Docket #0093 Date Filed: 05/18/2025

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
MOLECULAR TEMPLATES, INC., *et al.*,[1] Debtors.	Case No. 25-10739 (BLS)
	(Jointly Administered)
	Re: D.I. 25, 51, 86

DEBTORS' REPLY TO U.S. TRUSTEE'S OBJECTION TO DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) APPROVING THE COMBINED DISCLOSURE STATEMENT AND CHAPTER 11 PLAN OF REORGANIZATION OF MOLECULAR TEMPLATES, INC. AND ITS AFFILIATE DEBTOR ON AN INTERIM BASIS; (II) ESTABLISHING SOLICITATION AND TABULATION PROCEDURES; (III) APPROVING THE FORM OF BALLOTS AND SOLICITATION MATERIALS; (IV) ESTABLISHING THE VOTING RECORD DATE; (V) FIXING THE DATE, TIME, AND PLACE FOR THE CONFIRMATION HEARING AND THE DEADLINE FOR FILING OBJECTIONS THERETO; AND (VI) GRANTING RELATED RELIEF

Molecular Templates, Inc. and its affiliate (collectively, the "Debtors"), each of which is a debtor and debtor in possession in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), hereby file this reply[2] to the United States Trustee for the District of Delaware's (the "U.S. Trustee") Objection (the "Objection" or "Obj.") to the *Debtors' Motion for Entry of an Order (I) Approving the Combined Disclosure Statement and Chapter 11 Plan of Reorganization of Molecular Templates, Inc. and its Affiliate Debtor on an Interim Basis; (II) Establishing*

[1] The Debtors in these chapter 11 cases, along with the Debtors' federal tax identification numbers, are: Molecular Templates, Inc. (9596) and Molecular Templates OpCo, Inc. (6035). The Debtors' mailing address is: 124 Washington Street, Ste. 101 Foxboro, MA 02035. All Court filings can be accessed at: https://www.veritaglobal.net/MolecularTemplates.

[2] Pursuant to rule 9006-1(d) of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), the Debtors filed this reply before 4 p.m. on May 18, 2025, the day prior to the deadline for filing the agenda for the May 21, 2025 hearing. To the extent any party in interest interprets Local Rule 9006-1(d) to require an earlier filing, the Debtors respectfully request leave given that the Debtors extended the U.S. Trustee's objection deadline to accommodate discussions between the Debtors and the U.S. Trustee, and such discussions resolved many of the informal objections raised by the U.S. Trustee. In addition, prior to filing this reply, the Debtors informed the U.S. Trustee when the Debtor intended to file the reply.

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Solicitation and Tabulation Procedures; (III) Approving the Form of Ballots and Solicitation Materials; (IV) Establishing the Voting Record Date; (V) Fixing the Date, Time, and Place for the Confirmation Hearing and the Deadline for Filing Objections Thereto; and (VI) Granting Related Relief (D.I. 51).[3] For the reasons outlined below, the Objection should be overruled.

1. No creditor or party with an economic interest in these Chapter 11 Cases has objected to the Disclosure Statement and Plan. The only party opposing the Disclosure Statement and Plan is the U.S. Trustee. While lengthy, the Objection contains only rehashed arguments that have been roundly and repeatedly rejected by courts across the country. *See, e.g.*, *In re Spirit Airlines, Inc.*, No. 24-11988, 2025 WL 737068 (Bankr. S.D.N.Y); *In re Number Holdings, Inc.*, No. 24-10719 (JKS) (Bankr. D. Del.); *In re Fisker, Inc.,* No. 24-11390 (TMH) (Bankr. D. Del.); *In re Wheel Pros, LLC*, No. 24-11939 (JTD) (Bankr. D. Del.); *In re FTX Trading Ltd.*, No. 22-11068 (JTD) (Bankr. D. Del.); *In re Robertshaw US Holding Corp.*, No. 24-90052 (CML) (Bankr. S.D. Tex.); *In re Invitae Corp.*, No. 24-11362 (MBK) (Bankr. D.N.J.); *In re Bowflex Inc.*, No. 24-12364 (ABA) (Bankr. D. N.J.).

2. The U.S. Trustee principally objects to the third party release on the basis that the releases provided for in Section 10.7 of the Plan (the "Voluntary Release") are purportedly non-consensual. *See* Obj. ¶ 24. To reach this conclusion, the U.S. Trustee misinterprets and

[3] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the *Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization of Molecular Templates, Inc. and its Affiliated Debtor* (D.I. 25) (as it may be amended, modified, or supplemented from time to time in accordance with the terms thereof (including all appendices, exhibits, schedules, and supplements (including any plan supplements) thereto), the "Disclosure Statement and Plan," the "Disclosure Statement," or the "Plan," as applicable).

misapplies the Supreme Court's decision in *Harrington v. Purdue Pharma, L.P.*, 603 U.S. 204 (2024). The U.S. Trustee relies on *Purdue* to argue that "the release must be consensual under . . . applicable state contract law." *See* Obj. ¶ 27. The U.S. Trustee then argues the Voluntary Release is not consensual under state law. *See* Obj. ¶ 31. This is contrary to the holdings of this Court and the law of this circuit, even following *Purdue*.

3. The existing, longstanding precedent by this court and courts within the Third Circuit is to approve third-party releases where creditors have the opportunity to opt out, consistently finding that such opt out release provisions are consensual. *See, e.g.*, *In re Indianapolis Downs, LLC*, 486 B.R. 286, 306 (Bankr. D. Del. 2013) ("As for those impaired creditors who abstained from voting on the Plan, or who voted to reject the Plan and did not otherwise opt out of the releases, the record reflects these parties were provided detailed instructions on how to opt out, and had the opportunity to do so by marking their ballots. Under these circumstances, the Third Party Releases may be properly characterized as consensual and will be approved."); *U.S. Bank Nat'l Ass'n v. Wilmington Tr. Co. (In re Spansion, Inc.)*, 426 B.R. 114, 144 (Bankr. D. Del. 2010) (same); *In re Arsenal Intermediate Holdings, L.L.C.*, No. 23-10097 (CTG), 2023 WL 2655592, at *6–8 (Bankr. D. Del. Mar. 27, 2023) (describing third-party opt out releases as consensual and adopting the reasoning of *Indianapolis Downs* in upholding such releases); *In re Fisker, Inc.*, No. 24-11390 (TMH) (Bankr. D. Del. Oct. 11, 2024) (D.I. 706) Hr'g Tr. 44:20-21 (finding that "in light of Purdue, there is no prohibition on the use of opt-out releases"). This remains the law post-*Purdue*.

4. In *Purdue*, the Supreme Court did not opine on consensual third-party releases and only addressed whether a bankruptcy court may approve a plan of reorganization with a release and injunction that extinguishes claims against non-debtor third parties without the consent of affected claimants, holding that it may not. *Purdue*, 603 U.S. at 226. The Supreme Court expressly stated: "Nothing in what we have said should be construed to call into question consensual third-party releases offered in connection with a bankruptcy reorganization plan." *Id*. Thus, by its express terms, nothing in *Purdue* disturbs this Court's existing jurisprudence and, given the Supreme Court's guidance on this point, this Court should rely on existing precedent.

5. Other courts addressing this very issue have agreed. In the eleven months since *Purdue*, objections asserting the exact same arguments have been filed the U.S. Trustee across the country—including within the Third Circuit—and have been overruled. For example, in *In re Robertshaw U.S. Holdings Corp.*, Judge Lopez expressly rejected and overruled the U.S. Trustee's arguments (similar to those raised here), noting that "[t]he Trustee wants to use the *Purdue* holding as an opportunity to advance its long-held position that consensual third-party releases in a plan should require an opt-in feature, rather than an opt-out." 2024 WL 3897812, at *17 (Bankr. S.D. Tex. Aug. 16, 2024). In rejecting the U.S. trustee's argument, Judge Lopez opined that "[t]here is nothing improper with an opt-out feature for consensual third-party releases in a chapter 11 plan" and it had not been altered by *Purdue*. *Id.* As will be the case here, in *Robertshaw*:

> Parties in interest were provided detailed notice about the Plan, the deadline to object to plan confirmation, the voting deadline, and the opportunity to opt out of the third-party releases. The Disclosure Statement included a detailed description about the third-party releases and the opt-out . . . ballots were sent to holders of Claims

> in voting classes. . . . All ballots provided claimants an opportunity to opt out. Non-voting parties . . . received a Notice of Non-Voting Status that offered a chance to opt out too. The ballots and the Notice of Non-Voting Status allowed parties to carefully review and consider the terms of the third party release and the consequences of electing not to opt-out.

Id. at *18.

6. Similarly, in *In re Bowflex Inc.*, No. 24-12364 (ABA) (Bankr. D. N.J.), Judge Altenburg confirmed, over the U.S. Trustee's objection, a plan which contained third party releases and an opt out mechanism similar to that at issue here. At the confirmation hearing, Judge Altenburg determined that *Purdue* "did not determine what constitutes a consensual release" and that courts "must look to guidance from ***current*** case law." Hr'g Tr. Aug. 19, 2024, 65:17–21 (emphasis added). Judge Kaplan reached the same conclusion in *In re Invitae Corporation*, No. 24-11362 (MBK) (Bankr. D. N.J.), overruling the U.S. trustee's objection on the same basis and approving the third-party releases. Hr'g Tr. Jul. 23, 2024, 14:19–23.

7. Additionally, Judges Dorsey, Horan, and Stickles had occasion to address this very issue in this district. In *FTX Trading Ltd.*, Judge Dorsey addressed the U.S. Trustee's objection to the plan's third party releases under *Purdue*, and determined that "the Supreme Court was not saying that third party consensual releases through an opt-out process are per se improper. I think opt-out releases remain a valid way for a debtor to be able to obtain releases through the plan process and do so on a consensual basis because the parties are given the opportunity to opt out; if they don't opt out or if they don't return a ballot at all, then they're presumed to have opted out. And I don't have any issues with that process per se." No. 22-11068 (JTD) (Bankr. D. Del. Oct.

7, 2024) (D.I. 26412) Hr'g Tr. 115:25-116:8. Specifically, Judge Dorsey approved the opt out in *FTX* because it was narrowly tailored, limited in scope, and notice was given through ballots and publication notice—comparing it to the notice required in the class action context. *Id*. at 116:10-17:2.

8. Further, Judge Horan and Judge Stickles have both overruled objections by the U.S. Trustee regarding third party releases, finding that *Purdue* did not change the law on consensual third party releases and applicable law continues to permit courts to approve opt outs in chapter 11 cases. *See In re Fisker, Inc.,* No. 24-11390 (TMH) (Bankr. D. Del. Oct. 11, 2024) (D.I. 706) Hr'g Tr. 44:20-45:11 (finding that "in light of Purdue, there is no prohibition on the use of opt-out releases"); *In re Gigamonster*, No. 23-10051 (JKS) (Bankr. D. Del. Aug. 27, 2024), Hr'g Tr. Aug. 27, 2024, 64:19–22 (determining that "the Supreme Court declined to express a view on what constitutes a consensual release or the procedural mechanism to obtain a consensual release"); *see also In re Number Holdings, Inc.,* No. 24-10719 (JKS) (Bankr. D. Del. Jan. 24, 2025) (D.I. 1756) Hr'g Tr. 27:12-15 (finding an opt out consensual where it applied to parties who affirmatively made the decision to submit a ballot and did not check the opt out box).

9. The analysis employed by, and ultimate conclusion of, bankruptcy courts addressing this very issue over the past eleven months applies with equal force here. *Purdue* did not change the law on consensual third party releases and applicable law continues to permit this Court to approve the Voluntary Release in these Chapter 11 Cases. The Voluntary Release here is a proper, consensual release, and the scope of the Voluntary Release is necessary for the

consummation of the Plan, warranted under the circumstances, clearly permitted by the applicable law, and should be approved as proposed.

10. The Debtors submit that the Voluntary Release is consensual and consistent with the law in this circuit. The ballots submitted for approval by this Court and set to be distributed to Holders entitled to vote on the Plan (in Class 4 and Class 5) and the election forms set to be distributed to holders entitled to opt out of the Voluntary Release (in Class 1, Class 2, and Class 3) quote the entirety of the release that would be given in bold and clearly informs holders of the implications if they should grant the release. There is also no argument that the proposed Voluntary Release and the consequences thereof are not clearly and conspicuously stated. In each case, the proposed ballots and election forms set to be distributed to Holders entitled to opt out of the Voluntary Release contain the opt out in boxed text and in prominent format in the center of the page. The ballots and election forms also inform the recipients that "regardless of whether you elect to opt out of the Release Provision in the Plan, your recovery under the Plan remains unaffected."

11. Furthermore, the Debtors Plan takes additional measures to ensure that the Voluntary Release is in fact voluntary by excluding those deemed to reject and not entitled to vote on the Plan (Class 6) from the definition of "Releasing Party."

12. The U.S. Trustee cites Judge Goldblatt's opinion, *In re Smallhold, Inc.*, 665 B.R. (Bankr. D. Del. 2024), for the proposition that the Plan's releases are not permitted. *See* Obj. ¶ 57. This decision is both inconsistent with *Purdue* itself and distinguishable on the facts. Here, notice of the Voluntary Release will be widely disseminated to creditors both via direct mailing and

through publication notice. The notice in *Smallhold*, by contrast, involved "a form of notice of the confirmation hearing that would be sent to all creditors." *Id*. at *4.

13. As originally stated in the Disclosure Statement and Plan, the Plan is the product of intense negotiations between the Debtors and their secured lender, resulting in a comprehensive restructuring support agreement (the "RSA Term Sheet") that prevented the immediate wind-down of the Debtors prepetition. Under the Plan, creditors will receive recoveries that could not have been accomplished without the various compromises that form the foundation of the Plan.

14. Given the Debtors' negotiations with its creditors, the notice providing creditors the opportunity to opt out, and the detailed instructions provided to creditors on how to opt out, the process used here is akin to those opt out provisions previously approved by this Court, courts in the Third Circuit, and courts across the country.

15. With respect to the Debtor Releases under the Plan, the U.S. Trustee also argues that the Disclosure Statement does not adequately disclose (a) why the Debtors will be releasing the Released Parties, (b) the nature and value of the claims the Debtors are releasing, or (c) what consideration the Debtors are receiving in exchange for granting the releases. *See* Obj. ¶ 20. As stated in the Disclosure Statement and Plan, the Plan is a result of a heavily negotiated RSA Term Sheet between the Debtors and their largest secured lender, whose postpetition funding prevented the immediate wind-down of the Debtors' operations and allows for the operations of the Debtors to continue. The Plan releases are a condition of that RSA Term Sheet. If the Debtors fail to meet the conditions of the RSA Term Sheet, the Debtors will be unable to confirm the Plan and may be forced to convert to chapter 7. For the reasons discussed herein and in the Disclosure Statement,

that result would be detrimental to general unsecured creditors, who would risk receiving nothing in a chapter 7 liquidation.

16. Moreover, the Debtors are proposing to provide ample notice of the terms of the releases to all creditors. Here, the Disclosure Statement, Ballots, Notice of Non-voting Status, and Opt Out Election Form among other documents, conspicuously state the terms of the Voluntary Release in bold font. All voting creditors will receive comprehensive and detailed notice of the Debtor Releases in Article X of the Plan, their impact on the Debtors, and the right to object to confirmation of the Plan. The Debtors intend to further establish the appropriateness of the Debtors releases at the Confirmation Hearing, but, at this stage, the Court should overrule all objections to the Debtor Releases related to approval of the Disclosure Statement and Solicitation Procedures.

17. For these reasons, the Voluntary Release should be approved as consensual as to all creditors who did not opt out or object to the Voluntary Release.

Dated: May 18, 2025
Wilmington, Delaware

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