended pursuant to the terms of this Agreement such that fewer than five calendar months remain until the next Funding Deadline, such next Funding Deadline shall be automatically extended by one calendar month.

(iii) Notwithstanding anything in this Agreement to the contrary, if the Debtors renounce the Confirmation Hearing in accordance with Section 12.3(c) of the Plan, then, unless the Debtors and the Sackler Parties shall agree otherwise in their sole and absolute discretion, the Parties agree to amend this Agreement to remove the agreements and concessions made by the Debtors and the Sackler Parties reflected in the Mediator's Report.

(c) Payment of A-Side Funding Deadline Obligations. With respect to each A-Side Payment Group, on each Funding Deadline,

(i) The A-Side General Obligors shall pay, or cause to be paid (on a joint and several basis with the other A-Side General Obligors) to the MDT, on behalf of the A-Side Payment Groups, the A-Side

Funding Deadline Obligation of such A-Side Payment Groups by the applicable Funding Deadline;

(ii) the A-Side Payment Parties that are trusts (other than the A-Side General Obligors and “bare trusts”) or other entities within each A-Side Payment Group shall pay, or cause to be paid (on a joint and several basis with the other remaining A-Side Payment Parties that are trusts or other entities within such A-Side Payment Group), to the MDT such A-Side Payment Group’s A-Side Funding Deadline Obligation by the applicable Funding Deadline solely to the extent such A-Side Funding Deadline Obligation is not paid pursuant to clause (i); and

(iii) the A-Side Payment Parties that are natural persons or “Bare Trusts” within each A-Side Payment Group shall pay, or cause to be paid (on a joint and several basis with the other A-Side Payment Parties that are natural persons or “Bare Trusts” within such A-Side Payment Group), to the MDT such A-Side Payment Group’s A-Side Funding Deadline Obligation by the applicable Funding Deadline solely to the extent such A-Side Funding Deadline Obligation is not paid pursuant to clause (i) or (ii);

*provided* that (1) if, on any Funding Deadline, the payment of any A-Side Funding Deadline Obligation would cause the Outstanding Settlement Amount of an A-Side Payment Party’s Payment Group to be less than zero, such A-Side Payment Party shall pay, or cause to be paid, to MDT on such Funding Deadline an amount equal to the Outstanding Settlement Amount of its A-Side Payment Group; (2) no A-Side Payment Party shall be required to pay any portion of any Required Settlement Payment so long as the Outstanding Settlement



Amount of its A-Side Payment Group is zero; (or, in the case of any A-Side General Obligor, so long as the Outstanding Settlement Amounts of all A-Side Payment Groups is zero); (3) no A-Side General Obligor shall have any obligation to make any payment pursuant to this Section 2.01 (and shall not be in Breach or otherwise have any liability to the MDT for the failure to make any payment) if and to the extent it does not have sufficient liquid assets (not including any amounts reserved in good faith for the payment of Taxes or any other Permitted Withdrawals applicable to such A-Side General Obligor) to do so; and (4) nothing in this Section 2.01(c) shall limit the MDT's right to seek payment in full from any A-Side Payment Party of its A-Side Funding Deadline Obligation without any requirement to seek collection first from any A-Side General Obligor or any other A-Side Payment Party.

(d) Payment of B-Side Funding Deadline Obligations. With respect to each Funding Deadline, each B-Side Payment Group shall pay, or cause to be paid, to the MDT its B-Side Funding Deadline Obligation by the applicable Funding Deadline; *provided* that (x) if, on any Funding Deadline, the payment by any B-Side Payment Group of its B-Side Funding Deadline Obligation would cause its Outstanding Settlement Amount to be less than zero, then such B-Side Payment Group shall pay, or cause to be paid, to MDT an amount equal to its Outstanding Settlement Amount on such Funding Deadline and (y) such B-Side Payment Group shall not be required to pay any portion of any Required Settlement Payment so long as its Outstanding Settlement Amount is zero (or less than zero).

(e) Prepayment of Outstanding Settlement Amount. Any Payment Group (including, for the avoidance of

doubt, any A-Side General Obligor on behalf of the A-Side Payment Groups) shall have the right to prepay its Outstanding Settlement Amount at any time, in whole or in part, without premium or penalty. Any such prepayment by a Payment Group shall satisfy and reduce, dollar-for-dollar, the next due funding obligation of such Payment Group pursuant to Section 2.01(a) or (b) (or, at the option of such Payment Group, the next funding obligation of any IAC Payment Party in its Payment Group pursuant to Section 2.02(a) or (b)), it being understood that any unapplied prepayment shall carry over and be used to satisfy and reduce, dollar-for-dollar, such Payment Group's succeeding such funding obligation. For the avoidance of doubt, no such prepayment by a Payment Group (or subsequent reduction of the next due Aside Funding Deadline Obligation(s) or B-Side Funding Deadline Obligation(s) of such Payment Group) shall affect any payment obligation under this Agreement of any other Payment Group.

(f) Reallocation of A-Side Payments on the First Three Funding Deadlines to B-Side. If the Required Settlement Payment on any of the first, second, or third Funding Deadline is greater than zero, then (i) the payment obligation under Section 2.01(d) of each B-Side Payment Group on such Funding Deadline shall be an amount equal to fifty percent (50%) of such Required Settlement Payment due on such Funding Deadline and (ii) no A-Side Payment Party shall be required to pay any portion of such Required Settlement Payment due on any such Funding Deadlines. For the avoidance of doubt, (x) any payment by a B-Side Payment Group pursuant to this Section 2.01(f) shall be credited in full to such B-Side Payment Group (and not to any A-Side Payment Group) for purposes of calculating the Aggre-

gate Payments of such Payment Group and (y) each B-Side Payment Party shall be jointly and severally liable with the other B-Side Payment Parties within its B-Side Payment Group for the amount payable under this Section 2.01(f) by its B-Side Payment Group.

(g) B-Side Excess Amount Adjustment. If, as of any Funding Deadline, (x) the Aggregate Payments of all Payment Groups exceeds (y) an amount equal to the greater of (i) the Cumulative Minimum Required Settlement Payments as of the immediately prior Funding Deadline and (ii) the aggregate amount of Net Proceeds with respect to all Payment Parties calculated without giving effect to the deduction of Unapplied Advanced Contributions (the amount of the excess between clauses (x) and (y), the “B-Side Excess Amount”), then the portion of the Required Settlement Payment payable by each B-Side Payment Group on such Funding Deadline shall be reduced by the lesser of (A) fifty percent (50%) of the B-Side Excess Amount and (B) one hundred percent (100%) of such B-Side Payment Group’s B-Side Payment Group Portion of the Required Settlement Payment after giving effect to Section 2.01(f).

(h) A-Side Allocable Portion Adjustment. If, immediately prior to the eighth Funding Deadline, the A-Side Allocable Portion is greater than zero, then:

(i) on each of the eighth, ninth and tenth Funding Deadlines, each A-Side Payment Group’s A-Side Payment Group 2.01 Amount shall be increased by an amount equal to the lesser of (x) one-twenty-fourth (1/24) of the A-Side Allocable Portion calculated as of immediately prior to the eighth Funding Deadline and (y) such A-Side Payment Group’s Set-

tlement Amount Balance less its A-Side Payment Group 2.01 Amount as of such eighth, ninth or tenth Funding Deadline; *provided* that the aggregate amount determined pursuant to this Section 2.01(h)(i) on any given Funding Deadline shall not exceed the aggregate B-Side Payment Group 2.01 Amounts on such Funding Deadline (each such payment pursuant to this subparagraph (i), an “A-Side Reallocation Payment”); and

(ii) each B-Side Payment Group’s B-Side Payment Group 2.01 Amount for the eighth, ninth or tenth Funding Deadlines shall be reduced by an amount equal to fifty percent (50%) of the aggregate A-Side Reallocation Payments made on such Funding Deadline.

For the avoidance of doubt, (w) any A-Side Reallocation Payment made by an A-Side Payment Group shall be credited in full to such A-Side Payment Group (and not to any B-Side Payment Group) for purposes of calculating the Aggregate Payments, (x) the obligation of each A-Side Payment Group to pay its A-Side Reallocation Payment is included in its obligation to pay its A-Side Funding Deadline Obligation due on such Funding Deadline pursuant to Section 2.01(c), (y) each A-Side Payment Party shall be jointly and severally liable with the other A-Side Payment Parties within its A-Side Payment Group for the A-Side Reallocation Payment of such Payment Group, and (z) an A-Side Payment Group shall have no further obligation to pay its A-Side Reallocation Payment once (and for so long as) the Settlement Amount Balance of such Payment Group has been reduced to zero.

(i) Family Group 8 Cap.

(i) Notwithstanding anything in this Section 2.01 or Section 2.03 to the contrary if, at any time, the A-Side Capped Payment Parties have actually paid an aggregate of \$84,500,000 to the MDT pursuant to Sections 2.01(c)(ii), 2.01(e) and 2.10 (not including any payments deemed to have been made by A-Side Payment Group 8 pursuant to Section 2.01(l)), then, with respect to any other payment Obligations of the A-Side Capped Payment Parties arising from time to time thereafter pursuant to Sections 2.01(c)(ii) and Section 2.10 (any such amount, an “Excess Group 8 Payment Obligation”):

(A) the A-Side Payment Parties within each A-Side Payment Group (other than A-Side Payment Group 8) shall pay, or cause to be paid, on a joint and several basis with the other A-Side Payment Parties within their respective A-Side Payment Groups, to the MDT when such Excess Group 8 Payment Obligation is due an amount equal to one fourteenth (1/14) of any such Excess Group 8 Payment Obligation; and

(B) the B-Side Payment Parties within each B-Side Payment Group shall pay, or cause to be paid, on a joint and several basis with the other B-Side Payment Parties within their respective B-Side Payment Groups, to the MDT when such Excess Group 8 Payment Obligation is due an amount equal to one quarter (1/4) of any such Excess Group 8 Payment Obligation; and

(C) the A-Side Capped Payment Parties shall have no obligation to pay any portion of the Excess Group 8 Payment Obligation.

For the avoidance of doubt, (i) nothing in this Section 2.01(i) shall relieve the A-Side General Obligors or the A-Side IAC Payment Parties in A-Side Payment Group 8 of their obligations under Sections 2.01, 2.02, 2.03, and 2.10 and (ii) the payment of any such Excess Group 8 Payment Obligation (other than an Excess Group 8 Payment Obligation in respect of the Additional A-Side Amount) will be included in the calculation of the Aggregate Payments of A-Side Payment Group 8 (and not of the members of the Payment Group actually making such payment).

(ii) Notwithstanding the foregoing, if (i) any B-Side Payment Group pays any portion of an Excess Group 8 Payment Obligation and (ii) following the date on which the Full Outstanding Settlement Amount of A-Side Payment Group 8 (inclusive of the Excess Group 8 Payment Obligation) and of all other A-Side Payment Groups have been reduced to zero, any A-Side General Obligor receives proceeds from a Sale or Non-Tax Distribution (other than any such proceeds used to pay Taxes, reserved in good faith for the payment of Taxes, or that constitute IAC Distribution Deductions described in clause (ii) of the definition thereof or Sale Proceeds Deductions described in clause (ii) of the definition thereof) (any such proceeds, "Excess IAC Proceeds"), such A-Side General Obligor shall be obligated to pay to each such B-Side Payment Group an amount (such amount, a "2.01(i) Top-Off Payment") equal to the lesser of (x) one thirty-second ( $1/32$ ) of the amount of Excess IAC Proceeds received by such A-Side General Obligor, and (y) the amount paid by such B-Side Payment Group in respect of the Excess Group 8 Payment Obligation (less amounts previously paid

to such B-Side Payment Group pursuant to this paragraph (ii)). Until such time as the B-Side Payment Groups have received 2.01(i) Top-Off Payments equal to the amount paid by all B-Side Payment Groups in respect of the Excess Group 8 Payment Obligation, no A-Side General Obligor shall make any distribution to any A-Side Capped Payment Party of Excess IAC Proceeds. If, notwithstanding the foregoing, any A-Side Capped Payment Party receives any Excess IAC Proceeds, such A-Side Capped Payment party will be obligated to make a 2.01(i) Top-Off Payment to each B-Side Payment Group in an amount equal to the lesser of (1) one fourth (1/4) of the Excess IAC Proceeds received by such A-Side Capped Payment Party and (2) the amount paid by such B-Side Payment Group in respect of the Excess Group 8 Payment Obligation (less amounts previously paid to such B-Side Payment Group by the A-Side General Obligors or the A-Side Capped Payment Parties pursuant to this paragraph (ii)).

(iii) Any 2.01(i) Top-Off Payment required to be made pursuant to the preceding paragraph (ii) will be paid solely upon the later to occur of (x) the date that is thirty (30) days after the date on which the Full Outstanding Settlement Amounts of all A-Side Payment Groups have been reduced to zero (accounting for the maximum amount the A-Side Payment Groups may be liable for hereunder), and (y) the date that is thirty (30) days after the date on which such Excess IAC Proceeds have been received by the relevant A-Side General Obligor or A-Side Capped Payment Party, as the case may be. Any 2.01(i) Top-Off Payment by an A-Side Capped

Payment Party or A-Side General Obligor to a B-Side Payment Group pursuant to the immediately preceding sentence shall be made by wire transfer of immediately available funds to such account(s) as may be designated by such B-Side Payment Group to such A-Side Capped Payment Party or such A-Side General Obligor in accordance with Section 11.01. For the avoidance of doubt, the payment of any 2.01(i) Top-Off Payment will not be considered a payment made by any Payment Group for purposes of calculating the Aggregate Payments of any such Payment Group.

(j) Payments by Beacon Trust. All payments by any A-Side Payment Group, except as otherwise designated, shall be made directly or indirectly to Beacon Trust (which received substantial distributions indirectly from Purdue) and contributed by Beacon Trust through intervening entities to Pharmaceutical Research Associates L.P. (“PRA L.P.”), which shall make the required payments under this Section 2.01 to the MDT in accordance with Section 2.01(l) below. All such payments made directly or indirectly to Beacon Trust by any A-Side Payment Group shall be paid, dollar for dollar, to the MDT by PRA L.P.

(k) Payments by 74A Trust. All payments by any B-Side Payment Group, except as otherwise designated, shall be made directly or indirectly to the Trust formed under agreement of trust dated November 5, 1974 for the benefit of Beverly Sackler (the “74A Trust”) (which received substantial distributions indirectly from Purdue) and contributed by the 74A Trust through intervening entities to PRA L.P., which shall make the required payments under this Section 2.01 to the MDT in accordance with Section 2.01(l) below. All



such payments made directly or indirectly to the 74A Trust by any B-Side Payment Group shall be paid, dollar for dollar, to the MDT by PRA L.P.

(l) Allocation of Payments.

(i) For all purposes of this Agreement (including the definitions of Aggregate Payments, Outstanding Settlement Amount and Settlement Amount Balance), any payment by an A-Side General Obligor (including any payment pursuant to Section 2.02(a) or (b) but excluding any payment pursuant to Section 2.10 (the allocation of which shall be governed by Section 2.10)), shall be deemed to have been made by each A-Side Payment Group, in an amount equal to the lesser of (A) one-eighth (1/8) of such payment and (B) such A-Side Payment Group's Settlement Amount Balance, *provided* that if the Settlement Amount Balance of any A-Side Payment Group is zero or is reduced to zero by such allocation, then any unallocated portion of such payment by an A-Side General Obligor shall be deemed to have been made in equal proportion by each of the A-Side Payment Group(s) whose Settlement Amount Balances are greater than zero.

(ii) Any payment by a Payment Party that is a Crossover Member (other than any A-side General Obligor or Common B-Side Payment Party), shall be deemed to have been made in equal amounts by each Payment Group of which such Crossover Member is a member; *provided* that if the Settlement Amount Balance of any such A-Side Payment Group is zero or is reduced to zero by such allocation, then any unallocated portion of such payment by a such Crossover Member shall be deemed to have been made in

equal proportion by each of such A-Side Payment Group(s) of whose Settlement Amount Balances are greater than zero.

(iii) For all purposes of this Agreement (including the definitions of Aggregate Payments, Outstanding Settlement Amount and Settlement Amount Balance), any payment by any B-Side Payment Party that is a member of more than one B-Side Payment Group (such B-Side Payment Party, a “Common B-Side Payment Party”), shall be deemed to have been made by each B-Side Payment Group, in an amount equal to the lesser of (A) one-half (1/2) of such payment and (B) such B-Side Payment Group’s Settlement Amount Balance; *provided* that if such payment is made by the 74A Trust as a result of a B-Side Payment Party’s payment to the 74A Trust pursuant to Section 2.01(k) or Section 2.02(d), then, for so long as the 74A Trust is a Common B-Side Payment Party, such payment by the 74A Trust shall be deemed to have been made by the B-Side Payment Group in the amount such Payment Group paid to 74A Trust for such payment.

(m) Except as provided in Section 9.03, (1) each Payment Party agrees that its obligations with respect to the Full Outstanding Settlement Amount and all other Obligations owed by its Payment Group, and such Payment Party’s obligations arising as a result of its joint and several liability with each other Payment Party within its Payment Group as provided herein, shall be separate and distinct obligations, but all such obligations shall be primary obligations of each such Payment Party and (2) if a Specified Breach has occurred and is continuing with respect to any Payment Group and the MDT has elected to exercise the Pay-

ment Remedy in connection with such Specified Breach pursuant to Section 9.02, the MDT may, solely in accordance with Section 9.02 and subject to Section 9.03, proceed directly and at once, against any Payment Party within such Payment Group to collect and recover the full amount, or any portion of, such Payment Group's Full Outstanding Settlement Amount and all other Obligations, without first proceeding against any other Payment Party or any other Person, or against any Collateral securing the Full Outstanding Settlement Amount and all other Obligations of such Payment Group. Each Payment Party waives all suretyship defenses and consents and agrees that the MDT (and all other Secured Parties) shall be under no obligation to marshal any assets in favor of any Payment Group or against or in payment of any or all of the Full Outstanding Settlement Amount and all other Obligations.

(n) Subject to Section 2.08, all payments made to the MDT pursuant to this Section 2.01 shall be made by wire transfer of immediately available funds to the account set forth on Exhibit G (or such other account(s) of the MDT as may be designated by the MDT to the Sackler Parties' Representative in accordance with Section 11.02 at least ten (10) Business Days prior to the applicable Funding Deadline set forth in Section 2.01(b)).

**Section 2.02 Payment of Net Proceeds.**

(a) Each IAC Payment Party hereby covenants and agrees to pay, or cause to be paid, within forty-five (45) calendar days following receipt (or as soon thereafter as legally permissible or, if the IAC Payment Party is not entitled to receive any cash in respect of Net Proceeds, the receipt of Net Proceeds by any other IAC

Payment Party), an amount equal to 100% of all Net Proceeds in respect of such IAC

Payment Party to the MDT in the manner set forth in Section 2.02(c) or (d) below, as applicable, and Section 2.08 (each such payment, a “Net Proceeds Payment”), *provided* that no IAC Payment Party shall be required to pay to the MDT any amounts referred to in the proviso to the first sentence of Section 3.07(d). The A-side IAC Payment Parties shall have no further payment obligation under this Section 2.02 once (and for so long as) the Outstanding Settlement Amount of all A-Side Payment Groups has been reduced to zero and the B-Side IAC Payment Parties within a Payment Group shall have no further payment obligation under this Section 2.02 once (and for so long as) the Outstanding Settlement Amount of such Payment Group has been reduced to (and remains) zero. For the avoidance of doubt, if the Outstanding Settlement Amount of any Payment Group is reduced to zero and then subsequently becomes an amount greater than zero, from and after the date on which the Outstanding Settlement Amount becomes an amount greater than zero, the IAC Payment Parties in such Payment Group shall comply with the obligations of this Section 2.02 until its Outstanding Settlement Amount is again reduced to zero.

(b) In the event that a B-Side IAC Payment Party’s Net Proceeds is greater than the Settlement Amount Balance(s) of the B-Side Payment Group(s) in which such B-Side IAC Payment Party is a member (any such amount, “Unapplied Net Proceeds”), the A-Side IAC Payment Parties (or, if the A-Side IAC Payment Parties have insufficient funds, the other A-Side Payment Parties within each A-Side Payment Group, in a proportion equal to the proportion in which payments by A-Side

General Obligors are allocated and deemed to be made by each A-Side Payment Group at such time pursuant to Section 2.01(l) shall be obligated to pay, on the date such Net Proceeds would otherwise have been payable by the B-Side IAC Payment Party, to the MDT an additional amount equal to the lesser of (x) the Unapplied Net Proceeds of each such B-Side IAC Payment Party and (y) the aggregate remaining Outstanding Settlement Amount of all A-Side Payment Groups.

(c) All payments by any A-Side IAC Payment Party, except as otherwise designated, shall be made directly or indirectly to Beacon Trust (which received substantial distributions indirectly from Purdue) and contributed by Beacon Trust through intervening entities to PRA L.P., which shall make the required payments to the MDT under this Section 2.02 to the account set forth on Exhibit G (or such other account(s) of the MDT that previously have been designated by the MDT to each of the Sackler Parties in accordance with Section 11.02) by wire transfer of immediately available funds. All such payments made directly or indirectly to Beacon Trust by any A-Side IAC Payment Party shall be paid, dollar for dollar, to the MDT by PRA L.P.

\* \* \* \* \*

## ARTICLE 8.

### COVENANTS

#### Section 8.01 Intentionally Omitted.

**Section 8.02 Non-Circumvention.** Each Sackler Party covenants and agrees that it shall not, and shall cause all Persons under its Control not to, intentionally take or fail to take any action a purpose or material ef-

fect of which is to avoid, circumvent, frustrate or impair the ability of any Sackler Party to satisfy its Obligations under this Agreement or the Collateral Documents to which it is a party, the enforcement thereof or the ability of the MDT to recover any unpaid Obligations (a “Prejudicial Impact”); *provided* that, notwithstanding the foregoing, any Sackler Party may (i) for the avoidance of doubt, take any action expressly permitted by this Agreement (including the Credit Support Annexes) or the Collateral Documents to which it is a party and (ii) undergo a conversion, recapitalization, reorganization, division, appointment in further trust, appointment of new trustees or personal representatives or exchange of securities into one or more corporations, limited liability companies, limited partnerships, trusts or other entities, and such action shall not constitute a Prejudicial Impact, but only, in each case, to the extent that (A) the resulting entity or trust assumes the obligations of such Sackler Party in this Agreement pursuant to a joinder agreement in the form attached hereto as Exhibit V, (B) to the extent such Sackler Party has provided Collateral to the MDT or any other Secured Party pursuant to any Collateral Document, such conversion, recapitalization, reorganization, division, appointment, exchange or other transaction shall not have the effect of rendering any liens in favor of the MDT or any other Secured Party granted by such Sackler Party pursuant to any Collateral Document invalid, unenforceable or unperfected or adversely affect the priority thereof and any surviving or resulting trust or entity shall take any and all steps as are necessary to maintain the MDT’s or such other Secured Party’s perfected security interest (without lapse or change in priority) and also complies with all applicable limitations and require-

ments imposed under each Collateral Document to which such Sackler Party is a party, (C) the resulting entity or Trust is in the same Payment Group as its predecessor, (D) in the case of a Trust, each trustee and each Assuring Party that is a Power Holder of the continuing or resulting Trust shall have delivered to the MDT a Trust Certification and Further Assurances Undertaking, respectively, and (E) in the case of any change in the personal representatives of the JDS Estate, each personal representative and each Assuring Party that is a Power Holder of the JDS Estate shall have delivered to the MDT an Estate Certification and Further Assurances Undertaking, respectively.

**Section 8.03 No Interference.** Each Sackler Party hereby covenants and agrees that it will not, and shall cause all Persons under its Control not to, intentionally take any action that would in any material respect interfere with, delay, impede, postpone or frustrate the confirmation or consummation of the Plan and implementation of the transactions contemplated in this Agreement and under the Collateral Documents to which such Sackler Party is a party. Each Sackler Party further covenants and agrees to comply with the provisions of the Plan applicable to it.

**Section 8.04 Consent to Cancellation of PPLP Interests and De Minimis PRALP Interests.**

(a) PRA L.P. hereby agrees, subject to the terms and conditions of this Agreement, to the deemed surrender, cancellation and/or redemption of the PPLP Interests pursuant to the Plan and that the direct and indirect holders thereof shall not receive or retain any property under the Plan on account of the PPLP Interests.

(b) The Parties agree, subject to the terms and conditions of this Agreement, to the deemed surrender, cancellation and/or redemption of the PPI Interests and the De Minimis PRALP Interests (with any taxes of Purdue Pharma Inc. and any other after-tax costs to Purdue Pharma Inc. attributable to its De Minimis PRALP Interests and resulting from the transactions contemplated in the Plan and this Agreement including, for the avoidance of doubt, any sales of IACs, being borne by the Sackler Parties) pursuant to the Plan and that (i) Purdue Pharma Inc. shall not receive or retain any property under the Plan on account of the De Minimis PRALP Interests and (ii) the direct and indirect holders of Purdue Pharma Inc. shall not receive or retain any property under the Plan on account of the PPI Interests.

**Section 8.05 MDT Shareholder Insurance Rights.** The Sackler Parties agree to the treatment of the MDT Shareholder Insurance Rights on the terms and conditions set forth in the Plan.

**Section 8.06 Naming Rights.** Each Payment Party covenants and agrees that it shall, and the Confirmation Order shall provide that each Family Member that is a member of the Payment Group to which such Payment Party is a member shall, not seek, request, or permit any new naming rights with respect to charitable or similar donations to organizations (irrespective of when such funds were donated or from what source) until the later to occur of (1) the date on which the Full Outstanding Settlement Amount of the Payment Groups that such Family Member is a member has been reduced to zero (accounting, in the case of an A-Side Payment Group, for the maximum amount the A-Side Payment Group may be liable for hereunder) and (2) the first date



on which the IAC Payment Parties of such Payment Groups are no longer the owners or holders of any interest in any IAC (other than Retained Interests permitted by Section 3.01(b)); *provided* that at such time such Payment Party and its associated Payment Group and Family Members are in compliance with their obligations under Section 8.09. For the avoidance of doubt, nothing in this Section 8.06 or the Confirmation Order shall prohibit (x) any Payment Party or Family Member from making any charitable or similar donations or (y) the publication of the name of any Payment Party or Family Member making a charitable or similar donation in connection with such donation, provided such publication is not pursuant to a naming right.

**Section 8.07 No Side Agreements.** No Sackler Party shall maintain or enter into any written or oral agreement with any other Sackler Party with respect to the transactions and obligations contemplated hereby that would adversely affect the ability of such Sackler Party to perform its obligations hereunder.

**Section 8.08 Notification of Breach.** If any Party becomes aware that a Breach Trigger or Breach has occurred, such Party shall provide notice in accordance with Section 11.01 of this Agreement to all other Parties of the occurrence of such Breach Trigger or Breach within five (5) Business Days (for the avoidance of doubt, any such notice provided by the Sackler Parties' Representative shall constitute notice provided on behalf of all applicable Sackler Parties). Until the earlier of (i) the commencement of a Dispute Proceeding and (ii) the time at which the MDT is permitted to exercise remedies pursuant to Section 9.02(a) of this Agreement, the Parties shall not disclose any occurrence or notice of Breach Trigger or Breach except (a) to the other Par-

ties, (b) to their respective representatives and advisors to whom the confidential nature of such information is also disclosed, (c) as required by applicable law, rule, regulation, or ethical requirement, or by any governmental, judicial, administrative, regulatory or quasi-regulatory body or process or any self-regulatory organization or (d) as necessary, in the sole discretion of the MDT, to evaluate or consider enforcement of its rights and remedies in connection with such Breach Trigger or Breach or as necessary to notify potential affected parties as to the impact of such Breach Trigger or Breach on the MDT's abilities to fulfill its contractual or fiduciary duties (including its obligations under the Plan); *provided* that notice to potential affected parties shall not be through the making of a public announcement or public disclosure (whether by press release, social media posting or otherwise).

**Section 8.09 Opioid Business.** Each Person listed on Exhibit H-1 (each a "Restricted Person") shall not, other than by way of ownership of the IACs (unless and to the extent such IAC is no longer owned (directly or indirectly) by such Person (other than Retained Interests)), engage directly or indirectly in the manufacturing or sale of opioids, provided, however, that this provision shall not prohibit: (a) any investment in any third-party investment vehicle that is not controlled by any Restricted Person(s) and that makes investment decisions over which such Restricted Person has no discretion; *provided* that it is not an express investment purpose or objective of such third party investment vehicle to make investments in the opioid business or in entities engaged in the manufacturing or sale of opioids; (b) any investment in less than 5% of the equity of any Person; (c) investments in any Person for whom the re-

searching, development, manufacturing, distribution or sale of opioids is incidental or does not constitute one of such Person's principle businesses or business segments (including, without limitation, the practice of medicine or engaging in academic research on opioids); (d) investments held by such Restricted Person on the Agreement Effective Date and identified on Exhibit H-2 (or received as proceeds from dispositions of such investments); (e) activities related to MN Consulting LLC (as identified on Exhibit H-2), including serving as a director or officer thereof, only for so long as any IAC Payment Party directly or indirectly owns an IAC, to the extent such activities would otherwise violate this Section 8.09; or (f) engaging in activities for which the researching, development, manufacturing, distribution or sale of opioids is incidental, including, without limitation, the practice of medicine or engaging in academic research on opioids. To the extent that any Restricted Person engages in dispositions, sales or other transfers in order to comply with this provision, such dispositions, sales or other transfers shall not be with Persons known to such Restricted Person to be Related Parties, *provided* that for the purposes of this provision, Related Parties shall not include any IAC, any IAC Holding Company or any IAC Pledged Entity that is as of the time of determination not still owned or controlled by any of the Sackler Parties. In the event a Restricted Person holds an investment or interest in a Person and such Person makes acquisitions or changes its business to cause such investment or the holding of such interest to be impermissible under this Section 8.09 but for this sentence, the holding of such interest or investment shall not be a violation of Section 8.09 so long as (i) such Restricted Person uses its best efforts to dispose of all

or a portion of such investment sufficient to cause it no longer to be impermissible within 90 days (in the case of marketable securities) or 180 days (in the case of non-marketable securities) of learning of the pertinent facts of such acquisitions or change in business, and (ii) such Restricted Person has disposed of all or a portion of such investment sufficient to cause it no longer to be impermissible hereunder prior to the second anniversary of learning of the pertinent facts of such acquisitions or change in business.

Each Restricted Person that has any ownership interest in any entity listed on Schedule H-2 (except for MN Consulting LLC) (each, a “Schedule H-2 Entity”) shall (i) not actively participate in the ongoing management of any of the Schedule H-2 Entities; (ii) not provide their consent (where required under the relevant documentation) to any action intended to lead to a material expansion of the opioid business of the Schedule H-2 Entities; (iii) use reasonable efforts to explore exit options with regard to their investments in those of the Schedule H-2 Entities the ownership of which would be prohibited by Section 8.09 but for the fact that such entities are listed on Schedule H-2; and (iv) at such time as applicable restrictions on their rights to exit their investments in the Schedule H-2 Entities lapse, use their best efforts to dispose of such investments, if and to the extent that their ownership of such entities would be prohibited by Section 8.09 but for the fact that such entities are listed on Schedule H-2.

**Section 8.10 Additional Assuring Parties.** The Sackler Parties shall use reasonable best efforts to cause each Power Holder promptly to execute a Further Assurances Undertaking upon such Person becoming a new Power Holder with respect to any relevant power

and promptly notify the MDT of any difficulties encountered in obtaining the same.

**Section 8.11 Opinions of Counsel.** If counsel to the Ad Hoc Committee or counsel to the Creditors' Committee seeks to secure any Opinions of Counsel as to (1) the enforceability of the security interests with respect to the Collateral granted by the applicable Payment Parties and the IAC Pledgors to the Secured Party pursuant to the Collateral Documents or (2) the perfection of the security interests with respect to the Collateral granted by the applicable Payment Parties and the IAC Pledgors to the Secured Party pursuant to the Collateral Documents, then the applicable Payment Parties and IAC Pledgors shall cooperate with the reasonable requests of such counsel related to the provision of such Opinions of Counsel, *provided* that such cooperation shall not be required if counsel to the applicable Sackler Party has provided the applicable Opinion of Counsel or has communicated to counsel to the Ad Hoc Committee and counsel to the Creditors' Committee that it will provide the applicable Opinion of Counsel (and such Opinion of Counsel is actually provided) .

**Section 8.12 Refundings.** Each Trust hereby covenants and agrees that any property reverting or required to be refunded to such Trust by or from any other Trust shall be held by the trustees of such recipient Trust as a separate resulting trust that will remain subject to the transferring Trust's obligations under the Settlement Documents as if still held by such transferring Trust (with the satisfaction of obligations due MDT having, with respect to such resulting trust and the property thereof, priority over all other obligations of the recipient Trust to the fullest extent permitted by applicable law), and to execute such further documents

as the MDT may reasonably request to evidence and confirm the same.

**Section 8.13 Additional IACs.** Each Sackler Party hereby covenants and agrees that, in the event there is an entity that is as of the Agreement Effective Date a non-U.S. pharmaceutical operating company Controlled, directly or indirectly, individually or acting together with other Sackler Parties or their Affiliates, by one or more Sackler Parties is not listed in Exhibit E-1 (other than those entities set forth on Exhibit E-2), the applicable Sackler Parties shall, within 90 days of becoming aware of any such entity and that it is not listed on Exhibit E-1, deliver to the Parties an amended Exhibit E-1 that includes such company and such company shall constitute an “IAC” for all purposes under this Agreement as of the date of such delivery. Each Sackler Party that owns (directly or indirectly) Equity Interests in such IAC, as may reasonably be requested by the MDT, shall become an IAC Payment Party under this Agreement and/or shall cause any of its Controlled Affiliates that own any Equity Interest in such IAC to become an IAC Payment Party under this Agreement (in each case to the extent it is not already an IAC Payment Party). Each such Sackler Party shall (or shall cause a Controlled Affiliate to) grant a security interest in an entity that directly or indirectly owns 100% of the Equity Interests of such IAC owned (directly or indirectly) by such Sackler Party to the MDT pursuant to Section 3.07. For the avoidance of doubt, any IAC Payment Party that becomes party to this Agreement subsequent to the Agreement Effective Date pursuant to this Section 8.13 shall be bound by, and subject to the terms of, this Agreement applicable to IAC Payment Parties (including with respect to such newly added

IAC) as of the date an amended Exhibit E-1 is delivered to the Parties pursuant to this Section 8.13 (and any representations and warranties made pursuant to this Agreement shall be made as of the date of such delivery) and all references in this Agreement to “Agreement Effective Date” and “Settlement Effective Date” shall, with respect to any such new IAC Payment Party and IAC, be understood to be the date of such delivery.

\* \* \* \* \*

**Exhibit X**

**Certain Shareholder Released Parties**



**CERTAIN A-SIDE RELEASE PARTIES<sup>1</sup>**

**Individual Family Members**

1. Theresa E. Sackler
2. Ilene Sackler Lefcourt
3. Kathe A. Sackler
4. Mortimer D.A. Sackler
5. Michael Sackler
6. Marissa Sackler
7. Sophie Dalrymple
8. Samantha Hunt
9. The spouses, children and grandchildren of the above
10. The assets, businesses and entities owned by the above.

**Trusts, Trustees and Protectors**

1. 533 Canal Trust
2. Alexa M. Saunders
3. Anthony M. Roncalli
4. Angonoka Trust
5. Beacon Trust
6. Beacon Trust Company Limited

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<sup>1</sup> For the avoidance of doubt, the inclusion of any person on this list who also fits within a category on this list that is also a category in the release shall not be construed to narrow such category or to support an inference that another person within such category but not on this list is not a released party.

7. BJSS 2010 Trust
8. BJSS 2013 Trust
9. BJSS and JHSS 2012 K Trust
10. Bowland Company Limited
11. Canadian Partnership Trust
12. Charles G. Lubar
13. Christopher B. Mitchell (and the estate of Christopher B. Mitchell)
14. Chelsea Trust Company Limited
15. Christopher M. Reimer
16. Clover Trust
17. Cobo Bay Trust
18. Codan Trust Company Limited
19. Diagonal Blue Trust
20. Estera Services (Bermuda) Limited/Ocorian Services (Bermuda) Limited
21. Fidinc Trust
22. Flat Creek Fiduciary Management LLC
23. Flat Creek Purpose Trust
24. Frontier Directed Fiduciary Services LLC
25. Gorey Trust
26. Glebe Trust II
27. Hagen Trust Company Limited
28. Halm Trust
29. Heatheridge Trust Company Limited

30. Hercules Trust
31. Hermance Schaepman
32. Highland Court Trust
33. Hillside Trust Company Limited
34. Ilene S. Lefcourt Trust 88
35. Ilene S. Lefcourt Trust 96
36. Ilene Sackler Lefcourt Revocable Trust
37. Indian Wells Trust
38. Inholmes Trust
39. ISL 2010 Family Trust
40. ISL 2011 Family Trust
41. ISL JML OSHA Trust
42. ISL LT Children's Trust
43. Jackson River Trust
44. Jeffrey A. Robins
45. JHSS 2010 Trust
46. JHSS 2013 Trust
47. JML 2010 Family Trust
48. JML 2011 Family Trust
49. JML Investment Trust
50. JML OSHA Trust
51. JML Pour-Over Trust
52. Joerg Fischer
53. Jonathan G. White

54. KAS 2010 Family Trust
55. KAS 2011 Family Trust
56. Kathe A. Sackler 2001 Trust
57. Kathe A. Sackler Trust 88
58. Kathe A. Sackler Trust 96
59. Kerry J. Sulkowicz
60. KLT 2010 Family Trust
61. KLT 2011 Family Trust
62. KLT Pour-Over Trust
63. La Coupe Trust
64. La Digue Limited
65. Leslie J. Schreyer
66. LSRR Family Trust
67. Lune River Trust
68. May Trust
69. Maydean Trust Company Limited
70. MDAS 2010 Family Trust
71. MDAS 2011 Family Trust
72. MDAS 2012 Children's Trust
73. MDAS Investment Trust
74. Michael D. Sackler 1992 Trust
75. Michael D. Sackler 2002 Trust
76. Michael D. Sackler 2006 Trust
77. MDS Beacon 2010 Trust

78. MDS Beacon 2011 Trust
79. MDS Beacon 2012 Trust
80. MDS Beacon 2013 Trust
81. MDS Family Trust
82. Medichem Trust
83. Meerkat Trust
84. Memphis Pharma Trust
85. MIL Trust
86. Millborne Trust Company Limited
87. Millennium Trust
88. Milton Trust
89. Mondai Trust
90. Mordas Consolidated Purpose Trust
91. Mordas Trust Company Limited
92. Mortimer DA Sackler Trust 1996
93. Mortimer DA Sackler Trust 2002
94. Morvetta Trust
95. MTS 2002 Trust
96. MTS 2006 Trust
97. MTS 2013 Family Trust
98. MTS 2016 Trust
99. MTS Bare Trust
100. MTS Beacon 2010 Trust
101. MTS Beacon 2011 Trust

102. MTS Beacon 2012 Trust
103. MTS Beacon 2013 Trust
104. MTS Beacon 2014 Trust
105. MTS Beacon 2015 Trust
106. MTS Family Trust
107. MTS Trust 2006
108. Mundi Lab Trust
109. Nixie Trust
110. PALP Trust
111. Perelle Bay Trust
112. Peter M. Ward (and the estate of Peter M. Ward)
113. Pickering Trust
114. Racine Trust
115. Reserve Trust
116. Romas Trust 2002
117. Rosetta Trust
118. Sandiway Trust Company Limited
119. Samantha Hunt 1996 Trust
120. Samantha S. Hunt 2002 Trust
121. SASS 2010 Trust
122. SASS 2013 Trust
123. SDS 1992 Trust
124. SDS 2002 Trust
125. SDS 2006 Trust

126. SDS Bare Trust
127. SDS Beacon 2011 Trust
128. SDS Beacon 2012 Trust
129. SDS Beacon 2014 Trust
130. SDS Family Trust
131. Sheffield Trust
132. Silver Trust
133. Soft River Fiduciary Management LLC
134. Soft River Purpose Trust
135. Stone Trust
136. Stone Fiduciary Management Inc.
137. SS Tanager Trust
138. SSSH 2013 Family Trust
139. SSSH Beacon 2013 Trust
140. Stuart D. Baker
141. Taddeo Fiduciary Management Inc.
142. Taddeo Purpose Trust
143. Taddeo Trust
144. Tayleigh Trust Company Limited
145. Tenzin Trust Company Limited
146. TES Bare Trust
147. TES Beacon 2012 Trust
148. TES Beacon 2013 Trust
149. TES Beacon 2014 Trust

150. Themar Consolidated Purpose Trust
151. Themar Trust Company Limited
152. Theresa E. Sackler 1988 Trust
153. Theresa E. Sackler 2008 Trust
154. Tom & Kelly Trust
155. Trust under Agreement dated the 11th day of May 2005
156. Trust under Agreement dated the 13th day of March 2009
157. Trust Under Declaration dated April 11, 2002
158. Trust Under Declaration of Trust No. 1 dated November 25, 1996
159. Trust Under Declaration of Trust No. 2 dated November 25, 1996
160. Trust under Settlement dated 14 September 1998
161. Trust under Settlement dated 16 September 1998
162. Trust under Settlement dated 19 December 2000
163. Varus Trust
164. The assets, businesses and entities owned by the above.

**Purdue Parent Entities**

1. Banela Corporation
2. Beacon Company
3. BR Holdings Associates Inc.
4. BR Holdings Associates L.P.



5. Heatheridge Trust Company Limited, as Trustee under Settlement dated 31 December 1993 F.B.O. the issue of Mortimer D. Sackler M.D., Theresa E. Sackler and certain charitable objects
6. Millborne Trust Company Limited, as Trustee of the Hercules Trust under Declaration of Trust dated 2 March 1999 F.B.O. Theresa E. Sackler, the issue of Mortimer D. Sackler, M.D. and certain charitable objects
7. Pharmaceutical Research Associates L.P. (formerly Purdue Holdings L.P.)
8. PLP Associates Holdings Inc.
9. PLP Associates Holdings L.P.
10. Stanhope Gate Corp.
11. The assets, businesses and entities owned by the above (excluding the Debtors).

**II-Way Entities**<sup>2</sup>

1. Accardi B.V.
2. Accardi S.à.r.l.
3. Alfa Generics B.V.
4. Arsago B.V.
5. Bard Pharmaceuticals (1990) Inc.
6. Bard Pharmaceuticals Limited

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<sup>2</sup> A II-way entity is an entity directly or indirectly owned by persons or trusts associated with both the Raymond Sackler family and the Mortimer Sackler family, with equal interests associated with each family.

7. Bermag Limited
8. Boetti Corporation
9. Boldini Corporation
10. Bradenton Products B.V.
11. Bulla S.à.r.l.
12. Clinical Designs Limited
13. Clovio Corporation
14. E.R.G. Realty, Inc.
15. Elvium Life Sciences GP Inc.
16. Elvium Life Sciences Limited Partnership
17. Elvium ULC
18. Euro-Celtique S.A.
19. Evening Star Services Limited
20. Filti S.à.r.l.
21. Flira S.à.r.l.
22. Hayez Corporation
23. Ind S.à.r.l.
24. Ireys S.à.r.l.
25. Krugmann GmbH
26. Ladenburg B.V.
27. Lake Claire Investments Limited
28. L.P. Clover Limited
29. Lucien Holdings S.à.r.l.
30. Lymit Holdings S.à.r.l.

31. Maltus Corporation
32. Marnine Holdings Pte. Limited
33. Martone Holdings Pte. Limited
34. Mexcus Corporation
35. MN Consulting LLC
36. MNP Consulting Limited
37. Mundibiopharma Limited
38. Mundichemie GmbH
39. Mundipharma (Argentina) S.r.l.
40. Mundipharma (China) Pharmaceutical Company Limited
41. Mundipharma (Colombia) S.A.S.
42. Mundipharma (Hong Kong) Limited
43. Mundipharma (Myanmar) Co., Limited
44. Mundipharma (Proprietary) Limited
45. Mundipharma (Shanghai) International Trade Company Limited
46. Mundipharma (Thailand) Limited
47. Mundipharma A.S.
48. Mundipharma A/S
49. Mundipharma AB
50. Mundipharma AG
51. Mundipharma B.V.
52. Mundipharma Biologics GmbH
53. Mundipharma Biologics Inc.

54. Mundipharma Bradenton B.V.
55. Mundipharma Brasil Productos Médicos e Farmacêuticos Ltda.
56. Mundipharma BV
57. Mundipharma Company
58. Mundipharma Corporation (Ireland) Limited
59. Mundipharma Corporation Limited
60. Mundipharma DC B.V.
61. Mundipharma de Mexico, S. de R.L. de C.V.
62. Mundipharma Deutschland GmbH & Co. KG
63. Mundipharma Development Pte. Limited
64. Mundipharma Distribution GmbH
65. Mundipharma Distribution Limited
66. Mundipharma EDO GmbH
67. Mundipharma Egypt LLC
68. Mundipharma Farmaceutica LDA.
69. Mundipharma FZ-LLC
70. Mundipharma GesmbH
71. Mundipharma GmbH
72. Mundipharma Healthcare Corporation
73. Mundipharma Healthcare LLC
74. Mundipharma Healthcare Pte. Limited
75. Mundipharma Healthcare Pty. Limited
76. Mundipharma Holding AG
77. Mundipharma International Services GmbH

78. Mundipharma International Services Limited
79. Mundipharma International Services S.ar.l.
80. Mundipharma International Corporation Limited
81. Mundipharma International Holdings Limited
82. Mundipharma International Limited
83. Mundipharma International Technical Operations Limited
84. Mundipharma IT GmbH
85. Mundipharma IT Services GmbH
86. Mundipharma IT Services Inc.
87. Mundipharma IT Services Limited
88. Mundipharma IT Services Pte. Limited
89. Mundipharma Kabushiki Kaishe
90. Mundipharma Korea Limited
91. Mundipharma Laboratories GmbH
92. Mundipharma Laboratories Limited
93. Mundipharma LATAM GmbH
94. Mundipharma Limited
95. Mundipharma Ltd.
96. Mundipharma Management S.ar.l.
97. Mundipharma Manufacturing Pte. Limited
98. Mundipharma MEA GmbH
99. Mundipharma Medical CEE GmbH
100. Mundipharma Medical Company
101. Mundipharma Medical Company Limited

102. Mundipharma Medical GmbH
103. Mundipharma Medical S.ar.l.
104. Mundipharma Middle East FZ-LLC
105. Mundipharma Near East GmbH
106. Mundipharma New Zealand Limited
107. Mundipharma Oncology Pty. Limited
108. Mundipharma Ophthalmology Corporation Limited
109. Mundipharma Ophthalmology Products Limited
110. Mundipharma Oy
111. Mundipharma Pharmaceutical Company
112. Mundipharma Pharmaceuticals (Chile) Limitada
113. Mundipharma Pharmaceuticals Argentina S.r.l.
114. Mundipharma Pharmaceuticals B.V.
115. Mundipharma Pharmaceuticals Belgium BV
116. Mundipharma Pharmaceuticals Inc.
117. Mundipharma Pharmaceuticals Industry and Trade Limited
118. Mundipharma Pharmaceuticals Limited
119. Mundipharma Pharmaceuticals Private Limited
120. Mundipharma Pharmaceuticals S.L.
121. Mundipharma Pharmaceuticals S.r.l.
122. Mundipharma Pharmaceuticals Sdn. Bhd.
123. Mundipharma Polska SP. Z.O.O.
124. Mundipharma Pte Limited

125. Mundipharma Pty Limited
126. Mundipharma Research Company Limited
127. Mundipharma Research GmbH & Co. KG
128. Mundipharma Research Limited
129. Mundipharma Research Verwaltungs GmbH
130. Mundipharma SAS
131. Scientific Office of Mundipharma MEA GmbH
132. Mundipharma Singapore Holding Pte. Limited
133. Mundipharma TK
134. Mundipharma Verwaltungsgesellschaft mbH
135. Napp Laboratories Limited
136. Napp Pension Trustees Limited
137. Napp Pharmaceutical Group Limited
138. Napp Pharmaceutical Holdings Limited
139. Napp Pharmaceuticals Limited
140. Napp Research Centre Limited
141. Nitid S.à.r.l.
142. Nontag S.à.r.l.
143. One Stamford Realty L.P.
144. Paineurope Limited
145. Par-La-Ville Properties Limited
146. Porthos S.à.r.l.
147. PT. Mundipharma Healthcare Indonesia
148. Purdue BioPharma Inc.

149. Purdue BioPharma L.P.
150. Purdue Frederick Inc.
151. Purdue Pharma Inc. (Canadian Company)
152. Purdue Pharma Technologies Inc.
153. Mundipharma ANZ Pty. Limited
154. Purdue Pharma ULC
155. Qdem Pharmaceuticals Limited
156. Rafa Laboratories Ltd.
157. Sofy S.à.r.l.
158. Songol S.à.r.l.
159. Sonti S.à.r.l.
160. Tacca B.V.
161. Taiwan Mundipharma Pharmaceuticals Limited
162. Technical Scientific Office of Mundipharma Near East GmbH
163. Tenna B.V.
164. The Napp Educational Foundation
165. The Representative Office of Mundipharma Pharmaceuticals Pte Limited in Ho Chi Minh City
166. Vaccaro B.V.
167. Venusti B.V.
168. Win—Healthcare Private Ltd.
169. Win—Medicare Private Ltd.
170. Wuhu Haitong Kanghong Pharmaceutical Trading Co. Ltd.



171. The assets, businesses and entities owned by the above.

**CERTAIN B-SIDE RELEASED PARTIES**

<b>Certain Shareholder Released Parties</b>	
<b>Shareholder Released Party</b>	<b>Relationship to Proceedings</b>
Raymond R. Sackler/ Estate of Raymond R. Sackler	Family member; trust beneficiary; current and/or former director, manager and/or officer of II-way entity <sup>1</sup> in Purdue Pharma L.P. chain of ownership; current and/or former trustee
Beverly Sackler/Estate of Beverly Sackler	Family member; trust beneficiary; executor of estate; current and/or former director, manager and/or officer of II-way entity in Purdue Pharma L.P. chain of ownership; current and/or former trustee
Jonathan D. Sackler/ Estate of Jonathan D. Sackler	Family member; trust beneficiary; executor of estate; current and/or former director, manager and/or officer of II-way entity in Purdue Pharma

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<sup>1</sup> A II-way entity is an entity directly or indirectly owned by persons or trusts associated with both the Raymond Sackler family (the “RRS Family”) and the Mortimer Sackler family (the “MDS Family”), with equal interests associated with each family.

	L.P. chain of ownership; current and/or former director, manager and/or officer of RRS I-way <sup>2</sup> entity in Purdue Pharma L.P. chain of ownership; current and/or former director, manager and/or officer of trust company; current and/or former trustee
Richard S. Sackler, M.D.	Family member; trust beneficiary; executor of estate; current and/or former director, manager and/or officer of II-way entity in Purdue Pharma L.P. chain of ownership; current and/or former director, manager and/or officer of RRS I-way entity in Purdue Pharma L.P. chain of ownership; current and/or former director, manager and/or officer of trust company; current and/or former trustee

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<sup>2</sup> A I-way entity is an entity directly or indirectly owned by persons or trusts associated solely with either the RRS Family or the MDS Family.

Beth Cohen (formerly Sackler)	Family member; trust beneficiary; current and/or former trustee
David A. Sackler	Family member; trust beneficiary; current and/or former director, manager and/or officer of II-way entity in Purdue Pharma L.P. chain of ownership; current and/or former director, manager and/or officer of trust company; current and/or former trustee
Children of David Sackler	Family members; trust beneficiaries
Jaseleen Ruggles	Family member
Marianna Sackler Frame	Family member; trust beneficiary
Children of Marianna Sackler Frame	Family members; trust beneficiaries
James Frame	Family member
Rebecca Sackler	Family member; trust beneficiary; current and/or former trustee
Jeffrey Selikoff	Family member; trust beneficiary; current and/or former trustee
Mary Corson	Family member; trust beneficiary; current and/or

	or former director, manager and/or officer of trust company; current and/ or former trustee
Madeleine Sackler	Family member; trust beneficiary
Clare E. Sackler	Family member; trust beneficiary
Children of Clare E. Sackler	Family members; trust beneficiaries
Miles R.C.	Sackler Family member; trust beneficiary
Garrett Lynam	Executor of estate; current and/or former director, manager and/or officer of trust company; current and/or former trustee; employee of RRS Family I-way entity
Stuart D. Baker	Current and/or former director, manager and/or officer of II-way entity in Purdue Pharma L.P. chain of ownership; current and/or former director, manager and/or officer of trust company; current and/or former trustee
Anthony M. Roncalli	Current and/or former director, manager and/or

	officer of II-way entity in Purdue Pharma L.P. chain of ownership; current and/or former director, manager and/or officer of trust company; current and/or former trustee
Philip C. Strassburger	Current and/or former director, manager and/or officer of II-way entity in Purdue Pharma L.P. chain of ownership
Edward B. Mahony	Current and/or former director, manager and/or officer of II-way entity in Purdue Pharma L.P. chain of ownership
Peter Boer	Current and/or former director, manager and/or officer of II-way entity in Purdue Pharma L.P. chain of ownership
Paulo Costa	Current and/or former director, manager and/or officer of II-way entity in Purdue Pharma L.P. chain of ownership
Ralph Snyderman	Current and/or former director, manager and/or officer of II-way entity in

	Purdue Pharma L.P. chain of ownership
William Loomis	Current and/or former director, manager and/or officer of II-way entity in Purdue Pharma L.P. chain of ownership
Stephen A. Ives	Current and/or former director, manager and/or officer of RRS I-way entity in Purdue Pharma L.P. chain of ownership; current and/or former director, manager and/or officer of trust company; current and/or former trustee; employee of RRS Family I-way entity
Leslie J. Schreyer	Current and/or former director, manager and/or officer of RRS I-way entity in Purdue Pharma L.P. chain of ownership; current and/or former director, manager and/or officer of trust company; current and/or former trustee
Danny Parks	Current and/or former director, manager and/or officer of RRS I-way entity in Purdue Pharma L.P. chain of ownership;

	employee of RRS Family I-way entity
Jeffrey A. Robins	Current and/or former director, manager and/or officer of trust company; current and/or former trustee
Beatriz V. Iriondo/ Betty Andrikopoulos	Current and/or former director, manager and/or officer of trust company Christopher Reimer Current and/or former director, manager and/or officer of trust company
Jared Giddens	Current and/or former director, manager and/or officer of trust company; current and/or former trustee
Stephen L. Schreiner	Current and/or former director, manager and/or officer of trust company; current and/or former trustee
Frank S. Vellucci	Employee of RRS Family I-way entity
Rory Held	Employee of RRS Family I-way entity
BRJ Fiduciary Management LLC	Current and/or former trustee



Cedar Cliff Fiduciary Management Inc.	Current and/or former trustee
Cornice Fiduciary Management LLC	Current and/or former trustee
Crystal Fiduciary Company LLC	Current and/or former trustee
Data LLC	Current and/or former trustee
MCM Fiduciary Management LLC	Current and/or former trustee
North Bay Trust Company Inc.	Current and/or former trustee
Brian Olson	Current and/or former director, manager and/or officer of trust company; current and/or former trustee; employee of RRS Family I-way entity
Elizabeth A. Whalen	Current and/or former trustee
Lauren D. Kelly	Current and/or former director, manager and/or officer of trust company; current and/or former trustee
John N. Irwin III	Current and/or former director, manager and/or officer of trust company; current and/or former trustee

John Wilcox/Estate of John Wilcox	Current and/or former trustee
Michael Kassen	Current and/or former director, manager and/or officer of trust company; current and/or former trustee
Peter M. Ward/Estate of Peter M. Ward	Current and/or former trustee
Ruth Edelson	Current and/or former trustee
Susan C. Frunzi	Current and/or former trustee
Thomas A. Russo	Current and/or former director, manager and/or officer of trust company; current and/or former trustee
Janet Pomerantz	Current and/or former trustee
Alex Troy	Current and/or former trustee
Josephine Hoh	Trust beneficiary
Scott Bulua	Family member
Molly B. Johnson	Family member
Trust U/A 11/5/74 fbo Beverly Sackler	RRS Family trust indirectly owning Purdue

Raymond R. Sackler Trust 1 dtd 12/23/89	RRS Family trust indirectly owning Purdue
Raymond R. Sackler Trust 1B dtd 12/23/89	RRS Family trust indirectly owning Purdue
Raymond R. Sackler Trust 2 dtd 12/23/89	RRS Family trust indirectly owning Purdue
Raymond R. Sackler Trust 2B dtd 12/23/89	RRS Family trust indirectly owning Purdue
Trust B U/A 11/5/74 fbo Beverly Sackler	RRS Family trust
The 1974 Irrevocable Investment Trust	RRS Family trust
1974 Irrevocable Trust fbo BS and RSS	RRS Family trust
1974 Irrevocable Trust fbo BS and JDS	RRS Family trust
AR Irrevocable Trust	RRS Family trust
AJ Irrevocable Trust	RRS Family trust
Irrevocable Trust under Declaration dated as of September 19, 1995 f/b/o Issue of Jonathan D. Sackler	RRS Family trust
Irrevocable Trust under Declaration dated as of September 19, 1995 f/b/o Issue of Richard S. Sackler	RRS Family trust

Beverly Sackler Trust 1 f/b/o David Alex Sackler 12/20/1989	RRS Family trust
Beverly Sackler Trust 1 f/b/o Marianna Rose Sackler 12/21/1989	RRS Family trust
Beverly Sackler Trust 1 f/b/o Rebecca Kate Sack- ler 12/22/1989	RRS Family trust
Beverly Sackler Trust 2 f/b/o David Alex Sackler 12/20/1989	RRS Family trust
Beverly Sackler Trust 2 f/b/o Marianna Rose Sackler 12/21/1989	RRS Family trust
Beverly Sackler Trust 2 f/b/o Rebecca Kate Sack- ler 12/22/1989	RRS Family trust
Beverly Sackler Trust 3 f/b/o David Alex Sackler 12/20/1989	RRS Family trust
Beverly Sackler Trust 3 f/b/o Marianna Rose Sackler 12/21/1989	RRS Family trust
Beverly Sackler Trust 3 f/b/o Rebecca Kate Sack- ler 12/22/1989	RRS Family trust
Beverly Sackler Trust 1 f/b/o Madeleine Sackler 12/26/1989	RRS Family trust

Beverly Sackler Trust 1 f/b/o Clare Elizabeth Sackler 12/27/1989	RRS Family trust
Beverly Sackler Trust 1 f/b/o Miles Raymond Sackler 12/29/1989	RRS Family trust
Beverly Sackler Trust 2 f/b/o Madeleine Sackler 12/26/1989	RRS Family trust
Beverly Sackler Trust 2 f/b/o Clare Elizabeth Sackler 12/27/1989	RRS Family trust
Beverly Sackler Trust 2 f/b/o Miles Raymond Sackler 12/30/1989	RRS Family trust
Beverly Sackler Trust 3 f/b/o Madeleine Sackler 12/26/1989	RRS Family trust
Beverly Sackler Trust 3 f/b/o Clare Elizabeth Sackler 12/27/1989	RRS Family trust
Beverly Sackler Trust 3 f/b/o Miles Raymond Sackler 12/28/1989	RRS Family trust
David A. Sackler 2012 Trust	RRS Family trust
Marianna R. Sackler 2012 Trust	RRS Family trust

Rebecca K. Sackler 2012 Trust	RRS Family trust
Madeleine Sackler 2012 Trust	RRS Family trust
Clare E. Sackler 2012 Trust	RRS Family trust
Miles R.C. Sackler 2012 Trust	RRS Family trust
Irrevocable Trust under Declaration dated as of April 25, 1991	RRS Family trust
Trust under Declaration of Trust dated August 23, 1988 f/b/o Richard S. Sackler and Issue of Richard S. Sackler	RRS Family trust
Trust under Declaration of Trust dated December 17, 1991 f/b/o Richard S. Sackler and Issue of Richard S. Sackler	RRS Family trust
Trust under Declaration of Trust dated August 23, 1988 f/b/o Jonathan D. Sackler and Issue of Jonathan D. Sackler	RRS Family trust
Trust under Declaration of Trust dated December 17, 1991 f/b/o Jonathan D.	RRS Family trust

Sackler and Issue of Jonathan D. Sackler	
Trust under agreement dated December 3, 1979 f/b/o Richard S. Sackler	RRS Family trust
Trust under agreement dated December 3, 1979 f/b/o Jonathan D. Sackler	RRS Family trust
Trust under agreement dated June 16, 1980 f/b/o Richard S. Sackler	RRS Family trust
Trust under agreement dated June 16, 1980 f/b/o Jonathan D. Sackler	RRS Family trust
Trust under agreement dated December 23, 1980 f/b/o Richard S. Sackler	RRS Family trust
Trust under agreement dated December 23, 1980 f/b/o Jonathan D. Sackler	RRS Family trust
Beth B. Sackler Trust	RRS Family trust
Beth Sackler 2013 Trust	RRS Family trust
Mary Corson Trust	RRS Family trust
Trust Agreement dated August 29, 2003 f/b/o Issue of Richard S. Sackler	RRS Family trust
Trust Agreement dated August 29, 2003 f/b/o	RRS Family trust

Mary Corson and Issue of Jonathan D. Sackler	
Irrevocable Trust under Declaration dated as of August 25, 1992	RRS Family trust
Irrevocable Trust under Declaration dated as of December 29, 1992	RRS Family trust
Richard S. Sackler Life Insurance Trust RRS Family trust Jonathan D. Sackler Life Insurance Trust	RRS Family trust
Richard S. Sackler Trust U/A 9/30/04 RRS Family trust Jonathan D. Sackler Trust U/A 9/30/04 RRS Family trust Hudson Trust	RRS Family trust
Richard S. Sackler Trust f/b/o David A. Sackler 3/8/90	RRS Family trust
Richard S. Sackler Trust f/b/o Marianna R. Sackler 3/8/90	RRS Family trust
Richard S. Sackler Trust f/b/o Rebecca K. Sackler 3/8/90	RRS Family trust



Jonathan D. Sackler Trust f/b/o Clare Elizabeth Sackler 4/11/90	RRS Family trust
Jonathan D. Sackler Trust f/b/o Madeleine Sackler 4/11/90	RRS Family trust
Jonathan D. Sackler Trust f/b/o Miles Raymond Corson Sackler, 4/11/90	RRS Family trust
The RSS 2012 Family Trust	RRS Family trust
Marianna R. Sackler Captain Trust	RRS Family trust
Rebecca K. Sackler Captain Trust	RRS Family trust
RSS Fiduciary Management Trust	RRS Family trust
JDS Fiduciary Management Trust	RRS Family trust
Crystal Trust	RRS Family trust
MCM Fiduciary Management Trust	RRS Family trust
Data Trust	RRS Family trust
Cornice Trust	RRS Family trust
DABB Trust	RRS Family trust

Raymond R. Sackler Credit Shelter Trust u/a 3/29/2012	RRS Family trust
Raymond R. Sackler GST Exempt Marital Trust u/a 3/29/2012	RRS Family trust
Raymond R. Sackler Marital Trust u/a 3/29/2012	RRS Family trust
Beverly Sackler Revocable Trust u/a 3/29/12	RRS Family trust
RSS Revocable Pourover Trust	RRS Family trust
JDS Revocable Pourover Trust	RRS Family trust
Cedar Cliff Trust	RRS Family trust
Selikoff Family Investment Trust	RRS Family trust
1959 Irrevocable Trust	RRS Family trust (terminated)
1969 Irrevocable Trust	RRS Family trust (terminated)
FTA Trust	RRS Family trust (terminated)
1974 Revocable Trust	RRS Family trust (terminated)
RSS Pourover Trust	RRS Family trust (terminated)

JDS Pourover Trust	RRS Family trust (terminated)
RSS 2/2/98 Trust	RRS Family trust (terminated)
JDS 2/2/98 Trust	RRS Family trust (terminated)
RSS 1992 Insurance Trust	RRS Family trust (terminated)
JDS 1992 Insurance Trust	RRS Family trust (terminated)
The Richard S. Sackler Revocable Pourover Trust	RRS Family trust (terminated)
The Jonathan D. Sackler Revocable Pourover Trust dated 12/12/2010	RRS Family trust (terminated)
Moonstone Holdings LLC [DE]	RRS Family I-way entity in Purdue Pharma L.P. ownership chain
Linarite Holdings LLC [DE]	RRS Family I-way entity in Purdue Pharma L.P. ownership chain
Perthlite Holdings LLC [DE]	RRS Family I-way entity in Purdue Pharma L.P. ownership chain
Roselite Holdings LLC [DE]	RRS Family I-way entity in Purdue Pharma L.P. ownership chain

Rosebay Medical Company L.P. [DE]	RRS Family I-way entity in Purdue Pharma L.P. ownership chain
Rosebay Medical Company, Inc. [DE]	RRS Family I-way entity in Purdue Pharma L.P. ownership chain
BR Holdings Associates Inc. [NY]	II-way entity in Purdue Pharma L.P. ownership chain
BR Holdings Associates L.P. [DE]	II-way entity in Purdue Pharma L.P. ownership chain
PLP Associates Holdings Inc. [NY]	II-way entity in Purdue Pharma L.P. ownership chain
PLP Associates Holdings L.P. [DE]	II-way entity in Purdue Pharma L.P. ownership chain
Pharmaceutical Research Associates L.P. [DE]	II-way entity in Purdue Pharma L.P. ownership chain
Atlantic Laboratories Limited [Bermuda]	RRS Family I-way entity
B.L. Carrolton Limited [Bermuda]	RRS Family I-way entity
G.H. Carrell Limited [Bermuda]	RRS Family I-way entity
Laysan Limited [Bermuda]	RRS Family I-way entity

Mallard Limited [Bermuda]	RRS Family I-way entity
The Research Foundation Ltd. [Bermuda]	Foundation
Triangle Industries Ltd. [Bermuda]	RRS Family I-way entity
East Hudson Inc. [British Virgin Islands]	RRS Family I-way entity
East River Partners Ltd. [British Virgin Islands]	RRS Family I-way entity
Hobart Corporation [British Virgin Islands]	RRS Family I-way entity
Mauna Kea Limited [British Virgin Islands]	RRS Family I-way entity
Menlo Park Investors Inc. [British Virgin Islands]	RRS Family I-way entity
Meridian B.V.I. Limited [British Virgin Islands]	RRS Family I-way entity
Silk Crest Corp. [British Virgin Islands]	RRS Family I-way entity
Cheyenne Canada Limited Partnership [Canada]	RRS Family I-way entity
CPC Canada Corporation [Canada]	RRS Family I-way entity
CPC Canada Partnership 1 [Canada]	RRS Family I-way entity

CPC Canada Partnership 2 [Canada]	RRS Family I-way entity
The Raymond And Beverly Sackler Foundation [Canada]	Foundation
Boiling Bay S.à.r.l. [Luxembourg]	RRS Family I-way entity
Neji S.à.r.l. [Luxembourg]	RRS Family I-way entity
Nerula S.à.r.l. [Luxembourg]	RRS Family I-way entity
Aquebogue Holdings Corporation [Mauritius]	RRS Family I-way entity
Boiling Bay Corporation B.V. [Netherlands]	RRS Family I-way entity
The Raymond and Beverly Sackler Foundation [United Kingdom]	Foundation
The Raymond and Beverly Sackler 1988 Foundation [United Kingdom]	Foundation
1987 Fund LLC [DE]	RRS Family I-way entity
60 FPC Remainder (J) LLC [CT]	RRS Family I-way entity
60 FPC Residence (J) LLC [CT]	RRS Family I-way entity
95 Percent LLC [NY]	RRS Family I-way entity
1JM LLC [DE]	RRS Family I-way entity

2JM LLC [DE]	RRS Family I-way entity
3JM LLC [DE]	RRS Family I-way entity
A5 Atlas LLC [DE]	RRS Family I-way entity
Aim High Productions [DE]	RRS Family I-way entity
Akutan Bay LLC [AK]	RRS Family I-way entity
AJ Managed Holdings LLC [DE]	RRS Family I-way entity
Alexander Road Capital LLC [NY]	RRS Family I-way entity
Altaa LLC [DE]	RRS Family I-way entity
Alta Ridge, LLC [DE]	RRS Family I-way entity
Alta Ridge Capital LLC [DE]	RRS Family I-way entity
Alta Ridge Investments LLC [DE]	RRS Family I-way entity
Ankersea Limited Liability Company [DE]	RRS Family I-way entity
Antler LLC [DE]	RRS Family I-way entity
Azurite Holdings LLC [DE]	RRS Family I-way entity
Bapricot LLC [NY]	RRS Family I-way entity
Beryl Holdings LLC [DE]	RRS Family I-way entity
Berrybrook LLC [NY]	RRS Family I-way entity
BHPH LLC [DE]	RRS Family I-way entity

Boiling Bay Corporation [DE]	RRS Family I-way entity
Bowford Company [NY General Partnership]	RRS Family I-way entity
BRC Special Partners LLC [DE]	RRS Family I-way entity
Brook Holdings [NY General Partnership]	RRS Family I-way entity
BRJ Fiduciary Management LLC [WY]	RRS Family I-way entity
Calhoun Advisors LLC [DE]	RRS Family I-way entity
Camelot Hotel Holdings LLC [DE]	RRS Family I-way entity
Cap 1 LLC [DE]	RRS Family I-way entity
Cap 2 LLC [DE]	RRS Family I-way entity
Captain Leasing LLC [DE]	RRS Family I-way entity
Cedar Cliff Fiduciary Management Inc. [WY]	RRS Family I-way entity
CHBR LLC [DE]	RRS Family I-way entity
Cheviot LLC [DE]	RRS Family I-way entity
Cheyenne Energy Services LLC [OK]	RRS Family I-way entity
Cheyenne International Corporation [OK]	RRS Family I-way entity



Cheyenne Petroleum Company [NY Limited Partnership]	RRS Family I-way entity
Chez Ellie LLC [DE]	RRS Family I-way entity
China Sea Company, Inc. [DE]	RRS Family I-way entity
China Sea Company L.P. [DE Limited Partnership]	RRS Family I-way entity
Cornice Fiduciary Management LLC [WY]	RRS Family I-way entity
CPC 2001 LLC [DE]	RRS Family I-way entity
CPT 1A PE-AA LLC [DE]	RRS Family I-way entity
Crissaire Corporation [DE]	RRS Family I-way entity
Crystal Fiduciary Company LLC [WY]	RRS Family I-way entity
Curson Capital L.P. [CA]	RRS Family I-way entity
Curson Dev LLC [DE]	RRS Family I-way entity
CWC LLC [DE]	RRS Family I-way entity
DABB LLC [DE]	RRS Family I-way entity
Data LLC [WY]	RRS Family I-way entity
Deckstone International Company [CT General Partnership]	RRS Family I-way entity
DNKA LLC [DE]	RRS Family I-way entity

Dravite Holdings LLC [DE]	RRS Family I-way entity
Dolcedo LLC [DE]	RRS Family I-way entity
Elbanite Holdings LLC [DE]	RRS Family I-way entity
Exmoor Horn LLC [DE]	RRS Family I-way entity
Expert Philanthropy LLC [DE]	RRS Family I-way entity
Finnest Pharma LLC [DE]	RRS Family I-way entity
Foley Properties LLC [DE]	RRS Family I-way entity
G3A LLC [DE]	RRS Family I-way entity
G3D LLC [DE]	RRS Family I-way entity
G3R LLC [DE]	RRS Family I-way entity
GGM Company [DE General Partnership]	RRS Family I-way entity
Great Curve Films, LLC [DE]	RRS Family I-way entity
Golden Gun Capital, LLC [CA]	RRS Family I-way entity
Halesworth Corporation [DE]	RRS Family I-way entity
Haystacks Investments Partners LLC [DE]	RRS Family I-way entity
Haystacks Endure LLC [DE]	RRS Family I-way entity

HCRB LLC [NY]	RRS Family I-way entity
Hudson River (Delaware) Inc. [DE]	RRS Family I-way entity
Hudson River Partners [NY General Partnership]	RRS Family I-way entity
Inactive Holdings LLC [DE]	RRS Family I-way entity
Interrogation 2008 LLC [NY]	RRS Family I-way entity
Intrepidus Holdings LLC [DE]	RRS Family I-way entity
IS-BEP LLC [DE]	RRS Family I-way entity
JGT One LLC [DE]	RRS Family I-way entity
JGT Three LLC [DE]	RRS Family I-way entity
JGT Two LLC [DE]	RRS Family I-way entity
Jibwind Company [NY]	RRS Family I-way entity
JR Learning LLC [DE]	RRS Family I-way entity
JV Fuel LLC [DE]	RRS Family I-way entity
JWA Holdings LLC [DE]	RRS Family I-way entity
K-BEP LP [DE]	RRS Family I-way entity
K-BEP III L.P. [DE]	RRS Family I-way entity
K-Neptune LLC [DE]	RRS Family I-way entity
K-S Medical LLC [DE]	RRS Family I-way entity
K-SR Holdings LLC [DE]	RRS Family I-way entity

K-SR Performance LLC [DE]	RRS Family I-way entity
K-Ventures I LLC [DE]	RRS Family I-way entity
KB Managed Holdings LLC [DE] (Formerly Haystacks HH LLC)	RRS Family I-way entity
Kernite Holdings LLC [DE]	RRS Family I-way entity
Kokino Corporation [DE]	RRS Family I-way entity
Kokino LLC [DE]	RRS Family I-way entity
Kokino Maj Holdings LLC [DE]	RRS Family I-way entity
KRA Associates, Ltd. [CT General Partnership]	RRS Family I-way entity
KRA Associates, Ltd. [DE]	RRS Family I-way entity
Landings Financial Limited Liability Company [DE] RRS Family I-way entity LBV Non-Profit, Inc. [DE]	RRS Family I-way entity
LBV Inc. [DE] (Formerly Les Bouledogues Vignerones Inc.)	RRS Family I-way entity
Laramide LLC [DE]	RRS Family I-way entity
Level 4 Films LLC [NY]	RRS Family I-way entity
Lightship Company [NY General Partnership]	RRS Family I-way entity

Little Menlo LLC [DE]	RRS Family I-way entity
Llama Bay LLC [DE]	RRS Family I-way entity
Lodestone Limited Liability Company [DE]	RRS Family I-way entity
Longbrook Corporation [DE]	RRS Family I-way entity
M3C Holdings LLC [DE]	RRS Family I-way entity
MD60 LLC [DE]	RRS Family I-way entity
Meridian International, Ltd. [DE]	RRS Family I-way entity
MCM Fiduciary Management LLC [DE]	RRS Family I-way entity
Mill Shoals LLC [DE]	RRS Family I-way entity
Minimalist Project LLC [NY]	RRS Family I-way entity
MKL Haystacks Holdings LLC [DE]	RRS Family I-way entity
Moxietec LLC [DE]	RRS Family I-way entity
MXE LLC [DE]	RRS Family I-way entity
MXE Leasing, LLC [DE]	RRS Family I-way entity
NE SOL LLC [DE]	RRS Family I-way entity
Newhall & Company, Ltd. [DE]	RRS Family I-way entity
North Bay Associates [DE General Partnership]	RRS Family I-way entity

North Bay Eagle LLC [DE]	RRS Family I-way entity
North Bay Trust Company Inc. [OK]	RRS Family I-way entity
OG Film LLC [NY]	RRS Family I-way entity
OG Picture Inc. [NY]	RRS Family I-way entity
Orchids LLC [DE]	RRS Family I-way entity
Orcus Corporation [DE]	RRS Family I-way entity
Otavite Holdings LLC [DE]	RRS Family I-way entity
Pacific Partners Company [NY]	RRS Family I-way entity
Paloma Partners L.P. [DE]	RRS Family I-way entity
Park View Properties L.L.C. [DE]	RRS Family I-way entity
PBC - AC [NY General Partnership]	RRS Family I-way entity
PBC - ABS [NY General Partnership]	RRS Family I-way entity
PBC - ABSJS [DE General Partnership]	RRS Family I-way entity
PBC-ALF [NY General Partnership]	RRS Family I-way entity
PBC - Alternative Investments [NY General Partnership]	RRS Family I-way entity

PBC - Bear Stearns Healthcare Value Partners [NY General Partnership]	RRS Family I-way entity
PBC - Brook Holdings [NY General Partnership]	RRS Family I-way entity
PBC - BSM [NY General Partnership]	RRS Family I-way entity
PBC - Centaur [NY General Partnership]	RRS Family I-way entity
PBC - Glenhill Capital [NY General Partnership]	RRS Family I-way entity
PBC - GCLP [NY General Partnership]	RRS Family I-way entity
PBC - Lone Cascade [NY General Partnership]	RRS Family I-way entity
PBC - LP [NY General Partnership]	RRS Family I-way entity
PBC - LR [NY General Partnership]	RRS Family I-way entity
PBC - Marathon Structured Finance Fund [NY General Partnership]	RRS Family I-way entity
PBC - PP [NY General Partnership]	RRS Family I-way entity

PBC – R Domestic Fund [NY General Partnership]	RRS Family I-way entity
PBC-RLCP [NY General Partnership]	RRS Family I-way entity
PBC - Seneca Capital [NY General Partnership]	RRS Family I-way entity
PBC - Silver Point Capital Fund [NY General Partnership]	RRS Family I-way entity
PBC - Swiftcurrent Partners [NY General Partnership]	RRS Family I-way entity
PBC - Visium Balanced Fund [NY General Partnership]	RRS Family I-way entity
Piton Capital Management LLC [DE]	RRS Family I-way entity
Piton Capital Partners LLC [DE]	RRS Family I-way entity
Poco Bay Company [DE General Partnership]	RRS Family I-way entity
Poco Bay Realty LLC [DE]	RRS Family I-way entity
Poco Yield LLC [DE]	RRS Family I-way entity
PSART LLC [DE]	RRS Family I-way entity
QBEC LLC [DE]	RRS Family I-way entity



R Napp Holdings LLC [DE]	RRS Family I-way entity
Radstock Corporation [DE]	RRS Family I-way entity
RAR Investments LLC [DE]	RRS Family I-way entity
Raylodie LLC [NY]	RRS Family I-way entity
Raymond and Beverly Sackler Foundation, Inc. [NY]	Trust beneficiary; foundation
Raymond and Beverly Sackler Fund for the Arts and Sciences [DE] (Non-Profit)	Trust beneficiary; foundation
RBMC Holdings LLC [DE]	RRS Family I-way entity
RBS Institute LLC [DE]	RRS Family I-way entity
Rees Holdings LLC [NY]	RRS Family I-way entity
Refocus Foundation Inc. [DE]	Foundation
RLC Affiliates LLC [DE]	RRS Family I-way entity
RLC Affiliates [NY General Partnership]	RRS Family I-way entity
RGT One LLC [DE]	RRS Family I-way entity
RGT Three LLC [DE]	RRS Family I-way entity
RGT Two LLC [DE]	RRS Family I-way entity

Richard Sackler Family Foundation, Inc. [DE]	Foundation
Riverside Seven LLC [DE]	RRS Family I-way entity
Riviera Outlook LLC [DE]	RRS Family I-way entity
RJ Dan LLC [DE]	RRS Family I-way entity
Rockpoint Land LLC [CT]	RRS Family I-way entity
Rockpoint Residence LLC [CT]	RRS Family I-way entity
Rosebay Medical Company LLC [DE]	RRS Family I-way entity
RSHRS LLC [DE]	RRS Family I-way entity
Runham Corporation [DE]	RRS Family I-way entity
RWA Holdings LLC [DE]	RRS Family I-way entity
Sarbonne LLC [DE]	RRS Family I-way entity
Seabright Partners [DE] General Partnership]	RRS Family I-way entity
Seadog Partners [DE] General Partnership]	RRS Family I-way entity
SFP Holdings LLC [DE]	RRS Family I-way entity
Smoking LLC [DE]	RRS Family I-way entity
SO 32 Mack LLC [DE]	RRS Family I-way entity
SO-BFR LLC [DE]	RRS Family I-way entity

SO-CCS LLC [DE]	RRS Family I-way entity
SO-CSH LLC [DE]	RRS Family I-way entity
SO-ESH LLC [DE]	RRS Family I-way entity
SO-MSS LLC [DE]	RRS Family I-way entity
SO-SHSH LLC [DE]	RRS Family I-way entity
SO-WSH LLC [DE]	RRS Family I-way entity
SO-WSR LLC [DE]	RRS Family I-way entity
Solar SO Ware LLC [DE]	RRS Family I-way entity
Solar SO Wotton LLC [DE]	RRS Family I-way entity
Somac LLC [DE]	RRS Family I-way entity
Southern Alta LLC [DE]	RRS Family I-way entity
SR-GA RE LLC [DE]	RRS Family I-way entity
SR VC TP LLC [DE]	RRS Family I-way entity
SRMS LLC [DE]	RRS Family I-way entity
Standard Pharmaceuticals Corporation [DE]	RRS Family I-way entity
Stibnite Holdings LLC [DE]	RRS Family I-way entity
St. Lawrence Associates [NY General Partnership]	RRS Family I-way entity
Summer Road LLC [DE]	RRS Family I-way entity
Superior View L.L.C. [DE]	RRS Family I-way entity

Swipe Right LLC [DE]	RRS Family I-way entity
Tacitus Therapeutics Inc. [DE]	RRS Family I-way entity
The Bouncer Foundation, Inc. [DE]	Foundation
The Lottery, LLC [DE]	RRS Family I-way entity
The Neuroendocrine Tumor Research Foundation [DE] (Non-Profit)	Foundation
Temagami LLC [DE]	RRS Family I-way entity
TPART LLC [DE]	RRS Family I-way entity
Tradewind Company [NY General Partnership]	RRS Family I-way entity
Tremolite Holdings LLC [DE]	RRS Family I-way entity
TQD 1 LLC [DE]	RRS Family I-way entity
TQD 2 LLC [DE]	RRS Family I-way entity
Tract SRMS LLC [DE]	RRS Family I-way entity
Triangle Holding LLC [DE]	RRS Family I-way entity
Tukiewings LLC [DE]	RRS Family I-way entity
Twin Springs Holdings [NY General Partnership]	RRS Family I-way entity
UNCH Corp. [DE]	RRS Family I-way entity
UNCHADA LLC [DE]	RRS Family I-way entity

Unstable Elements LLC [DE]	RRS Family I-way entity
Valdiva Films LLC [DEII]	RRS Family I-way entity
Verto Institute LLC [DE]	RRS Family I-way entity
VLS LLC [DE]	RRS Family I-way entity
WA Canada L.P. [DE]	RRS Family I-way entity
Wasatch LLC [DE]	RRS Family I-way entity
Westward Home LLC [DE]	RRS Family I-way entity
Whilton Corporation [DE]	RRS Family I-way entity
WP Leasing LLC [DE]	RRS Family I-way entity
Yamashiro Development LLC [DE]	RRS Family I-way entity
Mundipharma (Argentina) S.r.l. [Argentina]	II-way entity
Mundipharma Pharmaceuticals Argentina S.r.l. [Argentina]* <sup>3</sup>	II-way entity
Mundipharma ANZ Pty. Limited [Australia]	II-way entity

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<sup>3</sup> Persons designated with “\*” are IACs, as defined in this Agreement.

Mundipharma Healthcare Pty. Limited [Australia] *	II-way entity
Mundipharma Oncology Pty. Limited [Australia] *	II-way entity
Mundipharma Pty Limited [Australia] *	II-way entity
Mundipharma GesmbH [Austria] *	II-way entity
Mundipharma Medical CEE GmbH [Austria]*	II-way entity
Bangladesh Beauty Products Private Limited [Bangladesh]	II-way entity
Mundipharma Bangladesh Private Limited [Bangladesh]	II-way entity
Mundipharma Trading Bangladesh Private Limited [Bangladesh]	II-way entity
Mundipharma BV [Belgium]*	II-way entity
Mundipharma Pharmaceuticals Belgium BV [Belgium]*	II-way entity
Bermag Limited [Bermuda]*	II-way entity
L.P. Clover Limited [Bermuda]*	II-way entity

MN Consulting LLC [Bermuda]	II-way entity
MNB Company [Ber- muda]	II-way entity
Mundipharma Company [Bermuda]	II-way entity
Mundipharma Interna- tional Corporation Lim- ited [Bermuda]*	II-way entity
Mundipharma Interna- tional Holdings Limited [Bermuda]*	II-way entity
Mundipharma Interna- tional Limited [Ber- muda]*	II-way entity
Mundipharma Laborato- ries Limited [Bermuda]*	II-way entity
Mundipharma Limited [Bermuda]*	II-way entity
Mundipharma Medical Company [Bermuda]*	II-way entity
Mundipharma Ophthal- mology Corporation Lim- ited [Bermuda]*	II-way entity
Mundipharma Ophthal- mology Products Limited [Bermuda]*	II-way entity

Mundipharma Pharmaceutical Company [Bermuda]	II-way entity
Mundipharma Research Company Limited [Bermuda]	II-way entity
Par-La-Ville Properties Limited [Bermuda]	II-way entity
SICO Ltd. [Bermuda]	II-way entity
Transworld Pharma Limited [Bermuda]	II-way entity
Mundipharma Brasil Productos Médicos e Farmacêuticos Ltda. [Brazil]*	II-way entity
Boetti Corporation [British Virgin Islands]	II-way entity
Boldini Corporation [British Virgin Islands]	II-way entity
Clovio Corporation [British Virgin Islands]	II-way entity
Evening Star Services Limited [British Virgin Islands]	II-way entity
Hayez Corporation [British Virgin Islands]	II-way entity
IAF Limited [British Virgin Islands]*	II-way entity



Lake Claire Investments Limited [British Virgin Islands]	II-way entity
Maltus Corporation [British Virgin Islands]	II-way entity
Mexcus Corporation [British Virgin Islands]	II-way entity
Mundipharma GesmbH (Bulgarian branch of Austrian company) [Bulgaria]	II-way entity
Mundipharma Medical S.ar.l. (Bulgaria Branch of Swiss company) [Bulgaria]*	II-way entity
Bard Pharmaceuticals (1990) Inc. [Canada]*	II-way entity
Elvium Life Sciences GP Inc. [Canada]*	II-way entity
Elvium Life Sciences Limited Partnership [Canada]*	II-way entity
Elvium ULC [Canada]*	II-way entity
Mundipharma International (Canada) Inc. [Canada]*	II-way entity
Purdue Frederick Inc. [Canada]*	II-way entity

Purdue Pharma [Canada]*	II-way entity
Purdue Pharma Inc. [Canada]*	II-way entity
Purdue Pharma ULC [Canada]	II-way entity
Mundipharma Pharmaceuticals (Chile) Limitada [Chile]	II-way entity
Mundipharma (China) Pharmaceutical Company Limited [China]*	II-way entity
Mundipharma (Shanghai) International Trade Company Limited [China]*	II-way entity
Wuhu Haitong Kanghong Pharmaceutical Trading Co. Ltd. [China]*	II-way entity
Mundipharma (Colombia) S.A.S. [Colombia]*	II-way entity
Mundipharma Pharmaceuticals Limited [Cyprus]*	II-way entity
Mundipharma GesmbH (Czech Republic Branch of Austrian company) [Czech Republic]*	II-way entity

Mundipharma A/S [Denmark]*	II-way entity
Mundipharma FZ-LLC [Dubai]	II-way entity
Mundipharma Middle East FZ-LLC [Dubai]*	II-way entity
Mundipharma Egypt LLC [Egypt]*	II-way entity
Scientific Office of Mundipharma MEA GmbH [Egypt]*	II-way entity
Mundipharma Oy [Finland]*	II-way entity
Mundipharma Management S.ar.l. [France]	II-way entity
Mundipharma SAS [France]*	II-way entity
Krugmann GmbH [Germany]*	II-way entity
Mundichemie GmbH [Germany]*	II-way entity
Mundipharma Biologics GmbH [Germany]*	II-way entity
Mundipharma Deutschland GmbH & Co. KG [Germany]*	II-way entity
Mundipharma GmbH [Germany]*	II-way entity

Mundipharma Medical GmbH [Germany]*	II-way entity
Mundipharma Research GmbH & Co. KG [Germany]*	II-way entity
Mundipharma Research Verwaltungs GmbH [Germany]*	II-way entity
Mundipharma Verwaltungsgesellschaft mbH [Germany]*	II-way entity
Mundipharma (Hong Kong) Limited [Hong Kong]*	II-way entity
Mundipharma Medical GmbH (Hungary Branch of Swiss Company) [Hungary]*	II-way entity
Modi-Mundipharma Beauty Products Private Limited [India]	II-way entity
Modi-Mundipharma Healthcare Private Limited [India]	II-way entity
Modi-Mundipharma Private Limited [India]	II-way entity
Win-Healthcare Private Limited [India]	II-way entity

Win-Medicare Private Limited [India]	II-way entity
Mundipharma Laboratories GmbH (Indonesian Branch of Swiss Company) [Indonesia]*	II-way entity
PT. Mundipharma Healthcare Indonesia [Indonesia]*	II-way entity
Mundipharma Corporation (Ireland) Limited [Ireland]*	II-way entity
Mundipharma Pharmaceuticals Limited [Ireland]*	II-way entity
Peer Hotzvim Ltd. [Israel]	II-way entity
Rafa Laboratories Limited [Israel]	II-way entity
Mundipharma Pharmaceuticals S.r.l. [Italy] *	II-way entity
Mundipharma Kabushiki Kaishe [Japan]*	II-way entity
Mundipharma TK [Japan]*	II-way entity
Mundipharma Medical CEE GmbH (Kazakhstan branch of Austrian company merged with Mundi-	II-way entity

pharma GesmbH) [Kazakhstan]	
Mundipharma Distribution Limited [Korea]*	II-way entity
Mundipharma Korea Limited [Korea]*	II-way entity
Accardi S.à.r.l. [Luxembourg]	II-way entity
Bulla S.à.r.l. [Luxembourg]	II-way entity
Euro-Celtique S.A. [Luxembourg]*	II-way entity
Filti S.à.r.l. [Luxembourg]	II-way entity
Flira S.à.r.l. [Luxembourg]	II-way entity
Ind S.à.r.l. [Luxembourg]	II-way entity
Irey S.à.r.l. [Luxembourg]	II-way entity
Lucien Holdings S.à.r.l. [Luxembourg]	II-way entity
Lymit Holdings S.à.r.l. [Luxembourg]	II-way entity
Mundipharma International Services S.ar.l. [Luxembourg]*	II-way entity
Nitid S.à.r.l. [Luxembourg]	II-way entity

Nontag S.à.r.l. [Luxembourg]	II-way entity
Porthos S.à.r.l. [Luxembourg]	II-way entity
Sofy S.à.r.l. [Luxembourg]	II-way entity
Songol S.à.r.l. [Luxembourg]	II-way entity
Sonti S.à.r.l. [Luxembourg]	II-way entity
Mundipharma Pharmaceuticals Sdn. Bhd. [Malaysia]*	II-way entity
Cutchogue Holdings Limited [Mauritius]	II-way entity
Mundipharma Ltd. [Mauritius]	II-way entity
Mundipharma de Mexico, S. de R.L. de C.V. [Mexico]*	II-way entity
Mundipharma Maroc [Morocco]*	II-way entity
Mundipharma (Myanmar) Co., Limited [Myanmar]*	II-way entity
Accardi B.V. [Netherlands]	II-way entity

Alfa Generics B.V. [Netherlands]*	II-way entity
Arsago B.V. [Netherlands]	II-way entity
Bradenton Products B.V. [Netherlands]*	II-way entity
Ladenburg B.V. [Netherlands]*	II-way entity
Mundipharma B.V. [Netherlands]*	II-way entity
Mundipharma Bradenton B.V. [Netherlands]*	II-way entity
Mundipharma DC B.V. [Netherlands]*	II-way entity
Mundipharma Pharmaceuticals B.V. [Netherlands]*	II-way entity
Tacca B.V. [Netherlands]	II-way entity
Tenna B.V. [Netherlands]	II-way entity
Vaccaro B.V. [Netherlands]	II-way entity
Venusti B.V. [Netherlands]	II-way entity
Mundipharma New Zealand Limited [New Zealand]*	II-way entity



Mundipharma A.S. [Norway]*	II-way entity
Mundipharma Distribution GmbH (Philippine Branch of Swiss Company) [Philippines]*	II-way entity
Mundipharma Polska SP. Z.O.O. [Poland]*	II-way entity
Mundipharma Farmaceutica LDA. [Portugal]*	II-way entity
Mundipharma GesmbH (Russian Branch of Austrian company) [Russia]*	II-way entity
Technical Scientific Office of Mundipharma Near East GmbH [Saudi Arabia]*	II-way entity
Marnine Holdings Pte. Limited [Singapore]	II-way entity
Martone Holdings Pte. Limited [Singapore]	II-way entity
Mundipharma Development Pte. Limited [Singapore]	II-way entity
Mundipharma Healthcare Pte. Limited [Singapore]*	II-way entity

Mundipharma IT Services Pte. Limited [Singapore]*	II-way entity
Mundipharma Manufacturing Pte. Limited [Singapore]*	II-way entity
Mundipharma Pharmaceuticals Private Limited [Singapore]*	II-way entity
Mundipharma Pte Limited [Singapore]*	II-way entity
Mundipharma Singapore Holding Pte. Limited [Singapore]*	II-way entity
Mundipharma GesmbH (Slovak Republic Branch of Austrian company) [Slovak Republic]*	II-way entity
Mundipharma (Proprietary) Limited [South Africa]*	II-way entity
Mundipharma Biologics S.L. [Spain]*	II-way entity
Mundipharma Pharmaceuticals S.L. [Spain]*	II-way entity
Beauty Products Lanka (Private) Limited [Sri Lanka]	II-way entity

Mundipharma AB [Sweden]*	II-way entity
Mundipharma AG [Switzerland]*	II-way entity
Mundipharma Distribution GmbH [Switzerland]*	II-way entity
Mundipharma EDO GmbH [Switzerland]*	II-way entity
Mundipharma Holding AG [Switzerland]*	II-way entity
Mundipharma International Services GmbH [Switzerland]*	II-way entity
Mundipharma IT GmbH [Switzerland]*	II-way entity
Mundipharma IT Services GmbH [Switzerland]*	II-way entity
Mundipharma Laboratories GmbH [Switzerland]*	II-way entity
Mundipharma LATAM GmbH [Switzerland]*	II-way entity
Mundipharma MEA GmbH [Switzerland]*	II-way entity
Mundipharma Medical Company (Swiss branch of Mundipharma Medical	II-way entity

Company, Bermuda) [Switzerland]*	
Mundipharma Medical GmbH*	II-way entity
Mundipharma Near East GmbH [Switzerland]*	II-way entity
Taiwan Mundipharma Pharmaceuticals Limited [Taiwan]*	II-way entity
Mundipharma (Thailand) Limited [Thailand]*	II-way entity
Mundipharma Pharma- ceuticals Industry and Trade Limited [Turkey]*	II-way entity
Bard Pharmaceuticals Limited [United King- dom]*	II-way entity
Clinical Designs Limited [United Kingdom]*	II-way entity
Mundibiopharma Lim- ited [United Kingdom]*	II-way entity
Mundipharma Corpora- tion Limited [United Kingdom]*	II-way entity
Mundipharma Interna- tional Limited [United Kingdom]*	II-way entity

Mundipharma International Services Limited [United Kingdom]*	II-way entity
Mundipharma International Technical Operations Limited [United Kingdom]*	II-way entity
Mundipharma IT Services Limited [United Kingdom]*	II-way entity
Mundipharma Limited [United Kingdom]	II-way entity
Mundipharma Medical Company Limited [United Kingdom]*	II-way entity
Mundipharma Research Limited [United Kingdom]*	II-way entity
Napp Laboratories Limited [United Kingdom]*	II-way entity
Napp Pension Trustees Limited [United Kingdom]	II-way entity
Napp Pharmaceutical Group Limited [United Kingdom]*	II-way entity
Napp Pharmaceutical Holdings Limited [United Kingdom]*	II-way entity

Napp Pharmaceuticals Limited [United Kingdom]*	II-way entity
Napp Research Centre Limited [United Kingdom]*	II-way entity
Paineurope Limited [United Kingdom]	II-way entity
Private Medical Trustees Limited [United Kingdom]	II-way entity
Qdem Pharmaceuticals Limited [United Kingdom]*	II-way entity
The Napp Educational Foundation [United Kingdom] Foundation Avrio Health Inc. [United States]	II-way entity
Caas Leasing, Inc. [United States]	II-way entity
Connecticut Avenue Realty Co., Inc. [United States]	II-way entity
Coventry Technologies L.P. [United States]	II-way entity
E.R.G. Realty, Inc. [United States]	II-way entity

HS Holdings Inc. [United States]	II-way entity
IAF Corporation [United States]	II-way entity
Midvale Chemical Company [United States]	II-way entity
MNP Consulting Limited [United States]	II-way entity
Mundipharma Biologics Inc. [United States]	II-way entity
Mundipharma Biologics L.P. [United States]	II-way entity
Mundipharma Healthcare Corporation [United States]*	II-way entity
Mundipharma Healthcare LLC [United States]*	II-way entity
Mundipharma Inc. [United States]	II-way entity
Mundipharma International Limited [United States]*	II-way entity
Mundipharma International Technical Operations Limited [United States]*	II-way entity

Mundipharma IT Services Inc. [United States]*	II-way entity
Mundipharma Ltd. [United States]	II-way entity
Mundipharma Pharmaceuticals Inc. [United States]*	II-way entity
Nappwood Land Corporation [United States]	II-way entity
New Suffolk Holdings LLP [United States]	II-way entity
One Stamford Land Inc. [United States]	II-way entity
One Stamford Realty L.P. [United States]	II-way entity
Pharma Associates Inc. [United States]	II-way entity
Pharma Associates L.P. [United States]	II-way entity
Pharma Technologies Inc. [United States]	II-way entity
Pharmaceutical Research Associates, Inc. [United States]	II-way entity
Pharmaceutical Research Associates, Inc. [United States]	II-way entity



PRA Holdings, Inc. [United States]	II-way entity
Purdue BioPharma Inc. [United States]	II-way entity
Purdue BioPharma L.P. [United States]	II-way entity
Purdue Healthcare Technologies Inc. [United States]	II-way entity
Purdue Healthcare Technologies L.P. [United States]	II-way entity
Purdue Pharma Technologies Inc. [United States]	II-way entity
Purdue Pharmaceutical Products Inc. [United States]	II-way entity
Rhodes Pharmaceuticals Inc. [United States]	II-way entity
Rhodes Technologies Inc. [United States]	II-way entity
RSJ Company L.P. [United States]	II-way entity
Sawwood Land Corporation [United States]	II-way entity
Signutra Inc. [United States]	II-way entity

The P.F. Betadine Products Co. Inc. [United States]	II-way entity
The P.F. Laboratories, Inc. [United States]	II-way entity
The Purdue Frederick Company Inc. d/b/a The Purdue Frederick Company [United States]	II-way entity
The Seven Hundred Realty Corporation [United States]	II-way entity
The Terramar Foundation, Inc. [United States]	Foundation
TXP Services Inc. [United States]	II-way entity
VitamERICAN Chemicals, Inc. [United States]	II-way entity
VitamERICAN Corporation [United States]	II-way entity
The Representative Office of Mundipharma Pharmaceuticals Pte Limited in Ho Chi Minh City [Vietnam]*	II-way entity
Norton Rose Fulbright US LLP	Service Provider: legal counsel to Shareholder Released Parties and the Debtors

UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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No. 19-23649 (RDD) (Jointly Administered)  
IN RE: PURDUE PHARMA L.P., ET AL., DEBTORS<sup>1</sup>

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Filed: Sept. 2, 2021  
New York, New York

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**TWELFTH AMENDED JOINT CHAPTER 11 PLAN  
OF REORGANIZATION OF PURDUE PHARMA L.P.  
AND ITS AFFILIATED DEBTORS**

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Each of Purdue Pharma L.P., Purdue Pharma Inc.,  
Purdue Transdermal Technologies L.P., Purdue  
Pharma Manufacturing L.P., Purdue Pharmaceuticals  
L.P., Imbrium Therapeutics L.P., Adlon Therapeutics

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's registration number in the applicable jurisdiction, are as follows: Purdue Pharma L.P. (7484), Purdue Pharma Inc. (7486), Purdue Transdermal Technologies L.P. (1868), Purdue Pharma Manufacturing L.P. (3821), Purdue Pharmaceuticals L.P. (0034), Imbrium Therapeutics L.P. (8810), Adlon Therapeutics L.P. (6745), Greenfield BioVentures L.P. (6150), Seven Seas Hill Corp. (4591), Ophir Green Corp. (4594), Purdue Pharma of Puerto Rico (3925), Avrio Health L.P. (4140), Purdue Pharmaceutical Products L.P. (3902), Purdue Neuroscience Company (4712), Nayatt Cove Lifescience Inc. (7805), Button Land L.P. (7502), Rhodes Associates L.P. (N/A), Paul Land Inc. (7425), Quidnick Land L.P. (7584), Rhodes Pharmaceuticals L.P. (6166), Rhodes Technologies (7143), UDF LP (0495), SVC Pharma LP (5717) and SVC Pharma Inc. (4014). The Debtors' corporate headquarters is located at One Stamford Forum, 201 Tresser Boulevard, Stamford, CT 06901.

L.P., Greenfield BioVentures L.P., Seven Seas Hill Corp., Ophir Green Corp., Purdue Pharma of Puerto Rico, Avrio Health L.P., Purdue Pharmaceutical Products L.P., Purdue Neuroscience Company, Nayatt Cove Lifescience Inc., Button Land L.P., Rhodes Associates L.P., Paul Land Inc., Quidnick Land L.P., Rhodes Pharmaceuticals L.P., Rhodes Technologies, UDF LP, SVC Pharma LP and SVC Pharma Inc. (each, a “*Debtor*” and, collectively, the “*Debtors*” or “*Purdue*”) proposes the following twelfth amended joint chapter 11 plan of reorganization pursuant to section 1121(a) of the Bankruptcy Code. Capitalized terms used herein shall have the meanings set forth in Section 1.1 below.

**ARTICLE I DEFINITIONS AND INTERPRETATION.**

**1.1 *Definitions.***

The following terms shall have the respective meanings specified below:

\* \* \* \* \*

**“Cause of Action”** means any Claim, action, class action, claim, cross-claim, counterclaim, third-party claim, cause of action, controversy, dispute, demand, right, Lien, indemnity, contribution, rights of subrogation, reimbursement, guaranty, suit, obligation, liability, debt, damage, judgment, loss, cost, attorneys’ fees and expenses, account, defense, remedy, offset, power, privilege, license or franchise, in each case, of any kind, character or nature whatsoever, asserted or unasserted, accrued or unaccrued, known or unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, allowable or disallowable, Allowed or Disallowed, assertible directly or derivatively (including, without limitation, under alter-ego theories), *in rem*, *quasi in rem*, *in personam* or otherwise, whether arising before, on or after the Petition Date, arising under federal or state statutory or common law, or any other applicable international, foreign or domestic law, rule, statute, regulation, treaty, right, duty, requirement or otherwise, in contract or in tort, at law, in equity or pursuant to any other theory or principle of law, including fraud, negligence, gross negligence, recklessness, reckless disregard, deliberate ignorance, public or private nuisance, breach of fiduciary duty, avoidance, willful misconduct, veil piercing, unjust enrichment, disgorgement, restitution, contribution, in-

demnification, rights of subrogation and joint liability, regardless of where in the world accrued or arising. For the avoidance of doubt, “Cause of Action” expressly includes (i) any Cause of Action held by a natural person who is not yet born or who has not yet attained majority as of the Petition Date or as of the Effective Date, (ii) any right of setoff, counterclaim or recoupment and any Cause of Action for breach of contract or for breach of duty imposed by law or in equity, (iii) the right to object to or otherwise contest Claims or Interests, (iv) any Cause of Action pursuant to section 362 of the Bankruptcy Code or chapter 5 of the Bankruptcy Code, (v) any claim or defense, including fraud, mistake, duress and usury and any other defense set forth in section 558 of the Bankruptcy Code, and (vi) any claim under any state or foreign law, including for the recovery of any fraudulent transfer or similar theory.

“*Channeled Claims*” means, collectively, all Non-Federal Domestic Governmental Claims, Tribe Claims, Hospital Claims, Third-Party Payor Claims, NAS Monitoring Claims, PI Claims, Released Claims and Shareholder Released Claims.

“*Channeling Injunction*” means the channeling injunction issued pursuant to Section 10.8 of the Plan.

“*Chapter 11 Cases*” means the cases under chapter 11 of the Bankruptcy Code commenced by the Debtors on or after the Petition Date (and not otherwise dismissed), currently pending in the Bankruptcy Court that are jointly administered in the case styled *In re Purdue Pharma L.P.*, Case No. 19-23649 (RDD).

\* \* \* \* \*

“**Claim**” has the meaning set forth in section 101(5) of the Bankruptcy Code.

\* \* \* \* \*

“**Co-Defendant**” means (i) any Holder of a Co-Defendant Claim and (ii) any co-defendant in a Pending Opioid Action commenced as of the Effective Date, in each case, other than (x) the Debtors and their current and former officers, directors, authorized agents and employees and (y) the Shareholder Released Parties.

“**Co-Defendant Action**” means any Pending Opioid Action and any previous, pending, or future litigation or dispute that alleges substantially similar facts or causes of action as those alleged in the Pending Opioid Actions and that concerns conduct occurring before the Effective Date.

“**Co-Defendant Claim**” means any Claim, other than a Claim held by an Insurance Company, that (i) either (A) is or could be asserted against any Debtor, including without limitation any Claim that would otherwise be a Cure Claim or (B) seeks to recover from any property of any Debtor or its Estate, including any MDT Insurance Policy, (ii) is for or based upon or arises from contribution, indemnification, reimbursement, setoff or recoupment or any other similar claim or Cause of Action, and (iii) seeks to recover, directly or indirectly, any costs, losses, damages, fees, expenses or any other amounts whatsoever, actually or potentially imposed upon the Holder of such Claim, in each case relating to or arising from any actual or potential litigation or dispute, whether accrued or unaccrued, asserted or unasserted, existing or hereinafter arising, based on or relating to, or in any manner arising from, in whole or in part, Opioid-Related Activities or otherwise relating to

opioids (including, without limitation, any such Claims asserted by any manufacturer, distributor, pharmacy, pharmacy-benefit manager, group purchasing organization or physician or other contract counterparty or business partner of any Debtor), in each case that is not a Shareholder Claim or a Claim held by any current or former director, officer, employee or agent of the Debtors. For the avoidance of doubt, a Co-Defendant Claim shall not include any Co-Defendant Surviving Pre-Effective Date Claim. Notwithstanding anything to the contrary outside of this definition in the Plan, any Claim that satisfies the definition of a Co-Defendant Claim shall be a Co-Defendant Claim notwithstanding that such Claim would otherwise satisfy the definition of another type of Claim. For the avoidance of doubt, Co-Defendant Claim includes a Claim that is held by an insurance company in its capacity as subrogee of a Holder of a Co-Defendant Claim.

\* \* \* \* \*

**“Co-Defendant Surviving Pre-Effective Date Claim”** means any Cause of Action held by a Co-Defendant that (i) arose in the ordinary course of business, (ii) is not related to a Co-Defendant Action, and (iii) concerns conduct occurring before the Effective Date.

\* \* \* \* \*

**“Confirmation Date”** means the date on which the Bankruptcy Court enters the Confirmation Order.

**“Confirmation Hearing”** means the hearing to be held by the Bankruptcy Court regarding confirmation of the Plan, as such hearing may be adjourned or continued from time to time.



**“Confirmation Order”** means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code and approving the Plan Settlement, which shall be in form and substance acceptable to the Debtors and reasonably acceptable to the Creditors’ Committee and the Governmental Consent Parties.

\* \* \* \* \*

**“Creditor Trust”** means (i) with respect to Non-Federal Domestic Governmental Channeled Claims, NOAT, (ii) with respect to Tribe Channeled Claims, the Tribe Trust, (iii) with respect to Hospital Channeled Claims, the Hospital Trust, (iv) with respect to Third-Party Payor Channeled Claims, the TPP Trust, (v) with respect to NAS Monitoring Channeled Claims, the NAS Monitoring Trust, (vi) with respect to PI Channeled Claims, the PI Trust and (vii) with respect to Future PI Channeled Claims, the PI Futures Trust.

**“Creditor Trust Documents”** means (i) with respect to an Abatement Trust, the applicable Abatement Trust Documents, (ii) with respect to the PI Trust, the PI Trust Documents and (iii) with respect to the PI Futures Trust, the PI Futures Trust Documents.

\* \* \* \* \*

**“Creditor Trust TDPs”** means, collectively or as applicable, the NOAT TDP, the Tribe TDP, the Hospital TDP, the TPP TDP, the NAS Monitoring TDP, the PI TDP and the PI Futures TDP.

\* \* \* \* \*

**“Debtor(s)”** has the meaning set forth in the introductory paragraph of the Plan.

**“Designated Shareholder Released Parties”** has the meaning set forth in the Shareholder Settlement Agreement.

\* \* \* \* \*

**“Effective Date”** means the date selected by the Debtors for the consummation of the Plan, or as soon thereafter as reasonably practicable.

\* \* \* \* \*

**“Entity”** has the meaning set forth in section 101(15) of the Bankruptcy Code.

\* \* \* \* \*

**“Estate(s)”** means, individually or collectively, the estate or estates of the Debtors created under section 541 of the Bankruptcy Code.

**“Estate Causes of Action”** means any and all Causes of Action that any Debtor may have or be entitled to assert on behalf of its Estate or itself, whether or not asserted.

\* \* \* \* \*

**“Excluded Claim”** means (i) any criminal action or criminal proceeding arising under a criminal provision of any statute instituted (A) by a Domestic Governmental Entity that has authority to bring such a criminal action or criminal proceeding, and (B) to adjudicate a person’s guilt or to set a convicted person’s punishment; (ii) any Cause of Action against a non-Debtor Person by any federal, state or local authority with respect to taxes imposed on such non-Debtor Person; (iii) any Estate Cause of Action or any Cause of Action held by a Releasing Party against an Excluded Party; (iv) any Estate Cause of Action identified on the Schedule of Re-

tained Causes of Action; (v) any Cause of Action (including, without limitation, any such Cause of Action held by holders of Settled Canadian Patient Claims or by other Canadians) against any non-Debtor Person (including, without limitation, Purdue Pharma, a Canadian limited partnership, Purdue Pharma Inc., a Canadian corporation and/or Purdue Frederick Inc., a Canadian corporation (collectively, “*Purdue Canada*”) or any other Shareholder Released Party) that (x) arises out of or relates to the conduct of any corporations, companies, partnerships and other entities formed under the laws of Canada or its provinces affiliated or associated with any of the Debtors, including, without limitation, Purdue Canada and (y) is not based upon any conduct of the Debtors, including any Opioid-Related Activities of the Debtors; or (vi) any Cause of Action against any Person to the extent based on the actual conduct of such Person after the Effective Date. For greater certainty, with respect to the foregoing clause (v), to the extent a Cause of Action is asserted in Canada against a Shareholder Released Party and/or former director or officer of a Debtor, the knowledge of that Person regarding the Opioid-Related Activities of the Debtors may be asserted against that Person and form part of the Cause of Action in Canada, and any such assertion shall be without prejudice to all defenses of the applicable Shareholder Released Party or former officer or director to such assertion.

“**Excluded Party**” means (i) each Person identified on the Schedule of Excluded Parties and (ii) each Co-Defendant; provided that (x) subject to the terms of the Settling Executive Stipulation, the Settling Executives shall not be Excluded Parties and (y) no Settling Co-Defendant and none of their respective Related Parties

(except to the extent any such Related Party is identified by name on the Schedule of Excluded Parties filed on August 23, 2021) shall be an Excluded Party.

\* \* \* \* \*

**“Future PI Channeled Claim”** means any alleged opioid-related personal injury or similar opioid-related Cause of Action against any Released Party or Shareholder Released Party based on or relating to, or in any manner arising from, in whole or in part, the Debtors, as such Entities existed prior to or after the Petition Date (including the subject matter described in subclause (i) of Sections 10.6(b) and 10.7(b) of the Plan), the Estates or the Chapter 11 Cases, and that is not (i) a PI Channeled Claim, a Third-Party Payor Channeled Claim, an NAS Monitoring Channeled Claim, a Hospital Channeled Claim or an Administrative Claim, (ii) held by a Domestic Governmental Entity or (iii) a Released Claim against any Debtor or its Estate, NewCo or any successor owner of NewCo’s opioid business, in each case, that arises from or relates to the use of an opioid that is manufactured by or placed in the stream of commerce by NewCo or any successor owner of NewCo’s opioid business. Future PI Channeled Claims shall be channeled solely to the PI Futures Trust in accordance with the Master TDP.

\* \* \* \* \*

**“Governmental Unit”** has the meaning set forth in section 101(27) of the Bankruptcy Code.

**“Holder”** means a Person holding a Claim, a Channeled Claim, a Cause of Action or an Interest, as applicable.

\* \* \* \* \*

“**Master TDP**” means the master trust distribution procedures to be implemented by the Master Disbursement Trust setting forth the procedures for the administration of Channeled Claims by the Master Disbursement Trust, which shall be filed by the Debtors with the Plan Supplement, and the terms of which shall be consistent with Articles I through XII of the Plan and otherwise reasonably acceptable to (i) the Debtors, (ii) the Creditors’ Committee, (iii) the Governmental Consent Parties and (iv) solely with respect to any provisions regarding the channeling of Channeled Claims to (A) the Tribe Trust, the Native American Tribe Group, (B) the Hospital Trust, the Ad Hoc Group of Hospitals, (C) TPP Trust, the Third-Party Payor Group, (D) the NAS Monitoring Trust, the NAS Committee and (E) the PI Trust, the Ad Hoc Group of Individual Victims and the NAS Committee.

\* \* \* \* \*

“**NAS Child**” means a natural person who has been diagnosed by a licensed medical provider with a medical, physical, cognitive or emotional condition resulting from such natural person’s intrauterine exposure to opioids or opioid replacement or treatment medication, including but not limited to the condition known as neonatal abstinence syndrome.

\* \* \* \* \*

“**NAS Monitoring Channeled Claim**” means (i) any NAS Monitoring Claim or (ii) any Released Claim or Shareholder Released Claim that is held on account of an NAS Child and that relates to medical monitoring support, educational support, vocational support, familial support or similar related relief, and is not for an alleged personal injury suffered by an NAS Child. NAS

Monitoring Channeled Claims shall be channeled to the NAS Monitoring Trust in accordance with the Master TDP.

**“NAS Monitoring Claim”** means any Claim against any Debtor that is held on account of an NAS Child and relates to medical monitoring support, educational support, vocational support, familial support or similar related relief, and is not for an alleged personal injury suffered by an NAS Child.

**“NAS Monitoring TDP”** means the trust distribution procedures to be implemented by the NAS Monitoring Trust setting forth the procedures for the distribution of Abatement Distributions by the NAS Monitoring Trust to Authorized Recipients and the Authorized Abatement Purposes for Abatement Distributions from the NAS Monitoring Trust, the terms of which shall be consistent with Articles I through XII of the Plan and otherwise acceptable to the Debtors and the NAS Committee and reasonably acceptable to the Creditors’ Committee and the Governmental Consent Parties, and which shall be filed by the Debtors with the Plan Supplement (it being understood and agreed that the form of NAS Monitoring TDP filed on July 14, 2021 is acceptable to such parties).

**“NAS Monitoring Trust”** means the trust to be established in accordance with Section 5.7 of the Plan to (i) assume all liability for the NAS Monitoring Channeled Claims, (ii) hold the MDT NAS Monitoring Claim and collect the Initial NAS Monitoring Trust Distribution and additional payments due under the MDT NAS Monitoring Claim in accordance with the Private Entity Settlements and the NAS Monitoring Trust Documents, (iii) administer NAS Monitoring Channeled Claims and

(iv) make Abatement Distributions to Authorized Recipients for Authorized Abatement Purposes, in each case in accordance with the NAS Monitoring TDP.

“**NAS Monitoring Trust Agreement**” means the trust agreement establishing and delineating the terms and conditions for the creation and operation of the NAS Monitoring Trust, the terms of which shall be consistent with Articles I through XII of the Plan and otherwise acceptable to the Debtors and the NAS Committee and reasonably acceptable to the Creditors’ Committee and the Governmental Consent Parties, and which shall be filed by the Debtors with the Plan Supplement.

“**NAS Monitoring Trust Documents**” means the NAS Monitoring Trust Agreement and the NAS Monitoring TDP.

“**NAS PI Channeled Claim**” means (i) any NAS PI Claim or (ii) any Released Claim or Shareholder Released Claim that is for alleged opioid-related personal injury to an NAS Child or that is a similar opioid-related Cause of Action asserted by or on behalf of an NAS Child, in each case, that arose prior to the Petition Date, and that is not a Third-Party Payor Channeled Claim, an NAS Monitoring Channeled Claim or a Hospital Channeled Claim, or held by a Domestic Governmental Entity. NAS PI Channeled Claims shall be channeled to the PI Trust in accordance with the Master TDP.

“**NAS PI Claim**” means any Claim against any Debtor that is for alleged opioid-related personal injury to an NAS Child or similar opioid-related Cause of Action against any Debtor asserted by or on behalf of an NAS Child, in each case, that arose prior to the Petition Date, and that is not a Third-Party Payor Claim, an

NAS Monitoring Claim or a Hospital Claim, or held by a Domestic Governmental Entity.

\* \* \* \* \*

“**NAS PI TDP**” means the trust distribution procedures to be implemented by the PI Trust with respect to NAS PI Channeled Claims, the terms of which shall be consistent with Articles I through XII of the Plan and otherwise acceptable to the Debtors and the NAS Committee and reasonably acceptable to the Ad Hoc Group of Individual Victims, the Creditors’ Committee and the Governmental Consent Parties, and which shall be filed by the Debtors with the Plan Supplement (it being understood and agreed that the form of NAS PI TDP filed on July 14, 2021 is acceptable to such parties).

“**Native American Tribe Group**” means the group consisting of the Muscogee (Creek) Nation, a member of the Ad Hoc Committee, the Cheyenne & Arapaho Tribes, an ex officio member of the Creditors’ Committee, and other Tribes represented by various counsel from the Tribal Leadership Committee and the MDL Plaintiffs’ Executive Committee.

\* \* \* \* \*

“**NOAT**” means the National Opioid Abatement Trust, a Delaware statutory trust to be established in accordance with Section 5.7 of the Plan to (i) assume all liability for the Non-Federal Domestic Governmental Channeled Claims, (ii) hold the MDT NOAT Interest and the TopCo NOAT Interest and collect the Initial NOAT Distribution (*less* the Public Schools’ Special Education Initiative Contribution) and other Public Creditor Trust Distributions received in accordance with the Public Entity Settlements, (iii) administer Non-Federal



Domestic Governmental Channeled Claims and (iv) make Abatement Distributions to Authorized Recipients for Authorized Abatement Purposes, in each case in accordance with the NOAT TDP.

“**NOAT Agreement**” means the trust agreement establishing and delineating the terms and conditions for the creation and operation of NOAT, the terms of which shall be consistent with Articles I through XII of the Plan and otherwise acceptable to the DOJ and the Governmental Consent Parties, in consultation with the Debtors and the Creditors’ Committee, and which shall be filed by the Debtors with the Plan Supplement.

“**NOAT Documents**” means the NOAT Agreement and the NOAT TDP.

“**NOAT TDP**” means the trust distribution procedures to be implemented by NOAT setting forth the procedures for the distribution of Abatement Distributions by NOAT to Authorized Recipients and the Authorized Abatement Purposes for Abatement Distributions from NOAT, which shall be consistent with Articles I through XII of the Plan and otherwise acceptable to the DOJ and the Governmental Consent Parties, in consultation with the Debtors and the Creditors’ Committee, and which shall be filed by the Debtors with the Plan Supplement (it being understood and agreed that the form of NOAT TDP filed on July 14, 2021 is acceptable to such parties).

\* \* \* \* \*

“**Non-NAS PI Channeled Claim**” means (i) any Non-NAS PI Claim or (ii) any Released Claim or Shareholder Released Claim that is for alleged opioid-related personal injury or that is a similar opioid-related Cause

of Action, in each case, that arose prior to the Petition Date, and that is not an NAS PI Channeled Claim, a Third-Party Payor Channeled Claim, an NAS Monitoring Channeled Claim or a Hospital Channeled Claim, or held by a Domestic Governmental Entity. Non-NAS PI Channeled Claims shall be channeled to the PI Trust in accordance with the Master TDP.

**“Non-NAS PI Claim”** means any Claim against any Debtor that is for alleged opioid-related personal injury or other similar opioid-related Cause of Action against any Debtor, in each case, that arose prior to the Petition Date, and that is not an NAS PI Claim, a Third-Party Payor Claim, an NAS Monitoring Claim or a Hospital Claim, or held by a Domestic Governmental Entity.

\* \* \* \* \*

**“Non-NAS PI TDP”** means the trust distribution procedures to be implemented by the PI Trust with respect to Non-NAS PI Channeled Claims, the terms of which shall be consistent with Articles I through XII of the Plan and otherwise acceptable to the Debtors and the Ad Hoc Group of Individual Victims and reasonably acceptable to the Creditors’ Committee and the Governmental Consent Parties, and which shall be filed by the Debtors with the Plan Supplement (it being understood and agreed that the form of Non-NAS PI TDP filed on July 14, 2021 is acceptable to such parties).

**“Non-Opioid Excluded Claim”** means a Cause of Action by a Person that is not a Debtor, an Estate, the Master Disbursement Trust, a Creditor Trust, the Plan Administration Trust or any successor of any of the foregoing against a Shareholder Released Party to the extent such Cause of Action (i) does not arise from or relate to Opioid-Related Activities, Pending Opioid Ac-

tions or opioid use or misuse or the consequences thereof; (ii) is not based upon and does not arise from the same allegations, facts or evidence as any Pending Opioid Action; (iii) does not allege (expressly or impliedly) any liability of such Shareholder Released Party that is derivative of any liability of any Debtor or any of their Estates, including, but not limited to, by making allegations (expressly or impliedly) that such Shareholder Released Party is directly or indirectly liable for the conduct of or a Cause of Action against a Debtor by reason of such Shareholder Released Party's (A) direct or indirect ownership of an Interest in a Debtor, a past or present affiliate of a Debtor, or a predecessor in interest of a Debtor; (B) involvement in the management of a Debtor or a predecessor in interest of a Debtor, or service as an officer, director or employee of a Debtor or a related party; or (C) involvement in a transaction changing the corporate structure, or in a loan or other financial transaction affecting the financial condition, of the Debtor or a related party, including but not limited to involvement in providing financing (debt or equity), or advice to an entity involved in such a transaction, or acquiring or selling a financial interest in an entity as part of such a transaction; and (iv) has been authorized to proceed by the Bankruptcy Court in accordance with Section 11.1(e) of the Plan. As used in this definition of Non-Opioid Excluded Claim, the term "related party" has the same meaning as in 11 U.S.C. § 524(g)(4)(A)(iii).

***"Notice of Shareholder Release Snapback"*** means a notice filed with the Bankruptcy Court by the Master Disbursement Trust pursuant to the Shareholder Settlement Agreement providing notice that a Shareholder Family Group is in Specified Breach (as defined in the

Shareholder Settlement Agreement) and the Master Disbursement Trust has elected to enforce the Shareholder Release Remedy and identifying the Breaching Shareholder Family Group and the Designated Shareholder Released Parties subject to such Shareholder Release Remedy.

**“Opioid Proceeds”** means any profits or proceeds derived from the development, production, manufacture, licensing, labeling, marketing, distribution or sale of opioid products by NewCo or the disposition of NewCo’s opioid businesses.

**“Opioid-Related Activities”** means the development, production, manufacture, licensing, labeling, marketing, advertising, promotion, distribution or sale of opioid Products or the use or receipt of any proceeds therefrom, including as described in greater detail in the DOJ Resolution, or the use or misuse of opioids, including opioids that are not Products.

\* \* \* \* \*

**“Pending Opioid Actions”** means the judicial, administrative or other actions or proceedings or Causes of Actions that were or could have been commenced before the commencement of the Chapter 11 Cases and that are identified in the charts annexed as Appendix II and Appendix III to the Preliminary Injunction, as well as any other pending actions against any of the Debtors, Released Parties or Shareholder Released Parties alleging substantially similar facts or Causes of Action as those alleged in the actions identified in those appendices.

**“Person”** means an individual (including, without limitation, in his or her capacity as a trustee, protector

or executor), corporation, partnership, joint venture, association, joint stock company, limited liability company, limited liability partnership, trust or trustee, protector, executor, estate, unincorporated organization, Governmental Unit, Tribe or other Entity.

**“Petition Date”** means September 15, 2019.

**“PI Channeled Claim”** means any NAS PI Channeled Claim or Non-NAS PI Channeled Claim.

**“PI Claim”** means any NAS PI Claim or Non-NAS PI Claim.

**“PI Futures TDP”** means, the trust distribution procedures to be implemented by the PI Futures Trust with respect to Future PI Channeled Claims, the terms of which shall be consistent with Articles I through XII of the Plan and otherwise acceptable to the Debtors and the Creditors’ Committee and reasonably acceptable to the Governmental Consent Parties, and which shall be filed by the Debtors with the Plan Supplement.

**“PI Futures Trust”** means the trust to be established in accordance with Section 5.7 of the Plan to (i) assume all liability for the Future PI Channeled Claims, (ii) collect the PI Futures Trust Distribution in accordance with the PI Futures Trust Documents, (iii) administer Future PI Channeled Claims, (iv) make Distributions on account of Allowed Future PI Channeled Claims in accordance with the PI Futures Trust Documents, and (v) carry out such other matters as are set forth in the PI Futures Trust Documents.

**“PI Futures Trust Agreement”** means the trust agreement establishing and delineating the terms and conditions for the creation and operation of the PI Futures Trust, the terms of which shall be consistent with Arti-

cles I through XII of the Plan and otherwise acceptable to the Debtors and the Creditors' Committee and reasonably acceptable to the Governmental Consent Parties, and which shall be filed by the Debtors with the Plan Supplement.

**"PI Futures Trust Distribution"** means the payment of \$5 million of Effective Date Cash to the PI Futures Trust on the Effective Date.

**"PI Futures Trust Documents"** means the PI Futures Trust Agreement and the PI Futures TDP.

**"PI TDP"** means, collectively or as applicable, (i) with respect to NAS PI Channeled Claims, the NAS PI TDP and (ii) with respect to Non-NAS PI Channeled Claims, the Non-NAS PI TDP.

**"PI Trust"** means the trust to be established in accordance with Section 5.7 of the Plan to (i) assume all liability for the PI Channeled Claims, (ii) hold the MDT PI Claim and collect the Initial PI Trust Distribution and additional payments due under the MDT PI Claim in accordance with the Private Entity Settlements and the PI Trust Documents, (iii) administer PI Channeled Claims, (iv) make Distributions on account of Allowed PI Channeled Claims in accordance with the PI Trust Documents, (v) fund the TPP LRP Escrow Account and make payments therefrom to LRP Participating TPPs, in each case, in accordance with and subject to the terms of the LRP Agreement and (vi) carry out such other matters as are set forth in the PI Trust Documents.

**"PI Trust Agreement"** means the trust agreement establishing and delineating the terms and conditions for the creation and operation of the PI Trust, the terms of which shall be consistent with Articles I through XII of

the Plan and otherwise acceptable to the Debtors and the Ad Hoc Group of Individual Victims and reasonably acceptable to the Creditors' Committee and the Governmental Consent Parties, and which shall be filed by the Debtors with the Plan Supplement.

\* \* \* \* \*

**"PI Trust Documents"** means the PI Trust Agreement, the PI TDP and the LRP Agreement.

**"PI Trust NAS Fund"** means a fund established by the PI Trust and funded with the NAS PI Portion to make Distributions on account of Allowed NAS PI Channeled Claims.

**"PI Trust Non-NAS Fund"** means a fund established by the PI Trust and funded with the Non-NAS PI Portion to make Distributions on account of Allowed Non-NAS PI Channeled Claims.

**"Plan"** means this joint chapter 11 plan of reorganization for the Debtors, including all appendices, exhibits, schedules and supplements hereto (including the Plan Supplement), as it may be altered, amended or modified from time to time in accordance with the Bankruptcy Code, the Bankruptcy Rules and the terms hereof.

\* \* \* \* \*

**"Plan Documents"** means, collectively, the Plan and all documents to be executed, delivered, assumed or performed in connection with the Restructuring Transaction and the occurrence of the Effective Date, including the documents to be included in the Plan Supplement.

\* \* \* \* \*

**“Plan Supplement”** means the supplement or supplements to the Plan containing certain documents relevant to the implementation of the Plan, which shall include the MDT Documents, the NewCo Transfer Agreement, the NewCo Operating Agreement, the TopCo Operating Agreement, the PAT Agreement, the PI Trust Documents (including the LRP Agreement), the PI Futures Trust Documents, the NAS Monitoring Trust Documents, the Hospital Trust Documents, the TPP Trust Documents, the NOAT Documents, the Tribe Trust Documents, the NewCo Credit Support Agreement, the identity of the MDT Trustees, the identity of the MDT Executive Director, the identity of the NewCo Managers, the identity of the TopCo Managers, the identity of the Plan Administration Trustee and PPLP Liquidator, the identity of the Creditor Trustees, the Schedule of Rejected Contracts, the Schedule of Retained Causes of Action, the Schedule of Excluded Parties, the Shareholder Settlement Agreement and the Restructuring Steps Memorandum.

\* \* \* \* \*

**“Preliminary Injunction”** means the *Seventeenth Amended Order Pursuant to 11 U.S.C. § 105(a) Granting Motion for a Preliminary Injunction*, Adv. Pro. No. 19-08289 (RDD) [D.I. 254], as amended from time to time.

\* \* \* \* \*

**“Products”** means any and all products developed, designed, manufactured, marketed or sold, in research or development, or supported by, the Debtors, whether work in progress or in final form.

\* \* \* \* \*



**“Proof of Claim”** means a proof of Claim against any of the Debtors filed in the Chapter 11 Cases in accordance with section 501 of the Bankruptcy Code.

\* \* \* \* \*

**“Protected Parties”** means, collectively, (i) the Debtors, (ii) each of the Debtors’ Related Parties, (iii) NewCo, (iv) TopCo, (v) the Plan Administration Trust, (vi) the Master Disbursement Trust, except, solely to the extent provided in the Master TDP, with respect to the Channeled Claims channeled to the Master Disbursement Trust, (vii) each Creditor Trust, except, solely to the extent provided in the applicable Creditor Trust TDP, with respect to the Channeled Claims channeled to such Creditor Trust and (viii) the Shareholder Released Parties, subject to Section 10.8(c) of the Plan with respect to the Shareholder Release Snapback Parties.

\* \* \* \* \*

**“Purdue”** has the meaning set forth in the introductory paragraph of this Plan.

\* \* \* \* \*

**“Related Parties”** means, with respect to a Person, (i) such Person’s predecessors, successors, assigns, Subsidiaries, affiliates, managed accounts or funds, past, present and future officers, board members, directors, principals, agents, servants, independent contractors, co-promoters, third-party sales representatives, medical liaisons, members, partners (general or limited), managers, employees, subcontractors, agents, advisory board members, financial advisors, attorneys and legal representatives, accountants, investment bankers, consultants, representatives, management companies,

fund advisors and other professionals and advisors, trusts (including trusts established for the benefit of such Person), trustees, protectors, beneficiaries, direct or indirect owners and/or equityholders, parents, transferees, heirs, executors, estates, nominees, administrators, and legatees, in each case in their respective capacities as such; (ii) the Related Parties of each of the foregoing, in each case in their respective capacities as such; and (iii) solely with respect to the Settling Co-Defendants, any insurer of any Settling Co-Defendant solely in its capacity as such and specifically excluding any MDT Insurer, solely in its capacity as an MDT Insurer. For the avoidance of doubt, the citizens and residents of a State shall not be deemed to be Related Parties of such State solely as a result of being citizens or residents of such State.

**“Released Claims”** means any Causes of Action released pursuant to Section 10.6(a) and (b) of the Plan.

**“Released Parties”** means, collectively, (i) the Debtors, (ii) each of the Debtors’ Related Parties, solely in their respective capacities as such, and (iii) solely for purposes of the Releases by the Debtors in Section 10.6(a) of the Plan, (A) the Supporting Claimants, the Creditors’ Committee and the Creditors’ Committee’s members and each of their respective professionals, in each case solely in their respective capacities as such and (B) the Settling Co-Defendants and each of their Related Parties, in each case solely in their respective capacities as such; *provided, however*, that, notwithstanding the foregoing or anything herein to the contrary, no Excluded Party or Shareholder Released Party shall be a Released Party in any capacity or respect. For purposes of this definition of “Released Parties,” the phrase “solely in their respective capacities as

such” means, with respect to a Person, solely to the extent a claim against such Person (x) arises from such Person’s conduct or actions taken in such capacity, or from such Person’s identified capacity in relation to another specified Released Party and not, in either case, from such Person’s conduct or actions independent of such capacity, and (y) to the extent such Person’s liability depends on or derives from the liability of such other Released Party, such claim would be released if asserted against such other Released Party.

“**Releases**” means the releases provided for in Section 10.6 of the Plan.

“**Releasing Parties**” means, collectively, (i) the Supporting Claimants, solely in their respective capacities as such, (ii) all Holders of Claims (whether or not asserted, transferred, hypothecated, waived, Allowed, allowable, choate, known, accrued, treated under this Plan or otherwise) against, or Interests in, the Debtors, (iii) all Holders of Future PI Channeled Claims, (iv) the Settling Co-Defendants, (v) with respect to each of the Persons in the foregoing clauses (i) through (iv), each of their Related Parties and (vi) each of the Debtors’ Related Parties, in each case, other than any Shareholder Released Party.

\* \* \* \* \*

“**Sackler Family Members**” means (i) Raymond R. Sackler and Mortimer D. Sackler, (ii) all Persons who are descendants of either Raymond R. Sackler or Mortimer D. Sackler, (iii) all current and former spouses of any individual identified in the foregoing clause (i) or (ii), and (iv) the estate of any individual identified in the foregoing clause (i), (ii) or (iii).

**“Schedule of Excluded Parties”** means the schedule of Excluded Parties filed by the Debtors with the Plan Supplement, which shall include only Persons agreed to by the Debtors and the Governmental Consent Parties, in consultation with the Creditors’ Committee.

\* \* \* \* \*

**“Shareholder Family Group”** has the meaning ascribed to the term “Family Group” in the Shareholder Settlement Agreement.

\* \* \* \* \*

**“Shareholder Payment Party”** means the Shareholder Released Parties that are parties to the Shareholder Settlement Agreement.

\* \* \* \* \*

**“Shareholder Release Remedy”** has the meaning ascribed to the term “Release Remedy” in the Shareholder Settlement Agreement.

**“Shareholder Release Snapback Parties”** means, collectively, the Designated Shareholder Released Parties and all members of any Shareholder Family Group.

**“Shareholder Released Claims”** means any Causes of Action released pursuant to Section 10.7(a) and (b) of the Plan.

**“Shareholder Released Parties”** means, collectively, (i) the Shareholder Payment Parties; (ii) the Designated Shareholder Released Parties and the Persons identified on Exhibit X to the Shareholder Settlement Agreement; (iii) all Persons directly or indirectly owning an equity interest in any Debtor on the date on which such Debtor commenced its Chapter 11 Case; (iv) Sackler Family Members; (v) all trusts for the benefit of any of

the Persons identified in the foregoing clause (iv) and the past, present and future trustees (including, without limitation, officers, directors and employees of any such trustees that are corporate or limited liability company trustees and members and managers of trustees that are limited liability company trustees), protectors and beneficiaries thereof, solely in their respective capacities as such; (vi) all Persons (other than the Debtors) to which property or funds of the Persons identified in any of the foregoing clauses (i) through (v) have been or are directly or indirectly transferred (including for charitable or philanthropic purposes), solely in such Persons' capacities as transferees and solely to the extent of any property or funds transferred to them; and (vii) with respect to each Person in the foregoing clauses (i) through (v), such Person's (A) predecessors, successors, permitted assigns, subsidiaries (other than the Debtors), controlled affiliates, spouses, heirs, executors, estates and nominees, in each case solely in their respective capacities as such, (B) current and former officers and directors, principals, members and employees, in each case, solely in their respective capacities as such, (C) financial advisors, attorneys (including, without limitation, attorneys retained by any director, in his or her capacity as such), accountants, investment bankers (including, without limitation, investment bankers retained by any director, in his or her capacity as such), consultants, experts and other professionals, in each case, solely in their respective capacities as such, and (D) property possessed or owned at any time or the proceeds therefrom; *provided* that the Debtors and the Excluded Parties identified on the Schedule of Excluded Parties shall not be Shareholder Released Parties. For purposes of this definition of "Shareholder Released Parties," the

phrase “solely in their respective capacities as such” means, with respect to a Person, solely to the extent a claim against such Person (x) arises from such Person’s conduct or actions taken in such capacity, or from such Person’s identified capacity in relation to another specified Shareholder Released Party and not, in either case, from such Person’s conduct or actions independent of such capacity, and (y) to the extent such Person’s liability depends on or derives from the liability of such other Shareholder Released Party, such claim would be released if asserted against such other Shareholder Released Party. For the avoidance of doubt, any Person that fits within multiple categories above shall be a Shareholder Released Party in all such categories and failure to include any Person that fits within any category above on Exhibit X to the Shareholder Settlement Agreement shall not mean that such Person is not a Shareholder Released Party.

“**Shareholder Releases**” means the releases provided for in Section 10.7 of the Plan.

“**Shareholder Settlement**” means the Shareholder Settlement Agreement and the transactions contemplated thereunder, the release and channeling of the Shareholder Released Claims pursuant to the Shareholder Releases and the Channeling Injunction issued for the benefit of the Shareholder Released Parties as set forth in Sections 10.7 and 10.8 of the Plan, the other transactions and terms described in Section 5.2(g) of the Plan and all other terms and provisions of the Plan, the Confirmation Order and the other Plan Documents implementing any of the foregoing.

“**Shareholder Settlement Agreement**” means the settlement agreement to be entered into by and among the

Debtors (and/or successors to the Debtors) and the Shareholder Payment Parties, which shall provide for, among other things, the payment of the Shareholder Settlement Amount by the Shareholder Payment Parties to the Master Disbursement Trust in exchange for the Shareholder Releases and the Channeling Injunction with respect to the Shareholder Released Claims, and the terms of which shall be consistent with Articles I through XII of the Plan and the Shareholder Settlement Term Sheet and otherwise acceptable to the Debtors, the Creditors' Committee and the Governmental Consent Parties, and which shall be filed by the Debtors with the Plan Supplement.

**“Shareholder Settlement Amount”** means Cash in an aggregate amount equal to \$4.325 billion, which shall be paid by the Shareholder Payment Parties on the dates and pursuant to the terms set forth in the Shareholder Settlement Agreement.

**“Shareholder Settlement Term Sheet”** means the term sheet attached as Appendix G to the Disclosure Statement.

\* \* \* \* \*

**“Tribe”** means any American Indian or Alaska Native Tribe, band, nation, pueblo, village or community, that the U.S. Secretary of the Interior acknowledges as an Indian Tribe, as provided in the Federally Recognized Tribe List Act of 1994, 25 U.S.C. § 5130, and as periodically listed by the U.S. Secretary of the Interior in the Federal Register pursuant to 25 U.S.C. § 5131; and any “Tribal Organization” as provided in the Indian Self-Determination and Education Assistance Act of 1975, as amended, 25 U.S.C. § 5304(1).

**“Tribe Channeled Claim”** means (i) any Tribe Claim or (ii) any Released Claim or Shareholder Released Claim that is held by a Tribe. Tribe Channeled Claims shall be channeled to the Tribe Trust in accordance with the Master TDP.

**“Tribe Claim”** means any Claim against any Debtor that is held by a Tribe (including any Claim based on the subrogation rights of a Tribe that is not an Other Subordinated Claim), and that is not a Priority Tax Claim. For the avoidance of doubt, claims of Tribes against Holders of PI Claims or Distributions payable to Holders of PI Claims, to the extent such claims exist, are not claims against any Debtor and therefore are not included in this definition of “Tribes Claims.”

**“Tribe TDP”** means the trust distribution procedures to be implemented by the Tribe Trust setting forth the procedures for the distribution of Abatement Distributions by the Tribe Trust to Authorized Recipients and the Authorized Abatement Purposes for Abatement Distributions from the Tribe Trust, the terms of which shall be consistent with Articles I through XII of the Plan and otherwise acceptable to the Debtors and the Native American Tribe Group and reasonably acceptable to the Creditors’ Committee and the Governmental Consent Parties, and which shall be filed by the Debtors with the Plan Supplement (it being understood and agreed that the form of Tribe TDP filed on July 14, 2021 is acceptable to such parties).

**“Tribe Trust”** means one or more trusts, limited liability companies or other Persons to be established in accordance with Section 5.7 of the Plan to (i) assume all liability for the Tribe Channeled Claims, (ii) hold the MDT Tribe Interest and the TopCo Tribe Interest and



collect the Initial Tribe Trust Distribution and the other Public Creditor Trust Distributions received in accordance with the Public Entity Settlements, (iii) administer Tribe Channeled Claims and (iv) make Abatement Distributions to Authorized Recipients for Authorized Abatement Purposes, in each case in accordance with the Tribe TDP.

\* \* \* \* \*

#### 1.4 **Controlling Document.**

In the event of an inconsistency between Articles I through XII of the Plan and the Plan Supplement, the terms of Articles I through XII of the Plan shall control, except that in the event of an inconsistency between Articles I through XII of the Plan and the Shareholder Settlement Agreement (or any agreements ancillary to the Shareholder Settlement Agreement), the Shareholder Settlement Agreement (or such ancillary agreement) shall control. In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan and of the Confirmation Order shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that, if there is determined to be any inconsistency between any provision of this Plan and any provision of the Confirmation Order that cannot be reconciled, then, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan solely to the extent of such inconsistency.

\* \* \* \* \*

### 4.3 Federal Government Unsecured Claims (Class 3).

(a) Allowance of the DOJ Civil Claim and DOJ Criminal Fine Claim: Pursuant to the DOJ 9019 Order, the DOJ Civil Claim is Allowed in the amount of \$2.8 billion. The DOJ Criminal Fine Claim shall be Allowed in the amount of \$3.544 billion on the later of (i) the DOJ Conviction Judgment Date and (ii) the entry by the Bankruptcy Court of the Confirmation Order.

(b) Treatment: On the Effective Date, in full and final satisfaction, settlement and release of the Allowed Federal Government Unsecured Claims, the United States shall receive (i) the Initial Federal Government Distribution and (ii) the MDT Federal Government Claim. The MDT Federal Government Claim shall be payable by the Master Disbursement Trust in the following installments (which installments shall, to the extent applicable, be reduced as a result of prepayments in accordance with Section 5.2(d)(iv) of the Plan): (x) \$10 million on the first Scheduled MDT Distribution Date, (y) \$10 million on July 31, 2023 and (z) \$5 million on July 31, 2024. The Initial Federal Government Distribution and the amounts paid to the United States on account of the MDT Federal Government Claim shall be deemed applied 60% to the DOJ Unsecured Claims and 40% to the Other Federal Agency Claims.

(c) Impairment and Voting: The Federal Government Unsecured Claims are Impaired. Holders of Federal Government Unsecured Claims are entitled to vote to accept or reject the Plan.

4.4 *Non-Federal Domestic Governmental Claims (Class 4).*

(a) Treatment: On the Effective Date, in full and final satisfaction, settlement and release of the Debtors' obligations in respect of Non-Federal Domestic Governmental Claims, NOAT shall receive (i) the Initial NOAT Distribution (less the Public Schools' Special Education Initiative Contribution), (ii) the TopCo NOAT Interest and (iii) the MDT NOAT Interest. Distributions in respect of Non-Federal Domestic Governmental Channeled Claims shall be exclusively in the form of Abatement Distributions made by NOAT to Authorized Recipients for Authorized Abatement Purposes, in accordance with the NOAT TDP.

(b) Channeling: As of the Effective Date, in accordance with the Plan and the Master TDP, any and all liability of the Debtors and the other Protected Parties for any and all Non-Federal Domestic Governmental Channeled Claims shall automatically, and without further act, deed or court order, be channeled exclusively to and assumed by NOAT. Each Non-Federal Domestic Governmental Channeled Claim shall be asserted exclusively against NOAT and resolved solely in accordance with the terms, provisions and procedures of the NOAT TDP. The sole recourse of any Person on account of any Non-Federal Domestic Governmental Channeled Claim, whether or not the Holder thereof participated in the Chapter 11 Cases and whether or not such Holder filed a Proof of Claim in the Chapter 11 Cases, shall be to NOAT as and to the extent provided in the NOAT TDP. Holders of Non-Federal Domestic Governmental Channeled Claims are enjoined from asserting against any Debtor or other Protected Party any Channeled Claim, and may not proceed in any manner against any

Debtor or other Protected Party on account of any Channeled Claim in any forum whatsoever, including any state, federal or non-U.S. court or administrative or arbitral forum, and are required to pursue Non-Federal Domestic Governmental Channeled Claims exclusively against NOAT, solely as and to the extent provided in the NOAT TDP.

(c) Impairment and Voting: Non-Federal Domestic Governmental Claims are Impaired. Holders of Non-Federal Domestic Governmental Claims are entitled to vote to accept or reject the Plan.

#### **4.5 Tribe Claims (Class 5).**

(a) Treatment: On the Effective Date, in full and final satisfaction, settlement and release of the Debtors' obligations in respect of Tribe Claims, the Tribe Trust shall receive (i) the Initial Tribe Trust Distribution, (ii) the TopCo Tribe Interest and (iii) the MDT Tribe Interest. Distributions in respect of Tribe Claims shall be exclusively in the form of Abatement Distributions made by the Tribe Trust to Authorized Recipients for Authorized Abatement Purposes, in accordance with the Tribe TDP.

(b) Channeling: As of the Effective Date, in accordance with the Plan and the Master TDP, any and all liability of the Debtors and the other Protected Parties for any and all Tribe Channeled Claims shall automatically, and without further act, deed or court order, be channeled exclusively to and assumed by the Tribe Trust. Each Tribe Channeled Claim shall be asserted exclusively against the Tribe Trust and resolved solely in accordance with the terms, provisions and procedures of the Tribe TDP. The sole recourse of any Person on account of any Tribe Channeled Claim, whether

or not the Holder thereof participated in the Chapter 11 Cases and whether or not such Holder filed a Proof of Claim in the Chapter 11 Cases, shall be to the Tribe Trust as and to the extent provided in the Tribe TDP. Holders of Tribe Channeled Claims are enjoined from asserting against any Debtor or other Protected Party any Channeled Claim, and may not proceed in any manner against any Debtor or other Protected Party on account of any Channeled Claim in any forum whatsoever, including any state, federal or non-U.S. court or administrative or arbitral forum, and are required to pursue Tribe Channeled Claims exclusively against the Tribe Trust, solely as and to the extent provided in the Tribe TDP.

(c) Impairment and Voting: Tribe Claims are Impaired. Holders of Tribe Claims are entitled to vote to accept or reject the Plan.

#### **4.6 Hospital Claims (Class 6).**

(a) Treatment: On the Effective Date, in full and final satisfaction, settlement and release of the Debtors' obligations in respect of Hospital Claims, the Hospital Trust shall receive (i) the Initial Hospital Trust Distribution and (ii) the MDT Hospital Claim. Distributions in respect of Hospital Channeled Claims shall be exclusively in the form of Abatement Distributions made by the Hospital Trust to Authorized Recipients for Authorized Abatement Purposes, in accordance with the Hospital TDP.

(b) Channeling: As of the Effective Date, in accordance with the Plan and the Master TDP, any and all liability of the Debtors and the other Protected Parties for any and all Hospital Channeled Claims shall automatically, and without further act, deed or court order,

be channeled exclusively to and assumed by the Hospital Trust. Each Hospital Channeled Claim shall be asserted exclusively against the Hospital Trust and resolved solely in accordance with the terms, provisions and procedures of the Hospital TDP. The sole recourse of any Person on account of any Hospital Channeled Claim, whether or not the Holder thereof participated in the Chapter 11 Cases and whether or not such Holder filed a Proof of Claim in the Chapter 11 Cases, shall be to the Hospital Trust as and to the extent provided in the Hospital TDP. Holders of Hospital Channeled Claims are enjoined from asserting against any Debtor or other Protected Party any Channeled Claim, and may not proceed in any manner against any Debtor or other Protected Party on account of any Channeled Claim in any forum whatsoever, including any state, federal or non-U.S. court or administrative or arbitral forum, and are required to pursue Hospital Channeled Claims exclusively against the Hospital Trust, solely as and to the extent provided in the Hospital TDP.

(c) Impairment and Voting: Hospital Claims are Impaired. Holders of Hospital Claims are entitled to vote to accept or reject the Plan.

#### ***4.7 Third-Party Payor Claims (Class 7).***

(a) Treatment: On the Effective Date, in full and final satisfaction, settlement and release of the Debtors' obligations in respect of Third-Party Payor Claims, the TPP Trust shall receive (i) the Initial TPP Trust Distribution and (ii) the MDT TPP Claim. Distributions in respect of Third-Party Payor Channeled Claims shall be exclusively in the form of Abatement Distributions made by the TPP Trust to Authorized Recipients for Authorized Abatement Purposes, in accord-

ance with the TPP TDP. For the avoidance of doubt, any payments from the TPP LRP Escrow Account to which LRP Participating TPPs may be entitled under the LRP Agreement shall not be subject to this Section 4.7.

(b) Channeling: As of the Effective Date, in accordance with the Plan and the Master TDP, any and all liability of the Debtors and the other Protected Parties for any and all Third-Party Payor Channeled Claims shall automatically, and without further act, deed or court order, be channeled exclusively to and assumed by the TPP Trust. Each Third-Party Payor Channeled Claim shall be asserted exclusively against the TPP Trust and resolved solely in accordance with the terms, provisions and procedures of the TPP TDP. The sole recourse of any Person on account of any Third-Party Payor Channeled Claim, whether or not the Holder thereof participated in the Chapter 11 Cases and whether or not such Holder filed a Proof of Claim in the Chapter 11 Cases, shall be to the TPP Trust as and to the extent provided in the TPP TDP. Holders of Third-Party Payor Channeled Claims are enjoined from asserting against any Debtor or other Protected Party any Channeled Claim, and may not proceed in any manner against any Debtor or other Protected Party on account of any Channeled Claim in any forum whatsoever, including any state, federal or non-U.S. court or administrative or arbitral forum, and are required to pursue Third-Party Payor Channeled Claims exclusively against the TPP Trust, solely as and to the extent provided in the TPP TDP.

(c) Impairment and Voting: Third-Party Payor Claims are Impaired. Holders of Third-Party Payor Claims are entitled to vote to accept or reject the Plan.

**4.8 Ratepayer Claims (Class 8).**

(a) Treatment: In full and final satisfaction, settlement and release of all Ratepayer Claims, on the Effective Date or as soon thereafter as reasonably practicable, Effective Date Cash shall be used to make the Truth Initiative Contribution in an amount equal to \$6.5 million, subject to the deductions therefrom for the required payments to the Common Benefit Escrow and in respect of attorneys' fees of the Ratepayer Mediation Participants in accordance with Section 5.8(c) and (f) of the Plan.

(b) Impairment and Voting: Ratepayer Claims are Impaired. Holders of Ratepayer Claims are entitled to vote to accept or reject the Plan.

(c) Tax Treatment: The Truth Initiative Contribution shall be treated, for U.S. federal income tax purposes, as (i) the cancellation of all Ratepayer Claims for no consideration and (ii) a transfer of Cash to the Truth Initiative Foundation by the Debtors.

**4.9 NAS Monitoring Claims (Class 9).**

(a) Treatment: On the Effective Date, in full and final satisfaction, settlement and release of the Debtors' obligations in respect of NAS Monitoring Claims, the NAS Monitoring Trust shall receive (i) the Initial NAS Monitoring Trust Distribution and (ii) the MDT NAS Monitoring Claim. Distributions in respect of NAS Monitoring Channeled Claims shall be exclusively in the form of Abatement Distributions made by the NAS Monitoring Trust to Authorized Recipients for Authorized Abatement Purposes, in accordance with the NAS Monitoring TDP.



(b) Channeling: As of the Effective Date, in accordance with the Plan and the Master TDP, any and all liability of the Debtors and the other Protected Parties for any and all NAS Monitoring Channeled Claims shall automatically, and without further act, deed or court order, be channeled exclusively to and assumed by the NAS Monitoring Trust. Each NAS Monitoring Channeled Claim shall be asserted exclusively against the NAS Monitoring Trust and resolved solely in accordance with the terms, provisions and procedures of the NAS Monitoring TDP. The sole recourse of any Person on account of any NAS Monitoring Channeled Claim, whether or not the Holder thereof participated in the Chapter 11 Cases and whether or not such Holder filed a Proof of Claim in the Chapter 11 Cases, shall be to the NAS Monitoring Trust as and to the extent provided in the NAS Monitoring TDP. Holders of NAS Monitoring Channeled Claims are enjoined from asserting against any Debtor or other Protected Party any Channeled Claim, and may not proceed in any manner against any Debtor or other Protected Party on account of any Channeled Claim in any forum whatsoever, including any state, federal or non-U.S. court or administrative or arbitral forum, and are required to pursue NAS Monitoring Channeled Claims exclusively against the NAS Monitoring Trust, solely as and to the extent provided in the NAS Monitoring TDP.

(c) Impairment and Voting: NAS Monitoring Claims are Impaired. Holders of NAS Monitoring Claims are entitled to vote to accept or reject the Plan.

**4.10 PI Claims (Classes 10(a) and 10(b)).**

(a) PI Trust: On the Effective Date, in full and final satisfaction, settlement and release of the Debtors'

obligations in respect of PI Claims, the PI Trust shall receive, subject to Section 5.2(h) of the Plan, (i) the Initial PI Trust Distribution and (ii) the MDT PI Claim.

(b) NAS PI Claims (Class 10(a))

- (i) Treatment: The PI Trust shall deposit the NAS PI Portion into the PI Trust NAS Fund in periodic installments as funds are received by the PI Trust. Distributions in respect of NAS PI Channeled Claims shall be exclusively in the form of Distributions from the PI Trust NAS Fund to Holders of Allowed NAS PI Channeled Claims, in accordance with the NAS PI TDP, and shall be subject to the PI Trust Deductions and Holdbacks.
- (ii) Channeling: As of the Effective Date, in accordance with the Plan and the Master TDP, any and all liability of the Debtors and the other Protected Parties for any and all NAS PI Channeled Claims shall automatically, and without further act, deed or court order, be channeled exclusively to and assumed by the PI Trust. Each NAS PI Channeled Claim shall be asserted exclusively against the PI Trust and resolved solely in accordance with the terms, provisions and procedures of the NAS PI TDP. The sole recourse of any Person on account of any NAS PI Channeled Claim, whether or not the Holder thereof participated in the Chapter 11

Cases and whether or not such Holder filed a Proof of Claim in the Chapter 11 Cases, shall be to the PI Trust NAS Fund as and to the extent provided in the NAS PI TDP. Holders of NAS PI Channeled Claims are enjoined from asserting against any Debtor or other Protected Party any Channeled Claim, and may not proceed in any manner against any Debtor or other Protected Party on account of any Channeled Claim in any forum whatsoever, including any state, federal or non-U.S. court or administrative or arbitral forum, and are required to pursue NAS PI Channeled Claims exclusively against the PI Trust, solely as and to the extent provided in the NAS PI TDP.

- (iii) Impairment and Voting: NAS PI Claims are Impaired. Holders of NAS PI Claims are entitled to vote to accept or reject the Plan.
- (e) Non-NAS PI Claims (Class 10(b)).
- (i) Treatment: The PI Trust shall deposit the Non-NAS PI Portion into the PI Trust Non-NAS Fund in periodic installments as funds are received by the PI Trust. Distributions in respect of Non-NAS PI Channeled Claims shall be exclusively in the form of Distributions from the PI Trust Non-NAS Fund to Holders of Allowed Non-NAS PI Channeled Claims, in accordance with

the Non-NAS PI TDP, and shall be subject to the PI Trust Deductions and Holdbacks.

- (ii) Channeling: As of the Effective Date, in accordance with the Plan and the Master TDP, any and all liability of the Debtors and the other Protected Parties for any and all Non-NAS PI Channeled Claims shall automatically, and without further act, deed or court order, be channeled exclusively to and assumed by the PI Trust. Each Non-NAS PI Channeled Claim shall be asserted exclusively against the PI Trust and resolved solely in accordance with the terms, provisions and procedures of the Non-NAS PI TDP. The sole recourse of any Person on account of any Non-NAS PI Channeled Claim, whether or not the Holder thereof participated in the Chapter 11 Cases and whether or not such Holder filed a Proof of Claim in the Chapter 11 Cases, shall be to the PI Trust Non-NAS Fund as and to the extent provided in the Non-NAS PI TDP. Holders of Non-NAS PI Channeled Claims are enjoined from asserting against any Debtor or other Protected Party any Channeled Claim, and may not proceed in any manner against any Debtor or other Protected Party on account of any Channeled Claim in any forum whatsoever, including any state, federal or non-U.S. court or administra-

tive or arbitral forum, and are required to pursue Non-NAS PI Channeled Claims exclusively against the PI Trust, solely as and to the extent provided in the Non-NAS PI TDP.

- (iii) Impairment and Voting: Non-NAS PI Claims are Impaired. Holders of Non-NAS PI Claims are entitled to vote to accept or reject the Plan.

(d) Canadian Patient Settlement. Pursuant to the Canadian Patient Claim Settlement Stipulation, if the Canadian Patient Settlement Agreement is approved by the Saskatchewan Court of Queen's Bench and the funds in the Canadian Patient Settlement Trust are released for the benefit of Holders of Settled Canadian Patient Claims (i) no Holder of a Settled Canadian Patient Claim that filed a Proof of Claim shall receive a recovery in respect of such Settled Canadian Patient Claim from any source other than the Patient Settlement Payment (as defined in the Canadian Patient Claim Settlement Stipulation) made from the Canadian Patient Settlement Trust and (ii) in order to receive a recovery in respect of any other Claim for which a Proof of Claim was filed by a Holder of a Settled Canadian Patient Claim, such Holder shall have the burden of proving that such Proof of Claim is not in respect of a Settled Canadian Patient Claim that was released and discharged pursuant to the Canadian Patient Claim Settlement Stipulation and such Holder has not received any recovery from the Canadian Patient Settlement Trust on account of such Claim. No Distributions shall be made on account of any Claims that may constitute Settled Canadian Patient Claims unless and until (x) the Saskatchewan Court of Queen's Bench approves the Ca-

nadian Patient Settlement Agreement and all funds in the Canadian Patient Settlement Trust have been distributed to Holders of Settled Canadian Patient Claims in accordance with the Canadian Patient Settlement Agreement or (y) the Saskatchewan Court of Queen's Bench denies the Canadian Patient Settlement Agreement. For the avoidance of doubt, nothing in Article X of the Plan shall affect the validity or enforceability of the Canadian Patient Settlement Agreement.

**4.11 Avrio General Unsecured Claims (Class 11(a)).**

(a) Treatment: Except to the extent a Holder of an Allowed Avrio General Unsecured Claim and Avrio Health L.P. agree to different treatment, on the Effective Date, or as soon as reasonably practicable thereafter, each Holder of an Allowed Avrio General Unsecured Claim shall receive, on account of such Allowed Claim, payment in full in Cash.

(b) Impairment and Voting: Avrio General Unsecured Claims are Unimpaired. Holders of Avrio General Unsecured Claims are conclusively presumed to accept this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Avrio General Unsecured Claims are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited.

**4.12 Adlon General Unsecured Claims (Class 11(b)).**

(a) Treatment: Except to the extent a Holder of an Allowed Adlon General Unsecured Claim and Adlon Therapeutics L.P. agree to different treatment, on the Effective Date, or as soon as reasonably practicable thereafter, each Holder of an Allowed Adlon General

Unsecured Claim shall receive, on account of such Allowed Claim, payment in full in Cash.

(b) Impairment and Voting: Adlon General Unsecured Claims are Unimpaired. Holders of Adlon General Unsecured Claims are conclusively presumed to accept this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Adlon General Unsecured Claims are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited.

**4.13 Other General Unsecured Claims (Class 11(c)).**

(a) Treatment: All Other General Unsecured Claims are Disputed. Except to the extent a Holder of an Allowed Other General Unsecured Claim and the Debtor against which such Claim is asserted agree to different treatment, after the Effective Date upon the Allowance of such Claim in accordance with Article VII of the Plan, each Holder of an Allowed Other General Unsecured Claim shall receive, on account of such Allowed Claim, such Holder's Pro Rata Share of the Other General Unsecured Claim Cash, up to payment in full of such Allowed Claim.

(b) Impairment and Voting: Other General Unsecured Claims are Impaired. Holders of Other General Unsecured Claims are entitled to vote to accept or reject the Plan.

**4.14 Intercompany Claims (Class 12).**

(a) Treatment: Except as otherwise provided in the NewCo Transfer Agreement or the Restructuring Steps Memorandum, on or after the Effective Date, Intercompany Claims shall be (x) in the case of Intercompany Claims held by a Liquidating Debtor against an

other Liquidating Debtor, at the discretion of the Debtors (or the Plan Administration Trustee, as applicable), (y) in the case of Intercompany Claims held by a Transferred Debtor against another Transferred Debtor, at the discretion of NewCo and (z) otherwise, at the discretion of the Debtors (or the Plan Administration Trustee, as applicable) with the consent (not to be unreasonably withheld, conditioned or delayed) of the Governmental Consent Parties:

- (i) Reinstated; or
- (ii) Compromised and settled or canceled and extinguished with no distribution on account thereof.

(b) Impairment and Voting: Intercompany Claims are either Unimpaired or Impaired with no distribution on account thereof. Holders of Intercompany Claims are either conclusively presumed to accept this Plan pursuant to section 1126(f) of the Bankruptcy Code or deemed to reject this Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Intercompany Claims are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Intercompany Claims.

#### **4.15 Shareholder Claims (Class 13).**

(a) Treatment: Holders of Shareholder Claims shall not receive or retain any property on account of such Claims. As of the Effective Date, in accordance with the terms of and except as otherwise expressly provided in the Shareholder Settlement, all Shareholder Claims shall automatically, and without further act, deed or court order, be deemed to have been re-



leased without any distribution on account thereof, and such Claims shall be of no further force or effect.

(b) Impairment and Voting: Shareholder Claims are Impaired. Holders of Shareholder Claims are deemed to reject this Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Shareholder Claims are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Shareholder Claims.<sup>2</sup>

**4.16 Co-Defendant Claims (Class 14).**

(a) Treatment: In full and final satisfaction and release of each Co-Defendant Claim, the Holder thereof shall (i) not receive or retain any property on account of such Co-Defendant Claim and not have any recourse to any Debtor or any Assets of any Debtor, any Estate or any Assets of any Estate, or any other Protected Party or any Assets of any Protected Party and (ii) retain its Co-Defendant Defensive Rights, which may be exercised solely in accordance with Section 10.18. As of the Effective Date, Co-Defendant Claims shall be deemed expunged, released and extinguished without further action by or order of the Bankruptcy Court, and shall be of no further force or effect. Notwithstanding the release, satisfaction, expungement and extinguishment of Co-Defendant Claims, a Co-Defendant retains its Co-Defendant Defensive Rights, which includes the ability to recover from Persons that are not Protected Parties or from any insurance policies that are not Purdue In-

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<sup>2</sup> Although Holders of Shareholder Claims are deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code, the Shareholder Payment Parties, in all capacities (including as Holders of Claims), have agreed to support the Plan pursuant to the Shareholder Settlement Agreement.

surance Policies or other insurance policies of Protected Parties.

(b) Impairment and Voting: Co-Defendant Claims are Impaired. Holders of Co-Defendant Claims are deemed to reject this Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Co-Defendant Claims are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Co-Defendant Claims.

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#### ***5.12 Public Document Repository.***

(a) **Summary.** The document disclosure program provided in this Plan will lead to the public disclosure of the most significant documents about Purdue, the Sackler family and the opioid crisis, including video depositions and millions of documents that Purdue produced in investigations and litigation over the past two decades. In addition, it will lead to the public disclosure of millions of documents not previously available to the public, including documents not previously produced in any investigation or litigation and certain privileged documents from the years when Purdue developed and promoted OxyContin, as identified below. The document disclosure program and Public Document Repository will be conducted in a way to maximize public confidence and public access and will set a new standard for transparency.

(b) **DOJ Repository Obligation.** The Debtors bear sole responsibility for complying with the DOJ document repository obligation set forth in the Plea Agreement (“***DOJ Repository Obligation***”), and the DOJ Repository Obligation is not modified by this Plan. Sim-

ilarly, the Debtors' satisfaction of the DOJ Repository Obligation shall not diminish the additional commitment to disclosure provided by this Plan. Instead, the public shall receive the full benefit of both, and the Public Document Repository shall contain the full set of documents that the Debtors have agreed to host under the DOJ Repository Obligation.

(c) **Disclosure Oversight Board.** As described further below, the disclosure program provided in this Plan shall be overseen by the DOB created on the Confirmation Date, consisting of up to three (3) representatives appointed by each of the Ad Hoc Committee, the Non-Consenting States Group, the Creditors' Committee and the MSGE Group and one (1) representative appointed by the Native American Tribe Group. No current or former director, officer, employee or attorney of the Debtors shall serve on the DOB or oversee the disclosure program.

(d) **Purdue Legal Matters.** As described further below, important material for the disclosure program is contained in documents that the Debtors preserved, collected, logged and produced in connection with investigations and litigation about Purdue's opioid business. Many non-privileged documents were produced in those matters, and many privileged documents were identified and logged. This Section 5.12 provides for the disclosure of many documents from the Purdue Legal Matters, which is a broad set of investigations and litigation defined in the Plan.

(e) **Disclosure Program Budget.** As described further below, the disclosure program is designed to avoid unnecessary expense, including by employing an unpaid volunteer oversight board and by using negoti-

ated agreements to avoid the need for litigation. The disclosure program shall be funded in an aggregate amount of \$44 million, which shall be paid in the following installments: (i) \$2 million on the Effective Date, (ii) \$11 million on the first Scheduled MDT Distribution Date, (iii) \$11 million on the second Scheduled MDT Distribution Date, (iv) \$10 million on the third Scheduled MDT Distribution Date and (v) \$10 million on the fourth Scheduled MDT Distribution Date (collectively, the “*Disclosure Program Budget*”). The Disclosure Program Budget shall be spent at the direction of the DOB. In addition, as provided in the Plan, Domestic Governmental Entities may elect (but are not required) to direct portions of their distributions to the Public Document Repository under terms provided in the Plan. Moreover, the DOB shall be permitted, but not required, to coordinate its work on this disclosure program with the work of state Attorneys General on related disclosures in the opioid industry, in a manner that reduces the costs and increases the benefits of this disclosure program. Finally, to make efficient use of the knowledge and expertise of the Debtors and their professionals, the Plan provides for significant materials to be collected by the Effective Date, or as soon as reasonably practicable thereafter, as described further below. For the avoidance of doubt, the Public Document Repository shall not be owned, held, administered or operated by the DOB, the Master Disbursement Trust or any Creditor Trust; the role of the DOB is to develop and oversee a temporary program to set up the appropriate Public Document Repository and achieve the goals of the disclosure program.

(f) **Access Materials.** On the Effective Date, or as soon as reasonably practicable thereafter, the DOB

shall be provided access to a set of non-privileged materials for the purpose of accomplishing the Public Document Repository (collectively, the “Access Materials”). These Access Materials shall include:

- (i) all transcripts and audio or video recordings of depositions taken in the Purdue Legal Matters, together with the exhibits to those depositions;
- (ii) all documents produced by the Debtors in the Purdue Legal Matters (which comprise more than thirteen million documents and more than one hundred million pages);
- (iii) the non-privileged documents from the Relativity Database (as defined below) (which are estimated to comprise more than twenty million additional documents beyond those produced in the Purdue Legal Matters);
- (iv) all privilege logs regarding documents withheld by the Debtors in the Purdue Legal Matters; and
- (v) documents obtained during the Chapter 11 Cases by the NAS Committee regarding clinical and pre-clinical studies conducted by the Debtors or other companies associated with the Sackler Family Members.

(g) **Debtors’ Relativity Database.** In the course of the Purdue Legal Matters, the Debtors collected a significant set of documents that are stored in a Relativity database (the “*Relativity Database*”). This collec-

tion includes files from more than two hundred custodians who played important roles at Purdue, including every Sackler Family Member who sat on the board or worked at the company. It also includes non-custodial documents, such as collections from electronic drives and paper archives. The custodial and non-custodial documents collected for the Relativity Database are from files that Purdue has preserved pursuant to broad document preservation policies in place for over twenty years, including from an email archive containing emails dating to the 1990s. Pursuant to the terms provided in this Section 5.12, materials from the Relativity Database created before February 2018 will be available for the disclosure program as described above.

(h) **Additional Collections.** On or before the Effective Date, the DOB will identify to the Debtors the additional custodians whose documents should be collected, to the extent possible, from the email archive and other preserved files, and the Debtors will load those files into the Relativity Database for inclusion as Access Materials or Sequestered Materials, as applicable.

(i) **Sequestered Materials.** On the Effective Date, or as soon as reasonably practicable thereafter, the Debtors shall provide the Plan Administration Trust with certain Privileged documents, described below, collected by the Debtors during the course of the Purdue Legal Matters and stored in the Relativity Database (“**Sequestered Materials**”), to be preserved for access by the DOB. The provision of the Sequestered Materials to the Plan Administration Trust shall not constitute a waiver of any applicable privileges, and, for clarity, no waiver of any applicable Privilege shall occur prior to the Sequestration Date (as defined below). The

Sequestered Materials are estimated to include hundreds of thousands of documents. To leverage efficiencies, the Debtors' current document review teams with experience reviewing Purdue's documents for privilege will screen and review, as necessary, all documents currently in the Relativity Database for Privilege, attorney work product, confidentiality, the Health Insurance Portability and Accountability Act or similar state or federal statute and critical business information before turning over documents as Access Materials or as Sequestered Materials. The DOB will aid the Debtors' document review team in setting parameters and search terms to effectuate accurate screening and review. The DOB may, confidentially and subject to privilege, request and be provided with information, and, as necessary, an appropriate, expert-aided statistically valid sampling of the relevant documents or other methodologies to aid in the foregoing review under an appropriate protective order and non-waiver agreement.

- (i) Subject to the Sequestration Date, the Debtors agree to waive attorney client and work product privilege over documents created before May 1, 2014 ("**Cutoff Date**") that fall within the following categories:
  - (A) Marketing materials, promotional materials and sales strategies. This will include, for example, legal advice on: marketing and promotional materials as part of the medical, regulatory, legal review process and other reviews of statements in promotional and marketing materials to ensure con-

sistency with a product's labeling and legal requirements; sales training materials (such as how to instruct the sales team on what they can and cannot say about the products); review of all call notes and whether statements on sales calls were appropriate; call planning; and sales bulletins. For the avoidance of doubt, "sales strategies" in this paragraph includes documents related to (I) medical liaisons, (II) continuing medical education, (III) the evolve to excellence program, (IV) Purdue's interactions with medical advocacy groups, and (V) legal advice regarding the performance, selection, retention, management and compensation of personnel in sales and marketing;

- (B) Materials reflecting legal advice on submissions to the FDA and compliance with FDA regulations. This will include, for example, advice on the decision to reformulate OxyContin, advice on interactions and communications with FDA and advice on FDA requirements;
- (C) Legal advice regarding distributions to or for the benefit of the Sackler Family Members;



- (D) Legal advice regarding the organization or function of the board of directors;
- (E) Legal advice regarding grants, gifts and other payments with respect to naming rights of Purdue and its shareholders;
- (F) Legal advice regarding the performance, selection, retention, management and compensation of the CEO of Purdue Pharma;
- (G) Legal advice regarding Purdue's interactions with state licensing boards and the federation of state medical boards;
- (H) Legal advice regarding Purdue's interactions with key opinion leaders, advisory boards and treatment guidance;
- (I) Legal advice regarding advocacy before the United States Congress or a state legislative branch with respect to OxyContin;
- (J) Employment records and files created before the Cutoff Date pertaining to employment terminations or disciplinary actions related to opioid sales and marketing, including documents created before the Cutoff Date pertaining to internal investigations of personnel related to marketing of opi-

oids, in all cases subject to applicable federal and state privacy and similar laws with respect to employees and with any redactions necessary to comply therewith; and

- (K) To the extent provided during the time period while the corporate integrity agreement was in effect, legal advice regarding compliance with the corporate integrity agreement entered into between Purdue and the DOJ.
- (ii) Subject to the Sequestration Date, below, the Debtors agree to waive attorney client and work product privilege over the following categories of documents:
- (A) Documents reflecting law department reviews of, and decisions regarding, health care providers and pharmacies pursuant to Purdue's abuse and diversion detection, order monitoring system and suspicious order monitoring programs, which will have been or will be provided to the DOJ under a June 2019 non-waiver agreement;
  - (B) Documents created before February 2018 reflecting legal review, analysis and advice with respect to advice received from McKinsey &

Company related to the sale and marketing of opioids; and

- (C) Documents created before June 30, 2017 reflecting legal review, analysis and advice with respect to Practice Fusion.
- (iii) To the extent documents subject to any of the foregoing waivers were previously logged on a privilege log in a Purdue Legal Matter, the Debtors shall provide the DOB with amended privilege logs that indicate the entries being produced pursuant to these waivers. For the avoidance of doubt, Privileged communications (during the applicable time periods set forth in Section 5.12(i)(i) and (ii)) about interactions with the media with respect to subject matters that are otherwise waived herein are included in such waivers.
- (iv) Nothing herein shall waive any third-party privilege or other rights, whether arising from a joint defense agreement, common interest privilege or otherwise, to which any document described in Section 5.12(i)(i) and (ii) is subject and which the Debtors do not have authority to waive. The Debtors will provide the DOB with privilege logs reflecting documents subject to such third-party privileges and rights that are identified in the course of identifying and compiling the Sequestered Materials. No doc-

uments subject to such third-party privileges and rights shall be included in the Public Document Repository, absent appropriate resolution of such third parties' rights and privileges. Further, no waiver of Privilege described herein shall be construed as subject matter waiver. Subject to the foregoing, the Debtors, the Creditors' Committee, the Governmental Consent Parties and the Newly Consenting States shall work together in good faith to ensure that all documents consistent with the Sequestered Material categories shall be available to the DOB for potential inclusion in the Public Document Repository in accordance with this Section 5.12.

(j) **Protection of the Privilege.** For the avoidance of doubt, the Debtors do not waive any Privilege and do not agree to provide as Sequestered Materials for the Public Document Repository any Privileged documents or communications not otherwise identified in Section 5.12(i)(i) and (ii). Such Privileged documents and communications not otherwise identified in Section 5.12(i)(i) and (ii) shall be removed from the Relativity Database and separately preserved, and shall not be eligible for the Public Document Repository at any time. All Privileged documents removed from the Relativity Database, and not included in the Sequestered Materials described above, will be provided to the Plan Administration Trust, separately from the Sequestered Materials. The Plan Administration Trust will retain these materials for the period described in Section 5.12(z).

For clarity, except for the Sequestered Materials identified in Section 5.12(i)(i) and (ii), the Debtors shall not intentionally provide the Master Disbursement Trust or the DOB with access to any documents or content of documents that are Privileged. In the event that the Debtors inadvertently provide the Master Disbursement Trust or the DOB with access to Privileged documents except for those documents identified in Section 5.12(i)(i) and (ii), that inadvertent provision shall not operate as a waiver of the Privilege, and, upon discovery, the DOB and/or the Master Disbursement Trust, as applicable, must promptly take steps to return the documents to the Plan Administration Trust or destroy such documents.

(k) **Sequestration Date.** On January 1, 2025, the Plan Administration Trust shall deliver the Sequestered Materials to the Host Institution (the “*Sequestration Date*”). Those materials shall be made available for assessment by the DOB and disclosure in the Public Document Repository, subject to the other provisions of this Section 5.12. The Host Institution may add Sequestered Materials to the Public Document Repository on the earlier of June 30, 2025 and the date after January 1, 2025 on which the MDT Claims are paid in full under the Plan.

(l) **Responsibilities of the DOB.** The DOB shall be responsible for:

- (i) accomplishing prompt, broad, permanent, public disclosure of millions of the Debtors’ documents via the Public Document Repository in accordance with this Section 5.12 to allow the public to

examine the Debtors' role in the opioid crisis;

- (ii) engaging with survivors, advocates, journalists, scholars, policymakers and others to ensure that the disclosure program serves the public;
- (iii) directing the use of the Disclosure Program Budget;
- (iv) establishing protections for Protected Information, as described below;
- (v) establishing procedures for resolution of challenges to the redaction or disclosure of information, as described below;
- (vi) overseeing the Host Institution's implementation of the disclosure program;
- (vii) coordinating, as appropriate, the disclosure of documents from other producing parties or non-parties in opioid cases whose confidential information is included in the Access Materials, including by discussing inclusion of Access Materials containing such third-party confidential information;
- (viii) ensuring the long-term sustainability and success of the disclosure program; and
- (ix) retaining and overseeing staff, counsel, or such other resources as are necessary and appropriate to accomplish the DOB's responsibilities under this Section 5.12.

(m) **Host Institution.** The host institution(s) shall be selected by the Governmental Consent Parties, the Creditors' Committee and the Newly Consenting States (the "***Host Institution***"). The Host Institution will be responsible for hosting and maintaining the Public Document Repository in perpetuity, including but not limited to: maintaining control and security over documents in the Public Document Repository; providing an accessible user interface; and providing clear and transparent explanations of its procedures to the public. Subject to restrictions and oversight imposed by the DOB, the Host Institution may employ appropriate resources to accomplish its responsibilities, including but not limited to the use of permanent university employees, temporary employees, contractors and vendor services. Commensurate with the large responsibilities assigned to the Host Institution, and subject to the decisions and oversight of the DOB and the requirements of this Plan, much of the Disclosure Program Budget may be directed to the Host Institution to fund the accomplishment of its responsibilities.

(n) **Prompt Disclosure.** In keeping with the importance of the matter, the DOB shall dedicate its best efforts to ensure prompt disclosure and shall seek to ensure that the public receives substantial disclosure at least every calendar quarter. The DOB shall prioritize prompt disclosure of the transcripts and audio and video recordings of depositions taken in the Purdue Legal Matters, together with the exhibits to those depositions. The Debtors will prioritize prompt production of the documents that Debtors have agreed to host pursuant to the DOJ Repository Obligation for immediate inclusion in the Public Document Repository for the sake of efficiency and cost savings.

(o) **Redaction of Protected Information.** The DOB shall implement appropriate procedures to protect the following information (“*Protected Information*”) by redacting Protected Information in documents before they are disclosed to the public in the Public Document Repository and by promptly catching and correcting errors if Protected Information is disclosed. Protected Information is (i) any information protected from disclosure by the Health Insurance Portability and Accountability Act or similar state or federal statute; (ii) personal email addresses or personal phone numbers; (iii) information subject to confidentiality rights of third parties; (iv) information subject to current trade secrets protection; (v) information regarding individuals that is of a purely personal nature and does not pertain to the Debtors’ opioid business or related practices; and (vi) information otherwise protected by law. For the avoidance of doubt, Protected Information that should be redacted in a written document shall also be redacted in audio or video, such as deposition recordings.

(p) **Limits on Redaction.** There shall be no redaction of: (i) names of the Debtors’ directors, officers, employees, agents, attorneys or consultants or of prescribers or of officials or employees of a government agency; (ii) email addresses at the “pharma.com” or “purduepharma.com” domain; or (iii) trade secrets in documents dated more than five (5) years before the disclosure.

(q) **Inadvertent Release of Privileged or Protected Information.** Notwithstanding anything else in the Plan, the Public Document Repository shall not contain or disclose any documents or content of documents that are Privileged, except for those documents identi-



fied in Section 5.12(i)(i) and (ii) above that are eligible for the Public Document Repository after January 1, 2025, or any Protected Information. Inadvertent disclosure of Privileged documents in the Public Document Repository does not operate as a waiver of Privilege, and, upon discovery, any Privileged documents shall be promptly removed from the Public Document Repository. The DOB will have sole liability for reviewing, evaluating, processing and redacting all Protected Information before any document is placed in the Public Document Repository, but may permit any individual or entity to review, evaluate, process or redact Protected Information. The DOB will establish a procedure that permits any party or member of the public to identify or challenge the disclosure of any potentially Protected Information placed in the Public Document Repository. The DOB will cause any document identified through this process to be immediately removed from the Public Document Repository pending review. Any disagreements regarding whether such material is Protected Information shall be resolved by the Special Master. The DOB will bear full legal responsibility arising out of or related to any improper disclosure of Protected Information.

(r) **Special Master.** Shortly after the Confirmation Date, the Debtors shall file an appropriate motion asking the Bankruptcy Court or the United States District Court for the Southern District of New York to select and appoint a disclosure oversight Special Master. The Special Master's qualifications shall include former service as a judicial officer, whether as a state or federal judge, and no current or former director, officer, employee or attorney of the Debtors, the Sackler Family Members, the Creditors' Committee, the Governmental

Consent Parties or the Newly Consenting States shall be eligible to be appointed as the Special Master, counsel or staff working under the Special Master, *provided* that prior work for a Governmental Consent Party or a Newly Consenting State that was completed prior to 2015 shall not preclude the appointment of a Special Master. The Special Master will adjudicate all privilege and related disputes. The Special Master's reasonable hourly fees and expenses shall be paid out of the Disclosure Program Budget except as the Special Master orders otherwise upon finding that a party advanced an argument that was frivolous, harassing or in bad faith.

- (i) Selection of Special Master. The selection of the Special Master shall be made by the Bankruptcy Court; *provided* that the Bankruptcy Court may consider a recommendation made jointly by the Debtors, the Sackler Family Members, the Creditors Committee, the Governmental Consent Parties, and the Newly Consenting States. For the purposes of determining if there is to be a joint recommendation, five (5) Business Days after the Confirmation Date, the parties ((x) the Debtors, (y) the Creditors' Committee, the Governmental Consent Parties and the Newly Consenting States and (z) the Sackler Family Members) each shall exchange a list of up to five (5) names as recommendations for the role of Special Master. The Debtors thereafter shall make a motion to the Bankruptcy Court to select a Special Master. If there are names in common

on the exchanged lists, the Debtors' motion shall be limited to any name or names that are common to all such parties' lists. If there is no name common to each of the three lists, the Debtors' motion will ask the Bankruptcy Court, in its discretion, to select a Special Master.

- (ii) Disclosure Challenges: To the extent that the DOB seeks to (A) challenge the Debtors' assertion of Privilege with respect to any documents withheld or redacted from production in the Purdue Legal Matters, or excluded by the Debtors from the Access Materials, or (B) disclose any Protected Information in the Public Document Repository, such efforts shall be subject to review by the Special Master, who shall have final say regarding whether (y) the DOB should be provided with such materials, and (z) such materials shall be protected from public disclosure.
- (iii) Timing of Challenges: All challenges to the redaction or withholding of documents from the Public Document Repository, including with regard to the Privilege and to Protected Information, including challenges brought by either the DOB or members of the public, shall be brought within the later of (A) one (1) year of the Effective Date and (B) one (1) year from when the document or information at issue is first withheld

from the Public Document Repository by redaction or logging.

- (iv) Counsel for Challenges: On or shortly after the Effective Date, the Debtors, the Governmental Consent Parties, the Creditors' Committee and the Newly Consenting States shall agree to appoint a law firm to defend the Debtors' Privilege assertions against challenges ("**Privilege Defense Counsel**"); *provided, however*, that if the Debtors, the Governmental Consent Parties, the Creditors' Committee and the Newly Consenting States are unable to reach an agreement regarding the identity of Privilege Defense Counsel, the Bankruptcy Court shall appoint the Privilege Defense Counsel. Third parties shall represent themselves before the Special Master and shall bear their own costs. Consistent with Sections 5.12(1)(ix) and 5.12(o), the DOB shall be responsible for defending against challenges to the disclosure or withholding of Protected Information.
- (v) Procedure for Challenges: Any party seeking to initiate a challenge to the Privilege or Protected Information designation of a document or information in a document or any other challenge to the inclusion or exclusion of documents in the Public Document Repository (the "**Petitioner**") must first, as a condition precedent to any such challenge, meet

and confer with the relevant defense counsel by serving a written statement of the specific material being disputed and the reasons for disputing each such material. If the meet and confer does not resolve the dispute, then the Petitioner shall submit a brief to the Special Master arguing why each individual document at issue should not be considered Privileged or Protected Information or should otherwise be included or excluded. Once a challenge has been submitted, the Special Master shall set a briefing schedule, permitting defense counsel no fewer than twenty-one (21) days to respond to the challenge, which may include in camera submissions in response. At the discretion of the Special Master, the briefing schedule may also include supplemental submissions, oral argument or other procedures the Special Master deems necessary to reach a determination. The Special Master shall then evaluate and decide the challenge based upon existing legal precedent of federal law within the U.S. Court of Appeals for the Second Circuit, and shall be empowered to determine whether such materials are subject to a valid claim of Privilege or otherwise constitute Protected Information or should have otherwise been included or excluded, but shall not be empowered to waive any Privilege ever

asserted by the Debtors with respect to the Purdue Legal Matters or with respect to the Access Materials or the Sequestered Materials. If the Petitioner does not prevail, then the Special Master shall have the discretion to shift to the Petitioner some or all of the reasonable legal expense of Privilege Defense Counsel, whose reasonable fees and expenses shall otherwise be paid for by the Disclosure Program Budget. If the Special Master determines that the challenge was frivolous, harassing, needlessly increasing costs or expenses, or otherwise brought for an improper purpose, then the Special Master shall shift to the Petitioner some or all of the reasonable legal expense of Privilege Defense Counsel. For avoidance of doubt, any materials determined by the Special Master to be Privileged or to contain Protected Information shall not be included in the Public Document Repository.

- (vi) Pending resolution of a challenge asserting a document was improperly disclosed, the Host Institution shall remove or redact each identified, challenged document.

(s) **Materials Produced by Shareholder Released Parties.** The Public Document Repository shall include all Sackler Family Members' documents that were produced in the Chapter 11 Cases and that relate to the manufacturing, sale or marketing of opioids in the

United States, the Debtors' alleged role or liability in connection with the opioid crisis or the regulatory approval of any opioid product sold in the United States by the Debtors, but subject to appropriate exclusions for documents covered by the attorney-client and work product privileges and certain confidential information (including exclusions for information and documents related to the finances, financing activities, taxes and tax filings, investments and third party business and advisory relationships of the Shareholder Released Parties).

- (i) The Special Master appointed in accordance with Section 5.12(r) shall resolve disputes regarding whether certain documents or information is required to be included in the document repository by the Sackler Family Members.
- (ii) The Sackler Family Members shall have the right to claw back documents that they were entitled to exclude in accordance with this provision but inadvertently produced to the Public Document Repository, and such inadvertent production shall not operate as a waiver of rights. The Special Master shall resolve any disputes between Sackler Family Members, the Governmental Consent Parties, the DOB and the Newly Consenting States concerning the exercise of clawback rights.
- (iii) For the avoidance of doubt, "Sackler Family Members' documents" refer

only to documents in the Sackler Family Members' possession, custody or control. Section 5.12(s) does not refer to documents including or involving Sackler Family Members that are in the Debtors' possession, custody or control.

(t) **Release of Confidentiality Rights by Parties Receiving Releases.** With regard to the disclosure of information in the Public Document Repository as authorized by this Section 5.12, the protections provided to Released Parties and Shareholder Released Parties shall be limited to the protections provided by this Plan. To the extent that Released Parties and Shareholder Released Parties possess rights to confidentiality beyond those provided this Plan (for example, a contractual confidentiality provision), those rights are waived to facilitate this disclosure program in exchange for the benefit of the releases provided to the Released Parties and Shareholder Released Parties by the Plan.

(u) **DOJ Settlement Communications.** Communications between the Debtors and DOJ regarding settlement or cooperation between 2015 and the final, non-appealable conclusion of *U.S. v. Purdue Pharma L.P.*, Case 2:20-cr-01028-MCA (D.N.J.) shall be protected from disclosure to the Master Disbursement Trust and the DOB and shall not be included in the Public Document Repository, nor shall any internal Debtor documents reflecting such communications or the strategy for such communications. The Debtors shall implement this exclusion when creating the set of Sequestered Materials.



(v) **Documents Produced By Certain Financial Institutions.** The disclosure program shall not include the documents produced by financial institutions pursuant to the examination authorized by the Bankruptcy Court at D.I. 1143. For the avoidance of doubt, if the same information also appears in a second source that is subject to disclosure (e.g., a deposition exhibit), then the information in that second source is subject to disclosure.

(w) **Active Vendor Contracts.** The Public Document Repository shall not disclose the NewCo's active vendor contracts or expired contracts that would reveal the sum and substance of active contracts. The DOB shall take appropriate steps to implement this exclusion.

(x) **Exculpation and Indemnification of DOB members and Host Institution.** To the maximum extent permitted by applicable law, the DOB members, whenever appointed, and the Host Institution shall not have or incur any liability for actions taken or omitted in his or her capacity as a DOB member, or on behalf of the DOB, except those acts found to be arising out of his or her willful misconduct, bad faith, gross negligence or fraud, and shall be entitled to indemnification, advancement and reimbursement for reasonable fees and expenses in defending any and all of his or her actions or inactions in his or her capacity as a DOB member, except for any actions or inactions found to be arising out of his or her willful misconduct, bad faith, gross negligence or fraud. Any valid indemnification claim of any of the DOB members shall be satisfied from the Disclosure Program Budget.

(y) **Reports.** On each of the first five anniversaries of the Effective Date, the DOB shall publish a public report describing the activities of the disclosure program, the use of any funds expended, and any funds committed for future use.

(z) **Wind Down.** In or after January 2026, the DOB shall wind itself down. If appropriate to facilitate the long-term success of the Public Document Repository, the DOB may arrange for another long-lived institution, such as one or more Attorneys General Offices, to interact with the Host Institution after the DOB is wound down (e.g., by receiving reports). Upon the wind down of the DOB, (i) the Host Institution shall be responsible for the permanent maintenance of the Public Document Repository; *provided* that, for avoidance of doubt, the access to the Access Materials and the Sequestered Materials granted to the DOB herein shall not be transferred to any successor institution other than the Host Institution and (ii) any Access Materials or Sequestered Materials in the possession of the DOB but not included in the Public Document Repository, for any reason, shall be, at NewCo's election, delivered to NewCo or destroyed or, if all or substantially all of the Assets of or Interests in NewCo have been sold, destroyed or delivered to Privilege Defense Counsel. Within ninety (90) days of the announcement of the dissolution of the Plan Administration Trust, the Plan Administration Trust shall use commercially reasonable efforts to return Privileged materials to Privilege Defense Counsel who shall retain the materials in a segregated client file.

(aa) **Master Disbursement Trust.** For the avoidance of doubt, nothing in this Section 5.12 limits the rights of the Master Disbursement Trust, subject to and

in accordance with Section 5.11 of the Plan, to access or use Privileged documents, including Excluded Privileged Materials, in connection with any potential or actual Causes of Action, including, among other things, any potential or actual Causes of Action contemplated by or that may result from, the Shareholder Settlement Agreement, including, without limitation, with respect to a Cause of Action against a Shareholder Release Snapback Party upon the filing of a Notice of Shareholder Release Snapback.

\* \* \* \* \*

**6.21 Post-Confirmation Claims.**

Except as otherwise provided in the applicable Creditor Trust TDP, in the event a Person seeks payment at any time on account of a Channeled Claim as to which no Proof of Claim was filed before the General Bar Date and/or for which no motion seeking leave or order granting leave to file a late Proof of Claim was filed or entered before the Confirmation Date, or as to which no Proof of Claim was required to be filed, such Person shall not be entitled to any payment or distribution on account of such Channeled Claim unless the Bankruptcy Court, by Final Order, first determines that such Person has a Channeled Claim that is or was channeled to a Creditor Trust under the Master TDP and grants such Person leave to assert such Channeled Claim against such Creditor Trust. If such leave is granted, such Person shall be entitled to seek to recover on such Channeled Claim solely from the Creditor Trust to which such Channeled Claim is or was channeled pursuant to the Master TDP, as determined by the Bankruptcy Court, and any such recovery shall be solely in accordance with and to the extent provided in

the Creditor Trust TDP for such Creditor Trust. After the Effective Date, in addition to the Person seeking to assert such Channeled Claim and any Person against which such Channeled Claim is purportedly asserted, only the MDT Trustees, the Creditor Trustees and NewCo shall have standing to participate in any action before the Bankruptcy Court in respect of the foregoing. For the avoidance of doubt, nothing in this paragraph is intended or shall be construed to enlarge, amend or modify the provisions of the Bar Date Order, nor is anything in this paragraph intended to derogate from, modify or amend the terms and conditions of any Creditor Trust TDP or the Master TDP or the rights of any MDT Trustee, Creditor Trustee or claims administrator for any Creditor Trust.

\* \* \* \* \*

## **ARTICLE X EFFECT OF CONFIRMATION.**

### **10.1 *Binding Effect.***

Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code, and subject to the occurrence of the Effective Date, on and after the entry of the Confirmation Order, the provisions of this Plan and the Plan Documents shall bind every Holder of a Claim against or Interest in any Debtor and every Holder of a Channeled Claim and inure to the benefit of, and be binding on, any such Holder's respective successors and assigns, regardless of whether any Claim or Interest of such Holder is Impaired under this Plan or whether such Holder has accepted this Plan.

\* \* \* \* \*

**10.4 Injunction against Interference with Plan.**

Subject to Section 12.4 of the Plan, upon entry of the Confirmation Order, all Holders of Claims against or Interests in the Debtors, Holders of Channeled Claims, Releasing Parties, Released Parties, Shareholder Released Parties and other parties in interests shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan and the Plan Documents. This Section 10.4 shall be included in the Confirmation Order.

\* \* \* \* \*

**10.6 Releases.****(a) Releases by Debtors.**

**As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, including, without limitation, the service of the Released Parties before and during the Chapter 11 Cases to facilitate the reorganization of the Debtors and the implementation of the Restructuring Transactions, and except as otherwise explicitly provided in the Plan or in the Confirmation Order, the Released Parties shall be conclusively, absolutely, unconditionally, irrevocably, fully, finally, forever and permanently released by the Debtors and their Estates from any and all Causes of Action, including any derivative claims asserted or assertible by or on behalf of any Debtor or any of their Estates and including any claims that any Debtor or any of their Estates, or that any other Person or party claiming under or through any Debtor or any of their Estates, would have presently or in the future been legally entitled to assert in its own right (whether individually or collectively) or on behalf of any Debtor or any of their Estates or any**

other Person, notwithstanding section 1542 of the California Civil Code or any law of any jurisdiction that is similar, comparable or equivalent thereto (which shall conclusively be deemed waived), whether existing or hereinafter arising, in each case, based on or relating to, or in any manner arising from, in whole or in part, (i) the Debtors, as such Entities existed prior to or after the Petition Date (including the Debtors' Opioid-Related Activities, manufacture, marketing and sale of Products, interaction with regulators concerning Opioid-Related Activities or Products, and involvement in the subject matter of the Pending Opioid Actions, and the past, present or future use or misuse of any opioid by a Releasing Party), (ii) the Estates or (iii) the Chapter 11 Cases. The Debtors, the Plan Administration Trust, the Master Disbursement Trust, the Creditor Trusts, NewCo, TopCo and any other newly-formed Persons that shall be continuing the Debtors' businesses after the Effective Date shall be bound, to the same extent the Debtors are bound, by the Releases set forth in this Section 10.6(a).

Notwithstanding anything herein to the contrary, (x) nothing in the Plan shall release any Excluded Claim and (y) nothing in this Section 10.6(a) shall (A) release any contractual Estate Cause of Action or any Estate Cause of Action that is commercial in nature and, in each case, unrelated to either the Chapter 11 Cases or the subject matter of the Pending Opioid Actions; *provided* that, with respect to the Settling Co-Defendants, only Estate Surviving Pre-Effective Date Claims shall be retained and not released, (B) release any Estate Cause of Action against a Holder of a Claim against a Debtor, to the extent such Estate Cause of Action is necessary for the administration and resolution of such Claim solely in accordance with the Plan, *provided, however*, that the fore-

going shall not apply to any Holder of a Co-Defendant Claim solely with respect to such Co-Defendant Claim, (C) be construed to impair in any way the Effective Date or post-Effective Date rights and obligations of any Person under the Plan, the Plan Documents, the Confirmation Order or the Restructuring Transactions, including the Shareholder Settlement Agreement, or (D) release any Claim or right to disgorge, recoup or recover compensation under the orders authorizing the Key Employee Plans or the orders with respect to the *Motion of Debtors for Entry of an Order Authorizing (I) Debtors to (A) Pay Pre-Petition Wages, Salaries, Employee Benefits and Other Compensation and (B) Maintain Employee Benefits Programs and Pay Related Administrative Obligations, (II) Employees and Retirees to Proceed with Outstanding Workers' Compensation Claims and (III) Financial Institutions to Honor and Process Related Checks and Transfers* [D.I. 6].

(b) Releases by Releasing Parties.

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, including, without limitation, the service of the Released Parties before and during the Chapter 11 Cases to facilitate the reorganization of the Debtors and the implementation of the Restructuring Transactions, and except as otherwise explicitly provided in the Plan or in the Confirmation Order, the Released Parties shall be conclusively, absolutely, unconditionally, irrevocably, fully, finally, forever and permanently released by the Releasing Parties from any and all Causes of Action, including any derivative claims asserted or assertible by or on behalf of the Debtors or their Estates and including any claims that any Releasing Party, or that any other Person or party claiming under or through any Releasing Party,

would have presently or in the future been legally entitled to assert in its own right (whether individually or collectively) or on behalf of any Releasing Party or any other Person, notwithstanding section 1542 of the California Civil Code or any law of any jurisdiction that is similar, comparable or equivalent thereto (which shall conclusively be deemed waived), whether existing or hereinafter arising, in each case, based on or relating to, or in any manner arising from, in whole or in part, (i) the Debtors, as such Entities existed prior to or after the Petition Date (including the Debtors' Opioid-Related Activities, manufacture, marketing and sale of Products, interaction with regulators concerning Opioid-Related Activities or Products, and involvement in the subject matter of the Pending Opioid Actions, and the past, present or future use or misuse of any opioid by a Releasing Party), (ii) the Estates or (iii) the Chapter 11 Cases.

For the avoidance of doubt and without limitation of the foregoing, each Person that is a Governmental Unit or a Tribe shall be deemed to have released all Released Claims that have been, are or could have been brought by (1) such Governmental Unit or Tribe in its own right, in its *parens patriae* or sovereign enforcement capacity, or on behalf of or in the name of another Person or (2) any other governmental official, employee, agent or representative acting or purporting to act in a *parens patriae*, sovereign enforcement or quasi-sovereign enforcement capacity, or any other capacity on behalf of such Governmental Unit or Tribe.

Notwithstanding anything herein to the contrary, (x) nothing in the Plan shall release any Excluded Claim; (y) Co-Defendants shall not be Released Parties for purposes of this Section 10.6(b); and (z) nothing in this Section 10.6(b) shall (A) release any Non-Opioid Excluded



Claims, (B) release any Estate Cause of Action against a Holder of a Claim against a Debtor, to the extent such Estate Cause of Action is necessary for the administration and resolution of such Claim solely in accordance with the Plan, *provided, however*, that the foregoing shall not apply to any Holder of a Co-Defendant Claim solely with respect to such Co-Defendant Claim, or (C) be construed to impair in any way the Effective Date or post-Effective Date rights and obligations of any Person under the Plan, the Plan Documents, the Confirmation Order or the Restructuring Transactions, including the Shareholder Settlement Agreement.

Notwithstanding anything herein to the contrary, but subject to the MDT Insurer Injunction and the Settling MDT Insurer Injunction, the Debtors shall not be released from liability for any Claim (other than any Co-Defendant Claim) that is or may be covered by any Purdue Insurance Policy; *provided* that recovery for any such Claim, including by way of settlement or judgment, shall be limited to the available proceeds of such Purdue Insurance Policy (and any extra-contractual liability of the Insurance Companies with respect to the Purdue Insurance Policies), and no Person or party shall execute, garnish or otherwise attempt to collect any such recovery from any assets other than the available proceeds of the Purdue Insurance Policies. The Debtors shall be released automatically from a Claim described in this paragraph upon the earlier of (x) the abandonment of such Claim and (y) such a release being given as part of a settlement or resolution of such Claim, and shall be released automatically from all Claims described in this paragraph upon the exhaustion of the available proceeds of the Purdue Insurance Policies (notwithstanding the nonoccur-

rence of either event described in the foregoing clauses (x) and (y)).

**(c) Releases by Debtors of Holders of Claims.**

As of the Effective Date, all Holders of Channeled Claims (excluding, in all respects, any Excluded Party, Shareholder Release Snapback Party or MDT Insurer) are hereby released by the Debtors and their Estates from any and all Causes of Action for any Claim in connection with, or arising out of, (i) the administration of the Chapter 11 Cases; the negotiation and pursuit of the Restructuring Transactions, the Plan, the Master Disbursement Trust, the Creditor Trusts (including the trust distribution procedures and the other Creditor Trust Documents) and the solicitation of votes with respect to, and confirmation of, the Plan; the funding of the Plan; the occurrence of the Effective Date; the administration of the Plan and the property to be distributed under the Plan; and the wind-up and dissolution of the Liquidating Debtors and the transactions in furtherance of any of the foregoing or (ii) such Holder's participation in the Pending Opioid Actions. The Debtors, the Plan Administration Trust, the Master Disbursement Trust, the Creditor Trusts, NewCo, TopCo and any other newly-formed Persons that shall be continuing the Debtors' businesses after the Effective Date shall be bound, to the same extent the Debtors are bound, by the Releases set forth in this Section 10.6(c).

As of the Effective Date, all Holders of PI Channeled Claims and Holders of NAS Monitoring Channeled Claims (excluding, in all respects, any Excluded Party, Shareholder Release Snapback Party or MDT Insurer) are hereby released by the Debtors and their Estates from any and all Causes of Action for any Claim in connection

with, or arising out of, (i) the Debtors, as such Entities existed prior to or after the Petition Date (including the Debtors' Opioid-Related Activities, manufacture, marketing and sale of Products, interaction with regulators concerning Opioid-Related Activities or Products, and involvement in the subject matter of the Pending Opioid Actions, and the past, present or future use or misuse of any opioid by a Releasing Party), (ii) the Estates or (iii) the Chapter 11 Cases, including, in each case, without limitation, any act, conduct, omission, event, transaction, occurrence, injury, damage, or continuing condition in any way relating to the foregoing.

Notwithstanding anything herein to the contrary, (x) nothing in the Plan shall release any Excluded Claim and (y) nothing in this Section 10.6(c) shall (A) release any contractual Estate Cause of Action or any Estate Cause of Action that is commercial in nature and, in each case, unrelated to either the Chapter 11 Cases or the subject matter of the Pending Opioid Actions, *provided* that, with respect to the Settling Co-Defendants, only Estate Surviving Pre-Effective Date Claims shall be retained and not released, (B) release any Estate Cause of Action against a Holder of a Claim against a Debtor, to the extent such Estate Cause of Action is necessary for the administration and resolution of such Claim solely in accordance with the Plan, *provided, however*, that the foregoing shall not apply to any Holder of a Co-Defendant Claim solely with respect to such Co-Defendant Claim, (C) release any claim or right arising in the ordinary course of the Debtors' or NewCo's business, including, without limitation, any such claim with respect to taxes or (D) be construed to impair in any way the Effective Date or post-Effective Date rights and obligations of any Person under the Plan, the Plan Documents, the Confir-

mation Order or the Restructuring Transactions, including the Shareholder Settlement Agreement.

**10.7 Shareholder Releases.**

**(a) Releases by Debtors.**

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, and except as otherwise explicitly provided in the Plan or in the Confirmation Order, the Shareholder Released Parties shall be conclusively, absolutely, unconditionally, irrevocably, fully, finally, forever and permanently released, subject to clause (z) of the last paragraph of this Section 10.7(a), by the Debtors and their Estates from any and all Causes of Action, including any derivative claims asserted or assertible by or on behalf of any Debtor or any of their Estates and including any claims that any Debtor or any of their Estates, or that any other Person or party claiming under or through any Debtor or any of their Estates, would have presently or in the future been legally entitled to assert in its own right (whether individually or collectively) or on behalf of any Debtor or any of their Estates or any other Person, notwithstanding section 1542 of the California Civil Code or any law of any jurisdiction that is similar, comparable or equivalent thereto (which shall conclusively be deemed waived), whether existing or hereinafter arising, in each case, based on or relating to, or in any manner arising from, in whole or in part, (i) the Debtors, as such Entities existed prior to or after the Petition Date (including the Debtors' Opioid-Related Activities, manufacture, marketing and sale of Products, interaction with regulators concerning Opioid-Related Activities or Products, and involvement in the subject matter of the Pending Opioid Actions, and the past, present or future use or misuse of any opioid by a

Releasing Party), (ii) the Estates or (iii) the Chapter 11 Cases. The Debtors, the Plan Administration Trust, the Master Disbursement Trust, the Creditor Trusts, NewCo, TopCo and any other newly-formed Persons that shall be continuing the Debtors' businesses after the Effective Date shall be bound, to the same extent the Debtors are bound, by the Shareholder Releases set forth in this Section 10.7(a).

Notwithstanding anything herein to the contrary, (x) nothing in the Plan shall release any Excluded Claim; (y) nothing in this Section 10.7(a) shall be construed to impair in any way the Effective Date or post-Effective Date rights and obligations of any Person under the Plan, the Plan Documents, the Confirmation Order or the Restructuring Transactions, including the Shareholder Settlement Agreement and the Separation Agreements; and (z) upon the filing of a Notice of Shareholder Release Snapback, (A) the Shareholder Releases set forth in this Section 10.7(a) shall be entirely null and void, revoked and invalidated, as of the Effective Date, with respect to all members of the Breaching Shareholder Family Group and the Designated Shareholder Released Parties, (B) the *status quo ante* shall be restored in all respects for the Debtors and the Master Disbursement Trust with respect to the members of the Breaching Shareholder Family Group and the Designated Shareholder Released Parties, and (C) the Master Disbursement Trust shall be deemed to have received and accepted all of the rights with respect to any member of the Breaching Shareholder Family Group and the Designated Shareholder Released Parties, in each case, that the Debtors and their Estates had prior to the Effective Date and that the Master Disbursement Trust would have pursuant to the transfer of the MDT Shareholder Rights to the Master

Disbursement Trust if the Shareholder Releases of this Section 10.7(a) had never been granted, which rights the Debtors and their Estates shall be deemed to have irrevocably transferred, granted and assigned to the Master Disbursement Trust; *provided* that, for the avoidance of doubt, notwithstanding the nullification, voiding, revocation and invalidation pursuant to the foregoing clause (A), the Shareholder Releases shall continue in effect for, and shall be fully enforceable by and for the benefit of, all other Shareholder Released Parties other than the Breaching Shareholder Family Group and the Designated Shareholder Released Parties.

(b) Releases by Releasing Parties.

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, and except as otherwise explicitly provided in the Plan or in the Confirmation Order, the Shareholder Released Parties, other than any Shareholder Released Parties identified in clause (vii)(C) of the definition of Shareholder Released Parties (and in no other clause of such definition), shall be conclusively, absolutely, unconditionally, irrevocably, fully, finally, forever and permanently released, subject to clause (z) of the last paragraph of this Section 10.7(b), by the Releasing Parties from any and all Causes of Action, including any derivative claims asserted or assertible by or on behalf of the Debtors or their Estates and including any claims that any Releasing Party, or that any other Person or party claiming under or through any Releasing Party, would have presently or in the future been legally entitled to assert in its own right (whether individually or collectively) or on behalf of any Releasing Party or any other Person, notwithstanding section 1542 of the California Civil Code or any law of any jurisdiction that is similar, comparable

or equivalent thereto (which shall conclusively be deemed waived), whether existing or hereinafter arising, in each case, (x) based on or relating to, or in any manner arising from, in whole or in part, (i) the Debtors, as such Entities existed prior to or after the Petition Date (including the Debtors' Opioid-Related Activities, manufacture, marketing and sale of Products, interaction with regulators concerning Opioid-Related Activities or Products, and involvement in the subject matter of the Pending Opioid Actions, and the past, present or future use or misuse of any opioid by a Releasing Party), (ii) the Estates or (iii) the Chapter 11 Cases and (y) as to which any conduct, omission or liability of any Debtor or any Estate is the legal cause or is otherwise a legally relevant factor.

In addition, as of the Effective Date, notwithstanding anything to the contrary herein, each Shareholder Released Party shall be released by any Person (regardless of whether such Person otherwise is a Releasing Party) that is a Shareholder Released Party's current or former officer, director, principal, member, employee, financial advisor, attorney (including, without limitation, any attorney retained by any director, in his or her capacity as such), accountant, investment banker (including, without limitation, investment banker retained by any director, in his or her capacity as such), consultant, expert or other professional, from any Cause of Action for indemnification, contribution or any similar liability-sharing theory based on or relating to, or in any manner arising from, in whole or in part, the subject matter of the preceding paragraph.

For the avoidance of doubt and without limitation of the foregoing, each Person that is a Governmental Unit or a Tribe shall be deemed to have released all Shareholder Released Claims that have been, are or could

have been brought by (1) such Governmental Unit or Tribe in its own right, in its *parens patriae* or sovereign enforcement capacity, or on behalf of or in the name of another Person or (2) any other governmental official, employee, agent or representative acting or purporting to act in a *parens patriae*, sovereign enforcement or quasi-sovereign enforcement capacity, or any other capacity on behalf of such Governmental Unit or Tribe.

Notwithstanding anything herein to the contrary, (x) nothing in the Plan shall release any Excluded Claim; (y) nothing in this Section 10.7(b) shall (A) release any Non-Opioid Excluded Claims or (B) be construed to impair in any way the Effective Date or post-Effective Date rights and obligations of any Person under the Plan, the Plan Documents, the Confirmation Order or the Restructuring Transactions, including the Shareholder Settlement Agreement and the Separation Agreements; and (z) upon the filing of a Notice of Shareholder Release Snapback, (A) the Shareholder Releases set forth in this Section 10.7(b) shall be entirely null and void, revoked and invalidated, as of the Effective Date, with respect to all members of the Breaching Shareholder Family Group and the Designated Shareholder Released Parties and (B) the *status quo ante* shall be restored in all respects for the Releasing Parties with respect to the members of the Breaching Shareholder Family Group and the Designated Shareholder Released Parties; *provided* that, for the avoidance of doubt, notwithstanding the nullification, voiding, revocation and invalidation pursuant to the foregoing clause (A), the Shareholder Releases shall continue in effect for, and shall be fully enforceable by and for the benefit of, all other Shareholder Released Parties other than the Breaching Shareholder Family Group and the Designated Shareholder Released Parties.



(c) Releases by Shareholder Released Parties.

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, and except as otherwise explicitly provided in the Plan or in the Confirmation Order, the Reciprocal Releasees shall be conclusively, absolutely, unconditionally, irrevocably, fully, finally, forever and permanently released, subject to clause (z) of the last paragraph of this Section 10.7(c), by the Shareholder Released Parties from any and all Causes of Action, including any derivative claims asserted or assertible by or on behalf of the Debtors or their Estates and including any claims that any Shareholder Released Party, or that any other Person or party claiming under or through any Shareholder Released Party, would have presently or in the future been legally entitled to assert in its own right (whether individually or collectively) or on behalf of any Shareholder Released Party or any other Person, notwithstanding section 1542 of the California Civil Code or any law of any jurisdiction that is similar, comparable or equivalent thereto (which shall conclusively be deemed waived), whether existing or hereinafter arising, in each case, based on or relating to, or in any manner arising from, in whole or in part, (i) the Debtors, as such Entities existed prior to or after the Petition Date (including the Debtors' Opioid-Related Activities, manufacture, marketing and sale of Products, interaction with regulators concerning Opioid-Related Activities or Products, and involvement in the subject matter of the Pending Opioid Actions, and the past, present or future use or misuse of any opioid by a Releasing Party), (ii) the Estates or (iii) the Chapter 11 Cases.

Notwithstanding anything herein to the contrary, (x) nothing in the Plan shall release any Excluded Claim; (y) nothing in this Section 10.7(c) shall be construed to

impair in any way the Effective Date or post-Effective Date rights and obligations of any Person under the Plan, the Plan Documents, the Confirmation Order or the Restructuring Transactions, including the Shareholder Settlement Agreement and the Separation Agreements, and including the rights of any Shareholder Released Party that is a current or former director, officer or employee of the Debtors but is not a Sackler Family Member relating to plan treatment of any Claims held by such party; and (z) upon the filing of a Notice of Shareholder Release Snapback and the commencement or continuation of any action or proceeding against a member of a Breaching Shareholder Family Group or a Designated Shareholder Released Party by any Reciprocal Releasee, (A) the releases set forth in this Section 10.7(c) of any Reciprocal Releasee that has commenced or continued any such action shall be entirely null and void, revoked and invalidated, as of the Effective Date, with respect to the members of the Breaching Shareholder Family Group and the Designated Shareholder Released Parties and (B) the *status quo ante* shall be restored in all respects for the members of the Breaching Shareholder Family Group and the Designated Shareholder Released Parties with respect to any Reciprocal Releasee that has commenced or continued any such litigation; *provided* that, for the avoidance of doubt, notwithstanding the nullification, voiding, revocation and invalidation pursuant to the foregoing clause (A), the releases set forth in this Section 10.7(c) shall continue in effect for, and shall be fully enforceable by and for the benefit of, all other Reciprocal Releasees, and shall be binding on, and enforceable against, all other Shareholder Released Parties, including any members of the Breaching Shareholder Family

Group with respect to any Reciprocal Releasee that has not commenced any such litigation.

**10.8 Channeling Injunction.**

In order to supplement the injunctive effect of the Plan Injunction, the Releases and the Shareholder Releases set forth in Sections 10.5, 10.6 and 10.7 of the Plan, the Confirmation Order shall provide for the following permanent injunction to take effect as of the Effective Date:

(a) **Terms.** In order to preserve and promote the settlements contemplated by and provided for in the Plan and to supplement, where necessary, the injunctive effect of the Plan Injunction, the Releases and the Shareholder Releases described in Sections 10.5, 10.6 and 10.7 of the Plan, and pursuant to the exercise of the equitable jurisdiction and power of the Bankruptcy Court under section 105(a) of the Bankruptcy Code, all Persons that have held or asserted, that hold or assert or that may in the future hold or assert any Channeled Claim shall be permanently and forever stayed, restrained and enjoined from taking any action for the purpose of directly or indirectly collecting, recovering or receiving payments, satisfaction, recovery or judgment of any form from or against any Protected Party with respect to any Channeled Claim, including:

- (i) commencing, conducting or continuing, in any manner, whether directly or indirectly, any suit, action or other proceeding, in each case, of any kind, character or nature, in any forum in any jurisdiction with respect to any Channeled Claims, against or affecting any Protected Party, or any prop-

erty or interests in property of any Protected Party with respect to any Channeled Claims;

- (ii) enforcing, levying, attaching, collecting or otherwise recovering, by any means or in any manner, either directly or indirectly, any judgment, award, decree or other order against any Protected Party or against the property of any Protected Party with respect to any Channeled Claims;
- (iii) creating, perfecting or enforcing, by any means or in any manner, whether directly or indirectly, any Lien of any kind against any Protected Party or the property of any Protected Party with respect to any Channeled Claims;
- (iv) asserting or accomplishing any setoff, right of subrogation, indemnity, contribution or recoupment of any kind, whether directly or indirectly, in respect of any obligation due to any Protected Party or against the property of any Protected Party with respect to any Channeled Claims; and
- (v) taking any act, by any means or in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the Plan Documents, with respect to any Channeled Claims.

(b) **Reservations.** Notwithstanding anything to the contrary in this Section 10.8 or the Confirmation Order, this Channeling Injunction shall not stay, restrain, bar or enjoin:

- (i) the rights of Holders of Channeled Claims to the treatment afforded them under the Plan and the Plan Documents, including the rights of Holders of Channeled Claims to assert such Channeled Claims solely in accordance with Section 6.21 of the Plan, the Master TDP and the Creditor Trust TDPs, in each case whether or not there are funds to make Distributions in respect of such Channeled Claims and whether or not such rights entitle such Holders to Abatement Distributions or any other form of Distributions;
- (ii) the rights of Persons to assert any claim, debt, litigation or liability for payment of Creditor Trust Operating Expenses solely against the applicable Creditor Trust;
- (iii) the rights of Persons to assert any claim, debt or litigation against any Excluded Party;
- (iv) the rights of the Master Disbursement Trust to pursue and enforce the MDT Shareholder Rights, the MDT Insurance Rights and the MDT Causes of Action;

- (v) **the rights of the parties to the LRP Agreement to enforce the terms thereof in accordance with the Plan;**
- (vi) **the Creditor Trusts from enforcing their respective rights against the Master Disbursement Trust under the Plan and the MDT Documents;**
- (vii) **the Master Disbursement Trust from enforcing its rights, on behalf of itself and the Private Creditor Trusts, against NewCo and TopCo under the Plan and the NewCo Credit Support Agreement; or**
- (viii) **NOAT or the Tribe Trust from enforcing their respective rights against TopCo under the TopCo Operating Agreement.**

**(c) Notice of Shareholder Release Snapback.**

Upon the filing of a Notice of Shareholder Release Snapback, the Channeling Injunction shall terminate, be rescinded and have no application, without further order of the Bankruptcy Court, to any suit, action or other proceeding, in each case, of any kind, character or nature, brought against any member of the Breaching Shareholder Family Group or any Designated Shareholder Released Party; *provided, however*, that the extension of time provided by Section 10.9(a) of the Plan shall continue in effect in accordance with its terms; and *provided further* that, for the avoidance of doubt, notwithstanding the termination and rescission pursuant to this Section 10.8(c), the Channeling Injunction shall continue in effect for, and shall be fully enforceable by and for the benefit of, all other Protected Parties, in-

cluding all other Shareholder Released Parties, other than the Breaching Shareholder Family Group and the Designated Shareholder Released Parties.

(d) **Modifications.** Except as expressly set forth in paragraph (c) of this Section 10.8, there can be no modification, dissolution or termination of the Channeling Injunction, which shall be a permanent injunction.

(e) **Non-Limitation of Channeling Injunction.** Except as expressly set forth in paragraphs (b) and (c) of this Section 10.8, nothing in the Plan, the MDT Documents or the Creditor Trust Documents shall be construed in any way to limit the scope, enforceability or effectiveness of the Channeling Injunction issued in connection with the Plan.

(f) **Bankruptcy Rule 3016 Compliance.** The Debtors' compliance with the requirements of Bankruptcy Rule 3016 shall not constitute an admission that the Plan provides for an injunction against conduct not otherwise enjoined under the Bankruptcy Code.

**10.9 *Tolling of Shareholder Released Claims; Violations of Shareholder Releases and Channeling Injunction.***

(a) **Tolling of Shareholder Released Claims.** If applicable law, an order in any proceeding or an agreement fixes a period for commencing or continuing an action or proceeding based on a Shareholder Released Claim and such Shareholder Released Claim is released pursuant to the Shareholder Releases or such action or proceeding is enjoined by the Channeling Injunction, then such period does not expire with respect to such Shareholder Released Claim with respect to the Master

Disbursement Trust (or the MDT Trustees) or the Releasing Parties until the latest of (i) the end of such period; (ii) with respect to the applicable Shareholder Family Group and any Designated Shareholder Released Party, two hundred twenty-five (225) days after the filing of a Notice of Shareholder Release Snapback with respect to such Shareholder Family Group; (iii) with respect to the applicable Shareholder Family Group and any Designated Shareholder Released Party, when such Shareholder Family Group fulfills its payment obligations under the Shareholder Settlement Agreement; and (iv) with respect to the applicable Shareholder Released Party that is a Subsidiary (as defined in the Shareholder Settlement Agreement) of a Shareholder Payment Party, two hundred twenty-five (225) days after the reinstatement of any Estate Cause of Action against such Shareholder Released Party pursuant to Section 10.20 of the Plan.

(b) **Violations of Shareholder Releases and Channeling Injunction.** In the event that any Person takes any action that a Shareholder Released Party believes violates the Shareholder Releases or Channeling Injunction as it applies to any Shareholder Released Party, such Shareholder Released Party shall be entitled to make an emergency application to the Bankruptcy Court for relief, and may proceed by contested matter rather than by adversary proceeding. The Bankruptcy Court shall have jurisdiction and authority to enter final orders in connection with any dispute over whether an action violates the Shareholder Releases or Channeling Injunction. Upon determining that a violation of the Shareholder Releases or Channeling Injunction has occurred, the Bankruptcy Court, in its discretion, may award any appropriate relief against such vi-



olating Person, including, but not limited to, (i) disgorgement from the violating Person of any funds, assets or other value received, directly or indirectly, pursuant to the Plan or Plan Documents (including fees and expenses paid pursuant to the Plan or Plan Documents on account of legal or other advisory services rendered to or for the benefit of the violating Person); (ii) the termination of any rights of the violating Person to receive any funds, assets or other value pursuant to the Plan or Plan Documents; (iii) the reduction of any payments owed by any Shareholder Released Parties under the Shareholder Settlement Agreement to the violating Person in an amount equal to the amount of disgorgement ordered from, or the reduction of future payments ordered to be made to, or on account of, the violating Person (subject to the right of the violating Person to request that any amounts actually disgorged from such violating Person offset any reduction of future payments ordered to be made to, or on account of, such violating Person); (iv) an admonition, reprimand or censure of, or citation of contempt by, the violating Person and its counsel; (v) a fine or penalty paid into the Bankruptcy Court; (vi) a bond or other security in an amount equal to any financial obligation ordered by the Bankruptcy Court in respect of the violation; (vii) an appropriate sanction on any attorney or law firm responsible for the violation; (viii) injunctive relief to prevent future violations by the Person or its counsel; and (ix) attorney and other professional fees incurred by any Shareholder Released Party arising from the violation. The provision of any one form of relief shall not preclude the provision of any other form of relief.

\* \* \* \* \*

***10.19 Channeling of Future PI Channeled Claims and Injunction in Support of PI Futures Trust.***

As of the Effective Date, in accordance with the Plan and the Master TDP, any and all liability of the Debtors and the other Protected Parties for any and all Future PI Channeled Claims shall automatically, and without further act, deed or court order, be channeled exclusively to and assumed by the PI Futures Trust. Each Future PI Channeled Claim shall be asserted exclusively against the PI Futures Trust and resolved solely in accordance with the terms, provisions and procedures of the PI Futures TDP. The sole recourse of any Person on account of any Future PI Channeled Claim, whether or not the Holder thereof participated in the Chapter 11 Cases and whether or not such Holder filed a Proof of Claim in the Chapter 11 Cases, shall be to the PI Futures Trust as and to the extent provided in the PI Futures TDP.  **Holders of Future PI Channeled Claims are enjoined from asserting against any Debtor or other Protected Party any Channeled Claim, and may not proceed in any manner against any Debtor or other Protected Party on account of any Channeled Claim in any forum whatsoever, including any state, federal or non-U.S. court or administrative or arbitral forum, and are required to pursue Future PI Channeled Claims exclusively against the PI Futures Trust, solely as and to the extent provided in the PI Futures TDP.**

***10.20 Reinstatement of Certain Shareholder Released Claims.***

As set forth in the Shareholder Settlement Agreement, if any Shareholder Released Party that is a Subsidiary (as defined in the Shareholder Settlement Agreement) of a Shareholder Payment Party voluntar-

ily or involuntarily becomes subject to an insolvency, bankruptcy, reorganization, winding-up, administration, dissolution, composition or similar proceeding, upon election by notice from the Sackler Party Representative (as defined in the Shareholder Settlement Agreement), with the consent of the Master Disbursement Trust, any Estate Causes of Action against such Shareholder Released Party that were previously held by the Debtors and that were released pursuant to Section 10.7(a) of the Plan shall be reinstated in full (and the Shareholder Release provided under Section 10.7(a) of the Plan shall be deemed null and void with respect thereto, and the Channeling Injunction shall terminate, be rescinded and have no application with respect thereto) and the Master Disbursement Trust, in its sole discretion and upon receipt of an advance for fees and expenses provided by the Shareholder Released Parties in an amount determined by the Master Disbursement Trust in its sole discretion (which advance shall be repaid to the extent not used), shall utilize commercially reasonable efforts to maximize the value of any such Estate Causes of Action in such insolvency or liquidation proceeding, and any recovery shall be treated in accordance with the terms as set forth in the Shareholder Settlement Agreement.

**10.21 Special Provisions for United States.**

(a) As to the United States, notwithstanding anything contained in the Plan or Confirmation Order to the contrary (except Section 5.2(h) of the Plan and in respect of the United States-PI Claimant Medical Expense Claim Settlement), including but not limited to this Article X, nothing in the Plan or Confirmation Order (except Section 5.2(h) of the Plan and in respect of

the United States-PI Claimant Medical Expense Claim Settlement) shall:

- (i) limit or expand the scope of discharge, release or injunction permitted to debtors under the Bankruptcy Code. The discharge, release, and injunction provisions contained in the Plan and Confirmation Order are not intended and shall not be construed to bar the United States from, subsequent to the Confirmation Order, pursuing any police or regulatory action, or any criminal action;
- (ii) discharge, release, exculpate, impair or otherwise preclude: (A) any liability to the United States that is not a “claim” within the meaning of section 101(5) of the Bankruptcy Code; (B) any Claim of the United States arising on or after the Effective Date; (C) any liability of the Debtors under police or regulatory statutes or regulations to the United States as the owner, lessor, lessee or operator of property that such Entity owns, operates or leases after the Effective Date; or (D) any liability to the United States, including but not limited to any liabilities arising under the IRC, the environmental laws, the criminal laws, the civil laws or common law, of any Person, including any Released Parties,

Shareholder Released Parties or any Exculpated Parties, in each case, other than the Debtors; provided, however, that the foregoing shall not (x) limit the scope of discharge granted to the Debtors under sections 524 and 1141 of the Bankruptcy Code, (y) diminish the scope of any exculpation to which any Person is entitled under section 1125(e) of the Bankruptcy Code or (z) change the treatment of the DOJ Forfeiture Judgment Claim pursuant to Section 2.3 of the Plan or the treatment of the Federal Government Unsecured Claims pursuant to Section 4.3 of the Plan;

- (iii) enjoin or otherwise bar the United States from asserting or enforcing, outside the Bankruptcy Court, any liability described in the preceding clause (ii); provided, however, that the non-bankruptcy rights and defenses of all Persons with respect to (A)-(D) in clause (ii) are likewise fully preserved;
- (iv) affect any valid right of setoff or recoupment of the United States against any of the Debtors; provided, however, that the rights and defenses of the Debtors with respect thereto are fully preserved (other than any rights or defenses based on language in the Plan or the

Confirmation Order that may extinguish setoff or recoupment rights);

- (v) divest any court, commission or tribunal of jurisdiction to determine whether any liabilities asserted by the United States are discharged or otherwise barred by this Confirmation Order, the Plan or the Bankruptcy Code; provided, however, that the Bankruptcy Court shall retain jurisdiction as set forth in and pursuant to the terms of the Plan to the extent permitted by law; or
- (vi) be deemed to (A) determine the tax liability of any Person, including but not limited to the Debtors, (B) have determined the federal tax treatment of any item, distribution or Entity, including the federal tax consequences of the Plan or Confirmation Order, or (C) expressly expand or diminish the jurisdiction of the Bankruptcy Court to make determinations as to federal tax liability and federal tax treatment under the Bankruptcy Code and 28 U.S.C. §§ 157, 1334.

For the avoidance of doubt, the Channeling Injunction set forth in Section 10.8 of the Plan does not apply to the rights and causes of action protected by this Section 10.21.

(b) Notwithstanding anything to the contrary herein, nothing in the Plan, the Confirmation Order, the

Shareholder Settlement Agreement or any other document filed in connection with the Plan shall release claims held by the United States of America against the Shareholder Released Parties; provided that, for the avoidance of doubt, nothing in the Plan, Confirmation Order, the Shareholder Settlement Agreement or any other document filed in connection with the Plan shall limit the releases contained in the Settlement Agreement between the United States of America and Purdue Pharma L.P., executed on October 21, 2020, or the Settlement Agreement between the United States of America and Dr. Richard Sackler, David Sackler, Mortimer D.A. Sackler, Kathe Sackler, and the Estate of Jonathan Sackler, executed on October 21, 2020.

(c) Several of the Debtors are parties to the various following agreements with the Secretary of the Department of Health and Human Services under which the Debtors owe rebates to third parties:

- (i) The Medicare Coverage Gap Discount Program Agreement is established under 42 U.S.C. §§ 1395w-114A, 1395w-153 and is required should manufacturers wish to have coverage for their products under Medicare Part D. Under the Medicare Coverage Gap Discount Program Agreement, manufacturers agree to reimburse Medicare Part D plan sponsors for certain Coverage Gap discounts the plans provide to Medicare beneficiaries in the Part D coverage gap. The Centers for Medicare & Medicaid Services requires that a new entity that seeks to as-

sume a Medicare Coverage Gap Discount Program Agreement enter into a novation agreement with the Centers for Medicare & Medicaid Services with respect to the transfer of such agreement. The Debtors that have entered into Medicare Coverage Gap Discount Program Agreements with the Secretary are: Purdue Pharma L.P. (P1180) and Rhodes Pharmaceuticals L.P. (P1281);

- (ii) The Medicaid Drug Rebate Program, established under section 1927 of the Social Security Act, requires manufacturers to enter into National Drug Rebate Agreements with the Secretary for the coverage and payment of a manufacturer's covered outpatient drugs. Under the Medicaid Drug Rebate Program, if a manufacturer has entered into and has in effect a National Drug Rebate Agreement, Medicaid covers and pays for all of the drugs of that manufacturer dispensed and paid for under the state plan, and in return manufacturers pay applicable rebates to the states. The Debtors that have National Drug Rebate Agreements and the labeler codes associated with the National Drug Rebate Agreements are as follows: Rhodes Pharmaceuticals L.P.



- (42858), Purdue Pharma L.P. (59011), Avrio Health L.P. (67618) and Adlon Therapeutics L.P. (72912);
- (iii) Manufacturers with National Drug Rebate Agreements must also comply with the Drug Pricing Program under section 340B of the Public Health Service Act, 42 U.S.C. § 256b, and have Pharmaceutical Pricing Agreements with the Secretary of the Department of Health and Human Services. Under the Pharmaceutical Pricing Agreements, manufacturers agree to charge a price for covered outpatient drugs that will not exceed the average manufacturer price decreased by a rebate percentage. The Debtors that have Pharmaceutical Pricing Agreements and the labeler codes associated with such agreements are as follows: Rhodes Pharmaceuticals L.P. (42858), Purdue Pharma L.P. (59011), Avrio Health L.P. (67618) and Adlon Therapeutics L.P. (72912); and
- (iv) The Medicare Coverage Gap Discount Program Agreements, the Medicaid National Drug Rebate Agreements and the Pharmaceutical Pricing Agreements identified above provide that, in the event of a transfer of ownership, such agreements are automatically assigned to

the new owner and all terms and conditions of such agreements remain in effect as to the new owner. Accordingly, notwithstanding anything contained in the Plan or the Confirmation Order which may be to the contrary, the Debtors shall assume such agreements pursuant to section 365 of the Bankruptcy Code, and upon the Effective Date, the Medicare Coverage Gap Discount Program Agreements, the Medicaid National Drug Rebate Agreements and the Pharmaceutical Pricing Agreements identified above shall be assigned to NewCo. NewCo, as the new owner, will assume the obligations of the Debtors who are parties under such agreements from and after the Effective Date, and to fully perform all the duties and responsibilities that exist under such agreements in accordance with their terms, including the payment of discounts owed to Part D Plan sponsors or payment of rebates owed to states and wholesalers for quarters prior to the Effective Date. For the avoidance of doubt, NewCo shall be liable for any outstanding rebates or discounts owed to third parties (and any applicable interest thereon) arising prior to the Effective Date, as well as any

penalties associated with noncompliance by the Debtors with the Medicare Coverage Gap Discount Program Agreements, the Medicaid National Drug Rebate Agreements and the Pharmaceutical Pricing Agreements identified above prior to the Effective Date.

(d) Notwithstanding anything to the contrary herein, nothing in the Plan, the Confirmation Order, the Shareholder Settlement Agreement or any other document filed in connection with the Plan shall bind the United States in any application of statutory, or associated regulatory, authority grounded in Title 19 of the Social Security Act, 42 U.S.C. § 1396-1 et seq. (the “*Medicaid Program*”) or in section 1115 of Title 11 of the Social Security Act. The United States is neither enjoined nor in any way prejudiced in seeking recovery of any funds owed to the United States under the Medicaid Program.

## ARTICLE XI RETENTION OF JURISDICTION.

### 11.1 *Retention of Jurisdiction.*

\* \* \* \* \*

(c) Notwithstanding anything in this Article XI to the contrary, the resolution of Channeled Claims against the Debtors and the forum in which such resolution shall be determined shall be governed by, and in accordance with, Section 6.21 of the Plan, the Master TDP and the Creditor Trust TDPs, if applicable.

\* \* \* \* \*

(e) No Person shall be permitted to initiate, continue, or otherwise prosecute a Cause of Action against a Shareholder Released Party based on an allegation, argument or position that such Cause of Action is or would be a Non-Opioid Excluded Claim if such Cause of Action is colorably a Non-Opioid Excluded Claim, unless such Person first obtains leave of the Bankruptcy Court. Without limiting the generality of the foregoing clauses of this Section 11.1, the Bankruptcy Court shall have and retain exclusive jurisdiction of, and authority to hear and determine, any request for such leave, and may grant such a request only upon a showing by the requesting Person, based on an appropriate evidentiary record, that such Cause of Action is within the definition of Non-Opioid Excluded Claim. The only Persons with standing to be heard on such a request for leave shall be: (i) the Person seeking to bring such Cause of Action; (ii) any Shareholder Released Party against which such Cause of Action would be brought; (iii) any Shareholder Payment Party; and (iv) the MDT or NewCo.

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UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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No. 19-23649 (RDD) (Jointly Administered)  
IN RE: PURDUE PHARMA L.P., ET AL., DEBTORS

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Signed: Sept. 17, 2021

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**MODIFIED BENCH RULING ON REQUEST  
FOR CONFIRMATION OF ELEVENTH  
AMENDED JOINT CHAPTER 11 PLAN<sup>1</sup>**

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Hon. ROBERT D. DRAIN, United States Bankruptcy  
Judge

The wrongful use, including marketing and distribution, of opioid products has contributed to a massive public health crisis in this country. The role of the debtors before me (the “Debtors” or “Purdue”) and their owners in that crisis makes these bankruptcy cases highly unusual and complex.

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<sup>1</sup> Because of the importance of promptly delivering a ruling on confirmation of the amended joint chapter 11 plan in these cases, I gave a lengthy bench ruling rather than reading from and issuing a written decision. I informed the parties, however, that after reviewing the transcript of that ruling I might modify it to make it clearer, add information that I inadvertently omitted, and of course correct typographical errors in the transcript. This Modified Bench Ruling, while still more colloquial than a written decision, attempts to do that and is being filed separately from the transcript of my bench ruling.

This is so primarily because of the nature of the creditor body, given the extraordinarily harmful effects of the Debtors' primary product, the prescription drug OxyContin, and other synthetic opioids on ordinary people as well as on the local governments, Indian tribes, hospitals and other first responders, states and territories, and the United States that confront these effects every day. In a very real sense, every person in the range of the Debtors' opioid products, sold throughout the United States, was a potential creditor.

Bankruptcy cases present a unique and perhaps the only means to resolve the collective problem presented by an insolvent debtor and a large body of creditors competing for its insufficient assets, including especially when there are mass claims premised on products to which, as here, massive harm is attributed.

Bankruptcy cases focus the solution away from individual litigations to a fair collective result subject to the unique ability under bankruptcy law to bind holdouts under well-defined circumstances who could not otherwise be bound under non-bankruptcy law.

Over the years courts and the parties to bankruptcy cases have refined and improved on such solutions, which clearly have been brought to bear in these cases involving likely the largest creditor body ever. And I'm not speaking solely of the roughly 618,000 claims that were filed, although I believe that is a record, but also, as noted, the people who could arguably be said to be represented by their local and state governments and by the United States.

Here, too, the parties have worked in unique and trailblazing ways to address the public health catastrophe that underlies those claims.

These cases are complex also because the Debtors' assets include enormous claims against their controlling shareholders, and in some instances directors and officers, who are members of the Sackler family, whose aggregate net worth, though greater than the Debtors', also may well be insufficient to satisfy the Debtors' claims against them and other very closely related claims that are separately asserted by third parties who are also creditors of the Debtors.

Since the start, then, key issues for these cases have been (a) how can such claims be resolved to best effect for the claimants and (b) is such a resolution authorized under the Bankruptcy Code and law? The primary questions for me now, focusing on the Chapter 11 plan before the Court, are can these issues be resolved by confirmation of the plan, and should they?

It is clear after a lengthy evidentiary hearing that there is now no other reasonably conceivable means to achieve the result that would be accomplished by the Chapter 11 plan in addressing the problems presented by the Debtors' Chapter 11 cases. I believe it is also clear under well-established precedent that, with a sufficient factual record, Congress in the Bankruptcy Code and the courts interpreting it provide the authority for such a resolution. That leaves the question whether the proposed resolution should be implemented.

This ruling explains my findings and conclusions regarding these issues, informed by the record of these cases, the parties' votes on the plan, the parties' briefing, and the record of a six-day trial involving 41 witnesses and a courtroom full of exhibits and two full days of oral argument.

**Notice.** The notice of the Debtors' request for confirmation of the plan was described by Jeanne C. Finegan in her declarations and live testimony, primarily in her third supplemental declaration, which, under my order setting procedures for the confirmation hearing, served as her direct testimony but also referred to prior declarations that she had provided in these cases regarding the notice to claimants and potential claimants.

As established by her testimony, the Debtors' notice of (a) these cases, (b) the right to assert a claim against the Debtors, (c) the Debtors' request for confirmation of the plan, and (d) the proposed release of third parties' claims against the released parties in the plan, primarily of such claims against the Sacklers and their related entities (the "shareholder released parties"), was unprecedentedly broad.

Ms. Finegan's testimony was uncontroverted and credible that the Debtors' noticing program as implemented under her supervision reached roughly 98 percent of the adult population of the United States and approximately 86 percent of Canadian adults, with an average frequency of message exposure in each case of four times, and also was extended extensively throughout the world where the Debtors' products might have caused harm. As testified to by Ms. Finegan, the supplemental confirmation hearing notice plan reached an estimated 87 percent of all U.S. adults, with an average message frequency of five times, and an estimated 82 percent of all Canadian adults, with an average message frequency of six times. It also was expanded to 39 countries not included in the bar date notice, served over 3.6 billion online and social impressions, and resulted in over 3,400 news mentions around the world.



The program was carefully tailored to reach not only known creditors but also the population at large, including through various types of media aimed especially at people who may have been harmed by the Debtors' products. Ms. Finegan's calculations reflect literally billions of hits on the internet and social media as well as reliable estimates of the very wide extent of the other means of notice by TV, radio, various types of publications, billboards, and outreach to victims' advocates and abatement-centered groups.

The only caveat that I have to the extraordinarily broad scope of the notice of the Debtors' request for confirmation of the plan pertains to notice to those in prison. The notice program was in large part effective in reaching prisons and groups known to work with people who are in prison and suffering from opioid use disorder or other adverse effects of opioids. But it is possible that because of prison regulations and at times the lack of access to TV, radio and other media, prisoners may not have received the same high level of notice of these cases, the bar date, and the Debtors' request to confirm the plan, including of the proposed third-party claim releases in the plan.

On the other hand, the Debtors, including in the plan's personal injury trust procedures, have shown a willingness to consider requests to assert and prove claims late based on evidence of prisoners' unique circumstances that may have restricted notice to them.

The United States Trustee has suggested that references in notices to the plan would have sent people to a lengthy and complex set of release provisions. This is true, as is the observation that it helps to have legal training to parse those provisions, although during the

confirmation hearing they have been narrowed and simplified. And as reflected by the record of the parties' responses to my comments during the hearing, those provisions were subject to some potential for differing interpretations, although I believe that is not the case now that they have been revised.

Nevertheless, the most widespread notices of the plan's proposed third-party claims release were simple, in plain English that the plan contemplated a broad release of the Sacklers and their related entities of civil claims pertaining to the Debtors, including claims against them held by third parties. Finegan Decl. at paragraphs 19-22 (describing various ways this notice was disseminated). In addition, extensive media coverage of these cases also hammered home that point. Indeed, wide media coverage exaggerated the extent of the plan's proposed releases of claims against the Sacklers and further noted controversy over its basis in applicable law. And it is these aspects of the plan's third-party claims release—that it is too broad and unfair and that it is not authorized under applicable law—that primarily underly the objections to confirmation of the plan that have been filed, including by the U.S. Trustee, not that the releases are hard to read.

I therefore conclude that the Debtors' notice of the confirmation hearing and the proposed releases in the plan was sufficient and indeed unprecedentedly broad.

**Voting on the Plan.** I should next note the vote on the plan by the classes of claimants entitled to vote. It is important to address this issue up front because if a plan is not accepted by the vote of an impaired class, the plan proponent must proceed with respect to that class under the so-called cramdown provision of the Bank-

ruptcy Code, section 1129(b). On the other hand, if the impaired classes have voted in favor of the plan's confirmation, the Court analyzes only section 1129(a)'s requirements for confirmation and the incorporated provisions of the Bankruptcy Code related to it, such as sections 1122 and 1123 of the Code.

Based on the ballot declaration and testimony of Christina Pullo, an unprecedented number of votes were cast on the plan, over 120,000. In contrast, votes on most Chapter 11 plans, even in large cases, number between a few and a few thousand.

And of the votes cast, the plan was in fact accepted by every voting class, thus obviating the need to proceed with the "cramdown" provisions of the Bankruptcy Code except as to insider classes where the plan has satisfied section 1129(b).

In addition, and significantly, each voting class voted in favor of confirmation of the plan overwhelmingly. In the aggregate, the vote was over 95 percent in favor of confirmation. That, too, is a remarkable result given the very large number of people who got notice, who were entitled to vote, and who voted.

For the personal-injury claims classes, the vote was 95.7 percent (Class 10(b)) to over 98 percent (Class 10(a)). In each class the percent voting in favor of the plan was above 93 percent with the exception of the class of hospital claims, which was over 88 percent (and no member of that class is pursuing an objection to the plan).

I will address later two objections that allege that this overwhelming acceptance of the plan should be looked at differently. They allege that the plan improperly classified certain claims together with other claims,

which, if classified in a separate class, would not have accepted the plan as overwhelmingly. These objectors acknowledge, though, that such a hypothetical class would still have voted in favor of confirmation by well over the 75 percent supermajority threshold that Congress provided for in section 524(g) of the Bankruptcy Code when setting a bar for the release of third-party claims in Chapter 11 plans addressing asbestos liability. Again, I will discuss such classification objections separately.

In addition, and frankly baffling to me, the United States Trustee has argued that I should not look at the votes cast but at the votes that were not cast in determining whether the plan was overwhelmingly accepted. That, of course, is not how elections are conducted. There is no conceivable way to determine the preferences of those who didn't vote other than that they didn't object to confirmation.

But where a vote is as extensive as occurred here, under any measure this plan has been overwhelmingly accepted. And of course it is the actual vote that counts under section 1126 of the Bankruptcy Code, as it does in every election, not a statement by a bureaucrat or his or her sense of where the wind is blowing. That's why we have elections.

**Burden of Proof, Uncontested Subsections of 11 U.S.C. § 1129(a), and Statutory Bases for the Objections to Confirmation of the Plan.** A plan's proponent has the burden of proof on the applicable elements of Bankruptcy Code section 1129(a) that must be met for a plan to be confirmed. That burden of proof is satisfied by showing that the test in the applicable subsection of section 1129(a) has been met by a preponderance of the evi-

dence. In re Ditech Holding Corp., 606 B.R. 544, 554 (Bankr. S.D.N.Y. 2019), and the cases cited therein.

Many of the subsections of section 1129(a) that are applicable to this plan are uncontested. And based on my review of the relevant witness declarations, including those of Jon Lowne, John S. Dubel, and Jesse DelConte, I conclude that with respect to the applicable uncontested subsections of section 1129(a), the Debtors have carried their burden of proof.

The subsections of section 1129(a) that have been contested in objections to the plan include section 1129(a)(1), which states that the plan “must comply with the applicable provisions of this title,” i.e., the Bankruptcy Code, and thus incorporates for purposes of these objections sections 1122 and 1123(a)(1) and (4) of the Bankruptcy Code pertaining to the classification and treatment of claims.

In addition, certain objections contend that the Debtors have not satisfied their burden to show under Bankruptcy Code section 1129(a)(3) that the plan has been proposed in good faith and not by any means forbidden by law, including not only as to the proposed settlement of claims against the shareholder released parties but also as to other plan provisions or related acts that, objectors contend, violate other provisions of the Code or were not in good faith.

The United States Trustee has objected that the payment of certain legal fees and expenses under section 5.8 of the plan (x) violates section 1129(a)(4) of the Code, which states that it is a requirement for confirmation that “[a]ny payment made or to be made by the proponent, or by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for

costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable,” 11 U.S.C. § 1129(a)(4); and (y) can be allowed only if sought and granted under the standard set forth in sections 503(b)(3) and (4) of the Code, which the plan does not propose to meet.

One set of objectors has suggested that the plan does not satisfy section 1129(a)(11) of the Bankruptcy Code’s so-called feasibility test, which requires a showing that “[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.” 11 U.S.C. § 1129(a)(11).

The remaining objections to the plan contend that the proposed settlement of the Debtors’ and third parties’ claims against the shareholder released parties are not sustainable on various theories challenging (x) the merits of the settlement of the Debtors’ claims under section 1123(b)(3)(A) of the Bankruptcy Code and Bankruptcy Rule 9019, (y) the Court’s jurisdiction and power to approve the plan’s third-party claims’ release under 28 U.S.C. §§ 157(a)-(b) and 1334(b), Article III of the U.S. Constitution, sections 105(a) and 1123(a)(5) and (b)(6) of the Bankruptcy Code, and (z) the merits of the shareholder released parties settlement and third-party claims release under applicable case law.

In addition, these objections contend that the Debtors have not satisfied the so-called best interests test of section 1129(a)(7) of the Bankruptcy Code, which requires a showing that “[w]ith respect to each impaired class of claims or interests, each holder of a claim or in-

terest of such class has (i) accepted the plan or (ii) will receive or retain under the plan on account of such claim or interest property of a value as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under Chapter 7 of this title on such date.” 11 U.S.C. § 1129(a)(7).

The objectors who have argued that the Debtors have not satisfied section 1129(a)(7) argue that because their third-party claims against the shareholder released parties are being channeled to the plan trusts or otherwise precluded in return for their distributions under the plan, whereas they would not be so channeled and precluded in a Chapter 7 liquidation, the plan fails the “best interests” comparison of their liquidation recovery to their recovery under the plan.

Each of these objections will be addressed below.

**Insurers’ Objections.** Navigators Specialty Insurance Company, American Guaranty and Liability Insurance Company, and Steadfast Insurance Company have pursued a limited objection to confirmation of the plan, joined in by National Union Fire Insurance Company. (Another objection, by the Chubb Insurance USA has been withdrawn.)

The Debtors seek certain findings in the proposed confirmation order regarding the effectiveness of the transfer of the Debtors’ insurance or insurance rights to the trusts established under the plan to fund and make distributions to creditors or to NewCo, the public benefit company to be established under the plan to fund distributions and develop and sell at or near cost drugs to combat opioid addiction and overdoses. They also seek a finding regarding the plan’s settlement of

claims against the Debtors that potentially are covered by such insurance: that the treatment of such claims under the plan does not violate consent rights under any applicable insurance coverage because it is a bona fide settlement on due notice to the objecting insurers, as well as to the other insurers who did not object.

The plan does not otherwise seek findings as to the Debtors' insurance. For example, it does not seek a declaration that any insurance coverage or insurance rights apply to claims that have been asserted to such coverage (this issue is the subject of a separate litigation that will take its own course). Rather, the findings that the Debtors seek are integral to the effectuation of the transfer by the Debtors of insurance and insurance rights to the plan trusts or NewCo, notwithstanding any "anti-assignment" provisions in the applicable policies, and to obviate a defense that the plan itself in providing for a means to pay creditors' claims somehow derogates the insurers' rights to review and consent to the payment of insured claims.

The objectors contend that the plan and confirmation order should not just be largely "insurance neutral," however, but that it be completely so—that is, that even these findings should be postponed for another day.

But there is no requirement that a Chapter 11 plan be "insurance neutral" in any respect. And where a plan provides for the transfer of a debtor's insurance or insurance rights to a trust or successor, as here, the issue of transferability has been joined in the context of the confirmation hearing and can and should be resolved then. Similarly, the plan's settlement of claims that might be covered by insurance is integral to the plan—indeed, it is a fundamental purpose of a plan—and



therefore the bona fides of that settlement are ripe for determination at confirmation. The Court is properly situated to decide those issues without a subset relating to the insurers' consent rights being carved out for a separate, second litigation.

This contrasts with, again, general coverage issues, such as whether any claim against the insurance is subject to a coverage exclusion, which is not something that is inherently raised in the request to confirm the plan and where the plan clearly reserves such rights assertable by the trustees of the trusts that will hold the insurance and insurance rights, on the one hand, and the insurers on the other.

The "insurance-neutral" argument of the objecting insurance companies therefore is not grounded on an underlying principle of bankruptcy law but rather only on a due process concern. The insurers contend that as originally filed the plan was arguably completely "insurance neutral" and did not seek even the foregoing limited determinations in connection with confirmation.

I find, however, that the objecting insurers and all other insurers have had sufficient notice for months that the Debtors were going to seek these limited findings in the confirmation order. The insurers were well represented and are highly sophisticated, as evidenced by their negotiations over the plan's provisions and the proposed confirmation order relating to them. They had a full opportunity to challenge the findings that I've just outlined, first disclosed to them in May 2021, which more than subsumes the applicable notice period under Bankruptcy Rule 2002(b) for the plan and confirmation hearing.

The plan as amended during the confirmation hearing also resolves the remaining due process issue that the insurers had originally raised—that, as originally drafted, the plan left open the possibility that additional findings could be sought or documents filed that the insurers would not have notice of and might nevertheless be binding on them. As the plan has been amended, this is not going to happen.

As far as the requested finding regarding the bona fides of the plan’s resolution of arguably insured claims by providing for the distribution of 100 percent of the value of the Debtors on account of the claims asserted against them in the form of payments between 700 and \$750 million through personal injury trusts and at least 5 billion more to abate the opioid crisis in various forms, it is almost impossible to see how an insurer could claim that its consent rights were violated, and in fact the insurers do not give any examples of how those rights might have been violated.

The claims filed in these cases assert at least roughly \$40 trillion of liability (excluding a \$100 trillion claim that was filed by an individual), which, moreover, covers only roughly 10 percent of the claims filed, the rest asserting wholly unliquidated amounts. As stated in the expert trial declaration of Jessica B. Horewitz, Ph.D., the allowed, fixed claim of the United States under the November 2020 civil and criminal settlement between the Debtors and the Department of Justice will receive less than a one percent recovery.

Under those circumstances, given the plan’s wide notice, the lack of any objection to the plan’s allocation of value either to personal injury claimants or to abate the opioid crisis, and the fact that insurers’ consent rights,

like any other contract party's consent rights, are circumscribed by the Bankruptcy Code's separate notice and hearing process, the Debtors' request for a finding that the plan does not violate the policies' applicable consent provisions is justified and appropriate.

In addition, ample case law establishes the authority under sections 1123(a)(5)(B) and (b)(2) and (6) of the Bankruptcy Code to transfer insurance rights and insurance policies as part and in furtherance of a plan to pay mass claims, such as in these cases.

The analysis of this issue in In re Federal-Mogul Global, 684 F.3d 355 (3d Cir. 2012), cannot be improved on. I will note, though, that although that case was driven by asbestos claims, the logic behind it was based on Bankruptcy Code sections 1123(a)(5) and 1141, not section 524(g) of the Code and, therefore, would apply here. See also In re W.R. Grace & Co., 475 B.R. 34, 139 n.189 (D. Del. 2012), aff'd 729 F.3d 311 (3d Cir. 2013), and the cases cited therein, which show the extensive, and perhaps unanimous, authority for the finding and conclusion that the Debtors seek here that notwithstanding any anti-assignment provision in any applicable insurance policy, under the plan the insurance policies, insurance rights, or rights to insurance proceeds can be lawfully assigned to the trusts created under the plan or NewCo for administration and distribution under the plan.

I will note that both requested findings are also warranted because it appears that at least at this stage the objecting insurers have either disclaimed coverage or indicated that they are reserving their rights to do so. See J.P. Morgan Sec. Inc. v. Vigilant Ins. Co., 151

A.D.3d 632, 58 N.Y.S.3d 38 (1st Dep't 2017), and the cases cited therein.

I therefore will overrule the insurers' confirmation objection. (And I will note that after the colloquy during oral argument with the insurers' counsel and counsel handling insurance issues in this case for the Debtors, it appeared that most, if not all, of the insurers' objections may have been resolved in any event by the changes to the plan that I've already described.)

**U.S. Trustee's Objection to Plan's Treatment of Certain Attorneys Fees and Expenses.** In addition to its objection to the plan's settlement of the Debtors' and third parties' claims against the shareholder released parties, to be discussed later, the United States Trustee has objected to section 5.8 of the plan's treatment of certain attorneys fees and expenses.

The plan provides for compensation and reimbursement of "professionals," a defined term comprising professionals for the Debtors and the Official Unsecured Creditors Committee who are retained pursuant an order of the Court and paid out of the estates' assets for their postpetition work under section 330 of the Bankruptcy Code. The compensation and reimbursement of two other groups of professionals—representing the ad hoc committee of government and other contingent litigation claimants (the "AHC") and the multi-state governmental entities group (the "MSG E")—are also covered by orders of the Court that subject the estates' payments to them to notice and Court review.

Section 5.8 of the plan sets forth the treatment of fee claims by other counsel, not counsel whose compensation is separately subject to approval by prior order of the Court. Section 5.8 effectuates a settlement regard-

ing the payment from the National Opioid Abatement Trust (the “NOAT”) and Tribal Abatement Fund Trust to be established under the Plan of counsel to beneficiaries of those trusts. In addition, section 5.8 provides for the payment of attorneys involved in the pursuit by hospitals of their claims; of the so-called NAS monitoring claimants’ attorneys fees and expenses; of ratepayer attorneys’ fees and expenses; of personal injury claimants’ attorneys fees and expenses; and of payment for the public schools’ attorneys fees and expenses.

The U.S. Trustee contends that the only way that the plan can provide for such payments is under section 503(b)(3) and (4) of the Bankruptcy Code. Section 503(b)(4) provides that “[a]fter notice and a hearing, there shall be allowed administrative expenses . . . [that is, expenses against the estate for postpetition claims], including the actual necessary expenses . . . [comprising] reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under subparagraph (A), (B), (C), (D), or (E) of paragraph 3 of this subsection based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title, and reimbursement of actual necessary expenses incurred by such attorney or accountant.” 11 U.S.C. § 503(b)(4). That section refers one back to section 503(b)(3) of the Code, which requires that a creditor show that it made a “substantial contribution in a case under Chapter 11 of the Bankruptcy Code” to be entitled to the administrative expense.

The U.S. Trustee’s objection is misplaced in two respects. First, the bulk of the fees covered by section 5.8 are not for postpetition work (and therefore not an “ad-

ministrative expense” covered by section 503(b)(3) and (4) but rather for prepetition work in raising and pursuing claims against the Debtors and to some extent the Sacklers, including in the multi-district litigation that was pending prepetition in the United States District Court for the Northern District of Ohio. Unsecured creditors’ claims for collection of their prepetition costs, including of attorneys’ fees and expenses, as well as rights under applicable non-bankruptcy law, such as on a “common benefit” basis, are enforceable in bankruptcy without the need to comply with subsections 503(b)(3) and (4) of the Bankruptcy Code, which, again, apply only to administrative expenses. In re United Merchs. & Mfrs., Inc., 674 F.2d 134, 138 (2d Cir. 1982).

The U.S. Trustee’s objection also is misplaced because the remaining fees to be paid under section 5.8 also are not being sought as an administrative expense payable on the plan’s effective date (as would be required under section 1129(a)(9)(A) of the Bankruptcy Code if they were being sought as administrative expenses) but rather as part of a heavily negotiated compromise of those fees and the clients’ obligation to pay them reached during the mediation in this case conducted by Kenneth R. Feinberg and Hon. Layn R. Phillips (ret.).

The settlements provided for in section 5.8 that resulted from the mediation are subject to this Court’s review both under Bankruptcy Rule 9019 and, I believe—although there are arguments to the contrary—under section 1129(a)(4) of the Bankruptcy Code, as has been so recognized in this district. See In re Stearns Holdings, LLC, 607 B.R. 781, 793 (Bankr. S.D.N.Y. 2019); In re Sabine Oil & Gas Corp., 555 B.R. 180, 258 (Bankr. S.D.N.Y. 2016).

The U.S. Trustee relies upon a case that is clearly distinguishable, Davis v. Elliot Mgmt. Corp. (In re Lehman Bros. Holdings, Inc.), 508 B.R. 283 (S.D.N.Y. 2014), in which the district court noted that Congress specifically precluded in Bankruptcy Code section 503(b)(3)(D) recovery by official creditors' committee members of their postpetition fees and expenses, and therefore any settlement of those expenses would have been an improper workaround of that provision. Id. at 288-91.

Mr. Feinberg's mediator's report [Dkt. No. 3339] makes it clear (and there is, in addition, unrefuted supporting testimony by Gary Gotto, John Guard, Peter Weinberger, and Jayne Conroy) that the compromised contingency fees provided for in section 5.8—again, almost all of which are for services rendered prepetition—are reasonable and indeed significantly reduced from a non-bankruptcy range of generally 20 to 40 percent to the ranges set forth in Section 5.8.

As stated at paragraphs 23-25 of the mediator's report, the contingency fee resolutions as well as the common benefit assessments reached in the mediation are consistent with fee arrangements or assessments agreed upon in other similar mass-tort contexts and are reasonable. See also the trial declaration of Gary Gotto at paragraphs 18(g) and 25(g); the John Guard declaration at paragraphs 57 through 60, 73, and 77 through 78; the Weinberger declaration at paragraphs 20 through 27 and 31 through 32; and the Conroy declaration at paragraphs 11 through 15.

It has been argued that because these section 5.8 fees and expenses are not being paid by the Debtors but by the clients through the trusts that the clients have agreed will be the source of their recovery, they are not

subject to this Court's review for reasonableness under the plain terms of Bankruptcy Code section 1129(a)(4) but are, rather, like the fees any claimant would pay its counsel. I conclude, however, that the thrust of section 1129(a)(4), evidencing Congress' desire that unreasonable fees and expenses not be allowed under the pressure of plan confirmation, is that the Court have the ultimate say on the reasonableness of these fees under section 1129(a)(4).

That reasonableness inquiry does not require an extensive review, however, if reasonableness can be otherwise established. In re Journal Register Co., 407 B.R. 520, 537-38 (Bankr. S.D.N.Y. 2009), citing Mabey v. Southwestern Elec. Power Co. (In re Cajun Elec. Power Coop.), 150 F.3d 503, 517 (5th Cir. 1998). Based on the uncontested declarations and mediator's report that I've previously cited—and I note that the U.S. Trustee has made no effort to contest these, despite at least implicitly contending that the fees and expenses are improper or unreasonable—I find that all but one of the contingency fees provided for in section 5.8 of the plan and the mechanism for allocating them among counsel are reasonable. Indeed, the mediated settlement set forth in section 5.8 benefits the estates and creditors by materially reducing the fees and expenses that might otherwise be claimed from the clients and therefore indirectly reduces the claims against the estates.

There are, however, two sets of fees covered by section 5.8 that I cannot on this record make a reasonableness finding on, those of counsel to the personal injury ad hoc committee and of counsel to the school districts' ad hoc committee. I noted this issue during oral argument. These fees are not the reduced contingency fees



that the parties and Mr. Feinberg as mediator negotiated and that I have analyzed based on the uncontroverted evidence as being reasonable but, rather, are based on counsels' hourly rates and perhaps in one instance a contingency fee that was not negotiated. I have not seen any time records or hourly rates charged by counsel billing at an hourly rate, nor have I seen the time spent relative to the contingency fee, nor do I have any testimony as to the reasonableness of the contingency fee, so I believe that I will need to make a reasonableness finding as to those counsel fees and expenses in the future under section 1129(a)(4).

The plan has already been amended to reflect this conclusion raised during oral argument, with one wrinkle. It contemplates that the contingency fee portion of counsel for the school districts' fees will not be reviewed by the Court but, rather, by Mr. Feinberg. I'm not prepared to accept that mechanism. I will certainly consider Mr. Feinberg's views, as I have regarding the contingency fee compromises that I have approved, but I ultimately must make the reasonableness determination on notice to parties in interest, including to the U.S. Trustee, under section 1129(a)(4).

**Objections by Creighton Bloyd, Stacey Bridges, and Charles Fitch.** Creighton Bloyd, Stacey Bridges, and Charles Fitch in their individual capacities object that there was insufficient notice to those incarcerated in prison of the bar date for filing claims, notwithstanding the extensive notice testified to by Ms. Finegan.

There is a fundamental problem with these objections, however, in that all three of the objectors have filed a timely proof of claim in these cases and a timely confirmation objection. They therefore lack standing

under Article III of the Constitution to pursue, and this Court lacks the power to decide, their objections because there is no remedy that the Court can grant for their complained-of wrong.

As stated in TransUnion LLC v. Ramirez, — U.S. —, 141 S. Ct. 2190, 2202-03, 210 L. Ed. 2d 568 (2021), to have standing, and for there to be a case and controversy, the party raising a matter with a federal court must have a personal stake in fact in obtaining a remedy, which clearly is lacking here. See also Kane v. Johns-Manville, Corp., 843 F.2d 636, 642-46 (2d Cir. 1988), which dealt with almost the same issue as raised by these objections, with the same result.

Mr. Bloyd also filed a second confirmation objection based on what he believes might be the consequences of the Debtors' guilty plea in their October 2020 criminal and civil settlement with the Department of Justice. Mr. Bloyd contends that people like him might have an individual right under the Mandatory Victims Restitution Act, 18 U.S.C. § 36633A, to proceeds to be paid by the Debtors to the United States under the DOJ settlement.

His counsel acknowledged at oral argument, though, that this issue is properly raised not here but at the Debtors' sentencing before the New Jersey District Court as contemplated by the settlement.

Even if that wasn't conceded, I conclude that any entitlement of Mr. Bloyd to a portion of the DOJ settlement proceeds arises not in the context of plan confirmation but, rather, properly after the Debtors make the DOJ settlement payment. I also do not believe the issue affects the feasibility of the plan and note, finally, that the discretion of the district court under the MVRA to

require a specific restitution fund is likely to be informed by the very large number of potential victims for whom the DOJ could be said to be acting, as well as based on the complexity of determining the number and amount of the victims' claims and the allocation to them of the settlement proceeds.

Mr. Bloyd also arguably has suggested that somehow the Debtors and the Department of Justice colluded in agreeing to the October 2020 settlement agreement by not specifically providing for a restitution fund under the MVRA, but this contention is not supported by the record.

Regarding the plan's treatment of the United States, the Debtors have established that the plan was proposed in good faith under section 1129(a)(3) of the Bankruptcy Code. There is no evidence of any attempt to improperly cut off rights that individual victims would have under the DOJ settlement and, indeed, the personal injury class was well and actively represented in the mediation in these cases conducted by Messrs. Feinberg and Phillips that resulted in the plan's allocation of value among public and private creditors, including the agreement to fund the personal injury trusts.

It is well established in the Second Circuit that some creditors' failure to participate in a mediation does not render the results of a mediation improper or not in good faith if there was no conflict of interest. In re Drexel Burnham Lambert Group, 960 F.2d 285, 293 (2d Cir. 1992). The mediation between personal injury and other private claimants, on the one hand, and governmental claimants on the other over the allocation of funds to the personal injury trusts was in good faith, as shown by, among other things, the mediators' report

and the ad hoc personal injury committee's alignment with all personal injury creditors. The extent of the vote of the non-NAS personal injury claimants' class, 95.7 percent in favor of the plan, also argues in favor of the good faith treatment of the personal injury creditors under the Plan in relation to the United States' and other types of creditors' recoveries. I therefore will overrule Mr. Bloyd's second objection to confirmation of the plan.

**Certain Canadian Creditors' Objections.** Certain Canadian municipalities and First Nations have objected to the plan on various grounds, all premised ultimately on their view that rather than be treated as general unsecured creditors in Class 11(c) of the plan, they must be classified with the U.S. non-federal governmental creditors and Native American Tribes in Classes 4 and 5, respectively, and thus participate in the opioid abatement trusts created under the plan for those classes instead of receiving their pro rata share of the cash payment to Class 11(c).

It should be noted that these objectors have not contended that the value to be paid to them under the plan differs unfairly in value from that to Classes 4 and 5. But, in any event, they concede that if their votes were counted in Class 11(c), as opposed to in Classes 4 and 5, Class 11(c) would still have overwhelmingly accepted the plan. Thus the provision in section 1129(b)'s cram-down requirement that there be no unfair discrimination among similarly situated creditors in different classes does not apply. Instead, the objection is, if at all, properly couched under different provisions of the Bankruptcy Code.

In that regard, there was some suggestion during oral argument and in one sentence in the objection that the claims of the Canadian municipalities and First Nations should not have been allowed for voting purposes at \$1.00, as provided in the Court's confirmation procedures order, along with all other contingent unliquidated claims, the objectors' implication being that if their claims had been liquidated they might have carried Class 11(c)'s vote. They have made no request, however, to estimate their claims for voting purposes under section 502(c) of the Bankruptcy Code or to temporarily allow them in a different amount than \$1 under Bankruptcy Rule 3018(a).<sup>2</sup>

Further, such temporary allowance in a uniform amount of mass tort claims such as those here in the sum of \$1 for voting purposes is well recognized as fair. See In re Lloyd E. Mitchell, Inc., 373 B.R. 416, 428 (Bankr. D. Md. 2007), and the cases cited therein. The alternative, fixing the amount of hundreds of thousands of unliquidated disputed claims before voting on a plan (because of course once the claims liquidation process started, most, if not all, of the claimants would insist on their claims being liquidated) would take years, defeat-

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<sup>2</sup> Indeed, based on my review of these Canadian municipalities and First Nations' proofs of claim, which rely on attached complaints against both non-Debtor Purdue Canada and other non-Debtors and against the Debtors that do not distinguish between the conduct of the Debtors and the non-Debtors, it is far from clear that the claims really are against the Debtors. To the extent they are against Purdue Canada or other non-Debtors, those claims are fully preserved under the plan. Nor are claims that are based on the shareholder released parties' conduct related to non-Debtors released or enjoined under the plan.

ing the conduct and purpose of the bankruptcy case. Kane v. Johns-Manville Corp., 843 F.2d at 647-48.

Given that section 1129(b) doesn't apply to the objecting Canadian claimants because of the class vote, the only remaining issue is whether the plan's separate classification of them in Class 11(c), rather than in the classes where they want to be classified, is proper.

A plan proponent has the right under the Bankruptcy Code to classify similar claims in separate classes if there is a reasonable basis to do so. See generally 7 Collier on Bankruptcy ¶ 1122.03[1][c] (16th Ed. 2021); see also In re LightSquared, Inc., 513 B.R. 56, 83 (Bankr. S.D.N.Y. 2014); In re Drexel Burnham Lambert Group, Inc., 138 B.R. 723, 759 (Bankr. S.D.N.Y. 1992).

Section 1123(a)(1) of the Bankruptcy Code, which is incorporated into section 1129(a)(1), states that “[n]otwithstanding any otherwise applicable non-bankruptcy law, the plan shall designate, subject to section 1122 of this title, classes of claims.” 11 U.S.C. § 1123(a)(1). Section 1122 provides only that, “except as provided in subsection (b) of this section [which is inapplicable here], a plan may place a claim in a particular class only if such claim or interest is substantially similar to other claims or interests in such class.” 11 U.S.C. § 1122. It does not require all substantially similar claims be placed in the same class.

Here, there are reasonable bases for separately classifying these objectors' claims from the U.S. public creditors and Native American Tribes: (x) the different regulatory regimes that the objectors operate under with regard to opioids and abatement, as well as (y) the fact that the allocation mediation conducted by Messrs.

Feinberg and Phillips that resulted in the plan's division of the Debtors' assets and third-party claims among private and public claimants and then separately the public claimants' allocation of their share among themselves involved only U.S.-based public claimants with their own regulatory interests and characteristics.

There was no request by any of the objecting Canadian creditors to participate in that mediation. The record is also clear, and I can take judicial notice of the fact, as well, that those who did request to participate in the mediation, if they had a reasonable basis to do so, were generally invited into it, including, for example, the NAACP. One's failure to participate in a mediation should not detract from the settlement reached if the classification scheme is fair and rational. See Ad Hoc. Comm. of Non-Consenting Creditors v. Peabody Energy Corp. (In re Peabody Energy Corp.), 933 F.3d 918, 927-28 (8th Cir. 2019).

This is not the first time that U.S. and Canadian creditors have been found to be properly classified separately. See Class Five Nev. Claimants v. Dow Corning Corp. (In re Dow Corning Corp.), 280 F.3d 648, 661 (6th Cir. 2012), and In re W.R. Grace & Co., 729 F.3d 311, 329-30 (3d Cir. 2013), where Canadian claimants, including the Queen on behalf of Canada, were found to be separately classified properly because of the different types of recovery their claims would have under applicable law, a close analogy to the different regulatory schemes that would apply here to the NOAT and Native American Tribes Trust. The plan's classification scheme therefore is proper as it pertains to the objecting Canadian municipalities and First Nations.

These objectors also suggested that the plan was not proposed in good faith for purposes of section 1129(a)(3) of the Bankruptcy Code. But that objection is premised on the same classification argument overruled above. Again, given the plan's rational basis for separate classification and the lack of any evidence to show that the objecting creditors were improperly silenced or excluded from negotiations, I find that the plan has been proposed in good faith as to them.

These objectors also suggested that the Debtors have not satisfied the "feasibility" test under section 1129(a)(11) of the Bankruptcy Code. The uncontested declaration of Mr. DelConte establishes, however, by showing projections for NewCo and discussing the assignability of the Debtors' insurance and insurance rights, that the plan satisfies section 1129(a)(11). The objecting Canadian municipalities and First Nations do not dispute this generally but contended at the confirmation hearing that their treatment under the plan would be sufficiently objectionable to the court presiding over the Canadian Companies Arrangement Act proceeding in Canada ancillary to those cases that it might not grant recognition of or enforce the plan in Canada.

Based on my understanding of the Model Law on Cross-Border Insolvencies, which is in effect in Canada as well as forming the basis of Chapter 15 of the Bankruptcy Code, I am reasonably comfortable, however, that the Canadian court will recognize and enforce the plan, although of course that is a decision for the Canadian court to make, and not view the plan as unduly discriminatory against Canadian creditors in the light of what they would reasonably recover from the Debtors if the plan were not confirmed, as well as the difference



between the non-bankruptcy regulatory regime that governs the Canadian creditors from that applying to U.S. governmental units and Native American tribes.

I also believe that the “public policy” exception to recognition under the Model Law on Cross-Border Insolvencies would not be applied by the Canadian court given the narrow nature of that exception, although again, of course, that decision is left to the Canadian court.

Further, it appears based upon Mr. DelConte’s declaration that while recognition in Canada is important and would bring clarity and finality to the claims of Canadian creditors against these Debtors, the absence of the Canadian CCAA court’s recognition is not critical to the survival of NewCo under the plan and the Chapter 11 feasibility test therefore is satisfied in any event.

Besides raising the foregoing objections, the Canadian creditors object to the plan’s release of third-party claims against the shareholder released parties. To the extent that they make the same arguments as others who raised this issue, I will address them collectively later.

In addition, however, the Canadian objectors have contended that because no money from the shareholder settlement is being specifically channeled to Class 11(c), Class 11(c) creditors like them should not be enjoined under the plan from pursuing whatever claims they may have against the shareholder released parties based on their U.S. conduct.

Upon the record before me, though, I conclude that the lack of specific channeling of any of the third-party claims settlement proceeds to Class 11(c) does not jus-

tify this objection. It is uncontested by the Canadian creditors that under the “best interests” liquidation analysis in the DelConte declaration, Class 11(c) would receive no recovery on their claims against the Debtors if, as I believe would occur, upon their carveout from the plan’s third-party release provisions that are an essential quid pro quo to the shareholder released parties’ settlement, the Debtors would liquidate. That settlement, in other words, enables Class 11(c)’s recovery to exist.

Further, there has been no indication by these claimants that the shareholder released parties would be liable to them based on their conduct related to the U.S. Debtors.<sup>3</sup> Indeed, as noted above, there is little indication that these creditors have any claims against the U.S. Debtors in the first place, let alone claims against the Sacklers covered by the release. The Sacklers’ defenses to such claims, as well as the costs and impediments to collecting on any eventual judgment against them, will be discussed later in the context of a general analysis of the plan’s third-party claims release. Suffice it for now that that any recovery by these Canadian objectors under the plan is inextricably tied to the plan’s release of the shareholder released parties and their payment of the settlement amount that enables the recovery to Class 11(c) creditors, a recovery they would not receive in a Chapter 7 liquidation from the Debtors’ estates and the shareholder released parties combined. Thus even without those proceeds being specifically channeled to Class 11(c), it is fair to the Canadian ob-

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<sup>3</sup> Again, the third-party claims release does not cover claims based on the shareholder released parties’ conduct related to non-Debtors.

jectors to bind them to the release provisions in the plan.

**Certain States' Classification Objection.** Certain of the objecting states and the District of Columbia have also raised objections to confirmation besides their objection to the third-party claims release and injunction in the plan.

They have asserted, first, that the plan violates section 1122 of the Bankruptcy Code by classifying them in Class 4 along with their political subdivisions.

Given that classification, the objecting states and the District of Columbia are a small percentage of Class 4's 3.13% rejecting vote, compared to the class' 96.87% vote in favor of the plan. These objecting states and the District of Columbia obviously do not like being portrayed in that way, and I do view them to some extent as representing their populations as a whole (although various political subdivisions of these objecting states actively support the plan, raising the question, which political entity is closer to its constituents?).

I do not accept, however, their blanket characterization that because they are states, the other public creditors, political subdivisions, and municipalities that are in Class 4 can be silenced as a matter of non-bankruptcy law based, as the objectors argue, on the parens patriae doctrine or "Dillon rule" with respect to some of the subdivisions' claims. As briefed by the AHC and MSGE, the vast majority of states have enacted "home rule" laws that override those doctrines.

As importantly, the objecting states and the District of Columbia have made no attempt to silence the other members of Class 4 by seeking to disallow their claims

for lack of standing or to designate their votes under section 1126(e) of the Bankruptcy Code so that they wouldn't be counted.

The objectors acknowledge, moreover—as stated on the record by their counsel—that their claims have the same rights to the Debtors' assets as other general unsecured creditors, including the political subdivisions that are in their class. That is, the states' claims are not priority claims, they are not secured claims, they are simply general unsecured claims like their political subdivisions'.

And under those circumstances, the states' claims are properly classified under Bankruptcy Code section 1122(a) with the other governmental entity claims in Class 4. As noted by the Third Circuit in In re W.R. Grace & Co., 729 F.3d at 326, which upheld a chapter 11 plan's classification of the State of Montana with private claimants also holding personal injury claims,

“[t]o determine whether claims are ‘substantially similar’ [for purposes of section 1122(a)], ‘the proper focus is on the legal character of the claim as it relates to the assets of the debtor.’ In re AOV Indus., Inc., 792 F.2d 1140, 1150 (D.C. Cir. 1986); see also In re Tribune Co., 476 B.R. 843, 855 (Bankr. D. Del 2012) (concluding that the phrase ‘substantially similar’ reflects ‘the legal attributes of the claims, not who holds them’) (internal quotation marks omitted); In re Quigley, 377 B.R. 110, 116 (Bankr. S.D.N.Y. 2007) (‘Claims are similar if they have substantially similar rights to the debtor’s’ assets.’) (emphasis and internal quotation marks omitted).”

See also In re Drexel Burnham Lambert Group, Inc., 138 B.R. at 757; 7 Collier on Bankruptcy ¶ 1122.03[3].

That is clearly the case here and, therefore, the claims can and should properly be classified together given the agreement by all of the states (with the exception of West Virginia) and territories along with the other members of Class 4 to the allocation of distributions within Class 4 among themselves, as well to as the allocation of distributions to the public creditors, on the one hand, and the private creditors on the other, that was reached during the mediation conducted by Messrs. Phillips and Feinberg.

(It also is worth noting, although it has no bearing on the classification issue, that if the plan had separately classified the states and territories from the other public creditors (although that would have unduly complicated the universally agreed allocation of value as between the states and all of the other public entities in Class 4 and the public/private allocation under the plan), the percentage of states and territories accepting the plan would go to over 79 percent, still well above the 75 percent supermajority threshold in the analogous provision of Bankruptcy Code section 524(g).)

The objecting states and the District of Columbia also contend that the Court's order establishing confirmation procedures improperly allowed their claims for voting purposes at \$1 (as it allowed all other opioid-related claims for voting purposes, which similarly have not been liquidated and would be disputed). Notwithstanding that the objectors have agreed to the allocation formula under the NOAT, and thus that their claims will never need to be liquidated for the plan's distributions to be made on their claims, they contend that their claims must be liquidated before their votes can be counted.

But this objection should be denied for the same reasons as the similar objection made by the Canadian municipalities and First Nations objectors. These objectors have made no attempt to seek to estimate their claims or temporarily allow them for voting purposes in a different amount under section 502(c) of the Bankruptcy Code or Bankruptcy Rule 3018(a). And there is an obvious reason why they haven't. If such a request had been made, almost all, if not all, of the other claimants with unliquidated claims would have made a similar request, leading to lengthy, expensive, and, as shown by the parties' agreement to their treatment in Class 4 solely for opioid abatement under an agreed formula, unnecessary litigation over the amount of their claims. Under such circumstances, it is entirely appropriate to allow the claims for voting purposes in the sum of \$1.00. Kane v. Johns-Manville Corp., 843 F.2d at 647-48; In re Lloyd E. Mitchell, Inc., 373 B.R. at 428.

The objectors also argue that they are being treated unfairly under the plan in relation to the United States, which, unlike them, is in large measure carved out of the plan's third-party claims release. This is not a proper objection, however, under section 1123(a)(4) of the Bankruptcy Code, cited by the objectors, which states that a plan shall "provide the same treatment for each claim or interest of a particular class unless the holder of a claim or interest agrees to a less favorable treatment," 11 U.S.C. § 1123(a)(4), because the plan classifies the United States in different classes than the objectors.

Clearly also, that separate classification is appropriate. As discussed earlier, the Bankruptcy Code gives plan proponents the ability to classify similar claims in different classes if there is a reasonable basis to do so.

7 Collier on Bankruptcy ¶ 1122.03[1][a]. Here, there clearly is a rational basis to classify the United States separately from the other public creditors. Indeed, the United States has qualitatively different claims to the Debtors' assets in some respects, mandating its multiple separate classifications from general unsecured creditors. In addition to its general unsecured claims in Class 3, it has secured claims, which are treated as part of one of the aspects of the plan's settlements, it has a superpriority administrative expense claim under the October 2020 DOJ settlement, and it has priority claims. And, unlike the claimants in Class 4, the United States has already settled civil claims against the Sacklers for a specific payment under its separate postpetition DOJ settlement agreement with the Sacklers. Finally, the United States' treatment under the plan is different than the treatment of the Class 4 claims; unlike them, it is not required to use its plan distributions for abatement, although it has agreed under the DOJ settlement to forego \$1.775 billion of its superpriority claim if, as the plan provides, NewCo is established on the effective date to operate for the public benefit and the states and other public claimants in Class 4 agree to use their distributions for abatement.

Clearly, then, the United States' different rights and different treatment support its separate classifications from Class 4, nor is an unfair discrimination argument available under section 1129(b) of the Bankruptcy Code given that Class 4 has accepted the plan, thus negating the need for the Code's cramdown provision to apply.

**West Virginia's Limited Objection to the NOAT Allocation Formula.** The State of West Virginia does not object to any aspect of the plan other than its allocation in Class 4 and under the NOAT distribution procedures

of the funds to be distributed to it for abatement of the opioid epidemic.

First, it contends that the plan has not been proposed in good faith for purposes of section 1129(a)(3) of the Bankruptcy Code because of the NOAT's assertedly unfair allocation formula for the states. Under section 1129(a)(3), the Court shall confirm a plan only if the proponent shows that "the plan has been proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). The Code does not define "good faith," but the courts have a fair consensus on its meaning in section 1129(a)(3). All courts emphasize, based on the section's plain terms, that the inquiry should primarily focus on whether the proposal of the plan was in good faith, not on whether the plan generally is in good faith or undertake an even more free ranging inquiry into fairness and equity. Many courts go further, to limit the section's application to whether the proposal of the plan was in good faith or instead infected with improper conflicts of interest or self-dealing. See, e.g., Garvin v. Cook Invs. NW, SPNWY, LLC, 922 F.3d 1031, 1035 (9th Cir. 2019) ("A contrary interpretation not only renders the words 'has been proposed' meaningless, but makes other provisions of § 1129(a) redundant."); see also 7 Collier on Bankruptcy ¶ 1129.02[3][a].

Generally, the Second Circuit has focused on the proposal of the plan. See Argo Fund Ltd. V. Bd. of Dirs. Of Telecom Arg., S.A. (In re Bd. of Dirs. Of Telecom Arg., S.A.), 528 F.3d 162, 174 (2d Cir. 2008); Kane v. Johns-Manville Corp., 843 F.2d at 649; In re Koelbl, 751 F.2d 137, 139 (2d Cir. 1984). On the other hand, courts in this district, while focusing largely on the proposal of the plan, including on the process of plan development, have also considered whether the plan, ". . . will achieve a re-



sult consistent with the standards prescribed under the Bankruptcy Code.” In re Ditech Holding Corp., 606 B.R. at 578, and the cases cited therein. See also In re Chemtura Corp., 439 B.R. 561, 608 (Bankr. S.D.N.Y. 2010); In re Quigley Co., Inc., 437 B.R. 102, 125 (Bankr. S.D.N.Y. 2010); In re Genco Shipping & Trading Ltd., 513 B.R. 233, 261 (Bankr. S.D.N.Y.); In re Breitburn Energy Partners LP, 582 B.R. 321, 352 (Bankr. S.D.N.Y. 2018).

As recognized by Judge Garrity in Ditech, those policies or objectives include preserving going concerns, maximizing property available to satisfy creditors, giving debtors a fresh start, discouraging debtor misconduct, the expeditious liquidation of claims and distribution of the bankruptcy estate to creditors and, where warranted, interest holders, and achieving fundamental fairness in the collective context of a bankruptcy case. 606 B.R. at 578.

Here, I have ample testimony by John Guard, from the office of the Attorney General of the State of Florida, that the allocation of the NOAT among the states under the plan and the NOAT distribution procedures derived from good faith, arms’ length negotiations by the states preceding the mediation by Messrs. Phillips and Feinberg and then continuing to completion during it. That testimony really is unassailable as to the plan’s good faith on this issue. It highlighted that these difficult but ultimately nearly comprehensively successful negotiations (with the exception of West Virginia’s disagreement) took into account the differing interests of the various states, which if not as weighty as those underlying the compromises at the Constitutional Convention, were similar: for example, the interests of states with small populations, though heavily impacted by opi-

oids; the interests of states with large populations and therefore more people affected by opioids; the interest of states with different health and law enforcement resources; and the interests of states with different ways of reporting opioid-related deaths and other conditions of opioids' impact.

Mr. Guard testified credibly that while the negotiations were difficult, the states recognized and tried to address these differing interests in an overall allocation formula. He also testified credibly that no state was prepared to come even close to accepting the alternate allocation proposal put forth by West Virginia but that states with characteristics similar to West Virginia agreed that the plan's allocation formula adequately addressed their concerns.

The states' unanimous agreement to accept their recovery in the form of money solely devoted to opioid abatement, and their nearly unanimous agreement on the allocation of that distribution among them is truly remarkable, and, as noted during the confirmation hearing by the Attorney General of West Virginia, likely will serve as a model for the allocation of future settlement proceeds from other opioid manufacturers and distributors among the states. Without that agreement, the goals of the Bankruptcy Code would have been jeopardized. Such a failure would have resulted in extensive litigation over the various states' claims, a lengthy delay in making distributions to abate the opioid crisis, and arguably a fallback to distributing the value under the plan not for abatement purposes but, rather, for general use by states and other public creditors.

Mr. Guard's testimony was supported by the cross-examination of West Virginia's expert, Charles Cowan, Ph.D. Mr. Cowan acknowledged that in publications that he wrote before being retained by the State of West Virginia for the purpose of showing why it should receive a larger allocation of the NOAT distributions, he recognized that other methods of allocating money towards abatement could be fair and reasonable, as well, and that there was no specific "best" formula for allocating settlement funds to public creditors. He also acknowledged that the plan's allocation formula was an acceptable choice if West Virginia's proposal was not adopted by the Court. He acknowledged that his proposed allocation to West Virginia was outside the range of allocations under formulas that he earlier had written were reasonable, whereas West Virginia's allocation of distributions to the NOAT was within those ranges.

It was clear that the allocation formula proposed by Mr. Cowan also would lead to peculiar allocations of the NOAT funds for abatement, for example that states with substantially smaller populations would get substantially more funds than states with large populations. Thus the State of Washington would have a larger recovery than Texas, and West Virginia would have a larger recovery than Virginia, although they are neighboring states and West Virginia is losing population and Virginia's is growing.

Mr. Guard and Mr. Cowan agreed that West Virginia and certain other states have been disproportionately harmed by the opioid crisis, but their testimony also reflected that a state's population is an important element of any allocation formula because it reflects the resources that a state will need to bring to bear for abatement. Their testimony established, moreover, that dif-

ferent states report opioid deaths and opioid disorders differently from each other, casting some doubt on the reliability of an “intensity” emphasis for an abatement allocation formula.

Lastly, the NOAT allocation formula does in certain ways recognize the interests of smaller states, including levels of intensity of harm.

I therefore find and conclude that the NOAT allocation was derived in good faith by arms’ length and fair negotiations among the parties and satisfied Bankruptcy Code section 1129(a)(3).

I also find and conclude that the treatment of the states in Class 4, and through it by means of the good faith, fair, and uniform trust procedures and allocation formula for the NOAT, provides for the same treatment of each claim in Class 4 for purposes of section 1123(a)(4) of the Bankruptcy Code. As discussed in In re W.R. Grace & Co., “[a]lthough neither the Code nor the legislative history precisely defines the standards of equal treatment, courts have interpreted the ‘same treatment requirement’ [of section 1123(a)(4)] to mean that all claimants in a class must have the same opportunity for recovery.” 729 F.3d at 327 (internal quotations and citation omitted). See also In re Cent. Med. Ctr., Inc., 122 B.R. 568, 575 (Bankr. E.D. Mo. 1990), which W.R. Grace cites for the proposition that “a plan that subjects all members of the same class to the same process for claim payment is sufficient to satisfy the requirements of Section 1123(a)(4).” 729 F.3d at 327.

The W.R. Grace court goes on to state, “Courts are also in agreement that § 1123(a)(4) does not require precise equality, only approximately equality,” id., citing In re Quigley Co., 377 B.R. 110, 116 (Bankr. S.D.N.Y.

2007), and In re Multiut Corp., 449 B.R. 323, 334 (Bankr. N.D. Ill. 2011). The consequences of how and when the class members would be paid under W.R. Grace's plan did not produce a substantive difference in a claimant's opportunity to recover and were the result of, among other things, a comprehensive mediation and arms' length negotiations, and thus the plan satisfied section 1123(a)(4). In re W.R. Grace & Co., 729 F.3d at 328. The same analysis applies to the treatment of the NOAT allocation among the states in Class 4.

I was not going to reach the same conclusion with respect to a former element of the NOAT allocation and distribution procedures. One of the adjustments made for the benefit of states with smaller populations like West Virginia in the NOAT allocation was a separate, so-called 1 percent fund, which all of the states, other than the small states that would participate in the fund, were going to contribute to, with, however, the exception of California.

I did not see sufficient evidence to justify California's being excepted from that contribution obligation to the 1 percent fund. However, since the discussion on the record during the confirmation hearing, California has agreed to contribute to the 1 percent fund. The one aspect of West Virginia's objection that I was going to grant has effectively been granted, therefore, by this agreement of the State of California.

Mr. Guard made it clear that all of the states recognized the huge impact that the opioid crisis has had on states like West Virginia and had tried to take that into account in negotiating the NOAT allocation. I too recognize that impact, but I believe that given the arms' length nature of the negotiation and the acceptable

range of West Virginia's treatment even within the writings acknowledged by Mr. Cowan, its objection under Section 1129(a)(4) should be denied.

**Pro se Objections/Good Faith.** The remaining objections to the plan, other than objections based upon the plan's third-party release and injunction provisions and the plan settlement with the Sacklers and their related entities, have been asserted by several parties who were not represented by counsel.

These objections are properly viewed in roughly four different categories. First, Ms. Butler-Fink, Ms. Villnave, Mr. Cobb, and Mr. Wright have stated in one form or another that the plan should not give the Sackler family ". . . immunity from criminal charges."

I completely agree, as does the plan. The plan does not contain a release of criminal conduct. That is crystal clear in the plan and always has been in these cases.

It is understandable that a person who is not a lawyer and looks at these cases from afar through one form of the media or another may have reached a different conclusion. In part that is because either through ignorance or choice, the plan has been described in the media and online as providing "immunity" to the Sacklers for crimes, including murder and illegal drug dealing. "Immunity" clearly suggests immunity from criminal charges; that's how one generally thinks of the word. But the plan simply does not grant such a release. It couldn't do it, and it doesn't.

Those who should know better, whether they are reporters, law professors, or politicians, should not suggest otherwise. At best, suggestions that the plan would relieve the Sacklers of potential criminal liability

reflect a lack of understanding about these cases; at worst, such suggestions are irresponsible and, frankly, cruel to those whom they mislead.

If anyone has engaged in criminal activity either before or during these cases, they are not relieved of the consequences of that liability under the plan. If any prosecutor wants to pursue such a claim against the released parties, they can.

Ms. Graham, Mr. Normile III, Mr. Burris, Ms. Willis, Ms. Ecke, Mr. West, and Ms. Farash have in one form or another contended that it is improper or unfair for the plan to provide only \$700 million to \$750 million in the aggregate for distribution on account of non-NAS personal injury claims, while the bulk of the recovery goes to, as one of the objectors stated, “the government, politicians and big businesses.”

I have said more than once during these cases, including to Ms. Ecke, who testified during the confirmation hearing, that one cannot put a price on a human life or an injury such as opioid addiction, and yet that’s what courts do with respect to personal injuries. They take into account a number of factors that are relevant legally, including potential defenses and intervening circumstances that defeat or dilute the claim, and ultimately the claimant must meet the burden of showing proximate cause. The dollar amount that courts reach if they find a claim for personal injury often does not seem like sufficient compensation. That is particularly the case where the wrongdoer is insolvent.

I did not have any specific valuation of personal injury claims in this case. What I do have is a lengthy and difficult arms-length mediation led by two of the best mediators not only in the United States but in the world,

Messrs. Feinberg and Phillips. They are, I believe, in no way beholden to any type of claimant or unduly sympathetic to any type of claimant or any other party.

Mr. Feinberg, for example, had the incredibly difficult job of working out, by dealing with victims and their families, the proper allocation of the 9/11 fund. Both mediators have extensively dealt with personal injury claims over the course of their careers, and I believe they have been so successful because they are as sympathetic, if not more so, to individual victims as they are to states, hospitals, and other corporate entities.

The people representing the personal injury claimants in the mediation were some of the most effective personal injury lawyers in the world, which means that they are aggressive, creative, knowledgeable and responsible in the pursuit of their clients' claims. I believe that, as set forth in the mediators' report, their negotiations with the other classes of creditors were at arms-length and in good faith. Dkt. No. 2548. I also do not see any conflict between their representation of their tens of thousands of clients in the mediation and the other tens of thousands of personal injury claimants in these cases, who collectively will receive the same type of treatment under the plan and the personal injury trust claims and distribution procedures.

I also carefully considered the trial declaration of Jayne Conroy, who is one of those personal injury lawyers and in fact with her colleagues was probably the main lawyer to pursue Purdue and the Sacklers over more than a decade on behalf of personal injury claimants. Because of that dogged work, she obtained a settlement for roughly 1,100 personal injury claimants, albeit many years ago. She described those clients in her



declaration as those who could tie their injury to a prescription of one of Purdue's products, from which I inferred that they probably were among those most likely to obtain a recovery in a litigation, notwithstanding all of the arguments that the defendants would throw back at them.

After deducting a reasonable contingency fee from that settlement, I believe on average the recovery under that settlement—and because I don't know how the recovery was divided among the clients, I simply allocate it evenly to each client—was approximately \$13,500 per person, which is well within the anticipated range under the plan for allowed personal injury claims.

The uncontroverted declarations of Peter H. Weinberger, Gary A. Gotto, and Ms. Conroy describe the hard-fought litigation and negotiation process leading to the settlement contained in the plan for personal injury claimants, a settlement they support and one which Ms. Conroy testified reflects a "settlement premium" paid to obtain a comprehensive result.

The uncontroverted trial declaration of Deborah E. Granspan details the procedures under the personal injury trust for efficiently—though consistently with the burden to prove one's claim—establishing the amount of one's personal injury claim and obtaining a distribution. Her declaration was uncontroverted in describing a trust procedures mechanism that minimizes the difficulty and cost of presenting a claim for personal injury while maintaining a sufficient degree of rigor over the burden of proof to ensure that as much of the money allocated to personal injury claimants can go promptly and directly to them instead of to lawyers.

I also have reviewed the declaration of Michael Atkinson on behalf of the Official Unsecured Creditors Committee, which attaches the Committee's letter in support of the plan and recognizes the Committee's role in balancing the interests of personal injury creditors with those of the states and other entities that also assert claims, and strongly supports confirmation of the plan as a fair balance of those interests.

The plan vote of approximately 95.7 percent of the non-NAS personal injury class in favor of the plan strongly argues that the members of that class support the plan and the fairness—although only in this setting where one allocates money from a limited pot based not on a moral view of the value of a human life or a person's health but, rather, upon the likelihood of such claims recovering in a litigation—of the plan's allocation of value among personal injury claimants and other creditors. Under the plan that settlement provides for funds to be paid early to personal injury creditors, ahead of the states and other governmental entities, and fair procedures that make it relatively easy, though preserving the burden of proof, to obtain a recovery.

As I will discuss later, the plan's allocation of value to all other creditors to be devoted solely to abatement purposes will also provide value, though indirectly, to all surviving personal injury claimants.

In sum, then, the plan's treatment of personal injury claimants is a fair, mediated resolution of extremely difficult private/public allocation issues.

The next set of objections was made by Ms. McGaha, who also was a witness at confirmation, and Ms. VomSaal. Both raise legitimate concerns, as do all the objectors, although, as I said before, I believe the first group of

objectors has been misled into thinking that the plan provides for a release of criminal conduct.

Ms. McGaha and Ms. VomSaal question why after the plan's effective date NewCo will continue to manufacture and sell opioids in any form, even though such sales would be lawful. Ms. McGaha also makes certain recommendations that could be viewed as abatement measures but are not necessarily included in the abatement policies and guidelines under the plan, such as the banning of long-term opioids or at least making different disclosures regarding them, changes in packaging, and the promotion of non-opioid treatments for chronic pain and alternative, non-opioid therapies for pain.

I believe strongly that every constituency in these cases—including the Official Unsecured Creditors Committee, the Debtors themselves, the United States, the states, the other governmental entities, the Native American tribes group, the ad hoc group of hospitals, the ratepayer and third-party payors groups, the NAS committees, and the ad hoc committee of personal injury claimants—has wanted to ensure that the production and sale of this dangerous product be not only lawful but also conducted in a way that is cautious, subject to layers of oversight, and informed by the public interest at every step. That is the purpose of the plan's provisions dealing with NewCo: the NewCo governance covenants, the NewCo monitor, the NewCo operating agreement, and the NewCo operating injunction.

From the start of these cases, this was a primary focus of the Official Unsecured Creditors Committee. This has also been a focus since the start of the states and political subdivisions and I believe soon after the start of these cases of the other institutional creditors,

such as hospitals and school districts. That is why with the exception of personal injury creditors all claimants in these cases have agreed to take their distributions in the form of payments to be devoted solely to abatement of the opioid crisis.

The Debtors, too, have been focused on these goals, for example at the start of these cases volunteering a self-injunction pertaining to their legal manufacture and sale of these products, agreeing to the appointment of a monitor, and re-focusing their business in part to developing overdose and addiction treatments to be sold at or near cost. Those measures are described in Mr. Lowne's trial declaration, as well as the fact declaration of Mr. DelConte. They also were discussed in Mr. Atkinson declaration and the attached letter from the Creditors Committee, and they are reflected in the provisions of the plan that I've just described.

Since before the start of these cases, this focus has not involved any input from the Sackler family or their related entities, because since before the bankruptcy petition date the Sacklers have not taken any role whatsoever on the Debtors' Board or otherwise regarding the Debtors' management.

The Bankruptcy Code does not require this focus, but in keeping with the broader view of section 1129(a)(3)'s good faith requirement, the parties in interest have required it, and I have encouraged them, so that at this point I believe the measures that I have just described will set a standard not only for this company but for other companies that manufacture and distribute products like the Debtors' that are legal yet dangerous.

It is hard to imagine how any other company that engaged in this business or in the distribution of these

types of products wouldn't also conclude that it was not only the right thing to do but also was in their interest to imitate these governance and operating constraints. They're not being imposed by a government; they're being imposed by this plan with the input of state and local representatives and the federal government and, importantly, representatives of the victims of Purdue's prior conduct. Again, these governance and operating constraints should serve as a model to similar companies as well as an implicit warning that if such companies do not take such care, if they rely instead only on the minimum that the F.D.A. or other federal or state law or regulations require, they may nevertheless, like Purdue, be found lacking if their products cause harm.

The plan's abatement programs themselves are the subject of substantial unchallenged testimony, including by Dr. Gautam Gowrisankaran and Dr. Rahul Gupta, and, with respect to the hospital class, William Legier and Dr. Gayle Galan. And the abatement initiatives reflect heavy input by all of the states and non-state governmental entities. Again, to have reached agreement on these abatement metrics and mechanisms is an incredible achievement given the strong views that various parties have about what types of abatement are proper.

Dr. Gowrisankaran's unchallenged testimony described the clear multiplier effect of dedicating the bulk of the value to be distributed under the plan, including from the shareholder released parties, to abatement programs as opposed to individual payments that perhaps could be used for abatement but, as with prior national settlements such as the settlements with tobacco companies, also could be used for miscellaneous governmental purposes.

The foregoing testimony also shows, as do the abatement metrics themselves, that the plan contemplates abatement procedures that will take into account developments and lessons learned over time about what works and what doesn't. That incremental development is furthered by the plan's requirement for periodic reports on the use of the abatement funds, which then can be checked to see what succeeds and what doesn't and therefore how future NOAT distributions might best be reallocated.

The abatement procedures and metrics also include a consultation process taking into account the views of local governments and people within local communities in a reasonable and fair way; that is, they are not simply imposed from the top down by the respective states.

Ms. McGaha and Ms. VomSaal don't identify a specific legal basis for their objections (which is understandable given that they are not represented by counsel). I have addressed them, however, in the light of Bankruptcy Code section 1129(a)(3)'s good faith requirement. Given all that I've just described, it is clear that the use of most of the value to be distributed under the plan for abatement purposes as specified is in good faith and, in fact, beneficial to those who have individual claims against the Debtors as well as the communities and states that also have claims. It is also clear that the plan's provisions for the governance and operations of NewCo, facilitate not only the purposes of the Bankruptcy Code but also the broader good. Within the constraints of federal law, including regulations and guidance from the F.D.A, the NewCo governance provisions go beyond that law where possible to ensure the safety or the safe use of the Debtors' products, including the development of products that would assist those who

are trying to recover from opioid use disorder and provide cheap and accessible prevention mechanisms for overdoses.

To suggest otherwise, to suggest that somehow this was an ill-cooked and cooked-in-secret stew (which I don't believe the two objectors are contending but has been suggested publicly by those who I don't think have been following these cases, or if they have been following them should know better), is incorrect and dramatically so.

The last objection by certain of the pro se objectors whom I've already named contends that the civil settlement under the plan with the shareholder released parties—the Sacklers and their related entities—is unfair and should not be approved. That settlement would resolve the claims of (x) the Debtors' estates against those parties and (y) certain claims against the shareholder released parties based in large measure on the same conduct underlying certain of the Debtors' claims against the shareholder released parties and the third parties' claims against the Debtors.

It is my main task, notwithstanding the length of this ruling already, to consider whether that settlement of the Debtors' claims and related third-party claims against the shareholder released parties is proper under the Bankruptcy Code.

One point should be addressed first regarding this inquiry, and I discuss it now in part because it has been raised by the pro se objectors, perhaps because of what they have read or heard in the media or from others.

Some assert that this Chapter 11 plan and the settlement in it is “the Sacklers' plan,” or perhaps, artfully, it

has been suggested that because it is proposed by the Debtors, and the Sacklers own the Debtors, the Debtors' plan is "the Sacklers' plan."

While I will separately examine whether the settlements with the Sacklers under the plan are fair, one thing is crystal clear, and anyone who contends to the contrary is, again, simply misleading the public: this is not the Sacklers' plan. The Debtors are not the Sacklers' company anymore. The Sacklers own the Debtors, but the Debtors are not run by the Sacklers in any way and have not been since before the start of these cases. There is literally no evidence to the contrary—none. Although it was not necessary, because the record was clear, the examiner appointed in these cases confirmed it in his report. Dkt. No. 3285.

More importantly, and as recognized by the examiner, these cases were driven as much, if not more, by the Official Unsecured Creditors Committee and the other creditors in these cases who formed well-represented ad hoc committees, including committees of the 48 states and territories that have claims against the Debtors (two states having settled those claims before the start of the bankruptcy cases) and strong representatives of non-state governmental entities and Native American tribes; personal injury claimants; victims of neonatal abstinence syndrome or their guardians, hospitals, ratepayers and third-party payors, and school districts.

These creditors essentially have represented the interests of all creditors of these Debtors, although of course other creditors were free as parties in interest to appear and be heard. And from the start of these cases, all of the Debtors' assets were dedicated to them.



These creditor groups wanted more than anything to obtain as much value not only from the Debtors but also from the Sacklers, who were viewed by all as the opposition, the other side, the potential defendants, the payors. And it is clear that the Official Unsecured Creditors Committee, the states and territories, the other governmental entities and tribes, and the other ad hoc groups were completely independent from the Sacklers in their focus on that goal.

They were facilitated in achieving that goal by the two incredibly experienced and effective mediators I've already discussed, Messrs. Philips and Feinberg. And, further, even after a largely successful mediation of the claims against the Sacklers—claims by the Debtors' estates and claims assertable by others—which ultimately resulted from the mediators' own proposal as to what would be a fair settlement that was accepted by all of the foregoing groups with the exception of the so-called nonconsenting state group of 24 states and the District of Columbia, I directed another mediation with another of the best mediators in the world, my colleague Judge Shelly Chapman. Based on her mediation report [Dkt. No. 3119], Judge Chapman held over 140 discussions before the mediation day set aside to see whether the remaining nonconsenting states could reach agreement with the Sacklers. That "day" lasted 27 hours. *Id.*

Judge Chapman, like Mr. Feinberg and former Judge Phillips, is a successful mediator because she does not browbeat people, although even if she wanted to, she could not browbeat the nonconsenting states' representatives. She, like Messrs. Feinberg and Phillips, is a successful mediator because she points out the risks and rewards of not reaching a settlement and of reaching a settlement. At the end of her mediation, fif-

teen of the states that had previously fought the Sackler settlement tooth and nail agreed to the modified settlement in the amended plan.

I'm saying this not to show my support for the underlying settlement but to highlight again the arms-length negotiation of the plan and the fact that it is not a "Sackler plan" but a plan agreed to by 79 percent of the states and territories and well over 96 percent of the non-state governments, and actively supported by the Official Unsecured Creditors Committee and the other ad hoc committees, notwithstanding the incredible harm that the Debtors' products have caused their constituents.

Bitterness over the outcome of these cases is completely understandable. Where there has been such pain inflicted, one cannot help but be bitter. But one also must look at the process and the issues in the light of the alternatives and with a clear understanding of the risks and rewards of continued litigation versus the settlements set forth in the plan. And it's that process to which I'll turn next.

**Analysis of the Settlements with the Shareholder Released Parties.** As I noted, the plan includes two settlements with the Sacklers and their related entities. It provides for the settlement of the Debtors' estates' claims—that is, the Debtors' claims against the Sacklers and related entities for the benefit of the Debtors' creditors. (And the estates have substantial claims against the Sacklers. Indeed, one can argue that those claims are the main claims against them.) Second, the plan provides for the settlement of certain third-party claims—that is, claims that could be asserted by others

—against the Sacklers and their related parties, the “shareholder released parties” under the plan.

I will focus first on the settlement of the Debtors’ estates’ claims, but I will note before doing so that the plan is not just a plan that settles the estates’ claims and certain third-party claims against the Sacklers related to those claims and the third parties’ claims against the Debtors. In fact, the plan contains several other settlements interrelated to those settlements that would not be achievable if either of the settlements with the Sacklers fell away.

These include a settlement of the complex allocation between personal injury claimants, NAS-personal injury claimants and non-governmental entities, on the one hand, and claims by public, governmental entities on the other, a subject of months of mediation that I’ve already discussed. They also include a settlement of the allocation of value among the public creditors—the states and nongovernmental entities and Native American tribes.

Remarkably, all parties with the exception of the personal injury claimants agreed in the mediation to use the value that they would receive solely for abatement purposes, the multiplier-effect benefits of which I’ve already described. This includes the private, corporate entity claimants as well as the non-federal governmental claimants.

In addition, during these cases, the Debtors settled both civil and criminal claims of the federal government, and the plan encompasses those settlements, importantly including the United States’ agreement to release \$1.775 billion of its \$2 billion superpriority administrative expense claim for the benefit of the other pub-

lic creditors if, as is the case here, the plan meets the requirements of the DOJ settlement to establish an abatement structure and the corporate governance and other public purposes for NewCo that I have previously described.

Each of those settlements hinges on at least the amount of money to be distributed under the plan coming from the Sacklers and their related entities in return for (x) the Debtors' settlement and (y) the third-party claims settlement. Without the \$4.325 billion being paid by the Sacklers under the plan and the other elements of the Sackler settlements, those other elements of the plan would not happen. The record is clear on that. The private/public settlement would fall apart and the abatement settlements likely would fall apart for lack of funding and the inevitable fighting over a far smaller and less certain recovery with its renewed focus on pursuing individual claims and races to collection.

That still begs the question, though, is the \$4.325 billion, coupled with the Sackler's other agreements, including the dedication of the two charities worth at least \$175 million for abatement purposes, the Sacklers' agreement to a resolution on naming rights, their agreement not to engage in any business with NewCo, their agreement to exit their foreign companies within a prescribed time, their agreement to various "snap back" protections to ensure the collectability of their settlement payments, and their agreement to an unprecedented extensive document depository accessible to the public that will archive in a comprehensive way the Debtors' history, including as it relates to the development, production, and sale of opioids, sufficient? Obviously, more money from the Sacklers, if such were ob-

tainable, would not unravel the settlements that I've already described.

Settlements and compromises of asserted or assertable claims by debtors' estates are a normal part of the process of reorganization in bankruptcy and are strongly favored over litigation. Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424, 88 S. Ct. 1157, 20 L. Ed. 2d 1 (1968). This is in part for the obvious reason that in bankruptcy the pie is not large enough to feed everyone. In bankruptcy the cost and delay factors in deciding whether to approve a settlement are more significant than in a non-bankruptcy context, as is an assessment of the merits of the claims that are being settled: the risks of losing a piece of the pie or having it go stale are magnified if from the start there is not enough to go around.

In determining whether to approve a settlement of a debtor's estate's claims, a bankruptcy court must make an informed independent judgment that the settlement is "fair and equitable" and "in the best interests of the estate." TMT Trailer Ferry, 390 U.S. at 424, 88 S. Ct. 1157; In re Drexel Burnham Lambert Group, 134 B.R. 493, 496 (Bankr. S.D.N.Y. 1991). "In undertaking an examination of the settlement . . . this responsibility of the bankruptcy judge . . . is not to decide the numerous questions of law and fact raised . . . but rather to canvas the issues and see whether the settlement falls below the lowest point in the range of reasonableness." Nuevo Pueblo, LLC v. Napolitano (In re Nuevo Pueblo, LLC), 608 Fed. Appx. 40, 42 (2d Cir. 2015), quoting In re W.T. Grant Co., 699 F.2d 599, 608 (2d Cir. 1983); see also Weinberger v. Kendrick, 698 F.2d 61, 74 (2d Cir. 1982) ("The Supreme Court could not have intended that, in

order to avoid a trial, the judge must in effect conduct one.”); E. 44th Realty, LLC v. Kittay, 2008 WL 217103, at \*8, 2008 U.S. Dist. LEXIS 7337, at \*22 (S.D.N.Y. Jan. 23, 2008). Nevertheless, a request to approve a settlement, including of course a major settlement like this in the context of a Chapter 11 plan, requires careful consideration and the right to an evidentiary hearing, and here warranted a six-day trial involving 41 witnesses.

Based on the framework laid out in TMT Trailer Ferry, courts in this Circuit have long considered the following factors in evaluating proposed settlements:

(1) The probability of success, should the issues be litigated, versus the present and future benefits of the settlement;

(2) the likelihood of complex and protracted litigation if the settlement is not approved, with its attendant expense, inconvenience and delay, including the difficulty of collecting on a judgment;

(3) the interests of the creditors, including the degree to which creditors support the proposed settlement;

(4) whether other interested parties support the settlement;

(5) the competence and experience of counsel supporting, and the experience and knowledge of the court in reviewing, the settlement;

(6) the nature and breadth of the releases to be obtained by officers and directors or other insiders; and

(7) the extent to which the settlement is the product of arms-length bargaining. See generally, Motorola, Inc. v. Off. Comm. of Unsecured Creditors & JPMorgan

Chase Bank, N.A. (In re Iridium Operating LLC), 478 F.3d 452, 464-66 (2d Cir. 2007).

The Iridium court also noted that how a settlement's distribution plan complies with the Bankruptcy Code's priority scheme may be the dispositive factor. That is, unless the remaining factors weigh heavily in favor of approving a settlement, if the settlement materially varies the Bankruptcy Code's priority scheme, the court should normally not approve it. That concern does not apply here, however. As I have noted regarding objections to classification and treatment under the plan, the plan does not vary the Bankruptcy Code's priority scheme or otherwise violate the Code's requirements for classification and treatment within a class.

I will address the elements of evaluating a settlement in a different order than listed by the Iridium court, noting first, however, that they are applied even where part of the settlement involves not just the simple trade of money for a claim but, as here, also performance, such as ceasing to be involved with Purdue or agreement to the public document depository. See, e.g., DeBenedictis v. Truesdell (In re Global Vision Prods.), 2009 WL 2170253, 2009 U.S. Dist. LEXIS 64213 (S.D.N.Y. July 13, 2009).

As discussed, the Sackler settlement was clearly and unmistakably the product of arm's-length bargaining conducted in two separate mediations by three outstanding mediators. It was preceded, moreover, by the most extensive discovery process that not only I have seen after practicing bankruptcy law since 1984 and being on the bench since 2002, but I believe any court in bankruptcy has ever seen.

The record is unrefuted regarding the incredible extent of discovery taken not only by the Debtors through their Special Committee and counsel, but also the Official Unsecured Creditors Committee in consultation with the nonconsenting states group and the other states and governmental entities, in fact anyone who wanted to sign a standard nondisclosure agreement to permit discovery to proceed without extensive fights over confidentiality.

From the first hearing in these cases, I made it clear—as was also recognized by Judge McMahon in Dunaway v. Purdue Pharm. L.P. (In re Purdue Pharm. L.P.), 619 B.R. 38, 58-59 (S.D.N.Y. 2020), in affirming the preliminary injunction that I entered—that the Sacklers and their related entities must provide discovery beyond even the normally extensive discovery in bankruptcy cases as a condition to retaining the continued benefit of the injunction. And that discovery occurred.

I did not have to decide one discovery dispute on the record. Each of the chambers conferences with parties over discovery disputes led to the production of additional discovery. As a result of that process, approximately ten million documents were produced, comprising almost 100 million pages, an almost unfathomable record that nevertheless teams of lawyers for the creditor groups have pored through to find anything suggesting a claim against the shareholder released parties.

Thus any assertion that there has not been “transparency” in these cases, at least to those who negotiated the plan’s settlements, who again in essence represented all of the creditors in these cases, is simply incorrect, and is particularly galling when asserted by any



of the states that continue to object to the plan on this basis. They know what they had access to. They know how unprecedentedly extensive that information was.

The only argument that they can make is that the public hasn't had access to such information. But of course if the discovery and information-sharing process had not been conducted as it was by the public's representatives, including the very states that make this argument, far less information would have been produced, most of which the public would never have had access to in any event, including if the settled claims instead went to trial or an examiner issued an examiner's report. Further, the objectors had the ability to probe the merits of the proposed settled claims, including their own claims, during the confirmation hearing, and objecting states took advantage of it to, among other things, extensively examine four members of the Sackler family and present the deposition testimony of a fifth.

The discovery record armed the parties in their negotiations in the mediations, and the mediations further fostered the arms-length bargaining in these cases.

The clearly arms-length nature of the negotiations also establishes that conflicts of interest or self-dealing do not taint the nature and breadth of the plan's proposed release of the shareholder released parties, who certainly once were "insiders," one element of the analysis of the Iridium factor focusing on such releases that otherwise will be discussed later when focusing on the plan's proposed release of third-party claims.

Applying the next Iridium factor—the competency and experience of counsel supporting the settlement—the Debtors were represented by very capable counsel and forensic and financial advisors that assisted the

Debtors' Special Committee in discovering most of the Debtors' claims against the Sacklers and their related entities. These claims, for over \$11 billion of assertedly avoidable transfers, are described in the trial declarations of Richard Collura, Mark Rule, and David DeRamus, Ph.D and commented on by John Dubel in his trial declaration, as well as set forth in even greater detail in the report filed by the Debtors before the start of the mediation. Dkt. No. 654.

The Official Unsecured Creditors Committee also had very experienced and capable counsel and financial advisors, who led the Committee's own extensive analysis of potential estate claims, including vetting the Debtors' analysis of avoidable transfer claims. The Committee also thoroughly investigated the estates' claims against the Sacklers that are not in the nature of avoidable transfer causes of action but, rather, claims based on theories of alter ego, piercing the corporate veil, and breach of fiduciary duty/failure to supervise. Here it appears clear that such claims would belong to the Debtors' estates, not individual creditors, because at least as far as the confirmation hearing record reflects, such claims would be based on a generalized injury to the estates and creditors rather than conduct directed only at certain creditors. See, e.g., St. Paul Fire and Marine Insur. Co. v. PepsiCo, Inc., 884 F.2d 688, 704-705 (2d Cir. 1989); Bd. of Trs. of Teamsters Local 863 Pension Fund v. Foodtown Inc., 296 F.3d 164, 169 (3d Cir. 2002).

Similarly, the counsel and advisors for the states and other governmental entities, all of whom were on the other side of the table from the Sacklers, were every match for the Sacklers' own able counsel. In many cases, in addition to their outside counsel, states' own

attorneys general played an active role in the negotiations, such as, for example the AGs for Massachusetts and New York who after the second mediation, led by Judge Chapman, agreed to the modified settlement.

The next two Iridium factors are closely related: the interests of creditors, including the degree to which creditors support the proposed settlement, and whether other interested parties support the settlement.

Given the over 95 percent aggregate vote in favor of the plan; given the support by the Official Unsecured Creditors Committee, over 79 percent of the states and territories, over 96 percent of the other governmental entities and Native American tribes, apparently in this context the United States—although one can't really make heads or tails of the U.S. Trustee's objection, which is not based on participation in the cases' discovery process,<sup>4</sup> regarding the merits of the Debtors' settlement with the shareholder released parties—approximately 96% of the personal injury and NAS personal injury claimants, and a supermajority of the other claimants; and given the paucity of objections to the plan's confirmation notwithstanding the size of the creditor body, it is clear that by an overwhelming margin the creditors support the settlements. They do so,

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<sup>4</sup> The U.S. Trustee did not participate in that discovery process and apparently took no independent discovery before the confirmation hearing to explore the merits of its factual objections to the plan. It also has offered no evidence for any of its fact-based objections to the plan, instead apparently assuming that it can nevertheless act credibly as an outside commentator on others' analysis of the settlements (which it mostly did not seek to challenge by cross examination).

again, after being fully informed in making that decision, or with their representatives being fully informed.

The next Iridium factor requires analysis of the likelihood of complex and protracted litigation if the settlement is not approved, with its attendant cost and delay, and, relatedly, the difficulty in collecting on a judgment. I'll focus first on the difficulty of collecting on a judgment absent the settlement.

As often happens, parties who support a settlement, such as here the Official Unsecured Creditors Committee, the consenting states and other governmental entities, and the Debtors are careful not to describe in detail the reasons for their support that would show the potential weaknesses of their underlying claims or their views on how difficult it would be to collect on a judgment. They are legitimately concerned that the settlement won't be approved, in which case they would have given their opponents a regretted roadmap. This leaves the Court to draw reasonable inferences from the record, as well as its knowledge and experience regarding the legal issues bearing on the merits and collection. Here, that record is fairly extensive in the light of submissions by the Sacklers and those overseeing their wealth.

One might think at first that the issue of collectability weighs against the settlement. The record is uncontroverted that the Sacklers, as a family, are worth—again, in the aggregate—approximately \$11 billion, reduced perhaps by \$225 million agreed to be paid under the Sacklers' own postpetition civil settlement with the United States. The discovery process that I have described has largely identified their assets and where and how they are held. And the preliminary injunction

in these cases precluded the further transfer of their assets. So, assuming the entry of judgments against them instead of the settlement, one might reasonably believe that collecting significantly more than \$4.325 billion, plus access to, or the dedication of, at least \$175 million of charitable assets under the settlement, is readily achievable

The Sacklers are not a simple group of a few defendants, however. They are a large family divided into two sides, Side A and Side B, with eight pods or groups of family members within those divisions that have their own unique sources and holdings of wealth. As described in the trial declarations of Timothy Martin and Steven Ives, their assets are in fact widely scattered and primarily held (x) in purportedly spendthrift offshore trusts, (y) in purportedly spendthrift U.S. trusts, and/or (z) by people who themselves live outside of the territorial jurisdiction of the United States and might not have subjected themselves sufficiently to the U.S. for a U.S. court to get personal jurisdiction over them.

I want to be clear that I am not deciding that jurisdictional issue, nor whether the trusts where most of the Sackler family's wealth is held are in fact spendthrift trusts that could not be invaded to collect a judgment, including in a possible bankruptcy case of a beneficiary of such a trust forced into bankruptcy by the pursuit of litigation.

A beneficial interest in a valid spendthrift trust may be excluded from a debtor's bankruptcy estate. Patterson v. Shumate, 504 U.S. 753, 757, 112 S. Ct. 2242, 119 L. Ed. 2d 519 (1992). As provided in Bankruptcy Code section 541(c)(2), "A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforcea-

ble under applicable non-bankruptcy law is enforceable in a case under [the Bankruptcy Code].” 11 U.S.C. § 541(c)(2). That section directs one to applicable non-bankruptcy law, which may or may not be the law of the United States with regard to the Sacklers’ foreign trusts, almost all of which are established under the law of the Bailiwick of Jersey.

Based on the trial declaration and examination of Michael Cushing, an expert in the law of the Bailiwick of Jersey and the enforceability of judgments against trusts organized under that law, there is a substantial question regarding the collectability from such a trust of even a U.S. fraudulent transfer judgment against the trust, let alone a judgment against a trust beneficiary, including for his or her conduct such as the beneficiary being an alter ego of another entity, like Purdue, or otherwise legally responsible for Purdue’s conduct.

For U.S. spendthrift trusts, on the other hand, generally applicable non-bankruptcy law provides that a transfer into such a trust that is fraudulent to creditors is recoverable for the benefit of creditors. See, e.g., Sec. Investor Prot. Corp. v. Bernard L. Madoff Sec. LLC (In re BLMS), 631 B.R. 1, 9-13 (Bankr. S.D.N.Y. 2021); see also In re BLMIS, 476 B.R. 715, 728, n.3 (S.D.N.Y. 2012).

U.S. law also generally does not recognize self-settled trusts that in name only are spendthrift trusts. But again, many of the trusts here might well be governed by the law of the Bailiwick of Jersey, which according to Mr. Cushing’s declaration—which was not meaningfully controverted on these points—strongly suggests that a different result might apply when enforcing a judgment against a beneficiary of such a trust. And

none of the evidence at the confirmation hearing clearly showed that any of the trusts was self-settled.

Lastly, the summaries of the Sackler family's wealth reveal that much of it is not held in readily liquidated assets but rather in the shares of closely held businesses, including the foreign businesses they are required to sell within seven years under the settlement.

Once more, I'm not deciding any legal issues that would affect the collectability of judgments against Sackler family members or their entities, but, given the record before me, as well as the agreement of substantially all of the parties in these cases to a settlement of the estates' claims against the Sacklers and their related entities after the due diligence that they have undertaken, I make the reasonable inference that the issue of collection if the settlement were not approved is in fact a significant concern.

Under the settlement, on the other hand, although the shareholder released parties are given several years to make their payments (in at least partial recognition, one infers, of the illiquid nature of many of their assets), (x) the shareholder settling parties have agreed to "snap back" provisions that enhance collectability upon a default and (y) the trustees and asset managers for the foreign trusts have agreed to seek, and believe they will obtain, the approval of the Jersey court to comply with the settlement.

As noted, Iridium also requires the Court to consider the cost and delay of continued litigation in comparison to the benefits of the proposed settlement. If the estate's claims against the Sacklers and their related entities were not settled as provided in the plan, the cost and delay to the estates clearly would be substantial.

That cost and delay would not be limited to the cost and delay of pursuing litigation claims against the family members and their related entities and collecting any ensuing judgments, which primarily would involve preparation for trials against multiple defendants (the discovery for which has mostly occurred) and the trials themselves, as well as judgment enforcement litigation and other collection costs in multiple jurisdictions. That cost and delay alone would be substantial, as it is reasonable to infer that the hundreds of prepetition lawsuits naming the Sacklers would resume and proceed alongside prosecution of the estates' claims against the Sacklers and related entities.<sup>5</sup>

Besides that cost and delay, moreover, is the cost and delay that would ensue from the unraveling of the other plan settlements that I have described. The confirmation hearing record strongly reflects that if the settlement of the Debtors' claims against the shareholder released parties were not approved, the creditor parties would be back essentially to square one on allocating the value of the Debtors' estates, including any ultimate recovery on the estates' litigation claims. And the creditors would be litigating against each other over the merits of their respective claims against the Debtors.

In that regard, the analysis in Mr. DelConte's second declaration, which contains the Debtors' section 1129(a)(7)

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<sup>5</sup> The preliminary injunction in these cases enjoined over 2,600 pending prepetition lawsuits against Purdue by governmental entities, hundreds of which named one or more Sackler family members as a co-defendant, and presumably most of the other actions would be amended to add Sackler family members as defendants, and other third parties also would attempt to pursue such claims, as well.



“best interests” liquidation analysis, is instructive. Under the most realistic scenarios described in that analysis, there would literally be no recovery by unsecured creditors from the estates in a Chapter 7 liquidation, which is, I believe, the most likely result if the settlements with the shareholder released parties were not approved, given the likely unraveling of the heavily negotiated and intricately woven compromises in the plan and the ensuing litigation chaos.

That projected outcome also reflects that in a liquidation scenario the United States’ agreement in the DOJ’s October 2020 settlement with Purdue to forego \$1.775 billion of its \$2 billion superpriority administrative expense claim for the benefit of the plan’s abatement program would disappear. The United States would be entitled to all of that recovery first from the Debtors’ estates. And no one has controverted the trial declaration of Joseph Turner, the Debtors’ investment banker in which he gives a midpoint valuation of the Debtors’ businesses as going concerns at \$1.8 billion. Thus the estates would be litigating their own claims against the Sacklers and their related entities in that highly contested environment on a severely reduced budget with no assurance of administrative solvency.

That leaves the last Iridium factor, a comparison of the legal risks posed by continued litigation against the results of the settlement.

As with the issue of the difficulty of collection, the parties supporting the settlement have been careful not to bare their views of the defenses that the shareholder released parties would have to the estates’ claims against them. However, I do have an extensive report and trial declarations as to the nature of the assertedly

over \$11 billion of avoidable transfers, when they occurred, what they comprised, and who they were made to. Those objecting to the settlement also had the opportunity to examine at length four members of the Sackler family at the confirmation hearing—David Sackler, Richard Sackler, Mortimer Sackler, and Kathe Sackler—and in addition submitted the deposition of Irene Sackler, including to attempt to show the strength of the estates' and third-parties' claims against them based on their actions in their capacities as shareholders and members of Purdue's Board and, in three instances, in Purdue's management. Finally, I have extensive submissions by both sides of the Sackler family regarding the defenses that they would argue in the absence of the settlement in response to the claims asserted against them and their related entities.

In evaluating that evidence and those arguments I want to be clear again that I am not deciding anything close to the merits of those claims. This assessment could not, therefore, serve as collateral estoppel or res judicata. Nor do I particularly have any fondness or sympathy for the Sacklers.

I will note the following, however. The Sackler family—or rather 77, I believe, of them—received releases from most of the states in 2007. In addition, 2007 is about as far back under any theory that one could look to avoid a fraudulent transfer to the Sacklers or any of their related entities under U.S. law. Thus one would, both for estate claims and for third-party claims, be looking at primarily, if not exclusively, potentially wrongful actions by the Sacklers or their related entities or potentially avoidable transfers to them that took place only after 2007. This would limit claims against them, for example, based on OxyContin's role since its

introduction in 1999 to 2007 in dramatically increasing the use of opioids and related addictions and opioid use disorders.

Avoidable Transfers. As described in the trial declaration of Carl Trompetta and as generally acknowledged, over 40 percent of the asserted avoidable transfers to the Sacklers or their related entities went to pay taxes associated with Purdue, including large amounts to the IRS and the states that continue to object to the plan and, of course, intend to keep the tax payments. The fact that these payments went to pay taxes obviously relieved the Sacklers of an obligation. I do, however, have uncontroverted testimony from Jennifer Blouin that if the partnership structure of Purdue, with the taxes running through the Sacklers, was not in place, Purdue itself would have been liable for taxes in almost all of the amount of the tax payments to or for the benefit of the Sacklers and, therefore, arguably received fair consideration for those tax payments.

The Sacklers also would argue the applicability of various statutes of limitation to the fraudulent transfer claims that would limit the reach-back by the estates to most of the claims. The estates would have arguments to the contrary, based on rights that unique creditors like the federal government would have to serve as a “golden creditor” under section 544(b) of the Bankruptcy Code, which provides that the Debtors “may avoid any transfer of an interest of the debtor in property . . . that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title,” 11 U.S.C. § 544(b), although the Sacklers would argue that the purportedly “golden creditor’s” current claims against the Debtors are not the claim it would have had when many of the transfers

were made that would have enabled the creditor to avoid them.

The Sacklers would also argue that after the 2007 settlement between Purdue and the United States, Purdue paid manageable amounts in settlements of litigation claims related to opioid matters or of other litigation claims between 2008 and 2019 and that as recently as 2016 Purdue was receiving ratings from rating agencies that indicated it was financially healthy. They would contend, therefore, that except for the last year or so before the bankruptcy filing date, when only a small fraction of the roughly \$11 billion of transfers occurred, Purdue was not insolvent, unable to pay its debts when they came due, or left with unreasonably small capital—requirements to prove constructive fraudulent transfers. Finally, they would argue that for these same reasons, and bolstered by at least some of the Sacklers' willingness to continue to invest large amounts of capital in Purdue in years after 2007, the Debtors would not be able to prove that most, if not all, of the transfers were intentionally fraudulent, either.

There are, on the other hand, statements in the record suggesting that at least some of the Sacklers were very aware of the risk of opioid-related litigation claims against Purdue and sought to shield themselves from the economic effect of such claims by causing Purdue to make billions of dollars of transfers to them and to shield their own assets, as well, from collection. Further, the estates would argue that the potential sheer size of opioid-related claims against Purdue was obvious several years before the second onslaught of litigation claims against it.

Alter Ego, Veil Piercing, and Breach of Fiduciary Duty/Failure to Supervise Claims. As discussed earlier, claims based on alter ego, piercing the corporate veil, and breach of fiduciary duty/failure to supervise theories would appear to stem from allegations against Sackler family members that they caused harm to the creditor body generally, or to the Debtors, in exercising their control of the Debtors and, therefore, would belong to the Debtors' estates rather than to individual creditors. As discussed later, very closely related, indeed usually the same, factual allegations also underly the objecting states' third-party claims against Sackler family members.

In response to such claims, most Sackler family members would argue that they did not serve on Purdue's Board or in management during the relevant period and that no actions by them in their capacity as a shareholder of Purdue have been identified that would show liability for such claims. In response, the Debtors and others would contend that notwithstanding the large size of the Sackler family, the Sacklers acted in a coordinated way over investment and business strategies involving Purdue, with regular meetings of authorized family representatives. The Sacklers would argue, supported by the trial declaration of Lawrence A. Hamermesh that generally the ability to control a corporate entity and such actions as were identified at the confirmation hearing do not give rise to such liability, however. In response, the Debtors' estates would argue, as did the objecting states at the confirmation hearing, that Mr. Hamermesh's declaration speaks only in generalities regarding the law of corporate fiduciaries and does not address the actual actions of Sackler family members in controlling Purdue.

The Sacklers would also point out that after the 2007 settlements with the federal government and the states, the U.S. Department of Health and Human Services entered into a five-year corporate integrity agreement with Purdue to monitor its compliance with federal healthcare law, which was in effect from July 31, 2007 to July 30, 2012. That agreement is available as part of the record but also is public and a matter for judicial notice. In addition, in 2015, after Purdue implemented an “Abuse and Diversion Detection” program, the New York Attorney General required the program be subjected to annual reviews, which occurred from 2015 to 2018. The Sacklers would argue that both the H.H.S.’s OIG monitor and those ADD reviews identified no improper actions by Purdue and therefore that as controlling shareholders or Board members they should not be liable for Purdue’s improper actions to the extent they were inconsistent with those reviews. More generally they would argue that as Board members they would not have a fiduciary duty for actions by Purdue’s management that were improper or unlawful unless they were aware of them or blindfolded themselves to them. Those who were not on the Board and did not individually control ownership of Purdue would argue that they were yet another step removed from such a duty. They would also point out the difficulty under applicable state law of piercing the corporate veil between a corporate entity and its owners.

Of course trials on the merits might well establish, as some of the testimony that I heard from the Sacklers tended to show, that as a closely held company Purdue was run differently than a public company and that its Board and shareholders took a major role in corporate decision-making, including Purdue’s practices regard-

ing its opioid products that was more akin to the role of senior management.

Moreover, strong arguments could be made that the Sackler Board members and the shareholders as a whole not only understood the highly addictive nature of Purdue's opioid products—which the Sackler witnesses acknowledged—but also that F.D.A.-approved warning labels and modifications to the product and how it was sold that allegedly made it less likely to be abused were not preventing massive harm. The Sackler witnesses testified that their aim, especially after 2007, was to avoid Purdue's causing more harm from the sale of highly addictive products. But a jury might well conclude to the contrary that the Sacklers' evident desire to continue to drive profits from the products' sale blinded them to evidence of the fraud, kickbacks and other crimes to which Purdue pled guilty in the October 2020 DOJ settlement or that the pain-relieving benefits of those products was still horribly out of balance with the harm caused, so that they could be held liable for such harm.

I believe that in a vacuum the ultimate judgments that could be achieved on the estates' claims (and the closely related third-party claims that are being settled under the plan) might well be higher than the amount that the Sacklers are contributing. But I do not believe that recoveries on such judgments would be higher after taking into account the catastrophic effect on recoveries that would result from pursuing those claims and unravelling the plan's intricate settlements. And as I said at the beginning of this analysis, there is also the serious issue of problems that would be faced in collection that the plan settlements materially reduce.

This is a bitter result. B-I-T-T-E-R. It is incredibly frustrating that the law recognizes, albeit with some exceptions, although fairly narrow ones, the enforceability of spendthrift trusts. It is incredibly frustrating that people can send their money offshore in a way that might frustrate U.S. law. It is frustrating, although a long-established principle of U.S. law, that it is so difficult to hold board members and controlling shareholders liable for their corporation's conduct.

It is incredibly frustrating that the vast size of the claims against the Debtors and the vast number of claimants creates the need for the plan's intricate settlements. But those things are all facts that anyone who is a fiduciary for the creditor body would have to recognize, and that I recognize.

A settlement is not evaluated in a vacuum, as a wish list. It takes an agreement, which means that if properly negotiated—and I believe that's clearly the case here—it generally reflects the underlying strengths and weaknesses of the opposing parties' legal positions and issues of collection, not moral issues or how someone might see moral issues.

It is not enough simply to say “we need more,” or “I don't care whether we don't get anything; I'd rather see it all burned up before the Sacklers keep anything.” One must focus on the foreseeable consequences of litigation versus settlement.

I must say that at the middle stage of these cases, before the mediation, I would have expected a higher settlement. And frankly anyone with half a brain would know that when I directed a second mediation, bravely undertaken by Judge Chapman, I expected a higher settlement, perhaps higher than the materially im-



proved settlement that resulted from that mediation. Nevertheless, extremely well-represented and dedicated parties on the prospective plaintiffs' side, knowing far more than I have laid out today about the strengths and weaknesses of the claims, costs, delay, and collection issues, agreed to this settlement as modified as a result of that second mediation.

Are the Sacklers paying a "settlement premium" in their settlements than they would pay in litigation, as Ms. Conroy suggested? Perhaps. As noted, Ms. Conroy as much as anyone has dedicated much of her professional career to pursuing Purdue and the Sacklers and has no reason to pull her punches now. In any event, I am not prepared, given the record before me, to risk that agreement. I do not have the ability to impose what I would like on the parties. Thankfully, no judge in our system is given that power. I can only turn down a request for approval of it and deny confirmation of the plan. Given this record, I'm not prepared to do that.

I will note, as far as the bona fides of the settlement are concerned, and notwithstanding my reservations, under this plan 100 percent of these Debtors, closely held by the Sacklers, is taken away from them and devoted to abating opioids' ill effects in one way or another.

In addition, the amount being paid is to my knowledge the highest amount that any shareholder group has paid for these types of claims. Throughout the history of litigation involving Purdue, the Sacklers themselves were not targets, except leading up to the relatively modest settlement payments by Purdue on their

behalf to a number of states in 2007,<sup>6</sup> until roughly three years before the bankruptcy petition date. The entire negotiation process in these cases has magnified that focus on them and will be remembered for doing so.

While I wish that the amount were higher, as I believe everyone on the other side of the Sacklers does, the settlement is reasonable in the light of the standards laid out by the Supreme Court and the Second Circuit. And clearly both it and the process of arriving at it have not been in any shape or form a free ride for the Sacklers or enabled them to “get away with it.”

If what people mean by “getting away with it” is being relieved of criminal liability, that obviously is not the case. And I believe, given all the factors that I’ve outlined, the Sacklers are paying a substantial and, under the circumstances of this case, justifiable amount, as well as agreeing to the other material aspects of the settlement that I have described.

I will note, finally, that as alluded to this morning by the Debtors’ counsel, they have agreed to enforcement mechanisms that are quite rigorous as part of the settlement, so that the potential collection problems that I addressed are far lessened by the settlement if any re-

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<sup>6</sup> The 2007 settlement between 26 states and the District of Columbia, on one side, and Purdue on the other called for a \$19.5 million multi-state payment by Purdue to the states. Consent Judgement, Washington v. Purdue Pharma L.P., Cause No. 07-2-00917-2 (Sup. Ct. Wash. Thurston Cnty. May 3, 2007), <http://www.atg.wa.gov/news/news-releases/washington-receiveshare-195-million-settlement-oxycontin-maker#:~:text=FOR%20IMMEDIATE%20RELEASE%3A%20May%208%202007%20SEATTLE%20%E2%80%93,to%20doctors%20while%20downplaying%20the%20risk%20of%20addiction.>

leased party doesn't live up to it, including as to the ability to hide behind spendthrift trusts.

So, I will overrule the objections to the merits of the settlement of the Debtors' estates' claims against the shareholder released parties.

**Analysis of Plan's Release and Injunction of Third-Party Claims.** That leaves the last issue for determination, which is the most complex issue legally: the propriety of the plan's release and injunction of certain third-party claims against the shareholder released parties. The third-party claims that the plan would release and enjoin are very closely related on the facts to the estates' claims for alter ego, veil piercing, and breach of fiduciary duty/failure to supervise settled under the plan. See Dunaway v. Purdue Pharm. L.P., 619 B.R. at 50 (noting virtually identical allegations against Purdue and third-party claims against Richard Sackler, each stemming from conduct by Purdue allegedly under his control). My analysis of the merits of the plan's treatment of such third-party claims thus is in large measure informed by my analysis of the alternatives to the settlement of the estates' claims against the shareholder released parties that I've just finished. Before turning to the merits, however, multiple other grounds for the objections to the plan's nonconsensual release and injunction of third-party claims against the shareholder settling parties must be addressed.

I will note first that I have agreed with certain of those objections, namely as to the over-breadth of the releases in the plan as initially proposed. In the light of colloquy during the confirmation hearing, the current form of the plan has substantially narrowed those releases. As discussed in more detail later, the settling

shareholder parties are now being released of true third-party claims only if they are opioid-related and then only for such claims where Purdue's conduct is at least in material part a legal element of the third-party claim.

Other released parties, including the Sacklers, are released from certain other third-party claims, as well under the plan, but it is clear, given the plan's revised definitions, that those releases cover claims that are truly derivative of the Debtors' claims such that the releases simply prevent third parties from going after released parties through the back door when the Debtors have resolved the claims, or, to change the metaphor, from improperly adding a second fork with which to eat their share of the pie.

The first objection to the release of third-party claims against the shareholder released parties is premised on the Court's asserted lack of subject matter jurisdiction to impose the release on those who do not consent to it.

It is axiomatic that federal courts, including bankruptcy courts, have only the jurisdiction given to them by the Constitution or Congress. Purdue Pharma L.P. v. Kentucky, 704 F.3d 208, 213 (2d Cir. 2013). Under 28 U.S.C. § 1334(b), however, this Court has broad jurisdiction over matters that are related to the Debtors' property and cases. Section 1334 of the Judicial Code provides that district courts have original jurisdiction (which is referred by standing orders to the bankruptcy courts under 28 U.S.C. § 157(a)-(a)) over "all cases under title 11" 28 U.S.C. § 1334(a), and "all civil proceedings arising under title 11 or arising in or related to cases under title 11." 28 U.S.C. § 1334(b).

This includes the power to enjoin claims of third parties that have a conceivable effect on the Debtors' estates. As noted by the Supreme Court in Celotex Corp. v. Edwards, 514 U.S. 300, 307-08, 115 S. Ct. 1493, 131 L. Ed. 2d 403 (1995), which involved a preliminary injunction of a third-party's right to pursue a third-party claim, "Congress did not delineate the scope of 'related to' jurisdiction, but its choice of words suggests a grant of some breadth." The Court found bankruptcy jurisdiction because the third-party's pursuit of the enjoined claim would affect or impede the debtor's reorganization. Id. at 312, 115 S. Ct. 1493.

In this Circuit, "a civil proceeding is related to a title 11 case if the action's outcome might have any conceivable effect on the bankrupt estate. If that question is answered affirmatively, it falls within the 'related to' jurisdiction of the bankruptcy court. Congress intended to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with all matters connected with the bankruptcy estate. While 'related to' jurisdiction is not limitless, it is fairly capacious and includes suits between third parties that have an effect on the bankruptcy estate. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt's estate." SPV OSUS, Ltd. v. UBS AG, 882 F.3d 333, 339-40 (2d Cir. 2018) (internal quotations omitted), citing Celotex Corp. v. Edwards, 514 U.S. at 307-08, 115 S. Ct. 1493; Parmalat Cap. Fin. Ltd. v. Bank of Am. Corp., 639 F.3d 572, 579 (2d Cir. 2001); In re Cuyahoga Equip. Corp., 980 F.2d 110, 114 (2d Cir. 1992).

In SPV OSUS, the court found bankruptcy jurisdiction over third-party claims based on the conceivable possible legal effect of an indemnification or contribution right against the debtor, although the party that might assert those rights had not filed a proof of claim in the case. 882 F.3d at 340-42. That decision is not alone. The Second Circuit has extensively dealt with bankruptcy jurisdiction over actions to stay or prevent the assertion of third-party claims in bankruptcy cases, the most informative of which for present purposes is In re Quigley Co., 676 F.3d 45 (2d Cir. 2012).

In Quigley the court undertook a lengthy analysis of bankruptcy jurisdiction over the preclusion of third-party claims. It did so because of the parties' confusion over the extent of such jurisdiction arguably injected by Johns-Manville Corp. v. Chubb Indem. Ins. Co. (In re Johns-Manville Corp.), 517 F.3d 52 (2d Cir. 2008), rev'd sub nom. Travelers Indem. Co. v. Bailey, 557 U.S. 137, 129 S. Ct. 2195, 174 L. Ed. 2d 99 (2009), which Quigley refers to as Manville III. Manville III left the impression, at least with the third-party claimant in Quigley, that the only source for jurisdiction to enter a coercive release of third-party claims and an injunction to support it was if the claim was "derivative" —that is, derivative of the debtor's rights and therefore affecting the res of the debtor's estate. 676 F.3d at 53-54.

The point was somewhat cleared up in the Circuit's next Manville case, Johns-Manville Corp. v. Chubb Indem. Ins. Co. (In re Johns-Manville Corp.), 600 F.3d 135 (2d Cir. 2010), referred to as Manville IV in the Quigley opinion, but Quigley addressed the asserted limitation head on.

In Manville III, a party that had brought a third-party claim against an insurer, notwithstanding the Manville Chapter 11 plan's injunction of claims against the insurer, asserted that the bankruptcy court did not have jurisdiction to enjoin the claim because it alleged a violation of an independent legal duty owed by the defendant, rather than a claim that was derivative of the debtor's claim. Quigley, 676 F.3d at 54. The Circuit disagreed that Manville III imposed this imitation on jurisdiction. Id. at 54-55, adding, "because [the third-party's] mistake as to the nature of the jurisdictional inquiry under 28 U.S.C. § 1334(a) and (b) stems from a misunderstanding of our case law's treatment of derivative liability in the context of bankruptcy jurisdiction, we discuss our previous cases addressing this subject in some detail." Id. at 55.

After analyzing MacArthur Co. v. Johns-Manville Corp., 837 F.2d 89 (2d Cir. 1988), the court held that there was no independent jurisdictional requirement that to be barred by a plan a third-party claim must be derivative of the estate's rights. Id. Rather, the claim must affect the debtor's estate, id. at 56, and "Manville III did not work a change in our jurisprudence. After Manville III, as before it, a bankruptcy court has jurisdiction to enjoin third-party non-Debtor claims that directly affect the res of the bankruptcy estate: As in Macarthur, the salience of Manville III's inquiry as to whether [the third party's] liability was derivative of the debtor's rights and liabilities was that, in the facts and circumstances of Manville III, cases alleging derivative liability would affect the res of the bankruptcy estate, whereas cases alleging non-derivative liability would not." Id. (internal quotations and citations omitted). However, "Manville III did not impose a requirement

that an action must both directly affect the estate and be derivative of the debtor's rights and liabilities for bankruptcy jurisdiction over the action to exist." Id. at 57 (emphasis in the original).

After noting that Manville IV was consistent with this view, the court summed up: "It thus appears from our case law that, while we have treated whether a suit seeks to impose derivative liability as a helpful way to assess whether it has the potential to affect the bankruptcy res, the touchstone for bankruptcy jurisdiction remains 'whether its outcome might have any conceivable effect on the bankruptcy estate.' Cuyahoga, 980 F.2d at 114. This test has been almost universally adopted by our sister circuits, see Celotex Corp. v. Edwards, 514 U.S. [300] 308 n.6 [115 S. Ct. 1493] (1995) (collecting cases), which in some instances have found bankruptcy jurisdiction to exist over non-derivative claims against third-parties." Id., citing EOP-Colonade v. Faulkner (In re Stonebridge Techs., Inc.), 430 F.3d 260, 263-64, 267 (5th Cir. 2005); Dogpatch Props., Inc. v. Dogpatch U.S.A., Inc. (In re Dogpatch U.S.A., Inc.), 810 F.2d 782, 786 (8th Cir. 1987).

Thus, "[a] suit against a third party alleging liability not derivative of the debtor's conduct but that nevertheless poses the specter of direct impact on the res of the bankrupt estate may just as surely impair the bankruptcy court's ability to make a fair distribution of the bankrupt's assets as a third-party suit alleging derivative liability. Accordingly, we conclude that where litigation of [the claimant's] suits against [the third party] would almost certainly result in the drawing down of insurance policies that are part of the bankruptcy estate . . . the exercise of bankruptcy jurisdiction to enjoin these suits was appropriate." Id. at 58.



I conclude that the third-party claims that are covered by the shareholder release under the plan, as I will further narrow that release in this ruling, directly affect the res of the Debtors' estates, including insurance rights, the shareholder released parties' rights to indemnification and contribution, and the Debtors' ability to pursue the estates' own closely related, indeed fundamentally overlapping, claims, and thus that bankruptcy subject matter jurisdiction to impose a third-party claims release and injunction under the plan exists.

Certain of the objectors cite Callaway v. Benton, 336 U.S. 132, 69 S. Ct. 435, 93 L. Ed. 553 (1949), for the proposition that there is no such jurisdiction. That decision, however, preceded 28 U.S.C. § 1334(b)'s jurisdictional grant, which, as discussed in Celotex, SPV OSUS, and Quigley, significantly broadened the jurisdictional scheme that existed before the Bankruptcy Code's enactment. In re Dow Corning Corp., 255 B.R. 445, 486-87 (E.D. Mich. 2000) (distinguishing Callaway on this basis), vacated on other grounds, In re Dow Corning Corp., 280 F.3d at 648. See also Howard C. Buschman, III & Sean P. Madden, "Power and Propriety of Bankruptcy Court Intervention in Actions Between Non-debtors," 47 Bus. Lawyer 913, 914-19 (May 1992).<sup>7</sup> See

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<sup>7</sup> I will note that another case that the objectors rely on, In re Aegean Marine Petroleum Network, Inc., 599 B.R. 717 (Bankr. S.D.N.Y. 2019), in questioning the Court's jurisdiction to impose the release of a third-party claim, which cites Callaway v. Benton but discusses neither SPV OSUS nor Quigley, nevertheless acknowledges that where there is "a huge overlap between claims that [a debtor] is making against the parent . . . [and] the parent did not want to settle the claims made by [the debtor] unless the

generally, Lynch v. Lapidem Ltd. (In re Kirwan Offices S.A.R.L.), 592 B.R. 489, 504-07 (S.D.N.Y. 2018), aff'd Lynch v. Mascini Hldgs. Ltd. (In re Kirwan Offices S.A.R.L.), 792 Fed. Appx. 99 (2d Cir. 2019).

Depending on the kinds of third-party claims covered by a plan's release and injunction of such claims, I conclude, therefore, that the Court has jurisdiction to impose such relief, based upon the effect of the claims on the estate rather than on whether the claims are "derivative," although if they are derivative that is a good sign that they affect the estate. Quigley, 676 F.3d at 52.

The objectors have also contested that the release of third-party claims under a plan violates the third-party claimants' rights to due process. There are two aspects to this objection. The first is not accepted by courts in this Circuit, which is that such a release is an adjudication of the claim. It is not. It is part of the settlement of the claim that channels the settlement funds to the estate. See Macarthur Co. v. Johns-Manville Corp., 837 F.2d at 91-92; Lynch v. Lapidem, 592 B.R. at 504-05; see also In re Millennium Lab Holdings II, LLC, 575 B.R. 252, 273 (Bankr. D. Del. 2017) ("An order confirming the plan with releases does not rule on the merits of the state law claims being released."), aff'd 591 B.R. 559 (D. Del. 2018), aff'd 945 F.3d 126 (3d Cir. 2019), cert. denied, Loan Tr. v. Millennium Lab Holdings, — U.S. —, 140 S. Ct. 2805, 207 L. Ed. 2d 142 (2020).

The other aspect of the due process objection goes to the extent and quality of notice provided regarding the

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overlapping third-party claims were also barred," a third-party release was justified. Id. at 727.

proposed release. Under the amended plan, it is now clear, however, that only holders of claims against the Debtors are being deemed to grant the shareholder release, and it is equally clear, as discussed earlier, that holders of such claims received due process notice of the plan's intention to provide a broad release of third-party claims against the shareholders and their related entities related to the Debtors.

As set forth in that widespread notice, including the press releases, short form publication notices, and short form notices sent, the proposed release was far broader than it is today in the amended plan. To argue that because it was more complicated then it somehow violated due process is equally incorrect.

The issue of what process is due requires a court to ask whether the notice was reasonably calculated under the circumstances to apprise interested parties of the pendency of the plan's proposed release and afford them an opportunity to present their objections. Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950). See also Elliott v. GM, LLC (In re Motors Liquidation Co.), 829 F.3d 135, 158 (2d Cir. 2016). As noted in Motors Liquidation, this requirement equally applies in bankruptcy proceedings, where whether notice satisfies due process turns upon what is reasonably known by the debtor of the party who would be affected by the action for which the debtor is seeking permission.

Based upon Ms. Finegan's testimony, holders of claims received sufficient notice of the proposed release. (Indeed, the media separately fostered the assumption, though incorrect, that the release was even broader, including of criminal liability.) And in fact

there were multiple objections to the plan based upon its proposed third-party release. The Debtors' compliance with the procedures described by Ms. Finegan, which also were well within the dictates of Bankruptcy Rule 3016 (which requires the prominent display of such release language in a proposed plan) was more than sufficient for due process purposes. See, e.g., Macarthur Co. v. Johns-Manville Corp., 837 F.2d at 94; Finova Cap. Corp. v. Larson Pharma., Inc., 2003 U.S. Dist. LEXIS 26681, at \*26-27 (M.D. Fla. Oct. 6, 2003), *aff'd* Finova Capital Corp. v. Larson Pharma., Inc., 425 F.3d 1294 (11th Cir. 2005); In re Retail Grp., Inc., 2021 WL 962553, at \*5-7, 2021 Bankr. LEXIS 547, at \*51-57 (Bankr. E.D. Va. March 9, 2021); In re Otero Cty. Hosp. Ass'n, Inc., 551 B.R. 463, 471-72 and 478-79 (Bankr. D.N.M. 2016).

If someone can make the case after the fact that the notice that Ms. Finegan testified to was in fact not provided, or that they did not receive actual notice of the confirmation hearing and proposed release although the Debtors were aware of their specific claim, they would have the right to return and argue that they did not receive due process, as in Motors Liquidation, 829 F.3d at 135, but as far as the record before me is concerned, notice of the confirmation hearing and the plan's proposed third-party claims release satisfied due process.<sup>8</sup>

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<sup>8</sup> On a somewhat related point, certain objecting states asserted that the creation by some of the Sacklers of a website that described their defenses to liability constituted an improper solicitation. The objectors ignore, though, that throughout the solicitation period they publicly proselytized their objections to the plan's release, which was widely described in the media. Neither activity

The next objection is based on a bankruptcy court's alleged lack of constitutional power to issue a final order confirming a plan that contains a third-party claims release, as opposed to an alleged lack of bankruptcy jurisdiction to approve confirmation of such a plan under section 1334(b) of the Judiciary Code.

This issue was not addressed by the courts until fairly recently, but it has been resolved at length in two opinions that I will simply cite because their logic cannot be improved upon to establish that a proceeding to determine whether a Chapter 11 plan that contains such a release should be confirmed not only is a core proceeding under 28 U.S.C. § 157(b), but also is a fundamentally central aspect of a Chapter 11 case's adjustment of the debtor/creditor relationship and, therefore, "constitutionally core" under Stern v. Marshall, 564 U.S. 462, 131 S. Ct. 2594, 180 L. Ed. 2d 475 (2011), and its progeny. See In re Millennium Lab Holdings II, LLC, 945 F.3d 126, as well as the lower court opinions in that case, Opt-Out Lenders v. Millennium Lab Holdings II, LLC, 591 B.R. at 559; In re Millennium Lab Holdings II, LLC, 575 B.R. at 252.

Also on point is Lynch v. Lapidem, 592 B.R. at 506, 509-12. See also In re Quigley Co., 676 F.3d at 51-52.

In its affirmance of Lynch v. Lapidem, the Circuit did not reach Judge McMahon's determinations regarding the existence of bankruptcy subject matter jurisdiction and the bankruptcy court's power to issue a final order under Article III of the Constitution with respect to this type of injunction. Lynch v. Mascini Holdings,

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violated my order approving the disclosure statement for the plan and confirmation procedures.

Ltd., 792 Fed. Appx. at 102-04. Her logic was impeccable, however, in the context of, as here, a request for confirmation of a Chapter 11 plan, which is a proceeding central to the bankruptcy court's adjustment of the debtor/ creditor relationship and "arising in" a case (as it would "have no existence outside of the bankruptcy," In re Motors Liquidation Co., 829 F.3d at 151), and "under" the Bankruptcy Code (11 U.S.C. §§ 1129 and 1123) for purposes of 28 U.S.C. § 1334(b). That traditional context is to be distinguished from a request under Fed. R. Bankr. P. 7065, incorporating Fed. R. Civ. P. 65, for a preliminary injunction of third-party claims, which Judge McMahon found in Dunaway v. Purdue Pharm. L.P., 619 B.R. at 55-57, to be based on only 'related to' jurisdiction under 28 U.S.C. § 1334(b).

Having addressed the jurisdictional, due process, and Stern v. Marshall objections, one still must decide, though, whether the Court has statutory or other power to confirm a plan with a third-party claim release and injunction pertaining to the shareholder released parties, as well as the merits of the settlement that is the quid pro quo for that release and injunction.

Almost every circuit has addressed those issues. The clear majority (the First, Second, Third, Fourth, Sixth, Seventh, Eleventh, and D.C. Circuits) have determined that such releases and injunctions under a plan are authorized in appropriate, narrow circumstances. See Monarch Life Ins. Co. v. Ropes & Gray, 65 F.3d 973, 984-85 (1st Cir. 1995); Deutsche Bank A.G. v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.), 416 F.3d 136, 141 (2d. Cir. 2005), and the cases cited therein from the Second Circuit, including the Macarthur Co. v. Johns-Manville Corp., 837 F.2d at 93-94, and In re Drexel Burnham Lambert Group, 960

F.2d at 293; In re Millennium Lab Holdings II, LLC, 945 F.3d at 133-40; Nat'l Heritage Found., Inc. v. Highbourne Found., Inc., 760 F.3d 344, 350 (4th Cir. 2014), cert. denied, 574 U.S. 1076, 135 S. Ct. 961, 190 L. Ed. 2d 833 (2015), and Menard-Sanford v. Mabey (In re A.H. Robins Co.), 880 F.2d 694, 700-02 (4th Cir. 1989); In re Dow Corning Corp., 280 F.3d at 656-58; Airadigm Communs. v. FCC (In re Airadigm Communs., Inc.), 519 F.3d 640, 655-59 (7th Cir. 2008), and In re Ingersoll, Inc., 562 F.3d 856 (7th Cir. 2009); SE Prop. Holdings, LLC v. Seaside Eng'g & Surveying (In re Seaside Eng'g & Surveying), 780 F.3d 1070, 1076-79 (11th Cir. 2015), cert. denied, Vision-Park Props. v. Seaside Eng'g & Surveying, 577 U.S. 823, 136 S. Ct. 109, 193 L. Ed. 2d 37 (2015); and In re AOV Indus., Inc., 792 F.2d 1140, 1153 (D.C. Cir. 1986).

Three circuits are on record that third-party claims releases are improper for a court exercising bankruptcy jurisdiction to approve. See Bank of New York Tr. Co., NA v. Off. Unsecured Creditors' Comm. (In re Pacific Lumber Co.), 584 F.3d 229, 252 (5th Cir. 2009); Resorts Int'l v. Lowenschuss (In re Lowenschuss), 67 F.3d 1394, 1401-02 (9th Cir. 1995); In re W. Real Estate Fund, 922 F.2d 592, 600 (10th Cir. 1990).

The following can be said about them, or the line of cases from those three courts, however. First, they are fundamentally based on the view that section 524(e) of the Bankruptcy Code precludes the grant of such a release. That section provides in relevant part, “[D]ischarge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity, for such debt.” 11 U.S.C. § 524(e). This statutory reading has been effectively refuted, however. See, e.g., In re Airadigm Communs.: (“If Congress

meant to include such a limit [in section 524(e)], it would have used the mandatory terms ‘shall’ or ‘will’ rather than the definitional term ‘does.’ And it would have omitted the prepositional phrase ‘on, or for, . . . such debt,’ ensuring that ‘the discharge of the debt of a debtor *shall* not affect the liability of another entity’—whether a debtor or not. See 11 U.S.C. § 34 (repealed Oct. 1, 1979) (“The liability of a person who is a co-debtor with, or guarantor or in any manner a surety for, a bankruptcy shall not be altered by the discharge of such bankruptcy.”) (prior version of § 524(e)). Also, where Congress has limited the powers of the bankruptcy court, it has done so clearly.”) 519 F.3d at 656; In re Dow Corning Corp., 280 F.3d at 657 (section 524(e) “explains the effect of a debtor’s discharge. It does not prohibit the release of a non-debtor”). See also Macarthur Co. v. Johns-Manville Co., 837 F.2d at 91, and Lynch v. Lapidem, 592 B.R. at 504-05, which distinguish a bankruptcy discharge or a final determination on the merits from a settlement of claims.

Second, the Fifth Circuit observed in Pacific Lumber that “non-debtor releases are most appropriate as a method to channel mass claims toward a specific pool of assets” in cases concerning “global settlements of mass claims against the debtors and co-liable parties,” 584 F.3d at 252, citing a similar observation by the Fifth Circuit in Feld v. Zale Corp., 62 F.3d 746, 760-61 (5th Cir. 1995), thus suggesting that in a context like the plan before this Court, the Fifth Circuit might reach a different result.

I will note, further, that notwithstanding its reliance on Bankruptcy Code section 524(e) as precluding any third-party claim release, which the Ninth Circuit in Lowenschuss, 67 F.3d at 1401-02, and In re Am. Hard-



woods, 885 F.2d 621, 623 (9th Cir. 1989), equated with a discharge, the Ninth Circuit has more recently held that a release of third-party claims based on actions taken in or related to the bankruptcy case could, in appropriate circumstances, be imposed in a plan, although such post-bankruptcy, preconfirmation claims would be subject to the discharge, as well. Blixseth v. Credit Suisse, 961 F.3d 1074, 1081-85 (9th Cir. 2020).

Fourth, both Am. Hardwoods, 885 F.2d at 624-25, and W. Real Estate Fund, 922 F.2d at 599, recognized the propriety of imposing a preliminary injunction of third-party claims to “facilitate the reorganization process,” leading one to ask why couldn’t such a stay become permanent if it was crucial to a reorganization process involving massive numbers of overlapping estate and third-party claims, in contrast to the peripheral third-party claims in those two decisions, simply because it was opposed by a small number of objecting creditors, or just one?

In any event, W. Real Estate Fund, has been interpreted by a court in the Tenth Circuit as not standing for the proposition that section 524(e) of the Bankruptcy Code precludes all third-party releases but rather that section 105(a) of the Bankruptcy Code and other applicable bankruptcy law might, in appropriate circumstances, justify a release of third-party claims under different circumstances. In re Midway Gold, 575 B.R. 475, 505 (Bankr. D. Colo. 2017).

The minority circuits’ reliance on Bankruptcy Code section 524(e) to preclude third-party claims releases under a plan, is also inconsistent with section 524 as a whole. Section 524(g) of the Bankruptcy Code specifically provides for certain third-party releases if certain

conditions are met in a plan that addresses asbestos liabilities, including the affirmative vote of the affected class by a supermajority of 75 percent of those voting.

But more importantly, section 524(h)(1) of the Bankruptcy Code expressly provides that section 524(g) does not mean that plans that were confirmed before the enactment of that section that are generally in conformity with it are unlawful. 11 U.S.C. § 524(h)(1). The legislative history to the amendment makes the same point:

“[S]ection [524(h)] contains a rule of construction to make clear that the special rule being devised for the asbestos claim trust/injunction mechanism is not intended to alter any authority bankruptcy courts may already have to issue injunctions in connection with a plan of reorganization. Indeed, Johns-Manville and UNR firmly believe that the court in their cases had full authority to approve the trust injunction mechanism. And other debtors in other industries are reportedly beginning to experiment with similar mechanisms. The Committee expresses no opinion as to how much authority a bankruptcy court may generally have under its traditional equitable powers to issue an enforceable injunction of this kind. The Committee has decided to provide explicit authority in the asbestos area because of the singular and cumulative magnitude of the claims involved. How the new statutory mechanism works in the asbestos area may help the Committee judge whether the concept should be extended into other areas.”

H.R. Rep. 103-834, 103d Cong., 2nd Sess. 12; 140 Cong. Rec. H10765 (Oct. 4, 1994).

A similar floor statement by Senator Heflin at 140 Cong. Rec. S14461-01 (Oct. 6, 1994) reads, “Finally, Mr.

President, with respect to the senator's specific question, this Section applies to injunctions in effect on or after the date of enactment. What that means is, for any injunction that may have been issued under a court's authority under the Code prior to enactment, such an injunction is afforded statutory permanence from the date of enactment forward, assuming that it otherwise meets the qualifying criteria described earlier."

It appears clear, therefore, under well-reasoned caselaw as well as the Code itself that section 524(e) is not a statutory impediment to the issuance or enforcement of a third-party claim release under a plan in appropriate circumstances.

That raises the issue, however, what is the statutory or other source of power for such a release? This issue also has been addressed at the appellate level. See In re Airadigm Communs., Inc., where after determining that section 524(e) does not bar a third-party claims release, the Seventh Circuit stated,

"The second related question dividing the circuits is whether Congress affirmatively gave the bankruptcy court the power to release third parties from a creditor's claims without the creditor's consent, even if 524(e) does not expressly preclude the releases. A bankruptcy court 'appl[ies] the principles and rules of equity jurisprudence,' Pepper v. Litton, 308 U.S. 295, 304, 60 S. Ct. 238, 84 L. Ed. 281 (1939), and its equitable powers are traditionally broad. United States v. Energy Resources Co, Inc., 495 U.S. 545, 549, 110 S. Ct. 2139, 109 L. Ed. 2d 580 (1990). Section 105(a) [of the Bankruptcy Code] codifies this understanding of the bankruptcy court's powers by

giving it the authority to effect any ‘necessary or appropriate’ order to carry out the provisions of the bankruptcy code. *Id.* at 549 [110 S. Ct. 2139]; 11 U.S.C. § 105(a). And a bankruptcy court is also able to exercise these broad equitable powers within the plans of reorganizations themselves. Section 1123(b)(6) [of the Bankruptcy Code] permits a court to ‘include any other appropriate provision not inconsistent with the applicable provisions of this title.’ 11 U.S.C. § 1123(b)(6). In light of these provisions, we hold that this ‘residual authority’ permits the bankruptcy court to release third parties from liability to participating creditors if the release is ‘appropriate’ and is not inconsistent with any provision of the Bankruptcy Code.”

519 F.3d at 657. See also *In re Dow Corning Corp.*, 280 F.3d at 656-58; *Lynch v. Lapidem*, 592 B.R. at 511 (“[T]hird-party releases contained in a confirmed plan are subject to 11 U.S.C. §§ 1129(a)(1), 1123(a)(5) & (b)(6), 105, and 524(e). In other words, those releases flow from a federal statutory scheme. This statutory scheme reflects Congress’s exercise of its preemption powers, which permit the abolition of [rights] to attain a permissible legislative object. Congress possesses exceedingly broad power [t]o establish uniform laws on the subject of [b]ankruptcies throughout the United States. By way of the Bankruptcy Code, Congress authorized wholesale preemption of state laws regarding creditors’ rights and has delegated this preemptive power to the bankruptcy courts.”); Adam J. Levitin, “Toward A Federal Common Law of Bankruptcy: Judicial Lawmaking in a Statutory Regime”, 80 *Am. Bankr. L.J.* 1, 79-80, 83-84 (2006) (finding source for third-party releases and injunctions under a plan in fed-

eral common law as much as, if not more, than under section 105(a) of the Bankruptcy Code coupled with sections 1123(a)(5) and (b)(6)).

All courts considering whether to approve a third-party claims release under a plan have noted that such power is subject to considerable scrutiny and may be exercised only in limited, rare cases. See, e.g., In re Metromedia Fiber Network, Inc., 416 F.3d at 143, and the cases cited therein. In deciding whether this Chapter 11 plan presents such a case, it is worthwhile to look first at the types of claims that courts find are properly subject to such a release. In re Quigley Co., 676 F.3d 45, again provides guidance, because it extensively addressed “derivative” claims not only in the context of subject matter jurisdiction, discussed earlier, but also when considering the types of third-party claims that can properly be released and enjoined under a plan, albeit in interpreting Bankruptcy Code section 524(g).

“Derivative claims” are widely understood to be claims by a third party that asserts injury to the corporate entity and requests relief that if granted would go to the corporate entity. See Donoghue v. Bulldog Invs. Gen. P’ship, 696 F.3d 170, 176 (2d Cir. 2012).

The Second Circuit has spent substantial time interpreting what constitutes a true derivative claim, one that, though asserted by a third party, properly belongs to the debtor’s estate, as opposed to being recoverable by the third party. In such disputes, the courts generally ask whether the relief sought by the third party would really address only a secondary harm to that which flows primarily to the estate. See Marshall v. Picard (In re Bernard L. Madoff Inv. Secs. LLC), 740 F.3d 81 (2d Cir. 2014); Tronox Inc. v. Kerr-McGee

Corp. (In re Tronox Inc.) 855 F.3d 84 (2nd Cir. 2017). This inquiry supports the strong bankruptcy policy in favor of the ratable recovery by all similarly situated creditors from the debtor's estate, which as a concomitant principle requires that claims that purport to be independent of a remedy held by the debtor's estate but in fact arise from harm to the debtor be reserved only for the estate's benefit.

This is the type of claim that is included within the non-opioid third-party claims release under the plan. That release, as defined in the plan's "non-opioid excluded claim" definition, excludes "any cause of action that does not allege (expressly or impliedly) any liability . . . that is derivative of any liability of any Debtor or any of their Estates."

If, in fact, those types of claims were the only claims to be released, we would not be talking about a "third-party claims" release of the shareholder released parties. We would be talking about a release that clarifies and protects the estates from backdoor attacks through the assertion of purported third-party claims, that, in fact, are estate claims to be shared ratably with the estate's creditors.

Instead, true third-party releases involve claims that are independent of the debtor's estate's claims at least on a legal basis, if not as a factual basis. See, e.g., In re Drexel Burnham Lambert Group, 960 F.2d at 288, 293 (release of securities laws claims against officers and directors proper); Macarthur Co. v. Johns-Manville Corp., 837 F.2d at 90-92 (claims of co-insured and direct claims of personal injury claimants against debtor's insurance properly enjoined as part of plan's resolution of claims against insurers); Cal. Dep't of Toxic Substances

Control v. Exide Holdings, Inc. (In re Exide Holdings, Inc.) 2021 WL 3145612, 2021 U.S. District LEXIS 138478 (D. Del. July 26, 2021) (claims against plan funders as potentially responsible parties properly enjoined as part of resolution of debtor’s cleanup obligations); Cartalemi v. Karta Corp. (In re Karta Corp.) 342 B.R. 45, 50, 56-57 (S.D.N.Y. 2006) (claims against non-debtor affiliates and their fiduciaries).

But obviously not all independent legal claims are properly covered by such a release if based on simply having some relationship to the debtor, a clear example being a third party’s guaranty of a debtor’s obligation. Quigley helps to sort out the degree of the necessary relationship.

There, the party relying upon a plan’s third-party claims release argued that because the claim against it would not have arisen but for the debtor, because the debtor distributed its products, it should be covered by the release. 676 F.3d at 59-60. The claimant argued otherwise, and the Circuit agreed with it. Id. at 60-61.

The court concluded that a “but for” test creates too much of an “accidental nexus” to the bankruptcy estate and that instead the third-party claim, to be subject to the plan’s release and injunction, must arise “as a legal consequence” of the debtor’s “conduct or the claims asserted against it must be a legal cause of or a legally relevant factor to the third party’s alleged liability.” Id. at 60; see also id. at 61 (channeling authority limited “to situations in which the third party’s relationship with the debtor is legally relevant to its purported liability [to the claimant]”). See also Cont’l Cas. Co. v. Carr (In re W.R. Grace & Co.), 900 F.3d 126, 136-37 (3d Cir. 2018) (claim need not be directly derivative of the

debtor's rights; instead, "[t]he proper inquiry is . . . to determine whether the third-party's liability is wholly separate from the debtor's liability or instead depends on it").

Again, the discussion in Quigley, as well as in W.R. Grace, came in the context of interpreting the limits of Bankruptcy Code section 524(g)'s release and injunction of third-party claims; however, the need to limit third-party claims releases and injunctions generally to such closely related, though independent, claims is a consistent theme throughout the case law, and it is reasonable therefore to be guided by the section 524(g) cases. See, e.g., In re Karta Corp., 342 B.R. at 55-57 (relying on identity of interest between debtors and non-debtor released parties); In re Dow Corning Corp., 280 F.3d at 658 (noting identity of interest between the debtor and third-party claimants).

To properly be subject to a third-party claims release under a plan, therefore, the third-party claim should be premised as a legal matter on a meaningful overlap with the debtor's conduct. Otherwise, the release would be too broad and would cover, for example, a claim against one of the Sacklers, some of whom are doctors, for negligently prescribing OxyContin to a patient. On the other hand, given a causal legal dependence on the Debtor's conduct, or a legally meaningful relationship with the debtor's conduct, a third-party claim is sufficiently close to the claims against the debtor to be subject to settlement under the debtor's plan if enough other considerations support the settlement.

So, while I firmly believe that I have subject matter jurisdiction, that the Debtors have satisfied due pro-



cess, that I have the power to issue a final confirmation order under Article III of the Constitution, and that there is a sufficient source of power in the Bankruptcy Code itself, in sections 105(a) and 1123(a)(5) and (b)(6), as well as in the Court's inherent equitable power, I will require section 10.7(b) of the plan, which provides for the release of third-party claims against the shareholder released parties, to be further modified to state that a Debtor's conduct, or a claim asserted against the Debtor, must be a legal cause of the released claim, or a legally relevant factor to the third-party cause of action against the shareholder released party, for the third-party claim to be subject to the release.

On the other hand, having read the objecting states' complaints against the Sacklers, which, as noted not only by me but also by Judge McMahon in Dunaway v. Purdue Pharm. L.P., 619 B.R. at 50, essentially dovetail with the facts of the claimants' third-party claims against the Debtors, such third-party claims would be properly covered by such a revised release and injunction.

This still leaves whether under the remaining applicable standards and the facts of these cases the plan's third-party claims release in favor of the shareholder released parties should be imposed. Those standards vary among the circuits. In In re Metromedia Fiber Network, Inc., the Second Circuit listed a number of circumstances in which courts have exercised their power to impose such a release under section 105(a) of the Bankruptcy Code, observing that non-debtor releases have been approved when the release is "important" to the plan, the estate receives substantial consideration in return, the enjoined claims would be channeled to a settlement fund rather than extinguished, the released

claims would otherwise indirectly impact the debtors' reorganization by way of indemnity or contribution, and the plan otherwise provided for the full payment of the enjoined claims. 416 F.3d at 141-42.

The court went on to state, however, that “this is not a matter of factors or prongs” and further that “[n]o case has tolerated nondebtor releases absent the finding of circumstances that may be characterized as unique.” *Id.* at 142. It also cautioned that such releases can be abused, especially if they are for insiders, and need to be supported by sufficient findings by the bankruptcy court. *Id.*

The Third Circuit has used a similar set of factors with perhaps one important difference. As summarized in *In re Exide Holdings, Inc.*, 2021 WL 3145612, at \*13, 2021 U.S. Dist. LEXIS 138478, at \*44-45: “To grant non-consensual releases a court must assess ‘fairness, necessity to the reorganization’ and [make] specific actual findings to support these conclusions. [*In re ] Cont'l Airlines*, 203 F.3d [203] at 214 [(3d Cir. 2000)]. These considerations might include whether: ‘(i) the non-consensual release is necessary to the success of the reorganization; (ii) the releasees have provided a critical financial contribution to the debtor’s plan; (iii) the releasees’ financial contribution is necessary to make the plan feasible; and (iv) the release is fair to the nonconsenting creditors, i.e. whether the non-consenting creditors received reasonable compensation in exchange for the release.’ *In re Spansion, Inc.*, 426 B.R. 114, 144 (Bankr. D. Del. 2010).”

The Fourth, Sixth, and Eleventh Circuits have applied a similar multifactor test: there is an identity of interest between the debtor and the third-party, usually

an indemnity relationship, such that a suit against the nondebtor is, in essence, a suit against the debtor or will deplete assets of the debtor's estate; the non-debtor has contributed substantial assets to the reorganization; the injunction is essential to the reorganization—namely, the reorganization hinges on the debtor being free from indirect suits against parties who would have indemnity or contribution claims against the debtor; the affected class or classes have voted overwhelmingly to accept the plan; the plan provides a mechanism to pay for all, or substantially all, of the claims in the class or classes affected by the injunction; the plan provides an opportunity for those claimants who choose not to settle to recover in full; and the bankruptcy court made a record of specific factual findings that support its conclusions. Behrmann v. Nat'l Heritage Found., Inc., 663 F.3d 704, 712 (4th Cir. 2011) (noting, however, that not all factors are required in each case); In re Dow Corning Corp., 280 F.3d at 658; In re Seaside Eng'g & Surveying, 780 F.3d at 1079.

The Seventh Circuit has used a broader standard, although also noting the potential for abuse, as well as the fact-based nature of the inquiry: whether the release is narrowly tailored, not blanket, whether there has been a finding that the release was an essential component of the plan, whether it was the fruit of long-term negotiations, and whether it was achieved by the exchange of good and valuable consideration that will enable unsecured creditors to realize distributions in the case. In re Ingersoll, Inc., 562 F.3d at 865.

Again, according to Metromedia Fiber, none of these factors is dispositive, but they do need to be considered, the release must be supported by factual findings in the

record, and the release must be requested in the context of unique circumstances and necessary to the plan.

Certainly the circumstances of these cases are unique. Every Chapter 11 case has its own difficulties, but I believe these cases are the most complex, given the issues before the parties and ultimately the Court, that I have handled, and frankly that the courts under Chapter 11 have handled. At least that view is shared by the parties to these cases, who were represented by very capable and experienced counsel.

The release of the shareholder released parties under the plan as amended also is narrowly tailored and as discussed above will need to be further narrowed.

Again for reasons that I've already stated, it is also clear that the monetary contributions by the Sacklers and their related entities are critical to confirmation of the plan. Without the settlement payments, I find that the plan would unravel, including the complex interrelated settlements that depend upon the payments being supplied under the settlement in addition to the non-monetary consideration under it.

Not every shareholder released party is necessarily going to make a specific payment under the plan, but the Sackler family members are obligated to cause the payments to be made, and the relationships among the shareholder released parties are sufficiently close to lead to the conclusion that the aggregate settlement payment hinges on each being released. Understandably the shareholder released parties are not going to agree to provide the consideration under the settlement without receiving the shareholder release in return.

The plan also has been overwhelmingly accepted, including by the classes affected by the third-party claims release, by well above the 75 percent supermajority in section 524(g) of the Bankruptcy Code. Indeed, over 95 percent of the large number of creditors voting have accepted the plan, including in the objectors' classes.

It is also clear that the amount being paid under the settlement is substantial. As I noted earlier, not only is it substantial in dollar terms, I believe that it is the largest amount that shareholders have ever paid in such a context of these types of third party claims and closely related claims for piercing the corporate veil, alter ego, and breach of fiduciary duty/failure to supervise. Moreover, the non-monetary consideration under the settlement also is substantial, including the agreement to allocation by charities to opioid abatement valued at least at \$175 million, resolution of naming rights, and the public document depository.

Objectors have argued that in the light of either the aggregate amount of claims asserted against Sacklers or the aggregate amount of their wealth, the settlement sum is not substantial. I've considered those points carefully. The Sackler settlement does not provide anything close to enough to pay for all or substantially all of the asserted claims of the classes affected by the third-party claims release. The United States' claim alone, for example, will recover only a small fraction of its allowed claim, and it is fair to assume that if the other claims were liquidated they, too, would not be paid in full. In addition, the settlement, although clearly substantial in dollars, leaves the Sackler family members in the aggregate with substantial wealth.

On the other hand, neither a defendant's wealth nor the amount of claims asserted against it should dictate the fairness of a settlement without considering the claims' merits, the costs and delay of continued litigation, and risks relating to the collectability of any eventual judgments.

More relevant than the prospect of full payment, therefore, is the Third Circuit's focus on the fairness of the settlement to the third-party claimants. In re Exide Holdings, Inc., 2021 WL 3145612, at \*13, 2021 U.S. Dist. LEXIS 138478, at \*44-45.<sup>9</sup> That issue can be assessed in two ways: first, the Court's analysis, based on the evidence, of the factors for and against the settlement and, second, based on the process leading to the settlement—that is, whether it was conducted at arms-length by well-informed and well-represented parties whose interests were aligned with the third parties whose claims would be released, as well as whether those parties and the overwhelming number of parties affected by the settlement, support it.

I therefore have analyzed the fairness of the settlement from the perspective of the third-party claimants

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<sup>9</sup> Courts have analogized the power to compel a third-party claims release under a plan to the equitable doctrine of marshaling. In re Dow Corning Corp., 280 F.3d at 656; In re A.H. Robins Co., 880 F.2d at 701 (“A creditor has no right to choose which of two funds will pay his claim. The bankruptcy court has the power to order a creditor who has two funds to satisfy his debt to resort to the fund that will not defeat other creditors.”). This approach similarly focuses the Court on the value of the third-party claim, taking into account all relevant factors, not just the size of the asserted claim or the target's net worth in a vacuum.

in comparison to the likely result if they were instead able to separately pursue their third-party claims.

This analysis in large measure overlaps the analysis of the merits of the Debtors' estates' settlement of certain of their claims against the shareholder released parties. This is because, as noted, the third-party claims being released under the settlement are based on essentially the same facts as the Debtors' veil piercing, alter ego, and breach of fiduciary duty/failure to supervise claims.

Having considered the complaints filed against the Debtors and certain of the Sacklers by the objecting states, their claims ultimately derive from the Debtors' conduct to the extent that as a legal matter one or more of the Sacklers can be said to have directed it or have had the knowledge and power to have directed it but failed to do so. As far as the gravamen or the proof that would need to be shown, I've not gone through every state's applicable law on this point, but I will note that the main cases that they have cited—Grayson v. Nordic Const., Co., 92 Wash. 2d 548, 599 P.2d 1271 (1979), and State v. Ralph Williams' N. W. Chrysler Plymouth, Inc., 87 Wash. 2d 298, 553 P.2d 423, 439 (1976)—found individual liability based upon the controlling shareholder's personal direction, including fraud committed by the corporation through the shareholder, of many of the unlawful acts and practices taken by the corporation.

The Sacklers therefore would raise the same defenses to these claims (to the extent that they would belong to the third party claimants instead of to the Debtors) as they would to the estates' closely similar claims: all would argue that many of the claims pre-date 2007 and are barred by prior settlements or statutes of limi-

tations; most of the shareholder released parties would argue that they never served on Purdue's Board, did not otherwise engage in decision-making for Purdue, and that their ability to control Purdue, if they exercised their shares along with their family members, does not, standing alone, suffice to ascribe liability; and the Sacklers who were on Purdue's Board would argue that the evidence does not show their involvement sufficiently in Purdue's wrongful conduct, such as the conduct admitted by it in the October 2020 DOJ settlement, and would point in support to the OIG and ADD certifications, although as I've discussed, they still face substantial legal risk on such claims.

As I've also discussed, moreover, there are serious collection issues pertaining to any judgment against shareholder released parties. These issues are exacerbated by the inevitable competition not only among all of those who assert third-party claims against the shareholder released parties (and it is noteworthy that none of these claims has been identified as being based on wrongful conduct specifically aimed at the claimant, as opposed to at all claimants), but also from the estates' claims. Indeed, as noted, the estates' fraudulent transfer avoidance claims, which the third-party claimants clearly would not be able to pursue on their own behalf, probably would have the best chance of material success among all of the claims against the shareholder released parties.

The issue of collection is two-fold. First, because of the dispersal of the Sacklers' wealth, including (x) among many different people or family groups, including outside of the U.S. and (y) in allegedly spendthrift trusts, including, again, outside of the U.S., recovery on judgments would be difficult, especially since the gen-



erally well-recognized fraudulent transfer exception to the integrity of U.S. spendthrift trusts would not be available to creditors that would not have standing to pursue fraudulent transfers for themselves because they would be pursued by the estates for the benefit of all creditors.

Second, as I've discussed, without the releases the plan would unravel and the Debtors' cases would likely convert to cases under Chapter 7 of the Bankruptcy Code. I've already found that in a liquidation, unsecured creditors would probably recover nothing from the Debtor's estates, as set forth in the unrefuted liquidation analysis by Mr. DelConte. Under that analysis, even in the less likely "best case" scenario, they would receive no more than their pro rata share of \$699 million, which would be small.

I've already gone through the dilutive effect resulting from conversion of these cases to Chapter 7. Claims that under the plan are to be resolved by agreed multi-billion-dollar payments for abatement, and thus do not require being determined on the merits, would then be contested, as would the personal injury claims. The contests would be extraordinarily expensive and time-consuming, and, after being determined, the resulting claims would likely not only receive zero from the Debtors' estates but also, because of their collective size, only a small pro rata share of any recovery from the shareholder released parties.

Collectively, the states and territories filed proofs of claims in these cases aggregating at least \$2.156 trillion. The share of that sum for the objectors who have attacked the plan's third-party claims release is roughly 450 billion, or less than 21 percent. If you factor in the

other, non-state claimants, many of which, like the City of Seattle, would clearly assert third-party claims, too, as well as the Debtors' estates' claims against the Sacklers and their related entities, the dilutive effect upon any individual third-party claimant's recovery from the shareholder released parties is clear. And I have no doubt that a Chapter 7 trustee and at least the other governmental entities would pursue similar claims against the shareholder released parties (in addition to a Chapter 7 trustee's pursuit of the estates' avoidance claims). They would never permit the objecting states, which are similarly situated to them, to win a litigation race.

I therefore conclude that if I denied confirmation of the plan, the objectors' aggregate net recovery on their claims against the Debtors and the shareholder released parties would be materially less than their recovery under the plan.

This conclusion is strongly supported by the second, process-related inquiry into the fairness of the settlement from the third-party claimants' perspective that I have identified. As discussed earlier, the negotiations of the Sackler settlement were clearly arms-length. The Sacklers were on one side, and everyone else was on the other. The Sacklers and their related entities were required to provide extraordinary disclosure regarding (x) their conduct related to Purdue and (y) their assets and liabilities, at least as much, and often more, than would be reasonably expected if they themselves sought bankruptcy relief (which for many of the Sacklers and most of their related entities would not be under the U.S. Bankruptcy Code). The parties investigating and negotiating against the Sacklers were very well represented and aligned with the objectors; indeed, in

addition to the Official Unsecured Creditors Committee, those parties were fellow state attorneys general and other governmental representatives, many of whom have been in the forefront pursuing Purdue and its shareholders for years. Lastly, the settlement was negotiated in not one but two mediations conducted by superb mediators.

Arguably the “best interests” analysis under section 1129(a)(7) of the Bankruptcy Code overlaps with the foregoing assessment of the fairness of the plan’s third-party claims release to the objectors. The objectors have argued that the plan does not satisfy section 1129(a)(7) of the Code because in a Chapter 7 liquidation of the Debtors they would have two sources of recovery—from the Debtors’ estates and separately from the shareholder released parties.

I have said that section 1129(a)(7) “arguably” applies to this objection because the section’s plain meaning may well not contemplate it. As previously quoted, section 1129(a)(7) provides that for the holder of a claim that has not accepted its treatment under a plan, such holder must be projected to “receive or retain under the plan on account of such claim . . . property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date.” 11 U.S.C. § 1129(a)(7) (emphasis added). As a matter of grammar, therefore, the comparison required by section 1129(a)(7) apparently is between the amount that the objecting creditor would receive under the plan on account of its claim and what it would “so” receive—that is, also on account of its claim—if the debtor were liquidated under chapter 7. It would not,

therefore, require analysis of the claimant's rights against third parties.

I recognize that the interpretation of section 1129(a)(7) by two of my colleagues, whom I greatly respect, was to the contrary in In re Ditech Holding Corp., 606 B.R. at 610-14, and In re Quigley Co., 437 B.R. at 145. In deciding, however, that when conducting the "best interests" test the court should take into account a claimant's recovery from a third-party source that is precluded by the plan if one can make a reasoned determination of the recovery on that third-party claim, neither of those decisions addresses the plain meaning argument that I've just described (and, moreover, the applicability of section 363(o) of the Bankruptcy Code in a Chapter 7 liquidation when it was found inapplicable under the plan<sup>10</sup> in the Ditech case would have placed the focus on third-party claims in a way absent here).

I have not limited my ruling, though, to the foregoing plain meaning interpretation. I have instead assessed, based on the record of the confirmation hearing, what I believe would be recovered by the objectors if the Debtors were liquidated in Chapter 7, both on account of their claims against the Debtors and on account of their third-party claims. And based on that assessment, I have concluded that under the plan they would recover at least as much as their recovery in a hypothetical Chapter 7 case, indeed materially more.

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<sup>10</sup> Section 363(o) of the Code, which Ditech found did not apply in a Chapter 11 plan context though it would in Chapter 7, id. at 595, expressly preserves the types of third-party claims that the plan would have released. 11 U.S.C. § 363(o).

In Quigley, 437 B.R. at 145, and Ditech, 606 B.R. at 615, the courts stated that the hypothetical recovery from non-debtor sources should be included in the “best interests” analysis if it was neither speculative nor incapable of estimation. The Debtors have argued that here such a recovery would be too speculative.

In Quigley the court relied on various admissions by the debtor regarding an over 20-year history of settlements of similar claims that such a recovery, which would be barred by the plan, was not speculative. 437 B.R. at 146. In Ditech, the court concluded that the debtors had not carried their burden to show that the claims that would be barred under the plan in return for a small pro rata distribution from a settlement fund could not be estimated or that the fund was a reasonable settlement, in part because the limited evidence offered by the debtors suggested to the contrary. 606 B.R. at 620-21. The objecting states have suggested that a similar failure of proof exists here given the absence of expert testimony regarding the value of the third-party claims against the shareholder released parties.

It is true that there was no such expert testimony, but given the evidence regarding the strengths and weaknesses of the claims, including the cost of pursuing them, the risks of collection, and the dilutive effect of all of the other litigation that would be pursued by all of the other creditors in these cases, including all of the other states and governmental entities who are otherwise agreeing to the plan that would have the same types of third-party claims, as well as the Chapter 7 trustee on behalf of the estate, I conclude that no additional evidence is required.

Unlike in Quigley, there is a paucity of any post-2007 settlement history here of third-party claims against the Sacklers and their related entities, with the exception of the Sacklers' postpetition payment of \$225 million to the United States in respect of the civil claims that were the subject of their postpetition settlement with the DOJ; the Sacklers' settlement shortly before the bankruptcy petition date with the State of Oklahoma for \$75 million;<sup>11</sup> and the fact that the Sacklers paid nothing to the State of Kentucky but obtained a release under Purdue's \$24 million December 2016 settlement with the State of Kentucky,<sup>12</sup> which amounts reasonably compare to the proposed recoveries of the objecting states under the plan. And unlike in Ditech, no one has tried to hide the Sacklers' settlement history.

In this context, the merits of the plan's settlement of the third-party claims can properly be undertaken by the Court not only in the light of that history but also the other evidence that I have already discussed at length.<sup>13</sup> Accordingly, for the same reasons that that the

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<sup>11</sup> Attorney General Hunter Announces Historic \$270 Million Settlement with Purdue Pharma, Office of the Oklahoma Attorney General (May 28, 2019), <http://oag.ok.gov/articles/attorney-general-hunter-announces-hitoric-270-million-settlement-purdue-pharma-200-million>.

<sup>12</sup> Settlement Agreement and General Release, Commonwealth of Kentucky, ex rel. Jack Conway, Attorney General, and Pike County, Kentucky v. Purdue Pharma, L.P., et al., Civil Action No. 07-CI-013303 (Ky. Ct. App. Dec. 22, 2015) (N0. 1606).

<sup>13</sup> It is worth noting that, unlike here, both Quigley, 437 B.R. at 126-29, and Ditech, 606 B.R. at 624-25, found that the proposed settlements of the third-party claims at issue were not negotiated by those whose interests were aligned with the third-party claimants and that this flaw meant that the plan either was not in good

plan's settlement/third-party claims release of the shareholder released parties is fair to the objectors, the plan also meets Bankruptcy Code section 1129(a)(7)'s "best interests" test under a broad construction of that test. Having a second fork in the pie does not help, it hurts because of the resulting "battle of the century" among the creditor parties, as well as the Chapter 7 trustee.

The last argument made by the objecting states, as well as the City of Seattle, is that the plan's nonconsensual third-party release and injunction violates their sovereignty and police power.

There is, however, no such bar or exception under the Bankruptcy Code.

In certain carefully delineated instances, the Bankruptcy Code and the Judicial Code recognize the police power of states and other governmental units, but only in those limited contexts. Thus, in section 362(b)(4) of the Code, Congress provided a limited exception to the automatic stay under section 362(a) "of the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's . . . police or regulatory power, including enforcement of a judgment other than a monetary judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's . . . police or regulatory power." 11 U.S.C. § 362(b)(4). By its own terms, however, section 362(b)(4) does not except governmental units' actions to enforce a monetary judgment from the automatic stay under section 362(a); nor

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faith for purposes of section 1129(a)(3) of the Bankruptcy Code or that the settlement was not fair and reasonable.

does the exception apply to governmental units' actions to obtain or enforce a lien against the estate. See Ohio v. Kovacs, 469 U.S. 274, 283 n.11, 105 S. Ct. 705, 83 L. Ed. 2d 649 (1985); SEC v. Brennan, 230 F.3d 65, 71-72 (2d Cir. 2000); 3 Collier on Bankruptcy ¶ 362.05[5][b].

Similarly, 28 U.S.C. § 1452(a) precludes the removal, which is generally permitted under that section when the district court has bankruptcy jurisdiction under 28 U.S.C. § 1334, of a claim or cause of action in a civil proceeding to enforce a governmental unit's police or regulatory power.

The scope of the "police or regulatory power" in those exceptions has not been decided definitively by the Second Circuit. As noted in the thorough discussion in People of Cal. v. GM L.L.C. (In re GM L.L.C. Ignition Switch Litig.) 69 F.Supp.3d 404 (S.D.N.Y. 2014), the definition of police power for purposes of these exceptions has always recognized a distinction between "whether the governmental action relates primarily to the government's pecuniary interest in the debtor's property or to matters of public health and welfare." Id. at 410 (internal quotation and citation omitted). After Bd. of Governors of Fed. Reserve Sys. v. MCorp. Fin., Inc., 502 U.S. 32, 40, 112 S. Ct. 459, 116 L. Ed. 2d 358 (1991), courts' focus turned from assessing whether the governmental unit was truly intending to deter harmful conduct rather than seeking to benefit the government financially, to an objective inquiry into the purpose of the law that the governmental unit was attempting to enforce. In re GM L.L.C. Ignition Switch Litig., 69 F. Supp. 3d at 410-12. Thus the fact that a governmental unit seeks a money judgment is not enough to take its claim out of the police power exception, and at least for many of the governmental objectors' causes of ac-



tion against shareholder released parties, therefore, the “police power exception” would apply.

But, again, that exception is a limited one. It is well recognized—indeed the 10th Circuit states that it is a matter of hornbook law—that actions excepted from the automatic stay, including under the police or regulatory power, may be subject to injunctive relief under section 105(a) of the Bankruptcy Code. In re W. Real Estate Fund, 922 F.2d at 599; In re Commonwealth Cos., Inc., 913 F.2d 518, 527 (8th Cir. 1990). See also 3 Collier on Bankruptcy ¶ 362.05[5][d]; H.R. Rep. 95-595 95th Congress 1st Sess. (September 8, 1977) (“Subsection (b) lists five exceptions to the automatic stay. The effect of an exception is not to make the action immune from injunction.”).

And where police and regulatory power or state sovereignty generally is not specifically recognized in the Bankruptcy Code, Congress’ power under Art. I cl. 8 of the Constitution to enact uniform bankruptcy laws overrides it. See, e.g., Cty. of San Mateo v. Peabody Energy Corp. (In re Peabody Energy Corp.), 958 F.3d 717, 724-25 (8th Cir. 2020) (chapter 11 plan discharges governmental units’ public nuisance claim); see also In re Fed’l-Mogul Global, 684 F.3d at 364-65, 367-70; In re Airadigm Communs., Inc., 519 F.3d at 653-54. Plan injunctions have previously been imposed over governmental units’ police or regulatory power. See, e.g., In re Exide Holdings, Inc., 2021 WL 3145612, at \*15, 2021 U.S. Dist. LEXIS 138478, at \*51 (California Department of Toxic Substances Control enjoined from pursuing claims against plan funder); see also In re Airadigm Communs., Inc., 519 F.3d at 557 (third-party claims release of plan funder applied to F.C.C.); cf. In re Dow Corning Corp., 280 F.3d at 648 (plan’s third-party

claims release could be applied to United States as claimant under Medicare Secondary Payer Program and Federal Medicare Recovery Act; remanded for findings in accordance with opinion). Such an injunction is most clearly within the ambit of traditional bankruptcy power when it pertains primarily to the collection of money on claims that overlap claims against a debtor's estate, not to enforcement of states' rights otherwise to regulate conduct.

The objecting states' and Seattle's police power and parens patriae arguments therefore should be considered only in evaluating the fairness of the settlement to them as governmental units, not as a bar to the settlement. Given the limited scope of the plan's release of the shareholder released parties and those parties' agreement to no longer be involved with the Debtors or NewCo except to perform the settlement, as a practical matter the plan only limits the objecting states' remedies against the shareholder released parties to collect money on account of their past conduct. As to that limitation, moreover, all of the states, including the objecting states, have agreed to the public/private allocation and the NOAT allocation under the plan for abatement purposes. Indeed, during the confirmation hearing, counsel for the objecting State of Washington lauded the constructive nature of the NOAT allocation and the plan's proposed abatement procedures guidelines. Further, I have found that if the objecting governmental units were carved out of the release, the plan would fail, the Debtors would likely liquidate, and the objectors would collect materially less money from the Debtors and the shareholder released parties in the aggregate, as would the other states and governmental entities and

non-public unsecured creditors who support the plan's confirmation.

The objecting states and Seattle nevertheless contend that the plan deprives them of establishing a sufficient civil remedy for the released claims. And sending a message to others who might similarly be shown to have improperly engaged in conduct that would subject them to liability certainly can be a valid aspect of the police power.

Should that interest, though, defeat a plan that 79 percent of their sister states support, more than 96 percent of the other governmental entities and Native American Tribes support, and more than 95 percent of the other claimants support? Should that interest deprive the other creditors of their assessment of the merits of the settlement, with which this Court's analysis agrees?

As noted earlier, moreover, the plan does not just address claims against the Debtors and the Sacklers for money. It not only deprives the Sacklers of all their interest in the Debtors and requires them to cause the delivery of \$4.5 billion to the creditors, primarily for abatement purposes. It not only has been negotiated in a context that has subjected them to national opprobrium. It also addresses their naming rights and includes the Sacklers and the Debtors' agreement to provide the comprehensive public document depository, including waivers of the attorney-client privilege, for future analysis by the federal government, states, and others.

Ms. Conroy, who has been pursuing Purdue and the Sacklers for as long and as diligently as anyone, in fact testified that the document depository is perhaps the

most important aspect of the settlement, even more important than the billions of dollars being paid by the shareholder released parties. It is especially important given the public interest raised by the objecting states. It will provide far more transparency to the conduct of Purdue and those it did business with and those who regulated it, including perhaps some of these very objectors, including the state of Connecticut where Purdue's headquarters is located, as well as, of course, the federal government, than would renewed litigation and any eventual trials against various members of the Sackler family.

The record to be established by the public document depository is important for the continued pursuit of lawsuits against other parties in this industry, and it will guide legislatures and regulators about how to better address other companies with lawful products that also are incredibly dangerous.

Similarly, the plan's mandated use of most of its anticipated distributions for abatement purposes, the parties' agreement on parameters for abatement, and the required periodic reporting on those efforts should guide the public's consideration of the efficacy of abatement measures going forward.

The aspects of the plan that regulate NewCo's future governance and conduct also, as I've noted, should provide a model for further self-regulation of similar companies or regulation by governmental entities.

I conclude therefore that the objectors' expressed public interests in opposing the settlement are outweighed by the foregoing considerations.

Each of the four members of the Sackler family who testified during the evidentiary hearing was asked if they would apologize for their role and conduct related to Purdue. Their reactions, typically for an unhappy family, varied. None would give an explicit apology, which I suppose is understandable given the legal risks faced, although I will note that in a somewhat similar context I have received a profound apology to victims of misconduct.

One of the witnesses, Richard Sackler, did not accept any level of responsibility. The other three with differing degrees of emotion stated their regret for what their companies had done. A forced apology is not really an apology. So we will have to live without one unless apologies follow the plan's confirmation.

The writer Stendahl wrote that most people do not forgive, they just forget. But given the nature of this settlement, including the document depository, forgetting should be impossible unless by choice. To me, the elements of the settlement, taken together, more than justify the admittedly serious implications of overriding the objecting states' and Seattle's rights.

So, assuming that the changes to sections 5.8 and 10.07(b) of the plan that I outlined will be made, as well as one other change that I will address in a moment, I will confirm the plan. I do so agreeing with the Official Unsecured Creditors Committee and everyone else on the other side of the table from the Sackler family, including the Debtors, that I wish the plan had provided for more, but I will not jeopardize what the plan does provide by denying its confirmation.

The other change to the plan that I believe is required involves section 11.1(e), which provides that

those who would prosecute a cause of action against released parties based on its being a “non-opioid excluded claim,” which by definition truly is not a derivative claim, nevertheless must obtain leave from the bankruptcy court to do so. The provision is intended to protect the estates and released parties from having to go to other courts to litigate whether someone is usurping the estates’ claims and thus violating the release.

Consistent with my remarks to counsel for certain Canadian municipalities and First Nations during the confirmation hearing, that provision should be clarified to apply only to a causes of action that colorably are derivative and therefore would belong to the Debtors’ estates. Thus, for example, if a cause of action seeks to avoid a fraudulent transfer made by a non-Debtor, the plaintiff should not have to obtain permission under section 11.1(e) from the bankruptcy court to bring it.

I will enter an order confirming the plan if it is amended as required hereby, which order can generally be in the form of proposed confirmation order previously circulated to the parties and provided to chambers.

UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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No. 19-23649 (RDD) (Jointly Administered)  
IN RE: PURDUE PHARMA L.P., ET AL., DEBTORS<sup>1</sup>

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Filed: Sept. 17, 2021

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**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
ORDER CONFIRMING THE TWELFTH AMENDED  
JOINT CHAPTER 11 PLAN OF REORGANIZATION OF  
PURDUE PHARMA L.P. AND ITS AFFILIATED  
DEBTORS**

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's registration number in the applicable jurisdiction, are as follows: Purdue Pharma L.P. (7484), Purdue Pharma Inc. (7486), Purdue Transdermal Technologies L.P. (1868), Purdue Pharma Manufacturing L.P. (3821), Purdue Pharmaceuticals L.P. (0034), Imbrium Therapeutics L.P. (8810), Adlon Therapeutics L.P. (6745), Greenfield BioVentures L.P. (6150), Seven Seas Hill Corp. (4591), Ophir Green Corp. (4594), Purdue Pharma of Puerto Rico (3925), Avrio Health L.P. (4140), Purdue Pharmaceutical Products L.P. (3902), Purdue Neuroscience Company (4712), Nayatt Cove Lifescience Inc. (7805), Button Land L.P. (7502), Rhodes Associates L.P. (N/A), Paul Land Inc. (7425), Quidnick Land L.P. (7584), Rhodes Pharmaceuticals L.P. (6166), Rhodes Technologies (7143), UDF LP (0495), SVC Pharma LP (5717) and SVC Pharma Inc. (4014). The Debtors' corporate headquarters is located at One Stamford Forum, 201 Tresser Boulevard, Stamford, CT 06901.

The Debtors<sup>2</sup> having:

- a. filed the *Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and Its Affiliated Debtors*, dated March 15, 2021 [D.I. 2487], which the Debtors revised on April 23, 2021 [D.I. 2731], on May 7, 2021 [D.I. 2823], on May 24, 2021 [D.I. 2904], on May 26, 2021 [D.I. 2935], on June 2, 2021 [D.I. 2967], and on June 3, 2021 [D.I. 2982] (as so revised and supplemented, the “**Solicitation Plan**” and, as revised pursuant to the Sixth Amended Plan, the Seventh Amended Plan, the Eighth Amended Plan, the Ninth Amended Plan and the Tenth Amended Plan (each, as defined herein) and as may be further amended, supplemented, or modified in accordance with the terms thereof, the “**Plan**”); and
- b. filed the *Disclosure Statement for Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and Its Affiliated Debtors*, dated March 15, 2021 [D.I. 2488], which the Debtors revised on April 24, 2021 [D.I. 2734], on April 30, 2021 [D.I. 2788], on May 8, 2021 [D.I. 2825], on May 24, 2021 [D.I. 2907], on May 26, 2021 [D.I. 2937], on June 2, 2021 [D.I. 2969], and on June 3, 2021 [D.I. 2983] (as so revised, the “**Disclosure Statement**”);

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan, Disclosure Statement, or Solicitation Order (each as defined herein), as applicable. The rules of interpretation set forth in Section 1.2 of the Plan shall apply to this Order.



the United States Bankruptcy Court for the Southern District of New York (the “**Court**”) having:

- a. entered the *Order Approving (I) Disclosure Statement for Fifth Amended Chapter 11 Plan, (II) Solicitation and Voting Procedures, (III) Forms of Ballots, Notices and Notice Procedures in Connection Therewith, and (IV) Certain Dates with Respect Thereto*, dated June 3, 2021 [D.I. 2988] (the “**Solicitation Order**”);
- b. approved, pursuant to the Solicitation Order, among other things, (i) the Disclosure Statement and (ii) the transmission to Holders of Claims against the Debtors’ Estates of the Solicitation Plan, the Disclosure Statement, and the associated Ballots and notices in compliance with title 11 of the United States Code (the “**Bankruptcy Code**”), the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and the Local Bankruptcy Rules for the Southern District of New York (the “**Local Rules**”); and
- c. set, pursuant to the *Third Amended Order Granting Debtors’ Motion for Order Establishing Confirmation Schedule and Protocols* [D.I. 3347], August 12, 2021 at 10:00 a.m. (prevailing Eastern Time) as the date and time for the commencement of the hearing to consider Confirmation of the Plan (the “**Confirmation Hearing**”);

the Debtors having:

- a. timely and properly solicited the Plan and Disclosure Statement and provided due notice of the Confirmation Hearing, all in compliance

with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Solicitation Order, as evidenced by, among other things, the *Affidavit of Service of Solicitation Materials*, dated July 25, 2021 [D.I. 3319] (the “**Solicitation Affidavit**”);

- b. timely and properly filed and served, on April 23, 2021 [D.I. 2732], April 25, 2021 [D.I. 2737], May 15, 2021 [D.I. 2867], May 17, 2021 [D.I. 2868], May 26, 2021 [D.I. 2938], June 2, 2021 [D.I. 2977], June 30, 2021 [D.I. 3098], July 7, 2021 [D.I. 3121], July 15, 2021 [D.I. 3187], July 15, 2021 [D.I. 3232], July 16, 2021 [D.I. 3246], July 19, 2021 [D.I. 3283], and August 10, 2021 [D.I. 3528], notices of filing of Plan Supplement documents (such Plan Supplement documents, collectively, as may be amended or supplemented from time to time, the “**Plan Supplement**”);
- c. filed, (i) on July 14, 2021, the *Sixth Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and Its Affiliated Debtors* [D.I. 3185] (the “**Sixth Amended Plan**”), (ii) on August 12, 2021, the *Seventh Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and Its Affiliated Debtors* [D.I. 3545] (the “**Seventh Amended Plan**”), (iii) on August 23, 2021, the *Eighth Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and Its Affiliated Debtors* [D.I. 3632] (the “**Eighth Amended Plan**”), (iv) on August 25, 2021, the *Ninth Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and Its Affiliated Debtors* [D.I.

3652] (the “**Ninth Amended Plan**”), (v) on August 26, 2021, the *Tenth Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and Its Affiliated Debtors* [D.I. 3682] (the “**Tenth Amended Plan**”), (vi) on August 31, 2021, the *Eleventh Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and Its Affiliated Debtors* [D.I. 3706] (the “**Eleventh Amended Plan**”), and (vii); on September 2, 2021, the *Twelfth Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and Its Affiliated Debtors* [D.I. 3726] (the “**Twelfth Amended Plan**”);

- d. filed, on August 5, 2021, the *Declaration of Lianna E. Simmonds* [D.I. 3432] (the “**Simmonds Declaration**”), the *Third Supplemental Declaration of Jeanne C. Finegan* [D.I. 3403] (the “**Third Supplemental Finegan Declaration**”), the *Declaration of Deborah E. Greenspan* [D.I. 3412] (the “**Greenspan Declaration**”), the *Declaration of Jesse DelConte* [D.I. 3411] (the “**First DelConte Declaration**”), the *Declaration of Richard A. Collura* [D.I. 3410] (the “**Collura Declaration**”), the *Declaration of Gautam Gowrisankaran* [D.I. 3414] (the “**Gowrisankaran Declaration**”), the *Declaration of Mark F. Rule* [D.I. 3424] (the “**Rule Declaration**”), the *Declaration of Davis W. DeRamus* [D.I. 3428] (the “**DeRamus Declaration**”), the *Declaration of John S. Dubel* [D.I. 3433] (the “**Dubel Declaration**”), the *Declaration of Joseph L. Turner* [D.I. 3431] (the “**Turner Declaration**”), the *Declaration of Jon Lowne* [D.I. 3440] (the “**Lowne Declaration**”), and the *Declaration of Jesse*

*DelConte* [D.I. 3456] (the “**Second DelConte Declaration**”);

- e. submitted, on August 2, 2021, the *Final Declaration of Christina Pullo of Prime Clerk LLC Regarding the Solicitation of Votes and Tabulation of Ballots Cast on the Fifth Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and Its Affiliated Debtors* [D.I. 3372] (the “**Tabulation Declaration**”), describing the methodology used for the tabulation of votes and the results of voting with respect to the Plan; and
- f. filed, on August 5, 2021, the *Debtors’ Memorandum of Law in Support of Confirmation of Debtors’ Sixth Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and Its Affiliated Debtors* [D.I. 3461] (the “**Confirmation Brief**”);

the Court having:

- a. found that the notice provided regarding the Confirmation Hearing, and the opportunity for any party in interest (including, without limitation, any Releasing Party) to object to Confirmation of the Plan and the releases and injunctions therein, have been adequate and appropriate under the circumstances and no further notice is required;
- b. considered, and having taken judicial notice of, the entire record of the Chapter 11 Cases;
- c. held the Confirmation Hearing;

- d. considered the entire record of the Confirmation Hearing, including, but not limited to,
  - i. the Plan (including, without limitation, the Plan Documents), the Disclosure Statement, and the Solicitation Order,
  - ii. the Solicitation Affidavit and Tabulation Declaration,
  - iii. the objections, reservations of rights, and other responses submitted with respect to the Plan (collectively, the “**Objections**”), including the following: [D.I. 3256], [D.I. 3257], [D.I. 3262], [D.I. 3263], [D.I. 3264], [D.I. 3265], [D.I. 3268], [D.I. 3270], [D.I. 3271], [D.I. 3272], [D.I. 3273], [D.I. 3274], [D.I. 3275], [D.I. 3276], [D.I. 3277], [D.I. 3278], [D.I. 3279], [D.I. 3280], [D.I. 3288], [D.I. 3292], [D.I. 3293], [D.I. 3298], [D.I. 3299], [D.I. 3301], [D.I. 3304], [D.I. 3306], [D.I. 3323], [D.I. 3335], [D.I. 3357], [D.I. 3359], [D.I. 3368], and [D.I. 3404],
  - iv. the Simmonds Declaration, the Third Supplemental Finegan Declaration, the Greenspan Declaration, the First DelConte Declaration, the Collura Declaration, the Gowrisankaran Declaration, the Rule Declaration, the DeRamus Declaration, the Dubel Declaration, the Turner Declaration, the Lowne Declaration, the Second DelConte Declaration, the *Preliminary Declaration of Christina Pullo of Prime Clerk LLC Regarding the Solicitation of Votes and Tabulation of Ballots Cast on the Fifth Amended Joint*

*Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and its Affiliated Debtors* [ECF No. 3327], the *Tabulation Declaration, the Declaration of Scott R. Bickford, Esq. In Support of The Ad Hoc Committee of NAS Children's Reply To The United States Trustee's Objection To The Fee Settlements Included In The Sixth Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. And Its Affiliated Debtors* [ECF No. 3398], the *Declaration of Rahul Gupta, MD, MPH, MBA, FACP Filed by Michael Patrick O'Neil on behalf of Ad Hoc Group of Hospitals* [ECF No. 3565 and JX-3270], the *Declaration of Gayle A. Galan, M.D. FACEP Filed by Michael Patrick O'Neil on behalf of Ad Hoc Group of Hospitals* [ECF No. 3565 and JX-3270], the *Declaration of William Legier Filed by Michael Patrick O'Neil on behalf of Ad Hoc Group of Hospitals* [ECF No. 3567 and JX-3272], the *Declaration of Carl J. Trompetta filed by Gerard Uzzi on behalf of The Raymond Sackler Family* [ECF No. 3415], the *Declaration of Garrett Lynam filed by Gerard Uzzi on behalf of The Raymond Sackler Family* [ECF No. 3416], the *Declaration of Stephen A. Ives filed by Gerard Uzzi on behalf of The Raymond Sackler Family* [ECF No. 3417], the *Declaration of David Sackler filed by Gerard Uzzi on behalf of The Raymond Sackler Family* [ECF No. 3418], the *Sup-*

*plemental Declaration of Jennifer L. Blouin filed by Gerard Uzzi on behalf of The Raymond Sackler Family* [ECF No. 3419], the *Declaration of Maureen M. Chakraborty filed by Gerard Uzzi on behalf of The Raymond Sackler Family* [ECF No. 3420], the *Declaration of Lawrence A. Hamermesh filed by Gerard Uzzi on behalf of The Raymond Sackler Family* [ECF No. 3421], the *Declaration of Timothy J. Martin filed by Gerard Uzzi on behalf of The Raymond Sackler Family* [ECF No. 3422], the *Declaration of Gary A. Gotto in Support of Ad Hoc Committee's Reply to Plan Objections and in Support of Plan Confirmation filed by Kenneth H. Eckstein on behalf of Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants* [ECF No. 3443], the *Declaration of John M. Guard in Support of Ad Hoc Committee's Reply to Plan Objections and in Support of Plan Confirmation filed by Kenneth H. Eckstein on behalf of Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants* [ECF No. 3446] (the "**Guard Declaration**"), the *Declaration of Jayne Conroy in Support of Ad Hoc Committee's Reply to Plan Objections and in Support of Plan Confirmation filed by Kenneth H. Eckstein on behalf of Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants* [ECF No. 3447], the *Declara-*

*tion of Timothy J. Martin filed by Jasmine Ball on behalf of Beacon Company [ECF No. 3448], the Declaration of Peter H. Weinberger in Support of Ad Hoc Committee's Reply to Plan Objections and in Support of Plan Confirmation filed by Kenneth H. Eckstein on behalf of Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants [ECF No. 3449], the Declaration of Jessica B. Horewitz, Ph.D in Support of the Ad Hoc Committee's Reply to Plan Objections and in Support of Plan Confirmation filed by Kenneth H. Eckstein on behalf of Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants [ECF No. 3450], the Declaration of Jonathan Greville White filed by Jasmine Ball on behalf of Beacon Company [ECF No. 3451], the Declaration of Alexa M. Saunders filed by Jasmine Ball on behalf of Beacon Company [ECF No. 3452], and the Redacted Declaration of Michael Atkinson in Support of the Statement of the Official Committee of Unsecured Creditors in Support of Confirmation of the Sixth Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and Its Affiliated Debtors [ECF No. 3460],*

- v. *the Confirmation Brief, the Debtors' Reply to Joint Objection of Certain Distributors, Manufacturers, and Pharmacies to the Sixth Amended Joint Chapter 11 Plan*



*of Purdue Pharma and its Affiliated Debtors* [ECF No. 3506], the *Ad Hoc Committee's Reply to Plan Objections filed by Kenneth H. Eckstein on behalf of Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants* [ECF No. 3465], the *Statement of the Official Committee of Unsecured Creditors in Support of Confirmation of the Sixth Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and its Affiliated Debtors* [ECF No. 3459], the *Multi-State Governmental Entities Group's Statement in Support of and Response to Certain Objections to the Sixth Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and Its Affiliated Debtors* [ECF No. 3430] and the *Ad Hoc Group of Individual Victims' Limited Reply in Support of Confirmation of the Debtors' Joint Chapter 11 Plan of Reorganization* [ECF No. 3427] and

- vi. arguments of counsel and the evidence proffered, adduced, and/or presented at the Confirmation Hearing; and
- e. filed its Modified Bench Ruling on Request for Confirmation of the Plan, dated September 17, 2021 (the “**Modified Bench Ruling**”); and
- f. overruled any and all Objections to the Plan and to Confirmation, as well as all statements and reservations of rights not consensually resolved or withdrawn, except as otherwise expressly provided herein; and

after due deliberation thereon and good cause appearing therefor, including for the reasons stated in the Modified Bench Ruling, it is hereby **FOUND, ORDERED, and ADJUDGED** that:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

A. The findings and conclusions set forth herein and in the Modified Bench Ruling constitute the Court's findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rules 7052 and 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. Jurisdiction and Venue. The Court has jurisdiction over the Chapter 11 Cases pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334\*b( and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.). Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (L), and (O), and the Court may enter a Final Order with respect thereto in accordance with Article III of the United States Constitution. Each of the Debtors was an eligible debtor under section 109 of the Bankruptcy Code. Venue was proper in the Southern District of New York as of the Petition Date and continues to be proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Commencement and Joint Administration of Chapter 11 Cases. On September 15, 2019 (the "**Petition Date**"), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. By order of the Court [D.I. 59], the Chapter 11 Cases are being jointly administered for procedural purposes only pursuant to Bankruptcy Rule 1015. The Debtors have continued in possession of their property and have continued to operate and manage their businesses as debtors in possession pursuant to sections 1107(a) and 1108

of the Bankruptcy Code. On September 27, 2019, the Office of the United States Trustee appointed an Official Committee of Unsecured Creditors (the “**Creditors’ Committee**”). See *Notice of Appointment of Committee of Unsecured Creditors* [D.I. 131].

D. Judicial Notice. The Court takes judicial notice of the docket of the Chapter 11 Cases maintained by the Clerk of the Court, including, but not limited to, all pleadings and other documents filed, all orders entered, and all evidence and arguments made, proffered, adduced, and/or presented at the various hearings held before the Court during the pendency of the Chapter 11 Cases.

E. Solicitation Order, Solicitation, and Notice.

(a) On June 3, 2021, the Court entered the Solicitation Order.

(b) The Disclosure Statement as transmitted pursuant to the Solicitation Order (i) contains sufficient information of a kind necessary to satisfy the disclosure requirements of all applicable non-bankruptcy laws and (ii) contains “adequate information” (as such term is defined in section 1125(a)(1) and used in section 1126(b)(2) of the Bankruptcy Code) with respect to the Debtors, the Plan, the Shareholder Settlement, and the transactions contemplated therein.

(c) The Disclosure Statement (including all applicable exhibits thereto and the notices provided for therein) provided holders of Claims, holders of Interests and all Persons that have held or asserted, that hold or assert or that may in the future hold or assert any Channeled Claim or any Shareholder Released Claim with sufficient notice of the releases, exculpatory

provisions, and injunctions, including the Channeling Injunction and Releases by Holders of Claims and Interests, set forth in Sections 10.6, 10.7, 10.8, 10.9, 10.10, 10.11, 10.12, and 10.13 of the Plan, as well as in the Shareholder Settlement, in satisfaction of the requirements of Bankruptcy Rule 3016(c).

(d) Promptly following entry of the Solicitation Order, in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Solicitation Order, and as evidenced by the Solicitation Affidavit, the Claims and Solicitation Agent effectuated:

(i) filing and service on all parties in interest of a notice concerning the Disclosure Statement and the Plan, and deadlines and hearing dates with respect thereto, including, but not limited to, setting forth the proposed release, exculpation, and injunction provisions in the Plan, the dates applicable to, and procedures regarding, the solicitation of votes on the Plan, the date of the Confirmation Hearing, and the procedures for objecting to Confirmation of the Plan;

(ii) service of the appropriate solicitation materials (collectively, the “**Solicitation Materials**”) on (A) each Holder of Claims entitled to vote on the Plan (i.e., Class 3 (Federal Government Unsecured Claims), Class 4 (Non-Federal Domestic Governmental Claims), Class 5 (Tribe Claims), Class 6 (Hospital Claims), Class 7 (Third-Party Payor Claims), Class 8 (Ratepayer Claims), Class 9 (NAS Monitoring Claims), Class 10(a) (NAS PI Claims), Class 10(b) (Non-NAS PI Claims), and Class 11(c) (Other General Unsecured Claims)) (the Classes of Claims entitled to vote to accept or reject the Plan, the “**Voting Classes**”), including, but not limited to, (I) the Disclosure Statement, (II) the Plan, (III) the

Solicitation Order, (IV) the Confirmation Hearing Notice, (V) an appropriate number of Ballots (with voting instructions with respect thereto), and (VI) the Cover Letters, and (B) each Holder of Claims or Interests in a Class not entitled to vote on the Plan (i.e., Class 1 (Secured Claims), Class 2 (Other Priority Claims), Class 11(a) (Avrio General Unsecured Claims), Class 11(b) (Adlon General Unsecured Claims), Class 13 (Shareholder Claims), Class 14 (Co-Defendant Claims), Class 15 (Other Subordinated Claims), Class 16 (PPLP Interests), and Class 17 (PPI Interests)), including (I) the Confirmation Hearing Notice and (II) the applicable Notice of Non-Voting Status; and

(iii) the Supplemental Confirmation Hearing Notice Plan (as defined in the Solicitation Order), including providing supplemental notice by means of (A) direct mailings to certain additional individuals and entities, (B) print media, (C) online display, (D) internet search terms, (E) social media campaigns, and (F) earned media, which collectively served over 3.7 billion impressions.

(e) The Debtors were not required to solicit votes from the Holders of Claims and Interests in Class 12 (Intercompany Claims) and Class 18 (Intercompany Interests) as each such Class either (i) will receive no distribution under the Plan and is deemed to reject the Plan or (ii) will be Unimpaired and is presumed to accept the Plan. Further, the Debtors did not send Holders of Claims and Interests in each such Class a Confirmation Hearing Notice or Notice of Non-Voting Status as such Holders are Debtors.

(f) As described in the Solicitation Order and as evidenced by the Solicitation Affidavit, service of the

Solicitation Materials was adequate and sufficient under the circumstances of the Chapter 11 Cases, and adequate and sufficient notice of the Confirmation Hearing and other requirements, deadlines, hearings, and matters described in the Solicitation Order (i) was timely and properly provided in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Solicitation Order and (ii) provided due process, and an opportunity to appear and to be heard, to all parties in interest, all holders of Claims, all holders of Interests, and all Persons that have held or asserted, that hold or assert, or that may in the future hold or assert any Channeled Claim or any Shareholder Released Claim.

(g) Because the foregoing transmittals, notices, and service set forth above were adequate and sufficient, no other or further notice is necessary or shall be required.

(h) All parties in interest, including, without limitation, the Debtors' insurers, had notice of the Purdue bankruptcy proceedings and an opportunity to participate in them and were on notice that Debtors' opioid-related liabilities were being mediated, negotiated, and resolved.

F. Voting and Solicitation. Votes on the Plan were solicited, including, where applicable, by Master Ballot Solicitation Method and by Direct Solicitation Method, after disclosure of "adequate information" as defined in section 1125 of the Bankruptcy Code. As evidenced by the Solicitation Affidavit and Tabulation Declaration, votes to accept the Plan have been solicited and tabulated fairly, in good faith, and in a manner consistent with the Solicitation Order, the Bankruptcy Code, the

Bankruptcy Rules, and the Local Rules. Neither the Raymond Sackler family making publicly available the website [www.JudgeforYourselves.info](http://www.JudgeforYourselves.info), nor the many postings, press releases, statements, and news conferences of various parties, constituted improper solicitations of the Plan under section 1125 of the Bankruptcy Code.

G. Plan Supplement. The filing and notice of the Plan Supplement (and any and all subsequent amendments, modifications, and supplements thereto filed with the Court) were proper and in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Solicitation Orders, and no other or further notice is or shall be required.

H. Plan Modifications. Any modifications to the Plan since the commencement of solicitation described or set forth herein following entry of the Solicitation Order comply with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules. Such modifications constitute immaterial modifications and/or do not adversely affect or change the treatment of any Claims or Interests of any Holders that have not accepted such modifications. Pursuant to Bankruptcy Rule 3019, the modifications do not require either (a) any additional disclosure under section 1125 of the Bankruptcy Code and/or the re-solicitation of votes under section 1126 of the Bankruptcy Code or (b) that the Holders of Claims be afforded an opportunity to change previously cast acceptances or rejections of the Plan.

I. Burden of Proof. The Debtors, as proponents of the Plan, have met their burden of proving the satisfaction of the applicable requirements for Confirmation of the Plan set forth in section 1129 of the Bankruptcy



Code by a preponderance of the evidence, which is the applicable standard. Further, but subject in all instances to paragraph 42 of this Order, each witness who testified (by declaration or otherwise) at or in connection with the Confirmation Hearing in support of the Plan was credible, reliable, and qualified to testify as to the topics addressed in his or her testimony.

J. Tabulation. As described in and evidenced by the Voting Report, Claims in Class 3 (Federal Governmental Unsecured Claims), Class 4 (Non-Federal Domestic Governmental Claims), Class 5 (Tribe Claims), Class 6 (Hospital Claims), Class 7 (Third-Party Payor Claims), Class 8 (Ratepayer Claims), Class 9 (NAS Monitoring Claims), Class 10(a) (NAS PI Claims), Class 10(b) (Non-NAS PI Claims), and Class 11(c) (Other General Unsecured Claims) are Impaired under the Plan. With the exception of Class 3 (Federal Governmental Unsecured Claims), which did not vote to accept or reject the Plan and is therefore presumed to accept the Plan pursuant to Section 3.3 of the Plan, each of the foregoing Classes has voted to accept the Plan by the numbers and amounts of Claims required by section 1126 of the Bankruptcy Code. The miscounting of the votes of the objecting Canadian municipalities and First Nations in Classes 4 and 5, respectively, instead of in the correct Class, Class 11(c), is immaterial given that each such Class accepted the Plan if such votes were properly counted in Class 11(c). No Class that was entitled to vote on the Plan voted to reject the Plan.

K. Bankruptcy Rule 3016. The Plan is dated and identifies the Debtors as the entities submitting the Plan, thereby satisfying Bankruptcy Rule 3016(a). The filing of the Disclosure Statement satisfied Bankruptcy Rule 3016(b).

**COMPLIANCE WITH SECTION 1129 OF  
BANKRUPTCY CODE**

L. Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)). As further detailed below, the Plan complies with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

(a) *Proper Classification (11 U.S.C. §§ 1122 and 1123(a)(1))*. Article III of the Plan designates all Claims and Interests, other than the Claims of the type described in sections 507(a)(2), 507(a)(3), or 507(a)(8) of the Bankruptcy Code, into 21 Classes. The Claims or Interests in each designated Class have the same or substantially similar rights as the other Claims or Interests in such Class and such classification is appropriate under the circumstances of these Chapter 11 Cases. Valid business, legal, and factual reasons exist for separately classifying the various Classes of Claims and Interests under the Plan. Had the States' Claims been separately classified from other Non-Federal Domestic Governmental Claims, both (i) such class and (ii) the class comprised of the remaining Non-Federal Domestic Governmental Claims would still have voted to accept the Plan. The Plan, therefore, satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

(b) *Specified Unimpaired Classes (11 U.S.C. § 1123(a)(2))*. The Plan specifies that Class 1 (Secured Claims), Class 2 (Other Priority Claims), Class 11(a) (Avrio General Unsecured Claims), and Class 11(b) (Adlon General Unsecured Claims) are Unimpaired Classes and Class 12 (Intercompany Claims) and Class 18 (Intercompany Interests) are potentially Unimpaired Classes under the Plan, each within the meaning of sec-

tion 1124 of the Bankruptcy Code, thereby satisfying section 1123(a)(2) of the Bankruptcy Code.

(c) *Specified Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3))*. The Plan specifies that Class 3 (Federal Government Unsecured Claims), Class 4 (Non-Federal Domestic Governmental Claims), Class 5 (Tribe Claims), Class 6 (Hospital Claims), Class 7 (Third-Party Payor Claims), Class 8 (Ratepayer Claims), Class 9 (NAS Monitoring Claims), Class 10(a) (NAS PI Claims), Class 10(b) (Non-NAS PI Claims), Class 11(c) (Other General Unsecured Claims), Class 13 (Shareholder Claims), Class 14 (Co-Defendant Claims), Class 15 (Other Subordinated Claims), Class 16 (PPLP Interests), and Class 17 (PPI Interests) are Impaired Classes under the Plan and Class 12 (Intercompany Claims) and Class 18 (Intercompany Interests) are potentially Impaired Classes under the Plan, each within the meaning of section 1124 of the Bankruptcy Code, and specifies the treatment of each such Class, thereby satisfying section 1123(a)(3) of the Bankruptcy Code.

(d) *No Disparate Treatment (11 U.S.C. § 1123(a)(4))*. The Plan provides for the same treatment for each Claim or Interest in each respective Class unless the Holder of a particular Claim or Interest has agreed to less favorable treatment on account of such Claim or Interest, thereby satisfying section 1123(a)(4) of the Bankruptcy Code.

(e) *Implementation of Plan (11 U.S.C. § 1123(a)(5))*. Article V of the Plan and the other provisions of the Plan, the various documents included in the Plan Supplement, and the terms of this order (this “**Order**”) provide adequate and proper means for the implementation of the Plan, including, but not limited to, au-

thorization for the Debtors to consummate the Restructuring Transactions and to take all actions consistent with the Plan as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Restructuring Transactions under and in connection with the Plan. The Bankruptcy Code authorizes (a) the transfer and vesting of the MDT Transferred Assets, notwithstanding any terms of the Purdue Insurance Policies or provisions of non-bankruptcy law and (b) authorizes the transfer and vesting of the NewCo Transferred Assets to NewCo. No insurers that issued the Purdue Insurance Policies have objected to the transfer and vesting of the MDT Transferred Assets.

(f) *Voting Power of Equity Securities (11 U.S.C. 1123(a)(6))*. The NewCo Operating Agreement will prohibit the issuance of non-voting securities to the extent prohibited by section 1123(a)(6) of the Bankruptcy Code. Accordingly, the Plan satisfies the requirements of section 1123(a)(6) of the Bankruptcy Code.

(g) *Designation of Directors, Officers, and Trustees (11 U.S.C. § 1123(a)(7))*. The Plan and the Plan Supplement are consistent with the interests of Holders of Claims and with public policy with respect to the manner of selection of the NewCo Manager, the TopCo Managers, the Plan Administration Trustee, the MDT Trustees, the MDT Executive Director, the Creditor Trustees, and the Creditor Trust Overseers. Thus, section 1123(a)(7) of the Bankruptcy Code is satisfied.

(h) *Inapplicable Provisions (11 U.S.C. § 1123(a)(8))*. None of the Debtors is an individual, as such term is used in the Bankruptcy Code. Accordingly,

section 1123(a)(8) of the Bankruptcy Code is inapplicable.

(i) *Additional Plan Provisions (11 U.S.C. § 1123(b))*. As set forth below, the discretionary provisions of the Plan comply with section 1123(b) of the Bankruptcy Code and are not inconsistent with the applicable provisions of the Bankruptcy Code. Thus, section 1123(b) of the Bankruptcy Code is satisfied.

(i) *Impairment/Unimpairment of Classes (11 U.S.C. § 1123(b)(1))*. In accordance with section 1123(b)(1) of the Bankruptcy Code, (A) Classes 1, 2, 11(a), and 11(b) are Unimpaired, (B) Classes 3, 4, 5, 6, 7, 8, 9, 10(a), 10(b), 11(c), 13, 14, 15, 16 and 17 are Impaired, and (C) Classes 12 and 18 are Unimpaired or Impaired under the Plan.

(ii) *Assumption and Rejection of Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2))*. In accordance with section 1123(b)(2) of the Bankruptcy Code, Article VIII of the Plan provides that each executory contract and unexpired lease to which any Debtor is a party, subject to Section 8.4 of the Plan, shall be deemed assumed by the applicable Debtor and, except with respect to any contract or lease held by a Transferred Debtor, assigned to NewCo or its designee, except if it (A) has previously been assumed or rejected pursuant to a Final Order of the Bankruptcy Court, (B) is specifically identified on the Schedule of Rejected Contracts, (C) is the subject of a separate assumption or rejection motion filed by the Debtors under section 365 of the Bankruptcy Code pending on the Confirmation Date, (D) is the subject of a pending Contract Dispute, or (E) is being otherwise treated pursuant to the Plan. The Debtors have exercised reasonable busi-

ness judgment in determining whether to reject, assume, or assume and assign each of their executory contracts and unexpired leases under the terms of the Plan. Accordingly, the Debtors' assumption, assumption and assignment, or rejection of each executory contract and unexpired lease under the Plan satisfies the requirements of section 365(b) of the Bankruptcy Code and, therefore, the requirements of section 1123(b)(2) of the Bankruptcy Code.

(iii) *Settlement, Releases, Exculpation, and Injunction of Claims (11 U.S.C. § 1123(b)(3)(A))*. In accordance with sections 1123(b)(3)(A) and (b)(6) of the Bankruptcy Code, the Plan contains appropriate settlement, releases, exculpation and injunction provisions as described in more detail in Paragraph II.

(iv) *Preservation of Claims and Retention of Claims (11 U.S.C. § 1123(b)(3)(B))*. In accordance with section 1123(b)(3)(B) of the Bankruptcy Code, the Master Disbursement Trust, the Plan Administration Trust, the Creditor Trusts, and NewCo shall have rights to prosecute Retained Causes of Action as and to the extent set forth in the Plan, as of the Effective Date, and all such Retained Causes of Action shall be absolutely transferred and assigned to the Master Disbursement Trust, the Plan Administration Trust, the Creditor Trusts, and NewCo, as applicable, on the Effective Date.

(v) *Additional Plan Provisions (11 U.S.C. § 1123(b)(6))*. The Plan's other provisions are appropriate and consistent with the applicable provisions of the Bankruptcy Code, including, but not limited to, provisions for (A) distributions to Holders of Claims, (B) resolution of Disputed Claims, (C) allowance of certain

Claims, (D) indemnification obligations, (E) releases by the Debtors of certain parties, (F) releases by certain parties of certain claims against third parties, (G) exculpations of certain parties, (H) injunctions from certain actions, including actions against certain third parties, and (I) retention of the Court's jurisdiction, thereby satisfying the requirements of section 1123(b)(6) of the Bankruptcy Code.

M. The Debtors' Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)). As further detailed below, the Debtors as proponents of the Plan have complied with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(2) of the Bankruptcy Code. Specifically:

(a) Each of the Debtor entities is a proper debtor under section 109 of the Bankruptcy Code.

(b) The Debtors have complied with all applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of the Court.

(c) The Debtors have complied with the applicable provisions of the Solicitation Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, including, but not limited to, sections 1125 and 1126(b) of the Bankruptcy Code, in (i) transmitting the Solicitation Materials and related documents and (ii) soliciting and tabulating votes with respect to the Plan.

(d) Good, sufficient, and timely notice of the Confirmation Hearing has been provided as further described in Paragraph E above.

N. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The Plan is the product of the good faith process through which the Debtors have conducted the

Chapter 11 Cases and reflects extensive, good faith, arm's-length negotiations among the Debtors, the Creditors' Committee, and the Debtors' key stakeholders, including each of the Supporting Claimants, and their respective professionals, including in arms-length good faith mediations. The Plan Documents are the product of good faith efforts of the Debtors and applicable non-Debtor parties who assisted in the drafting of the Plan Documents. The Plan itself and the process leading to its formulation provide independent evidence of the Debtors' good faith, serve the public interest, and assure fair treatment of Holders of Claims. Consistent with the overriding purpose of the Bankruptcy Code, the Chapter 11 Cases were filed and the Plan was proposed with the legitimate and honest purpose of maximizing the value of the Debtors' Estates and providing for fair and reasonable distributions to creditors. Accordingly, the Plan is fair, reasonable, and consistent with sections 1122, 1123, and 1129 of the Bankruptcy Code. Based on the foregoing, as well as the facts and record of the Chapter 11 Cases, including, but not limited to, the hearing with respect to the Disclosure Statement, the Confirmation Hearing, the Simmonds Declaration, the Third Supplemental Finegan Declaration, the Greenspan Declaration, the First DelConte Declaration, the Collura Declaration, the Gowrisankaran Declaration, the Rule Declaration, the DeRamus Declaration, the Dubel Declaration, the Turner Declaration, the Lowne Declaration, the Second DelConte Declaration and the Guard Declaration, the Plan has been proposed in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code.



O. Payment for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). All payments made or to be made by the Debtors for services or for costs and expenses in or in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, have been authorized by, approved by, or are subject to the approval of the Court as reasonable, thereby satisfying section 1129(a)(4) of the Bankruptcy Code. With respect to payments being made to stakeholder professionals out of distributions to creditors under the several private creditor trusts under Section 5.8 of the Plan and otherwise, such payments are not within the scope of section 1129(a)(4); alternatively, to the extent any such payments are within the scope of section 1129(a)(4), based upon the record, the Court finds that such fees and costs are reasonable or are, as set forth in the Modified Bench ruling and Section 5.8 of the Plan, subject to approval of the Court as reasonable.

P. Service of Certain Individuals (11 U.S.C. § 1129(a)(5)). To the extent not disclosed in the Plan Supplement, the identities and affiliations of the MDT Trustees, the MDT Executive Director, the NewCo Managers, the TopCo Managers, the Plan Administration Trustee and PPLP Liquidator, the Creditor Trustees, and the Creditor Trust Overseers shall be determined in accordance with Article V of the Plan. The appointment of such individuals to such positions, or the process by which such individuals have been or will be identified or appointed, is consistent with the interests of Holders of Claims and public policy. Accordingly, the Debtors have satisfied the requirements of section 1129(a)(5) of the Bankruptcy Code.

Q. Rate Changes (11 U.S.C. § 1129(a)(6)). The Plan does not provide for any rate changes over which a gov-

ernmental regulatory commission has jurisdiction, and, accordingly, section 1129(a)(6) of the Bankruptcy Code is inapplicable to the Plan.

R. Best Interest of Creditors (11 U.S.C. § 1129(a)(7)).

(a) The Plan satisfies section 1129(a)(7) of the Bankruptcy Code because each Holder of a Claim or Interest (i) has voted to accept or is presumed to have accepted the Plan, (ii) is Unimpaired and deemed to have accepted the Plan, or (iii) shall receive or retain under the Plan, on account of such Claim or Interest, property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would so receive or retain if the Debtors were to be liquidated under chapter 7 of the Bankruptcy Code on such date.

(b) In addition, the liquidation analysis attached as Appendix B to the solicitation version of the Disclosure Statement (the “**Liquidation Analysis**”), as well as the other evidence related thereto in support of the Plan that was proffered or adduced at, prior to, or in affidavits and declarations in connection with the Confirmation Hearing, (i) are reasonable, persuasive, credible, and accurate as of the dates such analysis or evidence was proffered, adduced, and/or presented, (ii) utilize reasonable and appropriate methodologies and assumptions, (iii) have not been controverted by other evidence, and (iv) establish that, with respect to each Impaired Class of Claims or Interests, each Holder of an Allowed Claim or Interest in such Class shall receive under the Plan on account of such Allowed Claim or Interest property of a value, as of the Effective Date, that is not less than the amount such Holder would so receive if the Debtors were liquidated on the Effective Date un-

der chapter 7 of the Bankruptcy Code. Accordingly, the Debtors have satisfied the requirements of section 1129(a)(7) of the Bankruptcy Code.

S. Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)).

(a) Holders of Claims in Class 1 (Secured Claims), Class 2 (Other Priority Claims), Class 11(a) (Avrio General Unsecured Claims), Class 11(b) (Adlon General Unsecured Claims), Class 12 (Intercompany Claims), and Class 18 (Intercompany Interests) are Unimpaired or potentially Unimpaired and, pursuant to section 1126(f) of the Bankruptcy Code, are conclusively presumed to have accepted the Plan, thus meeting the requirements of section 1128(a)(8) of the Bankruptcy Code.

(b) As reflected in the Tabulation Declaration, each Impaired Voting Class affirmatively voted to accept the Plan or is presumed to have accepted the Plan. Class 4 (Non-Federal Domestic Governmental Claims) voted, in the aggregate, 96.87% in number and 96.87% in amount to accept the Plan; Class 5 (Tribe Claims) voted, in the aggregate, 96.17% in number and 96.17% in amount to accept the Plan; Class 6 (Hospital Claims) voted, in the aggregate, 88.26% in number and 88.26% in amount to accept the Plan; Class 7 (Third-Party Payor Claims) voted, in the aggregate, 93.54% in number and 93.54% in amount to accept the Plan; Class 8 (Ratepayer Claims) voted, in the aggregate, 100% in number and 100% in amount to accept the Plan; Class 9 (NAS Monitoring Claims) voted, in the aggregate, 99.78% in number and 99.78% in amount to accept the Plan; Class 10(a) (NAS PI Claims) voted, in the aggregate, 98.08% in number and 98.08% in amount to accept

the Plan; Class 10(b) (Non-NAS PI Claims) voted, in the aggregate, 95.72% in number and 95.72% in amount to accept the Plan; and Class 11(c) (Other General Unsecured Claims) voted, in the aggregate, 93.28% in number and 96.44% in amount to accept the Plan. Class 3 (Federal Governmental Unsecured Claims), did not submit votes to accept or reject the Plan; accordingly, pursuant to Section 3.3 of the Plan, Class 3 (Federal Governmental Unsecured Claims) is presumed to have accepted the Plan.

(c) Accordingly, the Debtors have satisfied the requirements of section 1129(a)(8) of the Bankruptcy Code with respect to such Impaired Voting Classes of Claims.

T. Treatment of Administrative Claims, Priority Tax Claims, Secured Claims, and Other Priority Claims (11 U.S.C. § 1129(a)(9)). The treatment of Administrative Claims, Priority Tax Claims, Secured Claims, and Other Priority Claims under Articles II and III of the Plan satisfies the requirements of section 1129(a)(9) of the Bankruptcy Code.

U. Acceptance by Impaired Class of Claims (11 U.S.C. § 1129(a)(10)). The Voting Classes are Impaired Classes, and each Voting Class has voted to or is presumed to have accepted the Plan. Accordingly, at least one Class of Claims against the Debtors that is Impaired under the Plan has voted to accept the Plan by the requisite majorities, determined without including any acceptance of the Plan by any insider, thus satisfying the requirements of section 1129(a)(10) of the Bankruptcy Code.

V. Feasibility (11 U.S.C. § 1129(a)(11)). The information in the Disclosure Statement, including financial

projections attached as Appendix D to the Disclosure Statement and the evidence that was proffered or adduced at or prior to the Confirmation Hearing by the Debtors: (a) are reasonable, persuasive, and credible; (b) have not been controverted by other evidence; (c) utilize reasonable and appropriate methodologies and assumptions; (d) establish that the Plan is feasible and that there is a reasonable prospect of NewCo being able to meet its financial obligations under the Plan and in the ordinary course of business, and that Confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization of, NewCo or any other successor to the Debtor under the Plan; and (e) establish that NewCo will have sufficient funds available to meet its obligations under the Plan. Therefore, the Plan satisfies the requirements of section 1129(a)(11) of the Bankruptcy Code.

W. Payment of Fees (11 U.S.C. § 1129(a)(12)). All fees payable under section 1930 of title 28 of the United States Code and statutory interest thereon shall be paid in accordance with Section 12.5 of the Plan, thereby satisfying the requirements of section 1129(a)(12) of the Bankruptcy Code.

X. Continuation of Retiree Benefits (11 U.S.C. § 1129(a)(13)). The Debtors do not maintain retirement plans or other benefits obligations. Accordingly, section 1129(a)(13) of the Bankruptcy Code is inapplicable to the Plan.

Y. Domestic Support Obligations (11 U.S.C. § 1129(a)(14)). The Debtors are not required by a judicial or administrative order, or by statute, to pay a domestic support obligation and, accordingly, section

1129(a)(14) of the Bankruptcy Code is inapplicable to the Plan.

Z. Plan of an Individual Debtor (11 U.S.C. § 1129(a)(15)). None of the Debtors is an individual and, accordingly, section 1129(a)(15) of the Bankruptcy Code is inapplicable to the Plan.

AA. Transfers in Accordance with Non-Bankruptcy Law (11 U.S.C. § 1129(a)(16)). None of the Debtor entities is a nonprofit entity and, accordingly, section 1129(a)(16) of the Bankruptcy Code is inapplicable to the Plan.

BB. No Unfair Discrimination; Fair and Equitable (11 U.S.C. § 1129(b)). Each Voting Class has voted to or is deemed to have accepted the Plan. Therefore, section 1129(b) of the Bankruptcy Code is inapplicable to the Voting Classes in the Chapter 11 Cases. The Plan does not “discriminate unfairly” with respect to the Classes that are Impaired and deemed to have rejected the Plan, because the Debtors have a valid rationale for the Plan’s classification scheme, the Plan does not discriminate unfairly with respect to such Classes, and the Plan is “fair and equitable” with respect to the Classes that are Impaired and deemed to have rejected the Plan because no Class senior to any rejecting Class is being paid more than in full and the Plan does not provide a recovery on account of any Claim or Interest that is junior to such rejecting Classes. Thus, the Debtors have demonstrated that the Plan satisfies section 1129(b) of the Bankruptcy Code to the extent such provision is applicable.

CC. Only One Plan (11 U.S.C. § 1129(c)). The Plan is the only plan that has been filed in the Chapter 11 Cases and meets the requirements of sections 1129(a)

and (b) of the Bankruptcy Code, thereby satisfying the requirements of section 1129(c) of the Bankruptcy Code.

DD. Principal Purpose of Plan (11 U.S.C. § 1129(d)). The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act, thereby satisfying the requirements of section 1129(d) of the Bankruptcy Code.

EE. Not Small Business Cases (11 U.S.C. § 1129(e)). The Chapter 11 Cases are not small business cases and, accordingly, section 1129(e) of the Bankruptcy Code is inapplicable to the Chapter 11 Cases.

FF. Good Faith Solicitation (11 U.S.C. § 1125(e)). Based on the record of the Chapter 11 Cases, including, but not limited to, the evidence proffered, adduced, and/or presented at the Confirmation Hearing by the Debtors and the Supporting Claimants, which is reasonable, persuasive, and credible, utilizes reasonable and appropriate methodologies and assumptions, and has not been controverted by other evidence, the Debtors and each of their successors, predecessors, control persons, members, agents, employees, officers, directors, financial advisors, investment bankers, attorneys, accountants, consultants, and other professionals have solicited acceptances of the Plan in good faith, and the law firms that utilized the Master Ballot Solicitation Procedures have collected votes on the Plan in good faith, and in compliance with the applicable provisions of the Bankruptcy Code, including, but not limited to, section 1125(e) of the Bankruptcy Code, and any applicable non-bankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with such solicitation, and, therefore, (a) are not liable at any time for any

violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan and (b) are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and the exculpation provisions set forth in Article X of the Plan. In addition, the Debtors have acted and entered into the documents effectuating the Debtors' reorganization pursuant to the Plan in good faith and shall be deemed to continue to act in good faith if they (x) proceed to consummate the Plan and transactions contemplated thereby pursuant thereto and (y) take the actions authorized and directed by this Order. The Debtors negotiated the transactions effectuating the Debtors' reorganization pursuant to the Plan in good faith and the resulting terms of the agreements effectuating the Debtors' reorganization are in the best interests of the Debtors and the Estates.

GG. Satisfaction of Confirmation Requirements. Based upon the foregoing, all other pleadings, documents, exhibits, statements, declarations, and affidavits filed in connection with Confirmation of the Plan, and all evidence and arguments made, proffered, or adduced at the Confirmation Hearing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code.

**ADDITIONAL FINDINGS REGARDING  
CHAPTER 11 CASES AND PLAN**

HH. Implementation. All documents and agreements necessary to implement the Plan, including, but not limited to, any Plan Document, are essential elements of the Plan and have been negotiated in good faith and at arm's length by the Debtors and the other parties thereto, and entry into and consummation of the



transactions contemplated by each such document and agreement is in the best interests of the Debtors, the Estates, and the Holders of Claims, and each such document and agreement shall, upon completion of documentation and execution, be valid, binding, and enforceable and not be in conflict with any federal, state, or local law. The Debtors have exercised reasonable business judgment in determining which agreements to enter into and have provided sufficient and adequate notice of such documents and agreements.

## II. Injunction, Exculpation, and Releases.

(a) The Court has jurisdiction under section 1334 of title 28 of the United States Code to approve the injunctions, releases, and exculpation set forth in Article X of the Plan, including, but not limited to, jurisdiction to release claims against the Shareholder Released Parties. Sections 105(a) and 1123(b)(3) and (6) of the Bankruptcy Code and the Court's inherent equitable power permits issuance of the injunction and approval of the releases and exculpations set forth in Article X of the Plan. With respect to the Third-Party Releases (defined below), as has been established based upon the record in the Chapter 11 Cases and the evidence presented at the Confirmation Hearing, the Court has subject matter jurisdiction to approve the Third-Party Releases because (i) confirmation of a plan of reorganization is a core proceeding and the Third-Party Releases are integral to confirmation of the Plan and the failure to approve these injunctions, exculpations, and releases would render the Debtors unable to confirm and implement the Plan, and (ii) the Released Claims and Shareholder Released Claims that are the subject of the Third-Party Releases could have a conceivable effect on the Debtors' Estates. Released Claims and Share-

holder Released Claims have factual and legal issues in common with actual or potential claims or causes of action against the Debtors and actual or potential claims or causes of action of the Estates against third parties, including the Shareholder Released Parties. The litigation of the Released Claims and the Shareholder Released Claims would have conceivable effects on the *res* of the Estates. Litigation of such claims could deplete the value of certain insurance policies, could lead to the assertion of indemnification and contribution claims against the Estates, and could prejudice the Estates or the Master Distribution Trust (and therefore reduce the value available for distribution to the Creditor Trusts) in future litigation of such claims or causes of action. Litigation over a disputed indemnification or contribution claim is itself an effect upon the Estates. Moreover, the Court has the power to render a final decision confirming the Plan, including such provisions, under the United States Constitution.

(b) The injunctions, releases, and exculpations set forth in Article X of the Plan, including the Debtor Releases (defined below), the Third-Party Releases and the Channeling Injunction, were adequately disclosed and explained in the Disclosure Statement, on the Ballots, through the Supplemental Confirmation Hearing Notice Plan, in the Notices of Non-Voting Status and in the Plan.

(c) The releases granted by the Debtors and their Estates pursuant to Sections 10.6 and 10.7 of the Plan (the “**Debtor Releases**”) represent a valid exercise of the Debtors’ business judgment. For the reasons set forth in the Modified Bench Ruling, the Disclosure Statement and the Confirmation Brief and based on the evidence proffered or adduced at the Confirmation

Hearing, the Debtor Releases are (i) an integral and necessary part of the Plan, (ii) a good faith settlement and compromise of the claims and Causes of Action released, (iii) given in exchange for good and valuable consideration, (iv) appropriately tailored to the facts and circumstances of the Chapter 11 Cases, and (v) given after due notice and opportunity for objection. The Debtor Releases shall constitute a bar to the Debtors, the Liquidating Debtors, the Transferred Debtors, the Estates, the Plan Administration Trust, the Master Disbursement Trust, the Creditor Trusts, NewCo, TopCo, any other newly formed Persons that shall be continuing the Debtors' businesses after the Effective Date, or any party purporting to claim through any of the foregoing, from asserting any Released Claim or Shareholder Released Claim released pursuant to Section 10.6 or 10.7 of the Plan, except as otherwise set forth in the Plan. The Debtor Releases were negotiated by sophisticated parties represented by able counsel and financial advisors and are the result of an arm's-length, mediated negotiation process. The Debtors' pursuit of any Released Claims or Shareholder Released Claims against the Released Parties or the Shareholder Released Parties would not be in the interests of the Estates' various constituencies because the benefits to the Estates obtained in exchange for granting the releases, including the benefit to the Estate's creditors by virtue of the various intercreditor allocation agreements and settlements reached in Mediation, likely outweigh any potential benefit from pursuing such claims considering the costs and uncertainty involved therein, and the fact that all of the intercreditor allocation agreements and settlements reached in Mediation were conditioned upon the Shareholder Settlement. In light of, among

other things, the concessions and contributions provided to the Debtors' Estates and the critical nature of the Debtor Releases to the Plan, the Debtor Releases are fair and reasonable, in the best interests of the Estates and creditors, and appropriate.

(d) The non-Debtor releases set forth in Sections 10.6 and 10.7 of the Plan (the "**Third-Party Releases**") are appropriate. The Third-Party Releases satisfy the applicable standard for approval of nonconsensual third-party releases set forth in *Deutsche Bank AG v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.)*, 416 F.3d 136, 142 (2d Cir. 2005) ("**Metromedia**") and other applicable law. The record of the Confirmation Hearing demonstrates the following:

(i) The Third-Party Releases set forth in the Plan and implemented by this Order are fair, equitable, reasonable, and in the best interests of the Debtors and their Estates and the releasing parties, including as a result of their relationship to the intercreditor allocation agreements and settlements. An overwhelming number of creditors support the Plan, with 96.01% in number of Holders of Claims in Voting Classes that voted having voted to accept the Plan as reflected in the Tabulation Declaration. The Third-Party Releases are consensual, and not involuntary, as to those creditors who voted in favor of the Plan, including the Consenting States and Newly Consenting States. Of the over 600,000 claimants that filed proofs of claim in this case, which include the Federal Government, most of the States, thousands of political subdivisions, hundreds of Native American Tribes, more than 130,000 personal injury victims, and numerous hospitals, third party payors, ratepayers, public schools, and others, the following claimants filed objections and continue to press

such objections to the shareholder releases: nine States (including the District of Columbia), the U.S. Trustee (who is not a claimant), the City of Seattle, four Canadian municipalities, two Canadian First Nations and three pro se objectors.<sup>3</sup>

(ii) The complexity of the litigation against the Debtors and potential claims among the Debtors and co-defendants in that litigation or against the Shareholder Released Parties make these chapter 11 cases both “rare” and “unusual.” As of the Petition Date, the Debtors faced over 2,600 lawsuits arising from the Debtors’ marketing of opioid medications. Many of these suits sought to hold the Debtors and other parties jointly and severally liable for injuries related to opioid use. Many of these suits also name certain of the Debtors’ officers, directors, and shareholders, including members of the Sackler Families, as defendants. In addition, the claims that are the subject of the Shareholder Settlement are, in part, premised upon the alleged liability or conduct of the Debtors and assert trillions of dollars in damages.

(iii) The Third-Party Releases are an integral and necessary part of the Plan. The Plan, and the global resolution embodied in the Plan and Plan Settlements, would not be possible without the Third-Party Releases. The Shareholder Settlement would not be possible without the Shareholder Releases because the Sackler Families would not enter into the Shareholder Settlement, and cause the payments and other concessions contemplated therein, without the Shareholder Releases and Channeling Injunction. The Plan Settle-

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<sup>3</sup> The Department of Justice also filed a statement regarding the Shareholder Releases.

ments, including the intercreditor allocation agreements and settlements reached in Mediation, are premised upon the consideration under the Shareholder Settlement Agreement, and the term sheets agreed to by the private claimants in Mediation were conditioned on the participation of the Sackler Families in the Plan. In the absence of the Plan Settlements, the Debtors would not be able to take advantage of the DOJ Forfeiture Judgment Credit provided for in the DOJ Resolution. The Third-Party Releases, by way of the consideration under the Shareholder Settlement Agreement, also preserve the agreed allocations among creditors that underlie the Plan Settlements. Without the Third-Party Releases, and therefore without the consideration under the Shareholder Settlement Agreement, there could be no certainty that such agreed upon allocations would not be undermined by collateral litigation. Absent the consideration provided to the Debtors' Estates under the Shareholder Settlement, the Plan would not have been feasible. In the absence of the Plan Settlement, of which the Third-Party Releases are a key and inextricable element, the litigation of thousands of pending actions to judgment and through appeals in the civil court system would likely result in the destruction of the significant value that would otherwise have been distributed to opioid abatement efforts and personal injury claimants. The resumption of litigation that would otherwise be the subject of the Shareholder Settlement would implicate NewCo and could have an impact on the operations of NewCo and NewCo's ability to support abatement. The Restructuring Transactions contemplated by the Plan, the Plan Supplement, and other instruments, releases, and other agreements related to the Plan would not be possible absent the Shareholder

Settlement and the consideration received by the Debtors' Estates thereunder. As such, the Chapter 11 Cases present unique and extraordinary circumstances where release of non-Debtors as provided in the Plan is proper and appropriate.

(iv) The consideration under the Shareholder Settlement Agreement described in the Disclosure Statement (including in Article 11.2 thereof), including \$4.275 billion in cash and 100% of the equity interests in Purdue Pharma L.P., which does not include the enhancements described in the Mediators Report [D.I. 3119] that have since been added to the settlement consideration, constitutes a substantial contribution to the Estates. The consideration under the Shareholder Settlement Agreement includes payments totaling \$4.325 billion to estates over nine or ten years. Such payments total at least twice the value of the Debtors as a going concern. Such payments also allow the Debtors to make the payments required under the DOJ Resolution and the Plan Settlements.

(v) The Plan provides for channeling of the Released Claims and Shareholder Released Claims. Applicable Channeled Claims are eligible for treatment by the Creditor Trusts.

(vi) The Released Claims and Shareholder Released Claims directly impact the Debtors' reorganization. The appropriate resolution of these claims has been the subject of significant discovery, litigation and mediation in these cases by sophisticated parties from multiple creditor constituencies that were represented by able counsel and financial advisors.

(e) The injunction provisions set forth in Article X of the Plan, including, without limitation, the

Channeling Injunction: (i) are essential to the Plan; (ii) are necessary to preserve and enforce the discharge and releases set forth in Sections 10.2, 10.6, and 10.7 of the Plan, the exculpation provisions in Section 10.12 of the Plan, and the compromises and settlements implemented under the Plan; (iii) are appropriately tailored to achieve that purpose; (iv) are within the jurisdiction of this Court under 28 U.S.C. §§ 1334(a), 1334(b), and 1334(d); (v) are an essential means of implementing the Plan pursuant to section 1123(a)(5) and (b)(6) of the Bankruptcy Code; (vi) are an integral element of the transactions incorporated into the Plan; (vii) confer material benefits on, and are in the best interests of, the Debtors and their Estates, creditors, and other stakeholders; (viii) are critical to the overall objectives of the Plan; and (ix) are consistent with sections 105, 524(e), 1123, and 1129 of the Bankruptcy Code, other provisions of the Bankruptcy Code, and other applicable law. The injunction provisions set forth in Article X of the Plan, including, without limitation, the Channeling Injunction, were adequately disclosed and explained on the relevant Ballots, in the Disclosure Statement, and in the Plan. The record of the Confirmation Hearing and the Chapter 11 Cases is sufficient to support the injunction provisions set forth in Article X of the Plan.

(f) The Creditors' Committee, the Ad Hoc Committee, the MSGE Group, the Native American Tribes Group, the Ad Hoc Group of Individual Victims, the Ad Hoc Group of Hospitals, the Third-Party Payor Group, the Ratepayer Mediation Participants, the Public School District Claimants, and the NAS Committee affirmatively support the Plan, which includes the release and injunction provisions in favor of the Released Parties, the Shareholder Released Parties, and the Pro-



tected Parties (as applicable). The Newly Consenting States<sup>4</sup> do not object to approval of the Plan.

(g) The Exculpated Parties made significant contributions to the Chapter 11 Cases and played an integral role in working towards the resolution of the Chapter 11 Cases, and the Court has found that resolution to have been in good faith after due notice. Accordingly, the exculpations contemplated by Section 10.12 of the Plan are part of a fair and valid exercise of the Debtors' business judgment and are fair, reasonable, and appropriate under the circumstances of the Chapter 11 Cases.

(h) The record of the Confirmation Hearing and the Chapter 11 Cases is sufficient to support the injunctions, releases, and exculpations set forth in Article X of the Plan. Based on the record of the Chapter 11 Cases, the representations of the parties, and the evidence proffered, adduced, and presented at the Confirmation Hearing, this Court finds that the injunctions, releases, and exculpations set forth in Article X of the Plan are consistent with the Bankruptcy Code and applicable law. The failure to implement such provisions would render the Debtors unable to confirm and consummate the Plan.

JJ. Compromise of Controversies.

(a) Pursuant to the Bankruptcy Code, including section 1123 of the Bankruptcy Code, and Bankruptcy Rule 9019, the Debtors have authority to pro-

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<sup>4</sup> Newly Consenting States include the members of the Ad Hoc Group of Non-Consenting States that agreed to support the Plan on the terms set forth in the *Mediator's Report* filed with the Bankruptcy Court on July 7, 2021 [D.I. 3119].

pose and negotiate a resolution of their opioid-related liabilities and, with approval of the Court, enter into a resolution of their opioid-related liabilities through the Plan. The settlements reached between the Debtors and the opioid-related claimants, as embodied in the Plan, are fair, equitable and reasonable and were entered into in good faith based on arm's-length negotiations. The various intercreditor allocation agreements and settlements, including, without limitation, the NOAT Allocation Formula, are fair, equitable, and reasonable. Such negotiation, settlement, and resolution of liabilities shall not operate to excuse any insurer from its obligations under any insurance policy, notwithstanding any terms of such insurance policy (including any consent-to-settle or pay-first provisions) or provisions of non-bankruptcy law. The Plan Settlement is in the best interests of the Debtors, their Estates, and the Holders of Claims and Interests and is fair, equitable, and reasonable. The Plan Settlement is necessary and integral to the Plan and the Plan Documents and the success of the Chapter 11 Cases. Any reasonable estimate, projection, or valuation of their total liability and obligation to pay for Claims in Classes 3, 4, 5, 6, 7, 8, 9, 10(a), and 10(b), if the Debtors had the ability to pay those Claims and that liability outside of the Chapter 11 Cases, exceeds by many multiples the total value of all assets of the Debtors' Estates, including but not limited to the value of the Debtors' business, contributions from third parties and the full face value of all of Purdue's insurance.

KK. Shareholder Settlement.<sup>5</sup>

(a) The Debtors' Special Committee was vested with exclusive authority to provide approval on behalf of the Debtors with respect to all transactions between Purdue and members of the Sackler Families and the prosecution, defense, and settlement of any causes of action against the Debtors' shareholders and members of the Sackler Families and their affiliates. The members of the Special Committee were well qualified, independent, and acted independently and not under the direction or influence of the Sackler Families, including with respect to the negotiation and approval of the Shareholder Settlement, as evidenced by the record of the Chapter 11 Cases, including, without limitation, by the *Report of Stephen D. Lender, Examiner* [D.I. 3285]. The Special Committee conducted a comprehensive and thorough investigation into potential claims against the Sackler Families and associated entities. The Debtors have exercised reasonable business judgment in determining to enter into the Shareholder Settlement Agreement, Collateral Documents, and other Definitive Documents.

(b) The Official Committee, Ad Hoc Committee, the Newly Consenting States and the MSGE Group, through their respective experienced and well-qualified advisors and/or members, as applicable, each also separately conducted their own comprehensive and thorough investigation into potential claims against the Sackler Families and their associated entities. Based

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<sup>5</sup> Capitalized terms used solely in this paragraph KK but not otherwise defined herein or in the Plan, Disclosure Statement, or Solicitation Order shall have the meanings ascribed to such terms in the Shareholder Settlement Agreement.

on such investigations, as well as all of the facts and circumstances of these Chapter 11 Cases, the Official Committee, Ad Hoc Committee, and MSGE Group each made its own independent judgment—free of influence or coercion from any party in the case, and acting solely on behalf of, and in the best interests of, its constituents, in each case—to support the Plan, including all of its component parts and the Newly Consenting States agreed not to object to the Plan.

(c) The Shareholder Settlement is necessary and integral to the Plan and the success of the Chapter 11 Cases, is in the best interests of the Debtors, their Estates, and the Holders of Claims and Interests, is fair, equitable, and reasonable, and satisfies the standard for approval set forth in *In re Iridium Operating LLC*, 478 F.3d 452, 462 (2d Cir. 2007).

(i) The balance between the litigation’s possibility of success (including, specifically, issues regarding collectibility) and the Shareholder Settlement’s future benefits—when considered in light of all of the facts and circumstances of these Chapter 11 Cases—weigh in favor of approving the Shareholder Settlement. There are many benefits of the Shareholder Settlement, including the consideration under the Shareholder Settlement Agreement, the ability to implement the intercreditor allocation agreements and settlements reached in Mediation and the DOJ Resolution, and avoiding costly, lengthy, value-destructive litigation and likely delay in stakeholder recovery. The quantum and timing of success in, and collection with respect to, litigation against the Sackler Families is not certain and could require resolution of numerous complex and disputed legal and factual issues, including—depending upon the theory of liability and which party is the

defendant—jurisdiction, statute of limitations, prejudgment interest, solvency, reasonably equivalent value, intent to hinder, delay, or defraud creditors, and fiduciary duties.

(ii) Litigation of the claims resolved in the Shareholder Settlement would be complex, protracted, and expensive and delay resolution of these Chapter 11 Cases. Fraudulent transfer litigation is often lengthy and expensive, all the more so when dozens of defendants in multiple jurisdictions are involved. Before the Petition Date, the Debtors were incurring professional fees at an average rate of over \$2 million per week directly related to the Pending Actions. Representatives of the Sackler Families have stated that if the Shareholder Settlement, the Shareholder Releases, and the channeling injunction are not approved, the Sackler Families will vigorously defend any litigation against them. The Sackler Families have also asserted that recoveries would be limited by the amount of assets held by individual members of the Sackler Families and by obstacles in recovering against trusts held for the benefit of members of the Sackler Families. The Sackler Families have stated that, absent settlement, they would vigorously assert various defenses to the claims against them (both claims held by the Estates and by third parties), assert that substantial evidence supports their defenses, and argue that the Estates and third parties would face obstacles to their ability to collect on any judgments against members of the Sackler Families and trusts of which they are beneficiaries.

(iii) The Shareholder Settlement is in the best interests of creditors. The Shareholder Settlement confers substantial benefit on the Debtors' creditors. The consideration under the Shareholder Settlement

Agreement includes payments to the Debtors' Estates totaling at least \$4.325 billion. The Shareholder Settlement also avoids value-destructive litigation on many fronts.

(iv) The Shareholder Settlement is an integral part of the Plan. The Plan has overwhelming support. The Tabulation Report establishes that 96.01% in number of Holders of Claims in Voting Classes having voted to accept the Plan.

(v) Counsel to the multiple parties to the Shareholder Settlement are experienced and competent.

(vi) As described above, the breadth of the Releases and Shareholder Releases are appropriate under the facts and circumstances of these cases and satisfy the standard for granting such releases articulated in *Metromedia* and other applicable law.

(vii) The Shareholder Settlement is the product of arm's-length bargaining. The parties have engaged in extraordinarily broad discovery at a significant expense to the Estates and the Sackler families. The discovery exchanged has exceeded the scope of discovery that would be obtainable before judgment in civil litigation. The Shareholder Settlement is the product of mediation by court-appointed mediators the Honorable Layn Phillips (ret.), Kenneth Feinberg, and the Honorable Shelley C. Chapman.

(d) All documents and agreements necessary to implement the Shareholder Settlement, including, but not limited to, the Shareholder Settlement Agreement, Collateral Documents, and other Definitive Documents, are essential elements of the Plan and have been nego-

tiated in good faith, at arm's length, and without collusion or fraud, and entry into and consummation of the transactions contemplated by each such document and agreement is in the best interests of the Debtors, the Estates, and the Holders of Claims and shall, upon completion of documentation and execution, be valid, binding, and enforceable agreements and not be in conflict with any federal, state, or local law.

LL. Foundations.

(a) At a March 24, 2021 hearing concerning, among other things, the adequacy of the disclosures to the Plan, the Court, in suggesting that parties should continue to pursue additional support for the Plan, observed that: “historically the Sacklers have given lots of money to charity . . . [and] there’s absolutely nothing preventing the Sacklers from making an additional charitable contribution in a meaningful way. . . .” Tr. at 107:4-10, *In re Purdue Pharma LP*, No. 19-23649 (Bankr. S.D.N.Y. Mar. 24, 2021).

(b) On May 7, 2021, the Court appointed Bankruptcy Judge Shelley C. Chapman to mediate between the nonconsenting states, the Initial Covered Sackler Persons and the Additional Covered Sackler Persons (each as defined in the Mediator’s Report) (the “**Sackler Mediation Parties**”), with the Debtors also party to the mediation. See *Order Appointing the Honorable Shelley C. Chapman as Mediator* [D.I. 2820]; *Order Establishing the Terms and Conditions of Mediation Before the Honorable Shelley C. Chapman* [D.I. 2879] (the “**Appointment Order**”). As described in Judge Chapman’s Mediator’s Report, in the ensuing weeks, Judge Chapman conducted an in-person mediation among certain

parties. *Mediator's Report* [D.I. 3119] (the “**Mediator's Report**”).

(c) Following the mediation, Judge Chapman issued the Mediator's Report outlining the terms of a proposal made by Judge Chapman and accepted by a majority of the Ad Hoc Group of Non-Consenting States (consisting of the following 15 states: Colorado, Hawaii, Idaho, Illinois, Iowa, Maine, Massachusetts, Minnesota, Nevada, New Jersey, New York, North Carolina, Pennsylvania, Virginia, and Wisconsin), the Sacklers Mediation Parties and the Debtors. *Id.* at 2.

(d) The terms of Judge Chapman's proposal included, among other things: (i) “[e]nhanced economic consideration to be provided by the Sackler family members in the form of \$50 million in incremental cash payments . . . as well as acceleration of \$50 million in previously agreed settlement payments”; (ii) “[a] material expansion of the scope of the public document repository to be established” pursuant to the Plan, including “tens of millions of documents and approximately 13 categories of attorney-client privileged documents”; (iii) “[a] prohibition with regard to the Sackler family's naming rights related to charitable contributions until they have fully paid all obligations owed by them under the terms of the contemplated settlement and exited, worldwide, all businesses that engage in the manufacturing or sale of opioids”; and (iv) modification of certain aspects of the Plan concerning the sale of assets of the new company that will be formed to continue Purdue's businesses, and concerning the distribution of funds from the National Opioid Abatement Trust (“**NOAT**”). *Id.* at 2-3.



(e) Judge Chapman’s proposal also provided that: (i) “the individual trustees of NOAT, or such other qualified party or parties as shall be selected by the Bankruptcy Court, will, subject to receipt of necessary approvals, become the controlling members of the Raymond and Beverly Sackler Foundation and the Raymond and Beverly Sackler Fund for the Arts and Sciences, which shall have an aggregate value of at least \$175 million and will be required to limit the purposes of the Foundations to purposes consistent with philanthropic and charitable efforts to ameliorate the opioid crisis.” *Id.* at 4.

(f) The Raymond and Beverly Sackler Foundation (the “**Foundation**”) is a New York not-for-profit corporation. *See* Certificate of Incorporation of the Raymond and Beverly Sackler Foundation, Inc., dated November 28, 1967 at Art. 2. Pursuant to its Certificate of Incorporation, the Foundation’s purposes are to be “a charitable fund” to which donations may be made, and invested and reinvested, and whose directors are authorized to (i) “mak[e] and establish[] scholarships, awards, grants, endowments, gifts, loans, prizes, and/or contests for educational, cultural, scientific, and/or research purposes” and also (ii) “devote [its assets] . . . to any other charitable, scientific, literary, artistic, benevolent, social and/or educational use,” in each case in a manner that is not inconsistent with other provisions of its Certificate of Incorporation or applicable law. *Id.* at Art. 2.

(g) The Raymond and Beverly Sackler Fund for the Arts and Sciences (the “**Fund**”) is a Delaware not-for-profit corporation. *See* Certificate of Incorporation of the Raymond and Beverly Sackler Fund for the Arts and Sciences, dated October 13, 1999 at 1. Pur-

suant to its Certificate of Incorporation, the Fund was “formed exclusively for charitable, scientific, medical and educational purposes,” including making distributions to organizations described in Section 501(c)(3) of the Internal Revenue Code. *Id.* at Art. 3.

(h) In agreeing to step down from their positions as members of the Foundation and the Fund in accordance with the proposal outlined in the Mediator’s Report, the current members of the Foundation and the Fund will be voluntarily relinquishing control of the Foundation and the Fund to new members (the “**Continuing Foundation Members**”). The Continuing Foundation Members will be the Persons appointed to serve as members of the Foundations in accordance with Section 5.7(l) of the Plan, which Persons shall be (i) the individuals appointed to serve as Creditor Trustees of NOAT; and/or (ii) as otherwise agreed to by the Debtors, the Governmental Consent Parties and counsel to the Newly Consenting States.

(i) The assets of the Foundation and the Fund will not be transferred to NOAT or to the Tribe Trust. Consistent with the governing documents of the Foundation and the Fund, and in accordance with Section 5.7(l) of the Plan, unless otherwise agreed by the Debtors, the Governmental Consent Parties and counsel to the Newly Consenting States, the Continuing Foundation Members are to file certificates of amendment of their respective certificates of incorporation under applicable New York or Delaware law (in accordance with the rules of the respective states of incorporation and which, in the case of the Foundation, requires the approval of either (I) the Attorney General of the State of New York or (II) a justice of the Supreme Court of the New York judicial district in which the office of the

Foundation is located) limiting “the purposes of the Foundation [and the Fund] set forth in the certificates of incorporation of the Foundation [and the Fund] . . . to purposes consistent with philanthropic and charitable efforts to ameliorate the opioid crisis.” *See* Twelfth Amended Plan. By virtue of the amended certificates of incorporation, the Foundation and the Fund will be required to use such assets for charitable purposes in a manner consistent with Section 5.7(l) of the Plan, and the Plan also recognizes that Foundation and Fund members and directors will remain subject to all relevant fiduciary duties in the administration of the Foundation and the Fund. *Id.*

(j) Consistent with the proposal outlined in the Mediator’s Report and Section 5.7(l) of the Plan, (i) the members of the Foundation and the Fund are to relinquish control of the Foundation and the Fund on or before the Effective Date of the Plan, and (ii) consequently, the current members will no longer be entitled to make further decisions concerning the governance or operations of the Foundation and the Fund, including the use of the corporations’ assets.

(k) Deployment of the assets of the Foundation and the Fund by the Continuing Foundation Members for opioid abatement would be consistent with the broad charitable purposes of the corporations as set forth in their current certificates of incorporation.

(l) The Shareholder Settlement Amount is sufficient consideration for the Shareholder Releases under the facts and circumstances of these chapter 11 cases, the accepting votes of the Newly Consenting States were not necessary for acceptance of the Plan by Class 4, and the Plan’s treatment of Claims satisfies the

requirements for confirmation of the Plan; therefore, relinquishment of control of the Foundation and the Fund is not required to justify the Shareholder Releases or confirm the Plan.

(m) The actions taken pursuant to Section 5.7(l) of the Plan with respect to the relinquishment of control of the Foundation and the Fund constitute conduct relating to the Plan for purposes of Section 10.7(b) thereof.

MM. Additional Findings Related to Section 1129(a)(7). The Plan provides for recoveries that are no less than, and in many cases greater than, what creditors might receive in a hypothetical chapter 7 liquidation with specific regard to creditors in Classes 4 through 10(b). The testimony of the Debtors' witness, Jesse DelConte, evidenced that the creditors in such classes in the aggregate would recover zero in the low case and mid-case scenarios and would recover in the aggregate \$699.1 million in the less likely high case scenario. Under the Plan, an estimated at least \$5.5 billion will be distributed on account of contingent liability claims. The majority of that \$5.5 billion will be provided to the Creditor Trusts. The evidence at the Confirmation Hearing established that the value of claims against the Sackler Families that any individual creditor would retain or recover in a hypothetical chapter 7 liquidation is speculative and not readily capable of estimation but, in any event would, along with such creditor's recovery from the Estates not exceed its recovery under the Plan. No party put forth an estimate of the value of such claims or directed the court to evidence in the record from which such an estimate could be made. Representatives of the Sackler Families have testified that they would vigorously litigate any claims brought against

them relating to the Debtors. The outcome of such litigation is not certain. The Sackler Families have asserted that claimants would face uncertainty in collection, including because a substantial portion of the Sackler Families' assets are held in trusts, the contents of which they assert cannot be used to satisfy the personal liabilities of beneficiaries. An overwhelming majority of the voting creditors, including 38 out of 48 voting U.S. States, voted to accept the Plan. The Plan provides for the release of such creditors' potential third party claims against the Sackler Families. This support further supports the Court's finding and conclusion that recoveries under the Plan are not less than the recoveries they would obtain in hypothetical chapter 7 liquidation, including recoveries on account of such third-party claims.

NN. Scope of Discharge. Except as expressly provided in this Order or the Plan, the discharge or release of the Debtors through the Plan will not operate to relieve any other entity, including Insurance Companies, of their obligation to pay the Debtors' opioid-related liabilities, without regard to (i) whether the Debtors would be able to pay such liabilities in the first instance outside of bankruptcy, and (ii) whether the Debtors or a post-bankruptcy trust can or do pay those liabilities in full, in both instances notwithstanding any terms of the Purdue Insurance Policies or provisions of non-bankruptcy law. The Plan discharges or releases Debtors for their opioid-related liabilities.

OO. Attorney Fees and Costs. The Attorney Fees and Costs provisions set forth in Section 5.8 of the Plan are fair, appropriate, and constitute an integral part of the resolution of the Chapter 11 Cases. Such provisions, except as provided in Section 5.8 of the Plan as set forth

in the Modified Bench Decision, embody negotiated settlements as described in the *Mediator's Report* filed by Kenneth R. Feinberg on July 28, 2021. The *Mediator's Report* is persuasive and credible. Such Attorney Fees and Costs provisions set forth in Section 5.8 of the Plan (i) were the product of good-faith, hard fought arm's-length discussions and mediations that spanned many months; (ii) with respect to the contingency fee resolutions with respect to the payment of (a) Local Government and Tribe Costs and Expenses Fund, (b) State Costs and Expenses Fund, (c) Ratepayer Costs and Expenses, and (d) PI Claimant Costs and Expenses, as well as the funding of the Common Benefit Fund Escrow (items (a)-(e) and the Common Benefit Escrow shall be referred to as the "Public/Private Fee and Expense Settlement") are consistent with fee awards, arrangements, and assessments agreed upon in other similar mass tort cases; (iii) with respect to the fee settlements reached between the Debtors, the Ad Hoc Group of Hospitals and the Public Side Claimants, as well as the Ad Hoc Group of NAS Children and the Public Side Claimants (collectively, the "Hospital/NAS/Public Fee Settlement"), are consistent with fee awards, arrangements, and assessments in similar mass tort situations; (iv) with respect to such percentages agreed upon in Section 5.8 of the Plan are well within the range of reasonableness; (v) with respect to the Common Benefit Fund assessments were the reasonable result of the work of the public creditor contingency fee counsel that has benefited all other opioid claimant constituents; and (vi) as evidenced by the Public/Private Fee and Expense Settlement and Hospital/NAS/Public Fee Settlement are necessary and integral to the Plan and the success of the Chapter 11 Cases, are in the best interests

of the Debtors, their Estates, and the Holders of Claims and Interests, are fair, equitable, and reasonable and meet the standard for approval under Bankruptcy Rule 9019 and *In re Iridium Operating LLC*, 478 F.3d 452, 462 (2d Cir. 2007) for the foregoing reasons as they (w) will avoid costly, protracted litigation over Confirmation of the Plan; (x) are far above the lowest range of reasonableness; (y) were heavily negotiated and extensively disclosed in the Disclosure Statement; and (z) were approved overwhelmingly by creditors voting on the Plan.

PP. Value Distributed in Respect of Non-Federal Domestic Governmental Claims and Tribe Claims. The aggregate amount of value distributed or otherwise conferred by the Debtors in respect of Non-Federal Domestic Governmental Claims and Tribe Claims under the Plan exceeds \$1.775 billion.

QQ. Disputed Claims Reserve and Effective Date Distributions. Based on the evidence proffered, adduced, and/or presented by the Debtors at the Confirmation Hearing, the procedures for establishing Disputed Claims Reserves, as set forth more fully in Article VII of the Plan, are adequate to ensure that each Holder of a Claim that is Disputed on any particular distribution date but Allowed thereafter shall receive distributions equal to the Distributions such Disputed Claim would be entitled to on the applicable distribution date if such Disputed Claim were Allowed in its full amount on the Effective Date.

RR. Notice and Future Claims Issues.

(a) The uncontroverted testimony set forth in the Declaration of Jeanne C. Finegan [D.I. 719], the Supplemental Declaration of Jeanne C. Finegan [D.I.

1179], and the Third Supplemental Declaration of Jeanne C. Finegan [D.I. 3403], confirms that the Bar Date Notice Plan approved by this Court was incredibly extensive in its reach, having reached an estimated 98% of all adults 18 years and older in the United States with an average frequency of message exposure of eight times, and an estimated 86% of all adults 18 years and older in Canada, with an average frequency of message exposure of four times, through (i) direct mailings to certain individuals and entities, (ii) network broadcast, cable, and streaming television, (iii) terrestrial and streaming radio, (iv) print media (e.g., magazines and newspapers), (v) out-of-home advertising (e.g., billboards), (vi) online display (e.g., banner advertising on websites), (vii) internet search terms (e.g., Google and Bing), (viii) digital video and social media campaigns (e.g., Facebook, Instagram, LinkedIn, Twitter, and YouTube), and (ix) earned media (e.g., press releases). Print media served approximately 143 million impressions, television advertisements served over 1.1 billion impressions, and the digital campaign served over 1.6 billion impressions. As a result, this Court determines that the Notice of the General Bar Date provided, in part, through the Bar Date Notice Plan, was reasonable and appropriate, and provided due, proper, adequate, timely, and sufficient notice of the General Bar Date and the procedures for filing proofs of claim such that both known and unknown Holders of Claims and/or Channeled Claims are bound by the terms of the Plan, including the Shareholder Settlement. The court also finds that notice was reasonably calculated, under all the circumstances, to apprise interested parties of the chapter 11 cases and the confirmation hearing, and afford them an opportunity to present their objections as



set forth in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

(b) Similarly, according to the uncontroverted testimony set forth in the Second Supplemental Declaration of Jeanne C. Finegan [D.I. 2917] and the Third Supplemental Finegan Declaration, the Supplemental Confirmation Hearing Notice Plan reached an estimated 87% of adults 18 years and older in the U.S., with an average frequency of message exposure of five times, 82% of all adults 18 years and older in Canada, with an average frequency of message exposure of six times, and served over 2.6 billion digital media impressions in 39 other countries, through (i) direct mailings to certain individuals and entities, (ii) print media (e.g., magazines and newspapers), (iii) online display (e.g., banner advertising on websites), (iv) internet search terms (e.g., Google); (v) social media campaigns (e.g., Facebook, Instagram, LinkedIn, Twitter, and YouTube), and (vi) earned media (e.g., press releases). The Supplemental Confirmation Hearing Notice Plan was conducted in 27 different languages and served over 3.6 billion online and social media impressions. As a result, this Court determines that notice of the Confirmation Hearing (which included notice of the settlement of potential claims and Causes of Action against the Shareholder Released Parties) provided, in part, through the Supplemental Confirmation Hearing Notice Plan, was reasonable and appropriate, and provided due, proper, adequate, timely, and sufficient notice of the Confirmation Hearing, the releases, the exculpatory provisions, and the injunctions set forth in Article X of the Plan, including the Channeling Injunction, the Releases and the Shareholder Releases, as well as the Shareholder Settlement in satisfaction of the requirements of Bank-

ruptcy Rule 3016(c), to both known and unknown Holders of Claims and/or Channeled Claims, as well as Persons that may in the future assert any Claim and/or Channeled Claim or otherwise be bound by the Plan and this Order, and that such parties have had an opportunity to appear and be heard with respect thereto.

(c) The Court also finds, based upon the facts and legal argument presented, that the appointment of a future claims representative in these cases (which no party requested of this Court at any time in these Chapter 11 Cases) was not warranted, including because (i) the Debtors ceased all promotional activities, including the promotion of opioid medications through a sales force, advertisements in printed journals and electronic media, and speaker programs, by February 2018, (ii) the Sackler Families ended their tenure as directors on Purdue's board and relinquished all direct control over Purdue by January 2019, (iii) the Debtors and the Sackler Families have been subject to, and in compliance with, a voluntary injunction preventing the Debtors from promoting opioids or opioid products and prohibiting the Sackler Families from actively engaging in the opioid business in the United States since October 11, 2019 and November 6, 2019, respectively, and (iv) in light of these facts and the facts presented and arguments made in the Debtors' Confirmation Brief, the Court believes there are no viable future claims. To the extent a Person attempts to bring a Future PI Channeled Claim against the Debtors, the other Released Parties, the Sackler Families, and/or the Shareholder Released Parties, such claimants are provided for in the Plan, which, in order to preserve the bargained for consideration of the Shareholder Settlement, properly sets forth a procedure for the assertion of such a claim or

Cause of Action pursuant to Section 6.21 of the Plan, establishes the PI Futures Trust to litigate Future PI Channeled Claims, and—to the extent any Future PI Channeled Claim is found by a court to be viable—provides procedures for recovery that is consistent with that afforded to Holders of PI Claims. No such claims shall be asserted against any of the Protected Parties (other than the PI Futures Trust).

(d) The \$5 million set aside for the PI Futures Trust under the Plan is fair and reasonable in light of the purpose of the trust, which is to defend against such claims, and in the unlikely event that any such claim is found by a court to be viable, compensate the holder of any such claim in a manner consistent with Non-NAS PI Claims or NAS PI Claims.

SS. Public Document Repository. The Public Document Repository is an appropriate method of ensuring that the public is granted access to the Debtors' and Sackler Family Members' documents relevant to understanding the facts and circumstances underlying the Pending Opioid Actions, and the settlement related thereto reached with the Newly Consenting States in the third and final phase of mediation before the Honorable Shelley Chapman is in the public interest.<sup>6</sup>

TT. Retention of Jurisdiction. The Court may properly retain exclusive jurisdiction of all matters arising under, arising out of or related to the Chapter 11 Cases and the Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code, *provided*

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<sup>6</sup> The members of the Ad Hoc Group of Non-Consenting States other than the Newly Consenting States also endorse the Public Document Repository.

that the resolution of Channeled Claims and the forum in which such resolution shall be determined shall be governed by, and in accordance with, Section 6.21 of the Plan, the Master TDP and the Creditor Trust TDPs, as applicable.

UU. Likelihood of Satisfaction of Conditions Precedent. Each of the conditions precedent to the Effective Date, as set forth in Article IX of the Plan, is reasonably likely to be satisfied or waived in accordance with the provisions of the Plan.

VV. Good Faith. The Exculpated Parties have been and will be acting in good faith if they proceed to (a) consummate the Plan and the agreements, transactions, and transfers contemplated thereby and (b) take the actions authorized by this Order.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. Findings of Fact and Conclusions of Law. The above-referenced findings of fact and conclusions of law are hereby incorporated by reference as though fully set forth herein.

2. Confirmation. All requirements for the Confirmation of the Plan have been satisfied. Accordingly, the Plan, in its entirety, is CONFIRMED pursuant to section 1129 of the Bankruptcy Code. Each of the terms and conditions of the Plan and the exhibits and schedules thereto, including, but not limited to, the Plan Documents, and any amendments, modifications, and supplements thereto, are an integral part of the Plan and are incorporated by reference into this Order. Any failure to specifically describe or include a particular provision of the Plan (or any Plan Document) in this Order

shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Plan (including all Plan Documents) be approved and confirmed in its entirety. The Plan complies with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules. A copy of the confirmed Plan is attached hereto as Exhibit A. Once finalized and executed, the documents comprising the Plan Documents and all other documents contemplated by the Plan shall, as applicable, constitute legal, valid, binding, and authorized obligations of the respective parties thereto, enforceable in accordance with their terms and the terms of the Plan and this Order. All persons who hold or may in the future hold or assert any Shareholder Released Claim have received adequate notice that complies with due process and are bound by the releases in the Plan and Shareholder Settlement.

3. Objections. All parties have had a fair opportunity to litigate all issues raised by Objections, or which might have been raised, and the Objections have been fully and fairly litigated. All Objections, responses, statements, reservation of rights, and comments in opposition to the Plan, other than those withdrawn with prejudice in their entirety, waived, settled, or resolved prior to the Confirmation Hearing, or otherwise resolved on the record of the Confirmation Hearing and/or herein, are hereby overruled. To the extent set forth on the record at the Confirmation Hearing on August 23, 2021, the reservation of rights of the Settling Co-Defendants with respect to proceedings in Canada is preserved. The record of the Confirmation Hearing was closed before the issuance of the Court's bench ruling on September 1, 2021.

4. **Solicitation and Notice.** Notice of the Confirmation Hearing and the Plan, and all related documents, the solicitation of votes on the Plan, and the Solicitation Materials (a) complied with the solicitation procedures in the Solicitation Order, (b) were appropriate and satisfactory based upon the circumstances of the Chapter 11 Cases, and (c) were in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

5. **Plan Classification.** The categories listed in Article III of the Plan classify Claims against, and Interests in, each of the Debtors, pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code, for all purposes, including, but not limited to, voting, Confirmation of the Plan, and distributions pursuant to the Plan, and shall be controlling. The Court hereby holds that (a) the classifications of Claims and Interests under the Plan (i) are fair, reasonable, and appropriate and (ii) were not done for any improper purpose, (b) valid business, legal, and factual reasons exist for separately classifying the various Classes of Claims and Interests under the Plan, and (c) the creation of such Classes does not unfairly discriminate between or among Holders of Claims or Interests.

6. **Compromise of Controversies.**

(a) The provisions of the Plan (including the applicable provisions contained in Section 5.8 of the Plan and the release and injunctive provisions contained in Article X of the Plan) and the other Plan Documents constitute a good faith compromise and settlement of Claims and controversies among the Debtors, the Supporting Claimants, the Shareholder Payment Parties, certain other participants in the Mediation and

other parties in interest reached in connection with the Mediation and otherwise. The Debtors are hereby authorized and directed to enter into the Plan Settlement under section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019. The Plan, the Plan Settlement, the Plan Documents and this Order constitute a good faith, full and final comprehensive compromise and settlement of all Claims, Interests and controversies described in the Plan based upon the unique circumstances of these Chapter 11 Cases (such as the total distributable value available, the unique facts and circumstances relating to these Debtors and the need for an accelerated resolution without additional avoidable litigation) such that (a) none of the foregoing documents (including the provisions contained in Section 5.8 of the Plan), nor any materials used in furtherance of Plan confirmation (including, but not limited to, the Disclosure Statement, and any notes related to, and drafts of, such documents and materials), may be offered into evidence, deemed an admission, used as precedent or used by any party or Person in any context whatsoever beyond the purposes of the Plan, in any other litigation or proceeding, except as necessary, and as admissible in such context, to enforce their terms and to evidence the terms of the Plan and the Plan Documents before the Bankruptcy Court or any other court of competent jurisdiction and (b) any obligation by any party, in furtherance of such compromise and settlement, to not exercise rights that might be otherwise available to such party shall be understood to be an obligation solely in connection with this specific compromise and settlement and to be inapplicable in the absence of such compromise and settlement. The Plan, the Plan Settlement, the Plan Documents and this Order will be binding as to

the matters and issues described therein, but will not be binding with respect to similar matters or issues that might arise in any other litigation or proceeding in which none of the Debtors or any other Protected Party is a party; *provided* that such litigation or proceeding is not to enforce or evidence the terms of the Plan, the Plan Settlement, the Plan Documents or this Order. Any Person's support of, or position or action taken in connection with, the Plan, the Plan Settlement, the Plan Documents and this Order may differ from such Person's position or testimony in any other litigation or proceeding not in connection with these Chapter 11 Cases. Further, and, as all parties to the Mediation agreed, the Plan Settlement is not intended to serve as an example for, or represent the parties' respective positions or views concerning, any other chapter 11 cases relating to opioids, nor shall it be used as precedent by any Person or party in any other such chapter 11 cases or in any other proceeding, situation, or litigation.

(b) Professionals that are required to seek payment or reimbursement under Section 5.8(g) or (h) of the Plan of their compensation, costs and/or fees shall file with the Bankruptcy Court an application for approval of such compensation, costs and/or fees as "reasonable" under section 1129(a)(4) of the Bankruptcy Code (A) first, not later than thirty (30) days following the Confirmation Date, with respect to compensation, costs and/or fees incurred during the period prior to August 12, 2021 (the first day of the Confirmation Hearing), and (B) second, not later than thirty (30) days following the Effective Date, with respect to compensation, costs and/or fees incurred during the period of August 12, 2021 through and including the Effective Date. Such applications shall not be deemed an application for



reasonable compensation for actual, necessary services by such professionals or reimbursement for actual, necessary expenses to be paid from the Estates, and neither section 330 of the Bankruptcy Code nor any of the Bankruptcy Rules, guidelines from the office of the U.S. Trustee, or other rules or guidelines applicable to fee applications shall apply. Each such application shall set forth the amount of compensation, costs and/or fees sought, provide a narrative basis for such compensation, costs and/or fees, and attach, as applicable, supporting documentation. A single application may cover one or more professionals that represented or advised an ad hoc group. Each such application shall be set for hearing on not less than fourteen (14) days' notice and served upon counsel to the Debtors, counsel to the Creditors' Committee, and the U.S. Trustee. If no objection is filed by any of such parties by the date that is three (3) days prior to such hearing, the Bankruptcy Court may enter an order approving such application without a hearing. With respect to applications filed by professionals that represented or advised the Ad Hoc Group of Individual Victims or the NAS Committee under Section 5.8(g) of the Plan, the Supporting Claimants have agreed and acknowledged that they shall not file any objections to, and shall support, such applications. Any such application made is without prejudice to any applications by the Ad Hoc Group of Individual Victims, the NAS Committee, the Public School District Claimants or professionals that represented or advised any of the foregoing for allowance and payment of compensation, costs or fees under section 503(b) of the Bankruptcy Code.

7. Shareholder Settlement Agreement.<sup>7</sup>

(a) The Shareholder Settlement Agreement, Collateral Documents and other Definitive Documents, and all transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations to be incurred by the Debtors or the Master Disbursement Trust, as applicable, in connection therewith, are hereby approved. The Shareholder Settlement Agreement is approved in the form most recently filed by the Debtors with the Plan Supplement as of the date hereof, subject only to non-substantive or immaterial changes including changes to correct typographical and grammatical errors, and any amendments thereafter (including, for the avoidance of doubt, any purported amendment to Exhibits S and X thereto) are not approved, notwithstanding anything to the contrary in the Shareholder Settlement Agreement, the Plan or this Order.

(b) The Debtors and the Master Disbursement Trust, as applicable, are authorized in all respects, without further approval of the Bankruptcy Court, act or action under applicable law, regulation, order, rule or vote, or the consent, authorization or approval of any Person except as otherwise required by the Shareholder Settlement Agreement, the Collateral Documents or any of the other Definitive Documents, to (i) execute and deliver, or cause to be executed and delivered the Shareholder Settlement Agreement, the Collateral Documents and all other Definitive Documents

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<sup>7</sup> Capitalized terms used solely in this paragraph 7 but not otherwise defined herein or in the Plan, Disclosure Statement, or Solicitation Order shall have the meanings ascribed to such terms in the Shareholder Settlement

and to perform their obligations thereunder, except as otherwise required by the Shareholder Settlement Agreement, any of the Collateral Documents or any of the other Definitive Documents and (ii) perform all obligations under the Shareholder Settlement Agreement, Collateral Documents and other Definitive Documents, in each case consistent with the terms of the Shareholder Settlement Agreement, Collateral Documents and other Definitive Documents.

(c) Subject to the terms and conditions of the Shareholder Settlement Agreement, Purdue Pharma Inc. shall surrender, cancel and/or redeem its de minimis interests in Pharmaceutical Research Associates L.P.

(d) Each party to the Shareholder Settlement Agreement, the Collateral Documents, and the other Definitive Documents (as defined in the Settlement Agreement) shall comply in good faith with the applicable terms of such agreements to which they are a party. Each provision of the Shareholder Settlement Agreement, the Collateral Documents, and the other Definitive Documents shall have the full force and effect of a binding Court order as of the Agreement Effective Date (as defined in the Shareholder Settlement Agreement). The Plan and this Order shall be binding upon each of the Shareholder Released Parties.

(e) Pursuant to the Shareholder Settlement Agreement, each party to the Shareholder Settlement Agreement will (i) submit to the jurisdiction of the Court, (ii) consent to the authority of the Court to enter Final Orders or judgments, and (iii) waive and not advance any argument that any Proceeding (as defined in the Shareholder Settlement Agreement) arising under,

related to, or in connection with the Shareholder Settlement Agreement is or must be adjudicated as an adversary proceeding governed by Part VII of the Federal Rules of Bankruptcy Procedure or that the Court is an improper or inconvenient forum or venue.

8. Plan Transactions. All of the transactions contemplated by the Plan are hereby approved. The Debtors are authorized to take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan. All implementing actions required or contemplated by the Plan, including, but not limited to, (a) the execution and delivery of all appropriate agreements or other documents of merger, consolidation, sale, restructuring, conversion, disposition, transfer, dissolution or liquidation containing terms that are consistent with the Plan; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of any Asset, property, interest, right, liability, debt or obligation on terms consistent with the Plan; (c) the filing of appropriate certificates or articles of organization, limited partnership, incorporation, reincorporation, merger, consolidation, conversion or dissolution pursuant to applicable law; (d) the execution, delivery, filing, recordation and issuance of any other documents, instruments or agreements in connection with the Restructuring Transactions and (e) any transactions described in the Restructuring Steps Memorandum, are hereby authorized and approved in all respects.

9. Establishment and Purpose of the Trusts. Each of the Plan Administration Trust, the Master Disbursement Trust and the Creditor Trusts shall be established as a trust (or, in the case of Tribe Opioid Abatement

Fund LLC, a limited liability company) under applicable state law for the purposes described in the Plan and the applicable Plan Documents, and shall be funded as and to the extent provided for in the Plan. Each of the Master Disbursement Trust and the Creditor Trusts is being established to resolve or satisfy Claims that have resulted or may result from an event (or related series of events) that has occurred and that has given rise to Claims asserting liability arising out of a tort, breach of contract or violation of law.

10. **Beneficiaries.** Beneficiaries of the Plan Administration Trust, the Master Disbursement Trust and each of the Creditor Trusts shall have only such rights and interests in and with respect to the applicable trust assets as set forth in the Plan and the applicable Plan Documents. Each of the Plan Administration Trustee, the MDT Trustees and the Creditor Trustees shall be entitled to take the actions set forth in, and in each case in accordance with, the Plan and the applicable Plan Documents. The Creditor Trusts shall be subject to the continuing jurisdiction of the Bankruptcy Court.

11. U.S. Federal Income Tax Matters.

(a) U.S. Federal Income Tax Matters Relating to Plan Administration Trust. The Plan Administration Trust shall be structured to qualify as a trust described in IRC sections 661 through 664 and the regulations promulgated thereunder (a “complex trust”). The Plan Administration Trustee shall file (or cause to be filed) such statements, returns, or disclosures relating to the Plan Administration Trust as are required by any Governmental Unit, including IRS Form 1041, IRS Form 1041-ES, and IRS Schedule K-1. The Plan Administration Trustee shall be responsible for payment, out of the

PAT Assets, of any taxes imposed on the Plan Administration Trust or the PAT Assets, including estimated and annual U.S. federal income taxes. The Plan Administration Trustee may request an expedited determination of taxes of the Plan Administration Trust under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Plan Administration Trust for all taxable periods through the dissolution of the Plan Administration Trust. Nothing in this paragraph shall be deemed to determine, expand or contract the jurisdiction of the Bankruptcy Court under section 505 of the Bankruptcy Code.

(b) U.S. Federal Income Tax Matters Relating to the Master Disbursement Trust. The Master Disbursement Trust shall be structured to qualify as a “qualified settlement fund” for U.S. federal income tax purposes and shall be treated consistently for state and local tax purposes, to the extent applicable. All parties (including, without limitation, Holders of Claims against or Interests in the Debtors, the Related Parties of such Holders, the Debtors, the Master Disbursement Trust, the MDT Trustees and the Creditor Trusts) shall report consistently with the foregoing. An MDT Trustee or the MDT Executive Director, as determined in accordance with the MDT Agreement, shall be the “administrator,” within the meaning of Treasury Regulations section 1.468B-2(k)(3), of the Master Disbursement Trust. The administrator of the Master Disbursement Trust shall be responsible for filing all tax returns of the Master Disbursement Trust and the payment, out of the Assets of the Master Disbursement Trust, of any taxes due by or imposed on the Master Disbursement Trust. The MDT Trustees may request an expedited determination under section 505(b) of the Bankruptcy

Code for all tax returns filed by or on behalf of the Master Disbursement Trust for all taxable periods through the dissolution of the Master Disbursement Trust.

(c) U.S. Federal Income Tax Matters Relating to the Creditor Trusts. Each Creditor Trust (other than any Tribe Trust entity that is formed as a legal entity other than a trust) shall be structured to qualify as a “qualified settlement fund” for U.S. federal income tax purposes and shall be treated consistently for state and local tax purposes to the extent applicable. All parties (including, without limitation, Holders of Claims against or Interests in the Debtors, the Related Parties of such Holders, the Debtors, the Creditor Trustees, TopCo and the Master Disbursement Trust) will be required to report consistently with the foregoing for all applicable tax reporting purposes. A Creditor Trustee from each relevant Creditor Trust shall be the “administrator” within the meaning of Treasury Regulations section 1.468B-2(k)(3) of the applicable Creditor Trust. The administrator of each such Creditor Trust shall be responsible for filing all tax returns of the applicable Creditor Trust and the payment, out of the assets of such Creditor Trust, of any taxes due by or imposed on such Creditor Trust. Each Creditor Trustee may request an expedited determination of taxes under section 505(b) of the Bankruptcy Code for all tax returns filed by or on behalf of the applicable Creditor Trust for all taxable periods through the dissolution of such Creditor Trust.

(d) U.S. Federal Income Tax Matters Relating to the Appeals Account. The Appeals Account (as defined in the Shareholder Settlement Agreement) shall be structured to qualify as a “qualified settlement fund” for U.S. federal income tax purposes and shall be

treated consistently for state and local tax purposes to the extent applicable. All parties (including, without limitation, Holders of Claims against or Interests in the Debtors, the Related Parties of such Holders, the Debtors, the Creditor Trustees, TopCo and the Master Disbursement Trust) will be required to report consistently with the foregoing for all applicable tax reporting purposes. The person designated as escrow agent for the Appeals Account shall be the “administrator” within the meaning of Treasury Regulations section 1.468B-2(k)(3) of the Appeals Account. The administrator of the Appeals Account shall be responsible for filing all tax returns of the Appeals Account and the payment, out of the assets of the Appeals Account, of any taxes due by or imposed on the Appeals Account. The escrow agent for the Appeals Account may request an expedited determination of taxes under section 505(b) of the Bankruptcy Code for all tax returns filed by or on behalf of the applicable Appeals Account for all taxable periods through the close of the Appeals Account.

(e) Nothing in the Plan or this Order, including without limitation this Paragraph 11, shall be deemed to (A) determine the United States federal tax liability of any Person, including but not limited to the Debtors, (B) have determined the United States federal tax treatment of any item, distribution or Entity, including the federal tax consequences of the Plan or this Order, or (C) expressly expand or diminish the jurisdiction of the Bankruptcy Court to make determinations as to United States federal tax liability and United States federal tax treatment under the Bankruptcy Code and 28 U.S.C. §§ 157, 1334.

12. Approval of the Master TDP and the Creditor Trust TDPs. The Master TDP and the Creditor Trust



TDPs, copies of which are attached hereto in **Exhibit B**, are hereby approved. The sole recourse and source of Distribution under the Plan of any State on account of any Non-Federal Domestic Governmental Channeled Claim shall be a beneficial interest in NOAT as and to the extent provided in the NOAT TDP.

13. Appointment of Managers, Trustees, Etc. The appointment of the MDT Trustees, the MDT Executive Director, the NewCo Managers, the TopCo Managers, the Plan Administration Trustee, the PPLP Liquidator, the Creditor Trustees, and the Creditor Trust Overseers in accordance with Article V of the Plan and the exculpation thereof pursuant to Article V of the Plan, and the appointment of the PI Claims Administrator pursuant to Section 2.3 of the PI Trust Agreement, is hereby approved.

14. Corporate Action. Prior to or after the Effective Date, all actions contemplated under the Plan and the Plan Supplement shall be deemed authorized and approved in all respects, and any appropriate officer of the Debtors or the PPLP Liquidator, as applicable, shall be authorized to take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan and the Plan Supplement.

15. Preservation of Causes of Action and Reservation of Rights. As of the Effective Date, all Retained Causes of Action shall vest in the Master Disbursement Trust, the Plan Administration Trust, each Creditor Trust or NewCo, as applicable, and the Master Disbursement Trust, the Plan Administration Trust, each Creditor Trust and NewCo shall have the right to pros-

ecute Retained Causes of Action as and to the extent set forth in the Plan and/or Plan Supplement.

16. Executory Contracts and Unexpired Leases. Entry of this Order shall constitute approval of all amendments, assumptions, assumptions and assignments, and rejections of Executory Contracts and Unexpired Leases provided for under the Plan pursuant to section 365 of the Bankruptcy Code. Amendments, assumptions, assumptions and assignments, or rejections of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date without the need for any further action or consents that may otherwise be required under applicable non-bankruptcy law. Any motions to assume, assume and assign, or reject any Executory Contracts or Unexpired Leases pending on the Effective Date shall be subject to approval by a Final Order of the Court on or after the Effective Date, entry of which shall result in such assumption, assumption and assignment, or rejection becoming effective without need for any further action that may otherwise be required under applicable non-bankruptcy law.

17. Cigna Health and Life Insurance Objection to Assumption and Assignment of Executory Contracts. Cigna Health and Life Insurance Company reserves its rights to renew *Cigna Health and Life Insurance Company's Limited Objection to Assumption and Assignment of Executory Contracts* [D.I. 3358] ("**Cigna's Assumption and Assignment Objection**") to the extent of a future default under the Employee Benefits Agreement (as defined in Cigna's Assumption and Assignment Objection) occurring prior to the Effective Date.

18. Disputed Claims. The provisions of Article VII of the Plan, including, but not limited to, the provisions governing procedures for resolving certain Disputed Claims, are fair and reasonable and are approved.

19. No Post-Petition or Post-Effective Date Interest on Claims. Unless otherwise specifically provided for in the Plan or this Order, or required by applicable bankruptcy law, post-petition and post-Effective Date interest shall not accrue or be paid on any Claims, and no Holder of a Claim shall be entitled to interest accruing on such Claim on or after the Petition Date.

20. Full and Final Satisfaction of Claims. Unless otherwise provided in the Plan, the Distributions and deliveries to be made on account of Allowed Claims under the Plan shall, in the aggregate, be in complete and final satisfaction, settlement and discharge of, and exchange for, such Allowed Claims. The Distributions and deliveries to be made on account of Claims under the Plan shall additionally be in consideration of the release and discharge of any and all Released Claims and Shareholder Released Claims related to or arising from such Claims.

21. Release of Liens. Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan or this Order, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date in accordance with the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, discharged, and

compromised, without any further approval or order of the Court and without any action or Filing being required to be made by the Debtors or the Liquidating Debtors, as applicable, and all rights, titles, and interests of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall revert to the Liquidating Debtors and their successors and assigns. The Liquidating Debtors are authorized to File any necessary or desirable documents to evidence such release in the name of the party secured by such pre-Effective Date mortgages, deeds of trust, Liens, pledges, or other security interests.

22. Approval of Releases, Injunctions, and Exculpations. The record in the Confirmation Hearing and the Chapter 11 Cases is sufficient to support the approval of each of the releases, injunctions, and exculpations provided in the Plan, including those, without limitation, set forth in Article X thereof. Accordingly, based upon the record of the Chapter 11 Cases, the representations of the parties, and/or the evidence proffered, adduced, and/or presented at the Confirmation Hearing, the releases, settlements, injunctions, and exculpations set forth in the Plan, including those set forth in Article X thereof, are (i) appropriate and consistent with the Bankruptcy Code and applicable law, (ii) incorporated herein in their entirety, (iii) are hereby approved and authorized in all respects, and (iv) shall be immediately effective and binding on all Persons and Entities on the Effective Date, to the extent provided in the Plan, without further order or action on the part of this Court or any other party.

23. Injunction Against Interference with Plan. In accordance with Section 10.4 of the Plan, subject to Sec-

tion 12.4 of the Plan, upon entry of this Order, all Holders of Claims against or Interests in the Debtors, Holders of Channeled Claims, Releasing Parties, Released Parties, Shareholder Released Parties and other parties in interests shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan and the Plan Documents.

24. Injunction Regarding Post-Confirmation Claims. In accordance with Section 6.21 of the Plan, except as otherwise provided in the applicable Creditor Trust TDP, in the event a Person seeks payment at any time on account of a Channeled Claim as to which no Proof of Claim was filed before the General Bar Date and/or for which no motion seeking leave or order granting leave to file a late Proof of Claim was filed or entered before the Confirmation Date, or as to which no Proof of Claim was required to be filed, such Person shall not be entitled to any payment or distribution on account of such Channeled Claim unless the Bankruptcy Court, by Final Order, first determines that such Person has a Channeled Claim that is or was channeled to a Creditor Trust under the Master TDP and grants such Person leave to assert such Channeled Claim against such Creditor Trust. If such leave is granted, such Person shall be entitled to seek to recover on such Channeled Claim solely from the Creditor Trust to which such Channeled Claim is or was channeled pursuant to the Master TDP, as determined by the Bankruptcy Court, and any such recovery shall be solely in accordance with and to the extent provided in the Creditor Trust TDP for such Creditor Trust. After the Effective Date, in addition to the Person seeking to assert such Channeled Claim and any Person against which such Channeled Claim is purportedly asserted, only the

MDT Trustees, the Creditor Trustees and NewCo shall have standing to participate in any action before the Bankruptcy Court in respect of the foregoing. For the avoidance of doubt, nothing in this paragraph is intended or shall be construed to enlarge, amend or modify the provisions of the Bar Date Order, nor is anything in this paragraph intended to derogate from, modify or amend the terms and conditions of any Creditor Trust TDP or the Master TDP or the rights of any MDT Trustee, Creditor Trustee or claims administrator for any Creditor Trust.

25. Releases by Debtors.<sup>8</sup>

(a) **As set forth in Section 10.6(a) of the Plan, as of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, including, without limitation, the service of the Released Parties before and during the Chapter 11 Cases to facilitate the reorganization of the Debtors and the implementation of the Restructuring Transactions, and except as otherwise explicitly provided in the Plan or in this Order, the Released Parties shall be conclusively, absolutely, unconditionally, irrevocably, fully, finally, forever and permanently released by the Debtors and their Estates from any and all Causes of Action, including any derivative claims asserted or assertible by or on behalf of any Debtor or any of their Estates and including any claims that any Debtor or any of their Estates, or that any other Person or party claiming under or through any Debtor or**

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<sup>8</sup> For the avoidance of doubt, paragraphs 25 through 33 hereof do not override the corresponding sections of the Plan and, in the event of any inconsistency between such paragraphs and the corresponding sections of the Plan, such corresponding sections of the Plan govern.

any of their Estates, would have presently or in the future been legally entitled to assert in its own right (whether individually or collectively) or on behalf of any Debtor or any of their Estates or any other Person, notwithstanding section 1542 of the California Civil Code or any law of any jurisdiction that is similar, comparable or equivalent thereto (which shall conclusively be deemed waived), whether existing or hereinafter arising, in each case, based on or relating to, or in any manner arising from, in whole or in part, (i) the Debtors, as such Entities existed prior to or after the Petition Date (including the Debtors' Opioid-Related Activities, manufacture, marketing and sale of Products, interaction with regulators concerning Opioid-Related Activities or Products, and involvement in the subject matter of the Pending Opioid Actions, and the past, present or future use or misuse of any opioid by a Releasing Party), (ii) the Estates or (iii) the Chapter 11 Cases. The Debtors, the Plan Administration Trust, the Master Disbursement Trust, the Creditor Trusts, NewCo, TopCo and any other newly-formed Persons that shall be continuing the Debtors' businesses after the Effective Date shall be bound, to the same extent the Debtors are bound, by the Releases set forth in this subparagraph and Section 10.6(a) of the Plan.

(b) Notwithstanding anything herein or in the Plan to the contrary, (x) nothing in this Order or the Plan shall release any Excluded Claim and (y) nothing in this Order or Section 10.6(a) of the Plan shall (A) release any contractual Estate Cause of Action or any Estate Cause of Action that is commercial in nature and, in each case, unrelated to either the Chapter 11 Cases or the subject matter of the Pending Opioid Actions; *provided* that, with respect to the Settling Co-Defendants, only Estate Surviving Pre-Effective Date Claims shall be retained

and not released, (B) release any Estate Cause of Action against a Holder of a Claim against a Debtor, to the extent such Estate Cause of Action is necessary for the administration and resolution of such Claim solely in accordance with the Plan, *provided, however*, that the foregoing shall not apply to any Holder of a Co-Defendant Claim solely with respect to such Co-Defendant Claim, (C) be construed to impair in any way the Effective Date or post-Effective Date rights and obligations of any Person under the Plan, the Plan Documents, this Order or the Restructuring Transactions, including the Shareholder Settlement Agreement, or (D) release any Claim or right to disgorge, recoup or recover compensation under the orders authorizing the Key Employee Plans or the orders with respect to the *Motion of Debtors for Entry of an Order Authorizing (I) Debtors to (A) Pay Pre-Petition Wages, Salaries, Employee Benefits and Other Compensation and (B) Maintain Employee Benefits Programs and Pay Related Administrative Obligations, (II) Employees and Retirees to Proceed with Outstanding Workers' Compensation Claims and (III) Financial Institutions to Honor and Process Related Checks and Transfers* [D.I. 6].

26. Releases by Releasing Parties.

(a) As set forth in Section 10.6(b) of the Plan, as of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, including, without limitation, the service of the Released Parties before and during the Chapter 11 Cases to facilitate the reorganization of the Debtors and the implementation of the Restructuring Transactions, and except as otherwise explicitly provided in the Plan or in this Order, the Released Parties shall be conclusively, absolutely, unconditionally, irrevocably, fully, finally, forever and



permanently released by the Releasing Parties from any and all Causes of Action, including any derivative claims asserted or assertible by or on behalf of the Debtors or their Estates and including any claims that any Releasing Party, or that any other Person or party claiming under or through any Releasing Party, would have presently or in the future been legally entitled to assert in its own right (whether individually or collectively) or on behalf of any Releasing Party or any other Person, notwithstanding section 1542 of the California Civil Code or any law of any jurisdiction that is similar, comparable or equivalent thereto (which shall conclusively be deemed waived), whether existing or hereinafter arising, in each case, (x) based on or relating to, or in any manner arising from, in whole or in part, (i) the Debtors, as such Entities existed prior to or after the Petition Date (including the Debtors' Opioid-Related Activities, manufacture, marketing and sale of Products, interaction with regulators concerning Opioid-Related Activities or Products, and involvement in the subject matter of the Pending Opioid Actions, and the past, present or future use or misuse of any opioid by a Releasing Party), (ii) the Estates or (iii) the Chapter 11 Cases and (y) as to which any conduct, omission or liability of any Debtor or any Estate is the legal cause or is otherwise a legally relevant factor.

(b) For the avoidance of doubt and without limitation of the foregoing, each Person that is a Governmental Unit or a Tribe shall be deemed to have released all Released Claims that have been, are or could have been brought by (1) such Governmental Unit or Tribe in its own right, in its *parens patriae* or sovereign enforcement capacity, or on behalf of or in the name of another Person or (2) any other governmental official, employee, agent or representative acting or purporting to act in a

*parens patriae*, sovereign enforcement or quasi-sovereign enforcement capacity, or any other capacity on behalf of such Governmental Unit or Tribe.

(c) Notwithstanding anything herein or in the Plan to the contrary, (x) nothing in this Order or the Plan shall release any Excluded Claim; (y) Co-Defendants shall not be Released Parties for purposes of this subparagraph or Section 10.6(b) of the Plan; and (z) nothing in this Order or Section 10.6(b) of the Plan shall (A) release any Non-Opioid Excluded Claims, (B) release any Estate Cause of Action against a Holder of a Claim against a Debtor, to the extent such Estate Cause of Action is necessary for the administration and resolution of such Claim solely in accordance with the Plan, provided, however, that the foregoing shall not apply to any Holder of a Co-Defendant Claim solely with respect to such Co-Defendant Claim, or (C) be construed to impair in any way the Effective Date or post-Effective Date rights and obligations of any Person under the Plan, the Plan Documents, this Order or the Restructuring Transactions, including the Shareholder Settlement Agreement.

(d) Notwithstanding anything herein or in the Plan to the contrary, but subject to the MDT Insurer Injunction and the Settling MDT Insurer Injunction, the Debtors shall not be released from liability for any Claim (other than any Co-Defendant Claim) that is or may be covered by any Purdue Insurance Policy; *provided* that recovery for any such Claim, including by way of settlement or judgment, shall be limited to the available proceeds of such Purdue Insurance Policy (and any extra-contractual liability of the Insurance Companies with respect to the Purdue Insurance Policies), and no Person or party shall execute, garnish or otherwise attempt to collect any such recovery from any assets other than the

available proceeds of the Purdue Insurance Policies. The Debtors shall be released automatically from a Claim described in this paragraph upon the earlier of (x) the abandonment of such Claim and (y) such a release being given as part of a settlement or resolution of such Claim, and shall be released automatically from all Claims described in this paragraph upon the exhaustion of the available proceeds of the Purdue Insurance Policies (notwithstanding the nonoccurrence of either event described in the foregoing clauses (x) and (y)).

27. Releases by Debtors of Holders of Claims.

(a) As set forth in Section 10.6(c) of the Plan, as of the Effective Date, all Holders of Channeled Claims (excluding, in all respects, any Excluded Party, Shareholder Release Snapback Party or MDT Insurer) are hereby released by the Debtors and their Estates from any and all Causes of Action for any Claim in connection with, or arising out of, (i) the administration of the Chapter 11 Cases; the negotiation and pursuit of the Restructuring Transactions, the Plan, the Master Disbursement Trust, the Creditor Trusts (including the trust distribution procedures and the other Creditor Trust Documents) and the solicitation of votes with respect to, and confirmation of, the Plan; the funding of the Plan; the occurrence of the Effective Date; the administration of the Plan and the property to be distributed under the Plan; and the wind-up and dissolution of the Liquidating Debtors and the transactions in furtherance of any of the foregoing or (ii) such Holder's participation in the Pending Opioid Actions. The Debtors, the Plan Administration Trust, the Master Disbursement Trust, the Creditor Trusts, NewCo, TopCo and any other newly-formed Persons that shall be continuing the Debtors' businesses after the Effective Date shall be bound, to the same extent

the Debtors are bound, by the Releases set forth in this paragraph and Section 10.6(c) of the Plan.

(b) As of the Effective Date, all Holders of PI Channeled Claims and Holders of NAS Monitoring Channeled Claims (excluding, in all respects, any Excluded Party, Shareholder Release Snapback Party or MDT Insurer) are hereby released by the Debtors and their Estates from any and all Causes of Action for any Claim in connection with, or arising out of, (i) the Debtors, as such Entities existed prior to or after the Petition Date (including the Debtors' Opioid-Related Activities, manufacture, marketing and sale of Products, interaction with regulators concerning Opioid-Related Activities or Products, and involvement in the subject matter of the Pending Opioid Actions, and the past, present or future use or misuse of any opioid by a Releasing Party), (ii) the Estates or (iii) the Chapter 11 Cases, including, in each case, without limitation, any act, conduct, omission, event, transaction, occurrence, injury, damage, or continuing condition in any way relating to the foregoing.

(c) Notwithstanding anything herein or in the Plan to the contrary, (x) nothing in this Order or the Plan shall release any Excluded Claim and (y) nothing in this Order or Section 10.6(c) of the Plan shall (A) release any contractual Estate Cause of Action or any Estate Cause of Action that is commercial in nature and, in each case, unrelated to either the Chapter 11 Cases or the subject matter of the Pending Opioid Actions, provided that, with respect to the Settling Co-Defendants, only Estate Surviving Pre-Effective Date Claims shall be retained and not released, (B) release any Estate Cause of Action against a Holder of a Claim against a Debtor, to the extent such Estate Cause of Action is necessary for the administration and resolution of such Claim solely in ac-

cordance with the Plan, *provided, however*, that the foregoing shall not apply to any Holder of a Co-Defendant Claim solely with respect to such Co-Defendant Claim, (C) release any claim or right arising in the ordinary course of the Debtors' or NewCo's business, including, without limitation, any such claim with respect to taxes or (D) be construed to impair in any way the Effective Date or post-Effective Date rights and obligations of any Person under the Plan, the Plan Documents, this Order or the Restructuring Transactions, including the Shareholder Settlement Agreement.

28. Shareholder Releases by Debtors.

(a) As set forth in Section 10.7(a) of the Plan, as of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, and except as otherwise explicitly provided in the Plan or in this Order, the Shareholder Released Parties shall be conclusively, absolutely, unconditionally, irrevocably, fully, finally, forever and permanently released, subject to clause (z) of the last paragraph of Section 10.7(a) of the Plan, by the Debtors and their Estates from any and all Causes of Action, including any derivative claims asserted or assertible by or on behalf of any Debtor or any of their Estates and including any claims that any Debtor or any of their Estates, or that any other Person or party claiming under or through any Debtor or any of their Estates, would have presently or in the future been legally entitled to assert in its own right (whether individually or collectively) or on behalf of any Debtor or any of their Estates or any other Person, notwithstanding section 1542 of the California Civil Code or any law of any jurisdiction that is similar, comparable or equivalent thereto (which shall conclusively be deemed waived), whether existing or hereinafter arising, in each case, based on or re-

lating to, or in any manner arising from, in whole or in part, (i) the Debtors, as such Entities existed prior to or after the Petition Date (including the Debtors' Opioid-Related Activities, manufacture, marketing and sale of Products, interaction with regulators concerning Opioid-Related Activities or Products, and involvement in the subject matter of the Pending Opioid Actions, and the past, present or future use or misuse of any opioid by a Releasing Party), (ii) the Estates or (iii) the Chapter 11 Cases. The Debtors, the Plan Administration Trust, the Master Disbursement Trust, the Creditor Trusts, NewCo, TopCo and any other newly-formed Persons that shall be continuing the Debtors' businesses after the Effective Date shall be bound, to the same extent the Debtors are bound, by the Shareholder Releases set forth in Section 10.7(a) of the Plan.

(b) Notwithstanding anything herein or in the Plan to the contrary, (x) nothing in this Order or the Plan shall release any Excluded Claim; (y) nothing in this Order or Section 10.7(a) of the Plan shall be construed to impair in any way the Effective Date or post-Effective Date rights and obligations of any Person under the Plan, the Plan Documents, this Order or the Restructuring Transactions, including the Shareholder Settlement Agreement and the Separation Agreements; and (z) upon the filing of a Notice of Shareholder Release Snapback, (A) the Shareholder Releases set forth in paragraph 28(a) of this Order and Section 10.7(a) of the Plan shall be entirely null and void, revoked and invalidated, as of the Effective Date, with respect to all members of the Breaching Shareholder Family Group and the Designated Shareholder Released Parties, (B) the *status quo ante* shall be restored in all respects for the Debtors and the Master Disbursement Trust with respect to the members

of the Breaching Shareholder Family Group and the Designated Shareholder Released Parties, and (C) the Master Disbursement Trust shall be deemed to have received and accepted all of the rights with respect to any member of the Breaching Shareholder Family Group and the Designated Shareholder Released Parties, in each case, that the Debtors and their Estates had prior to the Effective Date and that the Master Disbursement Trust would have pursuant to the transfer of the MDT Shareholder Rights to the Master Disbursement Trust if the Shareholder Releases of paragraph 28(a) of this Order and Section 10.7(a) of the Plan had never been granted, which rights the Debtors and their Estates shall be deemed to have irrevocably transferred, granted and assigned to the Master Disbursement Trust; *provided* that, for the avoidance of doubt, notwithstanding the nullification, voiding, revocation and invalidation pursuant to the foregoing clause (A), the Shareholder Releases shall continue in effect for, and shall be fully enforceable by and for the benefit of, all other Shareholder Released Parties other than the Breaching Shareholder Family Group and the Designated Shareholder Released Parties.

29. Shareholder Releases by Releasing Parties.

(a) As set forth in Section 10.7(b) of the Plan, as of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, and except as otherwise explicitly provided in the Plan or in this Order, the Shareholder Released Parties, other than any Shareholder Released Parties identified in clause (vii)(C) of the definition of Shareholder Released Parties (and in no other clause of such definition), shall be conclusively, absolutely, unconditionally, irrevocably, fully, finally, forever and permanently released, subject to clause (z) of the last paragraph of Section 10.7(b) of the

Plan, by the Releasing Parties from any and all Causes of Action, including any derivative claims asserted or assertible by or on behalf of the Debtors or their Estates and including any claims that any Releasing Party, or that any other Person or party claiming under or through any Releasing Party, would have presently or in the future been legally entitled to assert in its own right (whether individually or collectively) or on behalf of any Releasing Party or any other Person, notwithstanding section 1542 of the California Civil Code or any law of any jurisdiction that is similar, comparable or equivalent thereto (which shall conclusively be deemed waived), whether existing or hereinafter arising, in each case, based on or relating to, or in any manner arising from, in whole or in part, (i) the Debtors, as such Entities existed prior to or after the Petition Date (including the Debtors' Opioid-Related Activities, manufacture, marketing and sale of Products, interaction with regulators concerning Opioid-Related Activities or Products, and involvement in the subject matter of the Pending Opioid Actions, and the past, present or future use or misuse of any opioid by a Releasing Party), (ii) the Estates or (iii) the Chapter 11 Cases. In addition, as of the Effective Date, notwithstanding anything to the contrary herein, each Shareholder Released Party shall be released by any Person (regardless of whether such Person otherwise is a Releasing Party) that is a Shareholder Released Party's current or former officer, director, principal, member, employee, financial advisor, attorney (including, without limitation, any attorney retained by any director, in his or her capacity as such), accountant, investment banker (including, without limitation, investment banker retained by any director, in his or her capacity as such), consultant, expert or other professional, from any Cause of Ac-



tion for indemnification, contribution or any similar liability-sharing theory based on or relating to, or in any manner arising from, in whole or in part, the subject matter of the preceding paragraph.

(b) For the avoidance of doubt and without limitation of the foregoing, each Person that is a Governmental Unit or a Tribe shall be deemed to have released all Shareholder Released Claims that have been, are or could have been brought by (1) such Governmental Unit or Tribe in its own right, in its *parens patriae* or sovereign enforcement capacity, or on behalf of or in the name of another Person or (2) any other governmental official, employee, agent or representative acting or purporting to act in a *parens patriae*, sovereign enforcement or quasi-sovereign enforcement capacity, or any other capacity on behalf of such Governmental Unit or Tribe.

(c) Notwithstanding anything herein or in the Plan to the contrary, (x) nothing in this Order or the Plan shall release any Excluded Claim; (y) nothing in this Order or Section 10.7(b) of the Plan shall (A) release any Non-Opioid Excluded Claims or (B) be construed to impair in any way the Effective Date or post-Effective Date rights and obligations of any Person under the Plan, the Plan Documents, this Order or the Restructuring Transactions, including the Shareholder Settlement Agreement and the Separation Agreements; and (z) upon the filing of a Notice of Shareholder Release Snapback, (A) the Shareholder Releases set forth in this Order and Section 10.7(b) of the Plan shall be entirely null and void, revoked and invalidated, as of the Effective Date, with respect to all members of the Breaching Shareholder Family Group and the Designated Shareholder Released Parties and (B) the *status quo ante* shall be restored in all respects for the Releasing Parties with respect to the

members of the Breaching Shareholder Family Group and the Designated Shareholder Released Parties; *provided* that, for the avoidance of doubt, notwithstanding the nullification, voiding, revocation and invalidation pursuant to the foregoing clause (A), the Shareholder Releases shall continue in effect for, and shall be fully enforceable by and for the benefit of, all other Shareholder Released Parties other than the Breaching Shareholder Family Group and the Designated Shareholder Released Parties.

30. Releases by Shareholder Released Parties.

(a) As set forth in Section 10.7(c) of the Plan, as of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, and except as otherwise explicitly provided in the Plan or in this Order, the Reciprocal Releasees shall be conclusively, absolutely, unconditionally, irrevocably, fully, finally, forever and permanently released, subject to clause (z) of the last paragraph of Section 10.7(c) of the Plan, by the Shareholder Released Parties from any and all Causes of Action, including any derivative claims asserted or assertible by or on behalf of the Debtors or their Estates and including any claims that any Shareholder Released Party, or that any other Person or party claiming under or through any Shareholder Released Party, would have presently or in the future been legally entitled to assert in its own right (whether individually or collectively) or on behalf of any Shareholder Released Party or any other Person, notwithstanding section 1542 of the California Civil Code or any law of any jurisdiction that is similar, comparable or equivalent thereto (which shall conclusively be deemed waived), whether existing or hereinafter arising, in each case, based on or relating to, or in any manner arising from, in whole or in part, (i) the Debtors,

as such Entities existed prior to or after the Petition Date (including the Debtors' Opioid-Related Activities, manufacture, marketing and sale of Products, interaction with regulators concerning Opioid-Related Activities or Products, and involvement in the subject matter of the Pending Opioid Actions, and the past, present or future use or misuse of any opioid by a Releasing Party), (ii) the Estates or (iii) the Chapter 11 Cases.

(b) Notwithstanding anything herein or in the Plan to the contrary, (x) nothing in this Order or the Plan shall release any Excluded Claim; (y) nothing in this Order or Section 10.7(c) of the Plan shall be construed to impair in any way the Effective Date or post-Effective Date rights and obligations of any Person under the Plan, the Plan Documents, this Order or the Restructuring Transactions, including the Shareholder Settlement Agreement and the Separation Agreements, and including the rights of any Shareholder Released Party that is a current or former director, officer or employee of the Debtors but is not a Sackler Family Member relating to plan treatment of any Claims held by such party; and (z) upon the filing of a Notice of Shareholder Release Snapback and the commencement or continuation of any action or proceeding against a member of a Breaching Shareholder Family Group or a Designated Shareholder Released Party by any Reciprocal Releasee, (A) the releases set forth in this Order and Section 10.7(c) of the Plan of any Reciprocal Releasee that has commenced or continued any such action shall be entirely null and void, revoked and invalidated, as of the Effective Date, with respect to the members of the Breaching Shareholder Family Group and the Designated Shareholder Released Parties and (B) the *status quo ante* shall be restored in all respects for the members of the Breaching Shareholder

Family Group and the Designated Shareholder Released Parties with respect to any Reciprocal Releasee that has commenced or continued any such litigation; *provided* that, for the avoidance of doubt, notwithstanding the nullification, voiding, revocation and invalidation pursuant to the foregoing clause (A), the releases set forth in paragraph 30(a) of this Order and Section 10.7(c) of the Plan shall continue in effect for, and shall be fully enforceable by and for the benefit of, all other Reciprocal Releasees, and shall be binding on, and enforceable against, all other Shareholder Released Parties, including any members of the Breaching Shareholder Family Group with respect to any Reciprocal Releasee that has not commenced any such litigation.

31. Channeling Injunction.

(a) As of the Effective Date, in order to preserve and promote the settlements contemplated by and provided for in the Plan and to supplement, where necessary, the injunctive effect of the Plan Injunction, the Releases and the Shareholder Releases described in Sections 10.5, 10.6, and 10.7 of the Plan, and pursuant to the exercise of the equitable jurisdiction and power of the Bankruptcy Court under section 105(a) of the Bankruptcy Code, all Persons that have held or asserted, that hold or assert or that may in the future hold or assert any Channeled Claim shall be permanently and forever stayed, restrained and enjoined from taking any action for the purpose of directly or indirectly collecting, recovering or receiving payments, satisfaction, recovery or judgment of any form from or against any Protected Party with respect to any Channeled Claim, including:

- (i) commencing, conducting or continuing, in any manner, whether directly or

indirectly, any suit, action or other proceeding, in each case, of any kind, character or nature, in any forum in any jurisdiction with respect to any Channeled Claims, against or affecting any Protected Party, or any property or interests in property of any Protected Party with respect to any Channeled Claims;

- (ii) enforcing, levying, attaching, collecting or otherwise recovering, by any means or in any manner, either directly or indirectly, any judgment, award, decree or other order against any Protected Party or against the property of any Protected Party with respect to any Channeled Claims;
- (iii) creating, perfecting or enforcing, by any means or in any manner, whether directly or indirectly, any Lien of any kind against any Protected Party or the property of any Protected Party with respect to any Channeled Claims;
- (iv) asserting or accomplishing any setoff, right of subrogation, indemnity, contribution or recoupment of any kind, whether directly or indirectly, in respect of any obligation due to any Protected Party or against the property of any Protected Party with respect to any Channeled Claims; and
- (v) taking any act, by any means or in any manner, in any place whatsoever, that

does not conform to, or comply with, the provisions of the Plan Documents, with respect to any Channeled Claims.

(b) Notwithstanding anything to the contrary in Section 10.8 of the Plan or this Order, this Channeling Injunction shall not stay, restrain, bar or enjoin:

- (i) the rights of Holders of Channeled Claims to the treatment afforded them under the Plan and the Plan Documents, including the rights of Holders of Channeled Claims to assert such Channeled Claims solely in accordance with Section 6.21 of the Plan, the Master TDP and the Creditor Trust TDPs, in each case whether or not there are funds to make Distributions in respect of such Channeled Claims and whether or not such rights entitle such Holders to Abatement Distributions or any other form of Distributions;
- (ii) the rights of Persons to assert any claim, debt, litigation or liability for payment of Creditor Trust Operating Expenses solely against the applicable Creditor Trust;
- (iii) the rights of Persons to assert any claim, debt or litigation against any Excluded Party;
- (iv) the rights of the Master Disbursement Trust to pursue and enforce the MDT Shareholder Rights, the MDT Insur-

**ance Rights and the MDT Causes of Action;**

- (v) the rights of the parties to the LRP Agreement to enforce the terms thereof in accordance with the Plan;**
- (vi) the Creditor Trusts from enforcing their respective rights against the Master Disbursement Trust under the Plan and the MDT Documents;**
- (vii) the Master Disbursement Trust from enforcing its rights, on behalf of itself and the Private Creditor Trusts, against NewCo and TopCo under the Plan and the NewCo Credit Support Agreement; or**
- (viii) NOAT or the Tribe Trust from enforcing their respective rights against TopCo under the TopCo Operating Agreement.**

(c) Upon the filing of a Notice of Shareholder Release Snapback, the Channeling Injunction shall terminate, be rescinded and have no application, without further order of the Bankruptcy Court, to any suit, action or other proceeding, in each case, of any kind, character or nature, brought against any member of the Breaching Shareholder Family Group or any Designated Shareholder Released Party; *provided, however*, that the extension of time provided by paragraph 32(a) of this Order and Section 10.9(a) of the Plan shall continue in effect in accordance with its terms; and *provided further* that, for the avoidance of doubt, notwithstanding the termination and rescission pursuant to this

paragraph and Section 10.8(c) of the Plan, the Channeling Injunction shall continue in effect for, and shall be fully enforceable by and for the benefit of, all other Protected Parties, including all other Shareholder Released Parties, other than the Breaching Shareholder Family Group and the Designated Shareholder Released Parties.

(d) Except as expressly set forth in paragraph 31(c) above and paragraph (c) of Section 10.8 of the Plan, there can be no modification, dissolution or termination of the Channeling Injunction, which shall be a permanent injunction.

(e) Except as expressly set forth in paragraphs (b) and (c) of this Order and paragraphs (b) and (c) of Section 10.8 of the Plan, nothing in the Plan, the MDT Documents or the Creditor Trust Documents shall be construed in any way to limit the scope, enforceability or effectiveness of the Channeling Injunction issued in connection with the Plan.

(f) The Debtors' compliance with the requirements of Bankruptcy Rule 3016 shall not constitute an admission that the Plan provides for an injunction against conduct not otherwise enjoined under the Bankruptcy Code.

32. Tolling of Shareholder Released Claims; Violations of Shareholder Releases and Channeling Injunction.

(a) *Tolling of Shareholder Released Claims.* If applicable law, an order in any proceeding or an agreement fixes a period for commencing or continuing an action or proceeding based on a Shareholder Released Claim and such Shareholder Released Claim is released



pursuant to the Shareholder Releases or such action or proceeding is enjoined by the Channeling Injunction, then such period does not expire with respect to such Shareholder Released Claim with respect to the Master Disbursement Trust (or the MDT Trustees) or the Releasing Parties until the latest of (i) the end of such period; (ii) with respect to the applicable Shareholder Family Group and any Designated Shareholder Released Party, two hundred twenty-five (225) days after the filing of a Notice of Shareholder Release Snapback with respect to such Shareholder Family Group; (iii) with respect to the applicable Shareholder Family Group and any Designated Shareholder Released Party, when such Shareholder Family Group fulfills its payment obligations under the Shareholder Settlement Agreement; and (iv) with respect to the applicable Shareholder Released Party that is a Subsidiary (as defined in the Shareholder Settlement Agreement) of a Shareholder Payment Party, two hundred twenty-five (225) days after the reinstatement of any Estate Cause of Action against such Shareholder Released Party pursuant to Section 10.20 of the Plan.

(b) *Violations of Shareholder Releases and Channeling Injunction.* In the event that any Person takes any action that a Shareholder Released Party believes violates the Shareholder Releases or Channeling Injunction as it applies to any Shareholder Released Party, such Shareholder Released Party shall be entitled to make an emergency application to the Bankruptcy Court for relief, and may proceed by contested matter rather than by adversary proceeding. The Bankruptcy Court shall have jurisdiction and authority to enter final orders in connection with any dispute over whether an action violates the Shareholder Releases or

Channeling Injunction. Upon determining that a violation of the Shareholder Releases or Channeling Injunction has occurred, the Bankruptcy Court, in its discretion, may award any appropriate relief against such violating Person, including, but not limited to, (i) disgorgement from the violating Person of any funds, assets or other value received, directly or indirectly, pursuant to the Plan or Plan Documents (including fees and expenses paid pursuant to the Plan or Plan Documents on account of legal or other advisory services rendered to or for the benefit of the violating Person); (ii) the termination of any rights of the violating Person to receive any funds, assets or other value pursuant to the Plan or Plan Documents; (iii) the reduction of any payments owed by any Shareholder Released Parties under the Shareholder Settlement Agreement to the violating Person in an amount equal to the amount of disgorgement ordered from, or the reduction of future payments ordered to be made to, or on account of, the violating Person (subject to the right of the violating Person to request that any amounts actually disgorged from such violating Person offset any reduction of future payments ordered to be made to, or on account of, such violating Person); (iv) an admonition, reprimand or censure of, or citation of contempt by, the violating Person and its counsel; (v) a fine or penalty paid into the Bankruptcy Court; (vi) a bond or other security in an amount equal to any financial obligation ordered by the Bankruptcy Court in respect of the violation; (vii) an appropriate sanction on any attorney or law firm responsible for the violation; (viii) injunctive relief to prevent future violations by the Person or its counsel; and (ix) attorney and other professional fees incurred by any Shareholder Released Party arising from the violation. The

provision of any one form of relief shall not preclude the provision of any other form of relief.

33. Special Provisions for United States.

(a) As set forth in Section 10.21 of the Plan, as to the United States, notwithstanding anything contained in the Plan or this Order to the contrary (except Section 5.2(h) of the Plan and in respect of the United States-PI Claimant Medical Expense Claim Settlement), including but not limited to Article X of the Plan, nothing in the Plan or this Order (except Section 5.2(h) of the Plan and in respect of the United States-PI Claimant Medical Expense Claim Settlement) shall:

- (i) limit or expand the scope of discharge, release or injunction permitted to debtors under the Bankruptcy Code. The discharge, release, and injunction provisions contained in the Plan and this Order are not intended and shall not be construed to bar the United States from, subsequent to this Order, pursuing any police or regulatory action, or any criminal action;
- (ii) discharge, release, exculpate, impair or otherwise preclude: (A) any liability to the United States that is not a “claim” within the meaning of section 101(5) of the Bankruptcy Code; (B) any Claim of the United States arising on or after the Effective Date; (C) any liability of the Debtors under police or regulatory statutes or regulations to the United States as the owner, lessor, lessee or operator of property that

such Entity owns, operates or leases after the Effective Date; or (D) any liability to the United States, including but not limited to any liabilities arising under the IRC, the environmental laws, the criminal laws, the civil laws or common law, of any Person, including any Released Parties, Shareholder Released Parties or any Exculpated Parties, in each case, other than the Debtors; *provided, however*, that the foregoing shall not (x) limit the scope of discharge granted to the Debtors under sections 524 and 1141 of the Bankruptcy Code, (y) diminish the scope of any exculpation to which any Person is entitled under section 1125(e) of the Bankruptcy Code or (z) change the treatment of the DOJ Forfeiture Judgment Claim pursuant to Section 2.3 of the Plan or the treatment of the Federal Government Unsecured Claims pursuant to Section 4.3 of the Plan;

- (iii) enjoin or otherwise bar the United States from asserting or enforcing, outside the Bankruptcy Court, any liability described in the preceding clause (ii); *provided, however*, that the non-bankruptcy rights and defenses of all Persons with respect to (A)-(D) in clause (ii) are likewise fully preserved;
- (iv) affect any valid right of setoff or recoupment of the United States against

any of the Debtors; *provided, however*, that the rights and defenses of the Debtors with respect thereto are fully preserved (other than any rights or defenses based on language in the Plan or this Order that may extinguish set-off or recoupment rights);

- (v) divest any court, commission or tribunal of jurisdiction to determine whether any liabilities asserted by the United States are discharged or otherwise barred by this Order, the Plan or the Bankruptcy Code; *provided, however*, that the Bankruptcy Court shall retain jurisdiction as set forth in and pursuant to the terms of the Plan to the extent permitted by law; or
- (vi) be deemed to (A) determine the tax liability of any Person, including but not limited to the Debtors, (B) have determined the federal tax treatment of any item, distribution or Entity, including the federal tax consequences of the Plan or this Order, or (C) expressly expand or diminish the jurisdiction of the Bankruptcy Court to make determinations as to federal tax liability and federal tax treatment under the Bankruptcy Code and 28 U.S.C. §§ 157, 1334.

For the avoidance of doubt, the Channeling Injunction set forth in paragraph 31 of this Order or Section 10.8 of the Plan does not apply to the rights and causes of

action protected by this paragraph or Section 10.21 of the Plan.

(b) Notwithstanding anything to the contrary herein, nothing in the Plan, this Order, the Shareholder Settlement Agreement or any other document filed in connection with the Plan shall release claims held by the United States of America against the Shareholder Released Parties; *provided* that, for the avoidance of doubt, nothing in the Plan, this Order, the Shareholder Settlement Agreement or any other document filed in connection with the Plan shall limit the releases contained in the Settlement Agreement between the United States of America and Purdue Pharma L.P., executed on October 21, 2020, or the Settlement Agreement between the United States of America and Dr. Richard Sackler, David Sackler, Mortimer D.A. Sackler, Kathe Sackler, and the Estate of Jonathan Sackler, executed on October 21, 2020.

(c) Several of the Debtors are parties to the various following agreements with the Secretary of the Department of Health and Human Services under which the Debtors owe rebates to third parties:

- (i) The Medicare Coverage Gap Discount Program Agreement is established under 42 U.S.C. §§ 1395w-114A, 1395w-153 and is required should manufacturers wish to have coverage for their products under Medicare Part D. Under the Medicare Coverage Gap Discount Program Agreement, manufacturers agree to reimburse Medicare Part D plan sponsors for certain Coverage Gap discounts the plans provide

to Medicare beneficiaries in the Part D coverage gap. The Centers for Medicare & Medicaid Services requires that a new entity that seeks to assume a Medicare Coverage Gap Discount Program Agreement enter into a novation agreement with the Centers for Medicare & Medicaid Services with respect to the transfer of such agreement. The Debtors that have entered into Medicare Coverage Gap Discount Program Agreements with the Secretary are: Purdue Pharma L.P. (P1180) and Rhodes Pharmaceuticals L.P. (P1281);

- (ii) The Medicaid Drug Rebate Program, established under section 1927 of the Social Security Act, requires manufacturers to enter into National Drug Rebate Agreements with the Secretary for the coverage and payment of a manufacturer's covered outpatient drugs. Under the Medicaid Drug Rebate Program, if a manufacturer has entered into and has in effect a National Drug Rebate Agreement, Medicaid covers and pays for all of the drugs of that manufacturer dispensed and paid for under the state plan, and in return manufacturers pay applicable rebates to the states. The Debtors that have National Drug Rebate Agreements and the labeler codes associated with the National Drug Rebate Agreements are as follows:

Rhodes Pharmaceuticals L.P. (42858), Purdue Pharma L.P. (59011), Avrio Health L.P. (67618) and Adlon Therapeutics L.P. (72912);

- (iii) Manufacturers with National Drug Rebate Agreements must also comply with the Drug Pricing Program under section 340B of the Public Health Service Act, 42 U.S.C. § 256b, and have Pharmaceutical Pricing Agreements with the Secretary of the Department of Health and Human Services. Under the Pharmaceutical Pricing Agreements, manufacturers agree to charge a price for covered outpatient drugs that will not exceed the average manufacturer price decreased by a rebate percentage. The Debtors that have Pharmaceutical Pricing Agreements and the labeler codes associated with such agreements are as follows: Rhodes Pharmaceuticals L.P. (42858), Purdue Pharma L.P. (59011), Avrio Health L.P. (67618) and Adlon Therapeutics L.P. (72912); and
- (iv) The Medicare Coverage Gap Discount Program Agreements, the Medicaid National Drug Rebate Agreements and the Pharmaceutical Pricing Agreements identified above provide that, in the event of a transfer of ownership, such agreements are automatically assigned to the new owner and all terms and conditions of such agree-



ments remain in effect as to the new owner. Accordingly, notwithstanding anything contained in the Plan or this Order which may be to the contrary, the Debtors shall assume such agreements pursuant to section 365 of the Bankruptcy Code, and upon the Effective Date, the Medicare Coverage Gap Discount Program Agreements, the Medicaid National Drug Rebate Agreements and the Pharmaceutical Pricing Agreements identified above shall be assigned to NewCo. NewCo, as the new owner, will assume the obligations of the Debtors who are parties under such agreements from and after the Effective Date, and to fully perform all the duties and responsibilities that exist under such agreements in accordance with their terms, including the payment of discounts owed to Part D Plan sponsors or payment of rebates owed to states and wholesalers for quarters prior to the Effective Date. For the avoidance of doubt, NewCo shall be liable for any outstanding rebates or discounts owed to third parties (and any applicable interest thereon) arising prior to the Effective Date, as well as any penalties associated with noncompliance by the Debtors with the Medicare Coverage Gap Discount Program Agreements, the Medicaid National Drug Rebate

Agreements and the Pharmaceutical Pricing Agreements identified above prior to the Effective Date.

(d) Notwithstanding anything to the contrary herein, nothing in the Plan, this Order, the Shareholder Settlement Agreement or any other document filed in connection with the Plan shall bind the United States in any application of statutory, or associated regulatory, authority grounded in Title 19 of the Social Security Act, 42 U.S.C. § 1396-1 et seq. (the “**Medicaid Program**”) or in section 1115 of Title 11 of the Social Security Act. The United States is neither enjoined nor in any way prejudiced in seeking recovery of any funds owed to the United States under the Medicaid Program.

34. MDT Insurer Injunction.

(a) **In accordance with section 105(a) of the Bankruptcy Code, upon the occurrence of the Effective Date, all Persons that have held or asserted, that hold or assert or that may in the future hold or assert any Claim based on, arising under or attributable to an MDT Insurance Policy shall be, and hereby are, permanently stayed, restrained and enjoined from taking any action for the purpose of directly or indirectly collecting, recovering or receiving payment or recovery on account of any such Claim based on, arising under or attributable to an MDT Insurance Policy from or against any MDT Insurer, including:**

- (i) **commencing, conducting or continuing, in any manner any action or other proceeding of any kind (including an arbitration or other form of alternate dispute resolution) against any MDT Insurer, or against the property of any**

**MDT Insurer, on account of any Claim based on, arising under or attributable to an MDT Insurance Policy;**

- (ii) enforcing, attaching, levying, collecting or otherwise recovering, by any manner or means, any judgment, award, decree or other order against any MDT Insurer, or against the property of any MDT Insurer, on account of any Claim based on, arising under or attributable to an MDT Insurance Policy;**
- (iii) creating, perfecting or enforcing in any manner any Lien of any kind against any MDT Insurer, or against the property of any MDT Insurer, on account of any Claim based on, arising under or attributable to an MDT Insurance Policy;**
- (iv) asserting or accomplishing any setoff, right of subrogation, indemnity, contribution or recoupment of any kind, whether directly or indirectly, against any obligation due to any MDT Insurer, or against the property of any MDT Insurer, on account of any Claim based on, arising under or attributable to an MDT Insurance Policy; and**
- (v) taking any act, in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the Plan applicable to any Claim based on, arising under or attributable to an MDT Insurance Policy.**

(b) The provisions of this MDT Insurer Injunction shall not preclude the Master Disbursement Trust from pursuing any Claim based on, arising under or attributable to an MDT Insurance Policy, or any other claim that may exist under any MDT Insurance Policy against any MDT Insurer, or enjoin the rights of the Master Disbursement Trust to prosecute any action based on or arising from the MDT Insurance Policies or the rights of the Master Disbursement Trust to assert any claim, debt, obligation, cause of action or liability for payment against an MDT Insurer based on or arising from the MDT Insurance Policies. The provisions of this MDT Insurer Injunction are not issued for the benefit of any MDT Insurer, and no such insurer is a third-party beneficiary of this MDT Insurer Injunction. This MDT Insurer Injunction shall not enjoin, impair or affect (i) any claims between or among MDT Insurers that are not Settling MDT Insurers; (ii) the rights of current and former directors, officers, employees and authorized agents of the Debtors that are not Sackler Family Members that are preserved under the Plan; or (iii) the terms of the Shareholder Settlement Agreement with respect to the MDT Shareholder Insurance Rights. For the avoidance of doubt, with respect to a Person that purports to be insured under any MDT Insurance Policy, the MDT Insurer Injunction shall enjoin only derivative claims and rights. Nothing in this Order or the Plan shall determine whether any Claim or right under any MDT Insurance Policy is either derivative or direct, or otherwise would be disallowed or subordinated under the Bankruptcy Code, which determination shall be made, as necessary, to the extent such Claim or right is not otherwise released under the Plan, in accordance with applicable law.

(c) To the extent the MDT Trustees make a good faith determination that some or all of the MDT Insurance Proceeds are substantially unrecoverable by the Master Disbursement Trust, the Master Disbursement Trust shall have the sole and exclusive authority at any time, upon written notice to any affected MDT Insurer, to terminate, reduce or limit the scope of this MDT Insurer Injunction with respect to any MDT Insurer, *provided* that (i) any termination, reduction, or limitation of the MDT Insurer Injunction (A) shall apply in the same manner to all beneficiaries of the Creditor Trusts that are MDT Beneficiaries and (B) shall comply with any procedures set forth in the MDT Agreement and (ii) the termination, reduction or limitation of the MDT Insurer Injunction as it relates to the MDT Bermuda-Form Insurance Policies shall be subject to the consent (not to be unreasonably withheld, conditioned or delayed) of the Creditor Trustee for the PI Trust.

(d) Except as set forth in this Order and paragraphs (b) and (c) of Section 10.10 of the Plan, nothing in the Plan, the MDT Documents or the Creditor Trust Documents shall be construed in any way to limit the scope, enforceability or effectiveness of the MDT Insurer Injunction issued in connection with the Plan.

35. Settling MDT Insurer Injunction.

(a) **In accordance with section 105(a) of the Bankruptcy Code, upon the occurrence of the Effective Date, all Persons that have held or asserted, that hold or assert or that may in the future hold or assert any Claim based on, arising under or attributable to an MDT Insurance Policy shall be, and hereby are, permanently stayed, restrained and enjoined from taking any action for the**

**purpose of directly or indirectly collecting, recovering or receiving payment or recovery on account of any such Claim based on, arising under or attributable to an MDT Insurance Policy from or against any Settling MDT Insurer, solely to the extent that such Settling MDT Insurer has been released from such Claim under such MDT Insurance Policy pursuant to an MDT Insurance Settlement, including:**

- (i) commencing, conducting or continuing, in any manner any action or other proceeding of any kind (including an arbitration or other form of alternate dispute resolution) against any such Settling MDT Insurer, or against the property of such Settling MDT Insurer, on account of such Claim based on, arising under or attributable to such MDT Insurance Policy;**
- (ii) enforcing, attaching, levying, collecting or otherwise recovering, by any manner or means, any judgment, award, decree or other order against any such Settling MDT Insurer, or against the property of such Settling MDT Insurer, on account of such Claim based on, arising under or attributable to such MDT Insurance Policy;**
- (iii) creating, perfecting or enforcing in any manner any Lien of any kind against any such Settling MDT Insurer, or against the property of such Settling MDT Insurer, on account of such Claim**

**based on, arising under or attributable to such MDT Insurance Policy;**

- (iv) asserting or accomplishing any setoff, right of subrogation, indemnity, contribution or recoupment of any kind, whether directly or indirectly, against any obligation due to any such Settling MDT Insurer, or against the property of such Settling MDT Insurer, on account of such Claim based on, arising under or attributable to such MDT Insurance Policy; and**
- (v) taking any act, in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the Plan applicable to such Claim based on, arising under or attributable to such MDT Insurance Policy.**

(b) Any right, Claim or cause of action that an Insurance Company may have been entitled to assert against any Settling MDT Insurer but for the Settling MDT Insurer Injunction, if any such right, Claim or cause of action exists under applicable non-bankruptcy law, shall become a right, Claim or cause of action solely as a setoff claim against the Master Disbursement Trust and not against or in the name of the Settling MDT Insurer in question. Any such right, Claim or cause of action to which an Insurance Company may be entitled shall be solely in the form of a setoff against any recovery of the Master Disbursement Trust from that Insurance Company, and under no circumstances shall that Insurance Company receive an affirmative recovery of funds from the Master Disbursement Trust or

any Settling MDT Insurer for such right, Claim or cause of action. In determining the amount of any set-off, the Master Disbursement Trust may assert any legal or equitable rights the Settling MDT Insurer would have had with respect to any right, Claim or cause of action.

(c) There can be no modification, dissolution or termination of the Settling MDT Insurer Injunction, which shall be a permanent injunction.

(d) Except as set forth in this Order and paragraphs (b) and (c) of Section 10.11 of the Plan, nothing in the Plan, the MDT Documents or the Creditor Trust Documents shall be construed in any way to limit the scope, enforceability or effectiveness of the Settling MDT Insurer Injunction issued in connection with the Plan.

36. Exculpation. To the maximum extent permitted by applicable law, no Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated from: any Cause of Action for any Claim in connection with, or arising out of, the administration of the Chapter 11 Cases; the negotiation and pursuit of the Disclosure Statement (including any information provided, or statements made, in the Disclosure Statement or omitted therefrom), the Restructuring Transactions, the Plan, the Master Disbursement Trust (including the Master TDP and the MDT Agreement), the Creditor Trusts (including the Creditor Trust TDPs and the other Creditor Trust Documents) and the solicitation of votes for, and confirmation of, the Plan; the funding of the Plan; the occurrence of the Effective Date; the administration of the Plan and the property to be distributed under the Plan; and the wind-up and dissolution of



the Liquidating Debtors and the transactions in furtherance of any of the foregoing, in each case other than Causes of Action arising out of, or related to, any act or omission of an Exculpated Party that is a criminal act or constitutes fraud, gross negligence or willful misconduct. This exculpation shall be in addition to, and not in limitation of, all other Releases, indemnities, exculpations and any other applicable law or rules protecting such Exculpated Parties from liability. For the avoidance of doubt, this paragraph and Section 10.12 of the Plan shall not exculpate or release any Exculpated Party with respect to any act or omission of such Exculpated Party prior to the Effective Date that is later found to be a criminal act or to constitute fraud, gross negligence or willful misconduct, including findings after the Effective Date. Notwithstanding anything herein to the contrary, nothing in the Plan shall release any Causes of Action that may be asserted against any Excluded Party.

37. Injunction Related to Releases and Exculpation. To the maximum extent permitted under applicable law, this Order shall permanently enjoin the commencement or prosecution by any Person, whether directly, derivatively or otherwise, of any Causes of Action released pursuant to the Plan, including, without limitation, the Causes of Action released or exculpated in the Plan and the Claims, Interests, Liens, other encumbrances or liabilities described in Section 5.3(b), 5.4(c) or 5.6(b) of the Plan (but, for the avoidance of doubt, excluding any Excluded Claims).

38. Channeling of Future PI Channeled Claims and Injunction in Support of PI Futures Trust. As of the Effective Date, in accordance with the Plan and the Master TDP, any and all liability of the Debtors and the

other Protected Parties for any and all Future PI Channeled Claims shall automatically, and without further act, deed or court order, be channeled exclusively to and assumed by the PI Futures Trust. Each Future PI Channeled Claim shall be asserted exclusively against the PI Futures Trust and resolved solely in accordance with the terms, provisions and procedures of the PI Futures TDP. The sole recourse of any Person on account of any Future PI Channeled Claim, whether or not the Holder thereof participated in the Chapter 11 Cases and whether or not such Holder filed a Proof of Claim in the Chapter 11 Cases, shall be to the PI Futures Trust as and to the extent provided in the PI Futures TDP. Holders of Future PI Channeled Claims are enjoined from asserting against any Debtor or other Protected Party any Channeled Claim, and may not proceed in any manner against any Debtor or other Protected Party on account of any Channeled Claim in any forum whatsoever, including any state, federal or non-U.S. court or administrative or arbitral forum, and are required to pursue Future PI Channeled Claims exclusively against the PI Futures Trust, solely as and to the extent provided in the PI Futures TDP.

39. Operating Injunction and Governance Covenants. The operating injunction set forth in **Exhibit C** hereto and the governance covenants set forth in **Exhibit D** hereto shall bind NewCo and any successor owner of NewCo's opioid business to the extent set forth therein.

40. Plan Modifications. The Plan may not be modified except in accordance with Section 12.3 of the Plan. The Debtors are authorized to make modifications to the Plan as and to the extent provided under Section 12.3 of the Plan.

41. Co-Defendant Defensive Rights.<sup>9</sup> Except as provided in the MDT Insurer Injunction, the Settling MDT Insurer Injunction or clause (ii) of the penultimate sentence of Section 10.18 of the Plan, notwithstanding anything to the contrary in Article X of the Plan or in the Plan as it currently exists or as it might be further amended, this Order or any order entered in connection with the Plan (or the Plan as amended) (or any such order, as amended, modified or supplemented), or any supplement to the Plan (or the Plan as amended), nothing contained in the Plan or any of the foregoing documents or orders (including, without limitation, the classification, treatment, allowance, disallowance, release, bar, injunction, Channeling Injunction or any other provision of the Plan or the Plan as amended with respect to, impacting, affecting, modifying, limiting, subordinating, impairing, in any respect, a Co-Defendant Claim), will release, bar, enjoin, impair, alter, modify, amend, limit, prohibit, restrict, reduce, improve or enhance any Co-Defendant Defensive Rights of any Holder of a Co-Defendant Claim or Excluded Party as such rights exist or might in the future exist under applicable non-bankruptcy law. Nothing in the Plan, any of the Plan Documents or in this Order shall preclude, operate to or have the effect of, impairing any Holder of a Co-Defendant Claim or Excluded Party from asserting in any proceeding any and all Co-Defendant Defensive Rights that it has or may have under applicable law. Nothing in the Plan, any of the Plan Documents or this Order shall be deemed to waive any

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<sup>9</sup> For the avoidance of doubt, paragraph 41 hereof does not override Section 10.18 of the Plan and, in the event of any inconsistency between such paragraph and the corresponding sections of the Plan, Section 10.18 of the Plan governs.

Co-Defendant Defensive Rights, and nothing in the Chapter 11 Cases, the Plan, any of the Plan Documents or this Order may be used as evidence of any determination regarding any Co-Defendant Defensive Rights, and under no circumstances shall any Person be permitted to assert issue preclusion or claim preclusion, waiver, estoppel or consent in response to the assertion of any Co-Defendant Defensive Rights. Co-Defendant Defensive Rights (i) may be used to offset, set-off, recoup, allocate or apportion fault, liability, or damages, or seek judgment reduction or otherwise defend against any Cause of Action brought by any Person against the Holder of any Co-Defendant Claim or the Excluded Party based in whole or in part on Opioid-Related Activities and (ii) shall in no case be used to seek or obtain any affirmative monetary recovery from any Protected Party or any Asset of any Protected Party (including from any Purdue Insurance Policy or any other insurance policy of a Protected Party) on account of any Released Claim or Shareholder Released Claim. The foregoing does not constitute a release of any Co-Defendant's Class 14 Claim or any other Excluded Party's Class 11(c) Claim.

42. Evidentiary Stipulations.

(a) This Order shall incorporate, as if set forth fully herein, the terms of the so-ordered Stipulation Between and Among the Raymond Sackler Family, the Mortimer Sackler Family, the States of Connecticut, Oregon, Washington, and the District of Columbia [ECF No. 3601], the Joint Stipulation of Facts Between and Among the Mortimer-side Initial Covered Sackler Persons and the State of Washington, State of Oregon, State of Connecticut, and the District of Columbia [ECF No. 3631], the Joint Stipulation as to Facts Be-

tween and Among the Mortimer-side Initial Covered Sackler Persons and the State of Maryland [ECF No. 3642], the Stipulation by the Debtors and Certain Insurers Regarding Certain Insurers Motion in Limine to Exclude Certain Evidence Related Solely to Insurance Coverage and to Strike Insurance-Related Testimony in Debtors Declarations [ECF No. 3588], the Stipulation Regarding the Objection Filed by Gulf Underwriters Insurance Company and St. Paul Fire and Marine Insurance Company [ECF No. 3589] and the Stipulations Between Certain Distributors, Manufacturers, and Pharmacies and the Debtors Regarding Documentary Evidence Pertaining to the Confirmation Hearing [ECF 3612].

(b) The following stipulation, which was read into the record at the Confirmation Hearing and further confirmed during oral argument, is hereby approved and so-ordered as set forth herein: In the event there is litigation against a Shareholder Released Party as a result of a Notice of Shareholder Release Snapback, as defined in the Plan, no party (a “**Non-Prejudiced Party**”) and no party formed as a result of the Plan (a “**Future Party**”) shall be prejudiced in any way in connection with such snapback litigation by its decision to (i) limit or forgo the presentation of evidence (or forgo cross examination of any witness) or (ii) forego or not participate in any argument regarding such evidence during oral argument, in each case in connection with the confirmation of the Plan (including at the Confirmation Hearing). If Plan confirmation is reversed on appeal, no Non-Prejudiced Party nor Future Party shall be prejudiced in any way in connection with any future proceeding based on its decision to (a) limit or forgo the presentation of evidence (or forgo cross examination of

any witness) or (ii) forego or not participate in any argument regarding such evidence during oral argument, in each case in connection with the confirmation of the Plan (including at the Confirmation Hearing). Nothing that occurs at the Confirmation Hearing (or related thereto) shall constitute or be deemed agreement or disagreement in any future proceeding or snapback litigation by any Non-Prejudiced Party or Future Party with any position taken or evidence offered or argument made (at oral argument) by any other party at the Confirmation Hearing, provided that nothing herein shall operate to limit or reduce the binding nature of the Plan, this Order, and any related findings on any party. For the avoidance of doubt, all parties agree and acknowledge that the Debtors, the UCC, any Public or Private Claimant that is not objecting to the Plan, any Shareholder Released Party subject to snapback litigation, and any Future Party is intended to be a “Non-Prejudiced Party.”

43. Timney and Stewart Stipulation. The *Stipulation in Connection with the Debtors’ Chapter 11 Plan of Reorganization* [ECF No. 3543] between the Debtors, Mark Timney, a former officer of Purdue, and John H. Stewart, a former officer of Purdue, and acknowledged and agreed to by the Official Committee of Unsecured Creditors, the Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants, the Multi-State Governmental Entities Group and the Ad Hoc Group of Non-Consenting States, was entered into as of August 11, 2021, and is hereby approved and so ordered.

44. West Boca Medical Center. Notwithstanding anything in the Plan, the Plan Supplement or elsewhere in this Order to the contrary, West Boca Medical Cen-

ter, its ultimate parent Tenet Healthcare Corporation, and their respective affiliates (together with the Related Parties of each of the foregoing, including any affiliated medical practices, the “West Boca Parties”) shall retain any Co-Defendant Defensive Rights they may have regardless of whether the West Boca Parties are or are not each a Co-Defendant under the Plan.

45. Revocation or Withdrawal of Plan. The Debtors shall have the right to revoke or withdraw the Plan prior to the Effective Date as to any or all of the Debtors in accordance with the terms of the Plan. If, with respect to a Debtor, the Plan has been revoked or withdrawn prior to the Effective Date, or if the occurrence of the Effective Date as to such Debtor does not occur on the Effective Date, then, with respect to such Debtor: (a) the Plan and the Plan Documents shall be null and void in all respects; (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount any Claim or Interest or Class of Claims or Interests), assumption or rejection of executory contracts and unexpired leases effected by the Plan and any document or agreement executed pursuant to the Plan (including the Plan Documents) shall be deemed null and void; and (c) nothing contained in the Plan shall (i) constitute a waiver or release of any Claim by or against, or any Interest in, such Debtor or any other Person, (ii) prejudice in any manner the rights of such Debtor or any other Person, or (iii) constitute an admission of any sort by any Debtor or any other Person; *provided* that any provisions under the Shareholder Settlement Agreement that are expressly contemplated to survive revocation or reversal of the Plan shall survive.

46. Retention of Jurisdiction. Except as provided in Section 11.1 of the Plan, notwithstanding the entry of this Order and the occurrence of the Effective Date, on and after the Effective Date, the Court shall retain exclusive jurisdiction of all matters arising under, arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code and for the purposes set forth in Section 11.1 of the Plan.

47. Successors and Assigns. The rights, benefits and obligations of any Person named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or permitted assign, if any, of each such Person.

48. Further Assurances. The Holders of Claims and Channeled Claims receiving Distributions under the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

49. Service of Documents. Any pleading, notice, or other document required by the Plan to be served on the Debtors shall be served pursuant to the terms of Section 12.13 of the Plan.

50. Effectiveness of All Actions. All actions authorized to be taken pursuant to the Plan shall be effective on, prior to, or after the Effective Date pursuant to this Order, as applicable, without further notice to, or action, order, or approval of, the Court or further action by the respective shareholders, affiliates, subsidiaries, members (including, but not limited to, ex-officio members), officers, directors, principals, managers, trus-



tees, employees, partners, agents, or representatives of the Debtors and with the effect that such actions had been taken by unanimous action of such shareholders, affiliates, subsidiaries, members (including, but not limited to, ex-officio members), officers, directors, principals, managers, trustees, employees, partners, agents, or representatives.

51. Notice of Confirmation Date and Effective Date; Substantial Consummation of Plan. The Claims and Solicitation Agent may serve notice of the entry of this Order on (a) all Holders of Claims and (b) those other parties on whom the Plan, Disclosure Statement, and related documents were served. Such service constitutes good and sufficient notice pursuant to Bankruptcy Rules 2002(f)(7) and 3020(c). On the Effective Date, or as soon thereafter as is reasonably practicable, the Debtors shall file with the Court a “Notice of Effective Date” (the “**Notice of Effective Date**”) and shall mail or cause to be mailed by first-class mail to Holders of Claims or Interests a copy of the Notice of Effective Date; *provided, however*, that the Debtors shall not be required to transmit the Notice of Effective Date to Holders of Claims or Interests in Classes 12 and 18 or to any Holders of Claims or Interest for which applicable Solicitation Materials were returned to the Debtors’ Claims and Solicitation Agent as undeliverable. Upon the Effective Date, the Plan shall be deemed substantially consummated as to each Debtor, consistent with the definition of “substantial consummation” in section 1101(2) of the Bankruptcy Code.

52. Transactions on Business Days. If any payment, distribution, act, or deadline under the Plan is required to be made or performed or occurs on a day that is not a Business Day, then the making of such payment

or distribution, the performance of such act, or the occurrence of such deadline shall be deemed to be on the next succeeding Business Day, but shall be deemed to have been completed or to have occurred as of the required date.

53. General Authorizations. Pursuant to section 1142 of the Bankruptcy Code, Section 303 of the Delaware General Corporation Law, and any comparable provisions of the business corporation or similar law of any applicable state, the Debtors and any other necessary parties are authorized and empowered on, prior to, or after the Effective Date pursuant to this Order, as applicable, without further corporate action or action by the Debtors' directors, members, partners, shareholders, or any other person to (a) execute and deliver any instrument, agreement, or document, (b) adopt amendments to by-laws or similar governing documents, (c) appoint the PPLP Liquidator to serve as the sole officer, director, or manager of each of the Liquidating Debtors, and (d) perform any act that is necessary, desirable, or required to comply with the terms and conditions of the Plan and this Order and consummation of the Plan, and are authorized and empowered, without limitation, to take all actions necessary or appropriate to enter into, implement, perform under, and consummate the contracts, instruments, and other agreements or documents created in connection with the Plan, including, without limitation, entering into the Plan Documents.

54. Administrative Claim Bar Date. All requests for payment of Administrative Claims that accrued on or before the Effective Date must be Filed with the Claims and Solicitation Agent and served on counsel for the Debtors and Liquidating Debtors, counsel for the

Creditors' Committee, the Plan Administration Trustee and the PPLP Liquidator by (a) 30 days after notice of the Confirmation Date with respect to Claims that arose before the Confirmation Date and (b) 30 days after notice of the Effective Date with respect to Claims that arose on or after the Confirmation Date (the "**Administrative Claim Bar Date**"). Any requests for payment of Administrative Claims pursuant to Article II of the Plan that are not properly Filed and served by the Administrative Claim Bar Date shall be disallowed automatically without the need for any objection from the Debtors or any action by the Court.

55. Payment of Statutory Fees. All fees payable under section 1930 of chapter 123 of title 28 of the United States Code and any statutory interest thereon shall be paid pursuant to Section 12.5 of the Plan.

56. Term of Injunctions or Stays and Case Stipulation.

(a) Unless otherwise provided in the Plan, all injunctions and stays arising under or entered during the Chapter 11 Cases, whether under section 105 or 362 of the Bankruptcy Code or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

(b) Notwithstanding the foregoing paragraph 56(a), on the Effective Date, without further action by or order of the Bankruptcy Court: (i) any and all obligations of the Shareholder Released Parties arising under the Case Stipulation shall terminate and the Case Stipulation shall be withdrawn, vacated and superseded by this Order solely with respect to paragraphs 15, 17,

19, 22 and 25 of the Case Stipulation, and solely as such paragraphs apply to any Shareholder Released Party; *provided* that, for the avoidance of doubt, the terms of such paragraphs shall continue in full force and effect with respect to all other parties (if applicable), and all other provisions of the Case Stipulation shall remain in full force and effect, in each case, unless otherwise provided by the Plan; (ii) any and all obligations of any Shareholder Released Party arising under paragraph I of the voluntary injunction set forth in Appendix I to the Preliminary Injunction (and any predecessors or successors of the Preliminary Injunction) shall terminate, and the Preliminary Injunction shall be withdrawn, vacated and superseded by this Order solely with respect to paragraph I of the voluntary injunction set forth in Appendix I; *provided* that, for the avoidance of doubt, all other provisions of the Preliminary Injunction shall remain in full force and effect, unless otherwise provided by the Plan; and (iii) any and all obligations of any Person arising under any subpoenas issued pursuant to any of *Order Pursuant to Federal Rules of Bankruptcy Procedure 2004 and 9016 Authorizing Examination of Third Parties* [D.I. 992] (as amended by the *Amended Order Pursuant to Federal Rules of Bankruptcy Procedure 2004 and 9016 Authorizing Examination of Third Parties* [D.I. 1008]), the *Order Pursuant to Rules 2004 and 9016 of the Federal Rules of Bankruptcy Procedure Authorizing Examinations of Certain Financial Institutions* [D.I. 1143], the *Order Pursuant to Federal Rules of Bankruptcy Procedure 2004 and 9016 Authorizing Examinations of and Document Production by Third Parties* [D.I. 1340] and the *Order Pursuant to Federal Rules of Bankruptcy Procedure 2004 and 9016 Authorizing Examination of Certain Former*

*Debtor Executives, Separately Represented Debtor Personnel, and Norton Rose Fulbright Pursuant to Federal Rules of Bankruptcy Procedure 2004 and 9006 [D.I. 1788]* shall terminate.

(c) Any and all information shared or produced by any Shareholder Released Party pursuant to the agreements or orders referenced in the foregoing paragraph 56(b), including any such information also shared with Persons not party to the Case Stipulation shall remain subject to the confidentiality terms under which it was shared, including any information that was designated under the Protective Order (or confidentiality agreement that was superseded by the Protective Order), which such information shall remain confidential under the terms of the Protective Order unless such information, materials or documents are included in the Public Document Repository in accordance with the Plan and the Shareholder Settlement Agreement. Names or other identifying information of investments or specific third-party counterparties or advisors with whom or with which a Shareholder Released Party has or had a third-party investment, advisory or business relationship that was disclosed in documents or information produced by a Shareholder Released Party and designated Outside Professional Eyes Only Information under the Protective Order shall retain such designation and be protected accordingly.

(d) Except as provided in the PI TDP or the PI Futures TDP, nothing in the Plan shall either (i) excuse any Person from compliance with any legislative, judicial or administrative subpoena, any civil investigative demand or any request for information made in the course of a government investigation; or (ii) limit any right of any Person with respect to compliance with any

legislative, judicial or administrative subpoena, any civil investigative demand or any request for information made in the course of a government investigation.

57. Plan Supplement. All materials included in the Plan Supplement (as may be amended in accordance with the terms of the Plan or this Order) are integral to, part of, and incorporated by reference into the Plan. The Plan Supplement (as may be altered, modified, or amended in accordance with the terms of the Plan or this Order) and all related documents are hereby approved, including, but not limited to, the Shareholder Settlement Agreement, the MDT Documents, the NewCo Transfer Agreement, the NewCo Operating Agreement, the TopCo Operating Agreement, the PAT Agreement, the PI Trust Documents (including the LRP Agreement), the PI Futures Trust Documents, the NAS Monitoring Trust Documents, the Hospital Trust Documents, the TPP Trust Documents, the NOAT Documents, the Tribe Trust Documents and the NewCo Credit Support Agreement.

58. Rhodes Debtors. Rhodes Debtors shall mean Debtor Rhodes Associates L.P. and its direct and indirect subsidiaries.

59. Purdue Pension Plan. Notwithstanding any provision in this Order to the contrary, no provision contained in this Order, the Plan, the Bankruptcy Code (including section 1141 thereof), or any other document filed in the Debtors' bankruptcy cases shall be construed as discharging, releasing, exculpating or relieving any Person (other than the Liquidating Debtors) from any fiduciary duties or liabilities under Title I of ERISA with respect to the Purdue Pension Plan. The PBGC and the Purdue Pension Plan shall not be en-

joined or precluded from enforcing such fiduciary duties or liabilities under Title I of ERISA as a result of any of the provisions of this Order, the Plan, the Bankruptcy Code or any other document filed in the Debtors' bankruptcy cases.

60. Independent Emergency Room Physician Payment. On the Effective Date, the Debtors shall make a payment of \$375,000 from Effective Date Cash (the “**Independent Emergency Room Physician Payment**”) to independent emergency room physician Dr. Michael Masiowski (“**Masiowski**”). In consideration for the Independent Emergency Room Physician Payment, Masiowski and his advisors and representatives, including his counsel in these Chapter 11 Cases, have withdrawn all of their objections to confirmation of the Plan and have agreed that any and all Claims or Causes of Action against, and/or any other purported right to payment from, any Protected Party, including without limitation any Claim set forth in Proof of Claim No. 29085, shall be deemed released and extinguished without any further payment or distribution and without any further action by or order of the Bankruptcy Court, and such Proof of Claim shall be expunged and shall be of no further force or effect.

61. Westchester Fire Insurance Company.

(a) Notwithstanding anything to the contrary in the Plan Documents, the Disclosure Statement, or this Order, or any agreements or documents relating to the foregoing, including, without limitation, any transition agreements and trust agreements (for purposes of this section, the “**Plan Documents**”), nothing in the Plan Documents shall in any way prime, discharge, impair, modify, subordinate or affect the rights of Westchester

Fire Insurance Company and/or its past, present or future U.S.-based affiliated sureties (each as surety in its role as an issuer of bonds, individually and collectively referred to herein as “**Westchester**” or “**Surety**”) as to:

- (i) any indemnity or collateral obligations or agreements relating to bonds or related instruments issued and/or executed by Surety and assumed by the Debtors and/or NewCo (each such bond or related instrument, a “**Bond**”, and, collectively, the “**Bonds**”);
  - (ii) any collateral or letter of credit related to any Bond; or
  - (iii) any indemnity agreement related to any of the Bonds (collectively, the “**Indemnity Agreements**”), which include, without limitation, the General Agreement of Indemnity dated December 13, 2016 and the General Agreement of Indemnity dated August 2, 2017 which are hereby assumed and assigned to NewCo.
- (b) Notwithstanding any provision in the Plan Documents to the contrary, including, without limitation, the third-party releases in the Plan,
- (i) any and all collateral, including cash collateral and letters of credit, held by Surety and/or on Surety’s behalf in connection with the Bonds shall be retained by Surety and/or on Surety’s behalf to secure the obligations of the



Debtors and/or NewCo under such Bonds;

- (ii) Surety has no obligation to issue or execute any new bond or related indemnity agreement on behalf of any entity, and Surety has no obligation to extend, modify and/or increase the amount of any Bond or related indemnity agreement;
- (iii) any rights, remedies and/or defenses Surety may now or in the future have with respect to the Bonds are preserved;
- (iv) any current or future setoff, recoupment rights, lien rights, trust fund claims of Surety or any party to whose rights the Surety has or may be subrogated, and/or any existing or future subrogation or other common law rights of the Surety are preserved;
- (v) It shall not be necessary for Surety to file an administrative proof of claim, file a request for payment, and/or file a fee application to protect any of its claims related to the Indemnity Agreements and Bonds;
- (vi) Sections 6.13 and 6.18 of the Plan shall not have the effect of disallowing Surety's claims related to the Bonds and Indemnity Agreements and/or the claims that Surety may assert via sub-

rogation, and Section 7.5 of the Plan shall not apply to such claims; and

- (vii) Surety shall have access to any and all books and records held by the Debtors and/or NewCo relating to the Bonds and Indemnity Agreements and Surety shall receive no less than thirty (30) days written notice by the entity holding such books and records prior to destruction or abandonment of any such books and records. Without limitation to any other rights of the Surety, if a claim or claims is or are asserted against any Bonds and/or related instruments, then the Surety shall be granted access to, and may make copies of, any books and records related to such Bonds upon Surety's request.

62. Gulf Underwriters Insurance Company. Purdue Pharma L.P., The Purdue Frederick Company Inc. d/b/a The Purdue Frederick Company, Purdue Pharma Inc., Purdue Pharmaceuticals L.P., The P.F. Laboratories, Inc., and PRA Holdings, Inc. (collectively, the "**Purdue Entities**"), on the one hand and Gulf Underwriters Insurance Company ("**Gulf**") and certain other insurers on the other hand, entered into a Settlement Agreement and Release, effective as of May 4, 2006 (the "**Settlement Agreement**"). Pursuant to the Settlement Agreement, certain claims under Gulf policy number GU6078280 (the "**Policy**"), were released, and with regard to such claims, the Purdue Entities undertook certain defense and indemnification obligations for the benefit of Gulf, as provided for, and subject to all terms

and limitations, in the Settlement Agreement (the “**Gulf Indemnification Obligation**”). Gulf contends that claims under the Policy by the Plaintiffs in Adv. Proc. No. 21-07005 (RDD), prior to the Effective Date, and by the Master Disbursement Trust, after the Effective Date (“**Debtor Policy Claims**”), that were released in the Settlement Agreement would be subject to the Gulf Indemnification Obligation. The Purdue Entities, Debtors, and the Plaintiffs in Adv. Proc. No. 21-07005 (RDD) disagree. Prior to the Effective Date, all Claims under the Policy other than Claims by the Plaintiffs in Adv. Proc. No. 21-07005 (RDD) are enjoined. Under the Plan, from and after the Effective Date, (1) all Persons are subject to the MDT Insurer Injunction under and subject to all terms of Section 10.10 of the Plan; (2) all Purdue Entities are released from the Gulf Indemnification Obligation; and (3) any and all Claims against the Purdue Entities in respect of the Gulf Indemnification Obligation, including Claims under Proof of Claim No. 116704, held by Gulf, Travelers, or otherwise, shall be deemed Disallowed and expunged; provided that (i) nothing in the Plan or this Confirmation Order shall preclude Gulf (as defined in the Settlement Agreement) from seeking a ruling by a court that a Debtor Policy Claim or any other claim against Gulf (as defined in the Settlement Agreement) (an “**Enjoined Claim**”) is subject to the Gulf Indemnification Obligation; (ii) with regard to a Debtor Policy Claim, to the extent that a court rules that a Debtor Policy Claim is subject to the Gulf Indemnification Obligation and such ruling becomes a final order not subject to appeal, NewCo shall be liable solely for reasonable amounts subject to the Gulf Indemnification Obligation under such final unappealable ruling; (iii) with regard to an Enjoined Claim, to the extent an En-

joined Claim triggers the Gulf Indemnification Obligation, NewCo shall be liable solely for reasonable amounts subject to the Gulf Indemnification Obligation and at NewCo's option, after consultation with the Master Disbursement Trust, NewCo either will defend the Enjoined Claim or pay Gulf's (as defined in the Settlement Agreement) reasonable amounts incurred in the defense of the Enjoined Claim solely to the extent subject to the Gulf Indemnification Obligation, with Gulf's (as defined in the Settlement Agreement) consent, such consent not to be unreasonably withheld. Nothing herein shall limit Gulf's (as defined in the Settlement Agreement) rights or ability to assert any defense to insurance coverage under any insurance policy or the Settlement Agreement, except as specifically stated herein; *provided* that the obligations of NewCo and the Master Disbursement Trust with respect to the Gulf Indemnification Obligation are limited to those specifically stated herein. Gulf (as defined in the Settlement Agreement), NewCo, and the Master Disbursement Trust shall reasonably cooperate with each other, each at its own expense except as otherwise provided herein, to the extent necessary to implement the obligations herein.

63. MDT Insurance Settlements. Any MDT Insurance Settlement for which Court approval is sought shall be sent out on notice pursuant to Bankruptcy Rule 9019.

64. Headings. The headings contained within this Order are used for the convenience of the parties and shall not alter or affect the meaning of the text of this Order.

65. Severability. Notwithstanding anything else contained in the Plan, but solely to the extent provided in the Shareholder Settlement Agreement, each of the provisions of the Shareholder Settlement, including, without limitation, the Shareholder Releases and the Channeling Injunction, is (a) integrated with and integral to all other provisions of the Shareholder Settlement and the remainder of the Plan and the Plan Documents, and shall not be severable from the remainder of the Shareholder Settlement, the Plan or the Plan Documents, (b) is valid and enforceable pursuant to its terms, integral to both the entirety of the Shareholder Settlement and the Plan and may not be excised or modified other than in accordance with the Shareholder Settlement Agreement, and (c) nonseverable from and mutually dependent on each other term in the Shareholder Settlement and the Plan. In the event that any one or more provisions of the Shareholder Settlement are deemed null, void, illegal or unenforceable, the Shareholder Settlement, the Plan, this Order and the Plan Documents shall be null and void, solely to the extent set forth in the Shareholder Settlement Agreement.

66. Final Order. This Order is a Final Order and the period in which an appeal must be filed shall commence upon the entry hereof.

67. Binding Effect; Bankruptcy Rules 3020(e), 6004(h), and 7062; Waiver of Any Other Stays. Pursuant to Bankruptcy Rules 3020(e), 6004(h), and 7062, this Order shall be stayed until the expiration of 14 days after the entry of this Order. Unless stayed by this Court or another court under Bankruptcy Rule 8007 or otherwise, (i) notwithstanding any Bankruptcy Rules, non-bankruptcy law, or otherwise, this Order shall be immediately effective and enforceable after the expiration of

14 days after the entry of this Order and (ii) except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code, and subject to the occurrence of the Effective Date, the provisions of the Plan, the Plan Documents, and this Order shall bind the Debtors, the other Protected Parties, all Releasing Parties, all Holders of Claims against or Interests in any Debtors, all Holders of Channeled Claims, all parties to executory contracts and unexpired leases with any of the Debtors, and all other parties in interest in the Chapter 11 Cases, including the Debtors' insurers, and each of their respective heirs, executors, administrators, estates, successors and assigns.

68. Conflicts with This Order; Controlling Document. The provisions of the Plan and this Order shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that, if there is determined to be any inconsistency between any provision of the Plan and any provision of this Order that cannot be reconciled, then, (a) with regard to paragraphs 25 through 33 and paragraph 41 of this Order, the Plan shall govern and (b) with regard to all other paragraphs of this Order, the provisions of this Order shall govern, and any such provisions of this Order shall be deemed a modification of the Plan solely to the extent of such inconsistency. In the event of an inconsistency between Articles I through XII of the Plan and the Plan Supplement, the terms of Articles I through XII of the Plan shall control, except that in the event of an inconsistency between Articles I through XII of the Plan and the Shareholder Settlement Agreement (or any agreements ancillary to the Shareholder Settlement Agreement), the Shareholder Settlement Agreement (or such ancillary agreement) shall control.

In the event of an inconsistency between the Plan and any other instrument or document created or executed pursuant to the Plan, or between the Plan and the Disclosure Statement, the Plan shall control.

Dated: Sept. 17, 2021  
White Plains, New York

/s/ ROBERT D. DRAIN  
ROBERT D. DRAIN  
THE HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE

**Non-NAS PI TDP**



**INDIVIDUAL PURDUE PHARMA L.P.**  
**PI TRUST DISTRIBUTION PROCEDURE FOR**  
**NON-NAS PI CHanneled CLAIMS**

**§ 1. APPLICABILITY AND SUBMISSION INSTRUCTIONS.**

This trust distribution procedure for Non-NAS PI Channeled Claims (as defined below) (the “Non-NAS PI TDP”) sets forth the manner in which Non-NAS PI Channeled Claims may become eligible for payments from, and shall be fully discharged by, the PI Trust.<sup>1</sup> Distributions in respect of Non-NAS PI Channeled Claims shall be exclusively in the form of Distributions from the PI Trust Non-NAS Fund to Holders of Non-NAS PI Channeled Claims on the terms set forth herein.

Pursuant to the Plan and the Master TDP, the following claims (the “Non-NAS PI Channeled Claims”) will be channeled to, and liability therefore shall be assumed by, the PI Trust as of the Effective Date of the Plan: (i) all Non-NAS PI Claims, which are Claims against any Debtor for alleged opioid-related personal injury or other similar opioid-related Causes of Action against any Debtor, in each case, that arose prior to the Petition Date, and that are not (A) NAS PI Claims, Third-Party Payor Claims, NAS Monitoring Claims or Hospital Claims, or (B) held by a Domestic Governmental Entity,

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Twelfth Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and Its Affiliated Debtors (as modified, amended or supplemented from time to time, the “Plan”) [ECF No. 3726) in the chapter 11 cases of Purdue Pharma L.P. and its Debtor affiliates (the “Chapter 11 Cases”) in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”).

and (ii) all Released Claims or Shareholder Released Claims that are for alleged opioid-related personal injury or that are similar opioid-related Causes of Action, in each case, that arose prior to the Petition Date, and that are not (A) NAS PI Channeled Claims, Third-Party Payor Channeled Claims, NAS Monitoring Channeled Claims or Hospital Channeled Claims, or (B) held by a Domestic Governmental Entity. Non-NAS PI Channeled Claims shall be administered and resolved pursuant to this Non-NAS PI TDP, and satisfied solely from the PI Trust Non-NAS Fund. Holders of Non-NAS PI Channeled Claims are referred to herein as “Non-NAS PI Claimants.”<sup>2</sup>

Non-NAS PI Channeled Claims liquidated under this Non-NAS PI TDP shall be (i) Allowed or Disallowed (such Non-NAS PI Channeled Claims so Allowed, “Allowed Non-NAS PI Channeled Claims”) and, for Allowed Non-NAS PI Channeled Claims, (ii) liquidated to determine the gross amounts receivable thereon (an “Award”), in each case pursuant to the terms of this Non-NAS PI TDP.

An Award for a Non-NAS PI Channeled Claim liquidated hereunder will be a gross number before deduction of the following “PI Trust Deductions and Holdbacks”: (A) a pro rata share of the operating expenses of the PI Trust; (B) amounts held back under the Lien Resolution Program (the “LRP Agreement”) to settle liens held by private insurance companies against that Award, if any; (C) amounts prepaid to the United States

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<sup>2</sup> “Non-NAS PI Claimant” includes each person holding a Non-NAS PI Channeled Claim arising from his/her own opioid use, and each person holding a Non-NAS PI Channeled Claim arising from the opioid use of a decedent (such deceased person, a “Decedent”).

under the United States-PI Claimant Medical Expense Claim Settlement to settle liens of the federal health-care programs like Medicare, Tricare, VA, or Medicaid against that Award, if any; (D) a pro rata share of the compensation, costs and fees of professionals that represented or advised the Ad Hoc Group of Individual Victims and the NAS Committee in connection with the Chapter 11 Cases, subject to Section 5.8(g) of the Plan; and (E) the common benefit assessment required under Section 5.8(c) of the Plan, and the fees and costs of the Non-NAS PI Claimant's individual attorney(s) in the Chapter 11 Cases, if any, reduced by the common benefit assessment in accordance with Section 5.8(c) of the Plan.<sup>3</sup> In addition to the deductions and holdbacks described above, your award may be subject to claims by certain state or tribal healthcare programs that are not part of the LRP Agreement.

The order of payments to be made hereunder by the PI Trust is set forth in § 6. No amounts shall be paid on account of a Non-NAS PI Channeled Claim unless such Claim has been Allowed.

This Non-NAS PI TDP sets forth what evidence and forms you must submit in order to be eligible to receive an Award. Forms may be completed online at the PI Trust's website, [www. \\_\\_\\_\\_ .com](http://www.____.com), or by mailing back the completed forms to the PI Trust at the below address. Evidence in support of your Non-NAS PI Claim should be submitted to [\_\_\_\_].<sup>4</sup>

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<sup>3</sup> If you have an individual attorney, then your attorney, rather than the PI Trust, will be responsible for deducting his/her fees and expenses from your Award.

<sup>4</sup> Submission instructions to be added after solicitation.

**ELECTION TO LIQUIDATE NON-NAS PI CLAIM IN  
THE TORT SYSTEM RATHER THAN UNDER THIS  
NON-NAS PI TDP**

A Non-NAS PI Claimant who (i) timely filed a Proof of Claim in the Chapter 11 Cases prior to the General Bar Date asserting his/her Non-NAS PI Claim against one or more Debtors and (ii) elects expressly, by timely submission of the Non-NAS PI Claim Form attached hereto as Exhibit A, to liquidate his/her Non-NAS PI Claim in the tort system rather than pursuant to the streamlined procedures set forth in §§ 6-9 of this Non-NAS PI TDP (each, a “Non-NAS Opt-Out Claimant” and, collectively, the “Non-NAS Opt-Out Claimants”), may assert and liquidate such Non-NAS PI Claim in the tort system at his/her own expense, as set forth in more detail in Exhibit B hereto, and shall forfeit all rights to liquidate such Non-NAS PI Claim (and any associated Non-NAS PI Channeled Claims regarding the same injuries that are the same subject of his/her Non-NAS PI Claim) under the streamlined procedures set forth in §§ 6-9 of this Non-NAS PI TDP, as well as the right to expedited appeal set forth in Exhibit C hereto. The right to litigate in the tort system is available only with respect to Claims that meet the definition of “PI Claim” set forth in the Plan.

**OPTING OUT REQUIRES YOU TO TAKE THE AFFIRMATIVE ACTION OF CHECKING THE “OPT OUT” BOX ON THE NON-NAS PI CLAIM FORM AND TIMELY SUBMITTING YOUR NON-NAS PI CLAIM FORM TO THE PI TRUST. FAILURE TO TIMELY SUBMIT THE NON-NAS PI CLAIM FORM SHALL CONSTITUTE CONSENT TO HAVE YOUR NON-NAS PI CHanneled CLAIMS LIQUIDATED PURSU-**

<b>ANT TO THE PROVISIONS OF THIS NON-NAS PI TDP.</b>
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**§ 2. ALLOCATION OF FUNDS; CLAIMS ADMINISTRATOR.**

- (a) Allocations of Funds to the PI Trust and Further Allocation to the PI Trust NAS Fund and the PI Trust Non-NAS Fund.

Under the Plan, the PI Trust will receive a gross amount of between \$700 million and \$750 million (minus amounts distributed directly to the United States under the United States-PI Claimant Medical Expense Claim Settlement), in the form of an initial installment of \$300 million on the Effective Date of the Plan and subsequent installments, in each case subject to the United States-PI Claimant Medical Expense Claim Settlement. The PI Trust shall establish a fund to pay NAS PI Channeled Claims (the “PI Trust NAS Fund”); and a fund to pay Non-NAS PI Channeled Claims (the “PI Trust Non-NAS Fund”), and shall allocate each distribution it receives under the Plan as follows: (i) 6.43% to the PI Trust NAS Fund, up to an aggregate maximum of \$45 million, and (ii) the remainder to the PI Trust Non-NAS Fund, in each case subject to applicable PI Trust Deductions and Holdbacks.

- (b) Claims Administrator.

- (i) The PI Trust shall be established in accordance with § 5.7 of the Plan to (1) assume all liability for the PI Channeled Claims, (2) hold the MDT PI Claim and collect the Initial PI Trust Distribution and payments due under the MDT PI Claim in accordance with

the Private Entity Settlements and the PI Trust Documents, (3) administer and resolve PI Channeled Claims, (4) make Distributions on account of Allowed PI Channeled Claims in accordance with the PI Trust Documents (including this Non-NAS PI TDP), (5) fund the TPP LRP Escrow Account and make payments therefrom to LRP Participating TPPs, in each case, in accordance with and subject to the terms of the LRP Agreement and (6) carry out such other matters as are set forth in the PI Trust Documents. The trustee of the PI Trust (the “Trustee”), Edgar Gentle III, of Gentle, Turner, Sexton & Harbison, LLC, will serve as claims administrator (the “Claims Administrator”) to carry out the duties of the Trustee as set forth in the Plan and PI Trust Documents.

- (ii) The Trustee and the Claims Administrator<sup>5</sup> shall determine, pursuant to the requirements set forth herein, the Allowance or Disallowance and valuation of all Non-NAS PI Channeled Claims liquidated under §§ 6-9 of this Non-NAS PI TDP, regardless of the type of Award sought. Distributions hereunder are determined only with

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<sup>5</sup> As the same individual is serving as both Trustee and Claims Administrator, reference to actions by each reference Mr. Gentle acting in such respective capacity.

consideration to a Non-NAS PI Claim held against the Debtors, and not to any associated Non-NAS PI Channeled Claim against a non-Debtor party. However, any Distribution to a Non-NAS PI Claimant on account of his/her Non-NAS PI Claim is deemed to be a distribution in satisfaction of all Non-NAS PI Channeled Claims held by such Non-NAS PI Claimant with respect to the injuries that are the subject of his/her Non-NAS PI Claim. The Claims Administrator may investigate any such claim, and may request information from any Non-NAS PI Claimant to ensure compliance with the terms outlined in this document. For Non-NAS PI Claimants who execute the required HIPAA forms attached hereto as Exhibit D, the Claims Administrator also has the power to directly obtain such Non-NAS PI Claimant's medical records.

**§ 3. INITIAL NON-NAS PI CHANNELED CLAIM ALLOWANCE.**

For a Non-NAS PI Channeled Claim that is being liquidated pursuant to the streamlined procedures set forth in §§ 6-9 of this Non-NAS PI TDP to be Allowed, the applicable Non-NAS PI Claimant must, with respect to that Non-NAS PI Channeled Claim:

- (a) Hold such Non-NAS PI Channeled Claim against one or more Debtors;

- (b) Demonstrate usage of a qualifying **prescribed** opioid listed in Exhibit E hereto (a “Qualifying Opioid”)
  - (i) Non-NAS PI Claimants who used only (or, as applicable, where the Decedent used only) a **non-prescribed** (diverted) version of a Qualifying Opioid (OxyContin, MS Contin, Dilaudid, Hysingla ER, Butrans, DHC Plus, MSIR, OxyFast, OxyIR, Palladone, or Ryzolt) are not eligible for an Easy Payment, Base Payment or Level Award (each as defined below) unless that Non-NAS PI Claimant or Decedent (as applicable) was a minor when s/he initiated usage of a non-prescribed, *branded* version of a Qualifying Opioid;
- (c) Have already timely<sup>6</sup> filed an individual personal injury Proof of Claim against one or more Debtors in the Chapter 11 Cases asserting his/her Non-NAS PI Claim against one or more Debtors;
- (d) Complete, sign and submit the Non-NAS PI Claim Form attached hereto as Exhibit A,

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<sup>6</sup> If the Proof of Claim was filed after the General Bar Date but before April 23, 2021, the Claims Administrator shall consider the Non-NAS PI Channeled Claim without penalty. If the Proof of Claim was filed on April 23, 2021 or after, the Non-NAS PI Channeled Claim asserted by such Proof of Claim shall be Disallowed unless (i) the Claims Administrator determines, which determination shall be on a case-by-case basis, that good cause exists to treat the late-filed Non-NAS PI Channeled Claim as if it were timely filed, or (ii) the Bankruptcy Court so orders otherwise.



checking at least one injury box<sup>7</sup> by the date that is 90 days<sup>8</sup> after the Non-NAS PI Claim Form is disseminated<sup>9</sup> to Non-NAS PI Claimants;<sup>10</sup>

- (e) Complete, sign and submit the two HIPAA consent forms attached hereto as Exhibit D; and
- (f) If the Non-NAS PI Channeled Claim concerns the injuries of a Decedent, then also execute and submit the appropriate Heirship Declaration attached hereto as Exhibit F.<sup>11</sup>

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<sup>7</sup> In the event a Non-NAS PI Claimant does not check any injury box from use of opioids on his/her Non-NAS PI Claim Form, his/her Non-NAS PI Channeled Claim shall be Disallowed. The Non-NAS PI Claim Form shall include clear language notifying a Non-NAS PI Claimant that if he or she fails to check any injury box from use of opioids, s/he will receive no recovery on his/her Non-NAS PI Channeled Claim.

<sup>8</sup> Subject to extension in the discretion of the Claims Administrator.

<sup>9</sup> Within 60 days after the Effective Date, the Non-NAS PI Claim Form will be made available to Non-NAS PI Claimants electronically and, if a Non-NAS PI Claimant is a pro se claimant, also mailed to such Non-NAS PI Claimant in physical copy. When disseminated, the Non-NAS PI Claim Form will clearly state the absolute deadline (e.g., “January 30, 2022”) by which the Non-NAS PI Claim Form must be returned.

<sup>10</sup> If the Non-NAS PI Claimant checks the box on the Non-NAS PI Claim Form indicating his/her election to liquidate his/her Non-NAS PI Claim in the tort system rather than under §§ 6-9 of this PI TDP, then such Non-NAS PI Claim will not be liquidated hereunder.

<sup>11</sup> Exhibit F hereto contains two declaration forms. One applies if the Decedent named the Non-NAS PI Claimant as executor in his/her will; the other applies if the Decedent had no will.

Any Non-NAS PI Claimant who satisfies all of the above requirements (a)-(f) with respect to a given Non-NAS PI Channeled Claim shall have that Non-NAS PI Channeled Claim Allowed.

**If a Non-NAS PI Claimant does not satisfy these requirements with respect to a Non-NAS PI Channeled Claim that is being liquidated under §§ 6-9 of this Non-NAS PI TDP, INCLUDING THE REQUIREMENT TO TIMELY SUBMIT IDS/HER NON-NAS PI CLAIM FORM AND ANY NECESSARY ACCOMPANYING EVIDENCE, then such Non-NAS PI Channeled Claim shall be Disallowed.**

**Regardless of whether you elect to “opt out” or to have your claim liquidated under this Non-NAS PI TDP, you must complete the Non-NAS PI Claim Form as instructed by the deadline, which is 90 days<sup>12</sup> after the Non-NAS PI Claim Form is disseminated. Failure to timely submit the Non-NAS PI Claim Form (and any required supporting evidence) will result in your claim being disallowed. In other words, if you do nothing, you will not receive any compensation from the PI Trust.**

**§ 4. DETERMINING WHETHER A PRODUCT IS QUALIFYING.**

One of the following is required to demonstrate a Qualifying Opioid as listed in Exhibit E:

- (a) A Non-NAS PI Claimant who provides evidence of a prescription for brand name OxyContin, MS Contin, Dilaudid, Hysingla ER, Butrans, DHC Plus, MSIR, OxyFast, OxyIR, Palladone, or

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<sup>12</sup> Subject to extensions which the Claims Administrator may give in his discretion.

Ryzolt may rely on the name alone without the necessity of a corresponding NDC number.

- (b) In order for a Non-NAS PI Claimant to qualify based on the use of one of the generic products listed in Exhibit E (e.g., oxycodone ER/CR, morphine sulfate ER, hydromorphone), s/he must present either:
  - (i) The product's corresponding NDC number, which is set forth in Exhibit E;<sup>13</sup> or
  - (ii) A notation in the record submitted that the product is manufactured or sold by Rhodes or Purdue.
- (c) A Non-NAS PI Claimant who used (or, as applicable, where the Decedent used) a generic oxycodone prescription that does not contain evidence of § 4(a) or (b) may only qualify if the prescription utilizes one of the following:
  - (i) Oxycodone CR (or controlled release); or
  - (ii) Oxycodone ER (or extended release).

**§ 5. TYPES OF EVIDENCE REQUIRED FOR QUALIFYING PRODUCTS.**

All Non-NAS PI Claimants must demonstrate a prescription (which contains the name of the Non-NAS PI Claimant or Decedent, as applicable) and a Qualifying Opioid by one of the following pieces of evidence (a)-(e):<sup>14</sup>

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<sup>13</sup> Subject to additional NDC numbers after discovery from or other disclosure by Debtors.

<sup>14</sup> Subject to the exceptions set forth in provisions (f) and (g) of this Section 5.

- (a) Pharmacy prescription records;
- (b) Prescription records, including without limitation:
  - (i) A visit note in which the prescribing physician lists a prescription for one of the Qualifying Opioids; or
  - (ii) A signed prescription from a doctor for one of the Qualifying Opioids;
- (c) A historical reference to one of the Qualifying Opioids, including but not limited to:<sup>15</sup>
  - (i) A reference in contemporaneous medical records to historical use of one of the Qualifying Opioids;
  - (ii) A reference in contemporaneous substance abuse/rehabilitation/mental health records to historical use of one of the Qualifying Opioids;
  - (iii) A reference in contemporaneous law enforcement records to historical use of one of the Qualifying Opioids; or
  - (iv) A reference in contemporaneous family law or other legal proceedings records to historical use of one of the Qualifying Opioids;
- (d) A photograph of the prescription bottle or packaging of one of the Qualifying Opioids with the name of the Non-NAS PI Claimant or Decedent

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<sup>15</sup> The record must have been created prior to September 15, 2019 only if the historical reference is self-reported by the Non-NAS PI Claimant.

(as applicable) as the patient listed the prescription label; or

- (e) A certification supplied by a Debtor, any of its successors (including the PI Trust), or a third party at a Debtor's or one of its successors' request, indicating that customer loyalty programs, patient assistance programs ("PAPs"), copay assistance programs, or any other data otherwise available to the certifying entity reflects that the Non-NAS PI Claimant or Decedent (as applicable) had at least one prescription for one of the Qualifying Opioids.
- (f) If a Non-NAS PI Claimant holds a Non-NAS PI Channeled Claim based on the Non-NAS PI Claimant's or Decedent's use of only *diverted* (i.e., without a lawful prescription) qualifying branded products as a minor pursuant to § 3(b)(i) above and cannot meet the evidentiary requirements of § 5(a)-(e) above,<sup>16</sup> s/he may still qualify if s/he can demonstrate both of the following:<sup>17</sup>
  - (i) By a declaration under penalty of perjury (a) from the Non-NAS PI Claimant, or (b) in the case of a claim arising from a Decedent's opioid use, from any third party

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<sup>16</sup> Since by definition diversion cases do not have a prescription, a Non-NAS PI Claimant could otherwise meet the evidentiary requirements above only with a historical reference to the diverted use of a qualifying product as a minor. In the absence of that historical reference in the medical records, this declaration requirement can be used under the conditions set forth in this subsection.

<sup>17</sup> Sample affidavits will be made available on the PI Trust website.

with knowledge of the Decedent's opioid use, that the Non-NAS PI Claimant or Decedent is known to have used diverted OxyContin, MS Contin, Dilaudid, Hysingla ER, Butrans, DHC Plus, MSIR, OxyFast, OxyIR, Palladone, or Ryzolt as a minor. The declaration must also state how long the diverted OxyContin, MS Contin, Dilaudid, Hysingla ER, Butrans, DHC Plus, MSIR, OxyFast, OxyIR, Palladone, or Ryzolt was used for purposes of determining whether the Non-NAS PI Channeled Claim would qualify for Tier 2 or Tier 3; and

- (ii) By an *additional* declaration from a third party with personal knowledge of the Non-NAS PI Claimant's or Decedent's use of opioids products stating under penalty of perjury that the declarant has personal knowledge that the Non-NAS PI Claimant or Decedent is known to have used diverted OxyContin, MS Contin, Dilaudid, Hysingla ER, Butrans, DHC Plus, MSIR, OxyFast, OxyIR, Palladone, or Ryzolt as a minor. The declaration must also state how long the diverted OxyContin, MS Contin, Dilaudid, Hysingla ER, Butrans, DHC Plus, MSIR, OxyFast, OxyIR, Palladone, or Ryzolt was used for purposes of determining whether the Non-NAS PI Channeled Claim would qualify for Tier 2 or Tier 3.
- (g) In the event a Non-NAS PI Claimant holds a claim arising from a *lawful* prescription of a

qualifying product and cannot meet the evidentiary requirements of § 5(a)-(e) above, s/he may only qualify if s/he demonstrates all of the following:

- (i) That the Non-NAS PI Claimant or his/her agents made a bona fide attempt to retrieve all known prescribing physician medical charts, all known pharmacy charts, all known rehabilitation charts, and all known insurance explanations of benefits. An affidavit of no records (ANR), certificate of no records (CNR), affidavit of destroyed records (ADR), or certificate of destroyed records (CNR) must be provided as to all known records listed above (and in the Non-NAS PI Claim Form). Alternatively, if some medical records were produced in response to the Non-NAS PI Claimant's request but others were not, then evidence must be provided that the Non-NAS PI Claimant requested all records but that only limited records were produced by the facilities (with an explanation of how the portion of records not provided by the custodian likely contains required evidence and the basis for that assessment of probability); and
- (ii) By a declaration under penalty of perjury from the Non-NAS PI Claimant or, in the case of a claim arising from the opioid use of a Decedent, from a third party with knowledge of the Decedent's opioid use, that the Non-NAS PI Claimant or Decedent is known to have been prescribed and

used OxyContin, MS Contin, Dilaudid, Hysingla ER, Butrans, DHC Plus, MSIR, OxyFast, OxyIR, Palladone, or Ryzolt. The declaration must also state how long the prescribed OxyContin, MS Contin, Dilaudid, Hysingla ER, Butrans, DHC Plus, MSIR, OxyFast, OxyIR, Palladone, or Ryzolt was used for purposes of determining whether the Non-NAS PI Channeled Claim would qualify for Tier 2 or Tier 3; and

- (iii) By a supporting declaration from a third party with personal knowledge of the Non-NAS PI Claimant's or Decedent's use of opioids products stating under penalty of perjury that the declarant has personal knowledge that the Non-NAS PI Claimant or Decedent is known to have used OxyContin, MS Contin, Dilaudid, Hysingla ER, Butrans, DHC Plus, MSIR, OxyFast, OxyIR, Palladone, or Ryzolt. The declaration must also state how long the prescribed OxyContin, MS Contin, Dilaudid, Hysingla ER, Butrans, DHC Plus, MSIR, OxyFast, OxyIR, Palladone, or Ryzolt was used for purposes of determining whether the Non-NAS PI Channeled Claim would qualify for Tier 2 or Tier 3.
- (h) The Claims Administrator shall have discretion, subject to the appeal process set forth in Exhibit C hereto, to determine whether the requirements in § 5(f)-(g) above have been met so as to provide sufficient indicia of reliability that the Non-NAS PI Claimant or Decedent was pre-



scribed (or as a minor received diverted) and used OxyContin, MS Contin, Dilaudid, Hysingla ER, Butrans, DHC Plus, MSIR, OxyFast, Oxy-IR, Palladone, or Ryzolt.

- (i) In no event may a Non-NAS PI Claimant whose evidence of qualifying product use is based solely on the declarations under § 5(f)-(g) qualify for Tier 1A or Tier 1B. Whether the Non-NAS PI Claimant qualifies for Tier 2 or Tier 3 will be based on the length of use stated in the declaration
- (j) Any Non-NAS PI Claimant who fails to meet the requirements of § 3, § 4 and § 5(a)-(g) is not entitled to any payment, including Easy Payment, Base Payment, or Level Award (each as defined below).
- (k) The Claims Administrator has the discretion to request additional documentation believed to be in the possession of the Non-NAS PI Claimant or his or her authorized agent or lawyer. The Claims Administrator has the sole discretion, subject to the appeal process set forth in Exhibit C hereto, to Disallow, or to reduce or eliminate Awards on, claims being liquidated hereunder where he concludes that there has been a pattern and practice to circumvent full or truthful disclosure under this § 5.

**§ 6. ORDER OF PAYMENTS; EASY PAYMENT.**

A Non-NAS PI Claimant may choose between receiving an “Easy Payment” or a “Base Payment” and “Level Award,” as detailed below.

The PI Trust will make payments in the following order:

- (a) Easy Payment of \$3,500 per qualifying Non-NAS PI Claimant<sup>18</sup> to those Non-NAS PI Claimants who elect to receive an Easy Payment; and
- (b) Base Payments and Level Awards to qualified Non-NAS PI Claimants who did not elect to receive an Easy Payment.

Because monies are being received by the PI Trust in installments, payments of Awards other than Easy Payments may be in installments. Additionally, payments of Awards may be further delayed into installment payments if a competent court so orders. Finally, distributions to minors are to be held in trust until the minor becomes a legal adult (unless a competent court orders otherwise). For all of these reasons, it may take years before you receive all of your Award.

A Non-NAS PI Claimant meeting the requirements of § 3 (Allowance) pursuant to the standards set in § 4 (Determining What is a Qualifying Product) and § 5 (Evidence Required to Demonstrate a Qualifying Product) may elect on his/her Non-NAS PI Claim Form to receive a set payment (an “Easy Payment”) in lieu of other compensation. **NOTE: if you select an Easy Payment, you are NOT eligible to receive any additional funds for your Non-NAS PI Channeled Claim.** That means you cannot receive any of the Base Payments or Level Awards below. If you select an Easy Payment and your Non-NAS PI Channeled Claim is determined to be an Allowed Non-NAS PI Channeled Claim, you will be enti-

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<sup>18</sup> If a Non-NAS PI Claimant has multiple qualified PI Claims on account of personal injuries to more than one opioid user, then that Non-NAS PI Claimant may have distinct Non-NAS PI Claims, each of which may recover hereunder.

tled to a gross payment of \$3,500, before deduction of any fees, costs or liens as described herein, within a reasonably short amount of time after receipt of your claims package by the Claims Administrator, or as soon as all applicable liens have been cleared. The Easy Payment is also expected to be free of many (but not all) types of health care liens, including liens of Third-Party Payors.

**§ 7. ADDITIONAL AWARD DETERMINATION.**

(a) Allowed Non-NAS PI Channeled Claims held by Non-NAS PI Claimants who do not elect to receive an Easy Payment and who otherwise meet the Qualifying Opioid requirement shall be categorized<sup>19</sup> as follows:

(i) **Tier 1A:**

A. **Base Payment:**

1. For a Non-NAS PI Claimant who demonstrates that his/her or the Decedent's addiction, dependence or substance abuse began while using one of the Qualifying Opioids.
2. Other than submission of qualifying product records under § 3, § 4 and § 5(a)-(f), no additional documents are required for a Holder of an Allowed Non-NAS PI Chan-

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<sup>19</sup> Non-NAS PI Claimants who assert or allege Qualifying Opioid usage in their Non-NAS PI Claim Forms for which they cannot produce corresponding evidence will not recover on account of such alleged opioid usage.

neled Claim to secure a Tier IA Base Payment. The showing required for a Tier IA Base Payment is a temporal relationship between use of a qualifying product and the onset of addiction, dependence or substance abuse within six months after use of a qualifying product. There is a presumption that proof of qualifying product usage under the methods above within 6 months before the onset of addiction, dependence or substance abuse (as set forth in the Non-NAS PI Claim Form) is sufficient.

- aa. However, notwithstanding evidence of a qualifying product usage before the onset of addiction, dependence or substance abuse noted in the Non-NAS PI Claim Form, if the Non-NAS PI Claim Form, pharmacy, medical or other records demonstrate any of the below indicia of addiction, dependence or substance abuse that precede the earliest use of a qualifying product demonstrated by a Non-NAS PI Claimant, the claim does not qualify for Tier 1A.

- a. diagnosis of addiction, dependence or substance abuse relating to opioid use made by any licensed medical professional;
  - b. treatment in a rehabilitation center for opioid use disorder;
  - c. overdose, withdrawal, or detox from an opioid;
  - d. consecutive use of opioids with MME of greater than 90 mg/day for 6 months or more;
  - e. use of illegal opioids; or
  - f. use of medication-assisted treatment (“MAT”) like methadone.
- B. Level Awards: In addition to Base Payments, Tier I A Non-NAS PI Claimants meeting the criteria below qualify for the additional payment attendant to the highest Level they qualify for (but not multiple Levels).
1. *Level A*:
    - aa. For Non-NAS PI Claimants who demonstrate one or more of the following:

- a. Opioid Use Disorder (“OUD”);<sup>20</sup>
- b. MAT usage >6 months. MAT drugs include methadone, buprenorphine, Butrans, Suboxone, Zubsolv, Methadose, and naltrexone; or
- c. Administration of Narcan, Evzio or Naloxone.

2. *Level B:*

- aa. For Non-NAS PI Claimants who demonstrate death caused by an opioid (such as overdose or withdrawal).

C. Additional Evidence for Level Awards:

1. If making a claim for a Tier 1A Level Award based on OUD diagnosis, medical records, including rehabilitation records, primary care, hospital, billing or other records reflecting a diagnosis of OUD made by a medical or health professional. No affidavits may be used to meet this requirement. The records do not have to coin-

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<sup>20</sup> The diagnosis can be made by any licensed medical professional, specifically including physicians, nurses, physician’s assistant, mental health counselor or therapist, or professional at a rehabilitation center.

cide in time with the provided qualifying product use.

2. If making a claim for a Tier 1A Level Award based on MAT or Narcan, Evzio or Naloxone use, pharmacy or other medical records reflecting use of MAT, Narcan, Evzio or Naloxone. The types of evidence that qualify to show MAT, Narcan, Evzio or Naloxone exposure are the same as those in § 5(a)-(d). No affidavits may be used to meet this requirement. The records do not have to coincide in time with the provided qualifying product use.
3. If making a claim for a Tier 1A Level Award based on death, the death certificate of the Decedent as well as any toxicology reports or autopsy reports. The records do not have to coincide in time with the provided qualifying product use. No declarations may be used to meet this requirement.
4. The Non-NAS PI Claimant may submit such additional information as the Non-NAS PI Claimant believes will assist the Claims Administrator's determination of the appropriate amount of any Non-NAS PI Channeled Claim that has

satisfied the initial claim validity requirements.

- (ii) **Tier 1B:** Claims based on opioid-related death (overdose or withdrawal) while on OxyContin (temporal relationship between date of death and usage of OxyContin) qualify for Tier 1B Base Payment. Only branded OxyContin qualifies under Tier 1B (i.e., no other Qualifying Opioids). There are no Level Awards. If a Non-NAS PI Claimant is making a claim for a Tier 1B Award, the death certificate of the Decedent as well as any toxicology reports or autopsy reports must be produced. The death must coincide in time with the provided qualifying product use (i.e. the timing of usage, including number of pills, falls within 5 days of the death). For example, if the Decedent had a prescription 20 days before death and the number of pills in that prescription was enough such that it can reasonably be expected the Decedent was using it within 5 days of death, the case qualifies. Conversely, if the Decedent had a prescription 45 days before death and the number of pills in the prescription was such that it can reasonably be expected that the Decedent would have run out of pills 15 days before death, the case does not qualify. The underlying addiction does not need to have begun during qualifying product use; OxyContin use at the time of death is sufficient.



- (iii) **Tier 2:** Non-NAS PI Claimants must demonstrate use of a qualifying product for 6 months or more; however, the usage does not have to be consecutive.
- A. **Base Payment:** Other than for qualifying product records under § 3, § 4 and § 5(a)-(g), no additional documents are required for a Tier 2 Base Payment. All Non-NAS PI Claimants that qualify for Tier 2 will receive a Base Payment.
- B. **Level Awards:** In addition to Base Payments, Tier 2 Non-NAS PI Claimants meeting the criteria below qualify for the additional payment attendant to the highest Level they qualify for (but not multiple Levels).
1. *Level A:*
    - aa. For Non-NAS PI Claimants who demonstrate one or more of the following:
      - a. Opioid Use Disorder (OUD);
      - b. MAT  $\geq$  6 months days;  
or
      - c. Administration of Narcan, Evzio or Naloxone.
  2. *Level B:*
    - aa. For Non-NAS PI Claimants who demonstrate death caused by an opioid.

C. Additional Evidence for Level Awards:

1. If making a claim for a Tier 2 Level A award based on OUD diagnosis, then medical records-including rehabilitation records, primary care, hospital, billing or other records reflecting a diagnosis of OUD made by a licensed medical or health professional-can serve as additional evidence. No affidavits may be used to meet this requirement. The records do not have to coincide in time with the qualifying product use.
2. If making a claim for a for a Tier 2 Level Award based on MAT or on Narcan, Evzio or Naloxone use, then pharmacy or other medical records reflecting use of MAT, Narcan, Evzio or Naloxone can serve as additional evidence. The types of evidence that qualify to show MAT, Narcan, Evzio or Naloxone exposure are the same as those in § 5(a)-(d). No declarations may be used to meet this requirement. The records do not have to coincide in time with the qualifying product use.
3. If making a claim for a Tier 2 Level Award based on death, the death certificate of the Decedent as well as any toxicology reports

or autopsy reports can serve as additional evidence. The records do not have to coincide in time with the qualifying product use. No affidavits may be used to meet this requirement.

- (iv) **Tier 3:** Claims based on the use of a qualifying product less than 6 months and otherwise not meeting the criteria of Tier 1A, Tier 1B or Tier 2 are entitled to no additional payments other than the Base Payment. Non-NAS PI Claimants who elect to receive the Easy Payment cannot receive any additional compensation, and no Tier applies to their Non-NAS PI Claims. However, in the event a Non-NAS PI Claimant declines the Easy Payment and elects to proceed but does not qualify for Tiers 1A, 1B, or 2, such Non-NAS PI Claimant will receive the Tier 3 Base Payment and only the Tier 3 Base Payment.

**§ 8. BASE PAYMENTS AND LEVEL AWARDS.**

(a) Grid Origins.

The point values provided in this grid resulted from the work of counsel to the Ad Hoc Group of Individual Victims, statistical sampling and modeling performed by financial analysts and subject matter experts for the Ad Hoc Group of Individual Victims and the other holders of PI Channeled Claims, and collaborative discussions with stakeholders. The estimated amount per point is based on a sample, and will be updated periodically on the PI Trust's website, [www. \\_\\_\\_\\_ .com](http://www.____.com).

## (b) Amount of Money Per Point.

Based on an initial sample, we estimate that the dollar award amount per point will be between \$0.80 and \$ 1 .20. The dollar amount ultimately awarded per point will be determined with reference to the funds available in the PI Trust and the pool of claims remaining against the PI Trust after the payment of Easy Payments.

	<b>Tier 1A</b> <i>Addiction from Purdue Opioids</i>	<b>Tier 1B</b> <i>Death on OxyContin</i>	<b>Tier 2</b> <i>Purdue Opioids Use ≥6 months</i>	<b>Tier 3</b> <i>No Addiction/ Death from Purdue Opioids, and Purdue Opioids Use &lt;6 months</i>
<b>BASE PAYMENTS</b>	20,000 pts <sup>21</sup>	40,000 pts	6,000 pts	\$3,500
<b>LEVELS (one of the below)<sup>22</sup></b>				
<b>A</b>	10,000 pts  OUD Diagnosis, OR MAT for ≥6 months	N/A	3,000 pts  OUD Diagnosis, OR MAT for ≥6 months	N/A
<b>B</b>	20,000 pts  Death from an Opioid	N/A	20,000 pts  Death from an Opioid	N/A

**§ 9. ADDITIONAL CLAIM FACTORS AND VALUATION.**

- (a) To the extent practicable, only objective factors are to be scored, based upon the axiom that in mass torts consistency is fairness.
- (b) This grid is based in part on other scoring grids developed in comparable cases with unique customization according to the claims

<sup>21</sup> Non-NAS PI Claimants who do not claim addiction, dependence or abuse of opioids are not entitled to receive Tier 1A Awards.

<sup>22</sup> If a Non-NAS PI Claimant does not qualify for additional Level Awards, he/she does not get additional money above the Base Payment. A Non-NAS PI Claimant can only qualify for one, but not multiple, Level Awards.

and injuries encountered and reviewed in sampling individual PI Claims.

- (c) Because of limited funds, economic damages are not compensable. This Non-NAS PI TDP only compensates general pain and suffering. Nonetheless, all personal injury damages from use of Qualifying Opioids are being channeled to the PI Trust and released, including both economic and non-economic or general damages.
- (d) Only reported injuries are to be scored.
- (e) In no circumstance shall the Claims Administrator assign any claim value for any punitive damages, exemplary damages, statutory enhanced damages, or attorneys' fees or costs (including statutory attorneys' fees and costs).
- (f) Only Non-NAS PI Claims based on injuries or facts occurring prior to the filing of your Non-NAS PI Claim Form are eligible for recovery.

**§ 10. BAR FOR PRIOR SETTLED CASES.**

A Non-NAS PI Claimant whose Non-NAS PI Channeled Claim was reduced prior to the Petition Date to a settlement, judgment, or award against a Debtor shall be barred from receiving any Award under this Non-NAS PI TDP (Easy Payment, Base Payment or Level Award) on account of such Non-NAS PI Channeled Claim and shall not recover from the PI Trust on account of such Non-NAS PI Channeled Claim; provided, however, that a prior settlement with respect to a living

person's OUD claim does not bar a subsequent wrongful death claim arising out of that settled OUD claim.

**§ 11. SPECIAL PROCEDURES IN RESPECT OF MINORS.**

For Non-NAS PI Claimants who are minors under applicable law, the special procedures set forth in Exhibit G hereto also apply and shall supplement the procedures set forth in this Non-NAS PI TDP.

**§ 12. FAIRNESS AUDITS AND FRAUD PREVENTION.**

The Claims Administrator will use appropriate technology and strategies to prevent paying fraudulent claims while making the claims process as simple as possible. Reasonable steps will be taken to mitigate fraud so as to ensure a fair and secure claims review and payment process, while not falsely flagging legitimate PI Channeled Claims. Among the techniques will be technology to prevent claims submitted by BOTS, unique Non-NAS PI Claimant identification numbers, and strategic Non-NAS PI Claim Form fields. Periodic fairness audits will be conducted on samples of Non-NAS PI Channeled Claims to ensure that they are being graded and paid fairly.

**§ 13. CHARITY.**

The PI Trust will establish a charitable trust to accept donations that can be used to address the opioid addiction crisis by providing grant funding for recovery support services, addiction and addiction family harm reduction-related activities, education, family support, community-based advocacy efforts, and assistance to organizations providing services to individuals and caregivers grappling with opioid-related problems of

Non-NAS PI Claimants. The distribution of funding provided by this charity may be streamlined through qualified not-for-profit organizations. The charity will be funded only through donations; none of the funds received by the PI Trust under the Plan will be diverted to fund this charity. Non-NAS PI Claimants may choose to allocate part or all of their share of their recovery to this charity.

**§ 14. APPEALS.**

Each Non-NAS PI Claimant who has his/her Non-NAS PI Channeled Claims liquidated under this Non-NAS PI TDP has an appeal right, which is described in Exhibit C. Decisions of the Appeals Master pursuant to Exhibit C are final and binding, and Non-NAS PI Claimants have no further appeal rights as to any determinations made by the Claims Administrator under this Non-NAS PI TDP beyond those set forth in Exhibit C.

**EXHIBIT A**

**SAMPLE CLAIM FORM FOR THE INDIVIDUAL  
PURDUE PHARMA L.P. PI TRUST DISTRIBUTION  
PROCEDURE FOR NON-NAS PI CLAIMS**



**PURDUE PHARMA PI TDP  
NON-NAS CLAIM FORM  
INSTRUCTIONS PAGE**

**THIS IS A SAMPLE CLAIM FORM AND IS SUBJECT TO CHANGE. DO NOT COMPLETE THE FORM AT THIS TIME. A BLANK COPY OF THE FINAL FORM WILL BE AVAILABLE ONLINE AND BY MAIL FOR YOU TO COMPLETE AT THE APPROPRIATE TIME AFTER THE PURDUE PLAN OF REORGANIZATION HAS BEEN APPROVED AND GONE EFFECTIVE.**

This claim form (the “Claim Form”) must be completed by each Non-NAS PI Claimant seeking to recover money from the Purdue Personal Injury Trust (The “PI Trust”) on its Non-NAS PI Channeled Claim(s).<sup>1</sup> IF YOU DO NOT TIMELY RETURN THIS CLAIM FORM AS INSTRUCTED, YOU WILL BE DEEMED TO HAVE CONSENTED TO HAVE YOUR NON-NAS PI CHANNELED CLAIM(S) LIQUIDATED UNDER THE NONNAS PI TDP, AND YOUR CLAIM(S) WILL BE DISALLOWED UNDER THE NON-NAS PI TDP FOR YOUR FAILURE TO TIMELY RESPOND.

If you hold multiple Non-NAS PI Claims against the Debtors on account of injuries to *more than one* person who used opioids, then fill out one Claim Form for each

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<sup>1</sup> Capitalized terms used but not defined herein have the meanings ascribed to them in the Non-NAS PI TDP or, if not defined therein, then the meanings ascribed to them in the Chapter 11 Plan.

of those Non-NAS PI Claims. If you hold multiple Non-NAS PI Claims on account of multiple injuries to *the same* person who used opioids, then fill out only one Claim Form. One Claim Form submitted for a Non-NAS PI Claim shall be deemed to be a Claim Form in respect of that Non-NAS PI Claim and also any Non-NAS PI Channeled Claims against a Released Person or Shareholder Released Person that are associated with that Non-NAS PI Claim.

**Follow the instructions of each section carefully to ensure that your Claim Form is submitted correctly.** If any section does not pertain to your claim, leave it blank. Except as otherwise indicated, all words shall be given their ordinary, dictionary meaning. Submitting this Claim Form does not guarantee that you will receive payment from the PI Trust. Whether or not you receive payment depends on whether you make the additional required submissions, as set forth in the Non-NAS PI TDP, and whether or not your claim meets the eligibility requirements set forth in the Non-NAS PI TDP.

This Claim Form allows you to choose to “opt out” of the streamlined, expedited Non-NAS PI TDP liquidation process with respect to any Non-NAS PI Claim against one or more of the Debtors, and instead pursue that Non-NAS PI Claim in the tort system by filing a lawsuit against the PI Trust at your own expense. You may litigate in court only with respect to a Non-NAS PI Claim held against one or more Debtors, and may not litigate other Non-NAS PI Channeled Claims. If you select the “opt out” option, you will not be eligible to receive the Easy Payment or any “Base Payment” or “Level Award.” Furthermore, you will not be allowed to opt back in to the Non-NAS PI TDP if your lawsuit

is unsuccessful in the tort system. Any final judgment you obtain in the tort system against the Non-NAS PI Trust will be subject to reduction pursuant to the “opt out” procedures set forth in Exhibit B to the Non-NAS PI TDP. YOU MAY ONLY OPT OUT BY CHECKING THE “OPT OUT” BOX AND TIMELY RETURNING THIS CLAIM FORM. FAILURE TO RESPOND DOES NOT CONSTITUTE OPTING OUT.

For those who do not “opt out,” this Claim Form requires you to choose between receiving an “Easy Payment” of \$3,500 or seeking a “Base Payment” and “Level Award.” If your Non-NAS PI Claim is eligible for payment, then the “Easy Payment” choice will get you money faster, but may not pay as much as a “Base Payment” or “Level Award” would ultimately pay.

By submitting this Claim Form and choosing to liquidate your Claim under the Non-NAS TDP, you are deemed to consent to the Lien Resolution Program and to become a party to the LRP Agreement, under which certain health insurance companies, known as “Third-Party Payors” or “TPPs,” have agreed to resolve their claims against you and/or your recoveries under the Non-NAS PI TDP for reduced amounts or, in some cases, by waiving their claims altogether. The LRP Agreement is attached as Exhibit [ ] to the [ ] Plan Supplement.

**Instructions for Submission:** You may complete and submit this Claim Form either online, at [REDACTED], or by mailing back the completed Claim Form to [REDACTED]

**EXHIBIT B****PROCEDURES FOR NON-NAS PI CLAIMANTS WHO  
OPT TO LIQUIDATE THEIR NON-NAS PI CLAIMS IN  
THE TORT SYSTEM RATHER THAN UNDER THE  
INDIVIDUAL PURDUE PHARMA L.P. NON-NAS  
TRUST DISTRIBUTION PROCEDURE**

The following procedures shall apply in the case of a Non-NAS PI Claimant<sup>1</sup> who elects, subject to the terms hereof, to liquidate his or her Non-NAS PI Claim by commencing a lawsuit in the tort system after so timely indicating on his or her Non-NAS PI Claim Form. By so electing, such Non-NAS PI Claimant forfeits any right to have his or her Non-NAS PI Claim liquidated under sections 6 through 9 (inclusive) of the Non-NAS PI TDP, and instead shall have the right to liquidate his or her Non-NAS PI Claim exclusively in the tort system. Only claims that meet the definition of “Non-NAS PI Claim” under the Plan may be litigated in the tort system. The adjudication of a Non-NAS PI Claim in the tort system shall be deemed to be an adjudication of that Non-NAS PI Claim and any associated Non-NAS PI Channeled Claims of the Non-NAS PI Claimant regarding the same injuries that are the subject of his or her Non-NAS PI Claim. Any Distribution from the PI Trust on a Final Judgment (as defined below) in respect of such Non-NAS PI Claim, if any, shall be deemed to be a Distribution in satisfaction and conclusive resolu-

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Non-NAS PI TDP or, if not defined in the Non-NAS PI TDP, the meanings ascribed to such terms in the Plan.

tion of such Non-NAS PI Claim and such associated Non-NAS PI Channeled Claims.

**§ 1. SUITS IN THE TORT SYSTEM.**

If a Non-NAS PI Claimant timely filed a proof of claim in the Chapter 11 Cases asserting his or her Non-NAS PI Claim, then he or she may elect to liquidate such Non-NAS PI Claim in the tort system rather than under the Non-NAS PI TDP by checking the box so indicating on his or her Non-NAS PI Claim Form, which Non-NAS PI Claim Form must be filed by the date that is ninety (90) days<sup>2</sup> after the applicable Non-NAS PI Claim Form is disseminated to him/her.<sup>3</sup> If the Non-NAS PI Claimant makes such election, then the Non-NAS PI Claimant may file a lawsuit regarding only his or her Non-NAS PI Claim (and no other claims) against only the PI Trust (and including no other parties as defendants) solely in the United States District Court for the Southern District of New York (the “SDNY District Court”),<sup>4</sup> unless such court orders pursuant to 28 USC

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<sup>2</sup> Within sixty (60) days after the Effective Date, the Non-NAS PI Claim Form will be made available to Non-NAS PI Claimants electronically and, if the Non-NAS PI Claimant is a pro se claimant, also mailed to such Non-NAS PI Claimant in physical copy. When disseminated, each Non-NAS PI Claim Form will clearly state the absolute deadline (e.g., “January 30, 2022”) by which the Non-NAS PI Claim Form must be returned.

<sup>3</sup> The filing of a Non-NAS PI Claim Form indicating that a Non-NAS PI Claimant has elected to liquidate his or her Non-NAS PI Claim in the tort system shall have no effect on any federal or state statute of limitation or repose applicable to the Non-NAS PI Claims asserted by such Non-NAS PI Claimant.

<sup>4</sup> The Debtors shall seek an order from the SDNY District Court requiring that lawsuits filed by Holders of PI Claims who elect, subject to the terms hereof, to liquidate their PI Claims by com-

§ 157(b)(5) that such suit may be filed and tried in the United States District Court for the district in which the Non-NAS PI Claim arose.

Any such lawsuit shall be filed by the Non-NAS PI Claimant in an individual capacity and not as a member or representative of a class, and no such lawsuit shall be consolidated with the lawsuit of any other plaintiff by, or on the motion of, any plaintiff.<sup>5</sup> All defenses (including, with respect to the PI Trust, all defenses which could have been asserted by the Debtors, except as otherwise provided in the Plan) shall be available to both sides at trial.<sup>6</sup>

Subject to the PI Trust's receipt of a Non-NAS PI Claim Form so indicating that a Non-NAS PI Claimant has elected to retain the option to file a lawsuit in the tort system as set forth above, NewCo and the Plan Administration Trust will establish and maintain, as necessary, a document reserve (the "PI Document Reserve") containing such materials as are necessary to such lawsuit as discovery material. Any such Non-NAS PI Claimant will be provided access to the PI Document

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mencing separate lawsuits in the tort system be filed and tried solely in the SDNY District Court pursuant to 28 U.S.C. § 157(b)(5).

<sup>5</sup> The trustee of the PI Trust (the "PI Trustee") shall be empowered (i) to bring one or more consolidated actions against multiple Holders of PI Claims who elect, subject to the terms hereof, to liquidate their PI Claims by commencing separate lawsuits in the tort system and (ii) to seek to consolidate multiple lawsuits commenced by individual Holders of PI Claims who elect, subject to the terms hereof, to liquidate their PI Claims by commencing separate lawsuits in the tort system.

<sup>6</sup> Among other things, the PI Trust shall be empowered to assert that the claim that is the subject of a Non-NAS PI Claimant's lawsuit is not a "Non-NAS PI Claim" within the meaning of the Plan.

Reserve subject to agreeing to (i) a protective order acceptable to the PI Trustee, the Plan Administration Trustee, and NewCo, and (ii) to the extent that the materials deposited into the PI Document Reserve include any documents produced by the Shareholder Released Parties that are not included in the Public Document Repository in accordance with the Plan and the Shareholder Settlement Agreement (the “Shareholder Released Party Documents”), the Protective Order, which shall exclusively govern the terms of disclosure of the Shareholder Released Party Documents. Any such Non-NAS PI Claimant who propounds on the PI Trust, NewCo, the Plan Administration Trustee, any other Creditor Trust, or any Debtor a request for additional documents or testimonial discovery must in such request (i) represent that such Non-NAS PI Claimant has conducted a reasonable search of the PI Document Reserve and, if it has been established, the Public Document Repository, and believes, based on such reasonable search, that the documents, information, or testimony it seeks is not available in either the PI Document Reserve or the Public Document Repository, and (ii) state and explain the basis for the Non-NAS PI Claimant’s good faith belief that the additional discovery he or she seeks is relevant to such lawsuit. The PI Trust shall not be liable for any costs incurred by parties other than the PI Trust in connection with third-party discovery propounded by any party other than the PI Trust.<sup>7</sup>

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<sup>7</sup> In order to minimize costs incurred by the PI Trust in connection with third-party discovery, the PI Trustee shall be empowered to seek to consolidate discovery propounded by Holders of PI

If a Non-NAS PI Claimant obtains a judgment on his or her Non-NAS PI Claim in the tort system and such judgment becomes a final order (a “Final Judgment”), such Final Judgment shall be deemed “Allowed” for purposes under the Plan and shall be payable by the PI Trust, subject to the limitations set forth in Section 2 below, as well as the Non-NAS Payment Percentage and Non-NAS Maximum Value (each as defined below), as provided in Section 6 below, the deductions as set forth in Section 6 below, and the resolution of health-care liens, as provided in Section 7 below.

**§ 2. LIMITATION ON DAMAGES AND ATTORNEYS’ FEES.**

Notwithstanding their availability in the tort system, no multiple, exemplary, statutory enhanced and/or punitive damages (i.e., damages other than compensatory damages), and no interest, attorneys’ fees or costs (including statutory attorneys’ fees and costs) shall be payable, with respect to any Non-NAS PI Claim litigated against the PI Trust in the tort system.

**§ 3. NON-NAS MAXIMUM VALUE.**

Payment on a Final Judgment for a Non-NAS PI Claim shall not exceed the dollar-equivalent of 120,000 points (the “Non-NAS Maximum Value”), which is three times the maximum point value attributed under the liquidation provisions of the Non-NAS PI TDP to eligible claims for the most severe injuries. Points will be converted to dollars consistent with the conversion set forth in section 8 of the Non-NAS PI TDP. As set forth in more detail in the Non-NAS PI TDP, the dollar

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Claims or the PI Trust in multiple lawsuits commenced by individual Holders of PI Claims against the PI Trust.



amount ultimately awarded per point will be determined with reference to the funds remaining in the PI Trust and to the pool of claims remaining against the PI Trust. It will vary depending on how many people choose to opt out their claims and how expensive it is for the PI Trust to defend those claims in the tort system. It will also depend on the payment elections made by those who are liquidating their claims under sections 6 through 9 (inclusive) of the Non-NAS PI TDP. At this time, it is estimated that the dollar award amount per point will be between \$0.80 and \$ 1.20.

**§ 4. NON-NAS PAYMENT PERCENTAGE.**

A Final Judgment on a Non-NAS Claim, minus any multiple, exemplary, statutory enhanced and/or punitive damages (i.e., damages other than compensatory damages), interest, attorneys' fees or costs (including statutory attorneys' fees and costs) that may have been awarded as part of such Final Judgment, shall be subject to reduction by the same percentage that Non-NAS PI Claims liquidated under the Non-NAS PI TDP are reduced prior to payment. In other words, a Non-NAS PI Claimant who elects to liquidate his or her Non-NAS PI Claim in the tort system shall not be entitled to receive more than his or her pro-rata share of the value available for distribution to all Non-NAS PI Channeled Claims entitled to a recovery pursuant to the Non-NAS PI TDP. Based upon the work of the Ad Hoc Group of Individual Victims, statistical sampling and modeling performed by financial analysts and subject-matter experts for the Ad Hoc Group of Individual Victims and other Holders of PI Claims, review of judgments obtained in lawsuits, settlement history, and collaborative discussions with stakeholders, the Base Payments and Level Awards described in the Non-NAS PI TDP rep-

resent an estimated pro-Tata percentage recovery by PI Claimants holding Allowed PI Channeled Claims of approximately 2.0% (such pro-rata percentage recovery as may be altered over time, the “Non-NAS Payment Percentage”). Accordingly, the initial Non-NAS Payment Percentage is 2.0%.

No Holder of a Non-NAS PI Claim who elects to liquidate his or her Non-NAS PI Claim in the tort system shall receive a payment that exceeds the liquidated value of his or her Non-NAS PI Claim multiplied by the Non-NAS Payment Percentage in effect at the time of payment (such value so reduced, the “Non-NAS Percentage-Reduced Claim”); *provided, however*, that if there is a reduction in the Non-NAS Payment Percentage, the PI Trustee, in his or her sole discretion, may cause the Non-NAS PI Trust to pay a Non-NAS PI Claim based on the Non-NAS Payment Percentage that was in effect prior to the reduction if the judgment in respect of such Non-NAS PI Claim became a Final Judgment prior to the date on which the PI Trustee proposes the new Non-NAS Payment Percentage to the PI Trust’s oversight committee (the “Oversight Committee”) and the processing of such Non-NAS PI Claim was unreasonably delayed due to circumstances beyond the control of the Non-NAS PI Claimant or the Claimant’s Counsel (as applicable).

**§ 5. ADJUSTMENT OF THE NON-NAS PAYMENT PERCENTAGE.**

The Non-NAS Payment Percentage shall be subject to change if the PI Trustee (with the assistance of the Claims Administrator), with the consent of the Oversight Committee, determines that an adjustment is required. No less frequently than once every three (3)

years, commencing with the date that is three (3) years after the Effective Date of the Plan, the PI Trustee (with the assistance of the Claims Administrator) shall reconsider the then-applicable Non-NAS Payment Percentage to assure that it is based on accurate, current information and may, after such reconsideration and with the consent of the Oversight Committee, change the Non-NAS Payment Percentage if necessary. The PI Trustee shall reconsider the then-applicable Non-NAS Payment Percentage at shorter intervals if he or she deems such reconsideration to be appropriate or if requested to do so by the Oversight Committee.

The PI Trustee shall base his or her determination of the Non-NAS Payment Percentage on current estimates of the number, types, and values of Non-NAS PI Channeled Claims, the value of the assets of the PI Trust Non-NAS Fund available for the payment of Allowed Non-NAS PI Channeled Claims pursuant to the Non-NAS PI TDP and amounts due and estimated to become due pursuant to the Non-NAS PI TDP in respect of Final Judgments obtained by Non-NAS PI Claimants who elect to liquidate their Non-NAS PI Claims in the tort system, all anticipated administrative and legal expenses, and any other material matters that are reasonably likely to affect the sufficiency of funds to pay a comparable percentage of (i) full value to all Holders of Allowed Non-NAS PI Channeled Claims and (ii) the Non-NAS Maximum Value to Non-NAS PI Claimants who elect to liquidate their Non-NAS PI Claims in the tort system. When making these determinations, the PI Trustee (with the assistance of the Claims Administrator) shall exercise common sense and flexibly evaluate all relevant factors.

If a redetermination of the Non-NAS Payment Percentage has been proposed in writing to the Oversight Committee by the PI Trustee, but such redetermination of the Non-NAS Payment Percentage has not yet been adopted by the Oversight Committee, a Non-NAS PI Claimant that has obtained a Final Judgment shall receive the lower of the then-current Non-NAS Payment Percentage and the proposed Non-NAS Payment Percentage. However, if the proposed Non-NAS Payment Percentage is the lower amount but is not subsequently adopted by the Oversight Committee, the Non-NAS PI Claimant shall thereafter receive the difference between the lower proposed amount and the higher current amount. Conversely, if the proposed Non-NAS Payment Percentage is the higher amount and subsequently adopted, the Non-NAS PI Claimant who has obtained a Final Judgment shall thereafter receive the difference between the current amount and the higher adopted amount.

At least thirty (30) days prior to proposing in writing to the Oversight Committee a change in the Non-NAS Payment Percentage, the PI Trustee shall post to the PI Trust's website a notice indicating the PI Trustee is reconsidering the Non-NAS Payment Percentage.

If the PI Trustee (with the assistance of the Claims Administrator), with the consent of the Oversight Committee, makes a determination to increase the Non-NAS Payment Percentage due to a material change in estimates of the future assets and/or liabilities of the PI Trust Non-NAS Fund, the Claims Administrator shall make supplemental payments to all Non-NAS PI Claimants who obtained previously a Final Judgment and received payments based on a lower Non-NAS Payment Percentage. The amount of any such supple-

mental payment shall be the liquidated value of the Non-NAS PI Channeled Claim in question multiplied by the newly-adjusted Non-NAS Payment Percentage, less all amounts paid previously to the Non-NAS PI Claimant in respect of such Non-NAS PI Channeled Claim.

The PI Trust's obligation to make a supplemental payment to a Non-NAS PI Claimant shall be suspended in the event the payment in question would be less than \$ 100.00, and the amount of the suspended payment shall be added to the amount of any prior supplemental payment/payments that was/were also suspended because it/they would have been less than \$ 100.00. However, the PI Trust's obligation shall resume, and the PI Trust shall pay any such aggregate supplemental payments due to such Non-NAS PI Claimant, at such time that the total exceeds \$ 100.00.

**§ 6. PAYMENT OF JUDGMENTS FOR MONEY DAMAGES.**

A Non-NAS PI Claimant who obtains a Final Judgment shall be entitled to receive from the PI Trust Non-NAS Fund in full and final satisfaction of that Final Judgment, a gross amount (subject to deductions set forth next) equal to the *lesser* of (i) the Non-NAS Percentage-Reduced Claim and (ii) the Non-NAS Maximum Value, in each case as then in effect (as described next) (such lesser amount, the "Non-NAS Gross Amount"). A Non-NAS PI Claimant's Non-NAS Gross Amount shall be subject to the following deductions and holdbacks: (A) its pro-rata share of the Creditor Trust Operating Expenses of the PI Trust; (B) amounts necessary to settle liens held by private insurance companies against such amount, if any; (C) amounts prepaid to the United

States under the United States-PI Claimant Medical Expense Claim Settlement to settle liens of the federal healthcare programs like Medicare, Tricare, VA, or Medicaid against such amount, if any; (D) its pro-rata share of the compensation, costs and fees of professionals that represented or advised the Ad Hoc Group of Individual Victims and the NAS Committee in connection with the Chapter 11 Cases as and to the extent provided in the PI Trust Agreement, subject to Section 5.8(g) of the Plan, and (E) the common benefit assessment required under Section 5.8(c) of the Plan, and the fees and costs of such Non-NAS PI Claimant's individual attorney(s) in the Chapter 11 Cases, if any, which deduction shall be taken by such individual attorney and reduced by the common benefit assessment in accordance with Section 5.8(c) of the Plan. The resulting net amount shall be paid to the Non-NAS PI Claimant in the form of an initial payment not to exceed \$3,500.00 and five (5) additional equal installments in years six (6) through ten (10) following the year of the initial payment; *subject, however,* to the prior satisfaction of healthcare liens as set forth in Section 7 below. In no event shall interest be paid in respect of any judgment obtained in the tort system.

None of the Non-NAS Percentage-Reduced Claim, the Non-NAS Maximum Value, the Non-NAS Gross Amount, the deductions therefrom, or the payment schedule is subject to any appeal or reconsideration.

**§ 7. RESOLUTION OF HEALTH CARE LIENS.**

The PI Trust shall not issue any payment in respect of a Final Judgment until the Claims Administrator has received proof to his or her reasonable satisfaction that any private or governmental healthcare liens or similar

claims against such Final Judgment have been satisfied or will be satisfied out of the recovery.

**§ 8. APPLICABILITY OF SPECIAL PROCEDURES FOR MINORS AND HEIRS.**

The special procedures set forth in Exhibit G to the Non-NAS PI TDP shall apply to all Non-NAS PI Claimants who are minors under applicable law and elect, subject to the terms hereof, to liquidate their Non-NAS PI Claims by commencing a lawsuit in the tort system. Anyone seeking a Distribution from the PI Trust in his or her capacity as an heir must execute and submit the applicable Heirship Declaration attached to the Non-NAS PI TDP as Exhibit F.<sup>8</sup>

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<sup>8</sup> Exhibit F contains two declaration forms. One applies if the Decedent named the Non-NAS PI Claimant as executor in his/her will; the other applies if the Decedent had no will.

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**NAS PI TDP**



**INDIVIDUAL PURDUE PHARMA L.P.**  
**PI TRUST DISTRIBUTION PROCEDURE FOR NAS**  
**PI CHanneled CLAIMS**

**§ 1. APPLICABILITY AND SUBMISSION INSTRUCTIONS.**

This trust distribution procedure for NAS PI Channeled Claims (as defined below) (the “NAS PI TDP”) sets forth the manner in which NAS PI Channeled Claims may become eligible for payments from, and shall be fully discharged by, the PI Trust.<sup>1</sup> Distributions in respect of NAS PI Channeled Claims shall be exclusively in the form of Distributions from the PI Trust NAS Fund to Holders of NAS PI Channeled Claims on the terms set forth herein.

Pursuant to the Plan and the Master TDP, the following claims (the “NAS PI Channeled Claims”) will be channeled to, and liability therefore shall be assumed by, the PI Trust as of the Effective Date of the Plan: (i) all NAS PI Claims, which are Claims against any Debtor for alleged opioid-related personal injury to an NAS Child or similar opioid-related Causes of Action against any Debtor asserted by or on behalf of an NAS Child, in each case, that arose prior to the Petition Date, and that are not (A) Third-Party Payor Claims, NAS Monitoring Claims or Hospital Claims, or (B) held by a

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Twelfth Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and Its Affiliated Debtors (as modified, amended or supplemented from time to time, the “Plan”) [ECF No. 3726] in the chapter II cases of Purdue Pharma L.P. and its Debtor affiliates (the “Chapter II Cases”) in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”).

Domestic Governmental Entity, and (ii) all Released Claims or Shareholder Released Claims that are for alleged opioid-related personal injury to an NAS Child or that are similar opioid-related Causes of Action asserted by or on behalf of an held by a Domestic Governmental Entity. NAS PI Channeled Claims shall be administered, liquidated and discharged pursuant to this NAS PI TDP, and satisfied solely from the PI Trust NAS Fund (as defined below). Holders of NAS PI Channeled Claims are referred to herein as “NAS PI Claimants.”

NAS PI Channeled Claims liquidated under this NAS PI TDP shall be (i) Allowed or Disallowed (such NAS PI Channeled Claims so Allowed, “Allowed NAS PI Channeled Claims”) and, for Allowed NAS PI Channeled Claims, (ii) liquidated to determine the gross amounts receivable thereon (an “Award”), in each case pursuant to the terms of this NAS PI

An Award for an NAS PI Channeled Claim liquidated hereunder will be a gross number before deduction of the following “PI Trust Deductions and Holdbacks”: (A) a pro rata share of the operating expenses of the PI Trust; (B) amounts held back under the Lien Resolution Program (the “LRP Agreement”) to settle liens held by private insurance companies against that Award if any; (C) amounts prepaid to the United States under the United States-PI Claimant Medical Expense Claim Settlement to settle liens of the federal healthcare programs like Medicare, Tricare, VA, or Medicaid against that Award, if any; (D) a pro rata share of the compensation, costs and fees of professionals that represented or advised the Ad Hoc Group of Individual Victims and the NAS Committee in connection with the Chapter 11 Cases, subject to Section 5.8(g) of the Plan; and (E) the

common benefit assessment required under Section 5.8(c) of the Plan, and the fees and costs of the NAS PI Claimant's individual attorney(s) in the Chapter 11 Cases, if any, reduced by the common benefit assessment in accordance with Section 5.8(c) of the Plan.<sup>2</sup> In addition to the deductions and holdbacks described above, your award may be subject to claims by certain state or tribal healthcare programs that are not part of the LRP Agreement.

This NAS PI TDP sets forth what evidence and forms you must submit in order to be eligible to receive an Award. Forms may be completed online at the PI Trust's website, [www. \\_\\_\\_\\_ .com](http://www.____.com), or by mailing back the completed forms to the PI Trust at the below address. Evidence in support of your NAS PI Claim should be submitted to [ ].<sup>3</sup>

**ELECTION TO LIQUIDATE NAS PI CLAIM  
IN THE TORT SYSTEM RATHER THAN  
UNDER THIS NAS PI TDP**

**An NAS PI Claimant who (i) timely filed a Proof of Claim in the Chapter 11 Cases prior to the General Bar Date asserting his/her NAS PI Claim against one or more Debtors and (ii) elects expressly, by timely submission of the NAS PI Claim Form attached hereto as Exhibit A, to liquidate his/her NAS PI Claim in the tort system rather than pursuant to the streamlined liquidation procedures set herein (a "NAS Opt-Out Claimant"), may assert and liquidate such NAS PI Claim in**

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<sup>2</sup> If you have an individual attorney, then your attorney, rather than the PI Trust, will be responsible for deducting his/her fees and expenses from your Award.

<sup>3</sup> Submission instructions to be added after solicitation.

the tort system at his/ her own expense, as set forth in more detail in Exhibit B, and shall forfeit all rights to liquidate such NAS PI Claim (and any associated NAS PI Channeled Claims regarding the same injuries that are the same subject of its NAS PI Claim) under the streamlined procedures set forth in this NAS PI TDP. The right to litigate in the tort system is available only with respect to Claims that meet the definition of “PI Claim” set forth in the Plan.

**OPTING OUT REQUIRES YOU TO TAKE THE AFFIRMATIVE ACTION OF CHECKING THE “OPT OUT” BOX ON THE NAS PI CLAIM FORM AND TIMELY SUBMITTING YOUR NAS PI CLAIM FORM TO THE PI TRUST. FAILURE TO TIMELY SUBMIT THE NAS PI CLAIM FORM SHALL CONSTITUTE CONSENT TO HAVE YOUR NAS PI CHANNELED CLAIMS LIQUIDATED PURSUANT TO THE PROVISIONS OF THIS NAS PI TDP.**

**§ 2. ALLOCATION OF FUNDS; CLAIMS ADMINISTRATOR.**

- (a) Allocations of Funds to the PI Trust and Further Allocation to the PI Trust NAS Fund and the PI Trust Non-NAS Fund.

Under the Plan, the PI Trust will receive a gross amount of between \$700 million and \$750 million (minus amounts distributed directly to the United States under the United States-PI Claimant Medical Expense Claim Settlement), in the form of an initial installment of \$300 million on the Effective Date of the Plan and subsequent installments, in each case subject to the United States-PI Claimant Medical Expense Claim Settlement. The PI Trust shall establish a fund to pay NAS PI Channeled Claims (the “PI Trust NAS Fund”); and a

fund to pay Non-NAS PI Channeled Claims (the “PI Trust Non-NAS Fund”), and shall allocate each distribution it receives under the Plan as follows: (i) 6.43% to the PI Trust NAS Fund, up to an aggregate maximum of \$45 million, and (ii) the remainder to the PI Trust Non-NAS Fund, in each case subject to applicable PI Trust Deductions and Holdbacks.

(b) Claims Administrator.

- (i) The PI Trust shall be established in accordance with § 5. 7 of the Plan to (1) assume all liability for the PI Channeled Claims, (2) hold the MDT PI Claim and collect the Initial PI Trust Distribution and payments due under the MDT PI Claim in accordance with the Private Entity Settlements and the PI Trust Documents, (3) administer, process, resolve and liquidate PI Channeled Claims, (4) make Distributions on account of Allowed PI Channeled Claims in accordance with the PI Trust Documents (including this NAS PI TDP), (5) fund the TPP LRP Escrow Account and make payments therefrom to LRP Participating TPPs, in each case, in accordance with and subject to the terms of the LRP Agreement and (6) carry out such other matters as are set forth in the PI Trust Documents. The trustee of the PI Trust (the “Trustee”), Edgar Gentle III, of Gentle, Turner, Sexton & Harbison, LLC, will serve as claims administrator (the “Claims Administrator”) to carry out the duties of the Trustee as set forth in the Plan and PI Trust Documents.

- (ii) The Trustee and the Claims Administrator<sup>4</sup> shall determine, pursuant to the requirements set forth herein, the Allowance or Disallowance of all NAS PI Channeled Claims liquidated under this NAS PI TDP. Distributions hereunder are determined only with consideration to an NAS PI Claim held against the Debtors, and not to any associated NAS PI Channeled Claim against a non-Debtor party. However, any Distribution to an NAS PI Claimant on account of his/her NAS PI Claim is deemed to be a distribution in satisfaction of all NAS PI Channeled Claims held by such NAS PI Claimant with respect to the injuries that are the subject of his/her NAS PI Claim. The Claims Administrator may investigate any such claim, and may request information from any NAS PI Claimant to ensure compliance with the terms outlined in this document. For NAS PI Claimants who execute the required HIP AA forms attached hereto as Exhibit C, the Claims Administrator also has the power to directly obtain such NAS PI Claimant's medical records.

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<sup>4</sup> As the same individual is serving as both Trustee and Claims Administrator, reference to actions by each reference Mr. Gentle acting in such respective capacity.

**§ 3. INITIAL NAS PI CHANNELED CLAIM ALLOW-  
ANCE.**

For an NAS PI Channeled Claim that is being liquidated pursuant to the streamlined procedures set forth in this NAS PI TDP to be Allowed, the applicable NAS PI Claimant must, with respect to that NAS PI Channeled Claim:

- (a) Hold such NAS PI Channeled Claim against one or more Debtors;
- (b) Have already timely<sup>5</sup> filed an individual personal injury Proof of Claim against one or more Debtors in the Chapter 11 Cases asserting his/her NAS PI Claim against one or more Debtors;

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<sup>5</sup> If the Proof of Claim was filed after the General Bar Date but before April 23, 2021, the Claims Administrator shall consider the NAS PI Channeled Claim without penalty. If the Proof of Claim was filed on April 23, 2021 or after, the NAS PI Channeled Claim asserted by such Proof of Claim shall be Disallowed unless (i) the Claims Administrator determines, which determination shall be on a case-by-case basis, that good cause exists to treat the late-filed NAS PI Channeled Claim as if it were timely filed, or (ii) the Bankruptcy Court so orders. Notwithstanding this deadline, in addition to the other requirements herein, up to 274 late-filed Claims filed by NAS PI Claimants who appear on the West Virginia NAS Birth Score Program and are represented by the WV NAS Ad Hoc Group (“WV NAS Claimants”) and who demonstrate the following to the satisfaction of the Claims Administrator shall be considered as if their Claim had been timely filed: (1) that the Claimant is a WV NAS Claimant, (2) that a Proof of Claim was filed in the Chapter 11 Cases by or on behalf of such WV NAS Claimant prior to April 15, 2021, and (3) a sworn declaration from the parent/guardian/custodian of such WV NAS Claimant that such parent/guardian/custodian did not know about the Chapter 11 Cases or Bar Date prior to the Bar Date.

- (c) Demonstrate by Competent Evidence (as defined below) a diagnosis by a licensed medical provider of a medical, physical, cognitive or emotional condition resulting from the NAS Child's intrauterine exposure to opioids or opioid replacement or treatment medication, including but not limited to the condition known as neonatal abstinence syndrome ("NAS"). The diagnosis can be made by any licensed medical professional, specifically including physicians, nurses, physician assistants, mental health counselor or therapist, or professional at a rehabilitation center. Only NAS PI Claims based on injuries or facts occurring prior to the filing of your NAS PI Claim Form are eligible for recovery.
- (d) Complete, sign and submit the NAS PI Claim Form attached hereto as Exhibit A by the date that is 150 days<sup>6</sup> after the NAS PI Claim Form is disseminated<sup>7</sup> to NAS PI Claimants;<sup>8</sup>
- (e) Complete, sign and submit the two HIP AA consent forms attached hereto as Exhibit C; and

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<sup>6</sup> Subject to extension in the discretion of the Claims Administrator.

<sup>7</sup> Within 60 days after the Effective Date, the NAS PI Claim Form will be made available to NAS PI Claimants electronically and, if an NAS PI Claimant is a pro se claimant, also mailed to such NAS PI Claimant in physical copy. When disseminated, the NAS PI Claim Form will clearly state the absolute deadline (e.g., "January 30, 2022") by which the NAS PI Claim Form must be returned.

<sup>8</sup> If the NAS PI Claimant checks the box on the NAS PI Claim Form indicating his/her election to liquidate his/her NAS PI Claim in the tort system rather than under the liquidation provisions of this NAS PI TDP, then such NAS PI Claim will not be liquidated hereunder.



- (f) If the NAS PI Channeled Claim concerns the injuries of a decedent, then also execute and submit the appropriate Heirship Declaration attached hereto as Exhibit D.<sup>9</sup>

Any NAS PI Claimant who satisfies all of the above requirements (a)-(f) with respect to a given NAS PI Channeled Claim shall have that NAS PI Channeled Claim Allowed.

**If an NAS PI Claimant does not satisfy these requirements with respect to an NAS PI Channeled Claim that is being liquidated under the liquidation provisions of this NAS PI TDP, INCLUDING THE REQUIREMENT TO TIMELY SUBMIT HIS/HER NAS PI CLAIM FORM AND ANY NECESSARY ACCOMPANYING EVIDENCE, then such NAS PI Channeled Claim shall be Disallowed.**

**Regardless of whether you elect to “opt out” or to have your claim liquidated under this NAS PI TDP, you must complete the NAS PI Claim Form as instructed by the deadline, which is 150 days<sup>10</sup> after the NAS PI Claim Form is disseminated. Failure to timely submit the NAS PI Claim Form (and any required supporting evidence) will result in your claim being disallowed. In other words, if you do nothing, you will not receive any compensation from the PI Trust.**

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<sup>9</sup> Exhibit D contains two declaration forms. One applies if the decedent named the person filing the NAS PI Claim Form as executor in his/her will; the other applies if the decedent had no will.

<sup>10</sup> Subject to extension in the discretion of the Claims Administrator.

**§ 4. COMPETENT EVIDENCE REQUIRED.**

- (a) To receive a recovery on his/her NAS PI Claim, an NAS PI Claimant must submit one of the following forms of evidence (“Competent Evidence”):
  - (i) A document from a licensed medical provider diagnosing the NAS Child with a medical, physical, cognitive or emotional condition resulting from the NAS Child's intrauterine exposure to opioids or opioid replacement or treatment medication, including but not limited to the condition known as NAS;
  - (ii) A document from a licensed medical provider affirming that the NAS Child had Neonatal Opioid Withdrawal Syndrome (“NOWS”); or
  - (iii) Other medical records evidencing that the NAS Child had an NAS diagnosis, including post-natal treatment for symptoms caused by opioid exposure, symptoms of post-natal withdrawal from opioids, medical scoring for NAS or NOWS which is positive or indicates fetal opioid exposure, a positive toxicology screen of the birth mother or infant for opioids or opioid-weaning drugs, or medical evidence of maternal opioid use.
- (b) The Claims Administrator shall have discretion to determine whether these evidentiary requirements have been met, including whether the forms of evidence submitted constitute Compe-

tent Evidence.<sup>11</sup> Any NAS PI Claimant who fails to meet these requirements is not entitled to any payment.

- (c) The Claims Administrator shall have the discretion to request additional relevant documentation believed to be in the possession of the NAS PI Claimant or his or her authorized agent or lawyer. The Claims Administrator has the sole discretion to Disallow, or to reduce or eliminate Awards on, claims being liquidated hereunder where he concludes that there has been a pattern and practice to circumvent full or truthful disclosure under this § 4.
- (d) If the Claims Administrator determines that an NAS PI Claim Form or accompanying evidence submitted hereunder is incomplete, he will notify the NAS PI Claimant and afford a 30-day period to cure any such deficiency. Such deficiencies include, but are not limited to, failure to sign or complete the NAS PI Claim Form, failure to execute the required HIP AA authorizations, or failure to submit qualifying evidence. If the deficiency is timely cured to the satisfaction of the Claims Administrator, no deduction or penalty will be assessed to an otherwise qual-

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<sup>11</sup> Competent Evidence necessary for Allowance of an NAS PI Claim is evidence, in the opinion of the Trustee, that establishes that the occurrence of a diagnosis of NAS with respect to an NAS PI Claimant is more likely true than not true, *i.e.* a probability standard. Competent Evidence requires more than a mere possibility or scintilla of truth, but such standard does not require proof that rises to the level of clear and convincing evidence. However, notwithstanding anything to the contrary in this NAS PI TDP, proof of a prescription of an opioid product shall not be required.

ifying NAS PI Channeled Claim. If the deficiency is not timely cured, or not cured at all, the Claims Administrator, depending on the nature of the deficiency, has the authority to prevent the NAS PI Claimant from receiving all or part of any Award (s)he would otherwise be entitled to on such NAS PI Channeled Claim.

**§ 5. AWARDS.**

The money available in the PI Trust NAS Fund for distribution to NAS PI Claimants shall be divided equally among the Allowed NAS PI Channeled Claims and allocated as equal gross awards to the Holders of such Allowed NAS PI Channeled Claims. The PI Trust may issue Distributions on account of Allowed NAS PI Channeled Claims in installments as funds are received by the PI Trust, or on account of installments pursuant to a court order. Because distributions to minors are to be held in trust until the minor becomes a legal adult (unless a competent court orders otherwise), it may take years before you have received all of your Award.

Your Distribution amount under the NAS PI TDP is a gross award that will be further reduced pay the applicable PI Trust Deductions and Holdbacks. In addition, your award may be subject

Although the Plan channels claims for all types of personal injury damages to the PI Trust, including both economic and non-economic or general damages, Awards issued hereunder compensate only general pain and suffering on account of the NAS Child's injuries. Because of limited funds, economic damages and punitive damages are not compensable.

**§ 6. BAR FOR PRIOR SETTLED CASES.**

An NAS PI Claimant whose NAS PI Channeled Claim was reduced prior to the Petition Date to a settlement, judgment, or award against a Debtor shall be barred from receiving any Award under this NAS PI TDP on account of such NAS PI Channeled Claim and shall not recover from the PI Trust on account of such NAS PI Channeled Claim.

**§ 7. SPECIAL PROCEDURES IN RESPECT OF MINORS.**

For NAS PI Claimants who are minors under applicable law, the special procedures set forth in Exhibit E hereto also apply and shall supplement the procedures set forth in this NAS PI TDP.

**§ 8. FAIRNESS AUDITS AND FRAUD PREVENTION.**

The Claims Administrator will use appropriate technology and strategies to prevent paying fraudulent claims while making the claims process as simple as possible. Reasonable steps will be taken to mitigate fraud so as to ensure a fair and secure claims review and payment process, while not falsely flagging legitimate NAS PI Channeled Claims. Among the techniques will be technology to prevent claims submitted by BOTS, unique NAS PI Claimant identification numbers, and strategic NAS PI Claim Form fields. Periodic fairness audits will be conducted on samples of NAS PI Channeled Claims to ensure that they are being evaluated and paid fairly.

**§ 9. APPEALS.**

If an NAS PI Claimant is dissatisfied with any determination made by the Claims Administrator with respect to his or her NAS PI Channeled Claim, (s)he can appeal to the Claims Administrator within fourteen (14) days of receiving notice of such Claims Administrator determination by submitting a written document clearly marked as “Appeal to Claims Administrator.” In that document, the NAS PI Claimant should identify the determination with which the NAS PI Claimant disagrees and state the reasons for the disagreement. The NAS PI Claimant may submit any additional documentation (s)he wishes to have considered. Only one appeal is permitted per Proof of Claim. The Claims Administrator shall conduct a de novo review and promptly issue a ruling in writing to the NAS PI Claimant and/or his/her counsel, as applicable. In the event that the Claims Office determines that the records submitted in support of the NAS PI Claimant's claim are unreliable, the notification of status shall advise the NAS PI Claimant of such determination and shall identify the particular records or statements that are deemed unreliable. In evaluating such appeal, the Claims Administrator shall not change the NAS PI IDP allowance criteria.

NAS PI Claimants shall have no other appeal rights beyond those set forth in this Section 9. Determinations made by the Claims Administrator in the appeals process pursuant to this Section 9 shall be final and binding and are not subject to further appeal in any forum.

**EXHIBIT A**

**SAMPLE CLAIM FORM FOR THE INDIVIDUAL  
PURDUE PHARMA L.P. PI TRUST DISTRIBUTION  
PROCEDURE FOR NAS PI CLAIMS**

**PURDUE PHARMA PI TDP  
NAS CLAIM FORM  
INSTRUCTIONS PAGE**

**THIS IS A SAMPLE CLAIM FORM AND IS SUBJECT TO CHANGE. DO NOT COMPLETE THE FORM AT THIS TIME. A BLANK COPY OF THE FINAL FORM WILL BE AVAILABLE ONLINE AND BY MAIL FOR YOU TO COMPLETE AT THE APPROPRIATE TIME AFTER THE PURDUE PLAN OF REORGANIZATION HAS BEEN APPROVED AND GONE EFFECTIVE.**

This claim form (the "Claim Form") must be completed for each NAS PI Claimant seeking to recover money from the Purdue Personal Injury Trust (the "PI Trust") on its NAS PI Channeled Claim(s).<sup>1</sup> IF YOU DO NOT TIMELY RETURN THIS CLAIM FORM AS INSTRUCTED, YOU WILL BE DEEMED TO HAVE CONSENTED TO HAVE YOUR NAS PI CHANNELED CLAIM(S) LIQUIDATED UNDER THE NAS PI TDP, AND YOUR CLAIM(S) WILL BE DISALLOWED UNDER THE NAS PI TDP FOR YOUR FAILURE TO TIMELY RESPOND.

If you represent the interests of an NAS Child and are seeking to recover money from the Purdue Personal Injury Trust (The "PI Trust") on account of an that NAS Child's NAS PI Channeled Claim(s), you must complete this Claim Form (the "Claim Form") and return the

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<sup>1</sup> Capitalized terms used but not defined herein have the meanings ascribed to them in the NAS PI TDP or, if not defined therein, then the meanings ascribed to them in the Chapter 11 Plan.



form as instructed below. If you do not complete the form, you will NOT qualify to receive funds on behalf of the child you represent.

If you believe that the NAS Child you represent holds multiple NAS PI Claims against the Debtors on account of multiple injuries, you should still submit only one Claim Form. One Claim Form submitted for a NAS PI Claim shall be deemed to be a Claim Form in respect of that NAS PI Claim and also any NAS PI Channeled Claims against a Released Person or Shareholder Released Person that are associated with that NAS PI Claim.

If you represent the interests of more than one NAS Child, you must file a Claim Form on behalf of each individual NAS Child. YOU CANNOT file one Claim Form on behalf of multiple children.

**Please follow the instructions of each section carefully to ensure that your Claim Form is submitted correctly.** Except as otherwise indicated, all words shall be given their ordinary, dictionary meaning. Submitting this Claim Form does not guarantee that you will receive payment from the PI Trust. Whether or not you receive payment depends on whether you make the additional required submissions, as set forth on this Claim Form and further detailed in the NAS PI TDP, and whether or not your claim meets the eligibility requirements set forth in the NAS PI TDP.

This Claim Form allows you to choose to “opt out” of the streamlined, expedited NAS PI TDP liquidation process with respect any NAS PI Claim against one or more of the Debtors, and instead pursue that NAS PI Claim in the system by filing a lawsuit against the PI Trust at your own expense. You may litigate in court

only with respect to a NAS PI Claim held against one or more Debtors, and may not litigate any other NAS PI Channeled Claims. If you select the “opt out” option, you will not be eligible to receive any distribution under the streamlined liquidation procedures of the NAS PI TDP. Furthermore, you will not be allowed to opt back in to the liquidation provisions of the NAS PI TDP if your lawsuit is unsuccessful in the tort system. In other words, if you lose your lawsuit, you cannot return to the NAS PI Trust and ask for money. And importantly, if you do obtain a judgment in a court against the PI Trust, that award will be subject to reduction pursuant to the “opt out” procedures set forth in Exhibit B to the NAS PI TDP. See the procedures set forth in Exhibit B to the NAS PI TDP for more detail. **YOU MAY ONLY OPT OUT BY CHECKING THE “OPT OUT” BOX AND TIMELY RETURNING THIS CLAIM FORM. FAILURE TO RESPOND DOES NOT CONSTITUTE OPTING OUT.**

For those who do note “opt out:” If your claim is Allowed by the Claims Administrator of the PI Trust, your claim will be liquidated and paid according to the NAS PI TDP. If your claim is Disallowed by the Claims Administrator, you will not receive a distribution from the PI Trust. All claimants whose NAS PI Channeled Claims are Allowed by the Claims Administrator shall receive an equal distribution from the PI Trust NAS Fund, subject to the deductions described in the NAS PI TDP.

By submitting this Claim Form and choosing to liquidate your NAS PI Claim under the NAS PI TDP, you are deemed to consent to the Lien Resolution Program and to become a party to the LRP Agreement, under which certain health insurance companies, known as

“Third-Party Payors” or “TPPs,” have agreed to resolve their claims against you and/or your recoveries under the NAS PI TDP for reduced amounts or, in some cases, by waiving their claims altogether. The LRP Agreement is attached as Exhibit [ ] to the [ ] Plan Supplement.

**Instructions for Submission:** You may complete and submit this Claim Form either online, at [REDACTED], or by mailing back the completed Claim Form to [REDACTED]

UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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Case No. 19-23649-rdd  
IN THE MATTER OF PURDUE PHARMA L.P., DEBTOR

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Nov. 9, 2021  
9:49 AM

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Before: Hon. ROBERT D. DRAIN, U.S. Bankruptcy  
Judge

[2]

HEARING re Order signed on 11/3/2021 Establishing  
Procedures for Remote Hearing on Motions for Stay  
Pending Appeal with hearing to be held on 11/9/2021 at  
10:00 AM at Videoconference (ZoomGove) (RDD)

HEARING re Notice of Agenda / Agenda for November  
9, 2021 Hearing

HEARING re Motion for Stay Pending Appeal/  
Memorandum of Law In Support of United States Trus-  
tees Expedited Motion for a Stay of Confirmation Order  
and Related Orders Pending Appeal Pursuant to Fed-  
eral Rule of Bankruptcy Procedure 8007 (related docu-  
ment(s) 3777, 3776) filed by Linda Rifkin on behalf of  
United States Trustee. (ECF #3778)

HEARING re Objection to Motion / Ad Hoc Commit-  
tee's Objection to Stay Motions (related document(s)  
3801, 3873, 3972, 3789, 3778, 3803, 3845) filed by Ken-  
neth H. Eckstein on behalf of Ad Hoc Committee of

Governmental and Other Contingent Litigation Claimants. (ECF #4002)

HEARING re Opposition Tribal Group Joinder in Opposition to Stay Motions filed by Peter D'Apice on behalf of Certain Native American Tribes and Others (ECF #4003)

\* \* \* \* \*

[256]

\* \* \* likely to succeed on the merits of the appeal.

The movants have the burden of proof with respect to their motions for the stay pending appeal, and that has been characterized as a heavy one. And the grant of a stay pending appeal has been characterized as extraordinary relief. See *In re General Motors Corp.*, 409 B.R. 24 (Bankr. S.D.N.Y. 2009 with regard to the first point, and *In re Sabine Oil & Gas Corporation*, 551 B.R. 132, 142 (Bankr. S.D.N.Y. 2016) on the second point.

The grant of a stay pending appeal is an exercise of judicial discretion dependent on the circumstances of a particular case, *id Sabine Oil*, 548 B.R. 681 and *In re General Motors*, 409 B.R. 30. They are, again, treated as an exception, not the rule, and are granted only in limited circumstances, *In re Brown*, 2020 WL 3264057, at \*5 (Bankr. S.D.N.Y. June 10, 2020).

To satisfy its burden to obtain a stay pending appeal, the movant needs to establish a proper balance in its favor of the following four factors; whether the movant has made a strong showing that it is likely to succeed on the merits, whether the movant will be irreparably injured absent a stay, whether a stay will substantially injure the other parties interested in the proceeding,

sometimes referred to as the assessment of the balance of harms, and four, where the public interest lies. See *Nken v. Holder*, [257] 556 U.S. 418, 434 (2009) and *Kelly v. Honeywell Int'l, Inc.*, 933 F.3d 173, 188-184 (2d Cir. 2019).

The *Honeywell* case is an important gloss on the first factor requiring a strong showing that the movant is likely to succeed on the merits of the underlying appeal by its focus on the need for that showing to show a fair ground for litigation. A number of courts have phrased this as a showing regarding the success on appeal somewhere between possible and probable. Again, see *Brown*, 2020 WL 3264057 \*7 and *Sabine Oil*, 548 B.R. 683, 684, which also notes in Judge Chapman's opinion that the probability of success that must be demonstrated can be viewed as inversely proportional to the amount of irreparable injury that the movant will suffer absent of the stay. In other words, more of one excuse is less of the other, *id* at 684.

I will briefly address the first prong, which, along with the prong of a showing of irreparable harm, are the two factors that are viewed as most critical in the analysis, *Nken v. Holder*, 556 U.S. 434. See also *Uniformed Fire Officers Association v. De Blasio*, 973 F.3d 41-48 (2d Cir. 2020).

This analysis of the merits by the court that issued the order upon which the appeal is based is one that places that court in the position of looking at its ruling objectively as one would from the outside to see whether [258] there are fair grounds for litigation of the appeal. And depending on the strength, or lack thereof, of a showing of irreparable harm, perhaps more than that to warrant a stay.

Obviously the Court's determination of the issues before it that are the subject of the movants' appeals was carefully undertaken by me after a lengthy trial and set forth in a 155-page written memorandum of decision. The issues on appeal I believe do not all warrant a finding of a strong showing likely to succeed on the merits or of likely success on the merits somewhere between possible and probable. Again, recognizing the sliding scale for this—for purposes of this stay pending appeal determination.

Certain of the issues raised I believe are clear under applicable Second Circuit law and a real stretch by the appellants. Those include the so-called due process argument, the so-called 524(e) argument, the analysis of the merits of the settlement, and the argument that the Second Circuit should change its law from how it is currently articulated.

As far as the due process argument is concerned, the United States Trustee has argued that the plan, with its injunction of certain third-party direct claims against the released parties, violates the due process clause by taking those claims without the right to a hearing and a trial, citing and relying on large measure upon *Ortiz v. Fibreboard [259] Corp.*, 527 U.S. 815 (1999).

As far as the notice point is concerned, I made extensive factual findings as to the notice that was provided and was received by those who are creditors of the Debtors. I will note my view that the plan itself and the underlying claims that have been identified by the U.S. Trustee apply to release or enjoin direct third-party claims that overlap with in a highly meaningful way claims of the Debtors or against the Debtors. And therefore, such notice would be sufficient. I will note

further that there is no absolute right to a trial beyond the trial that the court held as to the bona fides of the settlement with its right to object, which was preceded by a right to vote on the plan and to object to the plan generally, including the classification scheme set forth in the plan.

That scheme and the right to vote and the review by the bankruptcy court clearly distinguishes the bankruptcy process as recognized by the Second Circuit that would encompass certain types of releases of third-party claims from the fact pattern and concerns raised by the Supreme Court in *Ortiz*, where there was a concern that those that would be bound by a non-opt-out settlement were not adequately represented because of conflicts of interest, where there was no vote, and no plan process including the right to object to classification and voting, and ultimately [260] the court's review of the proposed settlement in that context.

The Supreme Court largely recognized this fact in *Ortiz* itself, recognizing that its general view as to due process was qualified by a special remedial scheme, quoting *Martin v. Wilks*, 490 U.S. 755, 762, Note 2 (1989), which specifically referenced the bankruptcy legislative scheme.

I believe the bench ruling sufficiently dealt with the inapplicability of the 524(e) argument, including citing well-reasoned opinions by other circuit courts on it.

As a factual matter, I will note that the U.S. Trustee took no discovery in connection with the confirmation hearing or generally in the case as a whole and largely played the role of a kibitzer on the evidence during the trial, offering no witnesses of its own. And to the extent it does, or the U.S. Trustee does object to the analysis



of the merits of the settlement, I find it highly unlikely that that analysis would prevail on appeal.

As far as the moving states' arguments on the merits that overlap with the ones that I just raised, I won't address them again. But I will note that I believe I comprehensively dealt with their classification arguments and their voting arguments and that the evidence in my analysis of recoveries under 1129(a)(7) clearly establishes that the plan would satisfy the best interest test even if [261] one considered the rights that they were being required to give up to pursue third-party claims against the released parties, although that was an alternative holding.

The U.S. Trustee's and the states' other arguments, however, I believe if there was a strong showing of irreparable harm, would satisfy the first prong of their burden of proof. The U.S. Trustee is clearly wrong that personal injury claimants and other creditors are receiving nothing on account of their third-party claims against the released parties. It is clear that it is the settlement of those third-party claims that enables the entire plan and the distributions under the plan, without which they would receive in my view as I found based on the analysis of the evidence, including the rights of the United States in the DOJ settlement to a super-priority claim and the limited recoveries that they would have in the free-for-all litigation that would ensue, literally no recovery.

The plan treats personal injury claims as receiving a distribution based on the liquidation of the underlying claim against the Debtor. That does not mean that the personal injury claimants are not receiving value on account of their third-party claims, but it reflects I believe

that their third-party claims are overlapping, and though entitling them perhaps to a direct recover as opposed to a recovery through the Debtor, viewed as derivative [262] claims under the analysis by the circuit in the Tronox case as well as by other courts that have distinguished claims that may be direct but are asserted because of harm to all of a debtor's creditors as opposed to individual creditors as discussed in the Tronox case, which is referenced and discussed at some length in my opinion. See also the discussion in *Deutsche Oel & Gas S.A. v. Energy Capital Partners Mezzanine Opportunities Fund A, LP*, U.S. Dist. LEXIS 181000 (S.D.N.Y. September 20, 2020), and *In re CIL Limited*, 2018 Bankr. LEXIS 354 (Bankr. S.D.N.Y. February 9, 2018).

As I also noted in the memorandum in support of the order, the circuit has now made it clear, notwithstanding the citation by the U.S. Trustee of *Johns Manville Corp. v. Chubb Indemnity Insurance Company*, 606 F.2d 135, 153-154 (2d. Cir. 2010), that the evaluation is only in respect of in rem claims. As stated and discussed at length in the Quigley case, the Court's power extends to in personam claims as long as the factors laid out by the Circuit are satisfied after a searching inquiry by the Court.

However, those factors have been the subject of different analyses over the years as to what is properly subject to an injunction of a direct third-party claim. And I believe that it is that issue, i.e. how those claims are [263] cabined between the clear instance where they should not be enjoined as discussed in the Manville III opinion, and where they should be.

I have tried to narrow those so that it does reflect in the plan that such claims are only those where there is

a substantial or an entire overlap. And I believe that the factual record of the claims that the U.S. Trustee purports to be protecting reflects just that overlap, i.e. a lack of direct fraud as opposed to allegations of extensive control over an enterprise that itself engaged in fraud or other violations of consumer law which would apply to all creditors, to protect all creditors of the debtors.

While I believe there is less of a fair ground for litigation on the second point which is raised only by the moving states, namely that notwithstanding there being any specific protection for them in the Bankruptcy Code, their status as a governmental entity takes them out of the reach of this particular plan injunction. Notwithstanding that, the injunction at this point given the creditors' other agreements applies just to the creditors' right to pursue monetary claims against the third parties.

The state creditors have argued that the deterrent effect of pursuing those claims is a valid governmental interest, which to some extent it is. But I believe that it is going far too far to state that that interest requires  
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