

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

In re:

VIEW, INC., *et al.*¹

Debtors.

Chapter 11

Case No. 24-10692 (CTG)

(Jointly Administered)

**SECURITIES LITIGATION PLAINTIFFS' OBJECTION
TO (I) CONFIRMATION OF THE DEBTORS' PROPOSED
PREPACKAGED PLAN OF REORGANIZATION, AND
(II) FINAL APPROVAL OF THE DEBTORS' (A) DISCLOSURE
STATEMENT, AND (B) SOLICITATION PROCEDURES**

Lead Plaintiff Stadium Capital LLC, on behalf of itself and a class of similarly situated investors (the "Lead Plaintiff") and plaintiff David Sherman (collectively, the "Plaintiffs") in the securities class action pending in the District Court for the Northern District of California (the "California District Court") under the caption, *Mehedi et al. v. View, Inc. f/k/a CF Finance Acquisition Corp. II et al.*, Case No. 5:21-cv-06374 (the "Securities Litigation"), submit this objection (the "Objection") to (i) confirmation of the *Joint Prepackaged Chapter 11 Plan of Reorganization of View, Inc., and its Debtor Affiliates* [Docket No. 15] (as may be amended or modified from time to time, the "Plan")² proposed by the debtors (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases") and (ii) final approval of (a) the *Disclosure Statement for the Joint Prepackaged Chapter 11 Plan of Reorganization of View, Inc. and its Debtor Affiliates* [Docket No. 16] (as may be amended or modified from time to time, the

1 The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: View, Inc. (5065), View Operating Corporation (4899), and Iotium, Inc. (4600). The Debtors' corporate headquarters is 6280 American Center Drive, Suite 200, San Jose, CA 95002.

2 Capitalized terms used but not defined herein shall have the same meanings as ascribed to them in the Plan.

“Disclosure Statement”); and (b) Solicitation Procedures Motion [Docket No. 17] (the “Solicitation Motion”). In support of this Objection, Plaintiffs respectfully state as follows:

PRELIMINARY STATEMENT³

1. The Debtors commenced these Chapter 11 Cases for the purpose of confirming, on an extremely expedited basis, a prepackaged Plan that proposes to eviscerate a vast array of claims and causes of action that third parties may have not only against the Debtors, but also against a slew of non-debtor third parties. The provisions in the Plan releasing and permanently enjoining Plaintiffs’ claims and the claims of the putative Class they represent in the Securities Litigation do not pass muster under the stringent standards for the granting of nonconsensual third-party releases.

2. The Third-Party Release, extraordinary relief under any circumstance, is fatally flawed, particularly with respect to the Securities Litigation Claims. The Plan generally violates the due process rights of the Plaintiffs and Class members by effectuating a nonconsensual Third-Party Release (for no consideration) with respect to federal securities law claims and causes of action against non-Debtors that are not adequately disclosed in the Disclosure Statement, Plan, or any Plan solicitation materials. Plaintiffs and Class members are not receiving any distribution under the Plan, are deemed to reject the Plan, and are not entitled to vote on the Plan. In a draconian display of targeted inequity (even as compared to other Holders of Class 8 Interests), those asserting securities litigation claims against the Debtors and non-debtor parties were not solicited in any way and are the *only* stakeholders in the Chapter 11 Cases that are expressly prohibited from opting out of the Third-Party Release.

³ Capitalized terms used but not defined herein shall have the meaning ascribed to them below.

3. Under those circumstances, it is particularly inequitable and improper for the Debtors to impose the completely gratuitous release of the Securities Litigation Claims not only against View, but also against the Non-Debtor Defendants – including solvent and insured third parties. Indeed, stripping Plaintiffs and Class members of their claims against non-debtor third parties eliminates their only opportunity for any recovery for their significant losses.

4. The Plan should not be confirmed (and, as applicable, the Disclosure Statement and Solicitation Motion not approved on a final basis) unless the Third-Party Releases and Plan Injunction expressly exclude the Securities Litigation Claims of the Plaintiffs and Class against the Non-Debtor Defendants and any other non-debtor subsequently named as a defendant. Absent such a carve-out and the additional relief set forth in greater detail below, confirmation should be denied.

RELEVANT BACKGROUND

I. The Securities Litigation

5. The allegations in the Securities Litigation relate to the March 8, 2021 transaction whereby Debtor View, Inc. (“View”) and CF Finance Acquisition Corp. II (“CF II”) combined via a business combination (the “Business Combination”). Following the Business Combination, the surviving entity, CF II, was renamed “View, Inc.”

6. The Securities Litigation was commenced on August 18, 2021 on behalf of a class consisting of (i) all persons and entities that purchased or otherwise acquired View and/or CF II securities between November 30, 2020 and November 9, 2021, inclusive (the “Class Period”); and (ii) all persons or entities who were holders of CF II Class A common stock as of the January 27, 2021 record date that were entitled to vote to approve the Business Combination between View and CF II (the “Class”).

7. As set forth in the *Second Amended Complaint for Violations of the Federal Securities Laws* [Dist. Docket No. 175]⁴ (the “Second Amended Complaint” or “SAC”), Plaintiffs assert claims based on false and misleading statements regarding warranty-related obligations and cost of revenue against (i) View, (ii) CF Finance Holdings II, LLC (“CF Holdings II” or the “Sponsor”) - CF II’s Sponsor, (iii) Cantor Fitzgerald & Co. (“CF&Co.”) - CF II’s advisor on the Business Combination, (iv) Cantor Fitzgerald, L.P. (“Cantor”) - an affiliate of CF II, the Sponsor, and CF&Co., and the sole member of the Sponsor, (v) CF Group Management, Inc. (“CFGM,”)⁵ - the managing general partner of Cantor, (vi) certain of View’s current and former officers and directors (the “Individual View Defendants”); and (vii) certain former officers and directors of CF II (the “CF II Individual Defendants”). The Individual View Defendants are (i) Rao Mulpuri, the current Chief Executive Officer (“CEO”) of View, and (ii) Vidul Prakash, the former Chief Financial Officer (“CFO”) of View. The CF II Individual Defendants are (i) Howard W. Lutnick, the former CEO and chairman of the board of CF II, (ii) Paul Pion, the former CFO and director of CF II, (iii) Alice Chan, the former CFO and director of CF II, (iv) Anshu Jain, the former president and director of CF II, (v) Robert J. Hochberg, a former director of CF II, and (vi) Charlotte S. Blechman, a former director of CF II.

8. The Second Amended Complaint asserts claims (the “Securities Litigation Claims”) for violations of (i) sections 10(b), 14(a), and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. sections 78j(b), 78n(a), and 78t(a); and (ii) Rules 10b-5 and

⁴ References to the California District Court docket in the Securities Litigation are cited to herein as [Dist. Docket No. ____].

⁵ The Sponsor, CF&Co., Cantor, and CFGM are referred to collectively as the “CF II Entity Defendants,” and together with the CF II Individual Defendants, the “CF II Defendants”. View, the Individual View Defendants, and the CF II Defendants are referred to collectively as the “Defendants”). All Defendants other than the Debtor are referred to collectively as the “Non-Debtor Defendants.”

14a-9, promulgated thereunder, 17 C.F.R. section 240.10b-5 and 17 C.F.R. section 240.14a-9 (“Rule 10b-5,” and “Rule 14a-9,” respectively). More specifically:⁶

- Count I of the SAC asserts all Defendants violated section 14(a) of the Exchange Act and Rule 14a-9 as a result of their false and misleading statements and omissions in the proxy statement and other proxy solicitation materials relating to the Business Combination;
- Count II of the SAC asserts that the Individual View Defendants and the CF II Defendants were culpable participants in the section 14(a) violations alleged in Count I, and thus, by virtue of their positions as controlling persons of View or CF II, violated section 20(a) of the Exchange Act;
- Count III of the SAC asserts that View and its CFO (Prakash) violated section 10(b) of the Exchange Act and Rule 10b-5(b) for engaging in acts of fraud upon the Class by disseminating or approving financial statements they knew were false and misleading (or in deliberate disregard for their false and misleading nature); and
- Count IV of the SAC asserts the “Control Defendants,”⁷ by virtue of their position as controlling persons, violated section 20(a) of the Exchange Act as a result of the wrongful conduct in the SAC including the section 10(b) and Rule 10b-5 violations by View and Prakash.

(See generally SAC, ¶¶ 160-266).

9. On February 2, 2022, the California District Court entered an *Order Appointing Lead Plaintiff and Lead Counsel* [Dist. Docket No. 67] appointing Stadium Capital LLC as Lead Plaintiff and Kaplan Fox & Kilsheimer LLP as lead counsel (“Lead Counsel”).

10. Although the California District Court entered an *Order Granting the Defendants’ Motion to Dismiss Without Leave to Amend* [Dist. Docket. No. 200], *Plaintiffs’ Motion for Reconsideration Under Fed. R. Civ. P. 59(e) and 60(b)* [Dist. Docket No. 203] (the “Motion for Reconsideration”) with respect to the Non-Debtor Defendants in the Securities Litigation was filed on April 17, 2024 and is pending. To the extent the Motion for Reconsideration is not successful, Plaintiffs maintain their appellate rights.

⁶ The following summary of the allegations in the SAC is intended for background purposes only.

⁷ The “Control Defendants” are the Individual View Defendants and the CF II Defendants (excluding Blechman and Hochberg).

II. The Chapter 11 Cases

A. The Disclosure Statement and Plan

11. On April 2, 2024 (the “Petition Date”), the Debtors filed their Plan and Disclosure Statement in this Court (the “Bankruptcy Court”), through which the Debtors seek approval of a balance-sheet restructuring memorialized in the restructuring support agreement, with the consent of approximately 90.3% in principal of the Prepetition Convertible Notes Claims, 100% in principal of the Prepetition Term Loan Claims, and approximately 8% of the holders of Existing Equity Interests. More specifically, the Plan provides for:

- \$17.5 million DIP Financing provided by the lenders under the Prepetition Term Loan that will be rolled into the New Exit Facility at closing of the Plan;
- \$32.5 million of new money to be funded pursuant to the New Exit Facility;
- Equitization of over \$274 million of Prepetition Term Loans and Prepetition Convertible Notes Claims into 64.2% of the equity of New TopCo;
- Issuance of 35.8% of New Common Interests to certain of the Exit Lenders; and
- Payment in full, in the ordinary course, of all general unsecured claims.

(See Disclosure Statement, Art. I.1).

B. Treatment of the Securities Litigation Claims

12. Under the terms of the Plan, any Claims asserted by Plaintiffs in the Securities Litigation are classified as “Class 8 – Existing Equity Interests”. (Plan, Art. III.B.8(b)). The Plan specifies that any Claim subject to subordination under section 510(b) of title 11 of the United States Code (the “Bankruptcy Code”), expressly including any Claims asserted by Plaintiffs in the Securities Litigation (a “Subordinated Interest”), shall be included in Class 8 – Existing Equity Interests. (Plan, Art. I.A.132). The Plan provides that Class 8 is conclusively deemed to have rejected the Plan, is not entitled to vote to accept or reject the Plan, and shall receive no recovery under the Plan. (Plan, Art. III.B.8(b)-(c)). On the Effective Date, the Subordinated Interests

(including the Securities Litigation claims) “will be cancelled, released, and extinguished and will be of no further force and effect” (Plan, Art. III.B.8(b)).

13. Article XI.8 of the Disclosure Statement states that the releases in the Plan (if approved) would impact certain prepetition litigation (including the Securities Litigation) against the Debtors and certain of their directors and officers, and goes on to specify the following:

- Subordinated litigation claims against Debtors. To the extent that litigation claims against the Debtors are Subordinated Interests, they will be discharged under the Plan and receive no recovery.
- Direct litigation against current and former Ds&Os. To the extent that such litigation includes direct claims against the Debtors’ current and former directors and officers, those claims will be discharged by the Plan.
- Litigation against non-Debtor third parties. Any claims against non-debtor third parties will not be impaired by the Plan, except to the extent they are released by the Third-Party Releases.

(Disclosure Statement, Art. XI.8).

14. Accordingly, in addition to the Securities Litigation Claims being discharged as against the Debtors and impaired as against the Non-Debtor Defendants to the extent set forth in the Third-Party Releases, Article XI.8 of the Disclosure Statement appears to incorrectly indicate that the Securities Litigation Claims against the Individual View Defendants (including Prakash) will be discharged by the Plan.⁸ (See Disclosure Statement, Art. XI.8).

C. Third-Party Release and Related Provisions

15. Article VIII.D of the Plan contains a sweeping and overbroad release of non-Debtor third parties (the “Third-Party Release”). Plan, Art. VIII.D. The “Releasing Parties” deemed to grant the Third-Party Release include, among numerous others: (g) the plaintiffs in the Securities

⁸ The lack of clarity with respect to the Plan’s treatment of Prakash is addressed in more detail in Section II.B, (footnote 19) of the Argument section herein.

Litigation; and (k) all other Holders of Claims or Interests that are deemed to reject the Plan and who do not affirmatively opt out of such Third-Party Release. (*See* Plan, Art. I.A.113).

16. The “Released Parties” receiving the Third-Party Release comprise an unending universe that includes, among others: **(a)** each Debtor; **(b)** each Reorganized Debtor; **(c)** the Agents/Trustees; **(d)** the Consenting Creditors; **(e)** the DIP Lenders; **(f)** the DIP Agent; **(g)** each current and former Affiliate⁹ of each Entity in clause (a) through (f), and **(h)** each Related Party¹⁰ of each Entity in clause (a) through (g). (*See* Plan, Art. I.A. 111-12). Notably, Vidul Prakash (an Individual View Defendant and View’s former CFO) is expressly carved out of the “Released Party” definition. (Plan, Art. I.A. 112).

17. Accordingly, although more information and explanation would be required to determine the full scope of the Third-Party Release, it appears that, in the event the Third-Party Release is approved, the Securities Litigation Plaintiffs (and the Class) will be deemed to release all of the Defendants (with the exception of Vidul Prakash) from any and all claims, based on or relating to, or in any manner arising from, in whole or in part, the Securities Litigation.

18. Notably, the Third-Party Release contains a carve out that provides: “claims or Causes of Action arising out of or related to any act or omission of a Released Party that constitutes actual fraud, gross negligence, or willful misconduct as determined by a Final Order shall not be released,” (the “Fraud Carve-Out”). (Plan, Art. VIII.D). Although Count III of the Second

⁹ “Affiliate” has the meaning set forth in section 101(2) of the Bankruptcy Code as if such Entity was a debtor in a case under the Bankruptcy Code. (Plan, Art. I.A.111).

¹⁰ “Related Party” means, collectively, current and former directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, predecessors, participants, successors, assigns, subsidiaries, affiliates, managed accounts or funds, partners, limited partners, general partners, principals, members, management companies, fund advisors or managers, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, heirs, executors, and assigns, and other professionals, in each case solely in their capacities as such; *provided* that, notwithstanding the foregoing, neither Vidul Prakash and [sic] Saurabh Agarwal shall not be considered a Related Party or a Released Party. (Plan, Art. I.A.111).

Amended Complaint (which asserts violations of section 10(b) of the Exchange Act and Rule 10b-5(b)) would otherwise generally survive under the Fraud Carve-Out, the Third-Party Release would nevertheless impact at least certain other claims asserted in the Securities Litigation. Also, since Count III of the SAC was asserted against only View and Prakash, and since Prakash is not a “Released Party” under the Plan, causes of action against Prakash are not released.

D. Plan Injunction and Gatekeeping Procedure

19. The Plan contains an injunction (the “Plan Injunction”) that permanently enjoins, in pertinent part, all entities that have held, hold, or may hold, among others, claims or Causes of Action, that have been settled, released, discharged, or exculpated under the Plan or Confirmation Order (collectively, the “Enjoined Matters,” which specifically includes the Securities Litigation) from taking any of the actions in the five categories identified, including “(5) **commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such claims or interests released or settled pursuant to the Prepackaged Plan.**” (Plan, Art. VIII.F). The Plan Injunction appears to prohibit the continuation of any action (potentially even with respect to any non-Released party) to the extent that such action can be said to be “in connection with” any claim or interest released pursuant to the Plan.¹¹

20. Article VIII.F of the Plan also contains a gatekeeping provision that purports to impose certain pre-filing restrictions upon parties seeking to pursue claims against the Debtors, the Released Parties, and others:

No Person or Entity may commence, continue, amend, or pursue a claim or Cause of Action, as applicable, of any kind against the Debtors, the Reorganized Debtors,

¹¹ Although at the outset, the Plan Injunction appears to be limited to actions with respect to the Debtors, the Reorganized Debtors, the Exculpated Parties, or the Released Parties, the actions in category 5 are the only actions that are not limited with respect to “such Entities.” When read in connection with Article XI.8 of the Disclosure Statement, this creates, at the very least, ambiguity regarding the scope of the Plan Injunction.

the Exculpated Parties, or the Released Parties, as applicable, that relates to or is reasonably likely to relate to any act or omission in connection with, relating to, or arising out of a claim or Cause of Action, subject to [the Debtor release, Third-Party Release, Exculpation, and Injunction provisions of the Plan] without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or Cause of Action, represents a colorable claim of any kind, and (ii) specifically authorizing such Person or Entity to bring such claim or Cause of Action, as applicable, against any such Debtor, Reorganized Debtor, Exculpated Party, or Released Party, as applicable.

(Plan, Art. VIII.F) (the “Gatekeeping Procedure”). Therefore, the Bankruptcy Court, regardless of whether it has justification to do so, will determine whether the claim is colorable, which determination will permit the party to file a proposed complaint, which will then be assessed by the Bankruptcy Court prior to its final decision. (Plan, Art. VIII.F).

E. Solicitation Procedures and Opt-Out Mechanism

21. Under the Plan as proposed, the Plaintiffs are not entitled to any distribution, are not entitled to vote, are deemed to reject the Plan and, adding insult to injury, they are explicitly precluded from opting out of the Third-Party Release. On the Petition Date, the Debtors filed the Solicitation Motion seeking, *inter alia*, approval of certain procedures for the solicitation of votes on the Plan. On April 4, 2024, the Bankruptcy Court entered an order granting the Solicitation Motion [Docket No. 68] (the “Solicitation Order”), which established, *inter alia*, the schedule under which the Debtors will solicit votes for the Plan. The Solicitation Order *conditionally* approved the solicitation procedures in the Disclosure Statement for purposes of soliciting votes on the Plan through the ballots and Opt-Out Form filed with the Solicitation Motion.

22. Holders of Interests in Class 8 (such as the Plaintiffs and the Class) were not solicited (Solicitation Motion ¶ 9), and, instead of serving the Plan and Disclosure Statement, the Debtors received authorization to mail only the Combined Hearing Notice and Opt-Out Form to the Non-Voting Classes. (Solicitation Order ¶ 17). However, it does not appear that any of the

Class members were served with even the Combined Hearing Notice or Opt-Out Form.¹² Indeed, the Plaintiffs were *expressly prohibited from opting-out of the Third-Party Release*. (See Disclosure Statement, Art. VI.6.6) (“For the avoidance of doubt, the plaintiffs in the Shareholder Lawsuits [including the Securities Litigation] shall not have the opportunity to affirmatively opt-out of the releases set forth in Article VIII.D of the Prepackaged Plan on their Opt-Out Form.”). Leaving aside the propriety of the opt out mechanism itself, the Third-Party Release here is indisputably nonconsensual with respect to Plaintiffs and the Class¹³ they represent, who are getting nothing, are not entitled to vote, and are deemed to reject the Plan. Even more egregiously, while Plaintiffs and Class members were prohibited from opting out of the Third-Party Release, it seems other members in Class 8 were permitted to opt out of the Third-Party Release. (See Solicitation Motion, Ex. D at 5) (providing instructions to Class 8 Existing Equity Interests for electronic submission of Opt-Out Form).

F. Document Retention

23. With respect to document retention, the Plan contains an affirmative covenant that the Debtors will “maintain proper books and records.” Plan, Affirmative Covenants (iii). The Plan further provides that the Reorganized Debtors may maintain documents in accordance with the Reorganized Debtors’ standard document retention policy, as may be altered, amended, modified, or supplemented by the Reorganized Debtors. (Plan, Art. VIII.H).

¹² See Docket No. 54 (the Affidavit of Service for, among others, the Plan, Disclosure Statement, and Solicitation Motion).

¹³ It is unclear from the Plan and related documents whether Class members are specifically prohibited from opting out. However, the Disclosure Statement provides that the “the plaintiffs in the Shareholder Lawsuits shall not have the opportunity to affirmatively opt-out” (Disclosure Statement, Art. VI.6) (emphasis added) but does not define the term “plaintiffs.” Furthermore, members of the Class were neither solicited nor served with the Opt-Out Form. Therefore, one can only assume that the Debtors intended for the prohibition to extend to Class members.

LEGAL ARGUMENT

I. THE PLAN CANNOT BE CONFIRMED AS PROPOSED.

A. The Third-Party Release is an Impermissible, Nonconsensual Release of Non-Debtor Defendants in the Securities Litigation.

24. The Third-Party Release is improper and legally impermissible under sections 524(e) and 1141(d)(3) of the Bankruptcy Code to the extent it purports to release the claims of Plaintiffs and the Class against the Non-Debtor Defendants in the Securities Litigation without their knowing and informed consent. Relevant case law supports the conclusion that the extraordinary relief of the Third-Party Release here is unsupportable.

25. In *Continental Airlines*, the Third Circuit indicated that a nonconsensual third-party release must be (i) fair, (ii) essential to the reorganization, and (iii) accompanied by specific factual findings supporting its fairness and essential nature. 203 F.3d 203, 214 (3d Cir. 2000). In *In re Genesis Health Ventures, Inc.*, this Court went further by noting that even if the “threshold *Continental* criteria of fairness and necessity” are satisfied, the releases will only be approved “in the context of extraordinary cases.” 266 B.R. 591, 608 (Bankr. D. Del. 2001) (citations omitted); *see also In re Mallinckrodt PLC*, 639 B.R. 837, 873 (Bankr. D. Del. 2022) (specifically noting the Third Circuit’s requirement of extraordinary circumstances for nonconsensual releases). Courts within the Third Circuit have also referenced the five factors set forth in *Master Mortgage*¹⁴ as instructive guideposts for considering approval of third-party releases.¹⁵ *In re Millennium Lab*

¹⁴ *In re Master Mortg. Inv. Fund, Inc.*, 168 B.R. 930, 935 (Bankr. W.D. Mo. 1994).

¹⁵ The five Master Mortgage factors are:

- “(1) an identity of interest between the debtor and the third party, such that a suit against the non-debtor is, in essence, a suit against the debtor or will deplete assets of the estate;
- (2) substantial contribution by the non-debtor of assets to the reorganization;
- (3) the essential nature of the injunction to the reorganization to the extent that, without the injunction, there is little likelihood of success;

Holdings II, LLC, 591 B.R. 559, 584 (D. Del. 2018).¹⁶ In recent years, Third Circuit decisions have reflected an increasingly cautious approach to nonconsensual third-party releases. *See, e.g., Millennium II*, 945 F.3d at 139 (“Our precedents regarding nonconsensual third-party releases and injunctions in the bankruptcy plan context set forth exacting standards that must be satisfied if such releases and injunctions are to be permitted, and suggest that courts considering such releases do so with caution.”) (citations omitted). Here, the proposed release of the Non-Debtor Defendants in connection with the Securities Litigation Claims is neither fair nor essential to a reorganization, and there are no extraordinary circumstances present that would support this relief.

i. The Nonconsensual Third-Party Release

26. The threshold issue—that is, whether the Third-Party Release is nonconsensual—is often heavily debated and requires consideration of various factors, including whether notice was provided, whether that notice was meaningful, and whether and to what extent the opt-out procedures imposed a burden on the releasing party. Tellingly, decisions from this District have even rejected the proposition that a creditor’s failure to return an opt-out form (where it is given the opportunity to opt out) is tantamount to consenting to a release. *See, e.g., In re Emerge Energy Servs. LP*, Case No. 19-11563 (KBO), 2019 WL 7634308, at *18 (Bankr. D. Del. Dec. 5, 2019) (“[A] waiver cannot be discerned through a party’s silence or inaction unless specific circumstances are present. A party’s receipt of a notice imposing an artificial opt-out requirement, the recipient’s *possible* understanding of the meaning and ramifications of such notice, and the recipient’s failure to opt-out simply do not qualify.”); *see also Mallinckrodt*, 639 B.R. at 881

(4) an agreement by a substantial majority of creditors to support the injunction, specifically if the impacted class or classes “overwhelmingly” votes to accept the plan; and

(5) provision in the plan for payment of all or substantially all of the claims of the class or classes affected by the injunction.”

¹⁶ *Aff’d sub nom. In re Millennium Lab Holdings II, LLC*, 945 F.3d 126 (3d Cir. 2019).

(stating that, even upon approving the third-party releases, that “any creditor that claims they did not receive notice of their right to opt out will have the opportunity to seek relief from the Court to exercise their rights.”). Courts within the Third Circuit have repeatedly held that inaction (even where such inaction is due to carelessness or mistake) is not sufficient manifestation of consent to support a release. *See, e.g., Emerge Energy*, 2019 WL 7634308, at *18.

27. This Court has required the revision of solicitation procedures where a stakeholder’s ability to vote on the plan is tied to granting a third-party release. *See KServicing Wind Down Corp.*, Case No. 22-10951-CTG, Docket No. 472, Page 9:14-22 (requiring revision of the solicitation procedures to add an ability to opt-out, stating that tying the vote on the plan to the granting of a third-party release is nonconsensual and puts undue leverage or pressure on granting consent); *accord In re Big Village Holding, LLC*, Case No. 23-10174-CTG, Docket No. 390 at 5:10-14 (noting that tying the vote to granting a third-party release makes the release less than fully consensual).

28. Here, however, the Debtors’ opt-out mechanism (as applied to Plaintiffs and the Class) on its face, obviates the need for any debate on the issue: the Plaintiffs and the Class were not solicited, were not entitled to vote, were deemed to reject, and were expressly prohibited from opting out of the Third-Party Releases. (*See* Disclosure Statement, Art. VI.6.6) (“For the avoidance of doubt, the plaintiffs in the Shareholder Lawsuits [including the Securities Litigation] shall not have the opportunity to affirmatively opt-out of the releases set forth in Article VIII.D of the Prepackaged Plan on their Opt-Out Form.”).

ii. Fairness

29. In analyzing whether a third-party release is fair, courts within the Third Circuit have considered specific factual findings including whether (i) the impacted class “overwhelmingly” voted to accept the plan; (ii) whether the release was given in exchange for

reasonable consideration; (iii) whether the Plan provides for payment of all or substantially all of the claims of the impacted class; and (iv) whether nonconsenting parties received more than they would in a liquidation. *Millennium I*, 591 B.R. at 586; *Continental*, 203 F.3d at 214.

30. Again, the Plan's treatment of the Securities Litigation Claims mandates a straightforward conclusion on the fairness element. The impacted class (Class 8) did not vote to accept the Plan "overwhelmingly" (or in any other fashion), as the Plan provides that Class 8 is conclusively deemed to have rejected the Plan, and is not entitled to vote to accept or reject the Plan. (Plan, Art. III.B.8(b)–(c)). The remaining fairness considerations are also unequivocally absent. Because the Plan clearly states that neither the Securities Litigation Plaintiffs, the Class, nor any other Holder of an Interest in Class 8 shall receive any recovery under the Plan, and all Subordinated Interests "will be cancelled, released, and extinguished and will be of no further force and effect" (Plan, Art. III.B.8(b)(c)), the Third-Party Release was not given in exchange for any consideration, let alone reasonable consideration, or for more consideration than in a liquidation. Indeed, stripping Plaintiffs and the Class of their claims against non-debtor third parties eliminates their only opportunity for any recovery for their significant losses.

31. Accordingly, the Third-Party Release is unequivocally unfair to the Plaintiffs and Class in the Securities Litigation.

iii. Essential to Reorganization

32. In analyzing this factor, courts within the Third Circuit primarily consider the relationship between the success of the Debtors' reorganization and the third-party release by taking into account whether there was a substantial contribution by the non-debtor of assets to the reorganization. *Continental*, 203 F.3d at 215 (considering whether non-debtors provided a critical financial contribution to the debtors' plan that was necessary to make the plan feasible in exchange for receiving a release of liability for the plaintiff's claims).

33. In purportedly describing the non-Debtor contributions supporting the Third-Party Release, the Plan states that the Third-Party Release is granted “to the maximum extent permitted by law,” and refers to such release, without evidence, as being for “good and valuable consideration, the adequacy of which is hereby confirmed, including the service of the Released Parties to facilitate the reorganization of the Debtors and the implementation of the Restructuring. . . .” (Plan Art. VIII.D). The Plan also states that distributions under the Plan shall be funded with (i) Debtors’ Cash on hand, (ii) Cash generated from operations, (iii) funds from the DIP Facility, and (iv) funds from the New Exit Facility. (Plan Art. IV.G).

34. While the fact that certain of the Non-Debtor Defendants may have helped “facilitate the reorganization of the Debtors and the implementation of the Restructuring,” as asserted in the Plan, facilitating the reorganization and implementing the restructuring simply do not qualify as consideration justifying the Third-Party Release. *See In re Washington Mut., Inc.*, 442 B.R. 314, 354 (Bankr. D. Del. 2011) (holding there was no basis for allowing releases of the debtors’ directors and officers when their only contribution was the negotiation of the global settlement and plan, which was part of their jobs, for which they received compensation); *see also Genesis Health Ventures*, 266 B.R. at 606-07 (“[T]he officers and directors of the debtors no doubt made meaningful contribution to the reorganization by designing and implementing the operational restructuring of the companies, and negotiating the financial restructuring with parties in interest. However, the officers, directors and employees have been otherwise compensated for their contributions, and the management functions they performed do not constitute contributions of ‘assets’ to the reorganization”).

35. Regardless of the mere conclusory reference to any contribution by the Released Parties, or the purported necessary and integral role of the Third-Party Release in the

reorganization (Disclosure Statement, Art. XI.7), there is *nothing* in the Plan or Disclosure Statement that indicates the release of the Securities Litigation Claims is a condition to confirmation. The Third-Party Release is provided “to the maximum extent permitted by law,” (Plan, Art. VIII.D) and neither the Plan nor Disclosure Statement indicates that any of the Non-Debtor Defendants in the Securities Litigation, to the extent relevant, will abandon the restructuring if they don’t get a release in connection with the Securities Litigation. *See Continental*, 203 F.3d at 215 (finding release of securities litigation was *not* essential to reorganization where nothing in the record implied the reorganization was tied to the third-party release of the securities litigation claims). In this case, like in *Continental*, the Third-Party Releases “amount to nothing more than a lockstep discharge of non-debtor liability and fall squarely into the section 524(e) prohibition.” *Id.* at 217.

36. The Third-Party Releases are improper, impermissible nonconsensual releases, and accordingly, the Court should not confirm the Plan in its present form.

B. The Plan Injunction is Impermissibly Overbroad.

37. In addition to the improper Third-Party Release, the Plan Injunction is not only impermissibly overbroad, but also appears to be a further attempt to effectively broaden the scope of the Third-Party Release and limit any recovery otherwise available from the Debtors’ insurance policies.

38. As noted above, the Plan Injunction enjoins any entity that holds a claim (whether against the Debtors or non-Debtors) that was settled, released, discharged, or exculpated, from continuing, in any manner, in connection with or with respect to those Enjoined Matters. (Plan, Art. VIII.F).

39. This provision may be reasonably interpreted (or even, is intended to be interpreted) as prohibiting the continuation of any action (even with respect to any non-Released claim or party)

to the extent that such action can be said to be “in connection with” any claim or interest released pursuant to the Plan. For example, View’s CFO, Vidul Prakash, is not a Released Party under the Third-Party Releases. However, the Securities Litigation is an Enjoined Matter, and accordingly, the Plan Injunction may work to prohibit the Plaintiffs or members of the Class from “continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to” the Securities Litigation.¹⁷ Thus, notwithstanding that Prakash is not released pursuant to the Third-Party Releases, without further clarity and revised language, it appears that Plaintiffs and Class members would not be able to continue pursuing their claims (even solely with respect to Prakash) to the extent such a continuation was determined to be an action “in connection with” the Securities Litigation.

40. The Plan Injunction may also have the impact of prohibiting the pursuit of the Securities Litigation Claims against the Debtors solely to the extent of any insurance coverage. *See, e.g., Miller v. McDonald (In re World Health Alts., Inc.)*, 369 B.R. 805, 808 (Bankr. D. Del. 2007); *Allied Digit. Techs. Corp.*, 306 B.R. 505, 507 (Bankr. D. Del. 2004); *In re La. World Exposition, Inc.*, 832 F.2d 1391, 1393 (5th Cir. 1989). This result effectively shields any relevant insurance carrier from covering claims they agreed to insure. There is no need to protect the Debtors from claims for which they would have no economic exposure.

41. Additionally, the terms of the Plan Injunction reference matters “settled, released, discharged, or exculpated” under the Plan or the Confirmation Order. (Plan, Art. VIII.F). The Confirmation Order has not been filed, and the Plaintiffs have had no opportunity to review its

¹⁷ As noted above, although at the outset, the Plan Injunction appears to be limited to actions with respect to the Debtors, the Reorganized Debtors, the Exculpated Parties, or the Released Parties, the actions in category 5 are the only actions that are not limited with respect to “such Entities.”

terms. The Plaintiffs reserve all rights in that respect. For the reasons set forth above, the current scope of the Plan Injunction is simply not justified.

C. The Bankruptcy Court Lacks Subject Matter Jurisdiction and Constitutional Authority to Engage in the Third-Party Release Gatekeeping Procedure.

42. Federal courts are courts of limited jurisdiction. A federal court may adjudicate a case or controversy “only if there is both Constitutional authority and statutory authority for federal jurisdiction.” *In re Midway Gold U.S., Inc.*, 575 B.R. 475, 517 (Bankr. D. Colo. 2017) (citation omitted). With respect to the Gatekeeping Procedure, the Bankruptcy Court has neither.

43. Section 1334(b) of title 28 of the U.S. Code provides that “the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.” In turn, the United States District Court for the District of Delaware has entered an *Amended Standing Order of Reference* dated February 29, 2012, which states that “any or all cases under Title 11 and any or all proceedings arising under Title 11 or arising in or related to a case under Title 11 are referred to the bankruptcy judges for this district.”

44. The terms “arising under,” “arising in,” and “related to” are terms of art. *In re Excel Storage Products, L.P.*, 458 B.R. 175, 181 (Bankr. M.D. Pa. 2011). A proceeding “arises under” the Bankruptcy Code “if it asserts a cause of action created by the Code,” such as the various causes of action created by chapter 5. *In re Sunbridge Cap., Inc.*, 454 B.R. 166, 169 (Bankr. D. Kan. 2011) (citation omitted). Proceedings “arising in” a bankruptcy case are those that could not exist outside of the bankruptcy case but are not causes of action created by the Bankruptcy Code itself. *Midway Gold U.S.*, 575 B.R. at 517. The Securities Litigation Claims against the Non-Debtor Defendants arise neither under nor in the Chapter 11 Cases.

45. The third category of proceedings over which bankruptcy courts may have jurisdiction – proceedings “related to” the bankruptcy case – are proceedings whose outcome

“could conceivably have any effect on the estate being administered in bankruptcy.” *Power Plant Ent. Casino Resort Ind., LLC v. Mangano*, 484 B.R. 290, 295 (Bankr. D. Md. 2012) (citation omitted). The party asserting that a bankruptcy court has subject matter jurisdiction over a matter bears the burden of proving by a preponderance of the evidence that jurisdiction exists. *In re SunEdison, Inc.*, 576 B.R. 453, 461 (Bankr. S.D.N.Y. 2017).

46. Further, not only must the Bankruptcy Court have subject matter jurisdiction over the Securities Litigation Claims, but it must also have constitutional authority to determine any aspect of the merits of such claims and any defenses that the Non-Debtor Defendants may have, including whether the claims have been released. As Article I courts, bankruptcy courts do not have the authority to enter final orders on matters “that are not integral to the restructuring of the debtor-creditor relationship.” *Lynch v. Lapidem, Ltd. (In re Kirwan Offs. S.à.r.l.)*, 592 B.R. 489, 510 (Bankr. S.D.N.Y. 2018) (internal quotations and citations omitted). Practically speaking, “resolving claims *against a debtor* will nearly always be integral to resolving a bankruptcy process, while claims *against third parties* will be integral only in ‘rare cases.’” *Id.* at 511 (quoting *Deutsche Bank AG v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.)*, 416 F.3d 136, 141 (2d Cir. 2005)) (emphasis added).

47. Against this backdrop, the Bankruptcy Court lacks the requisite jurisdiction and constitutional authority to make any determinations regarding claims against third parties if a claimant has not consented to the Third-Party Release. At that point, the applicable claims, such as the Securities Litigation Claims, cannot be said to relate to the Chapter 11 Cases or be integral to the debtor-creditor relationship. As such, the Third-Party Release and Gatekeeping Procedure set forth in Article VIII.F of the Plan cannot be approved by this Court as they relate to the claims of Plaintiffs and the members of the Class against the Non-Debtor Defendants.

D. The Confirmation Order Should Require the Preservation of Evidence Potentially Relevant to the Securities Litigation Through the Conclusion of the Securities Litigation.

48. The Plan does not explicitly require the Debtors and/or the Reorganized Debtors to preserve evidence potentially relevant to the Securities Litigation through the conclusion thereof. As set forth above, the Plan contains an affirmative covenant that the Debtors will “maintain proper books and records,” and provides that the Reorganized Debtors *may* maintain documents in accordance with the Reorganized Debtors’ standard document retention policy, as may be altered, amended, modified, or supplemented by the Reorganized Debtors. (Plan, Art. VIII.H). There is no disclosure with respect to the nature of the Reorganized Debtors’ “standard document retention policy,” and even if there was, the Plan permits the Reorganized Debtors to modify that policy at any time.

49. In the event discovery becomes necessary, the loss, destruction, or unavailability of evidence potentially relevant to the Securities Litigation would materially prejudice the Plaintiffs and the Class in the prosecution of the Securities Litigation and the related claims and causes of action. Accordingly, the Confirmation Order must require the Debtors, the Reorganized Debtors, and any of their transferees, successors and/or assigns to preserve originals or true copies of the Debtors’ books, records, and documents, electronically stored information, and other evidence potentially relevant to the Securities Litigation until the conclusion of the Securities Litigation. In furtherance of the foregoing, the proposed Confirmation Order should provide as follows:

- **Document Preservation.** Until the entry of a final order of judgment or settlement in the Securities Litigation (as defined in paragraph [] of this Order), the Debtors, the Reorganized Debtors, and any transferees, successors and/or assigns of the Debtors’ books, records, documents, files, electronic data (in whatever format, including native format), or any tangible object potentially relevant to the Securities Litigation, wherever stored (collectively, the “Potentially Relevant Books and Records”) shall preserve and maintain such Potentially Relevant Books and Records, and shall not destroy, abandon, transfer,

or otherwise render unavailable such Potentially Relevant Books and Records without providing counsel to the Plaintiffs in the Securities Litigation at least sixty (60) days' advance written notice and an opportunity to object and be heard by a court of competent jurisdiction. In the event the Securities Litigation Plaintiffs timely object to any such destruction, abandonment, or transfer, the Potentially Relevant Books and Records shall be preserved until the earlier of (a) a final order of the Bankruptcy Court or other court of competent jurisdiction and (b) the date the party in possession, custody, or control of such Potentially Relevant Books and Records provides originals or true copies thereof to counsel for the Securities Litigation Plaintiffs.

II. THE DISCLOSURE STATEMENT CANNOT BE APPROVED WITH RESPECT TO MATTERS RELATED TO THE THIRD-PARTY RELEASE AND PLAN INJUNCTION AND THEIR IMPACT ON THE CLASS.

A. The Disclosure Statement Does Not Contain an Adequate Description of the Securities Litigation.

50. The Securities Litigation involves allegations of substantial wrongdoing by the Defendants, including claims against the Individual View Defendants and the CF II Defendants that the Debtors seek to release through the Plan (and with the assistance of their targeted exclusion of the Plaintiffs and Class from the confirmation process). Yet, the Disclosure Statement contains no meaningful (or even accurate) description of the Securities Litigation. Article XI.8 of the Disclosure Statement addresses treatment of the prepetition litigation, and provides the following summary of the Securities Litigation:

One putative class action is brought on behalf of a purported class of plaintiffs who purchased or otherwise acquired or the publicly traded common stock of Parent and CF II between November 30, 2020 and May 10, 2022 (both dates inclusive), were **holders of CF II common stock** as of January 27, 2021, or who purchased or otherwise acquired Parent securities **pursuant to or traceable to the Form S-4 Registration Statement filed by CF II on December 23, 2020**, and is pending in the United States District Court for the Northern District of California (the "Mehedi Action"). The Plaintiffs in the Mehedi Action assert claims under Sections 10(b) (and Rule 10b-5 thereunder), 14(a) (and Rule 14a-9 thereunder), and 20(a) of the Exchange Act in connection with disclosures related to **the Company's** warranty-related obligations and cost of revenue.

(Disclosure Statement, Art. XI.8). Significantly, the bolded language in the excerpt reflects the factual inaccuracies in the description in the Disclosure Statement, which include (i) the end date of the Class Period—which is November 9, 2021 (not May 10, 2022); (ii) the “20221” record date, for holders of CF II **Class A** common stock; and (iii) the incorrect reference to the “Company”¹⁸ instead of View (or the “Parent”). Additionally, an entire clause of the Class definition was omitted. (See SAC ¶ 1) (including in the Class definition: holders of CF II Class A common stock as of the January 27, 2021 record date that were entitled to vote to approve the Business Combination between View and CF II as set forth in the February 16, 2021 Proxy Statement).

51. The Disclosure Statement does not identify the Lead Plaintiff, any of the Non-Debtor Defendants against whom the Securities Litigation Claims are asserted, *or* the members of the proposed Class on behalf of which the claims are asserted. Given the absence of this key identifying information, in addition to the significant number of mistakes in the Securities Litigation description, the Disclosure Statement does not contain adequate information under section 1125 of the Bankruptcy Code.

B. The Disclosure Statement Fails to Provide any Legal or Factual Basis for the Third-Party Release and Plan Injunction, Particularly as They Relate to the Securities Litigation, and Violates Bankruptcy Rule 3016(c) by Failing to Clearly Disclose the Scope of the Third-Party Release and Plan Injunction.

52. Bankruptcy Rule 3016(c) provides that:

[i]f a plan provides for an injunction against conduct not otherwise enjoined under the [Bankruptcy] Code, the plan and disclosure statement shall describe in specific and conspicuous language (bold, italic, or underlined text) all acts to be enjoined and identify the entities that would be subject to the injunction.

¹⁸ The “Company” is defined in the Disclosure Statement as - View, Inc. (“Parent”) and its debtor affiliates, as debtors and debtors in possession (collectively the “Debtors”), together with Parent’s direct and indirect non-Debtor subsidiaries.

Fed. R. Bankr. P. 3016(c); *see also In re Keys Fitness Prods., L.P.*, Nos. 08-31790-HDH-11, 08-30914-HDH-11, 2008 WL 5211927, at *5 (Bankr. N.D. Tex. Sept. 11, 2008) (noting disclosure of non-debtor release satisfies Bankruptcy Rule 3016(c)); *see also In re Lower Bucks Hosp.*, 471 B.R. 419, 460 (Bankr. E.D. Pa. 2012). The *Lower Bucks* court noted that although Rule 3016(c) purports to address only injunctions, “[i]ts purpose is to alert parties in interest that the plan purports to restrict their rights in ways that ordinarily would not result from confirmation of a plan.” 471 B.R. at 460 n.62. As here, “[w]hether ‘enjoined’ or merely ‘released,’ in this case, the Plan was designed to deprive [third parties] of their right to prosecute a claim against a non-debtor.” *Id.* Thus, Bankruptcy Rule 3016(c) applied to the presentation of both the Third-Party Release and Plan Injunction in the Plan and Disclosure Statement.

53. The Disclosure Statement might facially comply with Bankruptcy Rule 3016(c) by presenting the language of the Third-Party Release and Plan Injunction and briefly noting the existence of the opt-out mechanism. (*See, e.g.,* Disclosure Statement, Art. VIII.D; VI.6). However, its compliance with the rule ends there. As far as identifying the Released Parties and Releasing Parties that would be subject to the Third-Party Release and Plan Injunction, as well as identifying the Securities Litigation Claims the Plaintiffs and Class would be releasing, the Disclosure Statement stops far short of giving the information necessary insofar as Class members would be concerned.¹⁹ The Disclosure Statement fails to identify the Class, the Lead Plaintiff, or any of the Non-Debtor Defendants, other than by merely parroting the language of the Third-Party

¹⁹ Significantly, the Third-Party Release detailed in the Plan is inconsistent with the description of the Third-Party Release in the Disclosure Statement. While, as discussed above, the Debtors’ former CFO, Vidul Prakash, is not a “Released Party,” the Disclosure Statement (purporting to detail how the Third-Party Release would impact prepetition litigation, provides: “[t]o the extent that such litigation includes direct claims against the Debtors’ current and former directors and officers, those claims will be discharged by the Prepackaged Plan.” The lack of clarity regarding the scope of the Plan Injunction identified above further muddies the waters on this issue. This inconsistency in itself creates issues with compliance with Bankruptcy Rule 3016(c).

Release and setting forth defined terms. This, simply, is not effective compliance with Bankruptcy Rule 3016(c).

RESERVATION OF RIGHTS

54. Plaintiffs reserve all rights with respect to approval of the Solicitation Motion, Disclosure Statement, and confirmation of the Plan or any other chapter 11 plan proposed in these Chapter 11 Cases, including, without limitation, the right to seek certification of the Class under Bankruptcy Rule 7023 or to assert any further or supplemental objections to confirmation of the Plan or any other plan on any and all grounds, whether or not raised in this Objection.

CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that this Court deny confirmation of the Plan (and, as applicable, final approval of the Disclosure Statement and the Solicitation Motion) unless the issues raised in this Objection are appropriately addressed.

Dated: May 8, 2024
Wilmington, Delaware

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*Lead Counsel for Lead Plaintiff Stadium Capital
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CERTIFICATE OF SERVICE

I, Christopher P. Simon, hereby certify that on May 8, 2024, a true and correct copy of the foregoing *Securities Litigation Plaintiffs' Objection to (I) Confirmation of the Debtors' Proposed Prepackaged Plan of Reorganization, and (II) Final Approval of the Debtors' (A) Disclosure Statement, and (B) Solicitation Procedures* was served upon all interested parties via CM/ECF and upon the parties listed below by electronic mail unless otherwise indicated.

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