

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
)	Chapter 11
)	
SIO2 MEDICAL PRODUCTS, INC., <i>et al.</i> , ¹)	Case No. 23-10366 (JTD)
)	
Debtors.)	(Joint Administration Requested)
)	

**MOTION OF DEBTORS FOR ENTRY OF AN
ORDER (I) ESTABLISHING BIDDING PROCEDURES, (II) SCHEDULING
CERTAIN DATES WITH RESPECT THERETO, (III) APPROVING THE FORM
AND MANNER OF NOTICE THEREOF, AND (IV) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) state as follows in support of this motion:²

Preliminary Statement

1. The Debtors commenced these chapter 11 cases with a single objective: reorganizing the Debtors’ business as quickly as possible in a manner that maximizes value for all of the Debtors’ stakeholders. To that end, as described more fully in the First Day Declaration, the Debtors entered into the Restructuring Support Agreement and negotiated the Plan, contemplating that the Initial Plan Sponsors—affiliates of Oaktree Capital Management, L.P.—would equitize some or all of the Allowed First Lien Term Loan Claims and Allowed DIP Claims

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: SiO2 Medical Products, Inc. (8467); Advanced Bioscience Labware, Inc. (1229); and Advanced Bioscience Consumables, Inc. (2510). The location of the Debtors’ principal place of business and service address in these chapter 11 cases is 2250 Riley Street, Auburn, Alabama 36832.

² A detailed description of the Debtors and their business, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in the (a) *Declaration of Yves Steffen, Chief Executive Officer of SiO2 Medical Products Inc., in Support of Chapter 11 Filing and First Day Motions* (the “Steffen Declaration”) and (b) *Declaration of R. Seth Bullock, Interim Chief Financial Officer of SiO2 Medical Products, Inc., in Support of Chapter 11 Filing and First Day Motions* (the “Bullock Declaration”), filed contemporaneously herewith (collectively the “First Day Declarations”). Capitalized terms not defined herein shall have the meanings ascribed to such terms in the First Day Declarations.

of the DIP Lenders (in each case, in their discretion) in exchange for 100% of the equity of the reorganized Debtors (the “New Common Stock”, and such transaction, the “Equitization Restructuring”) through the Plan.

2. The Equitization Restructuring serves as a baseline restructuring proposal. The Plan contemplates, however, that the Debtors will continue their prepetition marketing and bidding process pursuant to the procedures attached as **Exhibit 1** hereto (the “Bidding Procedures”). These Bidding Procedures authorize the Debtors to consummate an alternative sale Transaction in the event that the Debtors receive an offer that, in their reasonable business judgment, and subject to and consistent with the terms of the Restructuring Support Agreement, represents a higher or otherwise better bid compared to the value provided by the Equitization Restructuring.

3. The Debtors have already started the marketing process to create as competitive an auction as possible. As further described in the First Day Declaration, in the months leading up to the Petition Date, the Debtors with the assistance of their investment banker, Lazard Frères & Co. LLC (“Lazard”) pursued all incremental financing options to address their acute liquidity issues and extend their runway. Having received no actionable proposals, in early 2023, the Debtors expanded their efforts and initiated a marketing process (the “Marketing Process”) to find potential strategic or financial purchasers of the Debtors’ businesses as a going concern. The Debtors, with the assistance of Lazard, have invested substantial time and effort in the Marketing Process: as of the date hereof, the Debtors have approached several prospective purchasers ranging from sponsors with a related portfolio company and/or that specialize in complex situations. Many of these prospective purchasers have been sent confidentiality agreements and, though some ultimately declined to proceed, discussions are ongoing with several prospective purchasers.

4. The Debtors intend to continue market testing the Equitization Restructuring to maximize value for all stakeholders. To the extent that the Marketing Process results in viable competing bids, the Debtors will hold an auction (the "Auction") pursuant to the Bidding Procedures to maximize the value of their estates. Should the Debtors ultimately select a bid as the winning bid (any such bid, the "Winning Bid", and any such bidder, the "Winning Bidder"), the Winning Bidder will become the Plan Sponsor. Any value in the Winning Bid above the value provided through the Equitization Restructuring (the "Additional Value") will be distributed as set forth in the Plan. In the event that such a bid does not materialize, the Debtors will consummate the Equitization Restructuring subject to the terms of the RSA. Completing the Marketing Process on a postpetition basis will ensure the Debtors' ability to fulfill their fiduciary duties, as it will serve as a market check on the value of the proposed recoveries to holders of Claims and Interests under the Equitization Restructuring.

5. The proposed timeline for the Marketing Process, though expedient, implements a reasonable schedule that provides sufficient time to continue canvassing the market for potential bidders or plan sponsors, especially in light of the Debtors' prepetition and ongoing Marketing Process, and is appropriate under the circumstances. The Bidding Procedures will maximize the time available to potential purchasers to review diligence and develop and submit bids within the proposed timeline for the postpetition Marketing Process. Given that the timeline and procedures contemplated herein were heavily negotiated with the Initial Plan Sponsors as part of the Restructuring Support Agreement and Equitization Restructuring, and that the Debtors will incur considerable expenses the longer the Chapter 11 Cases remain ongoing, it is essential that the Debtors consummate the Plan and emerge from chapter 11 as expeditiously as possible.

6. The Bidding Procedures and relief requested in this Motion are in the best interests of the Debtors' estates and their stakeholders. Accordingly, the Debtors request that the Court grant the relief requested herein.

Relief Requested

7. The Debtors seek entry of an order (the "Order"), substantially in the form attached hereto (the "Bidding Procedures Order"), (a) authorizing and approving the Bidding Procedures, attached to the Bidding Procedures Order as Exhibit 1, by which the Debtors will solicit and select the highest or otherwise best offer(s) for the New Common Stock, at the Auction, if needed, (b) scheduling certain dates with respect thereto, (c) approving the form and manner of notice thereof, and (d) granting related relief.

Jurisdiction and Venue

8. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. The Debtors confirm their consent, pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

9. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

10. The statutory bases for the relief requested herein are sections 105(a) and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), rules 2002,

6004, 6006, and 6007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rules 2002-1, 6004-1, and 9013-1.

Background

11. On the date hereof (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors have also filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). The Debtors are operating their business and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner in these chapter 11 cases, and no official committees have been appointed or designated.

The Proposed Marketing Process and Bidding Procedures

I. The Proposed Schedule.

12. The Debtors believe the proposed schedule is in the best interests of all stakeholders in these chapter 11 cases. Among other reasons, it is critical for the Debtors to execute on any proposed transaction within the timeframe contemplated by the milestones in the Restructuring Support Agreement. Accordingly, the Debtors propose the following timeline for the Marketing Process, as provided for in the Bidding Procedures:

Date and Time (all times in prevailing Eastern Time)	Event or Deadline
April 29, 2023, at 4:00 p.m.	IOI Deadline
May 29, 2023, at 4:00 p.m.	Bid Deadline
June 2, 2023, at 4:00 p.m.	Deadline to notify all Qualified Bidders of the highest or otherwise best Qualified Bid and provide copies of the documents supporting such Bid to all Qualified Bidders.
June 5, 2023, at [●] [a/p].m.	Auction (if required)
June 6, 2023, at 4:00 p.m.	Deadline for objections to approval of any Bid (including any credit bid), including objections based on the manner in which the Auction was conducted and the identity of the Winning Bidder, whether submitted prior to, on, or after the Bid Deadline.
June 15, 2023	Confirmation Hearing
June 27, 2023	Effective Date

13. The Debtors believe that this timeline provides them with an opportunity to conduct a fulsome Marketing Process while proceeding expeditiously toward Plan confirmation. The Debtors believe that timeframe will allow prospective purchasers to conduct the necessary diligence and submit a competitive bid, if desired. Accordingly, the proposed schedule is in the best interests of their creditors, other stakeholders, and all other parties-in-interest, and should be approved.

II. The Bidding Procedures.

14. To optimally and expeditiously solicit, receive, and evaluate bids in a fair and accessible manner, the Debtors have developed the Bidding Procedures, attached as Exhibit 1 to the Bidding Procedures Order. The following describes certain material points of the Bidding Procedures:³

³ This summary is qualified in its entirety by the Bidding Procedures attached as Exhibit 1 to the Bidding Procedures Order. All capitalized terms that are used in this summary but not otherwise defined herein shall have

Requirement	Description
Participation Requirements	<p>To receive due diligence information, including full access to the Debtors' electronic data room and additional non-public information regarding the Debtors, a party interested in consummating a transaction (a "<u>Potential Bidder</u>") should deliver (or have delivered) an executed confidentiality agreement (a "<u>Confidentiality Agreement</u>") in form and substance acceptable to the Debtors, to the extent not already executed, to the Debtors' Advisors.</p> <p>Promptly after a Potential Bidder delivers an executed Confidentiality Agreement to the Debtors' Advisors, such Potential Bidder may submit an Indication of Interest. Except as otherwise determined in the Debtors' business judgment, only those Potential Bidders that have delivered executed Confidentiality Agreements (each, an "<u>Acceptable Bidder</u>") may submit an Indication of Interest. In the event the Debtors deem that a Potential Bidder is not an Acceptable Bidder, the Debtors will promptly inform the Consultation Parties of such determination (and the reasons therefor). As applicable, the Debtors shall consult with the Consultation Parties prior to deeming any Potential Bidder an Acceptable Bidder or not an Acceptable Bidder.</p>
Indication of Interest Deadline	<p>In order to be eligible to submit a Bid, Acceptable Bidders will first be required to submit a non-binding indication of interest (an "<u>Indication of Interest</u>") not later than 4:00 p.m. (prevailing Eastern Time) on April 29, 2023 (the "<u>IOI Deadline</u>"), to the Debtors and their advisors specified herein; <i>provided</i>, that, after consultation with the Consultation Parties, the Debtors may extend the IOI Deadline or waive the requirement of an Indication of Interest for one or more Acceptable Bidders upon request, without further order of the Court. If the Debtors extend the IOI Deadline, the Debtors will promptly notify all Acceptable Bidders and file a notice of such extension on the Court's docket. The Debtors will promptly provide copies of all Indications of Interest received to the Consultation Parties.</p>
Indication of Interest Requirements	<p>Each Indication of Interest must include, except as the Debtors, in consultation with the Consultation Parties, otherwise determine:</p> <ul style="list-style-type: none"> • a letter outlining the Acceptable Bidder's offer, form(s) of consideration, and any conditions precedent (other than the sufficiency of financing) and stating that the Acceptable Bidder is prepared to work in good faith to acquire the New Common Stock through a chapter 11 plan (or such other Alternative Transaction as proposed) and finalize a binding proposal by the Bid Deadline (as defined below);

the meanings given to such terms in the Bidding Procedures. To the extent there are any conflicts between this summary and the Bidding Procedures, the terms of the Bidding Procedures shall govern.

	<ul style="list-style-type: none"> • written evidence acceptable to the Debtors demonstrating financial wherewithal and a description of any corporate or governmental authorizations necessary to consummate the proposed Transaction; • the identification of the ultimate beneficial owners of the Acceptable Bidder; • a description of all remaining due diligence requirements and any material conditions to be satisfied prior to submission of a Bid; • the identification of any person or entity who may provide debt or equity financing for the purchase and any material conditions to be satisfied in connection with such financing; • to the extent known at the time of the Indication of Interest, any obligations related to employees of the Debtors the Acceptable Bidder may assume; and • confirmation that the Acceptable Bidder consents to the jurisdiction of the Court and agrees to be bound by the Bidding Procedures.
Bid Deadline	An Acceptable Bidder that desires to make an irrevocable and binding offer (each, a “ Bid ”) shall transmit such irrevocable and binding offer via email (in .pdf or similar format) so as to be actually received on or before May 29, 2023, at 4:00 p.m. (prevailing Eastern Time) (the “ Bid Deadline ”) to the Debtors’ Advisors.
Bid Requirements	<p>Each Bid by an Acceptable Bidder must be submitted in writing and satisfy the following requirements (collectively, the “Bid Requirements”).</p> <ul style="list-style-type: none"> • <u>New Common Stock; Purpose.</u> Each Acceptable Bidder must submit a Bid for the New Common Stock and state that the Bid includes an irrevocable and binding offer by such Acceptable Bidder to purchase such New Common Stock. • <u>Purchase Price.</u> Each Bid must clearly set forth the purchase price, in cash, for the New Common Stock (the “Purchase Price”). For the avoidance of doubt, the Purchase Price must consist of sufficient Cash consideration to satisfy the Qualified Bid requirements set forth below. • <u>Good Faith Deposit.</u> Each Bid must be accompanied by a Cash deposit in the amount equal to 10% of the aggregate Purchase Price to be held in one or more escrow accounts on terms acceptable to the Debtors (the “Deposit”); <i>provided, however,</i> that the Debtors may, in their sole discretion on a case-by-case basis, in consultation with the Consultation Parties, elect to waive the Deposit requirement if such Acceptable Bidder otherwise provides sufficient evidence satisfactory to the Debtors, in their reasonable business judgment, that such Acceptable Bidder has sufficient

internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed Sale transaction and to fully satisfy the Acceptable Bidder's Purchase Price and other obligations under its Bid.

- **Transaction Documents.** Each Bid must be accompanied by executed Transaction documents, including a copy of the Plan (or Purchase Agreement, if applicable), marked to reflect any amendments and modifications thereto, and a plan sponsor agreement (the "Plan Sponsor Agreement"), the form of which will be provided to any Acceptable Bidder by the Debtors prior to the Bid Deadline, including the exhibits, schedules, and ancillary agreements related thereto, and any other related material documents integral to such Bid pursuant to which the Acceptable Bidder proposes to effectuate the proposed transaction, along with copies that are marked to reflect any amendments and modifications to the form Plan Sponsor Agreement provided to such Acceptable Bidder, which amendments and modifications may not be materially more burdensome than the Equitization Restructuring or otherwise inconsistent with the Bidding Procedures. The Debtors, in their reasonable business judgment and upon consultation with the Consultation Parties, will determine whether any such amendments and modifications are materially more burdensome.
- **Proof of Financial Ability to Perform.** A Bid must include written evidence that the Debtors reasonably conclude, in consultation with the Consultation Parties, that the Acceptable Bidder has the necessary financial ability to close the Transaction by no later than the milestone set forth in the Restructuring Support Agreement (the "Close Deadline") and has provided adequate assurances of the future performance under all contracts to be assumed and assigned in such Transaction. Such information must include, among other things, the following:
 - contact names and telephone numbers for verification of financing sources;
 - evidence of the Acceptable Bidder's requisite financial capacity to consummate the Transaction contemplated by its Bid, and/or equity commitments and, if applicable, proof of unconditional fully executed and effective debt funding commitments from one or more reputable sources in an aggregate amount equal to the cash portion of such Bid (including, if applicable, the Acceptable Bidder's payment of cure amounts), or the posting of an irrevocable letter of credit from a recognized banking institution issued in favor of the Debtors in such amount, in each case, as are needed to close the Transaction;
 - the Acceptable Bidder's current financial statements (audited if they exist) or other similar financial information reasonably acceptable to

the Debtors;

- a description of the Acceptable Bidder's pro forma capital structure; and
 - any such other form of financial disclosure or credit-quality support information or enhancement reasonably requested by the Debtors demonstrating that such Acceptable Bidder has the ability to close the Transaction by no later than the Close Deadline.
- **No Contingencies; No Financing or Diligence Outs.** A Bid shall not be conditioned on (a) the obtaining or the sufficiency of financing, (b) the obtaining of any board of directors or board of managers, equity holder, investment committee, or other similar internal approval, or (c) the outcome or review of due diligence. A Bid must identify with particularity each and every condition to the consummation of the Transaction, including the executory contracts and unexpired leases for which assumption and assignment is required.
 - **Identity.** Each Bid must fully disclose the identity of each entity and each entity's shareholders, partners, investors, and ultimate controlling entities that (a) will directly or indirectly own and/or control five percent or more (individually or collectively) of the equity and/or voting securities of the Potential Bidder, including its full legal name, jurisdiction of incorporation or formation, and its location in the Potential Bidder's corporate structure, that will be bidding for the New Common Stock, or otherwise participating in connection with such Bid, (b) will directly or indirectly own and/or control any amount of equity and/or voting securities of the Potential Bidder, (c) for trusts and similar legal arrangements that meet the criteria for subparts (a) and (b) above, (w) each trust's settlor (the provider of funds), (x) each trustee or person or entity exercising control over each trust, (y) any person with the power to remove any trustee and (z) the beneficiaries of such trust(s) or similar legal arrangement, and (d) has a connection or agreement with any Debtor or with any other prospective bidder for the New Common Stock or any officer, director, financial creditor, or equity security holder of any Debtor. Each Bid should also include contact information for the specific person(s) and counsel whom the Debtors (and their advisors) should contact regarding such Bid. Each Bid should contain sufficient evidence that the Acceptable Bidder is legally empowered, by power of attorney or otherwise, to complete the Transaction on the terms contemplated by the parties. Each Bid should also fully disclose any connections or agreements with any of the Debtors, any known, potential or prospective bidder, any Acceptable Bidder or any officer, director, manager, significant creditor, or equity holder of any Debtor.
 - **Joint Bids.** The Debtors, in consultation with the Consultation Parties, will be authorized to approve joint Bids in their sole discretion on a case-by-case

basis.

- **Regulatory and Third-Party Approvals.** A Bid must set forth each regulatory and third-party approval required for the Acceptable Bidder to consummate the Transaction, if any, and the time period within which the Acceptable Bidder expects to receive such regulatory and third-party approvals (which date shall be no later than the Confirmation Hearing), and those actions the Acceptable Bidder will take to ensure receipt of such approval(s) as promptly as possible.
- **Authorization.** Each Bid must contain evidence acceptable to the Debtors that the Acceptable Bidder has obtained authorization or approval from its board of directors, board of managers, or investment committee (or a comparable governing body) with respect to the submission of its Bid and the consummation of the Transaction contemplated in such Bid.
- **Compliance with Bankruptcy Code and Non-Bankruptcy Law; Acknowledgment.** Each Bid must comply in all respects with the Bankruptcy Code and any applicable non-bankruptcy law. Each Bid must also include a written acknowledgment that the Bidder agrees to all of the terms of the Sale set forth in the Bidding Procedures.
- **Management and Employee Obligations.** Each Bid must assume management and employee obligations as set forth in the Plan.
- **As-Is, Where-Is.** Each Bid must include a written acknowledgement and representation that the Acceptable Bidder: (a) has had an opportunity to conduct any and all due diligence regarding the Transaction prior to making its offer; (b) has relied solely upon its own independent review, investigation, and/or inspection of any documents in making its Bid; (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, by the Debtors or their advisors or other representatives regarding the Transaction and the New Common Stock or the completeness of any information provided in connection therewith or the Auction; and (d) the Acceptable Bidder did not engage in any collusive conduct and acted in good faith in submitting its Bid.
- **Back-Up Bid.** Each Bid shall provide that the Acceptable Bidder will serve as a back-up bidder if the Acceptable Bidder's Bid is the next highest or otherwise best bid.
- **Irrevocable.** Each Bid must state that in the event a Bid is chosen as the Back-Up Bid, it shall remain irrevocable until the Debtors and the Winning Bidder consummate the Transaction.
- **No Break-Up Fee; No Fees.** Each Bid shall indicate that such Acceptable

	<p>Bidder will not seek any transaction break-up fee, expense reimbursement, or similar type of payment and expressly waive any right to assert an administrative expense claim for substantial contribution under section 503(b) of the Bankruptcy Code in connection with bidding and/or participating in the Auction.</p> <ul style="list-style-type: none"> • Cooperation. Each Bid should contain a covenant whereby the Acceptable Bidder agrees to cooperate with the Debtors to provide pertinent factual information regarding such Acceptable Bidder's operations reasonably required to analyze issues arising with respect to any applicable laws or regulatory requirements. <p>By submitting its Bid, each Acceptable Bidder is agreeing, and shall be deemed to have agreed, to abide by and honor the terms of the Bidding Procedures and to refrain from submitting a Bid, or seeking to reopen the Auction, after conclusion of the Auction. The submission of a Bid shall constitute a binding and irrevocable offer to consummate the Transaction reflected in such Bid.</p>
<p>Designation of Qualified Bidders</p>	<p>Unless otherwise determined by the Debtors with the consent of the DIP Lenders and the First Lien Term Loan Lenders, a Bid will be considered a "<u>Qualified Bid</u>," and each Acceptable Bidder that submits a Qualified Bid will be considered a "<u>Qualified Bidder</u>," if the Debtors determine that such Bid:</p> <ul style="list-style-type: none"> • satisfies the Bid Requirements set forth above; • is reasonably likely (based on availability of financing, antitrust, or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Winning Bid, no later than the Close Deadline; and • provides for a Transaction value accounting for: <ul style="list-style-type: none"> ○ payment in full in Cash of approximately \$349.1 million comprised of the following obligations: <ul style="list-style-type: none"> ▪ the total amount of Allowed DIP Claims as of the Plan Effective Date, plus interest, fees, and expenses as of the Effective Date; <i>plus</i> ▪ the total amount of Allowed First Lien Term Loan Claims as of the Plan Effective Date, plus interest, fees, and expenses as of the Effective Date; and ○ an initial Overbid (as defined below) providing incremental value in Cash consideration of at least \$1,000,000 or such other amount as determined by the Debtors in consultation with the Consultation Parties to ensure the Plan Sponsor fulfills all obligations under the Plan,

including, as applicable, satisfying all administrative, priority, and secured claims (other than the DIP Claims), including professional fees of the Debtor's professionals and professional fees of advisors to the Initial Plan Sponsor, priority tax claims specified in section 507(a)(8) of the Bankruptcy Code,⁴ and secured tax claims;⁵ and

- For the avoidance of doubt, subject to the consent of the Initial Plan Sponsors, the Debtors may determine that a bid providing for alternative treatment of the DIP Claims and/or the First Lien Term Loan Claims is a Qualified Bid.

Prior to commencement of the Auction, the Debtors will notify each Acceptable Bidder whether such party is a Qualified Bidder.

If any Bid is determined not to be a Qualified Bid in accordance herewith, the Debtors (i) will refund such Acceptable Bidder's Deposit on the date that is three business days after the Bid Deadline (or as soon as reasonably practicable thereafter), and (ii) promptly inform the Consultation Parties of such determination (and the reasons therefor).

Between the date that the Debtors notify an Acceptable Bidder that it is a Qualified Bidder and the Auction, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the prior written consent of the Debtors, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase their Purchase Price, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in the Bidding Procedures; *provided*, that any Qualified Bid may be improved at the Auction as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth in the Bidding Procedures.

Notwithstanding anything herein to the contrary, the Debtors reserve the right to engage with (a) Potential Bidders and Acceptable Bidders to aggregate two or more Bids into a single consolidated Bid prior to the Bid Deadline or (b) Qualified Bidders to aggregate two or more Qualified Bids into a single Qualified Bid prior to the conclusion of the Auction. The Debtors reserve the right to cooperate with any Acceptable Bidder to cure any deficiencies in a Bid that is not initially deemed to be a Qualified Bid. The Debtors may accept a single Qualified Bid or multiple Bids that, if taken together in the aggregate, would otherwise meet the standards for a single Qualified Bid (in which event those multiple bidders shall be treated as a single Qualified Bidder and their

⁴ Unless otherwise agreed to by the holder of such tax claim or if the Debtors or reorganized Debtors elect to treat such claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code.

⁵ For the avoidance of doubt, the Winning Bidder shall be responsible for any taxes that arise due to the consummation of the Transaction.

	<p>Bid a single Qualified Bid for purposes of the Auction).</p> <p>Notwithstanding anything to the contrary contained herein, without the consent of the DIP Lenders and First Lien Term Loan Lenders, the Debtors shall not accept any Bid that would result in the net Cash proceeds contemplated by such Bid being less than the amount necessary to repay in full in Cash all outstanding obligations under the DIP Facility and the First Lien Term Loan Facility on the date the sale contemplated by such Bid is consummated, which, for the avoidance of doubt, shall be no later than [●], 2023 or the termination, expiration, or maturity of the DIP Facility, whichever is earlier.</p>
Right to Credit Bid	<p>Any Qualified Bidder who has a valid and perfected lien on any Assets of the Debtors' estates (a "<u>Secured Creditor</u>") shall have the right to credit bid all or a portion of the value of such Secured Creditor's claims within the meaning of section 363(k) of the Bankruptcy Code; <i>provided</i>, that a Secured Creditor shall have the right to credit bid its claim only with respect to the collateral by which such Secured Creditor is secured, and any such bid must contain a cash component sufficient to repay secured Claims of all senior Secured Creditors. Pursuant to the Bidding Procedures Order, the Second Lien Administrative Agent has a right to credit bid all of the Second Lien Claims with respect to the collateral securing the Second Lien Claims.</p>
Auction	<p>If the Debtors receive multiple Qualified Bids and determine that each of such Qualified Bids represents a higher or better value than the value available through the Equitization Restructuring, then the Debtors, in consultation with the Consultation Parties, may elect to conduct an Auction to determine the Winning Bidder (as defined below). If the Debtors do not receive multiple Qualified Bids as of the Bid Deadline, then the Auction will not occur. If the Debtors only receive one Qualified Bid, such Qualified Bid will be designated the Winning Bid and the Debtors will file notice of their election not to conduct an Auction and the designation of the Qualified Bid as the Winning Bid within two business days of the determination of such election by the Debtors. If the Debtors do not receive a Qualified Bid, the Debtors will file notice of their election not to conduct an Auction within two business days of the determination of such election by the Debtors.</p>

No later than commencement of the Auction, the Debtors will notify all Qualified Bidders of the highest or otherwise best Qualified Bid, as determined in the Debtors' business judgment (the "Baseline Bid") and provide copies of the documents supporting the Baseline Bid to all Qualified Bidders. The determination of which Qualified Bid constitutes the Baseline Bid and which Qualified Bid constitutes the Winning Bid (as defined below) shall take into account any factors the Debtors reasonably deem, in the Debtors' business judgment, and in consultation with the Consultation Parties, relevant to the value of the Qualified Bid to the Debtors' estates, including, among other things: (i) the number, type, and nature of any changes to the Plan requested by the Qualified Bidder and the certainty of a Qualified Bid leading to a confirmed plan (whether the Plan or some other plan); (ii) the amount and nature of the total consideration; (iii) the likelihood of the Qualified Bidder's ability to consummate a transaction and the timing thereof, as well as other execution risk and availability of financing and financial wherewithal to meet all commitments and required governmental, regulatory and other approvals; (iv) the net economic effect of any changes to the value to be received by the Debtors' estates from the Transaction contemplated by the Baseline Bid, taking into account any rights of the Initial Plan Sponsors to any protections included in the Restructuring Support Agreement Transaction; (v) the tax consequences of such Qualified Bid; (vi) the proposed changes or modifications to the form purchase agreement delivered in connection with such Qualified Bid and the comparative favorability of the terms set forth in such proposed purchase agreement versus any Baseline Bid, to the extent applicable; and (vii) the impact to vendors, landlords, and employees (collectively, the "Bid Assessment Criteria").

Unless otherwise indicated as provided by the Bidding Procedures Order, the Auction shall occur, if necessary, on **June 5, 2023, at [●] [p/a.m.] (prevailing Eastern Time)**, via remote video or in-person at the Debtors' election.

The Auction shall be conducted in a timely fashion, and in no event later than sixty-five (65) days after the Petition Date, according to the following procedures:

- **The Debtors Shall Conduct the Auction.** The Debtors (with the assistance of their professionals) shall direct and preside over the Auction. At the start of the Auction, the Debtors shall describe the terms of the Baseline Bid. All incremental Bids made thereafter shall be Overbids and be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders. The Debtors shall maintain a written transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, and the Winning Bid.

Only Qualified Bidders, the Debtors, the DIP Agent, the Consenting First Lien Term Lenders, the Second Lien Administrative Agent, and each of their respective legal and financial advisors, the advisors to any official

committee appointed in these chapter 11 cases, and any other parties specifically invited or permitted to attend by the Debtors, shall be entitled to attend the Auction, and the Qualified Bidders shall appear at the Auction in person and may speak or bid themselves or through duly authorized representatives. Except as otherwise permitted by the Debtors, only Qualified Bidders shall be entitled to bid at the Auction.

- **Terms of Overbids.** “Overbid” means any bid made at the Auction by a Qualified Bidder subsequent to the Debtors’ announcement of the Baseline Bid. Each Overbid must comply with the following conditions:
 - **Minimum Overbid Increment.** Any Overbid following the Baseline Bid or following any subsequent Prevailing Highest Bid (as defined below) shall be in increments of value (including revised treatment under the Plan) of \$1,000,000.00, unless otherwise determined by the Debtors in consultation with the Consultation Parties.
 - **Conclusion of Each Overbid Round.** Upon the solicitation of each round of Overbids, the Debtors may announce a deadline (as the Debtors may, in their business judgment, extend from time to time, the “Overbid Round Deadline”) by which time any Overbids must be submitted to the Debtors.
 - **Overbid Alterations.** An Overbid may contain alterations, modifications, additions, or deletions of any terms of the Bid no less favorable in the aggregate to the Debtors’ estates than any prior Qualified Bid or Overbid, as determined in the Debtors’ business judgment, but shall otherwise comply with the terms of the Bidding Procedures.
 - **Announcing Highest Bid.** Subsequent to each Overbid Round Deadline, the Debtors shall announce whether the Debtors have identified an Overbid as being higher or otherwise better than the Baseline Bid, in the initial Overbid Round, or, in subsequent rounds, the Overbid previously designated by the Debtors as the prevailing highest or otherwise best Bid (the “Prevailing Highest Bid”). The Debtors shall describe to all Qualified Bidders the material terms of any new Overbid designated by the Debtors as the Prevailing Highest Bid, as well as the value attributable by the Debtors to such Prevailing Highest Bid based on, among other things, the Bid Assessment Criteria.
- **Consideration of Overbids.** The Debtors reserve the right, in their business judgment, to adjourn the Auction one or more times, to, among other things (a) facilitate discussions between the Debtors and Acceptable Bidders, (b) allow Qualified Bidders to consider how they wish to proceed, and (c) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their business judgment,

	<p>may require, that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed Transaction at the prevailing Overbid amount.</p> <ul style="list-style-type: none"> • <u>No Round-Skipping.</u> To remain eligible to participate in the Auction, in each round of bidding, each Qualified Bidder must submit an Overbid with respect to such round of bidding and to the extent a Qualified Bidder fails to submit an Overbid with respect to such round of bidding, such Qualified Bidder shall be disqualified from continuing to participate in the Auction; <i>provided</i>, that the Debtors may, in consultation with the Consultation Parties, waive such requirement in their business judgment. • <u>Closing the Auction.</u> The Auction shall continue until there is only one Qualified Bid that the Debtors determine, in their business judgment, and subject to the consent of the Initial Plan Sponsors, in consultation with the Consultation Parties, to be the highest or otherwise best Qualified Bid. Such Qualified Bid shall be declared the Winning Bid and such Qualified Bidder, the Winning Bidder, at which point the Auction will be closed. The Auction shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction to the then Prevailing Highest Bid. Such acceptance by the Debtors of the Winning Bid is conditioned upon approval by the Court of the Winning Bid. As soon as reasonably practicable after closing the Auction, the Debtors shall finalize definitive documentation to implement the terms of the Winning Bid, including, as applicable, the Plan, the Plan Supplement (as defined in the Plan), the Confirmation Order (as defined in the Plan), and/or other form of definitive documentation, and cause such definitive documentation to be filed with the Court. • <u>No Collusion; Good-Faith <i>Bona Fide</i> Offer.</u> Each Qualified Bidder participating at the Auction will be required to confirm on the record at the Auction that (a) it has not engaged in any collusion with respect to the bidding and (b) its Qualified Bid is a good-faith <i>bona fide</i> offer and it intends to consummate the proposed Transaction if selected as the Winning Bidder. • <u>Rejection of Bids.</u> The Debtors, in their reasonable business judgment, in consultation with the Consultation Parties, may reject, at any time before entry of an order of the Court approving a Winning Bid (or Back-Up Bid, as applicable), any Bid that the Debtors determine is (1) inadequate or insufficient, (2) not in conformity with the requirements of the Bankruptcy Code and/or the Bidding Procedures, or (3) contrary to the best interests of the Debtors, their estates, their creditors, and other stakeholders.
Designation of Back-	The Qualified Bidder with the second highest or otherwise best bid or combination of bids (the " <u>Back-Up Bid</u> ") to purchase the New Common Stock

Up Bidder	(the “ <u>Back-Up Bidder</u> ”) will be determined by the Debtors at the conclusion of the Auction and will be announced at that time to all the Qualified Bidders participating in the Auction. The Debtors’ selection of a Back-Up Bid shall be deemed final and the Debtors shall not accept any further bids or offers to submit a bid after such selection. If for any reason a Winning Bidder fails to consummate the Transaction within the time permitted, then the Back-Up Bidder will automatically be deemed to have submitted the Winning Bid for the New Common Stock, and the Back-Up Bidder shall be deemed a Winning Bidder for the New Common Stock and shall be required to consummate the Transaction with the Debtors by no later than the Close Deadline without further order of the Court, provided that the Debtors shall file a notice with the Court.
Consent to Jurisdiction	All Qualified Bidders at the Auction shall be deemed to have consented to the jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction or the construction and enforcement of the Bidding Procedures.
Reservation of Rights	Subject to the approval rights set forth in the Restructuring Support Agreement, the Debtors reserve their rights to modify the Bidding Procedures in their business judgment in any manner that will best promote the goals of the Bidding Procedures, or impose, at or prior to the Auction, additional customary terms and conditions on a Transaction, including: (i) amending or extending the deadlines set forth in the Bidding Procedures; (ii) adjourning the Auction at the Auction; (iii) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction; (iv) canceling the Auction; (v) rejecting any or all Bids or Qualified Bids; and (vi) adjusting the applicable minimum overbid increment, including by requesting that Qualified Bidders submit last or final bids on a “blind” basis. For the avoidance of doubt, the Debtors reserve the right, at any point prior to the selection of a Successful Bidder, to terminate the Transaction processes contemplated hereunder and seek to sell any or all assets pursuant to section 363(b) of the Bankruptcy Code. Nothing in the Bidding Procedures shall abrogate the fiduciary duties of the Debtors.

15. The Bidding Procedures recognize the Debtors’ fiduciary obligations to maximize value, and, as such, do not impair the Debtors’ ability to consider all proposals. And, as noted, the Bidding Procedures preserve the Debtors’ right to modify the Bidding Procedures to best promote the goals of the marketing and bidding process, including, without limitation, maximizing value for the Debtors’ estates. Importantly, the Bidding Procedures also allow the Debtors to abandon

the sale process and solely focus on the Equitization Restructuring if no actionable bids are received or if continuing such sale process appears to become, on balance, a waste of estate resources.

III. Notice of Auction.

16. The Auction, if any, shall take place on **June 5, 2023, at 10:00 a.m. (prevailing Eastern Time)**, in person or via remote videoconference. As soon as practicable after entry of the Bidding Procedures Order, the Debtors will cause the notice of the Auction (the “Auction Notice”), substantially in the form attached to the Bidding Procedures Order as Exhibit 2, to be served on (a) all parties listed on the notice block of this Motion below, (b) all known holders of liens, encumbrances, and other claims secured by the Debtors’ assets, and (c) any parties that have expressed written interest in pursuing a potential Transaction in connection with the prepetition Marketing Process.

17. The Auction Notice is reasonably calculated to provide all interested parties with timely and proper notice of the Auction, if any, including the date, time, and place of the Auction. Accordingly, the Debtors request that the form and manner of the Auction Notice be approved and no other or further notice of the Auction be required.

Basis for Relief

I. The Relief Sought in the Bidding Procedures Order Is in the Best Interests of the Debtors’ Estates and Should Be Approved.

18. Courts have made clear that a debtor’s business judgment is entitled to substantial deference with respect to the procedures to be used in selling an estate’s assets. *See, e.g., In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996) (“[U]nder normal circumstances the court would defer to the trustee’s judgment so long as there is a legitimate business justification.”) (citing *In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991) (“[T]he debtor in possession can sell property of the

estate . . . if[] he has an ‘articulated business justification,’ he provides adequate notice to all creditors, and a hearing is held on the sale.” (citations omitted)); ; *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (“In determining whether to authorize the use, sale or lease of property of the estate . . . courts require the debtor to show that a sound business purpose justifies such actions.”).

19. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See In re Edwards*, 228 B.R. 552, 561 (Bankr. E.D. Pa. 1998) (“The purpose of procedural bidding orders is to facilitate an open and fair public sale designed to maximize value for the estate.”); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 564–65 (8th Cir. 1997) (in bankruptcy sales, “a primary objective of the [Bankruptcy] Code [is] to enhance the value of the estate at hand.”); *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (“It is a well-established principle of bankruptcy law that the objective of the bankruptcy rules and the [Debtor]’s duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.” (citation omitted)).

20. To that end, courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and, therefore, are appropriate in the context of bankruptcy transactions. *See Integrated Res., Inc.*, 147 B.R. at 659 (bidding procedures “are important tools to encourage bidding and to maximize the value of the debtor’s assets”); *In re Fin. News Network, Inc.*, 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1991) (“court-imposed rules for the disposition of assets . . . [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estates”). Where there is a court-approved auction process, the assets are presumed to sell for a

full and fair price because the best way to determine value is exposure to the market. *See Bank of Am. Nat'l Trust & Sav. Ass'n. v. LaSalle St. P'ship*, 526 U.S. 434, 457 (1999); *see also In re Trans World Airlines, Inc.*, No. 01-00056, 2001 WL 1820326, at *4 (Bankr. D. Del. 2001) (while a “sale transaction does not require an auction procedure,” “the auction procedure has developed over the years as an effective means for producing an arm’s length fair value transaction.”).

21. Here, the Bidding Procedures will promote active bidding from interested parties and will elicit the highest or otherwise best offers available for the New Common Stock. The Bidding Procedures are designed to facilitate orderly yet competitive bidding to maximize value. In particular, the Bidding Procedures contemplate an open auction process and provide potential bidding parties with sufficient time to perform due diligence and acquire the information necessary to submit a timely and well-informed bid. This is especially true where, as here, the New Common Stock has been subjected to an extensive prepetition and ongoing postpetition marketing process. Further, having the Equitization Restructuring in place ensures that the Debtors can set a minimum purchase price for the New Common Stock that will be tested by the marketplace, and an alternate transaction will only be pursued in the event that it is value-maximizing in the best interests of the Debtors’ stakeholders.

22. The proposed Bidding Procedures will encourage competitive bidding and are appropriate under the relevant standards governing auction proceedings. Accordingly, the Court should enter the Bidding Procedures Order.

II. The Form and Manner of the Auction Notice Should Be Approved.

23. Pursuant to Bankruptcy Rule 2002(a), the Debtors are required to provide creditors with 21-days’ notice of a hearing where the Debtors will seek to use, lease, or sell property of the estate outside the ordinary course of business. Bankruptcy Rule 2002(c) requires any such notice

to include the time and place of the auction and the hearing and the deadline for filing any objections to the relief requested therein. Notice of this Motion and the related hearing to consider entry of the Bidding Procedures Order, coupled with service of the Auction Notice, as provided for herein, is reasonably calculated to provide all interested parties with timely and proper notice of a potential Transaction, including the date, time, and place of the Auction (if one is held) and the Bidding Procedures and the dates and deadlines related thereto. Accordingly, the Debtors request that this Court approve the form and manner of the Auction Notice.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

24. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

Reservation of Rights

25. Nothing contained in this motion or any order granting the relief requested in this motion, and no action taken by the Debtors pursuant to the relief requested or granted (including any payment made in accordance with any such order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount of, basis for, priority, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's rights to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in this motion or any order granting the relief requested by this motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors'

estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

Notice

26. The Debtors will provide notice of this motion to: (a) the United States Trustee; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the office of the attorney general for each of the states in which the Debtors operate; (d) United States Attorney's Office for the District of Delaware; (e) the Internal Revenue Service; (f) the United States Securities and Exchange Commission; (g) the United States Department of Justice; (h) the DIP Agent and counsel thereto; (i) First Lien Credit Agreement Agent and counsel thereto; (j) the Second Lien Credit Agreement Agent and counsel thereto; and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002 (the "Notice Parties"). In light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

27. No prior request for the relief sought in this Motion has been made to this or any other court.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors request entry of the Order, substantially in the form attached hereto as **Exhibit A**, (a) granting the relief requested herein and (b) granting such other relief as the Court deems appropriate under the circumstances.

Dated: March 29, 2023

/s/ Justin R. Alberto

Seth Van Aalten (*pro hac vice* pending)

Justin R. Alberto (No. 5126)

Patrick J. Reilley (No. 4451)

Stacy L. Newman (No. 5044)

COLE SCHOTZ P.C.

500 Delaware Avenue, Suite 1410

Wilmington, Delaware 19801

Telephone: (302) 652-3131

Facsimile: (302) 652-3117

Email: svanaalten@coleschotz.com

jalberto@coleschotz.com

preilley@coleschotz.com

snewman@coleschotz.com

-and-

Brian Schartz, P.C. (*pro hac vice* pending)

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

601 Lexington Avenue

New York, New York 10022

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

Email: bschartz@kirkland.com

-and-

Joshua M. Altman (*pro hac vice* pending)

Dan Latona (*pro hac vice* pending)

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

300 North LaSalle Street

Chicago, Illinois 60654

Telephone: (312) 862-2000

Facsimile: (312) 862-2200

Email: josh.altman@kirkland.com

dan.latona@kirkland.com

Proposed Co-Counsel for the Debtors and Debtors in Possession