

Hearing Date: October 30, 2023, at 3:00 P.M. (ET)
Objection Deadline: October 23, 2023 at 4:00 P.M. (ET)

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*Proposed Counsel to the Official Committee
of Unsecured Creditors*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

BENITAGO INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 23-11394 (SHL)

Jointly Administered

**NOTICE OF HEARING TO CONSIDER THE MOTION OF THE OFFICIAL
COMMITTEE OF UNSECURED CREDITORS FOR ENTRY OF AN ORDER
ESTABLISHING INFORMATION SHARING PROCEDURES IN COMPLIANCE WITH
SECTIONS 105(A), 107(B), 1102(B)(3) AND 1103(C) OF THE BANKRUPTCY CODE**

PLEASE TAKE NOTICE that on or about August 30, 2023 (the “**Petition Date**”), the
above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) each filed a

¹ The last four digits of Benitago Inc.’s tax identification number are 4084. Due to the large number of debtors in these chapter 11 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at <https://cases.stretto.com/benitago>. The location of the Debtors' service address for purposes of these chapter 11 cases is: 1 Liberty Street, Ste. 320, New York, New York 10006.

voluntary petition under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of New York.

PLEASE TAKE FURTHER NOTICE that the date hereof, the Official Committee of Unsecured Creditors (the “**Committee**”) appointed in these cases (the “**Chapter 11 Cases**”) filed a Motion for Entry of an Order Establishing Information Sharing Procedures in Compliance with Sections 105(a), 107(b), 1102(b)(3) And 1103(c) of the Bankruptcy Code (the “**Motion**”), pursuant to which the Committee seeks entry of the proposed order attached as **Exhibit A** to the Motion (the “**Proposed Order**”).

PLEASE TAKE FURTHER NOTICE that a hearing to consider the relief sought in the Motion is scheduled for **October 30, 2023 at 3:00 P.M.** (prevailing Eastern Time) (the “**Hearing**”) or as soon thereafter as counsel can be heard, and the deadline to object to the relief sought in the Motion is **October 23, 2023 at 4:00 P.M.** (prevailing Eastern Time) (the “**Objection Deadline**”).

PLEASE TAKE FURTHER NOTICE that objections, if any, to the Motion and Proposed Order must be made in writing and filed with the United States Bankruptcy Court for the Southern District of New York, 300 Quarropas Street, White Plains, New York 10601-4140, and served so as to be actually received by the following parties no later than the Objection Deadline:

- i. the Honorable Sean H. Lane, United States Bankruptcy Judge for the Southern District of New York, United States Bankruptcy Court for the Southern District of New York, 300 Quarropas Street, White Plains, NY 10601-4140;
- ii. proposed counsel for the Official Committee of Unsecured Creditors, Dechert LLP, 1095 Avenue of the Americas, New York, NY 10036, Attn: Douglas Mannal, Esq. (dmannal@dechert.com) and David A. Herman, Esq. (david.herman@dechert.com);

- iii. proposed counsel to the Debtors, Togut, Segal & Segal LLP, One Penn Plaza, Suite 3335, New York, NY 10119, Attn: Kyle J. Ortiz, Esq. (kortiz@teamtogut.com) and Bryan M. Kotliar, Esq. (Bkotliar@teamtogut.com);
- iv. proposed co-counsel to the Acrux Debtors, Klestadt Winters Jureller Southard & Stevens, 200 West 41st Street, 17th Floor, New York, New York 10036, Attn: Fred Stevens, Esq. (FStevens@Klestadt.com) and Sean Southard, Esq. (SSouthard@Klestadt.com); and
- v. the Office of the United States Trustee for Region 2, U.S. Federal Office Building, One Bowling Green, Suite 534, New York, NY 10004, Attn: Richard Morrissey, Esq. (Richard.Morrissey@usdoj.gov) and Annie Wells, Esq. (Annie.Wells@usdoj.gov).

PLEASE TAKE FURTHER NOTICE that the Hearing will be held via Zoom for Government before the Honorable Sean H. Lane, United States Bankruptcy Judge for the Southern District of New York.

PLEASE TAKE FURTHER NOTICE that copies of the Motion, and related filings, can be viewed and/or obtained by (i) accessing the Bankruptcy Court's Website for a fee, (ii) visiting the website for the Debtors' chapter 11 cases at: <https://cases.stretto.com/benitago>, or (iii) by contacting the Office of the Clerk of the United States Bankruptcy Court, Southern District of New York.

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Dated: October 11, 2023
New York, New York

/s/ Douglas Manna

Douglas Manna

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

BENITAGO INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 23-11394 (SHL)

Jointly Administered

**MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR
ENTRY OF AN ORDER ESTABLISHING INFORMATION SHARING PROCEDURES
IN COMPLIANCE WITH SECTIONS 105(A), 107(B), 1102(B)(3) AND 1103(C) OF THE
BANKRUPTCY CODE**

The Official Committee of Unsecured Creditors (the “**Committee**”) appointed in the cases (the “**Chapter 11 Cases**” or “**Cases**”) of the above-captioned debtors and debtors in possession (the “**Debtors**”), by and through the undersigned counsel, hereby submits this motion (the “**Motion**”) for the entry of an order substantially in the form attached hereto as **Exhibit A** establishing procedures for the Committee to share information with unsecured creditors in

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compliance of sections 105(a), 107(b), 1102(b)(3) and 1103(c) of Title 11 of the United States Code (the “**Bankruptcy Code**”). In support of the Motion, the Committee respectfully represents as follows:

BACKGROUND

1. On August 30, 2023, each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the “**Court**”).

2. On September 15, 2023, the Office of the United States Trustee for Region 2 (the “**U.S. Trustee**”) appointed the Committee pursuant to section 1102(a) of the Bankruptcy Code [Dkt. No. 50]. The Committee consists of the following three members: (i) Stefana-Veronica Sticlaru; (ii) CalMyotis (HK) Limited; and (iii) Daniel Samimi.

3. On September 19, 2023, the Committee selected Dechert LLP to serve as its proposed counsel.² On September 21, 2023, the Committee selected Province, LLC to serve as its proposed financial advisor.

4. On October 11, 2023, the Court entered the *Stipulated Confidentiality Agreement and Protective Order* [Dkt. No. 82] (the “**Protective Order**”) governing the production of confidential and highly confidential documents and information.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. Venue is proper under 28 U.S.C. §§ 1408 and 1409. Venue is proper before this Court pursuant

² The Committee’s professionals are currently preparing retention applications that are expected to be filed with the Court in the near term.

to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are sections 105(a), 107(b) and 1102(b)(3) and 1103(c) of the Bankruptcy Code.

RELIEF REQUESTED

6. Section 1102(b)(3)(A) of the Bankruptcy Code requires a creditors' committee to "provide access to information for creditors who (i) hold claims of the kind represented by that committee; and (ii) are not appointed to the committee." 11 U.S.C. § 1102(b)(3)(A). However, the statute does not specify the kind, type, or extent of the information to be provided.³

7. Specifically, section 1102(b)(3) does not clearly identify whether, or to what extent, a creditors' committee is required to provide access to the various confidential and other material non-public information ("**Confidential Information**")⁴ that the committee may receive from a debtor or other parties. Read broadly, section 1102(b)(3) could also be interpreted to require a creditors' committee to disclose information that is subject to the attorney-client or other privilege between the committee and its counsel or other advisors ("**Privileged Information**").⁵ An unduly broad interpretation of section 1102(b)(3) to require the disclosure of Confidential Information

³ The legislative history to section 1102(b)(3) is similarly silent on these issues. *See* H.R. Rep. No. 109-31, 109th Cong. 1st Sess. 87 (2005) ("[Section 1102(b)(3)] requires the committee to give creditors having claims of the kind represented by the committee access to information. In addition, the committee must solicit and receive comments for these creditors and, pursuant to court order, make additional reports and disclosures available to them.").

⁴ For purposes of this Motion, the term "Confidential Information" shall mean all (a) information, documents, and matters disclosed to the Committee Parties, whether oral or written, which (x) constitute or contain nonpublic proprietary or confidential, technical, business, financial, personal or other information of a nature that can be protected under the Federal Rules of Bankruptcy Procedure or the Federal Rules of Civil Procedure or (y) are subject by law or by contract to a legally protected right of privacy; (b) information or documents generated by the Committee Parties for the sole use of or dissemination to the Committee; and (c) Committee discussions and any memorialization thereof. Notwithstanding the foregoing, Confidential Information shall not include any information (i) that is available to or was in the possession of the Committee on a non-confidential basis prior to the receipt of such information or (ii) that is or becomes publicly available.

⁵ For purposes of this Motion, the term "Privileged Information" shall mean any information subject to the attorney-client or other privilege, whether such privilege is controlled by the Committee or another party.

and Privileged Information would be detrimental to the committee's ability to perform its statutory functions and duties in an efficient manner.

8. In these Chapter 11 Cases, the Debtors have agreed to share certain Confidential Information with the Committee, subject to certain confidentiality restrictions in the Committee's by-laws and the terms of the Protective Order. Accordingly, by this Motion, the Committee seeks entry of an order, pursuant to sections 105(a), 107(b), 1102(b)(3) and 1103(c) of the Bankruptcy Code: (i) establishing certain information sharing procedures (the "**Information Sharing Procedures**"); (ii) finding that, by implementing the Information Sharing Procedures, the Committee, its members and their respective agents, representatives, counsel, and advisors (the "**Committee Parties**"), will be in compliance with section 1102(b) of the Bankruptcy Code; and (iii) providing that the Committee is not required to share any Confidential Information or Privileged Information, except as set forth in the Information Sharing Procedures.

9. Specifically, the Committee requests approval of the following Information Sharing Procedures in accordance with the requirements of section 1102(b)(3) of the Bankruptcy Code:

- a. The Committee will cause such information that it deems necessary to keep unsecured creditors informed of the status of these Chapter 11 Cases to be made available at the website maintained by the Debtors' Claims and Noticing Agent:⁶ <https://cases.stretto.com/benitago/>. The website will serve as a source for unsecured creditors to obtain information and enable the Committee to solicit and receive comments from unsecured creditors.

⁶ The term "Claims and Noticing Agent" shall have the meaning ascribed to it in the *Order (i) Authorizing the Appointment of Stretto, Inc. as Claims and Noticing Agent to the Debtors; and (ii) Granting Related Relief* [Dkt. No. 40].

- b. The Committee will also establish and maintain a designated email address at **BenitagoDechertTeam@dechert.com**, to be monitored by the Committee's counsel, to enable unsecured creditors to submit questions or comments regarding these Chapter 11 Cases.
- c. If an unsecured creditor (a "**Requesting Creditor**") submits a written request to the Committee for the Committee to disclose information (an "**Information Request**"), the Committee shall as soon as practicable under the circumstances, but no more than twenty (20) calendar days after receipt of the Information Request, provide a response to the Information Request. The Response will provide access to the information requested and/or, where applicable, state why the Committee will not provide all, or a subset, of the information requested. The Response will be made by the Committee's counsel. As part of the Information Sharing Procedures, the Committee and its counsel will not provide individualized legal advice to a Requesting Creditor and any response provided to an Information Request will not be intended as individual professional counsel or advice and should not be used as such.
- d. If an Information Request implicates Confidential Information of the Debtors (or of any other entity) and the Committee agrees that such Information Request should be satisfied, or if the Committee on its own wishes to disclose such Confidential Information to unsecured creditors, the Committee may make a demand (a "**Demand**") for the benefit of the unsecured creditors as follows: (i) if the Confidential Information is information of the Debtors, by submitting a written request to the Debtors' counsel, requesting that such information be disclosed; and

(ii) if the Confidential Information is information of another party, by submitting a written request to such party and its counsel of record requesting that such information be disclosed, with a copy to the Debtors' counsel. If the Debtors or the party to which the Demand is directed do not agree in writing within ten (10) calendar days after receipt of the Demand to disclose such information, the Committee or the Requesting Creditor may file a motion (under Rule 2004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") or other appropriate basis) seeking a ruling with respect to the Demand, with respect to which the Debtors and/or the party receiving the Demand (as applicable) reserve all rights. The Debtors or such party, as applicable, may file an objection to such motion, including on the basis that any information provided to creditors should be done so only pursuant to an order of the Court requiring that such information remain confidential.

BASIS FOR RELIEF

10. The Committee has certain duties under section 1103(c) of the Bankruptcy Code, including, among other things, to "investigate the acts, conduct, assets, liabilities and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan." 11 U.S.C. § 1103(c). In the ordinary course of performing its investigative duties in accordance with section 1103(c), the Committee is expected to receive and utilize confidential or other material non-public information shared by the Debtors or other parties.

11. As discussed above, section 1102(b)(3) of the Bankruptcy Code, which requires the Committee to provide access to information, raises the issue of whether the Committee is required

to disclose all information that it has received, regardless of whether the information is confidential or privileged. The Committee believes that the sharing of all information without limitation will not only hinder the Committee's efforts to carry out its investigative duties, as the Debtors and other parties would be deterred from voluntarily sharing Confidential Information with the Committee, but also prove detrimental to the Debtors' ability to maximize value should such Confidential Information be disseminated to the general public.

12. Section 1102(b)(3) could also be interpreted to require the disclosure of Privileged Information without proper protections put in place and thereby effectively waive the attorney-client and work product privileges between the Committee and its counsel or other agents. This would prevent the Committee's members from receiving unimpeded and independent advice and consultation from its counsel to the detriment of unsecured creditors. *See, e.g., In re Baldwin-United Corp.*, 38 B.R. 802, 805 (Bankr. S.D. Ohio 1984) (finding that a creditors' committee is entitled to protection of attorney-client privilege). Indeed, the preservation of these privileges is critical to maintaining the Committee's ability to exercise its investigative powers. Otherwise, the Committee may find itself in the undesirable position of having to prematurely share the findings of its investigations, even if such findings constitute Privileged Information.

13. Against this backdrop, the Committee believes that section 1102(b)(3)'s disclosure requirements must be properly balanced. The proposed Information Sharing Procedures provide for non-Confidential and non-Privileged Information to be shared with unsecured creditors in an efficient manner and create a means for those creditors to contact the Committee and its counsel. At the same time, the Information Sharing Procedures recognize and respect the interests of the Debtors in protecting Confidential Information and Privileged Information and preventing disclosure to the general public.

14. It is settled law that when “the literal application of a statute will produce a result demonstrably at odds with the intention of its drafters . . . the intention of the drafters, rather than the strict language, controls.” *United States v. Ron Pair Enter., Inc.*, 489 U.S. 235, 242-43 (1989) (citing *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564 (1982) (quotation omitted)). As discussed above, reading section 1102(b)(3)(A) strictly and literally could lead to an improper application of the statute requiring a creditors’ committee to provide non-committee member creditors with access to all information it receives from a debtor or from other means, even if such information constitutes either Confidential Information or Privileged Information. *See In re Refco, Inc.*, 336 B.R. 187, 196 (Bankr. S.D.N.Y. 2006) (“It has frequently been held that committee members’ fiduciary duties of loyalty and care to the unsecured creditors body require such information to be held in confidence.”). This literal reading of section 1102(b)(3)(A) would greatly limit the Committee’s ability to fulfill its fiduciary duties of loyalty and care and is clearly at odds with the intended goal of section 1102(b)(3)(A), which is to promote information sharing among the Debtors, the Committee and unsecured creditors rather than impair the Committee’s investigative functions.

15. Several statutory provisions empower this Court to grant the requested relief. Under section 105(a) of the Bankruptcy Code, the Court may “issue any order . . . that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). For the reasons discussed above, the Committee believes that the relief requested herein is necessary for the Committee to fulfill its statutory duties as contemplated by section 1103(c) of the Bankruptcy Code. *See Pan Am Corp. v. Delta Air Lines, Inc.*, 175 B.R. 438, 514 (S.D.N.Y. 1994) (“The function of an official creditors committee is to aid, assist and monitor the debtor to ensure that the unsecured creditors’ views are heard and their interests promoted and protected.”) (citations

omitted). Therefore, the proposed Information Sharing Procedures are “necessary and appropriate” to carry out these provisions of the Bankruptcy Code, and the Court is authorized to enter an order granting the relief requested.

16. Furthermore, section 107(b)(1) of the Bankruptcy Code provides that “on request of a party in interest, the bankruptcy court shall . . . protect an entity with respect to a trade secret or confidential research, development, or commercial information.” 11 U.S.C. § 107(b)(1); *see also* Fed. R. Bankr. P. 9018 (“On motion or on its own initiative . . . the court may make any order which justice requires . . . to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information.”). Section 107(b), coupled with Bankruptcy Rule 9018, empowers this Court to protect the Debtors’ privileged and proprietary Confidential Information from disclosure to general creditors. *See Video Software Dealers Ass’n v. Orion Pictures Corp.*, 21 F.3d 24, 27 (2d. Cir. 1994) (holding that the protections of section 107(b)(1) of the Bankruptcy Code are mandatory upon request).

17. The relief requested by the Committee in this Motion is consistent with similar relief granted by courts in this District and in other similar Chapter 11 cases across the country. *See, e.g., In re Brooks Brothers Grp., Inc.*, Case No. 20-11785 (Bankr. D. Del. Sept. 9, 2020); *In re LSC Commc’ns, Inc.*, Case No. 20-10950 (Bankr. S.D.N.Y. June 5, 2020); *In re Avaya Inc.*, Case No. 17-10089 (Bankr. S.D.N.Y. March 16, 2017); *In re Breitburn Energy Partners LP*, Case No. 16-11390 (Bankr. S.D.N.Y. Aug. 18, 2016); *In re AMR Corp.*, No. 11-15463 (Bankr. S.D.N.Y. March 5, 2012); *In re Borders Grp., Inc.*, No. 11-10614 (Bankr. S.D.N.Y. Apr. 7, 2011); *In re Innkeepers USA Tr.*, No. 10-13800 (Bankr. S.D.N.Y. Sept. 1, 2010); *In re Mesa Air Grp., Inc.*, No. 10-10018 (Bankr. S.D.N.Y. Feb. 25, 2010); *In re Motors Liquidation Co.*, No. 09-50026 (Bankr. S.D.N.Y. Aug. 3, 2009).

18. For all of the foregoing reasons, the Committee respectfully requests that the Court approve the Information Sharing Procedures and grant the related relief requested in this Motion.

NOTICE

19. Notice of this Motion shall be given to (i) counsel to the Debtors, (ii) counsel to SellersFunding International Portfolio Ltd., (iii) counsel to CoVenture – Bento Credit Opportunities GP, LLC and CoVenture – Bento Credit Opportunities SPV, LP, (iv) the U.S. Trustee, and (v) any party that has requested notice pursuant to Bankruptcy Rule 2002.

NO PRIOR REQUEST

20. No prior request for the relief sought herein has been made by the Committee to this or any other court.

WHEREFORE, the Committee requests that the Court enter an order, substantially in the proposed form attached hereto: (i) approving the Information Sharing Procedures; (ii) finding that, by implementing the Information Sharing Procedures, the Committee Parties will be in compliance with section 1102(b) of the Bankruptcy Code; and (iii) providing that the Committee is not required to share Confidential Information or Privileged Information, except as set forth in the Information Sharing Procedures; and (iv) granting such further relief as is just and proper.

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Dated: October 11, 2023
New York, New York

Respectfully submitted,

/s/ Douglas Mannal

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*Proposed Counsel to the Official Committee of
Unsecured Creditors*

Hearing Date: October 30, 2023, at 3:00 P.M. (ET)
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Exhibit A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

BENITAGO INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 23-11394 (SHL)

Jointly Administered

**ORDER ESTABLISHING INFORMATION SHARING PROCEDURES FOR
COMPLIANCE WITH SECTION 1102(B)(3) OF THE BANKRUPTCY CODE BY THE
OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

Upon consideration of the *Motion of the Official Committee of Unsecured Creditors for Entry of an Order Establishing Information Sharing Procedures in Compliance with Sections 105(a), 107(b), 1102(b)(3) and 1103(c) of the Bankruptcy Code* (the “**Motion**”);² and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that notice of the Motion was reasonable and sufficient under the circumstances, and it appearing that there is good cause to grant the relief requested therein; it is HEREBY ORDERED that:

1. Notice of the Motion as provided for therein is sufficient and further notice is waived pursuant to Fed. R. Bankr. P. 9006.

2. The Motion is granted, as set forth herein.

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

3. The following Information Sharing Procedures are approved and deemed in satisfaction of the obligations of the Committee, its members and their respective advisors, representatives, affiliates, counsel, and advisors (the “**Committee Parties**”), under section 1102(b)(3) of the Bankruptcy Code:

- a. The Committee will cause such information that it deems necessary to keep unsecured creditors informed of the status of these Chapter 11 Cases to be made available at the website maintained by the Debtors’ Claims and Noticing Agent: **<https://cases.stretto.com/benitago/>**. The website will serve as a source for unsecured creditors to obtain information and enable the Committee to solicit and receive comments from unsecured creditors.
- b. The Committee will also establish and maintain a designated email address at **BenitagoDechertTeam@dechert.com**, to be monitored by the Committee’s counsel, to enable unsecured creditors to submit questions or comments regarding these Chapter 11 Cases.
- c. If an unsecured creditor (a “**Requesting Creditor**”) submits a written request to the Committee for the Committee to disclose information (an “**Information Request**”), the Committee shall as soon as practicable under the circumstances, but no more than twenty (20) calendar days after receipt of the Information Request, provide a response to the Information Request. The Response will provide access to the information requested and/or, where applicable, state why the Committee will not provide all, or a subset, of the information requested. The Response will be made by the Committee’s counsel. As part of the Information Sharing Procedures, the Committee and its counsel will not provide individualized legal

advice to a Requesting Creditor and any response provided to an Information Request will not be intended as individual professional counsel or advice and should not be used as such.

- d. If an Information Request implicates Confidential Information of the Debtors (or of any other entity) and the Committee agrees that such Information Request should be satisfied, or if the Committee on its own wishes to disclose such Confidential Information to unsecured creditors, the Committee may make a demand (a “**Demand**”) for the benefit of the unsecured creditors as follows: (i) if the Confidential Information is information of the Debtors, by submitting a written request to the Debtors; counsel, requesting that such information be disclosed; and (ii) if the Confidential Information is information of another party, by submitting a written request to such party and its counsel of record requesting that such information be disclosed, with a copy to the Debtors’ counsel. If the Debtors or the party to which the Demand is directed do not agree in writing within ten (10) calendar days after receipt of the Demand to disclose such information, the Committee or the Requesting Creditor may file a motion (under Bankruptcy Rule 2004 or other appropriate basis) seeking a ruling with respect to the Demand, with respect to which the Debtors and/or the party receiving the Demand (as applicable) reserve all rights. The Debtors or such party, as applicable, may file an objection to such motion, including on the basis that any information provided to creditors should be done so only pursuant to an order of the Court requiring that such information remain confidential.

4. The Committee is not authorized or required to provide creditors with access to Confidential information or Privileged information.

a. The term “**Confidential Information**” shall mean all (a) information, documents, and matters disclosed to the Committee Parties, whether oral or written, which (x) constitute or contain nonpublic proprietary or confidential, technical, business, financial, personal or other information of a nature that can be protected under the Federal Rules of Bankruptcy Procedure or the Federal Rules of Civil Procedure or (y) are subject by law or by contract to a legally protected right of privacy; (b) information or documents generated by the Committee Parties for the sole use of or dissemination to the Committee; and (c) Committee discussions and any memorialization thereof. Notwithstanding the foregoing, Confidential Information shall not include any information (i) that is available to or was in the possession of the Committee on a non-confidential basis prior to the receipt of such information or (ii) that is or becomes publicly available.

b. The term “**Privileged Information**” shall mean any information subject to the attorney-client or other privilege, whether such privilege is controlled by the Committee or another party.

5. The Committee Parties shall not incur any liability to any entity (including the Debtors) for acts taken or omitted with respect to its obligations under section 1102(b)(3) of the Bankruptcy Code as long as the Committee has acted in compliance with the procedures set forth herein, any applicable confidentiality agreement, and the Protective Order; provided, however, that the foregoing shall not preclude or limit the right of any creditor to move before the Court for an order requiring the production of other or further information, to the extent available, and

provided further that nothing herein shall limit the Committee's liability for acts or omissions constituting gross negligence or willful misconduct.

6. Entry of this Order is without prejudice to the rights of the Committee to seek a further order of the Court addressing any additional relief concerning compliance with section 1102(b)(3) of the Bankruptcy Code.

7. The Committee is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

8. Nothing in this Order shall diminish or otherwise modify the obligations of the Committee or its members under the Protective Order.

9. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Dated: _____, 2023
New York, New York

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE