

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re

PQ New York, Inc., *et al.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 20-11266-JTD

(Jointly Administered)

**RE: 508, 523**

**ORDER GRANTING THE JOINT MOTION OF THE DEBTORS AND THE  
OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR AN ORDER  
(I) APPROVING ON AN INTERIM BASIS THE ADEQUACY OF DISCLOSURES  
IN THE COMBINED PLAN AND DISCLOSURE STATEMENT, (II) SCHEDULING  
THE CONFIRMATION HEARING AND DEADLINE FOR FILING OBJECTIONS,  
(III) ESTABLISHING PROCEDURES FOR SOLICITATION AND TABULATION  
OF VOTES TO ACCEPT OR REJECT THE COMBINED PLAN AND DISCLOSURE  
STATEMENT, AND APPROVING THE FORM OF BALLOT AND SOLICITATION  
PACKAGE, AND (IV) APPROVING THE NOTICE PROVISIONS**

Upon consideration of the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors (the “Debtors”) and the official committee of unsecured creditors (the “Committee,” and together with the Debtors, the “Plan Proponents”) for an Order (i) Approving on an Interim Basis the Adequacy of Disclosures in the Combined Plan and Disclosure Statement, (ii) Scheduling the Confirmation Hearing and Deadline for Filing Objections, (iii) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Combined Plan and Disclosure Statement, and Approving the Form of Ballot and Solicitation Package, and (iv) Approving the Notice Provisions; it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); it appearing

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<sup>1</sup> The last four digits of PQ New York, Inc.’s federal tax identification number are 1022. The mailing address for the debtors is PQ New York, Inc., c/o 33rd Street Bakery, Inc., 43-27 33rd Street, Long Island City, New York 11101. Due to the large number of debtors in these chapter 11 cases, for which the debtors have requested joint administration, a complete list of the debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the debtors’ claims and noticing agent at [www.donlinrecano.com/pqny](http://www.donlinrecano.com/pqny).

<sup>2</sup> Capitalized terms used, but not otherwise defined, herein shall have the same meanings ascribed to such terms in the Plan.

that venue of this proceeding and the Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; due, adequate and sufficient notice of the Motion having been given; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing, if necessary, before this Court; and it appearing that no other notice need be given; and after due deliberation and sufficient cause appearing therefor,

THE COURT HEREBY FINDS AS FOLLOWS:

A. The Combined Plan and Disclosure Statement (the “Plan”) contains adequate information within the meaning of section 1125 of the Bankruptcy Code, subject to the Confirmation Hearing.

B. The procedures set forth below for the solicitation and tabulation of votes to accept or reject the Plan provide for a fair and equitable voting process and are consistent with section 1126 of the Bankruptcy Code.

C. The contents of the Solicitation Package, Non-Voting Package and Information Package, as set forth in the Motion, comply with Bankruptcy Rules 2002 and 3017 and constitute sufficient notice to all interested parties including, without limitation, Holders of Claims against and Equity Interests in the Debtors.

D. The Confirmation Hearing Notice, substantially in the form attached to hereto as Exhibit 1 (the “Confirmation Hearing Notice”), satisfies the requirements of due process with respect to all Holders of Claims and Equity Interests.

E. The forms of Ballot for Classes 3 and 4, substantially in the form attached hereto as Exhibit 2: (i) are sufficiently consistent with Official Form B314; (ii) adequately address the particular needs of the Chapter 11 Cases; and (iii) are appropriate for the Voting Classes.

F. The voting instructions and procedures attached to the Ballots provide for a fair and equitable voting process and are consistent with section 1126 of the Bankruptcy Code and the applicable Bankruptcy Rules.

G. Ballots need not be provided to Holders of Unclassified Claims, or to Holders of Other Secured Claims, Priority Non-Tax Claims, Intercompany Claims, or Equity Interests in Classes 1, 2, 5, and 6, respectively, as such non-voting classes are either Unimpaired or are conclusively presumed to have accepted or rejected the Plan in accordance with sections 1126(f) and (g) of the Bankruptcy Code:

<b>Class</b>	<b>Type</b>	<b>Status Under Plan</b>	<b>Voting Status</b>
Class 1	Other Secured Claims	Unimpaired	Deemed to Accept
Class 2	Priority Non-Tax Claims	Unimpaired	Deemed to Accept
Class 3	Convenience Class of Unsecured Claims	Impaired	Entitled to Vote
Class 4	General Unsecured Claims	Impaired	Entitled to Vote
Class 5	Intercompany Claims	Impaired	Deemed to Reject
Class 6	Equity Interests	Impaired	Deemed to Reject

H. The period during which the Debtors may solicit votes to accept or reject the Plan, as established by this Order, provides sufficient time for Holders of Claims in the Voting Classes to make informed decisions to accept or reject the Plan, and submit their Ballots in a timely fashion.

I. The Tabulation Procedures (as defined below) for the solicitation and tabulation of votes to accept or reject the Plan, as approved herein, provide a fair and equitable voting process and are consistent with section 1126 of the Bankruptcy Code.

IT IS HEREBY FOUND AND DETERMINED THAT:

1. The Motion is GRANTED as set forth herein.

2. The Plan is approved on an interim basis as containing adequate information under Bankruptcy Code Section 1125 for solicitation purposes.

3. The Confirmation Hearing Notice, in substantially the form attached hereto as **Exhibit 1**, is approved, and the Debtors, as one of the Plan Proponents, shall provide all known creditors and equity security holders with the Confirmation Hearing Notice.

4. The forms of Ballot, in substantially the form attached hereto as **Exhibit 2**, are approved, and the Debtors shall provide a copy of the appropriate form of Ballot to all known Holders of Claims in Classes 3 and 4.

5. The form of Notice to Unimpaired Non-Voting Status Notice, in substantially the form attached hereto as **Exhibit 3**, is approved, and the Debtors, as one of the Plan Proponents, shall provide all known holders of Claims in Classes 1 and 2 with a copy of the Notice to Unimpaired Non-Voting Status Notice.

6. The form of Unimpaired Non-Voting Status Notice, in substantially the form attached hereto as **Exhibit 3**, is approved. The Debtors shall serve the non-voting Classes, including Holders of Allowed Administrative Expenses and Priority Tax Claims, with a copy of notice of Non-Voting Status.

7. The form of Impaired Non-Voting Status Notice, in substantially the form attached hereto as **Exhibit 4**, is approved. The Debtors shall serve all Holders of Claims and Interests in Classes 5 and 6 with a copy of the notice of Impaired Non-Voting Status.

8. The form of Notice to Disputed Claim Holders, in substantially the form attached hereto as **Exhibit 5**, is approved. The Debtors shall serve all Holders of Claims and Interests in Classes 3 or 4 whose Claims are the subject of an objection on the Voting Record Date with a copy of the notice of Notice to Disputed Claim Holders.

9. The cover letter, in substantially the form attached hereto as **Exhibit 6** (the “Cover Letter”), is approved. The Debtors, as one of the Plan Proponents, are authorized, but are not required, to serve the Cover Letter all Holders of Claims and Interests in Classes 3 or 4.

10. The Notice of Approval of Solicitation and Voting Procedures, in substantially the form attached hereto as **Exhibit 7** (the “Solicitation Approval Notice”), is approved. The Debtors shall serve the Solicitation Approval Notice on: (i) all parties filing a notice of appearance and request for service pursuant to Bankruptcy Rule 2002 in the Chapter 11 Cases, (ii) state and local taxing authorities for all jurisdictions in which the Debtors did business, (iii) the Internal Revenue Service, (iv) the United States Attorney for the District of Delaware, (v) holders of Claims or Equity Interests whether in the Voting Classes or in the Non-Voting classes, (vi) the United States Trustee, and (vii) all persons or entities listed on the Debtors’ creditor mailing matrix, on the Solicitation Commencement Date. Further, the Plan Proponents shall cause the Solicitation Approval Notice to be published once in a national newspaper at least twenty-eight (28) days prior to the Combined Confirmation Hearing. The service of the Confirmation Hearing Notice and the Solicitation Approval Notice as contemplated herein satisfies the requirements of due process with respect to all Holders of Claims and Equity Interests, whether known or unknown.

11. Pursuant to Bankruptcy Rule 3017(d), **August 24, 2020** (the “Voting Record Date”), shall be the record date for purposes of determining which Holders of Claims are entitled to receive Solicitation Package and, where applicable, vote on the Plan. With respect to any transferred claim, the transferee shall only be entitled to receive and cast a Ballot on account of such transferred claim if: (a) all actions necessary to effect the transfer of the claim pursuant to Bankruptcy Rule 3001(e) have been completed by the Voting Record Date (including without limitation, the passage of any applicable objection period).

12. In addition to its role as claims and noticing agent of the Debtors, the retention of Donlin Recano & Co. (the “Voting Agent”) is extended to authorize the Voting Agent to perform all services relating to the solicitation of votes on the Plan, including, without limitation the following services:

- a. identifying voting and non-voting Creditors and Interest Holders;
- b. printing Ballots that indicate such Holder’s Voting Classes, the voting amount of the Claim (where applicable), and other relevant information;
- c. coordinating the mailing of Ballots and providing an affidavit verifying the mailing of Ballots;
- d. mailing the Solicitation Packages, the Non-Voting Packages, and the Information Packages, as applicable;
- e. receiving Ballots, tabulating the votes on the Plan consistent with the procedures set forth below, preparing a voting report for the Voting Classes including voting amount and number, maintaining such information in a database, and providing an affidavit verifying the results of such tabulation; and
- f. providing any other balloting-related services the Debtors may request from time to time including, without limitation, providing testimony at the Confirmation Hearing regarding the balloting services and the tabulation of votes on the Plan Statement.

13. No later than August 26, 2020, the Voting Agent shall begin serving a copy of the following documents upon the Voting Classes:

- a. the Plan and all other exhibits annexed thereto, which documents the Plan Proponents may distribute via USB Flash Drive format instead of printed copies;
- b. this Conditional Approval and Procedures Order, including a Ballot to accept or reject the Plan along with a return envelope, and those other documents approved by the Court hereto as set forth herein; and
- c. such other materials as the Court may direct or approve, including any supplemental solicitation materials the Plan Proponents may file with the Court.

(collectively, the “Solicitation Materials”).

14. No later than **August 26, 2020**, the Voting Agent shall begin serving those other documents approved by the Court hereto upon other Holders of Claims and Interests and other

parties in interest as set forth herein. Such materials, including (a) the Confirmation Hearing Notice and (b) the Unimpaired Non-Voting Status Notice, the Impaired Non-Voting Status Notice, or the Notice to Disputed Claim Holders, shall be for information purposes only and not for solicitation since such Creditors and Interest Holders shall not be entitled to vote on the Plan or shall be deemed to have accepted or rejected the Plan, as applicable. The notice to Non-voting classes is hereby approved.

15. To the extent that the Office of the United States Trustee, governmental units having an interest in the Chapter 11 Cases or those parties requesting notice pursuant to Bankruptcy Rule 2002 have not otherwise received a Solicitation Package, prior to the Solicitation Commencement Date (as defined below), the Debtors shall distribute, or cause to be distributed, by first-class mail to such parties the following information (collectively, the “Information Package”): (a) the Plan, together with all other exhibits annexed thereto, (b) the Conditional Approval and Procedures Order, excluding the exhibits annexed thereto, and (c) the Confirmation Hearing Notice.

16. In order to be counted as votes to accept or reject the Plan, Ballots must be properly executed, completed and delivered by (a) first class mail; (b) courier; or (c) personal delivery, to the Voting Agent so that the Ballots are actually received no later than **September 18, 2020 at 4:00 p.m. (ET)** (the “Voting Deadline”).

17. Ballots transmitted by facsimile, e-mail, or other electronic means will not be counted, unless such Ballots are transmitted via electronic, online transmission through a customized electronic Ballot by utilizing the E-Ballot platform on the Voting Agent’s website (<https://www.donlinrecano.com/Clients/pqny/vote>). Holders of a Claim in the Voting Classes may cast an electronic Ballot and electronically sign and submit such electronic Ballot via this E-Ballot platform. Instructions for casting an electronic Ballot can be found on the “E-Ballot” section of the

Voting Agent's website. The encrypted ballot data and audit trail created by such electronic submission shall become part of the record of any electronic Ballot submitted in this manner and the electronic signature will be deemed to be an original signature that is legally valid and effective. For the avoidance of doubt, each Holder of a Claim in the Voting Classes may only cast Ballots electronically via the E-Ballot platform on the Voting Agent's website.

18. In tabulating votes, the following hierarchy shall be used to determine the voting amount for each Voting Claim (the "Tabulation Hierarchy"):

- a. The amount of the Claim listed in the Debtors' schedules of assets and liabilities; unless (i) such Claim is scheduled but listed (x) as contingent, unliquidated, undetermined, or disputed or (y) in the amount of \$0.00, (ii) a Proof of Claim has been timely filed (or otherwise deemed timely filed by the Court under applicable law), (iii) such Claim has been satisfied by the Debtors, (iv) a Proof of Claim has been asserted in the amount of \$0, or (iv) such Claim has been resolved pursuant to a stipulation or order entered by the Court.
- b. The undisputed, non-contingent and liquidated amount specified in a Proof of Claim timely filed with the Court or the Voting Agent (or otherwise deemed timely filed by the Court under applicable law) to the extent such Proof of Claim has not been amended or superseded by another Proof of Claim filed on or before the Voting Deadline and is not the subject of an objection (or, if such Claim has been resolved pursuant to a stipulation or order entered by the Court, or otherwise resolved by the Court, the amount set forth in such stipulation or order).
- c. If a Proof of Claim timely filed with the Court or the Voting Agent (or otherwise deemed timely filed by the Court under applicable law) has been amended by a later Proof of Claim filed on or before the Voting Deadline, the later filed amending claim shall be entitled to vote in a manner consistent with these tabulation rules, and the earlier filed Proof of Claim shall be disallowed for voting purposes, regardless of whether the Debtors have objected to such amended claim.
- d. If a Proof of Claim has been timely filed with the Court or the Voting Agent (or otherwise deemed timely filed by the Court under applicable law) and such claim is asserted in the amount of \$0.00, such claim shall not be entitled to vote.
- e. If a claim is Allowed under the Plan, such claim is allowed for voting purposes in the deemed Allowed amount set forth in the Plan.
- f. The amount temporarily allowed by the Court for voting purposes pursuant to Bankruptcy Rule 3018.



g. Except as otherwise provided in subsection (c) hereof, a Ballot cast by an alleged Creditor who has timely filed a Proof of Claim in a wholly unliquidated, unknown, or uncertain amount that is not the subject of a claim objection filed on or before the Voting Deadline as well as claims scheduled as contingent, unliquidated, or disputed (without a corresponding filed claim) shall be counted in determining whether the numerosity requirement of section 1126(c) of the Bankruptcy Code has been met, and shall be ascribed a value of one dollar (\$1.00) for voting purposes only in determining whether the aggregate Claim amount requirement of Bankruptcy Code Section 1126(c) has been met.

h. Except as otherwise provided in subsection (c) hereof, if a Creditor casts a Ballot and has timely filed a Proof of Claim (or has otherwise had a Proof of Claim deemed timely filed by the Court under applicable law), but the Creditor's Claim is the subject of a claim objection filed by the Voting Deadline, the Debtors request, in accordance with Bankruptcy Rule 3018(a), that the Creditor's Ballot not be counted.

i. Notwithstanding subsection (h) hereof and except as otherwise provided in subsection (c) hereof, if the Movants have requested by motion at least twelve (12) business days prior to the Confirmation Hearing that a Claim be reclassified and/or allowed in a fixed, reduced amount pursuant to a claim objection to such Claim, the Ballot of the Holder of such Claim shall be counted in the reduced amount requested by the Movants and/or in the requested category.

19. The following procedures and standard assumptions shall be utilized in tabulating the votes to accept or reject the Plan (the "Tabulation Procedures"):

a. For purposes of the numerosity and amount requirements of Bankruptcy Code Section 1126(c), to the extent that it is possible to do so for the Voting Classes, separate Claims held by a single Creditor against the Debtors in the Voting Classes will be aggregated as if such Creditor held a single Claim against the Debtors in such Voting Classes, and the votes related to those Claims shall be treated as a single vote on the Plan.

b. Creditors with multiple Claims within the Voting Classes must vote all such Claims in the Voting Classes to either accept or reject the Plan, and may not split their vote(s). Accordingly, an individual Ballot that partially rejects and partially accepts the Plan on account of multiple Claims within the Voting Classes will not be counted.

c. In the event a Claim is transferred after the transferor has executed and submitted a Ballot to the Voting Agent, the transferee of such Claim shall be bound by any such vote (and the consequences thereof) made by the Holder of such transferred Claim as of the Voting Record Date.

d. The delivery of a Ballot will be deemed made only when the Voting Agent has actually received the original, executed Ballot.

e. If a Holder of a Claim casts more than one Ballot voting the same Claim(s) before the Voting Deadline, the last properly executed Ballot received before the Voting Deadline

shall supersede and revoke any earlier received Ballot, and only the last Ballot received before the Voting Deadline shall be counted.

f. If a Holder of a Claim casts multiple Ballots on account of the same Claim or Class of Claims, which are received by the Voting Agent on the same day, but which are voted inconsistently, such Ballots shall not be counted.

g. If a Holder of a Claim submits a duplicate paper Ballot and an electronic Ballot (as provided for using the E-Ballot platform on the Voting Agent's website), only the electronic Ballot will be counted.

h. Unless otherwise provided, any party who has delivered a valid Ballot for the acceptance or rejection of the Plan may withdraw such acceptance or rejection by delivering a written notice of withdrawal to the Voting Agent at any time prior to the Voting Deadline. To be valid, a notice of withdrawal must (i) contain the description of the Claim(s) to which it relates and the aggregate principal amount represented by such Claim(s), (ii) be signed by the withdrawing party in the same manner as the Ballot being withdrawn, and (iii) contain a certification that the withdrawing party owns the Claim(s) and possesses the right to withdraw the vote sought to be withdrawn. The Debtors intend to consult with the Voting Agent to determine whether any withdrawals of Ballots were received and whether the requisite acceptances of the Plan have been received. The Movants expressly reserve the right to contest the validity of any such withdrawals of Ballots.

i. Subject to any contrary order of the Court, the Movants reserve the right to reject any and all Ballots that are not in proper form.

j. Subject to any contrary order of the Court, the Movants reserve the right to waive any defects, irregularities, or conditions of delivery as to any particular Ballot, including failure to timely file such Ballot.

k. Unless otherwise ordered by the Court, any defects or irregularities in connection with deliveries of Ballots must be cured within such time as the Movants (or the Court) determines, and delivery of such Ballots will not be deemed to have been made until such irregularities have been cured or waived.

l. Neither the Movants nor any other person or entity will be under any duty to provide notification of defects or irregularities with respect to deliveries of Ballots, nor will any such party incur any liability for failure to provide such notification. Ballots previously furnished (and as to which any irregularities have not theretofore been cured or waived) will not be counted (except as set forth in subsection (h) above).

m. If no Holders of Claims eligible to vote in the Voting Classes vote to accept or reject the Plan, the Plan and will be deemed accepted by the Holders of such Claims in such Class.

n. The following Ballots shall not be counted in determining acceptance or rejection of the Plan:

- (i) any Ballot that is otherwise properly completed, executed and timely returned to the Voting Agent, but does not indicate an acceptance or rejection of the Plan, or indicates both an acceptance and a rejection of the Plan;
- (ii) any Ballot received after the Voting Deadline, except in the Movants' discretion, or by order of this Court;
- (iii) any Ballot containing a vote that this Court determines, after notice and a hearing, was not solicited or procured in good faith or in accordance with the applicable provisions of the Bankruptcy Code;
- (iv) any Ballot that is illegible or contains insufficient information to permit the identification of the Creditor;
- (v) any Ballot that partially accepts, or partially rejects, the Plan;
- (vi) any Ballot cast by a Person or Entity that does not hold a Claim in the Voting Classes;
- (vii) any unsigned Ballot or Ballot without an original signature, except in the Movants' discretion; and
- (viii) any Ballot transmitted to the Voting Agent by facsimile, e-mail, or other electronic means, unless otherwise permitted.

20. Upon completion of the balloting, the Voting Agent shall certify the amount and number of allowed claims included in the Voting Classes accepting or rejecting the Plan. The Debtors, as one of the Plan Proponents, shall cause such certification to be filed with the Court prior to the commencement of the Confirmation Hearing.

21. On or before **September 23, 2020**, the Balloting Agent will file a signed declaration setting forth the final voting results and methodology used to tabulate the votes (the "Voting Declaration").

22. Objections to final approval and confirmation of the Plan on any ground, including adequacy of the disclosures therein, if any, must: (i) be in writing, (ii) comply with the Bankruptcy Rules and the Local Rules, and (iii) be filed with the Clerk of the Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801, no later than **September 23, 2020 at 4:00 p.m. (ET)**, and (iv) and a copy must served upon: (a) counsel to the Debtors: Mark D. Collins, Esquire and Jason

M. Madron, Esquire at [collins@rlf.com](mailto:collins@rlf.com) and [madron@rlf.com](mailto:madron@rlf.com), respectively (b) counsel to the Committee, Robert J. Gayda, Esquire and Jeffrey R. Waxman, Esquire at [gayda@sewkis.com](mailto:gayda@sewkis.com) and [jwaxman@morrisjames.com](mailto:jwaxman@morrisjames.com), respectively; and (c) counsel to the Office of the United States Trustee, Timothy Fox, Jr., Esquire at [timothy.fox@usdoj.gov](mailto:timothy.fox@usdoj.gov). Unless an objection is timely Filed and served, it may not be considered by the Bankruptcy Court at the Confirmation Hearing.

23. No later than **September 24, 2020**, the Plan Proponents may file a brief in support and submit any evidence in support of confirmation of the Plan, as well as respond to any objections or responses filed in opposition to the Plan.

24. The Bankruptcy Court shall conduct the Confirmation Hearing for (i) final approval of the Plan and (ii) confirmation of the Plan. The Confirmation Hearing is hereby scheduled for **September 25, 2020 at 10:00 a.m. (ET)**. The Confirmation Hearing may be continued from time to time by the Plan Proponents without further notice other than by (i) announcing the adjourned date(s) at the Confirmation Hearing (or any continued hearing) or (ii) filing a notice with the Court.


25. The Plan Proponents are authorized to make non-substantive and ministerial changes to any documents included in the Solicitation Package without further approval of the Court prior to its dissemination, including, without limitation, changes to correct typographical and grammatical errors and to make conforming changes to the Plan and any other materials included in the Solicitation Package prior to their distribution.

26. The Plan Proponents are authorized to take or refrain from taking any action necessary or appropriate to implement the terms of, and the relief granted in, this Order without seeking further order of the Court.

27. The Court shall retain jurisdiction as to all matters relating to the interpretation, implementation, and enforcement of this Order.

28. This Order is effective immediately upon entry.

Dated: August 24th, 2020  
Wilmington, Delaware

  
JOHN T. DORSEY  
UNITED STATES BANKRUPTCY JUDGE