IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
THE WEINSTEIN COMPANY HOLDINGS LLC, *et al.*,[1]	Case No. 18-10601 (MFW)
Debtors.	**Hearing Date: 11/05/2020 at 2:00 p.m. (ET)** **Obj. Deadline: 10/29/2020 at 4:00 p.m. (ET)**
	Re: D.I. 2994 & 3031

OBJECTION TO:

(1) DISCLOSURE STATEMENT IN SUPPORT OF SECOND AMENDED JOINT CHAPTER 11 PLAN OF LIQUIDATION; AND

(2) JOINT MOTION OF THE DEBTORS AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR ENTRY OF AN ORDER (A) APPROVING THE ADEQUACY OF THE DISCLOSURE STATEMENT, (B) APPROVING SOLICITATION PROCEDURES, (C) SETTING CONFIRMATION HEARING DATE AND RELATED DEADLINES, (D) ESTIMATING CERTAIN CLAIMS, AND (E) GRANTING RELATED RELIEF

Wedil David, Dominque Huett, Alexandra Canosa, Jane Doe I, Jane Doe II, Jane Doe III, Jane Doe IV[2], Jane Doe V[3], Jane Doe VI, Jane Doe VII and Jane Doe VIII[4] (collectively, the "Non-

[1] The last four digits of The Weinstein Company Holdings LLC's federal tax identification number are 3837. The mailing address for The Weinstein Company Holdings LLC is 99 Hudson Street, 4th Floor, New York, New York 10013. Due to the large number of debtors in these cases, which are being jointly administered for procedural purposes only, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at http://dm.epiq11.com/twc.

[2] Jane Doe I, Jane Doe II, Jane Doe III and Jane Doe IV are the Plaintiffs in the matter of *Jane Doe I, et al. v. Harvey Weinstein, et al.* (Dkt. No.: 1:20-cv-05241-GBD) which is currently docketed in the Southern District of New York and has a motion to remand to the Supreme Court of the State of New York pending.

[3] Jane Doe V is the Plaintiff in the matter of Jane Doe V v. Harvey Weinstein, et al. (Dkt. No.: 1:20-cv-08490-GBD) which is currently docketed in the Southern District of New York.

[4] Jane Doe VI, Jane Doe VII and Jane Doe VIII are all non-settling claimants who were sexually abused by Harvey Weinstein.

Settling Sexual Misconduct Claimants"), by and through their undersigned counsel, hereby submit this Objection[5] to the *Disclosure Statement in Support of Second Amended Joint Chapter 11 Plan of Liquidation* [D.I. 2995] (the "Disclosure Statement," or "DS") and *Joint Motion of the Debtors and the Official Committee of Unsecured Creditors for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement, (B) Approving Solicitation Procedures, (C) Setting Confirmation Hearing Date and Related Deadlines, (D) Estimating Certain Claims, and (E) Granting Related Relief* [D.I. 3031] (the "Proc. Motion"), and respectfully state as follows:

Preliminary Statement

1. Far from providing fair, accurate and complete information necessary to allow the Non-Settling Sexual Misconduct Claimants to make an informed decision to vote in favor of or reject the Plan,[6] the DS does not provide adequate information concerning questions and issues central to the Non-Settling Sexual Misconduct Claimants' consideration of the Plan. For example:

- Why is it fair for the Plan Proponents to treat every possible claim against Harvey Weinstein equally and arbitrarily set the claim value at $1 for voting purposes? Certainly, claims for **rape and sexual assault** are far more significant than **claims for negligent infliction of emotional distress or the non-existent claim of "inappropriate conduct."** But, in this insurance-driven Plan, all claims in Class 4, regardless of severity, have an equal vote to accept or reject the Plan.[7] Thus, a woman raped by Harvey Weinstein has the same voting power as someone to whom he made an inappropriate comment. This ignores the Bankruptcy Code's voting requirement under §1126 that two-thirds in dollar amount vote to accept the Plan.

[5] Because the deficiencies in the Disclosure Statement are intertwined with deficiencies in the Proc. Motion, they will be addressed together. Unless defined herein, capitalized terms shall have the means described therein.

[6] Second Amended Joint Chapter 11 Plan of Liquidation [D.I. 2994] (the "Plan").

[7] Pursuant to the DS, the universe of Tort Claims are divided into two subsets: Sexual Misconduct Claims and Other Tort Claims. DS pp. 1-2. "**Sexual Misconduct Claims**" are "**Tort Claims** that arise out of, connect to or relate in any way to any actual or alleged sexual conduct of Harvey Weinstein." Plan, Ex. 1, § 1.106 (**emphasis** added). Because the Plan is insurance-driven, the term Tort Claims is broadly defined. *Id.* at § 112. The resulting definitions create a very broad spectrum of potential claims and non-claims; at one end, "rape," "sexual assault," and "sexual abuse," and at the other end, "hostile work environment," "negligent infliction of emotional distress," and "inappropriate conduct." *Id.* As noted, valuing them equally for voting purposes is fundamentally unfair.

The Plan Proponents hope and expect that women who suffered far less abuse reflexively will vote to accept and thereby bind rape and sexual assault survivors to an unfair scheme. None of this is described in the DS.

- Why should claimants who may not hold **allowed** claims be entitled to vote? This runs afoul of §1126 and §502(a) of the Bankruptcy Code. But the definition of "Allowed" unfairly provides that holders of never-filed Sexual Misconduct Claims that are plainly time-barred will have equal voting rights as survivors who have been diligently pursuing timely claims in court.[9]

- The DS and/or the Plan do not provide a process to vet the votes of Sexual Misconduct Claims *prior to* tabulating the results of voting. All filed proof of Sexual Misconduct Claims are kept on a confidential basis[10] and, therefore, tort victims are precluded from objecting to claims asserted by other tort victims for voting or distribution purposes.[11] In the view of the Non-Settling Sexual Misconduct Claimants, the Plan Proponents are counting on votes of victims whose claims may not even be "allowed" at the end of the day, but are entitled to vote on the plan, and therefore outvote victims like the Non-Settling Sexual Misconduct Claimants who suffered much greater harm in degree.

- How many holders of potentially allowed Sexual Misconduct Claims are there? This question is not answered in the DS, but could have been determined *after* the Tort Claims Bar Date; October 31, 2020. Waiting to seek approval of the DS after that bar date would have allowed the parties to more insights about what they may receive if they vote in favor of the Plan.

- The DS should describe, for each policy described in the DS at pp. 28-30, the type and amount of coverage provided by each policy. Holders of Sexual Misconduct Claims have a right to know what they are foregoing in chapter 11 that might otherwise be available in chapter 7.

- Why did the Plan Proponents negotiate and settle upon the final amount of the Sexual Misconduct Claims Fund *before* knowing (or even attempting to know) the aggregate amount and nature of Sexual Misconduct Claims?[12]

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[9] The term "Allowed," Plan, Ex. 1 § 1.5, provides a separate definition for Sexual Misconduct Claims that does not exclude untimely filed claims or claims that are barred by applicable statutes of limitation.

[10] The Non-Settling Sexual Misconduct Claimants respectfully submit that their call for full disclosure is geared towards the number of claims filed and the type of harm suffered by the victims and that Holders of Sexual Misconduct Claims shall maintain the right to keep their names confidential.

[11] *See* Proc. Motion ¶¶ 26-27.

[12] As the Plan Proponents freely acknowledge, they "do not have sufficient information in order to provide a reasonable estimate of the total monetary amount of the Sexual Misconduct Claims they have or may be asserted." DS p. 13, n.5.

- Because information about victims is being kept confidential, preventing the Non-Settling Sexual Misconduct Claimants from seeking to solicit rejections of the Plan, the Debtors should be directed to host a website so victims may post messages and victims can talk to victims about the Plan instead of hearing just from the Debtors. Survivors are entitled to hear from other Harvey Weinstein victims who oppose the Plan.

- What is the *Debtors'* business justification to require rape victims of Harvey Weinstein affirmatively to agree to release him from all liability as a condition to collecting their full award from a pathetically meager Sexual Misconduct Award Fund, or receive only 25% of that amount if they do not?[13] This insurance-driven deathtrap provision, falsely touted by the Plan Proponents as a genuine "choice" for survivors who wish to pursue their claims, is a further insult to women traumatized physically and emotionally by disgraced Harvey Weinstein.

- Why are ultra-affluent former board members, in effect, being discharged from all potential liability resulting from their alleged negligence when the Debtors, as a matter of law, are not even entitled to a discharge?

- The DS should describe why a section 524(g)-style injunction is appropriate when the Insurance Companies are not devoting anywhere near the entirety of all insurance proceeds to support payments to victims and there is no evergreen source of funding for the Sexual Misconduct Claims Fund.

- Why is it appropriate for the Court to deploy its most robust equitable powers, typically only invoked in mass tort cases where the Debtors are reorganizing and solvent, in a case where the Debtors are not operating, and most likely administratively insolvent?

- Why does the Plan deprive rape victims a say in the selection of the Claims Examiner who will "score" them against other women's stories of abuse and determine their compensation?

- The DS should describe the conflict of interest of the proposed Sexual Misconduct Claims Examiner, who previously and unsuccessfully mediated cases in a failed attempt to certify a Class Action. The DS should acknowledge that the "Claims Examiner" previously mediated the claims of the Non-Settling Sexual Misconduct Claimants and has, without their consent and in violation of ethical rules, accepted

[13] Holders of Sexual Misconduct Claims understandably may not agree to release Harvey Weinstein. However, if they choose that option, the Plan punishes them, and they forfeit the right to right 75% of the Liquidated Value of their "Allowed" claims. Plan §§ 3.13, 5.4, 7.2.3; *see also* Sexual Misconduct Claims Fund Procedures § 3.1.

a role in which he will decide how much their claims are worth. In addition, the Claims Examiner should disclose their experience handling sexual assault cases.

- How is it in good faith for the Plan Proponents to re-direct $8,407,305.00 in insurance proceeds to satisfy *uninsured* claims instead of applying those funds only to *insured* claims. DS §§ V(A)(1), (3). In effect, the trade creditors are being paid insurance proceeds to satisfy their uninsured claims to set up an accepting class for the Plan.

- The DS should advise that tort victims they are being deprived of their right, pursuant to Bankruptcy Code § 502(a), to challenge a claim asserted by another tort victim.

OBJECTION TO DISCLOSURE STATEMENT

2. ***The DS and proposed Solicitation Procedures Order seek to value the claims of Rape Victims at $1 for voting purposes.*** Creditor enfranchisement is important in the chapter 11 process. Section 1126 speaks to the ability of a claimant to vote an allowed claim crediting the economic power of the claimant's vote; the two-third dollar amount requirement of section 1126(c) is a necessary element in voting tabulation. But the Plan Proponents deem it appropriate to devalue entirely the economic aspect of a rape victim's vote by valuing it at only $1. DS § VIII(E); Solicitation Procedures Order at ¶ 10. In addition to being offensive, the arbitrarily assigned $1 value is a strategic attempt by the Plan Proponents and the Insurance Companies to take away the voting power of the Non-Settling Sexual Misconduct Claimants and other similarly severely injured tort victims and subject them to the votes of tort victims who suffered lesser and non-physical harm.[15]

3. Rape and sexual assault victims are *not* nominal creditors. The DS does not provide adequate (or any) information to rape and sexual assault victims that the proposed voting process

[15] The result of valuing all claims *pari passu* at $1, as the Plan Proponents seek to do, is to steeply devalue rape and other serious claims and skew voting tabulation to favor confirmation. How can it be demonstrated to Holders of Sexual Misconduct Claims that there was a true satisfaction of the requirement in section 1126(c) that "at least two-thirds in amount" of the voting claims approved the plan?

under the proposed Proc. Order and the Plan fails to align their voting power with their economic claim value. By unfairly assigning all victims, without regard to the severity of the abuse they suffered, a claim set at $1 for voting purposes, the Plan eviscerates the two-third dollar amount requirement of section 1126(c). This approach to voting is dismissive of rape victims and other women who suffered physical and psychological injury and abuse from Harvey Weinstein. Their true votes are not being counted in the confirmation process. *See, e.g., In re Quigley Co.*, 346 B.R. 647, 654 (Bankr. S.D.N.Y. 2006) (the court disapproved the $1.00 valuation approach and reasoned that "[i]t appears, then, that the $1.00 per vote method can be used when support is overwhelming and a different voting method will not change the result. Where the harmless error rule cannot be applied, another approach may be necessary. The alternative is to weigh each vote based on the nature and impairment of each claimant's injury. This method more accurately aligns the voting strength with the ultimate claim value and prevents the holders of relatively small claims from disenfranchising the more severely impaired who hold larger claims.") (internal citation omitted). This process could and should occur after the Tort Claims Bar Date.

4. Section 1126(c) of the Bankruptcy Code provides that the holder of an **allowed**[16] claim or interest may vote to accept or reject a plan. Subsection (c) specifies that acceptance by a class of creditors must be by more than one-half in number **and at least two-thirds in amount.** The Proc. Motion seeks to expand the universe of persons entitled to vote in Class 4 and it is unclear who, if anyone, will vet the Ballots receive to determine if they actually qualify to vote.

[16] Section 1126(a) permits only holders of "allowed [claims] under section 502" to vote to accept or reject a plan. For a claim to be deemed allowed, however, a proof of the claim must be filed. Bankruptcy Rule 3003(c)(2) provides that any creditor whose claim is not scheduled or is scheduled as disputed, contingent, or unliquidated and who does not file a timely proof of claim "shall not be treated as a creditor with respect to such claim for the purposes of voting." (emphasis added).

5. The overly broad definition of Holders of Sexual Misconduct Claims, which includes Tort Claims, appears insurance-driven; *i.e.*, to capture every possibly claim, and even non-actionable allegations such as "inappropriate conduct," whether allowed or not and use those votes to bind rape and sexual assault victims who allege they are entitled to millions of dollars. Enfranchising *all* Holders of Sexual Misconduct Claims, even those who claims are barred by an applicable statute of limitations,[17] runs afoul of Bankruptcy Code section 1126, Rule 3003(c)(2) and the Tort Claims Bar Date Order. The DS, therefore, fails to identify and circumscribe the universe of Holders of Sexual Misconduct Claims that have allowed claims entitled to vote, a fact that could be determined and discussed after the Tort Claims Bar Date; October 31, 2020. Voting procedures used for the Holders of Sexual Misconduct Claims must be substantially modified to avoid the Plan Proponents' attempt to stack Class 4 with the slightest alleged abuse victim and affording those "claimants" the exact same voting power as rape or sexual assault victims. The Plan Proponents also imprudently agreed to a Settlement Amount before the universe of Sexual Misconduct Claims was known.

6. The DS does not provide adequate information necessary for the Non-Settling Sexual Misconduct Claimants to answer their most fundamental question: are they better if the cases are administered in chapter 11 or 7? The DS is opaque on that question. It never describes the full and aggregate amount of insurance proceeds that might be available in chapter 7 after the stay is lifted. Instead, the DS provides a false comparison; *i.e.*, what victims will receive: (a) in

[17] The Plan permits proofs of claims related in any way to sexual misconduct of Harvey Weinstein on or after June 30, 2005. The statute of limitations for most common law claims that could arise from such conduct is between one and three years, depending on the jurisdiction. Statutory employment discrimination claims, including claims for hostile work environment, have similar filing deadlines. Victims of rape and sexual assault or may have the benefit of longer limitations periods, including the 10-year statute of limitations under the 18 U.S.C. 1595(c). Nevertheless, it is undeniable that many, if not most, claims that have yet to be filed in 2020 will be time barred, particularly if the allegation does not involve a rape or comparable conduct.

chapter 11 with the Sexual Misconduct Claims Fund; i.e., steeply discounted insurance, and (b) what they would receive in chapter 7 with the full amount of insurance coverage. Simply put, the Insurance Companies are putting a very limited amount of money into a pot and then they are off the hook forever, as are ultra-affluent directors and officers. Moreover, while some of the coverage decision letters relating to the claims of the Non-Settling Sexual Misconduct Claimants have been produced, complete discovery of all of the coverage decision letters have yet to be provided, which have prevented the coverage counsel retained by the Non-Settling Sexual Misconduct Claimants from conducting a complete analysis of what they and other survivors may achieve if the Plan is not confirmed. In any case, what is already clear is that the Insurance Companies are dropping only a fraction of insurance proceeds into the Plan and the Plan Proponents, as proxies for the Insurance Companies, nevertheless request this Court to invoke the full, robust and "equitable" powers of the Bankruptcy Code to impose a Channeling Injunction on non-derivative claims.

7. The DS fails to adequately describe what rights tort victims are forfeiting under the Plan. Outside bankruptcy, victims have the Constitutional right to tell their stories to a jury of their peers, be awarded compensation[18] by that jury, and collect on the award to the extent of available insurance and/or assets held by affluent Directors. But under this this Plan, the Claims Examiner alone scores the abuse they suffered, awards Points, and the Points awarded are scored

[18] Not surprisingly, awards in rape cases and serious sexual abuse cases outside bankruptcy are substantial. *See, e.g., Gloria G v. Mount Vernon*, Westchester Cty. Index No. 70026/2012 ($28 million verdict obtained by this firm for fourteen year-old raped and assaulted one time); *see also Thompson v. Steuben Realty Corp.*, 820 N.Y.S.2d 285 (2nd Dept. 2006) ($4.5 million [$5.7 million in today's dollars] for an adult tenant against property owner resulting from a single sexual assault); *Bernstein v. 655 Realty Co., Goodman Mgmt. Co.*, 1985 WL 351193 (N.Y. Sup.) ($4 million award in 1985 for one-time rape of a woman by an intruder inside of her apartment); *McCormack v. Cambria Home Remodeling Corporation*, 1985 WL 352653 (N.Y. Sup.) ($4 million award for a 30-year-old female who endured emotional distress after she was raped by an intruder in her home); *Plaintiff Restaurant Bartender and Alleged Sexual Abuse Victim v. Defendant Owner of Restaurant*, 2015 NY Jury Verdicts Review LEXIS 151 ($2.5 million verdict in 2015 resulting from a female employee being sexually assaulted twice by her supervisor, including once in the back office of the restaurant where they both worked when he cornered her, turned her around and masturbated while he fondled her breasts until he orgasmed); *Splawn v. Lextaj Corp.*, 197 A.D.2d 479 (1st Dept. 1993) ($2 million verdict in 1993 resulting from a one-time sexual assault of a female tenant by an intruder in her hotel room).

relative to other victims. Also, ordinarily, a creditor is permitted to object to the claims of other creditors. *See* 11 U.S.C. § 502(a). However, that substantive right is being taken away under the Plan but not adequately described in the DS.

8. ***Rape victims should not be "scored" by Claims Examiners.*** But that is what the Plan Proponents advocate. The Claims Examiners will use a point system to score the abuse each woman suffered. Those "points" are compared with the points other women "scored," pitting women against women for compensation limited to a pathetically meager Sexual Abuse Misconduct Fund. If there are hundreds or one thousand claims,[19] then the approximate $17 million Sexual Abuse Misconduct Fund does not come close to compensating survivors, and provides even less for victims than the plan (for $18.875 million) already rejected by the Court in *Geiss v. Weinstein Co. Holdings LLC*, No. 17 CV. 9554 (AKH), 2020 WL 4266925, at *4 (S.D.N.Y. July 24, 2020) ("*Geiss*"). That plan was deemed unreasonable and "offensive" by the *Geiss* court even though it provided more for victims than what is presently before this Court. A *de minimis* recovery for women who will have lifelong pain and suffering cannot, under any reasonable assessment, be deemed fair or provide adequate compensation.

9. The DS should describe that the mandatory use of the Claims Examiner prejudices the right of sexual abuse survivors, especially those severely injured, to choose freely their own path for justice, even though it is critical to their emotional, psychological and spiritual healing process. The DS fails to describe that victims are being stripped of their Constitutional right to a trial by a jury of their peers; to tell their stories and thereby survive their ordeal. Instead, the Plan

[19] *See Hannah Thomas-Peter, Harvey Weinstein 'could have targeted nearly 1,000 women', lawyer says*, Sky News (Nov. 2, 2018, 11:30 PM), https://news.sky.com/story/harvey-weinstein-could-havetargeted-nearly-1-000-women-lawyer says-11543053.

requires them to fill out an information sheet and be "scored" by the Claims Examiner. This was part of the flawed settlement plan rejected by Judge Hellerstein in *Geiss*.

10. The proposed Plan does not even permit victims to choose the Claims Examiner who would be responsible for determining their compensation. The proposed Claims Examiners, who unsuccessfully mediated claims in the *Geiss* case, as well as the claims of each of the Non-Settling Sexual Misconduct Claimants, personally endorsed in a sworn declaration a settlement that was called "offensive" by a federal court judge because it provided more money for defendants' lawyers than for sexual abuse victims.[20] Moreover, the proposed Claims Examiners – Jed Melnick and Simone Lelchuk – accepted this appointment even though some parties to the mediation, including the Non-Settling Sexual Misconduct Claimants, have not consented to them having an adjudicatory role in deciding the compensation they would receive. In doing so, Mr. Melnick and Ms. Lelchuk have violated basic ethical standards governing mediators, which provide that a mediator "shall not undertake an additional dispute resolution role in the same matter *without the consent of the parties*." ABA Model Standards of Conduct for Mediators, Standard (VI)(A)(8).[21] It is important for sexual abuse victims to have a say and vet who will mediate their claim. The Plan does not provide for this.

11. ***The negotiations of the Settlement Amount lack signification plaintiff-side representation***. There was no Official Committee of Tort Claimants appointed in these cases. The Plan Proponents assert that the "comprehensive settlement embodied in the Plan is the result of extensive mediation and arm's-length negotiation efforts between the various stakeholders in these

[20] *See* Geiss v. The Weinstein Company Holdings, 17 Civ. 09554 (S.D.N.Y) (Dkt. No. 333-6).

[21] These standards can be found at: www.americanbar.org/content/dam/aba/administrative/dispute_resolution/dispute_resolution/model_standards_conduct_april2007.pdf

Chapter 11 Cases, ***including significant involvement by representatives of survivors*** of Harvey Weinstein's alleged sexual misconduct." This is misleading. On the plaintiff-side, the parties involved in the settlement discussion only include the NYOAG and the mislabeled "Class Action Counsel." According to Judge Hellerstein's Opinion in the *Geiss* litigation, proposed Class Action Counsel represented 3 victims with active claims. The NYOAG represents an unspecified group of former TWC employees. Significantly, neither the NYOAG nor the Class Action Counsel is a signator to the Plan Support Agreement [D.I. 3040-1].

12. ***The DS fails to describe the legal basis for the Channeling Injunction.*** The DS states that "[s]ection 105(a) of the Bankruptcy Code *and other sections of the Bankruptcy Code* authorize the Bankruptcy Court to enter a "channeling injunction" pursuant to which the Sexual Misconduct Claims are forever channeled to the Sexual Misconduct Fund …" DS at p. 3 (*emphasis* added). The DS should identify the "*other sections of the Bankruptcy Code []"* so creditors may better understand the legal basis for the injunction and whether the Court has subject matter jurisdiction to grant. Section 105 alone, cannot justify the broad relief sought here.

13. ***The Debtors' bankruptcy should not be used to reduce substantially the potential liability of Insurance Companies***. The Court should not artificially cap the Insurance Companies' exposure for tort claims. It is axiomatic the discharge of a debtor does not affect the liability of a third party. *See* 11 U.S.C. § 524(e) ("[D]ischarge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt."). Outside bankruptcy, or in a chapter 7, Holders of Sexual Misconduct Clams are free to pursue insurance to the full extent of coverage. But here, the Plan is premised on capping the exposure of Insurance Companies. This is not permitted by law, especially in a case where the Debtors themselves are not entitled to a discharge. *See* 11 U.S.C. § 1141(d)(3).

OBJECTION TO SOLICITATION PROCEDURES MOTION

14. Because this is an insurance driven Plan, and the definitional scheme is overly broad, there are potentially 59,000 tort claimants. Proc. Motion at ¶ 12. It is unclear how many of them are Holders of Sexual Misconduct Claims. The Plan Proponents, however, would enfranchise all of them with an equal vote. That would substantially prejudice the rights of women who were raped and sexually assaulted by Harvey Weinstein. The Plan Proponents are seeking to stack the deck in favor of confirmation. Votes will be counted regardless of whether the Tort Claimant have an allowed claim unlawfully ignoring section 1126's limitation of voting to allowed claims. Votes will be tabulated without regard to the two-thirds in dollar amount requirement of section 1126. Votes will be counted and tabulated without a vetting process. The scheme set up by the Debtors does not provide a mechanism for women to discuss the proposed Plan with other victims.

15. The Procedure Solicitation Motion makes two equally disingenuous statements. First, "[t]he benefits of [estimating all claims at $1] will inure to parties in interest." Procedure Solicitation Motion ¶ 46. And the proposed estimation procedures also ensure that all Holders of Sexual Misconduct Claims are treat equally-each Holder of Sexual Misconduct Claims will each have one vote that is afforded equal weight." *Id.*

16. Rape and sexual assault victims object to having their claims valued at $1 for voting purposes and treated the same way as the holder of a claim based on a less severe interaction with Harvey Weinstein. This is certainly not in their best interest or in accordance with section 1126. The Bankruptcy Code expressly provides that claimants with a greater economic interest in the outcome of a case should have a larger voice in confirmation of a plan that binds them to that outcome and provides for that in the two-thirds in dollar amount requirement. The proposed

procedures seek to silence these voices and the DS makes no attempt to caution other victims of the impact of their vote. This Proc. Motion pits the largest economic stakeholders-women who have been raped and sexually assaulted-against women whose unpleasant experience with Harvey Weinstein was minimal. Section 1126 was not intended to provide *pari passu* treatment. The Plan Proponents seek to break the alignment between economic interest and voting power as a leg up toward confirmation.

17. The Plan Proponents contend that "[c]onsistent with Bankruptcy Rule 3018(a)," the Plan Proponents urge the Court to set the Voting Record Date as November 5, 2020 (if the Court approves the DS on that date). Proc. Motion ¶ 49. But the relief the Plan Proponents seek is not consistent with Bankruptcy Rule 3018(a), which provides that "[a] plan may be accepted or rejected in accordance with § 1126 of the Code . . . ." Section 1126, in turn, requires that only [t]he holder of a claim . . . allowed under section 502 of this title may accept or reject a plan." 11 U.S.C. §1126. Finally, section 502(a) provides that "[a] claim . . . , proof of which is timely filed under section 501 of this title, is deemed allowed . . . ." 11 U.S.C. § 502(a). Taken together, the Bankruptcy Code and Rules restrict voting to allowed claims. But under the Debtors' scheme, the Proc. Motion seeks to enfranchise 59,000 potential claimants, very few of which have allowed claims, and therefore should not be entitled to vote. The Plan Proponents seek to vastly expand the voting universe for the transparent purpose of binding rape and sexual assault victims to an insurance driven process that will devalue their claims and deprive them of their Constitutional right to a jury trial.

18. The Plan provides that "with respect to a Sexual Misconduct Claim, the Sexual Misconduct Claims Fund Procedures shall govern the determination as to whether or not such Claims constitute Allowed Claims. Plan, Ex. 1 § 1.5. Because the insurance-driven Plan seeks to

bind the most severely injured women to a paltry recovery and an unfair process, they seek to open voting to the widest universe of potential claimholders. The Voting Record Date—which may happen as early as November 5, 2020 and is prior to the determination of whether a Sexual Misconduct Claim is Allowed—does not apply to Holders of Sexual Misconduct Claims. The proposed process of allowing Sexual Misconduct Claims to vote, without applying the Voting Record Date to them, unfairly enfranchises Holders of Sexual Misconduct Claims that may not ever be allowed.

19. Furthermore, the Plan Proponents seek to expand the concept of an "allowed" claim for purposes of voting on the Plan well beyond what the Bankruptcy Code permits. The Bankruptcy Code requires that a proof of claim be timely filed to have an allowed claim. Bankruptcy Code section 502(a). This is consistent with the definition of Allowed[22] under the Plan. But that same definition of Allowed purports to remove the Holders of Sexual Misconduct Claims from that requirement, potentially enfranchising potentially 59,000 persons that otherwise should not participate in the Plan process or receive a distribution. In so doing, they seek to stack Class 4 to achieve confirmation. This transparently is why the Plan Proponents, proxies for the insurance companies, filed their motion to seek approval of the DS before the results of the Torts Claim Bar Date. If the results were known in advance, the Plan Proponents would

[22] "Allowed" is defined as "With respect to any Claim ***other than*** an Administrative Expense Claim, a Disputed Claim or ***a Sexual Misconduct Claim***, (i) any Claim that is specifically designated as Allowed under the Plan, (ii) any Claim proof of which was timely filed with the Bankruptcy Court or its duly appointed claims agent, or, in compliance with any order of the Bankruptcy Court regarding the filing of a proof of claim, with respect to which either no objection to the allowance thereof has been filed within the applicable period of limitation fixed by either the Plan or Bankruptcy Code, the Bankruptcy Rules or the Bankruptcy Court, or the Claim has been allowed by a Final Order (but only to the extent so allowed), or (iii) any Claim that has been, or hereafter is, listed in the schedules as liquidated in amount and not disputed or contingent; provided, however, that notwithstanding the foregoing, with respect to a Sexual Misconduct Claim, the Sexual Misconduct Claims Fund Procedures shall govern the determination as to whether or not such Claims constitute Allowed Claims. Allowed Claims shall not, for purposes of Distribution under the Plan, include: (a) for any Claim arising prior to the Petition Date, interest on such Claim accruing from or after the Petition Date; or (b) any Non-Compensatory Damages." Plan, Ex. 1 § 1.5 (***emphasis*** added).

have to have a fair and frank conversation about which claimants are entitled and should be solicited to vote.

20. The Bankruptcy Code at section 1125(b) provides, in effect, that an acceptance or rejection of a plan may not be solicited until after the DS is approved. The Plan Proponents intend to actively solicit acceptances. The Ballot for holders of Sexual Misconduct Claims includes the following language:

> "**THE DEBTORS AND THE COMMITTEE RECOMMEND THAT YOU VOTE TO ACCEPT THE PLAN**."

Proc. Motion, Ex. C-1.

21. The Debtors seek to eliminate the ability of the Non-Settling Sexual Misconduct Claimants to solicit rejections of the Plan. The Plan Proponents are not Permitted Parties, and have no access to filed Sexual Misconduct Claims as do the Plan Proponents.

22. To remedy this, the Non-Settling Sexual Misconduct Claimants request that they be deemed Permitted Parties, and the Debtors set up a website so victims can discuss the Plan amongst each other and following language be added to that ballot:

> **SOME SEXUAL MISCONDUCT VICTIMS OF HARVEY WEINSTEIN OPPOSE THE PLAN AND DO NOT BELIEVE IT IS FAIR OR IN THE BEST INTEREST OF VICTIMS. FURTHER INFORMATION ABOUT THE VIEWS OF THOSE WHO OPPOSE THE PLAN MAY BE FOUND AT [website url].**

WHEREFORE, the Non-Settling Sexual Misconduct Claimants respectfully request the Court deny approval of the Disclosure Statement and for such other relief as is just and proper.

Dated: October 29, 2020
Wilmington, Delaware

Respectfully submitted,

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