Marcus A. Helt (Texas Bar No. 24052187)
Debbie E. Green (Texas Bar No. 24059852)
Jack Haake (Texas Bar No. 24127704)
MCDERMOTT WILL & SCHULTE LLP
2801 North Harwood Street, Suite 2600
Dallas, Texas 75201
Tel: (214) 210-2821 / Fax: (972) 528-5765
mhelt@mwe.com
dgreen@mwe.com
jhaake@mwe.com

COUNSEL FOR THE LIQUIDATING TRUSTEE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

In re	§	Chapter 11
	§	
SPHERATURE INVESTMENTS LLC, *et al*.,[1]	§	Case No. 20-42492
	§	
	§	Jointly Administered
Debtors.	§	

LIQUIDATING TRUSTEE'S MOTION FOR ENTRY OF AN ORDER (A) DETERMINING THE TAX LIABILITY OF CERTAIN OF THE DEBTORS AND (B) FOR RELATED RELIEF

Your rights may be affected by the relief sought in this pleading. You should read this pleading carefully and discuss it with your attorney if you have one in this bankruptcy case. If you oppose the relief sought by this pleading, you must file a written objection, explaining the factual and/or legal basis for opposing the relief.

No hearing will be conducted on this Motion unless a written objection is filed with the Clerk of the United States Bankruptcy Court for the Eastern District of Texas and served upon the party filing this pleading WITHIN TWENTY-ONE (21) DAYS FROM THE DATE OF SERVICE shown in the certificate of service unless the Court shortens or extends the time for filing such objection. If no objection is timely served and filed, this pleading shall be deemed to be unopposed, and the Court may enter an order granting the relief sought. If an objection is filed and served in a timely manner, the Court will thereafter set

[1] The "Debtors" in the above-captioned cases are: Spherature Investments LLC d/b/a WorldVentures Holdings, LLC ("WorldVentures") EIN#5471; Rovia, LLC ("Rovia") EIN#7705; WorldVentures Marketing Holdings, LLC ("WV Marketing Holdings") EIN#3846; WorldVentures Marketplace, LLC ("WV Marketplace") EIN#6264; WorldVentures Marketing, LLC ("WV Marketing") EIN#3255; and WorldVentures Services, LLC ("WV Services") EIN#2220.

a hearing with appropriate notice. If you fail to appear at the hearing, your objection may be stricken. The Court reserves the right to set a hearing on any matter.

Joseph M. Coleman, as Liquidating Trustee (the "Trustee") for the Spherature Liquidating Trust (the "Trust"), hereby files this motion for entry of an order (a) determining the tax liability of certain of the debtors and (b) for related relief (the "Motion"). In support of the Motion, the Trustee states as follows:

I. RELIEF REQUESTED

1. By this Motion, the Trustee requests an order substantially in the form attached as **Exhibit A** (i) determining the tax liability of Rovia LLC ("Rovia") for the second quarter of 2021 ("Q2-2021") and (ii) granting related relief.

II. JURISDICTION

2. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. The Motion involves a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory and other legal predicates for the relief requested in the Motion include sections 105(a) and 505(a)(1) of 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), Rules 3020(d) and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 9013-1 of the Local Rules of Bankruptcy Procedure of the United States Bankruptcy Court for the Eastern District of Texas (the "Local Rules").

III. BACKGROUND

A. The Debtors' Bankruptcy

4. The Debtors maintained a business providing access to unique travel and lifestyle experiences through a membership based direct sales business. The Debtors employed 85 employees at the time these bankruptcy cases commenced.

5. On December 21, 2020, each of the Debtors filed a voluntary petition under Chapter 11 of the Bankruptcy Code initiating these bankruptcy cases (the "Bankruptcy Cases").

6. On November 12, 2021, the Court entered the *Order Approving Disclosure Statement and Confirming Final Amended Joint Plan for Spherature Investments, LLC and Its Debtor Affiliates* (the "Confirmation Order") [Docket No. 708] confirming the *Final Joint Chapter 11 Plan for Spherature Investments LLC and its Debtor Affiliates* [Docket No. 708-1] (the "Plan").

7. The Plan provided for the sale of substantially all the Debtors' assets to the "Purchaser" (as defined in the Plan) and for the remaining "Excluded Assets" (as defined in the Plan) to vest free and clear in the Trust.

8. As relevant to this Motion, the Confirmation Order and the Plan contain an injunction that enjoins any entity that held, holds, or may hold a claim from "asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such entities or against the property of such entities on account of or in connection with or with respect to any such claims or interests unless such entity has timely asserted such setoff right in a document filed with the Bankruptcy Court explicitly preserving such setoff, and notwithstanding an indication of a claim or interest or otherwise that such entity asserts, has or intends to preserve any right of setoff pursuant to applicable law or otherwise." *See* Confirmation Order ¶ 9; Plan Art. VIII.G.

9. The Plan went effective on November 12, 2021. *See* Docket No. 725. The Plan established the Trust and appointed the Trustee.

B. Bar Dates and IRS Claims

10. On December 31, 2020, the Bankruptcy Court entered the *Notice of Chapter 11 Bankruptcy Case* [Docket No. 58] that was served by Stretto, the Debtors' claims' and noticing agent, pursuant to the *Notice of Appointment of Stretto as Claims, Noticing, and Balloting Agent* (the "Notice of Commencement") [Docket No. 151]. Pursuant to the Notice of Commencement, the last date for certain persons and entities to file Proofs of Claim in the Debtors' Chapter 11 Cases was April 20, 2021; and the last date for governmental units to file Proofs of Claim in the Debtors' Chapter 11 Cases was June 21, 2021 (collectively, the "Bar Date").

11. Additionally, the Plan requires a party seeking to assert an administrative claim that arises on or before September 1, 2021, to file such administrative claim on or prior to October 8, 2021 (the "Initial Administrative Claims Bar Date"). *See* Plan at Art. II.A. The Plan further provides that any party seeking to assert a claim that arises on or after September 1, 2021, was required to file a claim with the Court on or before December 13, 2021 (thirty days after the effective date of the Plan) (the "Supplemental Administrative Claims Bar Date" and together with the Initial Administrative Claims Bar Date, the "Administrative Claims Bar Dates"). *See id*.

12. The IRS has filed five claims in these cases—Claim Nos. 597, 607, 616, 637, and 1765. The Debtors objected to three claims—Claim Nos. 597, 607, and 637, which were expunged by order of the Court. *See* Docket Nos. 522 & 802. Claim No. 616 is for $700, for estimated partnership taxes from 2014 to 2020, and Claim No. 1765 is a claim for $1,200 for estimated FUTA and FICA taxes from 2014 to 2016, which was filed on June 8, 2022, after the bar date to file claims.[2] The IRS did not file any claims for administrative claims, which were required by the Plan to be filed on or before the Administrative Claims Bar Dates.

[2] The Trustee reserves the rights to object to the untimely filed claim at a later time.

C. The Trust's Entitlement To An ERTC Refund.

13. Pursuant to section 2301 of the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), eligible employers are entitled to claim certain refundable tax credits for qualified wages paid to employees from March 13, 2020, through December 31, 2021, which is referred to as the Employee Retention Credit or Employee Retention Tax Credit (the "ERTC").[3] Pub. L. No. 116-136, 134 Stat. 281 (March 27, 2020), as amended by section 206 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (the "Relief Act"), which was enacted as Division EE of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (December 27, 2020).[4]

14. In June 2021, the Debtors engaged Shields Legal Group ("Shields"), a vendor specializing in ERTC applications, to assist the Debtors in applying for the ERTC.

15. Shields assisted the Debtors with compiling the required information and sending that information to Automatic Data Processing, Inc. ("ADP"), the Debtors' payroll processor, to file with the IRS.

16. Shields determined that Rovia was entitled to an ERTC refund in the approximate amount of $217,507.49 for Q2-2021 based on its calculations.

17. The Trustee believed that the IRS received the Debtors' application and processed its ERTC claim in mid-2021.

18. The Plan provides that the Trustee is entitled to receive the ERTC refund. *See* Plan at Art. I.A.64, 67, and 96 (providing that the "Retained Employee Retention Tax Credit"[5] is an

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[3] https://home.treasury.gov/system/files/136/Employee-Retention-Tax-Credit.pdf.

[4] Section 207 of the Relief Act amended section 2301 of the CARES Act to extend the application of the ERTC to qualified wages paid after December 31, 2020, and before July 1, 2021, and to modify the calculation of the ERTC amount for qualified wages paid during that time. *See* https://www.irs.gov/pub/irs-drop/n-21-20.pdf.

[5] The Plan provides that the Trust is entitled to $900,000 of the ERTC with any amounts the Trust receives above

Excluded Asset that vested in the Trust).

19. The Confirmation Order and Plan provide that the Excluded Assets vested in the Trust "free and clear of all Liens,[6] Claims,[7] charges, and other encumbrances or interests." *See* Confirmation Order at pg. 30; *see also* Plan at Art. IV.D.

D. The IRS Rejects Rovia's Tax Return.

20. Throughout 2022, the Trust's advisors attempted to contact various parties, including the IRS and other tax professionals, to gather information related to the payment timing of the ERTC refund.

21. In early 2023, the Trust received a check from the IRS related to Rovia's returns in the amount of $76,312.57.

22. The check, however, did not come with any supporting documentation or explanation, and the check only contained "941" as the memo. The ERTC refund amount was far less than what the Trustee anticipated, based on Shields' calculations.

23. The Trust's professionals worked tirelessly to engage with the IRS to reconcile the discrepancy. Only after the Trustee threatened to pursue its rights in Court did the IRS finally engage with the Trustee.

24. Through discussions with representatives of the IRS, the Trustee finally learned recently that the IRS alleged that its records do not reflect that any amended return or refund claim was ever received or processed for Q2-2021 for Rovia, as it appears that Rovia's Q2-2021 return was bounced because it was mistakenly filed for the Q4-2021 tax period. The IRS also informed

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that amount to be paid to the Purchaser.

6 The Plan defines "Liens" as having the meaning set forth in § 101(37) of the Bankruptcy Code. The Bankruptcy Code defines the term lien to mean charge against or interest in property to secure payment of a debt or performance of an obligation

7 The Plan defines "Claim" as having the meaning set forth in section 101(5) of the Bankruptcy Code.

the Trustee that it could no longer process the return and that the Court would have to determine the amount of Rovia's tax liability for Q2-2021, including whether Rovia is entitled to an ERTC refund for that period, and if so, the amount of the ERTC.

IV. ARGUMENT AND AUTHORITIES

25. Section 505(a)(1) of the Bankruptcy Code provides that a bankruptcy court may decide "the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction." 11 U.S.C. § 505(a)(1).

26. As the IRS has not, as with other of the Debtors' claim for an ERTC, asserted that Rovia is not entitled to the ERTC refund claimed for Q2-2021 or that the ERTC for that period is subject to setoff, the Court should determine that Rovia's 941-X for Q2-2021 is correct and that Rovia is entitled to an ERTC refund of $217,507.49.

27. Nonetheless, the Trustee notes that any claim by the IRS that it can setoff against Rovia's ERTC refund would be misplaced.

28. While the IRS can, as a general matter, establish a non-bankruptcy right to setoff under section 6402 of the Internal Revenue Code, the IRS is not exempt from the requirements of section 553. *See In re Wade Cook Fin. Corp.*, 375 B.R. 580, 594 (B.A.P. 9th Cir. 2007) ("Regardless of whether the IRS has a right to setoff under IRC § 6402 and/or other nonbankruptcy statutes, its ability to assert its right of setoff in bankruptcy is subject to the requirements of § 553. The IRS must demonstrate that it has an enforceable right to setoff that should be preserved in the bankruptcy case pursuant to § 553.").

29. Here, mutuality is lacking.

30. As the court explained in *In re Thomas*, because the statute entitling Rovia to an ERTC refund was not enacted until December 27, 2020—after the Petition Date—Rovia's right to the ERTC was a post-petition right. 91 B.R. 731, 734 (N.D. Tex. 1988). "A debtor's pre-petition rights and assets are setoff or used to pay pre-petition debt while post-petition rights and assets are applied to post-petition debt." *Id.* Accordingly, the IRS could not, as a matter of law, apply Rovia's ERTC refund to any alleged pre-petition tax liability of the Debtors.

31. *In re Wade Cook Financial Corporation* is instructive on this point. 375 B.R. 580, 590 (B.A.P. 9th Cir. 2007). There, the IRS contended that it could setoff a debt that crossed the petition date line—specifically, the post-petition refund owed to the debtor against the debtor's pre-petition tax liability—because section 6402 of the Internal Revenue Code supplanted the mutuality requirement applicable to setoffs. *Id.* at 590. The court rejected the IRS's argument:

> Although the IRS has a right of setoff under IRC § 6402, the fact that the IRS holds this right does not mean that IRC § 6402 supplants § 553 in determining whether this right is recognized and preserved in bankruptcy. Contrary to the IRS's assertion, IRC § 6402 merely grants a right of setoff to the IRS. . . . Section 553 is the primary statute that governs whether a right of setoff is recognized and preserved in bankruptcy. . . . Though IRC § 6402 creates a right of setoff for the IRS, it does not except the IRS from meeting the requirements of § 553. There is nothing in the Bankruptcy Code that grants the IRS a special status above and beyond other creditors whose rights of setoff are subject to the requirements of § 553.

Id. at 591 (citations omitted).

32. Moreover, even if the IRS could establish a valid setoff right against the Debtors' ERTC,[8] the Confirmation Order and confirmed Plan bar the IRS from exercising any such right.

33. Section 1141(a) of the Bankruptcy Code provides that "the provisions of a confirmed plan bind the debtor . . . and any creditor . . . whether or not such creditor . . . has

[8] The IRS seems to have also set off against certain alleged post-petition tax liabilities of the Debtors, and if so, mutuality would arguably exist.

accepted the plan." 11 U.S.C. § 1141(a). As such, "[a] bankruptcy court's order of confirmation is treated as a final judgment with res judicata effect." *In re G-1 Holdings, Inc*., 514 B.R. 720, 747-48 (Bankr. D.N.J. 2014) aff'd, 654 F. App's 571 (3rd Cir. 2016) (citing *Stoll v. Gottlieb*, 305 U.S. 165, 170-71 (1938); *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 138-39 (2009) (holding that once an order becomes final, it is res judicata as to parties and those in privity with them)).

34. Here, the Confirmation Order confirming the Plan expressly barred the IRS from asserting a right of setoff or recoupment. Specifically, the Plan provides:

> Except as otherwise expressly provided in the Plan . . . all entities that have held, hold, or may hold claims or interests that have been released, settled or satisfied, pursuant to the Plan, or are subject to exculpation pursuant to the Plan, are **permanently enjoined, from and after the Effective Date**, from . . . (IV) **asserting any right of setoff, subrogation, or recoupment of any kind** against any obligation due from such entities or against the property of such entities on account of or in connection with or with respect to any such claims or interests uncles such entity has timely asserted such setoff right in a document filed with the Bankruptcy Court explicitly preserving such setoff, and notwithstanding an indication of a claim or interest or otherwise that such entity asserts, has or intends to preserve any right of setoff pursuant to applicable law or otherwise.

Confirmation Order ¶ 9; Plan Art. VIII.G (emphasis added).

35. Thus, the IRS is bound by the terms of the Confirmation Order and cannot now assert an impermissible setoff against Rovia's ERTC refund, which was transferred to the Trust free and clear of the IRS's setoff rights. *See, e.g., In re German Pellets La., L.L.C.*, 91 4th 802, 810-11 (5th Cir. 2024) (holding that provision in confirmed chapter 11 plan barring "recoupment and setoff" was enforceable against creditor seeking to assert recoupment and setoff defenses); *I.R.S. v. Driggs*, 185 B.R. 214, 214-15 (D. Md. 1995) (holding that IRS was not entitled to set off refund due to chapter 11 debtor against debtor's tax liability when confirmed plan prohibited any creditor from asserting any setoff against any obligation due to a debtor, section 553 of the Bankruptcy Code notwithstanding); *In re PT-1 Commc'ns*, 403 B.R. 250, 272 (Bankr. E.D.N.Y. 2009) (reversed on other grounds) (holding that while section 553 of the Bankruptcy Code

preserves rights of setoff and recoupment existing under nonbankruptcy law, rights of setoff and recoupment may be extinguished, if confirmed plan specifically enjoins assertion of such rights); *In re Twins, Inc.*, 318 B.R. 90, 95-96 (Bankr. D. S.C. 2004) (holding that language in debtor's confirmed chapter 11 plan, which clearly provided for disallowance of any counterclaims or affirmative defenses, including alleged right of setoff possessed by creditor, upon entry of confirmation order, was res judicata on creditor's ability to pursue such setoff claims post-confirmation, where creditor had notice of plan sufficient to satisfy its due process rights and failed to object to plan or to appeal from plan confirmation order and explaining that while bankruptcy statute generally preserves whatever setoff rights creditors otherwise possess, creditor's asserted right to setoff did not survive the specific disallowance thereof in debtor's confirmed plan); *In re Lykes Bros. Steamship Co.*, 217 B.R. 304, 309-10 (Bankr. M.D. Fla. 1997) (holding that federal government, by failing to object to provision in debtor's proposed chapter 11 plan that generally prohibited creditors from exercising any right of setoff post-confirmation, and by not appealing from plan confirmation order, was bound by res judicata effect of debtor's confirmed plan and could not belatedly assert right to setoff).

V. CONCLUSION

WHEREFORE, the Trustee respectfully requests that the Court enter an order determining that Rovia is entitled to an ERTC refund of $217,507.49 for Q2-2021, (ii) compelling the IRS to turnover that amount to the Trust, and (iii) granting related relief.

DATED: September 12, 2025

Respectfully submitted,

/s/ Debbie E. Green

Marcus A. Helt (Texas Bar No. 24052187)
Debbie E. Green (Texas Bar No. 24059852)
Jack Haake (Texas Bar No. 24127704)
MCDERMOTT WILL & SCHULTE LLP
2801 North Harwood Street, Suite 2600
Dallas, Texas 75201
Tel: (214) 210-2821
Fax: (972) 528-5765
mhelt@mwe.com
dgreen@mwe.com
jhaake@mwe.com

COUNSEL FOR THE LIQUIDATING TRUSTEE

CERTIFICATE OF SERVICE

I hereby certify that, on September 12, 2025, a true and correct copy of the foregoing document was served electronically by the Court's PACER system.

/s/ Debbie E. Green
Debbie E. Green

EXHIBIT A

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

In re	§	Chapter 11
	§	
SPHERATURE INVESTMENTS LLC, *et al*.,[1]	§	Case No. 20-42492
	§	
	§	Jointly Administered
Debtors.	§	

ORDER GRANTING LIQUIDATING TRUSTEE'S MOTION FOR ENTRY OF AN ORDER (A) DETERMINING THE TAX LIABILITY OF CERTAIN OF THE DEBTORS AND (B) FOR RELATED RELIEF

Upon the motion (the "Motion")[2] of Joseph Coleman, as Liquidating Trustee (the "Trustee") for the Spherature Liquidating Trust (the "Trust"), which was established upon confirmation of the Plan of the above-captioned debtors and debtors in possession (collectively, the "Debtors") seeking entry of an order (this "Order"): (i) determining the tax liability of Rovia LLC ("Rovia") for the second quarter of 2021 ("Q2-2021") and (ii) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that notice of the Motion and opportunity for a hearing on the Motion were appropriate under the

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[1] The "Debtors" in the above-captioned cases are: Spherature Investments LLC d/b/a WorldVentures Holdings, LLC ("WorldVentures") EIN#5471; Rovia, LLC ("Rovia") EIN#7705; WorldVentures Marketing Holdings, LLC ("WV Marketing Holdings") EIN#3846; WorldVentures Marketplace, LLC ("WV Marketplace") EIN#6264; WorldVentures Marketing, LLC ("WV Marketing") EIN#3255; and WorldVentures Services, LLC ("WV Services") EIN#2220.

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

circumstances and no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Liquidating Trust and all other parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT**:

1. The Motion is hereby GRANTED as set forth herein.

2. Rovia is entitled to an ERTC refund for Q2-2021 in the amount of $217,507.49.

3. The IRS shall turnover the ERTC refund due and owing to Rovia in the amount of $217,507.49 to the Trustee on or before fourteen (14) days from the date of entry of this Order.

4. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order

_____
HONORABLE BRENDA T. RHOADES,
UNITED STATES BANKRUPTCY JUDGE

Prepared and submitted by:

/s/ Debbie E. Green

Marcus A. Helt (Texas Bar No. 24052187)
Debbie E. Green (Texas Bar No. 24059852)
Jack Haake (Texas Bar No. 24127704)
MCDERMOTT WILL & SCHULTE LLP
2801 North Harwood Street, Suite 2600
Dallas, Texas 75201
Tel: (214) 210-2821
Fax: (972) 528-5765
mhelt@mwe.com
dgreen@mwe.com
jhaake@mwe.com

COUNSEL FOR THE LIQUIDATING TRUSTEE