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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re: BOWFLEX INC.,[1] Debtor.	Chapter 11 Case No. 24-12364 (ABA) **Hearing Date:** **July 31, 2025** **Hearing Time:** **2:00 p.m. (ET)**

[1] The Debtor's service address is c/o Kelley Drye & Warren LLP, 3 World Trade Center, 175 Greenwich Street, New York, NY 10007. On October 15, 2024, the Court entered the *Order and Final Decree Closing the Chapter 11 Case of BowFlex New Jersey LLC, Waiving Requirement of Further Post-Confirmation Reporting in Such Chapter 11 Case, And Updating Case Caption* closing the chapter 11 case of BowFlex New Jersey LLC. [Dkt. No. 698].

REPLY IN FURTHER SUPPORT OF 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 Trust and Johnson, by and through their respective undersigned counsel, hereby submit this reply (the "Reply") in further support of 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* [Dkt. No. 777] (the "Motion") and in response to (i) the *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* [Dkt. No. 800] (the "Objection") and (ii) the *Declaration of Elizabeth M. Cosin* [Dkt. No. 802] (the "Cosin Declaration").[2] In support of this Reply, the Movants rely upon the *Declaration of Joseph Saraceni in Support of the Reply in Further Support of 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* filed contemporaneously herewith (the "Saraceni Declaration"), and respectfully state as follows:

PRELIMINARY STATEMENT

1. As explained in the Motion, the Plaintiffs' commencement of the Violative Actions (a) against Johnson violates the free and clear findings and injunction in the Sale Order, and (b) against the Debtors violates this Court's Confirmation Order as well as the Plan Injunction and Gatekeeper Provision in the Plan. Apparently now recognizing that the Violative Actions violated

[2] All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

the express provisions of the Confirmation Order and Plan, the Plaintiffs now state their intention to dismiss BowFlex from the Violative Actions.

2. Further, the Plaintiffs do not contest and therefore concede that the Sale Order provided for the sale of BowFlex assets to Johnson free and clear of successor liability claims, including those asserted by the Plaintiffs in the Violative Actions. Nonetheless, the Plaintiffs continue with their crusade to avoid this Court's express findings and the Sale Order and upend the Sale Transaction by trying to make Johnson liable for claims it expressly did not assume. The Plaintiffs make three principal arguments in support of their cause, all of which should be easily overruled by this Court.

3. *First*, the Plaintiffs remarkably assert that this Court does not have subject matter jurisdiction to grant the relief requested in the Motion. As explained below, binding precedent from the Supreme Court and the Third Circuit unequivocally provides that this Court has core subject matter jurisdiction to interpret and enforce the Sale Order. This is precisely what the Movants request the Court do in the Motion. The Plaintiffs' arguments to the contrary strain credulity.

4. *Second*, the Plaintiffs challenge this Court's findings in the Sale Order that notice of the Sale Transaction was appropriate and sufficient, and assert that the Plaintiffs were "known" creditors, and therefore should have received actual notice rather than notice by publication. With respect to any such arguments as they apply to the Debtors, such arguments lack merit and are belied by well-established precedent and the express provisions of the Plan. Further, as explained below, this argument again misapplies binding Third Circuit precedent. But more tellingly, the Plaintiffs (perhaps strategically) omit the fact that BowFlex customers received notice both by Court-approved newspaper publication, *and* by the Debtors emailing notice of the Sale Transaction

(and the free and clear nature of the sale) to 1,816,576 BowFlex consumers pursuant to procedures approved by the Court. The Debtors provided more than sufficient notice of the Sale Transaction to satisfy due process, and thus this Court correctly ruled in the Sale Order that notice was sufficient to bind all creditors and other parties in interest. The Plaintiffs' arguments do not come close to rebutting such findings.

5. *Third*, the Plaintiffs assert that the Sale Notice, itself, was not sufficient to satisfy due process because it did not identify (a) a defect in the BowFlex Adjustable Dumbbells that still has never been proven in any court, and (b) the fact that the Sale Transaction would be free and clear of claims on account of such alleged defect. This argument, again, is inconsistent with binding Third Circuit precedent. Moreover, if adopted, it would create precedent entirely inconsistent with regularly accepted practice in this Circuit, where bankruptcy courts have regularly approved sale notices in substantially the form approved by this Court.

6. Both the Debtors and Johnson relied on the Sale Order to close the Sale Transaction, including this Court's undisputed findings in the Sale Order that such sale would be free and clear of successor liability claims such as those asserted in the Violative Actions. Not only are the Plaintiffs' arguments wholly meritless, but, if adopted by this Court, they would completely re-write the terms of the Sale Transaction by requiring Johnson to defend the Violative Actions, notwithstanding the fact that Johnson expressly did not assume such liabilities under the APA and Sale Order. The Sale Transaction constitutes a meaningful source of recovery for the Debtors' legitimate creditors pursuant to the Plan. Through the Objection, the Plaintiffs attempt to effectively undermine the Sale Transaction, and in doing so obtain priority over legitimate creditors by seeking full recoveries from Johnson that would penalize legitimate unsecured creditors who are projected to only receive fractional recoveries under the Plan.

7. As explained below, the Bankruptcy Code and applicable precedent do not permit such an outcome. But perhaps more concerning is the fact that, if the Plaintiffs' arguments are accepted, they would completely re-write applicable law with respect to the sanctity and enforceability of 363 sale orders, and wholly undermine the confidence that is necessary for potential purchasers to participate in chapter 11 sale processes. One of the fundamental purposes of sections 363(f) and (m) is to allow purchasers to have confidence that they will have no liability to the Debtors' creditors unless expressly assumed. If accepted, the Plaintiffs' arguments would fundamentally compromise this purpose, and potentially create a chilling effect in this District and beyond with respect to the ability to maximize value through orderly 363 sale processes.

8. For the reasons set forth herein, the Court should overrule the Objection and grant the relief requested in the Motion.

ARGUMENT

I. This Court Has Subject Matter Jurisdiction Over the Motion

9. The Plaintiffs assert that "the Court does not have post-confirmation jurisdiction to enjoin prosecution of the Defect Claims."[3] In reaching this conclusion, the Plaintiffs mischaracterize and misconstrue binding Third Circuit and Supreme Court precedent and this Court's Sale Order. This Court plainly has subject matter jurisdiction to interpret and enforce its prior Sale Order, and therefore has subject matter jurisdiction with respect to the Motion and should grant the relief requested therein.

A. This Court Has Core Statutory Jurisdiction to Rule on the Motion and Grant the Relief Requested Therein

10. The Plaintiffs' Objection focuses on the Court's ancillary jurisdiction, and in doing so ignores clear precedent demonstrating that the Court has core statutory jurisdiction to rule on

[3] Objection at 5.

the Motion, and grant the relief requested therein. *See* Objection at 4 ("The Court does not have ancillary jurisdiction . . . .").

11. "Bankruptcy courts, as courts of limited jurisdiction, may exercise subject matter jurisdiction on two grounds: statutory jurisdiction under 28 U.S.C. § 1334 and ancillary (sometimes called inherent) jurisdiction." *In re Revel AC, Inc.*, 532 B.R. 216, 224 (Bankr. D.N.J. 2015). While the Plaintiffs focus on ancillary jurisdiction, the Movants are clear in the Motion that this Court has statutory jurisdiction "over this Motion under 28 U.S.C. §§ 157 and 1334[.]"[4]

12. In assessing whether a bankruptcy court has statutory subject matter jurisdiction, courts generally look to whether a proceeding is "core" (i.e., "cases under title 11," "proceedings arising under title 11," or "proceedings arising in a case under title 11"), or "non-core" (i.e., "proceedings related to a case under title 11"). *See, e.g.*, *In re Essar Steel Minn., LLC*, 47 F.4th 193, 197 (3d Cir. 2022);[5] *In re Seven Fields Dev. Corp.*, 505 F.3d 237, 254 (3d Cir. 2007). The Third Circuit has uniformly held that an action "requesting a bankruptcy court [to] interpret and enforce its own sale orders '[i]s a core proceeding because it require[s] the court to interpret and give effect to its previous sale orders.'" *Essar Steel*, 47 F.4th at 199 (quoting *In re Allegheny Health Educ. & Rsch. Found.*, 383 F.3d 169, 174–76 (3d Cir. 2004)); *see also In re Marcus Hook Dev. Park, Inc.*, 943 F.2d 261, 267 (3d Cir. 1991) (requests "to enforce the August 14 sale order" are core proceedings); *In re Motors Liquidation Co.*, 428 B.R. 43, 57 (S.D.N.Y. 2010) (collecting cases and stating that "***courts have characterized the injunctive authority of bankruptcy courts as 'core' when the rights sought to be enforced by injunction are based on provisions of the***

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4 Motion ¶ 7.

5 The Plaintiffs cite *Essar Steel* for the proposition that the Court's "perpetual power [to interpret and enforce its own prior orders] is limited to the enforcement of orders directing or enjoining specific conduct." Objection at 4. This is simply not correct. Nothing in the Third Circuit's analysis limits a bankruptcy court's jurisdiction in such a fashion.

Bankruptcy Code, such as the 'free and clear' authority of section 363(f)" (emphasis added)). This is consistent with the Supreme Court's holding in *Travelers* that a bankruptcy court "***plainly ha[s] jurisdiction to interpret and enforce its own prior [sale] orders***." *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009) (emphasis added).

13. A bankruptcy court's core jurisdiction to interpret and enforce its own order is not limited to actions by or against a debtor or its successors, but includes actions between non-debtors and other non-debtors. *See, e.g.*, *Allegheny Health*, 383 F.3d at 175–76; *In re Petrie Retail, Inc.*, 304 F.3d 223, 230 (2d Cir. 2002) (recognizing the bankruptcy court's "post-confirmation jurisdiction to interpret and enforce its own orders," including when a "motion sought enforcement of a pre-existing injunction issued as part of the bankruptcy court's sale order and confirmation order"); *In re Midway Games Inc.*, 446 B.R. 148, 152–53 (Bankr. D. Del. 2011) (holding that intellectual property claims by a third party against a purchaser in a 363 sale were not subject to court's subject matter jurisdiction because "nothing in the Adversary requires the Court to interpret or enforce the terms of the Sale Order," not as a result of the claims involving non-debtors).

14. For example, in *Allegheny*, the Third Circuit found that, because a dispute between two non-debtor parties "required the court to interpret and enforce the [bankruptcy court's] sale orders," the bankruptcy court had "subject matter jurisdiction over the entire suit and counterclaim." *Allegheny Health*, 383 F.3d at 176. It was error for the court to not exercise jurisdiction over such claim on the basis that such "claim could have no effect on the estate . . . ." *Id.* Once the bankruptcy court found that a claim would require it to interpret and enforce the sale orders, that was the end of the analysis for purposes of determining subject matter jurisdiction. *Id.* The bankruptcy court's analysis of jurisdiction should not turn on its ultimate construction of the "asset purchase agreement and sale order." *Id.*

15. Here, there is no question that the Motion will require this Court to "interpret and enforce" its Sale Order. While the Plaintiffs do not dispute that the Violative Actions assert claims that are "Excluded Liabilities" under the APA, and therefore that the Debtors' assets were sold free and clear of such Excluded Liabilities pursuant to the Sale Order, the Plaintiffs directly challenge the interpretation and enforcement of the Sale Order in at least the following ways:

- In the Sale Order, the Bankruptcy Court found that "***due, proper, timely adequate and sufficient notice*** of the Motion, the Bidding Procedures Order, the Auction, the Sale Hearing, the APA, this Sale Order and the Transaction has been provided in accordance with sections 102(1) and 363 of the Bankruptcy Code, Bankruptcy Rules 2002, 9007, 9008 and 9014, and the Local Rules. . . . ***The aforementioned notices are good, sufficient and appropriate under the circumstances, and no other or further notice . . . is, or shall be, required***."[6] The brunt of the Plaintiffs' Objection is a challenge to these findings, and the enforceability of the Sale Order is based on unfounded allegations that notice was not sufficient.[7]

- The Sale Order provides that "all persons and entities, including, without limitation, the Debtors, creditors, . . . ***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)."[8] According to the Plaintiffs, "[t]here is no plausible interpretation of this language that enjoins the [Violative Actions]."[9] The Movants assert that this provision of the Sale Order does enjoin the Violative Actions (i.e., the Defect Claims).[10]

16. The Plaintiffs cannot seriously contest the fact that resolution of the Motion will require this Court to "interpret and enforce" the Sale Order. Under the Third Circuit's precedent

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6 Sale Order ¶ D (emphasis added).

7 Objection at 6–13.

8 Sale Order ¶ 15 (emphasis added).

9 Objection at 5.

10 Motion ¶ 41.

in *Allegheny*, *Essar Steel*, and *Marcus Hook*, among others, and the Supreme Court's precedent in *Travelers*, this is the only analysis this Court needs to undertake to determine that it has subject matter jurisdiction of the Motion and the relief requested therein as a core proceeding. Ancillary jurisdiction has nothing to do with the matters at issue.

17. Plaintiffs further entirely ignore the express provisions of the Plan relating to this Court's retention of exclusive jurisdiction over certain matters arising in or related to the chapter 11 cases. No less than five provisions of Article X of the Plan are directly applicable to the Motion, including provisions that provide for this Court's exclusive jurisdiction to (i) resolve disputes regarding the interpretation and enforcement of the Plan; (ii) enter orders to restrain interference with enforcement of the Plan; (iii) resolve disputes with respect to releases and injunctions contained in the Plan; (iv) hear and determine any disputes arising in connection with the interpretation, implementation or enforcement of the Plan and Confirmation Order; and (v) determine any other matters that may arise in connection with the sale, including the Sale Order.[11] As a result, the Plan explicitly provides for the Court's exclusive jurisdiction to address the matters raised in the Motion.

B. *Pacor* and *Resorts* Have No Impact on the Court's Subject Matter Jurisdiction

18. The Plaintiffs confusingly assert that this Court does not have subject matter jurisdiction because:

- "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, or related to jurisdiction under 28 U.S.C. § 1334." Objection at 3 (citing *Pacor, Inc. v. Higgins*, 743 F.2d 984 (3d Cir. 1984)); and

[11] *See* Plan, Sections X.9., X.10., X.11., X.13. and X.18.

- "Nor do the lawsuits in any way impede the consummation of, or have a 'close nexus' to, the Debtors' reorganization Plan." *Id.* (citing *In re Resorts Int'l, Inc.*, 372 F.3d 154, 166–67 (3d Cir. 2004)).

The Third Circuit's decisions in *Pacor* and *Resorts* have nothing to do with the Court's resolution of the Motion.

19. *First*, as set forth above, this Court has core subject matter jurisdiction to enforce its prior orders, including the Sale Order. The Third Circuit's decision in *Pacor* defined the test for "related to" (non-core) jurisdiction. *Resorts Int'l*, 372 F.3d at 164 ("[The Third Circuit] set forth the seminal test for determining the boundaries of 'related to' jurisdiction in *Pacor*, 743 F.2d at 994."). *Pacor* has nothing to do with this Court's core subject matter jurisdiction, which includes the Court's inherent authority to "interpret and enforce" the Sale Order. *See supra* Section I.A.

20. *Second*, *Resorts* is also irrelevant to this Court's core subject matter jurisdiction to enforce its prior orders. The Third Circuit could not be more clear on this point:

> As we discussed in *Resorts*, the "close nexus" standard only applies for the purpose of determining whether a federal court has jurisdiction over a non-core "related to" proceeding in the post-confirmation context. ***Appellants seem to believe that any time a party files a case post-confirmation, the "close nexus" test is triggered. This is plainly not the case***. While courts may choose to rely on "related to" jurisdiction because it is the broadest category of federal bankruptcy jurisdiction when examining their own jurisdiction, it certainly is not incumbent upon them to do so, because, as occurred here, ***a party may argue and a court may decide that a proceeding falls within one of the narrower categories of jurisdiction, such as "arising in" jurisdiction, in which case "related to" jurisdiction and the corresponding "close nexus" test are not implicated***.

Seven Fields, 505 F.3d at 260 (emphasis added and internal citations omitted).

21. Simply put, the Plaintiffs' references to *Pacor* and *Resorts* are wholly irrelevant.[12]

[12] The Plaintiffs' arguments on subject matter jurisdiction are plagued by citations to cases that are not relevant to the instant dispute. For example, the Plaintiffs assert that if Movants were to seek the relief sought in the Motion through a complaint in a new adversary proceeding, then the "first-filed" rule would require this Court to defer to the district courts in which the Violative Actions are pending. *See* Objection at 5 n.3 (citing

Binding Third Circuit and Supreme Court precedent are clear that this Court has core subject matter jurisdiction with respect to the Motion and the relief requested therein. "Related to" and "ancillary" jurisdiction, whether pre- or post-confirmation, do not impact this Court's jurisdiction, and do not provide the Plaintiffs their desired escape hatch to avoid this Court's review of the merits.

C. The Plaintiffs' Interpretation of the Sale Order Injunction is Not Plausible

22. As explained above, the Plaintiffs' contention that the injunction in paragraph 15 of the Sale Order does not enjoin the Violative Actions buttresses this Court's jurisdiction over the Motion, as the Court is being asked to "interpret and enforce" its prior Sale Order. *Allegheny Health*, 383 F.3d at 176. The actual outcome of that interpretation does not weigh on this Court's subject matter jurisdiction. *Id.* Nonetheless, the Plaintiffs' strained interpretation of the Sale Order is addressed here for ease of the Court's review.

23. "When construing an agreed or negotiated form of order, such as the Sale Order in this case, the Court approaches the task as an exercise of contract interpretation . . . ." *In re Trico Marine Servs., Inc.*, 450 B.R. 474, 482 (Bankr. D. Del. 2011) (citing *City of Covington v.*

Chavez v. Dole Food Co., 796 F.3d 261, 263–64 (3d Cir. 2015)). This argument is absurd. *First*, the "first-filed" rule only applies when a second complaint is "materially on all fours" with the first complaint, and the "matters are duplicative." *Chavez*, 796 F.3d at 266. Under the Plaintiffs' hypothetical, the Plaintiffs' complaints are asserting state law claims against Johnson for theories of product and successor liability; whereas Johnson's complaint would be seeking to enforce the Sale Order to enjoin—not litigate— the Plaintiffs' underlying claims. Such complaints would not be remotely "duplicative." Further, if accepted, the Plaintiffs' argument would eviscerate a bankruptcy court's well-accepted jurisdiction to enforce its sale orders, as any purchaser that seeks to enforce a sale order through an adversary proceeding, rather than a motion, would be left to litigate in non-bankruptcy court.

Similarly, the Plaintiffs cite to *Robin Woods Inc. v. Woods*, 28 F.3d 396, 399 (3d Cir. 1994) for the proposition that "[i]t is the burden of the Movants to demonstrate that the Defect Claims are enjoined," and that any "ambiguity weighs against the Movants' interpretation" of the Sale Order. Objection at 5. *Robin Woods* addresses the standard for civil contempt, not the interpretation and enforcement of a sale order. *Robin Woods*, 28 F.3d at 399 ("The plaintiff has a heavy burden to show a defendant guilty of civil contempt."). Movants have not yet sought to hold the Plaintiffs in contempt of the Court's Sale Order or Confirmation Order, but reserve the right to do so at a later date. Until such time, *Robin Woods* is inapposite.

Covington Landing Ltd. P'ship, 71 F.3d 1221, 1227 (6th Cir. 1995)). Accordingly, regular "contract principles govern its construction." *McDowell v. Phil. Hous. Auth. (PHA),* 423 F.3d 233, 238 (3d Cir. 2005). "One of these principles is that an unambiguous agreement should be enforced according to its terms." *Id.* Further, orders should be construed in their "entirety." *Trico Marine*, 450 B.R. at 482.

24. The Plaintiffs assert that "[t]here is no plausible interpretation of [the sale injunction] that enjoins the Defect Claims."[13] To reach this conclusion, the Plaintiffs cherry-pick language from a comprehensive paragraph of the Sale Order, such that the Plaintiffs assert that paragraph 15 only 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."[14] This interpretation wholly ignores the controlling language in this paragraph. Specifically, paragraph 15 of the Sale Order provides that:

> [A]ll persons and entities, including, without limitation, the Debtors, creditors, . . . ***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).[15]

25. The Plaintiffs intentionally omit the underlined language, which makes clear that the Plaintiffs, as "creditors" or "litigation claimants," are enjoined from asserting claims against Johnson that interfere with the transfer of the Acquired Assets free and clear of the Plaintiffs' claims, "in accordance with the terms of the APA and th[e] Sale Order." When paragraph 15 of

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13 Objection at 5.

14 *Id.*

15 Sale Order ¶ 15 (emphasis added).

the Sale Order is read in its entirety and in the context of the entire order, it is clear that the Court enjoined creditors such as the Plaintiffs from asserting claims that constitute Excluded Liabilities, and were not intended to be assumed by Johnson. The Plaintiffs do not contest that the express language and intent of the APA and Sale Order provide for the sale of the Debtors' assets to Johnson free and clear of their claims as Excluded Liabilities. As a result, the plain, unambiguous language of paragraph 15 enjoins the Violative Actions, rendering them void *ab initio*.

II. The Plaintiffs Received Adequate Notice of the Sale Transaction

26. The Plaintiffs concede, as they must, that their claims constitute "interests" in the Debtors' property, which section 363 sales can extinguish.[16] Further, the Plaintiffs do not dispute that their claims against Johnson in the Violative Actions constitute Excluded Liabilities, and were expressly sold free and clear of pursuant to the Sale Order. Consequently, the Plaintiffs' sole defense to the Sale Order barring their prosecution of the Violative Actions is the unfounded assertion that the *Debtors* did not satisfy the Plaintiffs' due process rights in providing notice of the Sale Transaction, and that as a result the APA and Sale Order should be reconstructed so that *Johnson,* a good-faith purchaser, is obligated to assume liability with respect to the Plaintiffs' purported claims. It is uncontested that Johnson did not agree under the APA to assume any liability with respect to the claims asserted in the Violative Actions, and requiring Johnson to defend such lawsuits would completely upend the terms and economics of the Sale Transaction that this Court approved through the Sale Order.

27. Further, if entertained by this Court, the Plaintiffs' tactics would wholly undermine the purpose of section 363 and contravene orders already entered by the Court, including the Sale Order that, among other things, (i) found notice of the Sale Transaction to be "good, sufficient and

[16] *See* Objection at 6.

appropriate under the circumstances" and (ii) indisputably extinguished the Plaintiffs' purported claims as against Johnson.[17] Not only did the Debtors provide adequate notice of the Sale Transaction, the Debtors provided *more* notice than was legally required. And, even if the Plaintiffs were able to demonstrate that the Debtors' notice of the Sale Transaction was somehow inadequate—which it was not—the remedy for the Plaintiffs is not to pursue claims against Johnson, but to seek leave to file late proofs of claim against the Debtors within the confines of the Plan and Confirmation Order.

A. The Totality of Circumstances Demonstrates that Notice was Sufficient

28. Bankruptcy courts do not analyze what notice is appropriate to satisfy due process "in a vacuum," but must rather take into account "all of the circumstances" of a bankruptcy case. *In re CTE 1 LLC*, 2024 WL 2349620, at *8 (Bankr. D.N.J. May 21, 2024) (quoting *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 272 (2010)). Thus, in situations like these—a late-coming claimant alleging liability against a free-and-clear asset purchaser—courts examine "not only the actions of the Debtor and [claimant], but also the policies underlying the Bankruptcy Code." *Id.* The policies underlying section 363 include (1) securing "the prompt and effectual administration and settlement of the debtor's estate;" and (2) "maximizing property value . . . by providing the purchaser the asset free and clear of any interests in the property, including potential successor liability claims." *Id.* (citing *In re Trans World Airlines, Inc.*, 322 F.3d 283, 292 (3d Cir. 2003) (*Trans World I*) and *Chemetron Corp. v. Jones*, 72 F.3d 341, 346 (3d Cir. 1995)). Tagging a good-faith section 363 purchaser with the obligation to defend successor liability claims months or years after the closing of a sale "would have a chilling effect on future sales and result in lower values being received to the detriment of all creditors." *Id.*; *accord Trans World I*, 322 F.3d at

[17] Sale Order ¶ D; *id.* ¶ 20.

292.

29. Further, that outcome would provide a windfall to the Plaintiffs that runs contrary to the Bankruptcy Code's priority scheme. By pursuing Johnson, the Plaintiffs (and their counsel) seek to recover in full, while other unsecured creditors who *did* participate in the bankruptcy will receive only their pro rata distributions from the estate. *Trans World I*, 322 F.3d at 292 ("To allow the claimants to assert successor liability claims against [the successor] while limiting other creditors' recourse to the proceeds of the asset sale would be inconsistent with the Bankruptcy Code's priority scheme."). The relief the Plaintiffs seek is thus not only unfair to Johnson, who acquired the Debtors' assets on the condition that such transaction would be free and clear of Excluded Liabilities, such as the claims asserted by the Plaintiffs, and in doing so funded recoveries available to the Debtors' creditors. But such an outcome is also entirely unfair to other unsecured creditors, who are limited to receiving only fractional recoveries from the estates under the Plan, as opposed to the Plaintiffs who seek full recovery from Johnson.

B. The Debtors Provided More Than Sufficient Notice to Satisfy Due Process

30. The Debtors provided notice to all known and unknown creditors in accordance with the Bankruptcy Code, Bankruptcy Rules, and the Court's orders.[18] The Debtors were cognizant of notice considerations from the outset of the cases and specifically requested authorization from the Court to serve their customers via email, which the Court granted.[19] The Debtors also submitted a proposed form of Sale Notice detailing the consequences of the free-and-

[18] *See* Dkt. No. 20 (the "Electronic Notice Motion"); Dkt No. 169 (the "Electronic Notice Order"); Dkt. No. 35 (the "Bid Procedures Motion"); Dkt. No. 79 (the "Bid Procedures Order"); Dkt. No. 79 Sch. 1 (the "Sale Notice"); Dkt. No. 152 (the "Sale Notice Certificate of Service"); Dkt. No. 784 (the "NYT Sale Notice Affidavit of Publication"); Dkt. No. 785 (the "Seattle Times Sale Notice Affidavit of Publication"); Dkt. No. 786 (the "Columbian Sale Notice Affidavit of Publication"); Dkt. No. 253 (the "Bar Date Order"); Dkt. No. 253 Ex. 3 (the "Bar Date Notice"); Dkt. No. 374 (the "Bar Date Notice Certificate of Service").

[19] *See* Electronic Notice Motion; Electronic Notice Order.

clear sale, which complied with the requirements of Bankruptcy Rule 2002.[20] The Court granted the Bid Procedures Motion, finding that the proposed form of Sale Notice constituted adequate notice of the Sale Transaction.[21] This record, as well as the presumption of delivery for properly mailed notice, establishes that the Debtors carried their burden with respect to demonstrating that notice was proper. *In re Freedom Commc'ns Holdings, Inc.*, 472 B.R. 257, 261 (Bankr. D. Del. 2012); *Stephenson v. AT&T Servs., Inc.*, 2021 WL 3603322, at *5 (E.D. Pa. Aug. 13, 2021).[22] On this record, the Court appropriately found that notice of the Sale Transaction was "***good, sufficient and appropriate under the circumstances, and no other or further notice . . . is, or shall be, required***."[23]

31. Johnson closed the Sale Transaction in reliance on the Court's finding that notice was proper. Collaterally attacking that finding now would undercut the premise of a free-and-clear sale and the well-developed mechanisms for giving notice thereof, and undermine the "importance of enforcing the finality of bankruptcy sales." *In re Target Two Assocs., L.P.*, 2006 WL 3068668, at *6 (S.D.N.Y. Oct. 27, 2006), *aff'd*, 282 F. App'x 914 (2d Cir. 2008).

1. Publication Notice Was Sufficient for the Plaintiffs

32. As the Plaintiffs acknowledge, "known" creditors are entitled to direct notice, while "unknown" creditors are entitled only to publication notice.[24] *Chemetron*, 72 F.3d at 346. Johnson

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20 *See* Bid Procedures Motion.

21 *See* Bid Procedures Order; Sale Notice.

22 Despite unfounded and unsupported arguments that Movants have some additional burden, *see* Objection at 8, it is in fact the *Plaintiffs* who have not—and cannot—satisfy *their* burden. "The burden of proving inadequate notice lies with the party contending that a plan's discharge or injunction does not apply – here, the [Plaintiffs]." *In re RML, LLC*, 662 B.R. 858, 868 (Bankr. S.D.N.Y. 2024); *accord In re Chemtura Corp.*, 2016 WL 11651714, at *8 (Bankr. S.D.N.Y. Nov. 23, 2016) (stating that parties challenging enforcement of injunction "bear the burden of proving that it does not bar their actions").

23 Sale Order ¶ D (emphasis added).

24 Objection at 10–11.

agrees that a "known" creditor is one whose identity is either known or "reasonably ascertainable" by the debtor. *Tulsa Prof'l Collection Serv., Inc. v. Pope*, 485 U.S. 478, 490 (1988). This generally requires an examination of the debtor's books and records. *Chemetron*, 72 F.3d at 347. However, contrary to the Plaintiffs' argument, merely being a customer of the Debtors does not transform the entire customer list into "known" creditors entitled to direct notice.[25]

33. A recent Delaware case is instructive: *In re Rental Car Intermediate Holdings, LLC*, 2022 WL 2760127 (Bankr. D. Del. July 14, 2022). There, former customers of the debtor (Hertz) alleged they were harmed by false police reports filed by Hertz prior to bankruptcy. The issue was whether these claimants were known or unknown creditors for notice purposes. The court analyzed the contacts between different groups of creditors and the debtor, finding that some had indeed put the debtor on notice of their potential claims. *Id.* at *8 n.73 (describing specific contacts with claimants such as demanding arbitration and threatening legal action). By contrast, "evidence of a simple dispute between a customer and the Debtors," which is "not unusual in retail consumer cases," was insufficient to transform mere customers of the debtor from unknown creditors into known creditors. *Id.* at *7.

34. Further, the mere existence of customer complaints against the Debtors cannot establish either the Debtors' or Johnson's knowledge of any alleged defect that could give rise to potential claims, because such complaints cannot establish that there *was* a defect. *See, e.g.*, *Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136, 1147 (9th Cir. 2012) (affirming dismissal of claims alleging product defects, observing that "[s]ome courts have expressed doubt that customer complaints in and of themselves adequately support an inference that a manufacturer was aware

[25] And, "[a]s noted, nothing in the Bankruptcy Code or Rules requires the prospective ***purchaser***, here [Johnson], to make such a search, and [the Plaintiffs] ha[ve] cited no authority to the contrary." *CTE 1*, 2024 WL 2349620, at *7 (emphasis in original).

of a defect"). No court has made any finding to this effect, nor has Johnson made any such admission. Receiving complaints about products, a common occurrence in any retail or consumer industry, is incomparable to the years-long state Attorneys General investigations over a deadly automobile flaw, the situation in *Motors Liquidation* which the Plaintiffs claim is "indistinguishable."[26]

35. Thus, simply being a customer of the Debtors—even one who had raised a minor dispute of some kind—does not equate to being a "known" creditor. To so hold "would effectively require notice to each of the Debtor's customers for a period covering any and all potentially applicable statutes of limitation," a disproportionately burdensome endeavor which "neither Due Process nor reason" requires. *CTE 1*, 2024 WL 2349620, at *6. *See also, e.g.*, *In re New Century TRS Holdings, Inc.*, 450 B.R. 504, 512 (Bankr. D. Del. 2011) ("The availability of the [plaintiffs'] names and address in the Debtors' loan files may have reflected that [they] were known *customers*, but without more, it did not make them 'known *creditors*.'") (emphasis in original); *Hebell v. NVR, Inc.*, 1997 WL 417363, at *2 (N.D. Ill. July 21, 1997) ("The fact that the identities of the [plaintiffs] themselves may have been 'reasonably ascertainable' from the loan service's records [] is not sufficient to make them 'known.'"). The Plaintiffs, as unknown creditors, were thus "entitled solely to publication notice" in any event. *In re Trans World Airlines*, 96 F.3d 687, 689 (3d Cir. 1996) (*Trans World II*); *accord Chemetron*, 72 F.3d at 348.

36. Based on the above precedent, the Debtors' customers, including those who acquired BowFlex Adjustable Dumbbells, were unknown creditors at the time of the closing of the Sale Transaction. Consistent with this Court's orders, the Debtors published a Court-approved Sale Notice in The New York Times on March 13, 2024, The Seattle Times on March 14, 2024,

[26] Objection at 3 (citing *In re Motors Liquidation Co.*, 829 F.3d 135 (2d Cir. 2016)).

and The Columbian on March 14, 2024.[27] The Plaintiffs do not contest that this form of publication notice was sufficient with respect to unknown claims.

2. To the Extent Actual Notice Was Required, the Debtors Provided Appropriate Notice

37. Even if customers that acquired BowFlex Adjustable Dumbbells prior to the Closing of the Sale Transaction were "known" creditors, which they are not, the Debtors provided sufficient actual notice to satisfy applicable due process standards.[28]

38. Even for known creditors, a chapter 11 debtor is only obligated to exercise "reasonably diligent efforts" to locate applicable creditor information, which focuses on the "debtor's own books and records." *Chemetron*, 72 F.3d at 346–47. "Efforts beyond a careful examination of these documents are generally not required." *Id.* at 347.

39. Notwithstanding the fact that the Debtors had no reason to know that any of their customers would assert claims against the estate, they served by email copies of the Sale Notice on 1,816,576 BowFlex consumers.[29] This is far more notice than is often provided in chapter 11 bankruptcy sales, and email service was provided consistent with this Court's Electronic Notice Order. And this is why the Plaintiffs' requests for discovery with respect to the Debtors' and Johnson's knowledge of any alleged defects in the BowFlex Adjustable Dumbbells is an unwarranted fishing expedition and, given their agreement to dismiss BowFlex from the Violative Actions, is wholly inappropriate against the Debtors or the Trust. Even if purchasers of such products were "known" creditors, the Debtors satisfied their due process obligations under *Chemetron* by providing actual notice.

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[27] *See* NYT Sale Notice Affidavit of Publication; Seattle Times Sale Notice Affidavit of Publication; and Columbian Sale Notice Affidavit of Publication.

[28] Sale Notice Certificate of Service ¶ 2(vii).

[29] Sale Notice Certificate of Service ¶ 2(vii).

40. The Plaintiffs complain about a lack of actual notice, but neglect in their Objection to inform this Court that the Debtors did undertake a very substantial effort to provide actual notice to its customers, including one of the Plaintiffs themselves. *See infra* Section II.B.3. This Court should not entertain the Plaintiffs' attempts to manipulate the record. This Court approved the Sale Order with far more than sufficient notice to satisfy due process, and appropriately found as such.

3. Ms. Cosin is Presumed to Have Received Direct Notice

41. The Plaintiffs assert that "[i]t 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."[30] In support of this assertion, the Plaintiffs have provided the Cosin Declaration, who is a named Plaintiff in one of the Violative Actions. According to the Cosin Declaration, Ms. Cosin received multiple notices by email with respect to the General Bar Date and the Debtors' Plan, but she did not receive the Sale Notice at that same email address.[31] This convenient purported omission does not lead to a conclusion that Ms. Cosin did not receive actual notice of the Sale Notice.

42. Courts have "long recognized a presumption that an item properly mailed was received by the addressee." *In re Cendant Corp. Prides Litig.*, 311 F.3d 298, 304 (3d Cir. 2002); *see also State v. Williams*, 2021 WL 2201724, at *7 (N.J. Super. Ct. App. Div. June 1, 2021). This presumption applies to electronic mail with equal force as traditional mail. *Stephenson*, 2021 WL 3603322, at *5. The certificates of service filed by the Debtors' claims and noticing agent trigger this presumption.[32] The Cosin Declaration, which merely "assert[s] that the [Sale Notice] was not

30 Objection at 10.

31 Cosin Declaration ¶¶ 2–5.

32 *See* Sale Notice Certificate of Service, Bar Date Notice Certificate of Service.

received, without corroboration, is insufficient to overcome the presumption." *Geise v. Nationwide Life & Annuity Co. of Am.*, 939 A.2d 409, 423 (Pa. Super. Ct. 2007).

43. Moreover, Ms. Cosin's assertion that she received all applicable notices in the Debtors' chapter 11 cases, but not the Sale Notice, is rebutted by the Saraceni Declaration, filed in connection with this Reply, which confirms that Ms. Cosin was provided email notice of the Sale Notice at the same email address at which she admits she received other notices in this case.

44. There is nothing else in the record suggesting or indicating that the Plaintiffs did not know about, or receive actual or constructive notice of, the Debtors' chapter 11 cases or the sale of the Debtors' assets to Johnson. Moreover, the Plaintiffs are not representatives of any other creditors in these chapter 11 cases, so should not be permitted to complain of a purported lack of notice on behalf of parties for whom they have no authority to speak.

4. The Form and Content of the Sale Notice Was Sufficient

45. The Plaintiffs double down on their ill-informed due process arguments by asserting that the Sale Notice itself was inadequate.[33] According to the Plaintiffs, the Sale Notice was required to provide "notice to purchasers of the Defective Products of (a) the existence of the Defect, and (2) that the proposed sale to Johnson would be free and clear of the Defect Claims."[34] This assertion is unsupported and detached from the requirements enumerated in the Federal Rules of Bankruptcy Procedure.

46. Bankruptcy Rule 2002 provides that notice of a section 363 sale must include:

> (A) a general description of the property;
> (B) the time and place of any public sale;
> (C) the terms and conditions of any private sale;
> (D) the time to file objections; and

[33] Objection at 11–13.

[34] *Id.* at 12.

> (E) for a proposed sale or lease of personally identifiable information under § 363(b)(1), a statement whether the sale is consistent with any policy that prohibits transferring the information.

Fed. R. Bankr. P. 2002(a)(2), (c)(1). The Debtors satisfied this obligation.[35]

47. Further, the Sale Notice unambiguously provides the following warning for creditors:

> **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.[36]**

No other language in the Sale Notice was in all caps and bold, emphasizing this warning for any creditor that received it.

48. Tellingly, the Plaintiffs cite no case even remotely on point to support the notion that unwritten requirements above and beyond Rule 2002 are mandated. The first relied on, *Memphis Light*, is not even a bankruptcy case.[37] Rather, it uncontroversially held that "a municipal utility [must] notify the customer of the availability of an avenue of redress within the organization should he wish to contest a particular charge." *Memphis Light*, 436 U.S. at 13. Although the other citations, *Barton* and *Linkous*, are bankruptcy cases, they deal with insufficient notice to *secured* creditors of a *confirmation* hearing, not with notice of an *asset sale* to *unknown*, *unsecured*

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35 *See* Sale Notice.

36 *Id.* (underline added).

37 Objection at 12 (citing *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1 (1978)).

creditors.[38] By arguing that the Sale Notice should describe and disclose in exquisite detail every conceivable right that could be affected and how, the Plaintiffs invite the Court to conflate the requirements of a disclosure statement, under 11 U.S.C. § 1125, with the requirements of a sale notice, under Bankruptcy Rule 2002.

49. But even in the confirmation context, the Plaintiffs' arguments hold no water: even when a debtor had been *sued* (not merely received customer complaints) over a defective product, unsecured creditors holding prepetition product liability claims were not entitled to any specific notice that "included information about those potential claims in the notices." *Sweeney v. Lafayette Pharms., Inc.*, 2020 WL 2079283, at *4 (D.N.J. Apr. 30, 2020), *aff'd*, 856 F. App'x 371 (3d Cir. 2021), *cert. denied*, 142 S. Ct. 565 (2021). The Plaintiffs' arguments are similarly unavailing in a bar date context. *RML*, 662 B.R. at 869 (rejecting argument that publication failed to satisfy due process because the bar date notice did not mention defective product giving rise to claims); *In re Placid Oil Co.*, 753 F.3d 151, 158 (5th Cir. 2014) ("We have never required bar date notices to contain information about specific potential claims.").

50. A more apt case—and indeed, a controlling Third Circuit case, unlike the out-of-circuit *Barton* and *Linkous*—is *In re Cone Mills Corp.*, 313 F. App'x 538 (3d Cir. 2009). There, an unsecured creditor, Chemtura, argued that its successor liability claims against a purchaser were not extinguished because the debtor, Cone Mills, failed to provide it with specific notice that a 363 sale would eliminate its successor liability claims. *Id.* at 540. In particular, Chemtura argued that it was entitled to the same level of notice as a lienholder. *Id.* Affirming the Bankruptcy and District Courts, the Third Circuit rejected the argument, holding that "[i]n short, Chemtura was not

[38] Objection at 12 (citing *In re Barton Indus., Inc.*, 104 F.3d 1241 (10th Cir. 1997) and *In re Linkous*, 990 F.2d 160 (4th Cir. 1993)).

entitled to any heightened form of notice." *Id.* at 541. Because the notice had complied with Rule 2002(a)(2), Chemtura "received all the notice that [it] was due." *Id.*

51. In light of the above precedent, it should not be surprising that the form of Sale Notice used in these chapter 11 cases and approved by this Court is consistent with those routinely used and approved in consumer chapter 11 cases in the Third Circuit.[39] The Plaintiffs' argument would create a wholly novel and impractical standard for the form of notice that must be used for 363 sales going forward.

C. The Remedy for Defective Notice Is Not Against Johnson

52. During the pendency of their cases, the Debtors, not Johnson, served notices on all parties in interest, in accordance with Bankruptcy Rule 2002. *See* Fed. R. Bankr. P. 2002(a)(2); *CTE 1*, 2024 WL 2349620, at *6 ("[I]t was the Debtor's burden to notify reasonably ascertainable creditors of the bankruptcy filing and 363 Sale, it was not [the purchaser's] burden as the purchaser, as [the claimant] suggests."). Johnson bears no responsibility for any alleged inadequacy of notice. To the extent the Court were to determine that notice to a particular individual Plaintiff was not sufficient, which the Movants submit is contradicted by the clear and unchallengeable facts set forth in the Motion and this Reply, such individual Plaintiff has the right to seek appropriate relief as to the Debtors' estates, with all rights of the Trust reserved with respect thereto.

53. The Plaintiffs have determined not to pursue any such claims against the Debtors, which claims would, of course, be subject to the terms and restrictions of the Plan and

[39] *In re Rite Aid Corp.*, No. 23-18993 (MBK), Dkt. No. 129 (Bankr. D.N.J. Oct. 18, 2023); *In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP), Dkt. No. 92 (Bankr. D.N.J. Apr. 25, 2023); *In re DirectBuy Home Improvement*, Inc., No. 23-19159 (SLM), Dkt. No. 187 (Bankr. D.N.J. Nov. 9, 2023); *In re Blink Holdings, Inc.*, No. 24-11686 (JKS), Dkt. No. 348 (Bankr. D. Del. Sep. 10, 2024); *In re AIO US, Inc.*, No. 24-11836 (CTG), Dkt. No. 319 (Bankr. D. Del. Oct. 29, 2024); *In re Packable Holdings, LLC*, No. 22-10797 (CTG), Dkt. No. 264 (Bankr. D. Del. Oct. 25, 2022); *In re Enjoy Tech., Inc.*, No. 22-10580 (JKS), Dkt. No. 199 (Bankr. D. Del. July 26, 2022); *In re Colt Holding Co. LLC*, No. 15-11296 (LSS), Dkt. No. 13 (Bankr. D. Del. June 15, 2015).

Confirmation Order and this Court's other relevant orders entered during the chapter 11 cases.[40] This decision, however, does not mean that the Plaintiffs should now have recourse against a good-faith purchaser such as Johnson.

III. The Plaintiffs Effectively Seek Reconsideration of, or to Appeal, the Sale Order

54. This Court has explicitly found that notice was both sufficient on the parties served and appropriate in form.[41] This Court has explicitly found that it retains jurisdiction over the present dispute.[42] This Court has explicitly found that Johnson bears no successor liability whatsoever for the Debtors' products.[43] Both Johnson and the Debtors relied on such findings in closing the Sale Transaction. Although not overtly framed as such, the Plaintiffs dispute each of these findings and seek relief that is functionally equivalent to a motion for reconsideration, if not a full-on appeal. But the Plaintiffs cannot meet the high standard for reconsideration, which, like an appeal, is time-barred in any event. Their requests are moot.

1. The Plaintiffs Cannot Satisfy the Standard for Reconsideration

55. While the Federal Rules of Civil Procedure do not "expressly recognize" motions for reconsideration, such motions are generally treated as a motion for relief under Rule 60(b). *United States v. Compaction Sys. Corp.*, 88 F. Supp. 2d 339, 345 (D.N.J. 1999). Relief under Rule 60(b) is available in cases of (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud, misrepresentation, or misconduct; (4) a void judgment; (5) a satisfied, released, or discharged judgment; or (6) any other reason justifying relief. Fed. R. Civ. P. 60(b). The motion must be made within a reasonable time, and in the case of (1), (2), and (3)

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40 Motion at 20–25.

41 Electronic Notice Order; Bid Procedures Order; Sale Order ¶ 4; *id.* ¶ D.

42 Sale Order ¶ 27.

43 *Id.* ¶ 20; *id.* ¶ O.

no more than a year after entry of the order. Fed. R. Civ. P. 60(c)(1).

56. It is well-settled that relief under Rule 60(b) motions is "extraordinary and may be granted only upon a showing of 'exceptional circumstances.'" *Mayberry v. Maroney*, 558 F.2d 1159, 1163 (3d Cir. 1977) (collecting cases). The moving party bears the burden of showing that, absent relief, "extreme" and "unexpected" hardship will result. *Id.* (citing *United States v. Swift & Co.*, 286 U.S. 106, 119 (1932)). The Plaintiffs plainly cannot meet this standard. The only evidence they have put forward is a declaration that a Plaintiff received actual notice of the Debtors' bankruptcy cases—hardly carrying the "heavy burden" necessary for a Rule 60 motion. *Id.*

2. The Relief the Plaintiffs Seek is Statutorily and Equitably Moot

57. Section 363(m) of the Bankruptcy Code provides, in essence, that a sale to a "good faith" purchaser cannot be modified or overturned unless the sale is stayed while the appeal is pending. 11 U.S.C. § 363(m). The policy rationale behind §363(m) is "not only [to afford] finality to the judgment of the bankruptcy court, but particularly to give finality to those orders and judgments upon which third parties rely." *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 147 (3d Cir. 1986); *accord Pittsburgh Food & Beverage, Inc. v. Ranallo*, 112 F.3d 645, 647–48 (1997). Here, the Sale Order contains explicit findings that Johnson is a good-faith purchaser entitled to the protections of section 363(m).[44] The Sale Transaction closed and no stay was obtained. Though the procedural posture may not directly invoke 363(m), the rationale underlying it applies with equal force. *See In re Polycel Liquidation, Inc.*, 2006 WL 4452982, at *9 (Bankr. D.N.J. Apr. 18, 2006), *aff'd*, 2007 WL 77336 (D.N.J. Jan. 8, 2007) ("This court nevertheless considers the Buyer's § 363(m) argument [despite the lack of appeal] since it pertains to the important policy of

[44] Sale Order ¶ 21.

finality in bankruptcy cases."). Attempting to impose successor liability on Johnson undercuts a fundamental element of the Sale Transaction, a feature that goes to its core, and would upset reliance on final orders of a bankruptcy court.

58. Whether or not section 363(m) is available, this is a textbook case where equitable mootness—which exists to avoid "unscrambling complex bankruptcy reorganizations"—precludes relief as a functional substitute for statutory mootness. *In re One2One Commc'ns, LLC*, 805 F.3d 428, 434 (3d Cir. 2015). The doctrine, while commonly arising in the context of appeals, "has been applied to matters other than appeals when the subject matter has been confirmation of a plan of reorganization." *In re Machne Menachem, Inc.*, 371 B.R. 63, 74 (Bankr. M.D. Pa. 2006). The inquiry has two prongs: first, whether the confirmed plan has been substantially consummated; and second, whether the relief requested will "(a) fatally scramble the plan and/or (b) significantly harm third parties who have justifiably relied on plan confirmation." *In re Boy Scouts of Am.*, 137 F.4th 126, 160 (3d Cir. 2025). Here, the Plan, which is the vehicle for distributing the Sale Transaction proceeds, has been substantially consummated and the relief requested would either (a) fatally scramble the Plan by undoing the Sale Transaction, an impossibility as the proceeds have already been distributed, or (b) significantly harm Johnson, who justifiably relied on the relief granted in the Sale Order in order to close the Sale Transaction that forms the basis of the Plan. Thus, equitable mootness precludes any relief that undercuts the core of the Sale Transaction: namely, any ability to pursue Johnson for the Debtors' prepetition liabilities under any theory.

IV. The Plaintiffs Should Not Be Permitted to Appear in This Case or Object to the Motion Under Bankruptcy Rule 2019

59. The Plaintiffs' acknowledgment that they will dismiss BowFlex from the Violative Actions is a tacit acknowledgment that they violated the Plan and this Court's Confirmation Order in bringing those claims. They continue to violate the applicable rules governing this Court and

this chapter 11 case by failing to timely file a verified statement under Bankruptcy Rule 2019.

60. Rule 2019 requires that every group "consisting of or representing—and every entity representing—multiple creditors" who are "acting in concert to advance their common interests" must file a verified statement containing specific disclosures. Fed. R. Bankr. P. 2019(b)(1). The four Plaintiffs are creditors (although disputed) acting in concert to advance their common interests represented by the same counsel. There is no credible argument that the Plaintiffs and/or their counsel are not required to file a verified statement satisfying the obligations of Rule 2019.[45] Yet, they have failed to comply with Rule 2019.

61. Upon finding a failure to comply with Rule 2019, a bankruptcy court may "refuse to permit the group . . . to be heard" or "hold invalid" any "objection" the group has given. Fed. R. Bankr. P. 2019. *See In re Quigley Co., Inc.*, 2016 WL 1084747, at *7 (Bankr. S.D.N.Y. Mar. 18, 2016) ("[Rule 2019] empowers the Court to bar the noncompliant entity from participating in the case" including through "invalidation of any pleadings filed"); *In re Ionosphere Clubs, Inc.*, 101 B.R. 844, 856 (Bankr. S.D.N.Y. 1989) (denying motion, in part, for failure to satisfy Rule 2019); *Reid v. White Motor Corp.*, 886 F.2d 1462, 1472 (6th Cir. 1989) (affirming denial of proof of claim for failure to comply with Rule 2019).

62. Particularly where, as here, the Plaintiffs appear to be advancing arguments on behalf of unknown claimants whom they have no authority to represent, this Court should strictly enforce Bankruptcy Rule 2019. The Court should thus bar the Plaintiffs from any participation in this case, and strike their Objection for continued non-compliance with the applicable rules and orders that govern this chapter 11 case.

[45] Although there is an exception for "a class-action representative," this exception is inapplicable as (1) no class has yet been certified, and (2) the group at issue is not a class, but four separate proposed class-action representatives. *See* Fed. R. Bankr. P. 2019(b)(2)(C).

V. The Plaintiffs' Concession to Dismiss BowFlex Is Not Sufficient

63. While the Trust appreciates the Plaintiffs' acknowledgment that the Violative Actions against BowFlex were improper, and is prepared to work with the Plaintiffs to dismiss BowFlex from the Violative Actions once contacted, it neither moots the Motion as it applies to the Debtors nor alters the necessity for entry of the proposed order attached as Exhibit A to the Motion. In particular, the proposed order should provide that (i) any of the Plaintiffs' claims are barred and permanently enjoined from being brought against the Debtors; (ii) the Violative Actions, and any Subsequent Actions are in violation of, and barred by, the Plan Injunction and Confirmation Order; (iii) the Violative Actions and any Subsequent Actions are void *ab initio*; and (iv) the Violative Actions as against BowFlex shall be dismissed with prejudice.

CONCLUSION

64. For the reasons set forth in the Motion and herein, this Court should grant the relief requested in the Motion, and enter the proposed order attached thereto.

Dated: July 25, 2025

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