Docket #0167 Date Filed: 06/30/2025

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. 156, 159, 162

DEBTORS' REPLY IN SUPPORT OF CONFIRMATION OF THE REVISED COMBINED DISCLOSURE STATEMENT AND JOINT CHAPTER 11 PLAN OF REORGANIZATION FOR MOLECULAR TEMPLATES, INC. AND ITS AFFILIATED DEBTOR

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, hereby file this reply in support of the *Revised Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization for Molecular Templates, Inc. and Its Affiliated Debtor* [D.I. 159] (the "Plan")[2] and in response to the objection (the "Objection" or "Obj.") from the Office of the United States Trustee (the "U.S. Trustee"). For the reasons outlined below, the Objection should be overruled.

PRELIMINARY STATEMENT

1. This reply is limited to responding to the U.S. Trustee's sole new argument regarding Federal Rule of Civil Procedure 23 (hereinafter, "Rule 23"). Fed. R. Civ. P. 23. The Objection misconstrues the relevance of the Court's prior question regarding third-party releases in the context of class actions. At the disclosure statement hearing, the Court asked how it should

[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] Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Plan, as applicable.

interpret Judge Dorsey's reasoning in *FTX*, where the court approved third-party releases with an opt-out mechanism after finding that the notice—both individual and by publication—was sufficient. May 21, 2025, Hr'g Tr. 26:15–20. Specifically, Judge Dorsey observed that "[b]oth of these ways of giving notice to parties are acceptable in the context of class action litigation, and I don't see why it would be any different here." *See In re FTX Trading, Ltd.*, Case No. 22-11068-JTD (Bankr. D. Del. Oct. 7, 2024, Hr'g Tr. 116:10–25).

2. The Objection focuses on the inapplicability of class action mechanics to bankruptcy, but this misses the point. The analogy is not used to impose Rule 23 standards wholesale but to underscore the sufficiency of notice and opportunity to opt out. Such framework is simply used by courts to evaluate third-party releases in the absence of a Federal Rule or binding higher court authority. The Debtors are not aware that any bankruptcy court has espoused that the requirements of Rule 23 must, in fact, be satisfied with respect to noticing third-party releases in connection with a Chapter 11 plan. As in *FTX*, the Debtors here provided robust notice—both direct and publication—and this *only further supports* the conclusion that the releases in this Plan are consensual and permitted.

3. To be clear, the Debtors do not contend that a failure to opt out constitutes consent because under Rule 23, a court-approved class action settlement may bind class members who do not opt out of the class action. Instead, the Debtors believe that the third-party releases provided for in the Plan are consensual under *Purdue* because (i) the solicitation materials provided ample notice of the releases to the Releasing Parties, (ii) these materials, including the Ballots and Opt-Out Election Forms, had clear and conspicuous instructions, and (iii) all parties subject to the

releases (a) had the ability the opt out and (b) received distributions. Additionally, to ensure that the Voluntary Releases were truly voluntary, the Debtors expressly excluded from the definition of "Releasing Party" those creditors and equity holders deemed to reject the Plan and not entitled to vote.

4. It is for these reasons that the Debtors believe the Voluntary Releases contained in the Plan are consensual and are like the many consensual releases previously approved by courts across the country, this circuit, and in this Court

5. Nevertheless, to specifically address the points raised by the U.S. Trustee in its objection: (i) the Debtors are not creating a *de facto* class action, as there has been no allegation of wrongdoing, nor are the Debtors aware of any such wrongdoing—and they have so stipulated; and (ii) the cases cited by the U.S. Trustee, which discuss the safeguards inherent in class-action procedures as a basis for permitting third-party releases, actually support the conclusion that the Voluntary Releases in this case are consensual.

ARGUMENT

I. The Class Action Analogy Supports the Debtors Position.

6. The class action lawsuit arena is governed by Rule 23. Consent is not the lynchpin of the analysis of whether a class action settlement is binding on a member of the class, rather, the focus there is on whether the procedures enshrined in Rule 23 have been adhered to. Again, in the plan confirmation context courts examine analogous bodies of law, not for the purpose of adopting them wholesale, but to develop an understanding how of similar issues are handled in other contexts. Although Rule 23 procedures and chapter 11 plan confirmation "consent" sound

different, upon closer inspection, the analysis under these bodies of law have a lot in common in both substance and form.

A. The Debtors Are Not Creating a *De Facto* Class Action; However, the Analogy is Still Applicable

7. The Objection relies on *U.S. v. Sanchez-Gomez* for the proposition that courts cannot create a *de facto* class action. Obj. ¶ 48. In *Sanchez-Gomez*, the Supreme Court addressed whether certain appeals were saved from mootness because the defendants sought "class-like" relief in a "functional class action." 584 U.S. 381, 383 (2018).

8. In *Sanchez-Gomez*, the U.S. Marshals in the Southern District of California adopted a policy of using full restraints on all in custody defendants during nonjury proceedings. *Id.* Four defendants appeared for pretrial proceeding in full restraints and subsequently raised constitutional objections on the use of full restraints on themselves and to the restraint policy as a whole. *Id.* at 384. Before a decision was reached on their complaints, their underlying criminal cases ended. *Id*. The Court of Appeals concluded that their claims were not moot and held that civil class precedents kept the cases alive, even though the respondents were no longer subject to the restraint policy. *Id*. at 384-85.

9. Holding that the defendants were not saved from mootness because the relief sought was a quasi-class action, the Supreme Court determined that class action is a creature of the Federal Rules of Civil Procedure and is an exception to the general rule that litigation be conducted by and on behalf of the individual named parties only. *Id.* at 387. The Supreme Court reasoned that "[t]he Federal Rules of Criminal Procedure establish for criminal cases no vehicle comparable . . . class

action. And we have never permitted criminal defendants to band together to seek prospective relief in their individual criminal cases on behalf of a class." *Id*. at 389. Because the claims of the four pretrial detainees did not involve any formal mechanism for aggregating claims, the protection from mootness enshrined in Rule 23 precedent could not save the complaints of the four pretrial detainees from being dismissed on mootness grounds.

10. However, because *Sanchez-Gomez* was concerned with mootness it has limited utility and does not apply to the subject matter at hand: confirmation of the Debtors' proposed Plan. Here, there is no effort to create a class action, after all, we are not dealing with plaintiffs, but with creditors. Furthermore, there has been no asserted wrongdoing, and the Debtors are not aware of any wrongdoing and have so stipulated. Finally, the relief the Debtors seek is not a settlement of an asserted cause of action or complaint.

11. Although the Debtors do not purport to create a class action, Rule 23 and the procedural safeguards provided for therein still provide a useful framework for analyzing whether in the Chapter 11 context a creditor's inaction can be a manifestation of consent. At bottom, Chapter 11 of the Bankruptcy Code, and particularly the confirmation process in this case, functions a lot like a class action suit under Rule 23.

12. First, on the petition date, an estate was created, which is similar to class certification. Second, the Solicitation Procedures provided stakeholders with notice of the Confirmation Hearing, classification of claims, voting and opt-out requirements, and the debtor releases, third-party releases, and exculpation provisions of the proposed plan. Specifically, in this case, Creditors received opt-out election forms, and two creditors opted out of the third-party

releases. *See* Voting Decl. (D.I. 160), Ex. B. This is analogous to the notice class members receive regarding the nature of the action, who the class is, what claims or defenses are, of the right to appear and be represented by counsel, right to not participate and exclude their claim from the class action, and of the binding nature of the judgment. *See generally* Fed. R. Civ. P. 23.

13. Third, the Debtors have proposed a Plan, which provides for classification of claims against the estate. *See* Plan Art. VII. Fourth, Class 4 consists of general unsecured claims. Class 4 claimants will receive the same treatment under the plan. *See* 11 U.S.C. § 1123(a)(4). Likewise, under Rule 23(a), a party demonstrates "commonality" when it shows that class members have "suffered the same injury" and that their claims "depend upon a common contention…of such a nature that it is capable of classwide resolution." *In re Roman Catholic Diocese of Syracuse, New York*, 667 B.R. 628, 633–34 (Bankr. N.D. NY. 2024).

14. *Fifth*, after the plan is confirmed and goes effective, holders of allowed Class 4 claims will receive a distribution of Liquidating Trust Assets in settlement of their prepetition claims against the debtors. *See* Plan Art. X, XII.

15. *Sixth*, the debtor in possession is an estate fiduciary, which is like the appointment of a class representative. Here, the debtors engaged in fulsome arm's-length negotiations with K2 regarding the wind-down budget and distributions to the holders of Allowed General Unsecured Claims. When deciding whether to approve a proposed class action settlement, a court will review (i) whether class members were adequately represented, (ii) whether the proposed settlement was negotiated at arm's-length; (iii) whether the relief is adequate; and (iv) whether the proposal treats class members equitably relative to each other. Fed. R. Civ. P. 23(e). As set forth at length in the

Memorandum of Law [D.I. 162], the Court's analysis of the proposed plan under sections 1122, 1123, and 1129 involves a similar undertaking under traditional chapter 11 principles.

16. In conclusion, using Rule 23 as a guide, in the face of the detailed and voluminous notice provided regarding the consequence of inaction, it is appropriate to find that the inaction of creditors is a manifestation of their consent to the third-party releases contained in the plan.

B. The U.S. Trustee's Cases are Distinguishable and by Analogy, Class Action Jurisprudence Would Support These Third-Party Releases.

17. The Objection relies heavily on *Patterson v. Mahwah Bergen Retail Grp., Inc.*, 636 B.R. 641 (E.D. Va. 2022), for the proposition that third-party releases in bankruptcy cases cannot be deemed consensual under class action principles. However, the U.S. Trustee's reliance on *Patterson* is misplaced. Far from undermining the releases proposed here, *Patterson* supports their validity—because the due process protections the *Patterson* court identified as essential are all satisfied in this case.

18. The Objection quotes *Patterson* for the assertion that "none of [the protections afforded under Rule 23] exist in the context of a non-debtor release." Obj. ¶ 57. That conclusion is incorrect as applied to the facts of this case.

19. In *Patterson*, the court reviewed the due process requirements for class action releases under *Phillips Petroleum Co. v. Shutts*, 472 U.S. 812 (1985), which remains the seminal authority on this point. The Supreme Court in *Shutts* held that due process is satisfied when:

1. Notice is the best practicable and reasonably calculated under the circumstances to apprise interested parties of the action and their rights;
2. The notice describes the action and the rights being affected;

3. The absent parties are given a true opportunity to opt out; and

4. The interests of absent parties are adequately represented.

See Patterson, 636 B.R. at 688–89 (citing *Shutts*).

20. The *Patterson* court concluded that the releases in that case were improper because only one of the four *Shutts* elements—an opt-out mechanism—was satisfied. *Id.* For the three elements not met, the court found that notice or opt-out forms were not sent to all parties subject to the release. *Id.* at 660. Second, the court noted that notice provided did not adequately describe the claims being released because the Debtors in *Patterson* knew of specific claims being asserted against the released parties and failed to identify or distinguish these claims in any way. *Id*. at 660, 688. Lastly, the court found that there was no party adequately representing the interests of those bound by the releases. *Id*. at 688. Compounding the problem, certain parties subject to the release were not set to receive any distributions. *Id*. at 656.

21. By contrast, the facts of this case could not be more different. First, the Debtors provided direct notice by mail and publication notice to all affected parties. The direct notice included the full text of the proposed release provisions and contained clear, prominent instructions on how to opt out of the releases.

22. Second, unlike in *Patterson*, where known claims were concealed, here the Debtors are not aware of any wrongdoing or claims against the Released Parties. The notices also provided the entire release provisions contained in the Plan in bold.

23. Third, the Debtors have also established effective and appropriate opt-out procedures, and creditors have demonstrated that the process works—as some have opted out the releases. This confirms both the adequacy of notice and the voluntariness of consent.

24. Fourth, while no official committee was appointed, the Debtors fulfilled their fiduciary duties to unsecured creditors by negotiating these releases in good faith and at arm's length. The Plan contemplates meaningful recovery for affected parties—relief that would not have been achievable absent the direct funding and support of the parties seeking the release. *See* Plan Art. II. This is in stark contrast to *Patterson*, where the Debtors' sought to bind classes set to receive no compensation under the plan. 636 B.R. at 656. Moreover, bankruptcy contains its own procedural safeguards: notice, the opportunity to object, solicitation, voting, and judicial oversight—all of which serve the same protective function as Rule 23 representation in class litigation.

25. The *Patterson* court's core concern was the absence of these safeguards. Here, they are not just present—they have been exceeded. For these reasons, even the authority most relied upon by the U.S. Trustee supports the Debtors' position. The due process protections required under Rule 23 have been met or exceeded in this case. The third-party releases in the Plan are consensual and should be approved.

WHEREFORE, the Debtors respectfully request that the Court overrule the Objection.

Dated: June 30, 2025
Wilmington, Delaware

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/s/ Luke Brzozowski

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