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Hearing Date:
July 20, 2021 at 10:00 a.m. EDT

Objection Deadline:
July 9, 2021 at 4:00 p.m. EDT

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

Chapter 11

In re:

Case No. 20-12117 (MEW)

COSMOLEDO, LLC, *et al.*¹

(Jointly Administered)

Debtors.

**NOTICE OF DEBTORS' MOTION FOR AN ORDER
APPROVING (I) THE ADEQUACY OF THE DISCLOSURE
STATEMENT; (II) SOLICITATION AND NOTICE PROCEDURES;
(III) FORMS OF BALLOTS AND NOTICES IN CONNECTION
THEREWITH AND (IV) CERTAIN DATES WITH RESPECT THERETO**

PLEASE TAKE NOTICE that a hearing on the Debtors' Motion for an Order Approving (I) the Adequacy of the Disclosure Statement; (II) Solicitation and Notice Procedures; (III) Forms of Ballots and Notices in Connection Therewith; and (IV) Certain Dates with Respect Thereto (the "Motion") will be held before the Honorable Michael E. Wiles, United States

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Cosmoledo, LLC (6787); Breadroll, LLC, (3279); 688 Bronx Commissary, LLC (6515); 95 Broad Commissary, LLC (2335); 178 Bruckner Commissary, LLC (2581); 8 West Bakery, LLC (6421); NYC 1294 Third Ave Bakery, LLC (2001); 921 Broadway Bakery, LLC (2352); 1800 Broadway Bakery, LLC (8939); 1535 Third Avenue Bakery, LLC (1011); 2161 Broadway Bakery, LLC (2767); 210 Joralemon Bakery, LLC (4779); 1377 Sixth Avenue Bakery, LLC (9717); 400 Fifth Avenue Bakery, LLC (6378); 1400 Broadway Bakery, LLC (8529); 575 Lexington Avenue Bakery, LLC (9884); 685 Third Avenue Bakery, LLC (9613); 370 Lexington Avenue Bakery, LLC (0672); 787 Seventh Avenue Bakery, LLC (6846); 339 Seventh Avenue Bakery, LLC (1406); and 55 Hudson Yards Bakery, LLC (7583).

Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York (the “Court”), One Bowling Green, on **July 20, 2021, at 10:00 a.m.** prevailing Eastern Time.

PLEASE TAKE FURTHER NOTICE that parties wishing to attend the Hearing must make arrangements through CourtSolutions LLC (www.courtsolutions.com), in accordance with General Order M-543 entered by the Bankruptcy Court for the Southern District of New York on March 20, 2020.

PLEASE TAKE FURTHER NOTICE that responses and objections, if any, to the Motion must be made in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, and shall be filed electronically with the Court on the docket of *In re Cosmoledo LLC et al.*, Case 20-12117 (MEW), and served as to be actually received no later than **4:00 p.m. prevailing Eastern Time on July 9, 2021** by to: (i) Mintz and Gold, LLP, 600 Third Avenue 25th Floor, New York, New York 10016, Attn: Andrew R. Gottesman, Esq., counsel to the Debtors; (ii) Office of the United States Trustee for the Southern District of New York; (iii) the Internal Revenue Service; (iv) New York State Department of Finance; (v) Willkie Farr and Gallagher, 787 Seventh Avenue New York, New York 10019, Attn: Paul V. Shalhoub, Esq., counsel to the holder of Cosmoledo’s equity interests; (vi) Hahn & Hessen LLP, 488 Madison Avenue, New York, New York 10022, Attn: Mark Indelicato, Esq., counsel for the Creditors’ Committee and (vii) all other parties who have requested notice under Bankruptcy Rule 2002.

PLEASE TAKE FURTHER NOTICE that only those responses that are timely filed, served, and received will be considered at the hearing. Failure to file a timely objection may result in entry of a final order granting the Motion as requested by the Debtors.

Dated: New York, New York
June 10, 2021

MINTZ & GOLD LLP

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Attorneys for the Debtors

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

Chapter 11

In re:

Case No. 20-12117 (MEW)

COSMOLEDO, LLC, *et al.*¹

Debtors.

Jointly Administered

**DEBTORS' MOTION FOR AN ORDER APPROVING (I) THE ADEQUACY OF THE
DISCLOSURE STATEMENT; (II) SOLICITATION AND NOTICE PROCEDURES;
(III) FORMS OF BALLOTS AND NOTICES IN CONNECTION THEREWITH;
AND (IV) CERTAIN DATES WITH RESPECT THERETO**

Cosmoledo LLC ("Cosmoledo") and its subsidiaries, as debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"), by and through their undersigned counsel, hereby

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtors' federal tax identification number, include: Cosmoledo, LLC (6787); Breadroll, LLC, (3279); 688 Bronx Commissary, LLC (6515); 95 Broad Commissary, LLC (2335); 178 Bruckner Commissary, LLC (2581); 8 West Bakery, LLC (6421); NYC 1294 Third Ave Bakery, LLC (2001); 921 Broadway Bakery, LLC (2352); 1800 Broadway Bakery, LLC (8939); 1535 Third Avenue Bakery, LLC (1011); 2161 Broadway Bakery, LLC (2767); 210 Joralemon Bakery, LLC (4779); 1377 Sixth Avenue Bakery, LLC (9717); 400 Fifth Avenue Bakery, LLC (6378); 1400 Broadway Bakery, LLC (8529); 575 Lexington Avenue Bakery, LLC (9884); 685 Third Avenue Bakery, LLC (9613); 370 Lexington Avenue Bakery, LLC (0672); 787 Seventh Avenue Bakery, LLC (6846); 339 Seventh Avenue Bakery, LLC (1406); and 55 Hudson Yards Bakery, LLC (7583).

file this Motion for Entry of an Order Approving (I) the Adequacy of the Disclosure Statement; (II) Solicitation and Notice Procedures; (III) Forms of Ballots and Notices in Connection Therewith; and (IV) Certain Dates with Respect Thereto (the “Motion”); and in support of the Motion, the Debtors respectfully state as follows:

Background

1. On September 10, 2020, Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “Petition Date”).

2. The Debtors continue to operate their business and manage their property as debtors and debtors in possession pursuant to Bankruptcy Code §§ 1107(a) and 1108. No trustee or examiner has been appointed in this case. An Official Committee of Unsecured Creditors (the “Committee”) was appointed by the Office of the United States Trustee for Region 2 (the “UST”) on September 18, 2020. The Committee’s appointment was amended on September 21, 2020. [ECF No. 58].

3. The Debtors owned and operated sixteen (16) fine casual bakery cafés (each a “Store,” and collectively, the “Stores”) in New York City under the trade name “Maison Kayser.” Maison Kayser, a global brand, is an authentic artisanal French boulangerie that has been doing business in New York since 2012. Despite its loyal customer base, the Debtors’ production and operational costs required a reorganization of their production facilities and store level management that was completed throughout 2019 into early 2020. At approximately the same time this restructuring was nearing completion, Governor Cuomo declared a state of emergency for the State of New York which required the Debtors to temporarily cease operations.²

4. In March 2020, the Debtors’ post-COVID business plan called for them to reopen their

² See New York State Exec. Order No. 202, dated March 7, 2020.

Stores in June at the latest. At the time, Breadroll LLC, (“Breadroll”), one of the Debtors, was the employer of the majority of the Debtor’s workforce. Accordingly, Breadroll applied for a loan under the Paycheck Protection Program (“PPP”) offered by the Small Business Administration under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Section 7(a)(36) of the Small Business Act (the “PPP Loan”). The PPP Loan was funded on April 20, 2020 in the amount of \$6,662,292. After additional delays in the reinstatement of in-house dining caused by the COVID 19 pandemic, the Debtors determined they would reopen their Stores in September. Ultimately however, the Debtors concluded that there was too great a risk that future operations would fail to generate sufficient capital to repay their obligations in the ordinary course of business. Consequently, the Debtors decided to not reopen their Stores and began seeking restructuring alternatives in mid-July.

5. Following a marketing effort that yielded a potential purchaser with a significant bid, the Debtors filed these cases to seek approval of a sale of the Debtor’s assets and effectuate an orderly liquidation of the remainder of their assets. Without the protection available under the Bankruptcy Code, the Debtors would have undoubtedly faced an immediate and irreparable reduction of their asset base, including their interests under the non-residential leases for many of their Stores. On November 2, 2020, the Court entered an order approving the sale of all or substantially all of the assets of the Debtors to MK USA, LLC, and its affiliates (the “Sale”). [ECF No.: 166]. The Sale closed that same day. [ECF No.: 168].

6. On October 21, 2020, the Debtors filed a Motion of the Debtors for Authorization to Use Funds to Repay Certain Prepetition Obligations Guaranteed by the Small Business Administration (the “PPP Motion”) [ECF No.: 136]. Through the PPP Motion, the Debtors sought authority to repay the PPP Loan because much of the PPP Loan was not utilized for the purposes required by the CARES Act prior to filing. Approximately \$5.3 million of the PPP Loan remains in the Debtor’s control. The

Committee has indicated its position that the PPP Loan is an unsecured obligation that can be used as part of a pro-rata payout to all creditors through a plan. The Debtors, the Small Business Administration, the Department of Justice and the Committee have negotiated a resolution to the PPP Motion. The settlement of the issues in the PPP Motion, which includes the consensual use of the remaining PPP Loan Funds, is embodied in the Plan. The Debtors have now withdrawn the PPP Motion. [ECF No.: 308].

7. The Debtors filed a Motion to Extend the Exclusive Periods to File a Chapter 11 Plan and to Solicit Acceptances Thereof Pursuant to Section 1121(d) of the Bankruptcy Code, on January 5, 2021. [ECF No. 212].³ On February 17, 2021, the Court approved the extension of the Debtors' exclusive periods to file and solicit a plan through March 12, 2021 and May 11, 2021, respectively. [ECF No.: 249]. As negotiations over specific plan provisions continued, it became clear that the Debtors would need additional time to file their plan. Accordingly, the Debtors filed a Second Motion to Extend the Exclusive Periods to File a Chapter 11 Plan and to Solicit Acceptances Thereof Pursuant to Section 1121(d) of the Bankruptcy Code. [ECF No.: 273]. The Court granted this second motion on March 30, 2021, approving the Debtors' exclusive periods to file and solicit a plan through May 12, 2021 and June 14, 2021. [ECF No.: 287]. Finally, as negotiations continued, the Debtors filed a Third Motion to Extend the Exclusivity Periods to File a Chapter 11 Plan and to Solicit Acceptances Thereof Pursuant to Section 1121(d) of the Bankruptcy Code. [ECF No.: 307]. The Court granted this third motion on May 27, 2021, approving the Debtors' exclusive periods to file and solicit a plan through June 10, 2021 and July 31, 2021 respectively. [ECF No.: 319].

³ Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Disclosure Statement to Accompany the Debtors' Plan of Liquidation Pursuant to Section 1122 of the Bankruptcy Code (as may be amended, supplemented or modified from time to time, the "Disclosure Statement") or the Debtors' Plan of Liquidation (as may be amended, supplemented or modified from time to time, the "Plan") both as filed contemporaneously herewith.

8. The Plan, filed concurrently, provides a resolution for this case that will provide a return to holders of Allowed Claims in excess of what would have been returned under any other available alternative scenario. The Debtors intend to solicit acceptances to the Plan and will provide the notices and Disclosure Statement in the form, and on the schedule approved by the Court.

9. The Committee and the SBA support confirmation of the Plan and approval of the Disclosure Statement.

10. As described in greater detail in the Disclosure Statement, the Plan classifies holders of Claims and Interests into certain Classes of Claims and Interests for all purposes, including with respect to voting on the Plan, pursuant to section 1126 of the Bankruptcy Code. Under the Plan, holders of Allowed Claims in Classes 3 and 4 are impaired will be entitled to vote to accept or reject the Plan (the “Voting Classes”) and the Debtors propose to solicit such votes in accordance with this Motion. The Debtors do not propose to solicit votes from (a) holders or Claims in Classes in Classes 1 or 2 because such Claims are not impaired under the Plan and presumed to accept the Plan under sections 1126(f) or (b) holders of Claims or Interests in classes 5, 6 or 7 because those classes will not receive a distribution and are presumed to reject the Plan under section 1126(g) of the Bankruptcy Code (collectively, the “Non-Voting Classes”).

Jurisdiction

11. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York* dated August 28, 1986, as amended by order dated January 21, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this proceeding is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

12. The statutory predicates for the relief requested herein are sections 1125, 1126, and

1128 of the Bankruptcy Code, Bankruptcy Rules 2002, 3016, 3017, 3018, and 3020, and Rules 3017-1, 3018-1, and 3020-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

Relief Requested

13. The Debtors seek entry of an order, substantially in the form attached hereto as Exhibit A (the “Order”), granting the following relief and such other relief as is just and proper:

- (a) ***Disclosure Statement***. Approving the Disclosure Statement as containing “adequate information” pursuant to section 1125 of the Bankruptcy Code;
- (b) ***Solicitation and Voting Procedures***. Approving the procedures for (i) the Debtors soliciting, receiving, and tabulating votes to accept or reject the Plan, (ii) Creditors voting to accept or reject the Plan, and (iii) filing objections to the Plan (the “Solicitation and Voting Procedures”), substantially in the form attached to the Order as Exhibit 1;
- (c) ***Ballots***. Approving the Class 3 and Class 4 ballots (together, the “Ballots”), substantially in the forms attached to the Order as Exhibits 2A and 2B;
- (d) ***Non-Voting Status Notices***. Approving (i) the form of notice applicable to holders of Claims and Interests that are Unimpaired under the Plan and who are pursuant to section 1126(f) of the Bankruptcy Code, conclusively presumed to accept the Plan; (ii) the form of notice applicable to holders of Claims and Interests that are Impaired under the Plan and who are, pursuant to section 1126(g) of the Bankruptcy Code conclusively deemed to reject the Plan; and (iii) the form of notice applicable to holders of Claims that are subject to a pending objection by the Debtors and who are not entitled to vote the disputed portion of such Claim, if any (each, a “Non-Voting Status Notice”), substantially in the forms attached to the Order as Exhibits 3, 4, and 5.
- (e) ***Solicitation Packages***. Finding that the solicitation materials and documents included in the solicitation packages (the “Solicitation Packages”) that will be sent to, among others, holders of Claims entitled to vote to accept or reject the Plan, comply with Bankruptcy Rules 3017(d) and 2002(b);
- (f) ***Cover Letter***. Approving the form of letter (the “Cover Letter”) that the Debtors will send to such holders of Claims entitled to vote to accept or reject the Plan urging such parties to vote in favor of the Plan, substantially in the form attached to the Order as Exhibit 6.
- (g) ***Confirmation Hearing Notice***. Approving the form and manner of notice of the hearing to consider Confirmation of the Plan (the “Confirmation Hearing,” and the notice thereof, the “Confirmation Hearing Notice”), substantially in the form attached to the Order as Exhibit 7; and

(h) **Confirmation Timeline.** Establishing the following dates and deadlines, subject to modification as necessary, set forth in the chart and further described below:

PROPOSED SOLICITATION AND CONFIRMATION TIMELINE	
Hearing on this Motion	July 20, 2021 at 10:00 a.m. (EST)
Voting Record Date	July 20, 2021 at 10:00 a.m. (EST)
Solicitation Deadline	July 23, 2021 at 5:00 p.m. (EST)
Deadline to file Rule 3018 Motions	August 9, 2021 at 5:00 p.m. (EST)
Rule 3018 Response Deadline	August 20, 2021 at 5:00 p.m. (EST)
Voting Deadline	August 18, 2021 at 5:00 p.m. (EST)
Deadline to Object to the Plan	August 20, 2021 at 5:00 p.m. (EST)
Voting Certification Deadline	August 23, 2021 at 5:00 p.m. (EST)
Deadline for Debtors' Response to Plan Objections	August 27, 2021 at 5:00 p.m. (EST)
Confirmation Brief Deadline	August 27, 2021 at 5:00 p.m. (EST)
Confirmation Hearing	August 31, 2021 at 10:00 a.m. (EST)

- i. **Voting Record Date.** The date for determining (x) which holders of Claims in the Voting Classes are entitled to vote to accept or reject the Plan and receive Solicitation Packages in connection therewith and (y) whether Claims have been properly assigned or transferred to an assignee pursuant to Bankruptcy Rule 3001(e) such that the assignee can vote as the holder of the respective Claim (the "Voting Record Date");
- ii. **Solicitation Deadline.** July 23, 2021 at 5:00 p.m. prevailing Eastern Time (or no later than three (3) business days after entry of an order approving the **Solicitation Package, if such date is later than July 23, 2021**) as the deadline for distributing Solicitation Packages including Ballots, to holders of Claims entitled to vote to accept or reject the Plan (the "Solicitation Deadline");
- iii. **Rule 3018 Motion.** August 9, 2021 at 5:00 p.m. prevailing Eastern Time as the date by which any holder of a claim seeking to challenge the allowance of its claim for voting purposes must file a motion for an order temporarily allowing its claim in a different amount or classification for purposes of voting to accept or reject the Plan ("Rule 3018 Motion");

- iv. **Rule 3018 Response Deadline.** August 20, 2021 at 5:00 p.m. prevailing Eastern Time as the date by which the Debtors (and, with respect to filing a response, any other party in interest) must serve any responses to Rule 3018 Motions (“Rule 3018 Response Deadline”)
- v. **Voting Deadline.** August 18, 2021 at 5:00 p.m. prevailing Eastern Time as the deadline by which **all** Ballots must be properly executed, completed, and delivered so that they are **actually received** (the “Voting Deadline”) by Donlin, Recano & Company, Inc. (the “Voting and Claims Agent”);
- vi. **Plan Objection Deadline.** August 20, 2021 at 5:00 p.m. prevailing Eastern Time as the deadline by which objections to the Plan must be filed with the Court and served so as to be **actually received** by the appropriate notice parties (the “Plan Objection Deadline”);
- vii. **Deadline to File Voting Certification.** August 23, 2021 at 5:00 p.m. prevailing Eastern Time as the date by which the report tabulating the voting on the Plan (the “Voting Certification”) must be filed with the Court;
- viii. **Plan Objection Response Deadline.** August 27, 2021 at 5:00 p.m. prevailing Eastern Time as the deadline by which responses to objections to the Plan must be filed with the Court and served so as to be **actually received** by the appropriate notice parties (the “Plan Objection Response Deadline”);
- ix. **Deadline to File the Confirmation Brief.** August 27, 2021 at 5:00 p.m. prevailing Eastern Time as the deadline by which the Debtors must file their brief in support of Confirmation; and
- x. **Confirmation Hearing Date.** August 31, 2021 at 10:00 a.m. prevailing Eastern Time, or as soon thereafter as the Debtors may be heard as the date for the hearing at which the Court will consider Confirmation of the Plan (the “Confirmation Hearing Date”).

BASIS FOR RELIEF

The Court Should Approve the Disclosure Statement.

14. Pursuant to section 1125 of the Bankruptcy Code, the proponent of a proposed chapter 11 plan must provide “adequate information” regarding the plan to holders of impaired claims and interests entitled to vote on the plan. Specifically, section 1125(a)(1) of the Bankruptcy Code states, in relevant part, as follows:

“[A]dequate information” means information of a kind, and in sufficient detail, as far as is

reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan.

11 U.S.C. § 1125(a)(1).

15. A disclosure statement must, as a whole, provide information that is “reasonably practicable” to permit creditors and interest holders to make an “informed judgment” to vote on a plan. *See In re Momentum Mfg. Corp.*, 25 F.3d 1132, 1136 (2d Cir. 1994); *see also In re Ionosphere Clubs, Inc.*, 179 B.R. 24, 29 (S.D.N.Y. 1995) (adequacy of a disclosure statement “is to be determined on a case-specific basis under a flexible standard that can promote the policy of [c]hapter 11 towards fair settlement through a negotiation process between informed interested parties” (internal citation and quotation marks omitted)); *see also In re Amfesco Indus., Inc.*, No. CV-88-2952 (JBW), 1988 WL 141524, at *5 (E.D.N.Y. Dec. 21, 1988) (stating that “[u]nder section 1125 of the Bankruptcy Code, a reasonable and typical creditor or equity security holder must be provided ‘adequate information’ to make an informed judgment regarding a proposed plan.”); *BSL Operating Corp. v. 125 E Taverns, Inc.* (*In re BSL Operating Corp.*), 57 B.R. 945, 950 (Bankr. S.D.N.Y. 1986) (stating that “[s]ection 1125 might be described as a non-rigid ‘how to inform’” section. . . . A disclosure statement . . . is evaluated only in terms of whether it provides sufficient information to permit enlightened voting by holders of claims or interests.”); *In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973, 979 (Bankr. N.D.N.Y. 1988) (the adequacy of a disclosure statement is to be “determined on a case-specific basis under a flexible standard that can promote the policy of [c]hapter 11 towards fair settlement through a negotiation process between informed interested parties.”).

16. “Adequate information” is a flexible standard, based on the facts and circumstances of each case. 11 U.S.C. § 1125(a)(1) (“‘adequate information’ means information of a kind, and in

sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records"); *see also Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988) ("From the legislative history of § 1125 we discern that adequate information will be determined by the facts and circumstances of each case."); *First Am. Bank of N.Y. v. Century Glove, Inc.*, 81 B.R. 274, 279 (D. Del. 1988) (noting that adequacy of disclosure for a particular debtor will be determined based on how much information is available from outside sources). Both this Court and others acknowledge that determining what constitutes "adequate information" for the purpose of satisfying section 1125 of the Bankruptcy Code resides within the broad discretion of the court. *See, e.g., Kirk v. Texaco, Inc.*, 82 B.R. 678, 682 (S.D.N.Y. 1988) ("The legislative history could hardly be more clear in granting broad discretion to bankruptcy judges under § 1125(a): 'Precisely what constitutes adequate information in any particular instance will develop on a case-by-case basis. Courts will take a practical approach as to what is necessary under the circumstances of each case.'" (*quoting* H.R. Rep. No. 595, at 408–09 (1977))); *see also In re River Village Assocs.*, 181 B.R. 795, 804 (E.D. Pa. 1995) ("Under § 1125(a), the Bankruptcy Court is thus given substantial discretion in considering the adequacy of a disclosure statement."); *In re PC Liquidation Corp.*, 383 B.R. 856, 865 (E.D.N.Y. 2008) (internal citations omitted) ("The standard for disclosure is, thus, flexible and what constitutes 'adequate disclosure' in any particular situation is determined on a case-by-case basis, with the determination being largely within the discretion of the bankruptcy court.").

17. In this case, the Disclosure Statement clearly provides "adequate information" to allow holders of Claims in the Voting Classes to make informed decisions about whether to vote to accept or reject the Plan. Specifically, the Disclosure Statement contains a number of categories of information that courts consider "adequate information," including information detailing: (a) the

Debtors' corporate history, corporate structure, events leading to these cases and prepetition marketing efforts (Disclosure Statement at Article II §§ A, B, D and E), (b) the settlement between the PPP Loan (Disclosure Statement at Article III § A(5)); (c) the treatment of claims under the Plan (Disclosure Statement at Article V §§ D and E); (d) the proposed substantive consolidation of the Debtors through the Plan (Disclosure Statement at Article V § G); (e) the exculpations, injunction and releases sought under the Plan (Disclosure Statement at Article V § M); (f) the Debtors' financial information, liquidation analysis and an analysis of the alternatives to confirmation of the Plan (Disclosure Statement at Article VII § A and Article VIII); (g) confirmation procedures and statutory requirements for confirmation (Disclosure Statement at Article VII).

18. The Debtors assert that the depth and detail of the information is sufficient to comply with all aspects of section 1125(a) of the Bankruptcy Code because it allows holders of Claims entitled to vote to make an informed decision on whether to accept or reject the Plan. As a result, the Debtors respectfully submit that the Disclosure Statement provides "adequate information" as defined in section 1125(a) of the Bankruptcy Code and should be approved.

19. Bankruptcy Rule 3016(c) requires that, if a plan provides for an injunction against conduct not otherwise enjoined under the Bankruptcy Code, the plan and disclosure statement must describe, in specific and conspicuous language, the acts to be enjoined and the entities subject to the injunction. Fed. R. Bankr. P. 3016(c). Although the Plan does not contain release of non-debtors by third-parties, in an abundance of caution, the Disclosure Statement clearly and conspicuously describes Sections 9.5 – 9.7 of the Plan which contain the Plan's exculpation, injunction and release. (Disclosure Statement Article IV. § N). Accordingly, the Debtors assert that the Plan complies with Bankruptcy Rule 3016(c).

The Court Should Approve the Materials and Timeline for Soliciting Votes on the Plan.

20. Bankruptcy Rule 3017(d) provides that, for the purposes of soliciting votes in connection with the confirmation of a plan, “creditors and equity security holders shall include holders of stocks, bonds, debentures, notes, and other securities of record on the date the order approving the disclosure statement is entered or another date fixed by the court, for cause, after notice and a hearing.” Fed. R. Bankr. P. 3017(d). Bankruptcy Rule 3018(a) contains a similar provision regarding determination of the record date for voting purposes. *See* Fed. R. Bankr. P. 3018(a). Additionally, Bankruptcy Rule 3017(c) provides that before approving the disclosure statement, the Court must fix a time within which the holders of claims and interests may accept or reject a plan and may fix a date for the hearing on confirmation of a plan. *See* Fed. R. Bankr. P. 3017(c).

21. The Debtors hereby respectfully request that the Court exercise its authority under Bankruptcy Rules 3017(d) and 3018(a) to establish (a) **July 23, 2021 at 5:00 p.m. prevailing Eastern Time** (or no later than three (3) business days after entry of an order approving the **Solicitation Package, if such date is later than July 23, 2021**) as the date of the Solicitation Deadline (the “Solicitation Deadline”); (b) **July 20, 2021** as the Voting Record Date (the “Voting Record Date”); and (c) **August 18, 2021 at 5:00 p.m. prevailing Eastern Time** as the Voting Deadline (the “Voting Deadline”).

22. Moreover, the Debtors propose that, with respect to any transferred Claim, the transferee shall be entitled to receive a Solicitation Package and, if the holder of such Claim is entitled to vote with respect to the Plan, cast a Ballot on account of such Claim only if: (a) all actions necessary to effectuate the transfer of the Claim pursuant to Bankruptcy Rule 3001(e) have been completed by the Voting Record Date or (b) the transferee files by the Voting Record Date (i) the documentation

required by Bankruptcy Rule 3001(e) to evidence the transfer and (ii) a sworn statement of the transferor supporting the validity of the Claim transfer, including the right to vote. In the event a Claim is transferred after the Voting Record Date, the transferee of such Claim shall be bound by any vote on the Plan made by the holder of such Claim as of the Voting Record Date.

**The Court Should Approve the Forms of Ballots and
the Form of Solicitation Packages**

23. In accordance with Bankruptcy Rule 3018(c), the Debtors have prepared and customized the Ballots. Although based on Official Form No. 314, the Ballots have been modified to (a) address the particular circumstances of these chapter 11 cases and (b) include certain additional information that is relevant and appropriate for Claims in certain of the Voting Classes. The proposed Ballots for each Voting Class are annexed as Exhibits 2A and 2B to the Proposed Order. The Debtors respectfully submit that the forms of the Ballots comply with Bankruptcy Rule 3018(c) and, therefore, should be approved.

24. The Debtors propose to send the Solicitation Packages to provide holders of Claims in the Voting Classes with the information they need to be able to make informed decisions with respect to how to vote on the Plan, in accordance with Bankruptcy Rule 3017(d). Specifically, on or before the Solicitation Deadline, the Debtors will cause the Solicitation Packages to be distributed through their Voting and Claims Agent (by first-class U.S. mail) to those holders of Claims in the Voting Classes. Each Solicitation Package will include the following materials:

- (a) a copy of the Solicitation and Voting Procedures;
- (b) a Ballot, together with detailed voting instructions and a pre-addressed, postage pre-paid return envelope;
- (c) the Cover Letter;
- (d) the Disclosure Statement (and exhibits thereto, including the Plan);

- (e) the Disclosure Statement Order (without exhibits, except the Solicitation and Voting Procedures);
- (f) the Confirmation Hearing Notice; and
- (g) such other materials as the Court may direct.

25. The Debtors request that they be authorized to distribute the Plan, the Disclosure Statement, and the Disclosure Statement Order (without exhibits except the Solicitation and Voting Procedures) to holders of Claims entitled to vote on the Plan in electronic format (e.g. on a flash drive). Only the Ballots, the Cover Letter, and the Confirmation Hearing Notice will be provided in paper format. Given the length of the Plan, the Disclosure Statement, and the proposed Order, distribution in this manner will translate into significant monetary savings for the Debtors' estates.

26. Additionally, the Debtors will provide complete Solicitation Packages (excluding the Ballots) to the U.S. Trustee, the Committee, and all parties on all parties requesting notice under Bankruptcy Rule 2002 (the "2002 List") as of the Voting Record Date. Any party that receives the material in electronic format but would prefer paper format may contact the Voting and Claims Agent and request paper copies of the corresponding materials previously received in electronic format (to be provided at the Debtors' expense). The Debtors will not mail Solicitation Packages or other solicitation materials to holders of Claims that have already been paid in full during these chapter 11 cases or that are authorized to be paid in full in the ordinary course of business pursuant to an order previously entered by this Court.

27. The Debtors respectfully request that the Voting and Claims Agent be expressly authorized (to the extent not authorized by another order of the Court) to assist the Debtors in: (a) distributing the Solicitation Package; (b) receiving, tabulating, and reporting on Ballots cast to accept or reject the Plan by holders of Claims against the Debtors; (c) responding to inquiries from holders

of Claims and Interests and other parties in interest relating to the Disclosure Statement, the Plan, the Ballots, the Solicitation Packages, and all other related documents and matters related thereto, including the procedures and requirements for voting to accept or reject the Plan and for objecting to the Plan; (d) soliciting votes on the Plan; and (e) if necessary, contacting creditors regarding the Plan.

28. In addition to accepting hard copy Ballots via first class mail, overnight courier, and hand delivery, the Debtors request authorization to accept Ballots via electronic transmissions. Instructions for electronic, online transmission of Ballots are set forth on the forms of Ballots. For the avoidance of doubt, Ballots submitted via electronic means shall be deemed to contain an original signature.

The Court Should Approve the Notice of Confirmation Hearing.

29. The Debtors will serve the Confirmation Hearing Notice on all known holders of Claims and Interests and the 2002 List (regardless of whether such parties are entitled to vote on the Plan) by no later than July 21, 2021. The Confirmation Hearing Notice will include the following: (a) instructions as to how to view or obtain copies of the Disclosure Statement (including the Plan and the other exhibits thereto), the Order, and all other materials in the Solicitation Package (excluding Ballots) from the Voting and Claims Agent and/or the Court's website via PACER; (b) notice of the Voting Deadline; (c) notice of the date by which the Debtors will file the Plan Supplement; (d) notice of the Plan Objection Deadline; and (e) notice of the Confirmation Hearing Date and information related thereto.

The Court Should Approve the Form of Notices to Non-Voting Classes.

30. As discussed above, the Non-Voting Classes are not entitled to vote on the Plan. As a result, they will not receive Solicitation Packages and, instead, the Debtors propose that such parties receive a Non-Voting Status Notice. Specifically, in lieu of solicitation materials, the Debtors propose

to provide the following to holders of Claims and Interests in Non-Voting Classes:

- (a) ***Non Impaired Claims—Conclusively Presumed to Accept.*** Holders of Claims in Classes 1 and 2 are not impaired under the Plan and, therefore, are conclusively presumed to have accepted the Plan. As such, holders of such Claims will receive a notice, substantially in the form attached to the Order as **Exhibit 3**, in lieu of a Solicitation Package.
- (b) ***Intercompany Claims and Interests and Interests in Cosmoledo, LLC—Deemed to Reject.*** Holders of Interests and Claims in Classes 5, 6 and 7 are receiving no distribution under the Plan and, therefore, are deemed to reject the Plan and will receive a notice, substantially in the form attached to the Order as **Exhibit 4**, in lieu of a Solicitation Package.
- (c) ***Disputed Claims.*** Holders of Claims that are subject to a pending objection by the Debtors are not entitled to vote the disputed portion of their claim. As such, holders of such Claims will receive a notice, substantially in the form attached to the Order as **Exhibit 5**.

31. Each of the Non-Voting Status Notices will include, among other things: (a) instructions as to how to view or obtain copies of the Disclosure Statement (including the Plan and the other exhibits thereto), the Order, and all other materials in the Solicitation Package (excluding Ballots) from the Voting and Claims Agent and/or the Court's website via PACER; (b) a disclosure regarding the settlement, release, exculpation, and injunction language set forth in Article 9 of the Plan; (c) notice of the Plan Objection Deadline; and notice of the Confirmation Hearing Date.

The Court Should Approve the Solicitation and Voting Procedures.

32. Section 1126(c) of the Bankruptcy Code provides that:

A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

11 U.S.C. § 1126(c).

33. Additionally, Bankruptcy Rule 3018(c) provides, in part, that “[a]n acceptance or rejection [of a plan] shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security holder or an authorized agent and conform to the appropriate Official

Form.” Fed. R. Bankr. P 3018(c). Consistent with these requirements, the Debtors propose to use the Solicitation and Procedures. The Solicitation and Voting Procedures include specific voting and tabulation requirements and procedures, as described below.

34. To ease and clarify the process of tabulating all votes received, the Debtors propose that a Ballot be counted in determining the acceptance or rejection of the Plan only if it satisfies certain criteria. Specifically, the Solicitation and Voting Procedures provide that the Debtors not count a Ballot if it is, among other things, illegible, submitted by a holder of a Claim that is not entitled to vote on the Plan, unsigned, or not clearly marked. Further, the Debtors, subject to a contrary order of the Court, may waive any defects or irregularities as to any particular Ballot at any time, either before or after the close of voting, and any such waivers shall be documented in the Voting Certification.

35. The proposed Solicitation and Voting Procedures set forth specific criteria with respect to the general tabulation of Ballots, voting procedures applicable to holders of Claims, and tabulation of such votes. The Debtors believe that the proposed Solicitation and Voting Procedures will facilitate the Plan confirmation process. Specifically, the procedures clarify any obligations of holders of Claims entitled to vote to accept or reject the Plan and create a straightforward process by which the Debtors can determine whether they have satisfied the numerosity requirements of section 1126(c) of the Bankruptcy Code. Accordingly, the Debtors submit that the Solicitation and Voting Procedures are in the best interests of their estates, holders of Claims, and other parties in interest, and that good cause supports the relief requested herein.

The Court Should Approve the Procedures for Confirming the Plan.

36. Section 1128 of the Bankruptcy Code provides that a court shall hold a hearing on confirmation of a plan and provides that parties in interest can object to confirmation. 11 U.S.C. § 1128. Additionally, Bankruptcy Rule 3017(c) provides that, on or before approval of a disclosure

statement, a court shall fix a time for the hearing on confirmation of a plan. Fed R. Bankr. P. 3017(c). In accordance with Bankruptcy Rule 3017(c) and section 1128 of the Bankruptcy Code, the Debtors request that the Court establish August 31, 2021, at 10:00 a.m. prevailing Eastern Time, or as soon thereafter as the Debtors may be heard, as the Confirmation Hearing Date. The Debtors further request that the Confirmation Hearing may be continued from time to time by the Court or the Debtors without further notice to parties in interest other than such adjournment announced in open court and/or a notice of adjournment filed with the Court and served on the 2002 List.

37. Bankruptcy Rules 2002(b) and (d) require no less than 28 days' notice to all holders of Claims of the time fixed for filing objections to the hearing on confirmation of a chapter 11 plan. The Debtors request that the Court establish August 20, 2021, at 5:00 p.m. prevailing Eastern Time as the Plan Objection Deadline.

38. The Debtors also request that the Court direct the manner in which parties in interest may object to confirmation of the Plan. Pursuant to Bankruptcy Rule 3020(b)(1), objections to confirmation of a plan must be filed and served "within a time fixed by the court." Fed. R. Bankr. P. 3020(b)(1). The Confirmation Hearing Notice will require that objections to confirmation of the Plan or requests for modifications to the Plan, if any, must:

- (a) be in writing;
- (b) conform to the Bankruptcy Rules, the Local Rules, and any orders of the Court;
- (c) state, with particularity, the legal and factual basis for the objection and, if practicable, a proposed modification to the Plan (or related materials) that would resolve such objection; and
- (d) be filed with the Court (contemporaneously with a proof of service) upon the notice parties so as to be **actually received** on or before the Plan Objection Deadline.

39. The Debtors believe that the Plan Objection Deadline for filing and service of objections (and proposed modifications, if any) will afford the Court, the Debtors, and other parties in

interest reasonable time to consider the objections and proposed modifications prior to the Confirmation Hearing.

40. The Debtors request authorization to make non-substantive changes to the Disclosure Statement, Disclosure Statement Hearing Notice, Plan, Confirmation Hearing Notice, Solicitation Packages, Non-Voting Status Notices, Ballots, Cover Letter, Solicitation and Voting Procedures, Plan Supplement Notice, Assumption and Rejection Notices, Voting and Tabulation Procedures, and related documents without further order of the Court, including changes to correct typographical and grammatical errors, if any, and to make conforming changes to the Disclosure Statement, the Plan, and any other materials in the Solicitation Packages before distribution.

NO PREVIOUS REQUEST

41. No prior motion for the relief requested herein has been made by the Debtors to this or any other court.

NOTICE

42. The Debtors will serve notice of the hearing scheduled for the Court to consider approval of the Disclosure Statement, in the form attached hereto (the “Disclosure Statement Hearing Notice”), The Disclosure Statement Hearing Notice, identifies the following: (a) the date, time, and place of the Disclosure Statement Hearing; (b) the manner in which a copy of the Disclosure Statement (and exhibits thereto, including the Plan) can be obtained; and (c) the deadline and procedures for filing objections to the approval of the Disclosure Statement.

43. Bankruptcy Rule 3017(a) requires that notice of the hearing to consider the proposed disclosure statement be provided to creditors and other parties in interest. Fed. R. Bankr. P. 3017(a). Bankruptcy Rule 2002(b) requires that all of the Debtor’s creditors and equity security holders be given at least twenty-eight (28) days’ notice by mail of the hearing and the time to file objections to

the Disclosure Statement. Fed. R. Bankr. P. 2002(b). The Disclosure Statement Hearing Notice, a copy of this Motion, including the proposed approval order, and the Disclosure Statement will be served on (i) the Office of the United States Trustee; (ii) the Internal Revenue Service; (iii) New York State Department of Finance; (iv) Willkie Farr and Gallagher LLP, 787 Seventh Avenue New York, New York 10019 Attn: Paul V. Shalhoub, Esq.; counsel to the holder of Cosmoledo's equity interests; (v) Hahn & Hessen LLP, 488 Madison Avenue, New York, New York 10022, Attn: Mark Indelicato, Esq., counsel for the Committee; (vi) the United States Attorney for the Southern District of New York and (vii) all parties who have filed a notice of appearance in this case under Bankruptcy Rule 2002. Additionally, the Debtors will serve the Disclosure Statement Hearing Notice (a) all persons listed on the Debtor's Schedules of Assets and Liabilities (the "Schedules") as holding claims against, or interests in, the Debtor or its property, (b) all persons not listed on the Schedules who have filed proofs of claim in this case, (c) any state and local taxing authorities in each jurisdiction in which the Debtor conducted business. The Debtors will also make the Disclosure Hearing Notice and all related documents available on the website of the Debtors' Claims Agent, free of charge at <https://www.donlinrecano.com/Clients/mk/Index>. The Debtor submits that such notice satisfies the requirements of the Bankruptcy Code, Bankruptcy Rule 2002, Bankruptcy Rule 3017, and the Local Rules of this Court.

CONCLUSION

44. WHEREFORE, for the reasons set forth above, the Debtors respectfully request the Court enter an Order in substantially in the form attached hereto as **Exhibit A** granting the relief requested herein and such other and further relief as the Court deems appropriate.

Dated: New York, New York
June 10, 2021

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Attorneys for the Debtors

EXHIBIT A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

Chapter 11

In re:

Case No. 20-12117 (MEW)

COSMOLEDO, LLC, *et al.*¹

Debtors.

Jointly Administered

ORDER APPROVING (I) THE ADEQUACY OF THE DISCLOSURE STATEMENT; (II) SOLICITATION AND NOTICE PROCEDURES; (III) FORMS OF BALLOTS AND NOTICES IN CONNECTION THEREWITH; AND (IV) CERTAIN DATES WITH RESPECT THERETO

Upon the motion (the “Motion”)² of Cosmoledo, LLC, *et al.*, as debtors and debtors-in-possession (collectively the “Debtors”) in the above-captioned Chapter 11 cases (the “Chapter 11 Cases”), for entry of an order pursuant to Sections 105, 363, 1125, 1126, and 1128 of the Bankruptcy Code, Bankruptcy Rules 2002, 3016, 3017, 3018, 3020, and Local Rules 3017- 1, 3018-1, and 3020-1 approving: (a) the *Disclosure Statement for Chapter 11 Plan of Liquidation of the Debtors* (the “Disclosure Statement”); (b) the Voting Record Date, Solicitation Deadline, and Voting Deadline; (c) the manner and form of the Solicitation Packages and the materials contained therein; (d) the Non-Voting Status Notices; (e) the Solicitation and Voting Procedures; (f) the Plan Objection Deadline, Confirmation Hearing Date, and Confirmation Hearing Notice; and (g) the dates and deadlines related thereto, all as more fully described in the Motion; and the Court having reviewed and considered the Motion; [no objections to the Motion having been filed]; and upon the record of the hearing held on July 20, 2021

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtors’ federal tax identification number, include: Cosmoledo, LLC (6787); Breadroll, LLC, (3279); 688 Bronx Commissary, LLC (6515); 95 Broad Commissary, LLC (2335); 178 Bruckner Commissary, LLC (2581); 8 West Bakery, LLC (6421); NYC 1294 Third Ave Bakery, LLC (2001); 921 Broadway Bakery, LLC (2352); 1800 Broadway Bakery, LLC (8939); 1535 Third Avenue Bakery, LLC (1011); 2161 Broadway Bakery, LLC (2767); 210 Joralemon Bakery, LLC (4779); 1377 Sixth Avenue Bakery, LLC (9717); 400 Fifth Avenue Bakery, LLC (6378); 1400 Broadway Bakery, LLC (8529); 575 Lexington Avenue Bakery, LLC (9884); 685 Third Avenue Bakery, LLC (9613); 370 Lexington Avenue Bakery, LLC (0672); 787 Seventh Avenue Bakery, LLC (6846); 339 Seventh Avenue Bakery, LLC (1406); and 55 Hudson Yards Bakery, LLC (7583).

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Motion.

for the Court to consider the relief sought in the Motion; and after due deliberation;

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The Court has jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012.

B. The is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

C. This Court may enter a final order consistent with Article III of the United States Constitution.

D. Venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

E. Notice of the Motion as set forth therein is sufficient under the circumstances, and that no other or further notice need be provided. The Disclosure Statement Hearing Notice, filed by the Debtors and served upon parties in interest in these chapter 11 cases, constitutes adequate and sufficient notice of the hearings to consider approval of the Disclosure Statement, the manner in which a copy of the Disclosure Statement (and exhibits thereto, including the Plan) could be obtained, and the time fixed for filing objections thereto, in satisfaction of the requirements of the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

F. The relief requested in the Motion is in the best interests of the Debtors' estates, creditors, and other parties-in-interest.

G. The Disclosure Statement contains adequate information as that term is defined under 11 U.S.C. § 1125(a)(1) because it provides holders of Claims entitled to vote on the Plan with adequate information to make an informed decision as to whether to vote to accept or reject the Plan.

H. The Disclosure Statement (including all applicable exhibits thereto) provides holders of Claims, holders of Interests, and other parties in interest with sufficient notice of the injunction,

exculpation, and release provisions contained in Article 9 of the Plan, in satisfaction of the requirements of Bankruptcy Rule 3016(c).

I. The Solicitation Packages provide the holders of Claims entitled to vote on the Plan with adequate information and make informed decisions with respect to voting on the Plan in accordance with Bankruptcy Rules 2002(b) and 3017(d), the Bankruptcy Code, and the Local Rules.

IT IS HEREBY ORDERED THAT

1. The Motion is granted as and to the extent set forth herein.
2. The Disclosure Statement, the exhibits thereto, are hereby approved as complying with the Bankruptcy Code, including 11 U.S.C. § 1125, and may be used by the Debtors in connection with solicitation for votes to accept or reject the Plan.
3. The following dates are hereby established subject to modification as necessary) with respect to the solicitation of votes to accept, and voting on, the Plan:
 - (a) **July 20, 2021 at 10:00 am prevailing Eastern Time** as the date for determining (i) which holders of Claims in the Voting Classes are entitled to vote to accept or reject the Plan and receive Solicitation Packages in connection therewith and (ii) whether Claims have been properly assigned or transferred to an assignee pursuant to Bankruptcy Rule 3001(e) such that the assignee can vote as the holder of the respective Claim (the “**Voting Record Date**”);
 - (b) the Debtors shall distribute Solicitation Packages to holders of Claims entitled to vote on the Plan by **July 23, 2021** (or no later than three (3) business days after entry of an order approving the **Solicitation Package, if such date is later than July 23, 2021**)(the “**Solicitation Deadline**”);
 - (c) **August 9, 2021 at 5:00 p.m.** prevailing Eastern Time as the date by which any holder of a claim seeking to challenge the allowance of its claim for voting purposes shall file a motion for an order temporarily allowing its claim in a different amount or classification for purposes of voting to accept or reject the Plan (“**Rule 3018 Motion**”);
 - (d) **August 20, 2021 at 5:00 p.m. prevailing Eastern Time** as the date by which the Debtors (and, with respect to filing a response, any other party in interest) shall serve any responses to Rule 3018 Motions (“**Rule 3018 Response Deadline**”); and
 - (e) all holders of Claims entitled to vote on the Plan must complete, execute, and return their Ballots so that they are **actually received** by the Voting and Claims Agent pursuant to the

Solicitation and Voting Procedures, on or before **August 18, 2021 at 5:00 p.m. prevailing Eastern Time** (the “**Voting Deadline**”).

- (f) **August 20, 2021, at 5:00 p.m. prevailing Eastern Time** as the deadline by which objections to the Plan must be filed with the Court and served so as to be actually received by the appropriate notice parties (the “**Plan Objection Deadline**”);
- (g) notwithstanding anything to the contrary in Local Rule 3018-1(a), **August 23, 2021 at 5:00 p.m. prevailing Eastern Time** shall be the date by which the voting certification must be filed with the Court;
- (h) **August 27, 2021, at 5:00 p.m. prevailing Eastern Time** shall be the date by which responses to objections to the Plan must be filed with the Court and served so as to be **actually received** by the appropriate notice parties (as identified below) (the “**Plan Objection Response Deadline**”);
- (i) **August 27, 2021, at 5:00 p.m. prevailing Eastern Time** shall be the date by which the Debtors shall file their brief in support of Confirmation; and
- (j) the Court shall consider Confirmation of the Plan at the hearing to be held on **August 31, 2021, at 10:00 a.m. prevailing Eastern Time** (the “**Confirmation Hearing Date**”).

4. In addition to the Disclosure Statement and exhibits thereto, the Solicitation Packages to be transmitted on or before the Solicitation Deadline to those holders of Claims in the Voting Classes entitled to vote on the Plan as of the Voting Record Date, shall include the following, the form of each of which is hereby approved:

- (a) an appropriate form of Ballot attached hereto as **Exhibits 2A**, and **2B**;
- (b) the Cover Letter attached hereto as **Exhibit 6**; and
- (c) the Confirmation Hearing Notice attached hereto as **Exhibit 7**.

5. The Debtors shall distribute Solicitation Packages to all holders of Claims entitled to vote on the Plan on or before the Solicitation Deadline. Such service shall satisfy the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

6. The Debtors are authorized, but not directed or required, to distribute the Plan, the Disclosure Statement and this Order, in electronic format (*e.g.*, on a flash drive), to holders of Claims entitled to vote on the Plan. Only the Ballots as well as the Cover Letter and the Confirmation Hearing

Notice will be provided in paper form. On or before the Solicitation Deadline, the Debtors (through their Voting and Claims Agent) shall provide complete Solicitation Packages (other than Ballots) to the U.S. Trustee, the Committee, and to all parties on the 2002 List as of the Voting Record Date.

7. Any party that receives the materials in electronic format but would prefer to receive materials in paper format may contact the Voting and Claims Agent and request paper copies of the corresponding materials previously received in electronic format (to be provided at the Debtors' expense).

8. The Voting and Claims Agent is authorized to assist the Debtors in: (a) distributing the Solicitation Package; (b) receiving, tabulating, and reporting on Ballots cast to accept or reject the Plan by holders of Claims against the Debtors; (c) responding to inquiries from holders of Claims and Interests and other parties in interest relating to the Disclosure Statement, the Plan, the Ballots, the Solicitation Packages, and all other related documents and matters related thereto, including the procedures and requirements for voting to accept or reject the Plan and for objecting to the Plan; (d) soliciting votes on the Plan; and (e) if necessary, contacting creditors regarding the Plan.

9. The Voting and Claims Agent is also authorized to accept Ballots via the Debtors' online vote portal. Ballots submitted via electronic means shall be deemed to contain an original signature.

10. The Confirmation Hearing Notice, in the form attached hereto as **Exhibit 7** once filed by the Debtors and served upon parties in interest in these chapter 11 cases, including those parties not receiving a Solicitation Package, on or before the Solicitation Deadline constitutes adequate and sufficient notice of the hearings to consider approval of the Plan, the manner in which a copy of the Plan could be obtained, and the time fixed for filing objections thereto, in satisfaction of the requirements of the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

11. Except to the extent the Debtors determine otherwise, the Debtors are not required to provide Solicitation Packages to holders of Claims or Interests in Non-Voting Classes, as such holders are not entitled to vote on the Plan. Instead, on or before the Solicitation Deadline, the Voting and Claims Agent shall mail (first-class postage pre-paid) a Non-Voting Status Notice in lieu of Solicitation Packages, the form of each of which is hereby approved, to those parties, outlined below, who are not entitled to vote on the Plan:

- (a) ***Non-Impaired Claims—Conclusively Presumed to Accept.*** Holders of Claims in Classes 1 and 2 are not impaired under the Plan and, therefore, are conclusively presumed to have accepted the Plan. As such, holders of such Claims will receive a notice, substantially in the form attached to the Order as **Exhibit 3**, in lieu of a Solicitation Package.
- (b) ***Other Interests and Claims—Deemed to Reject.*** Holders of Interests and Claims in Classes 5, 6, and 7 are receiving no distribution under the Plan and, therefore, are deemed to reject the Plan and will receive a notice, substantially in the form attached to the Order as **Exhibit 4**, in lieu of a Solicitation Package.
- (c) ***Disputed Claims.*** Holders of Claims that are subject to a pending objection by the Debtors are not entitled to vote the disputed portion of their claim. As such, holders of such Claims will receive a notice, substantially in the form attached to the Order as **Exhibit 5**.

12. The Debtors are not required to mail Solicitation Packages or other solicitation materials to: (a) holders of Claims that have already been paid in full during these chapter 11 cases or that are authorized to be paid in full in the ordinary course of business pursuant to an order previously entered by this Court; or (b) any party to whom the Disclosure Statement Hearing Notice was sent but was subsequently returned as undeliverable.

13. The Debtors are authorized to solicit, receive, and tabulate votes to accept the Plan in accordance with the Solicitation and Voting Procedures attached hereto as **Exhibit 1** which are hereby approved in their entirety.

14. Objections to the Plan will not be considered by the Court unless such objections are timely filed and properly served in accordance with this Order. Specifically, all objections to

confirmation of the Plan or requests for modifications to the Plan, if any, **must**: (a) be in writing; (b) conform to the Bankruptcy Rules and the Local Rules; (c) state, with particularity, the legal and factual basis for the objection and, if practicable, a proposed modification to the Plan (or related materials) that would resolve such objection; and (d) be filed with the Court (contemporaneously with a proof of service) and served upon the notice parties so as to be **actually received** on or before **August 20, 2021 at 5:00 p.m. prevailing Eastern Time** by each of the notice parties identified in the Confirmation Hearing Notice.

15. The Debtors reserve the right to modify the Plan in accordance with Section 15.1 thereof, including the right to withdraw the Plan as to any or all Debtors at any time before the Confirmation Date.

16. Nothing in this Order shall be construed as a waiver of the right of the Debtors or any other party in interest, as applicable, to object to a proof of claim after the Voting Record Date.

17. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

18. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

19. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.

Dated: New York, New York
June __, 2021

HONORABLE MICHAEL E. WILES
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Solicitation and Voting Procedures

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

Chapter 11

In re:

Case No. 20-12117 (MEW)

COSMOLEDO, LLC, *et al.*¹

Debtors.

Jointly Administered

SOLICITATION AND VOTING PROCEDURES

PLEASE TAKE NOTICE THAT on [____], 2021, the United States Bankruptcy Court for the Southern District of New York (the “Court”) entered an order (the “Disclosure Statement Order”), (a) authorizing Cosmoledo, LLC, *et al.*, as debtors and debtors-in-possession (collectively the “Debtors”), to solicit acceptances for the *Chapter 11 Plan of Liquidation of Debtors* (as may be amended, supplemented, or modified from time to time, the “Plan”);² (b) approving the *Disclosure Statement for Chapter 11 Plan of Liquidation of Debtors* (as may be amended, supplemented, or modified from time to time, the “Disclosure Statement”) as containing “adequate information” pursuant to section 1125 of the Bankruptcy Code; (c) approving the solicitation materials and documents to be included in the solicitation packages (the “Solicitation Packages”); and (d) approving procedures for soliciting, receiving, and tabulating votes on the Plan and for filing objections to the Plan.

A. The Voting Record Date.

The Court has approved [_____, 2021], as the record date for purposes of determining which holders of Claims in Class 3 (PPP Eligible Claims) and Class 4 (General Unsecured Claims) are entitled to vote on the Plan (the “Voting Record Date”).

B. The Voting Deadline.

The Court has approved [_____, 2021], at 5:00 p.m. prevailing Eastern Time as the voting deadline (the “Voting Deadline”) for the Plan. The Debtors may extend the Voting Deadline, in their

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtors’ federal tax identification number, include: Cosmoledo, LLC (6787); Breadroll, LLC, (3279); 688 Bronx Commissary, LLC (6515); 95 Broad Commissary, LLC (2335); 178 Bruckner Commissary, LLC (2581); 8 West Bakery, LLC (6421); NYC 1294 Third Ave Bakery, LLC (2001); 921 Broadway Bakery, LLC (2352); 1800 Broadway Bakery, LLC (8939); 1535 Third Avenue Bakery, LLC (1011); 2161 Broadway Bakery, LLC (2767); 210 Joralemon Bakery, LLC (4779); 1377 Sixth Avenue Bakery, LLC (9717); 400 Fifth Avenue Bakery, LLC (6378); 1400 Broadway Bakery, LLC (8529); 575 Lexington Avenue Bakery, LLC (9884); 685 Third Avenue Bakery, LLC (9613); 370 Lexington Avenue Bakery, LLC (0672); 787 Seventh Avenue Bakery, LLC (6846); 339 Seventh Avenue Bakery, LLC (1406); and 55 Hudson Yards Bakery, LLC (7583).

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Disclosure Statement.

discretion, without further order of the Court. To be counted as votes to accept or reject the Plan, all ballots sent to registered holders of Claims (“Ballots”) must be properly executed, completed, and returned in the pre-paid, pre-addressed return envelope included in the Solicitation Package or delivered by: (1) first class mail; (2) overnight courier; (3) personal delivery; or (4) via the Debtors’ online vote portal, so that they are **actually received**, in any case, no later than the Voting Deadline by Donlin, Recano & Company, Inc. (the “Voting and Claims Agent”). All Ballots should be sent to: (1) if by mail, Donlin, Recano & Company, Inc. Re: Cosmoledo, LLC, et al., P.O. Box 199043 Blythebourne Station, Brooklyn, New York 11219; (2) if by hand delivery or overnight courier, Donlin, Recano & Company, Inc. Re: Cosmoledo, LLC, et al., 6201 15th Avenue, Brooklyn, New York 11219; or (3) via the Debtors’ online vote portal at www.DonlinRecano.com/clients/mk/vote. Delivery of a Ballot to the Voting and Claims Agent by facsimile or e-mail shall not be valid.

C. Form, Content, and Manner of Notices.

The following materials shall constitute the solicitation package (the “Solicitation Package”):

- (a) a copy of these Solicitation and Voting Procedures, annexed as Exhibit 1 to the Disclosure Statement Order;
- (b) the applicable form of Ballot, in substantially the form of Ballots annexed as Exhibit 2 to the Disclosure Statement Order, as applicable including a pre- paid, pre-addressed return envelope;
- (c) a cover letter, in substantially the form annexed as Exhibit 6 to the Disclosure Statement Order describing the contents of the Solicitation Package and urging the holders of Claims in each of the Voting Classes to vote to accept the Plan;
- (d) the Notice of Hearing to Consider Confirmation of the Joint Chapter 11 Plan of Liquidation of Debtors Filed by the Debtors and Related Voting and Objection Deadlines, in substantially the form annexed as Exhibit 7 to the Disclosure Statement Order (the “Confirmation Hearing Notice”);
- (e) the approved Disclosure Statement (and exhibits thereto, including the Plan) annexed as Exhibit 8 to the Disclosure Statement Order;
- (f) the Disclosure Statement Order (without exhibits); and
- (g) any additional documents that the Court has ordered to be made available.

The Solicitation Package shall provide the Plan, the Disclosure Statement, and the Disclosure Statement Order (without exhibits, except the Solicitation and Voting Procedures) in electronic format (*e.g.*, on a flash drive), and all other contents of the Solicitation Package, including Ballots, shall be provided in paper format. Any party that receives the materials in electronic format but would prefer paper format may contact the Voting and Claims Agent by: (a) calling 212-771-1128; (b) visiting the Debtors’ restructuring website at <http://www.donlinrecano.com/Clients/mk/Index> (b) writing to Donlin,

Recano & Company, Inc., Re: Cosmoledo, LLC et al., Attn: Voting Department, c/o Donlin, Recano & Company, Inc., 6201 15th Avenue, Brooklyn, NY 11219; and/or (c) emailing DRCVote@DonlinRecano.com and requesting paper copies of the corresponding materials previously received in electronic format (to be provided at the Debtors' expense).

The Debtors shall serve, or cause to be served, all of the materials in the Solicitation Package (excluding the Ballots) on the U.S. Trustee, the Committee, and all parties who have requested service of papers in this case pursuant to Bankruptcy Rule 2002 as of the Voting Record Date. In addition, the Debtors shall mail, or cause to be mailed, the Solicitation Package to all holders of Claims in the Voting Classes on or before [_____, 2021] who are entitled to vote, as described below.

To avoid duplication and reduce expenses, the Debtors will use commercially reasonable efforts to ensure that any holder of a Claim who has filed duplicative Claims against a Debtor (whether against the same or multiple Debtors) that are classified under the Plan in the same Voting Class receives no more than one Solicitation Package (and, therefore, one Ballot) on account of such Claim and with respect to that Class as against that Debtor.

Certain Holders of Claims and Interests that are not classified in accordance with section 1123(a)(1) of the Bankruptcy Code or who are not entitled to vote because they are Unimpaired or otherwise presumed to accept the Plan under section 1126(f) of the Bankruptcy Code will receive only the *Notice of Non-Voting Status to Holders of Unimpaired Claims Conclusively Presumed to Accept the Plan*, substantially in the form annexed as **Exhibit 3** to the Disclosure Statement Order. Such notice will instruct these holders as to how they may obtain copies of the documents contained in the Solicitation Package (excluding Ballots). Certain holders of Claims and Interests who are not entitled to vote because they are deemed to reject the Plan under section 1126(g) of the Bankruptcy Code will receive the *Notice of Non-Voting Status to Holders of Impaired Claims and Equity Interests Deemed to Reject the Plan*, substantially in the form annexed as **Exhibit 4** to the Disclosure Statement Order. Such notice will instruct these holders as to how they may obtain copies of the documents contained in the Solicitation Package (excluding Ballots).

D. Rule 3018 Motions

Claims that have not been previously allowed by order of the Bankruptcy Court will be deemed to be temporarily allowed, solely for purposes of voting on the Plan if holders of such claims file a motion with the Bankruptcy Court seeking such relief ("Rule 3018 Motion") by no later than [_____, 2021] at 5:00 p.m. The Debtors (and, with respect to filing a response, any other party in interest) shall serve any responses to a Rule 3018 Motion by [_____, 2021] at 5:00 p.m.

Absent a further order of the Court, the holder of a Claim in a Voting Class that is the subject of a pending objection filed with the Court by the Debtor on a "reduce and allow" basis shall be entitled to vote such Claim in the reduced amount contained in such objection.

If a Claim in a Voting Class is subject to an objection other than a "reduce and allow" objection that is filed with the Court by the Debtors no later than the Solicitation Deadline: (i) the Debtors shall cause the applicable holder to be served with a Disputed Claim Notice substantially in the form annexed

as **Exhibit 5** to the Disclosure Statement Order; and (ii) the applicable holder shall not be entitled to vote to accept or reject the Plan on account of such claim unless a Resolution Event (as defined herein) occurs as provided herein.

No later than one business day following the occurrence of a Resolution Event, the Debtors shall cause the Voting and Claims Agent to distribute via email, hand delivery, or overnight courier service a Solicitation Package and a pre-addressed, postage pre-paid envelope to the relevant holder.

A “Resolution Event” means the occurrence of one or more of the following events no later than three business days prior to the Voting Deadline: an order of the Court is entered allowing such Claim pursuant to section 502(b) of the Bankruptcy Code, after notice and a hearing: (a) an order of the Court is entered temporarily allowing such Claim for voting purposes only pursuant to Bankruptcy Rule 3018(a), after notice and a hearing; (b) a stipulation or other agreement is executed between the holder of such Claim and the Debtors resolving the objection and allowing such Claim in an agreed upon amount; or (c) the pending objection is voluntarily withdrawn by the Debtors.

E. Voting and Tabulation Procedures.

Only the following holders of Claims in the Voting Classes shall be entitled to vote with regard to such Claims:

- (a) holders of Claims who, on or before the Voting Record Date, have timely filed a Proof of Claim (or an untimely Proof of Claim that has been Allowed as timely by the Court under applicable law on or before the Voting Record Date) that: (i) has not been expunged, disallowed, disqualified, withdrawn, or superseded prior to the Voting Record Date; and (ii) is not the subject of a pending objection filed with the Court by the Debtors at least seven days prior to the Voting Deadline, pending a Resolution Event as provided herein; provided that a holder of a Claim that is the subject of a pending objection on a “reduce and allow” basis shall receive a Solicitation Package and be entitled to vote such Claim in the reduced amount contained in such objection absent a further order of the Court;
- (b) holders of Claims that are listed in the Schedules, *provided* that if the applicable Claims Bar Date has not expired prior to the Voting Record Date, a Claim listed in the Schedules as contingent, disputed, or unliquidated shall be allowed to vote only in the amount of \$1.00;
- (c) holders whose Claims arise: (i) pursuant to an agreement or settlement with the Debtors, as reflected in a document filed with the Court, (ii) in an order entered by the Court, or (iii) in a document executed by the Debtors pursuant to authority granted by the Court, in each case regardless of whether a Proof of Claim has been filed;
- (d) holders of any Disputed Claim that has been temporarily allowed to vote on the Plan pursuant to Bankruptcy Rule 3018; and
- (e) with respect to any Entity described in subparagraphs (a) through (d) above, who, on or before the Voting Record Date, has transferred such Entity’s Claim to another Entity, the

assignee of such Claim; provided that such transfer or assignment has been fully effectuated pursuant to the procedures set forth in Bankruptcy Rule 3001(e) and such transfer is reflected on the Claims Register on the Voting Record Date.

F. Establishing Claim Amounts for Voting Purposes.

Class 3 Claims. The Claims amount of Class 3 Claims for voting purposes only will be established based on the amount of the claim held by such Class 3 Claim holder as of the Voting Record Date, as evidenced by (a) the Schedules and (b) the claims register maintained in these chapter 11 cases or (c) as otherwise agreed to by and among the Debtors, the Secured Parties, and the Claim holder.

Class 4 Claims. The Claims amount of Class 4 Claims for voting purposes only will be established based on the amount of the claim held by such Class 4 Claim holder as of the Voting Record Date, as evidenced by (a) the Schedules, (b) the claims register maintained in these chapter 11 cases, or (c) as otherwise agreed to by and among the Debtors, the Secured Parties, and the Claim holder.

If a Proof of Claim is amended, the last filed claim shall be subject to these rules and will supersede any earlier filed claim, and any earlier filed claim will be disallowed for voting purposes.

File/Scheduled Claims. The Claim amount established herein shall control for voting purposes only and shall not constitute the Allowed amount of any Claim. Moreover, any amounts filled in on Ballots by the Debtors through the Voting and Claims Agent, as applicable, are not binding for purposes of allowance and distribution. In tabulating votes, the following hierarchy shall be used to determine the amount of the Claim associated with each claimant's vote:

- (a) the Claim amount: (i) settled and/or agreed upon by the Debtors, as reflected in a document filed with the Court, (ii) set forth in an order of the Court, or (iii) set forth in a document executed by the Debtors pursuant to authority granted by the Court;
- (b) the Claim amount Allowed (temporarily or otherwise) pursuant to a Resolution Event under the procedures set forth in the Solicitation and Voting Procedures;
- (c) the Claim amount contained in a Proof of Claim that has been timely filed (or deemed timely filed by the Court under applicable law), except for any amounts asserted on account of any interest accrued after the Petition Date; provided, however, that Ballots cast by holders of Claims who timely file a Proof of Claim in respect of a contingent Claim or in a wholly-unliquidated or unknown amount that is not the subject of an objection will count for satisfying the numerosity requirement of section 1126(c) of the Bankruptcy Code and will count as Ballots for Claims in the amount of \$1.00 solely for the purposes of satisfying the dollar amount provisions of section 1126(c) of the Bankruptcy Code, and, if a Proof of Claim is filed as partially liquidated and partially unliquidated, such Claim will be Allowed for voting purposes only in the liquidated amount; provided, further, that to the extent the Claim amount contained in the Proof of

Claim is different from the Claim amount set forth in a document filed with the Court as referenced in subparagraph (a) above, the Claim amount in the document filed with the Court shall supersede the Claim amount set forth on the respective Proof of Claim;

- (d) the Claim amount listed in the Schedules, *provided* that such Claim is not scheduled as contingent, disputed, or unliquidated and/or has not been paid; *provided, further*, that if the applicable Claims Bar Date has not expired prior to the Voting Record Date, a Claim listed in the Schedules as contingent, disputed, or unliquidated shall be allowed to vote only in the amount of \$1.00; and
- (e) in the absence of any of the foregoing, such Claim shall be disallowed for voting purposes unless otherwise ordered by the Court.
- (f) the Claim amount Allowed (temporarily or otherwise) pursuant to a Resolution Event under the procedures set forth in the Solicitation and Voting Procedures;
- (g) the Claim amount contained in a Proof of Claim that has been timely filed (or deemed timely filed by the Court under applicable law), except for any amounts asserted on account of any interest accrued after the Petition Date; *provided, however*, that Ballots cast by holders of Claims who timely file a Proof of Claim in respect of a contingent Claim or in a wholly-unliquidated or unknown amount that is not the subject of an objection will count for satisfying the numerosity requirement of section 1126(c) of the Bankruptcy Code and will count as Ballots for Claims in the amount of \$1.00 solely for the purposes of satisfying the dollar amount provisions of section 1126(c) of the Bankruptcy Code, and, if a Proof of Claim is filed as partially liquidated and partially unliquidated, such Claim will be Allowed for voting purposes only in the liquidated amount; *provided, further*, that to the extent the Claim amount contained in the Proof of Claim is different from the Claim amount set forth in a document filed with the Court as referenced in subparagraph (a) above, the Claim amount in the document filed with the Court shall supersede the Claim amount set forth on the respective Proof of Claim;
- (h) the Claim amount listed in the Schedules, *provided* that such Claim is not scheduled as contingent, disputed, or unliquidated and/or has not been paid; *provided, further*, that if the applicable Claims Bar Date has not expired prior to the Voting Record Date, a Claim listed in the Schedules as contingent, disputed, or unliquidated shall be allowed to vote only in the amount of \$1.00; and
- (i) in the absence of any of the foregoing, such Claim shall be disallowed for voting purposes unless otherwise ordered by the Court.

G. Voting and Ballot Tabulation Procedures.

The following voting procedures and standard assumptions shall be used in tabulating Ballots, subject to the Debtors' right to waive any of the below specified requirements for completion and submission of Ballots so long as such requirement is not otherwise required by the Bankruptcy Code, Bankruptcy Rules, or Local Rules:

- (a) except as otherwise provided in the Solicitation and Voting Procedures, unless the Ballot being furnished is timely submitted on or prior to the Voting Deadline (as the same may be extended by the Debtors or by order of the Court), the Debtors shall reject such Ballot as invalid and, therefore, shall not count it in connection with Confirmation of the Plan;
- (b) the Voting and Claims Agent will date-stamp all Ballots when received. The Voting and Claims Agent shall retain the original Ballots and an electronic copy of the same for a period of one year after the Effective Date of the Plan, unless otherwise ordered by the Court. The Voting and Claims Agent shall tabulate Ballots on a Debtor-by-Debtor basis;
- (c) the Debtors will file with the Court, not later than [REDACTED], a certification of votes (the "Voting Certification"). The Voting Certification shall, among other things, certify to the Court in writing the amount and number of allowed claims or allowed interests of each class accepting or rejecting the plan, and delineate every Ballot that does not conform to the voting instructions or that contains any form of irregularity including, but not limited to, those Ballots that are late or (in whole or in material part) illegible, unidentifiable, lacking signatures or lacking necessary information, received via facsimile, or damaged ("Irregular Ballots"). The Voting Certification shall indicate the Debtors' intentions with regard to each such Irregular Ballot. The Voting Certification shall be served upon the Committee and the U.S. Trustee;
- (d) the method of delivery of Ballots to be sent to the Voting and Claims Agent is at the election and risk of each holder, and except as otherwise provided, a Ballot will be deemed delivered only when the Voting and Claims Agent actually receives the executed Ballot;
- (e) an executed Ballot is required to be submitted by the Entity submitting such Ballot. Subject to the other procedures and requirements herein, completed, executed Ballots may be submitted via the Debtor's online vote portal at www.DonlinRecano.com/clients/mk/vote. However, Ballots submitted by facsimile or e-mail will not be valid;
- (f) no Ballot should be sent to the Debtors, the Debtors' agents (other than the Voting and Claims Agent), the Debtors' financial or legal advisors, and if so sent will not be counted;
- (g) if multiple Ballots are received from the same holder with respect to the same Claim prior to the Voting Deadline, the last properly executed Ballot timely received will be deemed to reflect that voter's intent and will supersede and revoke any prior Ballot;
- (h) holders must vote all of their Claims within a particular Class either to accept or reject the Plan and may not split any votes. Accordingly, a Ballot that partially rejects and partially accepts the Plan will not be counted. Further, to the extent there are multiple Claims within the same Class, the Debtor may, in its discretion, aggregate the Claims of any particular holder within a Class for the purpose of counting votes;
- (i) a person signing a Ballot in its capacity as a trustee, executor, administrator, guardian,

attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity of a holder of Claims must indicate such capacity when signing;

- (j) the Debtors, subject to a contrary order of the Court, may waive any defects or irregularities as to any particular Irregular Ballot at any time, either before or after the close of voting, and any such waivers will be documented in the Voting Certification;
- (k) neither the Debtors, nor any other Entity, will be under any duty to provide notification of defects or irregularities with respect to delivered Ballots other than as provided in the Voting Certification, nor will any of them incur any liability for failure to provide such notification;
- (l) unless waived or as ordered by the Court, any defects or irregularities in connection with deliveries of Ballots must be cured prior to the Voting Deadline or such Ballots will not be counted;
- (m) in the event a designation of lack of good faith is requested by a party in interest under section 1126(e) of the Bankruptcy Code, the Court will determine whether any vote to accept and/or reject the Plan cast with respect to that Claim will be counted for purposes of determining whether the Plan has been accepted and/or rejected;
- (n) if a Claim has been estimated or otherwise Allowed for voting purposes only by order of the Court, such Claim shall be temporarily Allowed in the amount so estimated or Allowed by the Court for voting purposes only, and not for purposes of allowance or distribution;
- (o) if an objection to a Claim is filed, such Claim shall be treated in accordance with the procedures set forth herein;
- (p) the following Ballots shall not be counted in determining the acceptance or rejection of the Plan: (i) any Ballot that is illegible or contains insufficient information to permit the identification of the holder of such Claim; (ii) any Ballot cast by any Entity that does not hold a Claim in a Voting Class; (iii) any Ballot cast for a Claim scheduled as unliquidated, contingent, or disputed for which no Proof of Claim was timely filed, *provided* that if the applicable Claims Bar Date has not expired prior to the Voting Record Date, a Claim listed in the Schedules as contingent, disputed, or unliquidated shall be allowed to vote only in the amount of \$1.00; (iv) any unsigned Ballot or Ballot lacking an original signature (for the avoidance of doubt, a Ballot cast via the Debtors' online vote portal will be deemed to be an original signature); (v) any Ballot not marked to accept or reject the Plan or marked both to accept and reject the Plan; and (vi) any Ballot submitted by any Entity not entitled to vote pursuant to the procedures described herein;
- (q) after the Voting Deadline, no Ballot may be withdrawn or modified without the prior written consent of the Debtors;
- (r) the Debtors are authorized to enter into stipulations with the holder of any Claim agreeing to the amount of a Claim for voting purposes; and

- (s) where any portion of a single Claim has been transferred to a transferee, the holders of any portion of such single Claim will be: (i) treated as a single creditor for purposes of the numerosity requirements in section 1126(c) of the Bankruptcy Code (and for the other voting and solicitation procedures set forth herein), and (ii) required to vote every portion of such Claim collectively to accept or reject the Plan. In the event that: (x) a Ballot, (y) a group of Ballots within a Voting Class received from a single creditor, or (z) a group of Ballots received from the various holders of multiple portions of a single Claim partially reject and partially accept the Plan, such Ballots shall not be counted.

H. Amendments to the Plan and Solicitation and Voting Procedures

The Debtors reserve the right to make non-substantive or immaterial changes to the Disclosure Statement, Disclosure Statement Hearing Notice, Plan, Confirmation Hearing Notice, Solicitation Packages, Non-Voting Status Notices, Ballots, Cover Letter, Solicitation and Voting Procedures, Plan Supplement Notice, Assumption and Rejection Notices, Voting and Tabulation Procedures, and related documents without further order of the Court, including changes to correct typographical and grammatical errors, if any, and to make conforming changes to the Disclosure Statement, the Plan, and any other materials in the Solicitation Packages before distribution.

* * * * *

EXHIBIT 2A to Proposed Order
Class 3 Ballot

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

Chapter 11

Case No. 20-12117 (MEW)

In re:

COSMOLEDO, LLC, *et al.*¹

Jointly Administered

Debtors.

**BALLOT FOR VOTING TO ACCEPT OR REJECT THE PLAN OF
REORGANIZATION OF CHAPTER 11 PLAN OF LIQUIDATION OF THE
DEBTORS PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

CLASS 3 BALLOT FOR HOLDERS OF PPP ELIGIBLE CLAIMS

**PLEASE READ AND FOLLOW THE ENCLOSED INSTRUCTIONS FOR COMPLETING
BALLOTS CAREFULLY *BEFORE* COMPLETING THIS BALLOT.**

**FOR YOUR VOTE TO BE COUNTED, THIS BALLOT MUST BE COMPLETED,
EXECUTED, AND RETURNED SO AS TO BE *ACTUALLY RECEIVED* BY THE VOTING
AND CLAIMS AGENT BY AUGUST 18, 2021, at 5:00 PM PREVAILING EASTERN TIME
(THE “VOTING DEADLINE”) IN ACCORDANCE WITH THE FOLLOWING:**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), are soliciting votes with respect to the *Chapter 11 Plan of Liquidation of Debtors* (as may be amended, supplemented, or modified from time to time, the “Plan”) as set forth in the *Disclosure Statement for Chapter 11 Plan of Liquidation of Debtors* (as may be amended, supplemented, or modified from time to time, the “Disclosure Statement”).² The Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) has approved the Disclosure Statement as containing adequate information pursuant to section 1125 of the Bankruptcy Code, by entry of an order on _____, 2021 (the “Disclosure Statement Order”). Bankruptcy Court approval of the Disclosure Statement does not indicate approval of the Plan by the Bankruptcy Court.

You are receiving this Class 3 ballot (this “Class 3 Ballot”) because you are a holder of a

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtors’ federal tax identification number, include: Cosmoledo, LLC (6787); Breadroll, LLC, (3279); 688 Bronx Commissary, LLC (6515); 95 Broad Commissary, LLC (2335); 178 Bruckner Commissary, LLC (2581); 8 West Bakery, LLC (6421); NYC 1294 Third Ave Bakery, LLC (2001); 921 Broadway Bakery, LLC (2352); 1800 Broadway Bakery, LLC (8939); 1535 Third Avenue Bakery, LLC (1011); 2161 Broadway Bakery, LLC (2767); 210 Joralemon Bakery, LLC (4779); 1377 Sixth Avenue Bakery, LLC (9717); 400 Fifth Avenue Bakery, LLC (6378); 1400 Broadway Bakery, LLC (8529); 575 Lexington Avenue Bakery, LLC (9884); 685 Third Avenue Bakery, LLC (9613); 370 Lexington Avenue Bakery, LLC (0672); 787 Seventh Avenue Bakery, LLC (6846); 339 Seventh Avenue Bakery, LLC (1406); and 55 Hudson Yards Bakery, LLC (7583).

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Disclosure Statement.

PPP Eligible Claim in Class 3 as of **July 20, 2021** at 10:00 a.m. (the “Voting Record Date”). Accordingly, you have a right to vote to accept or reject the Plan.

Your rights are described in the Disclosure Statement, which was included in the package (the “Solicitation Package”) you are receiving with this Class 3 Ballot (as well as the Plan, Disclosure Statement Order, and certain other materials). If you received Solicitation Package materials in electronic format and desire paper copies, or if you need to obtain additional Solicitation Packages, you may obtain them from (a) calling 1-800-467-0821; (b) visiting the Debtors' restructuring website at <https://www.donlinrecano.com/Clients/mk/Index> (b) writing to Donlin, Recano & Company, Inc., Re: Cosmoledo, LLC *et al.*, Attn: Voting Department, c/o Donlin, Recano & Company, Inc., 6201 15th Avenue, Brooklyn, NY 11219; and/or (c) emailing DRCVote@DonlinRecano.com and requesting paper copies of the corresponding materials previously received in electronic format (to be provided at the Debtors' expense).

This Class 3 *Ballot* may not be used for any purpose other than for casting votes to accept or reject the Plan and making certain certifications with respect to the Plan. If you believe you have received this Class 3 Ballot in error, or if you believe that you have received the wrong ballot, please contact the Voting and Claims Agent ***immediately*** at the address, telephone number, or email address set forth above.

You should review the Disclosure Statement and the Plan before you vote. You may wish to seek legal advice concerning the Plan and the Plan's classification and treatment of your Claim. Your Claim has been placed in Class 3, PPP Eligible Claims, under the Plan. If you hold Claims in more than one Class, you will receive a ballot for each Class in which you are entitled to vote.

Item 1. Amount of Claim.

The *undersigned* hereby certifies that as of the Voting Record Date, the undersigned was the holder of a PPP Eligible Claim in the following aggregate unpaid amount:

\$ _____

Item 2. Vote on Plan.

The holder of the Class 3 PPP Eligible Claim against the Debtors set forth in Item 1 votes to (please check one):

☐ **ACCEPT** (vote FOR) the Plan ☐ **REJECT** (vote AGAINST) the Plan

Item 3. Important information regarding the Exculpation and Release Provisions.

The holder of the Class 3 PPP Eligible Claim set forth in Item 1 hereby acknowledges being made aware of the following provisions in **Article 9 of the Plan:**

Section 9.5 Exculpation.

To the extent permitted under section 1125(e) of the Bankruptcy Code, the Exculpated Parties shall neither have nor incur any liability to any Person for any act taken or omitted, or to be taken, in connection with the Case, including the formulation, preparation, dissemination, confirmation or approval of the Plan, any exhibits thereto, the Disclosure Statement or any contract, instrument, release or other agreement or document provided for or contemplated in connection with the consummation of the transactions set forth in the Plan; *provided, however*, that the foregoing provisions (a) shall not affect the liability of any Person that otherwise would result from any such act or omission to the extent that act or omission is determined in a Final Order to have constituted gross negligence or willful misconduct and (b) shall not abrogate any applicable attorney disciplinary rules. Any of the foregoing parties in all respects shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan. Notwithstanding any other provision of the Plan, neither any Holder of a Claim or Interest, nor any other party in interest, shall have any right of action against the Exculpated Parties for any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the negotiation and pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for such Persons' fraud, gross negligence or willful misconduct.

Section 9.7 Releases by the Debtors

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, the Released Parties are deemed released and discharged by each and all of the Debtors, on behalf of themselves and their respective successors, assigns, and representatives, and any and all other entities who may purport to assert any Claim or Cause of Action, directly or derivatively, by, through, for, or because of the foregoing entities, from any and all Claims, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, including any derivative claims, asserted or assertable on behalf of any of the Debtors or their Estates or Beneficiaries, as applicable, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, that the Debtors or their Estates, Beneficiaries or any of their affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in, a Debtor or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Debtors' in-or-out-of-court restructuring efforts, business determinations and intercompany transactions including, without limitation, prepetition restructuring efforts and marketing of the Debtors' Assets, the Sale to MK USA, LLC, these Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, filing, or consummation of the Disclosure Statement, the Plan (including, for the avoidance of doubt, any Plan Supplement), or any transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Disclosure Statement or the Plan, the filing of these Chapter 11 Cases, the pursuit of confirmation, the pursuit of consummation, administration and implementation of the Plan, including the Distribution of Assets under the Plan or any other related agreement, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date; *provided that* any right to enforce the Plan and Confirmation Order is not so released. Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases described in this Section 9.7 by the Debtors, which includes by reference each of the related provisions and definitions contained in this Plan, and further, shall constitute the Bankruptcy Court's finding that each release described in this

Section 9.7 is: (1) in exchange for the good and valuable consideration provided by the Released Parties, (2) a good-faith settlement and compromise of such Claims; (3) in the best interests of the Debtors and all Holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Debtors or Liquidation Trust or their respective Estates asserting any claim, Cause of Action, or liability related thereto, of any kind whatsoever, against any of the Released Parties or their property.

* * *

UNDER THE PLAN, “EXCULPATED PARTIES” AND “RELEASED PARTIES” MEANS EACH OF THE FOLLOWING IN THEIR CAPACITY AS SUCH: THE DEBTORS, THE COMMITTEE, THE ESTATES, AND THE OFFICERS, DIRECTORS, AND MEMBERS OF THE FOREGOING, AND EACH OF THEIR RESPECTIVE PROFESSIONALS.

Item 4. Certifications.

By signing this Class 3 Ballot, the undersigned certifies to the Bankruptcy Court and the Debtors:

- (a) that, as of the Voting Record Date, either: (i) the Entity is the holder of the PPP Eligible Claim being voted; or (ii) the Entity is an authorized signatory for an Entity that is a holder of the PPP Eligible Claim being voted;
- (b) that the Entity (or in the case of an authorized signatory, the holder) has received a copy of the Disclosure Statement and the Solicitation Package and acknowledges that the solicitation is being made pursuant to the terms and conditions set forth therein;
- (c) that the Entity has cast the same vote with respect to all PPP Eligible Claims in a single Class; and
- (d) that no other Class 3 Ballots with respect to the amount of the PPP Eligible Claim identified in Item 1 have been cast or, if any other Class 3 Ballots have been cast with respect to such PPP Eligible Claim, then any such earlier Class 3 Ballots are hereby revoked.

Name of Holder:	_____
	(Print or Type)
Signature:	_____
Name of Signatory:	_____
	(If other than holder)
Title:	_____
Address:	_____

Telephone Number:	_____
Email:	_____
Date Completed:	_____

PLEASE COMPLETE, SIGN, AND DATE THIS BALLOT AND RETURN IT (WITH AN ORIGINAL SIGNATURE) *PROMPTLY* VIA FIRST CLASS MAIL (OR THE ENCLOSED REPLY ENVELOPE PROVIDED), OVERNIGHT COURIER, OR HAND DELIVERY TO:

If by First Class Mail:	If by Hand Delivery or Overnight Mail:
Donlin, Recano & Company, Inc. Re: Cosmoledo, LLC, <i>et al.</i> , P.O. Box 199043 Blythebourne Station, Brooklyn, New York 11219;	Donlin, Recano & Company, Inc. Re: Cosmoledo, LLC, <i>et al.</i> , 6201 15th Avenue, Brooklyn, New York 11219;

OR

VISIT www.DonlinRecano.com/clients/mk/vote AND FOLLOW THE INSTRUCTIONS TO CAST YOUR BALLOT VIA THE DEBTORS' ONLINE VOTE PORTAL

HOLDERS OF CLAIMS WHO CAST A BALLOT VIA THE DEBTORS' ONLINE VOTE PORTAL SHOULD NOT ALSO SUBMIT A PAPER BALLOT.

FOR ANY BALLOT CAST VIA THE DEBTORS' ONLINE VOTE PORTAL, THE RECEIVED DATE AND TIME RECORDED IN THE VOTE PORTAL WILL BE USED AS A TIMESTAMP FOR RECEIPT OF YOUR CLAIM.

IF THE VOTING AND CLAIMS AGENT DOES NOT <i>ACTUALLY RECEIVE</i> THIS CLASS 3 BALLOT ON OR BEFORE AUGUST 18, 2021 at 5:00 p.m. PREVAILING EASTERN TIME, (AND IF THE VOTING DEADLINE IS NOT EXTENDED), YOUR VOTE TRANSMITTED BY THIS CLASS 3 BALLOT MAY BE COUNTED TOWARD CONFIRMATION OF THE PLAN ONLY IN THE DISCRETION OF THE DEBTORS.
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Class 3 — PPP Eligible Claims

INSTRUCTIONS FOR COMPLETING THIS CLASS 3 BALLOT

1. The Debtors are soliciting the votes of holders of Claims with respect to the Plan attached as **Exhibit A** to the Disclosure Statement. Capitalized terms used in the Class 3 Ballot or in these instructions (the “Ballot Instructions”) but not otherwise defined therein or herein shall have the meaning set forth in the Disclosure Statement, a copy of which also accompanies the Class 3 Ballot. **PLEASE READ THE PLAN AND DISCLOSURE STATEMENT CAREFULLY BEFORE COMPLETING THIS BALLOT.**

2. The Plan can be confirmed by the Court and thereby made binding upon you if it is accepted by the holders of at least two-thirds in amount and more than one-half in number of Claims or Interests in at least one class of creditors that votes on the Plan and if the Plan otherwise satisfies the requirements for confirmation provided by section 1129(a) of the Bankruptcy Code. Please review the Disclosure Statement for more information.

3. To ensure that your Class 3 Ballot is counted, you ***must*** complete and submit this Class 3 Ballot as instructed herein. **Ballots will not be accepted by facsimile.**

4. **Use of Ballot.** To ensure that your Class 3 Ballot is counted, you must: (a) complete your Class 3 Ballot in accordance with these instructions; (b) clearly indicate your decision either to accept or reject the Plan in the boxes provided in Item 2 of the Class 3 Ballot; and (c) clearly sign and submit your Class 3 Ballot as instructed herein.

5. Your Class 3 Ballot ***must*** be returned to the Voting and Claims Agent so as to be ***actually received*** by the Voting and Claims Agent on or before the Voting Deadline. **The Voting Deadline is August 18, 2021], at 5:00 p.m prevailing Eastern Time.** For any ballot cast via electronic mail, the received date and time in the Voting and Claims Agent’s inbox will be used as a timestamp for receipt.

6. If a Class 3 Ballot is received after the Voting Deadline and if the Voting Deadline is not extended, it may be counted only in the sole and absolute discretion of the Debtors. Additionally, **the following Class 3 Ballots will not be counted:**

- (a) any Class 3 Ballot that partially rejects and partially accepts the Plan;
- (b) Class 3 Ballots sent to the Debtors, the Debtors’ agents (other than the Voting and Claims Agent), or the Debtors’ financial or legal advisors;
- (c) Class 3 Ballots sent by facsimile or email;
- (d) any Class 3 Ballot that is illegible or contains insufficient information to permit the identification of the holder of the Claim;
- (e) any Class 3 Ballot cast by an Entity that does not hold a Claim in Class 3;

- (f) any Class 3 Ballot submitted by a holder not entitled to vote pursuant to the Plan;
- (g) any unsigned Class 3 Ballot;
- (h) any non-original Class 3 Ballot;
- (i) any Class 3 Ballot not marked to accept or reject the Plan; and/or
- (j) any Class 3 Ballot marked both to accept and reject the Plan.

The method of delivery of Class 3 Ballots to the Voting and Claims Agent is at the election and risk of each holder of a PPP Eligible Claim. Except as otherwise provided herein, such delivery will be deemed made only when the Voting and Claims Agent **actually receives** the originally executed Class 3 Ballot except Ballots submitted via the online portal. In all cases, holders should allow sufficient time to assure timely delivery.

7. If multiple Class 3 Ballots are received from the same holder of a PPP Eligible Claim with respect to the same PPP Eligible Claim prior to the Voting Deadline, the latest, timely received, and properly completed Class 3 Ballot will supersede and revoke any earlier received Class 3 Ballots.

8. You must vote all of your PPP Eligible Claims within Class 3 either to accept or reject the Plan and may **not** split your vote. Further, if a holder has multiple PPP Eligible Claims within Class 3, the Debtors may, in their discretion, aggregate the Claims of any particular holder with multiple PPP Eligible Claims within Class 3 for the purpose of counting votes.

9. This Class 3 Ballot does **not** constitute, and shall not be deemed to be, (a) a Proof of Claim or (b) an assertion or admission of a Claim.

10. **Please be sure to sign and date your Class 3 Ballot.** If you are signing a Class 3 Ballot in your capacity as a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity, you must indicate such capacity when signing. If required or requested by the Voting and Claims Agent, the Debtors, the Creditors Committee, the Liquidation Trustee or the Bankruptcy Court, you must submit proper evidence of your capacity to act on behalf of such holder to the respective requesting party. In addition, please provide your name and mailing address if it is different from that set forth on the attached mailing label or if no such mailing label is attached to the Class 3 Ballot.

If you hold Claims or Interests in more than one Class under the Plan you may receive more than one ballot coded for each different Class. Each ballot votes **only** your Claims or Interests indicated on that ballot, so please complete and return each ballot that you received.

PLEASE SUBMIT YOUR CLASS 3 BALLOT PROMPTLY

IF YOU HAVE ANY QUESTIONS REGARDING THIS CLASS 3 BALLOT, THESE VOTING INSTRUCTIONS OR THE PROCEDURES FOR VOTING, PLEASE CALL THE RESTRUCTURING HOTLINE AT: 1-800-467-0821 OR EMAIL DRCVOTE@DONLINRECANO.COM.

IF THE VOTING AND CLAIMS AGENT DOES NOT *ACTUALLY RECEIVE* THIS CLASS 3 BALLOT ON OR BEFORE THE VOTING DEADLINE, WHICH IS ON AUGUST 18, 2021 at 5:00 p.m. PREVAILING EASTERN TIME (IF THE VOTING DEADLINE IS NOT EXTENDED), YOUR VOTE TRANSMITTED HEREBY MAY BE COUNTED ONLY IN THE DISCRETION OF THE DEBTORS.

EXHIBIT 2B to Proposed Order

Class 4 Ballot

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

Chapter 11

Case No. 20-12117 (MEW)

In re:

COSMOLEDO, LLC, *et al.*¹

Jointly Administered

Debtors.

**BALLOT FOR VOTING TO ACCEPT OR REJECT THE PLAN OF
REORGANIZATION OF CHAPTER 11 PLAN OF LIQUIDATION OF THE
DEBTORS PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

CLASS 4 BALLOT FOR HOLDERS OF GENERAL UNSECURED CLAIMS

**PLEASE READ AND FOLLOW THE ENCLOSED INSTRUCTIONS FOR
COMPLETING BALLOTS CAREFULLY BEFORE COMPLETING THIS BALLOT.
FOR YOUR VOTE TO BE COUNTED, THIS BALLOT MUST BE COMPLETED,
EXECUTED, AND RETURNED SO AS TO BE ACTUALLY RECEIVED BY THE
VOTING AND CLAIMS AGENT BY AUGUST 18, 2021 at 5:00 p.m. PREVAILING
EASTERN TIME (THE “VOTING DEADLINE”) IN ACCORDANCE WITH THE
FOLLOWING:**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), are soliciting votes with respect to the *Chapter 11 Plan of Liquidation of Debtors* (as may be amended, supplemented, or modified from time to time, the “Plan”) as set forth in the *Disclosure Statement for Chapter 11 Plan of Liquidation of Debtors* (as may be amended, supplemented, or modified from time to time, the “Disclosure Statement”).² The Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) has approved the Disclosure Statement as containing adequate information pursuant to section 1125 of the Bankruptcy Code, by entry of an order on _____, 2021 (the “Disclosure Statement Order”). Bankruptcy Court approval of the Disclosure

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtors’ federal tax identification number, include: Cosmoledo, LLC (6787); Breadroll, LLC, (3279); 688 Bronx Commissary, LLC (6515); 95 Broad Commissary, LLC (2335); 178 Bruckner Commissary, LLC (2581); 8 West Bakery, LLC (6421); NYC 1294 Third Ave Bakery, LLC (2001); 921 Broadway Bakery, LLC (2352); 1800 Broadway Bakery, LLC (8939); 1535 Third Avenue Bakery, LLC (1011); 2161 Broadway Bakery, LLC (2767); 210 Joralemon Bakery, LLC (4779); 1377 Sixth Avenue Bakery, LLC (9717); 400 Fifth Avenue Bakery, LLC (6378); 1400 Broadway Bakery, LLC (8529); 575 Lexington Avenue Bakery, LLC (9884); 685 Third Avenue Bakery, LLC (9613); 370 Lexington Avenue Bakery, LLC (0672); 787 Seventh Avenue Bakery, LLC (6846); 339 Seventh Avenue Bakery, LLC (1406); and 55 Hudson Yards Bakery, LLC (7583).

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Disclosure Statement.

Statement does not indicate approval of the Plan by the Bankruptcy Court.

You are receiving this Class 4 ballot (this “Class 4 Ballot”) because you are a holder of a General Unsecured Claim in Class 4 as of **July 20, 2021** at 10:00 a.m. prevailing Eastern Time (the “Voting Record Date”). Accordingly, you have a right to vote to accept or reject the Plan.

Your rights are described in the Disclosure Statement, which was included in the package (the “Solicitation Package”) you are receiving with this Class 4 Ballot (as well as the Plan, Disclosure Statement Order, and certain other materials). If you received Solicitation Package materials in electronic format and desire paper copies, or if you need to obtain additional Solicitation Packages, you may obtain them from (a) Donlin, Recano & Company, Inc. (the “Voting and Claims Agent”) at no charge by: (a) calling 1-800-467-0821; (b) visiting the Debtors' restructuring website at <https://www.donlinrecano.com/Clients/mk/Index> (b) writing to Donlin, Recano & Company, Inc., Re: Cosmoledo, LLC *et al.*, Attn: Voting Department, c/o Donlin, Recano & Company, Inc., 6201 15th Avenue, Brooklyn, NY 11219; and/or (c) emailing DRCVote@DonlinRecano.com and requesting paper copies of the corresponding materials previously received in electronic format (to be provided at the Debtors' expense).

This Class 4 Ballot may not be used for any purpose other than for casting votes to accept or reject the Plan and making certain certifications with respect to the Plan. If you believe you have received this Class 4 Ballot in error, or if you believe that you have received the wrong ballot, please contact the Voting and Claims Agent *immediately* at the address, telephone number, or email address set forth above.

You should review the Disclosure Statement and the Plan before you vote. You may wish to seek legal advice concerning the Plan and the Plan’s classification and treatment of your Claim. Your Claim has been placed in Class 4, General Unsecured Claims, under the Plan. If you hold Claims in more than one Class, you will receive a ballot for each Class in which you are entitled to vote.

Item 1. Amount of Claim.

The undersigned hereby certifies that as of the Voting Record Date, the undersigned was the holder of a General Unsecured Claim in the following aggregate unpaid amount:

\$ _____

Item 2. Vote on Plan.

The holder of the Class 4 General Unsecured Claim against the Debtors set forth in Item 1 votes to (please check one):

☐ **ACCEPT** (vote FOR) the Plan ☐ **REJECT** (vote AGAINST) the Plan

Item 3. Important information regarding the Exculpation and Release Provisions.

The holder of the Class 4 General Unsecured Claim set forth in Item 1 hereby acknowledges being made aware of the following provisions in **Article 9 of the Plan:**

Section 9.5 Exculpation.

To the extent permitted under section 1125(e) of the Bankruptcy Code, the Exculpated Parties shall neither have nor incur any liability to any Person for any act taken or omitted, or to be taken, in connection with the Case, including the formulation, preparation, dissemination, confirmation or approval of the Plan, any exhibits thereto, the Disclosure Statement or any contract, instrument, release or other agreement or document provided for or contemplated in connection with the consummation of the transactions set forth in the Plan; *provided, however*, that the foregoing provisions (a) shall not affect the liability of any Person that otherwise would result from any such act or omission to the extent that act or omission is determined in a Final Order to have constituted gross negligence or willful misconduct and (b) shall not abrogate any applicable attorney disciplinary rules. Any of the foregoing parties in all respects shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan. Notwithstanding any other provision of the Plan, neither any Holder of a Claim or Interest, nor any other party in interest, shall have any right of action against the Exculpated Parties for any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the negotiation and pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for such Persons' fraud, gross negligence or willful misconduct.

Section 9.7 Releases by the Debtors

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, the Released Parties are deemed released and discharged by each and all of the Debtors, on behalf of themselves and their respective successors, assigns, and representatives, and any and all other entities who may purport to assert any Claim or Cause of Action, directly or derivatively, by, through, for, or because of the foregoing entities, from any and all Claims, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, including any derivative claims, asserted or assertable on behalf of any of the Debtors or their Estates or Beneficiaries, as applicable, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, that the Debtors or their Estates, Beneficiaries or any of their affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in, a Debtor or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Debtors' in-or-out-of-court restructuring efforts, business determinations and intercompany transactions including, without limitation, prepetition restructuring efforts and marketing of the Debtors' Assets, the Sale to MK USA, LLC, these Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, filing, or consummation of the Disclosure Statement, the Plan (including, for the avoidance of doubt, any Plan Supplement), or any transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Disclosure Statement or the Plan, the filing of these Chapter 11 Cases, the pursuit of confirmation, the pursuit of consummation, administration and implementation of the

Plan, including the Distribution of Assets under the Plan or any other related agreement, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date; *provided that* any right to enforce the Plan and Confirmation Order is not so released. Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases described in this Section 9.7 by the Debtors, which includes by reference each of the related provisions and definitions contained in this Plan, and further, shall constitute the Bankruptcy Court's finding that each release described in this Section 9.7 is: (1) in exchange for the good and valuable consideration provided by the Released Parties, (2) a good-faith settlement and compromise of such Claims; (3) in the best interests of the Debtors and all Holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Debtors or Liquidation Trust or their respective Estates asserting any claim, Cause of Action, or liability related thereto, of any kind whatsoever, against any of the Released Parties or their property.

* * *

UNDER THE PLAN, "EXCULPATED PARTIES" AND "RELEASED PARTIES" MEANS EACH OF THE FOLLOWING IN THEIR CAPACITY AS SUCH: THE DEBTORS, THE COMMITTEE, THE ESTATES, AND THE OFFICERS, DIRECTORS, AND MEMBERS OF THE FOREGOING, AND EACH OF THEIR RESPECTIVE PROFESSIONALS.

Item 4. Certifications.

By signing this Class 4 Ballot, the undersigned certifies to the Bankruptcy Court and the Debtors:

- (a) that, as of the Voting Record Date, either: (i) the Entity is the holder of the General Unsecured Claim being voted; or (ii) the Entity is an authorized signatory for an Entity that is a holder of the General Unsecured Claim being voted;
- (b) that the Entity (or in the case of an authorized signatory, the holder) has received a copy of the Disclosure Statement and the Solicitation Package and acknowledges that the solicitation is being made pursuant to the terms and conditions set forth therein;
- (c) that the Entity has cast the same vote with respect to all General Unsecured Claims in a single Class; and
- (d) that no other Class 4 Ballots with respect to the amount of the General Unsecured Claim identified in Item 1 have been cast or, if any other Class 4 Ballots have been cast with respect to such General Unsecured Claim, then any such earlier Class 4 Ballots are hereby revoked.

Name of Holder:	_____
	(Print or Type)
Signature:	_____
Name of Signatory:	_____
	(If other than holder)
Title:	_____
Address:	_____

Telephone Number:	_____
Email:	_____
Date Completed:	_____

PLEASE COMPLETE, SIGN, AND DATE THIS BALLOT AND RETURN IT (WITH AN ORIGINAL SIGNATURE) *PROMPTLY* VIA FIRST CLASS MAIL (OR THE ENCLOSED REPLY ENVELOPE PROVIDED), OVERNIGHT COURIER, OR HAND DELIVERY TO:

If by First Class Mail:	If by Hand Delivery or Overnight Mail:
Donlin, Recano & Company, Inc. Re: Cosmoledo, LLC, <i>et al.</i> , P.O. Box 199043 Blythebourne Station, Brooklyn, New York 11219	Donlin, Recano & Company, Inc. Re: Cosmoledo, LLC, <i>et al.</i> , 6201 15th Avenue, Brooklyn, New York 11219

OR

VISIT www.DonlinRecano.com/clients/mk/vote AND FOLLOW THE INSTRUCTIONS TO CAST YOUR BALLOT VIA THE DEBTORS' ONLINE VOTE PORTAL

HOLDERS OF CLAIMS WHO CAST A BALLOT VIA THE DEBTORS' ONLINE VOTE PORTAL SHOULD NOT ALSO SUBMIT A PAPER BALLOT.

FOR ANY BALLOT CAST VIA THE DEBTORS' ONLINE VOTE PORTAL, THE RECEIVED DATE AND TIME RECORDED IN THE VOTE PORTAL WILL BE USED AS A TIMESTAMP FOR RECEIPT OF YOUR CLAIM.

IF THE VOTING AND CLAIMS AGENT DOES NOT <i>ACTUALLY RECEIVE</i> THIS CLASS 4 BALLOT ON OR BEFORE AUGUST 18, 2021] at 5:00 p.m. PREVAILING EASTERN TIME, (AND IF THE VOTING DEADLINE IS NOT EXTENDED), YOUR VOTE TRANSMITTED BY THIS CLASS 4 BALLOT MAY BE COUNTED TOWARD CONFIRMATION OF THE PLAN ONLY IN THE DISCRETION OF THE DEBTORS.

Class 4 — General Unsecured Claims

INSTRUCTIONS FOR COMPLETING THIS CLASS 4 BALLOT

1. The Debtors are soliciting the votes of holders of Claims with respect to the Plan attached as Exhibit A to the Disclosure Statement. Capitalized terms used in the Class 4 Ballot or in these instructions (the “Ballot Instructions”) but not otherwise defined therein or herein shall have the meaning set forth in the Disclosure Statement, a copy of which also accompanies the Class 4 Ballot. **PLEASE READ THE PLAN AND DISCLOSURE STATEMENT CAREFULLY BEFORE COMPLETING THIS BALLOT.**

2. The Plan can be confirmed by the Court and thereby made binding upon you if it is accepted by the holders of at least two-thirds in amount and more than one-half in number of Claims or Interests in at least one class of creditors **that** votes on the Plan and if the Plan otherwise satisfies the requirements for confirmation provided by section 1129(a) of the Bankruptcy Code. Please review the Disclosure Statement for more information.

3. To ensure that your Class 4 Ballot is counted, you **must** complete and submit this Class 4 Ballot as instructed herein. **Ballots will not be accepted by facsimile or email.**

4. **Use of Ballot.** To ensure that your Class 4 Ballot is counted, you must: (a) complete your Class 4 Ballot in accordance with these instructions; (b) clearly indicate your decision either to accept or reject the Plan in the boxes provided in Item 2 of the Class 4 Ballot; and (c) clearly sign and submit your Class 4 Ballot as instructed herein.

5. Your Class 4 Ballot **must be returned** to the Voting and Claims Agent so as to be **actually received** by the Voting and Claims Agent on or before the Voting Deadline. **The Voting Deadline is August 18, 2021], at 5:00 p.m prevailing Eastern Time.** For any ballot cast via electronic mail, the received date and time in the Voting and Claims Agent’s inbox will be used as a timestamp for receipt.

6. If a Class 4 Ballot is received **after** the Voting Deadline and if the Voting Deadline is not extended, it may be counted only in the sole and absolute discretion of the Debtors. Additionally, **the following Class 4 Ballots will not be counted:**

- (a) any Class 4 Ballot that partially rejects and partially accepts the Plan;
- (b) Class 4 Ballots sent to the Debtors, the Debtors’ agents (other than the Voting and Claims Agent), or the Debtors’ financial or legal advisors;
- (c) Class 4 Ballots sent by facsimile;
- (d) any Class 4 Ballot that is illegible or contains insufficient information to permit the identification of the holder of the Claim;
- (e) any Class 4 Ballot cast by an Entity that does not hold a Claim in Class 4;
- (f) any Class 4 Ballot submitted by a holder not entitled to vote pursuant to the Plan;
- (g) any unsigned Class 4 Ballot;

(h) any non-original Class 4 Ballot; and/or

(i) any Class 4 Ballot not marked to accept or reject the Plan or
any Class 4 Ballot marked both to accept and reject the Plan.

7. The method of delivery of Class 4 Ballots to the Voting and Claims Agent is at the election and risk of **each** holder of a General Unsecured Claim. Except as otherwise provided herein, such delivery will be deemed made only when the Voting and Claims Agent **actually receives** the originally executed Class 4 Ballot except Ballots submitted via the online vote portal. In all cases, holders should allow sufficient time to assure timely delivery.

8. If multiple Class 4 Ballots are received from the same holder of a General Unsecured Claim with respect to the same General Unsecured Claim prior to the Voting Deadline, the latest, timely received, and properly completed Class 4 Ballot will supersede and revoke any earlier received Class 4 Ballots.

9. You must vote all of your General Unsecured Claims within Class 4 either to accept or reject the Plan and may **not** split your vote. Further, if a holder has multiple General Unsecured Claims within Class 4, the Debtors may, in their discretion, aggregate the Claims of any particular holder with multiple General Unsecured Claims within Class 4 for the purpose of counting votes.

10. This Class 4 Ballot does **not** constitute, and shall not be deemed to be, (a) a Proof of Claim or (b) an assertion or **admission** of a Claim.

11. **Please be sure to sign and date your Class 4 Ballot.** If you are signing a Class 4 Ballot in your capacity as a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity, you must indicate such capacity when signing. If required or requested by the Voting and Claims Agent, the Debtors, the Creditors Committee, the Liquidation Trustee or the Bankruptcy Court, you must submit proper evidence of your capacity to act on behalf of such holder to the respective requesting party. In addition, please provide your name and mailing address if it is different from that set forth on the attached mailing label or if no such mailing label is attached to the Class 4 Ballot.

12. If you hold Claims or Interests in more than one Class under the Plan you may receive more than one ballot coded for each different Class. Each ballot votes **only** your Claims or Interests indicated on that ballot, so please complete and return each ballot that you received.

PLEASE SUBMIT YOUR CLASS 4 BALLOT PROMPTLY

**IF YOU HAVE ANY QUESTIONS REGARDING THIS CLASS 4
BALLOT, THESE VOTING INSTRUCTIONS OR THE PROCEDURES
FOR VOTING, PLEASE CALL THE RESTRUCTURING HOTLINE
AT: 1-800-467-0821 OR EMAIL DRCVote@DonlinRecano.com.**

**IF THE VOTING AND CLAIMS AGENT DOES NOT ACTUALLY RECEIVE THIS
CLASS 4 BALLOT ON OR BEFORE THE VOTING DEADLINE, WHICH IS ON
AUGUST 18, 2021] at 5:00 p.m. PREVAILING EASTERN TIME, (AND IF THE
VOTING DEADLINE IS NOT EXTENDED), YOUR VOTE TRANSMITTED HEREBY
MAY BE COUNTED ONLY IN THE DISCRETION OF THE DEBTORS.**

EXHIBIT 3 to Proposed Order

Non-Impaired Non-Voting Status Notice

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

Chapter 11

Case No. 20-12117 (MEW)

In re:

COSMOLEDO, LLC, *et al.*¹

Jointly Administered

Debtors.

**NOTICE OF NON-VOTING STATUS TO HOLDER OF UNIMPAIRED
CLAIMS CONCLUSIVELY PRESUMED TO ACCEPT THE PLAN**

PLEASE TAKE NOTICE THAT on _____, **2021**, the United States Bankruptcy Court for the Southern District of New York (the “Court”) entered an order (the “Disclosure Statement Order”), (a) authorizing Cosmoledo, LLC, *et al.*, as debtors and debtors in–possession (collectively the “Debtors”), to solicit acceptances for the Chapter 11 Plan of Liquidation of Debtors (as may be amended, supplemented, or modified from time to time, the “Plan”); (b) approving the Disclosure Statement for Chapter 11 Plan of Liquidation of Debtors (as may be amended, supplemented, or modified from time to time, the “Disclosure Statement”)² as containing “adequate information” pursuant to section 1125 of the Bankruptcy Code; (c) approving the solicitation materials and documents to be included in the solicitation packages (the “Solicitation Packages”); and (d) approving procedures for soliciting, receiving, and tabulating votes on the Plan and for filing objections to the Plan.

PLEASE TAKE FURTHER NOTICE THAT because of the nature and treatment of your Claim under the Plan, **you are not entitled to vote on the Plan**. Specifically, under the terms of the Plan, as a holder of a Claim (as currently asserted against the Debtors) that is not impaired and conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code, you are **not** entitled to vote on the Plan.

PLEASE TAKE FURTHER NOTICE THAT the hearing at which the Court will consider Confirmation of the Plan (the “Confirmation Hearing”) will commence on **August 31, 2021 at 10:00 a.m. prevailing Eastern Time**, before the Honorable Michael E. Wiles, in the United States Bankruptcy Court for the Southern District of New York, located at One Bowling Green, New York, New York 10004-1408.

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtors’ federal tax identification number, include: Cosmoledo, LLC (6787); Breadroll, LLC, (3279); 688 Bronx Commissary, LLC (6515); 95 Broad Commissary, LLC (2335); 178 Bruckner Commissary, LLC (2581); 8 West Bakery, LLC (6421); NYC 1294 Third Ave Bakery, LLC (2001); 921 Broadway Bakery, LLC (2352); 1800 Broadway Bakery, LLC (8939); 1535 Third Avenue Bakery, LLC (1011); 2161 Broadway Bakery, LLC (2767); 210 Joralemon Bakery, LLC (4779); 1377 Sixth Avenue Bakery, LLC (9717); 400 Fifth Avenue Bakery, LLC (6378); 1400 Broadway Bakery, LLC (8529); 575 Lexington Avenue Bakery, LLC (9884); 685 Third Avenue Bakery, LLC (9613); 370 Lexington Avenue Bakery, LLC (0672); 787 Seventh Avenue Bakery, LLC (6846); 339 Seventh Avenue Bakery, LLC (1406); and 55 Hudson Yards Bakery, LLC (7583).

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Disclosure Statement.

PLEASE TAKE FURTHER NOTICE THAT the deadline for filing objections to the Plan is **August 20, 2021 at 5:00 p.m. prevailing Eastern Time** (the “Plan Objection Deadline”). Any objection to the Plan **must**: (a) be in writing; (b) conform to the Bankruptcy Rules, the Local Rules, and any orders of the Court; (c) state, with particularity, the basis and nature of any objection to the Plan and, if practicable, a proposed modification to the Plan that would resolve such objection; and (d) be filed with the Court (contemporaneously with a proof of service) and served upon the following parties so as to be **actually received** on or before **August 20, 2021 at 5:00 p.m. prevailing Eastern Time**:

Counsel for the Debtors	United States Trustee
<p>Mintz & Gold LLP, 600 Third Avenue 25th Floor New York, New York, 10016 Attn: Andrew Gottesman, Esq., Gabriel Altman, Esq., and CeCe M. Cole, Esq.</p>	<p>Office of the United States Trustee for the Southern District of New York 201 Varick Street, Suite 1006 New York, New York 10014 Attn.: Brian Masumoto, Esq.</p>
Counsel for the Committee	Counsel to the Holder of Cosmoledo’s Equity Interests
<p>Hahn & Hessen LLP, 488 Madison Avenue, New York, New York 10022, Attn: Mark Indelicato, Esq. and Mark T. Power, Esq.,</p>	<p>Willkie Farr and Gallagher LLP, 787 Seventh Avenue New York, New York 10019 Attn: Paul V. Shalhoub, Esq.</p>

PLEASE TAKE FURTHER NOTICE THAT if you would like to obtain a copy of the Disclosure Statement, the Plan, the Plan Supplement, or related documents, you should contact Donlin, Recano & Company, Inc., the voting and claims agent retained by the Debtors in these Chapter 11 Cases (the “Voting and Claims Agent”), by: (a) calling 1-800-467-0821; (b) visiting the Debtors' restructuring website at <https://www.donlinrecano.com/Clients/mk/Index> (b) writing to Donlin, Recano & Company, Inc., Re: Cosmoledo, LLC *et al.*, Attn: Voting Department, c/o Donlin, Recano & Company, Inc., 6201 15th Avenue, Brooklyn, NY 11219; and/or (c) emailing DRCVote@DonlinRecano.com and requesting paper copies of the corresponding materials previously received in electronic format (to be provided at the Debtors' expense).

Article 9 of the Plan contains Release, Exculpation, and Injunction Provisions. You are advised to review and consider the Plan carefully because your rights might be affected thereunder. This Notice is being sent to you for informational purposes only. If you have questions with respect to your rights under the Plan or about anything stated herein or if you would like to obtain additional information, contact the Voting and Claims Agent.

Dated: _____

MINTZ & GOLD LLP

By: /s/ Andrew R. Gottesman

Andrew R. Gottesman

Gabriel Altman

CeCe M. Cole

600 Third Avenue, 25th Floor

New York, New York 10016

Telephone (212) 696-4848

Facsimile (212) 696-1231

gottesman@mintzandgold.com

altman@mintzandgold.com

cole@mintzandgold.com

Attorneys for the Debtors

EXHIBIT 4 to Proposed Order

Impaired Non-Voting Status Notice

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

Chapter 11

Case No. 20-12117 (MEW)

In re:

COSMOLEDO, LLC, *et al.*¹

Jointly Administered

Debtors.

**NOTICE OF NON-VOTING STATUS TO HOLDER OF IMPAIRED
CLAIMS AND EQUITY INTERESTS DEEMED TO REJECT THE PLAN**

PLEASE TAKE NOTICE THAT on _____, 2021, the United States Bankruptcy Court for the Southern District of New York (the “Court”) entered an order (the “Disclosure Statement Order”), (a) authorizing Cosmoledo, LLC, *et al.*, as debtors and debtors in-possession (collectively the “Debtors”), to solicit acceptances for the *Chapter 11 Plan of Liquidation of Debtors* (as may be amended, supplemented, or modified from time to time, the “Plan”); (b) approving the *Disclosure Statement for Chapter 11 Plan of Liquidation of Debtors* (as may be amended, supplemented, or modified from time to time, the “Disclosure Statement”)² as containing “adequate information” pursuant to section 1125 of the Bankruptcy Code; (c) approving the solicitation materials and documents to be included in the solicitation packages (the “Solicitation Packages”); and (d) approving procedures for soliciting, receiving, and tabulating votes on the Plan and for filing objections to the Plan.

PLEASE TAKE FURTHER NOTICE THAT because of the nature and treatment of your Claim or Interest under the Plan, **you are not entitled to vote on the Plan**. Specifically, under the terms of the Plan, as a holder of a Claim or Interest (as currently asserted against the Debtors) that is receiving no distribution under the Plan, you are deemed to reject the Plan pursuant to section 1126(f) of the Bankruptcy Code and are not entitled to vote on the Plan.

PLEASE TAKE FURTHER NOTICE THAT the hearing at which the Court will consider Confirmation of the Plan (the “Confirmation Hearing”) will commence on **August 31, 2021 at 10:00 a.m. prevailing Eastern Time**, before the Honorable Michael E. Wiles, in the United States Bankruptcy Court for the Southern District of New York, located at One Bowling

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtors’ federal tax identification number, include: Cosmoledo, LLC (6787); Breadroll, LLC, (3279); 688 Bronx Commissary, LLC (6515); 95 Broad Commissary, LLC (2335); 178 Bruckner Commissary, LLC (2581); 8 West Bakery, LLC (6421); NYC 1294 Third Ave Bakery, LLC (2001); 921 Broadway Bakery, LLC (2352); 1800 Broadway Bakery, LLC (8939); 1535 Third Avenue Bakery, LLC (1011); 2161 Broadway Bakery, LLC (2767); 210 Joralemon Bakery, LLC (4779); 1377 Sixth Avenue Bakery, LLC (9717); 400 Fifth Avenue Bakery, LLC (6378); 1400 Broadway Bakery, LLC (8529); 575 Lexington Avenue Bakery, LLC (9884); 685 Third Avenue Bakery, LLC (9613); 370 Lexington Avenue Bakery, LLC (0672); 787 Seventh Avenue Bakery, LLC (6846); 339 Seventh Avenue Bakery, LLC (1406); and 55 Hudson Yards Bakery, LLC (7583).

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Disclosure Statement.

Green, New York, New York 10004-1408.

PLEASE TAKE FURTHER NOTICE THAT the deadline for filing objections to the Plan is **August 20, 2021 at 5:00 p.m. prevailing Eastern Time** (the “Plan Objection Deadline”). Any objection to the Plan **must**: (a) be in writing; (b) conform to the Bankruptcy Rules, the Local Rules, and any orders of the Court; (c) state, with particularity, the basis and nature of any objection to the Plan and, if practicable, a proposed modification to the Plan that would resolve such objection; and (d) be filed with the Court (contemporaneously with a proof of service) and served upon the following parties so as to be **actually received** on or before **[August 20, 2021 at 5:00 p.m. prevailing Eastern Time]**:

Counsel for the Debtors	United States Trustee
<p>Mintz & Gold LLP, 600 Third Avenue 25th Floor New York, New York, 10016 Attn: Andrew Gottesman, Esq., Gabriel Altman, Esq., and CeCe M. Cole, Esq.</p>	<p>Office of the United States Trustee for the Southern District of New York 201 Varick Street, Suite 1006 New York, New York 10014 Attn.: Brian Masumoto, Esq.</p>
Counsel for the Committee	Counsel to the Holder of Cosmoledo’s Equity Interests
<p>Hahn & Hessen LLP, 488 Madison Avenue, New York, New York 10022, Attn: Mark T. Power, Esq. and Mark Indelicato, Esq.</p>	<p>Willkie Farr and Gallagher LLP, 787 Seventh Avenue New York, New York 10019 Attn: Paul V. Shalhoub, Esq.</p>

PLEASE TAKE FURTHER NOTICE THAT if you would like to obtain a copy of the Disclosure Statement, the Plan, the Plan Supplement, or related documents, you should contact Donlin, Recano & Company, Inc., the voting and claims agent retained by the Debtors in these Chapter 11 Cases (the “Voting and Claims Agent”), by: (a) calling 1-800-467-0821; (b) visiting the Debtors' restructuring website at <https://www.donlinrecano.com/Clients/mk/Index> (b) writing to Donlin, Recano & Company, Inc., Re: Cosmoledo, LLC *et al.*, Attn: Voting Department, c/o Donlin, Recano & Company, Inc., 6201 15th Avenue, Brooklyn, NY 11219; and/or (c) emailing DRCVote@DonlinRecano.com and requesting paper copies of the corresponding materials previously received in electronic format (to be provided at the Debtors’ expense).

Article 9 of the Plan contains Release, Exculpation, and Injunction Provisions. You are advised to review and consider the Plan carefully because your rights might be affected thereunder. This Notice is being sent to you for informational purposes only. If you have questions with respect to your rights under the Plan or about anything stated herein or if you would like to obtain additional information, contact the Voting and Claims Agent.

Dated: _____

MINTZ & GOLD LLP

By: /s/ Andrew R. Gottesman

Andrew R. Gottesman

Gabriel Altman

CeCe M. Cole

600 Third Avenue, 25th Floor

New York, New York 10016

Telephone (212) 696-4848

Facsimile (212) 696-1231

gottesman@mintzandgold.com

altman@mintzandgold.com

cole@mintzandgold.com

Attorneys for the Debtors

EXHIBIT 5 to Proposed Order
Notice to Disputed Claim Holders

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

Chapter 11

Case No. 20-12117 (MEW)

In re:

COSMOLEDO, LLC, *et al.*¹

Jointly Administered

Debtors.

NOTICE OF NON-VOTING STATUS WITH RESPECT TO DISPUTED CLAIMS

PLEASE TAKE NOTICE THAT on _____, 2021, at 5:00 p.m. the United States Bankruptcy Court for the Southern District of New York (the “Court”) entered an order (the “Disclosure Statement Order”), (a) authorizing Cosmoledo, LLC, *et al.*, as debtors and debtors in-possession (collectively the “Debtors”), to solicit acceptances for the *Chapter 11 Plan of Liquidation of Debtors* (as may be amended, supplemented, or modified from time to time, the “Plan”); (b) approving the *Disclosure Statement for Chapter 11 Plan of Liquidation of Debtors* (as may be amended, supplemented, or modified from time to time, the “Disclosure Statement”)² as containing “adequate information” pursuant to section 1125 of the Bankruptcy Code; (c) approving the solicitation materials and documents to be included in the solicitation packages (the “Solicitation Packages”); and (d) approving procedures for soliciting, receiving, and tabulating votes on the Plan and for filing objections to the Plan.

PLEASE TAKE FURTHER NOTICE THAT if you would like to obtain a copy of the Disclosure Statement, the Plan, the Plan Supplement, or related documents, you should contact Donlin, Recano & Company, Inc., the voting and claims agent retained by the Debtors in these Chapter 11 Cases (the “Voting and Claims Agent”), by: (a) calling 1-800-467-0821; (b) visiting the Debtors’ restructuring website at <https://www.donlinrecano.com/Clients/mk/Index> (b) writing to Donlin, Recano & Company, Inc., Re: Cosmoledo, LLC *et al.*, Attn: Voting Department, c/o Donlin, Recano & Company, Inc., 6201 15th Avenue, Brooklyn, NY 11219; and/or (c) emailing DRCVote@DonlinRecano.com and requesting paper copies of the corresponding materials previously received in electronic format (to be provided at the Debtors’ expense).

PLEASE TAKE FURTHER NOTICE THAT you are receiving this notice because you are the holder of a Claim that is subject to a pending objection by the Debtors. **You are not**

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtors’ federal tax identification number, include: Cosmoledo, LLC (6787); Breadroll, LLC, (3279); 688 Bronx Commissary, LLC (6515); 95 Broad Commissary, LLC (2335); 178 Bruckner Commissary, LLC (2581); 8 West Bakery, LLC (6421); NYC 1294 Third Ave Bakery, LLC (2001); 921 Broadway Bakery, LLC (2352); 1800 Broadway Bakery, LLC (8939); 1535 Third Avenue Bakery, LLC (1011); 2161 Broadway Bakery, LLC (2767); 210 Joralemon Bakery, LLC (4779); 1377 Sixth Avenue Bakery, LLC (9717); 400 Fifth Avenue Bakery, LLC (6378); 1400 Broadway Bakery, LLC (8529); 575 Lexington Avenue Bakery, LLC (9884); 685 Third Avenue Bakery, LLC (9613); 370 Lexington Avenue Bakery, LLC (0672); 787 Seventh Avenue Bakery, LLC (6846); 339 Seventh Avenue Bakery, LLC (1406); and 55 Hudson Yards Bakery, LLC (7583).

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Disclosure Statement.

entitled to vote any disputed portion of your Claim on the Plan unless one or more of the following events have taken place before a date that is three business days before the Voting Deadline (each, a “Resolution Event”):

1. an order of the Court is entered allowing such Claim pursuant to section 502(b) of the Bankruptcy Code, after notice and a hearing;
2. an order of the Court is entered temporarily allowing such Claim for voting purposes only pursuant to Bankruptcy Rule 3018(a), after notice and a hearing;
3. a stipulation or other agreement is executed between the holder of such Claim and the Debtors temporarily allowing the holder of such Claim to vote its Claim in an agreed upon amount; or
4. the pending objection to such Claim is voluntarily withdrawn by the Debtors.

Accordingly, this notice and the *Notice of Entry of Order Approving (I) Adequacy of the Disclosure Statement, (II) the Solicitation and Notice Procedures, (III) Form of Ballots and Notices in Connection Therewith, and (IV) Certain Dates with Respect Thereto* are being sent to you for informational purposes only.

PLEASE TAKE FURTHER NOTICE THAT if a Resolution Event occurs, then no later than one business day thereafter, the Voting and Claims Agent shall distribute a ballot, and a pre-addressed, postage pre-paid envelope to you, which must be returned to the Voting and Claims Agent no later than the Voting Deadline, which is on **August 18, 2021 at 5:00 p.m. prevailing Eastern Time.**

PLEASE TAKE FURTHER NOTICE THAT if you have any questions about the status of any of your Claims, you should contact the Voting and Claims Agent in accordance with the instructions provided above.

Dated: _____

MINTZ & GOLD LLP

By: /s/ Andrew R. Gottesman

Andrew R. Gottesman

Gabriel Altman

CeCe M. Cole

600 Third Avenue, 25th Floor

New York, New York 10016

Telephone (212) 696-4848

Facsimile (212) 696-1231

gottesman@mintzandgold.com

altman@mintzandgold.com

cole@mintzandgold.com

Attorneys for the Debtor

EXHIBIT 6 to Proposed Order

Cover Letter

[COMPANY LETTERHEAD]

[DATE]

Via First Class Mail

**Re: In re Cosmoledo, LLC
Chapter 11 Case No. 20-12117 (MEW)**

TO ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN:

COSMOLEDO, LLC, et al as debtors and debtors in possession (collectively the “Debtors”)¹ each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York (the “Court”) on September 10, 2020 (as to Cosmoledo, LLC, Breadroll, LLC, NYC 1294 Third Avenue Bakery, LLC, 1377 Sixth Avenue Bakery, LLC, 1400 Broadway Bakery, LLC, 1535 Third Avenue Bakery, LLC, 178 Bruckner Commissary, LLC, 1800 Broadway Bakery, LLC, 210 Joralemon Bakery, LLC, 2161 Broadway Bakery, LLC, 300 Madison Avenue Bakery, LLC, 339 Seventh Avenue Bakery, LLC, 370 Lexington Avenue Bakery, LLC, 400 Fifth Avenue Bakery, LLC, 55 Hudson Yards Bakery, LLC, 575 Lexington Avenue Bakery, LLC, 685 Third Avenue Bakery, LLC, 688 Bronx Commissary, LLC, 787 Seventh Avenue Bakery, LLC, 8 West Bakery LLC, 921 Broadway Bakery, LLC, 95 Broad Commissary, LLC).

You have received this letter and the enclosed materials because you are entitled to vote on the *Chapter 11 Plan of Liquidation of Debtors* (as may be amended, supplemented, or modified from time to time, the “Plan”). On _____, 2021 the Court entered an order (the “Disclosure Statement Order”), (a) authorizing the Debtors to solicit acceptances for the Plan; (b) approving the *Disclosure Statement for Chapter 11 Plan of Liquidation of Debtors* (the “Disclosure Statement”)² as containing “adequate information” pursuant to section 1125 of the Bankruptcy Code; (c) approving the solicitation materials and documents to be included in the solicitation packages (the “Solicitation Package”); and (d) approving procedures for soliciting, receiving, and tabulating votes on the Plan, and for filing objections to the Plan.

**You are receiving this letter because you are entitled to vote on the Plan.
Therefore, you should read this letter carefully and discuss it with your attorney.
If you do not have an attorney, you may wish to consult one.**

¹ identification number, include: Cosmoledo, LLC (6787); Breadroll, LLC, (3279); 688 Bronx Commissary, LLC (6515); 95 Broad Commissary, LLC (2335); 178 Bruckner Commissary, LLC (2581); 8 West Bakery, LLC (6421); NYC 1294 Third Ave Bakery, LLC (2001); 921 Broadway Bakery, LLC (2352); 1800 Broadway Bakery, LLC (8939); 1535 Third Avenue Bakery, LLC (1011); 2161 Broadway Bakery, LLC (2767); 210 Joralemon Bakery, LLC (4779); 1377 Sixth Avenue Bakery, LLC (9717); 400 Fifth Avenue Bakery, LLC (6378); 1400 Broadway Bakery, LLC (8529); 575 Lexington Avenue Bakery, LLC (9884); 685 Third Avenue Bakery, LLC (9613); 370 Lexington Avenue Bakery, LLC (0672); 787 Seventh Avenue Bakery, LLC (6846); 339 Seventh Avenue Bakery, LLC (1406); and 55 Hudson Yards Bakery, LLC (7583).

² Capitalized terms not otherwise defined herein shall have the same meanings set forth in the Disclosure Statement.

In addition to this cover letter, the enclosed materials comprise your Solicitation Package, and were approved by the Court for distribution to holders of Claims in connection with the solicitation of votes to accept the Plan. The Solicitation Package consists of the following:

- a. a copy of the Solicitation and Voting Procedures;
- b. the Notice of Hearing to Consider Confirmation of the Chapter 11 Plan of Liquidation of Debtors Filed by the Debtors and Related Voting and Objection Deadlines, in substantially the form annexed as Exhibit 7 to the Disclosure Statement Order (the “Confirmation Hearing Notice”);
- c. the applicable form of Ballot, in substantially the form of Ballots annexed as Exhibit 2 to the Disclosure Statement Order, as applicable including a pre- paid, pre-addressed return envelope;
- d. the approved Disclosure Statement as Exhibit 8 (and exhibits thereto, including the Plan);
- e. the Disclosure Statement Order (without exhibits, except the Solicitation and Voting Procedures); and
- f. any additional documents that the Court has ordered to be made available.

The Debtors strongly urge you to properly and timely submit your Ballot casting a vote to accept the Plan in accordance with the instructions in your Ballot. The Voting Deadline is August 18, 2021 at 5:00 p.m. prevailing Eastern Time.

Cosmoledo, LLC, *et al.*, (on behalf of itself and each of the other Debtors) has approved the filing of the Plan and the solicitation of votes to accept the Plan. The Debtors believe that the acceptance of the Plan is in the best interests of their estates, holders of Claims, and all other parties in interest. The Committee supports confirmation of the Plan. Moreover, the Debtors believe that any alternative other than Confirmation of the Plan could result in extensive delays and increased administrative expenses, which, in turn, likely would result in smaller distributions (or no distributions) on account of Claims asserted in these Chapter 11 Cases.

The materials in the Solicitation Package are intended to be self-explanatory. If you should have any questions, however, please feel free to contact Donlin, Recano & Company, Inc. the voting and claims agent retained by the Debtors in these Chapter 11 Cases (the “Voting and Claims Agent”), by: (a) calling 1-800-467-0821; (b) visiting the Debtors’ restructuring website at <https://www.donlinrecano.com/Clients/mk/Index> (b) writing to Donlin, Recano & Company, Inc., Re: Cosmoledo, LLC *et al.*, Attn: Voting Department, c/o Donlin, Recano & Company, Inc., 6201 15th Avenue, Brooklyn, NY 11219; and/or (c) emailing DRCVote@DonlinRecano.com and requesting paper copies of the corresponding materials previously received in electronic format (to be provided at the Debtors’ expense).

Please be advised that the Voting and Claims Agent is authorized to answer questions

about, and provide additional copies of solicitation materials, but may **not** advise you as to whether you should vote to accept or reject the Plan.

Sincerely,

Cosmoledo, LLC, on its own behalf
and for each of the other twenty
Debtors

EXHIBIT 7

Confirmation Hearing Notice

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

Chapter 11

Case No. 20-12117 (MEW)

In re:

COSMOLEDO, LLC, *et al.*¹

Jointly Administered

Debtors.

**NOTICE OF HEARING TO CONSIDER CONFIRMATION OF
THE CHAPTER 11 PLAN FILED BY THE DEBTORS AND
RELATED VOTING AND OBJECTION DEADLINES**

PLEASE TAKE NOTICE THAT on _____, **2021**, the United States Bankruptcy Court for the Southern District of New York (the “Court”) entered an order (the “Disclosure Statement Order”), (a) authorizing Cosmoledo, LLC, *et al.*, as debtors and debtors in–possession (collectively the “Debtors”), to solicit acceptances for the *Chapter 11 Plan of Liquidation of Debtors* (as may be amended, supplemented, or modified from time to time, the “Plan”); (b) approving the *Disclosure Statement for Chapter 11 Plan of Liquidation of Debtors* (as may be amended, supplemented, or modified from time to time, the “Disclosure Statement”)² as containing “adequate information” pursuant to section 1125 of the Bankruptcy Code; (c) approving the solicitation materials and documents to be included in the solicitation packages (the “Solicitation Packages”); and (d) approving procedures for soliciting, receiving, and tabulating votes on the Plan and for filing objections to the Plan.

PLEASE TAKE FURTHER NOTICE THAT the hearing at which the Court will consider Confirmation of the Plan (the “Confirmation Hearing”) will commence **on August 31, 2021, at 10:00 a.m. prevailing Eastern Time**, before the Honorable Michael E. Wiles, either telephonically or in the United States Bankruptcy Court for the Southern District of New York, located at One Bowling Green, New York, New York 10004-1408.

Please be Advised: The Confirmation Hearing may be continued from time to time by the Court or the Debtors without further notice other than by such adjournment being announced in open court or by a Notice of Adjournment filed with the Court and served on all parties entitled to notice.

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtors’ federal tax identification number, include: Cosmoledo, LLC (6787); Breadroll, LLC, (3279); 688 Bronx Commissary, LLC (6515); 95 Broad Commissary, LLC (2335); 178 Bruckner Commissary, LLC (2581); 8 West Bakery, LLC (6421); NYC 1294 Third Ave Bakery, LLC (2001); 921 Broadway Bakery, LLC (2352); 1800 Broadway Bakery, LLC (8939); 1535 Third Avenue Bakery, LLC (1011); 2161 Broadway Bakery, LLC (2767); 210 Joralemon Bakery, LLC (4779); 1377 Sixth Avenue Bakery, LLC (9717); 400 Fifth Avenue Bakery, LLC (6378); 1400 Broadway Bakery, LLC (8529); 575 Lexington Avenue Bakery, LLC (9884); 685 Third Avenue Bakery, LLC (9613); 370 Lexington Avenue Bakery, LLC (0672); 787 Seventh Avenue Bakery, LLC (6846); 339 Seventh Avenue Bakery, LLC (1406); and 55 Hudson Yards Bakery, LLC (7583).

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Disclosure Statement.

CRITICAL INFORMATION REGARDING VOTING ON THE PLAN

Voting Record Date. The voting record date is **July 20, 2021 at 10:00 a.m. prevailing Eastern Time** (the “Voting Record Date”), which is the date for determining which holders of Claims in Classes 3 and 4 are entitled to vote on the Plan.

Voting Deadline. The deadline for voting on the Plan is on **August 18, 2021 at 5:00 p.m. prevailing Eastern Time** (the “Voting Deadline”). If you received a Solicitation Package, including a Ballot and intend to vote on the Plan you **must**: (a) follow the instructions carefully; (b) complete **all** of the required information on the ballot; and (c) execute and return your completed Ballot according to and as set forth in detail in the voting instructions so that it is **actually received** by the Debtors' voting and claims agent, Donlin, Recano & Company, Inc. (the “Voting and Claims Agent”) on or before the Voting Deadline. **A failure to follow such instructions may disqualify your vote.**

Article 9 of the Plan contains Release, Exculpation, and Injunction provisions. You are advised to review and consider the Plan carefully because your rights might be affected thereunder.

CRITICAL INFORMATION REGARDING OBJECTING TO THE PLAN

Plan Objection Deadline. The deadline for filing objections to the Plan is **August 20, 2021 at 5:00 p.m. prevailing Eastern Time** (the “Plan Objection Deadline”). All objections to the relief sought at the Confirmation Hearing **must**: (a) be in writing; (b) conform to the Bankruptcy Rules, the Local Rules, and any orders of the Court; (c) state, with particularity, the legal and factual basis for the objection and, if practicable, a proposed modification to the Plan (or related materials) that would resolve such objection; **and** (d) be filed with the Court (contemporaneously with a proof of service) and served upon the following parties so as to be **actually received** on or before **August 20, 2021 at 5:00 p.m. prevailing Eastern Time**:

Counsel for the Debtors	United States Trustee
Mintz & Gold LLP, 600 Third Avenue 25th Floor New York, New York, 10016 Attn: Andrew Gottesman, Esq., Gabriel Altman, Esq., and CeCe M. Cole, Esq.	Office of the United States Trustee for the Southern District of New York 201 Varick Street, Suite 1006 New York, New York 10014 Attn.: Brian Masumoto, Esq.
Counsel for the Committee	Counsel to the Holder of Cosmoledo's Equity Interests
Hahn & Hessen LLP, 488 Madison Avenue, New York, New York 10022, Attn: Mark T. Power, Esq.,	Willkie Farr and Gallagher LLP, 787 Seventh Avenue New York, New York 10019 Attn: Paul V. Shalhoub, Esq.

ADDITIONAL INFORMATION

Obtaining Solicitation Materials. The materials in the Solicitation Package are intended to be self-explanatory. If you should have any questions or if you would like to obtain additional solicitation materials (or paper copies of solicitation materials if you received a CD-ROM or flash drive), please feel free to contact the Debtors' Voting and Claims Agent, by: (a) calling 1-800-467-0821; (b) visiting the Debtors' restructuring website at <https://www.donlinrecano.com/Clients/mk/Index>; (b) writing to Donlin, Recano & Company, Inc., Re: Cosmoledo, LLC *et al.*, Attn: Voting Department, c/o Donlin, Recano & Company, Inc., 6201 15th Avenue, Brooklyn, NY 11219; and/or (c) emailing DRCVote@DonlinRecano.com and requesting paper copies of the corresponding materials previously received in electronic format (to be provided at the Debtors' expense).

Please be advised that the Voting and Claims Agent is authorized to answer questions about, and provide additional copies of, solicitation materials, but may **not** advise you as to whether you should vote to accept or reject the Plan.

Filing the Plan Supplement. The Debtors will file the Plan Supplement (as defined in the Plan) no later than ten (10) days prior to the Voting Deadline and will serve notice on all holders of Claims entitled to vote on the Plan, which will: (a) inform parties that the Debtors filed the Plan Supplement; (b) list the information contained in the Plan Supplement; and (c) explain how parties may obtain copies of the Plan Supplement.

Binding Nature of the Plan

If confirmed, the Plan will bind all Holders of Claims and Interests to the maximum extent permitted by applicable law, whether or not such Holder will receive or retain any property or interest in property under the Plan, has filed a Proof of Claim in these Chapter 11 Cases, or failed to vote to accept or reject the Plan or voted to reject the Plan.

Dated: _____
New York, New York

MINTZ & GOLD LLP

By: /s/ Andrew R. Gottesman
Andrew R. Gottesman
Gabriel Altman
CeCe M. Cole
600 Third Avenue, 25th Floor
New York, New York 10016
Telephone (212) 696-4848
Facsimile (212) 696-1231
gottesman@mintzandgold.com
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cole@mintzandgold.com

Attorneys for the Debtors

EXHIBIT 8

Disclosure Statement

[FINAL AND APPROVED VERSION TO BE INCLUDED]