Docket #0164 Date Filed: 06/27/2025

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
MOLECULAR TEMPLATES, INC., *et al.*,[1]	Case No. 25-10739 (BLS)
Debtors.	(Jointly Administered)
	Re: D.I. 86, 96, 124 & 156

DIP LENDER'S REPLY TO OBJECTION OF UNITED STATES TRUSTEE 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

In connection with the above-captioned chapter 11 cases, the DIP Lender,[2] by and through their undersigned counsel, hereby (i) submits this statement in support of confirmation of *Revised Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization for Molecular Templates, Inc. and its Affiliated Debtor* [D.I. 124] (as modified, amended, or supplemented from time to time, the "Plan")[3] and (ii) joins in the *Debtors' Reply to the U.S. Trustee's Objection to*

[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] The "DIP Lender" consists of K2 HealthVentures LLC and/or one of its subsidiaries, as identified in the Combined Plan and Disclosure Statement.

[3] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan, as applicable.

Debtors' Motion for Entry of an Order (I) Approving the Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization for Molecular Templates, Inc. and its Affiliated 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 [D.I. 96] (the "Debtors' Reply") to United States Trustee for the District of Delaware's (the "U.S. Trustee") Objection (the "Objection") [D.I. 156 and 86]. In support of the Debtors' Reply, the DIP Lender respectfully states as follows:

THIRD-PARTY RELEASE

1. The third-party release provided in Section 10.7 of the Plan (the "Third-Party Release") is a proper, consensual release, and its scope is necessary for the consummation of the Plan, warranted under the circumstances, and clearly permitted by applicable law.[4] The U.S.Trustee objects primarily to the use of opt-outs in the Third-Party Release purporting that these releases are non-consensual. The U.S. Trustee misreads and misapplies the Supreme Court's decision in *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204 (2024) and contradicts longstanding precedent in this Court and other courts in its characterization of the Third-Party Release. The U.S. Trustee relies on *Purdue* to argue both that the Third-Party Release must be consensual under applicable state contract law and also that it is ultimately nonconsensual under that standard.

2. In *Purdue*, the Supreme Court did not opine on consensual third-party releases and

[4] *See* Plan § X.

only addressed whether a bankruptcy court may approve a reorganization plan with a release and injunction that extinguishes claims against non-debtor third parties without the consent of affected claimants.[5] 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."[6] Thus, *Purdue* did not change the law on consensual third-party releases, and applicable law continues to permit this Court to approve the Third-Party Release in these Chapter 11 Cases.

3. A third-party release in which creditors have the opportunity to opt out has been consistently found to be consensual.[7] In this jurisdiction, comparable objections have been overruled, finding that *Purdue* did not change the law on consensual third-party releases, and that 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

[5] *Harrington v. Purdue Pharma, L.P., et al.* (*In re Purdue Pharma L.P.*), 603 U.S. 204, 227 (2024).

[6] *Id.*

[7] *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).

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 decided to submit a ballot and did not check the opt-out box).

4. Other jurisdictions have also consistently held that third-party releases limitations only apply to non-consensual third-party releases—i.e. releases that occur despite the affected party's effort to object or opt out.[8] The Fifth Circuit in *Republic Supply* found that the Bankruptcy Code does not preclude a third-party release provision where "it has been accepted and confirmed as an integral part of a plan of reorganization."[9] The Fifth Circuit further found that the third-party release at issue—to which no party timely objected—was binding and enforceable.[10]

5. *Republic Supply* and the cases that follow stand for the proposition that "[c]onsensual nondebtor releases that are specific in language, integral to the plan, a condition of settlement, and given for consideration do not violate" the Bankruptcy Code.[11] At the core of the analysis is whether the third-party release is consensual.

6. In determining whether a release is consensual, courts focus on the process,

[8] See, e.g., *In re Pilgrim's Pride Corp*., No. 08-45664-DML-11, 2010 WL 200000, at 5 (Bankr. N.D. Tex. Jan. 14, 2010) (ruling that under Pacific Lumber "the court may not, over objection, approve through confirmation of the Plan third-party protections. . . .") (emphasis added); *see also In re Camp Arrowhead, Ltd*., 451 B.R. 678, 701–02 (Bankr. W.D. Tex. 2011) ("[T]he Fifth Circuit does allow permanent injunctions so long as there is consent.") (emphasis in original).

[9] *Republic Supply Co. v. Shoaf*, 815 F.2d 1046, 1050 (5th Cir. 1987).

[10] *Id*. at 1053.

[11] *In re Wool Growers*, 371 B.R. at 776 (citing *Republic Supply*, 815 F.2d at 1050); *Dr. Barnes Eyecenter*, 255 Fed. App'x at 911–12).

including whether the disclosure is adequate so that parties can actually understand what they're being asked to do and the options that they're being given.[12] Ultimately, these courts acknowledge that parties in interest waive their rights with respect to a third-party release if they do not opt out of the releases.[13]

7. The Third-Party Release provides that each Releasing Party—including all Holders of Claims and Interests who do not specifically object to or opt out of the Third-Party Release—shall release all claims, Causes of Action, and liabilities that could be asserted against the Released Parties.[14] The provisions of the Plan, including the Third-Party Release, are the result of good faith arm's length negotiations among the Debtors, the DIP Lender and other key stakeholders.

8. The Third-Party Release is consensual because the affected parties received a

[12] Confirmation Hr'g Tr. 47:7-11, *In re Energy & Exploration Partners, Inc*., No. 15 44931 (RFN) (Bankr. N.D. Tex. April 21, 2016) [Docket No. 730] (hereinafter "ENXP Tr.").

[13] See ENXP Tr. 47:13-15 (reasoning that, so long as due process is satisfied, a party can waive its substantive rights by not affirmatively participating in the bankruptcy case); Confirmation Hr'g Tr. 42:2-9, *In re Southcross Holdings*, LP, No. 16-20111 (MI) (Bankr. S.D. Tex. April 11, 2016) [Docket No. 191] (approving as consensual a third-party release provision in favor of the debtors' prepetition equity sponsors that bound all holders of claims and interest).

[14] *Id*. Under the Plan, "Releasing Party" is defined as each of, and in each case in its capacity as such: (i) the Debtors and each of the Debtors' Estates; (ii) the DIP Secured Parties; (iii) all holders of claims that vote to accept the Plan and do not opt out of the voluntary release contained in Section 10.7 of the Plan by checking the "opt out box" on the ballot and returning it in accordance with the instructions set forth thereon; (iv) all holders of claims that are deemed to accept the Plan and who do not affirmatively execute and timely return a release opt-out form; (v) all holders of claims whose vote to accept or reject the Plan is solicited but who do not vote either to accept or to reject the Plan and do not opt out of the voluntary release contained in Section 10.7 of the Plan by checking the "opt out box" on the ballot and returning it in accordance with the instructions set forth thereon; (vi) all holders of claims that vote to reject the Plan and do not opt out of the voluntary release contained in Section 10.7 of the Plan by checking the "opt out box" on the ballot and returning it in accordance with the instructions set forth thereon; and (vii) each Related Party of each Entity in clauses (i) through clause (vi) solely to the extent such Related Party may assert Claims or Causes of Action on behalf of or in a derivative capacity by or through an Entity in clause (i) through clause (vi); provided, that, in each case, an entity shall not be a Releasing Party if it: (a) elects to opt out of the third party release; (b) is deemed to reject the Plan, or (c) timely objects to the third party release through a formal objection filed on the docket of the Cases that is not resolved before the hearing on confirmation of the Plan. Notwithstanding the foregoing, any party who is a Released Party shall also be a Releasing Party and any party who is a Releasing Party shall also be a Released Party.

meaning opportunity to opt out along with proper notice.[15] The U.S. Trustee compares the opt-out to class action settlement; however, we believe this is besides the point. The question is whether there is consent. Consistent with prior rulings in this district and elsewhere, failure to act by a party receiving benefit under the Plan constitutes consent.[16] All parties in interest were provided notice of these Chapter 11 Cases, the Plan, the deadline to object to confirmation of the Plan, and the opportunity to opt out of the Third-Party Release and the related deadline for doing so.[17]

9. The Ballots and the Opt-Out Election Form, which were transmitted to all holders of claims in the Voting Class, contained the full text of Section 10.7 of the Plan—the Third-Party Release—along with relevant definitions therein.[18] Moreover, under the Plan, the Releasing Party granting the Third-Party Release could opt out of the Third-Party Release without the need to

[15] *See In re Smallhold, Inc.*, No. 24-10267 (CTG), at 33 (Bankr. D. Del. Sept. 25, 2024) [Docket No. 288] (noting there must be "conspicuous notice of the opt-out mechanism"); *In re Arsenal Intermediate Holdings, LLC*, No. 23-10097 (CTG), 2023 WL 2655592, at *7 (Bankr. D. Del. Mar. 27, 2023) (noting that the opt outs resulted in consensual third party releases because "each affected party received notice and had an opportunity to be heard").

[16] Nov. 14 H'rg Tr. 61:14-19, *In re Diamond Sports Grp., LLC*, No. 23-90116 (CML) (Bankr. S.D. Tex. Nov. 16, 2024) [Docket No. 2680] ("Does this only happen in bankruptcy cases? No. As I noted in *Robertshaw*, happens in class actions, you can opt-out. It happens there. You know, with the State law there. It's a Federal law. It's a consensual. People had the opportunity and it worked."). *See, e.g.*, *Harris Cnty. Hosp. Dist. v. Pub. Util. Comm'n of Tex.*, 577 S.W.3d 370, 380 (Tex. App.—Austin 2019, pet. denied) (rejecting a class member's argument it could not be bound to a settlement unless it opted in and observing, "Texas law requires putative class members to opt out of a settlement to avoid the binding effects of class action."); *Hibbs v. Marvel Enters., Inc.*, 19 A.D.3d 232, 233 (N.Y. App. Div. 2005) (determining whether to approve a class action settlement and observing, "There is no legal or constitutional principle that mandates the use of the opt-in method. In fact, we have regularly approved class action settlements which incorporate an opt-out method under circumstances similar to those here").

[17] *See generally Order (I) Approving the Combined Disclosure Statement and Chapter 11 Plan of Reorganization 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* [Docket No. 122]; Exs. 1–5.

[18] *See* Plan § X.

object to or vote against confirmation of the Plan. The Notice of Non-Voting Status, Opt-Out Election Forms and the Ballot set forth the procedures for opting out of such Third-Party Release. Specifically, the Ballots included a box to check to indicate the opt out of the Third-Party Release. The procedure was clearly laid out in detail in the Plan.

ADEQUATE INFORMATION

10. The U.S. Trustee additionally objects that the Disclosure Statement does not provide adequate information as to who will be deemed to give third-party releases, who will receive such releases, what claims are being released and the value of such claims. However, the Plan clearly defines the Released Party, the Releasing Party and the claims that are being released.[19] Accordingly, the Disclosure Statement does provide adequate information on (a) why the Debtors will be releasing the Released Party; (b) claims the Debtors are releasing; and (c) the value of the Third-Party Release to the Debtors.

11. The primary purpose of a disclosure statement is to provide all material information that creditors and interest holders affected by a proposed plan need to make an informed decision regarding whether or not to vote for the plan.[20] In making a determination as to whether a

[19] Under the Plan, "Released Party" is defined as each of, and in each case in its capacity as such: (i) the Debtors and each of the Debtors' Estates; (ii) the DIP Secured Parties; (iii) any other Releasing Party; (iv) each current and former Affiliate of each entity in clauses (i) through clause (iii); and (v) each Related Party of each entity in clauses (i) through clause (iii); provided, that, in each case, an entity shall not be a Released Party if it: (a) elects to opt out of the releases provided by the Plan, (b) is deemed to reject the Plan, or (c) timely objects to the releases provided by the Plan through a formal objection filed on the docket of these Cases that is not resolved before the hearing on confirmation of the Plan. Notwithstanding the foregoing, any party who is a Released Party shall also be a Releasing Party and any party who is a Releasing Party shall also be a Released Party.

[20] *See, e.g., Century Glove, Inc. v. First Am. Bank of N.Y.*, 860 F.2d 94, 100 (3d Cir. 1988) ("[Section] 1125 seeks to guarantee a minimum amount of information to the creditor asked for its vote."); *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985) ("The primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan."); *In re Phoenix Petroleum, Co.*, 278 B.R. 385, 392 (Bankr. E.D.Pa. 2001) ("[T]he general purpose of the disclosure statement is to provide 'adequate information' to enable 'impaired' classes

disclosure statement contains adequate information as required by section 1125 of the Bankruptcy Code, courts typically look for disclosures related to topics including: (a) the events that led to the filing of a bankruptcy petition; (b) the relationship of the debtor with its affiliates; (c) a description of the available assets and their value; (d) the company's anticipated future; (e) the source of information stated in the disclosure statement; (f) the debtor's condition while in chapter 11; (g) claims asserted against the debtor; (h) the estimated return to creditors under a chapter 7 liquidation; (i) the future management of the debtor; (j) the chapter 11 plan or a summary thereof; (k) financial information, valuations, and projections relevant to a creditor's decision to accept or reject the chapter 11 plan; (l) information relevant to the risks posed to creditors under the plan; (m) the actual or projected realizable value from recovery of preferential or otherwise avoidable transfers; (n) litigation likely to arise in a non-bankruptcy context; and (o) tax attributes of the debtor.[21] Disclosure regarding all topics is not necessary in every case.[22]

12. The Disclosure Statement provides adequate information to allow Holders of Claims in the Voting Classes to make an informed decision about whether to vote to accept or reject the Plan. Specifically, the Disclosure Statement contains a number of categories of information that courts consider "adequate information," including, among other things: (a) the

---

of creditors and interest holders to make an informed judgment about the proposed plan and determine whether to vote in favor of or against that plan."); *In re Unichem Corp.*, 72 B.R. 95, 97 (Bankr. N.D.Ill. 1987) ("The primary purpose of a disclosure statement is to provide all material information which creditors and equity security holders affected by the plan need in order to make an intelligent decision whether to vote for or against the plan").

[21] *See, e.g., In re U.S. Brass Corp.*, 194 B.R. 420, 424–25 (Bankr. E.D. Tex. 1996) (listing factors courts have considered in determining the adequacy of information provided in a disclosure statement); *In re Scioto Valley Mortg. Co.*, 88 B.R. 168, 170–71 (Bankr. S.D. Ohio 1988) (same); *In re Metrocraft Pub. Serv., Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984) (same).

[22] *See U.S. Brass Corp.*, 194 B.R. at 424; *see also Phoenix Petroleum Co.*, 278 B.R. at 393 ("[C]ertain categories of information which may be necessary in one case may be omitted in another; no one list of categories will applyin every case.").

Plan, including a summary, the procedures for voting on the Plan and projected recoveries thereunder; (b) the statutory requirements for confirming the Plan; (c) the Debtors' organizational structure including the Debt-for-Equity Transaction; (d) the events leading to the filing of the Debtors' Chapter 11 Cases; (e) the major events during these Chapter 11 Cases, including pleadings filed in the Debtors' Chapter 11 Cases and certain relief granted by the Court; (f) the classification and treatment of Claims and Interests under the Plan, including the identification of the Holders of Claims entitled to vote on the Plan; (g) the means for implementation of the Plan, the provisions governing distributions to certain Holders of Claims pursuant to the Plan, the procedures for resolving Disputed Claims and other significant aspects of the Plan; (h) certain risk factors that Holders of Claims should consider before voting to accept or reject the Plan; and (i) the potentiality for certain United States federal income tax consequences of the Plan.

CONCLUSION

13. In sum, the Third-Party Release here is an appropriate, consensual release and should be approved as the Debtors provided comprehensive and detailed notice, the opt-out provisions are clearly described, and there are no unsecured committees objecting to the Plan. Moreover, the Disclosure Statement contains adequate information and satisfies section 1125 of the Bankruptcy Code, and the Disclosure Statement should be approved be approved on a final basis.

14. For all of the foregoing reasons, the Objection should be overruled.

WHEREFORE, for the reasons set forth above, as well as the reasons sets forth in the Debtors' Reply, the DIP Lender respectfully requests that the Court enter an order (i) overruling all objections to final approval of the Combined Plan and Disclosure Statement, (ii) confirming the Plan, and (iii) granting such other and further relief as the Court may deem just and proper.

Dated: June 27, 2025
Wilmington, Delaware

POLSINELLI PC

/s/ Shanti M. Katona
Christopher A. Ward (Del. Bar No. 3877)
Shanti M. Katona (Del. Bar No. 5352)
222 Delaware Avenue, Suite 1101
Wilmington, Delaware 19801
Telephone: (302) 252-0920
Facsimile: (302) 252-0921
cward@polsinelli.com
skatona@polsinelli.com

-and-

SIDLEY AUSTIN LLP

Samuel A. Newman (Admitted *Pro Hac Vice*)
1999 Avenue of the Stars, 17th Floor
Los Angeles, California 90067
Facsimile: (310) 595-9501
sam.newman@sidley.com

-and-

Jeri Leigh Miller (Admitted *Pro Hac Vice*)
2021 McKinney Avenue, Suite 2000
Dallas, Texas 75201
Telephone: (214) 981-3300
Facsimile: (214) 981-3400
jeri.miller@sidley.com

Counsel to the DIP Lender