Docket #0025 Date Filed: 11/30/2020

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re **MELINTA THERAPEUTICS, INC.,** ***et al.*****,** **Debtors.**	**Chapter 11** **Case No. 19-12748 (LSS)** **B.A.P. No. 20-09**
LIN LUO, **Appellant,** **v.** **MELINTA THERAPEUTICS, INC.** **Appellee.**	**C.A. No. 20-600 (MN)**

ANSWERING BRIEF OF APPELLEE

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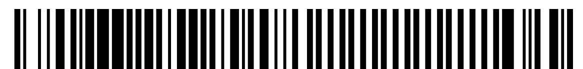
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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Bankruptcy Procedure 8012, Appellee Melinta Therapeutics, LLC, formerly known as Melinta Therapeutics, Inc., makes the following disclosures:

1. **Melinta Therapeutics, LLC (formerly known as Melinta Therapeutics, Inc.).** Deerfield Private Design Fund III, L.P. and Deerfield Private Design Fund IV, L.P. together own 100% of the limited liability company interests of Melinta Therapeutics, LLC. There is no publicly held corporation that owns more than 10% of the equity interests in Melinta Therapeutics, LLC.[1]

2. **Cempra Pharmaceuticals, Inc.** Cempra Pharmaceuticals, Inc. is a wholly owned subsidiary of Melinta Therapeutics, LLC. There is no publicly held corporation that owns more than 10% of the stock in Cempra Pharmaceuticals, Inc.

3. **CEM-102 Pharmaceuticals, Inc.** CEM-102 Pharmaceuticals, Inc. is a wholly owned subsidiary of Melinta Therapeutics, LLC. There is no publicly held corporation that owns more than 10% of the stock in CEM-102 Pharmaceuticals, Inc.

[1] On November 1, 2020, Melinta Therapeutics, Inc. converted from a Delaware corporation to a Delaware limited liability company and became Melinta Therapeutics, LLC.

4. **Melinta Subsidiary Corp.** Melinta Subsidiary Corp. is a wholly owned subsidiary of Melinta Therapeutics, LLC. There is no publicly held corporation that owns more than 10% of the stock in Melinta Subsidiary Corp.

5. **Rempex Pharmaceuticals, Inc.** Rempex Pharmaceuticals, Inc. is a wholly owned subsidiary of Melinta Therapeutics, LLC. There is no publicly held corporation that owns more than 10% of the stock in Rempex Pharmaceuticals, Inc.

6. **Targanta Therapeutics Corporation.** Targanta Therapeutics Corporation is a wholly owned subsidiary of Melinta Therapeutics, LLC. There is no publicly held corporation that owns more than 10% of the stock in Targanta Therapeutics Corporation.

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Appellee Melinta Therapeutics, LLC, formerly known as Melinta Therapeutics, Inc. ("**Melinta Therapeutics**"), respectfully submits this brief in opposition to the opening brief of Appellant Lin Luo [Docket No. 16] [2] (the "**Appellant's Brief**").[3]

PRELIMINARY STATEMENT

The bankruptcy court properly confirmed the *Modified Amended Joint Chapter 11 Plan of Reorganization of Melinta Therapeutics, Inc. and Its Debtor Affiliates* [Bankr. Docket No. 520-1] (the "**Plan**") (A358) after finding, on a substantially undisputed factual record, that the Plan was proposed in good faith and satisfied all applicable requirements for confirmation under section 1129 of title 11 of the United States Code (the "**Bankruptcy Code**"). *See Findings of Fact, Conclusions of Law, and Order Confirming Modified Amended Joint Chapter 11 Plan of Reorganization of Melinta Therapeutics, Inc. and its Debtor Affiliates* [Bankr. Docket No. 520] (the "**Confirmation Order**") (A301).

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[2] Documents filed in this Court are cited as "Docket No."; documents filed in the bankruptcy court are cited as "Bankr. Docket No.". For the Court's convenience, an appendix containing certain key documents from the bankruptcy court proceedings is filed herewith and cited "A__".

[3] Melinta Therapeutics is the sole party formally named as an Appellee in this appeal; however, the chapter 11 plan of reorganization to which this appeal relates constitutes a joint plan of reorganization proposed by Melinta Therapeutics and certain of its affiliates, who are the debtors in the above-captioned chapter 11 cases. Thus, by this brief, Melinta respectfully requests that this Court affirm the order confirming such plan on behalf of itself and such affiliated debtors. The debtors are referred to collectively as "**Melinta**," the "**Debtors**," or the "**Reorganized Debtors**." References to the Debtors mean each of the Debtors in the chapter 11 cases prior to the effectiveness of the Plan; references to the Reorganized Debtors mean each of the Debtors in the chapter 11 cases following effectiveness of the Plan.

Under the Plan, which became effective on April 20, 2020, the lenders under the Debtors' senior secured Prepetition Credit Agreement[4] received 100% of newly issued equity interests in Melinta Therapeutics in satisfaction of their prepetition secured claims. This transaction (the "**Supporting Lender Transaction**") was thoroughly tested by a months'-long, court-approved, and court-supervised marketing process.

The Plan also embodied a global settlement (the "**Global Settlement**") negotiated at arm's-length among Melinta's key creditor constituents, including: the Supporting Lenders; Vatera Healthcare Partners LLC ("**Vatera**") and The Medicines Company ("**MedCo**"), Melinta's two largest unsecured creditors; and the Official Committee of Unsecured Creditors (the "**Committee**"). Consistent with the Global Settlement, the Plan provided general unsecured creditors with beneficial interests in a trust (the "**GUC Trust**"), which received certain causes of action held by Melinta and cash contributions from the Supporting Lenders and Vatera. While the recovery to general unsecured creditors provided by the Global Settlement is meaningful (approximately 23%), the Plan and the Global Settlement does not provide creditors a full recovery. Unless unsecured creditors agree otherwise, the Bankruptcy Code generally does not permit equity holders to

[4] The Plan refers to these lenders as the "Supporting Lenders." The Supporting Lenders are Deerfield Private Design Fund III, L.P. and Deerfield Private Design Fund IV, L.P.

receive or retain any property on account of such equity interests unless unsecured creditors are paid in full; as such, the Plan does not provide a recovery to Melinta Therapeutics' former shareholders, and all existing equity interests in Melinta Therapeutics (including the common stock held by Appellant) were extinguished under the Plan.

Appellant now seeks to overturn the substantially consensual and value-maximizing Plan (the effective date of which was April 20, 2020) on the basis of unsupported legal and factual theories and vague allegations of fraud. Ms. Luo's appeal is now equitably moot, as granting the relief she seeks seven months after the substantial consummation of the Plan would contravene the Bankruptcy Code's policy in favor of finality and cause harm to third parties, including vendors, customers, and employees that have reasonably relied upon Melinta's emergence. Even if considered on the merits, Ms. Luo's allegations find no support in the record and establish no error in the bankruptcy court's decision to confirm the Plan. The bankruptcy court's rulings should be affirmed in all respects.

STATEMENT OF JURISDICTION

The bankruptcy court, as a unit of the District Court pursuant to 28 U.S.C. § 151, had jurisdiction over the bankruptcy proceedings below pursuant to 11 U.S.C. §§ 157 and 1334. The Confirmation Order entered by the bankruptcy court

on April 11, 2020, is a final order over which this Court has appellate jurisdiction under 28 U.S.C. §§ 158 and 1334.

STATEMENT OF ISSUES

Although Ms. Luo's brief purports to challenge multiple aspects of Melinta's bankruptcy case, she has only appealed the Confirmation Order.[5] *See Notice of Appeal and Statement of Election* [Docket No. 1] ("**Notice of Appeal**"). Properly framed, the issues on appeal are as follows:

1. Is Ms. Luo's appeal equitably moot, in that she seeks to undo the Plan, which became effective on April 20, 2020, and has been substantially consummated, and upon which third parties have reasonably relied?

2. Did the bankruptcy court err when it found on a substantially undisputed factual record that the Plan (which provided for the cancellation of all existing equity interests) satisfied all applicable requirements for confirmation, including the requirements that the Plan: (a) be proposed in good faith, (b) treat equity interests in accordance with the Bankruptcy Code, and (c) be accepted by at least one impaired class of claims?

[5] Although Ms. Luo describes her appeal as a challenge to the "Sale Order," she attached only the Confirmation Order to the Notice of Appeal. [Docket No. 1-1]; *see also* Appellant's Brief at 76 ("For the foregoing reasons, the court should reverse the confirmation order. . . .").

STANDARD OF REVIEW

On appeal, district courts "review the bankruptcy court's legal determinations *de novo*, its factual findings for clear error and its exercise of discretion for abuse thereof." *In re Trans World Airlines, Inc.* 145 F.3d 124, 131 (3d Cir. 1998). The Court's application of facts to a controlling legal standard—in this case, 11 U.S.C. § 1129—is reviewed for clear error. *See Pa. Higher Educ. Assistance Agency v. Gillins*, No. 00-500 KAJ, 2003 WL 22844398, at *1 (D. Del. Nov. 24, 2003) (reviewing lower court's application of facts to controlling legal test for clear error); *In re Paige*, Nos. 2:07-CV-822 TS, 05-34474, 2008 WL 1994905, at *2 (D. Utah May 8, 2008) (determination was factual where there was "no real issue as to the controlling law" but only to the court's application of that legal standard to facts).

Under the clear error standard, a factual determination will not be set aside unless "that determination is completely devoid of minimum evidentiary support displaying some hue of credibility or bears no rational relationship to the supportive evidentiary data." *In re Dr. R.C. Samanta Roy Inst. of Sci. Tech. Inc.,* 465 F. App'x 93, 96 (3d Cir. 2011) (citation omitted). Moreover, where the lower court bases its findings upon an uncontroverted record, those findings should not be found clearly erroneous. *See In re Dunn*, No. 1:15-cv-672, 2015 WL 5165141, at *2 (E.D. Va. Aug. 18, 2015) (finding that none of bankruptcy court's findings

were clearly erroneous, because appellant presented no evidence, other than self-serving testimony, to support its claim); *In re Generation Ministries, Inc.*, No. 08-13869, 2008 WL 5412892, at *1 (E.D. Mich. Dec. 30, 2008) (finding determination regarding fee award was not clearly erroneous because trustee "presented no evidence at the hearing to refute the law firm's representations").

STATEMENT OF THE CASE

I. Background

Melinta is a biopharmaceutical company focused on developing and commercializing differentiated antibiotics. *Declaration of Peter Milligan in Support of Chapter 11 Petitions and First-Day Papers* [Bankr. Docket No. 17] (the "**First-Day Declaration**") ¶ 7 (A1). Melinta's mission is to stem the public health threat posed by bacterial resistance to antibiotics through the research and creation of products for serious gram-positive and gram-negative types of bacterial infections. *Id.* As of the Petition Date (as defined below), Melinta had four medications in its antibiotic portfolio, which are sold under the brand names Baxdela, Vabomere, Orbactiv, and Minocin for injection. *Id.*

On January 5, 2018, Melinta acquired Vabomere, Orbactiv, Minocin for injection, and other assets from MedCo for consideration including $165 million in cash at closing and deferred purchase price obligations (the "**MedCo Transaction**"). *Id.* ¶ 10 (A2). Melinta funded most of the up-front cash purchase

price for the MedCo Transaction using an initial disbursement of approximately $147 million from the Supporting Lenders pursuant to a Facility Agreement dated January 5, 2018 (as amended, modified, or supplemented in accordance with the terms therewith, the "**Deerfield Facility Agreement**" and the credit facility thereunder, the "**Deerfield Facility**"). *Id.* ¶ 28–29 (A7–8). The obligations under the Deerfield Facility were secured by liens on substantially all of Melinta's assets, and the Deerfield Facility Agreement imposed several financial covenants on Melinta, including minimum sales and liquidity covenants, which, if breached, would trigger defaults under the Deerfield Facility Agreement. *Id.*

On December 31, 2018, Melinta entered into a senior unsecured subordinated convertible loan agreement (as amended, modified, or supplemented in accordance with the terms therewith, the "**Vatera Loan Agreement**" and the facility governed thereby, the "**Vatera Facility**") with Vatera, a substantial shareholder. *Id.* ¶ 34 (A9). At its inception, the Vatera Loan Agreement provided for up to $135 million in convertible loans. *Id.* ¶ 35 (A9–10). The financial covenants imposed by the Vatera Loan Agreement were substantially comparable to those set forth in the Deerfield Facility Agreement, except that the financial covenants were approximately 10% less restrictive. *Id.* ¶ 38 (A10–11).

II. Events Leading to the Bankruptcy Filing

A. Melinta's Financial Challenges

The market for antibiotics has encountered significant financial challenges in recent years. *Id.* ¶ 40 (A11–12). Like many of its peers, Melinta faced a combination of slow sales growth, high up-front development costs, substantial distribution costs, and significant debt. *Id.* ¶ 44 (A13). These factors strained Melinta's balance sheet, leaving it without the liquidity and access to capital needed to successfully execute its go-forward business plan absent a financial restructuring. *Id.*

These challenges were amplified by two related lawsuits in the Delaware Court of Chancery stemming from the MedCo Transaction (the "**MedCo Litigation**"). First-Day Declaration ¶ 45 (A13–14). In the MedCo Litigation, MedCo and other plaintiffs asserted that Melinta wrongly withheld payment of $80 million of deferred purchase price obligations and assumed liabilities due in connection with the MedCo Transaction. *Id.* Melinta did not deny that it withheld these payments. *Id.* ¶ 46 (A14). It contended, however, that these obligations were offset by significant affirmative claims against MedCo relating to the MedCo Transaction. *Id.*

Irrespective of the legal merits of the parties' competing positions in the MedCo Litigation, the fact remained that the MedCo Transaction proved far less

valuable than first projected, as the three antibiotics Melinta acquired from MedCo significantly underperformed expectations. *Id.* ¶ 48 (A15). The underperformance of these assets relative to Melinta's borrowing associated with the MedCo Transaction were critical drivers of the Debtors' financial predicament. *Id.*

In light of these developments, it became apparent that Melinta would require (a) additional liquidity to fund operations and/or (b) relief from financial and other covenants under its prepetition credit facilities. First-Day Declaration ¶ 50 (A16). Despite evaluating several potential new-money transactions, Melinta was ultimately unable to agree to the terms of either a debt or equity transaction that would provide it sufficient capital on acceptable terms. *Id.* ¶ 51 (A16). Melinta then commenced discussions with the Supporting Lenders and Vatera during the second quarter of 2019 to request covenant relief. *Id.* ¶ 52 (A16–17). The Supporting Lenders were amenable to granting Melinta such relief, including relaxing the minimum-sales covenant and the requirement that Melinta's audited financial statements for fiscal years 2019 and 2020 contain no "going-concern" qualification. *Id.* The Supporting Lenders conditioned these agreements, however, on Vatera's agreement to provide similar covenant relief and to make further disbursements under the Vatera Facility. *Id.* Melinta was unable to secure Vatera's agreement to these conditions, thus also negating the Supporting Lenders'

agreement to modify the relevant covenants in the Deerfield Facility Agreement. *Id.*

B. Melinta's Prepetition Restructuring Efforts

By the third quarter of 2019, several factors—poor sales, diminishing liquidity, lack of access to additional capital, and a potential near-term judgment in the MedCo Litigation—threatened Melinta's ability to remain in compliance with the covenants set forth in the Deerfield Facility Agreement and the Vatera Loan Agreement. First-Day Declaration ¶ 55 (A18–19). In light of these circumstances, Melinta determined that a more comprehensive restructuring solution may be required and, accordingly, launched a review of strategic alternatives. *Id.* Thus, over an approximately four-month period, Melinta, assisted by its investment bankers and other professional advisors, canvassed, solicited, and evaluated a wide array of potential restructuring alternatives, including a sale of all or a portion of Melinta's business, third-party financing alternatives, a "standalone" restructuring of Melinta's balance sheet, and various permutations of the foregoing. *Id.* Melinta considered both in- and out-of-court implementation alternatives. *Id.*

In mid-September, 2019, Melinta and its advisors initiated a formal marketing process for both potential buyers and parties interested in providing financing. *Id.* ¶ 56 (A19). Prior to the Petition Date, Melinta and its advisors contacted (or were contacted by) 77 parties with respect to a potential sale

transaction, including 48 potential strategic buyers and 29 potential financial buyers. *Id.* As a result of the prepetition marketing process, Melinta received four non-binding indications of interest. First-Day Declaration ¶ 58 (A20).[6] As the third-party marketing effort progressed, Melinta engaged in dialogue with its principal stakeholders, including the Supporting Lenders and Vatera, concerning its strategic review process and stakeholders' interest in participating in one or more transaction alternatives. *Id.* ¶ 59 (A20).

In the weeks following the deadline for the submission of initial non-binding indications of interest, Melinta and its advisors reviewed the indications of interest, discussed other transaction alternatives, and considered the benefits and challenges associated with each such non-binding proposal and each potential counterparty's diligence and timing requirements. *Id.* ¶ 62 (A21–22). In light of these considerations, Melinta determined that the value-maximizing option was to pursue the Supporting Lender Transaction, by which the Supporting Lenders would receive 100% of newly issued equity interests Melinta Therapeutics in satisfaction of their prepetition secured claims. *Id.* Thus, on December 27, 2019, Melinta and the Supporting Lenders entered into a restructuring support agreement. *Id.* ¶ 63 (A22); *see also Restructuring Support Agreement Among Melinta*

[6] This marketing process continued seamlessly following Melinta's Chapter 11 filing, and is described more fully below.

Therapeutics, Inc. and the Supporting Lenders Identified Herein [Bankr. Docket No. 432-1] (the "**Restructuring Support Agreement**").

The Restructuring Support Agreement provided, among other things, that the Supporting Lender Transaction would function as a "stalking-horse" bid for Melinta in bankruptcy. First-Day Declaration ¶ 65 (A22–23). As contemplated by the Restructuring Support Agreement, the Supporting Lenders would exchange their secured claims for 100% of the equity in the Reorganized Debtors, if the Supporting Lender Transaction was the highest or otherwise best bid received after a competitive marketing process. *Id.* ¶ 63 (A22).

III. The Debtors' Chapter 11 Cases

The Debtors filed their Chapter 11 petitions on December 27, 2019 (the "**Petition Date**"). *See Voluntary Petition for Melinta Therapeutics, Inc.* [Bankr. Docket No. 1]. Although the Supporting Lender Transaction represented the best transaction offer Melinta had received as of the Petition Date, the Debtors—consistent with their overarching objective of maximizing the value of their estates for the benefit of all stakeholders—elected to continue their marketing efforts after the Petition Date. *Declaration of Peter Milligan in Support of Confirmation of the Modified Amended Joint Chapter 11 Plan of Reorganization of Melinta Therapeutics, Inc. and Its Debtor Affiliates* [Bankr. Docket No. 484] (the "**Confirmation Declaration**") ¶ 6 (A108–109). To this end, on December 30,

2019, the Debtors filed a motion by which they sought approval of procedures to govern a formal postpetition marketing and auction process (the "**Bidding Procedures Motion**" and the procedures proposed thereby, the "**Bidding Procedures**"). *Id.*

A. The Initial Settlement

Initially, Vatera and the Committee opposed the Debtors' first-day motions and the Bidding Procedures Motion on several grounds. *See* Jan. 28, 2020 Hr'g Tr. [Bankr. Docket No. 221] at 183:4–10 (the bankruptcy court remarking, "I won't say that the objections were kind of 'throw it against the wall and see what sticks,' but there were some arguments, which weren't as persuasive as other concerns—let's put it that way."). Following extensive, arm's-length negotiations, however, the Debtors, the Supporting Lenders, MedCo, Vatera, and the Committee reached a preliminary global settlement on February 7, 2020. Confirmation Declaration ¶ 8 (A109); s*ee Notice of Filing of Global Settlement Term Sheet* [Bankr. Docket No. 275] (the "**Initial Term Sheet**"). The Initial Term Sheet provided, among other things, that:

1. The Bidding Procedures would be amended to, among other things: (a) extend the period to submit bids for the Debtors from 30 days to 45 days, (b) allow partial bids for the Debtors, and (c) allow the Committee to

suggest potential bidders and to provide input as a "consultation party" on bids received, Initial Term Sheet § 10;

2. Upon emergence, a GUC Trust would be established for the benefit of general unsecured creditors and would receive certain prepetition causes of action held by the Debtors, *id.* § 5;

3. The GUC Trust would be funded with $3.5 million cash from the Supporting Lenders, *id.*;

4. The Supporting Lenders would waive their general unsecured claims against the Debtors, *id.* § 6;

5. All potential "challenges" of the Debtors and the Committee to the claims and liens of the Supporting Lenders were settled, Initial Term Sheet § 7;

6. The Committee would support and not object to the Plan if the Supporting Lenders were approved by the bankruptcy court as the successful bidder, *id.* § 11;

7. Vatera and Medco (each subject to the results of the Investigation described below) would support and not object to the Plan if the

Supporting Lenders were approved by the bankruptcy court as the successful bidder, *id.* §§ 1, 11;

8. Vatera and Medco (each subject to the results of the Investigation described below and to the bankruptcy court's approval of certain release provisions) would subordinate their claims to the first $3.5 million distributed from the GUC Trust, *id*. §§ 2, 3; and

9. The Debtors (subject to the results of the Investigation described below) would not contribute any claims or causes of action against the Debtors' present and former directors and officers, Vatera (and its affiliates and representatives), or MedCo (and its affiliates and representatives) to the GUC Trust, *id.* § 1.

The Initial Term Sheet contemplated an investigation (the "**Investigation**") of any potential colorable claims that the Debtors may have held against their present and former directors and officers, Vatera (and its affiliates and representatives), and MedCo (and its affiliates and representatives). Initial Term Sheet § 1. The Initial Term Sheet required that (a) one of Melinta's independent directors investigate any colorable claims that the Debtors may have held against their present and former directors and officers or against Vatera (and its affiliates and representatives); and (b) the Debtors investigate claims that they may have

held against MedCo (and its affiliates and representatives). *Id.* In both cases, the relevant investigator was tasked with determining whether any causes of action held by the Debtors should be transferred to the GUC Trust, after consulting with the Committee and considering, among other factors: (a) the cost and expense of pursuing the relevant claim, (b) the likelihood of success on the merits, and (c) the consideration that had been or would be provided under the Global Settlement by the party that was the subject of the claim. *Id.* Under the Initial Term Sheet, the subject of any colorable claim transferred to the GUC Trust would be permitted to raise any and all objections to the Plan. *Id.*

B. The Debtors' Postpetition Marketing Process

On February 11, 2020 the bankruptcy court entered an order approving the proposed Bidding Procedures, as amended in accordance with the Initial Term Sheet. *Order (A) Establishing Bidding Procedures; (B) Approving Expense Reimbursement; (C) Establishing Procedures Relating to the Assumption or Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, Including Notice of Proposed Cure Amounts; (D) Approving Form and Manner of Notice of All Procedures, Protections, Schedules, and Agreements; (E) Scheduling a Hearing to Consider Any Proposed Sale; and (F) Granting Certain Related Relief* [Docket No. 280] (the "**Bidding Procedures Order**"); *see also* Initial Term Sheet § 1.

Consistent with the Bidding Procedures Order and the Initial Term Sheet, the Debtors' marketing efforts, which had continued seamlessly through and following the Petition Date, continued in consultation with the Committee. Confirmation Declaration ¶ 6 (A108–109). Over the course of the prepetition and postpetition marketing process, Melinta and its advisors contacted 86 potential buyers, including buyers suggested by the Committee, and executed 33 non-disclosure agreements. *Id.* Despite the best efforts of the Debtors and their advisors, however, no competing bids were received by the March 2, 2020 bid deadline. *Id.* ¶ 7. For this reason, the Debtors filed the *Notice of Successful Bidder and Cancellation of Auction* [Bankr. Docket No. 372], which identified the Supporting Lender Transaction as the successful bid. Confirmation Declaration ¶ 7 (A109); *cf. Bidding Procedures* [Bankr. Docket No. 280-1] Art. V ("If no Competing Bids other than the Supporting Lender Transaction are received prior to the Bid Deadline, then the Auction will not occur . . . .").

C. Solicitation of the Plan

The Debtors solicited acceptance of their proposed Plan as required by Bankruptcy Code section 1125. Confirmation Order §§ E–G (A305–306); *see* Apr. 2, 2020 Hr'g Tr. [Bankr. Docket No. 502] at 126:16–23 (A259) (the bankruptcy court remarking that all stakeholders were provided with "significant information," consistent with the Solicitation Procedures Order). On February 25, 2020 and after

an extensive hearing, the bankruptcy court approved the disclosure statement for the Debtors' Plan and established procedures for soliciting and tabulating votes to accept or reject the Plan. *Order (I) Approving Adequacy of Debtors' Disclosure Statement, (II) Approving Solicitation and Notice Procedures with Respect to Confirmation of Debtors' Proposed Plan of Reorganization, (III) Approving Form of Various Ballots and Notices in Connection Therewith, and (IV) Scheduling Certain Dates with Respect Thereto* [Bankr. Docket No. 342] (the "**Solicitation Procedures Order**"); *see also Amended Disclosure Statement for Amended Joint Chapter 11 Plan of Reorganization of Melinta Therapeutics, Inc. and its Debtor Affiliates* [Bankr. Docket No. 345] (the "**Disclosure Statement**"); *see generally* Feb. 21, 2020 Hr'g Tr. [Bankr. Docket No. 343]. Ms. Luo did not object to approval of the Disclosure Statement or the Solicitation Procedures Order or participate in the Disclosure Statement hearing.

The Debtors then served the relevant parties, including Ms. Luo, with copies of the Disclosure Statement and other materials as required by the Solicitation Procedures Order and published notices regarding the confirmation hearing and Plan objection and voting deadlines in *The New York Times*. *Affidavit of Service* [Bankr. Docket No. 379], Ex. B; *see also Affidavit of Publication of the Notice of (I) Approval of Adequacy of Disclosure Statement, (II) Solicitation and Notice*

Procedures, (III) Objection and Voting Deadlines, and (IV) Confirmation Hearing in The New York Times—National Edition [Bankr. Docket No. 377].

D. The Results of the Investigation and the Amended Global Settlement

Pursuant to the Initial Term Sheet, the relevant investigators conducted the Investigation in consultation with the Committee. Initial Term Sheet § 5 (A736); Confirmation Declaration ¶ 9 (A109–10). On March 12, 2020, the Investigation concluded and the applicable investigators determined: (a) that no claims against any of the Debtors' present and former directors and officers or MedCo would be contributed to the GUC Trust, and (b) subject to the agreement of Vatera to contribute $500,000 to the GUC Trust, no claims against any of the Vatera Persons would be contributed to the GUC Trust. Confirmation Declaration ¶ 9 (A109–10); *Declaration of Aron Schwartz in Support of Confirmation of Amended Joint Chapter 11 Plan of Reorganization of Melinta Therapeutics, Inc. and Its Debtor Affiliates* [Bankr. Docket No. 477] (the "**Schwartz Declaration**") ¶¶ 18–19. In connection with the foregoing agreement, MedCo and Vatera agreed to further subordinate their general unsecured claims to the $500,000 contributed to the GUC Trust by Vatera. The contribution of $500,000 by Vatera to the GUC Trust and the subordination of MedCo and Vatera's unsecured claims were the product of extensive, arm's-length negotiations, and were incorporated into an amended term sheet filed on March 13, 2020. *Notice of Filing of Amended and Restated Global*

Settlement Term Sheet [Bankr. Docket No. 411] (the "**Global Settlement Term Sheet**") (A85); Confirmation Declaration ¶¶ 8–10 (A109–11), 12–14 (A111–12).

E. The Plan

The Plan effectuates the Supporting Lender Transaction. Confirmation Declaration ¶ 11 (A111); *see* Plan § 5.04 (A389–393). Specifically, the Plan provides that upon emergence all prepetition equity interests in Melinta Therapeutics were extinguished and that the Supporting Lenders received 100% of the equity of reorganized Melinta Therapeutics in satisfaction of their secured claims. Plan §§ 3.02(c) (A386), 3.02(h) (A388), 5.04(b) (A390). The Plan also incorporates the terms of the Global Settlement, and thus provides for a meaningful recovery by general unsecured creditors through the GUC Trust. *See id.* §§ 3.02(d) (A386–87), 5.03 (A389), 5.04(e) (A391); Confirmation Declaration ¶¶ 11–14 (A111–12), 46 (A121), 68 (A127–28); *see also Liquidation Analysis* [Bankr. Docket No. 345-2].

On April 2, 2020, the bankruptcy court held a hearing to consider confirmation of the Plan. *See* Apr. 2, 2020 Hr'g Tr. [Bankr. Docket No. 502] (A134). Ms. Luo filed multiple written objections to confirmation of the Plan; at the confirmation hearing, she made extensive arguments; and she had the opportunity to cross-examine the Debtors' witnesses. *Id.* at 24:8–25:22 (A157–58), 35:1–36:10 (A168–69); 43:6–45:5 (A176–78); *see, e.g.*, *Letter to the Court by Lin*

Luo re: Objection to Sale [Bankr. Docket No. 427]. Ms. Luo did not, however, present evidence to support her claims or cross-examine the Debtors' witnesses. Apr. 2, 2020 Hr'g Tr. [Bankr. Docket No. 502] at 127:18-20 (A260). Based on the testimony presented at the hearing and on a substantially undisputed factual record, the bankruptcy court overruled Ms. Luo's objections and found that:

1. The Plan was proposed in good faith, *id.* at 122:21–24 (A255);

2. The Supporting Lender Transaction was market-tested and thus accurately reflected the value of the Debtors, *id.* at 123:6–18 (A256);

3. The Plan was approved by both voting classes—the secured claims under the Deerfield Facility ("**Class 3**") and general unsecured claims ("**Class 4**"), without counting the votes of any insider (including Vatera), *id.* at 125:1–126:4 (A258–59); and

4. The Debtors satisfied all disclosure, solicitation, and notice requirements under applicable law, *id.* at 118:14 (A251), 126:16–23 (A259).

See also Memorandum on Relief Sought by Shareholders Seeking to "Cancel Sale" [Bankr. Docket No. 744] (the "**Reconsideration Memorandum**") (A432).

F. The Debtors' Emergence from Bankruptcy

The Plan became effective on April 20, 2020 (the "**Effective Date**"). *Notice of (I) Entry of Findings of Fact, Conclusions of Law and Order Confirming Modified Amended Joint Plan of Reorganization of Melinta Therapeutics, Inc. and its Debtor Affiliates and (II) Occurrence of Effective Date* [Bank. Docket No. 542]. Under the Plan, all existing equity interests in Melinta Therapeutics were extinguished, and the Supporting Lenders received 100% of the newly issued stock of a reorganized Melinta Therapeutics in exchange for their secured claims. Plan § 3.02(h) (A388). No holder of an existing equity interest in Melinta Therapeutics either received or retained any property on account of such existing equity interest. *Id.*

Also upon emergence, the GUC Trust was funded and received certain causes of action held by the Debtors on the Petition Date. *Id.* § 5.04(e) (A391). Since the Effective Date, the GUC Trust has worked diligently to reconcile general unsecured claims, including by objecting to and/or settling disputed claims. *Trustee's Motion for Extension of Time to Make Distributions to General Unsecured Creditors* [Bankr. Docket No. 848] ¶ 12 ("The [GUC] Trustee has worked diligently since the Effective Date to review, object to, and resolve all claims against the Debtors' estate and causes of actions that were vested in the GUC Trust under the Plan."). This process is well advanced, and the GUC Trust

anticipates making a distribution to general unsecured creditors by the end of 2020. *Order Approving Trustee's Motion for Extension of Time to Make Distributions to General Unsecured Creditors* [Bankr. Docket No. 862].

Since emergence, Melinta has continued operating in the ordinary course of business. *See* Plan § 9.01 (A411). As a developer of novel antibiotics, Melinta works closely with a global network of vendors, suppliers, customers, and other third parties. *See* First-Day Declaration ¶¶ 157–162 (A53–55), 201–203 (A70–72). The development of antibiotics is complex and the market for Melinta's medications is highly competitive and, as a result, vendors, suppliers, and customers place significant importance upon their relationship with Melinta when deciding whether to transact. *Id.*

G. Ms. Luo's Litigation in the Bankruptcy Court

As stated above, Ms. Luo objected to the Plan, but offered no evidence in support of her position and was overruled by the bankruptcy court. Apr. 2, 2020 Hr'g Tr. [Docket No. 502] at 122:10–127:25 (A255–60); *see, e.g., Letter to the Court by Lin Luo re: Objection to Confirmation of Plan* [Bankr. Docket No. 446]. Following confirmation of the Plan, Ms. Luo filed dozens of papers seeking reconsideration of the Plan[7] and challenging other aspects of the Debtors' chapter

[7] *See* Bankr. Docket Nos. 578, 646, 648, 696, 797, 778, 808, 814.

11 cases.[8] On April 28, 2020, the bankruptcy court informed the Debtors that certain of Ms. Luo's filings would be considered as a motion to reconsider the Confirmation Order. *See* Reconsideration Memorandum at 5 (A436). On July 2, 2020, the bankruptcy court denied Ms. Luo's requests for reconsideration, stating that Ms. Luo "did not present any evidence at the [confirmation] hearing" and that the Plan had been confirmed "against [a] backdrop of unrefuted evidence, and with an accepting vote of each class entitled to vote." *Id.* at 4 (A435). Following entry of the Reconsideration Memorandum, Ms. Luo filed multiple additional letters challenging the Plan and other aspects of the Debtors' chapter 11 cases.

At a hearing on September 17, 2020, the bankruptcy court again denied Ms. Luo's request to reconsider the Plan and denied certain other motions by Ms. Luo and other shareholders to, among other things, bar certain parties from owning equity interests in reorganized Melinta and "clarify" the Plan. Sept. 17, 2020 Hr'g Tr. [Bankr. Docket No. 839] at 19:9–13 (A467) ("There have probably been close to 50 filings with respect to various issues, and that just simply has to stop. I ruled on confirmation. I considered your motion, your first motion, to cancel the sale. I ruled on that."); s*ee also*, *e.g.*, *Order Denying Bar Motions* [Bankr. Docket No. 826], *Order Denying Motions to Clarify* [Bankr. Docket No. 828]. Ms. Luo did not

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[8] *See, e.g.*, Bankr. Docket Nos. 581, 585, 613, 614, 615, 647, 694, 695, 697, 708, 709, 768, 769, 771, 772, 773, 792, 793.

request a stay of the Plan until October 19, 2020, nearly six months after the Effective Date. *Motion to Stay Closing of the Sale Order* [Bankr. Docket No. 843] (the "**Stay Motion**").

SUMMARY OF ARGUMENT

Ms. Luo's appeal should be dismissed as equitably moot under the two-part test established by the Third Circuit in *In re Tribune Media Co.*, 799 F.3d 272 (3d Cir. 2015). *First*, the Plan was substantially consummated more than seven months ago, when Melinta emerged from bankruptcy under new ownership and the GUC Trust was funded and established. *See* Plan § 8.01 (A407) (establishing timing of distributions under the Plan). *Second*, Ms. Luo's appeal would fatally scramble the Plan and would harm third parties who have reasonably relied upon the finality of the Plan. Indeed, Ms. Luo challenges both the Plan in its entirety and the Supporting Lender Transaction that forms the Plan's foundation, and her appeal is therefore a request to revoke, rather than amend, the Plan. Further, since emergence, third parties have reasonably relied on the Plan. Melinta has entered into go-forward agreements with customers, vendors, and other third-parties who have justifiably relied on Melinta's ability to operate long-term without the disruption of bankruptcy. Similarly, the GUC Trust has settled creditors' claims and causes of action provided to it by Melinta, and third parties have thus relied on the GUC Trust's ability to administer these claims and causes of action under the

Plan. Plan § 5.04(e) (A391). The Court should not hesitate to apply the doctrine in this case, because Ms. Luo has failed to obtain (or even seek) a timely stay and because Ms. Luo has contributed to the mootness of her appeal by causing significant delay in its adjudication. *In re Trib. Media Co.*, 799 F.3d at 281.

If considered on the merits, Ms. Luo's appeal should be denied because she identifies no error in the bankruptcy court's rulings, which were made on an undisputed record. The bankruptcy court properly found (twice) that the Plan was proposed in good faith, that the Debtors conducted a thorough marketing process, and that the Plan was accepted by both voting classes. The items that Ms. Luo cites throughout her brief are simply not evidence of the wide-ranging conspiracy that she alleges. Instead, the record is fully consistent with the bankruptcy court's findings below and with the Debtors' representations throughout their bankruptcy. Accordingly, the bankruptcy court's Confirmation Order should be affirmed.

ARGUMENT

I. The Appeal Is Equitably Moot.

An appellate court should forbear deciding an appeal "when [granting] the relief requested will undermine the finality and reliability of consummated plans of reorganization." *In re Trib. Media Co.*, 799 F.3d at 277. The Third Circuit has established two steps for the equitable mootness inquiry. *Id.* at 278. *First*, the appellate court inquires whether a confirmed plan has been substantially

consummated. *Id. Second*, if the confirmed plan has been substantially consummated, the appellate court then determines "whether granting the relief requested in the appeal will (a) fatally scramble the plan and/or (b) significantly harm third parties who have justifiably relied on plan confirmation." *Id.* Thus, the appeal of a substantially consummated plan should be dismissed if it threatens to either fatally scramble the plan or significantly harm third parties who have justifiably relied upon said plan. *Id.* The question of equitable mootness is separate from any determination on the merits, "because the idea of equitable mootness is that even *if* [appellant] is correct, it would not be fair to award it the relief it seeks." *Id.* at 281 (emphasis in original).

A. The Plan Has Been Substantially Consummated.

The Plan has been substantially consummated under section 1101(2) of the Bankruptcy Code, which defines "substantial consummation" as "(A) transfer of all or substantially all of the property proposed by the plan to be transferred; (B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and (C) commencement of distribution under the plan." 11 U.S.C. § 1101(2). After a plan has been substantially consummated, "the strong public interest in the finality of bankruptcy reorganizations is particularly compelling." *In*

re Cont'l Airlines, 91 F.3d 553, 561 (3d Cir. 1996) (discussing Bankruptcy Code Section 1101).

All three statutory elements of substantial consummation have been satisfied in this case. *See* 11 U.S.C. § 1101(2). *First*, on or shortly after the Effective Date, the property transfers contemplated by the Plan occurred, as the GUC Trust Assets (*i.e.*, $4 million in funding,[9] plus certain designated causes of action) vested in the GUC Trust, and substantially all other assets of the Debtors' estates vested in the Reorganized Debtors. *See* Plan §§ 1.64 (A370) (defining "GUC Trust Assets"), 5.04(e) (A391), 8.01 (A407), 9.01 (A411). *Second*, on the Effective Date, the Reorganized Debtors continued the ordinary day-to-day operations of their business. *See* Plan § 9.01 (A411). *Third*, distribution under the Plan has not only commenced but likely will soon conclude—the Supporting Lenders received their distribution of new equity on the Effective Date, and general unsecured creditors likely will begin receiving distributions from the GUC Trust by the end of this year. Plan §§ 1.76 (A371–72) (defining "Initial Distribution Date"), 8.01 (A407) (providing for timing of distributions); *see Order Approving Trustee's Motion for Extension of Time to Make Distributions to General Unsecured Creditors* [Bankr. Docket No. 862]. Courts have found that plans were substantially consummated

[9] The Supporting Lenders contributed $3.5 million and Vatera contributed $500,000, each in connection with the Global Settlement. Global Settlement Term Sheet §§ 2–3 (A86–87); Confirmation Declaration ¶¶ 12–14 (A111–12).

where, as here, substantial steps had been taken to repay creditors, new equity was issued, and the debtors paid costs and expenses incurred in connection with the plan. *In re Nuverra Env't Sols., Inc.*, 590 B.R. 75, 83 n.6 (D. Del. 2018); *In re Paragon Offshore plc*, 597 B.R. 748, 761 (D. Del. 2019); *see also In re Paige*, 584 F.3d 1327, 1334 (10th Cir. 2009) (holding that plan had been substantially consummated because "the trustee took substantial steps to pay creditors, object to creditors' claims, and prosecute" an adversary proceeding).

B. Granting Ms. Luo's Appeal Would Fatally Scramble the Plan.

An appeal would fatally scramble a plan and thus satisfy the second step of the *Tribune* test if the effect of a decision for appellant would be to "recall the entire Plan for a redo." *In re Trib. Media Co.*, 799 F.3d at 281. Not only would reversing the confirmation of a substantially consummated plan run counter to the policy in favor of finality in bankruptcy proceedings, it would also "'create a nightmarish situation for the bankruptcy court on remand' . . . and make reconstructive relief extremely improbable." *In re Pub. Serv. Co. of N.H.*, 963 F.2d 469, 474 (1st Cir. 1992) (citation omitted). To determine whether an appeal would fatally scramble a plan, the "starting point is the relief an appellant specifically asks for." *In re Trib. Media Co.*, 799 F.3d at 278.

Ms. Luo requests that the Court "recall the entire Plan for a redo." *Id.* at 281. Ms. Luo asks the Court to "reverse the confirmation order" but requests no specific

amendment or other change. *See* Appellant's Brief at 70. In particular, she alleges that the Reorganized Debtors' bankruptcy is the culmination of a conspiracy to defraud shareholders. *See* Appellant's Brief at 17. Nothing that Ms. Luo identifies as an alleged flaw in the Plan "could be stricken from the plan without undoing other portions of it," and Ms. Luo's appeal thus cannot be granted without scrambling the Plan in its entirety. *In re PWS Holding Corp.*, 228 F.3d 224, 236 (3d Cir. 2000).

Moreover, Ms. Luo expressly requests that the Court undo the Supporting Lender Transaction, which is central to the Plan. Confirmation Declaration ¶¶ 11 (A111), 23 (A115); *see* Plan § 5.04 (A389–93); *see generally* Appellant's Brief. The Plan could not have been formulated, let alone confirmed and consummated, without the Supporting Lender Transaction. First-Day Declaration ¶ 63 (A22); Confirmation Declaration ¶ 11 (A111). The Supporting Lenders' contribution of $3.5 million to the GUC Trust, which will lead to meaningful recovery for general unsecured creditors, was explicitly conditioned on the completion of said transaction. Confirmation Declaration ¶¶ 23 (A115), 68 (A127–28). Critically, unwinding the Supporting Lender Transaction would create a "nightmarish" situation in the bankruptcy court, as the Supporting Lenders' offer for the Debtors was the best and only bid received after a months-long marketing process. *Id.* ¶ 7 (A109); *see In re Pub. Serv. Co. of N.H.*, 963 F.2d at 474.

C. Third Parties Have Relied Upon the Finality of the Effective Plan.

Equitable mootness assures "stakeholders that a plan confirmation order is reliable and that they may make financial decisions based on a reorganized entity's exit from Chapter 11 without fear that an appellate court will wipe out or interfere with their deal." *In re Trib. Media Co.*, 799 F.3d at 280. The Court should therefore consider whether an appeal, if granted, would "have damaging ripple effects" on third parties. *Id.* at 280.

First, the parties to the Global Settlement relied on the finality of the Plan and the Confirmation Order in resolving the complex and interrelated matters addressed in the Global Settlement Term Sheet. As discussed above, the Global Settlement addresses numerous actual or potential disputes among the parties thereto. Global Settlement Term Sheet §§ 1–4 (A85–88); Confirmation Declaration ¶¶ 8–10 (A109–10), 12–14 (A111–12). Among other things, it resolves actual or potential claims and causes of action the Debtors may have otherwise been entitled to assert (or continue prosecuting) against Vatera, MedCo, and others. Global Settlement Term Sheet §§ 1–4 (A85–88); Confirmation Declaration ¶¶ 8–9 (A109–10). In entering into the Global Settlement, the parties assumed that the Plan would conclusively resolve these matters and acted accordingly. For example, both Vatera and MedCo agreed to subordinate up to $4 million of their respective general unsecured claims to the unsecured claims of other creditors, and Vatera

agreed to contribute an additional $500,000 to the GUC Trust on the Effective Date, all in reliance of the approval of the Global Settlement under the Plan. Global Settlement Term Sheet §§ 2–3 (A86–87); Confirmation Declaration ¶¶ 12–14 (A111–12).

Further, reversal of the Confirmation Order would disrupt the significant efforts the GUC Trust has undertaken since the Effective Date to reconcile and administer general unsecured claims against the Debtors. Courts should be especially hesitant to overturn a Plan that led to third-party behavior "that contributes to a successful reorganization," *In re. Trib. Media Co.*, 799 F.3d at 279, such as the negotiated resolution of claims and causes of action. As of the date hereof, the GUC Trust has resolved, through consensual settlements and orders of the bankruptcy court, the lion's share of general unsecured claims against the Debtors. *See, e.g., Order Approving Stipulation Between the GUC Trustee, Intrado Digital Media LLC, Intrado Enterprise Collaboration, Inc., and West IP Communications, Inc. n/k/a Intrado IP Communications, Inc.* [Bankr. Docket No. 833]; *see In re Trib. Media Co.*, 799 F.3d at 279 (noting that "other creditors" who were not equity investors are considered third parties under the doctrine) (citing *In re Phila. Newspapers, LLC,* 690 F.3d 161, 171 (3d Cir. 2012)). The general unsecured creditors who entered into these settlements relied on the GUC Trust's power to dispose of the relevant causes of action and to administer claims. Plan

§ 5.04(e) (A391). Moreover, this reliance was reasonable because, at the time of such settlement and other actions (and indeed, until as recently as October) Ms. Luo had not requested a stay of the Confirmation Order.

Finally, customers, suppliers, vendors, and employees have relied upon Melinta's Plan when deciding whether to do business with Melinta. Melinta's business is complex and involves agreements with a global web of drug manufacturers, processors, and customers all of whom rely upon their relationship with Melinta when deciding to do business. First-Day Declaration ¶¶ 157–162 (A53–55), 201–203 (A70–72). Melinta's interactions with customers and vendors are highly dependent on Melinta's reputation, and reversing course now could irreparably harm Melinta's relationships with these third parties. *See id*. ¶¶ 201–203 (A70–72). Additionally, Melinta's sales force suffered significant attrition as a result of the Debtors' bankruptcy, *Declaration of Peter Milligan in Support of Debtors' Bidding Procedures Motion* [Bankr. Docket No. 165] ¶ 9, and employees have relied upon the finality of the Plan when deciding whether to continue their employment. Granting Ms. Luo's appeal would thus disrupt relationships with customers, suppliers, employees, and vendors who have reasonably relied on the finality of Melinta's Plan.

D. Application of the Equitable Mootness Doctrine Is Not Unfair to Ms. Luo.

The Court should not hesitate to apply the equitable mootness doctrine because Ms. Luo did not timely act to stay the Plan. The Third Circuit has held that an appellant's failure to obtain a stay pending appeal "is an important reason we should forebear from hearing a challenge to the order[.]" *In re Trib. Media Co.*, 799 F.3d at 281; *see also In re Loral Space & Commc'ns, Ltd.*, 342 B.R. 132, 141 (S.D.N.Y. 2006) ("[S]eeking a stay is of the utmost importance to an appellant desiring to preserve an appeal of a confirmation order."). Ms. Luo did not seek a stay of the Plan until October 19, 2020, even though she first learned that the bankruptcy court intended to confirm the Plan on April 2, 2020, and even though she continued to make filings in the bankruptcy court throughout the intervening months. *See* Stay Motion; *see generally* Apr. 2, 2020 Hr'g Tr. [Bankr. Docket No. 502] (A134). Because the Plan has been substantially consummated, the Stay Motion is now grossly untimely, and parties-in-interest will be greatly harmed if this Court overturns the Confirmation Order. *See In re Trib. Media Co.,* 799 F.3d at 280.

Additionally, Ms. Luo has consistently delayed these proceedings, contributing significantly to the mootness of her appeal and increasing the disruption that third parties will face as a result of any revocation of the Plan. In the Bankruptcy Court, Ms. Luo filed several motions to reconsider the

Confirmation Order, which delayed the effectiveness of her notice of appeal under Rule 8002(b) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") until the bankruptcy court denied Ms. Luo's requests on July 2, 2020. *See* Reconsideration Memorandum at 5–6 (A436–37). These reconsideration motions were facially meritless in that they merely repeated the same arguments Ms. Luo advanced in her objections to confirmation and did not even attempt to show that any of the bases for reconsideration prescribed by Bankruptcy Rules 9023 or 9024 were satisfied.

Then, in her *Initial Proposed Briefing Schedule*, filed on July 28, 2020, Ms. Luo argued that her opening brief should be due on December 14, 2020, far after the date contemplated by Bankruptcy Rule 8018(a). [Docket No. 5]. Melinta responded, requesting that Ms. Luo file and serve her opening brief by August 29, 2020, and this Court set October 28, 2020—roughly midway between the competing dates proposed by Ms. Luo and Melinta—as the deadline for Ms. Luo to file her opening brief. *See Order of October 21, 2020* [Docket No. 15] at 2. On October 16, 2020, Ms. Luo moved to continue the deadline for the filing of her opening brief to January 31, 2021 [Docket No. 12], which the Court denied. *Order of October 21, 2020* [Docket No. 15]. As any delay in these proceedings is entirely of Ms. Luo's making, the Court should not hesitate to apply the equitable mootness doctrine. *See In re Trib. Media Co.*, 799 F.3d at 284 (holding that delay does not

prevent application of the doctrine where appellee diligently complied with all deadlines and was not to blame for delay).

II. The Reorganized Debtors Prosecuted Their Bankruptcy in Good Faith.

Ms. Luo's appeal is centered around the unfounded theory that Melinta's bankruptcy was manufactured by Melinta and its creditors in bad faith. As the bankruptcy court properly found below, however, the undisputed record supports the opposite conclusion. After encountering significant economic hardship (like other firms in its industry), the Debtors filed for bankruptcy in order to preserve and reorganize their business while maximizing recovery for creditors. First-Day Declaration ¶¶ 55 (A18–19), 63 (A22). Throughout its bankruptcy, the Debtors worked in good faith with their major stakeholders to design a Plan that maximized value for their "fulcrum" creditors (*i.e.*, the Supporting Lenders), while also achieving a meaningful distribution for general unsecured creditors, who would otherwise have realized little or no recovery. Apr. 2, 2020 H'rg Tr. [Bankr. Docket No. 502] at 123:19–24 (A256); Confirmation Declaration ¶ 61 (A125–26); *Liquidation Analysis* [Bankr. Docket No. 345–2]. As a result of the Debtors' good-faith efforts, as well as the good-faith efforts of the other parties to the Global Settlement, the Plan enjoyed the support of both voting classes (as discussed in more detail below), the Committee, and each of the Debtors' largest creditors.

A. The Decision to File for Bankruptcy Was Made in Good Faith to Maximize the Value of Melinta.

The undisputed evidence shows that Melinta's bankruptcy filing was made in a good-faith attempt to maximize value and preserve the business. *See In re Am. Cap. Equip., LLC*, 688 F.3d 145, 157 (3d Cir. 2012) (holding that determination as to whether a petition was made in 'good faith' requires an examination of all the facts and circumstances in the case). The record shows that Melinta's bankruptcy filing was the result of: (a) soft sales consistent with industry trends, (b) an unexpected shortfall in the value of the three medications acquired in the MedCo Transaction, (c) Melinta's corresponding inability to service its debt; and (d) Melinta's inability to obtain additional capital absent a restructuring of its existing liabilities. First-Day Declaration ¶¶ 40 (A11–12), 44 (A13), 48 (A15), 50 (A16), 55 (A18–19). Melinta made significant efforts to address these challenges and avoid bankruptcy, including seeking liquidity from outside sources, negotiating waivers of covenants, and extensively marketing the Debtors. *Id.* ¶¶ 52 (A16–17), 55 (A18–19), 56 (A19), 59 (A20), 62 (A21–22), 63 (A22). Although these efforts were ultimately unsuccessful, they demonstrate Melinta's consistent commitment to maximizing the value of the Debtors and that Melinta, not its creditors, made the decision to file.

B. The Plan Was Proposed in Good Faith.

Ms. Luo demonstrates no error in the bankruptcy court's finding that the Plan was proposed in good faith, as required by Bankruptcy Code section 1129(a)(3). "In analyzing whether a plan has been proposed in good faith under § 1129(a)(3), 'the important point of inquiry is the plan itself and whether such a plan will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code.'" *In re Am. Cap. Equip., LLC*, 688 F.3d at 156 (quoting *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 247 (3d Cir. 2004)). "[U]nder Chapter 11, the two 'recognized' policies, or objectives, are 'preserving going concerns and maximizing property available to satisfy creditors.'" *In re Am. Cap. Equip., LLC*, 688 F.3d at 156 (quoting *Bank of Am. Nat.'l Tr. & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 453 (1999)). The leading bankruptcy treatise explains that "denial of confirmation for failure to satisfy section 1129(a)(3) should be reserved for only the most extreme of cases." 7 COLLIER ON BANKRUPTCY ¶ 1129.02 (Richard Levin & Henry J. Sommer eds., 16th ed.). Whether a plan was proposed in good faith is a legal question subject to *de novo* review by the district court, but the factual findings supporting the bankruptcy court's determination that a plan was proposed in good faith should be reviewed for clear error. *Wells Fargo, N.A. v. Bear Stearns & Co. (In re HomeBanc Mortg. Corp.)*, 945 F.3d 801, 811 (3d Cir. 2019), *cert. denied*, No. 19-1349, 2020 WL 5882295 (U.S. Oct. 5, 2020)..

The bankruptcy court concluded that the Plan was proposed in good faith after finding that the Plan: (a) was the result of arm's-length negotiations among the Debtors' major constituencies; (b) was not proposed for any improper purpose; (c) resulted in meaningful recovery for general unsecured creditors; and (d) incorporated a market-tested acquisition of the Debtors (as discussed in more detail below). Apr. 2, 2020 Hr'g Tr. [Bankr. Docket No. 502] at 122:21–124:23 (A255–57). The evidence supporting these findings is undisputed. *Id.* at 122:21–24 (A255); Reconsideration Memorandum at 4 (A435). Together, these facts show that the Plan maximized creditor recoveries and thus was consistent with the purposes of the Bankruptcy Code.[10] *See In re Am. Capital Equip.*, 688 F.3d at 156. Because Ms. Luo identifies no clear error in the bankruptcy court's underlying factual findings, the Court should affirm the bankruptcy court's conclusion that the Plan was proposed in good faith.

C. There Is No Evidence of Fraud.

The Court should also affirm the bankruptcy court's finding that the Plan was not procured by fraud. *See* Reconsideration Memorandum at 17 (A448). Ms. Luo identifies no agreement to bankrupt the Reorganized Debtors or to defraud investors. Appellant's Brief *passim.* Instead, she insists that the evidence of her

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[10] As a plan of reorganization, the Plan also preserves the Company as a going concern. *See* Apr. 2, 2020 Hr'g Tr. [Bankr. Docket No. 502] at 128:10–11 (A261) ("[N]o one has seriously questioned the ability of the reorganized debtor to move forward . . . ."); Plan § 9.01 (A411).

alleged conspiracy is contained in "secretive NDAs," Appellant's Brief *passim*, although she also states that "we cannot know what else was agreed" to in these alleged agreements.[11] *Id.* at 50. Such vague allegations would fail to state a claim for fraud at the pleading stage and are thus plainly insufficient to overturn a lower court's findings as clearly erroneous. *See Haskell v. Goldman, Sachs & Co. (In re Genesis Health Ventures, Inc.)*, 355 B.R. 438, 455 (Bankr. D. Del. 2006) (holding that averments of fraud must be made with particularity).

Moreover, the undisputed facts belie Ms. Luo's theorized conspiracy among the Supporting Lenders and Vatera. *See* Appellant's Brief at 11. Initially, Vatera vigorously opposed several aspects of the Debtors' bankruptcy, including the proposed adequate protection for the use of the Supporting Lenders' cash collateral. *See* Jan. 28, 2020 Hr'g Tr. [Bankr. Docket No. 221] at 183:4–13. Contrary to Ms. Luo's argument that Vatera received stock in exchange for its

[11] Throughout her brief, as well as her filings in the Bankruptcy Court, Ms. Luo has frequently and repeatedly mischaracterized the purpose of the Debtors' non-disclosure agreements or "NDAs." NDAs are crucial to the negotiation of any restructuring transaction, particularly with respect to public companies. In order to successfully negotiate and implement financial transactions, companies are often required to disclosure material non-public information or other commercially sensitive information to prospective counterparties. *Hoffman v. Sbarro, Inc.*, 97 CIV. 4484 (SS), 1997 WL 736703, at *1 (S.D.N.Y. Nov. 26, 1997) ("[C]ompetition-related information [is] normally subject to a non-disclosure agreement . . . ."). To ensure that this sensitive information is safeguarded and not used improperly, companies require that these counterparties enter into non-disclosure agreements, which generally set out the scope of permissible use of sensitive information and establish rules for permitted and prohibited disclosures thereof. These NDAs are industry-standard, and are the exact type of NDAs that the Debtors entered into, not only with the Supporting Lenders and Vatera, but with multiple potential bidders. *See* First-Day Declaration ¶ 60 n.16 (describing use of NDA in connection with a recapitalization proposal) (A21). Melinta's non-disclosure agreements with its creditors contained no substantive transaction terms, but instead related solely to the treatment of confidential information.

cooperation, all existing equity interests in Melinta Therapeutics (including Vatera's existing common stock) were extinguished under the Plan. Plan § 3.02(h) (A388). Indeed, the record shows that Vatera's eventual cooperation with the Plan was not a foregone conclusion but rather the result of extensive and arm's-length and often contentious negotiations. Confirmation Declaration ¶¶ 8–10 (A110–11), 12–14 (A111–12).

III. The Cancellation of Existing Equity Interest Under the Plan Is Proper and Consistent with the Bankruptcy Code.

In connection with her asserted conspiracy, Ms. Luo makes two related and unfounded allegations relating the Plan's treatment of equity interests. *First*, she asserts that the Supporting Lenders acquired the equity interests in Melinta for less than its true value, and that some hypothetical third-party bidder would have paid enough to allow for shareholder recovery. *See* Appellant's Brief at 44. *Second*, she claims that certain parties retained equity interests in contravention of Bankruptcy Code section 1123(a)(4). *Id.* at 58. As explained below, Ms. Luo identifies no evidence for her positions and demonstrates no clear error in the bankruptcy court's findings with respect to the Plan's treatment of equity interests.

A. There Was Insufficient Value to Support Recoveries for Shareholders Under the Plan.

The Supporting Lender Transaction was the only offer received for the Debtors after a thorough marketing process. Confirmation Declaration ¶ 6 (A108–

109); Apr. 2, 2020 Hr'g Tr. at 123:6–124:1 (A256–57). Courts recognize that "[a] market test is the best evidence of a company's value at a given point in time." *Off. Comm. of Unsecured Creditors of Champion Enters. Inc. v. Credit Suisse (In re Champion Enters., Inc.)*, Nos. 09-14019 (KG), 10-50514 (KG), 2012 WL 3778872, at *35 (Bankr. D. Del. Aug. 30, 2012) (citing *Cohen v. KB Mezzanine Fund II, LP (In re SubMicron Sys. Corp.)*, 432 F.3d 448, 461 (3d Cir. 2006) (holding that a free market auction "best reflects the economic realities" of a debtor's worth)).

The Debtors were marketed pursuant to court-approved Bidding Procedures that were the result of meaningful compromise between major stakeholders, including the Committee. Global Settlement Term Sheet § 10 (A90–91); Reconsideration Memorandum at 1 (A432); *see generally* Bidding Procedures Order. This marketing process was court-supervised and conducted with the support and participation of the Committee. At no point in the court-sanctioned process did any party (including Appellant) raise any allegation that the Debtors or their advisors were not complying with the Bidding Procedures or otherwise seeking to maximize value for their stakeholders.

This marketing process was extensive. Between September 2019 and February 2020, Melinta and its advisors contacted 86 potential buyers, including buyers suggested by the Committee, and executed 33 non-disclosure agreements.

Confirmation Declaration ¶ 6 (A108–109); *Declaration of Jeffrey Finger in Support of Debtors' Bidding Procedures Motion* [Docket No. 164] (the "**Finger Declaration**") ¶¶ 17–18. Relying on the unrefuted evidence of this market test, the bankruptcy court found that "the valu[e] of this company ha[s] been proven by the marketing process." Apr. 2, 2020 Hr'g Tr. [Bankr. Docket No. 502] at 122:21–123:18 (A255–56).

Ms. Luo fails to identify a clear error in the bankruptcy court's finding that the marketing process reflected the Debtors' true value. Contrary to Ms. Luo's assertions, the Committee was a consultation party, and thus had significant input into the evaluation and solicitation of bids, while the Supporting Lenders were not. *Bidding Procedures* [Bankr. Docket No. 280–1] Art. VIII. Ms. Luo also presents no evidence that Melinta artificially deflated its value by improperly writing off its intangible assets—and, in fact, the Debtors provided potential bidders with access to a dataroom containing confidential information that would have allowed bidders to come to their own conclusion about the value of the Debtors and their intangible assets. Finger Declaration ¶ 10. Critically, Ms. Luo presents no evidence of any specific entity that was actually prevented or dissuaded from bidding by any alleged malfeasance or restrictive requirement. *See generally* Appellant's Brief.

The Court should also reject Ms. Luo's argument that Vatera's participation in the Global Settlement categorically prevented outside bids. Appellant's Brief at

45–46; *see* Global Settlement Term Sheet § 11 (A92). Vatera agreed that it would not challenge the Plan if (among other conditions) the Supporting Lender Transaction was deemed the "Successful Bid" under the Bidding Procedures, but the Global Settlement Term Sheet did not state that Vatera would have opposed a sale to a third-party bidder. Global Settlement Term Sheet § 11 (A92); *see Bidding Procedures* [Bankr. Docket No. 280-1] § VI(E) (defining "Successful Bid"). Indeed, the Global Settlement Term Sheet reflects agreements designed to enhance the competitiveness of the marketing process by, among other things, allowing partial bids and extending the bid deadline. *Id*. § 10 (A90–91).

B. The Plan Provides for Equal Treatment of All Holders of Class 8 Equity Interests.

Contrary to Ms. Luo's unfounded allegations, all existing equity interests, including the equity interests held by Vatera, MedCo, the Supporting Lenders, and current and former directors and officers of Melinta Therapeutics, were extinguished under the Plan. Confirmation Declaration ¶ 33 (A118); Plan § 3.02(h) (A388). To support her argument, Ms. Luo relies, again, on references to non-disclosure agreements that are not in the record. Appellant's Brief at 58. Ms. Luo also cites pre-Effective Date disclosures of various parties' holdings of Melinta Therapeutics stock, Appellant's Brief at 58, but these values do not reflect post-Effective Date stock ownership. As noted above, 100% of the new common stock of reorganized Melinta Therapeutics was issued to the Supporting Lenders on the

Effective Date. Plan §§ 3.02(c) (A386), 5.04(b) (A390). Furthermore, the fact that neither MedCo nor Vatera objected to the Plan is a result of the Global Settlement and not indicative of a conspiracy to protect existing equity in contravention of the Plan. Sept. 17, 2020 Hr'g Tr. [Bankr. Docket No. 839] at 62:13–15 (A510) (the bankruptcy court remarking, "[T]he plan provides that everyone's stock, no matter when they received it or how they received it, pre-bankruptcy is cancelled."); *see generally* Global Settlement Term Sheet (A85); *see also* Appellant's Brief at 60.

IV. The Plan Was Accepted by at Least One Impaired Class.

Based on an apparent misunderstanding of the Voting Declaration,[12] Ms. Luo claims that the Plan was not approved by at least one impaired class without counting the vote of any insider, as required under Bankruptcy Code section 1129(a)(10). Specifically, Ms. Luo contends that MedCo and the Supporting Lenders[13] are insiders, that the Supporting Lenders' secured claims were not impaired under the Plan, and that the votes of general unsecured creditors were improperly tabulated. Appellant's Brief at 51–53. Each of these three alleged defects was considered and properly rejected by the bankruptcy court on an undisputed record. Reconsideration Memorandum at 9–15 (A440–46). As

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[12] The "**Voting Declaration**" is the *Declaration of P. Joseph Morrow IV of Kurtzman Carson Consultants LLC Regarding the Solicitation of Votes and Tabulation of Ballots Cast on the Amended Joint Chapter 11 Plan of Reorganization of Melinta Therapeutics, Inc. and its Debtor Affiliates* [Bankr. Docket No. 487].

[13] The Reorganized Debtors do not dispute that Vatera met the statutory definition of an "insider." As explained further below, however, Class 4 voted to accept the Plan even without counting Vatera's vote.

explained below, Ms. Luo demonstrates no error in the bankruptcy court's finding that the Plan satisfied Bankruptcy Code section 1129(a)(10).

A. Neither the Supporting Lenders Nor MedCo Were Insiders.

Insiders of a debtor corporation include any "(i) director of the debtor; (ii) officer of the debtor; (iii) person in control of the debtor; (iv) partnership in which the debtor is a general partner; (v) general partner of the debtor; or (vi) relative of a general partner, director, officer, or person in control of the debtor." 11 U.S.C. § 101(31)(B). This list is not exhaustive; a creditor also may be considered an insider where there is a close relationship between the debtor and the creditor and "anything other than closeness to suggest that any transactions were not conducted at arm's length." *Schubert v. Lucent Techs., Inc. (In re Winstar Commc'ns, Inc.)*, 554 F.3d 382, 396–97 (3d Cir. 2009) (quoting *Anstine v. Carl Zeiss Meditech AG (In re U.S. Med., Inc.)*, 531 F.3d 1272, 1277 (10th Cir. 2008)).

Ms. Luo's allegations that MedCo and the Supporting Lenders controlled Melinta do not demonstrate clear error in the bankruptcy court's finding that neither the Supporting Lenders nor MedCo was an insider. *See* Appellant's Brief at 53–54. The fact that Melinta's former interim chief executive officer was once employed by MedCo does not demonstrate that MedCo exerted control over Melinta prior to or during the bankruptcy. *See id.* Ms. Luo's argument that the Supporting Lenders are insiders similarly lacks any basis in fact. The Supporting

Lenders never did, nor ever had the power to, direct the appointment of Melinta's chief executive officer, other executives, or board members. *See id.* Furthermore, an independent investigation, with the cooperation of the Committee, found no colorable claims against any of Melinta's current or former directors and officers. *See* Global Settlement Term Sheet § 1 (A85–86); Confirmation Declaration ¶ 9 (A109–10); Schwartz Declaration ¶ 18; Apr. 2, 2020 Hr'g Tr. at 124:4–16 (A257) ("The undisputed evidence is that those investigations were extensive, they were complete, they included interviews with people, reviews of Board minutes, correspondence, other documents."). Nor is Ms. Luo's reliance on "secretive NDA's" availing. As discussed above, the Debtors entered into customary non-disclosure agreements with certain creditors to facilitate discussions concerning potential restructuring transactions, but non-disclosure agreements of this nature are commonplace in complex chapter 11 proceedings and hardly evidence of wrongdoing. Ms. Luo thus fails to demonstrate clear error in the bankruptcy court's finding that MedCo and the Supporting Lenders were neither statutory nor "non-statutory" insiders.

In fact, the record demonstrates that the Debtors, the Supporting Lenders, and MedCo consistently negotiated at arm's-length. For example, during "heated" prepetition negotiations, Melinta successfully insisted on several concessions from the Supporting Lenders, including a longer marketing process than the Supporting

Lenders had originally proposed. *See* Dec. 30, 2019 Hr'g Tr. [Bankr. Docket No. 80] at 86:5–24 (counsel for the Supporting Lenders describing the prepetition negotiations between the Debtors and the Supporting Lenders regarding the Bidding Procedures). And, far from enjoying a cozy relationship, Melinta and MedCo were in fact engaged in contentious, high-stakes litigation through the Petition Date. Disclosure Statement §§ IV.B–C.

B. Class 3 Was Impaired, and Its Acceptance of the Plan Was Therefore Sufficient to Satisfy Bankruptcy Code Section 1129(a)(10).

Contrary to Ms. Luo's assertion, Class 3 (*i.e.*, the Supporting Lenders' secured claims) was impaired and its acceptance was therefore sufficient for the Plan to satisfy Bankruptcy Code section 1129(a)(10). *See* Appellant's Brief at 61. A class is impaired under a plan unless the plan "leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest." 11 U.S.C. § 1124(1); *see In re Union Meeting Partners*, 160 B.R. 757, 771 (Bankr. E.D. Pa. 1993) ("'[I]mpairment' is a term of art and includes virtually any alteration of a claimant's rights . . . even where a creditor's rights are improved by a plan."). Class 3 was impaired because its rights were altered under the Plan as the Supporting Lenders received equity (rather than payment in full in cash at maturity, as the Deerfield Facility Agreement requires) in exchange for their secured claims. Plan § 3.02(c) (A386). As explained above,

the Supporting Lenders are not insiders and their votes may be considered when determining whether Class 3 has accepted the Plan for purposes of Bankruptcy Code section 1129(a)(10). The bankruptcy court therefore correctly found that the Plan may satisfy Bankruptcy Code section 1129(a)(10) through the acceptance of Class 3 alone. Apr. 2, 2020 Hr'g Tr. [Bankr. Docket No. 502] at 125:20–126:4 (A258–59).

C. Class 4 Voted to Accept the Plan.

The Plan also independently satisfies Bankruptcy Code section 1129(a)(10) through the acceptance of Class 4 (*i.e.*, general unsecured creditors). The Plan constitutes a separate plan of reorganization for each of the six Debtors. Thus, votes were tabulated and counted on a per-Debtor basis. *See* Disclosure Statement § I(D). Consistent with the Solicitation Procedures Order, no creditor voted more than once as to any of the six Debtors.[14] *See* Voting Declaration, Ex. A.

Ms. Luo's argument that Class 4 did not vote to accept the Plan thus relies on several mischaracterizations of the Solicitation Procedures Order and the Voting Declaration. *See* Appellant's Brief at 51–53. When analyzed properly on a Debtor-by-Debtor basis, the Plan was accepted by general unsecured creditors at each entity, even excluding Vatera's vote. *See* Voting Declaration, Ex. A. As to

[14] For the avoidance of doubt, the Supporting Lenders are two distinct legal entities: Deerfield Private Design Fund III, L.P. and Deerfield Private Design Fund IV, L.P. Each entity held secured and unsecured claims against each of the Debtors and validly voted on the Plan because each of the Debtors were jointly and severally liable to each of the Supporting Lenders.

three of the Debtors (CEM-102 Pharmaceuticals, Inc., Cempra Pharmaceuticals, Inc., and Targanta Therapeutics Corporation), general unsecured creditors voted unanimously to accept the Plan. *Id.* As for the other three Debtors, non-insider votes were sufficient to satisfy the thresholds for acceptance under Bankruptcy Code section 1126(c). *Id.* Even assuming *arguendo* that the Supporting Lenders and MedCo were insiders, which they were not, non-insider general unsecured creditors for Melinta Therapeutics (the only entity in which Ms. Luo held an equity interest) would have still have overwhelmingly voted to accept the Plan by a margin of 17 creditors holding $933,400.02 in claims against two creditors holding $22,751 in claims. *Id.*; s*ee* Reconsideration Memorandum at 15 (A446).

V. Ms. Luo's Remaining Allegations Should Not Persuade the Court.

Ms. Luo's opening brief is nearly 80 single-spaced pages and contains dozens of factual allegations, which, like those specifically addressed above, are entirely unsupported by the record. Although these unsupported factual allegations are many and varied, they all tie in some fashion to one or more of Ms. Luo's principal thematic claims: that the Plan and Chapter 11 Cases were not pursued in good faith, that votes on the Plan were not properly tabulated, that Class 8 equity interests were not treated in accordance with the Bankruptcy Code, or that the Supporting Lenders or other parties-in-interest are receiving a disparate recovery in

comparison with other, similarly situated, parties. Each of these arguments is meritless for the reasons described in detail above.

Moreover, Ms. Luo forfeited her ability to have this Court consider many of her factual allegations because she never presented such allegations to the Bankruptcy Court in connection with her objections to the Confirmation Order, which is the only order subject to appeal. *See In re Reliant Energy Channelview LP*, 594 F.3d 200, 209 (3d Cir. 2010) (refusing to consider claim on appeal where appellant "did not raise [its] claim in the Bankruptcy Court."); *see also Singleton v. Wulff*, 428 U.S. 106, 120 (1976) ("It is the general rule, of course, that a federal appellate court does not consider an issue not passed upon below."). At the Bankruptcy Court, Ms. Luo failed to object to many of the orders that she attacks in her opening brief, including the orders approving the Debtors' Key Employee Incentive Plan, the Disclosure Statement, the Bidding Procedures, and the Debtors' assumption of the Restructuring Support Agreement. Moreover, many of the additional factual allegations set forth in Ms. Luo's brief were not asserted until after the Court had entered the Confirmation Order, and were only asserted in filings by which Ms. Luo asked the Bankruptcy Court to reconsider the Confirmation Order. The Bankruptcy Court denied Ms. Luo's numerous post-confirmation requests, and none of those orders are subject to this (or any) appeal.

For this reason, these allegations warrant neither specific responses by the Reorganized Debtors or consideration by this Court.[15]

For these reasons, a line-by-line rebuttal of each of the factual assertions set forth in Ms. Luo's brief is neither necessary nor appropriate. However, in the interest of clarity and completeness, the Reorganized Debtors offer the following corrections to certain factual allegations set forth in Ms. Luo's opening brief:

1. The Plan discloses all compensation to be paid to post–Effective Date directors, officers, and insiders, as required under Bankruptcy Code section 1129(a)(5). Confirmation Declaration ¶ 66 (A127); *Notice of Filing of Third Plan Supplement to the Amended Joint Chapter 11 Plan of Reorganization of Melinta Therapeutics, Inc. and Its Debtor Affiliates* [Bankr. Docket No. 476], Ex I.
2. The Plan's exculpation provision does not include prepetition acts and omissions. Plan § 1.54 (A369) (defining "Exculpated Parties"). Ms. Luo's claim to the contrary is incorrect. Appellant's Brief at 61–63.
3. The Plan does not provide that former shareholders are deemed to grant releases if they failed to "opt-out." Plan § 1.116 (A375–76) (defining "Releasing Parties"). Ms. Luo's claim to the contrary is incorrect. Appellant's Brief at 63–66.

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[15] Further, Ms. Luo entirely disregarded the page and word limits set forth in Bankruptcy Rule 8015(a)(7).

CONCLUSION

For the above reasons, Melinta respectfully requests that the Court affirm the Confirmation Order, dismiss Ms. Luo's appeal with prejudice, and grant the Reorganized Debtors such other relief as is just and proper.

Dated: Wilmington, Delaware
November 30, 2020

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. Bankr. P. 8015(h), the undersigned hereby certifies that:

1. This brief complies with the type-volume limitations of Fed. R. Bankr. P. 8015(a)(7)(B) because the brief contains 12,102 words, excluding the parts of the brief exempted by Fed. R. Bankr. P. 8015.

2. This brief complies with the typeface requirements of Fed. R. Bankr. P. 8015(a)(5) and type style requirements of Fed. R. Bankr. P. 8015(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word, in 14-point Times New Roman.

Dated: Wilmington, Delaware
November 30, 2020

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: MELINTA THERAPEUTICS, INC., et al., Debtors.[1]	Chapter 11 Case No. 19-12748 (LSS) BAP No. 20-09
LIN LUO, Appellant, v. MELINTA THERAPEUTICS, INC., Appellee.	C.A. No. 20-600 (MN)

CERTIFICATE OF SERVICE

I, Jason M. Liberi, an attorney, do hereby certify as follows:

On November 30, 2020, I caused a copy of the following documents to be filed and served electronically using the CM/ECF System on all counsel of record in the above referenced case:

- Answering Brief Of Appellee
- Appendix To Answering Brief Of Appellee

[1] The Reorganized Debtors and the last four digits of their respective taxpayer identification numbers are: Melinta Therapeutics, Inc. (0364); Cempra Pharmaceuticals, Inc. (5814); CEM-102 Pharmaceuticals, Inc. (4262); Melinta Subsidiary Corp. (9437); Rempex Pharmaceuticals, Inc. (6000); and Targanta Therapeutics Corporation (1077). The address of the Reorganized Debtors' corporate headquarters is 44 Whippany Road, Suite 280, Morristown, New Jersey 07960.

In addition, on November 30, 2020, I also caused a copy of this document to be served on those listed below in the manner indicated:

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(By First-class mail and Electronic Mail)

Dated: Wilmington, Delaware
November 30, 2020

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