IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: Apple Tree Life Sciences, Inc., *et al.*,[1] Debtors.	Chapter 11 Case No. 25-12177 (LSS) (Jointly Administered)

OBJECTION OF RIGMORA BIOTECH INVESTOR ONE LP AND RIGMORA BIOTECH INVESTOR TWO LP TO DEBTORS' MOTION FOR APPROVAL OF (I) EXIT FINANCING PROCEDURES; (II) PAYMENT OF UPFRONT DUE DILIGENCE FEE AND STALKING HORSE PROTECTIONS; AND (III) FORM AND MANNER OF NOTICES RELATED THERETO

Parties in interest Rigmora Biotech Investor One LP, by its general partner Unicorn Biotech Ventures One Ltd, and Rigmora Biotech Investor Two LP, by its general partner Unicorn Biotech Ventures Two Ltd (collectively, the "**Rigmora LPs**"), respectfully submit the following objection (the "**Objection**")[2] to the *Debtors' Motion for Approval of (I) Exit Financing Procedures, (II) Payment of Upfront Due Diligence Fee and Stalking Horse Protections, and (III) Form and Manner of Notices Related Thereto* [Docket No. 478] (the "**Procedures Motion**") and state as follows:

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number include: Apple Tree Life Sciences, Inc. (4506); ATP Life Science Ventures, L.P. (8224); ATP III GP, Ltd. (6091); Apertor Pharmaceuticals, Inc. (3161); Initial Therapeutics, Inc. (2453); Marlinspike Therapeutics, Inc. (4757); Red Queen Therapeutics, Inc. (8563); Evercrisp Biosciences, Inc. (4437); Nine Square Therapeutics, Inc. (4503); and Nereid Therapeutics Incorporated (8493). The location of the Debtors' service address in these chapter 11 cases is 230 Park Avenue, Suite 2800, New York, NY 10169.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the *Objection of Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP to Debtors' Motion for Entry of an Order (I) Extending the Debtors' Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances Thereof Pursuant to Section 1121 of the Bankruptcy Code and (II) Granting Related Relief* ("**Exclusivity Objection**"), filed contemporaneously herewith.

PRELIMINARY STATEMENT

1. The Procedures Motion is the latest in a series of gambits by the Debtors to disregard their corporate structure and governance controls and set these cases on a value-destructive path that will not inure to any party's benefit. This is not a standard financing motion, designed to solicit investors for DIP financing to finance the expenses of a chapter 11 case. Nor are the Debtors pursuing exit financing for a confirmable chapter 11 plan that is on file. Instead, the procedures that the Debtors propose in Exhibit A to the Procedures Motion (the **"Plan Investment Procedures"**) are designed to help the GP execute on his stated goal of removing the Fund's 98% LPs through this process, without their consent -- and now make clear that he intends to do so in exchange for far less than the value the LPs are due. While Debtors purport to seek approval of a simple financing motion, in reality, they ask this Court to endorse their effort to hardwire a plan process that is fundamentally at odds with the governing LPA and heavily weighted against the Debtors' fulcrum security holders, the Rigmora LPs.

2. The Plan Investment Procedures start from a flawed premise, and compound their error at each step. To start, bankruptcy does not allow Debtors to ignore the LPA. Quite the contrary: it is a core principle of bankruptcy that prepetition governance mechanisms remain in place and control throughout chapter 11; if the Fund is to be a debtor in chapter 11 at all, that partnership continues to be governed by the terms of its constitutive agreement. The Plan Investment Procedures ignore that core principle and ignore meaningful bargained-for terms of the LPA, that were included to protect the Rigmora LPs and on which the Rigmora LPs relied when they agreed to put $2.425 billion under the GP's management. Perhaps most significantly for these purposes, even though the LPA expressly prevents the GP from bringing any new investors—whether in debt or equity—into the Fund without the Rigmora LPs' consent, the Plan Investment Procedures seek to do just that. The proposed "procedures" seek to open up the

partnership far beyond the terms contemplated by its LPA, by forcibly marketing the Rigmora LPs' interests to new investors through a process that would significantly impair the value of their interests. As the Rigmora LPs have consistently argued, the Fund Debtor is a multi-billion-dollar solvent Fund, created almost entirely – 98% -- with their capital, and holding assets on trust for their benefit. It would be a complete breach of the LPA and betrayal of its principles (and those of Cayman law) to allow the GP to force a sale like that over their objection.

3. If the Fund-Level Debtors remain in chapter 11—which they should not, for all of the reasons now pending before this Court—Cayman law and their Cayman LPA would continue to govern and would prohibit the kind of radical reworking of the Cayman exempted limited partnership that the Procedures Motion contemplates.

4. Proceeding from that flawed premise, the Plan Investment Procedures go on to completely disregard the equities, placing the GP, other insiders, and potential new investors ahead of the Rigmora LPs and their interests in ways that neither the LPA nor bankruptcy law permit. The Debtors purport to propose a marketing process, but it looks nothing like the fair sale process that one might expect in chapter 11, that puts substantially all their assets on the auction block for the highest and best offer and holds the resulting proceeds in the chapter 11 estates for distribution according to bankruptcy law priorities. Because those priorities in this case overwhelmingly favor the Rigmora LPs—who are the fulcrum security, and the ones with the most at stake and the most to lose – the Debtors have gone to great lengths to avoid that kind of a fair process. If the Debtors did that, the winner of that marketing process (or the recipient of resulting value if there were a successful third-party investor) would necessarily be the one party the Debtors do not want to own the assets: the Rigmora LPs, as the fulcrum security.

5. Instead, every aspect of the Plan Investment Procedures is designed to achieve the Debtors' preferred restructuring outcome to the exclusion of all others, as detailed herein. *See* Factual Background ¶¶ 12–13. They presuppose the direction these cases will take: a "plan of reorganization" with a plan sponsor hand-picked by the Debtors' conflicted, insider management. They presuppose the transaction structure: an investment in the reorganized equity interests of the Fund or financing provided to a reorganized Fund that will be 100% owned by a sliver of the Fund's current limited partner investors. They presuppose the restructuring outcome: the "New Fund." They presuppose the governance and management of the reorganized entity: the existing General Partner remains in place in the New Fund, which will be organized under Delaware law (not Cayman law). None of this is consistent with the typical investment or sale procedures this Court approves regularly, and all of it is proposed to be approved well in advance of any plan process where the validity of these approaches would be tested and would fail.

6. Other features of the Plan Investment Procedures are peculiar at first glance. Why insist on a consent to jurisdiction clause for any party that is merely *contacted* by the Debtors or their advisors? Why insist that the New Fund be organized as a Delaware entity? Why insist on cash up front or that any bids must be a minimum of $300 million? Why seek pre-approval of breakup fees, and uncapped expense reimbursements, and Due Diligence Fees (but only a limited number of them)? None of these provisions—and others detailed below—will maximize participation in a fair auction process. But these provisions make much more sense when viewed through the lens of the GP's overarching goal in these cases, which is not, contrary to bedrock bankruptcy principles, to maximize value. It is to weaponize the Bankruptcy Code and rent this Court to oust the Rigmora LPs from their position as limited partners. No canon of bankruptcy law permits a debtor to pursue such a value-destructive path.

7. These fundamental flaws require rejection of the Procedures Motion, or a complete overhaul of its terms. But this Court need not reach these issues now, as it would be inefficient and a waste of judicial resources to consider procedures for Debtors that should be dismissed (or at least returned to the Cayman Court for the winding up trial that, but for Fund-level Debtors' decision to file for bankruptcy, would have already been completed resulting in clarity as to the GP's role and rights under the LPA and Cayman law). For all these reasons, the Court should hold in abeyance or deny the Procedures Motion.

PROCEDURAL BACKGROUND

8. The Court is already familiar with the history of these unprecedented cases. For purposes of this Motion, the Rigmora LPs reiterate that these cases were improperly filed and represent an abuse of the bankruptcy system and that the proper course is for the parties to return to the Cayman Islands. [Docket Nos. 125, 204] The Rigmora LPs reiterate the arguments made in those objections, and the Rigmora LPs' motion to dismiss the Fund and GP chapter 11 cases, and incorporate by reference herein.

9. As further described in the Exclusivity Objection, the Debtors have now filed three motions[3] seeking authorization for financing to be provided from Fund assets to the Debtor portfolio companies, but repeatedly have failed to provide the basic information the Rigmora LPs requested to evaluate those proposals. Even so, and despite that funding would not be permitted under the Fund's LPA without the Rigmora LPs' consent, the Rigmora LPs have now consented twice to the use of Fund assets for chapter 11 administrative expenses and portfolio company operations and are actively and in good faith considering a new round of funding. *See* Docket No. 102; Docket No. 206; Docket No. 532. Despite the failure to reach an agreement on the Debtors'

[3] Docket Nos. 89, 228, 529.

Second Funding Motion, the Rigmora LPs continued to offer additional funding on terms similar to the prior consensual orders. The Debtors, however, did not meaningfully engage with those proposals.

10. While the Rigmora LPs engaged with the Debtors' Second Funding Motion and provided not one but two distinct financing proposals that would have resulted in funding to portfolio companies, the Debtors abruptly pivoted to a DIP financing proposal from Oaktree, as further described in the Exclusivity Motion. As described in more detail in the Exclusivity Objection, the DIP Motion was not a genuine response to near-term distress, but part of a broader effort to advance a restructuring strategy that included courting Oaktree as a new investor who would displace the Rigmora LPs.

FACTUAL BACKGROUND

11. On March 25, 2026, while the Rigmora LPs' motion to dismiss and the Debtors' Funding and DIP Financing motions were still pending, the Debtors filed the Procedures Motion seeking approval of the Plan Investment Procedures, authority to pay upfront due diligence fees to initial bidders, stalking horse protections, such as a break-up fee, and related notice procedures. *See* Procedures Motion. The Procedures Motion is, to our knowledge, unprecedented. A very valuable Cayman ELP, with little to no creditors, is seeking "exit financing" in a U.S. chapter 11 for itself and 15 separate companies without any regard to its controlling corporate governance or operative Cayman law.

12. The Debtors state their intention to use the financing requested "to (i) facilitate payments required under a plan and (ii) provide the Debtors and the non-Debtor portfolio companies with necessary working capital for their day-to-day operations after the effective date of a plan." *See* Procedures Motion ¶ 2. Under the Plan Investment Procedures, any potential investor making an initial bid must include "a minimum facility of no less than U.S. $300 million,"

in their letter of interest. Procedures Motion, Ex. A ¶ 4(A). The Debtors will consider bids of either debt or equity. Procedures Motion, Ex. A ¶ 7(D). The Plan Investment Procedures do not specify what bidders are bidding on, other than to say that First Round LOIs must specify "the amount and type of investment for exit financing" and that bids must also conform to the plan term sheet attached to the Debtors' [Docket No. 313, DIP Financing Motion], which contemplates a reorganized fund, organized under Delaware law with the GP remaining in place. *See* Procedures Motion, Ex. A ¶ 4(C). According to the Debtors, the Indicative Plan Term Sheet is the guidepost for the "financing" being requested by the Plan Investment Procedures. *See* Procedures Motion, Exhibit A, at 4. The Indicative Plan Term Sheet describes a chapter 11 plan that includes the following terms:

- *Classification*. The Rigmora LPs are placed in a class of their own, separate from all other holders of interests in the Fund. Indicative Plan Term Sheet, at 5–6.

- *Treatment*. The two classes of similarly situated equityholders are treated entirely differently with respect to all but a few of the Fund's portfolio companies.[4] The Fund's equity in non-Debtor affiliate Braeburn and the Fund's interests in non-Debtors Tusker Medical, Inc., Syntimmune, Inc., and Corvidia Therapeutics Corporation will be distributed, either directly or through a trust, to all of the limited partners across both classes. *See id.*, at 2, 5–6. All other portfolio companies, debtors and non-debtors alike, will be held by a reorganized fund in which the non-Rigmora LPs retain their interests, whereas the Rigmora LPs are forcibly cashed out with an uncertain recovery. *See id.*, at 2–3.

- *New Investment.* On account of the Oaktree DIP financing (which presumably would be replaced by some other funding if the Debtors' proposed "financing" procedures are permitted to move forward), the new investor would receive an unspecified share of equity interests in the GP and the Fund, *see id.*, at 4, which clearly would replace the Rigmora LPs' existing interests. Despite this being, in economic terms, a sale of the Rigmora LPs' interests, the proceeds of that sale are diverted under the term sheet to pay unpaid administrative fees of all chapter 11 cases (including for the portfolio company debtors), funding for a liquidating trust, and a significant new-money

[4] That difference is not because the Debtors propose to honor the pool structure of the LPA that requires priority distributions to the Rigmora LPs as holders of preferred interest; rather, the Indicative Plan Term Sheet is *ignoring* that structure and providing worse treatment to the Rigmora LPs instead.

investment in the portfolio companies that will be owned by the non-Rigmora LPs. *See id.*, at 5.

- *Releases Favoring Insiders*. Both the Debtors and all third parties will release pre-effective date claims against each other that are in any way related to the Debtors, including claims against directors and officers and without any capacity qualifiers, so both in a personal and official capacity. Indicative Plan Term Sheet, 7–8. The Indicative Plan Term Sheet provides for broad releases for "current and former officers, directors, employees, advisors, attorneys, professionals, accountants, investment bankers, consultants, agents and other representatives" of the Debtors. Id. at 7.

13. The Plan Investment Procedures vest the Debtors (apparently guided by their insider management, not by their independent decision-maker) with broad control over who may participate and what they must provide. The Debtors, based solely on their unlimited discretion, can (i) deem an interested party a "Competitor" and have their participation limited at any point, and (ii) decide that an interested party's confidentiality agreement did not contain enough information to establish enough "financial wherewithal and sophistication" for the party to continue in the process. *See* Procedures Motion, Ex. A ¶ 2. The Debtors' advisors must also approve any co-investment, with a potential bidder needing the Debtors' prior written consent before approaching any other potential bidder regarding a joint bid. *See* Procedures Motion, Ex. A ¶ 3.

14. All potential participants in the bidding outlined in the Plan Investment Procedures—from an initial first-round investor to an ultimate plan sponsor—are deemed to have consented to this Court's jurisdiction. *See* Procedures Motion, Ex. A ¶ 10.

OBJECTION

I. The LPA Forbids the Debtors from Soliciting New Investors for This or Any Other Fund without the Rigmora LPs' Consent

15. It is black-letter law that a debtor's prepetition governance mechanisms continue to control in bankruptcy and that a debtor's organizational documents do not cease to operate upon

the filing of a chapter 11 case. *See, e.g., In re Marvel Ent. Grp., Inc*., 209 B.R. 832, 838 (D. Del. 1997) (shareholder vote to replace board of directors did not violate automatic stay); *see also, e.g*., *In re Indianapolis Downs LLC*, 486 B.R. 286, 302 (Bankr. D. Del. 2013) ("It is axiomatic that the commencement of a Chapter 11 case does not suspend or displace non-bankruptcy law and contractual rights regarding corporate governance."); *In re DocAssist, LLC*, 2014 WL 3955062, at *3 (Bankr. S.D. Fla. Aug. 12, 2024) ("the filing of a [c]hapter 11 [p]etition does not operate to nullify or void regular corporate (or LLC) internal governance constraints.").

16. Here, as addressed in connection with prior motions, the structure, management, and operation of the Fund are controlled by the terms of its prepetition Limited Partnership Agreement (as amended from time to time, the "**LPA**"), which is governed by the law of the Cayman Islands and is expressly subject to the Cayman Islands' Exempted Limited Partnership Act ("ELP Act"). Ex. A, LPA ¶ 18(g)(i). Those Cayman governance controls remain in place in these cases, and the Debtors must comply with them, unless expressly displaced by the Bankruptcy Code. As detailed below, under the terms of the LPA and applicable Cayman law, the Debtors do not have authority to pursue the Plan Investment Procedures.

17. As a threshold matter, the Debtors cannot solicit financing for the Fund—or a successor Fund—without the Rigmora LPs' consent. The LPA explicitly addresses the equity, or partnership, interests in the Fund and fixes the Fund's capital structure by limiting it to five categories of units and strictly regulating their issuance. *Id.* at ¶ 6(c). None of the categories can be expanded or issued without the consent of the Rigmora LPs. Preferred Units, which are the only units that carry voting rights, and Investment Common Units may not be reissued once redeemed or cancelled except "with the prior written consent of the holders of a majority of the Preferred Units." *Id.* at ¶ 6(e). All authorized Preferred and Investment Common Units were issued

by the original LPA, and while subsequent amendments cancelled some outstanding units, those units cannot be reissued without the consent of Rigmora, who holds over 98.4% of Preferred Units. *Id.* at ¶¶ 6(c), (e). The remaining unit classes are even more constrained. Founder Common Units are issued to Dr. Harrison, but any transfer is subject to a right of first offer in favor of the Rigmora LPs. *Id.* at ¶ 12(j). Incentive Common Units and Tracking Units are limited to service providers, with Tracking Units tied to specific projects, and neither may be issued to the "General Partner, the Management Company, Dr. Harrison, or their affiliates without the prior written approval of the holders of a majority of the Preferred Units." *Id.* at ¶ 6(e). And, although investment in some later-created pools operates independently of the Unit system created by LPA ¶ 6, the LPA states by name which entities may contribute to, and receive distributions from, those pools, precluding introduction of new investors. Ex. B, Amendment No. 18 ¶ 1; Ex. C, Amendment No. 20 ¶¶ 1–2. Finally, the Debtors may not amend the LPA to permit them to solicit financing without the Rigmora LPs' consent. Ex. A, LPA ¶ 17.

18. The Plan Investment Procedures disregard these legal and contractual controls entirely, vesting in the Debtors and their management complete discretion over the manner and process of soliciting new investors in the Fund. In addition to reserving the right to amend or modify the Plan Investment Procedures, the Debtors further reserve the right to "(i) negotiate with one or more prospective investors at any time (including by granting exclusivity), (ii) enter into a definitive agreement for any Transaction, (iii) reject any or all proposals at any time prior to entry of an order confirming the Debtors' chapter 11 plan that are (a) inadequate or insufficient, or (b) not in conformity with the requirements of the [Plan Investment Procedures] or the requirements of the Bankruptcy Code, (iv) waive terms and conditions set forth herein with respect to all Potential Investors and Investors, as applicable, or (v) terminate the Exit Financing Solicitation

Process, in each case without prior notice and without assigning a specific reason." Procedures Motion, Ex. A ¶ 11. Far from seeking the Rigmora LPs' consent, the Debtors are not even proposing to "consult" with the Rigmora LPs regarding their solicitation process. *See* Procedures Motion, Ex. A, ¶ (1)(B).

19. The same is true for debt. The LPA provides that the "[the Fund] shall not borrow money except with the prior written consent of the holders of a majority of the Preferred Units." Ex. A, LPA ¶ 2(i). It likewise prohibits the Fund from guaranteeing or otherwise becoming liable for the obligations of another person without that same consent. *See id.* at ¶ 2(h). The Plan Investment Procedures are vague as to whether the Debtors contemplate new debt investors in the Fund. Procedures Motion Ex. A ¶ 4(C) (requiring First Round LOIs specify "the amount and type of investment for exit financing"). Any exit financing facility that contemplates new debt investors in the Fund falls squarely within these prohibitions.

20. To the extent Debtors attempt to end-run the limitations of the LPA and Cayman law by purporting to create a new Delaware partnership, with new terms and new investors, untethered to the LPA, their procedures also fail as a matter of law. Any rights that the GP purports to hold and exercise to manage the Fund and its investments are created and controlled solely by the LPA and Cayman law. Declaration of Mark Phillips KC ("Phillips Decl."), Docket No. 126, ¶¶ 26, 27, 31 (noting the Fund is governed by the LPA and Cayman ELP Act and citing *Re Padma Fund LP* [2021] (2) CILR 556); *id.* ¶ 43 (citing *Kuwait Ports Authority v Port Link GP Limited* [2023] (1) CILR 50); Phillips Decl. Ex. B-05, ELP Act §§ 14, 16 (establishing that limited partners take no active role in the conduct of the business and the GP holds the partnership's assets on trust); Ex. A, LPA ¶ 18(g)(i) (providing that the LPA is governed by Cayman law). It is the LPA that gives the GP the legal authority to manage the Fund's assets—and that requires the GP to

manage those assets for the benefit of the Fund's limited partners, to which it owes fiduciary duties. Phillips Decl. ¶¶ 24(b), 26–27, 57–81.

21. Under Cayman law, the GP's authority is now severely constrained by the GP's own bankruptcy filing. Docket No. 125 ¶ 76; Ex. A, LPA ¶¶ 10, 11 (triggering the winding up of the ELP upon the occurrence of events specified in the ELP Act); Phillips Decl. Ex. B-05, ELP Act § 36(7) (establishing the GP's commencement of bankruptcy proceedings as an event of withdrawal); Phillips Decl. ¶¶ 147–52 (explaining that the GP's powers are now limited to winding up the ELP). But even if this Court were to depart from the terms of the LPA and Cayman law to find that the GP has authority to continue to manage investments notwithstanding its own filing, that authority would ***still*** derive entirely from the LPA and be entirely subject to Cayman law. The GP cannot rely on the powers entrusted to it under the terms of its LPA to manage the Fund and its assets, while disregarding the extensive limits and conditions the LPA places on it. *See Sharon Steel Corp. v. Nat'l Fuel Gas Distribution Corp*., 872 F.2d 36, 40 (3d Cir. 1989) (debtor may not "blow hot or cold" and must take burdens of a contract with the benefits) (citations omitted); *In re DocAssist, LLC*, 2014 WL 3955062 (rejecting as "nonsense" a debtor's request to borrow funds in violation of governing LLC agreement). The notion that the GP can take its authority to manage assets under one partnership agreement, and use that authority to bring in investors that the LPA prohibits, to create a new fund that frees it from the obligations to its prior investors but leaves it with full discretion to manage the assets acquired with their capital, is utterly unsupported and unlawful. Yet that is what the Procedures Motion purports to do.

22. Nowhere in the Procedures Motion do the Debtors grapple with the Cayman law and contractual constraints on their proposed path. Nor do they offer any evidence in the form of witness testimony or documents. Rather the Procedures Motion offers nothing but boilerplate

citations to Bankruptcy Code sections 105(a) and 363(b) to justify this extraordinary departure from their controlling governance. Procedures Motion, ¶¶ 32–34. But the Debtors cannot use those authorities to rewrite their governance charter or create new substantive rights that do not otherwise exist. *See Indianapolis Downs*, 486 B.R. at 302; *see also Law v. Siegel*, 571 U.S. 415 (2014) (Bankruptcy Code section 105(a) cannot be used to create substantive rights not found in the Bankruptcy Code). The Procedures Motion, if approved, would greenlight a restructuring process that would allow the GP to use its powers under the LPA to fundamentally alter the governance, capital structure, and economic arrangements of the Fund without the Rigmora LPs' consent, and while disregarding the LPA's own terms.

23. Finally, the Plan Investment Procedures contemplate the use of the cash held on trust for the Fund's limited partners—including for Due Diligence Fees and stalking horse protections, and transaction costs—without regard to the LPA's strict limitations on capital deployment. Under the LPA, capital contributions may be called and used only for specified purposes and in accordance with budgets approved by the Rigmora LPs. Ex. A, LPA ¶ 5(a). The Procedures Motion does not contend—nor could it—that the proposed expenditures fall within any approved budget or that the required approvals have been obtained. Ex. A. LPA ¶ 5(a)(ii); *see also ATP III GP, Ltd. v. Rigmora Biotech Inv. One LP*, 2025 WL 3496987, at *3 (Del. Ch. Dec. 5, 2025) ("The LPA . . . granted Rigmora the right to approve budgets for projects before the General Partner can call capital for those projects."). The Plan Investment Procedures thus purport to authorize the use of Fund capital in direct contravention of the LPA approval requirements.

24. Core bankruptcy principles insist that corporate governance continues unabated through the chapter 11 process, and the Debtors do not and cannot dispute that the governance here is set by the terms of the LPA and operative Cayman law—without which, the GP has no role and

no authority to manage these investments at all. It is the terms of the LPA that govern and determine what equity may or may not be issued, and what financing the fund may or may not solicit, not the terms of some future fund created without the LPs' consent. Under this LPA, the Debtors cannot solicit investments for new equity stakes that they are not permitted to issue, or otherwise sell or finance interests in a Fund that consists almost entirely of the LPs' capital and assets held on trust for their benefit. In attempting to take those assets, dismantle this Fund, and create a new fund with new terms and investors—out from under the LPs and over their objection—the Debtors' motion assumes a conclusion that they have no legal ability to reach.

II. The Court Should Deny the Procedures Motion as an Improper Sub Rosa Plan and Not a Valid Exercise of Business Judgment

25. Even if permitted under the LPA, the Procedures Motion, while ostensibly seeking approval of mere "Procedures," is precisely the kind of relief courts have warned should be rejected as an improper attempt to sidestep chapter 11's procedural guardrails. As detailed herein, the Plan Investment Procedures contain all the hallmarks of a plan process: the Debtors are seeking permission to solicit investors pursuant to a flawed marketing process for a particular type of restructuring that will dictate the recovery that each class of creditors and interest holders will receive. At the same time, the Debtors propose stripping those interest holders and creditors of all the procedural safeguards chapter 11 imposes on debtors seeking confirmation of a plan. The Court should not permit the Debtors to pursue this value-destructive path.

26. While Bankruptcy Code section 363(b) authorizes a chapter 11 debtor to "use, sell, or lease" property of the estate outside the ordinary course of business, pre-confirmation sales (or use/pledge of estate assets to incur financing) are heavily scrutinized because they risk "deny[ing] creditors the statutory protections they would otherwise receive through the Chapter 11 confirmation process by establishing the terms of a sub rosa, or perhaps more accurately, de facto,

plan in connection with the sale." *In re Tempnology*, 542 B.R. 50, 65 (Bankr. D.N.H. 2015) (*citing In re Iridium Operating LLC*, 478 F.3d 452, 466 (2d Cir. 2007)). To be sure, courts in this jurisdiction routinely approve bidding procedures ahead of contemplated sales under Bankruptcy Code section 363. But courts are specifically charged with policing against "cleverly disguised transactions" that subvert chapter 11's strict safeguards. *In re Boy Scouts of Am*., 137 F.4th 126, 157 (3d Cir. 2025).

27. One mechanism courts use to ensure that procedural safeguards are not being trampled is to evaluate whether proposed bidding procedures constitute an improper "sub rosa" plan. Courts recognize the "sub rosa doctrine as an inherent limitation to authorizations under § 363(b)" and that section 363(b) sales are only permissible if they do not "effectively dictate the terms of an eventual reorganization plan." *Id*. at 157 n. 16.

28. *In re Braniff Airways*, 700 F.2d 935 (5th Cir. 1983), the leading case on improper sub rosa plans, is on all fours and demonstrates why the Plan Investment Procedures are improper. There, the Fifth Circuit reversed the lower courts' approval of a transaction agreement between the debtor and creditors that included a term where certain creditors received cash in exchange for a travel benefit, a valuable asset of the debtor, that could be "used only in a future Braniff reorganization," thereby predetermining plan distributions. *In re Braniff Airways*, 700 F.2d 935, 939 (5th Cir. 1983). In addition, the agreement required secured creditors to vote a portion of their claim "in favor of any future reorganization plan approved by a majority of the unsecured creditors' committee," and provided for the release of claims by all parties against the debtor and other parties. *Id*. at 940. Based on these terms, the Fifth Circuit found the agreement to be an impermissible sub rosa plan that "thwart[ed] the Code's carefully crafted scheme for creditor enfranchisement." *Id*.

29. Here, the Plan Investment Procedures are a quintessential sub rosa plan. The Debtors explicitly require the first-round proposals to be "consistent with the Plan Term Sheet," which the Debtors' representatives have stated refers to the Oaktree plan term sheet attached to the Debtors' DIP financing motion (the "**Indicative Plan Term Sheet**"). *See* Procedures Motion at 8–9; Ex. D, March 31, 2026 Email from P. Mandarino to B. Aebersold (noting in reply to B. Aebersold's question, "Are you able to share the plan term sheet to which the recent filing alluded?" that the "[p]lan ter[m] sheet is attached to DIP motion"). Even if the Debtors ultimately consider bids that depart from the specific Oaktree terms, by building that term sheet as a baseline into the first-round of the procedures, the Debtors are not merely asking bidders to lend or invest money with the goal of maximizing value, the Debtors are *exclusively* soliciting parties for a plan-shaped restructuring transaction. Indeed, to participate in the Debtors' proposed process, an investor has to agree in advance to (i) the use of the investor's cash in the context of a plan of reorganization, (ii) the specific treatment of individual classes of the Debtors' creditors and interest holders, including that the Rigmora LPs' interests in the Fund debtor will be extinguished, and (iii) a transaction structured as an investment in a "New Fund" that is organized under Delaware law, notwithstanding the pendency of the proceedings in the Cayman Islands. *See* Procedures Motion, ¶ 2, Ex. A ¶ 4 (C); Indicative Plan Term Sheet at 6 and 3.

30. To be clear: these are just the features of the Plan Investment Procedures that make it a sub rosa plan. As detailed in the Exclusivity Objection, there are a host of other, substantive problems with the Indicative Plan Term Sheet; had the Debtors sought confirmation of a plan of reorganization in the spirit of the Indicative Plan Term Sheet today, it would be dead on arrival. By smuggling this plan into a "Procedures" motion in the hopes of neutering those confirmation objections ahead of time, the Debtors are seeking approval of a sub rosa plan.

31. Moreover, even if not an impermissible sub rosa plan, the Court should reject the Plan Investment Procedures because they appear designed to further entrench insiders and not maximize value. While courts will often defer to the debtor's business judgment regarding procedures governing sales, when a proposed sale would benefit an insider of a debtor, "the court is required to give heightened scrutiny to the fairness of the value provided by the sale and the good faith of the parties in executing the transaction." *In re Family Christian, LLC*, 533 B.R. 600, 622 (Bankr. W.D. Mich. 2015) (citing *In re Rickel & Assocs., Inc.*, 272 B.R. 74, 100 (Bankr. S.D.N.Y. 2002)). Bidding procedures that are structured to steer a debtor's management towards an insider sale have been found to be "nothing short of incomprehensible." *In re Bidermann Indus. U.S.A., Inc.*, 203 B.R. 547, 551 (Bankr. S.D.N.Y. 1997).

32. *Bidermann* is instructive. There, the court applied heightened scrutiny to a management-sponsored transaction and rejected the proposed bidding framework where management stood on both sides because it would allow the CEO to receive an equity success fee if a management-led buyout group won a sale process. 203 B.R. at 552. The court found that the arrangement was designed to "stifle bidding." *Id*. at 553.

33. This case is no different. The Debtors cannot show that the Plan Investment Procedures are the product of the Debtors' "good faith" desire to maximize value. *See Family Christian*, 533 B.R. at 622. As explained in greater detail below (*see infra* Section III), there are multiple aspects of the Plan Investment Procedures that are designed to exclude the Rigmora LPs from participating in the process (including by requiring bidders to bid in cash) and will chill bidding (including by limiting the number of potential bidders). Put together, the Plan Investment Procedures outline a flawed marketing process that will inevitably lead to a depressed valuation that will harm the Rigmora LPs, the fulcrum security. But unlike many other cases this Court sees,

this is not the case where the bidding procedures can simply be tweaked at the margins to ensure a competitive process, because the entire process that led to the filing of the Procedures Motion has been tainted by conflicts of interest and poor corporate governance.

34. The Rigmora LPs are responding to the Motion in an information vacuum; in addition to ignoring the Rigmora LPs' information requests for months, the Motion entirely lacks evidentiary support and, as of the filing of this Objection, the Debtors have largely refused to respond to the Rigmora LPs' discovery requests. From what the Rigmora LPs can glean, however, it appears the Plan Investment Procedures were designed entirely by the Debtors' insiders and their conflicted advisors with the goal of enriching themselves and entrenching their positions of authority. While the Fund-Level Debtors nominally have an independent director, it does not appear he was consulted about, let alone approved, the Plan Investment Procedures.[5] The Debtors in the past have previewed, and the Indicative Plan Term Sheet contemplates, that the GP—i.e., Seth Harrison and entities Seth Harrison controls—will remain in place post-confirmation. *See* Procedures Motion, Ex. A ¶ 4 (C). Proper corporate oversight was necessary, because the conflicts of interest abound:

- the Fund and ATP III GP, Ltd. (the "**GP**") are conflicted via the theory of "economic asymmetry": the GP benefits disproportionately from upside on successful investments, which can incentivize it to pursue riskier uses of Fund assets that do not align with the Fund's interest in preserving and maximizing value. That tension is not theoretical here, as it has already been actualized in the Cayman Islands dispute, where the Rigmora LPs contend that the GP acted contrary to its duties to the Fund and its investors. *See* Ex. F, Feb. 19, 2026 Hr'g Tr. at 194:4–16 ("[I]f the fund invests and loses money, then the GP is not going to lose any money. It is the LPs going to lose the money. But if the fund is going to be successful, which is the lottery jackpot, then the GP will get some part of the profits. And so this creates what we call economic asymmetry.").

[5] The Rigmora LPs requested the Debtors produce all documents and communications with the independent directors relating to the Plan Investment Procedures. Ex. E, Rigmora LPs' Procedures Motion RFPs and Interrogatories, Request No. 15. The Debtors produced none.

- The Debtors' lead advisors are conflicted, such as Quinn Emanuel who remains conflicted because if the Cayman Court winds up the Fund, the $20 million that was paid to Quinn Emanuel from Fund assets will be void and subject to claw back under Cayman law.

- The interests of the GP and the Fund are not consistent with the interests of the portfolio companies, because the Fund's role is to act as an investor seeking to preserve and maximize value for the Rigmora LPs, while the portfolio companies' interest is to obtain continued funding for cash-intensive operations and research. That divergence is concrete, not theoretical, and has already surfaced in disputes over emergency Fund financing, alleged funding obligations exceeding $200 million, and loans made on terms favorable to the portfolio companies without meaningful analysis of return to the Fund.

- The Debtors' proposed "placement agent," Atlantic-Pacific Capital, is laboring under a conflict of interest, as its proposed fee structure incentivizes it to prioritize lowball bids so it can improve the economics on its post-confirmation carried interest fee.

35. There is no evidence that the Debtors have taken any steps to mitigate these conflicts and the Plan Investment Procedures do not account for the differing interests of these various stakeholders. Unless and until these conflicts are redressed, the Court should deny the Procedures Motion and reject the Plan Investment Procedures.

III. If the Court Approves the Plan Investment Procedures, They Must Be Modified to Ensure They Maximize Value.

36. For the reasons explained above, the proposed Plan Investment Procedures are the product of a tainted process designed to achieve an impermissible outcome. While the Plan Investment Procedures are nominally called financing procedures, the Indicative Plan Term Sheet that bidders must use as their starting point belies that characterization, making clear that, in substance, this is a marketing process for equity in the New Fund.

37. It is a bedrock principle of bankruptcy law that any proposed bidding procedures must be designed to maximize the value of the debtors' assets. *See In re Summit Glob. Logistics, Inc*., Case No. 08-11566, 2008 WL 819934, at *12 (Bankr. D.N.J. Mar. 26, 2008); *In re Flour City Bagels, LLC*, 557 B.R. 53, 78 (Bankr. W.D.N.Y. 2016); *In re GSC, Inc*., 453 B.R. 132, 169 (Bankr.

S.D.N.Y. 2011). Where appropriate, courts have also ordered debtors to devise new procedures for conducting sales when initial auction procedures were "not designed to insure a competitive bid," reflected an "unwillingness or inability to maximize the value of [the debtor]'s assets" and "unduly favored" an insider. *Solow v. Stone*, 994 F. Supp. 173, 176 (S.D.N.Y.), aff'd, 163 F.3d 151 (2d Cir. 1998). The Court should not approve the Plan Investment Procedures because they are not designed to achieve that goal. Instead they are designed to entrench insiders and their conflicted advisors. *See supra* Section II.

38. But if the Court were inclined to permit the Debtors to move forward with soliciting investors without a confirmable plan on the horizon, there are numerous aspects of the Plan Investment Procedures that must be modified to ensure a level playing field, avoid wasting estate resources and encourage maximum participation by as many competitive bidders as possible. Below, we organize the most problematic aspects of the Plan Investment Procedures into the following categories: (i) those that predetermine transaction structure and form of consideration (i.e., what makes them a sub rosa plan); (ii) the Debtors' authority to limit competitors' bidding; (iii) the requirement that all parties broadly consent to this Court's jurisdiction; and (iv) the various fees the Debtors want pre-approval to pay to potential, yet-to-be-identified bidders. Each category suffers from numerous defects that must be fixed before the Court permits the Debtors to begin a marketing process.

39. ***Predetermining transaction structure and form of consideration***. The Plan Investment Procedures provide that any party seeking to participate in the process must, in its First Round LOI, propose exit financing or an investment of at least $300 million in a manner consistent with the Indicative Plan Term Sheet. As discussed above (*see supra* Section II), the requirement that any bid conform to a specific restructuring path, one currently reflected by the Indicative Plan

Term Sheet, confirms the Plan Investment Procedures are a sub rosa plan masquerading as a mere procedures motion.

40. But the requirement that all bids be in the form of a new investment and otherwise conform to the Indicative Plan Term Sheet serves another, even more insidious purpose: it appears the Debtors are pursuing a framework designed to exclude the Rigmora LPs from participating in the auction process. There is no purpose to require the Rigmora LPs to advance at least $300 million to acquire something they already own more than 98% of, other than to make it harder for them to participate in the process at all.[6] The Rigmora LPs already own more than 98% of the Fund's equity interests. With no funded debt and minimal creditors, the preferred interests the Rigmora LPs hold are undoubtedly the Fund's fulcrum security. In a level playing field, any bidder would thus have to outbid the Rigmora LPs. Because the Rigmora LPs can roundtrip 98% of any bid, they have the ability, effectively, to set the price of these assets, absent some procedures that expressly or effectively limit their ability to do that.[7]

41. Moreover, the Indicative Plan Term Sheet (and by extension, the Plan Investment Procedures) reveal the Debtors' plan to provide current management discretion over how much of the new investment will be allocated to post-effective date working capital needs. In addition to violating the Chancery Court's ruling that the Fund must comply with budgets approved by the Rigmora LPs, this provision effectively gives the Debtors' current conflicted management carte

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[6] In fact, the Debtors' have previously expressed unfounded concern about the Rigmora LPs' supposed liquidity constraints, *see e.g.*, Docket No. 245 ¶¶ 8, 32, 49–51 (asserting that Rigmora's "liquidity crisis" drove its refusal to honor capital commitments and that Rigmora gave no indication it intended to comply with the Chancery Court's judgment prior to the Petition Date), notwithstanding that they honored the capital call before the deadline, further corroborating their intent to exclude the Rigmora LPs from participating.

[7] The Indicative Plan Term Sheet contemplates the Fund reorganizing as a Delaware entity. To the extent that requirement remains in place, it imposes yet another hurdle on the Rigmora LPs, or any other foreign bidder, participating—thus further chilling participation with the potential effect of artificially reducing the ultimate offered price.

blanche to determine how much of a recovery the Rigmora LPs will see on their multi-billion dollar investment. This approach is reminiscent of the GP's losing request in the Delaware Court of Chancery to forfeit half of the Rigmora LPs' interest in the Fund. *See* Docket No. 204, ¶ 7

42. ***Limitations on "Competitors" bidding***. The Procedures provide that the Debtors, in their sole discretion, may withhold information from, and exclude from the marketing process, "Competitors," defined as "an actual or potential competitor of the Debtors or [a party that] holds a meaningful equity or debt interest in a direct competitor of the Debtors." Procedures Motion, Ex. A ¶ 2. The Debtors retain that unfettered discretion even if the deemed Competitor establishes a "clean team," which is commonly used to address exactly these concerns in the M&A context. *See, e.g.*, *In re Food52, Inc.*, Case No. 25-12277 (LSS) (Bankr. D. Del. Jan. 12, 2026) (reserving the debtors' right to limit access to sensitive diligence materials); *In re Novan, Inc.*, Case No. 23-10937 (LSS) (Bankr. D. Del. Aug. 15, 2023) (same); *In re In-Shape Holdings, LLC*, Case No. 20-13130 (LSS) (Bankr. D. Del. Jan. 20, 2021) (same, for business-sensitive materials and subject to a reasonableness qualifier). The Rigmora LPs do not dispute that the Debtors need to be protective of their intellectual property and sensitive confidential information. But given the Debtors' apparent desire to pursue a transaction that benefits their insiders and does not maximize value, they should not be granted such broad discretion to limit the pool of potential bidders.

43. ***Deemed Consent to Jurisdiction.*** The Plan Investment Procedures provide that certain parties are deemed to have consented to the Court's binding, and effectively exclusive, jurisdiction over a sweeping range of matters, including any Transaction, the construction or enforcement of any agreement or document related to a Transaction, and even matters as to which it is later determined that the Court lacked jurisdiction. Procedures Motion, Ex. A ¶ 10. This deemed consent provision does not require any affirmative action by the party. Rather, it

encompasses any "Potential Plan Sponsor," which the Plan Investment Procedures define to include any party contacted by the Debtors' advisors as potentially interested in the marketing process. *Id.*; *see* Procedures Motion, Ex. A at 1.

44. The "deemed consent to jurisdiction" provisions are yet another attempt to exclude the Rigmora LPs from participating in the process. The Plan Term Sheet purports to unwind the current Fund—a Cayman exempted limited partnership—and replace it with a new fund, governed by Delaware law. Procedures Motion, Ex. A ¶ 10. But whether and how this Fund can be wound up is a question of Cayman law subject to the exclusive jurisdiction of the Cayman Courts. Ex. G, *Family Mart China Holding Co Ltd v Ting Chuan (Cayman Islands) Holdings Corporation* [2023] UKPC 33 at [80]; Phillips Decl. Ex. B-05, ELP Act § 36(3) (incorporating exclusive jurisdiction provision from Phillips Decl. Ex. B-04, Cayman Companies Act, § 92). The Rigmora LPs have pending claims in the Cayman Court to that effect, and rights and remedies that the Cayman Court must adjudicate. Although that action is currently stayed, it cannot as a matter of Cayman law be fully resolved by this U.S. court, and would need to proceed at this point; instead, the Debtors seek to force the Rigmora LPs into the catch-22 of giving up their Cayman claims and Cayman relief, in order to participate in this process—or risk losing their multi-billion-dollar investment to a low-ball bid. If these cases remain in this Court, they should not proceed in a way that disregards principles of comity and governing Cayman law, and forces the Rigmora LPs to surrender rights and interests in order to participate in the process at all.

45. There are at least three other problems with the consent to jurisdiction provision.

- *First*, the Debtors cannot manufacture consent to jurisdiction for third parties based on no action of their own. That is, a party could receive an email from the Debtors' advisors, ignore it, and yet be deemed to have consented to the Court's jurisdiction. But parties cannot consent to subject matter jurisdiction. *See Vuyanich v. Smithton Borough*, 5 F.4th 379, 385 (3d Cir. 2021).

- Second, even if it were enforceable, the consent is overbroad and could lead to absurd results, including the Court having binding jurisdiction over a new LPA in the event of an equity investment, the application of the credit agreement documents related to the exit facility with the reorganized Debtors, or even the current LPA, on the theory that it relates, "among other things," "in any way" to the terms of a transaction to emerge from chapter 11. *See, e.g.*, *In re Food52, Inc.*, Case No. 25-12277 (LSS), Docket No. 80, Annex 1 at 8 (Bankr. D. Del. Jan. 12, 2026) (consent to jurisdiction expressly tied to disputes related to the marketing process, auction, and sale); *In re Novan, Inc.*, Case No. 23-10937 (LSS), Docket No. 166, Exhibit 1 at 7 (Bankr. D. Del. Aug. 15, 2023) (same); *In re AGDP Holding Inc.*, Case No. 25-11446-MFW, Docket No. 17, Exhibit 1 at 15 (Bankr. D. Del. Sept. 11, 2025) (same). Indeed, the Plan Investment Procedures could even be read as granting a blanket consent untethered to any affirmative act by the participant. *See* Procedures Motion, Exhibit A at 10.[8]

- Third, the deemed consent provision is materially broader than the formulations typically used in this District, where parties are deemed to submit to jurisdiction by the affirmative act of submitting a bid or bid materials, not by the Debtors' unilateral decision to contact them. *See, e.g.*, *In re Food52, Inc.*, Case No. 25-12277 (LSS), Docket No. 80, Annex 1 at 8 (Bankr. D. Del. Jan. 12, 2026) (consent-to-jurisdiction terms applicable to "Qualified Bidders"); *In re Novan, Inc.*, Case No. 23-10937 (LSS), Docket No. 166, Exhibit 1 at 7 (Bankr. D. Del. Aug. 15, 2023) (same, and requiring bids to include an affirmative statement of such consent); *In re Melinta Therapeutics, Inc.*, Case No. 19-12748 (LSS), Docket No. 280, Exhibit 1 at 10 (Bankr. D. Del. Feb. 11, 2020) (consent-to-jurisdiction terms applicable to "Potential Bidders" who had signed a confidentiality agreement and shown financial capacity to consummate a transaction).

46. ***Fees***. The Debtors seek pre-approval to grant three kinds of fees to potential bidders: (i) a "Due Diligence Fee" of up to $1 million per bidder, up to an aggregate cap of $3 million; (ii) a "Breakup Fee" of up to 3% of total cash consideration (with crediting for payment

[8] That provision reads in full (emphasis added): All Potential Plan Sponsors, First Round Investors, and Investors, as applicable, shall be deemed to have (i) consented to the jurisdiction of the Court to enter any order, which shall be binding in all respects, in any way related to, ***among other things,*** (a) these Procedures or (b) the construction or enforcement of any agreement or any other document relating to a Transaction, including the Debtors' Chapter 11 Plan, the confirmation order related thereto, and the Investment Agreement, (ii) waived any right to a jury trial in connection with any disputes relating to these Procedures, or the construction or enforcement of any agreement or any other document relating to a Transaction, and (iii) consented to the entry of a final order or judgment in any way related to these Procedures, or the construction or enforcement of any agreement or any other document relating to a Transaction if it is determined that the Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the parties.

of a Due Diligence Fee or reimbursement of expenses); and (iii) an uncapped expense reimbursement. Procedures Motion ¶¶ 18, 22. These fees are not appropriate, and the Court should not pre-approve them at this juncture.

47. As a threshold matter, this Court has specifically disfavored fees that (i) amount to funding a potential purchaser's diligence efforts, (ii) would not encourage other parties to participate in the marketing process, or (iii) would provide debtors with prospective authority to offer stalking horse protections. *In re UpHealth Holdings, Inc., et al.*, Case No. 23-11476-LSS, Docket No. 1027 Hearing Tr., 26:1–6, 30:1–25, 31:1–14 (Oct. 9, 2024); *see also In re UpHealth Holdings, Inc., et al.*, Case No. 23-11476-LSS, Docket No. 854 (Bankr. D. Del. Aug. 6, 2024) (approving bidding procedures that require a separate notice, motion, and hearing for the court's consideration of any proposed stalking horse protections). Here, each of the proposed fees outlined below violates these guidelines: the Due Diligence Fees are for the express purpose of funding potential bidders' due diligence efforts *and* the Debtors seek prospective authority to offer stalking horse protections. This Court should follow its past practice and reject the Debtors' attempts to do so here.

48. Nor will the proposed fees and expense reimbursement foster competitive bidding or advance value maximization. Fees and expenses provided by debtors to third parties to facilitate a market test are not entitled to the insulation afforded by deference to the debtors' business judgment. *See In re O'Brien Envtl. Energy, Inc*., 181 F.3d 527, 532–37 (3d Cir. 1999) (declining to follow other courts that apply business-judgment deference in similar circumstances); *In re Reliant Energy Channelview LP*, 594 F.3d 200, 209 (3d Cir. 2010) (affirming and applying the rule from O'Brien); *In re Energy Future Holdings Corp*., 904 F.3d 298, 313–14 (3d Cir. 2018). Rather, the Third Circuit has instructed that, when movants seek approval based on *potential*

benefits, that discretion is ultimately a "judgment call about whether the proposed fee's *potential* benefits to the estate outweigh any *potential* harms, such that the fee is 'actually necessary to preserve the value of the estate[.]'" *Energy Future Holdings Corp.*, 904 F.3d at 314 (citing *O'Brien*, 181 F.3d at 535) (emphasis added); *see Reliant Energy*, 594 F.3d at 208 (affirming the denial of proposed fees and, in so doing, holding that the bankruptcy court did not abuse its discretion by weighing the proposed fee's potential benefits against its potential harms). It is also of note that during prepetition discussions with Oaktree regarding financing for Braeburn, Oaktree did not contemplate charging any due diligence or related fee.

49. While breakup fees and expense reimbursements are commonly used to induce bidders to serve as a stalking horse and set a floor at auction, the sheer conglomeration of proposed fees the Debtors seek pre-approval of—before a bidder has even surfaced—is staggering, and to our knowledge, unprecedented. Taken together, these fees could lead to massive value leakage from the estate for potentially no corresponding benefit.

- *Upfront Due Diligence Fees.* The Investment Plan Procedures authorize the Debtors to pay up to $1 million to potential bidders (up to an aggregate cap of $3 million) as Due Diligence Fees to defray costs related to obtaining scientific advice in the marketing process. Procedures Motion ¶ 18. This proposal is unworkable and will only serve to waste estate resources and limit competitive bidding. With every bidder knowing the Debtors' negotiating limit, they will each be incentivized to demand the full $1 million in Due Diligence Fees. With a limit of $3 million to offer, that means the Debtors may inadvertently be limiting themselves to only three bidders (plus Oaktree, who apparently already received $1 million from non-debtor Braeburn) in the process. In addition, the Debtors are authorized to grant this fee at the First Round LOI stage, before any bids are binding. There is therefore nothing to prevent a party from treating the Due Diligence Fee as a windfall and then walking away from the process.

- *Break-Up Fee.* The Procedures provide that, if the Debtors designate a Plan Sponsor Stalking Horse, they may provide that party with a break-up fee of up to 3% of the gross cash consideration, less any expense reimbursement and Due Diligence Fee, subject to certain terms. Procedures Motion ¶ 22. The Debtors do not cite, and we are unaware, of an instance of a court in this district or anywhere else approving a breakup fee in the context of a "financing procedures" motion. Consistent with this Court's prior practice, the Court should deny the Debtors' request for authority to provide a

Break-Up Fee without a record showing a specific committed stalking horse bid in hand and an actual benefit to the estate.

- *Expense Reimbursement*. The Plan Investment Procedures appear to contemplate expense reimbursement, but the Debtors' motion is not clear as to the amount, cap, or conditions. Procedures Motion ¶¶ 18, 22. Courts typically condition reimbursement of expenses to actual, documented, and reasonable out-of-pocket expenses and ordinarily subject to a cap.[9] At a minimum, any expense reimbursement should be limited to actual, documented, reasonable out-of-pocket expenses, subject to a hard cap and should be approved only on a transaction-specific record.

CONCLUSION

WHEREFORE, the Rigmora LPs request that the Procedures Motion be denied and for such other and further relief as the Court deems just and proper.

[9] *See In re Kidde-Fenwal, Inc.*, No. 23-10638 (LSS), Docket No. 601 at 2 (Bankr. D. Del. Nov. 7, 2023).

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Wilmington, Delaware

Respectfully Submitted,

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