

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

Chapter 11

In re:

Case No. 20-12117 (MEW)

COSMOLEDO, LLC, *et al.*<sup>1</sup>

Debtors.

Jointly Administered

**SOLICITATION AND VOTING PROCEDURES**

**PLEASE TAKE NOTICE THAT** on July 21, 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”);<sup>2</sup> (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 **July 20, 2021, at 10:00 a.m.** prevailing Eastern Time, 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 **August 18, 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

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<sup>1</sup> 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).

<sup>2</sup> 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](http://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 <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](mailto: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 and all other parties entitled to receive them on or before 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), 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 and the Solicitation Materials. 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 **August 9, 2021, at 5:00 p.m.** prevailing Eastern Time. The Debtors (and, with respect to filing a response, any other party in interest) shall serve any responses to a Rule 3018 Motion by **August 13, 2021, at 5:00 p.m.** prevailing Eastern Time.

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 **August 23, 2021, by 5:00 p.m.** prevailing Eastern Time, 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](http://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. Provided, however, that the Debtors shall provide notice to any party submitting a Ballot with defects and irregularities prior to the Voting Deadline of such defects or irregularities;
- (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.

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