

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

In re:

SUITABLE TECHNOLOGIES, INC.,¹

Debtor.

Chapter 11

Case No. 20-10432 (CTG)

Ref. Docket No. 415

Confirmation Hearing:

June 18, 2021 at 10:00 a.m. (ET)

Confirmation Objection Deadline:

June 10, 2021 at 4:00 p.m. (ET)

NOTICE OF ORDER (I) APPROVING THE DISCLOSURE STATEMENT; (II) APPROVING SOLICITATION AND VOTING PROCEDURES, INCLUDING (A) FIXING THE RECORD DATE, (B) APPROVING THE SOLICITATION PACKAGES AND PROCEDURES FOR DISTRIBUTION, (C) APPROVING THE FORM OF BALLOTS AND ESTABLISHING PROCEDURES FOR VOTING, AND (D) APPROVING PROCEDURES FOR VOTE TABULATION; (III) SCHEDULING A CONFIRMATION HEARING AND ESTABLISHING NOTICE AND OBJECTION PROCEDURES; AND (IV) GRANTING RELATED RELIEF

PLEASE TAKE NOTICE THAT:

1. ***Approval of the Disclosure Statement.*** At a hearing held on May 11, 2021 (the “**Disclosure Statement Hearing**”), the United States Bankruptcy Court for the District of Delaware (the “**Court**”), having jurisdiction over the above-captioned chapter 11 case of Suitable Technologies, Inc. (the “**Debtor**”), entered an order [Docket No. 415] (the “**Disclosure Statement Order**”) approving the *Disclosure Statement for the Chapter 11 Plan of Liquidation of Suitable Technologies, Inc.*, dated as of April 2, 2021 and attached as Exhibit 1 to the Disclosure Statement Order (as amended, modified or supplemented from time to time, the “**Disclosure Statement**”), as containing adequate information within the meaning of section 1125 of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”), and authorized the Debtor to solicit votes to accept or reject the *Chapter 11 Plan of Liquidation of Suitable Technologies, Inc.*, dated as of April 2, 2021 (as amended, modified or supplemented from time to time, the “**Plan**”), annexed as Exhibit A to the Disclosure Statement. Capitalized terms used but not otherwise defined herein shall the meaning ascribed to such terms in the Plan.

2. ***Classification of Claims and Interests under the Plan.*** The classification and treatment of Claims and Interests under the Plan is described generally below:

<u>Class</u>	<u>Claim or Equity Interest</u>	<u>Summary of Treatment</u>	<u>Estimated Allowed Amount of Claims</u>	<u>Projected Recovery Under Plan</u>
1	Secured Claims	Unimpaired <i>Deemed to Accept Plan</i>	\$20,787	100%
2	Priority Claims	Unimpaired <i>Deemed to Accept Plan</i>	\$7,265	100%
3	Prepetition Secured Promissory Notes Claim	Impaired <i>Entitled to Vote on Plan</i>	\$3,775,000	0% ²

¹ The last four digits of the Debtor’s United States federal tax identification number are 7816. The Debtor’s mailing address is 921 East Charleston Road, Palo Alto, CA 94303.

<u>Class</u>	<u>Claim or Equity Interest</u>	<u>Summary of Treatment</u>	<u>Estimated Allowed Amount of Claims</u>	<u>Projected Recovery Under Plan</u>
4	General Unsecured Claims	Impaired <i>Entitled to Vote on Plan</i>	\$875,764	35% ³
5	Subordinated Claims	Impaired <i>Deemed to Reject Plan</i>	\$0	0%
6	Interests	Impaired <i>Deemed to Reject Plan</i>	\$0	0%

3. ***Deadline for Voting on the Plan.*** The Court has established **June 8, 2021 at 5:00 p.m. (ET)** (the “**Voting Deadline**”) as the deadline by which Ballots accepting or rejecting the Plan ***must be received***. Only Holders of Claims in Class 3 (Prepetition Secured Promissory Notes Claim) and Class 4 (General Unsecured Claims) under the Plan are entitled to vote on the Plan and will receive Ballots to cast such votes. To be counted, to the extent Ballots are cast in paper form, Ballots must be properly executed, completed, and delivered to the Voting Agent at either of the addresses provided for herein, so as to be ***received by the Voting Agent*** no later than the Voting Deadline, unless extended, in writing (which writing may be an email), by the Debtor; and to the extent Ballots are submitted electronically as provided for herein, Ballots must be electronically signed and submitted no later than the Voting Deadline, unless extended, in writing (which writing may be an email), by the Debtor. Ballots will be accepted in paper form, by delivering the Ballot by first-class mail postage prepaid, personal delivery or overnight courier, or electronically, through the Online Voting Platform (as defined below), as follows:

<u>If by First-Class mail:</u>	<u>If by hand delivery or overnight mail:</u>	<u>If by electronic submission:</u>
Suitable Technologies, Inc. Ballot Processing c/o Donlin Recano & Company, Inc. P.O. Box 199043 Blythebourne Station Brooklyn, NY 11219	Suitable Technologies, Inc. Ballot Processing c/o Donlin Recano & Company, Inc. 6201 15 th Avenue Brooklyn, NY 11219	Through the Voting Agent’s customized “E-Ballot” portal (the “ Online Voting Platform ”), which can be found on the Debtor’s case administration website at https://www.donlinrecano.com/Clients/sti/vote Please make sure to follow the instructions at the Online Voting Platform to submit your Ballot.

It is not sufficient for a Ballot merely to be post-marked by the Voting Deadline. Any Ballots submitted by fax or any electronic transmission (other than through the Online Voting Platform as provided for herein) will not be counted, unless approved by the Debtor in writing or otherwise ordered by this Court. Holders of Unimpaired Claims under the Plan (i.e., Class 1 Secured Claims and Class 2 Priority Claims) and Classes that are deemed to reject the Plan (i.e., Class 5 Subordinated Claims and Class 6 Interests) are not entitled to vote on the Plan.

4. ***Plan Supplement.*** The Plan Supplement, if any, shall be filed and served on the following parties no later than June 1, 2021, which service may be made by email: (i) the U.S. Trustee; (ii) those parties requesting notice pursuant to Bankruptcy Rule 2002 as of the service date; and (iii) any other party who requests in writing a copy of the same. Once it is filed, copies of the Plan Supplement will be available for review free of charge at

² Pursuant to the Plan Settlement, the Prepetition Secured Promissory Notes Claim shall be Allowed in the amount of not less than \$3,775,000; however, Magicheart shall waive any and all rights to a Distribution on account of such claim.

³ This projected recovery is based on the Magicheart Parties waiving all rights to a Distribution on account of their General Unsecured Claims against the Debtor pursuant to the Plan Settlement, including, without limitation, the Prepetition Unsecured Promissory Notes Claim and the Palo Alto Real Property General Unsecured Lease Claim, which the Debtor believes are not less than \$88,476,083 in the aggregate. The foregoing significantly reduces the anticipated amount of Allowed General Unsecured Claims to approximately \$875,764.

www.donlinrecano.com/sti/PlanOfReorg, by clicking on the link on the left hand side of the page titled “Confirmation Documents.”

5. **Confirmation Hearing.** A hearing to consider the confirmation of the Plan and for such other and further relief as may be just or proper (the “**Confirmation Hearing**”) will be held on **June 18, 2021 at 10:00 a.m. (ET)** before the Honorable Craig T. Goldblatt, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Courtroom No. 7, Wilmington, Delaware 19801. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court or the Debtor without further notice to parties other than noting the adjournment in the hearing agenda for the noticed Confirmation Hearing or a filing on the docket of the Chapter 11 Case in addition to any announcement that may be made in Court at the Confirmation Hearing or any adjourned Confirmation Hearing. The Plan may be modified in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Plan and other applicable law, without further notice unless such notice is required by the Bankruptcy Code or the Bankruptcy Rules, prior to or as a result of the Confirmation Hearing. If the Bankruptcy Court enters an order confirming the Plan, section 1141 of the Bankruptcy Code shall become applicable with respect to the Plan and the Plan shall be binding on all parties to the fullest extent permitted by the Bankruptcy Code.

6. **Deadline for Objections to Confirmation of the Plan.** Objections, if any, to confirmation of the Plan, must (i) be in writing; (ii) state the name, address, and nature of the Claim or Interest of the objecting or responding party; (iii) state with particularity the legal and factual basis and nature of any objection or response; and (iv) be filed with the Clerk of the Bankruptcy Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801 **before 4:00 p.m. (ET) on June 10, 2021** and served by that date and time in accordance with the Local Rules, which service may be made by email, on the following parties: (i) counsel to the Debtor, Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, Delaware 19801, Attn: Robert F. Poppiti, Jr., Esq. (rpoppiti@ycst.com) and Betsy L. Feldman, Esq. (bfeldman@ycst.com); (ii) counsel for the Magicheart Parties, Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, Wilmington, Delaware 19801, Attn: Curtis S. Miller, Esq. (cmiller@morrisnichols.com) and Paige N. Topper, Esq. (ptopper@morrisnichols.com); and (iii) the Office of the United States Trustee for the District of Delaware, 855 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Juliet M. Sarkessian, Esq. (Juliet.M.Sarkessian@usdoj.gov).

7. **Certain Voting Issues.** Any party whose Claim is in a Voting Class (as defined in the Disclosure Statement Order), and whose Claim is subject to a pending claim objection and wishes to vote on the Plan, or who otherwise wishes to challenge the allowance of its Claim for voting purposes shall serve on counsel to the Debtor, at the address set forth at the end of this notice, and file with the Court, a motion for an order, pursuant to Bankruptcy Rule 3018(a), temporarily allowing such Claim in a different amount or classification for purposes of voting to accept or reject the Plan **on or before 4:00 p.m. (ET) on June 4, 2021**.

8. **RELEASE, INJUNCTION AND EXCULPATION PROVISIONS CONTAINED IN THE PLAN. ARTICLE XI OF THE PLAN CONTAINS CERTAIN RELEASE, INJUNCTION AND EXCULPATION PROVISIONS. YOU ARE ENCOURAGED TO CAREFULLY REVIEW THE PLAN, INCLUDING THESE PROVISIONS, AS YOUR RIGHTS MAY BE AFFECTED, REGARDLESS OF WHETHER OF YOU ARE UNIMPAIRED OR IMPAIRED UNDER THE PLAN.**

9. **The release in Section 11.10(a) of the Plan (the “Debtor Release”) binds the Debtor and the Estate. It provides:**

“Releases by Debtor and the Estate. As of the Effective Date, for good and valuable consideration, including the contributions of the Debtor Released Parties in facilitating the administration of the Chapter 11 Case and other actions contemplated by the Plan and the other contracts, instruments, releases, agreements or documents executed and delivered in connection with the Chapter 11 Case, the Plan or the Confirmation Order, including, without limitation, the Prior Asset Sales and the Plan Settlement, the Debtor Released Parties are forever released by the Debtor and the Estate, and anyone claiming by or through the Debtor and the Estate, from any and all claims, interests, obligations,

rights, suits, damages, causes of action (including, without limitation, any and all causes of action under chapter 5 of the Bankruptcy Code), remedies and liabilities whatsoever, including, without limitation, any derivative claims or claims asserted or assertible on behalf of the Debtor and the Estate, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, existing or hereinafter arising, in law, equity or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or that a Holder of any Claim or Interest would have been legally entitled to assert derivatively on behalf of the Debtor or otherwise by or through the Debtor, based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtor, the Estate, the Chapter 11 Case (including, without limitation, the Prior Asset Sales), the Plan, the Confirmation Order, the Disclosure Statement or related agreements, instruments or other documents in the Chapter 11 Case (including, without limitation, the Asset Purchase Agreements)."

"Debtor Released Parties" is defined as follows:

"Each solely in their capacities as such, (i) the Debtor, the Estate and the Debtor's Related Parties; (ii) Ronald Barliant; (iii) the Magicheart Parties; (iv) the Asgaard Capital Parties; (v) Bo Preising; and (vi) the Professionals retained by the Debtor pursuant to an Order of the Bankruptcy Court pursuant to sections 327, 328, 1103 or 1104 of the Bankruptcy Code."

10. *Additionally, Article XI of the Plan contains certain exculpation and injunction provisions. All parties are advised to read Article XI of the Plan carefully and consult with their own advisors with respect thereto. The text of the relevant provisions of Article XI of the Plan are as follows:*

Section 11.9. Non-Discharge of the Debtor; Injunction. In accordance with section 1141(d)(3) of the Bankruptcy Code, the Plan does not discharge the Debtor. Section 1141(c) of the Bankruptcy Code nevertheless provides, among other things, that the property dealt with by the Plan is free and clear of all Claims and Interests. As such, no Person or Entity holding a Claim or Interest may receive any payment from, or seek recourse against, any Assets or property of the Debtor and its Estate or the Post-Effective Date Debtor other than Assets or property required to be distributed to that Person or Entity under the Plan. Except as otherwise expressly provided for in the Plan or the Confirmation Order, all Persons and Entities are permanently enjoined, on and after the Effective Date, on account of any Claim or Interest, or on account of any claim, interest, obligation, right, suit, damages, cause of action, remedy or liability released, dismissed, exculpated, settled or waived under the Plan or the Confirmation Order, from:

- (a) asserting any such Claim or Interest, or any such claim, interest, obligation, right, suit, damages, cause of action, remedy or liability released, dismissed, exculpated, settled or waived under the Plan or the Confirmation Order, against any assets or property of the Debtor, its Estate, the Post-Effective Date Debtor, the Released Parties, and their successors and assigns;*
- (b) commencing or continuing in any manner any suit, action, discovery, or other matter or proceeding of any kind against the Debtor, its Estate, the Post-Effective Date Debtor, the Released Parties, their successors and assigns and any of their assets and properties;*
- (c) enforcing, attaching, collecting or recovering by any manner or means any judgment, award, decree or order against the Debtor, its Estate, the Post-Effective Date Debtor, the Released Parties, their successors and assigns and any of their assets and properties;*
- (d) creating, perfecting or enforcing any encumbrance of any kind against the Debtor, its Estate, the Post-Effective Date Debtor, the Released Parties, their successors and assigns and any of their assets and properties; or*

(e) asserting any right of setoff or subrogation of any kind against any obligation due from the Debtor, its Estate, the Post-Effective Date Debtor, the Released Parties or their successors and assigns, or against any of their assets and properties, except to the extent that a right to setoff or subrogation is asserted in a timely filed proof of claim.

Notwithstanding anything to the contrary in the Plan or the Confirmation Order, but subject to, and not in any way modifying or otherwise affecting, the terms of (a) Sections 3.1.1, 11.10 and 11.11 of the Plan or (b) the DIP Order, the following claims are not precluded, enjoined, released, or dismissed pursuant to the Plan or the Confirmation Order: any and all direct claims that Allison Huynh may have (i) against any party other than the Debtor and the Estate or (ii) against such other party's assets except for any such party's assets that were acquired from the Debtor and the Estate pursuant to the Sale Orders (collectively, the "Direct Huynh Claims"), provided, however, that the Direct Huynh Claims shall not include, and shall expressly exclude, any derivative claims or claims asserted or assertible by or on behalf of the Debtor and the Estate or that Allison Huynh would have been legally entitled to assert derivatively on behalf of the Debtor and the Estate or otherwise by or through the Debtor and the Estate. For the avoidance of doubt, notwithstanding the preceding sentence, the Post-Effective Date Debtor is authorized and directed to return, or cause to be returned, to Magicheart (or any Person or Entity designated in writing by Magicheart) any amounts or assets that are to be returned to Magicheart pursuant to Section 3.1.1 of the Plan.

Section 11.11. Exculpation and Limitation of Liability. On the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, to the maximum extent permitted by law, none of the Exculpated Parties shall have or incur any liability to any Person or Entity, including, without limitation, to any Holder of a Claim or an Interest, for any act or omission in connection with, relating to, or arising out of the Chapter 11 Case (including, without limitation, the Prior Asset Sales), the formulation, negotiation, preparation, dissemination, solicitation of acceptances, implementation, confirmation or consummation of the Plan (including, without limitation, the Plan Settlement), the Disclosure Statement, the Plan Administrator Agreement or any contract, instrument, release or other agreement or document created, executed or contemplated in connection with the Chapter 11 Case (including, without limitation, the Asset Purchase Agreements), the Plan, the Confirmation Order, or the administration of the Plan or the Assets and property to be distributed under the Plan; provided, however, that the exculpation provisions of this Section 11.11 shall not apply to acts or omissions constituting actual fraud, willful misconduct or gross negligence by any Exculpated Party, as determined by a Final Order. The Confirmation Order and the Plan shall serve as a permanent injunction against any Person or Entity commencing or continuing in any manner any suit, action, discovery, or other matter or Proceeding of any kind against the Exculpated Parties that has been exculpated pursuant to this Section 11.11 of the Plan.

"Exculpated Parties" is defined as follows:

"Each of, solely in their capacities as such, and solely in connection with Section 11.11 of the Plan: (i) the Debtor and the Estate; (ii) Ronald Barliant; (iii) the Asgaard Capital Parties; (iv) Bo Preising; and (v) the Professionals retained by the Debtor pursuant to an Order of the Bankruptcy Court pursuant to sections 327, 328, 1103 or 1104 of the Bankruptcy Code."

11. **Copies of Documents.** Copies of the Plan, the Disclosure Statement, the Plan Supplement (which will be filed on or before June 1, 2021), and the Disclosure Statement Order are, or will be, available for review free of charge at www.donlinrecano.com/sti/PlanOfReorg, by clicking on the link on the left hand side of the page titled "Confirmation Documents." In addition, copies of the Plan are available upon written request via first-class mail to the Debtor's Voting Agent at Donlin, Recano & Company, Inc., Re: Suitable Technologies, Inc., P.O. Box 199043, Blythebourne Station, Brooklyn, NY 11219, by submitting an inquiry to the Voting Agent via email at DRCVote@donlinrecano.com with a reference to "Suitable Technologies, Inc." in the subject line, or by contacting the

Voting Agent via telephone at (877) 322-4952 (domestic/toll free). If you are the holder of a Claim and believe that you are entitled to vote on the Plan, but you did not receive a Solicitation Package, or if you have any questions concerning voting procedures, the Solicitation Package that you received, or the amount of your Claim, you should contact the Voting Agent electronically, in writing or via telephone using the contract information provided in this paragraph for the Voting Agent.

Dated: May 11, 2021
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Betsy L. Feldman

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