IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11 (subchapter V)
CREATIVEMASS HOLDINGS, INC., *et al.*,	Case No. 25-10695 (MFW) Jointly Administered
Debtors.[1]	Re: D.I. 9 & 31 Hearing Date: May 29, 2025, at 9:00 a.m. Obj. Deadline: May 15, 2025, at 4:00 p.m.

OBJECTION OF THE UNITED STATES TRUSTEE TO
CONFIRMATION OF THE DEBTORS' PREPACKAGED CHAPTER 11 PLAN

Andrew R. Vara, United States Trustee for Region 3 (the "U.S. Trustee"), through his undersigned counsel, objects to confirmation of the *Debtors' Joint Prepackaged Subchapter V Plan of Liquidation* [D.I. 9] (the "Plan"), and in support of his objection respectfully states:

PRELIMINARY STATEMENT

1. The Court should deny confirmation unless the Debtors demonstrate they are proposing the Plan in good faith. The Plan seeks to cement the conversion of $5,717,527 of convertible notes into equity in late 2022. Around that time, some noteholders apparently protested the conversion and had their notes reinstated. Under the Plan, five noteholders owed about $1,537,722 would receive 100% distributions on their notes. The Debtors' sole director, to whom the Plan's signatory reports, holds the second-largest such note. In contrast, all other former noteholders (i.e. people who have not yet protested the note conversion), would lose any ability to challenge the conversion and would receive about 45% of the pre-conversion

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number are as follows: Creativemass Holdings, Inc. (2172) and Creativemass Enterprises US LLC (9046). The Debtors' mailing address is 1209 N. Orange Street, Wilmington, DE 19801.

face amount of their notes. The Court should require the Debtors to establish whether noteholders continue to have a right to protest the conversion of their notes under applicable non-bankruptcy law. A prepackaged plan should not be confirmed if its purpose is to lock in favorable treatment for a handful of claimants including, indirectly, the Debtors' sole director.

2. In addition, the Court should deny confirmation because the Plan does not satisfy Sections 1129(a)(1) and 1191 of the Bankruptcy Code. The Plan proposes to enjoin the assertion of claims against and interests in the Debtors. Further, if proofs of claim or interest are filed, the Plan would automatically disallow them. These Plan provisions violate Sections 501(a) and 502(a) and are particularly problematic where the Debtors have not located all of their interest holders.

JURISDICTION & STANDING

3. Pursuant to 28 U.S.C. § 1334, applicable order(s) of the United States District Court for the District of Delaware issued pursuant to 28 U.S.C. § 157(a), and 28 U.S.C. § 157(b)(2)(A), this Court has jurisdiction to hear and resolve this objection.

4. Pursuant to 28 U.S.C. § 586, the U.S. Trustee is charged with monitoring the federal bankruptcy system, including the confirmation of chapter 11 plans. *See Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6th Cir. 1990) (describing the U.S. Trustee as a "watchdog").

5. The U.S. Trustee has standing to be heard on confirmation of the Plan pursuant to 11 U.S.C. § 307. *See United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.)*, 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that 11 U.S.C. § 307 gives the U.S. Trustee "public interest standing").

BACKGROUND

6. On April 14, 2025 (the "Petition Date"), the above-captioned debtors (the "Debtors") filed chapter 11 petitions in this Court. The Debtors are proceeding under subchapter V of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

7. The lead Debtor is the parent company of an Australian subsidiary that built a wealth management software application and was placed into a voluntary Australian insolvency proceeding in 2023. *See Declaration of Claudia Z. Springer in Support of Petitions and First Day Relief* [D.I. 8] (the "Springer Decl.") ¶¶ 9-10.

8. The Debtors have no operations, employees, or secured debt. *See id.* ¶¶ 11, 14, 17 & 34. The Debtors' only current asset is cash upstreamed from the insolvent Australian subsidiary. Plan §§ 1.4 & 1.8.

9. On the Petition Date, the Debtors filed the Plan.

10. On April 15, 2025, the U.S. Trustee appointed William Homony as the subchapter V trustee in these cases. *See* D.I. 15.

11. On April 16, 2025, the Court entered its *Order (I) Scheduling a Confirmation Hearing; (II) Establishing Plan Objection Deadlines and Related Procedures; (III) Approving Solicitation Procedures; (IV) Directing That a Meeting of the Creditors Not Be Convened; (V) Waiving the Requirement of Filing Rule 2015.3 Reports; (VI) Waiving the Requirement of Filing Schedules of Assets and Liabilities and Statement of Financial Affairs; (VII) Waiving the Requirement of Filing Status Report and Directing a Status Conference Not Be Held; (VIII) Setting the Bar Date; and (IX) Granting Related Relief* [D.I. 31] (the 'Scheduling Order').

12. The Scheduling Order provides in part: "The Bar Date for which *any* party, not listed in the Plan, believing it (i) holds a Claim against the Debtor(s), or (ii) an Equity Interest in the Debtor(s), must file a Proof of Claim on or before the Confirmation Date; *provided however*, the government bar date shall be 180 days from the Petition Date per section 502(b)(9) of the Bankruptcy Code." D.I. 31 ¶ 20.

13. The Debtors appear to have incomplete books and records. According to the first-day motion that sought the Scheduling Order:

> While the Debtors were operational, Creativemass Holdings maintained information regarding its capital structure, including shareholder information, through a portal ("Portal") hosted by Carta, Inc. ("Carta"), an equity management software firm. When the CRO and the Debtors' counsel gained access to the Portal in March 2025 (after months of communications and requests to Carta went unanswered), they discovered the Portal had very limited contact information for each Creativemass shareholder and lacked physical mailing addresses for any of them. Rather, the Portal's shareholder information included only e-mail addresses for each shareholder, and for a number of shareholders, only deactivated e-mail addresses with the defunct "@creativemass.com" domain (the "Unreachable Class 2 Members").

D.I. 7 ¶ 15.

14. As of the date of Plan solicitation, the Debtors did not have mailing addresses for 55 of 244 shareholders. D.I. 7 ¶ 17. The undersigned understands that number is decreasing.

15. According to the *Declaration of Claudia Z. Springer Pursuant to 11 U.S.C. § 1116(1)* [D.I. 1] ¶ 4: "The following do not exist: (1) a 2024 or partial 2025 balance sheet for either Debtor; (2) a 2024 or partial 2025 statement of operations for either Debtor; (3) a 2024 or partial 2025 cash flow statement for either Debtor; and (4) a 2024 Federal tax return for either Debtor."

16. One of the main issues in this case is the conversion of $5,717,527 in convertible notes into equity about the notes' maturity in December 2022. Springer Decl. ¶¶ 22-23. A "number" of noteholders "protested their conversion, many stating its impropriety because it occurred on or near the Convertible Notes' maturity date. Upon information and belief, Creativemass' management responded by either excluding some, but not all, of the protesting Noteholders from the Note to Equity Conversion (approximately 5% of Convertible Notes were not converted as a result) or settling certain claims of improper conversion (approximately 1% of Convertible Notes were not converted based on some form of settlement)." *Id.* ¶ 23.

17. The Debtors' sole director, Alexander Ulrich, indirectly holds the second-largest note, totaling $279,254.34. Plan § 1.5 n.4. At the 341 meeting of creditors, the Debtors' witness did not know if Mr. Ulrich indirectly held the note because he had protested the December 2022 conversion.

18. Under the Plan, five noteholders (including Mr. Ulrich indirectly) holding $1,537,721.96 in convertible notes would receive a **100%** distribution. *See* Plan §§ 1.5 & 2.2.A.

19. All other convertible noteholders, who held about $4,179,805 in face amount of notes that were converted into equity, would be bound by the December 2022 conversion and receive about **45%** of the pre-conversion face amount of their notes. Plan § 2.2.

20. The Plan was signed by the Debtors' CRO, Claudia Springer. Ms. Springer reports to Mr. Ulrich. *See* D.I. 38 ¶ 23 ("Ms. Springer, as the CRO, shall report to

and have such duties as Creativemass' sole director, Mr. Alex Ulrich, may from time to time determine.").

21. The Debtors state that their prepetition winddown process "was imperiled . . . [by] the potential exposure to liability stemming from the actions of [former sole director Michael] Rouse, including, but not limited to, the Note to Equity Conversion. As discussed above, various converted Noteholders had already asserted that the conversion was improper, and Mr. Ulrich had no way of knowing whether other former Holders of Convertible Notes would likewise raise claims, either informally or by initiating court proceedings." Springer Decl. ¶ 27.

22. The Debtors state that:

> ***Mr. Ulrich***, concerned about the precarious financial condition of Creativemass left by its prior management, decided to explore, with counsel, the possibility of court oversight in connection with a distribution of the remaining Assets. It was determined that the best route was to formulate a plan to distribute the Assets while also attempting to abate any potential litigation that might occur as a result of the previous director's actions, of which there was and remains a material risk. The financial state of Creativemass as well as ***the risk of potential litigation would jeopardize the Cash Funds available to pay Unsecured Noteholder Claims*** or the General Unsecured Claims or any new Allowed Claims should they arise and become Allowed through these Chapter 11 Cases.

Id. ¶ 30 (emphasis added).

23. The Debtors state that the Chancery Court's dismissal of the attempted assignment for the benefit of creditors in November 2024 "did not . . . acknowledge or resolve the potential liability to which Creativemass was exposed in connection with, among other things, the Note to Equity Conversion." *Id.* ¶ 32.

24. The U.S. Trustee asked the Debtors for the minutes of any board meeting and any board resolution where the note conversion was approved. Upon information and

belief, the Debtors' governance records are incomplete, and Ms. Springer does not have access to the board minutes for the meeting at which the note conversion was approved.

ARGUMENT

A. Debtors Must Demonstrate Good Faith Under Section 1129(a)(3)

25. The Court should deny confirmation unless the Debtors demonstrate they are proposing the Plan in good faith.

26. Under Section 1129(a)(3) of the Bankruptcy Code, the Court shall confirm a plan only if, among other requirements, the plan "has been proposed in good faith any not by any means forbidden by law."

27. Good faith under Section 1129(a)(3) "is generally interpreted to mean that there exists a reasonable likelihood that the plan will achieve a result consistent with the objectives and purposes of the Bankruptcy Code." *In re Madison Hotel Assocs.*, 749 F.2d 410, 424-25 (7th Cir. 1984) (other internal quotations omitted; citations omitted). The objectives and purposes of the Bankruptcy Code include "preserving going concerns and maximizing property available to satisfy creditors, giving debtors a fresh start in life, discouraging debtor misconduct, the expeditious liquidation and distribution of the bankruptcy estate to its creditors, and achieving fundamental fairness and justice." *In re WR Grace & Co.*, 729 F.3d 332, 346 (3d Cir. 2013) (citations omitted, cleaned up). "In evaluating the totality of circumstances surrounding a plan a court has considerable judicial discretion in finding good faith, with the most important feature being an inquiry into the fundamental fairness of the plan." *In re Coram Healthcare Corp.*, 271 B.R. 228, 234 (Bankr. D. Del. 2001) (cleaned up).

28. A central policy of the Bankruptcy Code is equality of distribution among creditors. *See Begier v. IRS*, 496 U.S. 53, 58 (1990). "The Bankruptcy Code furthers the

policy of 'equality of distribution among creditors' by requiring that a plan of reorganization provide similar treatment to similarly situated claims." *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 239 (3d Cir. 2004). Classification of claims "is constrained by two straight-forward rules: Dissimilar claims may not be classified together; similar claims may be classified separately only for a legitimate reason." *In re Chateaugay Corp.*, 89 F.3d 942, 949 (2d Cir. 1996). Although similar claims can be grouped in different classes under section 1122(a), such classification "must be reasonable." *In re Jersey Med. Ctr.*, 817 F.2d 1055, 1061 (3d Cir. 1987); *see John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assoc. (In re Route 37 Bus. Park Assocs.)*, 987 F.2d 154, 158 (3d Cir. 1993) ("it seems clear that the Code was not meant to allow a debtor complete freedom to place substantially similar claims in separate classes."). Separate classification of substantially similar claims "[must not] offend one's sensibility of due process and fair play." *In re One Times Square Assocs. Ltd. P'ship*, 159 B.R. 695, 703 (Bankr. S.D.N.Y. 1993). Classification "should not do substantial violence to any claimant's interest." *In re LeBlanc*, 622 F.2d 872, 879 (5th Cir. 1980).

29. The good-faith requirement of Section 1129(a)(3) applies to subchapter V plans. *See* Section 1191(a).

30. Here, the Court should require the Debtors to demonstrate that giving a handful of noteholders—including, indirectly, the Debtors' sole director—100% on their notes, while giving all other former noteholders 45% on their claims, upholds the principle of equality of distribution.

31. The Debtors' capital structure appears to be a function of a decision the Debtors' former sole director and 48% shareholder, Mr. Rouse, made in late December 2022 to convert $5,717,527 of convertible notes into equity. Mr. Rouse is now apparently unreachable,

and the Debtors have not provided minutes of any board meeting at which the note conversion was approved. Plan § 1.7 n.8. But "a number" of noteholders protested the conversion and had their notes reinstated. Springer Decl. ¶ 23. The Plan proposes to pay a handful of noteholders owed $1,537,722 **in full**. The second-largest such noteholder to be paid in full is affiliated with the Debtors' sole director, Mr. Ulrich. Plan § 1.5 n.4. The Debtors' CRO, Ms. Springer, who signed the Plan, reports to Mr. Ulrich. D.I. 38 ¶ 23. Meanwhile, the Plan would pay all other former noteholders (i.e. noteholders whose notes were converted and did not protest) about **45%** of the pre-conversion face amount of their notes. Plan § 2.2. If all noteholders received the same Plan treatment, their approximate recovery (after payment in full of general unsecured claims) would be about **60%**. Remaining equityholders would likely receive no recovery under the Plan waterfall.[2]

32. The record should be clear whether Mr. Ulrich protested the note conversion and thereby had his indirectly-held notes reinstated. There should be no appearance that the Debtors' sole director is seeking to cement full payment on (or foreclose any dilution of) his indirect note claim while preventing other noteholders from protesting the conversion of their own notes into equity. *See*, *e.g.*, *In re Coram Healthcare Corp.*, 271 B.R. at 235-40 (actual conflict of interest implicating senior officer's duty of loyalty precluded good faith finding under section 1129(a)(3)). If affected noteholders no longer have the right to challenge the note conversion under applicable non-bankruptcy law, then the Debtors should

[2] The Plan Supplement [D.I. 67 at pp. 16-17 of 18] indicates that entities that may be affiliated with Mr. Ulrich hold about 347,836 shares in the Debtors. The Debtors should make a record whether those equity interests are indeed affiliated with Mr. Ulrich and whether those equity interests are held as a result of, or independently of, the note conversion. Equity interests held independently of the note conversion would appear to stand to benefit under the Plan because they would share pari passu with convertible notes that are locked into the conversion (versus such equity interests being out of the money if all convertible notes were reinstated).

make a record of that to the Court's satisfaction. Conversely, if noteholders do still have the right to challenge or rescind the note conversion under applicable non-bankruptcy law (*cf.* Springer Decl. ¶¶ 27 & 32) then the Debtors should explain why it is fair to extinguish that right. There should be no hint of self-dealing or any appearance of impropriety.

B. Plan Would Eliminate Any Claims Process

33. The Court should deny confirmation because the Plan does not satisfy Section 1129(a)(1) of the Bankruptcy Code.

34. Section 1129(a)(1) provides: "The court shall confirm a plan only if all of the following requirements are met: (1) The plan complies with the applicable provisions of this title." Pursuant to Section 1191 of the Bankruptcy Code, Section 1129(a)(1) applies to subchapter V plans.

35. Section 501(a) of the Bankruptcy Code provides: "A creditor or an indenture trustee may file a proof of claim. An equity security holder may file a proof of interest."

36. Section 502(a) of the Bankruptcy Code provides: "A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects."

37. Sections 9.1 and 9.2 of the Plan purport to enjoin parties from filing proofs of claim or interest and to automatically disallow any filed proofs of claim or interest.

38. Section 9.1 provides in relevant part:

> Except as otherwise provided in this Plan, Holders of Claims shall not be required to File a Proof of Claim, and no parties should File a Proof of Claim. All Filed Proofs of Claim shall be deemed objected to and Disputed without further action by the Debtors; *provided, however*, that the Debtors and the Plan Administrator, as applicable, reserve the right to object to any Claim that is entitled, or deemed to

> be entitled, to a Distribution under this Plan or is rendered Unimpaired under this Plan. Instead, the Debtors intend to make Distributions, as required by this Plan, in accordance with the books and records of the Debtors.
>
> [. . .]
>
> **Except as otherwise provided herein or in the Confirmation Order, all Proofs of Claim Filed before or after the Effective Date shall be Disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against any Debtor, without the need for any objection by the Debtors or any further notice to or action, order, or approval of the Bankruptcy Court.**

Plan § 9.1.

39. Section 9.2 provides in relevant part:

> Except as otherwise provided in this Plan, Holders of Equity Interests shall not be required to File a Proof of Equity Interest, and no parties should File a Proof of Equity Interest. All Filed Proofs of Interest relating to Equity Interests shall be deemed objected to and Disputed without further action by the Debtors; *provided, however*, that the Debtors and the Plan Administrator, as applicable, reserve the right to object to any Equity Interest. Instead, the Debtors intend to make Distributions on account of Equity Interests, as required by this Plan, in accordance with the books and records of the Debtors.
>
> [. . .]
>
> **Except as otherwise provided herein or in the Confirmation Order, all Proofs of Equity Interest Filed before or after the Effective Date shall be Disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against any Debtor, without the need for any objection by the Debtors or any further notice to or action, order, or approval of the Bankruptcy Court.**

Plan § 9.2.

40. The above Plan provisions violate Sections 501(a) and 502(a) of the Bankruptcy Code.

41. Section 501(a) of the Bankruptcy Code authorizes people to file proofs of claim and interest. But Plan sections 9.1 and 9.2 would generally enjoin people from doing so. The Plan would enjoin people from filing proofs of claim or interest even before the bar date and automatically disallow any filed proofs. The Plan would also appear to deny creditors and interest holders located on the other side of the globe an opportunity to show excusable neglect if they filed a proof of claim or interest after the bar date. To enjoin people from simply filing proofs of claim or interest contradicts Section 501(a).

42. Similarly, automatically disallowing any filed proofs of claim or interest contradicts Section 502(a). Here, creditors and interest holders have no protection under Rule 3003(b) because the Debtors obtained a conditional waiver from filing schedules. D.I. 31 ¶ 17. But the Debtors' available books and records appear to be incomplete. If creditors or interest holders who are not on the Debtors' radar do file proofs of claim or interest, those proofs of claim or interest could be valid. The Plan should not automatically disallow them, especially if the Debtors lack complete books and records.

43. Where a statute's meaning is plain, "the sole function of the courts is to enforce it according to its terms." *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989) (*citing Caminetti v. United States*, 242 U.S. 470, 485 (1917)). "[I]n the absence of ambiguity in the statute, I must apply it as written." *In re Winstar Communications, Inc.*, 378 B.R. 756, 761 (Bankr. D. Del. 2007). "Courts are not authorized to rewrite a statute because they might deem its effects susceptible of improvement." *Badaracco v. Commissioner of Internal Revenue*, 464 U.S. 386, 398 (1984) (*citing TVA v. Hill*, 437 U.S. 153, 194-95 (1978)); *see also In re Columbia Gas Systems Inc.*, 33 F.3d 294, 302 (3d Cir. 1994) ("the bankruptcy court cannot waive or modify Bankruptcy Code requirements that are plain and unambiguous

because it agrees with the policy underlying the debtor's arguments."); *Law v. Siegel*, 134 S. Ct. 1188, 1194 (2014) ("Section 105(a) confers authority to 'carry out' the provisions of the Code, but it is quite impossible to do that by taking action that the Code prohibits."); *Lamie v. U.S. Trustee*, 540 U.S. 526, 538 (2004) ("Our unwillingness to soften the import of Congress' chosen words even if we believe the words lead to a harsh outcome is longstanding."); *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988) (bankruptcy court's equitable powers "must and can only be exercised within the confines of the Bankruptcy Code."); *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 236 (3d Cir. 2004) ("The general grant of equitable power contained in § 105(a) cannot trump specific provisions of the Bankruptcy Code, and must be exercised within the parameters of the Code itself.").

44. Finally, the above-cited language in Plan sections 9.1 and 9.2 would give the Debtors a partial discharge injunction, even though the Debtors are not eligible for a discharge under Section 1141(d)(3), and Plan section 7 says there is no discharge. *See In re Bigler LP*, 442 B.R. 537, 544-45 (Bankr. S.D. Tex. 2010) (holding that provision that enjoined the post-confirmation prosecution of claims against debtors was "inappropriate as applied to the Debtors because a liquidating Chapter 11 plan may not provide for the discharge of the debtor. § 1141(d)(3)," and "An injunction preventing the post-confirmation prosecution of claims would certainly operate as a discharge of the Debtors."). Automatically prejudging, disallowing, and enjoining the assertion of proofs of claim or interest has no basis in the Bankruptcy Code.

45. The Court should deny confirmation unless the confirmation order provides that Plan sections 9.1 and 9.2 are revised as follows:

> Except as otherwise provided in this Plan, Holders of Claims shall not be required to File a Proof of Claim~~, and no parties should File~~

~~a Proof of Claim. All Filed Proofs of Claim shall be deemed objected to and Disputed without further action by the Debtors~~; *provided, however*, that the Debtors and the Plan Administrator, as applicable, reserve the right to object to any Claim that is entitled, or deemed to be entitled, to a Distribution under this Plan or is rendered Unimpaired under this Plan. ~~Instead, the Debtors intend to make Distributions, as required by this Plan, in accordance with the books and records of the Debtors.~~

[. . .]

~~**Except as otherwise provided herein or in the Confirmation Order, all Proofs of Claim Filed before or after the Effective Date shall be Disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against any Debtor, without the need for any objection by the Debtors or any further notice to or action, order, or approval of the Bankruptcy Court.**~~

Plan § 9.1.

Except as otherwise provided in this Plan, Holders of Equity Interests shall not be required to File a Proof of Equity Interest~~, and no parties should File a Proof of Equity Interest. All Filed Proofs of Interest relating to Equity Interests shall be deemed objected to and Disputed without further action by the Debtors~~; *provided, however*, that the Debtors and the Plan Administrator, as applicable, reserve the right to object to any Equity Interest. ~~Instead, the Debtors intend to make Distributions on account of Equity Interests, as required by this Plan, in accordance with the books and records of the Debtors.~~

[. . .]

~~**Except as otherwise provided herein or in the Confirmation Order, all Proofs of Equity Interest Filed before or after the Effective Date shall be Disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against any Debtor, without the need for any objection by the Debtors or any further notice to or action, order, or approval of the Bankruptcy Court.**~~

Plan § 9.2.

C. Plan Would Cause Interest Holders Who Cannot Be Located To Forfeit Their Distributions

46. The Court should deny confirmation because Plan section 8.6 does not comply with Section 347(a) of the Bankruptcy Code.

47. Section 347(a) provides (emphasis added):

> Ninety days after the final distribution under section 726, **1191**, 1226, or 1326 of this title in a case under chapter 7, **subchapter V of chapter 11**, 12, or 13 of this title, as the case may be, the trustee shall stop payment on any check remaining unpaid, and any remaining property of the estate shall be paid into the court and disposed of under chapter 129 of title 28.

48. An unlocated creditor has a property right in his or her distribution from a bankruptcy estate. *See Leider v. United States*, 301 F.3d 1290, 1296 (Fed. Cir. 2002); *see also In re Rush Hampton Indus., Inc.*, 379 B.R. 192, 193-94 (Bankr. M.D. Fla. 2007) ("A creditor to whom a distribution in a bankruptcy case is payable retains a property interest in such funds . . . Under statutory requirements and due process principles, the Court has the duty to protect the original claimant's property interest by making sure that unclaimed funds are disbursed to their true owner[.]") (quoting *In re App. Unclaimed Funds in Exhibit "A"*, 341 B.R. 65, 69 (Bankr. N.D. Ga. 2005)).

49. Section 347(a) of the Bankruptcy Code specifically references subchapter V, whereas section 347(b) does not.

> It therefore appears that in chapter 9 and chapter 11 cases other than small business reorganizations, uncashed checks are given different treatment than in chapter 7, 12 and 13 cases and cases under subchapter V of chapter 11. In cases under chapters 7, 12 and 13, and cases under subchapter V of chapter 11, the proceeds of such checks are paid into the court, pursuant to the specific directive of section 347(a). In chapter 9 and all other chapter 11 cases, the proceeds revert to the debtor or the entity acquiring assets of the debtor.

3 COLLIER ON BANKRUPTCY ¶ 347.03[2] (Richard Levin & Henry J. Sommer eds., 16th ed.).

50. Here, Plan section 8.6 would function like a chapter 11 plan under section 347(b). It would cause shareholders the Debtors cannot reach to forfeit their distributions in favor of other shareholders the Debtors have reached. Shareholders would be at the mercy of the completeness of the Debtors' books and records. But under Section 347(a), proceeds of uncashed checks in a subchapter V case are paid into the Court. The Court should require that here. The Debtors know how much in notes was converted into equity. The Debtors know how much each equity holder would receive on account of those notes (viz. about 45% of the face amount converted). Amounts owed to unlocated shareholders can be easily reserved and paid into the Court. That way, people with equity claims who come forward later can claim their distribution then, and people who happened to have their contact information included in the remnants of the Debtors' books and records do not receive a windfall.

D. Fee Oversight Should Run to Effective Date

51. The Court should deny confirmation unless the Debtors' professional fees remain subject to Court oversight through the effective date.

52. Plan section 2.1(a) provides in relevant part (emphasis added):

> **Upon the Confirmation Date**, any requirement that Professionals retained in connection with and for services during the Chapter 11 Cases continue to comply with sections 327 through 331 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Debtors and the Plan Administrator may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court. Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Debtors or the Plan Administrator, as the case may be, will, without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented professional fees and expenses incurred by the

Debtors or the Plan Administrator from the Plan Administrator Assets.

53. Professional fees should be subject to Court review through the Effective Date, not just the Confirmation Date. Bankruptcy courts have an independent duty to review fee applications, regardless of whether a party-in-interest objects. *See In re Busy Beaver Bldg. Centers., Inc.*, 19 F.3d 833, 841 (3d Cir. 1994). "[T]he bankruptcy court must protect the estate, lest overreaching attorneys or other professionals drain it of wealth which by right should inure to the benefit of unsecured creditors." *Id.* at 844. The confirmation order should clarify that fee review runs through the Effective Date.

CONCLUSION

54. The U.S. Trustee reserves any and all rights to (i) amend or supplement this objection and (ii) conduct discovery.

WHEREFORE, the U.S. Trustee respectfully requests that the Court deny confirmation of the Plan unless (1) the Debtors demonstrate that the Plan satisfies Section 1129(a)(3); and (2) the confirmation order clarifies that (a) the Plan shall not enjoin the filing of, nor automatically disallow filed, proofs of claim or interest; (b) the Plan shall not establish a discharge injunction; and (c) professional fees shall be subject to Court review through the Plan's effective date.

Dated: May 15, 2025
Wilmington, DE

Respectfully submitted,

ANDREW R. VARA
UNITED STATES TRUSTEE,
REGIONS 3 & 9

By: */s/ Benjamin Hackman*

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11 (subchapter V)
CREATIVEMASS HOLDINGS, INC., *et al.*,	:	Case No. 25-10695 (MFW)
	:	Jointly Administered
Debtors.[1]	:	

CERTIFICATE OF SERVICE

I, Benjamin Hackman, certify that on May 15, 2025, I served a copy of the *Objection of the United States Trustee to Confirmation of the Debtors' Prepackaged Chapter 11 Plan* in the above-entitled action through the CM/ECF notification system, with courtesy copies upon the following via e-mail (unless otherwise noted):

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[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number are as follows: Creativemass Holdings, Inc. (2172) and Creativemass Enterprises US LLC (9046). The Debtors' mailing address is 1209 N. Orange Street, Wilmington, DE 19801.

Dated: May 15, 2025
Wilmington, Delaware

By: */s/ Benjamin Hackman*

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