IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11 (Subchapter V)
QLESS, INC.,[1]	Case No.: 24-11395 (BLS)
Debtor.	**Objection Deadline: August 21, 2024 at 5:00 p.m. (ET)** **Hearing Date: August 27, 2024 at 2:00 p.m. (ET)** **Re: Docket Nos. 70**

OBJECTION OF ALEX BÄCKER AND CERTAIN PREFERRED SHAREHOLDERS TO DEBTOR'S SUBCHAPTER V ELIGIBILITY AND PLAN

Alex Bäcker ("Bäcker") and Cerocaru Investment Trust, Ricardo Bäcker, Tom Mitchell and Xianzhong Chen (together, the "Preferred Shareholders," and with Bäcker, the "Objectors"), by and through their undersigned counsel, hereby file this objection (the "Objection") to (1) QLess, Inc.'s election and representation that it is a small business debtor eligible for relief under subchapter V of chapter 11 of the Bankruptcy Code and (2) the *Plan* [D.I. 70] (the "Plan").[2] In support of this Objection, the Objectors respectfully state as follows:

PRELIMINARY STATEMENT

1. The Debtor's eleventh-hour attempt[3] to manufacture eligibility as a subchapter V debtor on the eve of the sunset of the $7.5 million statutory cap, in an effort to shirk responsibility

[1] The Debtor's principal place of business and service address is 21 Miller Alley, Suite 210, Pasadena CA 91105.

[2] Capitalized terms used but not otherwise defined herein shall have the meaning given to them in the Plan.

[3] The Small Business Reorganization Act of 2019 (SBRA) was enacted on August 23, 2019, with an effective date of February 19, 2020. Pub. L. No. 116-54 (2019). Upon enactment, small business debtors with less than about $2.75 million in debts, which amount would be adjusted at 3-year intervals per 11 U.S.C. § 104, could voluntarily elect to proceed under a new subchapter V of chapter 11 of the Bankruptcy Code if they met certain eligibility criteria. Shortly thereafter, the CARES Act increased this debt limit to $7.5 million, for cases pending, commenced on, or commenced after March 27, 2020, which increase was

to its founder, shareholders, and litigants for a merger transaction that directly benefitted the debtor's private equity controlling shareholder who has necessitated, financed, and is the sole beneficiary of this bankruptcy, does not pass muster.

2. The glaring blanks and undetermined amounts for readily-known claims in Debtor's schedules and the evasive responses at the 341 Meeting (defined herein) evidence efforts to shoehorn this Debtor into subchapter V and improperly invoke the expedited process, more limited oversight, and lesser requirements for confirmation that are afforded to small business debtors who appropriately qualify to be a debtor under section 1182 of the Bankruptcy Code. But the shoe does not fit this Debtor.

3. On this flawed footing, the Debtor and its controlling shareholder turned DIP lender, further seek improperly overbroad injunction, exculpation, and gatekeeping provisions in the Plan to cobble together an impermissible non-consensual third-party release in the wake of *Purdue Pharma* and immunize themselves from any liability for the Objecting Creditor's claims relating to the Merger Transaction (defined herein) or Bäcker's wrongful termination. The Plan itself fails to satisfy the most fundamental requirement—that it be in the best interest of the Debtor's creditors—relying upon a liquidation value that is inexplicably 97% below a valuation conducted in 2023 to assert that creditors receive more under the Plan than in a hypothetical liquidation.

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then further extended by two additional acts until June 21, 2024. *See* Pub. L. No. 116-136 (2020), as amended by Pub. L. No. 117-5 (2021), as further amended by Pub. L. No. 115-151 (2002). The extension that increased the debt limit applicable to subchapter V cases to $7.5 million expired on June 21, 2024. Therefore, had the Debtor filed this case only two days later, its debtors would have exceeded the applicable $3,024,725 debt limit. Nonetheless, its debts exceed the $7.5 million limit as well.

4. Accordingly, the Objecting Creditors respectfully request that the Court strike the Debtor's designation as a subchapter V debtor, terminate the appointment of the subchapter V trustee in this case, and deny confirmation of the Plan.

BACKGROUND

A. The Bankruptcy Filing

5. On June 19, 2024, (the "Petition Date"), QLess, Inc. ("QLess" or the "Debtor") commenced this case by filing a voluntary petition for relief under subchapter V of chapter 11 of the Bankruptcy Code (the "Petition") [D.I. 1]. On the Balance Sheet that was included with the Petition, the Debtor listed its "Total Current Liabilities" as $6,934,907.79 and its "Total Liabilities" as $13,504,290.20. *See* Petition, p. 14.

6. Debtor is authorized to continue to operate its businesses and manage its properties as debtor and debtor-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.[4] On June 2, 2024, David M. Klauder was appointed as the subchapter V trustee [D.I. 12]. No committee of unsecured creditors was appointed in these cases.

B. Objecting Creditors' History with QLess and The Shareholder Litigation

7. In 2007, Bäcker founded QLess, Inc., an innovative and award-winning software-as-a-service company that produced and licensed a virtual queue management system to reduce the time that customers wait in line for services. Bäcker's mission for QLess was to eliminate waiting in line from the face of the Earth.

8. As of 2020, QLess was generating millions of dollars of annual revenue with near-term revenue projections approaching $100 million of annual revenue.

[4] Unless otherwise specified, all statutory references to "Section" are to 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code").

9. At the beginning of 2021, QLess had two groups of shareholders: (i) the common shareholders, and (ii) the Series A and A-1 preferred shareholders, of which Palisades Growth Capital II, L.P. ("Palisades")—a private equity firm—owned over 80% of QLess's preferred stock. As QLess's controlling and majority preferred shareholder, Palisades controlled QLess through its voting power and veto rights for a range of QLess's decisions, including, any merger, asset sale, or other corporate reorganization and the incurrence of any debt through borrowed funds.

10. Palisades appointed three members (the "Palisades Directors") of QLess's five-seat Board of Directors (the "Board") and officers and therefore controlled the Board.

11. In 2021, the Board, at the direction of Palisades, guided QLess into a freeze-out merger transaction at less than fair market value and for the purpose of removing QLess's shareholders from the rapidly growing company for Palisades' benefit.

12. In January 2021, Palisades expressed its intention to acquire QLess and proposed a two-step merger transaction. First, Palisades would secure additional voting power and leverage over QLess through a $1 million financing. Second, QLess would be sold to Palisades at an undervalued price. Palisades justified this proposal based on purported liquidity needs of QLess, which were overstated and of Palisades' own making.

13. In March 2021, QLess entered a convertible note transaction with Palisades, over Bäcker's objections, that was conditioned on QLess initiating a process to sell the company. This transaction was approved by the Board without consideration of whether a financing transaction with QLess's controlling shareholder that was conditioned on initiating a merger process that Palisades would control through its veto power, was in the best interest of QLess's shareholders, despite the availability of two markedly better financing offers which the Board failed to pursue at the direction of Palisades.

14. Palisades, through the Palisades Directors, controlled the sale process. Although three bids from bidders outside of Palisades were generated that were favorable to QLess's shareholders, Palisades utilized its veto power over these merger transactions and coerced QLess into an acquisition transaction with itself.

15. Furthermore, as a result of Palisades' control over the Board, the Board ignored an offer to replace QLess's senior lender at the time (whose technical default was manufactured at Palisades' request and was explicitly called a "red herring" by Palisades' Managing Director at a QLess board meeting) and to inject millions of additional dollars into QLess. The availability of this alternative financing demonstrates that a sale of QLess was not necessary.

16. As a result of Palisades' control over the Board, the Board accepted Palisades' offer reflecting an enterprise value of $24.7 million, which was significantly less than the prior valuations and the alternate bids that projected QLess to be worth in excess of $100 million (the "Merger Transaction").

17. Furthermore, Palisades dictated that the Merger Transaction be structured as a "Deemed Liquidation Event," as defined by the Debtor's Amended and Restated Articles of Incorporation, dated November 19, 2012 (the "Articles of Incorporation"), which caused nearly the entirety of the merger consideration that it paid for QLess to be paid to itself, with no merger consideration to common shareholders.

18. In 2021, following the Merger Transaction, Bäcker, who had served as the President of QLess and a member of the Board since 2007, was improperly terminated from QLess and removed from the Board.

19. As a result of this termination, in June 2022, Bäcker submitted claims to arbitration in accordance with his employment agreement for unpaid compensation under his employment

agreement and for consulting services, severance, and certain bonuses, which total approximately $2.4 million (collectively, the "Arbitration Claims").

20. On December 27, 2023, Bäcker and the Preferred Shareholders filed a verified complaint in the Court of Chancery of the State of Delaware ("Chancery Court") bringing various claims for breach of fiduciary duty relating to the Merger Transaction against QLess, Palisades, and the Palisades Directors (the "Shareholder Litigation").[5] The Shareholder Litigation is now stayed as to the Debtor by operation of the automatic stay, and is temporarily stayed as to the other defendants by consent of the parties, through August 30, 2024.

C. The Schedules and the 341 Meeting

21. On July 17, 2024, the Debtor filed the *Schedules of Assets and Liabilities for QLess, Inc. (Case No. 24-11395)* [D.I. 66] (the "Schedules"), as subsequently amended on August 2, 2024 [D.I. 91] (the "Amended Schedules"), listing the Debtor's total liabilities as $8,111,375.37. *See* Schedules, p. 3; Amended Schedules, p. 3.

22. On July 17, 2024, the Debtor also filed the *Statement of Financial Affairs for QLess, Inc. (Case No. 24-11395)* [D.I. 67] (the "SOFA"), as subsequently amended on August 2, 2024 [D.I. 92] (the "Amended SOFA"), which listed $2,469,749.33 as being paid within the 90 days before the Petition Date. *See* SOFA, pp. 26-28; Amended SOFA, pp. 26-28. Additionally, the Amended SOFA reflects that the day before the Petition Date, the Debtor made several large

[5] The Objectors timely filed proofs of claim asserting and preserving claims against the Debtor by the General Bar Date of August 19, 2024, relating to the Shareholder Litigation and the Arbitration Claims. However, upon information and belief the Debtor did not provide Objectors with ballots to enable them to vote on the proposed Plan by the voting deadline of August 21, 2024 at 5:00 p.m. (ET) (the "Voting Deadline") by returning physical ballots received by the Voting Deadline with no option for electronic submission of ballots. Objectors nevertheless sought ballots from the Debtor's claims and noticing agent and are using best efforts to hand deliver ballots to the claims and noticing agent by the Voting Deadline, but for the avoidance of doubt, Objectors each vote to reject the Plan.

payments totaling $350,230.34, and on the Petition Date, the Debtor made a payment of $18,904.11. *Id.*

23. On June 28, 2024, the United States Trustee scheduled a meeting of creditors pursuant to Section 341 (the "341 Meeting") for July 19, 2024 at 2:00 p.m. [D.I. 38, 39].

24. On July 19, 2024, the initial 341 Meeting was held by the United States Trustee, at which the Debtor's Chief Executive Officer, James Harvey (the "Debtor Representative") appeared and testified on behalf of the Debtor regarding the Petition, Schedules, and SOFA. A true and correct copy of a transcript of the United States Trustee's official recording of the 341 Meeting is attached hereto as **Exhibit A** ("341 Tr."). The United States Trustee continued the 341 Meeting and the 341 Meeting was concluded on August 12, 2024 [D.I. 98].

25. On its Schedules, the Debtor listed the following debts totaling at least $1,078,729.96 as contingent and/or unliquidated and provided the following rationales at the 341 Meeting:

- **Brex, Inc.** – Schedule D, § 2.1
  Claim Amount: Undetermined
  Listed As: Unliquidated
  Reason: Debtor Representative "could not explain why this is undetermined" and did not know how much was owed to Brex, Inc. as of the Petition Date. *See* 341 Tr. 105:13-106:6.

- **International Revenue Service** – Schedule D, § 2.3
  Claim Amount: $243,000.00
  Listed As: Contingent and Disputed
  Reason: Liability pre-dated Debtor Representative's arrival at QLess. *See* 341 Tr. 49:13-106:6. The Debtor failed to remit payroll taxes to the IRS so a lien was filed. *Id.* The Debtor paid the IRS the payroll taxes, penalties, and interest but the lien was not removed and the Debtor did not follow up. *Id.* Debtor Representative stated that the IRS still has a lien against the Debtor. *Id.*

- **State of Washington** – Schedule E/F, § 2.1
  Claim Amount: Undetermined
  Listed As: Unliquidated
  Reason: Debtor Representative did not know what tax period this claim referred to, the amount of these taxes, or when these taxes need to be paid. *See* 341 Tr. 108:12-109:12.

- **US Small Business Administration** – Schedule E/F, § 3.18
  Claim Amount: $127,237.00
  Listed As: Contingent and Disputed
  Reason: This amount pre-dated Debtor Representative's "time with QLess." *See* 341 Tr. 110:16-111:8. Debtor Representative understood this amount to be for a PPP, that the Small Business Administration asserts QLess owes and that QLess "disputed [] because [QLess] did not agree that [QLess] owed that amount." *Id.* Debtor Representative could not remember when the dispute was submitted to the Small Business Administration. *Id.*

26. Although Debtor Representative signed Debtor's Schedule and SOFA, Debtor Representative was unresponsive or claimed not to know the answers to the many of the questions at the 341 Meeting. *See* 341 Tr. 22:12-20 (number of Debtor's shareholders); 23:15-17 (how many shareholders Debtor had one year ago); 36:25-37:2 (who conducted the 2023 appraisal of the Debtor); 41:1-12 (Debtor's privacy policy); 45:2-17 (whether there has been any counterclaims filed in the pending litigation with the Debtor and the position on lawsuits being contingent and unliquidated); 68:24-69:10 (Debtor's net income for the last three years and last profitable year); 79:4-24 (how long amounts owed to Hogan Lovells were outstanding); 82:10-23 (payments made to auditor prepared for investors and lender); 84:14-23 (payment made to Ellucian Company, LP day before Petition Date); 86:2-13 ($18,904.11 made to Brex, Inc. on Petition Date); 88:6-9 (payments made to Morris Nichols); 88:18-90:17 (payments made to ClearPoint, LLC for financial services); 92:10-14 (prospective payment to ClearPoint, LLC); 94:22-96:19 (payments made to Debtor's director Mr. Tapling); 100:22-101:10 (value provided under valuation); 103:7-12 (what constitutes long term liabilities on Debtor's schedule); 104:21-105:9 (whether the Debtor's liability included amounts Debtor listed as contingent, undisputed, and disputed); 105:19-106:6

(what secured Brex. Inc.'s secured claim and how much money was owed to Brex, Inc. on the Petition Date); 106:7-108:2 (the outstanding amount owed to Celtic Bank, what the scheduled claim for Celtic Bank included, the interest rate for the loan, and the monthly payment amounts for the loan); 108:20-109:22 (the period for the scheduled sales tax claim owed to the State of Washington, the typical amount of such sales taxes, and when such taxes are due); 109:17-110:11 (whether the $250,000 "loan" from Palisades was included in the Debtor's balance sheet, whether there was a written agreement accompanying this loan, and whether there are any repayment terms for this loan); 111:14-112:18 (how payments to QLess AM were structured, whether QLess AM was owed amounts as of the Petition Date, and whether QLess AM has a claim that was scheduled); 115:22-117:5 (whether the Debtor was current on payments to vendors who did not appear on the schedules).[6]

27. Furthermore, despite the United States Trustee stating that amounts should be included on the Schedules for the Shareholder Litigation Arbitration Claim as that amount is known by the Debtor and the purpose of the Schedules is disclosure, the Debtor refused to update the Schedules to reflect such an amount as such claims, characterizing the Arbitration Claim as "broad-reaching and frivolous." *See* Tr. 341 49:9-51:15.

D. Palisades as DIP Lender

28. Predating the filing of this bankruptcy and since the Petition Date, Palisades has exerted control over the Debtor. On the day before the Petition Date, Palisades purportedly provided the Debtor with a $250,000 undocumented unsecured loan, which the Debtor lists as an

[6] In response to informal discovery requests from the Objectors, the Debtor produced certain explanations and responsive documents shortly before the deadline to object to the Plan. Objectors continue to review and evaluate the materials produced by the Debtor and reserve all rights to seek other and further discovery, and to raise additional arguments arising from the ongoing discovery process in an amended objection or at any hearing with respect to the Debtor's eligibility for subchapter V or confirmation of the Plan.

unsecured claim rather than an equity investment, despite having testified at the 341 Meeting that the Debtor Representative did not know if there was a written agreement or repayment terms accompanying the infusion of $250,000 into the Debtor's business. *See* Amended Schedule E/F, § 3.10; 341 Tr. 59:22-61:7; 110:1-12.

29. On the Petition Date, the Debtor filed an *Emergency Motion of the Debtor for Interim and Final Orders (I) Authorizing and Approving Debtor to (A) Obtain Debtor in possession Financing on a Junior Secured Basis and (B) Use Cash Collateral of Pre-Petition Secured Lender; (II) Scheduling a Final Hearing; and (III) Granting Related Relief* [D.I. 7] (the "Financing Motion"), seeking approval of $1 million in secured financing on an interim basis and a total of $3.5 million on a final basis from a newly formed entity owned and controlled by Palisades. On June 21, 2024, the Court approved the Financing Motion on an interim basis [D.I. 27], and on July 17, 2024, the Court approved the Financing Motion on a final basis [D.I. 59].

E. The Plan

30. On July 19, 2024, the Debtor filed the Plan, and on July 23, 2024, the Debtor filed a *Notice of: (A) Hearing to Consider Confirmation of Debtor's Chapter 11 Plan; (B) Deadline for Voting to Accept or Reject Plan; and (C) Related Matters* [D.I. 76] which established August 21, 2024 as the deadline for parties to object to confirmation of the proposed Plan, and scheduled a hearing to consider confirmation of the proposed Plan for August 27, 2024 at 2:00 p.m. (ET).

i. Claim Treatment and Classes

31. Under the Plan, the Debtor seeks to reorganize "through among other things, an elimination of litigation that has been burdening the Debtor's liquidity and profitability and a conversion of the debt the Debtor has incurred during the Case into equity." *See* Plan, p. 3.

32. Under the Plan, there are six classes of creditors. Class 1 consists of Celtic Bank's Secured Claim which the Debtor estimates to be approximately $6,500,000[7] as of the Effective Date. *See* Plan, § 4.1.3.

33. Class 2 is comprised of Palisades' DIP Loan claim, which is estimated to be $3,800,000 as of the Effective Date, including accrued and unpaid interest and fees. Plan, § 4.2.3. As treatment for its Class 2 claim, Palisades will receive senior preferred capital stock in the Debtor ("New Preferred Shares") that will constitute 30% of the fully-diluted equity capital of the Debtor if Class 4, General Unsecured Claims vote in favor of the Plan. Plan, § 4.2.2. However, if Class 4 votes to reject the plan, Palisades will receive $3,050,000 in New Preferred Shares constituting 24% of the Debtor's stock on a fully-diluted basis and an allowed administrative expense claim of $750,000 with accruing interest. Plan, § 4.2.2.

34. Class 4 consists of General Unsecured Claims, which includes the Shareholder Lawsuit Claim, the Palisades Claim, the Arbitration Claim, and all Rejection Damages Claims. This class also includes claims that arise under obligations of the Debtors to indemnify any person where such obligation is not subject to an applicable Insurance Policy [Plan, § 2.56] —these "Non-Insured Indemnity Claims" were not included on the Debtor's Schedules. Plan, § 4.4.

35. The Debtor estimates the value of the claims in Class 4 to be $738,000, and of this amount, $338,000 is attributed to vendors and other general unsecured creditors and $150,000 is attributed to Rejection Damages Claims. Plan, § 4.4.3. The remaining $250,000 is not expressly

[7] The Debtor's estimation of Celtic Bank's Secured Claim is $55,487.00 more that the scheduled amount for this claim [*see* Amended Schedule D, § 2.2], and Debtor's Representative was not able to answer questions about the outstanding amount of this claim at the 341 Meeting. *See* 341 Tr. 45:23-46:12 (Debtor Representative cannot confirm why value of collateral supporting Celtic's claim is listed as undetermined); 106:7-107:4 (Debtor Representative cannot confirm or remember whether Celtic's Secured Claim included interest, fees, and other charges, Debtor's counsel stating that scheduled amount included principal and anything else).

allocated in the Plan as the valuation for the Palisades Claim; however, it appears that the Debtor did not estimate any claim value at all for the Shareholder Lawsuit Claim, the Arbitration Claim, or the Non-Insured Indemnity Claims in the Plan or the Schedules. Plan, § 4.4.3.

36. The Plan also contains a gratuitous, punitive death trap provision for General Unsecured Claim Holders. Plan, § 4.4.2. Although subchapter V permits a plan to be confirmed even if a class votes to reject the plan so long as the plan does not discriminate unfairly and is fair and equitable with respect to any class that does not accept the plan, the Debtor, nonetheless, incorporated a death trap provision for Class 4 General Unsecured Claims. 11 U.S.C. § 1191(b). Under the death trap, if Class 4 votes to accept the Plan, Palisades will waive its $250,000 purported general unsecured claim and, assuming that the Arbitration Claim and Shareholder Lawsuit Claims are entirely disallowed, General Unsecured Claim Holders will receive a projected recovery of 88.75% of the claims, subject to dilution by any Allowed Non-Insured Indemnity Claims, which are not valued under the Plan. If Class 4 votes to reject the Plan, Palisades will receive its Allowed Administrative Claim of $750,000 and will not waive its purported $250,000 unsecured claim and, assuming that the Arbitration Claim and Shareholder Lawsuit Claims are entirely disallowed, General Unsecured Claim Holders will receive a projected recovery of 6.9% of the claims, which is still subject to dilution by any Allowed Non-Insured Indemnity Claims, which are not valued under the Plan.

ii. *Liquidation Analysis and Projected Disposable Income*

37. The Debtor claims that it "easily satisfies the Best Interests Test with respect to any holder of an Allowed General Unsecured Claim that may Vote." *See* Plan, § 1.3.5(c). To satisfy the best interest test, the Debtor attached a liquidation analysis to the Plan that assumes that the Debtor's assets have a "gross liquidation value between $168,000 and $915,000" so that no

recoveries would be possible for any creditors aside from the Debtor's secured debt holders. *See* Plan, § 1.3.5(a).

38. Following questioning at the 341 Meeting, where testimony referred to a February 2023 valuation of which Mr. Harvey was unable to recall any details, and shortly before the deadline to object to the Plan, the Debtor produced to the Objectors a copy of a valuation dated January 31, 2023 and prepared by Carta Valuations LLC on May 5, 2023 (the "2023 Valuation"), a copy of which is attached hereto as **Exhibit B**.. The 2023 Valuation concluded that **the market value of QLess was $27,692,000**. The Plan's Liquidation Analysis does not adequately detail how the liquidation value of the business was reached—**a liquidation value which represents a nearly 97% decline in value over approximately 18 months with no explanation**—especially given the 2023 Valuation and the bids that the Debtor received in connection with the sale that was conducted as part of the Merger Transaction.

39. The Plan, the Liquidation Analysis, and the Projected Disposable Income, do not value the "Allowed Non-Insured Indemnity Claims," which will dilute the recovery for General Unsecured Claims under the Plan.

40. Although the Debtor reports making $2,469,749.33 in payments during 90 days before the Petition Date, the Plan and the Liquidation Analysis also do not account or provide for any value for preference or avoidance actions, contain no discussion of any investigation into the potential value of these actions, and contain no estimate of the value of these claims.

iii. The Overbroad Injunction and Exculpation and Targeted Gatekeeping Provisions

41. The Plan also implements broad injunction, exculpation, and gatekeeping provisions that essentially carve out a non-consensual third-party release for the benefit of Palisades and its representatives.

42. Under the Plan's injunction, "all entities who have ever held or will ever hold any Claims are permanently enjoined from . . . (i) commencing or continuing in any manner any action or other proceeding against any property dealt with by the Plan, . . . (iv) commencing or continuing any action that does not comply with or is inconsistent with the Plan or the Bankruptcy Code." Plan, § 10.1.1.

43. Pursuant to the proposed exculpation under the Plan, in addition to the Debtor and the estate, Palisades and "all of their respective directors, officers, employees, managers, managing members, members, financial advisors, attorneys, accounts, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives" would be exculpated for any act or omissions arising from the Petition Date through the Effective Date connected with, related to, or arising out of this case, except those that would be a crime, actual fraud, willful misconduct, or gross negligence. Plan, §§ 2.42 & 10.2.

44. Furthermore, under the gatekeeping provision in the Plan, Gated Parties may not commence or pursue any claim or cause of action of any kind—including negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence—relating to, *inter alia*, the Case or property to be distributed under the Plan against any Protected Party, which includes Palisades and its representatives, until this Court determines such claim is colorable and specifically authorized the Gated Party to bring that claim or cause of action. Plan, § 10.3. "Gated

Parties" are limited and defined to directly target Bäcker and the plaintiffs in the Shareholder Litigation and the Bäcker Arbitration. Plan, § 2.46.

ARGUMENT

A. The Debtor is Not Eligible to Proceed Under Subchapter V

45. Despite its best efforts to orchestrate and otherwise manufacture eligibility, the Debtor is not eligible for relief under subchapter V because its non-insider debt exceeds the $7.5 million debt cap.

46. As of the Petition Date, Section 1182, which governs the eligibility of a debtor to proceed under subchapter V of the Bankruptcy Code, required that a debtor have less than $7,500,000 in aggregate non-contingent, liquidated, secured and unsecured debts (excluding debt owed to one or more affiliates or insiders). QLess does not meet this requirement, and, therefore cannot confirm a plan under subchapter V.

47. Under Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 1020(b), a party in interest may file an objection to a debtor's election to proceed under subchapter V of chapter 11 within 30 days after the conclusion of the 341 Meeting, which in this case would be September 11, 2024, as the 341 Meeting concluded on August 12, 2024.

48. It has generally been held that the debtor bears the burden of proof for establishing eligibility, and numerous courts have specifically held that a debtor bears the burden to "demonstrate satisfaction of the eligibility requirements for subchapter V." *In re Sullivan*, 626 B.R. 326, 330 (Bankr. D. Colo. 2021); *see also In re Zhang Med. P.C.*, 655 B.R. 403, 409 (Bankr. S.D.N.Y. 2023); *In re Blue*, 630 B.R. 179, 187 (Bankr. M.D.N.C. 2021) ("When a party challenges debtor's eligibility to file under a particular chapter of the United States Bankruptcy Code, the debtor carries the burden of establishing such eligibility."); *In re Offer Space, LLC*, 629 B.R. 299, 304 (Bankr. D. Utah 2021); *In re Port Arthur Steam Energy, L.P.*, 629 B.R. 233, 235 (Bankr. S.D.

Tex. 2021) ("If a party-in-interest objects, the debtor bears the burden of proving eligibility under Subchapter V."); *In re Ruthellen W. Rickerson,* 636 B.R. 416, 422 (Bankr. W.D. Pa. 2021) ("It has generally been held that the burden of proof in establishing eligibility for bankruptcy relief lies with the party filing the bankruptcy petition. The large majority of the cases that have considered issues of eligibility specific to Subchapter V have adopted that same view.") (citations omitted); *In re Dille Family Trust*, 598 B.R. 179, 189 (Bankr. W.D. Pa. 2019).

49. Although expediency is intended for subchapter V debtors, "when Congress expanded the reach of Subchapter V to debtors who have up to $7.5 million in debts, it made Subchapter V available to entities having more complex creditor relationships than a debtor in a typical Chapter 12 or 13 case." *In re Parking Mgmt., Inc.*, 620 B.R. 544, 551 (Bankr. D. Md. 2020). As such, "[t]he court need not find a lack of good faith or candor to conclude it should review the claims" in a case where there are reasonable grounds to dispute whether specific claims were contingent and/or unliquidated as of the petition date. *Id.* Nonetheless, because the debt limitation that applies in a chapter 13 bankruptcy is similar to the debt limitation that applies in a subchapter V case, courts have looked to chapter 13 case law when considering the eligibility of a subchapter V debtor. *In re Blue*, 630 at 192 n.12 (looking to chapter 13 case law interpreting a debtors eligibility under chapter 13 in subchapter V case); *In re Zhang Med. P.C.*, 655 B.R. 403, 408 (Bankr. S.D.N.Y. 2023) ("That case was not a subchapter V case; instead, it arose in the analogous context of the debt limit for chapter 13 eligibility."); *In re Parking Mgmt., Inc.* 620 B.R. at 550.

50. Disputed debt is considered when evaluating whether the Debtor has exceeded the subchapter V cap. *See In re Corson,* No. 03-18160F, 2004 WL 5865045, at *12 (Bankr. E.D. Pa. June 25, 2004) (explaining that a disputed debt is considered for chapter 13 eligibility purposes);

In re Knight, 55 F.3d 231, 234 (7th Cir. 1995) ("a disputed claim is a debt to be included when calculating § 109(e) requirements"); *In re Leggett*, 335 B.R. 227, 229–30 (Bankr. N.D. Ga. 2005) ("A dispute over the debtor's liability does not make a debt contingent or unliquidated.") (citations omitted); *In re Claypool*, 142 B.R. 753, 755 (Bankr. E.D. Va. 1990) ("[a] liquidated, noncontingent claim whose validity is in dispute must nevertheless be included in determining eligibility").

51. Furthermore, "when it appears that the debtor has not exercised reasonable diligence or good faith in completing and filing the schedules, the bankruptcy court may look to other evidence, including post-petition events, to determine eligibility." *In re De Jounghe*, 334 B.R. 760, 768 (B.A.P. 1st Cir. 2005) (citations omitted). In evaluating eligibility, the Court can consider whether debt may have been understated or omitted by the Debtor. *In re Barcal*, 213 B.R. 1008, 1015 (B.A.P. 8th Cir. 1997) ("it is appropriate for a court considering eligibility to rely primarily upon a debtor's schedules and proofs of claim, checking only to see if these documents were filed in good faith. In so doing, however, the court should neither place total reliance upon a debtor's characterization of a debt nor rely unquestionably on a creditor's proof of claim, for to do so would place eligibility in control of either the debtor or the creditor.") (citations omitted); *In re Perkins,* 581 B.R. 822, 834 (B.A.P. 6th Cir. 2018) (a debtor whose scheduled debts can nonetheless fall below the debt limit "if from the face of the schedules it is apparent to a legal certainty that the debtor is beyond the debt limit, and second, if evidence shows that the amounts were inaccurately scheduled in bad faith for the purpose of making the debtor eligible for Chapter 13."); *In re Ollis*, 609 B.R. 459, 465 (Bankr. D.S.C. 2019) (looking beyond the schedules to determine a chapter 13 debtor's aggregate debt "because the evidence demonstrates that certain amounts on [debtor's] Schedules were grossly inaccurate and numerous debts were omitted"); *In re Kelly*, Case No. 18-13244, 2018 WL 4354653, at *5 (Bankr. D. Md. 2018) ("[I]t would

eviscerate the Chapter 13 eligibility requirements if a court could only consider a debtor's schedules regardless of their completion and apparent inaccuracies.").

52. In the context of considering a debtor's eligibility and reviewing whether the debt limit cap has been met, "a bankruptcy court can 'scrutinize and redesignate the characterization by a debtor of any given debt when that characterization is the subject of a case or controversy.'" *In re Kelly*, 656 B.R. 541, 580 (Bankr. D. Md. 2023) (quoting *In re Stern*, 266 B.R. 322, 326 (Bankr. D. Md. 2001).

53. In this case, based on the Debtor's Amended Schedules alone, it is undisputed that the Debtor has aggregated noncontingent, liquidated, secured and unsecured debt as of the Petition Date in the amount of $7,032,645.41. If the Court determines that the Debtor erroneously scheduled more than $467,354.59 of its debts as contingent and/or unliquidated, or failed to schedule such additional debt in any amount at all, the Debtor does not meet the definition of a "debtor" under Section 1182 and is ineligible to proceed under subchapter V of chapter 11.

54. Here, the Court should not rely solely on the debtor's characterization of debts, as it is clear from the face of the Schedules and the Amended Schedules as well as the testimony at the 341 Meeting that the schedules were compiled to manufacture the Debtor's alleged subchapter V eligibility.

i. *The Undetermined and Unliquidated Amounts on the Schedules Provide a Ready Basis for the Debtor to Exceed the Statutory Cap*

55. The Debtor listed both (i) Brex, Inc.'s secured claim and (ii) the priority claim held by the State of Washington Department of Revenue for Q2 2024 sales taxes as undetermined and unliquidated. *See* Amended Schedule D, § 2.1; Amended Schedule E/F, § 2.1.

56. Although whether a claim is "liquidated" for purposes of a debtor's eligibility is not defined in the Bankruptcy Code, "courts have generally held that a debt is liquidated if its

amount is readily and precisely determinable, as where the claim is determinable by reference to an agreement or by a simple computation." 2 Collier on Bankruptcy P109.06[2][c] (16th 2024).

57. Debt that is owed to Brex, Inc. under a credit card agreement is unquestionably readily and precisely determinable. The Debtor included in their Amended SOFA several payments that were made to Brex, Inc. in the 90 days prior to the Petition Date and the payments to Brex, Inc. in the eleven days prior to the Petition Date alone totaled $300,361.91—this does not even include the $18,904.11 payment that was made to Brex, Inc. on the Petition Date. Yet as reported in the Debtor's Schedules, they purport to be unable to determine what they owe to Brex, Inc?

58. Similarly, the amount that is owed to the State of Washington Department of Revenue for sales taxes should be readily able to be computed by the Debtor based on its known Q2 2024 sales and prior sales taxes that were paid in Q1 2024—this claim is not unliquidated (certainly not by August 2, 2024 when the Debtor filed its Amended Schedules).

59. Therefore, these debts, which are able to be determined readily and precisely, should be calculated and would count towards the Debtor's subchapter V cap as these claims are not marked contingent. The failure to include these amounts evidences that the Debtor conveniently understated its debts right before the $7.5 million cap was scheduled to sunset and it would no longer have a chance to maneuver itself into this subchapter of the Bankruptcy Code to evade responsibility in litigation and to benefit Palisades.

ii. *The Large Payments Made on the Eve of Filing to Manufacture Eligibility*

60. Despite not being valued in the Debtor's liquidation analysis included in the Plan, the Debtor made $2,469,749.33 in payments during 90 days before the Petition Date.[8] *See* SOFA pp. 26-28; Amended SOFA pp. 26-28. If the Debtor had paid just 18.92% less during this period, the Debtor would not qualify as a subchapter V debtor.

61. The timing of these payments is particularly illuminating as shown below:

- During the first 19 days of June 2024, the Debtor made payments totaling $931,475.51.
- Of that amount, the Debtors made three payments totaling $216,199.31 on June 17, 2024—only two days before the Petition Date.
- On June 18, 2024, the day before the Petition Date, the Debtors made eight large payments totaling $350,230.34.
- Finally, on the Petition Date, the Debtors made an $18,904.00 payment to Brex, Inc. based on a credit card agreement.

62. If the $585,333.76 that was paid by the Debtor during the three days prior to the Petition Date on the eve of this bankruptcy filing had not been paid, based solely on the claims that the Debtor listed as non-contingent and liquidated on its Schedules, the Debtor would have been $117,979.17 over the $7.5 million subchapter V limit.[9]

iii. *The Debtor's 341 Testimony Raised More Questions Than It Answered*

63. Mr. Harvey's testimony at the 341 Meeting raised, for the first time, the existence of a contractual relationship between the Debtor and QLess AM, an Armenian company that

[8] This total does not even take into account the additional $996,534.23 in payments made to insiders in the year prior to the Petition Date, which could provide additional valuable estate claims. Amended SOFA, pp. 29-30.

[9] Alternatively, if the Debtor had waited two more days until June 21, 2024 to file the case—even with the payments made in the days prior to the Petition Date—they would have been $4,007,920.41 over the new subchapter V debt limit.

provides a significant number of employees to the Debtor necessary to operate the Debtor's business. *See* 341 Tr. 12:5-15:11. Curiously, no executory contract with QLess AM is listed on the Debtor's Schedules G—not even when they amended the Schedules after the 341 Meeting. Moreover, Mr. Harvey was unable to testify as to the terms of the contract, nor did he know whether the Debtor owed any money to QLess AM as of the Petition Date (which amounts should have also been listed on Schedule E/F but were not). *See* 341 Tr. 111:14-112:18. It was also unclear from Mr. Harvey's testimony what the relationship is between QLess and QLess AM, and whether QLess AM, through its direct or indirect ownership, would qualify as an "insider" of QLess. *See* 341 Tr. 13:10-14:10. In fact, the only mention of QLess AM in the Debtor's Schedules or SOFA was the $640,155.00 in transfers made to QLess AM in the 90 days before the Petition Date, including $200,000.00 paid just two days before the bankruptcy filing.

B. The Plan Has Not Been Proposed In Good Faith and Does Not Meet the Best Interest Test

64. Section 1190 provides that at a minimum, a subchapter V plan must, *inter alia*, include "(A) a brief history of the business operations of the debtor; (B) a liquidation analysis; and (C) projections with respect to the ability of the debtor to make payments under the proposed plan or reorganization." 11 U.S.C. § 1190(1)(A). In addition to the requirements under Section 1190, a subchapter V plan must further satisfy the requirements of Section 1129(a), which includes a good faith standard and a best interest of creditor's test. 11 U.S.C. §§ 1191; 1129(a); *In re 303 Invs., Inc.*, No. 22-14267-JGR, 2024 WL 3355169, at *5 (Bankr. D. Colo. June 24, 2024).

i. The Good Faith Standard Has Not Been Met

65. In any voluntary chapter 11 case, the debtor bears the burden of proving good faith. *In re SGL Carbon Corp.*, 200 F.3d 154, 162 (3d Cir. 1999) (chapter 11 petitions are subject to

dismissal unless filed in good faith); *In re PPI Enterprises (U.S.), Inc.*, 324 F.3d 197, 211 (3d Cir. 2003).

66. The determination regarding the good faith requirement "is a 'fact intensive inquiry' in which the court must examine 'the totality of facts and circumstances' and determine where a 'petition falls along the spectrum ranging from the clearly acceptable to the patently abusive.'" *In re Integrated Telecom Express, Inc.*, 384 F.3d 108, 118 (3d Cir. 2004) (quoting *Solow v. PPI Enters. (U.S.), Inc. (In re PPI Enters. (U.S.), Inc.)*, 324 F.3d 197, 211 (3d Cir. 2003).

67. This good faith inquiry focuses on "whether the petitioner sought 'to achieve objectives outside the legitimate scope of the bankruptcy laws' when filing for protection under Chapter 11." *Primestone Inv. Partners L.P. v. Vornado PS, L.L.C.* (*In re Primestone Inv. Partners L.P.)*, 272 B.R. 554, 557 (D. Del. 2001) (quoting *In re SGL Carbon*, 200 F.3d at 165).

68. As the court explained in *In re Team Sys. Int'l LLC*, "while the fact that a bankruptcy case was filed to take advantage of a provision of the Bankruptcy Code does not, in and of itself, show either good faith or bad faith—it is a truism every voluntary case is filed because the debtor sees an advantage to filing—the circumstances of that filing can give rise to an inference in either direction." 640 B.R. 296, 311 (Bankr. D. Del. 2022). In that case, the court reasoned that "the bankruptcy filing made immediately prior to a hearing at which the debtor faced the prospect of being held to account for its failure to comply with an order granting post-judgment discovery to the judgment creditors, coupled with the filing of the motion to dismiss, is more than sufficient to put the question of good faith 'at issue.'" *Id.*

69. Courts have considered numerous factors when examining whether a debtor filed their petition in good faith, which include "whether the debtor: (a) has only a single asset; (b) has few unsecured creditors; (c) has no ongoing business or employees; (d) filed the petition on the

eve of foreclosure; (e) is engaged in a two-party dispute which can be resolved in pending state court action; (f) has no cash or income; (g) has no pressure from non-moving creditors; (h) has filed a previous bankruptcy petition; (i) has engaged in improper prepetition conduct; (j) has no possibility of reorganization; (k) was formed immediately prepetition; or (l) filed solely to create automatic stay. *In re BYJU's Alpha, Inc.*, No. 24-10140 (JTD), 2024 WL 3738150, at *2 (Bankr. D. Del. Aug. 8, 2024) (citing *Primestone Inv. Partners L.P. v. Vornado PS, L.L.C. (In re Primestone Inv. Partners L.P.)*, 272 B.R. 554, 557 (D. Del. 2002) (applying the above factors); *In re Jer/Jameson Mezz Borrower II, LLC*, 461 B.R. 293, 298-99 (Bankr. D. Del. 2011) (same)). Although a debtor's subjective intent is considered in this analysis, the good faith inquiry "depends 'more on [an] objective analysis of whether the debtor has sought to step outside the "equitable limitations" of Chapter 11.'" *Id.* (citing *In re SGL Carbon Corp.*, 200 F.3d at 165).

70. Here, the Debtor paid off numerous creditors on the eve of filing (in addition to understating its liabilities) so that it could facially qualify as a subchapter V debtor right before the debt limit adjusted down, with the stated goal of pursuing this case to (1) eliminate the Shareholder Litigation and the Arbitration Claim (which the parties had already litigated for five days and was poised for closing briefing and judgment) and (2) provide Palisades with further equity in the Debtor. *See* Plan, p. 3.

71. The factors that courts consider in this context militate toward a finding that the Debtor filed this case in bad faith. First, the Debtor only has 21 unsecured creditors—including Palisades and nine individuals or entities who may have claims relating to the Merger Transaction. Second, the Petition was filed on the eve of the sunset of the expanded subchapter V cap, and in a circumstance where subchapter V provides the Debtor with its only viable opportunity to present the Plan, which would otherwise not be able to be confirmed. Third, the case was filed to provide

the Debtor—*and Palisades*—an opportunity to utilize the automatic stay and escape liability for the litigation surrounding the Merger Transaction, which is currently pending in Chancery Court. Fourth, as discussed above, the Debtor improperly engineered this subchapter V filing by, *inter alia*, making $2,469,749.33 in payments during 90 days before the Petition Date (and $931,475.51 in payments during the first 19 days of June alone). *See* SOFA pp. 26-28; Amended SOFA pp. 26-28. Fifth, the Schedules, SOFAs, and testimony at the 341 Meeting failed to provide relevant and necessary information related to the Debtor's assets and liabilities, including, but not limited to, the relationship with QLess AM and key terms of and complete current balance outstanding as of the Petition Date of the Celtic Bank secured debt. *See* 341 Tr. 106:7-108:2; 111:14-112:18. For these reasons, the Debtor exceeded the equitable limitations of Chapter 11 when filing this case and did not do so in good faith.

ii. *The Plan is Not in the Best Interest of Creditors*

72. The best interest of creditors requirement that a creditor must receive at least as much in a reorganization as it would in a liquidation established under Section 1129(a)(7) is "one of the cornerstones of chapter 11 practice" and is the plan proponent's burden. 7 Collier on Bankruptcy P 1129.02[7] (16th 2024); *In re W.R. Grace & Co.*, 475 B.R. 34, 142 (D. Del. 2012) ("the plan proponent bears the burden of proof to establish by a preponderance of the evidence that its plan is within the creditors' best interests"). This foundational guarantee to creditors applies in equal measure in a subchapter V bankruptcy. *In re Wetter*, 620 B.R. 243, 255 (Bankr. W.D. Va. 2020) (citing 11 U.S.C. § 1181(a)).

73. "To satisfy the best interests of creditors test, the court looks at a hypothetical chapter 7 liquidation." *In re Boteilho Hawaii Enterprises, Inc.*, No. 22-00827, 2023 WL 7117223, at *1–2 (Bankr. D. Haw. Oct. 24, 2023) (considering a liquidation analysis presented in a

subchapter V case). This liquidation analysis must be based on evidence; however, this analysis "is, by nature, inherently speculative and is often replete with assumptions and judgments." *In re PC Liquidation Corp.*, 383 B.R. 856, 868 (E.D.N.Y. 2008).

74. A trustee's avoidance powers may affect the liquidation analysis. *In re Wetter*, 620 B.R. 243, 255 (Bankr. W.D. Va. 2020); *In re Affiliated Foods, Inc.*, 249 B.R. 770, 788 (Bankr. W.D. Mo. 2000) (The liquidation analysis "requires an estimation of the value of all of the bankruptcy estate's assets, including such hard to determine values as disputed and contingent claims, *id.*, the potential disallowance of claims (under § 502(d)), *id.*, the probability of success and value of causes of action held by the estate, *In re Texas Extrusion Corp.*, 844 F.2d 1142, 1158 (5th Cir.1988), and, in this case, potential preference actions.").

75. Here, the Debtor—who bears the burden of proof—states in conclusory fashion that it "easily satisfies the Best Interests Test with respect to any holder of an Allowed General Unsecured Claim that may Vote." *See* Plan, § 1.3.5(c). This is not true. The Debtor's Liquidation Analysis does not provide sufficient support for its depressed valuation of a business at a "gross liquidation value between $168,000 and $915,000," when Palisades purchased the Debtor at an undervalued enterprise value of $24.7 million in 2021, and the 2023 Valuation paced the market value of QLess at $27,692,000. The Plan, as filed, contains no explanation of how the business purportedly lost 97% of its value within the 18 months before the Petition Date, at a time when the Debtor brought its newer, better product to market and had implemented "significant" expense reductions. *See* Harvey Decl., D.I. 9, at ¶ 21. There is no evidentiary support for the liquidation value included in the Liquidation Analysis—the sole basis upon which the Debtor relies to assert that creditors receive more under the Plan than in a hypothetical liquidation scenario.

76. Moreover, despite the Plan expressly preserving avoidance actions as assets of the estate, the Liquidation Analysis fails to mention avoidance action claims at all, therefore ascribing no value to those claims whatsoever, despite the nearly $3 million in known transfers made during the 90-day preference period.[10] Mr. Harvey testified at the 341 Meeting that he had not evaluated any avoidance actions or potential preference actions.

77. Given these large unknowns, which unquestionably impact the liquidation analysis, the Debtor has not met its burden and has not satisfied the best interests test.

iii. *The Punitive Death Trap Provision in the Plan Should Not Be Approved*

78. In addition to not meeting the best interest test, the Plan, which primarily benefits Palisades, needlessly foists a strictly punitive death trap provision on General Unsecured Creditors. Plan, § 4.4.2.

79. "A 'death-trap' provision is a coercive provision that seeks to encourage claimants to vote in favor of a plan with promises—in return for a favorable vote—of treasure and/or favorable treatment. Should the claimants vote against the plan, the claimants will receive less or no treasure and/or is otherwise penalized." *In re MPM Silicones, L.L.C.*, 596 B.R. 416, 424 (S.D.N.Y. 2019) (citing Douglas E. Deutsch., *Chapter 11 Plan Confirmation Issues: Settlements, Releases, Gifting and Death Traps*, 29-OCT Am. Bankr. Inst. J. 54, 91 (2010)).

80. While in a traditional chapter 11 cases, the carrot and stick approach that a death trap provision offers may serve a purpose, here, the Debtor gains *nothing* by offering creditors a treasure. Subchapter V permits a plan to be confirmed even if a class votes to reject the plan, so

[10] Since the Debtor has failed to schedule an executory contract for QLess AM, the $640,155.00 in transfers made to QLess AM during this time may be particularly ripe for collection by a chapter 7 trustee.

long as the plan does not discriminate unfairly and is fair and equitable with respect to any class that does not accept the plan—a standard the Debtor says it "easily" meets. 11 U.S.C. § 1191(b).

81. While it is unclear whether a death trap provisions is even appropriate in a subchapter V plan, it certainly serves no coercive purpose since unlike a traditional chapter 11 case, no impaired accepting class is necessary for confirmation. Therefore, Objecting Creditors can only conclude that the deathtrap is intended to be punitive to holders of General Unsecured Claims in Class 4—coincidentally largely comprised of the plaintiffs in the Shareholder Litigation and Bäcker Arbitration.

C. The Injunction and Gatekeeping Provisions Under the Plan are Disguised Third-Party Releases for Palisades

82. The Debtor, as the proponent of the Plan, has the burden to establish that Plan complies with the requirements of Section 1129 and that the Bankruptcy Code's statutory requirements for confirmation are met by a preponderance of evidence. *In re TCI 2 Holdings, LLC*, 428 B.R. 117, 132 (Bankr. D.N.J. 2010); *In re Danny Thomas Properties II L.P.*, 241 F.3d 959, 963 (8th Cir. 2001); *In re Charter Communications,* 419 B.R. 221, 243 (Bankr. S.D.N.Y. 2009); *In re Hurricane Memphis, LLC*, 405 B.R. 616, 624 (Bankr. W.D. Tenn. 2009).

83. Exculpation provisions "have their genesis in two different sources": (i) the *Barton Rule*, which provides that "a party cannot bring a suit against a bankruptcy trustee or the trustee's attorneys for acts within the trustee's duties of recovering assets for the estate without first obtaining leave of court" and (ii) Section 1103(c), which is interpreted by Courts to imply a fiduciary duty and a corresponding limited grant of immunity to members of a creditors committee. *Patterson v. Mahwah Bergen Retail Grp., Inc.*, 636 B.R. 641, 701 (E.D. Va. 2022) (citing *Barton v. Barbour*, 104 U.S. 126, 26 L. Ed. 672 (1881); 11 U.S.C. § 1103(c).

84. In the context of exculpations, the Third Circuit had explained that –

> Section 524(e), by its terms, only provides that a discharge of the debtor does not affect the liability of non-debtors on claims by third parties against them for the debt discharged in bankruptcy. ***Thus, for example, § 524(e) makes clear that a discharge in bankruptcy does not extinguish claims by third parties against guarantors or directors and officers of the debtor for the debt discharged in bankruptcy. Indeed, Continental II held that a plan that enjoined plaintiffs' actions against the debtor's directors and officers who "ha[d] not formally availed themselves of the benefits and burdens of the bankruptcy process," violated § 524(e)***. The injunction in that plan protected directors and officers from actions taken prior to bankruptcy that allegedly violated the securities laws and thus abrogated the liability of third parties.

In re PWS Holding Corp., 228 F.3d 224, 245–47 (3d Cir. 2000) (citations omitted). In *PWS,* the Third Circuit did not treat section 524 as a per se rule barring provisions in a plan limiting liability, and found that such a provision was appropriate where it set forth the applicable standard for liability. *Id; see also, In re Washington Mut., Inc.*, 442 B.R. 314, 350 (Bankr. D. Del. 2011) ("The Third Circuit has held that a creditors' committee, its members, and estate professionals may be exculpated under a plan for their actions in the bankruptcy case except for willful misconduct or gross negligence. The Third Circuit reasoned that such a provision merely stated the standard to which such estate fiduciaries were held in a chapter 11 case.") (citations omitted).

85. However, recently, in *Purdue Pharma,* the Supreme Court held that the Bankruptcy Code "does not authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seeks to discharge claims against a nondebtor without the consent of the affected claimants." *Harrington v. Purdue Pharma L.P.*, 144 S. Ct. 2071, 2088 (2024). As the court also recently explained in *In re Parlement Techs., Inc.*, "non-debtors may not receive permanent injunctive relief in the form of a third-party release, under a plan of reorganization, even when a bankruptcy court finds that the release is necessary to facilitate the debtor's reorganization." No. 24-10755 (CTG), 2024 WL 3417084, at *1 (Bankr. D. Del. July 15, 2024)

(finding that there was not a sufficient basis to grant a *temporary* preliminary injunction to debtor's former officers who were the subject of litigation).

86. Although not in line with Third Circuit precedent prior to *Purdue Pharma*, in light of the *Purdue Pharma* opinion, the Fifth Circuit's reasoning, examination, and limitation of exculpation and gatekeeping provisions in *In re Highland Capital Management, L.P.* is persuasive. 48 F.4th 419, 437 (5th Cir. 2022).

87. In *Highland,* the Fifth Circuit explained that the exculpation that was provided for in the plan "partly runs afoul of that statutory bar on non-debtor discharge by reaching beyond Highland Capital, the Committee, and the Independent Directors." The court found that—

> [O]ur precedent and § 524(e) require any exculpation in a Chapter 11 reorganization plan be limited to the debtor, the creditors' committee and its members for conduct within the scope of their duties, 11 U.S.C. § 1103(c), and the trustees within the scope of their duties. And so, excepting the Independent Directors and the Committee members, the exculpation of non-debtors here was unlawful. Accordingly, the other non-debtor exculpations must be struck from the Plan.

Matter of Highland Cap. Mgmt., L.P., 48 F.4th 419, 437–38 (5th Cir. 2022), *cert. denied sub nom. Highland Cap. Mgmt v. Nexpoint Advisors*, No. 22-631, 2024 WL 3259692 (U.S. July 2, 2024), and *cert. denied sub nom. Nexpoint Advisors v. Highland Cap. Mgmt*, No. 22-669, 2024 WL 3259697 (U.S. July 2, 2024)) (citations omitted).

88. The Fifth Circuit struck the terms in the exculpation and the gatekeeping provision that would have extended these terms to parties outside of the debtor, the creditor committee and its members and the independent directors. *Id.* In *In re Galleria 2425 Owner, LLC*, the Bankruptcy Court for the Southern District of Texas considered a gatekeeping provision that it determined was appropriately limited under *Highland*, as no non-debtor party would be releasing direct and

independent claims against the debtor. No. 23-34815, 2024 WL 3170626, at *9 (Bankr. S.D. Tex. June 22, 2024).

89. Although on its face, the Plan contains no third-party releases, careful review reveals that the Debtor in this case attempts to utilize the overbroad injunction, exculpation, and gatekeeping provisions to collectively act as a release for itself and Palisades from the Shareholder Litigation and Bäcker Arbitration. Indeed, the only "Gated Parties" under the proposed Plan are the plaintiffs in the Shareholder Litigation and Bäcker Arbitration, and their parents or subsidiaries. Plan, § 2.46. Meanwhile, the "Protected Parties" against whom Gated Parties would be forced to come to the Bankruptcy Court for blessing on whether its claims are "colorable" are broadly defined to include "(a) the Debtor; (b) the Reorganized Debtor; (c) the Professionals retained by the Debtor in the Case; (d) the DIP Lender; (e) the defendants in the Shareholder Litigation; and (f) the Related Persons (including the Debtor's Chief Restructuring Officer) parties listed in (a) through (e) other than a Gated Party." Plan, § 2.66. The definition of what claims would be subject to this Gatekeeper provisions is similar broad, including "any claim or cause of action of any kind, including negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence, against any Protected Party that arose or arises from or is related to the Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, or any transaction in furtherance of the foregoing." Plan, § 10.3.

90. Although gating provisions have been approved in this jurisdiction, it is not clear whether such provisions have ever been approved in a subchapter V case. Taken together, the broad protections sought for Palisades and all of its related parties would unquestionably interfere with the valid claims and causes of action asserted against non-debtors in the Shareholder Litigation, amounting to an impermissible non-consensual third party release. The transparency of

the Debtor's efforts to hinder the Objecting Creditor's claims against related non-debtor third parties (and insurance proceeds, which are not property of the estate) should not be rewarded.

91. Further, the terms of the injunction as drafted would act as a total bar to the Shareholder Litigation and Bäcker Arbitration as it permanently enjoins "(i) commencing or continuing in any manner any action or other proceeding against any property dealt with by the Plan, . . . (iv) commencing or continuing any action that does not comply with or is inconsistent with the Plan or the Bankruptcy Code." Plan, § 10.1.1.

92. The exculpation provision improperly includes tangential parties who had no fiduciary relationship to the Debtor—notably including all of following parties as they relate to the Debtor and Palisades in this exculpation "all of their respective directors, officers, employees, managers, managing members, members, financial advisors, attorneys, accounts, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives." Plan, §§ 2.42 & 10.2.

CONCLUSION

93. For the reasons stated above, the Objecting Creditors respectfully request that the Court strike the Debtor's designation as a subchapter V debtor, terminate the appointment of the subchapter V trustee in this case, and deny confirmation of the Plan consistent with this Objection.

Dated: August 21, 2024
Wilmington, Delaware

/s/ Laurel D. Roglen

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EXHIBIT A

UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

In re:	:	
	:	Chapter 11
QLESS, INC.,	:	
	:	Case No. 24-11395 (BLS)
Debtor.	:	
_____	:	

Office of the United States Trustee

United States Bankruptcy Court

824 North Market Street

Wilmington, Delaware

July 19, 2024

2:00 PM

341 Meeting of Creditors

B E F O R E :

MALCOLM M. BATES

TRUSTEE

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A P P E A R A N C E S :

PACHULSKI STANG ZIEHL & JONES LLP
Attorney for the Debtors

BY: JAMES E O'NEILL ESQ.
JEFFREY N. POMERANTZ ESQ.

BALLARD SPAHR
Attorney for Alex Backer

BY: LAUREL D. ROGLEN, ESQ.

STATE OF COLORADO
Attorney for Colorado Department of Revenue

BY: CAROLYN CORDEAN, ESQ.

ESCAMBIA COUNTY
Attorney for Colorado Department of Revenue

BY: BRIAN JACKSON, ESQ.

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ALSO PRESENT:

JAMES HARVEY
ANDREW DE CAMARA
JAROD WADA
RONALD BAECKER

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P R O C E E D I N G S

MR. BATES: Okay. Great. My computer's working. That's a great sign. Okay. Once again, we're here for the 341 meeting for QLess, Inc., a debtor in Chapter 11 case Number 24-11395-BLS now pending before Judge Shannon in the U.S. Bankruptcy Court for the District of Delaware. It is July 19, 2024 a little bit after 2 p.m. Eastern Time. My name is Malcom Bates. I'm a trial attorney with the Office of the United States Trustee for the District of Delaware.

Before we get started, I'm just going to do a brief roll call and go over some ground rules and parameters of the meeting today, and then I'll get into the United States trustee's examination. So let's start with appearances by debtor's counsel please.

MR. O'NEILL: Hi. This is James O'Neill, and I'm appearing today with Jeff Pomerantz and we're from Pachulski Stang Ziehl and Jones.

MR. BATES: Okay. And the debtor's representatives?

MR. O'NEILL: Debtor's representative is James Harvey, who is the CEO of QLess.

MR. BATES: Okay. And I believe we're also being joined by the CRO from Sherwood. Sir, would you like to enter your appearance?

MR. DE CAMARA: Yes, this is Andrew De Camara of

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Sherwood Partners, Chief Restructuring Office of QLess.

MR. BATES: Thank you, sir. Okay. Anybody else on behalf of the debtors today? Okay. Hearing nothing, let's go to the other parties --

MR. WADA: I --

MR. BATES: Sorry?

MR. WADA: Apologies. And Jarod Wada with Sherwood Partners.

MR. BATES: Oh, okay.

MR. WADA: (indiscernible) debtor.

MR. BATES: Thanks, Jarod. Okay. Let's go to counsel for creditors on the line. Do me a favor and please state your name, spell your name for the record, your law firm, and the name of the party you represent in these cases. And let's start with counsel for Alex Becker.

MS. ROGLEN: Hi, this is Laurel Roglen, R-O-G-L-E-N. I'm with the firm of Ballard Spahr on behalf of Allen Stafford.

MR. BATES: Okay. Thank you, Ms. Roglen. And let's go to Ms. Cordean on behalf of the Colorado Department of Revenue for the record please.

MS. CORDEAN: This is Carolyn Cordean, C-O-R-D-E-A-N, with the Colorado Department of Revenue.

MR. BATES: Thank you, Ms. Cordean. And I believe we're joined by another Department of Revenue. I forgot

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your names, gentlemen. You can make your appearances, please.

MR. JACKSON: Brian Jackson (indiscernible), Escambia County Tax Collector.

MR. BATES: You said Camden County?

MR. JACKSON: Escambia County, E-S-C-A-M-B-I-A.

MR. BATES: Thank you.

MR. JACKSON: Florida.

MR. BATES: Okay. And are there any other counsel on the line? Okay. Can I also get appearances from any creditors who are here on their own behalf starting with Mr. Ron Becker?

MR. R. BAECKER: I'm sorry?

MR. BATES: Sir, could you just state your name for the record please and who you're representing today? I guess you're representing yourself.

MR. R. BAECKER: My name is Ronald Baecker, B-A-E-C-K-E-R, and I'm representing myself.

MR. BATES: Okay. Thank you, sir. Are there any other unrepresented creditors on the line right now? Okay. I will check in periodically throughout my examination to see if we've been joined by anyone. But for now we're going to get going. Would anybody other than Ms. Roglen on behalf of Alex Baecker like to question the witness once I've concluded my examination? Okay. Hearing nothing, let's get

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started. So could I please have debtor's counsel briefly introduce the witness who will be testifying today?

MR. POMERANTZ: Sure. This is Jeff Pomerantz introducing James Harvey, who is the debtor's chief executive officer.

MR. BATES: Okay. Thank you. Okay. Just some quick ground rules and parameters of the examination. All lines other than my own and the debtor's representative will be muted if there's too much background noise. Once I've concluded my examination I will ask parties that wish to speak to send me an email to Malcolm.M.Bates at the USDOJ.gov other than those who have party-entered appearances to receive instructions to unmute so that questions may be asked regarding the debtor's financial condition. That email address is also included in the notice you received regarding the 341 meeting.

Please note that neither my office nor the debtor's counsel can give legal advice to members of the general public. Additionally, the debtor may not be able to answer all specific questions regarding individual claims, and parties should consider making arrangements off the line with debtor's counsel directly to discuss some issues further.

To the extent any line of questioning begins to get too far afield from the purposes of the 341 meeting,

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which is assessing the financial condition of the debtor, I will ask that party to cease that line of questioning and either move on to other appropriate inquiries or move on to the next party. Although we appreciate everyone's participation, please note that listening to the 341 meeting is not required in order to preserve any legal rights a party may have with respect to the debtor. If you have called in to avoid any impairment of your rights and do not wish to listen to my examination or ask any questions of your own, please feel free to disconnect from the call.

You will still be able to listen even when your phone is muted. When speaking please identify yourself for the record and any entity you represent. Do not put the phone on hold at any time after the call is connected. Once the meeting of creditors is finished, please hang up. If you come -- if you become disconnected before the meeting is finished, please call back in.

The Section 341 meeting of creditors will be recorded by the U.S. trustee. Any other recordings are prohibited. So before I swear in the witness, are there any questions about what I've just said? Okay. Hearing none, Mr. Harvey, are you prepared to be sworn in?

MR. HARVEY: Yes, Mr. Bates, I am.

MR. BATES: Okay. Thank you, sir. Mr. Harvey, would you please swear or affirm that the testimony you are

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about to give will be the truth, the whole truth, and nothing but the truth under penalty of perjury?

MR. HARVEY: Yes.

MR. BATES: Okay. Thank you, sir. With that, I will begin my examination. To start, would you please just state your name and title for the record again?

MR. HARVEY: Absolutely. James Harvey, CEO of QLess.

MR. BATES: Okay. Thank you, sir. How long have you held that position?

MR. HARVEY: Just over two years.

MR. BATES: Okay. And who appointed you to the role of CEO?

MR. HARVEY: The QLess board of directors.

MR. BATES: And that was two years ago?

MR. HARVEY: Yes. That was April, late April of 2022.

MR. BATES: Okay. And what is your current salary, sir?

MR. HARVEY: My current salary is $350,000 annually.

MR. BATES: Were you fully paid up for all pre-petition salary immediately prior to the filing?

MR. HARVEY: Yes.

MR. BATES: And have you been paid your salary

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since the filing?
MR. HARVEY: Yes, I have.
MR. BATES: And would you please briefly describe your duties at your current position, sir?
MR. HARVEY: Yes. My duties would be to set the strategy and direction of the company, to oversee the company's business operations, to meet with our existing customers and ensure high quality service to our customers.
MR. BATES: Okay. And are you currently a creditor of the debtor?
MR. HARVEY: No. I am not to the best of my knowledge.
MR. BATES: Okay. Are you a shareholder of the debtor?
MR. HARVEY: I am.
MR. BATES: Okay. Are you indebted to the debtor?
MR. HARVEY: No, I am not indebted to the debtor.
MR. BATES: Have you ever leant money to the debtor?
MR. HARVEY: No, I have not leant money to the debtor.
MR. BATES: Okay. Does the debtor have any claims against you that you are aware of?
MR. HARVEY: None that I'm aware of.
MR. BATES: And have you personally guaranteed any

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debts to the debtor at any time?
MR. HARVEY: I'm sorry, Mr. Bates. Could you restate the question?
MR. BATES: Yes, I apologize. Have you personally guaranteed any debts of the debtor at any time?
MR. HARVEY: No, I have not.
MR. BATES: Thank you, sir. I've got a few questions about other officers and directors of the company. Are there currently any other officers other than yourself?
MR. HARVEY: There are no declared officers of the company. There could be implied officers of the company. We have an executive vice president of products and technology, but he's not been declared an officer of the company.
MR. BATES: Okay.
MR. POMERANTZ: I think Mr. Bates (indiscernible) title of officer, but he is not actually a corporate officer as we take them to be in the corporate governance use.
MR. BATES: Okay. Who was that speaking? Sorry.
MR. POMERANTZ: That was Jeff Pomerantz.
MR. BATES: Okay. So no other declared officers. In other words, it's just the CEO right now?
MR. HARVEY: Yes, that's correct.
MR. BATES: Okay. About how many employees does the debtor currently have?

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MR. HARVEY: Around 32 employees.
MR. BATES: Okay. And how about a year ago?
MR. HARVEY: A year ago we were at or around 65 employees.
MR. BATES: Okay. And so there were some layoffs pre-petition?
MR. HARVEY: My apologies. There were. My apologies. I should've offered clarification. I'm accustomed to answering that question in a non-legal sense, so I answered that question in a business sense. We do work with an outsource company that is a separate entity, and we often refer to them in the business sense as employees. So I am assuming you wanted me to answer in a clear legal sense of employees.
MR. BATES: Yeah. I mean, I would prefer all the answers be answered in the legal sense that I -- yes.
MR. HARVEY: Yeah. Okay. Apologies for that. That was -- that is (indiscernible). In a legal sense, we were I believe roughly around 45 (indiscernible).
MR. BATES: 45 you said?
MR. HARVEY: Around 45 employees a year ago. Yes. And today we are between 25 and 30 employees today. I may need to get back to you on the precise number.
MR. BATES: Okay.
MR. HARVEY: I'm accustomed to tracking this

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number including both entities. My apologies.
MR. BATES: And what is the other entity?
MR. HARVEY: The other entity is a company called QLess AM, which is in Armenia, the agents for our media. They are an outsourced development organization. We effectively work with them the same way that we work with employees, but they work directly for QLess AM, and that QLess pays QLess AM for their operating costs on a monthly basis.
MR. BATES: Okay. That -- I'm going to come back to that later. So QLess AM employees, certain employees, and the debtor pays QLess' monthly operating costs?
MR. HARVEY: Yes, that is correct.
MR. BATES: And so do those operating costs include employee salaries?
MR. HARVEY: They do.
MR. BATES: But the employment agreements are with the QLess AM.
MR. HARVEY: That is correct.
MR. BATES: Okay. And what's the relationship between the debtor and QLess AM in the business sense? Like are they an affiliate, a subsidiary?
MR. HARVEY: We treat them as a subsidiary, but we do not technically own them. It's just how we operate in a business sense.

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MR. BATES: Okay. So --
MR. POMERANTZ: And just to be clear -- this is Jeff Pomerantz -- Mr. Harvey is saying that there is no corporate ownership. So there is no affiliate subsidiary relationship, but there is a close relationship between the two companies. And that's what I think he meant by use of the "we treat them as a subsidiary". But there's no corporate ownership between the two.
MR. BATES: Not formally then, right?
MR. HARVEY: That is correct.
MR. BATES: Do you know who does own QLess? Is it privately held? Or QLess AM. I apologize.
MR. HARVEY: Yes. Yes. So QLess AM -- (indiscernible). QLess AM is owned by a woman by the name of Mary Harutyunyan. Mary is in -- the owner and she also works on a daily basis as a part of QLess AM.
MR. BATES: Okay. And what kind of services are they providing for you? I understand that they're providing labor, but is -- are these local jobs in Armenia? Or I guess what's the benefit of the relationship to the debtor?
MR. HARVEY: Yes, exactly. They are local in Yerevan, Armenia's capital, and they provide product development for engineering types of services to us --
MR. BATES: Okay.
MR. HARVEY: -- which is to say that they are

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actively helping us build our product.
MR. BATES: Okay. I think I understand. Okay. Thank you very much for that explanation. So let's I guess take a step back to the originating question here, which is how many employees are there currently versus a year ago? So currently, I'll call them the debtor's employees, right, as opposed to QLess AM employees. There's about 25 to 30 currently, and a year ago there were approximately 45? Do those numbers sound in the vicinity?
MR. HARVEY: Roughly correct, and I -- we can follow up with precise numbers if that's okay.
MR. BATES: Sure. That's totally fine. And so there were some layoffs pre-petition. Is that correct?
MR. HARVEY: Yes, that is correct.
MR. BATES: Okay. And about when did those occur?
MR. HARVEY: Those occurred mostly on April 1st of 2024 this year with a few additional on July 1, 2024 this yar.
MR. BATES: Okay. Okay. And how many directors are there currently?
MR. HARVEY: There are five directors.
MR. BATES: Okay. And is that different from the pre-petition period?
MR. HARVEY: There have been five directors both pre-petition and post-petition.

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MR. BATES: Okay. And let me just check something here. Okay. And yeah. Those are all -- these -- the directors -- the current directors are the ones listed in Attachment 28 to the SOFA. Is that correct?
MR. HARVEY: Give me just one minute.
MR. BATES: I'm jumping ahead here. Sorry.
MR. HARVEY: That's okay. Can you tell me what page that is?
MR. BATES: That would be PDF Page -- or oh, wait. That's the very last page of the document, sir.
MR. HARVEY: Thank you. Yes. That is the correct list.
MR. BATES: Okay. Great. And just for the record, when I say SOFA, I am referring to the debtor's Statement of Financial Affairs for QLess, Inc. filed at Docket Number 67 in the case. Okay. And who appointed the directors?
MR. HARVEY: The board of directors appointed myself. The board of directors appointed Freddie Reiss. The board of directors appointed Mark Tapling. I am unaware of who appointed (indiscernible) Richardson or Nathaniel Hoffman. They are non-operating investors on our board.
MR. BATES: Got it. Okay. And do you have any independent directors?
MR. HARVEY: Yes. Freddie Reiss is an independent

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director.
MR. BATES: Okay. And I'm going to run through basically the same litany of questions that I gave you about your relationship with the company, sir. So are any of the -- I understand there are no other officers, so I'm just going to limit these questions to directors. Are any of the directors creditors of the debtor?
MR. HARVEY: Yes. Palisades I believe is a -- that we are a debtor. We owe a debt to Palisades.
MR. BATES: Mm-hmm. And they're the DIP lender, right?
MR. HARVEY: (indiscernible) debtor-in-possession.
MR. POMERANTZ: This is Jeff Pomerantz. Just to clarify, Palisades is not a director. I think (indiscernible) the mistake was asking Mr. Harvey is (indiscernible) Richardson a member of the board or any of the members of the board are creditors or not whether entities for whom they may work.
MR. BATES: Yeah, thanks, Jeff. I do appreciate that. So Mr. Harvey, when I'm asking this series of questions I'm about to run through, I'm referring to any of the five entities listed on that schedule that you were just referring to, okay?
MR. HARVEY: Understood. Thank you for the clarification. That's helpful.

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MR. BATES: And thank you, Jeff.
MR. HARVEY: I am not aware of --
MR. POMERANTZ: Yes.
MR. HARVEY: I am not aware of -- is the question does QLess owe a debt to any of these individuals who are directors?
MR. BATES: At a -- yeah, at a very high level, yes. So do any of the entities on that list have some kind of claim against the debtor?
MR. HARVEY: Not that I'm aware of.
MR. BATES: Okay. Are any of the directors shareholders of the debtor? It looks like the answer is yes.
MR. HARVEY: Yes.
MR. BATES: Okay. Are any of the directors indebted to the debtor?
MS. WALKLEY: May I speak with Justin (indiscernible)?
MR. BATES: I'm sorry. Could you repeat that, ma'am?
MS. WALKLEY: Hi, Justin. This is Mary Walkley. I don't know if you (indiscernible), but we received (indiscernible) --
MR. BATES: Hi. Excuse me. Whoever is leaving a voicemail right now, you are currently --

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MS. WALKLEY: -- (indiscernible).
MR. BATES: Sorry. Excuse me. Hi. Did somebody join the line? This is the 341 meeting in QLess. Okay. Justin's going to get an interesting voicemail. I apologize for the interruption. Are any of the debtor's directors --
WOMAN: Oh, no. That's probably (indiscernible).
MR. BATES: What?
MR. POMERANTZ: Malcolm, is there (indiscernible) people?
MR. BATES: Yeah. I think we're going to have to go ahead and mute. She does not seem to able to hear me. Okay. So before -- well, okay, here.
AUTOMATED VOICE: Mute on.
MR. BATES: Okay. To all the creditors and counsel on the line, I do apologize for the interruption. I've muted all lines to cut out the background noise. Debtor's counsel and Mr. Harvey, please just let me know when you have unmuted your lines and I can forward the email that I sent earlier if need be. Okay. Mr. Harvey, are you there?
AUTOMATED VOICE: I'm sorry. This option is not available. Mute off. The conference is now in silent mode.
MR. BATES: Okay. I apologize for the delay. I've muted all the lines. That was a first for me as far as background noise goes. Debtor's counsel and Mr. Harvey,

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could you please confirm when you have unmuted?
AUTOMATED VOICE: Mute on. Mute off.
MR. BATES: Mr. Harvey, are you there?
MR. POMERANTZ: (indiscernible).
MR. BATES: Okay, great. We've got Jeff. And Mr. Harvey, is that you in the background?
MR. O'NEILL: Just -- this is James O'Neill again. Just to confirm, press star 6 in order to unmute your line.
MR. BATES: Yes, that's correct, Jamie.
MR. O'NEILL: Okay. So maybe Mr. Harvey can do that and then I think that you should have debtor's counsel and Mr. Harvey still able to speak while the other parties are muted.
MR. BATES: Yeah, that would work.
MR. HARVEY: Mr. Bates, this is James Harvey from QLess.
MR. BATES: Oh, thank you, Mr. Harvey. Okay. Great. Apologies to everybody again. That was a first for me as far as interruptions during a 341. That was interesting. Okay. We're currently in silent mode. If you would like to be unmuted and did not hear the instructions from Mr. O'Neill, please just go ahead and send me an email. I can send you the instructions, but I'm going to jump back in at this point. Mr. Harvey, where we left off I was asking if any of the directors who are listed on that

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schedule at the end of the debtor's SOFA are currently indebted to the debtor.
MR. HARVEY: Not that I'm aware of.
MR. BATES: Okay. Have any of them made loans to the debtor?
MR. HARVEY: Not that I'm aware of. I don't believe so.
MR. BATES: Okay. And does the debtor have claims against any of the directors?
MR. HARVEY: No. No claims that I'm aware of.
MR. BATES: And have any of the directors personally guaranteed any debts of the debtor?
MR. HARVEY: No, not that I'm aware of.
MR. BATES: Okay. And does the debtor currently use any independent contractors, consultants, or temporary employees?
MR. HARVEY: Yes, we do.
MR. BATES: Okay. Which category? All three or...
MR. HARVEY: Independent contractors.
MR. BATES: Okay. And I saw some references to consulting services in some of the schedules in the SOFA. Are those employees considered independent contractors, consultants, both?
MR. HARVEY: They are considered both. We do have

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-- I'll probably -- just I'll clarify. We have independent contractors and then we do have temporary consultants.
MR. BATES: Okay. Who are they?
MR. HARVEY: Temporary consultants would be -- an example of that would be ClearPoint, which provides finance consulting services to us.
MR. BATES: Okay.
MR. HARVEY: Independent contractors would be folks that -- I'll say some names here. Harry Lufson, Lucas Sherbin, Nakias Sherbin. Those would be examples of independent contractors.
MR. BATES: Okay. Thank you. And I'll come back to that when we get into some of the actual filings. Okay. Pivoting a little bit here, as far as the equity structure of the debtor, how many shareholders does the debtor have?
MR. HARVEY: I need to get back to you on the exact number. I believe it is --
MR. POMERANTZ: It's only if (indiscernible).
MR. HARVEY: Yeah, not off the top of my head. Thank you.
MR. BATES: Okay. And who was that in the background?
MR. POMERANTZ: It's Jeff Pomerantz. Sorry about that.
MR. BATES: No worries. What's up, Jeff? Did you

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have something to add or...
MR. POMERANTZ: No, I just asked him -- I told him, you know, he doesn't need to guess. If he knows the answer, he knows the answer.
MR. BATES: Yeah. Thank you for that --
MR. POMERANTZ: (indiscernible) --
MR. BATES: -- clarification.
MR. POMERANTZ: -- (indiscernible). Yeah, and I also assume that there's a list of equity holders that's attached to one of those similar statements or somewhere. So --
MR. BATES: I think that's right. It might've been filed with the petition.
MR. POMERANTZ: Okay.
MR. BATES: But at any rate, Mr. Harvey, do you know how many shareholders the debtor had a year ago?
MR. HARVEY: I do not.
MR. BATES: Okay. Okay. And I know that Ms. Roglen's on the line. I'll probably getting into some questions about that shareholder litigation before she starts her examination. But I'm going to jump down to the debtor's business generally. Can you confirm that the debtor is currently operating?
MR. HARVEY: Yes, I can.
MR. BATES: Okay. And could you briefly describe

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the nature of the debtor's business for me please?
MR. HARVEY: Yes. QLess is a technology business. We provide software and sometimes, not often, but sometimes hardware to customers. Our software operates out of the cloud, so we operate the software on behalf of our customers. Our customers use our software to meet with their customers. Those meetings could be folks who walk into their locations, folks who set appointments, and those appointments can be in person or virtual over Zoom, Teams, Webex, or they'd be for customers via a callback queue over the phone. And our customers use our services to work with their customers roughly just over 30 million times a year.
MR. BATES: Okay. Perfect.
MR. HARVEY: Collectively.
MR. BATES: And how long has the debtor been in business?
MR. HARVEY: The debtor has been in business since 2009.
MR. BATES: And where are its operations located?
MR. HARVEY: Operations are located in multiple locations. The headquarters is in Pasadena.
MR. BATES: Okay.
MR. HARVEY: We also have employees who work remotely throughout the U.S. We have contractors who operate out of Argentina and the U.K. And not employees, we

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have an outsourced development organization that we discussed earlier (indiscernible) that operates out of Yerevan, Armenia.
MR. BATES: Okay. And why did this case file in Delaware?
MR. HARVEY: We are incorporated in Delaware.
MR. BATES: Okay. And do you know at the moment what the costs of the debtor's operations are?
MR. HARVEY: (indiscernible) --
MR. POMERANTZ: (indiscernible) --
MR. HARVEY: Go ahead.
MR. POMERANTZ: Could you be a little more specific (indiscernible)?
MR. BATES: Yeah, I guess I'm looking for like an aggregate cost of operations number that you might have as a line item in financial statements.
MR. POMERANTZ: Are you looking for on that of a marketing basis? Are you talking on annual basis?
MR. BATES: Yeah, I guess --
MR. POMERANTZ: An accrual basis?
MR. BATES: Well, I mean, I have questions about that in a minute, but I guess high level -- we've only been in the case for about a month. So speaking -- sitting -- as we sit here today, I guess on a monthly basis would be most useful.

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MR. HARVEY: We have -- it's difficult for me to answer that question because we have a lot of (indiscernible) in our cost.
MR. BATES: Mm-hmm.
MR. HARVEY: We have high-cost months and we have low-cost months. And so I didn't come prepared to -- I don't want to provide an estimate. I'd rather provide a precise number.
MR. BATES: Sure.
MR. HARVEY: Is that something we could follow up maybe per se the month -- the most recent month, the month of June?
MR. BATES: Yeah, absolutely. And I'm going to get into some other questions that I think will nibble at the edges of this. So that's -- I'm fine with that.
MR. POMERANTZ: And let me also -- I'd suggest one thing. Our monthly reports too. I suspect our monthly op reports will have that information in there. So (indiscernible) file the monthly operating report, and obviously if you have any questions we could follow up with additional (indiscernible).
MR. BATES: Sure. And I'll skip ahead to that question. I can't remember -- I also can't remember. I think it's technically this weekend that would be the first MOR due date. Are you -- do you -- well, you know what?

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I'll -- I will actually just save that for later. I think that's going to be more beneficial later. Okay. And then let me jump into post-petition obligations. Okay. Is the debtor current on all post-petition obligations, taxes, insurance premiums, things like that?
MR. HARVEY: Yes, we are.
MR. BATES: Okay. And does the debtor have any taxes, any like accrued or unpaid taxes?
MR. HARVEY: I'm sorry, Mr. Bates. Could you repeat the question?
MR. BATES: Yeah. Does the debtor have any accrued or unpaid taxes?
MR. HARVEY: None that I'm aware of.
MR. BATES: Okay. Approximately how much revenue is currently coming in through the debtor's operations?
MR. HARVEY: Revenue under contract with our customers is roughly 9.1 million.
MR. BATES: Okay. Have there been any changes to the debtor's cash management system since the filing?
MR. HARVEY: When you say cash management system, I am -- well, maybe you could tell me more specifically what you mean.
MR. BATES: Sure. Why don't I get a little more granular? Has the debtor opened any new bank accounts?
MR. HARVEY: No. Not that I'm aware of.

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MR. BATES: Okay. And the debtor doesn't have like a DIP account for example?
MR. HARVEY: To (indiscernible) --
MR. O'NEILL: This is James O'Neill. I just want to jump in.
MR. HARVEY: -- (indiscernible).
MR. O'NEILL: Sorry. So we filed a cash management system --
MR. BATES: Right.
MR. O'NEILL: -- a cash management motion. We got an interim cash management order. We have a final cash management order.
MR. BATES: Mm-hmm.
MR. O'NEILL: To my knowledge, the debtor has complied with the terms of the cash management order throughout the case to date.
MR. BATES: Okay. Okay. Thanks for that. I'm still -- I've got a couple of more specific questions on that. Has there been a debtor-in-possession legend printed on checks and other business forms?
MR. O'NEILL: This is James O'Neill speaking. In terms of the cash management order, we agreed that the debtor would change or put debtor-in-possession on the checks. Now, I don't know whether Mr. Harvey is knowledgeable about the checks that have gone out from the

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debtor or not. If he is, we can certainly respond to that question. If he is not knowledgeable about the checks that have gone out, we can -- we'll follow up with you.
MR. BATES: Okay. So yes, I think that's the question that's pending, Mr. Harvey.
MR. HARVEY: I am not aware of the text on the checks that have gone out.
MR. O'NEILL: Okay. So this is James O'Neill. Yeah, we will follow up with you and -- with this. And with any other questions that we don't have the answer to, I'm kind of keeping a list. And we can go back and follow up and give you any information you need. We are -- and so, again, if Mr. Harvey doesn't know the answer to something, we will -- I will jot it down. We'll follow up and get you the information that you need.
MR. BATES: Okay. Great. Thanks, Jamie. Okay. And Mr. Harvey, where -- no, you know what? I'm good on that. Bah, bah, bah. Mr. Harvey, can you just briefly tell me why the debtor filed a bankruptcy case?
MR. HARVEY: Yes. QLess as a business has been operating for years earning cash, which is to say that it's been operating with significant net operating losses. We have narrowed those net operating losses over the past two years significantly and have been headed towards a path to profitability particularly with a new product that we've

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introduced.
However, over the past year to year and a half, we have incurred significant legal fees as a result of multiple lawsuits that have been brought against QLess by its former founder and a few shareholders. Those lawsuits we have spent -- not only have we spent a lot of money already on those lawsuits, but the estimates to continue fighting those lawsuits would put the company out of business. And that's what led us to pursue bankruptcy.
MR. BATES: Okay. Thank you. And when did the debtor decide to file?
MR. HARVEY: There was (indiscernible) --
MR. O'NEILL: (indiscernible). So Mr. Harvey, you can answer that question if it doesn't involve disclosure of attorney-client information.
MR. BATES: And Mr. Harvey, you can consider that consult applicable to any question I ask you. I'm not seeking any attorney-client privilege information here.
MR. HARVEY: Understood. No, I don't feel like -- I mean, these are public items. So I don't feel like we're disclosing any attorney-client privileged information. There was a filing in 2022. There was one of the legal matters that was filed by the former founder. And there was a second in 2023 filed end of 2023 in December filed by the former founder and a few shareholders.

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MR. BATES: Sorry. And when you say -- you're referring to shareholder lawsuits?
MR. HARVEY: One shareholder lawsuit, yes.
MR. BATES: Okay.
MR. O'NEILL: (indiscernible) --
MR. BATES: I apologize --
MR. O'NEILL: -- (indiscernible).
MR. BATES: -- Mr. Harvey. My question was when did this debtor QLess decide to file its Chapter 11 case?
MR. HARVEY: Oh, my apologies. We made that decision in June of this year.
MR. BATES: Okay. And who made the decision on behalf of the company?
MR. HARVEY: The board of directors.
MR. BATES: Okay. And was the board constituted with the same members that it is today? In other words, including the same members that are listed on the schedule to the debtor's SOFA?
MR. HARVEY: We had a change in one of our board of directors -- one of our directors.
MR. BATES: Okay.
MR. HARVEY: And one director leaving and another joining. And I cannot remember exactly on the date of voting to make the decision if our new board member has been a board member, Freddie Reiss, was part of that vote. So

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I'll have to come back to you on that.
MR. BATES: Okay. That's fine. Okay. Has QLess ever filed a prior bankruptcy case?
MR. HARVEY: Not that I'm aware of.
MR. BATES: Has QLess ever used any other names?
MR. HARVEY: Not that I'm aware of.
MR. BATES: Okay. And before the company filed for bankruptcy, did it make any transfers of property in the 12 months preceding bankruptcy? Other -- well, let me take a step back. The debtors filed a pretty extensive schedule listing payments made in the 90 days before the bankruptcy case as well as transfers to insiders in the one year before the bankruptcy case. I'm curious if the debtor made any transfers of property other than the transfers listed in those schedules in the 12 months preceding this bankruptcy case.
MR. HARVEY: No, not that I'm aware of.
MR. BATES: Thank you. Okay. Mr. Harvey, do you have the debtor's Chapter 11 petition in front of you? This would be Docket Item 1 filed in the case.
MR. HARVEY: Give me just one moment.
MR. BATES: No problem.
MR. HARVEY: I do. It's not in the documents I have right in front of me, so I am collecting it now.
MR. BATES: Okay. Just let me know when you're

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prepared to answer questions about that.
MR. HARVEY: Yeah. Apologies. I have the Schedule of Assets and Liabilities along with the SOFA in front of me, the (indiscernible) of filings, but I now have the filing including my declaration.
MR. BATES: Okay. Excellent. I'm looking at Page 4 of the petition, Item Number 17.
MR. HARVEY: I don't believe I am looking at that particular document. This was part of the January 19th filing. Is that correct?
MR. BATES: That's correct. And you know, I can ask you some questions without having the document in front of you, and I think we should be able to accomplish the same purpose. Let me ask you this. It's -- is it correct that you signed the debtor's Chapter 11 petition this case, sir?
MR. HARVEY: That is correct.
MR. BATES: And did you read the document before you signed it?
MR. HARVEY: I did.
MR. BATES: And did counsel and the debtor explain or answer any questions you had about the document to your satisfaction before you signed it?
MR. HARVEY: Yes, they did.
MR. BATES: And when you signed the document, did you understand the contents of the document?

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MR. HARVEY: I did.
MR. BATES: Okay. Thank you, sir. So at this point, Mr. Harvey, I'm going to jump into the Statement of Financial Affairs and -- or excuse me, the Schedules of Assets and Liabilities followed by the Statement of Financial Affairs that the debtor filed in this case on July 17, 2024. The first document I'm going to reference is Docket Item 66, the Schedules of Assets and Liabilities for QLess, Inc. And just let me know when you're ready to answer questions about that.
MR. HARVEY: I have it in front of me. I'm ready.
MR. BATES: Okay. Great. So to start off, I'm looking at the -- I'm going to jump right past the Summary of Assets and Liabilities, and I'm going to go straight into the Schedule AB. And I just have some really high-level questions about the schedule first. So I'm aware that the --
MR. POMERANTZ: I'm sorry, Mr. Bates?
MR. BATES: Yes.
MR. POMERANTZ: I'm sorry, Mr. Bates. I hate to interrupt, but I'm just going to be efficient. What page are we looking at?
MR. BATES: I am looking at Page 4. If you're going by the legend on the top of the document from the Pacer system.

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MR. POMERANTZ: Okay. My Page 4 has the investment.
MR. BATES: Hmm. The Page 4 I'm looking at says Schedule AB Assets, Real and Personal Property at the top. Oh, I see what you're looking at. Yes, sir. Yes. You're in the -- bah, bah, bah. So if you look at the top of the page on the document it should say Case 24-11395-BLS Doc 66 filed on July 17, 2024, Page blank of 48. And I'm on Page 4 going by that legend.
MR. POMERANTZ: (indiscernible). My print-out of this doesn't have that information (indiscernible) --
MR. BATES: Oh, okay. I see.
MR. POMERANTZ: -- the filing print-out of the document that was submitted for the filing. So that's (indiscernible), but I'm on Schedule -- I do see it on here. Schedule AB Assets, Real and Personal Property.
MR. BATES: Okay. Terrific. So I am looking at that. And just generally speaking, I'm aware that the debtor has a pre-petition secured lender. And just at a very high level, what assets are covered by that secured lender's liens? Is it substantially all of the debtor's assets?
MR. HARVEY: Yes, substantially all of the debtor's assets.
MR. BATES: Okay. I'll have some more specific

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questions about that later, but I don't want to burn time on that now. And another general question, have any appraisals been performed of the debtor's property in the last two years?
MR. HARVEY: My apologies. My phone cut out, Mr. Bates. Have any appraisals of what specifically?
MR. BATES: Sorry. Have any appraisals of any of the debtor's property been conducted in the last two years?
MR. POMERANTZ: From -- this is Jeff Pomerantz, Mr. Bates. You're asking him in the years prior to the petition date, correct?
MR. BATES: That's correct.
MR. HARVEY: Jim, I have a question. Would this include from a legal response (indiscernible) valuation?
MR. O'NEILL: If you know, right, for pre-petition. The two years leading up to the bankruptcy, was there any valuation done of the debtor's assets leading up to the bankruptcy --
MR. HARVEY: Yes.
MR. O'NEILL: -- (indiscernible) petition?
MR. HARVEY: Yes, there was.
MR. BATES: Okay. And when was that performed?
MR. HARVEY: That was performed in February of 2023.
MR. BATES: And who was the appraiser?

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MR. HARVEY: We used the appraiser of -- you know what? I need to check to give you a precise answer.
MR. BATES: Okay.
MR. HARVEY: So I'll follow up with a precise answer.
MR. BATES: Yes, no problem. Just getting that down. Okay. Sticking with Part 1 of the AB, I just wanted to confirm. I'm looking at item -- Part 1, Item 3, which lists the debtor's bank accounts. I know we talked about the cash management system a little bit, but just for the record today, could you just confirm basically which accounts these are in Items 3.4 and 3.5? In other words, what are these accounts used for?
MR. HARVEY: Yes. These accounts -- Celtic Bank is used for the collection of customer receipts --
MR. BATES: Mm-hmm.
MR. HARVEY: -- per the loan agreement. So customer receipts, electronic customer receipts are deposited into the account for Celtic Bank. Bridge Bank is used as our operating account. And so as an example, we pay employees, employee paychecks, payroll --
MR. BATES: Mm-hmm.
MR. HARVEY: -- is funded by, amongst other things, but that's one of the biggest ones funded out of the Bridge Bank account.

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MR. BATES: Great. Okay. I'm going to jump to Part 3 of the Schedule AB.
MR. HARVEY: Okay.
MR. BATES: And I'm looking at Item 11B, which aged AR over 90 days. It looks like there's just about 6K there in face amount. Could you just tell me what, if you know, what this relates to and why it isn't doubtful?
MR. HARVEY: Yes. Those are those that we've sent to customers, and we sent those bills, and they were due greater than 90 days ago.
MR. BATES: Okay. And is it common for the debtor's customers to take more than 90 days to pay their invoices?
MR. HARVEY: No. As you can see by the balance here, it does happen.
MR. BATES: Mm-hmm.
MR. HARVEY: It is a very small percentage of total billings. So yes, it's common, but it is a very small -- typically a very small number of customers.
MR. BATES: Okay. But typically the debtor is able to recover those amounts?
MR. HARVEY: I'm sorry, Mr. Bates. Could you repeat the question?
MR. BATES: Yes. But typically the debtor is able to recover those amounts?

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MR. HARVEY: Typically.
MR. BATES: Okay. I'm going to jump now, sir, to Part 7 of the AB.
MR. HARVEY: Okay.
MR. BATES: And I'm looking at the valuations provided in Items 39 and 41 for some of the debtor's hard assets. And I am -- no, you know what? I think after further review of the filings this got answered for me. So we can strike that. And I'm going to go to Part 9 instead. And I'm looking at Item 55.
MR. HARVEY: I'm with you.
MR. BATES: I just wanted to clarify if both of these leased spaces are with Providence.
MR. HARVEY: No.
MR. BATES: Okay. So can you --
MR. HARVEY: Providence is the --
MR. BATES: Okay.
MR. HARVEY: Yes, it's the office space in Englewood, Colorado.
MR. BATES: Okay. And who's the landlord in Pasadena?
MR. HARVEY: Give me one second for the technical name. We work out of a shared office --
MR. BATES: Oh, okay.
MR. HARVEY: -- location. It's like a

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(indiscernible).
MR. BATES: I was just about to ask.
MR. HARVEY: Yeah. But with the actual -- who we pay the bill to --
MR. BATES: Mm-hmm.
MR. HARVEY: -- it would be a different name from Industrious. It is in one of our filings. I just don't have it right here.
MR. BATES: Okay. No worries.
MR. HARVEY: (indiscernible) pages I think, but (indiscernible).
MR. BATES: Okay. That's fine. I'm looking at Part 10. I had some questions about, to start with, IP. So Item 64.
MR. HARVEY: Yes.
MR. BATES: So capitalized proprietary software, does this refer to what I think the debtor has called its old software at the first-day hearing?
MR. HARVEY: No. This is mostly items with the exact percentage, but this is largely the building of the new software.
MR. BATES: Okay.
MR. HARVEY: And this would be, you know, on a gap basis wages, income factors that we use and those costs are capitalized.

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MR. BATES: Okay. Okay. Well, you anticipated my next question. I'm going to jump down to Item 67. And I'm going to have I think a little bit more of a specific point on this later, but I did want to ask basically what the debtor's privacy policy says, if anything, about transfers of personally identifiable information, which I'll call PII from now on.
MR. POMERANTZ: This is Jeff Pomerantz. If you know, Mr. Harvey.
MR. HARVEY: (indiscernible) in a business sense, but I don't feel comfortable answering that in a legal sense.
MR. BATES: Okay.
MR. HARVEY: Can we follow up with a response to that later?
MR. BATES: Yeah, that's no problem. I -- and I -- you know, Jeff and Jamie, all have my -- they will probably know better with that. This may ultimately not be an issue in this case, but it's just something I had to ask about. So I'll come back to this in a little bit. I might have a question you can't answer for me, but if one of the lawyers could, I don't know, maybe they'll flip a copy of the privacy policy or something, that might be helpful and just resolve the issue.
MR. POMERANTZ: Yeah. I can clarify that these

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(indiscernible) we filed today would not contemplate a sale of the company's assets.
MR. BATES: Okay. Is there anything coming down the pike like that?
MR. POMERANTZ: No.
MR. BATES: Okay. Great. Thank you. That answers my question. I'm going to go to Part 11.
MR. HARVEY: Okay.
MR. BATES: So I'm looking at Item 72. This deals with tax refunds and unused NOLs, non-operating losses, excuse me, which I'll refer to NOLs from now on. The debtor obviously included a Schedule AB72 attachment that provides that the unused tax refunds and NOLs have a face value of $15 million with a caveat that that may not reflect current values. So I'm just wondering if the debtor has a position on current value of unused tax refunds and NOLs or a ballpark.
MR. POMERANTZ: If you know, Mr. Harvey. If you don't know, you could say I don't know.
MR. HARVEY: Yes, I know, but again, we track on what we're tracking in the ballpark on a -- in a business definition. So for example, how we would discuss it at a board level, I know what roughly the ballpark is.
MR. BATES: Okay. What would that be?
MR. HARVEY: But I don't know how it reconciles to

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this particular list, but that is cumulatively 35 million of net operating losses since the -- since 2009.
MR. BATES: Okay. So the business' position is that as we sit here today, the all-in value of the unused -- or excuse me, tax refunds and unused NOLs is 35 million? Did I hear that correctly?
MR. HARVEY: Yes (indiscernible).
MR. POMERANTZ: (indiscernible).
MR. HARVEY: Go ahead.
MR. POMERANTZ: I think Mr. Harvey said that's what's reflected in the books and records as to what it's done. They are available (indiscernible).
MR. BATES: What was the last part of that, Jeff? Sorry.
MR. POMERANTZ: Yeah. I'm looking at where it's reflected. As you know, NOLs and their availability are a lot of (indiscernible) analysis. I think Mr. Harvey would agree that there hasn't been a formal analysis by an accountant as to the availability of the (indiscernible). So I think he could testify as to what is in the books and records. But beyond that, in terms of any analysis or evaluation of those and their availability is something I don't think he's (indiscernible) testify about.
MR. BATES: Well, let me ask this then. Has there been a formal analysis by accountants of the value of these

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assets?
MR. HARVEY: I'm going to defer to my counsel on that.
MR. POMERANTZ: Yeah, I'm not aware of any analysis of the available (indiscernible).
MR. BATES: Sorry. I didn't mean the availability. I -- well, I understand that there is -- to an extent of availability and value go hand in hand, but let me -- to maybe broaden the scope a little bit, has there been any analysis at all of the potential of value of these NOLs by an accountant or other auditor or financial advisor?
MR. POMERANTZ: Yeah, I'm not aware of any. As you know, there have been corporate transactions that were reflected in the bankruptcy filings that are part of the issues of the lawsuit that's filed. So what -- and those transactions have an impact on the valuation. I'm unaware of any that's been done to determine whether the NOLs that are otherwise on the books and records are still available.
MR. BATES: Okay. And Mr. Harvey, as the witness, is that also your understanding?
MR. HARVEY: That is also my understanding. Yes, Mr. Bates.
MR. BATES: Okay. Thanks, guys. The -- no, you know what? I don't need that answered. On Item 74 -- and we'll take Items 74 and 75 together, I'm just wondering

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about contingent claims here or unliquidated claims and causes of action. Obviously there's been a lot of litigation here. I'm wondering if there's been any counterclaims filed or positions taken on contingent or unliquidated claims in these lawsuits, pre-petition lawsuits.
MR. POMERANTZ: If you know, Mr. Harvey, since you're not a lawyer.
MR. BATES: Yeah. Mr. Harvey, I'll just -- let's just make a standing comment that I'm only asking about things you know about. I'm not interested in you making guesses about thing you don't know about, and I'm not seeking any information that's protected by the attorney-client privilege. We can just assume that that applies to all questions.
MR. HARVEY: Okay. Thank you, Mr. Bates. I don't know --
MR. BATES: Okay.
MR. HARVEY: -- in response to 74 and 75.
MR. BATES: Okay. Terrific. Okay. I'm going to jump to the Schedule D.
MR. HARVEY: Okay.
MR. BATES: And I'm at Item 2.2, which is the secured claim of Celtic Bank Corporation. So --
MR. HARVEY: Yes, I'm here.

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MR. BATES: Okay. Great. I think the first issue I have is I just wanted to -- let me start with this. Can I -- can you confirm why in Column B the value of the collateral that supports this claim is listed as undetermined?

MR. HARVEY: I cannot.

MR. BATES: Okay.

MR. POMERANTZ: If I could just interject (indiscernible), since they have substantially all of the assets of the company, and since the company has not done a recent valuation of its assets, I believe that's why undetermined (indiscernible).

MR. BATES: Okay. And I'm looking at -- in the -- I guess you could call it the second line here under "describe the lien", there's a reference to a California UCC filing. Do you see that? Mr. Harvey?

MR. HARVEY: Apologies. I was looking at it. Yes, I do.

MR. BATES: Okay. So this is -- I guess I should confirm this, but this appears to be an expired UCC, and I should be more specific and say it's (indiscernible) UCC. And it looks like the UCC one that currently reflects Celtic Bank's security interest is File Number U230011554320. Is that also your understanding, Mr. Harvey?

MR. HARVEY: I can't confirm that because I don't

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have those UCC numbers available to me.

MR. BATES: Okay. That -- if you can confirm that, debtors or debtor's counsel, that was something that should probably be updated. And that UCC is --

MR. POMERANTZ: Yeah.

MR. BATES: -- dated February 16, 2023. That UCC, the February 16, 2023 UCC, so that pre-dates the date that that was incurred by about five days. I'm guessing this is because that was when the loan was actually funded, the 21st? Is that correct?

MR. HARVEY: I don't know that answer specifically to the date.

MR. BATES: Okay.

MR. HARVEY: But I know that it was February of 2023.

MR. BATES: Okay. All right. I'm going to jump to the -- oh, actually -- no, yeah, I did have one more question on that. So I did look at the -- I took a look at the UCC. I think you've already answered this. So it looks like the lien encumbered substantially all of the debtor's assets like you said. I wanted to ask specifically does the lien cover the debtor's software, other IP, including the software that's being developed now?

MR. HARVEY: Yes, it does.

MR. BATES: Okay. Okay. Now I'll jump to the EF.

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And I'm looking at Schedule EF, Part 1. This is priority unsecured claims. And I'm curious about the IRS' claim. So it's listed as contingent and disputed. And the basis for the claim is a tax lien. So -- and there's no priority amount listed. So I guess I've got a couple of questions here. The first is why is this listed as contingent and disputed?

MR. HARVEY: This pre-dates my arrival, so the following is my understanding. This dates back to 2018.

MR. BATES: Okay.

MR. HARVEY: And at that time in 2018, the company failed to remit payroll taxes to the IRS. There was an IRS lien that was filed, which is (indiscernible) in question here. The company paid the IRS for those payroll taxes and penalties and interest is my understanding. And the IRS failed to remove the lien, and the company never followed up to have the lien removed. So it is my understanding that we have no liability to the IRS, but still we have a lien against the company.

MR. BATES: Okay. Well, if there's a lien, I mean, it should probably be in the Schedule D. I think that's probably another (indiscernible) that we would need.

MR. POMERANTZ: And we're happy to reflect that.

MR. BATES: Okay. But bottom line is the company's position is that has been paid. So there's a lien

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out there, but the company's position is that it's baseless basically because it's already been paid back?

MR. HARVEY: That is correct.

MR. BATES: Okay. I'm going to jump down to Part 2 of the EF, Mr. Harvey, which is non-priority unsecured claims, also called general unsecured claims. I might refer to them in that way interchangeably.

MR. HARVEY: Okay.

MR. BATES: The first one I wanted to -- I know this -- I'm just going to run through a couple of the specific ones here. I'm looking at Item 3.2, which is the claim asserted by Alex Baecker.

MR. HARVEY: Yes.

MR. BATES: So I see there's no amount listed here. I'm wondering if there's a -- and I see it's listed as unliquidated, but there's no amount and no like unknown. So I guess I'm curious why this was left blank or if there's been a pre-petition amount asserted in any of the litigation or anything like that. I'm just wondering why it was left in blank at eye level.

MR. POMERANTZ: Yeah. And so I can -- there's a complaint with no demand amount, which is why it was listed as contingent and unliquidated (indiscernible) anything (indiscernible) --

MR. BATES: Okay.

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MR. POMERANTZ: -- (indiscernible) is that there is no liability.

MR. BATES: And Jeff, my understanding was there was also an arbitration where there was an asserted liquidated claim. Is that right?

MR. POMERANTZ: Well, there's -- there is -- again, we dispute. We think they're contingent, unliquidated, and disputed. There is an arbitration going on unrelated to the (indiscernible) litigation. But we dispute any claims in reality whether it's an item amount listed or not. It's a disputed, unliquidated, and contingent. I am -- and if Mr. Baecker wants to file a proof of claim that would probably be objected to.

MR. BATES: Well, I -- listen, we can take it as a given that the debtor thinks it's contingent, unliquidated, and disputed, and all that. But I mean, the debtor also thinks the IRS claim is contingent, disputed, and -- contingent and disputed, but there's a claimant out there. So I think if there's amounts that are asserted out there, at a minimum, something should be included.

MR. POMERANTZ: Oh, yeah. But is your question that the arbitration is not listed here for reason? Is that the question?

MR. BATES: No. I mean, it says arbitration plaintiff, and I think there was at least an amount asserted

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there. And look, again, I completely understand the debtor's position. I'm not taking a position on that at all and whether this claim exists and what amount. It actually -- if -- to the extent there is a claim, what the amount of that claim may be. I just think that the purpose of the schedules is for there to be disclosures made on this point. So if there's been a claim asserted, I think it should be included.

MR. POMERANTZ: Okay. That could be the trustee's position. We don't believe that we understand the nature and extent of those arbitration claims. They're broad-reaching and frivolous. So we would not be intending to modify the schedules to reflect that. If Mr. Baecker files his own claim, then that would be deemed allowed until we object to it.

MR. BATES: Okay. I'm going to jump to 3.3, Mr. Harvey. This is Serocaro Investment Trust.

MR. HARVEY: Yes, Mr. Bates.

MR. BATES: I just have a general question about the basis for the claim here, and this is applicable to several of the claims listed. So I wanted to use this one to kind of get some color here. Could you just give me some background on the 2021 recapitalization event?

MR. O'NEILL: Well, again, the background of this issue is the subject of litigation. I do not want Mr.

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Harvey to be describing the history of any transactions that are subject to litigation. I can tell you that basically several claims listed are certain shareholders who claimed they were entitled to certain merchant consideration, but they failed to miss or comply with the prerequisites to actually getting that consideration.

So they are not -- from the debtor's perspective, not entitled to that consideration. That -- those are issues that are raised in the lawsuit. And given that there's a very -- a pending active lawsuit, I do not want Mr. Harvey testifying anything about the specifics of any of the transactions.

MR. BATES: Okay. Give me one second. Mr. Harvey, did you say that you had your first day declaration in front of you?

MR. HARVEY: Yes, I do.

MR. BATES: Okay. Could you go to Paragraph 14 please?

MR. HARVEY: Absolutely. I'm looking at that Paragraph 14.

MR. BATES: Okay. In the paragraph there's a sentence that begins about halfway through. "At its essence, the shareholder lawsuit alleges various forms of wrongdoing associated with a merger transaction in October 2021 in which, among other things, QLess was recapitalized

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with considerable new equity investment by Palisades," and so on. Is this the 2021 recapitalization event that's described in the Schedule EF?

MR. HARVEY: Jeff, am I allowed to answer this question?

MR. POMERANTZ: Yeah, you can say that's what you (indiscernible), yes.

MR. HARVEY: Yes. This is related to the previous item we were discussing 3 point -- sorry, I lost track of which one it is, but --

MR. BATES: It's 3.3. It applies to several, but yeah. But generally speaking, this is the basis for what was referred to as the 2021 recapitalization event?

MR. HARVEY: Yes, Mr. Bates. That's right.

MR. BATES: Okay. Thank you. And would you look at Paragraph 15 now?

MR. HARVEY: Okay.

MR. BATES: And that paragraph -- this is your declaration, and it says that that -- in that paragraph Alex Baecker has asserted a claim for approximately $500,000 plus interest in arbitration against QLess.

MR. HARVEY: Yes, I see that.

MR. BATES: Plus $4,000 for -- $400,000 for severance?

MR. HARVEY: Yes.

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MR. BATES: Plus $660,000 for alleged compensation for work as a consultant?
MR. HARVEY: I don't see the 660,000.
MR. BATES: Sorry. That goes -- that bleeds onto the next page as a write-on.
MR. HARVEY: Okay. I'm looking at Paragraph 15. I see the 500,000. I see the 400,000. I'm looking at the actual filing from 6/19. I do not see the 600,000.
MR. BATES: Yeah, the paragraph continues onto Page 7.
MR. HARVEY: Oh, hold on one second. My -- yes, I see it. 600,000 for alleged compensation for work as a consultant.
MR. BATES: Okay. And is that -- are those amounts -- you understand those to be the amounts that Mr. Baecker is asserting in that arbitration?
MR. HARVEY: Yes.
MR. BATES: And -- but I understand that the debtors dispute that those amounts are valid and that they believe these claims are contingent and disputed. Is that correct?
MR. HARVEY: That is correct.
MR. BATES: And these amounts were known to the debtors when they prepared their schedules and statements?
MR. HARVEY: Yes, the filing (indiscernible) my

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declaration was known during the completion of the schedules.
MR. BATES: Okay. Again, I think the schedules should be updated to include these amounts. I don't understand why you would leave this in blank. But I will drop that for right now.
MR. POMERANTZ: We understand your position.
MR. BATES: Okay. Great. Mr. Harvey, I'm going to jump to Item 3.4. This is Chipman Brown.
MR. HARVEY: I am here.
MR. BATES: Okay, great. I'm going to have questions. I see several law firms listed here, so just to preview this I'm going to have similar questions for a lot of the law firm claims. So basis for the claim is professional services. And I should take a step back. Can I just have you confirm that Chipman Brown is a law firm?
MR. HARVEY: Yes, that is my understanding.
MR. BATES: Okay. Do you know what -- well, did Chipman Brown provide litigation services for the debtor?
MR. HARVEY: No. They provided the sale of QLess -- services related to the sale of QLess --
MR. BATES: Okay.
MR. HARVEY: -- to a company called Drake Star. Oh, I'm sorry. Trick Star provided services to QLess for the 2021 transaction, and Chipman Brown is representing

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Drake Star.
MR. BATES: Can you spell the name of that entity? Sorry.
MR. HARVEY: Yes. D as in David, R as in Robert, A as in apple, K as in Kansas, E as in Edward, S as in Sam, T as in Tom, A as in apple, R as in Robert.
MR. BATES: Okay. And Drake Star was involved in this 2021 transaction and QLess is on the hook for their fees?
MR. HARVEY: Yes. QLess pre-petition indemnified Drake Star.
MR. BATES: Got it.
MR. HARVEY: That is my understanding.
MR. BATES: Okay. Thank you. That's helpful. Okay. I'm going to jump to it looks like 3.6. This is Dailey LLP.
MR. HARVEY: Yes.
MR. BATES: And did Dailey -- is Dailey a law firm? Sorry.
MR. HARVEY: That is my understanding.
MR. BATES: Okay. Do you know if they provided litigation services for the debtor?
MR. HARVEY: Not directly. They provide litigation services for the former CEO of QLess named Kevin Grauman is my understanding. And Kevin Grauman was named in

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the shareholder suit, and QLess indemnifies Kevin Grauman pre-petition.
MR. BATES: Okay. Got it. Okay. I'm going to jump to 3.8. It says KBB Capital.
MR. HARVEY: Which item number is that again?
MR. BATES: It's 3.8.
MR. HARVEY: I see it. 3.8, yep. I see it.
MR. BATES: Just wanted to confirm. And why don't we do -- yeah, let's do the -- let's do it this way. Can you confirm that the 2021 recapitalization event here is the same 2021 recapitalization event that we were discussing with respect to Serocaro Investment Trust?
MR. HARVEY: That is my understanding, yes.
MR. BATES: Okay. And Mr. Harvey, there are several other places in the Schedule EF that refer to a 2021 recapitalization event. Can you confirm that they all refer to the same "2021 recapitalization event"?
MR. HARVEY: Yes, I can.
MR. BATES: Okay. Great. All right. I'm going to jump -- I'm going to get to Palisades in a second, but I wanted to ask first. I didn't see -- I'm curious. Did Morris Nichols Arsht and Tunnell, which is a law firm, provide any services for the debtor pre-petition?
MR. HARVEY: Yes, they did provide services pre-petition.

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MR. BATES: And what was the nature of those services?
MR. HARVEY: Those services were related to the shareholder lawsuit that was related to the 2021 recapitalization appeals.
MR. BATES: Okay. And I should repeat that when I'm asking you questions about law firms and the services they provided and anything like that, I'm not asking you to disclose anything that's attorney-client privileged. So if my question would elicit information that you discussed privately with your lawyers, please just tell me that and I'm not going to press that. Did they represent QLess in that litigation?
MR. HARVEY: Yes, they represented QLess in litigation.
MR. BATES: Do they currently represent QLess in that litigation understanding that it's currently stayed?
MR. HARVEY: I am going to defer to my counsel.
MR. POMERANTZ: The answer's yes.
MR. BATES: Okay. Okay. And do they have any outstanding claims against the estate?
MR. POMERANTZ: You're talking about the petition (indiscernible)?
MR. BATES: Yes.
MR. POMERANTZ: The answer's no.

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MR. BATES: Okay. And are they paid pursuant to a retainer or do they invoice the debtor?
MR. O'NEILL: This is James O'Neill. I'm just going to jump in. I believe that they listed them on the -- on our OCP motion. So they will be -- they're going to file their (indiscernible) and that information. If there's any relevant information it would be disclosed in that, and then there'll be seen as no objection to (indiscernible). And in terms of providing services, they'll be paid in accordance with the procedures outlined in the (indiscernible) motion.
MR. BATES: Okay. Thanks, Jamie. I appreciate the clarification. All right. Then I'm going to jump to Palisades. And Mr. Harvey, can you confirm that Palisades growth capital -- I'm sorry. Let me take a step back. Mr. Harvey, I'm looking at Item 3.10 in the debtor's Schedule EF.
MR. HARVEY: Yes, Mr. Bates.
MR. BATES: Can you confirm for me, sir, that Palisades Growth Capital 2LP is the debtor's DIP lender in this case?
MR. HARVEY: Yes, I can.
MR. BATES: Okay. And looking at this, it looks like the debt was incurred on June 18, 2024, which is the day before the petition date and the basis is listed as unsecured debt. So I'm wondering what was the 250K that the

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DIP lender leant to the debtor the day before the case filed.
MR. HARVEY: Jeff, (indiscernible).
MR. POMERANTZ: Yeah.
MR. HARVEY: Great. The 250,000 was to assist QLess in operating costs, which included cost to make the payroll as we were heading into the filing. So there was several days where we needed access to capital and resources, you know, money. And so that's the $250,000.
MR. BATES: Okay. So basically a bridge loan to get into the filing?
MR. HARVEY: I don't know if it would be legally (indiscernible) --
MR. BATES: Yeah. You know what? Let me --
MR. HARVEY: -- (indiscernible).
MR. BATES: -- not be flippant there. I don't want to bind you to anything on that. I don't -- I won't characterize it, but do you happen to know -- I saw the plan got filed today. Do you know how this claim is being treated in the plan?
MR. POMERANTZ: Yes, it was unsecured. (indiscernible). Malcolm, you want me to answer that?
MR. BATES: Yeah, that's fine.
MR. POMERANTZ: Sure. So it's an unsecured claim. The (indiscernible) two options under the plan. If the

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unsecured creditors accept the plan, then the Palisades claim was going to be (indiscernible) in the sum of $300,000 to be made available pro rata for all unsecured creditors. If basically the unsecured creditors do not accept the plan, the $250,000 is not going to be waived, and the unsecured creditors are going to receive the disposable -- three-year disposable income, which is $50,000.
MR. BATES: Okay. And what's the (indiscernible)? Sorry, what's the size of the general unsecured claims?
MR. POMERANTZ: A few hundred thousand dollars if you (indiscernible) Palisades (indiscernible) zero claims that would be allowed by Mr. Baecker and with relations pending in the (indiscernible) lawsuit.
MR. BATES: Oh, yeah.
MR. POMERANTZ: (indiscernible).
MR. BATES: Sorry. And again, you know, Jeff, I totally understand the debtor's position. But as far as what's included in the plan, you said it's about a few hundred thousand.
MR. POMERANTZ: Yeah.
MR. BATES: And subject to all the caveats about the --
MR. POMERANTZ: Yeah.
MR. BATES: -- this being in litigation.
MR. POMERANTZ: Yeah. I think -- and don't hold

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me to it. We have enough room in there that I think with like roughly 340, $350,000 of trade for lawyers and such (indiscernible) --

MR. BATES: Okay.

MR. POMERANTZ: -- there's an estimate of 170,000 in profession claims and 270 of Palisades claims. And there's a little bit unquantified amount of unreimbursed (indiscernible) cost.

MR. BATES: Okay.

MR. POMERANTZ: So that's where the -- it's in $100,000.

MR. BATES: Okay. And then, Mr. Harvey, was there a loan agreement executed with respect to this amount or any other loan documents?

MR. POMERANTZ: I can answer that. There was and (indiscernible) amount.

MR. BATES: Okay.

MR. POMERANTZ: (indiscernible).

MR. BATES: Just like an -- you know, I don't want to characterize it. If there's no loan docs, that's fine. That answers the question. Okay. I'm going to move on. I'm going to go to 3.11.

MR. HARVEY: Yes.

MR. BATES: And I think we already discussed this. This is separate from the arbitration. This is the pre-

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petition and shareholder litigation. Is that right?

MR. HARVEY: Yes, that is correct.

MR. BATES: Okay. I saw there was an amount in blank here. I actually did look at the complaint in this lawsuit, and I think Jeff confirmed this earlier that there's actually not a specific demand for liquidated damages in the prayer. Is that right?

MR. POMERANTZ: (indiscernible).

MR. O'NEILL: Go ahead, Jeff.

MR. POMERANTZ: Go ahead. I think he wants to hear you.

MR. HARVEY: Yeah, I was going to say he -- yes, that is my understanding.

MR. BATES: Okay. So is that why this was left in blank?

MR. HARVEY: Yes, that is my understanding.

MR. BATES: As the claimant amount. Okay. Thank you. In 3.12, I'm looking at Potter Anderson and Corroon.

MR. HARVEY: Yes, I see it.

MR. BATES: Okay. Potter Anderson's a law firm, right?

MR. HARVEY: That is correct.

MR. BATES: And do they provide litigation services to the debtor?

MR. HARVEY: No. Not directly to the debtor.

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They provide litigation services, it is my understanding, to Palisades. And Palisades is pre-petition indemnified by QLess.

MR. BATES: Okay. Is Palisades covered by the debtor's DNO insurance? Or I guess where does the indemnification obligation come from if you know?

MR. POMERANTZ: Again, I would -- just again, DNO insurance and (indiscernible) is an issue in connection with the litigation. I would instruct Mr. Harvey not to answer any questions about what he knows about who's covered and not covered, but --

MR. BATES: Oh, okay.

MR. POMERANTZ: -- (indiscernible).

MR. BATES: Okay.

MR. O'NEILL: He could say there is DNO.

MR. POMERANTZ: I think he could testify to that, but not to go into the specifics of who's covered and who's not covered.

MR. BATES: No, that's fair. I won't press that. That's fine. Okay. I'm going to jump ahead a little bit, Mr. Harvey, down to Number 3.16.

MR. HARVEY: Yes.

MR. BATES: Okay. And Stubbs Alderton and Markiles a law firm?

MR. HARVEY: Yes, they are.

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MR. BATES: Okay. Did they provide legal services to the debtor, or is this another indemnification obligation?

MR. HARVEY: They provide legal services to the debtor.

MR. BATES: Okay. And do they provide litigation services?

MR. HARVEY: Give me one second.

MR. BATES: Yeah, no problem.

MR. HARVEY: I cannot answer that. Prior to my arrival.

MR. BATES: Mm-hmm.

MR. HARVEY: But since my arrival, they have provided more business and operational legal advice in support.

MR. BATES: Okay. And I'm going to Item 3.19. This is Wilks Law LLC.

MR. HARVEY: Yes, I see.

MR. BATES: Okay. Wilks Law is a law firm?

MR. HARVEY: Yes, they are.

MR. BATES: Do they represent the debtor, or is this an indemnification obligation argument?

MR. HARVEY: I struggle with that word all the time. Glad to hear somebody else struggle with it.

MR. BATES: A word no less.

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MR. HARVEY: Yes, they -- yep. They do not provide services to QLess. It is an indemnification of QTech and Scopia.
MR. BATES: Q-Tech and you said Scopia. Is that S-C-O-P-I-A?
MR. HARVEY: That is correct.
MR. BATES: Okay. And is our -- and I'll just ask. So is that also related to the shareholder litigation?
MR. HARVEY: Yes, it is.
MR. BATES: Okay. Who are Q-Tech and Scopia?
MR. HARVEY: Those are investors (indiscernible).
MR. BATES: Okay. I'll leave that there. And then the --
MR. POMERANTZ: And just to be accurate, Q-Tech is an investor in QLess and I believe Scopia is the investor in Q-Tech.
MR. BATES: Got it. Okay. And 3.20 the very next entry, sir, Wolflick Khachaturian, I hope I'm saying that right.
MR. HARVEY: Yes, you are.
MR. BATES: Is that also a law firm?
MR. HARVEY: That is a law firm, yes.
MR. BATES: Okay. And then just same question. Are they -- do they provide services to the debtor or is this an indemnity obligation?

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MR. HARVEY: They provide services to QLess.
MR. BATES: Okay. And litigation services or something else?
MR. HARVEY: Litigation. This is related to the arbitration.
MR. BATES: Okay. And I'll head off in an interjection from Jeff here. Understanding that I am under the impression that the arbitration is confidential, to the extent you can answer this question, has QLess asserted any counterclaims or anything like that in the arbitration?
MR. POMERANTZ: You can answer that.
MR. BATES: You said it's a no, Jeff?
MR. POMERANTZ: I didn't believe -- I believe the answer is no, but what I'm saying is he can answer that.
MR. BATES: Oh, okay. Yeah. Go ahead, Mr. Harvey.
MR. HARVEY: Yeah. I believe the answer is no as well.
MR. BATES: Okay.
MR. HARVEY: Not to my knowledge.
MR. BATES: Okay. And then, Mr. Harvey, I just have a couple of general questions about the Schedules D and EF together. Do the Schedule D and the Schedule EF reflect all claims as of the petition date, including any claims that were paid post-petition by way of first-day orders? So

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priority wage claims, critical vendors, whatever else was filed here.
MR. HARVEY: Yes, that is my understanding.
MR. BATES: Okay. Great. I'm going to jump to your Schedule G, and I'm going straight to Item 2.12, which is on the last page of that schedule.
MR. HARVEY: I have it in front of me, Mr. Bates.
MR. BATES: Okay. There is really no question here. It just says various holders of warrant agreements. List of holders of warrants can be provided upon request. I'd like to request that list. That's really all I've got on this one.
MR. HARVEY: Okay.
MR. BATES: All right. Now I'm going to jump --
MR. POMERANTZ: (indiscernible).
MR. BATES: Thank you. I appreciate that. I'm going to jump to the Schedule AB 72. You know what? No, I'm not. I think you already answered all my questions on this to my satisfaction. Okay. I'm going to go to the debtor's Statement of Financial Affairs for QLess, Inc. This is Docket Item 67. And just let me know when you're ready to answer questions about that, sir.
MR. HARVEY: Yes, I'm ready.
MR. BATES: Okay. Well, you beat me, so give me one second. So I see -- I'm looking at Part 1, gross

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revenue from business going back to 2022. And if you know, do you know what the debtor's net income for the last three years was?
MR. HARVEY: Not off the top of my head precisely. I would like to follow up with that.
MR. BATES: Okay. And what was the last year the debtor was profitable?
MR. HARVEY: I am not aware of any year in which QLess has been profitable, but I have only been here for two years.
MR. BATES: Mm-hmm. Okay. And then do you happen to know the debtor's projected revenue over the next 120 days? And you've got -- I think you've answered a similar question before, but I'll let you answer it here as well.
MR. POMERANTZ: So what I would say, Malcolm, is the attachment and plan are the projections for the next three years.
MR. BATES: Oh, okay.
MR. POMERANTZ: So rather than just -- so what I propose is why don't you take a look at those and then obviously if you ask Jeff a question, you'll have to have him answer. But all creditors should have the three-year projected projections to be able to give them a sense of where the business is headed.
MR. BATES: No, I think that's fair. Okay. And

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then earlier, Mr. Harvey, you mentioned that the company seasonality. So I'm curious what are the, I guess, you know, slow and busy times of the year for the company?

MR. HARVEY: Yes. From a cost perspective, the busy times are in two, three, in particular August and September, where we see a material rise in our operating cost to support customers. And then the second business period from an operating perspective is January too, which has a significant number of customers in higher education.

MR. BATES: Okay.

MR. HARVEY: And that represents students returning to school for fall and winter.

MR. BATES: Okay. You pre-empted my next questions. Okay. Interesting. And this next question I think is going to be answered in the plan, so I'm going to skip that. I did want to ask just from looking at this Part 1, it looks like year-to-date revenues was actually trending up a little bit. Is that your understanding?

MR. HARVEY: Yes, that is my understanding. That is related to the new product that I referred to earlier.

MR. BATES: Mm-hmm. Okay. And currently, is the debtor positive or negative cashflow?

MR. HARVEY: Negative.

MR. BATES: Okay. And is the debtor currently showing a profit or a loss?

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MR. HARVEY: a loss.

MR. BATES: Okay. Thank you. I wanted to jump to the next page, Item 2, non-business revenue.

MR. HARVEY: Yes.

MR. BATES: And I just wanted to ask about -- interest is kind of all over the place. It looks like this year was tracking to be closer to 2023. I guess I'm just really interested in the discrepancy between 2022 and 2023 and any color you can give me on that.

MR. HARVEY: Yes. In 2023, we had a cash injection from our investors. We did what we referred to as a Series A1 round.

MR. BATES: Okay.

MR. HARVEY: And so that cash came in, and that was mostly interest for that -- to that cash injection.

MR. BATES: Okay. Got it. And I guess on that point, do the investors who provided the cash injection have claims in this case?

MR. HARVEY: No. No. I do not think so.

MR. BATES: Okay. I'm going to jump down to Part 6. And I'm looking at Item 11.2. And these are payments or transfers to Saul Ewing LLP in May 2024. Do you know what the basis for these transfers was? Mr. Harvey?

MR. HARVEY: I -- my apologies. I was looking at it.

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MR. BATES: Not a problem.

MR. HARVEY: Yes. Yes, I do know what the transfers are for. Would you like me to describe them?

MR. BATES: Yes. Yes, please, sir.

MR. HARVEY: Okay. This was the original representation for QLess related to the shareholder lawsuit we started with Saul Ewing. And once the location of the (indiscernible) was determined, we switch to Morris Nichols --

MR. BATES: Okay.

MR. HARVEY: -- for representation in the shareholder lawsuit.

MR. BATES: When you say the location --

MR. HARVEY: (indiscernible) shareholder lawsuit.

MR. BATES: Okay. When you say the location --

MR. POMERANTZ: Actually --

MR. BATES: Sorry, I'm not as familiar with that as (indiscernible). Was there a venue dispute?

MR. POMERANTZ: I'm on -- I'd like to refresh Mr. Harvey's recollection (indiscernible) with counsel that (indiscernible).

MR. BATES: Sorry?

MR. POMERANTZ: I don't believe (indiscernible).

MR. HARVEY: Oh, my apologies. My apologies. You're right, Jeff. (indiscernible) all of these law firms

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since (indiscernible), well, at least in this one case (indiscernible). It's not Morris Nichols. It's Pachulski.

MR. POMERANTZ: Yeah, so to be clear, Malcolm --

MR. BATES: Thank you, yes.

MR. POMERANTZ: -- the company was originally talking to some and then ultimately made the decision to move over to (indiscernible). And we took over from Saul Ewing.

MR. BATES: Okay. So this relates to the Chapter 11, not the shareholder litigation.

MR. POMERANTZ: Correct.

MR. BATES: Okay. And Mr. Harvey, I mean, well, how far did the debtor get in those talks with Saul Ewing? Was Saul Ewing actively working on the case? Were they working on filings, things like that? I'm just kind of wondering how they got 167K. Like what -- like how far in the file did they make it? Just out of curiosity.

MR. POMERANTZ: Again, (indiscernible), Mr. Harvey. (indiscernible) the transfers out. Didn't they return a portion of that money?

MR. HARVEY: They returned a majority of the money.

MR. POMERANTZ: Okay. So this is the gross that's being --

MR. BATES: Got it.

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MR. POMERANTZ: -- reflected in that. Right? Is that correct, Mr. Harvey?
MR. HARVEY: I'm not walking with those numbers in my head. I would have to come back to answer that.
MR. BATES: Well, let me ask this.
MR. POMERANTZ: Well, I can tell you when it came to us there was very little done in terms of preparations and that.
MR. BATES: Okay.
MR. POMERANTZ: And some (indiscernible).
MR. BATES: So this might simplify it. Mr. Harvey, did you pay Saul Ewing a retainer when you initially decided to use them for your Chapter 11 case when the company did?
MR. HARVEY: Yes.
MR. BATES: Okay.
MR. HARVEY: Yes, we did.
MR. BATES: And I understand that you received a refund of we'll say most of that retainer?
MR. HARVEY: Yes.
MR. BATES: Okay. I'm going to jump to Part 9.
MR. HARVEY: Yes, I have it in front of me.
MR. BATES: Okay. And you already answered this question, so I apologize for the false start there. Yeah, okay. So you answered the question about PII, but I did

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have a couple more. In Item 17, you answered that the debtor does provide some kind of pension or profit-sharing plan. I think this is probably in the wages motion, but can you just confirm what you were referring to in this section of the SOFA?
MR. HARVEY: Yes. 401K.
MR. BATES: Okay. Great. And does the debtor provide or have a self-funding healthcare plan?
MR. HARVEY: Yes.
MR. BATES: Okay. All right. I'm going to jump to Part 13.
MR. HARVEY: Yes, Mr. Bates. I'm ready.
MR. BATES: Great. I'm looking at Item 26A. I don't think these questions are specifically listed in this section, but they're relevant to it. These are just general accounting questions. Are the debtor's books maintained on a cash or accrual basis?
MR. HARVEY: Both, actually.
MR. BATES: Oh, okay. And where are they maintained?
MR. HARVEY: They are maintained in a software program called QuickBooks.
MR. BATES: Okay. And then it looks like from the 26A attachment that the only current entity that maintains the books is ClearPoint, LLC. Is that right?

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MR. HARVEY: Pre-petition, yes.
MR. BATES: Okay, but currently --
MR. HARVEY: To the best of my knowledge.
MR. BATES: -- are there more entities that maintain the books and records now?
MR. HARVEY: Yeah, there's (indiscernible) from another consultancy which is called Interim CFO.
MR. BATES: Okay. And they're going to be an OC -- well, they're listed as an OCP in this case, right?
MR. HARVEY: Can you remind me what the term OCP stands for?
MR. BATES: I am so sorry. Yes.
MR. O'NEILL: This is James O'Neill. They are listed as an ordinary course professional. We do have them listed on that.
MR. BATES: Thank you, Jamie.
MR. O'NEILL: (indiscernible).
MR. BATES: Okay.
MR. O'NEILL: Mm-hmm.
MR. BATES: Okay. And then let me see. How often were income statements and balance sheets prepared pre-petition?
MR. HARVEY: I would say annually.
MR. BATES: Okay. And what's the debtor's fiscal year?

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MR. HARVEY: Calendar year January 1st.
MR. BATES: Okay. And does the debtor have -- actually, it looks like that's answered here, so I can skip that. Okay. I'm going to go to Item 29 in this same schedule.
MR. HARVEY: Yes, I'm here.
MR. BATES: Okay. I'm looking at Item 29. This is -- first this is just kind of a general comment. The addresses need to be listed or there needs to be relief sought to seal addresses. So if you want to amend this really, you can file a motion. Really up to you, but --
MR. HARVEY: Okay.
MR. BATES: -- and then you made a comment that there was a change in directors. There was one director who left and was replaced. Is that Neil Hudspeth? Is he the one that was replaced pre-petition?
MR. HARVEY: Yes, Mr. Bates, it is.
MR. BATES: Okay. And then do you know -- I mean, this is pretty close to the petition date. Is there any info you can provide on the decision to relieve Mr. Hudspeth?
MR. HARVEY: I think just we either --
MR. POMERANTZ: (indiscernible) --
MR. HARVEY: Go ahead, Jeff.
MR. POMERANTZ: I think that's due to the fact

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(indiscernible) that he was relieved. My recollection (indiscernible) is he was on (indiscernible).
MR. HARVEY: Yes. Yes, he left voluntarily.
MR. BATES: He left voluntarily. Oh, okay.
MR. HARVEY: Yes.
MR. BATES: Okay. And I'm going to go to Attachment 3, which is pre-petition transfers.
MR. HARVEY: Is this the one within 90 days?
MR. BATES: Yes, that's correct.
MR. HARVEY: Okay. I'm looking at it.
MR. BATES: Okay. This is a big list, but generally to the best of your knowledge were any of the payments listed here made outside of the debtor's ordinary course of business?
MR. HARVEY: I'm just doing a quick rereview. No, I don't see any that are outside the normal ordinary course of business. So I -- yeah.
MR. BATES: Okay. All right. I'm going to go through some of the specific ones. I understand that this is a pretty detailed and extensive schedule, so I'll do my best to flag them. I'm on Page 1 of 3 pretty near the bottom, and it looks like there are two payments to -- two transfers to Hogan Lovells U.S., LLP.
MR. HARVEY: I see them, 6,900 and 2,900?
MR. BATES: Correct. And it just -- it says

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services. Hogan Lovells is counsel for the DIP lender in this case. Is that right?
MR. HARVEY: Yes.
MR. POMERANTZ: Just to clarify, I (indiscernible) some point for counsel for the company.
MR. BATES: Hogan Lovells was?
MR. POMERANTZ: (indiscernible) the company. Well, at one point they were counsel to the company, but they did not provide any services relating -- and that was way before the bankruptcy was even contemplated. I believe that those transfers were for some debts that were owed to them in connection with their performance of work for the company not in connection with any of their services as DIP lender's counsel.
MR. HARVEY: That is correct.
MR. BATES: So they represented the company. It was long before the bankruptcy was contemplated, but they're getting paid in May. I guess my question is how long were the amounts outstanding?
MR. HARVEY: I don't know --
MR. BATES: Okay.
MR. HARVEY: -- of the top of my head. It is my understanding that these were related to supporting QLess in the arbitration.
MR. BATES: Okay. Okay. Hmm. Okay. And then

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the bottom of that same page, Mr. Harvey, Lucas Chairvin and then if you look at Page 2 there's also a Matias Chairvin. And it sounds like based on the location these are two of the debtor's independent contractors. Is that right?
MR. HARVEY: That is correct.
MR. BATES: What services did they provide for the debtor?
MR. HARVEY: They provide services that help us support our customers so if there's a customer issue that -- where a customer contacts to us and has an issue or needs help, that goes into our support organization and they work in the support organization.
MR. BATES: Okay. Okay. Near the bottom of Page 3 I'm looking at QLess AM, LLC. I think you've probably already answered these -- my questions about this entity to my satisfaction, but just because there was a 200K payment two days before the petition date, it looks like from the other payments listed here that this is like the -- if I'm understanding it correctly, this is the normal monthly payment to cover operating costs for QLess AM. Is that right?
MR. HARVEY: That is absolutely correct. Sorry, that would be -- that's for -- that's their monthly pay that includes -- that's for their payroll.
MR. BATES: Okay. Okay. And then I'm going to go

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back to the top of Page 1 and just run through a couple of things here. So these are -- there were a pretty extensive number of payments that were made on June 18, 2024 or the day before the petition date. So I just want to get some color on those. The first one is at the very top. This was a $35,447 payment to AWS. Can you just give me some background on that?
MR. HARVEY: Yes, I can. This is trying to pay the estimated amount. Let me back up. Our software runs in AWS, and so AWS is critical --
MR. BATES: Mm-hmm.
MR. HARVEY: -- to -- we can't serve our customers with AWS. They bill us on a monthly basis and we did our best to estimate the cost from June 1st to June 19th. And I believe that's what is represented here in this statement.
MR. POMERANTZ: Yeah, and in my experience (indiscernible) that if you don't see the people like Amazon Web Services happy --
MR. BATES: Mm-hmm.
MR. POMERANTZ: -- you're going to have trouble. And so not to avoid a critical vendor (indiscernible) we wanted to just make sure that we would pay that.
MR. BATES: Okay. Hmm. Okay. And they would normally, what, bill you at the end of the month?
MR. HARVEY: Yes.

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MR. BATES: Okay.
MR. HARVEY: Towards -- the billing period, I believe, is on a monthly basis.
MR. BATES: Okay. And it was estimated for June 1 to June 18th you said?
MR. HARVEY: That is correct.
MR. BATES: Okay.
MR. HARVEY: (indiscernible) would be turned off it could've been disastrous for the company.
MR. BATES: No, I don't doubt that at all. Okay. Going down a few lines it looks like there's two payments to Armanino LLP, one for $28,350 and one for $29,400.
MR. HARVEY: Yes. Armanino is our auditor, and we are currently -- not only was this towards the end of the audit, not the very end, but towards the end of the audit. And their activities picked up quite significantly in the May/June timeframe. And so these are payments to Armanino for that audit. We have a June 30th date for having audited financial statements prepared already for our investors and our lender.
MR. BATES: Okay. Is there any reason why there were two payments?
MR. HARVEY: I don't know.
MR. BATES: And the debtor's going to seek to retain them as an OCP in this case? Sorry, an ordinary

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course professional.
MR. HARVEY: That's correct. We (indiscernible) --
MR. BATES: I'll try to avoid the vernacular. I apologize. Okay.
MR. HARVEY: It's okay. I have it now. Ordinary course of business.
MR. BATES: That's right.
MR. HARVEY: Or ordinary course professional.
MR. BATES: That's right. Yes.
MR. HARVEY: Yeah.
MR. BATES: Okay. If you go down a little bit further on the same page about midway down, there's three transfers to Brex, two on the 18th and one on the petition date. One's for about 24K, one is for 70K, and one's for about 19K.
MR. HARVEY: I'm looking at Brex Card transactions. I'm sorry. Could you repeat the dates of the transactions?
MR. BATES: Sure. There is two on June 18th and one on June 19th.
MR. HARVEY: I see them. I see it as 23,832 --
MR. BATES: Mm-hmm.
MR. HARVEY: -- for the 18th and 18,904 for the 19th.

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MR. BATES: Yeah, and one for 70,000 on the 18th as well.
MR. HARVEY: I see it, yes.
MR. BATES: Do these all relate to the same credit card? Are there multiple credit cards? Like what's the story here?
MR. HARVEY: There are multiple credit cards.
MR. BATES: Okay. So the -- are -- is it fair to say these represent payments on account of different credit card accounts?
MR. HARVEY: Yes. And they -- these are used for operating costs, and we pay Amazon. We pay (indiscernible) usually off of these cards.
MR. BATES: Okay. I'm jumping down to closer to the bottom of the page. This is -- it looks like Ellucian Company, LP, a $10,000 payment on June 18th?
MR. HARVEY: Yes. Ellucian is a partner of ours. It's a software company that we partner with, and this is our annual partnership fee.
MR. BATES: Got it. Is that typically due on or about June 18th?
MR. HARVEY: I don't know and I don't want to guess.
MR. BATES: Okay.
MR. HARVEY: I believe it is, but I'd like to come

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back (indiscernible).
MR. BATES: Okay. I'm on Page 2 now.
MR. HARVEY: Okay.
MR. BATES: And about a third of the way down the page there's a payment to Morris, Nichols, Arsht and Tunnel, LLP on June 18, 2024 for $150,000.
MR. HARVEY: Yes.
MR. BATES: Okay. So what was that for?
MR. HARVEY: This is for services that Morris Nichols provided to QLess in representing us in the Delaware shareholder case.
MR. BATES: Okay. Be nice and scroll up. Okay. And they're also listed in the ordinary course professional motion?
MR. HARVEY: Jamie, I believe they are?
MR. O'NEILL: I believe so, yes. Yeah.
MR. BATES: Okay. And I think Jamie also said that there'll be some disclosures in that declaration, so that's fine. I'll move off of that for now. Okay. A little bit further down actually. Oh, there it is. Yeah. A little closer to the bottom Rimon PC in Boise, Idaho.
MR. HARVEY: Yes.
MR. BATES: These are -- these look like pretty small payments. I'm just curious what these were for.
MR. HARVEY: These are for operating expenses.

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This is a legal firm that provides legal services to us.
MR. BATES: Okay. And so I guess I -- just really quickly to jump back up to the Brex credit cards, on June 19 there was payment of $18,904.11. I'm just wondering whether you know when this payment was made relative to the actual filing of the case.
MR. HARVEY: I don't know.
MR. BATES: Okay.
MR. HARVEY: I don't (indiscernible).
MR. POMERANTZ: Malcolm, I believe our -- my recollection is the case was filed today (indiscernible). So I suspect this was -- was this a (indiscernible), James?
MR. HARVEY: I don't know.
MR. POMERANTZ: Okay. (indiscernible). I know where you're going with it. It was a post-petition payment. I don't believe it was.
MR. BATES: Okay. If you could -- if there's any way you could follow up on that, I would certainly appreciate it. And then I guess just high level, there were on June 18th $350,000 in transfers submitted before the petition date including 150K to a law firm. There's another 2000 on the 17th and another 20 or so on the petition date. So I don't know. We're out like half a mil in the two or -- two days or so between the filing. But there was a -- sorry, go ahead.

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MR. POMERANTZ: No. Yeah, I'm sorry.
MR. BATES: Oh, okay. I guess how much of this was the -- we'll call it short-term loan from Palisades meant to cover? Or was that meant to cover the sums?
MR. POMERANTZ: How much -- I mean, (indiscernible), right?
MR. BATES: Yeah.
MR. POMERANTZ: There was money coming in and money going out.
MR. BATES: Yeah, fair enough.
MR. POMERANTZ: Because the company needed the money. It wasn't going to really get access to the DIP until after to fund it, what it needed to pay to keep the wheels on the bus in operations, and to make the bankruptcy smoother and not have to worry about critical vendor motions and whatnot, which, you know, are issues to deal with. So I think you asked what money was coming in. The company made the determination of what it needed to pay. It had a shortfall from what revenues, and that's where the Palisades money funded the shortfall.
MR. BATES: Okay. I -- and Jeff, I do appreciate the background. But Mr. Harvey, could I get your response to that?
MR. HARVEY: Yes. That is absolutely correct. And so these -- where it's just timing you can see from the

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payment to the 209 -- I'm sorry, you can see from the $200,000 payment to QLess AM on the 17th, the dates that you look in the previous numbers are almost right there. But that's normally the time that we (indiscernible) money to them.
MR. BATES: Mm-hmm. And how often were you making payments to Morris Nichols?
MR. HARVEY: I don't know the answer to that question.
MR. BATES: Okay. Is it -- I'll just ask this. For the Morris Nichols payment, is it your understanding that that was a payment made on account of accrued legal fees?
MR. HARVEY: Yes. That is my understanding.
MR. BATES: Okay. I'm going to jump to Attachment 4.
MR. HARVEY: Okay.
MR. BATES: Okay. ClearPoint LLC, you've given a little bit of background on this already, but can you just explain to me again what this entity is exactly?
MR. HARVEY: Yes. This entity is really a person who's name is Al Sajak and he provides finance services to QLess. Bookkeeping, tracking of our books, and also just running the finance option for us.
MR. BATES: Okay. And is this entity related to

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interim CFOs or are those distinct entities?
MR. HARVEY: Separate entities.
MR. BATES: And no affiliation?
MR. HARVEY: No affiliation.
MR. BATES: Okay. And how is this entity paid? Like is it prospective? Is it invoiced? Is there a retainer?
MR. HARVEY: Invoice.
MR. BATES: Okay. So you get invoiced for services rendered and then you pay?
MR. HARVEY: That is correct.
MR. BATES: Do the payment terms ever change?
MR. HARVEY: When you say payment terms, do you mean like due dates or payments that are not charged?
MR. BATES: I guess either. Like I'm looking at this and it looks like at first it was maybe monthly invoices and then maybe biweekly.
MR. HARVEY: Yes, it did change. We had someone who -- in our finance function that was (indiscernible) on the company. And there were some increases and decreases in workload that were happening.
MR. BATES: Okay. And so are they billed hourly?
MR. HARVEY: They are usually billed hourly unless there is a -- really high in workload. And when there's a really high workload, then there is an adjustment that is

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based loosely on an hourly -- (indiscernible) an hourly rate.

MR. BATES: Okay. And is that -- are those terms like those -- that kind of like bifurcated payment scheme, is that documented in an agreement?

MR. HARVEY: I believe it is documented in an agreement.

MR. BATES: Okay.

MR. HARVEY: Yes.

MR. BATES: Okay. That answers a lot of my questions. What -- I'm looking about halfway down the schedule. It looks like there were three payments for February 2024. I think that's the only month where there were three payments for the monthly period. I'm just wondering what happened there.

MR. HARVEY: I don't know off the top of my head. I'll come to (indiscernible).

MR. BATES: Okay.

MR. HARVEY: But I -- what I do know is this is roughly -- I believe that this is almost exactly the same month as the person that we relieved from the company --

MR. BATES: Okay.

MR. HARVEY: -- (indiscernible) part of the company.

MR. BATES: Got it.

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MR. HARVEY: But I -- you can follow up.

MR. BATES: Sure. And then last question about that, I'm looking at the payment on June 3, 2024. So that's $31,200 for June 2024 consulting. So I guess I had a few questions about this. So if the entity of ClearPoint's invoicing you for services rendered, was this meant to cover services between June 1 and June 3?

MR. HARVEY: June 1 and June 3, yes.

MR. BATES: Okay.

MR. HARVEY: I'm sorry. June 1 and June 19 I believe. I can't remember if it was June 1 to June 3 or June 1 to June 19. I think it is June 1 to June 19. But I can come back to you with more specifics.

MR. BATES: Sure.

MR. O'NEILL: And also, Mr. Harvey, the date -- the services needed from ClearPoint expanded significantly in light of the filing Chapter 11 bankruptcy. So (indiscernible), correct?

MR. BATES: So --

MR. HARVEY: That is correct. So not only that, but also the audit as well in addition to the operational finance needs on a day-to-day basis.

MR. BATES: Okay. So did you switch to the like adjustment fee rate or whatever that study you were just describing earlier?

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MR. HARVEY: That is correct.

MR. BATES: Okay. Is that like -- is that rate three times higher than the normal monthly rate?

MR. HARVEY: Yes. The normal monthly rate tends to be at a much lower hourly number of hours. I don't remember the number of hours off the top of my head, but this was -- this is very (indiscernible) for 31,000 because at that time there were 80-hour -- 75- to 80-hour, sometimes over 80-hour work weeks.

MR. BATES: Mm-hmm. Okay. And was this the first time that you had paid ClearPoint prospectively as opposed to being invoiced?

MR. HARVEY: I don't know the answer to that. I would have to follow up.

MR. BATES: Okay. Okay. Coming to the end here. Again, just a general comment for the individuals. You know, with respect to the addresses, those need to be either unsealed or there needs to be a motion filed. And then same with the amount or value of the payments. There either needs to be a motion to seal or this needs to be unsealed.

MR. HARVEY: Understood.

MR. O'NEILL: Yeah, understood.

MR. BATES: Okay. And I -- you know, I'm not saying that to pass judgment. I think that the motion to -- but I would point out I believe the motion to seal would be

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due on this coming Monday. Under the local rules that is. Okay. With respect to Derek Francis, what kind of commissions does a chief revenue officer earn?

MR. HARVEY: Mr. Bates, would you asking your question again?

MR. BATES: Sure. Yeah. I just see a bunch of line items for commissions and I'm curious what kind of commissions Mr. Francis earned in his capacity as chief revenue officer.

MR. HARVEY: Okay. Yeah. Those would be commissions on the sales of our software products. So --

MR. BATES: Oh, okay.

MR. HARVEY: -- when we sell our software products to the customers as an example --

MR. BATES: Mm-hmm.

MR. HARVEY: -- he earns a commission on that.

MR. BATES: Got it. Okay. I'm looking at Page 3 of 3.

MR. HARVEY: Yes.

MR. BATES: And there is a line item for M. Freddie Reiss, the independent director.

MR. HARVEY: Yes.

MR. BATES: When was he retained? Or what's the word? When was he appointed?

MR. HARVEY: I do not know the date of June off

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the top of my head, but it was June of this year.
MR. BATES: Oh, it was June. Okay. And what are the director fees for?
MR. POMERANTZ: He was (indiscernible).
MR. BATES: Sorry?
MR. POMERANTZ: (indiscernible). He was hired to be an independent director.
MR. BATES: Okay. So this is just his fee for being --
MR. POMERANTZ: (indiscernible).
MR. BATES: Sorry. Mr. Harvey, is this his fee for being an independent director? Is that what I'm hearing?
MR. HARVEY: Yes, Mr. Bates. (indiscernible).
MR. BATES: Okay. Okay. And who authorized the director fees?
MR. HARVEY: The board of directors authorized the appointment of Mr. Reiss and QLess authorized the payment to Mr. Reiss.
MR. BATES: Okay. And none of the other directors received director fees?
MR. HARVEY: Mr. Tapling advises QLess. I don't know the definition if it's referred to as a director fee not. I could follow up with that, but he provides -- he is a former interim CEO of QLess, and in that capacity provides

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advisory services to QLess because of his knowledge of the markets and the company.
MR. BATES: Okay. Sure. So actually that's an easy enough transition to Mr. Tapling. So could you just -- I think you just answered this, but what kind of consulting does he do? I see a number of payments listed as some kind of monthly consulting fee.
MR. HARVEY: That's right. He provides advisements on (indiscernible) market, but also on other matters related to restructuring that we've done. The financial forecasting of the business that we can engage in investors (indiscernible) examples of services.
MR. BATES: Okay. And is he paid pursuant to, I don't know, a consulting agreement or some other contract?
MR. HARVEY: That is correct.
MR. BATES: Okay. And it looks like scrolling through these, he's typically paid on the last day of the month? Is that right? Or last business day?
MR. HARVEY: Yes. That is correct.
MR. BATES: And that the -- those payments cover the services rendered for the entire month?
MR. HARVEY: Yes, for the entire month.
MR. BATES: Okay. And then for June 2024 he gets paid on June 18th, correct?
MR. HARVEY: Yes, that is my understanding.

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MR. BATES: Okay. And without disclosing the amount because that's an open issue, I'll represent to you that he received the same amount that he received for every other month that's listed in the schedule. Is that also your understanding?
MR. HARVEY: I don't know the amount for June off the top of my head.
MR. BATES: Mm-hmm.
MR. HARVEY: That is something I would need to follow up with.
MR. BATES: Okay. I'll represent to you that's true. So I'm curious whether this was intended to be a pre-payment for the full month.
MR. HARVEY: I don't know the answer for that particular payment.
MR. BATES: Okay. Do you know if his payment terms changed for June 2024?
MR. HARVEY: I don't know. I will need to follow up.
MR. BATES: Okay.
MR. HARVEY: This was largely handed by our head of finance, and so I was not close to this payment.
MR. BATES: Okay. And is that ClearPoint that's head of finance or is that someone else?
MR. HARVEY: ClearPoint, yes.

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MR. BATES: Okay. All right. Those are all my questions about the filings. I've got some quick questions about the state of play in the case, and I'm going to jump through. I think you've already answered most of them. I'm going to skip all my questions about the plan because that just got filed. You already answered my questions about any sale. Are there any plans to offer bonuses to directors or officers or employees in the case?
MR. HARVEY: (indiscernible).
MR. POMERANTZ: (indiscernible).
MR. HARVEY: Go ahead.
MR. POMERANTZ: I think the answer is no. We don’t contemplate any (indiscernible).
MR. BATES: Okay. I -- thank you. That's helpful.
MR. POMERANTZ: I will say that the plan does reference (indiscernible) than the plan that exists now to it wouldn't even be calibrated based upon the emergence from Subchapter V, but that was not (indiscernible) motion if you were (indiscernible).
MR. BATES: Yeah, no. You're absolutely right. And I won't get into any plan stuff right now that's been filed, so I'm happy to review that and reach out with any questions. So -- but I do appreciate the color. Okay. I think I know the answer to this. Are there any

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environmental issues with the company that need to be disclosed?
MR. HARVEY: None that I am aware of.
MR. BATES: Okay. I would be shocked. Okay. I already asked that. Okay. Your -- the debtor has already received the IDI requests from the U.S. trustee, correct? The initial debtor interview requests. I apologize.
MR. O'NEILL: Yes. Yes. Those were received and we responded to them.
MR. BATES: Okay. You guys produced everything already?
MR. O'NEILL: We did.
MR. BATES: Okay. Thank you. I think we already addressed this, but do you have an idea when the initial MOR will be filed? The initial monthly operating report. I'm so sorry.
MR. O'NEILL: We'll -- this is James O'Neill. They will confirm it's Sherwood, but I would expect they'd be filed next week.
MR. BATES: Okay. And is Sherwood preparing the MORs?
MR. O'NEILL: I believe the answer to that question is yes. The Sherwood team is on and they can respond if that's not the case, but I think (indiscernible) assisting the debtor in preparing the operating reports.

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MR. BATES: Okay. I'm happy to accept that from you, Jamie. Okay. Okay. Are there any plans to retain any professionals other than those already retained and not including -- or excuse me, and -- okay. Let me take that again. Are there any plans to retain any professionals other than those already retained or for whom the retention application has already been filed?
MR. POMERANTZ: You're talking about other than the ordinary course professional (indiscernible), right?
MR. BATES: Other than OCPs and B. Reilly. I'll be granular.
MR. POMERANTZ: The answer is no.
MR. BATES: Okay. Okay. And the debtor has no subsidiaries. Is that correct?
MR. HARVEY: That is correct.
MR. BATES: Okay. I'm going to take us off silent mode at this point.
AUTOMATED VOICE: The conference is now in talk mode.
MR. BATES: Okay. We're now off silent mode. That concludes the United States trustee's questioning. I -- if -- I know that Ms. Roglen was on and wanted to ask questions. Is that still the case, Ms. Roglen?
MS. ROGLEN: Yeah. That's right. And I, you know, was paying close attention. So you asked a lot of my

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questions, and I'm going to try hard not to retread anything you've already covered.
MR. BATES: Okay. Great. Take it away, and we'll just jump in if we get too far afield here. But I'm confident that won't happen.
MS. ROGLEN: Okay. Thanks. Mr. Harvey, during the trustee's questioning earlier, you mentioned briefly a valuation I think in February of 2023. Is that right?
MR. HARVEY: Yes. That was correct.
MS. ROGLEN: What was valued in that practice?
MR. POMERANTZ: I think his answer was that he wasn't aware of the valuation did and didn't do and what the amount was. If you have any recollection, Mr. Harvey, of what it is you can answer. If not, you can just answer I don't know.
MR. HARVEY: Yes, it's the same process. We had recently taken test (indiscernible), which I referred to in February of 2023. And there's a standard valuation process that we do that's called a 409A. It's a very standard process for all software companies. And so that was what that valuation was related to.
MS. ROGLEN: Okay. And do you recall what the value was that was provided by that valuation?
MR. HARVEY: Not specifically off the top of my head.

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MS. ROGLEN: Do you have a ballpark idea?
MR. POMERANTZ: I think he answered that he didn't know. So he had -- I would ask you not to guess or estimate or speculate. If you had any basis or factual basis to be able to answer the question now you can answer it. If not, you can say I don't know.
MR. HARVEY: I don't know.
MS. ROGLEN: I'm sorry. Mr. Harvey, did you say something after?
MR. HARVEY: I did, yes. I said I don't know.
MS. ROGLEN: Okay. Thank you. Moving on, I think earlier -- do you have a copy of the petition package of you, or do you not have a copy of it?
MR. HARVEY: I have in front of me -- are you referring to the petition packet from June 19th?
MS. ROGLEN: Yes.
MR. HARVEY: Yes, I have a number of the motions, but I'm not sure what you're specifically referring to.
MS. ROGLEN: I am asking about -- specifically I'm going to -- I want to ask some questions about the balance sheet that was filed as an attachment to the petition.
MR. HARVEY: Give me one second. And let's -- let me see if I can find it.
MR. O'NEILL: Do you have it in front of you? Mr. Harvey, you don't have it in front of you.

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MR. HARVEY: I don't have it in front of me.
MS. ROGLEN: Okay. Are you familiar with the balance sheet that was filed with the petition?
MR. HARVEY: I don't remember specific numbers off the top of my head to the balance sheet.
MS. ROGLEN: There is a line item on the balance sheet that is called Deferred Revenue that's listed as a liability in the amount of $5,148,359.63. Do you know what that line item is?
MR. HARVEY: I understand deferred revenue as a general concept, but I am not looking at that line in front of me right now.
MS. ROGLEN: Can you tell me your understanding of the concept of deferred revenue?
MR. POMERANTZ: And we're not -- she's not speculating -- or I'd say do not speculate or guess. If you have an understanding of what deferred revenue generally means separate and apart from what it means in this particular line item she's referring to, then answer.
MR. HARVEY: Okay. Yes. I do. So as it relates to QLess and other software service companies, we bill upfront customers for the upcoming year. (indiscernible) coming up. As customers (indiscernible), they prepay during their one-year contract and they prepay that under contract. And so we deduct from the deferred revenue and recognize

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revenue on a monthly basis for that customer.
MS. ROGLEN: Okay. So this is basically an accounting function to account for pre-payment under those contracts?
MR. HARVEY: Yes, it's a gap accounting file function.
MS. ROGLEN: Okay. There is another line on the balance sheet under liabilities that's called Other Long Term Liabilities that's listed at $250,000. Do you know what goes into that amount?
MR. HARVEY: I do not know off the top of my head what that amount -- what it -- what constitutes that amount.
MS. ROGLEN: Okay. I'm going to turn now to the Schedules of Assets and Liabilities if you want to flip back to those.
MR. HARVEY: Sure. Give me just one second. Okay. I have the document in front of me.
MS. ROGLEN: Okay. The -- turning to what's the third page of the document, which is really the first page of the form where it says Summary of Assets and Liabilities for Non-Individuals, do you have that page?
MR. HARVEY: So is this -- was this in Part 1?
MS. ROGLEN: Yes, it starts with -- it's the page that has Part 1 and Part 2 on it.
MR. HARVEY: Okay. Yes. Which item specifically?

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MS. ROGLEN: So at the bottom of that page for total liabilities this lists $8,111,375.37 in total liabilities. You see that?
MR. HARVEY: (indiscernible). Are you referring to Part 2, Number 4? Ms. Roglen, are you referring to Part 2, Item 4?
MS. ROGLEN: Yes, that's right.
MR. HARVEY: Okay. I'm with you. Go ahead. Could you ask me the question again please?
MS. ROGLEN: Sure. That number there lists total liabilities for the debtor as $8,111,335.37, right?
MR. POMERANTZ: Are you asking him to read what the number on the page says and agree with you what the number on the page says?
MS. ROGLEN: I'm just making sure we're in the same place.
MR. POMERANTZ: Okay. I think he said he (indiscernible) --
MS. ROGLEN: Yeah.
MR. POMERANTZ: -- (indiscernible).
MS. ROGLEN: Okay. So do you know if that amount includes liabilities that the debtor has listed as contingent, unliquidated, or disputed?
MR. POMERANTZ: And do you have to go and do you have to add up all the amounts on the schedule to be able to

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answer that question, Mr. Harvey? Or do you know if it includes where the contingent unliquidated disputed amount is checked and there is an amount listed? Do you know if the software was listing it together or would you basically add those numbers regardless of whether it's listed as contingent, unliquidated, or disputes? And if you don't know the answer, you can say I don't know the answer.
MR. HARVEY: My apologies. I was on mute. Yes, I don't know the answer.
MS. ROGLEN: Okay. Continuing in the schedule, I'd like to go to Schedule D.
MR. HARVEY: Yes, I'm at Schedule D.
MS. ROGLEN: Okay. The first item in that schedule under 2.1 is a secured claim for Brex Inc. The amount of the claim is listed as undetermined. Can you explain why that's undetermined?
MR. HARVEY: No, I cannot explain why this is undetermined.
MS. ROGLEN: Can you explain the basis for Brex Inc.'s secured claim?
MR. HARVEY: Brex offers us credit card services in which we can do things like pay vendors. That is the nature of the services they provide to us.
MS. ROGLEN: And it's secured by a bank account?
MR. HARVEY: I think I know the answer to that,

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but I'm going to answer that I don't know because I don't want to guess at it.
MS. ROGLEN: Okay. Do you know how much money was owed to Brex as of the petition date?
MR. HARVEY: I do not. Not off the top of my head.
MS. ROGLEN: Okay. The next item in the same schedule on the next page for Item 2.2 is the secured claim of Celtic Bank. That's listed in the amount of $6,444,513. Does that amount include all outstanding principal, interest, fees, and other charges in connection with that loan as of the petition date?
MR. HARVEY: I cannot -- I can answer only one part of that question. It doesn't include a principal.
MS. ROGLEN: Okay. I believe the principal is 6.25 million I believe?
MR. HARVEY: That is correct.
MS. ROGLEN: Okay. But you don't know for sure whether the 6.44 million that's listed in the schedule includes everything that was done.
MR. HARVEY: That's correct. That would -- there's a number of items on it. I can't remember specifically which ones are in and which ones are out (indiscernible).
MR. POMERANTZ: This is Jeff Pomerantz. I can

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tell you (indiscernible) principal and anything else.
MS. ROGLEN: You just cut out a little. You said it does include everything?
MR. POMERANTZ: Yes, it does.
MS. ROGLEN: Thanks, Jeff. Okay. Moving to -- or what's the -- what are the terms of that loan? Are you familiar with the terms of the loan?
MR. HARVEY: There are a lot of terms associated with the loan, but could you maybe ask me specifically?
MS. ROGLEN: Sure. What's the interest rate on that loan?
MR. HARVEY: The interest rate changes because it is not always the same. So I don't know as of today what the interest rate is. That can change -- like I said, it changes throughout the year.
MS. ROGLEN: Okay. What's the term of the loan?
MR. HARVEY: The term of the loan, it's a three-year loan.
MS. ROGLEN: And when was it issued?
MR. HARVEY: February of 2023 I'm fairly certain.
MS. ROGLEN: And do you know when the service payments are due on that loan? Are they paid monthly, quarterly?
MR. HARVEY: Monthly.
MS. ROGLEN: And do you know the amounts of the

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(indiscernible) for each month?
MR. HARVEY: I do not.
MS. ROGLEN: Okay. I'm going to move now into the next Schedule EF.
MR. HARVEY: Yes, (indiscernible).
MS. ROGLEN: The trustee already asked my questions about the IRS, so we can skip that. In 2.2, there is a priority claim of goods for the State of Washington Department of Revenue that's listed in an undetermined amount and the box is checked for unliquidated. What is that priority claim for?
MR. HARVEY: That was sales tax to the State of Washington that we paid. And --
MS. ROGLEN: And what --
MR. HARVEY: -- there is -- go ahead. Please.
MS. ROGLEN: Now continue. I'm sure you were going to answer my next question.
MR. HARVEY: Oh, I'm just saying that it states a -- the sales tax to the State of Washington.
MS. ROGLEN: Okay. And what period is that for?
MR. HARVEY: I don't know off the top of my head which period.
MS. ROGLEN: Okay. I think it says here that the date this debt was incurred is for 2/2/2024. Does that sound right?

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MR. HARVEY: I see it here as well, and yes, I'm reading the same thing.
MS. ROGLEN: Do you have an idea of what the taxes were that were due to the State of Washington since 2/1 of 2024?
MR. HARVEY: I do not.
MS. ROGLEN: And do you know typically when those taxes are due? Like for example, if either the tax is for the second quarter of 2024, when do those need to be paid to the State of Washington?
MR. HARVEY: I do not know that. Not off the top of my head.
MS. ROGLEN: Okay. Next I'm going to Section 3, Non-Priority Unsecured Claims. And I have a couple more questions about Section 3.10, which is the Palisades unsecured claim.
MR. HARVEY: I have it in front of me.
MS. ROGLEN: Okay. That $250,000, do you know whether that was captured in the balance sheet that was filed with the petition?
MR. POMERANTZ: Only if you know the answer. If you say -- if you don't know, you can say I don't know.
MR. HARVEY: (indiscernible) to that time and when the -- when each were created or when it came and was created, I don't know off the top of my head.

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MS. ROGLEN: Okay. And I think you answered earlier that there is no written agreement accompanying that $250,000 loan?
MR. HARVEY: I did not say that.
MS. ROGLEN: Is there a written agreement accompanying that $250,000 loan?
MR. POMERANTZ: I think he said (indiscernible). I think that was what you heard (indiscernible). That was not him. He didn't know.
MS. ROGLEN: Okay. So do you know whether there are any repayment terms on that $250,000 loan?
MR. HARVEY: Not off the top of my head.
MS. ROGLEN: Okay. Next I wanted to ask about Section 3.18.
MR. HARVEY: Yes, I (indiscernible).
MS. ROGLEN: Okay. That was the claim for the U.S. Small Business Administration in the amount of $127,237.
MR. HARVEY: Yes, I see that.
MS. ROGLEN: That (indiscernible) -- what is this claim based on?
MR. HARVEY: This is based on a PPP loan. This is before my time with QLess. But it was my understanding it was based on a PPP loan, the Paycheck Protection Program of -- I don't know the exact name for (indiscernible). And

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there was a -- an amount that the U.S. Small Business Administration believes that QLess owed to it. We disputed that because we did not agree that we owed that amount. We set out to dispute them and the U.S. Small Business Administration has not responded to us or contacted us.
MS. ROGLEN: And when did you submit that dispute to them?
MR. HARVEY: I don't remember off the top of my head.
MS. ROGLEN: Okay. Next I want to move into Schedule G.
MR. HARVEY: Yes, I have it in front of me, Ms. Roglen.
MS. ROGLEN: Yes. Thank you. Earlier you mentioned an agreement with QLess AM whereby they, you know, provide certain services to the debtor. Is that contract listed in this schedule?
MR. HARVEY: I don't see it in the schedule, no.
MS. ROGLEN: Okay. What's the payment structure under that contract?
MR. HARVEY: (indiscernible) --
MR. POMERANTZ: (indiscernible) --
MR. HARVEY: Go ahead.
MR. POMERANTZ: I was just going to say if you know without having the contract in front of you. If not,

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you can say I don't know.
MR. HARVEY: I don't have the contract in front of me.
MS. ROGLEN: Do you know if the debtor pays QLess AM in advance for services or if it pays in arrears for services it already provided?
MR. HARVEY: I (indiscernible) those payments. Yeah, so I don't know because that is some (indiscernible) financing.
MS. ROGLEN: Do you know if QLess AM was owed any money as of the petition date?
MR. HARVEY: I do not know if there is some small amounts or some amount that is owed to QLess AM as of the petition date.
MS. ROGLEN: Do you know if a claim is scheduled for QLess AM in Schedule EF?
MR. HARVEY: No, I do not believe that there was any claim by QLess AM in Schedule EF.
MS. ROGLEN: Okay. Sticking with Schedule G, I think there's a total of 13 contracts and leases that are scheduled in Schedule G. One of them, which the trustee asked about earlier in 2.12 actually looks like it's kind of a (indiscernible) aggregation of multiple warrant option agreements.
MR. HARVEY: Mm-hmm.

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MS. ROGLEN: And 2.10 lists the debtor's office lease from Providence Partners, LLC. I think you mentioned earlier it's for their office space in Colorado. And --
MR. HARVEY: That is correct.
MS. ROGLEN: -- for -- and for that, a claim is included in Schedule E and F for unpaid rent, correct?
MR. HARVEY: (indiscernible). I need to find Schedule EF.
MS. ROGLEN: Sorry I'm referring to two schedules at once and you have to flip.
MR. HARVEY: No, it's okay. Sorry. Go ahead.
MR. POMERANTZ: At 3.13.
MS. ROGLEN: Thank you.
MR. HARVEY: Okay. I'm looking at the schedules you asked about. Here we go. I'm finding the Schedule EF, and it's -- you said 3.13?
MR. POMERANTZ: Correct.
MR. HARVEY: Okay. Okay. I'm at 3.13. Ms. Roglen, would you mind repeating your question?
MS. ROGLEN: Sure. That's unpaid rent under the Providence Partners lease, correct?
MR. HARVEY: This is definitely for the Denver office in rent, and I am not certain if this represents the unpaid amount or not. Like the monthly unpaid amounts or not. I never looked at the individual monthly payment for

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that lease.
MS. ROGLEN: Okay.
MR. HARVEY: I see that (indiscernible).
MS. ROGLEN: Apologies. Flipping back to Schedule G --
MR. HARVEY: Okay.
MS. ROGLEN: -- Section 2.2 lists the other office lease from BPP East Union, LLC, which I think is for your space in Pasadena, California?
MR. HARVEY: Yes, that is correct.
MS. ROGLEN: Do you know why no claim was scheduled for this lease?
MR. HARVEY: We actively use this office space, and this office space is the headquarters of our company. And we are required to have an office space of headquarters for our company. This is also where customers who have -- who send us paper checks also send it to this location. So this is an operational site of the company.
MS. ROGLEN: Okay. So is the landlord --
MR. POMERANTZ: James --
MS. ROGLEN: -- there not owed any money?
MR. POMERANTZ: Yeah, James. I think she's asking were they -- was the company current on this lease. To the best of your knowledge.
MR. HARVEY: To the best of my knowledge yes.

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MS. ROGLEN: Okay. So other than the two leases we just discussed and the warrant agreement, there's 10 scheduled executory contracts, each of which are called a vendor services agreement with 10 different providers of various services. And those are all services provided to the debtors under these contracts, right?
MR. HARVEY: (indiscernible). Which schedule are you referring to? Schedule G? Is that the (indiscernible) contracts?
MS. ROGLEN: That's right.
MR. HARVEY: Yes, I see the (indiscernible). I'm just double checking which one of them.
MS. ROGLEN: Mm-hmm.
MR. HARVEY: I'm sorry. I don't recall. Did you have a question about these?
MS. ROGLEN: Yeah. These contracts were all contracts where the debtors pay money to these service providers under the agreement, not the other way around, right?
MR. HARVEY: Yes. Yes. We pay -- well, no, we do not pay money to warrant holders.
MS. ROGLEN: Yes, correct. Excluding the warrant options and even taking out the leases that we already discussed, the 10 vendor service agreements where the vendors provide services to the debtors and the debtors pay

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them for those services.
MR. HARVEY: Yes, that is correct.
MS. ROGLEN: Okay. Are all of those vendors current because there aren't any claims scheduled for any of those vendors?
MR. POMERANTZ: This assumes did you agree with the statement that there are no claims scheduled for any of those vendors, which were required to go back to -- with the schedule. So do you have a specific question without having him to have to compare the schedules to the exhibit? What is the question since we see that there's no claim there? There's no claim there. So what's the question?
MS. ROGLEN: I'm asking if that's accurate and if all of those contracts are paid currently and that there are no amounts owing to any contract counterparties. I think that the scheduled claims are understated. That's where I'm going.
MR. POMERANTZ: It was patently apparent that (indiscernible). If you know the answer, James, you can answer.
MR. HARVEY: So yeah, I would like to give a definitive answer. I know on some of these the answer is yes. There's just some that I'm not -- I can't recall off the top of my head. I think the answer's yes, but you know, I am not in -- into the journal entries to see if the

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payment was actually made.
MR. POMERANTZ: Right. All we're asking for is your knowledge right now. If you don't have specific knowledge to answer the question, just say I don't know.
MR. HARVEY: Yeah, I don't know.
MS. ROGLEN: Okay. Did you prepare Schedules E and F?
MR. HARVEY: Along with my financial advisor and our finance team. I reviewed Schedules E and F with our team.
MS. ROGLEN: Okay. That's all of my questions. Thank you, Mr. Harvey.
MR. HARVEY: Thank you.
MR. BATES: Okay. Thank you, Ms. Roglen. At this time I'm going to ask if there are any other creditors or counsel on the line who wish to examine the witness.
MR. A. BAECKER: Yes. If you don't have an objection (indiscernible), I would like to ask a couple of questions.
MR. BATES: Is that Ron Baecker?
MR. POMERANTZ: (indiscernible).
MR. A. BAECKER: This is Alex Baecker.
MR. BATES: Alex Baecker?
MR. POMERANTZ: Yes, and I (indiscernible) --
MR. BATES: Mr. Baecker --

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MR. POMERANTZ: -- by counsel.
MR. BATES: Excuse me. Yes. Mr. Baecker, you are represented by counsel in this matter, so if you have questions, I would prefer that it be submitted to counsel to be directed to the witness. Otherwise I -- that's the procedure that I think we should follow here.
MR. POMERANTZ: (indiscernible) -- yeah. I think also, Malcolm, questions been closed. Ms. Roglen said she had no more questions, so I think it's time to ask questions of (indiscernible).
MR. BATES: I understand that, but if -- yeah, I hear you. But yes, Mr. Baecker, if -- because you're represented in this matter, your questions should be asked through counsel. That's without prejudice to your right to seek discovery pursuant to Bankruptcy Rule 2004 or otherwise.
MR. A. BAECKER: Okay. Is there an opportunity for my counsel to present additional questions either in writing or in a follow-up call?
MR. BATES: Well, as I stated, this is where --
MR. POMERANTZ: No, unless discovery --
MR. BATES: Excuse me, Jeff. I'll field it. I appreciate that.
MR. A. BAECKER: The question is for the trustee, not for the counsel, Jeff --

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MR. BATES: Mr. Baecker, please. I don't really want to have to mute the lines while I'm trying to wrap things up here. It's been a long examination. I'll answer your question. This is without prejudice to your right as a party in interest in this case to seek discovery pursuant to the Federal Rules of Bankruptcy Procedures, the Federal Rules of Civil Procedure, or any other applicable statute.
With respect to the 341 meeting specifically, I am going to be leaving the meeting open potentially to reconvene because I'm anticipating supplemental disclosures and amendments to the schedules by the debtor. If we do reconvene, there will be an additional opportunity for your counsel to ask questions. If not, as I stated, you're entitled to seek any discovery you wish in this case.
MR. POMERANTZ: Malcolm, I kind of have to object to keeping the 341 open. We have been here -- it's now been three hours in a Subchapter V case. I think we've answered all the questions to the best of the ability, which is all Mr. Harvey was required to answer. If there's informal questions that you want follow-up on, we're happy to provide you to. But we would object to keeping this 341 open.
MR. BATES: I understand that we've been here --
MR. POMERANTZ: (indiscernible).
MR. BATES: Jeff, I understand we've been here for a long time. We're going to have amendments to the

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schedules. We have an issue with, in my view, improper sealing of information that's been provided in connection with the schedules and SOFA. There are going to be additional disclosures that are going to be made. There were numerous questions that the witness was not able to answer and that I am anticipating follow-ups from the debtors on. So until I've had a chance to review that information and address the issue of the sealing of information in the schedules and SOFA, I don't think I can close the meeting.
Now I may review the supplemental information and conclude that there's nothing else to pursue here and close it, but I'm not prepared to close it until those issues have been resolved.
MR. POMERANTZ: Okay. Well, just for the record, we have -- we obviously know we have to file a sealing motion, and that will be addressed in court. And if the court requires us to file any additional information, you will have you rights to get (indiscernible) additional information. But after three hours of questioning going through the painstaking detail, Mr. Harvey was not required to be able to answer every last one. He answered many questions, provided a lot of information.
Again, we will cooperate with your office and provide additional information, so we do object. And I

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understand your position. You understand our position to the 341 being open, and we reserve the right to not show up to a 341 or to seek appropriate relief from the court.
MR. BATES: All rights that you may have are --

CERTIFICATION

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

<%12151,Signature%>

Sonya Ledanski Hyde

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Date: August 15, 2024

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DELAWARE RULES OF CIVIL PROCEDURE

Part V. Depositions and Discovery

Title V, Rule 30

(e) Submission to witness; changes; signing. When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days after the date when the reporter notifies the witness and counsel by mail of the availability for examination by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be

used as fully as though signed, unless on a motion to suppress under Rule 32(d) the Court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted

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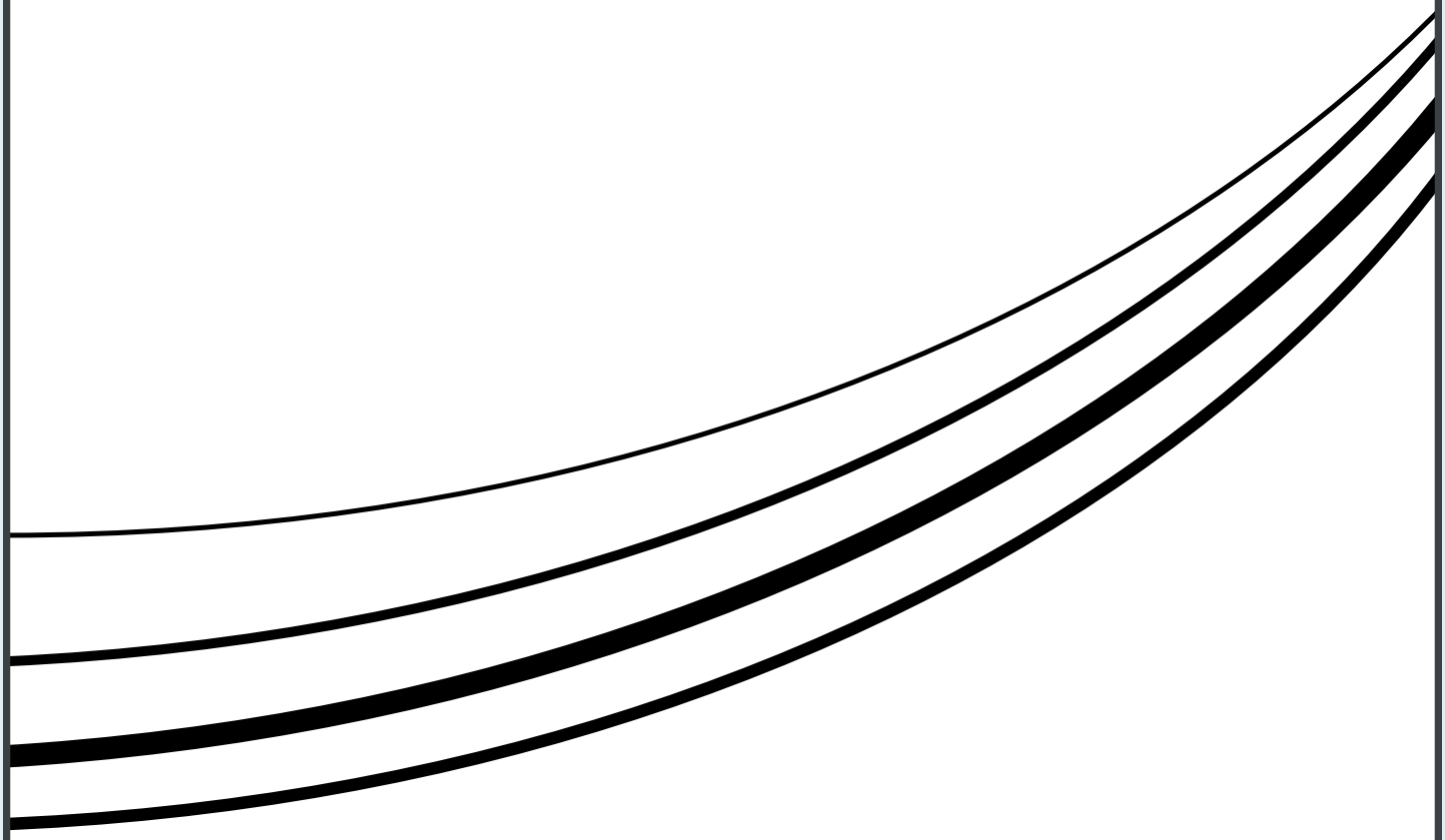
EXHIBIT B

Common stock valuation for

QLESS Inc. dba QLESS

Valuation date Jan. 31, 2023

Prepared by Carta Valuations LLC on May 5, 2023



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James Harvey

Chief Executive Officer

QLESS INC. DBA QLESS

150 S LOS ROBLES AVE, SUITE 900 Pasadena, CA 91101

May 5, 2023

This report details the valuation analysis used to derive the fair market value of the common equity of QLESS Inc. dba QLESS (hereinafter referred to as "QLESS" or the "Company") on a per share basis ("Subject Interest") as of Jan. 31, 2023 ("Valuation Date"). It is understood that the valuation of the Subject Interest, as developed in this report, will be used for tax planning and financial reporting purposes in recognition of Internal Revenue Code Section 409A ("409A") and FASB Accounting Standards Codification Topic 718 – Stock Compensation ("ASC 718"). As such, this report should not be used for any other purpose.

The analysis was prepared following the guidance of the American Institute of Certified Public Accountants ("AICPA") Accounting and Valuation Guide: Valuation of Privately-Held-Company Equity Securities Issued as Compensation (the "AICPA Guide").

The definition of fair market value is predicated on IRS Revenue Ruling 59-60.

STANDARD OF VALUE

For income tax purposes, the appropriate standard of value is fair market value ("FMV"), which is defined as:

> *The price, expressed in terms of cash equivalents, at which such property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arm's length in an open and unrestricted market, when neither is under compulsion to buy or to sell, and when both have reasonable knowledge of relevant facts.*

For financial reporting purposes, the appropriate standard of value is fair value ("FV"), which is defined as:

> *The amount at which an asset (or liability) could be bought (or incurred) or sold (or settled) in a current transaction between willing parties, that is, other than in a forced or liquidation sale.*

According to the May 7, 2003 FASB Board meeting, the above definition of fair value is consistent with the definition of fair market value in Internal Revenue Ruling 59-60. We are not aware of any facts that would cause a difference in our conclusions on a fair market value basis compared with fair value. As such, it is not unreasonable that our conclusion of fair value for financial reporting purposes be consistent with our conclusion of fair market value for tax reporting purposes.

SCOPE OF ENGAGEMENT

This report was created in compliance with guidance regarding valuation methodologies published by the AICPA.

We considered differences between the Company's preferred and common shares, as applicable, with respect to liquidation preferences, conversion rights, voting rights, and other features. We also considered appropriate adjustments to recognize lack of marketability related to the Subject Interest.

SCOPE OF ANALYSIS

Carta Valuations, LLC has based this report on information provided and represented by the management of QLESS ("Management"). Our review and analysis included, but was not necessarily limited to, the following steps:

- Communication with Management concerning the assets, financial and operating history and forecasted future operations of the Company;
- Analysis of audited and unaudited historical and forecast financial statements, as applicable, and other financial and operational data concerning the Company;
- Review of corporate documents including, but not limited to, the capitalization summary of preferred stock ("Preferred Stock" or "Preferred Shares"), Common Stock, options and warrants;
- Analysis of the Company, its financial and operating history, the nature of its product(s)/service(s), technologies and its competitive position;
- Analysis of the industry in which the Company competes, the stage of the development of the Company's target markets and the pace of adoption of its chosen technology platforms;
- Research and analysis concerning comparable public companies and transactions involving comparable public and private companies;
- Analysis concerning the current economic conditions and outlook for the US economy, as well as applicable global economic conditions; and
- Analysis and estimation of the FMV and FV of the common equity on a non-marketable, minority interest basis as of the Valuation Date.

CONCLUSIONS

Based on the information provided and the analysis conducted, and subject to the attached Statement of Assumptions and Limiting Conditions, it is our opinion that the fair value and fair market value of one share of the Company's common stock on a non-marketable, minority basis as of the Valuation Date is as follows:

Common Stock of QLESS: **$0.15**

Carta Valuations LLC's fee for this service is not contingent upon the results of the Valuation expressed herein. This Valuation is subject to the terms and conditions of the master subscription agreement between eShares, Inc. (an affiliate of Carta Valuations LLC) and QLESS executed on Sept. 13, 2022.

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VALUATION SUMMARY

Company value

Approach	Value	Weighting
Market approach (subject company transaction method)	$27,692,000	100.00%
Concluded value	**$27,692,000**	**100.00%**

Common share value

Inputs	Conclusion
Allocation methodology	Option pricing model
Fully marketable value	$0.23
Discount for lack of marketability	35.00%
Concluded fair market value	**$0.15**

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COMPANY OVERVIEW

QLess, Inc. develops Software-as-a-Service queue management solutions. The platform watches, learns and forecasts future wait times using various statistical analysis techniques. It serves education, healthcare, government, and retail customers worldwide. The Company provides its products through direct and reseller sales channels. QLess, Inc. was founded in 2007 and is based in Pasadena, California.

Company Update

The Company recently closed its Series A-1 Preferred round of financing. The financing included a due diligence process and was determined to be an arm's length transaction. Accordingly, Carta Valuations LLC has relied primarily upon the recent financing for this analysis. In terms of operational updates, the Company restructured the executive management team, hiring a permanent CEO, and new Head of Product & Technology, to lead growth and product development efforts. The Company is launching a newly designed product in 2023 and development efforts in 2022 have continued on pace and in line with expectations. A preferred equity round was successfully closed on January 23, 2023 and a new debt facility was closed in March 2023. The injection of debt and equity will provide enough runway through 2024. 2022 sales growth did not meet expectations due to higher than forecast customer attrition and lower than forecast new customer acquisition.

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QLESS FINANCIALS

Income statement

Metric	LTM[2]	NTM[3]	2024
Revenue	$8,024,441	$10,085,368	$11,808,516
EBITDA	($6,544,028)	($5,896,388)	($5,005,430)

Balance sheet as of Jan. 31, 2023

Metric	Value
Cash and cash equivalents	$6,434,053
Interest bearing liabilities	$5,000,000

[1] 'LTM' refers to the period from Feb. 1, 2022 to Jan. 31, 2023.
[2] 'NTM' refers to the period from Feb. 1, 2023 to Jan. 31, 2024.

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CAPITALIZATION

Share classes

Outstanding shares	Shares outstanding	Warrants	Options	Total
Series A-1 Preferred	14,585,331	0	0	14,585,331
Series A Preferred	27,275,000	75,430	0	27,350,430
Common	6,818,750	1,411,466	878,894	9,109,110
Total	**48,679,081**	**1,486,896**	**878,894**	**51,044,871**

Liquidation preferences

Share class	Liquidation rank	Issue price	Multiplier	Dividend type	Dividend rate	Participation Y/N	Participation cap	Conversion ratio
Series A-1 Preferred	1	$0.41	1.00	Non-Cumulative	N/M	Y	2.00x	1.00
Series A Preferred	2	$1.00	1.00	Non-Cumulative	N/M	Y	2.00x	1.00
Common	3	—	1.00	N/A	N/A	N/A	N/A	1.00

Lowest number liquidation preference is paid out first.

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VALUATION METHODOLOGY SUMMARY

Selected valuation approaches

The first step in valuing the Company's common shares was to determine the value of the Company. In arriving at a conclusion of the Company value, we considered the methodologies below:

Market approach: Subject company transaction method

This methodology consists of examining prior transactions of the subject Company. According to the AICPA guidelines, recent securities transactions in the Company's stock should be considered as a relevant input for computing the enterprise valuation.

Given that there were security transactions near the Valuation Date, the Subject Company Transaction Method was used. Detailed discussion and information about this approach can be found in the exhibits and appendix.

Market approach: Guideline public company method

The Guideline (or Comparable) Publicly Traded Company Methodology within the Market Approach relies on an analysis of publicly traded companies similar in industry and/or business model to the Company. This methodology uses these guideline companies to develop relevant market multiples and ratios, using metrics such as revenue, earnings before interest and taxes (EBIT), earnings before interest, taxes, depreciation and amortization (EBITDA), net income and/or tangible book value. These multiples and values are then applied to the Company's corresponding financial metrics. Since no two companies are perfectly comparable, premiums or discounts may be applied to the subject company's metrics if its position in its industry is significantly different from the position of the guideline companies, or if its intangible attributes are significantly different.

Given this context, and the Company's recent arm's length financing, the value indication from the Subject Transaction Method was considered a more relevant indicator of value.

Market approach: Guideline M&A transaction method

The Guideline Transactions Methodology of the Market Approach uses prices paid in merger and acquisitions targeting companies similar to the Subject Company. These acquisition values were used in conjunction with the transaction targets' financials to calculate implied exit multiples. These multiples are then applied to the Company's corresponding financial data.

Given the recent financing, the value indication from the Subject Company Transaction Method was considered more appropriate. Accordingly, the Guideline Transaction Methodology was not selected.

Income approach: Discounted cash flow

This approach focuses on the income-producing capability of a business. Carta Valuations LLC reviewed the Company's historical financials and any forecasts provided by Management.

The Company has not achieved profitability as of the Valuation Date and does not project consistent margins or stable cash flows in the near-term. Given this context, and the Company's recent arm's length financing, the value indication from the Subject Transaction Method was considered a more relevant indicator of value.

Asset approach

The asset approach measures the value of an asset by the cost to recreate or replace it with another of like utility. When applied to the valuation of equity interests in businesses, value is based on the net aggregate fair market value of the entity's underlying individual assets. This approach is frequently used in valuing holding companies or capital-intensive businesses. This methodology was considered and not used, as it does not accurately represent the going concern value of the Company.

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GUIDELINE PUBLIC COMPANY DISCUSSION

Public companies selected

A global list of companies that could be considered similar to QLESS was compiled for comparative purposes from a variety of sources including Capital IQ and our communication with management. We selected publicly traded guideline companies based on consideration of: business descriptions, operations and geographic presence, financial size and performance, stock liquidity, and management recommendations regarding most similar companies. Refer to the Appendix for business descriptions of the selected guideline public companies.

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COMPARABLE COMPANY STATISTICS

Selected industry: General SaaS, ($USD in thousands)

Company	LTM revenue	Historic growth rate	Projected growth	EBITDA margin	Projected EBITDA margin
2U, Inc.	$971,000	5.81%	-0.77%	-0.17%	15.73%
Alteryx, Inc.	$728,000	39.25%	27.22%	-31.98%	7.61%
Blackbaud, Inc.	$1,031,000	11.79%	6.41%	8.90%	26.06%
HubSpot, Inc.	$1,631,000	37.79%	19.29%	-4.85%	12.90%
Okta, Inc.	$1,731,000	50.25%	19.56%	-41.87%	3.72%
Open Text Corporation	$3,514,000	2.90%	-0.45%	27.81%	36.51%
Synchronoss Technologies, Inc.	$265,000	-4.10%	-3.36%	11.91%	20.04%
Verint Systems Inc.	$900,000	4.01%	2.86%	10.90%	28.45%
Minimum	$265,000	-4.10%	-3.36%	-41.87%	3.72%
10th percentile	$589,000	0.80%	-1.55%	-34.95%	6.45%
25th percentile	$857,000	3.74%	-0.53%	-11.63%	11.58%
Mean	$1,346,000	18.46%	8.84%	-2.42%	18.88%
Median	$1,001,000	8.80%	4.64%	4.36%	17.89%
75th percentile	$1,656,000	38.15%	19.35%	11.15%	26.66%
90th percentile	$2,266,000	42.55%	21.86%	16.68%	30.87%
Maximum	$3,514,000	50.25%	27.22%	27.81%	36.51%

Source: Capital IQ

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REVENUE MULTIPLES

Selected industry: General SaaS, ($USD in Millions)

Name	MVIC	LTM	NTM	2023	2024	2025
2U, Inc.	$1,733.80	1.79x	1.80x	1.76x	1.63x	-
Alteryx, Inc.	$4,796.96	6.59x	5.18x	4.95x	4.23x	3.66x
Blackbaud, Inc.	$4,137.60	4.01x	3.77x	3.71x	3.52x	3.31x
HubSpot, Inc.	$17,592.98	10.79x	9.04x	8.56x	6.93x	5.58x
Okta, Inc.	$14,171.29	8.19x	6.85x	6.53x	5.51x	4.30x
Open Text Corporation	$13,422.11	3.82x	3.84x	3.82x	3.70x	-
Synchronoss Technologies, Inc.	$318.98	1.20x	1.25x	1.24x	-	-
Verint Systems Inc.	$3,393.95	3.77x	3.67x	3.60x	3.26x	2.98x
Minimum	$318.98	1.20x	1.25x	1.24x	1.63x	2.98x
10th percentile	$1,309.35	1.61x	1.64x	1.60x	2.61x	3.11x
25th percentile	$2,978.91	3.28x	3.20x	3.14x	3.39x	3.31x
Mean	$7,445.96	5.02x	4.42x	4.27x	4.11x	3.97x
Median	$4,467.28	3.92x	3.80x	3.76x	3.70x	3.66x
75th percentile	$13,609.41	6.99x	5.60x	5.35x	4.87x	4.30x
90th percentile	$15,197.79	8.97x	7.51x	7.14x	6.08x	5.07x
Maximum	$17,592.98	10.79x	9.04x	8.56x	6.93x	5.58x

Source: Capital IQ

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MARKET APPROACH: SUBJECT COMPANY TRANSACTION METHOD

The Market Approach: Subject Company Transaction Method calculates the implied total value of an enterprise by accounting for all share class rights and preferences, as of the date of the latest financing. In order to determine the value of the Company's common shares, the Company's recently closed round of financing was used, whereby the Company sold shares of Series A-1 Preferred for $0.41 per share. The total equity value implied by this transaction was then applied in the context of an option pricing model to determine the value of each class of the Company's shares.

Equity value calculation

As noted above, this analysis considers the Series A-1 Preferred transaction, specifically those shares issued in exchange for new capital. The analysis uses the Black-Scholes option pricing model (OPM) to determine the value of the Company that results in a cumulative value of the transacted shares equal to the amount paid for those shares, or $0.41 per share. In this case, the most recently transacted share class has punitive term rights. Per the AICPA Valuation Guide and sections C.10.49 and C.10.50 in the AICPA PE/VC Guide, performing a backsolve with punitive terms may suppress Common Stock value. Therefore, the Stacked Preference rights for all Preferred share classes were removed when calculating implied equity value. For purposes of determining company value with a Black-Scholes OPM, five key inputs are required:

- Total consideration of the most recent transaction (discussed above);
- The rights and preferences of the shareholders (discussed above);
- Time to liquidity;
- Risk free rate;
- Volatility

Time to liquidity

In the context of the OPM, the time to a liquidity event (otherwise referred to as "time to exit") constitutes the time until the Company issues an initial public offering ("IPO"), is acquired, or liquidates assets through a dissolution sale. In determining the time to liquidity, the analysis relied upon guidance from Management.

Risk-free rate

The risk free rate used is the constant maturity US Treasury rate corresponding to the applicable time to liquidity. A risk free rate of 4.210% was applied which represents the US Treasury rate as of the Valuation Date.

Volatility

The analysis considered the volatility of companies operating in the Company's comparable industry as well as the Company's capital structure and risk profile relative to the peer group. The list of companies was further refined to include only companies with securities traded on major exchanges with sufficient pricing and volume. Typically, size and volatility are inversely correlated. A volatility of 70.00% was selected for the Company.

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Conclusion

Given the proximity of the transaction and Valuation Date and guidance from Management, no market adjustment to equity value was utilized in this analysis. Based on the Black-Scholes model, a value of $27,692,000 is necessary to provide a fair value of $0.41 per share for the Series A-1 Preferred shares issued in exchange for new capital.

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BACKSOLVE INPUTS

Inputs	Value
Selected preferred share class	Series A-1 Preferred
Backsolve date	Jan. 31, 2023
Risk-free interest rate	4.210%
Volatility	70.00%
Weighted time to exit	2.00 year(s)
Calculated backsolve value (rounded)	$27,692,000

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BACKSOLVE BREAKPOINTS

Description	From	To	Delta	Option value	Incremental value
Liquidation preference: Series A-1 Preferred, Series A Preferred	$0	$33,324,995	$33,324,995	$9,645,662	$18,046,069
Participates: Series A-1 Preferred, Series A Preferred, Series A Preferred Warrants $1 Strike, Common	$33,324,995	$46,488,713	$13,163,718	$6,978,589	$2,667,073
Exercises: Common $0.27 Strike	$46,488,713	$53,675,630	$7,186,917	$5,941,124	$1,037,466
Participation caps: Series A-1 Preferred	$53,675,630	$68,213,571	$14,537,941	$4,407,039	$1,534,085
Converts to common: Series A-1 Preferred	$68,213,571	$69,126,826	$913,255	$4,329,633	$77,406
Exercises: Common Warrants $0.848 Strike	$69,126,826	$76,885,646	$7,758,820	$3,740,764	$588,869
Participation caps: Series A Preferred, Series A Preferred Warrants $1 Strike	$76,885,646	$100,580,087	$23,694,441	$2,494,062	$1,246,702
Converts to common: Series A Preferred Warrants $1 Strike, Series A Preferred	$100,580,087	Infinity	Infinity	$0	$2,494,062

BACKSOLVE ALLOCATION

Percentages

Share classes	1	2	3	4	5	6	7	8
Series A Preferred	81.85%	55.94%	54.95%	77.82%	54.95%	53.43%	-	53.43%
Series A-1 Preferred	18.15%	29.92%	29.39%	-	29.39%	28.57%	61.56%	28.57%
Common	-	13.99%	13.74%	19.46%	13.74%	13.36%	28.78%	13.36%
Series A Preferred Warrants $1 Strike	-	0.15%	0.15%	0.22%	0.15%	0.15%	-	0.15%
Common $0.27 Strike	-	-	1.77%	2.51%	1.77%	1.72%	3.71%	1.72%
Common Warrants $0.848 Strike	-	-	-	-	-	2.77%	5.96%	2.77%
Total	**100.00%**	**100.00%**	**100.00%**	**100.00%**	**100.00%**	**100.00%**	**100.00%**	**100.00%**

$USD

Share classes	1	2	3	4	5	6	7	8
Series A Preferred	$14,769,890	$1,492,055	$570,118	$1,193,851	$42,537	$314,653	-	$1,332,662
Series A-1 Preferred	$3,276,178	$797,878	$304,871	-	$22,747	$168,261	$767,419	$712,642
Common	-	$373,014	$142,529	$298,463	$10,634	$78,663	$358,774	$333,165
Series A Preferred Warrants $1 Strike	-	$4,126	$1,577	$3,302	$118	$870	-	$3,686
Common $0.27 Strike	-	-	$18,371	$38,470	$1,371	$10,139	$46,244	$42,943
Common Warrants $0.848 Strike	-	-	-	-	-	$16,283	$74,265	$68,964
Total	**$18,046,069**	**$2,667,073**	**$1,037,466**	**$1,534,085**	**$77,406**	**$588,869**	**$1,246,702**	**$2,494,062**

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BACKSOLVE RESULTS

Share class	Share class value	Shares outstanding	Fully marketable value
Series A Preferred	$19,715,765	27,275,000	$0.72
Series A-1 Preferred	$6,049,995	14,585,331	$0.41
Common	$1,595,243	6,818,750	$0.23
Series A Preferred Warrants $1 Strike	$13,678	75,430	$0.18
Common $0.27 Strike	$157,538	878,894	$0.18
Common Warrants $0.848 Strike	$159,513	1,411,466	$0.11

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ALLOCATION

After the value of the Company was determined, it was allocated among the various share classes. The three allocation approaches considered are outlined below:

Option pricing model (OPM)

The OPM allocates a company's equity value among the various capital investors. The OPM takes into account the preferred shareholders' liquidation preferences, participation rights, dividend policy, and conversion rights to determine how proceeds from a liquidity event shall be distributed among the various ownership classes at a future date.

Option pricing model inputs

Inputs	Value
Equity value	$27,692,000
Risk-free interest rate	4.210%
Selected equity volatility	70.00%
Probability weighted time to exit	2.00 years

To calculate the fair market value of Common Stock, the Black-Scholes Option Pricing Model was used. The Black-Scholes implementation of the Option Pricing Method treats the rights of holders of various classes of securities (preferred stock, common stock, warrants, and options) as call options on any value of the Company above a series of breakpoints. For the Company, these breakpoints were set after examining the Certificate of Incorporation, warrant and option agreements, and management's records of the numbers of securities outstanding as of the Valuation Date. The values of the breakpoints were calculated by reviewing:

- The liquidation preferences of preferred stock (including seniority of any series of preferred stock);
- The participation rights of preferred stock (including any caps on such participation);
- The strike prices of warrants and options

The Black-Scholes Model requires a series of variables, including the: value of company, time to liquidity event, risk-free rate, and volatility. Below are the key assumptions for each of these variables.

Company value

The implied equity value of $27,692,000 was used as the underlying value of the Company.

Time to liquidity

In the context of the OPM, the time to a liquidity event (otherwise referred to as "time to exit") constitutes the time until the Company issues an initial public offering ("IPO"), is acquired, or liquidates assets through a dissolution sale. In determining the time to liquidity, Carta Valuations LLC incorporated guidance from management in the probability weighted time to exit that accounts for different exit, financing, or dissolution scenarios. As for the selected time to exit used in the DLOM, it reflects an approximation of the time to an IPO or M&A event.

As per Section 6.37 of the AICPA Practice Aid, *"...for early-stage firms, the next round of financing may be highly uncertain. Using a term in the OPM based on the expected time to exit, including the likelihood of dissolution in the short term, while still estimating the discount for lack of marketability based on the expected time to a successful exit may provide a more representative value for common stock in situations in which the company's ability to raise the next round of funding is highly uncertain."*

Risk-free rate

It is commonly accepted that US Treasury securities are a good proxy for the risk-free rate. We used the yield, as of Jan. 31, 2023 of the 2.00 year US Treasury bond, a maturity which closely approximates the forecasted liquidity horizon of the Company.

Volatility

The estimate for expected volatilities, over the estimated time to a liquidity event, was based upon an analysis of the historical volatility of guideline public companies as well as factors specific to the Company, including, but not limited to, size, expected growth and relative risk. A volatility of 70.00% was selected for the Company.

Probability weighted expected return method (PWERM)

The Probability Weighted Expected Return Method of allocating value between security holders analyzes the capital structure of a business at the time of several different potential future outcomes. It assumes that the likelihood, timing, and size of financial success or failure can be estimated. This method involves a forward-looking analysis of the possible future outcomes available to the enterprise, the estimation of ranges of future and present value under each outcome, and the application of a probability factor to each outcome as of the Valuation Date.

Given the subjectivity and difficulty associated with estimating exit values and lack of empirical data to support the values at the Company’s current stage of development, the probability-weighted expected return method was not selected.

Current value method

The Current Value Method allocates the Company's current value among various equity owners based on liquidation preferences and other rights under the assumption that all capital owners act to maximize their financial return. According to AICPA guidelines, the Current Value Method is applicable in three circumstances: 1) the assumption of an imminent liquidity event in the form of an acquisition or dissolution of a company; 2) when a company is assumed to be at such an early stage of its development that no material progress has been made on its business plan, no significant value has been created above the liquidation preference of the senior securities, and there is no reasonable basis for estimating the amount and timing of any such common equity above the liquidation preference that might be created in the future; and 3) In the case of a simple capital structure, the equity value is allocated pro rata to the common stock, consistent with a Current Value Method allocation methodology.

The Company is early in its development and does not face an imminent liquidity/dissolution event as of the Valuation Date. Therefore, the Current Value Method was not selected.

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VOLATILITY SELECTION

Selected industry: General SaaS

Comparable company	Symbol	Equity volatility
2U, Inc.	TWOU	91.79%
Alteryx, Inc.	AYX	54.79%
Blackbaud, Inc.	BLKB	37.85%
HubSpot, Inc.	HUBS	64.30%
Okta, Inc.	OKTA	68.09%
Open Text Corporation	OTEX	28.48%
Synchronoss Technologies, Inc.	SNCR	68.05%
Verint Systems Inc.	VRNT	38.83%
Minimum		28.48%
10th percentile		35.04%
25th percentile		38.59%
Mean		56.52%
Median		59.55%
75th percentile		68.06%
90th percentile		75.20%
Maximum		91.79%
Selected volatility		70.00%

The volatility represents the normalized, standard deviation of the natural log of daily price returns of the comparable public companies. All pricing data is sourced from CapitalIQ.

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BREAKPOINTS

Description	From	To	Delta	Option value	Incremental value
Liquidation preference: Series A-1 Preferred	$0	$6,049,995	$6,049,995	$22,378,144	$5,313,587
Liquidation preference: Series A Preferred	$6,049,995	$33,324,995	$27,275,000	$9,645,662	$12,732,481
Participates: Series A-1 Preferred, Series A Preferred, Series A Preferred Warrants $1 Strike, Common	$33,324,995	$46,488,713	$13,163,718	$6,978,589	$2,667,073
Exercises: Common $0.27 Strike	$46,488,713	$53,675,630	$7,186,917	$5,941,124	$1,037,466
Participation caps: Series A-1 Preferred	$53,675,630	$68,213,571	$14,537,941	$4,407,039	$1,534,085
Converts to common: Series A-1 Preferred	$68,213,571	$69,126,826	$913,255	$4,329,633	$77,406
Exercises: Common Warrants $0.848 Strike	$69,126,826	$76,885,646	$7,758,820	$3,740,764	$588,869
Participation caps: Series A Preferred, Series A Preferred Warrants $1 Strike	$76,885,646	$100,580,087	$23,694,441	$2,494,062	$1,246,702
Converts to common: Series A Preferred Warrants $1 Strike, Series A Preferred	$100,580,087	Infinity	Infinity	$0	$2,494,062

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OPTION PRICING MODEL

Percentages

Share classes	1	2	3	4	5	6	7	8	9
Series A-1 Preferred	100.00%	-	29.92%	29.39%	-	29.39%	28.57%	61.56%	28.57%
Series A Preferred	-	100.00%	55.94%	54.95%	77.82%	54.95%	53.43%	-	53.43%
Common	-	-	13.99%	13.74%	19.46%	13.74%	13.36%	28.78%	13.36%
Series A Preferred Warrants $1 Strike	-	-	0.15%	0.15%	0.22%	0.15%	0.15%	-	0.15%
Common $0.27 Strike	-	-	-	1.77%	2.51%	1.77%	1.72%	3.71%	1.72%
Common Warrants $0.848 Strike	-	-	-	-	-	-	2.77%	5.96%	2.77%
Total	**100.00%**	**100.00%**	**100.00%**	**100.00%**	**100.00%**	**100.00%**	**100.00%**	**100.00%**	**100.00%**

$USD

Share classes	1	2	3	4	5	6	7	8	9
Series A-1 Preferred	$5,313,587	-	$797,878	$304,871	-	$22,747	$168,261	$767,419	$712,642
Series A Preferred	-	$12,732,481	$1,492,055	$570,118	$1,193,851	$42,537	$314,653	-	$1,332,662
Common	-	-	$373,014	$142,529	$298,463	$10,634	$78,663	$358,774	$333,165
Series A Preferred Warrants $1 Strike	-	-	$4,126	$1,577	$3,302	$118	$870	-	$3,686
Common $0.27 Strike	-	-	-	$18,371	$38,470	$1,371	$10,139	$46,244	$42,943
Common Warrants $0.848 Strike	-	-	-	-	-	-	$16,283	$74,265	$68,964
Total	**$5,313,587**	**$12,732,481**	**$2,667,073**	**$1,037,466**	**$1,534,085**	**$77,406**	**$588,869**	**$1,246,702**	**$2,494,062**

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OPTION PRICING MODEL RESULTS

Share class	Share class value	Shares outstanding	Fully marketable value
Series A-1 Preferred	$8,087,404	14,585,331	$0.55
Series A Preferred	$17,678,356	27,275,000	$0.65
Common	$1,595,243	6,818,750	$0.23
Series A Preferred Warrants $1 Strike	$13,678	75,430	$0.18
Common $0.27 Strike	$157,538	878,894	$0.18
Common Warrants $0.848 Strike	$159,513	1,411,466	$0.11

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DISCOUNT FOR LACK OF MARKETABILITY

When selecting a discount for lack of marketability ("DLOM") to be applied to the subject Company's common shares, Carta Valuations LLC relied primarily on put option models as a means to satisfy the AICPA's preference to use quantitative approaches over more subjective approaches when appropriate. Court case rulings (i.e. Mandelbaum, et al v. Commissioner Internal Revenue), restricted stock studies, and IPO studies were also considered to gauge the reasonableness of the put option model results. The results from the selected put option model(s) shown below, suggest a DLOM in the range of 32.25% and 62.92%.

Inputs	The Asian Put Approach	The Finnerty Approach
Risk-free interest rate	3.630%	3.630%
Time to exit	5.00 years	5.00 years
Common share class volatility	131.27%	131.27%
Total equity value, *S*	$1.00	—
Equity breakpoint, *X*	$1.00	—
Value of the share of common stock without transfer restrictions, *V*	—	$1.00
Continuously compounded dividend yield rate, *q*	0.00%	0.00%
Standard normal cumulative distribution of *d1*, *N(d1)*	33.59%	66.12%
Standard normal cumulative distribution of *d2*, *N(d2)*	89.81%	33.88%
Calculated value of Put option	$0.61	$0.32
Calculated discount for lack of marketability	61.24%	32.25%
Selected discount for lack of marketability		**35.00%**

Selected approach: The Incremental Chaffe Approach

Inputs	Value
Risk-free interest rate	3.630%
Common share class volatility	131.27%
Time to exit	5.00 years
Calculated discount for lack of marketability	62.92%
Selected discount for lack of marketability	**35.00%**

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CARTA VALUATIONS LLC QUALIFICATIONS

Appraisal Team

Carta Valuations LLC has a team of over 50 valuation personnel with more than 175 collective years of experience in valuation. Team members have previous experience at some of the most well-known valuation shops and audit firms. Members of the team hold various credentials, including CFA, CPA, ABV, and CVA.

Carta Valuations LLC has performed over 15,000 valuations for clients across a wide range of industries, including information technology, software development, life sciences, manufacturing, retail, and others. Since its inception in 2016, the Appraisal Team within Carta Valuations LLC has solidified its place as the market leader in providing IRC §409A/ASC 718 and ASC 820 valuations and is recognized as the premier provider worldwide.

R&D Team

Carta Valuations LLC has a dedicated team of engineers and product managers who have created the technology that allows the Appraisal Team to deliver the highest quality valuations more quickly than any provider in the market. The team is made up of 15 people with over 100 years of combined experience and backgrounds at leading software companies. The R&D Team works closely with the Appraisal Team and with Carta clients to understand the business needs and effectively improve the valuation experience both internally and externally. Carta's technology automates many AICPA-compliant methodologies and produces leverage for analysts through complex allocation calculation, public comparable selection, and scenario modeling. Capitalization table data from the Carta platform is utilized to ensure accuracy.

Valuation Policy

The Appraisal Team creates valuation policy to ensure consistent application of methodologies. The team leverages deep relationships with all of the major audit firms and works to set valuation policy that matches expectations from the audit community and the IRS. The valuation policy is reviewed on an ongoing basis and updated for any changes in guidance from the AICPA and other regulatory bodies.

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REPRESENTATION OF CARTA VALUATIONS LLC

1. The analysis and conclusion of value included in the valuation report are subject to the specified assumptions and limiting conditions.
2. The economic and industry data included in the valuation report have been obtained from various printed or electronic reference sources that Carta Valuations LLC and its valuation professionals believe to be reliable. No corroborating procedures have been performed to substantiate that data.
3. The parties for which the information and use of the valuation report is restricted are identified; the valuation report is not intended to be and should not be used by anyone other than such parties.
4. The compensation to Carta Valuations LLC and its valuation professionals for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this report.
5. Affiliates of Carta Valuations LLC may provide additional services to the Company including management of Company's capitalization table and other services. Carta Valuations LLC and its valuation professionals do not perform any work related to any such additional services. The valuation conclusions in this report are based solely on the information provided by the Company and Carta Valuations LLC's research of economic, industry and capital market information.
6. Neither Carta Valuations LLC nor its staff who conducted this valuation have a present or intended financial interest in the Company.
7. Carta Valuations LLC has no obligation to update the report or the conclusion of value for information that is provided after the date of the report.

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STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS

1. The conclusion of value arrived at herein is valid only for the stated purpose as of the date of the valuation.
2. Financial statements and other related information provided by QLESS or its representatives, in the course of this engagement, have been accepted without any verification as fully and correctly reflecting the enterprise's liquidation preferences, ownership positions, business conditions and operating results for the respective periods, except as specifically noted herein. Carta Valuations LLC has not audited, reviewed, or compiled the financial information provided to us and, accordingly, we express no audit opinion or any other form of assurance on this information.
3. Public information and industry and statistical information have been obtained from sources we believe to be reliable. However, we make no representation as to the accuracy or completeness of such information and have performed no procedures to corroborate the information.
4. We do not provide assurance on the achievability of the results forecasted by QLESS because events and circumstances frequently do not occur as expected; differences between actual and expected results may be material; and achievement of the forecasted results is dependent on actions, plans, and assumptions of management.
5. The conclusion of value arrived at herein is based on the assumption that the current level of management expertise and effectiveness would continue to be maintained, and that the character and integrity of the enterprise through any sale, reorganization, exchange, or diminution of the owners' participation would not be materially or significantly changed.
6. This report and the conclusion of value arrived at herein are for the exclusive use of QLESS's Board and management, tax advisors, and auditors for the sole and specific purposes as noted herein. They may not be used for any other purpose or by any other party for any purpose. Furthermore, the report and conclusion of value are not intended by Carta Valuations LLC and should not be construed by the reader to be investment advice in any manner whatsoever. The stated valuation represents the considered conclusion of value of Carta Valuations LLC, based on information furnished to them by QLESS and other sources.
7. Neither all nor any part of the contents of this report (especially the conclusion of value, the identity of any valuation specialist(s), or the firm with which such valuation specialists are connected or any reference to any of their professional designations) should be disseminated to the public through advertising media, public relations, news media, sales media, mail, direct transmittal, or any other means of communication without the prior written consent and approval of Carta Valuations LLC.
8. Except as specifically stated by Carta Valuations LLC, this valuation report and its contents may not be quoted or referred to, in whole or in part, in any registration statement, prospectus, public filing, loan agreement, or other agreement or document without the prior written approval of Carta Valuations LLC. This valuation report may not be reproduced or distributed to any third parties without Carta Valuations LLC's prior written consent.
9. Future services regarding the subject matter of this report, including, but not limited to testimony or attendance in court, shall not be required of Carta Valuations LLC unless previous arrangements have been made in writing.
10. Carta Valuations LLC is not an environmental consultant or auditor, and it takes no responsibility for any actual or potential environmental liabilities. Any person entitled to rely on this report, wishing to know whether such liabilities exist, or the scope and their effect on the value of the property, is encouraged to obtain a professional environmental assessment. Carta Valuations LLC does not conduct or provide environmental assessments and has not performed one for the subject property.

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11. Carta Valuations LLC has not determined independently whether QLESS is subject to any present or future liability relating to environmental matters (including, but not limited to CERCLA/Superfund liability) nor the scope of any such liabilities. Carta Valuations LLC's valuation takes no such liabilities into account, except as they have been reported to Carta Valuations LLC by QLESS or by an environmental consultant working for QLESS, and then only to the extent that the liability was reported to us in an actual or estimated dollar amount. Such matters, if any, are noted in the report. To the extent such information has been reported to us, Carta Valuations LLC has relied on it without verification and offers no warranty or representation as to its accuracy or completeness.
12. Carta Valuations LLC has not made a specific compliance survey or analysis of any subject property to determine whether it is subject to, or in compliance with, the American Disabilities Act of 1990, and this valuation does not consider the effect, if any, of noncompliance.
13. No change of any item in this report shall be made by anyone other than Carta Valuations LLC, and we shall have no responsibility for any unauthorized change.
14. Unless otherwise stated, no effort has been made to determine the possible effect, if any, on the subject business due to future Federal, state, or local legislation, including any environmental or ecological matters or interpretations thereof.
15. If prospective financial information approved by management has been used in our work, we have not examined or compiled the prospective financial information and therefore, do not express an audit opinion or any other form of assurance on the prospective financial information or the related assumptions. Events and circumstances frequently do not occur as expected and there will usually be differences between prospective financial information and actual results, and those differences may be material.
16. The management of QLESS has provided materials concerning the past, present, and prospective operating results of the company via interviews, request forms and/or direct correspondence.
17. Except as noted, we have relied on the representations of the owners, management, and other third parties concerning the value and useful condition of all equipment, real estate, investments used in the business, and any other assets or liabilities, except as specifically stated to the contrary in this report. We have not attempted to confirm whether or not all assets of the business are free and clear of liens and encumbrances or that the entity has good title to all assets.
18. Nothing in this valuation report is to be construed as a fairness opinion as to the fairness of an actual or proposed transaction, a solvency opinion, or an investment recommendation. For various reasons, the price at which the assets might be sold in a specific transaction between specific parties on a specific date might be significantly different from the value expressed in this report.
19. This report is limited to issues concerning compliance with IRC §409(A). Additional issues may exist that could affect the federal tax treatment of the interests that are subject to the report, and the report does not consider or provide a conclusion with respect to any additional issues. Carta Valuations LLC's report is not intended or written to be used, and cannot be used, by the Company or any other person or entity, for the purpose of avoiding any penalties that may be imposed on any taxpayer.
20. The text of this report is copyright ©2023, Carta Valuations LLC. All rights are reserved and no reproduction, publication, distribution, or other use of this report is authorized without the prior consent of Carta Valuations LLC.

Appendix

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COMPARABLE COMPANY DESCRIPTIONS

2U, Inc.

2U, Inc. operates as an education technology company in the United States, Hong Kong, South Africa, and the United Kingdom. The company operates in two segments, Degree Program and Alternative Credential. The Degree Program segment provides the technology and services to nonprofit colleges and universities to enable the online delivery of degree programs. This segment targets students seeking an undergraduate or graduate degree. The Alternative Credential segment offers online short courses, and technical and skills-based boot camps through nonprofit colleges and universities. This segment targets students seeking to reskill or upskill through shorter duration and lower-priced offerings. It also provides 2UOS, a platform that provides front-end and back-end cloud-based SaaS technology and technology-enabled services. The company was formerly known as 2Tor Inc. and changed its name to 2U, Inc. in October 2012. 2U, Inc. was founded in 2008 and is headquartered in Lanham, Maryland.

Alteryx, Inc.

Alteryx, Inc. provides end-to-end analytics platform for data analysts and scientists worldwide. Its analytic process automation software platform includes Alteryx Designer, a data profiling, preparation, blending, and analytics product used to create visual workflows or analytic processes; Alteryx Server, a server-based product for scheduling, sharing, and running analytic processes and applications in a Web-based environment; Alteryx Connect, a collaborative data exploration platform for discovering information assets and sharing recommendations across the enterprise; and Alteryx Promote, an analytics model management product for data scientists and analytics teams to build, manage, monitor, and deploy predictive models into real-time production applications. The company also offers Alteryx Analytics Gallery, a cloud-based collaboration offering that allows users to share workflows in a centralized repository; Alteryx Analytics Hub, a server-based product that provides a centralized and governed, web-based experience for process automation, collaboration, and analytics; Alteryx Intelligence Suite, a hub for machine learning and artificial intelligence capabilities for automated modeling, optical character recognition, and natural language processing; and Alteryx Community, which allow users to gain valuable insights in its platform. In addition, it provides technical support, instruction, and customer services. Alteryx has strategic relationship with Veritone. The company was formerly known as Alteryx, LLC and changed its name to Alteryx, Inc. in March 2011. Alteryx, Inc. was founded in 1997 and is headquartered in Irvine, California.

Blackbaud, Inc.

Blackbaud, Inc. provides cloud software solutions to nonprofits, foundations, companies, education institutions, healthcare organizations, and other social good entities in the United States and internationally. The company offers fundraising and relationship management solutions, such as Blackbaud Raiser's Edge NXT and Blackbaud CRM, Blackbaud TeamRaiser, Blackbaud Peer-to-Peer Fundraising, and Blackbaud Guided Fundraising and Blackbaud Volunteer Network Fundraising; marketing and engagement solutions, including Blackbaud Luminate Online, Blackbaud Luminate Advocacy, Blackbaud Online Express, and Blackbaud School Website System; and financial management solutions comprising Blackbaud Financial Edge NXT, Blackbaud Tuition Management, and Blackbaud Financial Aid Management. It also provides grant and award management solutions, consisting of Blackbaud Grantmaking, Blackbaud Outcomes, and Blackbaud Award Management; organizational and program management, such as Blackbaud Student Information System, Blackbaud Learning Management System, Blackbaud Enrollment Management System, Blackbaud Altru, and Blackbaud Church Management; social responsibility solutions, which includes YourCause Grants Connect and YourCause CSR; Blackbaud Merchant Services and Blackbaud Purchase

Cards payment services; and Blackbaud's Intelligence for Good solutions, as well as donor acquisition, prospect research, data enrichment, and benchmarking and performance management solutions and services. It sells its solutions and related services through its direct sales force. The company was founded in 1981 and is headquartered in Charleston, South Carolina.

HubSpot, Inc.

HubSpot, Inc. provides a cloud-based customer relationship management (CRM) platform for businesses in the Americas, Europe, and the Asia Pacific. The company's CRM platform includes marketing, sales, service, and content management systems, as well as integrated applications, such as search engine optimization, blogging, website content management, messaging, chatbots, social media, marketing automation, email, predictive lead scoring, sales productivity, ticketing and helpdesk tools, customer NPS surveys, analytics, and reporting. It also offers professional, as well as phone and/or email and chat based support services. It serves mid-market business-to-business companies. HubSpot, Inc. was incorporated in 2005 and is headquartered in Cambridge, Massachusetts.

Okta, Inc.

Okta, Inc. provides identity management platform for enterprises, small and medium-sized businesses, universities, non-profits, and government agencies in the United States and internationally. The company offers Okta Identity Cloud, a platform that offers a suite of products to manage and secure identities, such as Universal Directory, a cloud-based system of record to store and secure user, application, and device profiles for an organization; and Single Sign-On that enables users to access their applications in the cloud or on-premise from various devices with a single entry of their user credentials. It also provides Adaptive Multi-Factor Authentication, a product that provides an additional layer of security for cloud, mobile, and Web applications, as well as for data; Lifecycle Management, which enables IT organizations or developers to manage a user's identity throughout its lifecycle; API Access Management that enables organizations to secure APIs; Advanced Server Access to secure cloud infrastructure; and Access Gateway that enables organizations to extend the Okta Identity Cloud from the cloud to their existing on-premise applications. In addition, the company offers customer support and training, and professional services. Okta, Inc. sells its products directly to customers through sales force, as well as through channel partners. The company was formerly known as Saasure, Inc. Okta, Inc. was incorporated in 2009 and is headquartered in San Francisco, California.

Open Text Corporation

Open Text Corporation engages in the designs, develops, markets, and sells information management software and solutions. It offers content services; business network that manages data within the organization and outside the firewall; security and protection solutions for defending against cyber threats, and preparing for business continuity and response in the event of a breach; digital investigation and forensic security solutions; OpenText security solutions to address information cyber resilience needs; Carbonite and Webroot products; and OpenText Information Management software platform. The company also provides Discovery platform that provides forensics and unstructured data analytics; OpenText Developer Cloud; key developer API services; AI and analytics that leverages structured or unstructured data; digital process automation solutions, which enables organizations to transform into digital data-driven businesses; and OpenText Digital Experience platform. In addition, it offers customer support programs, including access to software upgrades, a knowledge base, discussions, product information, and an online mechanism to post and review trouble tickets; and consulting and learning services relating to the implementation, training, and integration of its licensed product offerings, as well as cloud services. The company serves

organizations, enterprise and mid-market companies, public sector agencies, small and medium-sized businesses, and direct consumers in Canada, the United States, the United Kingdom, Germany, rest of Europe, the Middle East, Africa, and internationally. It has strategic partnerships with SAP SE, Google Cloud, Amazon AWS, Microsoft Corporation, Oracle Corporation, Salesforce.com Corporation, Accenture plc, ATOS, Capgemini Technology Services SAS, Cognizant Technology Solutions U.S. Corp., Deloitte Consulting LLP, and Tata Consultancy Services. The company was incorporated in 1991 and is headquartered in Waterloo, Canada.

Synchronoss Technologies, Inc.

Synchronoss Technologies, Inc. provides cloud, digital, messaging, and network management platforms, products, and solutions in the Americas, Europe, the Middle East, Africa, and the Asia Pacific. Its platforms, products, and solutions include cloud sync, backup, storage, device set up, content transfer, and content engagement for user generated content; multi-channel messaging peer-to-peer communications and application-to-person commerce solutions; customer journey and workflow design, development, orchestration, and experience management solutions; and telecom network infrastructure designing, procuring, managing, and optimizing solutions. In addition, the company offers software development and customization services. It markets and sells its services through direct sales force and strategic partners. Synchronoss Technologies, Inc. was incorporated in 2000 and is headquartered in Bridgewater, New Jersey.

Verint Systems Inc.

Verint Systems Inc. provides customer engagement solutions worldwide. It offers various applications for use in Forecasting and Scheduling, which understands the work needed to meet and exceed customer expectations; Quality and Compliance that uses automation and analytics for customer interactions for attended and self-service channels; Interaction Insights, which extracts insights from structured and unstructured customer interactions and activities; Real-Time Work that supports in-the-moment workforce activities; Self-Service, which connects customers and employees with information, resources, and support; Case Management that helps employees to improve efficiency, time to resolution, compliance, and customer satisfaction; and Knowledge Management, which help agents to deliver stellar service with tools. The company also provides Digital Experience that monitors customer-initiated feedback via web and mobile channels; Enterprise Experience, which captures experience data across various channels and unify feedback; Interaction Experience that uses voice surveys and contact center interaction to understand and improve the effectiveness of people, products, and processes; and Predictive Experience, which listens and acts on customer and employee experiences. In addition, it offers engagement data management applications for data management, enrichment, and compliance solutions, as well as cloud platform services. The company was incorporated in 1994 and is headquartered in Melville, New York.

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ECONOMIC OVERVIEW 3Q 2022

The U.S. economy—as indicated by GDP—increased at an annual rate by 2.6% in the third quarter of 2022 after declining at a rate of 0.6% in the second quarter. The rate for the third quarter of 2022 reflected increases in exports, consumer spending, nonresidential fixed investment, federal government spending, and state and local government spending. The increases were partly offset by decreases in residential fixed investment and private inventory investment. Imports, which are a subtraction in the calculation of GDP, declined.

The current-dollar GDP increased 6.7%, or $414.8 billion, in the third quarter, to $25.7 trillion. This followed the second-quarter rate, which increased by 8.5%, or $508.0 billion. The price index for gross domestic purchases rose 4.6% in the third quarter, compared with an increase of 8.5% in the second quarter. The PCE price index went up 4.2%, compared with an increase of 7.3% in the previous quarter.

The U.S. Leading Economic Index (LEI) fell 0.4% in September, and the weaknesses among the indicators were widespread. Most notably, rising inflation, increasing interest rates, and a slowdown in the labor markets stifled the LEI. The LEI is now down 2.8% over the past six months. The senior director of economics with The Conference Board interpreted the data to suggest that a recession is likely coming before the end of 2022.

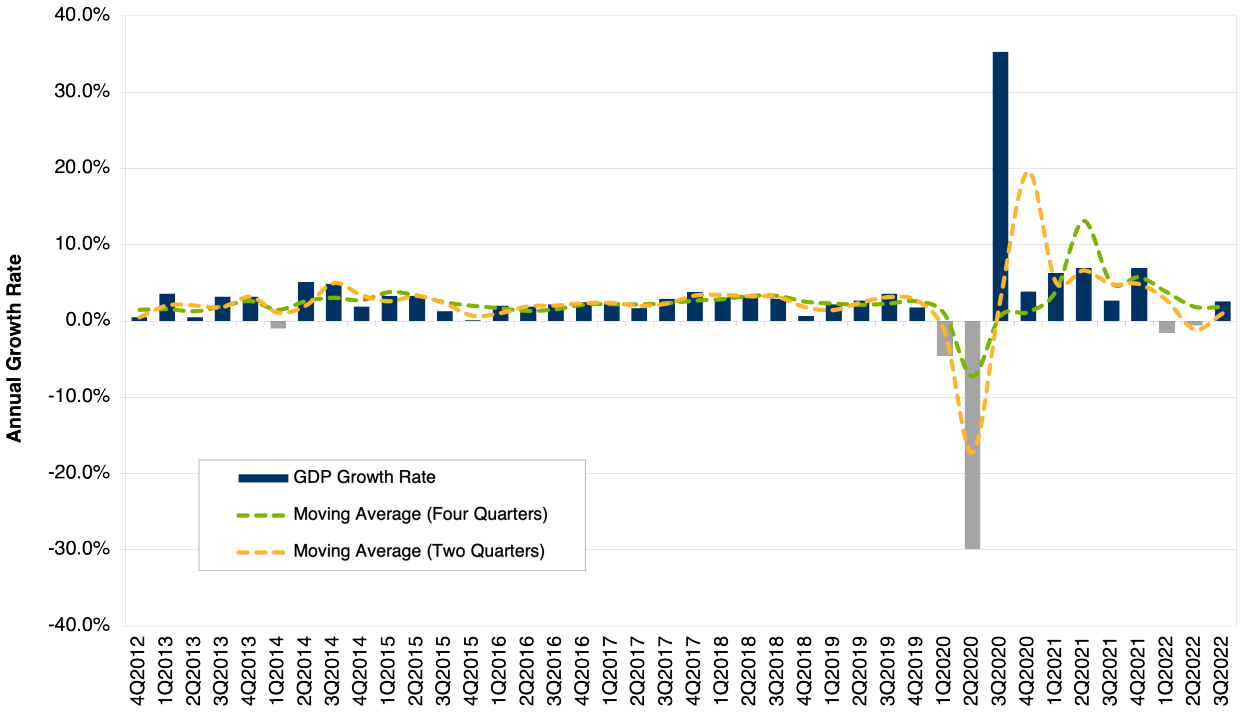
The Chicago Fed National Activity Index (CFNAI) was unchanged in September, at +0.10. Production-related indicators provided positive contributions to the CFNAI, owing to growth in industrial production. Employment-related contributors also aided the CFNAI, as the unemployment rate edged down. The index's three-month moving average made a significant increase, from +0.04 in August to +0.17 in September.

In September, the U.S. economy added 263,000 jobs. The U.S. Bureau of Labor Statistics reported that the unemployment rate decreased 0.2 percentage point, to 3.5%.

The U6 unemployment rate, the broadest measure of labor underutilization, edged down 0.3 percentage point in September, to 6.7%.

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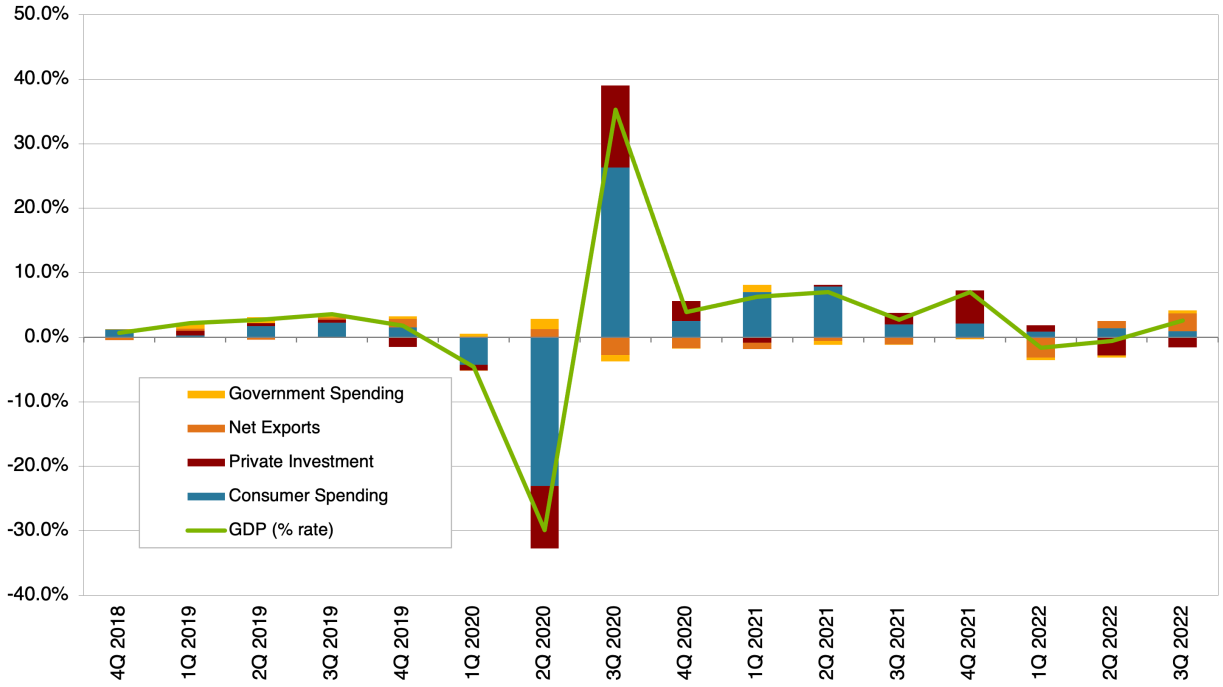
EXHIBIT 1A: Real Gross Domestic Product and Moving Averages



Source of data: U.S. Department of Commerce.
Note: Figures are seasonally adjusted at annual rates. As the U.S. Department of Commerce issues revised data, some historically reported figures may change.

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EXHIBIT 1B: GDP Components—Contribution to GDP Rate



The four-week average of initial claims for unemployment insurance in the last week of September was 219,000. The total number of continued weeks claimed for benefits in all programs for the week ending October 1 was 1,223,968. This is a decrease of 30,879 from the previous week. The number of weekly claims filed for benefits in all programs was 3,279,058 in the comparable week in 2021.

Wages increased 10 cents in September, to $32.46. Real average hourly earnings, seasonally adjusted, have increased by 5.0%, from $30.92, over the 12-month period ending September 2022.

In the third quarter of 2022, the Federal Open Market Committee (FOMC) met twice. In the first meeting in July, the FOMC voted to raise the target range for the federal funds rate from 2.25% to 2.5%.

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EXHIBIT 1: Historical Economic Data 2009-2021 and Forecasts 2022-2032

														Consensus Forecasts**						
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028-2032
Real GDP*	-2.5	2.6	1.6	2.2	1.8	2.5	3.1	1.7	2.3	2.9	2.3	-2.8	5.9	1.7	0.5	1.8	2.2	2.0	1.9	1.9
Industrial production*	-11.4	5.5	3.2	3.0	2.0	3.0	-1.4	-2.2	1.4	3.2	-0.7	-7.0	4.9	4.1	-0.1	1.6	2.2	2.0	1.7	1.7
Consumer spending*	-1.3	1.7	1.9	1.5	1.5	3.0	3.8	2.8	2.4	2.9	2.0	-3.0	8.3	2.4	0.8	1.8	2.1	2.1	2.0	2.0
Real disposable personal income*	-0.4	1.0	2.5	3.1	-1.4	4.0	4.1	1.8	2.8	3.3	3.5	6.2	1.9	-5.2	1.8	2.6	2.3	2.1	2.1	2.1
Business investment*	-14.5	4.5	8.7	9.5	4.1	6.9	1.8	0.7	4.1	6.5	3.6	-4.9	6.4	4.3	0.8	3.0	3.1	2.9	2.9	2.7
Nominal pretax corp. profits*	8.4	25.0	4.0	10.0	1.7	5.4	-2.8	-2.4	4.5	8.6	3.9	-5.9	22.6	5.0	-1.5	2.4	6.0	4.7	4.2	4.0
Total government spending*	3.5	0.0	-3.1	-2.1	-2.4	-0.9	1.8	1.8	0.5	1.7	3.3	2.6	0.6	-1.4	0.9	NA	NA	NA	NA	NA
Consumer price inflation*	-0.4	1.6	3.2	2.1	1.5	1.6	0.1	1.3	2.1	2.4	1.8	1.2	4.7	8.0	3.8	2.4	2.4	2.5	2.4	2.3
Core PCE						1.6	1.2	1.6	1.7	2.0	1.7	1.3	3.5	4.9	3.5	NA	NA	NA	NA	NA
3-month Treasury bill rate	0.2	0.1	0.1	0.1	0.1	0.0	0.2	0.5	1.4	2.4	1.5	0.1	0.1	3.6	3.4	2.5	2.6	2.6	2.5	2.5
10-year Treasury bond yield	3.3	3.2	2.8	1.8	2.4	2.5	2.2	2.5	2.8	2.7	1.9	0.9	1.6	3.3	3.1	3.2	3.4	3.4	3.3	3.3
Unemployment rate	9.3	9.6	8.9	8.1	7.4	6.2	5.3	4.9	4.4	3.9	3.7	8.1	5.4	3.7	4.2	NA	NA	NA	NA	NA
Housing starts (millions)	0.6	0.6	0.6	0.8	0.9	1.0	1.1	1.2	1.2	1.3	1.3	1.4	1.6	1.6	1.4	NA	NA	NA	NA	NA

Source of historical data: U.S. Department of Commerce, U.S. Department of Labor, U.S. Census Bureau and The Federal Reserve Board.
Source of forecasts: Consensus Forecasts - USA, September 2022.

Notes:
*Numbers are based on percent change from preceding period.
Historic consumer price inflation, unemployment rate, 3-month Treasury rate, and 10-year Treasury yield are the annual averages.

**Forecast numbers are based on percent change from preceding period (excludes unemployment rate, housing starts, 3-month Treasury rate, and 10-year Treasury yield). Consumer price inflation information is annual averages. The 2022 through 2026 forecasts for the 3-month Treasury rate and 10-year Treasury yield are for the end of each period. Forecasts for 2028-2032 signify the average for that period.

Consumer spending, also known as personal consumption expenditures, includes spending on services, durable, and nondurable goods.
Business investment is also referred to as nonresidential fixed investment.
Total government spending includes federal, state, and local government spending.

Every month, Consensus Economics surveys a panel of 30 prominent United States economic and financial forecasters for their predictions on a range of variables including future growth, inflation, current account and budget balances, and interest rates.

At the September meeting, the FOMC unanimously voted to raise the target for the federal funds rate by 75 basis points, bringing the range to between 3.0% and 3.25%. The federal funds rate is the interest rate at which a commercial bank lends immediately available funds in balances at the Federal Reserve to another commercial bank. The committee announced it will continue to reduce its holdings of Treasury securities, agency debt, and agency mortgage-backed securities. The FOMC issued a press release stating that recent indicators in spending and production pointed to a modest growth. It also mentioned that job gains continued to be robust and unemployment had been low in recent months. Inflation, however, remains elevated due to pandemic-related supply-and-demand bottlenecks, rising food and energy prices, and other broad price pressures. The statement also pointed to the invasion of Ukraine by Russia as a key driver of inflationary pressures and instability in global economic activity. The committee also voted unanimously to approve a 75-basis-point increase to the primary credit rate, to 3.25%. The primary credit rate is the basic interest rate charged to most banks.

EXHIBIT 2B: Historical Energy Data 2009-2021 and Forecasts 2022-2023

														EIA Forecasts		% Change	
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2022	2023
Brent crude oil spot price*	61.8	79.6	111.3	111.7	108.6	98.9	52.3	43.7	54.2	71.2	64.3	41.7	70.9	104.2	96.9	47.0%	-7.0%
West Texas intermediate crude oil price*	62.0	79.5	94.9	94.1	98.0	93.2	48.7	43.3	50.8	65.1	57.0	39.2	68.2	98.1	90.9	43.8%	-7.3%
Heating oil retail price**	252.4	297.1	365.7	378.6	378.3	371.4	264.9	210.3	250.7	301.2	299.9	244.3	300.0	461.0	411.0	53.7%	-10.8%
Gasoline regular grade retail price**	234.9	278.1	352.6	362.7	350.6	336.4	242.8	214.9	241.7	272.7	260.4	218.4	302.0	398.0	361.0	31.8%	-9.3%
Electricity residential retail price***	11.5	11.5	11.7	11.9	12.1	12.5	12.7	12.6	12.9	12.9	13.0	13.2	13.7	14.8	15.2	7.5%	3.3%
Electricity commerical retail price***	10.2	10.2	10.2	10.1	10.3	10.7	10.6	10.4	10.7	10.7	10.7	10.6	11.3	12.1	12.5	7.5%	3.1%
Electricity industrial retail price***	6.8	6.8	6.8	6.7	6.9	7.1	6.9	6.8	6.9	6.9	6.8	6.7	7.3	8.0	8.0	10.6%	-0.9%
Natural gas Henry Hub spot price******	4.0	4.4	4.0	2.8	3.7	4.4	2.6	2.5	3.0	3.2	2.6	2.0	3.9	7.4	6.0	88.5%	-18.5%
Airline Ticket Price Index	258.0	278.2	304.0	305.0	312.7	307.7	292.2	282.6	275.8	264.9	265.4	217.6	217.5	290.0	281.8	33.3%	-2.8%
Producer Price Index: Petroleum	1.8	2.3	3.0	3.1	3.0	2.8	1.8	1.4	1.7	2.1	1.9	1.4	2.4	3.4	2.9	41.9%	-15.8%
Producer Price Index: all commodities	1.7	1.9	2.0	2.0	2.0	2.1	1.9	1.9	1.9	2.0	2.0	1.9	2.3	2.7	2.5	16.7%	-4.5%

Source of historical and forecast data: U.S. Energy Information Administration.

Notes:
*Dollars per barrel
**Cents per gallon, U.S. average
***Cents per kilowatthour, U.S. average
****Dollars per million Btu

The Consumer Confidence Index increased 4.4 points in September. The September gain marked the second consecutive monthly increase, breaking a three-month streak of declines. The index now stands at 108.0. Consumers' assessment of current conditions and their short-term outlook both improved.

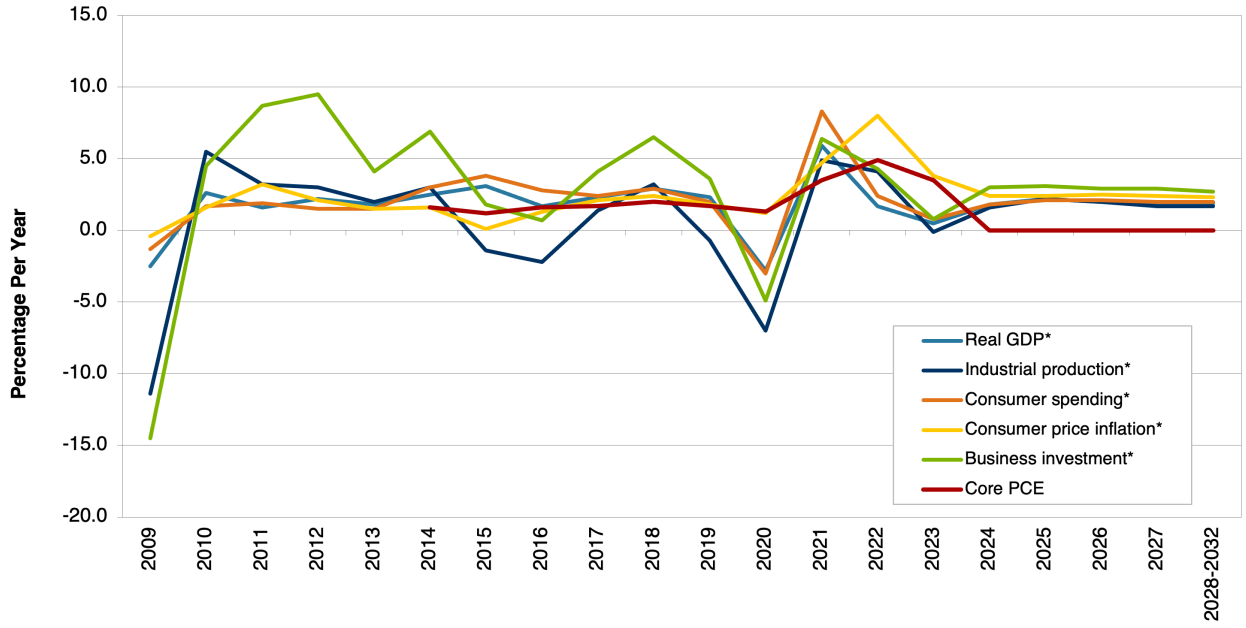
MetLife and the U.S. Chamber of Commerce published their third-quarter 2022 survey in August. The quarter's score dropped to 62.1, which is the lowest since the start of the pandemic. The third-quarter score fell 4.7 points, from 66.8 points last quarter. Despite the drop, the score remains higher compared to the all-time low of 39.5 at

the start of the pandemic in the second quarter of 2020.

The survey highlighted three key findings for the quarter:

- Half of the respondents stated that inflation is their bigger challenge. This result was the increasing concern for the fifth consecutive quarter. It also indicates a significant 31-point increase since last year.
- Less than 60% of the small-business owners remarked that the economy is currently in poor health, an increase of 10 percentage points from last quarter.
- Small businesses are reportedly becoming less comfortable with their cash flow. Although more than half (66.0%) of small businesses stated that they are comfortable with their current cash flow, it is 7.0 points lower than it was last quarter. This is a notable decline since mid-2020.

EXHIBIT 3: Key Economic Variables Actual 2009-2021 and Forecast 2022-2032



Source of historical data: U.S. Department of Commerce, U.S. Department of Labor and The Federal Reserve Board.
Source of forecasts: Consensus Forecasts.

*Numbers are based on percent change from preceding period. Consumer price inflation information is annual averages.

The RSM U.S. Middle Market Business Index continued to rebound in September, rising 7.3 points, to 138.5 points. The September increase brought the index closer to its record-high of 143.7, which it hit in the third quarter of 2021. Despite elevated inflation, the report noted that 48.0% of respondents saw an increase in their gross revenues, while 60% expected their revenues to rise in the next six months.

The Institute for Supply Management's Manufacturing PMI index decreased by 1.9 percentage points in September, to 50.9%. Despite the decrease, the score indicates an expansion in the manufacturing economy for the 28th consecutive month, albeit at a lower rate. A reading above 50% indicates that the manufacturing economy is generally expanding, while a reading below 50% indicates that it is generally contracting. Over the past 12 months, the Manufacturing PMI has averaged 56.2%.

The Federal Reserve reported that total industrial production increased by 0.4% in September, to 105.2. In the third quarter of 2022, industrial production increased at an annual rate of 2.9%. The total industrial production was 5.3% higher than it was one year ago. Capacity utilization for the industrial sector was at 80.3% in September, a rate that is 0.7 percentage point above its long-run (1972-to-2020) average.

The Institute for Supply Management's Services PMI index declined 0.2 percentage point in September, to a reading of 56.7%. While the index declined in September, it remained at a level that represented growth in the services sector for the 28th consecutive month. The Services PMI has remained in growth territory since the start of the coronavirus pandemic in March 2020 and April 2020, the only two periods of contraction in the last 152 months. Over the past 12 months, the Services PMI has averaged 59.2%. Fourteen industries reported growth in business activity during the month.

Stocks continued to decline in September. The S&P 500 dropped 9.2%, the Dow Jones Industrial Average fell 8.8%, and the Nasdaq Composite lost 10.5%. The Russell MidCap shed 9.3 percentage points in September, while the Russell 2000 Index retreated 9.6%. Stock volatility remained high in September, with the Chicago Board Options Exchange Volatility Index averaging 27.2, up from the August average of 25.8.

During the third quarter of 2022, the yield on the benchmark 10-year U.S. Treasury bond started the quarter at 2.9% and rose to 3.8% by the end of the quarter.

Housing starts increased 1.9% in September, to a seasonally adjusted rate of 1.439 million units. Despite the monthly increase, housing starts are 3.2% below their mark from one year ago. Single-family housing starts in September were at a rate of 892,000, 4.7% lower than the revised August figure and 18.5% lower than the rate from one year ago. Multifamily starts fell 13.1% in September, to a rate of 530,000, but remain up 16.5% from one year ago.

Existing-home sales declined for the eighth consecutive month, falling 1.5% to a seasonally adjusted annual rate of 4.71 million. Prospective buyers continued to face rising interest rates and rising home prices in most markets. On a year-over-year basis, home sales fell 23.8%.

The number of building permits authorized for new privately owned housing units, which measures how much construction is in the pipeline, rose 1.4% in September, to 1.564 million. On a year-over-year basis, the rate is down 3.2%. The number of privately owned housing completions increased by 6.1% in September and is 15.7% higher than the September 2021 rate.

The NAHB/Wells Fargo Housing Marking Index (HMI) decreased by 3.0 points, to 46.0 points. The report attributed the decline to weaker buyer traffic since early this year, and a rising number of builders have reported a spike in cancellations.

The National Association of Realtors' most recent "Commercial Market Insights Report," which analyzed the commercial real estate market in the past 12 months, stated that, after the strong rebound in 2021, the commercial real estate market slowed down in 2022. The combination of high inflation, lowered household incomes, and geopolitical events is causing a decline in the growth of commercial real estate.

Multifamily home rent growth and absorption are decelerating, with rent growing year over year by 5.7%, a slower rate compared to the 9.4% and 11.3% in two previous quarters. Net absorption for office space dropped as the vacancy rate rose to 12.4% in the third quarter of 2022. Absorption for the industrial sector is reportedly double that of the prepandemic times. This sector had the lowest vacancy rate, 4.0%, than any other sector in the commercial real estate market.

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EXHIBIT 4: Economic Indicators Historical Data

Monthly Data												
	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22	Apr-22	May-22	Jun-22	Jul-22	Aug-22	Sep-22
Real GDP			7.0			-1.6			-0.6			2.6
Consumer spending			3.1			1.3			2.0			1.4
Business investment			1.1			7.9			0.1			3.7
Total government spending			-1.0			-2.3			-1.6			2.4
Exports			23.5			-4.6			13.8			14.4
Imports			18.6			18.4			2.2			-6.9
CPI (one-month % change)	0.8	0.5	0.3	0.8	0.9	1.3	0.6	1.1	1.4	0.0	0.0	0.2
Unemployment rate	4.6	4.2	3.9	4.0	3.8	3.6	3.6	3.6	3.6	3.5	3.7	3.5
PMI	60.8	60.6	58.8	57.6	58.6	57.1	55.4	56.1	53.0	52.8	52.8	50.9
Services PMI	66.7	68.4	62.3	59.9	56.5	58.3	57.1	55.9	55.3	56.7	56.9	56.7
HMI	80.0	83.0	84.0	83.0	81.0	79.0	77.0	69.0	67.0	55.0	49.0	46.0
Housing starts (millions)	1.6	1.7	1.8	1.7	1.8	1.7	1.8	1.6	1.6	1.4	1.6	1.4
Building permits (millions)	1.7	1.7	1.9	1.8	1.9	1.9	1.8	1.7	1.7	1.7	1.5	1.6

Notes: Real GDP and subcomponents data only available on a quarterly basis and therefore, are quarterly figures. GDP and its subcomponents, along with housing starts and building permits, are seasonally adjusted at annual rates. PMI is the Institute of Supply Management's Manufacturing Index—any reading above 50.0% suggests growth in the manufacturing economy, whereas a reading below 50.0% indicates contraction. Services PMI is the Institute of Supply Management's Non-Manufacturing Index, which measures the strength of the services sector—any reading above 50.0% suggests growth, whereas a reading below 50.0% indicates contraction. HMI is the National Association of Home Builders/Wells Fargo Housing Market Index—any reading over 50 indicates that more builders view sales conditions as good than poor.

Quarterly Data												
	4Q 18	1Q19	2Q19	3Q19	4Q19	1Q20	2Q20	3Q20	4Q20	1Q21	2Q21	3Q21
Real GDP	0.7	2.2	2.7	3.6	1.8	-4.6	-29.9	35.3	3.9	6.3	7.0	2.7
Consumer spending	1.8	0.4	2.6	3.4	2.4	-6.2	-32.1	43.0	3.9	10.8	12.1	3.0
Business investment	3.8	1.8	6.2	4.1	-1.6	-8.2	-29.4	20.2	11.5	8.9	9.9	0.6
Total government spending	0.1	4.9	5.3	3.4	2.4	3.3	7.3	-5.9	-0.1	6.5	-3.0	-0.2
Exports	1.2	4.8	-2.3	0.0	0.8	-15.3	-60.9	59.5	24.2	0.4	4.9	-1.1
Imports	3.9	1.3	0.7	-1.7	-8.0	-12.2	-53.7	88.2	32.9	7.6	7.9	6.6
CPI (3-month % change)	-0.5	1.2	0.8	0.2	0.1	0.4	-0.1	1.0	0.1	1.7	2.6	1.0
Unemployment rate	3.9	3.8	3.7	3.5	3.5	4.4	11.1	7.9	4.2	6.0	5.9	4.8
PMI	54.3	54.6	51.6	48.2	47.8	49.7	52.2	55.7	60.5	64.7	60.9	60.5
Services PMI	58.0	56.3	55.4	53.5	54.9	53.6	56.5	57.2	57.7	63.7	60.7	62.6
HMI	56.0	62.0	64.0	68.0	76.0	72.0	58.0	83.0	86.0	82.0	81.0	76.0
Housing starts (millions)	1.1	1.2	1.2	1.3	1.6	1.3	1.3	1.4	1.7	1.7	1.7	1.6
Building permits (millions)	1.3	1.3	1.3	1.4	1.5	1.4	1.3	1.6	1.8	1.8	1.6	1.6

Notes: Unemployment rate, housing starts, building permits, PMI, Services PMI, and HMI are readings from the last month of the quarter. GDP and its subcomponents, along with housing starts and building permits, are seasonally adjusted at annual rates.

Yearly Data												
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Real GDP	2.6	1.6	2.2	1.8	2.3	2.7	1.7	2.2	2.9	2.3	-2.8	5.9
Consumer spending	1.7	1.9	1.5	1.5	2.7	3.3	2.5	2.4	2.9	2.0	-3.0	8.3
Business investment	4.5	8.7	9.5	4.1	7.2	2.3	0.9	4.1	6.5	3.6	-4.9	6.4
Total government spending	0.0	-3.1	-2.1	-2.4	-0.9	1.8	2.0	0.4	1.7	3.3	2.6	0.6
Exports	12.1	7.1	3.4	3.0	3.9	0.3	0.4	4.3	2.8	0.5	-13.2	6.1
Imports	13.1	5.6	2.7	1.2	5.2	5.2	1.5	4.5	4.2	1.1	-9.0	14.1
Consumer Price Index	1.6	3.2	2.1	1.5	1.6	0.1	1.3	2.1	1.9	2.3	0.1	0.6
Unemployment rate	9.6	8.9	8.1	7.4	6.2	5.3	4.9	4.4	3.9	3.7	8.1	5.4
Housing starts (millions)	0.6	0.6	0.8	0.9	1.0	1.1	1.2	1.2	1.2	1.3	1.4	1.6
Building permits (millions)	0.6	0.6	0.8	1.0	1.1	1.2	1.2	1.3	1.3	1.4	1.5	1.7

Notes: Yearly Consumer Price Index rates and yearly unemployment rates are the annual average rates.

Personal consumption includes spending on services and durable and nondurable goods.
Government spending includes federal, state, and local government spending.
As the government issues revised data, some historical reported figures may have changed.

Source of data: U.S. Department of Commerce, U.S. Department of Labor, U.S. Census Bureau, The Federal Reserve Board, the Institute of Supply Management, and the National Association of Home Builders.

ECONOMIC OUTLOOK

Consensus Economics Inc., the publisher of Consensus Forecasts—USA, reports that the consensus of U.S. forecasters believe that real GDP will rise at an annual rate of 0.7% in the fourth quarter of 2022 and will increase at a rate of by 0.2% in the first quarter of 2023. Every month, Consensus Economics surveys a panel of 30 prominent U.S. economic and financial forecasters for their predictions on a range of variables, including future growth, inflation, current account and budget balances, and interest rates. The forecasters expect GDP to increase 1.7% in 2022 and 0.5% in 2023.

They forecast that consumer spending will increase at a rate of 1.2% in the fourth quarter of 2022 and will rise 0.4% in the first quarter of 2023. They expect consumer spending to increase 2.4% in 2022 and 0.8% in 2023.

The forecasters believe unemployment will average 3.7% in the fourth quarter of 2022 and 3.9% in the first quarter of 2023. They predict that unemployment will average 3.7% in 2022 and 4.2% in 2023.

The forecasters believe that the three-month Treasury bill rate will be 3.6% at the end of the fourth quarter of 2022 and will stay at 3.6% at the end of the first quarter of 2023. They predict the 10-year Treasury bond yield will be 3.3% at the end of the fourth quarter of 2022 and will remain at 3.3% at the end of the first quarter of 2023.

They also believe consumer prices will rise at a rate of 4.4% in the fourth quarter of 2022 before increasing 3.7% in the first quarter of 2023. They expect consumer prices to increase by 8.0% in 2022 and 3.8% in 2023. They expect producer prices to increase 4.4% in the fourth quarter of 2022 before increasing 2.5% in the first quarter of 2023. The forecasters anticipate producer prices will rise 13.4% in 2022 and 3.1% in 2023.

The forecasters believe real disposable personal income will rise 1.3% in the fourth quarter of 2022 and increase by 2.7% in the first quarter of 2023. They believe real disposable personal income will decrease by 5.2% in 2022 but rise by 1.8% in 2023.

The forecasters expect industrial production to increase 0.3% in the fourth quarter of 2022 and fall 1.1% in the first quarter of 2023. They forecast that industrial production will increase 4.1% in 2022 and fall 0.1% in 2023.

Nominal pretax corporate profits are expected to increase 5.0% in 2022 but decrease 1.5% in 2023. The forecasters also project housing starts in 2022 will be 1,560,000 and 1,390,000 in 2023.

The most recent release of The Livingston Survey (the Survey) predicts GDP growth of 2.1% for the second half of 2022, which is a downward revision from the previously forecasted rate of 3.5% in the prior survey. The Survey, conducted by the Federal Reserve Bank of Philadelphia, is the oldest continuous survey of economists' expectations. It summarizes the forecasts of economists from industry, government, banking, and academia. The survey forecasts GDP growth of 2.3% in the first half of 2023. The forecasters predict a lower unemployment rate compared with their prior expectations. In June 2022, they forecast the unemployment rate will drop to 3.4% in December 2022 from the current rate of 3.6%, then rise to 3.5% by June 2023. The forecasters believe CPI inflation will be 7.6% for 2022 and 3.8% for 2023 while PPI inflation will be 13.2% for 2022 but drop significantly, to 4.2% for 2023.

The Congressional Budget Office (CBO) provided its baseline economic forecast that is used as the basis for updating its budget projections for 2022 to 2032. In the report, the CBO projects that, if current laws governing federal taxes and spending generally remain in place, the economy will grow modestly for the rest of the year. Real (inflation-adjusted) gross domestic product (GDP) is expected to grow at 3.1% by the fourth quarter of 2022 over the fourth quarter of 2021 and by 2.2% by the fourth quarter of 2023. The unemployment rate is projected to average 3.7% in 2022 and fall to 3.6% in 2023.

The CBO assumes in its forecast that many of the current disruptions in the supply chain, as well as many of the effects of pandemic-related demand for goods and services, will cause inflation to remain high through midyear 2022 and those effects will start to fade through 2023, staying above 2%, however, into 2024. The impact of price increases of food, energy, and motor vehicles are expected taper off in 2023.

The Federal Reserve published its summary of economic projections, which is released with the FOMC meeting minutes in September 2022. For 2022, the Federal Reserve forecasts real GDP to increase by 0.2%, which is less than its prior forecast for growth of 1.7%. Real GDP is forecasted to grow by 1.2% in 2023 and by 1.7% in 2024. The unemployment rate is projected to be 3.8% for 2022, which is more than its earlier projection of 3.7%. Unemployment is expected to be at 4.4% in 2023 and 4.4% in 2024. The Federal Reserve forecasts PCE to be at 5.4% in 2022, higher than the previously projected rate of 5.2%, but it is expected to moderate to 2.8% in 2023 and 2.3% in 2024. Core PCE is forecasted to be 4.5%, more than the originally projected rate of 4.3% in 2022, but is projected to increase to 3.1% in 2023 and 2.3% in 2024.

The Energy Information Administration (EIA) predicts that the West Texas Intermediate crude oil spot price will average approximately $98.07 per barrel in 2022, down from $98.71 per barrel in the previous forecast, and fall to $90.91 per barrel in 2023, up from $89.13 per barrel in the previous forecast. The average price for West Texas Intermediate crude in 2021 was $68.21 per barrel. The EIA expects retail prices for regular-grade gas to average $3.98 per gallon in 2022 and $3.61 per gallon in 2023, compared with $3.02 per gallon in 2021.

The EIA believes the Henry Hub natural gas spot price will average $7.37 per million Btu (MMBtu) in 2022, up from $6.80 per MMBtu in the previous forecast, and drop to $6.01 per MMBtu in 2023. The average Henry Hub natural gas spot price was $3.91 per MMBtu in 2021.

The cost of coal delivered to electricity-generating plants, which averaged $1.98 per MMBtu in 2021, is expected to average $2.26 per MMBtu in 2022 and similarly $2.26 per MMBtu in 2023. Residential electricity prices, which averaged 13.72 cents per kilowatt-hour (kWh) in 2021, are expected to average 14.75 cents per kWh in 2022 then rise to 15.24 cents per kWh in 2023. The airline ticket price index, which averaged $217.50 in 2021, is expected to rise to $290.00 in 2022, a slight decrease from the previous forecast, before declining to $281.80 in 2023.

The most recent three-year outlook from the Urban Land Institute (ULI) and Ernst & Young (EY) found that real estate economists and analysts expect a slowing economy with minimal growth in 2022 and 2023 but will return to stronger growth in 2024. The forecast also projects a full recovery from the 9.3 million jobs lost in 2020 by adding 4.3 million jobs in 2022 to the 6.74 million jobs added in 2021. The forecast further projects job growth to continue but at a slower pace by 0.6 million and 1.5 million jobs in 2023 and 2024, respectively. The ULI/EY Real Estate Consensus Forecast, a semiannual publication, is based on a survey of 43 of the industry's top economists and analysts representing 37 of the country's leading real estate investment, advisory, and research firms and organizations. The forecast for each indicator is the median forecast from the 43 survey respondents. The key findings from the Real Estate Consensus Forecast include:

- U.S. commercial real estate transaction volumes reached an all-time high of $855 billion in 2021, a rebound from a seven-year low of $432 billion in the pandemic of 2020. It is forecasted to slow down to $600 billion in 2022 and remain at that level in 2023. Transaction volume is predicted to grow stronger in 2024, to $750 billion; this would exceed annual volumes in all prepandemic years.

- Overall price increased by 19.2% in 2021 but is expected to lower substantially, to 5.5%, in 2022. Although it remain above the long-term average, it is expected to dip in 2023 to 3.0% and rise to 5.0% in 2024.

- Office vacancy rates are predicted to rise to 17.2% in 2022, following a weak two previous years. Vacancy rates will continue at an elevated level, 17.6% in 2023, and stay at that level in 2024.

- Single-family housing starts are projected to slow down in 2022 and remain low by almost 30.0% by 2023. Housing starts are expected to recover in 2024, though not yet back to their long-term average.

- National Council of Real Estate Investment Fiduciaries (NCREIF) total returns, which were positive for 11 consecutive years, finished at a strong 17.7% in 2021. Total returns are predicted to be 11.0% in 2022, 3.8% in 2023, and 7.0% in 2024. The 2022 total returns forecast range by property type; the range was from industrial, at 18.9%, to office, at 2.0%. In 2024, returns are projected to range from industrial, at 9.6%, to office, at 4.1%.

- In 2021, the vacancy/availability rates for apartments dropped substantially, to 2.6%. Vacancy rates are expected to remain low by historic standard but increase over time to 3.2% in 2022, 3.6% in 2023, and 3.7% in 2024.

- Commercial property rent growth differs widely by property type. Industrial and apartment rent growth are expected to reach their strongest level in 2022 and stay at moderate levels for the next two years. The annual growth averaged by 5.9% in 2023, then 4.5% in 2024. Annual retail rent growth will average 1.7% over the forecast years, with a dip in 2023. Rent for office space will grow 0.3% on average, with the most growth to occur in 2024. For hotels—which track revenue per available room (RevPAR), combining rental rates and occupancy—growth will rise 40.0% in 2022, bringing it to above prepandemic levels. The growth will continue but at far more moderate rates of 3.7% in 2023 and 5.0% in 2024.

Source

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INDUSTRY SUMMARY

Operators in the Software Publishing industry design, develop and publish software. Industry revenue expanded rapidly over the five years to 2022, as businesses and consumers increased their investment in software, computers, smartphones and video games. Rising private investment in computers and software stimulated demand from businesses, while higher consumer spending encouraged consumers to spend on software as well. Moreover, new internet-based solutions and the increasing popularity of mobile devices have triggered an explosion of mobile software applications. Industry revenue is estimated to rise at an annualized rate of 7.1% to $442.5 billion over the past five years. Moreover, in 2020, the industry experienced strong revenue growth of 7.6%, as the COVID-19 (coronavirus) pandemic compelled businesses to increase spending on software for remote operations and consumers increased spending on social and entertainment software offerings. Revenue is anticipated to rise 0.8% in 2022. Software publishers are often highly profitable despite the prevalence of software piracy, litigation and an expensive workforce. Publishers have focused on strategic acquisitions and product development in recent years, with large software publishers regularly acquiring smaller operators with specialties in high-growth, niche markets. Additionally, most operators have switched to the software-as-a-service (SaaS) model to stabilize cash flows. This model makes it more affordable to buy software products, enticing smaller and cash-strapped companies to subscribe while also facilitating easy scalability and frequent software updates. Greater ubiquity of software in daily activities and the rise of predictive analytics and artificial intelligence software will benefit the industry over five years to 2027, expanding software publishers' product offerings and markets. For example, connected cars, smart appliances and automated logistics services are all expected to continue integrating with the daily activities of US consumers and businesses. Mobile computing devices are also providing new platforms on which operators can compete, while cloud computing is opening a wider array of software possibilities for smartphones and tablets that are no longer hampered by low storage capacities. Altogether, revenue is expected to rise at an annualized rate of 3.1% to $515.2 billion over the next five years.

MAJOR PRODUCTS

APPLICATION SOFTWARE PUBLISHING

This segment is accountable for 48.2% of total revenue for the Software Publishing industry in 2022. General business productivity and home use applications make up 48.2% of the application software segment's revenue overall. This category includes software products such as Microsoft Corporation (Microsoft)'s Office and Apple Inc. (Apple)'s iWork. Other sources of revenue in this segment includes sales of cross-industry application software, utilities software and vertical market application software. The COVID-19 (coronavirus) pandemic incentivized businesses to transition to remote work and update their processes, this segment has grown as a share of revenue.

SYSTEM SOFTWARE PUBLISHING

In 2022, this segment is accountable for an estimated 26.0% of industry revenue, having grown over the past five years. System software includes operating systems, network software, database management software and development tools and programming language software, among other systems software products. Operating systems software, which manages a computer's processes, memory and hardware, account for 32.3% of the segment's revenue and includes Microsoft Windows and Apple's Mac OS X. Network software accounts for 26.8% of the segment's revenue and is designed to set up, manage and monitor computer networks. Finally, sales of database software represent 21.4% of this segment's revenue.

OTHER

Custom application design and development are designed for specific organizations and users. These may include agriculture, aerospace & defense, education, healthcare, and transportation industries among others. More expensive than other types of software, custom software accommodates the customers' needs and may be designed in stages and permit changes and improvements.

MAJOR MARKETS

BUSINESSES

Businesses adopt operating systems and application software to boost productivity and cater to industry-specific environments, such as computer-aided design and manufacturing. Virus prevention and protection from "hackers" are also areas in which businesses require continual upgrades in software to meet ever-changing threats to internal networks and websites. Some industries, including those in the health and finance sectors, have increased spending on software to improve systems in coping with regulatory and market changes. Large businesses have increasingly resorted to "off-the-shelf" software, including enterprise resource planning software, customer relationship management software and database management software. A move toward networked workplaces has driven demand for networking software, as well as applications software. The COVID-19 (coronavirus) pandemic and subsequent shift to work from home for a large portion of the workforce has resulted in an increase in demand for virtual communications platforms such as Microsoft teams. Demand from businesses remained steady in 2021 amid a continuation of employees working from home and conducting meetings with clients virtually.

GOVERNMENT AND HOUSEHOLDS

Governmental needs are similar to that of business users, while the household market is more diverse, as purchases range from games and photo editing to educational, word-processing and spreadsheet software. As households have widely adopted mobile devices, including smartphones and tablets, gross and relative revenue from this consumer class have both stagnated. However, emerging high-growth markets that appeal to households, such as video game software, continue to generate high revenue growth and maintain a strong share of total industry revenue for the segment. Moreover, rising per-capita disposable income during the coronavirus pandemic enabled consumers to purchase industry products such as video game software, boosting households' share of industry revenue. In 2022 this trend is likely to wane somewhat as alternate entertainment options, such as sporting events and bars and restaurants are anticipated to continue to experience rising demand, potentially limiting time spent playing video games.

OPERATING CONDITIONS

CAPITAL INTENSITY

The Software Publishing industry is highly labor-intensive, with companies allocating only $0.11 toward capital investments for every $1.00 spent on labor. Most software companies require only limited capital goods, such as computers and office space. Software is an intangible product that requires highly skilled employees and a significant time investment. Companies rarely encode their software on discs themselves, preferring to outsource that activity or by selling via downloadable files through the internet.

REVENUE VOLATILITY

Increasing use of technology in business and consumers' everyday lives has spurred demand during the period. Additionally, the increasing prevalence of subscription-based software sales has smoothed out demand during the period. The majority of industry revenue comes from software sold to businesses, normally on a subscription basis. Most businesses treat software spending as a capital expense, as software is viewed as a productivity-enhancing tool. In times of increasing demand, businesses take advantage of available funds to invest in computer software and increase productivity. Conversely, many businesses do not view software spending as necessary in an environment of declining demand. Companies that primarily sell their products to consumers or businesses on a single license basis experience much more revenue volatility than business-oriented software companies. This is particularly true for software which is updated regularly and customarily bought in concordance with new hardware. In these cases, operators are exposed when consumer credit tightens and consumers reduce their debt levels, causing hardware sales to decline, and software sales and updates decline as a result.

REGULATION

Failure to protect such technology could lead to a loss of valuable assets and competitive advantage. Software companies protect their proprietary information through the use of patents, copyrights, trademarks, trade secret laws, confidentiality procedures and contractual provisions. Congress has passed the Sherman Antitrust Act, the Clayton Act and the Robinson-Patman Act, along with various other regulations regarding unfair competition. In addition, states have enacted their own antitrust laws to ensure that the general public is provided with the best prices, quality and competition among businesses. In 2010, the Department of Justice (DOJ) filed a lawsuit against Oracle, claiming that between 1998 and 2006, the federal government did not receive the same discounts for services as the commercial sector. The case was ultimately settled for just under $199.5 million plus interest fees. In 1994, the DOJ opened an investigation into whether Microsoft was abusing its monopoly on the PC operating system market. The investigation resulted in a settlement, in which Microsoft consented to not tying other Microsoft products to the sale of its Windows operating system. In 1998, the DOJ and the attorney generals of 20 states sued Microsoft for illegally thwarting competition. In 2001, the DOJ reached a proposed settlement, requiring Microsoft to share its application programming interfaces with third-party companies and appoint a panel of three people that would have full access to Microsoft's systems, records and source code for five years to ensure compliance. In 2004, a US Appeals Court approved the settlement, with Microsoft's obligation under the settlement, as originally drafted, expiring on November 12, 2007. Microsoft later agreed to a two-year extension of part of the final judgments dealing with communications protocol.

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INDUSTRY STRUCTURE

BARRIERS TO ENTRY

The Software Publishing industry has moderate barriers to entry, though certain product segments have much stronger barriers than others. Patents on intellectual property are commonly used to limit competition, though in many cases companies are willing to license their patented technology. In certain product segments, particularly operating systems, network effects are a key factor protecting incumbent products; for example, the ubiquity of Microsoft Corporation (Microsoft)'s Windows operating system makes it extremely difficult for competing products to gain market share, even when the competing software is more technologically robust and given away for free. Software publishers have historically been the targets of antitrust regulators. In 1998, the US Department of Justice brought charges against Microsoft for anticompetitive business practices that led to the dominance of Microsoft's Internet Explorer internet browser over competing programs. Microsoft had been bundling its internet browser with its immensely popular Windows operating system and forming restrictive licensing agreements with computer vendors. Software bundling remains a common competition-limiting practice, though large software publishers must be careful not to garner too much regulatory scrutiny. Companies seeking to supply software to the government, particularly military contractors, must have that software approved through additional certification and accreditation processes. On an investment basis, there are few barriers to entry for software publishing start-ups. Many software companies began with a little more than a handful of computers and programmers. Scarcity of highly skilled, creative programmers is the most limiting factor for software publishers, leading to very high wages or stock-based compensation plans.

COMPETITIVE LANDSCAPE

MARKET SHARE CONCENTRATION

The Software Publishing industry has a medium level of market share concentration, with the four largest companies estimated to account for a combined 49.0% of industry revenue in 2022. Due to the varied nature of different industry software, it is difficult for a single player to dominate the industry. Microsoft Corporation (Microsoft) is the industry's largest player with a market share of 22.5% of industry revenue in 2021. The size of Microsoft's market share is due to its leading role in the operating system, business analytics and video game software segments. Other players in this industry, however, focus on only one or two industry segments. As a result, their market share for software publishing is relatively small, resulting in a low market share concentration for the industry. Concentration for the Software Publishing industry has remained relatively consistent over the five years to 2022, falling slightly as new operators have increasingly entered the industry.

COMPETITION

This industry can be segmented into more specific markets, including operating systems, database publishing and video game software (IBISWorld reports 51121a, 51121b and 51121e, respectively). Companies that produce software, including operating systems software, video games and productivity tools, experience high competition. A major internal threat to revenue-generating companies is that of open-source software, where programmers contribute to create and distribute free programs. While such software can lack the polish (i.e. usability, attractiveness and stability) of professionally published programs, these programs can be updated more easily and often are more standards-compliant. While business and enterprise customers tend to stay away from this software, open-source programs are becoming more popular with consumers seeking free or low- cost alternatives to expensive software sold by the likes of Microsoft Corporation (Microsoft) or Apple Inc.

GLOBALIZATION

Globalization is on the rise as major players in the Software Publishing industry increasingly become multinational companies and control a large percentage of the worldwide software publishing market. Typically, sales to customers outside the United States can represent a significant share of revenue. For example, 50.1% of Microsoft Corporation's revenue was generated outside the US in fiscal 2021. Additionally, many industry players have made acquisitions and formed collaborative alliances across national borders to achieve economies of scale and reach local markets. International trade flows do not reflect these trends because software is increasingly transferred digitally rather than by physical CD. Therefore, industry trade is almost negligible. Companies can also outsource the production of code to low wage countries such as India or China. This option can be attractive to start-up companies that want to design software such as mobile applications but do not have the coding knowledge to create the software or the budget to hire an in-house team.

STAGE OF DEVELOPMENT

SELECTED STAGE OF DEVELOPMENT: STAGE FOUR

The American Institute of Certified Public Accountants (AICPA) defines six stages of enterprise development:

STAGE ONE

Enterprise has no product revenue to date and limited expense history, and typically an incomplete management team with an idea, plan, and possibly some initial product development. Typically, seed capital or first-round financing is provided during this stage by friends and family, angels, or venture capital firms focusing on early-stage enterprises, and the securities issued to those investors are occasionally in the form of common stock but are more commonly in the form of preferred stock.

STAGE TWO

Enterprise has no product revenue but substantive expense history, as product development is underway and business challenges are thought to be understood. Typically, a second or third round of financing occurs during this stage. Typical investors are venture capital firms, which may provide additional management or board of directors expertise. The typical securities issued to those investors are in the form of preferred stock.

STAGE THREE

Enterprise has made significant progress in product development; key development milestones have been met (for example, hiring of a management team); and development is near completion (for example, alpha and beta testing), but generally there is no product revenue. Typically, later rounds of financing occur during this stage. Typical investors are venture capital firms and strategic business partners. The typical securities issued to those investors are in the form of preferred stock.

STAGE FOUR

Enterprise has met additional key development milestones (for example, first customer orders, first revenue shipments) and has some product revenue, but is still operating at a loss. Typically, mezzanine rounds of financing occur during this stage. Also, it is frequently in this stage that discussions would start with investment banks for an IPO.

STAGE FIVE

Enterprise has product revenue and has recently achieved breakthrough measures of financial success such as operating profitability or breakeven or positive cash flows. A liquidity event of some sort, such as an IPO or a sale of the enterprise, could occur in this stage. The form of securities issued is typically all common stock, with any outstanding preferred converting to common upon an IPO (and perhaps also upon other liquidity events).

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STAGE SIX

Enterprise has an established financial history of profitable operations or generation of positive cash flows. An IPO or sale of the enterprise could also occur during this stage.

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VALUATION METHODOLOGIES

In valuing the FMV of QLESS's common shares, Carta Valuations LLC has considered the three generally accepted valuation approaches as recommended by the American Institute of Certified Public Accountants (AICPA).

In its Valuation of Privately-Held-Company Equity Securities Issued as Compensation publication, the AICPA outlines three approaches to determining fair market value: market approach, income approach, and asset approach.

MARKET APPROACH

According to the AICPA, the **market approach** is a valuation technique that uses prices and other relevant information generated by market transactions involving identical or comparable (that is, similar) assets, liabilities, or a group of assets and liabilities, such as a business. The market approach derives value based on the value implied by these other similar enterprises or transactions. Using this approach, Carta Valuations LLC would examine investments by unrelated parties or examine transactions in enterprises with equity securities similar to QLESS. Within the market approach, Carta Valuations LLC considers three valuation methods:

- **Guideline Public Company Method**
- **Guideline Company Transactions Method**
- **Subject Company Transactions Method**

GUIDELINE PUBLIC COMPANY METHOD

Relevant market multiples from the guideline comparable public companies are developed using metrics such as revenue and earnings before interest, taxes, depreciation and amortization (EBITDA).

GUIDELINE TRANSACTIONS METHOD

This methodology utilizes valuation multiples based on actual transactions that have occurred in the subject entity's industry or related industries to arrive at an indication of value. These derived multiples are then adjusted and applied to the appropriate operating data of the subject entity to arrive at an indication of value.

SUBJECT COMPANY TRANSACTIONS METHOD

The method is useful for valuators when there has been a recent transaction in the company's own securities. At a fundamental level, the Subject Company Transactions Method answers the singular question:

> *What would the total value of the enterprise need to be, in order for a third-party investor to invest at the given per-share price, accounting for all liquidation preferences and seniorities for all share classes in the enterprise?*

In other words, given that an investment occurred, the method calculates the implied total value of the enterprise if the valuation accounts for all share class rights and preferences, as of the date of the latest financing.

According to the AICPA, the backsolve is the most reliable indicator of enterprise value for early-stage customers, provided that the relevant transactions in the enterprise's shares have occurred at **arm's length***.

The Subject Company Transactions Method considers the various terms of an enterprise's shareholder agreements that would affect the distributions to each class of equity upon a liquidity event as of the future liquidation date, including:

- the level of seniority among securities,
- dividend policy,
- conversion ratios,
- and cash allocations.

***Arm's length transaction:** A transaction that was entered into by informed but unrelated market participants, simultaneously seeking the best terms possible.

***Note:** In many situations, the transactions are not done at arm's length. It is still possible to perform the valuation in these cases, but additional considerations need to be made.

INCOME APPROACH

According to the FASB ASC glossary, the Income Approach is defined as a:

> *"Valuation technique that converts future amounts (for example, cash flows or income and expenses) to a single current (that is, discounted) amount."*

This approach finds conceptual support in the basic assumption that the value of an enterprise is represented by the aggregate expectations of future income and cash flows.

DISCOUNTED CASH FLOW METHOD

The income approach converts future cash flows to a single, current discounted amount. The fair value measurement is estimated on the basis of the value indicated by current market expectations about those future cash flow amounts. The DCF method converts these future cash flows to their present value using a specific discount rate that factors in the time value of money and any measurable level of risks associated with the business.

WACC CALCULATION

The Weighted Average Cost of Capital ("WACC") is the rate of return specific to the enterprise being valued that reflects the risk of investment in said enterprise. In general, the higher the WACC, the higher an investor's expected return would be for an investment in the enterprise. When performing a Discounted Cash Flow analysis, Carta Valuations LLC computes an enterprise-specific WACC using the Capital Asset Pricing Model ("CAPM").

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The CAPM formula is defined as follows:

$$R_E = R_F + \beta * (R_M) + SP + CSRP$$

Where:

R_e = Return on equity

R_f = Risk-free rate

β = Beta

R_m = Market risk premium

SP = Small company size premium

CSRP = Company-specific risk premium

SMALL COMPANY SIZE PREMIUM

Given that most of the comparable public companies are much larger than the enterprise being valued, we apply an additional premium to the cost of equity calculation to reflect the additional premium that investors would require to invest in small cap public shares.

COMPANY-SPECIFIC RISK PREMIUM

To capture the added risk involved in investing in smaller, less profitable, and less mature companies, an additional company specific risk premium is applied to the cost of equity calculation. This risk premium reflects the additional risk associated with the enterprise's revenue relative to the market at large.

ASSET APPROACH

Among the three valuation approaches discussed, the AICPA considers the Asset Approach in most circumstances to be the weakest valuation method from a conceptual standpoint. This approach is frequently used in valuing capital-intensive companies and holding companies. Typically this approach would only be used when valuing enterprises that:

- are in the very early stages of development,
- have not yet raised any arms-length financing,
- or when there is a limited (or no) basis for the application of the Income Approach or the Market Approach.

COST TO RECREATE METHOD

This method defines an enterprise's fair market value as the sum total of the enterprise's assets minus the sum total of the corresponding liabilities. In the case that an enterprise's assets are not sufficiently captured on its balance sheet, the **cost to recreate** method assumes that the enterprise's fair market value is consistent with the replacement cost (i.e. **cost to recreate**) of the enterprise's assets.

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EQUITY VALUE ALLOCATION

After calculating the total value of the enterprise, valuators must then allocate the value to the various classes of securities in the capital structure. The generally accepted methods of equity allocation are explained below.

CURRENT VALUE METHOD (CVM)

The Current Value Method allocates enterprise value to the various series of an enterprise's preferred stock based on the respective liquidation preferences or conversion values, in accordance with the terms of the enterprise's Articles/Certificate of Incorporation.

This approach involves allocating the company's current value among the various capital owners based on their respective liquidation preferences and conversion, dividend, and other rights under the assumption that all capital owners act in a manner that maximizes their financial return. Unlike the OPM and the PWERM approaches, this methodology is not forward-looking, and therefore fails to consider the possibility that the value of the company and the individual share classes will increase or decrease between the Valuation Date and a future date when the common shareholders receive a return on their investment (e.g., through a liquidity event such as an IPO or sale/merger). Per the AICPA guidelines:

> *"Because the CVM focuses on the present and is not forward looking, the task force believes its usefulness is limited primarily to two types of circumstances. The first occurs when a liquidity event in the form of an acquisition or dissolution of the enterprise is imminent, and expectations about the future of the enterprise as a going concern are virtually irrelevant. The second occurs when an enterprise is at such an early stage of its development that (a) no material progress has been made on the enterprise's business plan, (b) no significant common equity value has been created in the business above the liquidation preference on the preferred shares, and (c) no reasonable basis exists for estimating the amount and timing of any such common equity value above the liquidation preference that might be created in the future."*

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OPTION PRICING MODEL

This approach allows for the allocation of the determined value of the company among the various equity capital owners (preferred and common shareholders). The OPM uses the preferred shareholders' liquidation preferences, participation rights, dividend policy, and conversion rights to determine how proceeds from a liquidity event shall be distributed among the various ownership classes at a future date. Per the AICPA guidelines:

> *"The OPM treats common stock and preferred stock as call options on the company's value, with exercise prices based on the liquidation preferences of the preferred stock. Under this method, the common stock has value only if the funds available for distribution to shareholders exceed the value of the liquidation preferences at the time of a liquidity event (for example, a merger or sale), assuming the enterprise has funds available to make a liquidation preference meaningful and collectible by the shareholders. The common stock is modeled as a call option that gives its owner the right, but not the obligation, to buy the underlying value at a predetermined or exercise price. In the model, the exercise price is based on a comparison with the value rather than, as in the case of a "regular" call option, a comparison with a per-share stock price. Thus, common stock is considered to be a call option with a claim on the equity at an exercise price equal to the remaining value immediately after the preferred stock is liquidated."*

PROBABILITY WEIGHTED EXPECTED RETURN

This approach involves the estimation of future potential outcomes for the company, as well as values and probabilities associated with each respective potential outcome. The common stock per share value determined using this approach is ultimately based upon probability-weighted per share values resulting from the various future scenarios, which can include an IPO, merger or sale, dissolution, or continued operation as a private company. Per the AICPA guidelines:

> *"Under a PWERM, the value of the various equity securities are estimated based upon an analysis of future values for the enterprise, assuming various future outcomes. Share value is based upon the probability-weighted present value of expected future investment returns, considering each of the possible future outcomes available to the enterprise, as well as the rights of each share class."*

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OPTION PRICING MODEL

Carta Valuations LLC estimated the fair market value of QLESS common shares using the Option Pricing Model (OPM).

One of the most common AICPA-approved methods to value private companies with complex capital structures is the Option Pricing Model. The Option Pricing Model (OPM) treats each share class as a call option on the value of the entire firm, with exercise prices based on the liquidation preferences of the preferred stock. One notable benefit to using the OPM is that it accounts for the economic rights often seen in venture-capital backed preferred shares, including preferred liquidation preferences and payout seniority. In this method, each share class only has value if the funds available for distribution to shareholders exceed the value of the liquidation preferences at the time of a liquidity event for each of the prior share classes in a company's cap table.

Using the OPM, the common stock is modeled as a call option that gives its owner the right, but not the obligation, to buy the underlying value at a predetermined price. The considered "price" of these common-stock "call options" is based on the value of the entire enterprise at specific values ('breakpoints'). Thus, the common stock is considered to be a call option with a claim on the equity at an exercise price equal to the remaining value immediately after all share classes with lower-numbered liquidation seniority have liquidated. Carta Valuations LLC utilizes the Black-Scholes-Merton Option Pricing Model.

OPTION PRICING MODEL CONSIDERATIONS

The OPM considers the various terms of an enterprise's stockholder agreements that would affect the distributions to each class of equity upon a liquidity event as of the future liquidation date, including:

- the level of seniority among securities,
- dividend policy,
- conversion ratios,
- and cash allocations.

OPTION PRICING MODEL INPUTS

The Option Pricing Model relies on four inputs:

- the total value of the enterprise,
- the expected time to exit,
- the risk free rate of interest as of the Valuation Date,
- the volatility derived from similar publicly traded companies.

The formula for the Option Pricing Model is as follows:

$$C = S_0\, e^{-qt} * N(d_1) - X\, e^{-rt} * N(d_2)$$

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Where:

- S_0 = Total value
- **X** = Breakpoint value
- **q** = Continuously compounded dividend yield
- **t** = Time to exit (years)
- **σ** = Volatility
- **r** = Risk free rate

and d_1 and d_2 are defined as:

$$d_1 = \frac{ln(\frac{S_0}{X}) + t\,(r - q + \frac{\sigma^2}{2})}{\sigma\sqrt{t}}$$

$$d_2 = d_1 - \sigma\sqrt{t}$$

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VOLATILITY ASSUMPTIONS

Volatilities are estimated using historical daily pricing data, provided by CapIQ, for the selected comparable companies. The historical pricing data is gathered for a look-back period that matches the expected term.

Although more typical in later stage companies, the subject company may use both equity and debt instruments to finance their business activities. Per Section 6.36 of the AICPA Valuation of Privately-Held-Company Equity Securities Issued as Compensation, "[...] consideration should be given to the effect of the company's leverage." In order to account for the different capital structures across the subject company and its peer group, Carta Valuations LLC makes adjustments to the capital structure based on the Merton model and the equity volatility and asset volatility relationships listed below.

Under certain circumstances, applying an asset volatility and allocating enterprise value may have the effect of shifting value from the senior equity securities to the junior equity securities, as the liquidation preference for the senior securities is "sandwiched" between debt and the junior securities. When this sandwich effect occurs, Carta Valuations LLC deems it appropriate to apply an equity volatility (instead of an asset volatility) and allocate equity value. When such circumstance does not exist, the most appropriate volatility to use when allocating value across all investments is the asset volatility.

$$EquityValue = AssetValue * N(d_1) - [Debt * e^{(-rT)} * N(d_2)]$$

$$EquityVolatility = \frac{AssetVolatility*(AssetValue*N(d_1))}{EquityValue}$$

- ***Asset Value*** *= total equity and debt value (**S_0**)*
- ***Equity Value*** *= total equity value only*
- ***Debt*** *= total value of debt claims outstanding (**X**)*
- ***q*** *= continuously compounded dividend yield*
- ***t*** *= probability weighted time to exit (years)*
- ***σ*** *= volatility*
- ***r*** *= risk-free rate*
- ***N(.)*** *= standard normal cumulative distribution function*

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VALUATION ADJUSTMENTS

DISCOUNT FOR LACK OF MARKETABILITY

When valuing closely-held (private) companies, valuators typically apply a discount for lack of marketability (DLOM) to the share price, to account for the fact that private company shares are not as liquid as their public comparable company counterparts. In other words, one should expect to pay less for a closely-held (private) share of stock than that same investor would pay for a publicly-traded, fully liquid security.

Discount for lack of marketability: "An amount or percentage deducted from the value of an ownership interest to reflect the relative absence of marketability."[1]

Marketability: "The ability to quickly convert property to cash at minimal cost, with a high degree of certainty of realizing the anticipated amount of proceeds."[1,2]

WHAT TO CONSIDER

This valuation, in accordance with the parameters set forth in **Mandelbaum v. Commissioner**[3], takes into account the following:

- The value of the subject corporation's privately traded securities vis-a-vis its publicly traded securities (or, if the subject corporation does not have stock that is traded both publicly and privately, the cost of a similar corporation's public and private stock);
- an analysis of the subject corporation's financial statements;
- the corporation's dividend-paying capacity, its history of paying dividends, and the amount of its prior dividends;
- the nature of the corporation, its history, its position in the industry, and its economic outlook;
- the corporation's management;
- the degree of control transferred with the block of stock to be valued;
- any restriction on the transferability of the corporation's stock;
- the period of time for which an investor must hold the subject stock to realize a sufficient profit;
- the corporation's redemption policy;
- the cost of effectuating a public offering of the stock to be valued, e.g. legal, accounting, and underwriting fees.

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SUMMARY OF APPROACHES

In preparing this valuation, we considered number of different approaches to computing the proper Discount for Lack of Marketability, loosely categorizable into the following: **benchmark study approach** and **securities-based approaches.**

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[1]International Glossary of Business Valuation Terms, as adopted in 2001 by American Institute of Certified Public Accountants, American Society of Appraisers, Canadian Institute of Chartered Business Valuators, National Association of Certified Valuation Analysts, and The Institute of Business Appraisers.
[2]Shannon P. Pratt, Alina V. Niculita, Valuing a Business, The Analysis and Appraisal of Closely HeldBusinesses, 5th ed (New York: McGraw Hill, 2008), p.39.
[3]Mandelbaum v. Commissioner, T.C. Memo 1995-255, 36.
[4]Securities Act of 1933 (Section 230.144). Note: Because the holder of restricted common stock is prohibited from selling any of the stock for full year (1997-2008, thereafter holding period is six months) and has additional constraints on the amounts that may be sold for an additional year, the restricted stock is significantly less liquid (and therefore less valuable) than its unrestricted counterpart.

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BENCHMARK STUDY APPROACH

This approach estimates the appropriate DLOM based on restricted stock studies, as well as pre-Initial Public Offering (IPO) pricing studies. This valuation considers the pre-IPO pricing studies a generally less-accurate indicator of private company DLOM for smaller, earlier-stage companies. Accordingly, we have not relied upon pre-IPO studies in determining an appropriate DLOM.

Restricted stock: unregistered common stock of a corporation identical in every respect to its publicly traded shares, except that it has not been registered, and is therefore, not freely tradable.[4]

We considered the following restricted stock studies because the effect of lack of marketability can be quantified by comparing the sale price of publicly traded shares to the sale price of so-called restricted shares of the same company that are identical in all rights and powers except for their ability to be freely marketed. Restricted stock studies are published, empirical studies, the most often cited of which are indicated below:

Empirical study	Time period covered	Mean DLOM
SEC overall average [a]	Jan 1966 - Jan 1969	25.8%
SEC non-reporting OTC companies [a]	Jan 1966 - Jan 1969	32.6%
Gelman [b]	Jan 1968 - Dec 1970	33.0%
Trout [c]	Jan 1968 - Dec 1972	33.5%
Moroney [d]	Jan 1969 - Dec 1972	35.6%
Maher [e]	Jan 1969 - Dec 1973	35.4%
Standard Research Consultants [f]	Oct 1978 - Jun 1982	45.0% (median)
Willamette Management Associates [g]	1981 - 1984	31.2% (median)
Silber [h]	Jan 1981 - Dec 1988	33.8%
FMV Opinions, Inc. [i]	Jan 1979 - Apr 1992	23.0%
Management Planning, Inc. [j]	Jan 1980 - Dec 1996	27.1%
Bruce Johnson Study [k]	Jan 1991 - Dec 1995	20.0%
Columbia Financial Advisors [l]	Jan 1996 - Apr 1997	21.0%
Columbia Financial Advisors [l]	May 1997 - Dec 1998	13.0%

[a]Discounts Involved in Purchases of Common Stock (1966-1969), Institutional Investor Study Report of the Securities and Exchange Commission, H.R. Do. No. 92-64, Part 5, 92nd Congress, 1st Session, 1971, 2444- 2456.
[b]Gelman, Milton, An Economist Financial Analyst's Approach to Valuing Stock of a Closely Held Company, Journal of Taxation, June 1972, 353-354.
[c]Trout, Robert R., Estimation of the Discount Associated with the Transfer of Restricted Securities, Taxes, June 1997, 381-384.
[d]Moroney, Robert E., Most Courts Overvalue Closely Held Stocks, Taxes, March 1993, 144-154.
[e]Maher, Michael J., Discounts for Lack-of-marketability for Closely Held Business Interests, Taxes, September 1976, 562-71.
[f]Pittock, William F., and Stryker, Charles H., Revenue Ruling 77-287 Revisited, SRC Quarterly Reports, Spring 1983.
[g]Willamette Management Associates study (unpublished)
[h]Silber, William L., Discounts on Restricted Stock: The Impact of Illiquidity on Stock Prices, Financial Analysts Journal, July-August 1991, 60-64.
[i]Hall, Lance S., and Timothy C . Polacek, "Strategies for Obtaining the Largest Valuation Discounts," Estate Planning, January/February 1994. pp. 38-44.
[j]Oliver, Robert P. and Roy H Meyers, "Discounts Seen in Private Placements of Restricted Stock: The Management Planning, Inc., Long-Term Study (1980-1996)" (Chapter 5) in Robert F, Reilly and Robert P. Schweihs, eds, The Handbook of Advanced Business Valuations (New York: McGraw-Hill, 2000).
[k]Johnson, Bruce, "Restricted Stock Discounts, 1991-95", Shannon Pratt's Business Valuation Update, Vol. 5, No. 3, March 1999, pp. 1-3. "Quantitative Support for Discounts for Lack of Marketability." Business Valuation Review, December, 1999, pp. 152- 155
[l]CFAI Study, Aschwald, Kathryn F., "Restricted Stock Discounts Decline as Result of 1-Year Holding Period – Studies After 1990 'No Longer Relevant' for Lack of Marketability Discounts", SHANNON PRATT'S BUSINESS VALUATION UPDATE, Vol. 6, No. 5, May 2000, pp. 1-5.

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SECURITIES-BASED APPROACHES

Securities-based approaches to computing Discount for Lack of Marketability rely on firmly-established stock option pricing theory. In compiling this valuation, we considered three distinct stock option pricing models - **The Chaffe Approach**, **The Asian Put Approach** and **The Finnerty Approach**.

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THE CHAFFE APPROACH[6]

$$P = Xe^{-rt} * \mathcal{N}(-d_2) - S_0 e^{-qt} * \mathcal{N}(-d_1)$$

S_0 *= total equity value*

X *= equity breakpoint value*

q *= continuously compounded dividend yield*

t *= time to expiration (% of year)*

σ *= volatility*

r *= risk-free rate*

N(.) *= standard normal cumulative distribution function*

REPRESENTATIVE DLOMS

Time to exit	Volatility:	25.00%	50.00%	75.00%	100.00%	125.00%
1 year		9.25%	18.97%	27.48%	37.40%	45.86%
2 years		12.61%	26.01%	37.41%	50.11%	60.25%
3 years		14.97%	30.98%	44.20%	58.28%	68.81%
4 years		16.81%	34.84%	49.30%	64.02%	74.35%
5 years		18.32%	37.97%	53.50%	68.20%	78.00%

[6] *David B.H. Chaffe III, "Option Pricing as a Proxy for Discount for Lack of Marketability in Private Company Valuations," Business Valuation Review (December 1993): 182–6. (Model corrected and updated in 2009; the Carta Valuations LLC uses the corrected, updated model)*

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THE ASIAN PUT APPROACH[7]

$$p = e^{-rT}\left[KN(-d_2) - F_0 N(-d_1)\right]$$

Where

$$d_1 = \frac{\ln\left(S_0 e^{aT} / K\right) + \left(\frac{1}{2}\sigma_A^2\right)T}{\sigma_A\sqrt{T}}, \quad d_2 = d_1 - \sigma_A\sqrt{T}$$

$$a = \frac{1}{2}\left(r - q - \frac{\sigma^2}{6}\right), \quad \sigma_A = \frac{\sigma}{\sqrt{3}}$$

And

$$F_0 = S_0 e^{aT}$$

P *= Discount for Lack of Marketability*

K *=* ***F_0*** *= The value of the share of common stock without transfer restrictions*

q *= Continuously compounded dividend yield*

T *= Time to expiration (% of year)*

σ *= Volatility*

r *= Risk-free rate*

e *= The mathematical constant = 2.71828...*

N(.) *= Standard normal cumulative distribution function*

REPRESENTATIVE DLOMS

Time to exit	Volatility:	25.00%	50.00%	75.00%	100.00%	125.00%
1 year		6.00%	12.00%	19.00%	26.00%	33.00%
2 years		9.00%	18.00%	28.00%	37.00%	47.00%
3 years		11.00%	22.00%	34.00%	46.00%	57.00%
4 years		12.00%	26.00%	39.00%	53.00%	64.00%
5 years		14.00%	29.00%	44.00%	58.00%	70.00%

[7] *David LeRay, "Efficient Pricing of an Asian Put Option Using Stiff ODE Methods", A Master's Project, Worcester Polytechnic Institute Review (2007).*

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THE FINNERTY APPROACH[8]

$$D(T) = V_0 e^{-qT}[\mathcal{N}(v\sqrt{T}/2) - \mathcal{N}(-v\sqrt{T}/2)] \qquad v\sqrt{T} = \sqrt{\sigma^2 T + \ln[2(e^{\sigma^2 T} - \sigma^2 T - 1)] - 2\ln(e^{\sigma^2 T} - 1)}$$

D(T) *= Discount for Lack of Marketability*

V_0 *= The value of the share of common stock without transfer restrictions*

q *= Continuously compounded dividend yield*

t *= Time to expiration (% of year)*

σ *= Volatility*

r *= Risk-free rate*

e *= The mathematical constant = 2.71828...*

N(.) *= standard normal cumulative distribution function*

REPRESENTATIVE DLOMS

Time to exit	Volatility:	25.00%	50.00%	75.00%	100.00%	125.00%
1 year		5.72%	11.24%	16.34%	20.85%	24.62%
2 years		8.04%	15.50%	21.84%	26.63%	29.74%
3 years		9.79%	18.52%	25.26%	29.50%	31.49%
4 years		11.24%	20.85%	27.54%	30.95%	32.05%
5 years		12.49%	22.73%	29.10%	31.66%	32.22%

Note: The Finnerty model has a mathematical asymptote at approximately 32%. Thus, for companies at higher volatilities, this model may understate the proper DLOM. [8] *John D. Finnerty, "An Average-Strike Put Option Model of the Marketability Discount", The Journal of Derivatives (2012).*

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THE DIFFERENTIAL PUT APPROACH

The Differential Put Approach is an option pricing model method that quantitatively approximates a discount for lack of marketability of common stock in a company where a precedent transaction, typically a preferred stock financing round, is used as an indication of fair value.

When applying the backsolve methodology to determine the value of common stock based on the price paid in the most recent preferred financing round, the resulting value of common stock already incorporates an implied discount for lack of marketability that is reflected in the price of the most recent preferred stock transaction. Therefore, according to the differential put approach, the appropriate discount for lack of marketability for the common stock is the incremental discount between the common stock and most recently transacted preferred share class.

The Chaffe or the Finnerty put models are applied to the share class volatilities to determine the specific discount for each share class.

$$D(T) = V_0 e^{-qT}\left(N(v\sqrt{T}/2) - N(-v\sqrt{T}/2)\right)$$

$$v\sqrt{T} = \sqrt{\sigma^2 T + \ln\left(2\left(e^{\sigma^2 T}\right)\right) - 2\ln\left(e^{\sigma^2 T} - 1\right)}$$

$$\text{DLOM}_{\text{incremental}} = 1 - (1 - \text{DLOM}_{\text{common}})/(1 - \text{DLOM}_{\text{preferred}})$$

$$\sigma_{\text{class}} = \sigma_{\text{equity}} * \text{Equity Value} * N(d_1)/\text{Class Value}$$

$$N(d_1)_{\text{class}} = \sum (N(d_1)_{\text{incremental}} * \text{Incremental Allocation})$$

$$p = Xe^{-rt}N(-d_2) - S_0 N(-d_1)$$

S_0 *= total equity value*

X *= equity breakpoint value*

t *= Time to expiration (% of year)*

σ *= Volatility*

r *= Risk-free rate*

e *= The mathematical constant = 2.71828...*

N(.) *= standard normal cumulative distribution function*

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VOLATILITY ANALYSIS

Historical volatilities as of the Valuation Date.

Company name	1 year	2 years	3 years	4 years
2U, Inc.	119.19%	91.79%	89.47%	97.33%
Alteryx, Inc.	61.48%	54.79%	66.31%	62.38%
Blackbaud, Inc.	40.35%	37.85%	45.82%	42.39%
HubSpot, Inc.	73.20%	64.30%	63.59%	57.95%
Okta, Inc.	83.95%	68.09%	63.04%	58.57%
Open Text Corporation	35.58%	28.48%	32.53%	29.68%
Synchronoss Technologies, Inc.	72.22%	68.05%	75.67%	73.51%
Verint Systems Inc.	33.75%	38.83%	46.00%	42.61%
Maximum	119.19%	91.79%	89.47%	97.33%
90th percentile	94.52%	75.20%	79.81%	80.66%
75th percentile	75.89%	68.06%	68.65%	65.16%
Median	66.85%	59.55%	63.32%	58.26%
Mean	64.97%	56.52%	60.30%	58.05%
25th percentile	39.16%	38.59%	45.96%	42.56%
10th percentile	35.03%	35.04%	41.84%	38.58%
Minimum	33.75%	28.48%	32.53%	29.68%

Source: Capital IQ

CERTIFICATE OF SERVICE

I, Laurel D. Roglen, hereby certify that, on this 21st day of August, 2024, I caused a true and correct copy of the foregoing *Objection of Alex Bäcker and Certain Preferred Shareholders to Debtor's Subchapter V Eligibility and Plan* to be served by electronic service via Court's CM/ECF system on all parties who have registered for electronic service in these cases, as well as on the following parties in the manner indicated.

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Office of United States Trustee

Dated: August 21, 2024
Wilmington, Delaware

/s/ Laurel D. Roglen
Laurel D. Roglen (DE No. 5759)
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