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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW JERSEY

In re: BOWFLEX INC., Debtor.	Case No. 24-12364 (ABA) Chapter 11 **OBJECTION OF THE PROPOSED CLASS REPRESENTATIVES TO THE JOINT MOTION OF THE BOWFLEX LIQUIDATING TRUST AND JOHNSON HEALTH TECH TRADING, INC., JOHNSON HEALTH TECH RETAIL, INC. AND THEIR AFFILIATED ENTITIES TO ENFORCE THE PLAN, CONFIRMATION ORDER, AND SALE ORDER** Hearing Date: July 31, 2025 Hearing Time: 2:00 p.m. (ET)

Elizabeth M. Cosin, Duke Douglas, Alan Calderon, and Robert Ahearn (the "Proposed Class Representatives") hereby submit their objection to *The Joint Motion Of The Bowflex Liquidating Trust And Johnson Health Tech Trading, Inc., Johnson Health Tech Retail, Inc. And Their Affiliated Entities To Enforce The Plan, Confirmation Order, And Sale Order* (the "Motion") [Docket No. 777], filed by (a) the BowFlex Liquidating Trust (the "Trust") and (b) Johnson Health TechTrading, Inc. ("JHTT") and Johnson Health Tech Retail, Inc. ("JHTR," and together with JHTT and certain of its affiliated entities, "Johnson"). The Trust and Johnson are collectively referred to as the "Movants."

In support of this Objection, the Proposed Class Representatives have concurrently filed the Declarations of Elizabeth M. Cosin and David B. Shemano.

I.

THE PROPOSED CLASS REPRESENTATIVES WILL NOT PURSUE THEIR CLAIMS AGAINST THE DEBTORS IN THE PENDING LAWSUITS

Pursuant to the Motion, the Movants seek to enjoin four class action lawsuits commenced against Johnson. As set forth in the Motion, two of the lawsuits (the Douglas and Calderon lawsuits) include the Debtors as named defendants. Upon review of the Motion, the Douglas and Calderon Proposed Class Representatives intend to dismiss the Debtors as defendants. Since the Movants and Proposed Class Representatives are parties to a stipulation staying the lawsuits pending final adjudication of the Motion, the Fed. R. Civ. P. 41(a) notice of dismissal will require the cooperation of the Movants. Docket No. 796, ¶ 4.

II.

SUMMARY

Johnson has recalled approximately 3.8 million BowFlex brand dumbbells (the "Defective Products") because the "weight plates can dislodge from the handle during use, posing an impact hazard" (the "Defect"). Declaration of Michael Neumeister ("Neumeister Decl."), Ex. 6 at 3 [Docket No. 778-6]; Ex. 7 at 2 [Docket No. 778-7]. The Defect is sufficiently serious that Johnson has instructed purchasers to "immediately stop using" the Defective

Products because of the risk of personal injury. Neumeister Decl., Ex. 6 at 5; Ex. 7 at 2.

When Johnson purchased the Acquired Assets[1] from the Debtors last year, the Debtors and Johnson were aware of the Defect. However, despite knowledge of the Defect, Johnson now takes the position that it has no responsibility to the individuals who purchased the Defective Products prior to the sale, and seeks relief from this Court to bar the Proposed Class Representatives from proceeding against Johnson to obtain a meaningful remedy for the Defect (the "Defect Claims").

While the Movants represent they seek "straightforward relief," the Motion is fundamentally flawed:

1. The Debtors' reorganization Plan was confirmed last year, so this Court's post-confirmation jurisdiction is limited. The Motion represents that this Court has the jurisdiction to interpret and enforce an injunction included in the Sale Order, but the injunction entered by the Court was very narrow and does not apply to the Defect Claims. Accordingly, this Court does not have subject matter jurisdiction to adjudicate this post-confirmation dispute between non-debtors that has no conceivable effect on the Debtors' estates.
2. Even assuming the Court concludes that the Sale Order applies to the Defect Claims, the Motion must be denied on the merits. The Motion fails to inform the Court that, even though the Debtors were required by the Federal Rules of Bankruptcy Procedure and procedural due process to serve notice of the sale free and clear of the Defect Claims on holders of the Defect Claims, and the Debtors represented to the Court that they would serve the required notice, the Debtors failed to serve actual notice on holders of the Defect Claims that were identified in the Debtors' books and records or otherwise reasonably ascertainable by the Debtors. Furthermore, the publication notice intended for unknown creditors failed to include the minimal

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

information required by due process.

Accordingly, this case is indistinguishable from *Elliott v. GM LLC (In re Motors Liquidation Co.)*, 829 F.3d 135 (2d Cir. 2016), in which the Court of Appeals held that due process requires known creditors to be served with actual notice that requested relief may affect their rights and interests, and the known creditors that did not receive actual notice will not be subject to any order entered in violation of their due process rights. This Court should deny the Motion and make clear the orders entered by this Court present no bar to the Proposed Class Representatives prosecuting the Defect Claims against Johnson.

III.

THE COURT DOES NOT HAVE POST-CONFIRMATION JURISDICTION TO ENJOIN PROSECUTION OF THE DEFECT CLAIMS

Last year, the Court entered its Confirmation Order confirming the Debtors' reorganization Plan. Docket No. 614. While ¶ 113 of the Confirmation Order includes a broad reservation of subject matter jurisdiction, courts cannot "write their own jurisdictional ticket." *Binder v. Price Waterhouse & Co., LLP (In re Resorts Int'l, Inc.)*, 372 F.3d 154, 161 (3d Cir. 2004). "If there is no jurisdiction under 28 U.S.C. § 1334 or 28 U.S.C. § 157, retention of jurisdiction provisions in a plan of reorganization or trust agreement are fundamentally irrelevant." *Id*.

This Court does not have subject matter jurisdiction over the pending lawsuits filed by the Proposed Class Representatives against Johnson, nor do the Movants argue otherwise. The lawsuits concern claims arising under non-bankruptcy law between non-debtors with no conceivable effect on the Debtors' estates, so there is no arising in, arising under, or related to jurisdiction under 28 U.S.C. § 1334. *Pacor, Inc. v. Higgins*, 743 F.2d 984 (3d Cir. 1984).[2] Nor do the lawsuits in any way impede the consummation of, or have a "close nexus" to, the Debtors' reorganization Plan. *In re Resorts Int'l, Inc.*, 372 F.3d at 166-67.

[2] The Court would have jurisdiction if the Debtors or the Trust were defendants, but that issue is now moot.

If Johnson believes that the Sale Order bars the Defect Claims, it may assert that defense in the pending lawsuits, and it is well within the jurisdiction and power of the District Courts where the lawsuits are pending to determine the applicability and effect of the Sale Order. *See generally, Smith v. Corp.*, 564 U.S. 299, 307 (2011) ("[d]eciding whether and how prior litigation has preclusive effect is usually the bailiwick of the second court"); *Mid-City Bank v. Skyline Woods Homeowners Ass'n (In re Skyline Woods Country Club)*, 636 F.3d 467 (8th Cir. 2011) (non-bankruptcy courts have jurisdiction to interpret and give effect to section 363(f) sale free and clear orders).

A. The Court Does Not Have Ancillary Jurisdiction Because The Sale Order Does Not Enjoin The Defect Claims

It is true of course that this Court always has ancillary jurisdiction to "interpret and enforce its own prior orders." *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009). But this perpetual power is limited to the enforcement of orders directing or enjoining specific conduct. *See generally, Mesabi Metallics Co., LLC v. B. Riley FBR, Inc. (In re Essar Steel Minn., LLC)*, 47 F.4th 193 (3d Cir. 2022). The perpetual power does not extend to the adjudication of every dispute implicating a judgment, finding of fact or conclusion of law made by a court, including a dispute that is allegedly a collateral attack on the sale free and clear provisions of a sale order. *Battle Ground Plaza, LLC v. Ray (In re Ray)*, 624 F.3d 1124 (9th Cir. 2010); *Purlin 4, LLC v. Real Prop. Mortgagee I, LLC (In re D'Angelo)*, 654 B.R. 553 (Bankr. W.D. Pa. 2023).

Accordingly, for this Court to have post-confirmation jurisdiction to grant relief in this matter, it is the burden of the Movants to identify an order entered by this Court enjoining the Proposed Class Representatives from pursuing the Defect Claims against Johnson. Movants have not and cannot do so. The only language cited by Movants is the following language in ¶ 15 of the Sale Order:

> Subject to the terms, conditions, and provisions of this Sale Order, all persons and entities, including, without limitation, the Debtors, creditors, employees, former employees, shareholders, administrative agencies, tax and regulatory authorities,

> governmental departments, secretaries of state, federal, state and local officials, litigation claimants, and their respective successors and assigns, are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtors to sell and/or transfer the Acquired Assets to the Purchaser (or its designee) in accordance with the terms of the APA and this Sale Order and are hereby forever barred, estopped and permanently enjoined from asserting such claims against any Purchaser Party or its property (including the Acquired Assets).

Motion, ¶ 18.

There is no plausible interpretation of this language that enjoins the Defect Claims. The language enjoins parties "from taking any action that would adversely affect or interfere with the ability of the Debtors to sell and/or transfer the Acquired Assets to the Purchaser." As the sale by the Debtors to Johnson was consummated over one year ago, by what logic can the prosecution of the Defect Claims "adversely affect or interfere with" what was already consummated? To the contrary, the assertion of the Defect Claims against Johnson under applicable successor liability law is predicated on the consummation of the transfer to Johnson and Johnson's acquisition of the Debtors' assets.

It is the burden of the Movants to demonstrate that the Defect Claims are enjoined, not the burden of the Proposed Class Representatives to show the Defect Claims are not enjoined. *Robin Woods Inc. v. Woods*, 28 F.3d 396, 399 (3d Cir. 1994). The Movants drafted the injunctive language they wanted, and that language does not enjoin the Defect Claims. And even if the language was ambiguous, which it is not, the ambiguity weighs against the Movants' interpretation. *Id*. This Court does not have post-confirmation jurisdiction to find the Proposed Class Representatives in violation of an injunction that by its terms does not apply to the Defect Claims.[3]

[3] If this Court were to conclude that the Sale Order does not enjoin the lawsuits, but this Court has the jurisdiction to otherwise adjudicate the issues raised by the Motion, the Movants must commence an adversary proceeding to obtain a new injunction. *Solow v. Kalikow (In re Kalikow)*, 602 F.3d 82, 93 (2d Cir. 2010); *In re Cont'l Airlines*, 236 B.R. 318, 326-27 (Bankr. D. Del. 1999). Furthermore, because the lawsuits were filed in the District Courts prior to the Movants filing the Motion, the "first to file" rule would apply and this Court would be required to defer to those District Courts. *Chavez v. Dole Food Co.*, 796 F.3d 261, 263-64 (3d Cir. 2015); *New York v. Exxon Corp.*, 932 F.2d 1020 (2d Cir. 1991).

IV.

THE SALE FREE AND CLEAR LANGUAGE IN THE SALE ORDER DOES NOT APPLY BECAUSE THE HOLDERS OF DEFECT CLAIMS WERE NOT SERVED WITH NOTICE AS REQUIRED BY DUE PROCESS, THE FEDERAL RULES OR BANKRUPTCY PROCEDURE, AND THE BIDDING PROCEDURES ORDER

The heart of the Motion is that the Sale Order provides that the transfer of assets to Johnson was free and clear of successor liability claims, so the prosecution of the Defect Claims against Johnson is barred by the Sale Order.

A. The Defect Claims Are Interests In The Debtors' Property Within The Meaning Of Section 363(f) Of The Bankruptcy Code

The power of a bankruptcy court to authorize a sale free and clear of successor liability claims is governed in the Third Circuit by *In re TWA*, 322 F.3d 283 (3d Cir. 2003). At issue was whether the debtor could sell its airline assets free and clear of certain travel vouchers held by customers. The Court of Appeals held that the travel vouchers were an "interest" in the debtor's property within the meaning of section 363(f) of the Bankruptcy Code, so the debtor could sell the airline assets free and clear of successor liability claims related to the travel vouchers. *Id*. at 288-90; *accord, Elliott v. GM LLC (In re Motors Liquidation Co.)*, 829 F.3d 135, 155 (2d Cir. 2016) ("We agree that successor liability claims can be 'interests' when they flow from a debtor's ownership of transferred assets.").

Similar to the facts in *TWA* and *GM,* the Defect Claims are inextricably intertwined with the assets sold by the Debtors to Johnson, so the Proposed Class Representatives acknowledge that the Defect Claims are plausibly an "interest" in the assets within the meaning of section 363(f) as interpreted in *TWA*.

B. The Debtors Represented To The Court That Notice Would Be Served On All Holders Of Interests

To sell an asset free and clear of an interest pursuant to section 363(f), the debtor must comply with Federal Rule of Bankruptcy Procedure 6004(c), which provides that a motion for authority to sell property free and clear must be "served on the parties who have the liens or other interests." The requirement of Rule 6004(c) is a codification of the procedural due process

required under the 5th and 14th Amendments, which in bankruptcy cases requires "notice that is 'reasonably calculated to reach all interested parties, reasonably conveys all the required information, and permits a reasonable time for a response.'" *Chemetron Corp. v. Jones,* 72 F.3d 341, 346 (3d Cir. 1995) (internal citations omitted).

In their March 5, 2024, motion for approval of the sale (the "Sale Motion") [Docket No. 35], the Debtors represented to the Court that they would serve notice of the sale on "all entities known or reasonably believed to have asserted a lien, encumbrance, claim, *or other interest* in or on any of the Debtors' Assets." Sale Motion, ¶ 44 (emphasis added). In the March 18, 2024, Order entered by the Bankruptcy Court approving the Debtors' proposed bidding procedures (the "Bidding Procedures Order") [Docket No. 131], the Court found the Debtors' proposed notice appropriate and adequate, and ordered notice served on "all known holders of liens, encumbrances, and other claims secured by the Assets." Bidding Procedures Order, ¶¶ 3, 20.

C. The Sale Order Cannot Be Enforced Against The Holders Of Known Defect Claims Because The Debtors Did Not Serve Actual Notice On The Holders Of Known Defect Claims

While the Debtors represented to this Court that they would comply with FRBP 6004(c) and serve actual notice on "all entities known or reasonably believed to have asserted a lien, encumbrance, claim, or other interest in or on any of the Debtors' Assets" [Sale Motion, ¶ 44], the Motion does not represent and there is no evidence that the Debtors served actual notice of the proposed sale on the holders of the Defect Claims. Where an entity with an interest in the debtor's property is not served with actual notice of the proposed sale free and clear of the interest, the sale is not free and clear of the interest. *W. Auto Supply Co. v. Savage Arms (In re Savage Indus.)*, 43 F.3d 714 (1st Cir. 1994).

With respect to product defect claims, the issue was thoroughly analyzed in *Elliott v. GM LLC (In re Motors Liquidation Co.)*, 829 F.3d 135 (2d Cir. 2016), in which "New GM" recalled automobiles with an ignition switch defect, but claimed no responsibility to customers that purchased from "Old GM" because New GM had acquired the assets free and clear of successor

liability claims. The Court of Appeals concluded that customers that purchased from Old GM, but had no reason to know about the defect prior to the transfer to New GM, were the holders of a contingent claim against Old GM, so the free and clear sale language covered their contingent claims. However, enforcement of the sale order was conditioned upon Old GM's compliance with procedural due process. Because Old GM was aware of, or should have been aware of, the ignition defect, due process required service of actual notice on all known customers affected by the sale. Accordingly, the sale order did not bar successor liability claims against New GM asserted by known creditors that were not served with actual notice. *Id*. at 158-161.

There is no evidence that the Debtors served actual notice of the sale on holders of the Defect Claims. Accordingly, to enforce the Sale Order to bar the Defect Claims against any specific holder of a Defect Claim, the Movants have the burden to demonstrate either (1) the Debtors did not know, and had no reason to know, about the Defect at the time of the sale, or (2) the specific holder of the Defect Claim was unidentifiable at the time of the sale. Movants have not met this burden.

1. The Debtors And Johnson Were Aware Of The Defect At The Time Of The Sale

The Bankruptcy Code provides broad protection to the good faith debtor that discloses all known claims, "[b]ut if a debtor does not reveal claims that it is aware of, then bankruptcy law cannot protect it." *Id*. at 159. With respect to a product defect that the debtor is aware of, the debtor is required to give *actual* notice to purchasers who hold "contingent" claims that are contingent solely on disclosure of the defect by the debtor. *Id*. at 160.

The Debtors were well aware of the Defect prior to the transfer of the Acquired Assets to Johnson. The recall notice provides:

> Johnson Health Tech Trading has received 12 reports of the plates dislodging during use with no injuries for units it sold. Nautilus received 337 reports of the plates dislodging during use for units it sold, including 111 resulting in injuries such as concussions, abrasions, broken toes or contusions.

Neumeister Decl., Ex. 6 at 5. "Nautilus" as referenced in the recall notice is the Debtors, so the

notice is representing that the Debtors received 337 reports of the Defect prior to the transfer, 111 of which resulted in "injuries such as concussions, abrasions, broken toes or contusions."

It is almost certain Johnson was aware of the 337 reports when it purchased the Acquired Assets; and if Johnson claims it did not know, it absolutely should have known.[4] The Asset Purchase Agreement, attached as an exhibit to the Sale Order, granted Johnson complete access to the Debtors' books and records to perform due diligence:

> Prior to the Closing, Sellers shall permit representatives of Purchaser to have reasonable access during regular business hours and upon reasonable notice, and in a manner so as not to interfere with the normal business operations of Sellers, to all premises, property, books, records (including Tax records), Contracts, and documents of or pertaining to the Business (provided that any representatives of Purchaser shall be subject to the confidentiality obligations under the Confidentiality Agreement or otherwise agree in writing to be bound by the terms of such Confidentiality Agreement applicable to Purchaser thereunder) and Acquired Assets. If requested, Purchaser shall be permitted to conduct a physical inspection of Inventory within 10 business days of the Closing.

Sale Order, p. 49, § 6.6. Johnson further represented in the Asset Purchase Agreement that it did in fact perform due diligence on the Acquired Assets:

> PURCHASER ACKNOWLEDGES THAT PURCHASER HAS CONDUCTED AN INDEPENDENT INSPECTION AND INVESTIGATION OF THE PHYSICAL CONDITION OF ALL ACQUIRED ASSETS AND ALL SUCH OTHER MATTERS RELATING TO OR AFFECTING THE ACQUIRED ASSETS AS PURCHASER DEEMS NECESSARY OR APPROPRIATE AND THAT IN PROCEEDING WITH ITS ACQUISITION OF THE ACQUIRED ASSETS, EXCEPT FOR ANY REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN SECTION IV, PURCHASER IS DOING SO BASED SOLELY UPON SUCH INDEPENDENT INSPECTIONS AND INVESTIGATIONS. ACCORDINGLY, PURCHASER WILL ACCEPT THE ACQUIRED ASSETS AT THE CLOSING "AS IS," "WHERE IS," AND "WITH ALL FAULTS."

Sale Order, p. 53, § 8.1.

[4] To the extent relevant, the pending lawsuits against Johnson are not based on a generic "mere continuation" theory applicable to all creditors of the Debtors, but instead based on Johnson's knowledge of the Defect Claims when it purchased the Acquired Assets. This fundamental difference distinguishes the pending lawsuits from the lawsuits at issue in *In re Emoral, Inc*., 740 F.3d 875 (3d Cir. 2014), cited in footnote 51 of the Motion.

It is possible the Debtors and/or Johnson will dispute knowledge of the Defect prior to the sale. In contemplation of that possibility, on July 10, 2025, the Proposed Class Representatives served discovery requests on the Movants concerning their knowledge of the Defect Claims at the time of the sale, which responses are currently due on August 11, 2025.[5] If the Court concludes there is a legitimate factual dispute, the Proposed Class Representatives request that the adjudication of the Motion be continued to permit the completion of discovery and the presentation of a complete factual record for consideration by the Court.[6]

2. Certain Holders Of Defect Claims Were Indisputably Known Creditors

Due process requires services of actual notice on "known" creditors. *Chemetron*, 72 F.3d at 346. A "known" creditor is one "whose identity is either known or reasonably ascertainable by the debtor . . . through reasonably diligent efforts." *Id*. Comparatively, an "unknown" creditor is one whose "interests are either conjectural or future or, although they could be discovered upon investigation, do not in due course of business come to knowledge [of the debtor]." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 317 (1950).

It is indisputable that at least some of the holders of Defect Claims were identified in the Debtors' books and records as purchasers of the Debtors' Defective Products. As set forth in the Declaration of Elizabeth Cosin ("Cosin Decl."), Ms. Cosin did not receive any notice of the hearing on the Debtors' motion to sell its assets to Johnson. However, on April 16, 2024, one day after this Court entered the Sale Order, Ms. Cosin was directly served with the Debtors' notice of the general bar date, and then subsequently received notice of the Debtors' reorganization Plan, so it is self-evident that Ms. Cosin was identified in the Debtors' books and records. Cosin Decl., ¶ 2, Exhibit 1. The Proposed Class Representatives submit that it is indisputable that holders of Defect Claims that were served with the notice of general bar date,

[5] Copies of the discovery requests are attached to the Declaration of David B. Shemano ("Shemano Decl.") as Exhibits A and B.

[6] The Movants refused the Proposed Class Representatives' reasonable request to continue the hearing on the Motion to a date after the completion of discovery. Shemano Decl., ¶¶ 2-4.

such as Ms. Cosin, are known creditors that were specifically entitled to actual notice of the proposed sale free and clear of the Defect Claims.

Whether any specific holder was known to the Debtors or whose identity was reasonably ascertainable by the Debtors at the time of the sale is a factual question that is beyond the scope of the Motion. To the extent necessary, the Proposed Class Representatives submit that this issue is best addressed by the District Courts in the pending lawsuits at the class certification stage. If the Court disagrees and concludes that this Court should be the fact finder with respect to the Debtors' knowledge concerning each and every one of the millions of purchasers of the Defective Products, then the Proposed Class Representatives request that the adjudication of the Motion be continued to permit the completion of discovery and the presentation of a complete factual record for consideration by the Court.

D. The Sale Order Cannot Be Enforced Against The Holders Of Defect Claims Because The Auction Notice Fails To Provide Reasonable Notice That The Sale Affected The Rights Of The Holders Of Defect Claims

If this Court were to determine that certain holders of Defect Claims were unknown creditors, due process required that those holders receive publication notice that the proposed sale to Johnson would affect their rights and interest relating to the Defect Claims. *Chemetron*, 72 F.3d at 346.

The Movants have the burden to prove that service by publication notice was properly effectuated. *Grand Entm't Grp. v. Star Media Sales*, 988 F.2d 476, 488 (3d Cir. 1993). The Movants represent on page 10 of the Motion that the Debtors published notice of the general bar date, but until July 8, 2025, there was no representation that the Debtors complied with the Bidding Procedures Order and published notice of the sale to Johnson. On July 8, 2025, 15 months after entry of the Sale Order and one week after the Motion was filed, proofs of publication that allegedly occurred in March 2024 were filed on the case docket. Docket Nos. 784, 785, 786. While the Proposed Class Representatives have no basis to challenge the validity of the belatedly filed proofs, the Debtors' carelessness in filing the proofs is consistent with their

failure to make any effort to reasonably serve notice on the known holders of Defect Claims at the time of the sale.

Regardless of whether publication notice was timely served, the Motion must still be denied because the Auction Notice that was published did not convey the minimal information required by due process to the holders of Defect Claims.[7] Procedural due process does not require mere notice of a hearing, but sufficient information about how the entity's rights may be affected at the upcoming hearing. With respect to the sale to Johnson, due process required adequate notice to purchasers of the Defective Products of (1) the existence of the Defect, and (2) that the proposed sale to Johnson would be free and clear of the Defect Claims. *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950) ("[t]he notice must be of such nature as reasonably to convey the required information"); *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 15 (1978) (notice of threat of termination of service inadequate because notice did not advise of procedures to dispute termination); *Am. Bank & Tr. Co. v. Jardine Ins. Servs. Tex. (In re Barton Indus.)*, 104 F.3d 1241, 1245 (10th Cir. 1997) (notice of confirmation hearing inadequate to provide notice that creditor's lien would be affected by the plan); *Piedmont Tr. Bank v. Linkous (in Re Linkous)*, 990 F.2d 160 (4th Cir. 1993) (notice of confirmation hearing inadequate to provide notice that the creditor's collateral would be valued at the hearing).

The form Auction Notice is attached as an exhibit to the Bidding Procedures Order and is the form identified in the publication proofs. Docket No. 131, pages 40-43 of 54; Docket Nos. 784, 785, 786. The Auction Notice includes no disclosure of the existence of the Defect, no disclosure that the sale to Johnson would be free and clear of the Defect Claims, and no disclosure that any successor liability claims would be terminated. The only reference in the Auction Notice concerning a sale free and clear is the very last sentence, which cryptically states that parties will be barred from objecting to the sale if they do not timely object, including with

[7] While the Court previously approved the adequacy of the Auction Notice, it is well-settled that an order obtained in violation of due process may always be collaterally attacked. *In re Diet Drugs Prods. Liab. Litig.*, 431 F.3d 141, 145 (3d Cir. 2005).

respect to the sale free and clear except as set forth in the applicable purchase agreement:

> ANY PARTY OR ENTITY WHO FAILS TO TIMELY MAKE AN OBJECTION TO THE SALE OR A SALE TRANSACTION, AS APPLICABLE, ON OR BEFORE THE SALE OBJECTION DEADLINE IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE APPLICABLE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, EXCEPT AS MAY BE SET FORTH IN THE APPLICABLE PURCHASE AGREEMENT OR THE PLAN, AS APPLICABLE.

Bidding Procedures Order, page 42 of 54.

This single, cryptic reference to be being barred from objecting to the sale (as opposed to barred from asserting successor liability claims), is inadequate to provide reasonable notice to purchasers of the Debtors' Defective Products that (1) the products they purchased may have a defect that they should be aware of, and (2) there will be an upcoming sale that will terminate their right to any remedy if they discover in the future that the purchased product has a dangerous defect. No reasonable purchaser of one of the Debtors' Defective Products that reviewed the Auction Notice would have any idea that the product was defective and the purchaser's claim would be affected by the upcoming sale.

The Movants will presumably complain to this Court that it is too burdensome to actually provide meaningful notice to purchasers of the Defective Products that a proposed sale will effectively terminate the purchasers' right to obtain a remedy for the defective product. This argument was rejected in *GM*, which held that "if a debtor does not reveal claims that it is aware of, then bankruptcy law cannot protect it." 829 F.3d at 159. The Movants were aware of the Defect prior to the sale and, if they wanted to terminate the right of the purchasers of the Defective Products to obtain a future remedy, due process required the Movants to serve the purchasers with a meaningful disclosure (1) of the existence of the Defect, and (2) that the purchasers' right to a remedy will be affected by the upcoming sale. Because that minimally required information was not included in the Actual Notice, the Motion must be denied.

V.

CONCLUSION

While the Bankruptcy Code may permit a debtor to sell assets free and clear of successor liability claims, the condition is that the debtor must comply with the fundamental requirements of procedural due process. In this case, the Debtors, in cooperation with Johnson, for whatever reason elected not to provide notice to their customers disclosing the existence of the Defect Claims and that the transfer of the Acquired Assets to Johnson would be free and clear of the Defect Claims, thereby violating due process. Even assuming this Court concludes it has post-confirmation jurisdiction to consider the Motion, the Motion should be denied and Johnson's liability under applicable non-bankruptcy law should be determined on the merits in the pending lawsuits.

DATED: July 21, 2025

SHEMANOLAW

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