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OBJECTION DEADLINE: JANUARY 21, 2025
HEARING DATE: JANUARY 29, 2025
HEARING TIME: 11:00 A.M.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
SPIRIT AIRLINES, INC, *et al.*,[1]	:	Case No. 24-11988-SHL
Debtors.	:	(Jointly Administered)

UNITED STATES TRUSTEE'S OBJECTION TO DEBTORS' DISCLOSURE STATEMENT AND PLAN

[1] The Debtors' names and last four digits of their respective employer identification numbers or registration numbers in the applicable jurisdictions are as follows: Spirit Airlines, Inc. (7023); Spirit Finance Cayman 1 Ltd. (7020); Spirit Finance Cayman 2 Ltd. (7362); Spirit IP Cayman Ltd. (4732); and Spirit Loyalty Cayman Ltd. (4752). The Debtors' mailing address is 1731 Radiant Drive, Dania Beach, FL 33004.

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William K. Harrington, the United States Trustee for Region 2 (the "**United States Trustee**") hereby submits this objection (the "**Objection**") to the (1) approval of Disclosure Statement (the "**Disclosure Statement**") (ECF Dkt. No. 270) and (2) confirmation of Joint Chapter 11 Plan of Reorganization dated December 17, 2024 (the "**Plan**") (ECF Dkt. No. 247) of Spirit Airlines, Inc, *et al.* (collectively, the "**Debtors**"). In support of his Objection, the United States Trustee states as follows:

I. PRELIMINARY STATEMENT

The United States Trustee objects to approval of the Disclosure Statement and confirmation of the Plan. The Plan seeks to impose third-party releases without obtaining consent of the parties purportedly giving those releases. According to the Disclosure Statement and the Plan, all creditors are required to affirmatively opt out of the releases to avoid having them imposed upon them. Moreover, creditors who are not entitled to vote must still *affirmatively opt out* of the proposed third-party releases in order to avoid the broad releases imposed by the Plan. First, this is confusing for claimholders who may not understand the separate act of a vote for the plan and a *secondary* opt out for releases, and likely will even more so for those not even entitled to vote for the Plan. Second, a claimholder must indicate *express consent* to be bound by the third-party releases. Consent cannot be assumed or be the default. Payment under the Plan does not equate to consideration under contract law, as claimants are already entitled to payment under the Plan. The Debtors should provide an opt-in release to ensure that informed consent is actually provided. Accordingly, confirmation of the Plan should be denied.

II. BACKGROUND

1. On November 18, 2024 (the "**Petition Date**"), Debtor Spirit Airlines, Inc. filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. On November 25, 2024, Spirit Airlines, Inc.'s subsidiaries filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

2. The Chapter 11 Cases are being jointly administered for procedural purposes only pursuant to Bankruptcy Rule 1015(b), as ordered by the Court. ECF Dkt. No. 121.

3. On November 29, 2024, the United States Trustee appointed an official committee of unsecured creditors (the "**Committee**") pursuant to section 1102 of the Bankruptcy Code. ECF Dkt. No. 133.

4. On November 19, 2024, the Debtors filed a request for a status conference (the "**Status Conference**") with the Court to discuss the future act of filing of a motion requesting a combined hearing for approval of the Disclosure Statement and Confirmation of the Plan (the "**Combined Hearing Motion**"), in accordance with M-634. *See* ECF Dkt. No. 49.

5. The Combined Hearing Motion was approved by the Court on December 17, 2024 (the "**Combined Hearing Order**"). ECF Dkt. No. 246. The Combined Hearing Order *inter alia* conditionally approved the Disclosure Statement on an interim basis, scheduled a combined hearing for final approval of the Disclosure Statement and Confirmation of the Plan, established dates and deadlines for solicitations, and approved the form of ballots. *Id*.

6. On December 18, 2024, the Debtors filed the Disclosure Statement and the Plan, as modified and supplemented.

7. The Plan provides definitions in relevant part:

> 110. "**General Unsecured Claim**" means any Claim against any of the Debtors that is not one of the following Claims: (a) Administrative Claim (including a

Professional Fee Claim, DIP Superpriority Claim, or a Claim related to U.S. Trustee Fees); (b) Priority Tax Claim; (c) Senior Secured Notes Claim; (d) Convertible Notes Claim; (e) Other Secured Claim; (g) Other Priority Claim; (g) Section 510(b) Claim; or (h) Intercompany Claim.

134. "**Nonvoting Classes**" means, Class 1, Class 2, Class 3, Class 6, Class 7, Class 8, Class 9, and Class 10.

135. "**Opt-Out Form**" means the form (including the E-Opt-Out Form) through which Holders of Claims or Interests in Nonvoting Classes (with the exception of the Holders of Existing Interests) can affirmatively elect to "opt out" of being a Releasing Party, as further set forth thereon and in the Scheduling Order.

167. "**Released Party**" means each of the following, and in each case, solely in its capacity as such**: (a) the Debtors; (b) the Reorganized Debtors; (c) each DIP Secured Party; (d) each Consenting Senior Secured Noteholder; (e) each Consenting Convertible Noteholder; (f) each Prepetition Agent/Trustee; (g) each RCF Secured Party; (h) each Backstop Commitment Party; (i) the Distribution Agent; (j) any Committee and all members thereof;** and (k) with respect to each of the foregoing Entities in clauses (a) through (j), such Entity's Related Parties; *provided, however*, that an Entity that (i) affirmatively elects to "opt out" of being a Releasing Party by timely objecting to Confirmation or by checking the appropriate box on such Holder's timely and properly submitted Ballot or Opt-Out Form, thereby indicating that such Holder elects to opt out of the Plan's release provisions, or (ii) timely objects to the releases herein and such objection is not resolved before Confirmation shall not be considered a "Released Party" notwithstanding anything to the contrary herein.

168. "**Releasing Party**" means each of the following, and in each case, solely in its capacity as such: (a) the Debtors and their Estates; (b) the Reorganized Debtors; (c) each DIP Secured Party; (d) each Consenting Senior Secured Noteholder; (e) each Consenting Convertible Noteholder; (f) each Prepetition Agent/Trustee; (g) each RCF Secured Party; (h) each Backstop Commitment Party; (i) **each Holder of a Claim entitled to vote to accept or reject the Plan that does not affirmatively elect to "opt out" of being a Releasing Party by checking the appropriate box on such Holder's timely and properly submitted Ballot to indicate that such Holder elects to opt out of the Plan's release provisions;** (j) **each Holder of a Claim or Interest in a Nonvoting Class (with the exception of Holders of Existing Interests) that does not affirmatively elect to "opt out" of being a Releasing Party by checking the appropriate box on such Holder's timely and properly submitted Opt-Out Form to indicate that such Holder elects to opt out of the Plan's release provisions**; and (k) with respect to each of the foregoing Entities in clauses (a) through (j), such Entities' Related Parties; *provided*, that, for the avoidance of doubt, any opt-out election made by a Consenting Stakeholder (that has not terminated the Restructuring Support Agreement as to itself and remains a party thereto) in any capacity shall be *void ab initio*.

Plan, Art. I.A (emphasis added).

8. The Plan provides with respect to voting for Classes 7 and 10 that,

> Under the Plan, (a) Classes 7 and 10 are Impaired, (b) the Holders of Claims or Interests in such Classes are deemed to have rejected the Plan and shall receive no Plan Distributions on account of their Claims or Interests, and (c) **such Holders are not entitled to vote to accept or reject the Plan and the votes of such Holders shall not be solicited**.

Plan, Art. III.C.4 (emphasis added); *see also* Art.III.A.7.c ("therefore, is not entitled to vote to accept or reject the plan.") and Art.III.A.10.c ("[t]herefore, no holder of Existing Interests is entitled to vote to accept or reject the Plan.").

9. The Plan provides with respect to Classes 8 and 9 that,

> Under the Plan, Classes 8 and 9 are each either (a) Unimpaired, in which case the Holders of such Claims or Interests are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code, or (b) Impaired and receiving no Plan Distributions (and retaining no interest in property), in which case the Holders of such Claims or Interests are presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. In either (a) or (b), as applicable, **such Holders are not entitled to vote to accept or reject the Plan and the votes of such Holders shall not be solicited**.

Plan, Art. III.C.5 (emphasis added); *see also* Art.III.A.8.c ("[t]herefore, no holder of an Intercompany Claim is entitled to vote to accept or reject the Plan.") and Art.III.A.9.c. ("Art.III.A.10.c ("[t]herefore, no holder of Intercompany Interest is entitled to vote to accept or reject the Plan.").

10. With respect to Plan releases, the Plan provides in relevant part that,

> ***each Releasing Party shall*** be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged ***the Released Parties from any and all*** claims, interests, obligations, debts, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, asserted or unasserted, existing or hereinafter arising, in law, equity, or otherwise, whether for tort, fraud, contract, violations of federal, state, or other applicable laws, or otherwise, including Avoidance Actions, those Causes of Action based on veil piercing or alter-ego theories of liability,

> contribution, indemnification, joint liability, or otherwise that such Releasing Party would have been legally entitled to assert (whether individually or collectively) . . .

Art. VIII.F (emphasis added).

11. The Plan further provides that New York law will govern, other than "for corporate governance matters relating to the (Reorganized) Debtors not incorporated in New York shall be governed by the laws of the state or other jurisdiction of incorporation of the applicable (Reorganized) Debtor." Plan, Art. I.D.

12. The Plan introduction states in relevant part:

> **ALL HOLDERS OF CLAIMS OR INTERESTS ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO READ THE PLAN AND DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.**

Plan, p. 6 of 89 (emphasis in original).

III. BASIS FOR RELIEF

The Supreme Court has held that non-consensual third-party releases are not authorized under the Bankruptcy Code. *Harrington v. Purdue Pharma L.P.*, 603 U.S. __, 144 S. Ct. 2071, 2082-88 (2024). The Supreme Court in Purdue did not address whether consensual non-debtor releases can be included in a chapter 11 plan and confirmation order.

A. Third-Party Releases are Contractual.

The foundation of a consensual release is an agreement between the parties. Whether parties have reached an agreement—including an agreement to release one's claims against another (*i.e.*, not to sue)—is governed by state law, the reason being that the third-party release is essentially a settlement between a non-debtor claimant and another non-debtor. The only exception is if there is federal law that preempts applicable state contract law in some specific context. *See, e.g., Shady Grove Orthopedic Assocs. v. Allstate Ins. Co.*, 559 U.S. 393, 416 (2010) (plurality) ("For where neither the Constitution, a treaty, nor a statute provides the rule of decision or

authorizes a federal court to supply one, 'state law must govern because there can be no other law.'") (quoting *Hanna v. Plumer*, 380 U.S. 460, 471-72 (1965)).

i. There is No Applicable Federal Law.

No such exception applies here. The Bankruptcy Code does not define a "consensual release." It contains no provision that addresses how to determine whether one non-debtor has agreed to extinguish its direct claims against another non-debtor. And no Code provision authorizes courts, as part of an order confirming a chapter 11 plan or otherwise, to "deem" a nondebtor to have consented to an agreement to release claims against other non-debtors where consent would not otherwise be found to exist as a matter of state law. Nor does section 105(a) itself confer any power to override state law. Rather, section 105(a) "serves only to carry out authorities expressly conferred elsewhere in the code." *Purdue*, 144 S. Ct. at 2082 n.2 (quotation marks omitted). Bankruptcy courts cannot "create substantive rights that are otherwise unavailable under applicable law," nor do they possess a "roving commission to do equity." *In re Dairy Mart Convenience Stores, Inc*., 351 F.3d 86, 92 (2d Cir. 2003) (quotation omitted). Accordingly, any authority to include third-party releases in a plan must derive from some other source of law. Thus, the Bankruptcy Code does not change the state-law definition of consent as applicable to claims among non-debtor parties.[2]

[2] Indeed, even as to a debtor, it is well settled that whether parties have entered a valid settlement agreement is governed by state law. *See Houston v. Holder (In re Omni Video, Inc.)*, 60 F.3d 230, 232 (5th Cir. 1995) ("Federal bankruptcy law fails to address the validity of settlements and this gap should be filled by state law."); *De La Fuente v. Wells Fargo Bank, N.A. (In re De La Fuente)*, 409 B.R. 842, 845 (Bankr. S.D. Tex. 2009) ("Where the United States is not a party, it is well established that settlement agreements in pending bankruptcy cases are considered contract matters governed by state law."). That is because "the basic federal rule in bankruptcy is that state law governs the substance of claims, Congress having generally left the determination of property rights in the assets of a bankrupt's estate to state law." *Travelers Cas. & Sur. Co. of America v. Pacific Gas & Elec. Co*., 549 U.S. 443, 450-451 (2007) (quotation marks omitted); *Butner v. United States*, 440 U.S. 48 (1979) ("Congress has generally left the determination of property rights in the assets of a bankrupt's estate to state law.").

As courts have recognized, because the Bankruptcy Code does not govern relationships between claim holders and non-debtor third-parties, state-law contract principles serve as controlling authority when considering whether a release is consensual. *See, e.g., Patterson v. Mahwah Bergen Ret. Grp., Inc*., 636 B.R. 641, 684-85 (E.D. Va. 2022) (describing bankruptcy courts in the District of New Jersey as "look[ing] to the principles of contract law rather than the bankruptcy court's confirmation authority to conclude that the validity of the releases requires affirmative consent"); *Smallhold,* No. 24-10267, 2024 WL 4296938, at *11 (Bankr. D. Del. Sept. 25, 2024) (requiring "some sort of affirmative expression of consent that would be sufficient as a matter of contract law"); *In re SunEdison, Inc*., 576 B.R. 453, 458 (Bankr. S.D.N.Y. 2017) ("Courts generally apply contract principles in deciding whether a creditor consents to a third-party release."); *In re Arrowmill Dev. Corp*., 211 B.R. 497, 506 (Bankr. D.N.J. 1997) (explaining that a third-party release "is no different from any other settlement or contract" and thus "the validity of the release . . . hinge[s] upon principles of straight contract law or quasicontract law rather than upon the bankruptcy court's confirmation order") (internal quotation marks omitted) (alterations in original); *Houston v. Holder (In re Omni Video, Inc.)*, 60 F.3d 230, 232 (5th Cir. 1995) ("Federal bankruptcy law fails to address the validity of settlements and this gap should be filled by state law."); *De La Fuente v. Wells Fargo Bank, N.A. (In re De La Fuente)*, 409 B.R. 842, 845 (Bankr. S.D. Tex. 2009) ("Where the United States is not a party, it is well established that settlement agreements in pending bankruptcy cases are considered contract matters governed by state law.").[3] As one court recently held, because "nothing in the Bankruptcy Code contemplates (much less authorizes it)' … any proposal for a non-debtor release is an ancillary offer that becomes a contract

[3] *See also Travelers Cas.*, 549 U.S at 450-451 ("[T]he basic federal rule in bankruptcy is that state law governs the substance of claims, Congress having generally left the determination of property rights in the assets of a bankrupt's estate to state law.") (internal quotation marks omitted); *Butner*, 440 U.S. 48 ("Congress has generally left the determination of property rights in the assets of a bankrupt's estate to state law.").

upon acceptance and consent." *In re Tonawanda Coke Corp*., No. BK 18-12156 CLB, 2024 WL 4024385, at *2 (Bankr. W.D.N.Y. Aug. 27, 2024) (quoting *Purdue*, 144 S. Ct. at 2086). Accordingly, "any such consensual agreement would be governed by state law." *Id*.

Here, the Debtors do not meet their burden of establishing that the releasing parties will affirmatively agree to release their property rights in a manner sufficient to demonstrate consent under state law.

B. Silence is not Consent.

The "general rule of contracts is that silence cannot manifest consent." *Patterson*, 636 B.R. at 686; *see also, e.g., McGurn v. Bell Microproducts, Inc*., 284 F.3d 86, 90 (1st Cir. 2002) (recognizing "general rule" that "silence in response to an offer . . . does not constitute acceptance of the offer"). Moreover, "[o]rdinarily an offeror does not have power to cause the silence of the offeree to operate as acceptance." RESTATEMENT (SECOND) OF CONTRACTS § 69 cmt. a (1981); *accord* 1 CORBIN ON CONTRACTS § 3.19 (2018); 4 WILLISTON ON CONTRACTS § 6:67 (4th ed.); *Reichert v. Rapid Investments, Inc*., 56 F.4th 1220, 1227 (9th Cir. 2022) ("[T]he offeror cannot prescribe conditions so as to turn silence into acceptance."). Instead, under state law, an agreement to release claims—like any other contract—generally requires a manifestation of assent to that agreement. *See, e.g*., RESTATEMENT (SECOND) OF CONTRACTS § 17(1) ("[T]he formation of a contract requires a bargain in which there is manifestation of mutual assent to the exchange and a consideration."). Consent cannot be imputed or "deemed" based on a party's failure to object—rather, consent must be affirmatively shown to exist. *See, e.g., id*.; RESTATEMENT (SECOND) OF CONTRACTS § 69 cmt. a.

There are only very limited exceptions to that principle. "[T]he exceptional cases where silence is acceptance fall into two main classes: those where the offeree silently takes offered

benefits, and those where one party relies on the other party's manifestation of intention that silence may operate as acceptance. Even in those cases the contract may be unenforceable under the Statute of Frauds." RESTATEMENT (SECOND) OF CONTRACTS § 69 cmt. a (1981).

But absent such extraordinary circumstances, "[t]he mere receipt of an unsolicited offer does not impair the offeree's freedom of action or inaction or impose on him any duty to speak." RESTATEMENT (SECOND) OF CONTRACTS § 69 cmt. a (1981). And "[t]he mere fact that an offeror states that silence will constitute acceptance does not deprive the offeree of his privilege to remain silent without accepting." *Id*. § 69, cmt. c (1981); *see also Patterson*, 636 B.R. at 686 (explaining how contract law does not support deeming consent based upon a failure to opt out).

Here, the Plan provides for application of New York law and the Debtors are incorporated in Delaware.[4] However, the same contract principles apply under either state (indeed, the same concepts apply in *almost every* state). Delaware common law, as a point of reference, is in accord with general contract principles that failure to opt out is not consent. *See, e.g., Hornberger Mgmt. Co. v. Haws & Tingle Gen. Contractors, Inc*., 768 A.2d 983, 991 (Del. Super. Ct. 2000) (quoting RESTATEMENT (SECOND) OF CONTRACTS § 69 (1981)). Absent limited exceptions not triggered here, silence and inaction are not assent to an offer. *See Urban Green Techs., LLC v. Sustainable Strategies* 2050 LLC, No. N136-12-115, 2017 WL 527565, at *3 (Del. Super. Ct. Feb. 8, 2017); *see also Patterson*, 636 B.R. at 686 (contract law does not support consent by failure to opt out). For the reasons discussed *infra*, none of those exceptions apply here.

[4] While the Plan provides that its construction and enforcement is governed by the laws of the State of New York, debtors cannot choose the law to apply to contracts between non-debtors. Rather, ordinary choice of laws principles govern which state's law applies to contracts between non-debtors, although a choice of law analysis may not be necessary absent any assertion of a difference in potentially applicable state laws. *See Smallhold*, 2024 WL 4296938, at *13 n.57. The United States Trustee asserts no position as to choice of law in this Objection and reserves all rights with respect thereto.

New York common law is also supportive of these general contractual concepts. *See, e.g.*, *Karlin v. Avis*, 457 F.2d 57, 62 (2d Cir. 1972). Absent limited exceptions not triggered here, silence and inaction are not assent to an offer. *See also Albrecht Chem. Co. v. Anderson Trading Corp.*, 298 N.Y. 437, 440, 84 N.E.2d 625, 626 (1949) ("where the recipient of an offer is under no duty to speak, silence–when not misleading, may not be translated into acceptance merely because the offer purports to attached that effect to it."); s*ee Matter of Tanenbaum Textile Co. v. Schlanger*, 287 N.Y. 400, 404, 40 N.E.2d 225, 226 (1942); *Poel v. Brunswick-Balke-Collender Co.*, 216 N.Y. 310, 318 *et seq.*, 110 N.E. 619, 621 (1915); *More v. New York Bowery Fire Ins. Co.*, 130 N.Y. 537, 545, 547, 29 N.E. 757, 758, 759 (1892); *see also* 1 WILLISTON ON CONTRACTS [Rev.Ed.], § 91, pp. 279, 280; RESTATEMENT (SECOND) OF CONTRACTS, § 72(1).

C. <u>Consent Cannot Be Inferred from the Procedural Default Theory.</u>

Applicable state contract law cannot be disregarded on a default theory, previously applied by some courts, under which creditors who remain silent are held to have forfeited their rights against non-debtors if they received notice of the non-debtor release but failed to object, just as they would forfeit their right to object to a debtor's plan if they failed timely to do so. *See, e.g., In re Arsenal Intermediate Holdings, LLC*, No. 23-10097, 2023 WL 2655592 (Bankr. D. Del. Mar. 27, 2023), *abrogated by Smallhold*, 2024 WL 4296938, at *8-11; *In re DBSD North America, Inc*., 419 B.R. 179, 218-19 (Bankr. S.D.N.Y. 2009), aff'd on other grounds, 2010 WL 1223109 (S.D.N.Y. Mar. 24, 2010), rev'd in part and aff'd in part, 634 F.3d 79 (2d Cir. 2011). These courts had reasoned that so long as the creditors received notice of a proposed non-debtor release and were informed of the consequences if they did not opt out or object to that release, there is no unfairness or deprivation of due process from binding them to the release. *Cf*. *Smallhold*, 2024 WL

4296938, at *1 (describing this reasoning as having treated a mere "failure to opt out" as "allow[ing] entry of the third-party release to be entered by default").

As explained in *Smallhold*, the Supreme Court's *Purdue* decision rejected a fundamental premise of the decisions which had imputed consent for non-debtor releases on a procedural default theory—that a bankruptcy proceeding legally could lead to the destruction of creditors' rights against non-debtors, so they had best pay attention lest they risk losing those rights. *Smallhold*, 2024 WL 4296938, at *1-2; *see also id*. at *10 ("The possibility that a plan might be confirmed that provided a nonconsensual release was sufficient to impose on the creditor the duty to speak up if it objected to what the debtor was proposing."). The courts that relied on this procedural-default theory had reasoned that non-debtor releases were no different from any other plan provision to which creditors had to object or risk forfeiture of their rights, because pre-*Purdue* a chapter 11 plan could permissibly include nonconsensual, non-debtor releases under certain circumstances. *Id*. at *10. As the *Smallhold* court explained, however, under the default theory, a plan's opt-out provision functions not as a method to secure consent, but rather serves as "an administrative shortcut to relieve those creditors of the burden of having to file a formal plan objection." *Id*. at *2; *see also id*. at *9 ("In this context, the word 'consent' is used in a shorthand, and somewhat imprecise, way. It may be more accurate to say that the counterparty forfeits its objection on account of its default.").

But "[u]nder established principles," courts may enter relief against a party who procedurally defaults by not responding "only after satisfying themselves that the relief the plaintiff seeks is relief that is at least potentially available to the plaintiff in litigation" that is actually contested. *Id*. at *2; *see also id*. at *13 ("[T]he obligation of a party served with pleadings to appear and protect its rights is limited to those circumstances in which it would be appropriate

for a court to enter a default judgment if a litigant failed to do so."). "[After *Purdue*], that is no longer the case in the context of a third-party release." *Id*. at *13. A third-party release is not "an ordinary plan provision that can properly be entered by 'default' in the absence of an objection." *Id*. "It is unlike the listed cure amount where one can properly impose on a creditor the duty to object, and in the absence of such an objection bind the creditor to the judgment." *Id*. That is because, unlike for a creditor's claims against the debtor, the Bankruptcy Code affords no affirmative authority to order a release of claims against third parties. The *Smallhold* court provided an illustration that makes obvious why, even with clear notice, a mere failure to object or opt out of a proposed release does not constitute the manifestation of assent necessary to constitute consent under state law: Consider, for example, a plan of reorganization that provided that each creditor who failed to check an "opt out" box on a ballot was required to make a $100 contribution to the college education fund for the children of the CEO of the debtor. Just as in the case of Party A's letter to Party B, no court would find that in these circumstances, a creditor that never returned a ballot could properly be subject to a legally enforceable obligation to make the $100 contribution. *Id*. at *2 (footnote omitted). None of the cases that allow imposing of a non-debtor release based merely on a creditor's failure to object or opt out "provide[] any limiting principle that would distinguish the third-party release from the college education fund plan. And after *Purdue Pharma*, there is none." *Id*.

Because *Purdue* establishes that a nonconsensual third-party release is "per se unlawful," it follows that a third-party release "is not the kind of provision that would be imposed on a creditor on account of that creditor's default." *Id*. at *2. Rather, absent an affirmative showing of consent, a court lacks any power to approve the non-debtor release. And besides the now-discredited default theory, there is "no other justification for treating the failure to 'opt-out' as 'consent' to the release

[that] can withstand analytic scrutiny." *Id*. Because a chapter 11 plan cannot permissibly impose non-debtor releases without the affirmative consent of the releasing parties, a release cannot be imposed based on their mere failure to respond regarding the nondebtor release. Rather, an "affirmative expression of consent that would be sufficient as a matter of contract law" is required. *Id*. at *11 (emphasis added).[5]

D. Failing to Opt Out Does Not Provide the Required Affirmative Consent.

An affirmative agreement—something more than the failure to opt out or object—is required for a non-debtor release to be consensual. *See Tonawanda Coke*, 2024 WL 4024385, at *2; *Patterson*, 636 B.R. at 686. Failing to "opt out" of, or object to, an offer is not a manifestation of consent unless one of the exceptions to the rule that silence is not consent applies, such as conduct by the offeree that manifests an intention that silence means acceptance or taking the offered benefits. RESTATEMENT (SECOND) OF CONTRACTS § 69 cmt. a (1981). For example, the *Patterson* court, in applying black-letter contract principles to opt-out releases in a chapter 11 plan, found that contract law does not support consent by failure to opt-out. *Patterson*, 636 B.R. at 686. "Whether the Court labels these 'nonconsensual' or based on 'implied consent' matters not, because in either case there is a lack of sufficient affirmation of consent." *Id*. at 688.

The Ninth Circuit's decision in *Norcia v. Samsung Telecomms. Am., LLC*, 845 F.3d 1279 (9th Cir. 2017), cited with approval by the Third Circuit in *Noble v. Samsung Elec. Am., Inc*., 682 F. App'x 113, 117-18 (3d Cir. 2017) and the Fifth Circuit in *Imperial Ind. Supply Co. v. Thomas*, 825 F. App'x 204, 207 (5th Cir. 2020), illustrates the point. In *Norcia*, a consumer bought a Samsung phone from a Verizon Wireless store and signed the Verizon Wireless Customer

[5] For those reasons, the *Smallhold* court expressly disapproved of its prior decision in Arsenal, which had relied on the procedural default theory. *See id.* at *8 ("On the central question presented, the Court concludes that its decision in *Arsenal* does not survive *Purdue Pharma*.").

Agreement. *Norcia*, 845 F.3d at 1282. Among the contents of the phone's box was a Samsung "Product Safety & Warranty Information" brochure that contained an arbitration provision, which "stated that purchasers could opt out of the arbitration agreement by providing notice to Samsung within 30 calendar days of purchase, either through email or by calling a toll-free telephone number." *Id*. It also stated that opting out would not affect the warranty coverage. *See id*. The customer did not take any steps to opt out. See id. When the customer later sued Samsung, Samsung argued that the arbitration provision applied. *See id*. at 1282-83.

As an initial matter, the *Norcia* court rejected the argument that the customer agreed to the arbitration provision by signing his contract with Verizon: "The Customer Agreement is an agreement between Verizon Wireless and its customer. Samsung is not a signatory." 845 F.3d at 1290. That is even more true in the context of a chapter 11 plan. Not only are the non-debtor Released Parties not signatories to it, a chapter 11 plan is a creature of the Bankruptcy Code specifically for determining how the debtor will pay its creditors, not for resolving claims between non-debtors. As the Ninth Circuit has explained, "[w]hen a bankruptcy court discharges the debtor, it does so by operation of the bankruptcy laws, not by consent of the creditors. … [T]he payment which effects a discharge is not consideration for any promise by the creditors, much less for one to release non-party obligators." *Blixseth v. Credit Suisse*, 961 F.3d 1074, 1085 (9th Cir. 2020) (quotation marks omitted).

The Ninth Circuit in *Norcia* further held that the customer's failure to opt out did not constitute consent to arbitrate. Unsurprisingly — because there was no applicable federal law — the court applied the "general rule," applicable under California law, that "silence or inaction does not constitute acceptance of an offer." 845 F.3d at 1284 (quotation marks omitted); *accord Southern Cal. Acoustics Co. v. C.V. Holder, Inc*., 456 P.2d 975, 978 (Cal. 1969). The customer did

not agree to arbitrate because he did not "sign the brochure or otherwise act in a manner that would show his intent to use his silence, or failure to opt out, as a means of accepting the arbitration agreement." *Norcia*, 845 F.3d at 1285 (quotation marks omitted). This was true, even though the customer did take action to accept the offered contract from Verizon Wireless. "Samsung's offer to arbitrate all disputes with [the customer] cannot be turned into an agreement because the person to whom it is made or sent makes no reply, even though the offer states that silence will be taken as consent, unless an exception to this general rule applies." *Id*. at 1286 (quotation marks and citation omitted).

The Ninth Circuit explained that there are two exceptions to this rule—when the offeree has a duty to respond or when the offeree retains the offered benefits—but held neither exception applied. *See Norcia*, 845 F.3d at 1284-85. There was no state law imposing a duty on the customer to act in response to the offer, the parties did not have a prior course of dealing that might impose such a duty, and the customer did not retain any benefits by failing to act given that the warranty applied whether or not he opted out of the arbitration provision. *See id*. at 1286.

Here, too, the debtor's creditors have not signed an agreement to release the non-debtor releasees nor acted in any other manner to suggest that their silence manifests an intention to accept an offer to release the non-debtors. First, voting for a plan without checking an opt-out box does not constitute the affirmative consent necessary to reflect acceptance of an offer to enter a contract to release claims against non-debtors. See RESTATEMENT (SECOND) OF CONTRACTS § 69 cmt. a (1981).

As an initial matter, merely voting to approve a plan is not an expression of consent to a non-debtor release. *See, e.g., In re Congoleum Corp.*, 362 B.R. 167, 194 (Bankr. D.N.J. 2007) ("[A] consensual release cannot be based solely on a vote in favor of a plan."); *Arrowmill*, 211

B.R. at 507 (reaching same conclusion). As explained in *Arrowmill*, a voluntary release arises only "because the creditor agrees" to it. 211 B.R. at 507 (emphasis in original). There is nothing in the Code that authorizes treating a vote to accept a chapter 11 plan as consent to a third-party release. Instead, the "validity of th[at] release" necessarily "hinges upon principles of straight contract law or quasi-contract law rather than upon the bankruptcy court's confirmation order." *Id*. (citation and alterations omitted). Because "a creditor's approval of the plan cannot be deemed an act of assent having significance beyond the confines of the bankruptcy proceedings," "it is not enough for a creditor . . . to simply vote 'yes' as to a plan" in order to destroy its rights under nonbankruptcy law. *Id.* (quotation marks omitted); *accord Congoleum Corp.*, 362 B.R. at 194; *In re Digital Impact, Inc.*, 223 B.R. 1, 14 (Bankr. N.D. Okla. 1998). Rather, a creditor must "unambiguously manifest[] assent to the release of the nondebtor from liability on its debt." *Arrowmill*, 211 B.R. at 507.

Because merely voting to approve a plan does not manifest consent to a non-debtor release, such a vote plus a failure to opt out is still nothing more than silence with respect to the offer to release claims against non-debtors. Voting to accept a plan but remaining silent about a non-debtor release by failing to check an opt-out box does not fit within any of the exceptions to the rule that silence is not acceptance of an offer.

Creditors who vote for a plan without opting out of a non-debtor release are not "silently tak[ing] offered benefits" from the released non-debtors, such that consent may be inferred. RESTATEMENT (SECOND) OF CONTRACTS § 69 cmt. a (1981). The only benefits received by the creditors are distributions from the debtor's chapter 11 plan. Thus, "[e]ssentially, creditors are being asked to give releases to third parties for no consideration." *Tonawanda Coke.*, 662 B.R. at 222. Because creditors are entitled to whatever distributions the Plan allocates them regardless of

whether they opt out of the non-debtor releases, consent to the non-debtor release cannot be inferred from mere acceptance of the benefits of the debtor's plan. *See Norcia*, 845 F.3d at 1286 (explaining that customer's failure to opt out did not imply his consent where warranty applied regardless, meaning that customer did not thereby obtain any additional benefit). Further, non-debtors have no right to prevent a debtor's creditors from receiving distributions under the debtor's chapter 11 plan, and thus acceptance of those distributions does not manifest acceptance of an offer to release non-debtors. *See Railroad Mgmt. Co., L.L.C. v. CFS La. Midstream Co.,* 428 F.3d 214, 223 (5th Cir. 2005) ("In the absence of any evidence that Strong had the right to exclude CFS from the property in question or that CFS accepted any service or thing of value from Strong, no reasonable jury could conclude that CFS's failure to remove its pipeline upon Strong's demand constituted consent to a contract.").

Nor does voting to approve a chapter 11 plan while remaining silent about a non-debtor release "manifest [an] intention that silence may operate as acceptance" of an offer to release claims against non-debtors. RESTATEMENT (SECOND) OF CONTRACTS § 69 cmt. a. Because impaired creditors have a federal right under the Bankruptcy Code to vote on a chapter 11 plan, 11 U.S.C. § 1126(a), merely exercising that right does not manifest consent to release claims against non-debtors. Rather, voting on a chapter 11 plan is governed by the Bankruptcy Code, and a favorable vote reflects only approval of the plan's treatment of the voters' claims against the debtor.

And as in *Norcia*, creditors have no state law duty to respond to an offer to release non-debtors such that their silence can be understood as consent, nor have they any prior course of dealing with the released non-debtors that would impose such a duty. *See Norcia*, 845 F.3d at 1285-86. Nor do creditors have any affirmative obligation to act on a plan, either to vote or to opt

out. *See, e.g.,* 11 U.S.C. § 1126(a) (providing that creditors "may" vote on a plan); *SunEdison, Inc.,* 576 B.R. at 460–61 (recognizing that creditors have no duty to speak regarding a plan that would allow a court to infer consent to third-party releases from silence). A claimant's vote in favor of a plan while remaining silent regarding a non-debtor release thus does not fit within the exception to the general rule that consent cannot be inferred from silence.

Second, for the same reasons, releases cannot be imposed on those who vote to reject the plan but do not opt out. It is implausible to suggest that a party returning a ballot rejecting the plan but neglecting to opt out of the third-party release is evidencing consent to the third-party release. Not only is there no "mutual agreement" as to the Plan, much less the Third-Party Release, the creditor has expressly stated its rejection of the Plan. As the court in *Chassix* reasoned, "a creditor who votes to reject a plan should also be presumed to have rejected the proposed third-party releases that are set forth in the plan. The additional 'opt out' requirement, in the context of this case, would have been little more than a Court-endorsed trap for the careless or inattentive creditor." 533 B.R. 64, 79 (Bankr. S.D.N.Y. 2015).

Whether or not a creditor votes to accept or reject the Plan, such creditors may not have understood the solicitation package and may not have possessed the time or financial resources to engage counsel, never imagining that their rights against non-debtors could be extinguished through the bankruptcy of these Debtors. "[A]n offeree, regardless of apparent manifestation of his consent, is not bound by inconspicuous contractual provisions of which he was unaware, contained in a document whose contractual nature is not obvious." *Norcia*, 845 F.3d at 1285 (quotation marks omitted).

IV. ARGUMENT

A. The Plan Imposes Impermissible Non-Consensual Third-Party Releases.

As numerous courts have held, releases cannot be imposed on those who do not vote and do not opt out. *See Smallhold*, 2024 WL 4296938, at *2; *SunEdison*, 576 B.R. at 458–61; *Chassix*, 533 B.R. at 81–82; *In re Wash. Mut., Inc*., 442 B.R. 314, 355 (Bankr. D. Del. 2011). This applies equally to those creditors who simply abstain from voting and those creditors who are not entitled to vote on a plan. Those who abstain from voting cannot be said to be consenting to anything—they are taking no action with respect to the plan. The same is true for those who have no right to vote on a plan, such as the creditors here who will be deemed to consent to releases unless they file an objection to them. Creditors who do not vote on a plan do not manifest consent to a nondebtor release by failing to return an opt out form or failing to object to confirmation.

The Debtors have deemed multiple classes–7, 8, 9, and 10–as non-voting classes.[6] However, despite not being entitled to vote for or against the Plan, claimants in each of these four classes must separately and affirmatively opt-out of the third-party releases in the Plan. Failure to affirmatively opt out of these releases will result in the application of these third-party releases to each claimant.

Recently, Judge Stickles in Delaware struck down a similar plan provision to the one here:

> And here, the debtors are seeking releases from impaired classes. And the three impaired classes have already been notified that they're deemed to reject this plan and they don't have the opportunity to vote. The projected recovery for Class 5 and 6 is nothing, is zero, and the recovery for GUCs is unknown. So I'm skeptical at this point that an opt-out is appropriate for any class of a creditor who's already been told that they're not entitled to vote and they are not entitled to a recovery or,

[6] The Debtors designate certain classes as unimpaired and thus not entitled to a vote on the Plan. If a class is forced to give a release, they are not unimpaired because the claimant is giving away its right to sue. Creditors not allowed to vote therefore cannot be unimpaired because they are bound by those releases. Requiring classes that are actually impaired to opt out of releases in a Plan that they have not had an opportunity to vote, is antithetical to section 1129's confirmation requirements. Accordingly, here, these impaired creditors should at minimum be provided an opt-in to the Plan's releases instead of the current combination of no vote plus an opt out ballot.

> with respect to the GUCs, the GUC recovery is unknown. So, consistent with Judge Shannon's prior ruling pre Purdue, Judge Dorsey pre Purdue and post Purdue ruling, and Judge Horan, as you noted, post Purdue ruling in Fisker, I will require an opt-out under the facts of this case.

In re Lumio Holdings, Inc., et al., Case No. 24-11916-JKS (Bankr. D. Del.) Jan. 3, 2025 Transcript 24:5-18.

Even where there are conspicuous warnings in the ballots or an opt-out form that silence or inaction will constitute consent to a release, that is not sufficient to recast a party's silence as consent to the release. *SunEdison*, 576 B.R. at 458–61. Just as creditors have no federal or state law duty to vote on a plan, they also have no obligation to read a plan. Creditors who have no intention of voting (or in this case, are not permitted to vote) in the first place are unlikely to do so. Moreover, parties who are solicited but do not vote may have failed to vote for reasons other than an intention to assent to the releases. *SunEdison*, 576 B.R. at 461. Further to this point, the Debtor's own plan draws attention that "**HOLDERS OF CLAIMS OR INTERESTS ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO READ THE PLAN AND DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.**" *See* Plan at p. 6 of 89 (emphasis in original). This wording only adds confusion to the case for the classes of non-voters who are then required to read the Plan carefully to affirmatively and separately opt out of the releases.

Classes of creditors are bound despite their silence unless they take specific, but different, actions under the Plan: creditors who vote must select the opt out box on the ballot; creditors who can vote but do not can opt out either through returning the ballot with the opt out box checked or by objecting to confirmation; and creditors who are not entitled to vote must opt out of the releases on this separate form that accompanies the non-voting notice or object to confirmation. This creates unnecessary confusion and further demonstrates that the opt out process can be a trap for

the unwary or less sophisticated creditors. The court in *SunEdison* rejected the debtors' argument that the warning in the disclosure statement and on the ballots regarding the potential effect of silence gave rise to a duty to speak, and the non-voting creditors' failure to object to or reject the Combined Plan should be deemed their consent to the release. *Id*. at 460–61. The court found that the nonvoting creditors' silence was not misleading and did not signify their intention to consent to the release (finding that silence could easily be attributable to other causes). *Id*. at 460-61.

Simply put, as Judge Walrath explained, "[f]ailing to return a ballot is not a sufficient manifestation of consent to a third-party release." *Washington Mut*., 442 B.R. at 355; *see also Chassix*, 533 B.R. at 81–82. An "opt out mechanism is not sufficient to support the third-party releases . . . particularly with respect to parties who do not return a ballot (or are not entitled to vote in the first place)." *Washington Mut*., 442 B.R. at 355. "Charging all inactive creditors with full knowledge of the scope and implications of the proposed third-party releases, and implying a 'consent' to the third-party releases based on the creditors' inaction, is simply not realistic or fair and would stretch the meaning of 'consent' beyond the breaking point." *Chassix*, 533 B.R. at 81. "It is reasonable to require creditors to pay attention to what the debtor is doing in bankruptcy as it relates to the creditor's rights against the debtor. But as to the creditor's rights against third parties – which belong to the creditor and not the bankruptcy estate – a creditor should not expect that those rights are even subject to being given away through the debtor's bankruptcy." *Smallhold*, 2024 WL 4296938, at *12, *10 (discussing *Chassix*). As Judge Owens similarly explained in *Emerge Energy Services, LP*, "[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" as implied consent through a party's silence or inaction. No. 19-11563, 2019 WL 7634308, at *18 (Bankr. D. Del. Dec. 5, 2019)

(emphasis in original). "[B]asic contract principles" require affirmative assent, not inferences drawn from inaction that in fact may reflect only "[c]arelessness, inattentiveness, or mistake." *Id*.

Here, the Debtors do not meet the state-law burden of establishing that the Releasing Parties (as defined by the Plan) will affirmatively agree to release their property rights (*i.e.* the releases) in a manner sufficient to demonstrate consent under state law. Rather, as this and other courts have held, an affirmative agreement is required to support a consensual third-party release. *See Tonawanda Coke,* 662 B.R. 220; *Patterson*, 636 B.R. at 686. Like in *Norcia*, here too, the debtors' creditors have not signed an agreement to release the nondebtor releasees nor acted in any other manner to suggest that their silence manifests an intention to accept an offer to release the non-debtors. That is because the "general rule of contracts is that silence cannot manifest consent." *Patterson*, 636 B.R. at 686.

The only benefits received are through distributions from the Debtors' Plan. Because the Plan distributions are not contingent on agreeing to the non-debtor release, one cannot infer consent from the acceptance of those distributions. *See Norcia*, 845 F.3d at 1286 (holding customer did not retain any benefits when warranty applied regardless of failure to opt out). Further, acceptance of a "benefit"—distributions under the plan—that the offeror had no right to refuse the offeree does not manifest acceptance of the offer. *See Railroad Mgmt.*, 428 F.3d at 223 ("In the absence of any evidence that Strong had the right to exclude CFS from the property in question or that CFS accepted any service or thing of value from Strong, no reasonable jury could conclude that CFS's failure to remove its pipeline upon Strong's demand constituted consent to a contract.").

Thus, "[t]he mere receipt of an unsolicited offer does not impair the offeree's freedom of action or inaction or impose on him any duty to speak." RESTATEMENT (SECOND) OF CONTRACTS § 69 cmt. a (1981); *see also Patterson*, 636 B.R. at 686 (discussing how contract law does not

support consent by failure to opt out). Further, "[t]he mere fact that an offeror states that silence will constitute acceptance does not deprive the offeree of his privilege to remain silent without accepting." RESTATEMENT (SECOND) OF CONTRACTS § 69, cmt. c (1981); s*ee also Reichert.*, 56 F.4th at 1227-28 ("[E]ven though the offer states that silence will be taken as consent, silence on the part of the offeree cannot turn the offer into an agreement, as the offerer cannot prescribe conditions so as to turn silence into acceptance.") (quoting *Columbia Malting Co. v. Clausen-Flanagan Corp.*, 3 F.2d 547, 551 (2d Cir. 1924).

Moreover, those receiving benefits under the Plan (and in this case who are not even entitled to vote) have not "manifest[ed] [an] intention that silence may operate as acceptance" of an offer to release claims against non-debtors. RESTATEMENT (SECOND) OF CONTRACTS § 69 cmt. a. Further, creditors have no state law duty to respond to an offer to release nondebtors such that their silence can be understood as consent, nor have they any prior course of dealing with the released nondebtors that would impose such a duty. *See, e.g., Norcia*, 845 F.3d at 1285-86. Nor do creditors have any affirmative obligation to act on a plan, either to vote or to opt out. *See, e.g.*, 11 U.S.C. § 1126(a) (providing that creditors "may" vote on a plan); *see also SunEdison, Inc.*, 576 B.R. at 460–61 (holding that creditors have no duty to speak regarding a plan that would allow a court to infer consent from silence). A claimant's receipt of payment under the Plan while remaining silent regarding a non-debtor release thus does not fit within the exception to the general rule that consent cannot be inferred from silence.

As explained in *Arrowmill*, a voluntary release arises only "because the *creditor agrees*" to it. 211 B.R. at 507 (emphasis in original). Because "a creditor's approval of the plan cannot be deemed an act of assent having significance beyond the confines of the bankruptcy proceedings," "it is not enough for a creditor . . . to simply vote 'yes' as to a plan." *Id*. (quotation marks omitted);

accord Congoleum Corp., 362 B.R. at 194; *Digital Impact, Inc*., 223 B.R. at 14. Rather, a creditor must "unambiguously manifest[] assent to the release of the nondebtor from liability on its debt." *Arrowmill*, 211 B.R. at 507.

A claimant cannot be compelled to accept a non-debtor release as a condition of receiving the benefits of a plan. That is not consent under governing state law. For those who believe the plan is the best way to maximize the return of their money from the debtor, requiring them to vote "no" on the Plan—thus raising the possibility that the Plan may not be able to be confirmed and they thus cannot receive the economic benefit under the Plan—to reject the nondebtor release would be penalizing them for exercising their right to vote in favor of the Plan. That an offeree is penalized unless an "offer" is accepted "preclude[es] an inference of assent." *Reichert.*, 56 F.4th at 1230-31.

Because affirmative consent is required for a non-debtor release, the court in *Tonawanda Coke* rejected the argument that there is consent to a third-party release that is imposed on unsecured creditors through the use of a provision whereby the creditor must opt out of the release to avoid having it imposed upon it.

Citing to New York statutory authority, the Court held that failure to opt out of a non-debtor release will not suffice to bind a creditor. *Id.* Under that New York statute:

> An agreement, promise or undertaking to change or modify, or to discharge in whole or in part, any ... obligation ... shall not be invalid because of the absence of consideration, provided that the agreement, promise or undertaking changing, modifying, or discharging such ... obligation ... shall be in writing and signed by the party against whom it is sought to enforce the change, modification or discharge, or by his agent.

Id. at 222 (citing N.Y. GEN. OBLIG. LAW § 5-1103 (McKinney 2022)). Under this provision, "the creditor must affirmatively sign a writing under which it expressly agrees to discharge the non-debtor parties." *Id*. at 222-23.

Courts have further held that, "[e]ven aside from the specific requirements for a writing under the General Obligations Law," the proposed plan was "deficient in securing the consent of creditors." *Id*. at 223. "Absent a writing expressly agreeing to a release of non-debtors, creditors have not given consent as required by the Supreme Court in *Harrington v. Purdue Pharma*." *Id*.

Furthermore, as bankruptcy courts have stated:

> An agreement to settle litigation is a 'contract that is interpreted according to general principles of contract law.' *In re Motors Liquidation Co.*, 580 B.R. 319, 343 (Bankr. S.D.N.Y. 2018) (quoting *Omega Eng'g, Inc. v. Omega S.A.*, 432 F.3d 437, 444 (2d Cir. 2005)). "The party seeking to enforce a purported settlement agreement bears the burden of proving that such a binding and enforceable agreement exists." *In re Motors Liquidation Co.*, 580 B.R. at 343 (quoting *Grgurev v. Licul*, Case No. 1:15-cv-9805-GHW, 2016 U.S. Dist. LEXIS 156162, at *3 (S.D.N.Y. Nov. 10, 2016)). "For a contract to exist, there must be mutual assent to be bound . . . ." *Schoninger*, 763 Fed. Appx. at 4 (citations omitted). "Moreover, under well-settled New York law, the existence of a binding contract is not dependent on the subjective intent of either party. Rather, it depends upon the objective manifestations of the intent of the parties as gathered by their expressed words and deeds." *Id.* (internal quotation marks omitted) (quoting *Brown Bros. Elec. Contractors v. Beam Constr. Corp.*, 361 N.E.2d 999, 1001 (N.Y. 1977)).

Continental Ins. Co. v. The Diocese of Rochester (In re The Diocese of Rochester), Adv. No. 23-02014, 2024 WL 4438724, *7 (Bankr. W.D.N.Y. Oct. 7, 2024).

V. CONCLUSION

WHEREFORE, the United States Trustee requests that the Court (1) sustain this Objection (2) deny approval of the Disclosure Statement, (3) deny confirmation of the Plan, and (4) and grant further relief as is just and appropriate.

Dated: January 21, 2025
New York, New York

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