

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

TRICIDA, INC.,¹

Debtor.

Chapter 11

Case No. 23-10024 (JTD)

*Proposed Hearing Date: May 19, 2023 at 10:00
a.m. (ET)*

*Proposed Obj. Deadline: May 18, 2023 at 4:00
p.m. (ET)*

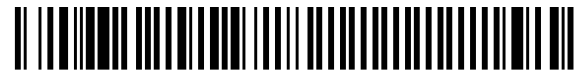
**DEBTOR'S MOTION FOR ENTRY OF
AN ORDER, PURSUANT TO SECTION 105(a) OF THE
BANKRUPTCY CODE AND BANKRUPTCY RULE 9019, APPROVING
THE SETTLEMENT AGREEMENT REGARDING THE PATHEON CLAIM**

Tricida, Inc., as debtor and debtor in possession in the above-captioned chapter 11 case (“Tricida” or the “Debtor”), hereby submits this motion (the “Motion”) for the entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), pursuant to section 105(a) of title 11 of the United States Code, 11 U.S.C. § 101-1532 (the “Bankruptcy Code”), and Rule 9019 of the Federal Rules of Bankruptcy Procedures (the “Bankruptcy Rules”), approving the *Settlement Agreement and General Release of Claims* (the “Settlement Agreement”) by and amongst the Debtor and Patheon Austria GmbH & Co. KG (“Patheon”), a copy of which is attached to the Proposed Order as **Exhibit 1**.

In support of this Motion, the Debtor relies upon the *Declaration of Geoffrey Parker in Support of Debtor's Motion for Entry of an Order, Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, Approving the Settlement Agreement Regarding the Patheon Claim*, attached hereto as **Exhibit B** (the “Parker Declaration”).

In support of the Motion, the Debtor respectfully represents as follows:

¹ The Debtor in this chapter 11 case, together with the last four digits of the Debtor's federal tax identification number, is Tricida, Inc. (2526). The Debtor's service address is 2108 N Street, Suite 4935, Sacramento, CA 95816.



STATUS OF THE CASE AND JURISDICTION

1. On January 11, 2023 (the “Petition Date”), the Debtor filed a voluntary petition for relief under sections 101–1532 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Court”). The Debtor continues to operate its business as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner.

2. On January 23, 2023, the Office of the United States Trustee (the “U.S. Trustee”) appointed an Official Committee of Unsecured Creditors (the “Creditors’ Committee”).

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012 (Sleet, C.J.). This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Debtor confirms its consent, pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), to the entry of a final order or judgment by the Court in connection with this Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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

5. The statutory and other bases for the relief requested in this Motion are section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019.

BACKGROUND²

A. General Background

6. Founded in 2013, the Debtor is a clinical-stage pharmaceutical company focused on the development and commercialization of veverimer, a drug meant to slow the progression of CKD through the treatment of chronic metabolic acidosis. Veverimer is a new chemical entity discovered by the Debtor using its own proprietary technology. In addition to veverimer, the Debtor's intellectual property portfolio includes 233 patents in 52 different countries, including compositions-of-matter, dosage unit forms, methods-of-treatment, medical use, and methods of manufacture.

7. Additional information regarding the Debtor's business, capital structure and the circumstances preceding the Petition Date may be found in the *Declaration of Lawrence Perkins in Support of the Debtor's Chapter 11 Petition and First Day Pleadings* [D.I. 2] (the "First Day Declaration").

B. Background Regarding the Settlement

8. On October 4, 2019, Patheon entered into a Manufacturing and Commercial Supply Agreement (as amended, the "CSA") with the Debtor. *See* Parker Declaration ¶ 4. Pursuant to the CSA, Patheon agreed to manufacture a supply of veverimer sufficient to support Tricida's plans for commercialization. *See id.*

9. On or about December 7, 2022, after providing notice of an alleged breach under the CSA to Tricida, Patheon issued a "Notice of Termination" purporting to terminate the CSA in connection with, among other things, the alleged breach. *See id.* ¶ 5. Tricida vehemently disputed Patheon's characterization of circumstances it relied upon in connection with its termination of the CSA, including, but not limited to, the contention that Patheon's purported

² Capitalized terms not defined herein shall have the meaning ascribed to them in the Settlement Agreement.

termination of the agreement was not in compliance with the CSA and was therefore ineffective. *See id.*

10. On February 6, 2023, the Court entered an order rejecting the CSA pursuant to section 365 of the Bankruptcy Code as of January 19, 2023.³

11. On March 6, 2022, Patheon filed proof of claim no. 122. On March 8, 2023, Patheon filed substantively identical proofs of claim (nos. 141 and 143) in this chapter 11 case (collectively, the “Claim”) each in the amount of \$136,206,149.00. The Claim amended and superseded proof of claim no. 122. The Claim asserts damages in connection with the purported termination of the CSA.

12. Over the course of this chapter 11 case, the Debtor and Patheon participated in active negotiations spanning several weeks with respect to the Claim. *See id.* ¶ 7. Specifically, the parties exchange information and materials, as well as participated in court-directed mediation. In connection with the Claim, the Debtor’s advisors undertook a review of the Patheon Claim and potential defenses and counter claims the Debtor’s estate may have had against Patheon. *See id.* ¶ 9. As part of that review, the Debtor’s legal and financial advisors studied transaction agreements and related documents, correspondence by and among the parties, and other materials, as well as researched and analyzed the applicable law governing CSA and potential claims. Members of the Debtor’s management discussed the CSA, potential claims that may arise out of the CSA, and the Patheon Claim. *See id.* ¶ 10.

13. On March 10, 2023, the Court entered an order for mediation between, among other parties, the Debtor and Patheon, regarding issues relating to the Disclosure Statement and

³ *See Order (I) Authorizing Debtor to Reject Certain Executory Contracts with Patheon Austria GMBH & Co. KG, Effective as of the Rejection Date and (II) Granting Related Relief* [D.I. 153].

the Debtor's Plan. *See* D.I. 286. The Debtor and Patheon participated in a mediation that occurred on March 15, 2023 and April 24, 2023.

14. In connection with its review of the Patheon Claim and potential counter claims against Patheon, as well as the mediation amongst the parties, the Debtor, in consultation with its advisors, determined that litigating claims arising out of the Patheon Claim and the CSA would involve significant costs to the estate and have a uncertain outcome, and the costs of pursuing any such litigation would likely outweigh the expected outcome if litigated to resolution. *See id.* ¶ 9. Patheon also maintained that no viable defenses or counter claims exist and have expressed their intent to vigorously prosecute the Patheon Claim and defend any counter claim asserted against it.

15. In light of such determination, in an exercise of its sound business judgment, the Debtor entered into the Settlement Agreement.

C. The Settlement

16. The Parties, following mediation and good faith and arm's-length negotiations, have negotiated the Settlement Agreement in resolution of the Claim. *See id.* ¶¶ 10-12. The Settlement Agreement contains the following key terms:⁴

- On the Effective Date, proof of claim number 143 shall be allowed as a general unsecured claim in the amount of \$85,000,000.00.
- All other proofs of claim filed by Patheon on the Debtor's claims register shall be deemed withdrawn.
- Patheon shall be deemed to be both a Released Party and Releasing Party, as such terms are defined under the Plan (as amended), and applied pursuant to the terms and conditions of the Plan.

⁴ The summary of the Settlement Agreement provided for herein is provided solely for the convenience of the Court, and is not intended to be a comprehensive recitation of all of the terms of the Settlement Agreement. The summary is qualified in its entirety by the actual terms of the Settlement Agreement, and to the extent that there is any inconsistency between the summary provided for herein and the actual terms of the Settlement Agreement, the actual terms of the Settlement Agreement shall control.

- Patheon shall support the Debtor's Plan through the confirmation and implementation thereof.
- No further claims between the Parties will arise from the Settlement Agreement.

17. The Debtor has worked with its advisors to review the Settlement Agreement and determined it is reasonable and appropriate. *See id.* ¶ 12.

18. The Settlement resolves legal issues that are subject to potential litigation, as well as provides further certainty with respect to recoveries and disbursement to general unsecured creditors. *See id.* ¶ 13. Moreover, with Patheon's support of the Plan, it facilitates a clearer path to confirmation of the Debtor's proposed Plan. *See id.* ¶ 14. Absent the Settlement Agreement, Patheon's Claim would be subject to a claim estimation process that would increase the administrative expense borne by the estate, and ultimately require the Claim to be resolved through a costly and time consuming claim objection process. That process would not only increase costs to the estate and Patheon, but would also impact other creditors of the Debtor. That is, any uncertainty regarding the amount of Patheon's Claim would impact the amount of funds available for immediate disbursement to creditors upon the Plan becoming effective.

RELIEF REQUESTED

19. By this Motion, the Debtor seeks entry of the Proposed Order approving the Settlement Agreement, pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019.

BASIS FOR RELIEF REQUESTED

20. Bankruptcy Rule 9019(a) provides, in relevant part:

On motion by the [debtor in possession] and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, . . . and indenture trustee as provided in Rule 2002 and to any other entity as the court may direct.

Fed. R. Bankr. P. 9019(a).

21. Settlements and compromises are “a normal part of the process of reorganization.” *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 428 (1968). It is well settled that in order to “minimize litigation and expedite the administration of a bankruptcy estate, ‘[c]ompromises are favored in bankruptcy.’” *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996) (quoting 9 *Collier on Bankruptcy* ¶ 9019.03[1] (15th ed. 1993)); see also *Will v. Northwestern Univ. (In re Nutraquest, Inc.)*, 434 F.3d 639, 644 (3d Cir. 2006) (finding that “[s]ettlements are favored [in bankruptcy]”); *In re Adelphia Commc’n Corp.*, 361 B.R. 337, 348 (Bankr. D. Del. 2007) (same). Accordingly, when required, “courts are able to craft flexible remedies that, while not expressly authorized by the [Bankruptcy] Code, affect the result the [Bankruptcy] Code was designed to obtain.” *Official Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery*, 330 F.3d 548, 568 (3d Cir. 2003).

22. Pursuant to Bankruptcy Rule 9019(a), a bankruptcy court may, after appropriate notice and a hearing, approve a compromise or settlement so long as the proposed settlement is fair, reasonable, and in the best interest of the estate. See *In re Marvel Entm’t Grp., Inc.*, 222 B.R. 243, 249 (D. Del 1998) (“[T]he ultimate inquiry [is] whether ‘the compromise is fair, reasonable, and in the interest of the estate.’” (citation omitted)); *In re Northwestern Corp.*, 2008 WL 2704341, at *6 (Bankr. D. Del. July 10, 2008) (“[T]he bankruptcy court must determine whether the compromise is fair, reasonable, and in the best interests of the estate.”) (citation omitted); *In re Key3Media Grp., Inc.*, 336 B.R. 87, 92 (Bankr D. Del. 2005) (“[T]he bankruptcy court has a duty to make an informed, independent judgment that the compromise is fair and equitable.”). “Ultimately, the decision whether or not to approve a settlement agreement lies

within the sound discretion of the Court.” *In re Nortel Networks, Inc.*, 522 B.R. 491, 510 (Bankr. D. Del. 2014).

23. In *Martin*, the United States Court of Appeals for the Third Circuit set forth a four-factor balancing test under which bankruptcy courts are to analyze proposed settlements. The factors the Court must consider are: “(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors.” *Martin*, 91 F.3d at 393. *See also In re Nutraquest*, 434 F.3d at 644–45 (applying *Martin*’s four-factor test to affirm district court’s order approving settlement); *Key3Media*, 336 B.R. at 93 (holding that, when determining whether a compromise is in the best interests of the estate, courts must “assess and balance the value of the claim that is being compromised against the value of the estate of the acceptance of the compromise proposal”).

24. Importantly, it is well-established that a settlement proponent need not convince the Court that a settlement is the best possible compromise, but only that the settlement falls “within the reasonable range of litigation possibilities somewhere above the lowest point in the range of reasonableness.” *In re Nutritional Sourcing Corp.*, 398 B.R. 816, 833 (Bankr. D. Del. 2008). *See also In re W.R. Grace & Co.*, 475 B.R. 34, 77–78 (Bankr. D. Del. 2012) (“In analyzing the compromise or settlement agreement under the *Martin* factors, courts should not have a ‘mini-trial’ on the merits, but rather should canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness.”); *Nortel*, 522 B.R. at 510 (same).

25. In the Debtor’s business judgment, the Settlement Agreement is reasonable and in the best interests of the Debtor, its estate, and creditors and other parties in this chapter 11 case.

The compromise embodied in the Settlement Agreement is the product of good-faith and arm's-length negotiations between the Parties. The Settlement Agreement resolves the Parties' disputes related to the obligations and alleged damages of the Patheon and the Debtor in connection with the CSA. Absent the Settlement Agreement, the obligations and rights of the Debtor and Patheon under the CSA would be subject to a costly and time consuming claims objection process, which would not only increase the administrative expense incurred by the Debtor's estate, but would also potentially delay the confirmation of the Debtor's proposed Plan and disbursements to creditors. The Settlement Agreement provides finality and certainty not only to the Parties, but also to all creditors in the Debtor's bankruptcy case, as well conserves estate resources and facilitate an efficient timeline to confirmation.

26. Accordingly, the Debtor respectfully submits that the *Martin* factors are met, the Settlement Agreement falls well within the lowest "range of reasonableness," and, therefore, the Settlement Agreement should be approved pursuant to Bankruptcy Rule 9019.

NOTICE

27. Notice of this Motion has been provided by email or first class mail, as applicable, to: (a) the U.S. Trustee; (b) Womble Bond Dickinson (US) LLP, counsel to the Committee; (c) Davis Polk & Wardwell LLP, counsel to certain holders of 3.50% Convertible Senior Notes Due 2027; (d) Greenberg Traurig, LLP, counsel to U.S. Bank, the indenture trustee to the 3.50% Convertible Senior Notes Due 2027; (e) Thompson Hine LLP and Ashby & Geddes, P.A., counsel to Patheon; and (f) any party that has requested notice pursuant to Bankruptcy Rule 2002.

WHEREFORE, the Debtor respectfully requests that the Court enter the Proposed Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and granting such other relief as is just and proper.

Dated: May 9, 2023
Wilmington, Delaware

/s/ Allison S. Mielke

**YOUNG CONAWAY STARGATT &
TAYLOR, LLP**

Sean M. Beach (No. 4070)
Allison S. Mielke (No. 5934)
Andrew A. Mark (No. 6861)
Carol Cox (No. 6936)

Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253
Email: sbeach@ycst.com
amielke@ycst.com
amark@ycst.com
ccox@ycst.com

SIDLEY AUSTIN LLP

Samuel A. Newman (admitted *pro hac vice*)
Julia Philips Roth (admitted *pro hac vice*)
555 West Fifth Street
Los Angeles, California 90013
Telephone: (213) 896-6000
Facsimile: (213) 896-6600
Email: sam.newman@sidley.com
julia.roth@sidley.com

Charles M. Persons (admitted *pro hac vice*)
Jeri Leigh Miller (admitted *pro hac vice*)
Chelsea McManus (admitted *pro hac vice*)
2021 McKinney Avenue, Suite 2000
Dallas, Texas 75201
Telephone: (214) 981-3300
Facsimile: (214) 981-3400
Email: cpersons@sidley.com
jeri.miller@sidley.com
cmcmanus@sidley.com

Michael A. Sabino (admitted *pro hac vice*)
787 Seventh Avenue
New York, New York 10019
Telephone: (212) 839-5300
Facsimile: (212) 839-5599
Email: msabino@sidley.com

Attorneys for Debtor, Tricida, Inc.

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

In re:

TRICIDA, INC.,¹

Debtor.

Chapter 11

Case No. 23-10024 (JTD)

Proposed Hearing Date:
May 19, 2023 at 10:00 a.m. (ET)

Proposed Objection Deadline:
May 18, 2023 at 4:00 p.m. (ET)

NOTICE OF MOTION

PLEASE TAKE NOTICE that the above-captioned debtor and debtor in possession (the “Debtor”), have filed the *Debtor’s Motion for Entry of an Order, Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, Approving the Settlement Agreement Regarding the Patheon Claim* (the “Motion”) and the *Debtor’s Motion for Entry of an Order Shortening the Notice Period of the Debtor’s Motion for Entry of an Order, Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, Approving the Settlement Agreement Regarding the Patheon Claim* (the “Motion to Shorten”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).

PLEASE TAKE FURTHER NOTICE that the Debtors have requested that any objections or responses to the relief requested in the Motion be filed on or before **May 18, 2023 at 4:00 p.m. (ET)** (the “Objection Deadline”) with the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE THAT THE DEBTORS HAVE REQUESTED A HEARING TO CONSIDER THE MOTION TO BE HELD ON MAY 19, 2023 AT 10:00 A.M. (ET) BEFORE THE HONORABLE JOHN T. DORSEY, IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 N. MARKET STREET, 5TH FLOOR, COURTROOM NO. 5, WILMINGTON, DELAWARE 19801.

PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS OR RESPONSES TO THE MOTION ARE TIMELY FILED, SERVED, AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN CONNECTION WITH SUCH MOTION WITHOUT FURTHER NOTICE OR HEARING.

[signature page follows]

¹ The Debtor in this chapter 11 case, together with the last four digits of the Debtor’s federal tax identification number, is Tricida, Inc. (2526). The Debtor’s service address is 2108 N Street, Suite 4935, Sacramento, CA 95816.

Dated: May 9, 2023
Wilmington, Delaware

/s/ Allison S. Mielke

**YOUNG CONAWAY STARGATT &
TAYLOR, LLP**

Sean M. Beach (No. 4070)
Allison S. Mielke (No. 5934)
Andrew A. Mark (No. 6861)
Carol E. Cox (No. 6936)

Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253
Emails: sbeach@ycst.com
amielke@ycst.com
amark@ycst.com
ccox@ycst.com

SIDLEY AUSTIN LLP

Samuel A. Newman (admitted *pro hac vice*)
555 West Fifth Street
Los Angeles, California 90013
Telephone: (213) 896-6000
Facsimile: (213) 896-6600
Email: sam.newman@sidley.com

Charles M. Persons (admitted *pro hac vice*)
Jeri Leigh Miller (admitted *pro hac vice*)
Chelsea McManus (admitted *pro hac vice*)
2021 McKinney Avenue, Suite 2000
Dallas, Texas 75201
Telephone: (214) 981-3300
Facsimile: (213) 981-3400
Email: cpersons@sidley.com
jeri.miller@sidley.com
cmcmanus@sidley.com

Michael Sabino (admitted *pro hac vice*)
787 7th Avenue
New York, New York 10019
Telephone: (212) 839-5300
Facsimile: (212) 839-5599
Email: msabino@sidley.com

Counsel to the Debtor, Tricida, Inc.

Exhibit A

Proposed Order

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

In re:

TRICIDA, INC.,¹

Debtor.

Chapter 11

Case No. 23-10024 (JTD)

Re: Docket No. ____

**ORDER, PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE
AND BANKRUPTCY RULE 9019, APPROVING THE SETTLEMENT AGREEMENT**

Upon consideration of the motion (the “Motion”)² of the Debtor for entry of an order (this “Order”), pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, approving the Settlement Agreement, a copy of which is attached hereto as **Exhibit 1**, as more fully set forth in the Motion; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 1334 and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b) and that this Court may enter a final order consistent with Article III of the United States Constitution; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion and the hearing thereon having been given as set forth in the Motion; and such notice having been adequate and appropriate under the circumstances; and it appearing that no other or further notice need be provided; and it appearing that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested

¹ The Debtor in this chapter 11 case, together with the last four digits of the Debtor’s federal tax identification number, is Tricida, Inc. (2526). The Debtor’s service address is 2108 N Street, Suite 4935, Sacramento, CA 95816.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

in the Motion is in the best interests of the Debtor, its estate, creditors, and all parties in interest; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. Pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, the Settlement Agreement is approved, and the terms and conditions of the Settlement Agreement are incorporated into this Order as if fully set forth herein.
3. The Debtor is authorized to execute and deliver all instruments and documents, and take such other action as may be necessary or appropriate, to implement and effectuate the relief granted by this Order.
4. The Debtor's claims agent in this chapter 11 case is authorized to take such further action as may be necessary or appropriate to implement and effectuate the relief granted by this Order.
5. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order or the Settlement Agreement.

Exhibit 1

Settlement Agreement

SETTLEMENT AGREEMENT AND GENERAL RELEASE OF CLAIMS

This Settlement Agreement and General Release of Claims (the “**Settlement Agreement**” or “**Agreement**”), effective as of the date hereof (the “**Execution Date**”), is entered into by and among the following parties (each of the following described in sub-clauses (a) and (b) of this preamble, each a “**Party**” and, collectively, the “**Parties**”):¹

- (a) Tricida, Inc., a company incorporated under the Laws of Delaware and debtor in the Chapter 11 Case (the “**Debtor**”); and
- (b) Patheon Austria GmbH & Co. KG (“**Patheon**”).

RECITALS

WHEREAS, on January 11, 2023 (the “**Petition Date**”), Tricida, Inc. filed a voluntary chapter 11 petition in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”). The case is pending under Case No. 2310024 (JTD) (the “**Chapter 11 Case**”);

WHEREAS, the Debtor and the Consenting Noteholders are parties to the Restructuring Support Agreement dated January 11, 2023, under which the Debtor shall not settle the Patheon Rejection Claim without the consent of the Majority Consenting Noteholders.

WHEREAS, on February 6, 2023, the Bankruptcy Court entered an order rejecting the Patheon Agreements, including the CSA, pursuant to section 365 of title 11 of the United States Code (the “**Bankruptcy Code**”) as of January 19, 2023.

WHEREAS, on March 6, 2023, Patheon timely filed proof of claim no. 122 in the Debtor’s Chapter 11 Case in the amount of \$136,206,149.00 in connection with alleged damages Patheon incurred as a result of the Debtor’s purported rejection and breach of the CSA.

WHEREAS, on March 8, 2023, Patheon timely filed proof of claim no. 141, amending and superseding proof of claim no. 122, in the amount of \$136,206,149.00 in connection with alleged damages Patheon incurred as a result of the Debtor’s purported rejection and breach of the CSA.

WHEREAS, on March 8, 2023, Patheon timely filed proof of claim no. 143, amending and superseding proof of claim no. 122, in the amount of \$136,206,149.00 in connection with alleged damages Patheon incurred as a result of the Debtor’s purported breach of the CSA (the “**Patheon Claim**”).

WHEREAS, the Debtor, Consenting Noteholders and Patheon have in good faith and at arm’s length negotiated this Agreement in resolution of Patheon’s Claims against the Debtor arising out of the Patheon Agreements and in connection with this Chapter 11 Case.

¹ Capitalized terms used but not defined in the preamble and recitals to this Agreement have the meanings ascribed to them in Section 2.

NOW, THEREFORE, in consideration of the mutual promises and releases contained herein, the receipt of which is hereby acknowledged, the recitals set forth above, and for other good and valuable consideration, the Parties agree as follows:

AGREEMENT

1. **Recitals.** The foregoing recitals are incorporated herein by reference.
2. **Definitions.**

“Agreement” or **“Settlement Agreement”** has the meaning set forth in the preamble to this Agreement.

“Bankruptcy Code” has the meaning set forth in the recitals to this Agreement.

“Bankruptcy Court” has the meaning set forth in the recitals to this Agreement.

“Chapter 11 Case” has the meaning set forth in the recitals to this Agreement.

“Chapter 11 Budget” has the meaning ascribed to it in the RSA (as defined herein).

“Claim” has the meaning set forth in section 101(5) of the Bankruptcy Code.

“Committee” means, the official committee of unsecured creditors appointed in this Chapter 11 Case.

“Consenting Noteholders” means the holders of, or investment advisors, sub-advisors, or managers of discretionary accounts that hold, the Noteholder Claims that have executed and delivered counterpart signature pages to the Restructuring Support Agreement, a Joinder, or a Transfer Agreement, to counsel to the Debtor.

“CSA” means that certain Manufacturing and Commercial Supply Agreement, as amended, entered into between Tricida, Inc. and Patheon on October 4, 2019.

“Debtor” has the meaning set forth in the preamble to this Agreement.

“Effective Date” means the date upon which the Bankruptcy Court enters the Order (as defined herein).

“Execution Date” has the meaning set forth in the preamble to this Agreement.

“Joinder” has the meaning ascribed to it in the RSA (as defined herein).

“Majority Consenting Noteholders” means, as of the relevant date, Consenting Noteholders holding a majority in face value of the aggregate holdings of the Notes of all Consenting Noteholders.

“Motion” has the meaning set forth in Section 3 herein.

“Notes” means the 3.50% Convertible Senior Notes Due 2027 indenture, dated May 22, 2020, by and among Tricida, Inc., as issuer, and U.S. Bank Trust Company, National Association, as trustee.

“Order” has the meaning set forth in Section 3 herein.

“Party” or **“Parties”** has the meaning set forth in the preamble to this Agreement.

“Patheon” has the meaning set forth in the recitals to this Agreement.

“Patheon Agreements” means the (a) Manufacturing and Commercial Supply Agreement, dated October 4, 2019, by and among Patheon, as supplier, and the Debtor, as purchaser, as such may have been modified, amended, restated, or amended and restated from time to time; (b) the Master Development / Validation Services and Clinical / Launch Supply Agreement, dated May 8, 2018, by and among Tricida, Inc. and Patheon, as such may have been modified, amended, restated, or amended and restated from time to time; and (c) any other ancillary or supplemental agreements relating to clauses (a) through (b).

“Patheon Claim” has the meaning set forth in the recitals to this Agreement.

“Patheon Rejection Claim” has the meaning ascribed to it in the RSA (as defined herein).

“Petition Date” has the meaning set forth in the recitals to this Agreement.

“Plan” means the plan of liquidation (as amended), including any exhibits and schedules thereto, filed by the Debtor under chapter 11 of the Bankruptcy Code, which, for the avoidance of doubt, shall include the language that incorporates the global settlement reached by the Committee, Consenting Noteholders, and the Debtor on or about May 8, 2023.

“Released Party” has the meaning set forth in Article I.A.106 of the Plan.

“Releasing Party” has the meaning set forth in Article I.A. 107 of the Plan.

“Released Patheon Claims” has the meaning set forth in Section 6 herein.

“Released Settlement Party” or **“Released Settlement Parties”** has the meaning set forth in Section 6 herein.

“Releasing Settlement Party” or **“Releasing Settlement Parties”** has the meaning set forth in Section 6 herein.

“Restructuring Support Agreement” or **“RSA”** means the Restructuring Support Agreement (as such may be amended, supplemented, or modified from time to time in accordance with the provisions therein), dated as of January 11, 2023, by and between the Debtor and the Consenting Noteholders.

“Solicitation Materials” has the meaning ascribed to it in the Plan (as defined herein).

“Transfer Agreement” has the meaning ascribed to it in the RSA (as defined herein).

3. **Order Approving Settlement Agreement.** This Agreement is contingent upon entry of an order of the Bankruptcy Court approving this Agreement (the **“Order”**). The Parties will in good faith exercise all reasonable efforts required to obtain the entry of the Order, including executing and delivering any motions, declarations or other items of support reasonably required in connection therewith. Consistent with the preceding sentence, the Debtor will promptly prepare a motion to approve compromise of controversy pursuant to Federal Rule of Bankruptcy Procedure 9019 (**“Motion”**). The Debtor shall file the Motion with the Bankruptcy Court and serve the Motion upon those parties entitled to notice thereof.
4. **Compromise and Settlement.** Except as provided herein, nothing in this Agreement or any negotiations or proceedings in connection therewith shall constitute or be deemed or claimed to be evidence of an admission of any liability by any Party, or of the merit or lack of merit of any claim or defense of any Party. All communications (whether oral or in writing) between the Parties, their counsel and/or their respective representatives relating to, concerning or in connection with this Agreement, or the matters covered herein, shall be governed and protected in accordance with Federal Rule of Evidence 408 to the fullest extent permitted by law.
5. **Terms of Settlement.**
 - 5.1 **Allowed Claim.** On the Effective Date, the Patheon Claim shall be Allowed fully, finally and irrevocably for all purposes under the Bankruptcy Code, in the Chapter 11 Case and otherwise in the general unsecured amount of \$85,000,000.00 (the **“Allowed Patheon Claim”**). The Plan shall provide that the Allowed Patheon Claim shall be satisfied in the same manner, and at the same time(s), as the claims of the Consenting Noteholders in the Chapter 11 Case.
 - 5.2 **Adjustment to the Claims Register.** On the Effective Date, pursuant to the Order, the Debtor’s claims agent in the Chapter 11 Case is authorized to withdraw proof of claim numbers 122 and 141 and amend the Patheon Claim as set forth in this Settlement Agreement.
 - 5.3 **Timing.** The Debtor shall file the Motion as soon as reasonably practicable, and seek to have the Motion heard on or before May 19, 2023, or as soon as the Bankruptcy Court may allow.
 - 5.4 **The Debtor’s Plan.** As of the Execution Date, subject to the terms and conditions of this Agreement, Patheon agrees:
 - a. not to object to, or take any other action that would reasonably be expected to delay, impede, interfere with acceptance, confirmation, implementation, or consummation of the Plan;
 - b. to vote the Allowed Patheon Claim to accept the Plan by delivering its duly executed and completed ballot accepting the Plan following the

commencement of the solicitation of the Plan and its actual receipt of the Solicitation Materials and the ballot and prior to the deadline for such delivery; and

- c. to the extent it is permitted to elect whether to opt out of the releases set forth in the Plan, elect not to opt out of the releases set forth in the Plan by delivering its duly executed and completed ballot(s) indicating such election prior to the deadline for such delivery.

5.5 Application of Plan Releases and Related Provisions. Upon confirmation of the Debtor's Plan, Patheon shall be deemed to be both a Released Party and Releasing Party, as such terms are defined under Plan (as amended), and applied pursuant to the terms and conditions of the Plan, including but not limited to Plan Art. IX (Release, Injunction, and Related Provisions).

6. **Mutual Releases.** In consideration of the promises herein, upon the Effective Date, each Party (each a "**Releasing Settlement Party**" and collectively, the "**Releasing Settlement Parties**") intends to provide to the other Parties the fullest and broadest release permitted by law of all claims against any other Party as of the date of this Agreement in connection with the Patheon Agreements and Patheon Claim. Accordingly, except as provided herein, each Party, on behalf of itself and each of its respective past, present, or future agents, employees, parents, subsidiaries, divisions, affiliates, officers, managers, directors predecessors, predecessors-in-interest, successors, successors-in-interest, beneficiaries, spouses, heirs, assigns, relatives, legatees, advisors, consultants, attorneys, personal or legal representatives, administrators, accountants, auditors, insurers, co-insurers, reinsurers, and associates, and all persons acting by, through, under or in concert with them (each, a "**Released Settlement Party**" and collectively, the "**Released Settlement Parties**"), hereby fully, forever, irrevocably, unconditionally, and completely release, discharge, and hold harmless from any and all claims, demands, controversies, obligations liabilities, sums of money, suits, debts, dues, fees, costs, expenses, attorneys' fees, penalties, fines, charges, rights, grievances, liabilities, obligations, actions, matters, issues, promises, damages, potential claims, counterclaims, cross-claims, causes of action (including causes of action seeking declaratory or injunctive relief), liens, or interests, whether asserted or unasserted, express or implied, direct or derivative, foreseen or unforeseen, suspected or unsuspected, known or unknown, matured or unmatured, fixed, contingent or vested, accrued or unaccrued, liquidated or unliquidated, of any kind or nature or description whatsoever, whether based in statute, equity, common law, contract, tort, or any other grounds or authority or otherwise, which the Releasing Settlement Party ever had, or now has, against the Released Settlement Parties arising out of or in any way connected with, related to, or referred to in the Patheon Agreements and/or the Patheon Claim, up to and including the date of this Agreement, including, but not limited to, breach of contract, tortious interference, conspiracy, breach of fiduciary duty, defamation or any other potential legal or equitable theories asserted or that could have been asserted in any action (collectively, the "**Released Patheon Claims**").

7. **Actions Necessary to Effectuate this Agreement.** The Parties agree the Debtor is authorized, as of the Execution Date, to take all actions necessary to effectuate and reflect

the terms of this Agreement and the Order, including, but not limited to, amending the Chapter 11 Budget and purchasing and/or altering any director and officer liability insurance applicable to the Debtor.

8. **Covenant Not to Sue in the Future.** The Parties forever waive, release, and covenant not to sue or file or assist with suing or filing any lawsuit or claim against any Party with any court, governmental agency, or other entity, whether known or unknown at the time of execution except in connection with an alleged breach of this Agreement by any such Party.
9. **Representations and Warranties.** By executing this Settlement Agreement and as a condition precedent to any obligations or liabilities of the Parties, each party expressly acknowledges, represents, and warrants that it (i) is not relying upon any statements, understandings, representations, expectations, or agreements other than those expressly set forth in this Settlement Agreement; (ii) has been provided with the opportunity to discuss all aspects of this Settlement Agreement with legal counsel of its own choosing; (iii) has made its own investigation of the facts, has had a full opportunity to review the terms of the Settlement Agreement, and has and is relying solely upon its own knowledge and the advice of its own legal counsel; (iv) has carefully read and understood all of the provisions of this Settlement Agreement (v) knowingly waives any claim that this Settlement Agreement was induced by any misrepresentation, omission, or nondisclosure and any right to rescind or avoid this Settlement Agreement based upon presently existing facts, known or unknown; (vi) is the lawful owner of the claims and the potential claims released in this Settlement Agreement; (vii) has full capacity and authority to settle, compromise, and release the claims or potential claims released herein and to enter into this Settlement Agreement; (viii) no other person or entity has inherited, acquired, or has been assigned, or will in the future inherit, acquire, or have any right to assert any portion of the claims or potential claims released in this Settlement Agreement; and (ix) knows of no other person or entity that intends to assert a claim by, through, under, or on its behalf relating to the claims released in this Settlement Agreement. Each Party stipulates that it is relying upon these representations and warranties and the representations and warranties shall survive the execution of this Settlement Agreement.
10. **Waiver of Cal. Civ. Code § 1542.** In connection with the release of the Released Patheon Claims, the Parties shall be deemed to have waived any and all provisions, rights, and benefits conferred by section 1542 of the California Civil Code and any statute, rule, and legal doctrine similar, comparable, or equivalent to California Civil Code section 1542, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Notwithstanding the provisions of section 1542, and for the purpose of implementing a full and complete waiver and release in accordance with the terms set forth in Sections 5 and 6

above, the Parties Patheon acknowledge that this release is intended to include in its scope all Released Patheon Claims arising from the present dispute which the Parties do not know or suspect to exist in their favor at the time of execution of this Agreement, and that this release contemplates the extinguishment of any such claim or claims. The Parties expressly waive any right to assert hereafter that any claims were excluded from this Agreement through ignorance, oversight, error, or otherwise.

In addition to the foregoing, the Parties hereby expressly waive and fully, finally, and forever settle and release any known or unknown, suspected or unsuspected, contingent or non-contingent claims with respect to the Patheon Claims and the Released Patheon Claims, whether or not concealed or hidden, without regard to any subject, discovery or existence of different or additional facts.

11. **No Rescission or Termination.** As a part of the foregoing releases, each Party acknowledges that it understands and accepts the risk that the facts with respect to which this Agreement is entered into may be different from the facts now known or believed by it to be true. From and after the Execution Date of this Agreement, this Agreement shall not be subject to termination or rescission by virtue of any such differences in fact. In entering into this Agreement, and the releases given hereunder, each of the Parties acknowledges that it has conducted its own independent investigation, has consulted with legal counsel of its own choice, and has not relied on any statement, representation, promise, inducement, or agreement expressly contained within this Agreement.
12. **Consultation with Attorneys.** The Parties understand and acknowledge that they have had the opportunity to retain independent counsel to represent them in connection with their consideration of this Agreement. The Parties represent and warrant that each of them has undertaken its own investigation of the facts and is relying solely upon its own knowledge and the advice of its counsel. The Parties further represent and warrant to each other that they have each consulted with counsel and other advisors with respect to the preparation, negotiation, and execution of this Agreement to the extent they deemed such consultation necessary or appropriate, and have been provided with a reasonable period of time to consider and execute this Agreement. The Parties, therefore, stipulate and agree that this Agreement shall not be construed against any Party as the drafter thereof. All provisions of this Agreement have been negotiated by the Parties at arm's length, and no Party shall be deemed the scrivener of this Agreement. The Parties agree and direct that the rule of contract construction providing that ambiguous contract terms should be interpreted against the drafting party shall not apply nor be applied to this Agreement. The representations and warranties contained in this Section shall survive the execution of this Agreement.
13. **General Provisions.**
 - 13.1 **Voluntary Agreement.** The Parties acknowledge that they have read this Agreement and understand all of its terms and that this Agreement is executed voluntarily, without duress, and with full knowledge of its legal significance.
 - 13.2 **No Assignment.** The Parties represent and warrant to each other that such party is

the only person or entity who, to its knowledge, has any interest in any claims, causes of action, costs or demands, herein released and that none of such claims, causes of action, costs or demand, nor any part thereof, has been assigned, granted or transferred in any way to any person, persons, entity or entities.

- 13.3 Authority to Execute Agreement.** Each person whose signature appears hereon individually represents and warrants to the other Party that he or she has been fully authorized, and has fully authority, to execute this Agreement on behalf of the entity on whose behalf he or she executed this Agreement.
- 13.4 Counterparts.** This Agreement may be executed in two or more counterparts, including electronic or facsimile counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 13.5 Interpretation.** This Agreement has been negotiated at arm's length between persons (or their representatives) sophisticated and knowledgeable in the matters dealt within this Agreement. Accordingly, any rule of law or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is hereby waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the Parties and this Agreement.
- 13.6 Notices.** Any notice, request, instruction, or other document or communication required or permitted to be given under this Agreement shall be in writing and shall be deemed given (i) upon receipt if delivered in person, by a messenger or nationally recognized courier service; or (ii) five business days after being deposited in the U.S. mail, certified or registered, return receipt requested, postage prepaid, and addressed as follows:

If to Debtor, delivered to:

Tricida, Inc.
2108 N St., Suite 4935
Sacramento, CA 95816

with a courtesy copy (which shall not constitute notice) to:

Sidley Austin LLP
787 Seventh Avenue
New York, New York 10019
Attention: Geoff Levin, Sam Newman and Charles Persons
Email: glevin@sidley.com, sam.newman@sidley.com,
cpersons@sidley.com

If to Consenting Noteholder, delivered to

Davis Polk & Wardwell LLP

450 Lexington Avenue
New York, New York 10017
Attention: Darren Klein and Abraham Bane
Email: darren.klein@davispolk.com,
abraham.bane@davispolk.com

If to Patheon, delivered to:

Patheon Austria GmbH & Co. KG
St. Peter Strasse 25
4020 Linz, Austria
Attention: Michael Stanek, Klaus Hilber and Sandra Spitzer
E-mail address: michael.stanek@thermofisher.com,
Klaus.hilber@thermofisher.com,
Sandra.spitzer@thermofisher.com

with a courtesy copy (which shall not constitute notice) to:

Thompson Hine LLP
312 Walnut Street, Suite 2000
Cincinnati, OH 45202
Attention: Louis F. Solimine and Tony J. Hornbach
Email: louis.solimine@thompsonhine.com,
tony.hornbach@thompsonhine.com

Any notice given by deliver, mail, or courier shall be effective when received.

- 13.7 Governing law and Jurisdiction.** This Agreement is made and entered into under the laws of the State of New York and Title 11 of the United States Code, and shall be interpreted, applied, and enforced under those laws. The Parties agree that this Agreement shall be governed by the laws of the State of New York and Title 11 of the United States Code, and any litigation concerning this Agreement shall be held in the venue of the United States Bankruptcy Court for the District of Delaware. Each of the Parties consents to the exclusive jurisdiction of the United States Bankruptcy Court for the District of Delaware as to any litigation or dispute that arises from or relates to this Agreement or any breach thereof.
- 13.8 Severability.** If any provision of this Agreement is held to be unenforceable, such provision will be considered separate, distinct, and severable from the other remaining provisions of this Agreement (except for Sections 5 and 6), and will not affect the validity or enforceability of such other remaining provisions, and that, in all other respects, this Agreement will remain in full force and effect. If any provision of this Agreement is held to be unenforceable as written but may be made to be enforceable by limitation thereof, then such provision will be enforceable to the maximum extent permitted by applicable law.

13.9 Entire Agreement. This Agreement constitutes the complete, exclusive, and final agreement between the Parties concerning the subject matter hereof, and supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied, between the Parties or any of their agents, shareholders, representatives, or attorneys, with regard to the subject matter, basis, or effect of this Agreement. The Parties acknowledge that they have not relied on any representations, inducements, promises, agreements, or warranties, oral or otherwise, which are not expressly embodied in this Agreement. Rather, the Parties relied entirely upon their own judgment, beliefs, and interest and the advice of their own counsel, and had a reasonable period of time to consider this Agreement.

[Signature Pages to Follow]

THE UNDERSIGNED HAVE CAREFULLY READ THE FOREGOING COMPROMISE SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS, KNOW THE CONTENTS THEREOF, FULLY UNDERSTAND IT, AND SIGN THE SAME AS ITS OWN FREE ACT.

IN WITNESS WHEREOF, the Parties to this Agreement have read, understood and agreed to the terms of this Agreement, and have voluntarily executed the Agreement as of the dates set forth below by and through their undersigned and duly authorized representatives.

[•]:

By: _____
Name: _____
Title: _____
Dated: _____

EXHIBIT B

Declaration of Geoffrey Parker

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

In re:

TRICIDA, INC.,¹

Debtor.

Chapter 11

Case No. 23-10024 (JTD)

**DECLARATION OF GEOFFREY PARKER IN
SUPPORT OF DEBTOR'S MOTION FOR ENTRY OF
AN ORDER, PURSUANT TO SECTION 105(a) OF THE
BANKRUPTCY CODE AND BANKRUPTCY RULE 9019, APPROVING
THE SETTLEMENT AGREEMENT REGARDING THE PATHEON CLAIM**

I, Geoffrey Parker, hereby declare under penalty of perjury:

1. I am the Chief Operating Officer and Chief Financial Officer of Tricida, Inc., the debtor and debtor-in-possession in the above-captioned chapter 11 case (the “Debtor,” or “Tricida”). Pursuant to the order entered by this Court on March 31, 2023, I have entered into a consulting agreement with the Debtor to provide limited services as the Debtor’s remaining officer in connection with this chapter 11 case.²

2. Except as otherwise indicated, the facts set forth herein are based upon (a) my personal knowledge of and familiarity with the Debtor’s operations and finances, (b) information learned from my review of the relevant documents and information supplied to me by other members of the Debtor’s management, the Debtor’s professionals, and employees of the Debtor working under my supervision, and (c) my opinions based upon experience, knowledge, and information concerning the Debtor.

¹ The Debtor in this chapter 11 case, together with the last four digits of the Debtor’s federal tax identification number, is Tricida, Inc. (2526). The Debtor’s service address is 2108 N Street, Suite 4935, Sacramento, CA 95816.

² See *Order Authorizing and Approving the Debtor’s Entry into the Consulting Agreements, (II) Authorizing the Debtor to Terminate Certain Executives, and (III) Granting Related Relief* [D.I. No. 343].

3. I submit this declaration (the “Declaration”) on behalf of the Debtor in support of the relief requested in the *Debtor’s Motion for Entry of an Order, Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, Approving the Settlement Agreement Regarding the Patheon Claim*, attached (the “Motion”).³ I am authorized to submit this Declaration on behalf of the Debtor.

4. On October 4, 2019, Tricida entered into a Manufacturing and Commercial Supply Agreement (as amended, the “CSA”) with Patheon. Pursuant to the CSA, Patheon agreed to engage in the manufacture and supply of veverimer and engage in certain developmental services for the Debtor.

5. On or about December 7, 2022, after providing notice of an alleged breach under the CSA to Tricida, Patheon issued a “Notice of Termination” purporting to terminate the CSA in connection with, among other things, the alleged breach. Tricida vehemently disputed Patheon’s characterization of circumstances it relied upon in connection with its termination of the CSA, including, but not limited to, the contention that Patheon’s purported termination of the agreement was not in compliance with the CSA and was therefore ineffective.

6. I understand that Patheon’s Claim in this chapter 11 case asserts damages in connection with the termination of the CSA.

7. The Parties participated in active negotiations over several weeks concerning the Claim. In connection with the Claim, the parties participated in mediation regarding the Claim on April 24, 2023.

8. In connection with the negotiations and mediation, I understand that each party was assisted by experienced legal and professional advisors. It is also my understanding that

³ Capitalized terms used and not otherwise defined herein have the meanings ascribed to them in the Motion.

each party had the opportunity to conduct independent evaluations of potential claims and associated litigation risk.

9. Specifically, the Debtor's advisors undertook a review of the Patheon Claim and potential defenses and counter claims the Debtor's estate may have had against Patheon. As part of that review, it is my understanding that the Debtor's legal and financial advisors studied transaction agreements and related documents, correspondence by and among the parties, and other materials, as well as researched and analyzed the applicable law governing CSA and potential claims. Following this review, the Debtor, in consultation with its advisors, determined that litigating claims arising out of the Patheon Claim and the CSA would involve significant costs to the estate and have an uncertain outcome, and the costs of pursuing any such litigation would likely outweigh the expected outcome if litigated to resolution. Patheon also maintained that no viable defenses or counter claims exist and have expressed their intent to vigorously prosecute the Patheon Claim and defend any counter claim asserted against it.

10. I participated in numerous meetings with the Debtor's management and other professional advisors to, among other things, assess and discuss whether it is in the Debtor's best interests to enter into the Settlement Agreement that is the subject of the Motion. I reviewed the Motion and believe that it accurately describes the development of, and justification for, the resolution of various issues as set forth in the Settlement Agreement. Based on my review of the settlement terms and my participation in these ongoing discussions regarding settlement, and for the reasons described herein and in the Motion, it is my opinion that the Settlement Agreement is reasonable, appropriate, and necessary to maximize the value of the Debtor's estate.

11. It is my belief that the Settlement Agreement was negotiated, proposed, and entered into by the Parties at arm's length, after significant negotiations. From my role and

firsthand participation in the mediation, negotiations and related discussions, it appeared to me that the parties were operating in good faith, and I have seen no evidence of collusion or fraud. Those negotiations were hard fought over the course of several weeks.

12. The Debtor worked with its advisors to review the Settlement Agreement and determine whether it is reasonable and appropriate. The Debtor negotiated the Settlement Agreement with the aim of preserving and maximizing the value of its estate for the benefit of all parties by ensuring that potential costly litigation would not negatively impact confirmation and delay disbursements to creditors.

13. I believe the Settlement Agreement represents a fair and reasonable compromise that is in the best interests of the Debtor's estate. This settlement resolves legal issues that are subject to potential litigation, provides further certainty with respect to recoveries and disbursements to general unsecured creditors and that facilitates a path to confirmation of the Debtor's proposed Plan. All of this will directly benefit the Debtors' estates and all parties in interest.

14. The Settlement Agreement will not only resolve the Parties' dispute as to the rights and obligations in connection with the CSA and the amount of Patheon's Claim, but also facilitate the efficient administration of the Debtor's estate and increases value to other creditors by way of more certainty with respect to potential disbursements under the Plan and the path to confirmation of the Debtor's proposed Plan. Therefore, based on my business judgment, I believe that the Settlement Agreement is reasonable and appropriate given the facts and circumstances of this chapter 11 case.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: May 9, 2023
South San Francisco, CA

/s/ Geoffrey Parker
Geoffrey Parker