UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

In re:	)	**Chapter 11**
BRIGGS & STRATTON CORP., ***et al.*****,**	)	**Case No. 20-43597-399**
	)	**(Jointly Administered)**
Debtors.[1]	)	

OBJECTION OF THE SECURITIES AND EXCHANGE COMMISSION TO DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) APPROVING THE DISCLOSURE STATEMENT; (II) ESTABLISHING NOTICE AND OBJECTION PROCEDURES FOR CONFIRMATION OF PLAN; (III) APPROVING SOLICITATION PACKAGES AND PROCEDURES FOR DISTRIBUTION THEREOF; (IV) APPROVING FORM OF BALLOTS AND ESTABLISHING PROCEDURES FOR VOTING ON PLAN; AND (V) GRANTING RELATED RELIEF

The United States Securities and Exchange Commission (the "SEC"), a statutory party to this case[2] and the federal agency responsible for enforcing the federal securities laws, objects to the above-referenced motion [Dkt 1070] (the "Motion") because the Motion asks this Court to approve solicitation procedures related to plan provisions that seek to impose non-debtor third party releases on the Debtors' public investors without their consent. In support of its objection, the SEC respectfully states as follows:[3]

1 The Debtors in these Chapter 11 cases are: Briggs & Stratton Corporation, Billy Goat Industries, Inc., Allmand Bros., Inc., Briggs & Stratton International, Inc., and Briggs & Stratton Tech, LLC..

2 As a statutory party in Chapter 11 proceedings, the SEC "may raise and may appear and be heard on any issue." 11 U.S.C. §1109(a).

3 The SEC files its objection in accordance with the Debtors' extension of the SEC's objection deadline to November 3, 2020 at 12:00 pm CT.

INTRODUCTION

1. The SEC objects to the Motion on the grounds that: (i) the Disclosure Statement lacks adequate information, as required under Section 1125(b) of the Bankruptcy Code, to support the release and permanent injunction provisions in the Plan; (ii) the Plan contains provisions that release and discharge the liability of numerous non-debtor parties in a manner that contravenes applicable law in the Eighth Circuit and Section 524(e) of the Bankruptcy Code; and (iii) the Plan does not provide an opportunity for creditors and interest holders subject to these provisions to affirmatively consent to such releases.[4]

2. As a general matter, non-debtor third party releases contravene Section 524(e) of the Bankruptcy Code, which provides that only debts of the debtor are affected by the Chapter 11 discharge provisions. Such releases have special significance for public investors because they enable non-debtors to benefit from a debtor's bankruptcy by obtaining their own releases with respect to past misconduct, including violations of the federal securities laws or breaches of fiduciary duty under state law. Such provisions are at odds with sound public policy considerations underlying the rights of investors to pursue legitimate claims against wrongdoers. In this case, such releases are especially troubling because under the Plan, public investors will receive nothing, their shares will be canceled, and they are not allowed to vote. In addition, the releases here benefit a litany of unnamed entities and individuals (some of whom may have no direct connection to the Chapter 11 cases) who are providing no consideration in exchange for the releases.

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[4] While some of these issues may appropriately constitute an objection to confirmation, because the Debtors seek approval of solicitation procedures that include an opt-out process with respect to the releases, the SEC believes that these issues should be decided now. The SEC reserves all rights to object to confirmation of the Plan, including on grounds not raised in this objection.

3. While the Eighth Circuit has not directly addressed whether nonconsensual releases are permissible as a matter of law, it has found that such releases are "rare" and "allowed only in extraordinary cases and only under exceptional circumstances…." *Murray Ky. Energy Inc. v. Ceralvo Holdings LLC (In re Armstrong Energy Inc.)*, 613 B.R. 529, 535 (8th Cir. B.A.P. 2020) (*citations omitted*). The Disclosure Statement fails to demonstrate that extraordinary facts are present here. In an attempt to relieve the Debtors of their burden to show that this is an extraordinary case justifying the imposition of nonconsensual third party releases, the Debtors likely will assert that the inclusion of an opt-out election renders the releases consensual with respect to public investors. However, investor silence, in the form of a failure to opt out, does not constitute "consent" to third party releases in our view. Consent to releases can be achieved only if affected parties are given an opportunity to provide affirmative and unambiguous consent by opting *in* to the releases.

4. The Commission urges the Court to deny the Motion or, in the alternative, order that the Plan and Disclosure Statement be revised to provide: (i) additional information in the Disclosure Statement regarding the factual and legal support for the release provisions; and (ii) that impaired creditors and interest holders must "opt in" to the release provisions in order to be bound by them.

BACKGROUND

5. On July 20, 2020, Briggs & Stratton Corporation ("BSC") and its affiliates (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Missouri. BSC is a public company; its common stock traded on the NYSE until it was delisted on July 20, 2020, and currently trades on the OTC Pink marketplace under the symbol "BGGSQ." Discl. St. at 18. On

September 21, 2020, this Court approved the joint sale of substantially all of the assets of the Debtors for a purchase price of $550 million and the assumption of certain liabilities (the "Sale").

6. On October 9, 2020, the Debtors filed the Joint Chapter 11 Plan of Briggs & Stratton Corporation and Its Related Affiliates [Dkt 1066] (the "Plan") and Disclosure Statement [Dkt 1067] (the "Disclosure Statement"). The Plan, which generally provides for the distribution of remaining cash proceeds of the Sale and the orderly wind-down of the Debtors' estates, incorporates a global settlement (the "GSA") among the Debtors, purchaser under the Sale, secured lenders, official committee of unsecured creditors (the "UCC"), and Pension Benefit Guaranty Corporation (the "PBGC").[5] Under the Plan, unsecured creditors, which include holders of outstanding unsecured notes in the aggregate principal amount of $203.5 million, will receive remaining available cash for an estimated 6% - 10% recovery. Discl. St at 11. All existing equity interests in BSC will be extinguished, and shareholders will receive no distribution and are deemed to reject the Plan. Section 510(b) claimants also will receive no consideration and are deemed to reject the Plan.

Third Party Release Provisions of the Plan

7. Articles 10.6 and 10.4 of the Plan (the "Releases") contain provisions that would release and discharge the liability of numerous, unnamed non-debtor parties, including the Debtors' current and former officers and directors and many other entities that appear to have no direct connection or relationship to the Debtors or Chapter 11 cases (the "Released Parties"). Plan

[5] The GSA provides, among other things, that the first $5 million that the PBGC would otherwise recover on account of its claim will be subordinated to the recovery of all other allowed general unsecured claims (the "PBGC Subordination"). Plan at 7.

at 8. Significantly, the Released Parties are not required to pay or provide any consideration in exchange for the benefits of the Releases.

8. The Releases are for any and all claims and causes of action, whether known or unknown, based on or related to the Debtors, among other things, but exclude claims based on intentional fraud and willful misconduct. Plan at 48. The Plan provides that creditors who vote to accept the Plan are deemed to consent to the Releases, and that claim and interest holders who abstain from voting, vote to reject the Plan, or are deemed to reject or accept the Plan are also bound by the Releases unless they opt out. Plan at 48. [6]

DISCUSSION

I. The Disclosure Statement lacks adequate information, as required under Section 1125(b) of the Bankruptcy Code, to support the Releases.

9. Section 1125(b) of the Bankruptcy Code provides, in relevant part, that "[a]n acceptance or rejection of a plan may not be solicited . . . from a holder of a claim or interest with respect to such claim or interest, unless, at the time of or before such solicitation, there is transmitted to such holder. . . a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information." 11 U.S.C. 1125(b). Adequate information, in turn, is defined as "information of a kind, and in sufficient detail . . . that would enable a hypothetical investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan . . . ." 11 U.S.C. 1125(a)(1).

[6] The Debtors have proposed revisions to the Plan that would (i) exclude claims related to gross negligence from the Releases; (ii) provide the SEC is not subject to third party release and exculpation provisions in the Plan; and (iii) expressly limit the exculpation provided in Article 10.7 of the Plan to post-petition conduct with respect to the purchase, sale, or rescission of the purchase or sale, of securities or assets of the Debtors. The SEC reserves its right to further object to the Releases in the event such revisions are not made.

10. The Disclosure Statement contains the general statement that the Releases are being given "for good and valuable consideration, including … the contributions of the Released Parties to facilitate and implement the Plan …." Discl. St. at 81. Such a statement, however, falls short of adequate disclosure here. The Disclosure Statement fails to provide factual and legal support for the Releases, fails to identify by name each person and entity that are the proposed beneficiaries of the Releases, and fails to identify the specific contribution that each Released Party is making in exchange for the Releases. Moreover, as discussed below, the Debtors need to establish that the Releases are either consensual or, if they are not consensual, that extraordinary circumstances exist to justify their imposition. *See In re Master Mortg. Inv. Fund*, 168 B.R. 930, 937 (Bankr. W.D. Mo. 1994). Here, the information in the Disclosure Statement fails to satisfy these requirements. The Disclosure Statement thus fails to include sufficient information that would permit creditors voting on the Plan to assess the likelihood that the Debtors will succeed in confirming the Plan notwithstanding the inclusion of the Releases.

II. The Releases are not consensual and do not meet the standards to be approved as nonconsensual releases.

A. The Releases do not meet the standards to be approved as nonconsensual releases.

11. Section 524(e) of the Bankruptcy Code addresses the scope of a bankruptcy discharge and states, in relevant part, that "discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." 11 U.S.C. § 524(e). The purpose of Section 524(e) therefore is to ensure that only a debtor that has submitted to the burdens of the bankruptcy process is entitled to the benefits of a discharge. *See Green v. Welsh*, 956 F. 2d 30, 33 (2d Cir. 1992) ("the language of [Sections 524(a) and (e)] reveals that Congress sought to free the debtor of his personal obligations while ensuring that no one else reaps

a similar benefit"); *In re Western Real Estate Fund, Inc.*, 922 F. 2d 592, 600 (10th Cir. 1980), *modified sub nom.*, *Abel v. West*, 932 F. 2d 898 (10th Cir. 1991).

12. Although the Eight Circuit has not squarely addressed whether Section 524(e) limits a bankruptcy court's authority to approve nonconsensual third-party releases, it has found that such releases are "rare" and "allowed only in extraordinary cases and only under exceptional circumstances." *Murray Ky. Energy*, 613 B.R. at 535 (affirming decision that plan release did not release contingent indemnity obligations). In doing so, the Eight Circuit has noted that "[c]ourts should treat third-party releases with caution" in order to "prevent an abuse of the bankruptcy process…." *Id*. Courts in the Eighth Circuit have similarly found that the imposition of non-debtor releases is a "rare thing," the possibility of which a court will not entertain absent a showing of "exceptional circumstances." *Master Mortg.*, 168 B.R. at 937. *See also In re Archdiocese of St Paul & Minneapolis*, 578 B.R. 823, 833 (Bankr. D. Minn. 2017) (finding that third party releases "should be the exception and approved only in rare circumstances").

13. In the Eighth Circuit, courts will consider the following factors set forth in *Master Mortgage* to determine whether "exceptional circumstances" are present: (i) an identity of interest between the debtor and the third party, usually an indemnity relationship, such that a suit against the non-debtor is, in essence, a suit against the debtor or will deplete assets of the estate; (ii) the non-debtor has contributed substantial assets to the reorganization; (iii) the injunction is essential to the reorganization; without it, there is little likelihood of success; (iv) the impacted class, or classes, has overwhelmingly voted to accept the proposed plan treatment; (v) the plan provides a mechanism for the payment of all, or substantially all, of the claims of the class or classes affected by the injunction. *Master Mortg.*, 168 B.R. at 935 (*citations omitted)*. *See also Archdiocese*, 578 B.R. at 833.

14. Here, it is clear that the Releases do not meet any of the factors considered in *Master Mortgage.* First, shareholders are deemed to reject the Plan. *See Archdiocese*, 578 B.R. at 833 (denying confirmation of plan for the sole reason that creditors subject to releases had overwhelmingly rejected the plan). Moreover, shareholders receive nothing and their interests are canceled under the Plan, while unsecured creditors of BSC are estimated to receive only a 6% - 10% recovery. It also appears that not one of the many Released Parties is making a separate financial contribution in exchange for the Releases. With respect to "the contributions of the Released Parties to facilitate and implement the Plan," the Released Parties had pre-existing duties to participate in the Chapter 11 cases, including the sale and plan processes, and have been separately compensated for their services. *See In re Exide Technologies, Inc.*, 303 B.R. 48, 74 (Bankr. D. Del. 2003) (even "meaningful" work contribution is not justification for releases). Such general statements are wholly insufficient to show, as prescribed in *Master Mortgage*, that *each* Released Party is making a substantial contribution under the Plan in exchange for the Releases. *See Class Five Nev. Claimants (In re Dow Corning Corp.)*, 280 F. 3d 648, 658 (6th Cir. 2002) (bankruptcy court's determinations did not support a finding of "unusual circumstances" where the court "did not discuss the facts as they relate specifically to the various released parties, but merely made sweeping statements as to all released parties collectively").

15. Finally, because the Debtors are liquidating, the Releases are not essential to a *reorganization*, as contemplated under *Master Mortgage*. The Plan and Disclosure Statement also fail to show that there is an identity of interests between the Debtors and *each* of the Released Parties such that a suit against them would deplete assets of the estate. It is highly improbable that each of the many Released Parties is entitled to indemnification from the Debtors. But even with respect to those Released Parties to whom the Debtors owe indemnification obligations, there is

no showing that the amount of potential indemnification claims is so out of the ordinary that they would deplete assets of the estate, in particular an estate that is winding-down under the Plan. This is a liquidating case; it is not a case such as *A.H. Robins* where pending mass tort litigation caused the imposition of non-debtor releases to be necessary with respect to the debtor's very ability to reorganize. *See In re A.H. Robins Co*., 880 F. 2d 694 (4th Cir. 1989). Indeed, courts have found that the simple fact that a debtor may face indemnity claims sometime in the future, in some unspecified amount, is insufficient to justify the imposition of releases as being necessary even with respect to a reorganization. *See Gillman v. Continental Airlines (In re Continental Airlines)*, 203 F. 3d 203, 216 (3rd Cir. 2000).

16. Thus, because the Releases do not appear to satisfy even a single factor set forth in *Master Mortgage*, there is no evidence of extraordinary circumstances that would justify the imposition of the Releases on claim and interest holders. If releases such as these can be approved, then almost any third party release would pass muster, a result that would undermine the policy recognized by the Eight Circuit that third party releases are rare so as to prevent an abuse of the bankruptcy process. *See Murray Ky. Energy*, 613 B.R. at 535.

B. The Releases are not consensual.

17. To avoid having to satisfy the *Master Mortgage* standard, the Debtors will likely argue that the Releases are consensual and hence permissible under applicable law. In the SEC's view, however, a release is consensual only when the affected parties are given an opportunity to affirmatively and unambiguously grant the release, separate and apart from voting on the plan, by making a specific election on the ballot or non-voting notice to opt *in* to the release. The Plan here provides that creditors who vote to accept the Plan are automatically bound by the Releases, and that claim and interest holders who abstain from voting, vote to reject, or are deemed to reject or

accept the Plan will be bound by the Releases unless they opt out. Because no mechanism is provided for creditors and shareholders to *affirmatively* consent to the Releases, they are not consensual.

18. Although Chapter 11 plans containing opt-out procedures have been confirmed in this district, the SEC is unaware of any published precedent in this district or the Eighth Circuit holding that inclusion of an opt-out election on a ballot or non-voting notice renders plan releases "consensual." In the absence of guidance in the Eighth Circuit, decisions in other jurisdictions are instructive in considering whether a failure to opt-out of a third party release constitutes consent.

19. Recently, a bankruptcy court in the District of Delaware held that a failure to return an opt-out form is not a manifestation of an intent to provide a release, specifically finding that "[a] party's receipt of a notice imposing an artificial opt-out requirement, the recipient's *possible* understanding of the meaning and ramifications of such notice, and the recipients' failure to opt-out simply do not qualify [as consent]." *In re Emerge Energy Servs. LP*, 2019 Bankr. LEXIS 3717, at *54 (Bankr. D. Del. Dec. 5, 2019).

20. Bankruptcy courts in other circuits have agreed. In *In re Chassix Holdings, Inc.*, 533 B.R. 64 (Bankr. S.D.N.Y. 2015), the bankruptcy court held that where creditors and interest holders who were deemed to reject the plan, voted to reject the plan, or abstained from voting were not provided with an "opt in" mechanism, such parties had not consented to the releases proposed in the plan. *Chassix,* 533 B.R. at 80-81. In reaching that decision, the court found that to approve releases with an "opt out" requirement for creditors who voted to reject the plan would be "little more than a Court-endorsed trap for the careless or inattentive creditor," and to imply consent to releases based on the inaction of a creditor who abstained from voting "would stretch the meaning of 'consent' beyond the breaking point." *Id.* at 79, 81, *citing In re Washington Mutual, Inc.*, 442

B.R. 314, 355 (Bankr. D. Del. 2011) ("[f[ailing to return a ballot is not a sufficient manifestation of consent to a third party release"). The court concluded that with respect to creditors and interest holders who were deemed to reject the plan and hence were given no opportunity to vote or "opt in" to the releases, it would "defy common sense to conclude that those parties had 'consented' to releases." *Id*. at 81. *See also In re Arrowmill Dev. Corp.*, 211 B.R. 497, 507 (Bankr. D.N.J. 1997) (finding that a court must determine whether the creditor "unambiguously manifested assent to the release of the nondebtor from liability on its debt" in order to determine whether a release is consensual.) As the *Chassix* court implicitly recognized, it makes no sense that a shareholder who is deemed to reject a plan, or a creditor who votes to reject a plan, would at the same time consent to give up anything of value through third party releases contained in the plan. Indeed, if a creditor who votes in favor of a plan is deemed to consent to third party releases that are contained in the plan, then "by that same logic a creditor who votes to reject a plan should also be presumed to have rejected" such releases. *Id*. at 79.[7]

21. Here, the Plan does not allow shareholders or creditors to affirmatively consent to the Releases. Merely voting to accept a plan is not sufficient evidence of consent. *See Arrowmill*, 211 B.R. at 507 (because validity of releases hinges on contract law rather than the bankruptcy court's confirmation order, "it is not enough for a creditor to abstain from voting on a plan, or even to simply vote 'yes' as to a plan"); *In re Congoleum Corp*., 362 B.R. 167, 194 (Bankr. D.N.J. 2007) (a consensual release "cannot be based solely on a vote in favor of a plan"). *See also In re AOV Indus*., 31 B.R. 1005, 1010 (D.D.C. 1983), *aff'd in part*, 792 F. 2d 1140 (D.C. Cir. 1986) (releases not tied to acceptance or rejection of plan were given voluntarily and thus were

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[7] If the Court is inclined to accept the Debtors' position that a creditor who votes in favor of the Plan has accepted the Releases, then the Court should also rule that any investor who rejects the Plan or is deemed to reject the Plan should be deemed to reject the Releases.

enforceable). Further, abstaining from voting, voting to reject, and being deemed to reject the Plan without executing an opt-out, are also not sufficient evidence of consent. As the court in *Chassix* recognized, there could be any number of reasons why a shareholder who is not allowed to vote might fail to execute an opt-out that have nothing to do with consenting to the Releases. *See Chassix*, 533 B.R. at 78 ("inattentiveness, inaction and mistake are a known and expected part of the voting process"). *See also In re SunEdison, Inc.*, 576 B.R. 453, 460-61 (Bankr. S.D.N.Y. 2017) (finding that failure to object to releases was not consent because silence could be attributable to other causes). And the same is true of a creditor who fails to vote or votes to reject the Plan. It is neither fair nor reasonable to conclude that a shareholder or creditor's inaction, by failing to opt out, demonstrates consent to the Releases. [8]

22. While the bankruptcy court in *In re U.S. Fidelis, Inc*., 481 B.R. 503 (Bankr. E.D. Mo. 2012) indicated that a creditor's silence could be construed as consent to third party releases contained in a plan, it did so in *dicta* after holding that unimpaired creditors whose claims were carved out from the releases lacked standing to object to them. *See U.S. Fidelis*, 481 B.R. at 514-15. In that case, the plan incorporated a global settlement whereby a released party, Mepco Finance Corporation, agreed to compromise $60 million in claims it held against the debtor in order to make possible a $14.1 million restitution fund for defrauded consumer creditors. *Id*. at 509-10. In *dicta*, the court ruled that under the facts before it, voting to accept the plan would not be required to establish consent to Mepco's release, and indicated that creditors would be bound by the release if they failed to object to the plan. *Id.* at 517 ("a vote to reject a plan is not per se a

[8] The SEC notes that many of BSC's securities are likely held in street name and continue to trade during the bankruptcy. It is therefore quite possible that beneficial holders will not receive delivery of the non-voting notice from their respective brokers in time to opt out of the releases by the given deadline. As for former shareholders who no longer hold the securities at the time of solicitation, and holders of unknown claims such as Section 510(b) claimants, such parties likely will not receive any notice, much less an opportunity to opt out, of the Releases.

refusal to consent to a third party release … especially when the creditor does not file an objection to confirmation, [and] the plan provides for a significant distribution to the creditor ….”). In concluding that the releases were consensual, however, the court limited its ruling to the narrow circumstances before it. In particular, the court found that the consent of consumer creditors had been shown by the support for confirmation of state attorney generals whom consumer creditors had relied on throughout the case. *Id*. at 517-18 (“Under these circumstances, where the consumer creditors have clearly relied on the Attorney Generals and Attorney Generals have borne the mantle of that responsibility, the Court would find that affirmative consent of the consumer creditors is established.”). Thus, the court was willing to find that a vote to accept the plan was not required to show consent when those affected by the releases were effectively represented in the bankruptcy proceeding. *See id*. at 518. In contrast, even assuming the thousands of public shareholders in this case receive timely notice of the Plan and an opt out form, they nonetheless have no representation in the bankruptcy proceeding and may not have the understanding or the resources to object to confirmation of a plan containing releases. The *U.S. Fidelis* court also did not address whether failure to object to plan releases can be deemed consent by claim or interest holders who do not vote or are deemed to reject the plan. *U.S. Fidelis* therefore lends little support to the proposition that a failure to opt out of a release is sufficient to show consent.

23. Finally, courts have recognized that the determination of whether an action constitutes consent to a release is governed by contract principles. *See id.* at 517 (consensual releases sound in contract law rather than arise under bankruptcy statutes); *SunEdison,* 576 B.R. at 458 (“Courts generally apply contract principles in deciding whether a creditor consents to a third party release”) (*citations omitted*); *Arrowmill*, 211 B.R. at 507 (validity of a release hinges on principles of contract law rather than the bankruptcy court’s confirmation order). Deeming

consent to non-debtor releases to be established by silence or inaction is inconsistent with basic contract principles. Under Missouri law, silence or inaction generally will not constitute an acceptance of an offer. *Pride v. Lewis*, 179 S.W. 3d 375, 379 (Mo. App. W.D. 2005); *Revere Copper & Brass v. Mftrs. Metals & Chemicals Inc.,* 662 S.W. 2d 866, 870 (Mo. App. W.D. 1983) ("mere silence or failure to reject an offer when it is made, do not constitute acceptance of an offer"), *citing* 17 Am. Jur. 2d Contracts, §47, at 385; *Kunzie v. Jack-In-The-Box Inc*., 330 S.W. 3d 476, 483 (Mo. App. E.D. 2010) ("in order for an acceptance to be effective, it 'must be positive and unambiguous'"), *citing* 2 Williston on Contracts, §6.10 (4th ed. 2007). This is because the "meeting of the minds" between two parties that is essential to the formation of a contract occurs only when "there is a definite offer and an unequivocal acceptance." *Kunzie*, 330 S.W. 3d at 483.

24. Thus, Missouri contract law further supports the view that a failure to opt out, which amounts to no more than inaction or silence on the part of a creditor or interest holder, does not manifest consent sufficient to support a third party release. Accordingly, a release is consensual only if the affected parties provide affirmative and unequivocal consent by opting in to the release, regardless of how they vote on the plan or are deemed to have voted on the plan. Without the ability to opt in, public investors here cannot be found to have consented to, and therefore should not be bound by, the Releases.

CONCLUSION

25. For all of the foregoing reasons, the SEC requests that the Court enter an order denying the Motion unless the Plan and Disclosure Statement are revised to provide: (i) additional information in the Disclosure Statement regarding the factual and legal support for the release provisions; and (ii) that impaired creditors and interest holders must "opt in" to the release provisions in order to be bound by them.

Dated: November 3, 2020

U.S. SECURITIES AND EXCHANGE COMMISSION

By: /s/ Sonia Chae____
Sonia Chae (admitted *pro hac vice*)
Illinois ARDC No. 6199271
Chicago Regional Office
175 West Jackson St., Suite 1450
Chicago, Illinois 60604
Tel: (312) 353-6269
Fax: (312)353-7398
Email: chaes@sec.gov

CERTIFICATE OF SERVICE

I, Sonia Chae, do hereby certify that a copy of the foregoing *OBJECTION OF THE SECURITIES AND EXCHANGE COMMISSION TO THE DEBTORS' MOTION FOR ENTRY OF ORDER (I) APPROVING DISCLOSURE STATEMENT; (II) ESTABLISHING NOTICE AND OBJECTION PROCEDURES FOR CONFIRMATION OF PLAN; (III) APPROVING SOLICITATION PACKAGES AND PROCEDURES FOR DISTRIBUTION THEREOF; (IV) APPROVING FORM OF BALLOTS AND ESTABLISHING PROCEDURES FOR VOTING ON PLAN; AND (V) GRANTING RELATED RELIEF* has been served by the Electronic Case Filing System for the Eastern District of Missouri on this 3rd day of November, 2020.

/s/ *Sonia Chae*____
Sonia Chae

Attorney for

U.S. Securities and Exchange Commission