

No.

IN THE
Supreme Court of the United States

TAMÁS HAMPEL,

Petitioner,

v.

VIRGIN ORBIT HOLDINGS, INC.,

Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Section 1144 of the Bankruptcy Code, 11 U.S.C. § 1144, permits a court to revoke a confirmation order that was “procured by fraud.”

The question presented is whether a showing of “fraud” under Section 1144 requires a proof of an affirmative misstatement made with fraudulent intent, as the Third Circuit held, or may also be satisfied by omission of a material fact, as several other circuits have recognized.

PARTIES TO THE PROCEEDINGS

Petitioner, Dr. Tamás Hampel, was the pro se plaintiff in the bankruptcy court proceedings and the appellant in the Delaware District Court and the Third Circuit.

Respondent, Virgin Orbit, LLC was the defendant in the bankruptcy court and the appellee in the district court and court of appeals.

RELATED PROCEEDINGS

United States Bankruptcy Court (Bankr. D. Del.):

In re Virgin Orbit Holdings, Inc., et al., Nos. 23-10405 (KBO) and 23-10408 (KBO) (Mar. 6, 2024) (order denying revocation under 11 U.S.C. § 1144).

United States District Court (D. Del.):

In re Virgin Orbit, LLC, C.A. No. 24-328 (MN) (Mar. 31, 2025) (affirming bankruptcy court's denial of revocation).

United States Court of Appeals (3d Cir.):

In re Virgin Orbit, LLC, No. 25-1702 (Sept. 26, 2025) (affirming district court).

Supreme Court of the United States:

In re Tamás Hampel, No. 25-6426 (Feb. 23, 2026) (denying petition for a writ of mandamus arising from the same Third Circuit judgment).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Dr. Tamás Hampel, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The opinion of the Third Circuit is available at 2025 WL 2741796 and is not published. Pet.App.3a-9a. The opinion of the United States District Court for the District of Delaware is reported at 669 B.R. 725. Pet.App.10a-34a. The opinion of the bankruptcy court is reported at 659 B.R. 36. Pet.App.35a-47a.

JURISDICTION

The Third Circuit entered its judgment on September 26, 2025. On March 20, 2026, the Third Circuit recalled its mandate and granted Petitioner leave to file a petition for panel rehearing or rehearing en banc. Petitioner filed his pro se petition for rehearing on March 20, 2026, and the Third Circuit denied rehearing on June 4, 2026.

On August 28, 2026, this Court extended the time within which to file a petition for a writ of certiorari to and including October 2, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

**CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED**

11 U.S.C. § 1144 — Revocation of an order of confirmation

On request of a party in interest at any time before 180 days after the date of the entry of the order of confirmation, and after notice and a hearing, the court may revoke such order if and only if such order was procured by fraud. An order under this section revoking an order of confirmation shall—

- (1) contain such provisions as are necessary to protect any entity acquiring rights in good faith reliance on the order of confirmation; and
- (2) revoke the discharge of the debtor.

INTRODUCTION

Investors in Virgin Orbit—including ordinary people, such as Petitioner Tamás Hampel and Stephen Inguagiato, a New York City firefighter—lost hundreds of thousands of dollars when the company declared bankruptcy. Equity shareholders in a public company accept the general risk that they may lose the value of their investment. This is the cost of doing business. But public companies may not procure a bankruptcy confirmation order by fraud, to the detriment of individual investors.

After Virgin Orbit declared Chapter 11 bankruptcy in April 2023, the company and its debtor associates successfully marketed and auctioned off their major tangible assets to outside purchasers. In the process, Petitioner argued below, they intentionally concealed the true value of the IP assets underlying their multi-billion-dollar satellite launching business. The Debtors claimed that those assets had “de minimis” value in April 2023. In December 2024, however, Virgin Orbit’s former CEO, Dan Hart, publicly hailed those same IP assets as “amazing technology” that they were “currently licensing” to “companies who [were] tapping in” to revive Virgin Orbit’s rocket launch concept.¹

Petitioner and other investors presented serious arguments that the bankruptcy confirmation order was “procured by fraud” within the meaning of 11

¹ Układ Sił, The Future of Space Exploration – Dan Hart, YouTube (Dec. 1, 2024), <https://youtu.be/R1Iwx0WddR0?si=Fi3LchvtKGqywlBu&t=1685>.

U.S.C. § 1144 and should be revoked. Those arguments were summarily dismissed, based on a narrow construction of the term “fraud” adopted by the district court and approved by the Third Circuit. That interpretation is both wrong and at odds with the decisions of other courts of appeals that have addressed the scope of the Section 1144’s fraud safety valve.

STATEMENT OF THE CASE

Section 1144 of the Bankruptcy Code permits a court to revoke an order of confirmation, at the request of an interested party, “*if and only if* such order was procured by fraud.” 11 U.S.C. § 1144 (emphasis added). Satellite company Virgin Orbit declared Chapter 11 bankruptcy in April 2023 and proceeded to sell off its major tangible assets in the following months. Petitioner argued below that Virgin Orbit failed to disclose the true value of its intellectual property assets (the “IP assets”), which were not marketed to buyers or offered at auction. As a result of this omission, equity shareholders in Virgin Orbit, including Petitioner, lost \$250 million, while Virgin Orbit’s parent company received the IP assets that buttressed a \$3.7 billion valuation and launched dozens of satellites into low-earth orbit.

The Third Circuit summarily rejected Petitioner’s serious arguments that Virgin Orbit procured its bankruptcy confirmation order through fraud by omission. In so doing, it suggested that only an affirmative misrepresentation made with fraudulent intent may satisfy Section 1144. The Seventh Circuit has similarly appeared to interpret Section 1144 as

requiring proof of an affirmative misstatement. *See In re Longardner & Assocs., Inc.*, 855 F.2d 455, 461 n.6 (7th Cir. 1988) (requiring “that the debtor made a representation.”). By contrast, the Fifth and Sixth Circuits have explicitly recognized that fraud by omission may suffice to establish grounds for revocation under Section 1144. *See Matter of: Sherwin Alumina Company, L.L.C.*, 952 F.3d 229, 235 (5th Cir. 2020) (considering whether “the debtor or proponent made a materially false representation or omission”); *In re Tenn-Fla Partners*, 226 F.3d 746, 750 (6th Cir. 2000) (quoting *In re Tenn-Fla Partners*, 170 B.R. 946, 967 (Bankr. W.D. Tenn. 1994), *aff’d in part, rev’d in part sub nom. Tenn-Fla Partners v. First Union Nat. Bank of Fla.*, 229 B.R. 720 (W.D. Tenn. 1999), *aff’d sub nom. In re Tenn-Fla Partners*, 226 F.3d 746 (6th Cir. 2000)) (finding fraud where “the debtor intentionally deprived the court, creditors and parties in interest of knowledge that was material in this case.”) (internal quotation marks omitted).

The approach taken by the Fifth and Sixth Circuits is plainly the correct one. Under well-settled principles of statutory interpretation, the term “fraud” should be construed consistent with its common-law meaning, which has never been thought to require an affirmative misrepresentation. *See Husky Int’l Elecs., Inc. v. Ritz*, 578 U.S. 355, 362 (2016). This Court’s precedents make clear that Congress’s use of the term “fraud,” without more, includes both affirmative misrepresentations and material omissions. *Compare id.* (interpreting “fraud” to not require an affirmative misstatement), *with Macquarie Infrastructure Corp. v. Moab Partners, L.*

P., 601 U.S. 257, 259–60 (2024) (interpreting a fraud provision requiring “statements made” to require an affirmative misstatement). The Bankruptcy Act of 1898, the predecessor to the modern Bankruptcy Code, contained a provision analogous to Section 1144 that was understood to include material omissions. The language of Section 1144 is substantively identical. *See* Chandler Act, § 386, 52 Stat. 840, 905 (1938) (repealed 1978).

This case well illustrates the risk of permitting corporate insiders to use their control of information to manipulate the bankruptcy process. The petition should be granted, and this Court should hold that “fraud” in Section 1144 may include a material omission.

A. Factual Background

At the end of 2021, Virgin Orbit was valued at \$3.7 billion. Central to the company’s valuation was its proprietary technology, the LauncherOne rocket, which tucked beneath a Boeing 747 before boosting small satellites into low-earth orbit. Using its state-of-the-art, proprietary mobile launch system, Virgin Orbit sold its “any time, any place, any orbit” mantra to domestic and international commercial and government customers and launched thirty-three satellites in four successful missions. Pet.App.50a, 56a. Virgin Orbit envisioned its business as one that could “use space to drive positive and lasting change on Earth ... helping create the next generation of world-changing space technology.” Pet.App.56a. By July 2023—only eighteen months after its initial public offering—Virgin Orbit was in bankruptcy, and the IP assets underlying the business model were

(according to the company) suddenly essentially worthless. Case No. 23-10405, Doc. No. 1.

The story begins two years earlier, when Virgin Orbit's indirect parent entity, Virgin Investments Limited ("VIL"), maneuvered Virgin Orbit to become a publicly traded company in December 2021. Unfortunately, this failed to raise the capital VIL had hoped, and Virgin Orbit soon faced liquidity issues. Pet.App.48a. By spring of 2023, Virgin Orbit faced a liquidity crisis. The corporation filed for Chapter 11 bankruptcy on April 4, 2023. Pet.App.38a-74a; Case No. 23-10405, Doc. No. 1. VIL agreed to finance the bankruptcy as debtor-in-possession with a \$74.1 million loan, including \$31.6 million in "new money" loans and \$42.5 million in "rolled up loans" ("the DIP Loan"). Case No. 23-10405, Doc. No. 17. VIL therefore stood on both sides of the bankruptcy: it was Virgin Orbit's controlling shareholder, held the prepetition secured claim, and financed the Debtors as their sole DIP lender.

The Debtors initially pursued bids to sell the business whole as a going concern. Despite thirty indications of interest, the Debtors decided instead to auction the business's assets piecemeal. Case No. 23-10405, Doc. No. 274. The Debtors separated their tangible assets into five categories. On May 22, 2023, the Debtors successfully sold four of the five groups of assets to non-insider bidders. The fifth group was not sold at auction but was later sold to another purchaser. Case No. 23-10405, Doc. Nos. 365, 366, 378, 379, 481. All five sales were approved by the Bankruptcy Court, and Petitioner does not contest the marketing or sales processes for these assets. Case No. 23-10405, Doc. No. 201.

The IP assets central to this dispute, however, were never offered at auction, although limited intellectual property associated with the tangible assets was transferred with those sales. Indeed, the purchase of Virgin Orbit's LauncherOne asset at auction by Stratolaunch expressly excluded LauncherOne's associated intellectual property. Pet.App.147a.

Despite the successful auction, the five asset groups yielded the Debtors a meager \$39.5 million, just 1% of Virgin Orbit's \$3.7 billion valuation eighteen months prior. At this point, VIL maintained a secured claim of \$28.4 million in pre-petition loans and a \$39 million deficiency claim. The Debtors' unsecured claimants were owed more than \$183 million. The five asset groups sold at auction represented the substantial majority of Virgin Orbit's non-IP holdings. Remaining in Virgin Orbit's possession—and never solicited to buyers—were the IP assets at the center of this dispute.

The Bankruptcy Settlement Plans

Parallel to the auction, the Debtors drafted a series of global settlement plans to resolve the outstanding claims against Virgin Orbit. The first of these plans was proposed on April 19, 2023, prior to the auction date. The second and third plans were proposed on June 12 and 20, respectively. The Third Amended Plan was the first to be presented to Virgin Orbit's investors for solicitation. In this Third Amended Plan, the IP assets were included within "distributable proceeds," rather than being affirmatively conveyed to an insider like VIL. Pet.App.164a. Only three classes of claims

(Prepetition Secured Notes Claims, General Unsecured Claims, and Convenience Claims, each as defined in the Plan) were impaired and entitled to receive or retain property under the Plan. Therefore, only these classes were entitled to vote on the plan; Petitioner and other equity interest holders did not have a right to vote on the proposed settlement plans. Pet.App.177a.

As to the treatment of these claims and interests, the Plan allowed VIL's Class 3 claim in the principal amount of \$28,400,000. It distributed cash and interests in a post-confirmation litigation trust to VIL in satisfaction of this claim. The Debtors projected that VIL would ultimately recover less than half of the claim attributable to its DIP Loan and nothing on its prepetition secured claim. Nevertheless, VIL waived its resulting unsecured deficiency claim, which increased recoveries for general unsecured creditors. Holders of Class 4 general unsecured claims received their pro rata share of a cash pool in an amount no less than \$1,100,000 and interests in the post-confirmation trust. The projected recovery for this class was 1.29% to 5.46% of the claims. Class 5 general unsecured creditors that held "convenience claims" in an amount of \$5,000 or less received a higher percentage of compensation, but still less than full payment. Equity interests in Class 9, such as those held by Petitioner, were canceled and extinguished. Pet.App.169a-177a.

Ballot Certification for impaired class voting was filed on July 26, 2023. Case No. 23-10405, Doc. No. 572. The ballots were cast, necessarily, on the Third Amended Plan.

That same day, two days before the Bankruptcy Court's confirmation hearing, the Debtors released a Fourth Amended Plan with material changes to ownership of the IP assets. Rather than selling the IP assets to benefit shareholders as before, VIL, Virgin Orbit's majority owner and DIP lender, would receive the IP assets. On July 28, the day of the confirmation hearing itself, a "Further Revised" Fourth Amended Plan introduced the ultimate recipient: VIL "so designates Virgin Management USA, Inc." to receive the consideration. Pet.App.192a. And on July 31, the Debtors filed the Fifth Amended Plan, and the court signed the confirmation order the same day. Case No. 23-10405 Doc. No. 595, 604.

Between the morning of July 26 and the evening of July 31, Debtors had pulled the IP assets away from shareholders and conveyed them to VIL. No shareholder ballot ever tested these amendments. Petitioner and his fellow equity interest holders received no distribution on their equity interests worth approximately \$250 million. Because equity holders were not entitled to vote on the settlement, they were not provided with the particular notice necessary to respond in a timely manner. On August 2, the bankruptcy confirmation took effect. Case No. 23-10405, Doc. No. 610. The Debtors' sudden, last-minute ploy to deliver the IP assets central to its rocket business to the majority shareholder appeared to succeed.

B. Procedural History

1. On December 21, 2023, Petitioner exercised his right as an equity interest holder and made a timely Motion for Revocation of the Delaware Bankruptcy

Court's confirmation pursuant to Section 1144 of the Bankruptcy Code. Pet.App.75a-84a. Under Section 1144, a party in interest has 180 days after the date of confirmation to request revocation on the ground that the order was "procured by fraud." 11 U.S.C. § 1144.

Although the Debtors sold their tangible assets in five segments at a May 22, 2023 auction to five non-insider purchasers, they did not package the core IP assets for auction. The Debtors did not disclose the IP assets' significance to Virgin Orbit's prior \$3.7 billion valuation or disclose an estimate as to the IP assets' potential freestanding value. And despite transferring the IP assets as a means of satisfying VIL's outstanding claims, the Debtors claimed that the IP assets held "de minimis" value.

It was not until Petitioner sought revocation that Debtors produced a statement from plan administrator Brian Whittman, claiming the Debtors had engaged in "extensive prepetition and post-petition marketing processes and extensive engagement with numerous parties" for the IP assets. Pet.App.102a. According to Debtors, this "extensive" marketing of the transformative technology yielded "only a few inconsiderable indications of interest." *Id.* This was news to Petitioner, who was not informed of this purported marketing before confirmation. The Debtors did not provide evidence that they had marketed the asset for sale. To the extent that Debtors mentioned the value of the IP assets that launched thirty-three satellites into low-earth orbit, they characterized the value as "de minimis." Debtors did not define, quantify, or support this designation

with an external valuation. Rather, the IP assets were distributed to the controlling shareholder in satisfaction of that same shareholder's secured claim.

On February 7, 2024, the Bankruptcy Court held an evidentiary hearing on Petitioner's Motion for Revocation. At the hearing, the Debtors again asserted that they "ran a public and standard marketing and sale process" but "did not receive binding bids of any material value." Pet.App.128a. The Debtors did not present any witnesses or bid records to substantiate their valuation of the IP assets.

Relying solely on post-confirmation representations by the Debtors' plan administrator and attorneys, the Bankruptcy Court found that Debtors did not procure the confirmation by fraud when they delivered their IP assets to their majority shareholder in the final days of the bankruptcy process. Pet.App.35a-47a. To reach this conclusion, the Bankruptcy Court applied a test for fraud under which the moving party was required to show "that the debtor made a representation regarding compliance with Code § 1129 which was materially false," and it concluded that there was no "evidence sufficient to show that the Debtors' statements were materially false." Pet.App.44a-46a. As a result, the Bankruptcy Court largely ignored Petitioner's principal argument, which was that the Debtors had intentionally *omitted* a material fact: the true valuation of the intellectual property. See Pet.App.42a-47a.

2. On March 12, 2024, Petitioner filed a timely notice of appeal to the District Court for the District

of Delaware pursuant to 28 U.S.C. § 158(a). The Delaware District Court found, in relevant part, that Petitioner had failed to satisfy the standard for revocation of the confirmation order. Pet.App.10a-34a. Like the Bankruptcy Court, the District Court relied on a reading of 11 U.S.C. § 1144 and 1129 requiring “that the debtor made a representation regarding compliance with 11 U.S.C. § 1129, which was materially false” to constitute fraud, ignoring the possibility of fraudulent omission. Pet.App.28a. As a result, the district court held, oddly, that “valuation evidence is not germane” to showing fraud, even though such evidence tends to show that the Debtors omitted to reveal the true value of their assets. Pet.App.27a.

Petitioner filed a timely appeal to the Third Circuit, which affirmed the district court in a six-page per curiam opinion. The court of appeals observed that “the statute [sic] does not further define ‘fraud’ or ‘procured by fraud,’ but held that it does require “a showing of actual fraudulent intent.” Pet.App.8a. The court of appeals did not offer much additional reasoning in support of its decision, which is fairly read as having uncritically adopted the reasoning and interpretation of the district court.²

² Although the Third Circuit included the passing parenthetical reference, “(or omitted to act),” Pet.App.3a, nothing in its opinion indicates any independent engagement with Petitioner’s argument that a material omission regarding valuation of the IP assets could demonstrate fraud. It simply adopted the analysis of the district court.

REASONS FOR GRANTING THE PETITION

Section 1144 permits a court to revoke an order of confirmation “if and only if such order was procured by fraud.” 11 U.S.C. § 1144. The Third Circuit, following the district court’s lead, summarily rejected Petitioner’s argument that the confirmation order here was procured by fraud through an intentional, material omission. That approach is at odds with decisions of the Fifth and Sixth Circuits, and it conflicts with decisions of this Court interpreting the term “fraud” in other provisions of the Bankruptcy Code to encompass fraud by omission. *See, e.g., Husky Int’l Elecs., Inc. v. Ritz*, 578 U.S. at 357.

Section 1144 is the only means by which investors like Petitioner can challenge a confirmation order that was fraudulently procured by the intentional omission of a material fact. *See In re Longardner & Assocs., Inc.*, 855 F.2d at 460. The Third Circuit’s narrow conception of “fraud” in this context would essentially write this critical protection out of the statute, leaving individual investors powerless to effectively challenge apparent self-dealing by insiders.

I. The Third and Seventh Circuits’ Narrow Interpretation of “Fraud” in Section 1144 Conflicts with the Law in at Least Two Other Circuits.

The Third Circuit below joined the Seventh Circuit in adopting an approach at odds with at least two other circuits.

The Fifth Circuit addressed the “fraud” standard in Section 1144 in *Matter of: Sherwin Alumina*

Company, L.L.C., 952 F.3d 229. There, the court examined an allegation of fraud under Section 1144 for the alleged “extinguish[ment] of an easement” by way of “last-minute changes” to a proposed confirmation order that “sprang a trap on the [easement holder], isolating its easement for extinguishment, a material change that should have been announced as such to the bankruptcy court.” *Id.* at 231, 235. The Fifth Circuit explained that Section 1144 requires “that the debtor or proponent made a materially false representation *or omission* to the court.” *Id.* at 235 (emphasis added). It ultimately found there was insufficient evidence of a false representation or material omission. *Id.* at 235-36.

The Sixth Circuit has similarly held that Section 1144 includes fraud by omission. *See In re Tenn-Fla Partners*, 226 F.3d at 751 (affirming the revocation of an order of confirmation pursuant to Section 1144). *In re Tenn-Fla Partners* involved the Chapter 11 proceedings of Tenn-Fla Partners (“the partnership”), which “served as an investment vehicle for individuals” and owned as its sole asset “an extensive apartment complex” (“the property”). *Id.* at 747. Under the originally confirmed plan, “the partnership would purchase the property and outstanding bonds for \$9,885,000.” *Id.* Immediately after confirmation, however, the partnership sold the property for \$12,443,547. *Id.* It turned out that throughout the bankruptcy proceedings, the partnership did not disclose that multiple parties were interested in the property, including “a \$12,250,000 offer” and another indication of interest “in the mid-\$11,000,000 range.” *Id.* at 748. In fact, the property manager warned that if the partnership’s plan was not accepted, bondholders “could be left without a buyer,” while the

only offer disclosed by the partnership pre-confirmation was for \$8,000,000. *Id.* at 749. The bankruptcy court thus inferred that the partnership was attempting to “play down the value of the property, while the more serious interest was hidden so the equity holders might take advantage post-confirmation.” *Id.* The Sixth Circuit adopted the bankruptcy court’s reasoning that “the duty of full disclosure rests with a plan’s proponent under § 1125 and 1129,” and therefore found “fraud” because the “debtor’s disclosures and plans never disclosed the true level of interest in purchasing the property; thus, the debtor intentionally deprived the court, creditors and parties in interest of knowledge that was material in this case.” *Id.* at 750 (quoting *In re Tenn-Fla Partners*, 170 B.R. 946, 967 (Bankr. W.D. Tenn. 1994), *aff’d in part, rev’d in part sub nom. Tenn-Fla Partners v. First Union Nat. Bank of Fla.*, 229 B.R. 720 (W.D. Tenn. 1999), *aff’d sub nom. In re Tenn-Fla Partners*, 226 F.3d 746 (6th Cir. 2000)) (internal quotation marks omitted). In addition, the partnership had actively concealed this information in order to satisfy its own partners’ exposure. *Id.*

In contrast, and like the Third Circuit’s approach in this case, the Seventh Circuit has adopted a narrow interpretation of fraud in the Section 1144 context focused on affirmative misrepresentations. *See, e.g., In re Longardner & Assocs., Inc.*, 855 F.2d 455. In *Longardner*, the Seventh Circuit considered the meaning of fraud in Section 1144 where a “creditor state[d] broadly that the debtor filed false or fraudulent financial statements,” alleging that “gross and serious inconsistencies between the disclosure statement and the debtor’s financial records raise[d] insurmountable questions concerning the accuracy of

the disclosure statements and the plans submitted to the court ... the debtor's assets did not accurately reflect \$265,000 received by it in accounts receivable." *Id.* at 461 (internal quotation marks and citations omitted). The court found these allegations insufficient to constitute fraud, reasoning that the "motion fail[ed] to cite clear, specific and demonstrable instances involving actual fraudulent intent" and, more specifically, that "the creditor fail[ed] to show *specific acts* involving fraudulent intent." *Id.* at 461–62 (emphasis added).

Here, the Third Circuit seemed to acknowledge a lack of clarity as to the definition of "procured by fraud," but then relied on the district court's reasoning to summarily reject Petitioner's arguments. The district court reasoned that "fraud" requires "that the debtor made a representation . . . which was materially false." Pet.App.28a (citing the Seventh Circuit's decision, *In re Longardner & Assocs., Inc.*, 855 F.2d at 461–62). The district court further reasoned that "there was insufficient evidence to conclude that any *statements* the Debtors made . . . were materially false or amounted to fraud." Pet.App.31a (emphasis added); *see also* Pet.App.29a (requiring parties to "identify with precision any alleged false representations.") (quoting Pet.App.45a). Relying on this reasoning, the Third Circuit noted that "the statute [sic] does not further define 'fraud' or 'procured by fraud,'" and that "courts agree that a showing of actual fraudulent intent is required." *Id.* (first quoting *In re Michelson*, 141 B.R. 715, 725 (Bankr. E.D. Cal. 1992) then quoting *In re Longardner & Assocs., Inc.*, 855 F.2d at 461–62) (internal quotation marks and citations omitted). It did not engage with Petitioner's core argument that

the Debtors had committed fraud by omission. If it had considered those allegations relevant to the analysis, it surely would have considered whether fraudulent intent could be inferred in the circumstances. *Cf. United States v. Sullivan*, 406 F.2d 180, 186 (2d Cir. 1969) (“The presence of a fraudulent intent is rarely susceptible of direct proof, and must instead be established by legitimate inferences from circumstantial evidence.”); *In re Deepwater Horizon*, 857 F.3d 246, 251 (5th Cir. 2017) (collecting cases where fraudulent intent was inferred from concealment of material facts).

II. The Third Circuit’s Narrow Interpretation of “Fraud” Is Incorrect.

When interpreting a statute, courts must “start . . . with the language of the statute.” *Williams v. Taylor*, 529 U.S. 420, 431 (2000). Section 1144, originally enacted in 1978, permits a court to revoke an order of confirmation “if and only if such order was procured by fraud.” 11 U.S.C. § 1144. The Bankruptcy Code does not further define “fraud”; however, traditional tools of statutory interpretation and this Court’s precedents compel the conclusion that the term “fraud” in Section 1144 includes material omissions.

A. “Fraud” should be interpreted according to its common-law meaning.

“[W]here Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word.” *Morissette v. United States*, 342 U.S. 246, 263 (1952). “[F]raud,” as written in Section 1144

of the Bankruptcy Code, is one of those terms. And if properly construed in accordance with its common-law meaning, a confirmation should be understood to be “procured by fraud” where that fraud was produced by omission or concealment rather than solely by affirmative misstatement. 11 U.S.C. § 1144.

When Congress has not expressly provided a statutory definition of “fraud,” this Court has looked to the “settled principle of interpretation that, absent other indication, Congress intends to incorporate the well-settled meaning of the common-law terms it uses.” *Universal Health Servs., Inc. v. United States*, 579 U.S. 176, 187 (2016) (quoting *Sekhar v. United States*, 570 U.S. 729, 732 (2013)) (internal quotation marks omitted); see also *Neder v. United States*, 527 U.S. 1, 22 (1999) (“actionable ‘fraud’ had a well-settled meaning at common law”); *Field v. Mans*, 516 U.S. 59, 70 (1995) (“there is no reason to doubt Congress’s intent to adopt a common-law understanding of the terms it used.”); *Husky Int’l Elecs., Inc. v. Ritz*, 578 U.S. at 360 (“This Court has historically construed the terms in § 523(a)(2)(A) to contain the ‘elements that the common law has defined them to include.’”) (quoting *Field v. Mans*, 516 U.S. at 69). Section 1144 does not further define “fraud” and contains no structural or contextual indication that Congress intended to modify the common-law meaning of fraud. Section 1144 is consequently “a paradigmatic example of a statutory term that incorporates the common-law meaning of fraud.” See *Universal Health Servs., Inc.*, 579 U.S. at 187.

When Congress enacted the modern Bankruptcy Code, it was well-settled that common-law fraud encompassed both affirmative misrepresentations

and omissions or concealment. The Restatement (Second) of Torts § 550 (1977) contemplates liability for “fraudulent concealment,” stating that “[o]ne . . . who by concealment or other action intentionally prevents the other from acquiring material information is subject to the same liability . . . as though he had stated the nonexistence of the matter.” See also W. Page Keeton et al., *Prosser and Keeton on Torts* § 106, p. 736 (5th ed. 1984) (“[i]n addition to such representations by word or conduct . . . deceit . . . may be based on active concealment of the truth.”). Even in the absence of concealment, fraud generally included non-disclosure “where the parties stand in some confidential or fiduciary relation to one another,” producing a duty to disclose—just as there is here. *Id.* at 738–39. See Black’s Law Dictionary (5th ed. 1979) (defining “fraud” in relevant part as “[a] false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, *or by concealment of that which should have been disclosed*, which deceives and is intended to deceive another so that he shall act upon it to his legal injury.”) (emphasis added).

This Court reached the same conclusion when it considered the term “actual fraud” in a different provision of the Bankruptcy Code. In *Husky Int’l Elecs., Inc. v. Ritz*, the Court concluded that “actual fraud” included fraudulent conveyances—despite lacking a false representation. 578 U.S. at 361–62. The Court reasoned that “the common law . . . indicates that fraudulent conveyances, although a ‘fraud,’ do not require a misrepresentation from a debtor to a creditor.” *Id.* at 361. For these types of frauds, “the fraudulent conduct is not in dishonest[y] It is in the acts of concealment and hindrance.”

Id. at 362. Because the ordinary meaning of “fraud” in Section 1144 should also be read consistent with its common-law meaning, it should not be interpreted to require an affirmative misrepresentation.

B. Congress is presumed to be consistent in its usage of the term “fraud” throughout the Bankruptcy Code.

“A word or phrase is presumed to bear the same meaning throughout a text.” Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 170 (2012). When applying the canon, this Court has noted that it “is mostly applied to terms with some heft and distinctiveness, whose use drafters are likely to keep track of and standardize,” *Pulsifer v. United States*, 601 U.S. 124, 149 (2024), and that “the presumption is most commonly applied to terms appearing in the same enactment.” *United States v. Castleman*, 572 U.S. 157, 174 (2014). Section 1144 presents a textbook case for application of the presumption of consistent usage. “Fraud” is undoubtedly a term with heft and distinctiveness that drafters are likely to standardize, and another “fraud” provision within this same enactment has already been interpreted to incorporate its common-law meaning, which includes material omissions. *See Husky*, 578 U.S. at 357.

This Court has on multiple occasions interpreted Section 523 of the Bankruptcy Code, which “prohibits debtors from discharging debts ‘obtained by . . . false pretenses, a false representation, or actual fraud.’” *Id.* at 357 (quoting 11 U.S.C. § 523(a)(2)(A)); *see also Field*, 516 U.S. at 62. First, in *Field v. Mans*, the Court decided what “level of justification a creditor

needs to show above mere reliance in fact in order to exempt the debt from discharge under § 523(a)(2)(A).” 516 U.S. at 66. In doing so, the Court looked to the concept of “actual fraud” and interpreted that term to incorporate its common-law meaning, finding that Section 523 requires “justifiable, but not reasonable, reliance.” *Id.* at 69–75. Later, in *Husky*, the Court interpreted that same provision to answer “whether ‘actual fraud’ requires a false representation or whether it encompasses other traditional forms of fraud that can be accomplished without a false representation, such as a fraudulent conveyance.” *Husky*, 578 U.S. at 357. Looking to the common-law meaning of “fraud,” the Court reasoned that while “‘fraud’ connotes deception or trickery generally, the term is difficult to define more precisely”; nevertheless, “a false representation has never been a required element of ‘actual fraud,’ and we decline to adopt it as one today.” *Id.* at 361–62.

In accordance with the presumption of consistent usage, these decisions offer two insights as applied to Section 1144: (1) “fraud” in Section 1144 must indeed be read in light of its common-law understanding, and (2) the ordinary meaning of “fraud” throughout the Bankruptcy Code does not require an affirmative misstatement absent specific text to the contrary. Sections 523 and 1144 were both enacted as provisions within the same statute—the Bankruptcy Reform Act of 1978. *See* The Bankruptcy Reform Act of 1978, Pub. L. No. 95–598, 92 Stat. 2549 (1978). Accordingly, the presumption of consistent usage applies between Sections 1144 and 523 with full force. When Congress does intend to exclude omissions, it does so in express terms. Consider, for example,

Macquarie Infrastructure Corp. v. Moab Partners, L. P., 601 U.S. at 259–60. In *Macquarie*, this Court held that “[p]ure omissions are not actionable under Rule 10b–5(b).” *Id.* at 266. Implementing Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 “makes it unlawful for issuers of registered securities to ‘make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.’” *Id.* at 260 (quoting 17 C.F.R. § 240.10b–5(b) (2022)). Interpreting the specific language of Rule 10b-5(b), the Court reasoned that it “prohibits omitting material facts necessary to make the ‘statements made . . . not misleading.’ . . . Logically and by its plain text, the Rule requires identifying affirmative assertions.” *Id.* at 264. Because of this specific statutory text, Rule 10b-5(b) does not proscribe pure omissions. *Id.* at 266.

Macquarie and Rule 10b-5(b) make clear that where legislators intend to exclude omissions or concealment from a fraud provision, they know how to do so.

C. The Bankruptcy Act of 1898 confirms that “fraud” includes omissions

Finally, the modern Bankruptcy Code’s predecessor statute, the Bankruptcy Act of 1898 (“Act of 1898”), included an analogous provision to Section 1144 that was understood to permit revocation of confirmation by reason of fraud—without an affirmative misstatement. The operation of this provision went essentially unchanged by the enactment of a substantially equivalent version in the

modern Bankruptcy Code, confirming that Section 1144 does not require an affirmative misrepresentation. *See, e.g., In re Michelson*, 141 B.R. at 725 (“In this instance the fraud is misrepresentation, or misrepresentation by omission, of material facts in the disclosure and confirmation process. Such a fraud plainly would have justified revocation of a Chapter XI plan of arrangement under former law and justifies revocation under current law.”).

In *Field v. Mans*, this Court noted that some provisions of the Bankruptcy Reform Act of 1978 “had obvious antecedents in the Bankruptcy Act of 1898” from which “language . . . was changed only slightly” when enacting the new Bankruptcy Code. 516 U.S. at 64–65. Section 1144 is a strong example of a modern provision with an obvious antecedent from the Act of 1898. As explained in the 14th edition of *Collier on Bankruptcy*, Section 386 of the Act of 1898 permitted the confirmation of a plan to be set aside or modified if “... it shall be made to appear that fraud was practiced in the procuring of such arrangement” 9 *Collier on Bankruptcy* ¶ 11.02 (14th ed. 1940) (quoting Chandler Act, § 386, 52 Stat. 840, 905 (1938) (repealed 1978)) (internal quotation marks omitted). Elaborating on the requirement that “fraud was practiced in the procuring,” *Collier on Bankruptcy* explained that “fraud means fraud in fact A particular act or failure to act will constitute the requisite fraud if it was accompanied by a fraudulent intent.” *Id.* (emphasis added). As an illustration, it noted that the “omission of a creditor from the schedules in bad faith constitutes fraud.” *Id.* The Act of 1898 plainly did not require an affirmative statement to constitute fraud.

The current Bankruptcy Code’s version of this provision—Section 1144—was enacted with essentially the same language as Section 386: confirmation orders can now be revoked “if and only if such order was procured by fraud.” 11 U.S.C. § 1144. Besides the addition of “if and only if” by a 1984 amendment, the text of Section 386 is substantially identical to Section 1144. *See* Pub. L. 98–353, 98 Stat. 333 (1984). In view of the fact that Congress enacted Section 1144 against the backdrop of Section 386 with nearly identical language, the two provisions must be read consistent with one another.

D. The Third Circuit’s narrow interpretation of Section 1144 undermines its purpose.

The Bankruptcy Code has two general purposes. “The first is to provide honest debtors who have fallen on hard times the opportunity for a fresh start in life, after they have made a good-faith attempt to pay what they can.” The second is to “is to protect creditors in general by preventing an insolvent debtor from selectively paying off the claims of certain favored creditors at the expense of others.” H. R. Rep. No. 103–835, pp. 32–33 (1994). The Court has recognized that while the Code protects the “honest but unfortunate debtor,” it does not protect debtors from the consequences of their own fraud. *See Grogan v. Garner*, 498 U.S. 279, 286 (1991) (quoting *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934)).

To ensure a proposed bankruptcy plan meets the Code’s purpose of protecting stakeholders, debtors must disclose information adequate to allow investors to make an “informed judgment.” 11 U.S.C. § 1125. Stakeholders must vote on the proposed plan, and the

court must also independently evaluate the adequacy of the plan before issuing a confirmation order. 11 U.S.C. § 1129. This calls for the court’s “informed, independent judgment.” *National Surety Co. v. Coriell*, 289 U.S. 426, 433 (1933). In particular, the court must determine that the “plan has been proposed in good faith and not by any means forbidden by law.” 11 U.S.C. § 1129(a)(3); *see also In re W.R. Grace & Co.*, 475 B.R. 34, 87–88 (D. Del. 2012)) (“The factors which a court should consider in determining a debtor’s good faith include if the plan: (1) fosters a result consistent with the Code’s objectives; (2) has been proposed with honesty and good intentions and with a basis for expecting that reorganization can be effected; and (3) [reflects] a fundamental fairness in dealing with the creditors.”).

Since both the court and stakeholders rely on the debtor’s disclosed information, revocation for fraud is necessary to protect the integrity of the plan confirmation process. *See In re Michelson*, 141 B.R. at 719 (“The purpose of the disclosure process is to obviate, not necessitate, independent investigation before agreeing to a reorganization.”). To carry out its purpose, 11 U.S.C. § 1144 must cover fraud by omission. A fundamental point in the law of fraud is that the burden to disclose information should be placed on the party that controls or can most easily discover that information. Accordingly, 11 U.S.C. § 1129 places the burden on the proponent of the bankruptcy plan to disclose its key features. By covering both affirmative misstatements and omissions, 11 U.S.C. § 1144 ensures adequate disclosure.

III. The Scope of § 1144 Is an Important and Recurring Question Warranting Review

The context surrounding modern bankruptcy proceedings makes it particularly important for fraud to cover omissions. Insiders increasingly form agreements to guide bankruptcy cases well in advance of the proceedings.³ Sponsors or controlling equity holders have the ability to guide a subsidiary's bankruptcy plan; senior creditors may agree among themselves or with the debtor on restructuring support agreements with their preferred characteristics; or distressed companies may form a DIP financing agreement with certain creditors to obtain financing for bankruptcy in exchange for the creditors' preferred terms. That was the case here: Virgin Investments Limited, which was both Virgin Orbit's indirect parent and its DIP lender, proposed the plan of reorganization.

Such agreements give sponsors or senior creditors substantial power to guide bankruptcy proceedings to the detriment of junior creditors and minority equity holders. Financing arrangements are agreed to before a Chapter 11 plan is filed or approved and before an

³ See generally, e.g., Robert Miller, *Loan-to-Own 2.0*, 17 Drexel L. Rev. 1 (2024); Kenneth Ayotte & Jared A. Elias, *Bankruptcy Process for Sale*, 39 Yale J. on Reg. 1 (2022); Kenneth Ayotte & Alex Zhicheng Huang, *Standardizing and Unbundling the Sub Rosa DIP Loan*, 39 Emory Bankr. Dev. J. 523 (2023); Edward J. Janger & Adam J. Levitin, *Badges of Opportunism: Principles for Policing Restructuring Support Agreements*, 13 Brook. J. Corp. Fin. & Com. L. 169 (2018); Vincent S.J. Buccola, *Sponsor Control: A New Paradigm for Corporate Reorganization*, 90 U. Chi. L. Rev. 1, 39-42 (2023).

informed valuation can take place. Bankruptcy scholars have lamented that DIP lenders and other insiders can divert value to themselves at the expense of junior creditors. *See, e.g.*, Miller, *supra*, at 78-89; Ayotte & Ellias, *supra*, at 4-5. In one notable case, DIP lenders to J.C. Penney received the equivalent of an annualized interest rate of 545%. Ayotte & Huang, *supra*, at 538-40. In another, Caesars Entertainment nearly succeeded in reaching a deal with senior creditors that would have released it from liability for billions of dollars in fraudulent liabilities while leaving almost nothing for junior creditors. *See In re Caesars Entertainment Operating Co., Inc.*, 533 B.R. 714, 725-726 (Bankr. N.D. Ill. 2015) ; Sujeet Indap, What happens in Vegas . . . the messy bankruptcy of Caesars Entertainment, Financial Times (Sept. 26, 2017), available at <https://on.ft.com/2jYu8PD>.

To be sure, courts must approve financing arrangements early in bankruptcy. *See* 11 U.S.C. § 364. But practical realities make it difficult for courts, or parties who may be harmed by financing arrangements, to scrutinize them. As one bankruptcy court has explained: “The need for cash is usually immediate Each judge in the Manhattan branch of this court is presented with at least two such applications each month. Such applications are regularly granted by bankruptcy courts.” *In re Ames Dept. Stores, Inc.*, 115 B.R. 34, 38 n.4 (Bankr. S.D.N.Y. 1990).

Section 1144 provides a critical check on self-dealing behavior. Indeed, the statute establishes Section 1144 as the only post-petition means to challenge a bankruptcy proceeding. *See* 11 U.S.C. §

1144 (noting that “the court may revoke such order *if and only if* such order was procured by fraud”) (emphasis added); *In re Asset Resol., LLC*, 542 F. App’x 578, 579 (9th Cir. 2013) (“Section 1144 of the Bankruptcy code is the only avenue for revoking a confirmed Chapter 11 plan.”); *In re Longardner & Assocs., Inc.*, 855 F.2d at 460 (“Under the Code, however, section 1144 is the only avenue for revoking confirmation of a plan of reorganization.”). And in an environment with so much information asymmetry, where insiders control the bankruptcy process from the start—it is particularly important for § 1144 to reach fraud by omission.

The Court has intervened before to prevent parties from evading the safeguards of the Bankruptcy Code. In *Czyzewski v. Jevic Holding Corp.*, the Court rejected a structured dismissal of a bankruptcy case that violated the statutory priority scheme by distributing assets to high-priority secured creditors and low-priority general unsecured creditors but not some mid-priority creditors. 580 U.S. 451, 454 (2017). The Court recognized that the priority rules prevent collusion and insider control of the bankruptcy process. *Id.* at 465, 470. Similarly, in *Truck Insurance Exchange v. Kaiser Gypsum Company, Inc.*, the Court recognized that Congress broadly allowed parties in interest to be heard in bankruptcy proceedings as a check on the possibility that “a few insiders, whether representatives of management or major creditors, [could] use the reorganization process to gain an unfair advantage” 602 U.S. 268, 280 (quoting *Bank of America Nat. Trust and Sav. Assn. v. North LaSalle Street Partnership*, 526 U.S. 434, 444 (1999)).

This case presents an opportunity to provide guidance on the law governing the nation's most important bankruptcy proceedings. Delaware and Houston are the most popular venues for large public company bankruptcies. *See* Lynn LoPucki, *Chapter 11's Descent into Lawlessness*, 96 Am. Bankruptcy L. J. 247, 259 (2022); Bethany Blankley, Delaware, Texas have highest business bankruptcy filings in U.S., Greater Fort Wayne Business Weekly (Aug. 1 2026). The two courts of appeals sitting in review of the majority of these proceedings have divergent approaches to evaluating fraud.

There is little reason to expect the courts of appeals to devote more consideration to this issue. Under 28 U.S.C. § 1408(a), venue in bankruptcy cases may be brought not only in any district in which the business has its “domicile, residence, principal place of business in the United States, or principal assets in the United States,” but also where “there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.” This regime permits businesses to bring bankruptcy cases in their venue of choice simply by establishing an affiliate there. Whether because of a bankruptcy court's expertise, or because parties perceive that the court will be sympathetic to their plan for the bankruptcy, businesses continue to choose the same popular venues, particularly Delaware and Texas. *See* Adam J. Levitin, *Judge Shopping in Chapter 11 Bankruptcy*, 2023 U. Ill. L. Rev. 351, 358-72 (2023). The Court should not, therefore, await further percolation on this issue; it should grant the petition and restore a uniform approach consistent with the plain meaning of Section 1144.

Finally, this case is an appropriate vehicle for the Court to consider the scope of Section 1144, notwithstanding the Third Circuit's cursory opinion. The Court may and should consider the reasoning of the bankruptcy court and the district court, as it has in other cases dealing with fraud provisions under the Bankruptcy Code. Indeed, in *Bartenwerfer v. Buckley*, this Court granted review where the court of appeals had issued a six-page unpublished memorandum opinion. See 598 U.S. 69, 73-74 (2023); *In re Bartenwerfer*, 860 F. App'x. 544 (9th Cir. 2021). And in *Field v. Mans*, the Court reviewed a two-paragraph order. 516 U.S. at 62-63; see 36 F.3d 1089 (Table) (1st Cir. 1994). The opinions of the bankruptcy court, district court, and court of appeals in this case provide ample foundation for the Court's review and resolution of the important question presented.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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October 2, 2026

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-1702

IN RE: VIRGIN ORBIT, LLC,

Debtor

DR. TAMAS HAMPEL,

Appellant

(D. Del. No. 1:24-cv-00328)

SUR PETITION FOR REHEARING

Present: CHAGARES, *Chief Judge*, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES, CHUNG, BOVE, and MASCOTT, *Circuit Judges*.

The petition for rehearing filed by the Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

2a

BY THE COURT,

s/ Thomas M. Hardiman
Circuit Judge

Dated: June 4, 2026

PDB/cc: Tamas Hampel
All Counsel of Record

3a

APPENDIX B

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-1702

IN RE: VIRGIN ORBIT, LLC;

Debtor

DR. TAMAS HAMPEL,

Appellant

On Appeal from the United States District Court
for the District of Delaware
(D.C. No. 1:24-cv-00328)
District Judge: Honorable Maryellen Noreika

Submitted Pursuant to Third Circuit LAR 34.1(a)
September 19, 2025

Before: HARDIMAN, MATEY, and CHUNG,
Circuit Judges

(Opinion filed: September 26, 2025)

OPINION*

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

PER CURIAM

Virgin Orbit, LLC, a company that provided satellite launch services, filed for Chapter 11 bankruptcy in April 2023. After obtaining debtor-in-possession (“DIP”) financing from Virgin Investments Limited (“VIL”), Virgin Orbit’s indirect parent and prepetition senior secured lender, and setting bidding procedures under the supervision of the Bankruptcy Court, Virgin Orbit sought to sell substantially all its assets.¹ Because efforts to sell the company as a going concern were unsuccessful, the company separated its assets into five groups. All but one group of assets sold at auction to non-insider purchasers; after further negotiation, the fifth group of assets sold to a non-insider who had made an unsuccessful bid at auction. The Bankruptcy Court approved all five sales.² Remaining after these sales were a portion of the company’s intellectual property (“IP”) assets, for which the company could not find any buyers willing to pay more than a de minimis value.

After the asset sales did not generate enough money to repay VIL’s DIP claim, VIL agreed to receive significantly less than full repayment of its senior secured claims as part of a global settlement that allowed a plan that would satisfy administrative

¹ As we write primarily for the parties, who are familiar with the facts, we will discuss further details only as they are relevant to the analysis.

² In so doing, the Bankruptcy Court determined, inter alia, that the bidding procedures were fair; the decisions to enter into the sales agreements were supported by good, sufficient, and sound business reasons; the negotiations were at arm’s length and in good faith; the buyers were not insiders; and the consideration for each sale was fair, reasonable, and the highest and best offer. *See, e.g.*, D. Del. Bankr. No. 23-bk-10405, ECF No. 364.

expenses and other priority claims and provide a small distribution to holders of unsecured claims. As part of its recovery on its allowed claim under the proposed plan, VIL obtained the remaining IP assets. Equity interest holders, including the appellant, Dr. Tamas Hampel, received nothing because their shares were cancelled. Dr. Hampel did not object to the proposed plan, which the Bankruptcy Court confirmed.³ No appeal was taken from the confirmation order.

Approximately five months after the Bankruptcy Court confirmed the plan, Dr. Hampel filed his “notice of objection” to the confirmation of the plan. *See* D. Del. Bankr. No. 23-bk-10408, ECF No. 17. Specifically, he asserted that the cancellation of his 763,044 shares was procured by fraud because VIL had received \$3.7 billion in assets when it was awarded the remaining IP assets.⁴ *See id.* at 1. In support, he noted a valuation of the company when it went public; the initial interest in the sale of Virgin Orbit as a going concern; an article about the Pentagon’s interest in the company; and a video about the UK Space Agency’s interest in horizontal satellite launch technology. *Id.* at 2. He sought revocation of the confirmation order under 11 U.S.C. § 1144.

³ In confirming the plan, the Bankruptcy Court concluded, *inter alia*, that the global settlement, as incorporated and implemented by the plan, was fair, equitable, reasonable, and in the best interests of the debtors and their estates; that the plan complied with all relevant provisions of § 1129 of the Bankruptcy Code; and that the plan was proposed in good faith and not forbidden by law. *See* D. Del. Bankr. No. 23-bk-10405, ECF No. 604.

⁴ Other equity holders joined his motion, but he alone filed this appeal.

After holding a hearing, the Bankruptcy Court denied Dr. Hampel's motion. The Bankruptcy Court concluded that *res judicata* barred any arguments that Virgin Orbit did not fairly or properly market and sell the assets. The Bankruptcy Court further determined that Dr. Hampel had not met the test to show that the confirmation order was procured by fraud. *See* Bankr. ECF No. 64 (citing *In re Melinta Therapeutics, Inc.*, 623 B.R. 257, 263-64 (Bankr. D. Del. 2020)). Among other things, the Bankruptcy Court noted that the value of the IP assets was determined by a fair and open sale process that revealed what the market would pay.

Dr. Hampel filed a timely appeal to the District Court. He submitted a brief, essentially arguing that the Bankruptcy Court erred in denying his motion because Virgin Orbit misrepresented the valuation of the IP assets and conducted the sales process in a way that undervalued them. He also filed two motions for the District Court to consider new evidence.⁵

The District Court denied the motions to consider new evidence (while also concluding that the proposed additional evidence was not relevant to the question whether the confirmation order had been procured by fraud). The District Court also agreed with the Bankruptcy Court that Dr. Hampel did not meet his burden to show that the confirmation order should be revoked under § 1144 of the Bankruptcy Code because

⁵ He asked the District Court to consider 1) a Hungarian Security and Defense Expert's opinion that the \$3.7 billion valuation of the IP assets is justified, and 2) a video interview in which the former CEO of Virgin Orbit discusses the current ownership of the IP assets and the efforts to license the "amazing technology."

it was procured by fraud. Dr. Hampel filed a timely appeal.

We have jurisdiction under 28 U.S.C. §§ 158(d) and 1291.⁶ We review the District Court's legal conclusions de novo. *See In re Trans World Airlines*, 145 F.3d 124, 131 (3d Cir. 1998). To determine whether the District Court erred in its review of the Bankruptcy Court's factual findings, we consider whether those findings are clearly erroneous. *See In re Fegeley*, 118 F.3d 979, 982 (3d Cir. 1997). We do not review any arguments that Dr. Hampel raises for the first time on appeal.⁷ *See Simko v. U.S. Steel Corp.*, 992 F.3d 198, 205 (3d Cir. 2021) (“[A]rguments raised for the first time on appeal are not properly preserved for appellate review.”).

First, we agree with the District Court that Dr. Hampel could not present his new evidence, which related to the value of the IP assets. The District Court was sitting as an appellate court and could not consider that evidence that had not been presented to the factfinder, the Bankruptcy Court, and made a part of the record.⁸ *See In re Madera*, 586 F.3d 228, 234 (3d Cir. 2009).

Second, we agree that Dr. Hampel did not meet his burden to show that the confirmation order should be

⁶ The Bankruptcy Court had jurisdiction under 11 U.S.C. § 101 *et seq.*, and the District Court had jurisdiction under 28 U.S.C. § 158(a).

⁷ We also do not reach arguments that District Court declined to hear because Dr. Hampel had not presented them to the Bankruptcy Court.

⁸ As the District Court explained, Dr. Hampel could have earlier presented valuation evidence to the Bankruptcy Court. And, in any event, the evidence is not relevant to the § 1144 analysis.

revoked. Under § 1144 (on timely request and with proper procedural protections), a bankruptcy court may revoke a confirmation order, but “if and only if such order was procured by fraud.” 11 U.S.C. § 1144. The statute [sic] does not further define “fraud” or “procured by fraud.” However, it has been said that “fraud upon the court is at the heart of ‘procured by fraud’ as that term is used at section 1144.” *In re Michelson*, 141 B.R. 715, 725 (Bankr. E.D. Cal. 1992). Other types of fraud may also come within the scope of the term. *Compare id. with In re Melinta Therapeutics, Inc.*, 623 B.R. at 263. In any event, courts agree that “a showing of actual fraudulent intent” is required to prove that a confirmation order was procured by fraud. *In re Longardner & Assocs., Inc.*, 855 F.2d 455, 461-62 (7th Cir. 1988).

Dr. Hampel did not show that Virgin Orbit acted (or omitted to act) with actual fraudulent intent so he was not entitled to a revocation of the confirmation order. *See In re D.F.D. Inc.*, 43 B.R. 393, 395 (Bankr. E.D. Pa. 1984) (holding that a litigant who failed to produce evidence at a hearing “clearly failed to establish the requisite fraudulent intent needed to prove fraud”). At essence, he argued (and continues to argue) that Virgin Orbit committed fraud because it did not treat the remaining IP assets as highly valuable. But Virgin Orbit and the Bankruptcy Court were guided by what the market would pay for the IP assets. “[T]he market’s reaction to a sale best reflects the economic realities of assets’ worth.” *In re SubMicron Sys. Corp.*, 432 F.3d 448, 461 (3d Cir. 2006). Dr. Hampel, citing *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986), challenges the District Court’s reliance on the sale in rejecting his appeal because he believes that the sale was not in good faith (claiming rushed timing and the exclusion of bidders). *See, e.g.*, 3d Cir.

Doc. No. 9 at 22. But, in *In re Abbotts Dairies*, the Bankruptcy Court had not made a required finding about the good faith of the purchaser. *See* 788 F.2d at 149-50. Here, the Bankruptcy Court had made findings about the fairness and openness of the sale, *see supra* n.2, so the District Court could consider the market's valuation of the IP assets. In short, neither we, nor the Bankruptcy Court nor the District Court, can infer fraud from Dr. Hampel's belief that the IP assets were or are worth more than what the market would bear. *Cf. In re Vandeweghe*, 49 F.2d 939, 940 (S.D.N.Y. 1931) (explaining that, in determining whether to set aside a confirmation order, "[f]raud is not to be inferred").

For these reasons, we will affirm the District Court's judgment.

10a

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Chapter 11

Case No. 23-10405 (KBO)

Case No. 23-10408 (KBO)

IN RE: VIRGIN ORBIT, LLC,
Debtor.

C.A. No. 24-328 (MN)

DR. TAMAS HAMPEL,
Appellant,
v.
VIRGIN ORBIT HOLDINGS, INC.,
Appellee.

MEMORANDUM OPINION

Dr. Tamas Hampel – Pro Se Appellant

Robert S. Brady, Michael R. Nestor, Kara Hammond
Coyle, Allison S. Mielke, Carol E. Thompson, YOUNG
CONAWAY STARGATT & TAYLOR, LLP, Wilmington,
DE – Attorneys for Appellee

March 31, 2025
Wilmington, Delaware

/s/ Maryellen Noreika

NOREIKA, U.S. DISTRICT JUDGE:

Pro se appellant, Dr. Tamas Hampel (“Appellant”), an equity holder in Virgin Orbit Holdings Inc.,¹ has appealed the March 6, 2024 decision (Bankr. D.I. 64, A1-A7)² (“the Memorandum Order”) entered by the Bankruptcy Court in the chapter 11 case of Virgin Orbit, LLC (“Appellee”), which denied Appellant’s motion (Bankr. D.I. 17) (“the Motion for Revocation”) seeking revocation of the order (Lead Bankr. D.I. 610, A4399-4485) (“the Confirmation Order”) which confirmed the chapter 11 plan proposed by Appellee and its debtor affiliates (together, “the Debtors”), on the basis that Appellant failed to establish that the entry of the Confirmation Order was procured by fraud. The appeal is fully briefed. (D.I. 7, 8, 20). Appellant also filed two motions to consider new evidence (D.I. 21, 23) (“the Motions to Consider New Evidence”), which Appellee has opposed (D.I. 22, 24). No party requested oral argument.

For the reasons set forth below, the Motions to Consider New Evidence will be denied, and the Memorandum Order will be affirmed.

¹ The chapter 11 cases of Virgin Orbit Holdings, Inc. and its affiliates, Virgin Orbit National Systems, LLC, Vieco USA, Inc., and JACM Holdings, Inc., were closed as of December 1, 2023. All motions and contested matters that remained open as of the closing of such cases, or that are opened after the date thereof, are administered in the remaining chapter 11 case of Virgin Orbit, LLC, Case No. 23-10408 (KBO).

² References the Bankruptcy Court docket are identified herein as follows: (a) docket entries in case number 23-10405 will be identified by “Lead Bankr. D.I. __” and (b) docket entries in case number 23-10408 will be identified by “Bankr. D.I. __.” The appendix filed in support of Appellee’s answering brief is cited herein as “A__.”

I. BACKGROUND

A. The Postpetition Sale Process

On April 4, 2023 (“the Petition Date”), the Debtors filed petitions for relief under chapter 11 of the Bankruptcy Code. (A8, A49, A98, A146, & A194). Prior to filing the chapter 11 cases, the Debtors provided satellite launch services to domestic and international commercial and government customers. (A243). After unsuccessfully marketing the company for sale in 2022, the Debtors filed for chapter 11 bankruptcy protection in early April 2023 facing an immediate liquidity crisis. The Debtors entered bankruptcy with the objective of maximizing value for all stakeholders through an expedited sale of substantially all of their assets pursuant to section 363 of the Bankruptcy Code.

To fund the chapter 11 cases, the Debtors’ indirect parent entity, Virgin Investments Limited (“VIL”), which had invested significant capital into the Debtors and their operations to fund operating cash flow losses – more than \$500 million in the last three years of the Debtors’ operations, during which time the Debtors generated less than \$45 million in revenue – agreed to fund debtor-in-possession financing (“the DIP Loan”), consisting of (a) an aggregate principal amount of up to \$31,600,000 of “new money” loans, and (b) an aggregate principal amount of up to \$42,500,000 in “rolled up” loans. (A262).

Following an uncontested hearing, the Bankruptcy Court approved the Debtors’ proposed bidding procedures, including the form and manner of notice thereof to interested parties (Lead Bankr. D.I. 201) (“the Bidding Procedures Order”). (A1376). The Bankruptcy Court determined that the bidding proce-

dures were in the best interest of the estates, fair, reasonable, appropriate, and reasonably designed to maximize value. (*Id.* at 3-4). The Bankruptcy Court also found that the form and manner of the sale notice were appropriate, sufficient, and reasonably calculated to provide proper notice of the auction, sale hearing, and the bidding procedures. (*Id.*).

Pursuant to the approved bidding procedures, the Debtors launched a postpetition marketing process (“the Postpetition Sale Process”) by contacting more than 200 potential bidders for the Debtors’ assets, which built upon the Debtors’ previous marketing and sale efforts. (A1749). As compared to the Debtors’ prepetition sale efforts, the Postpetition Sale Process was highly publicized and designed to broadly solicit strategic and financial parties that sought to either (a) purchase the Debtors’ business and continue to operate it as a going concern, or (b) purchase the Debtors’ assets for use or liquidation. (A1749). The Debtors provided all interested parties that executed non-disclosure agreements with a confidential information memorandum containing an overview of the Debtors’ business, access to a virtual data room, which contained more than 1,000 files representing more than 21,000 pages of information, and where appropriate, access to the Debtors’ management team, operational personnel, and facilities. (*Id.*).

Non-binding indications of interest were due on May 4, 2023. (A1750). As the Debtors publicly disclosed on May 8, 2023, the Debtors received over 30 indications of interest. (*Id.*). In addition, several parties that did not submit an indication of interest notified the Debtors that they were continuing due diligence and other financial and operational analysis towards a

potential going-concern transaction, including up to and during an auction for the Debtors' assets. (*Id.*).

The Bidding Procedures Order originally set May 15, 2023 as the deadline for submission of bids for the Debtors' assets, which the Debtors, in consultation with various interested parties, subsequently extended to May 19, 2023 ("the Bid Deadline") (Lead Bankr. D.I. 249) (A1612). Ultimately, the Debtors accepted a stalking horse bid for the Debtors' modified Boeing 747 airplane in the amount of \$17 million in cash but did not receive a stalking horse bid for the Debtors' other assets. (A1627).

Despite the Debtors' best efforts, including extensive prepetition and postpetition marketing processes, the Debtors were unable to identify a buyer who was willing to purchase the Debtors' assets as a going concern. (A1625). Because the Debtors had received indications of interest from potential bidders for several distinct groups of assets that included machinery and equipment, leases, an aircraft, and inventory, the Debtors, in the exercise of their business judgment and in consultation with various interested parties, determined that it would be beneficial to separate their assets into five segments and proceed with an auction for the sale of those five segments. (A4164). The auction took place as scheduled on May 22, 2023 at the office of Debtors' counsel in New York and involved active bidding from various bidders over the course of more than 11 hours. (A1603). The Debtors declared four non-insider winning bidders, each for a distinct group of assets. The fifth asset group was not sold at the auction.

The Postpetition Sale Process ultimately yielded approximately \$39.5 million in cash, pursuant to asset purchase agreements with five non-insider purchas-

ers, which were all negotiated at arms' length by sophisticated parties that were represented by counsel. (A4606; *see* Lead Bankr. D.I. 364, 365, 378, 379, 465, & 481). Such asset purchase agreements were presented to the Bankruptcy Court by motion and upon notice to interested parties. (A4606; *see* Lead Bankr. D.I. 75, 204, 245, 249, 274, 279, 326, 334, 336, 339, 344, 347, 353, 360, 362, 364, 365, 366, 378, 379, 453, 456, & 481). The Bankruptcy Court held an evidentiary hearing on the sales. Evidence was submitted by the Debtors' investment banker, Ducera Partners LLC ("Ducera") and by the Debtors' CEO with respect to the marketing of the Debtors' assets, the competitive bidding process, the auction, the value of the winning bids, and the good faith, non-collusive behavior of the Debtors and the purchasers. (*See, e.g.*, Bankr. D.I. 340, 348, 369, 370). Based on this evidence the Bankruptcy Court approved the four sales ("the Sale Orders").

Thereafter, the Debtors selected a non-insider purchaser for the fifth and final group of assets. (Lead Bankr. D.I. 455). This purchaser participated in the auction but did not submit an acceptable bid. The Debtors continued negotiations with several parties following the auction and ultimately selected the purchaser as the successful bidder. (*See* Lead Bankr. D.I. 454). The Bankruptcy Court approved that sale as well. (Lead Bankr. D.I. 481).

In approving the five sales, the Bankruptcy Court ruled that, among other things, the notice of the Bid Procedures Order, sale, auction, objection deadline, and sale hearing was sufficiently provided to all interested parties, the Debtors acted in compliance with the Bid Procedures Order, entering into the sales constituted a valid and sound exercise of the Debtors'

business judgment, the Debtors and purchasers acted in good faith, and the consideration provided by the purchasers constituted the highest and best offers for the purchased assets. (See Lead Bankr. D.I. 364, 365, 378, 379, 481 (together, “the Sale Orders”)).

Pursuant to these sales, the Debtors sold substantially all the Debtors’ non-intellectual property assets along with a portion of the Debtors’ intellectual property assets. (A4606). The Debtors assert that they were unable to identify any potential purchasers that were willing to purchase the Debtors’ remaining intellectual property for more than de minimis value. The remaining IP Assets are central to the appeal.

Ultimately, the proceeds from the sales of the Debtors’ assets were insufficient to satisfy the Debtors’ substantial secured debt obligations. (A4606). Specifically, after application of sale proceeds to satisfy the DIP Loan obligations and administrative and priority claims, VIL held a secured claim in the amount of \$28.4 million, plus a \$39.0 million deficiency claim. (A4682). In addition, the Debtors’ general unsecured claimants were owed more than \$183 million. (A4682). All these claims have priority over the claims of equity security holders like Appellant.

B. The Chapter 11 Plan

Having sold substantially all of their assets, counsel for the Debtors, counsel for the official committee of unsecured creditors appointed in the chapter 11 cases (“the Committee”), and counsel for VIL engaged in negotiations regarding the terms of a chapter 11 plan, and ultimately reached an agreement (“the Settlement”), which provided for, among other things, a recovery to holders of general unsecured claims, which were otherwise substantially out of the money. (A4118; see

Lead Bankr. D.I. 460). The recovery to holders of general unsecured claims was made possible only by VIL's agreement to waive a recovery on account of its unsecured deficiency claims and allow holders of general unsecured claims to be paid ahead of VIL's secured claims. This resulted in VIL receiving significantly less than full repayment on its senior secured claims, with an estimated recovery to VIL of only 45% of its total claim value. (A4118). The Settlement ultimately paved the way for a consensual plan confirmation process. The Debtors provided interested parties with notice of the Settlement, and its terms were incorporated into a joint chapter 11 plan (Lead Bankr. D.I. 96) (as amended, modified and supplemented, "the Plan"). (A1171).

In connection with solicitation of the Plan, on April 19, 2023, the Debtors filed a disclosure statement (Lead Bankr. D.I. 97; A1231-1375) that described in detail the liquidation value of the Debtors' assets, the proposed treatment of all claims and interests under the Plan, the cancellation of equity interests in the Debtors, and the Debtors' proposal to wind up their businesses and affairs. (A1231; *see* Disclosure Statement at 11).

On June 12, 2023, the Bankruptcy Court entered an order approving a revised disclosure statement (Lead Bankr. D.I. 438) in connection with a second amended plan (Lead Bankr. D.I. 439). Neither the disclosure statement nor the second amended plan provided for the Prepetition Secured Noteholder (VIL) to receive the remaining IP Assets on account of its secured claims. (Lead Bankr. D.I. 438-2 at p. 5 of 87 n.5; Lead Bankr. D.I. 439 at 24). On June 20, 2023, the Debtors filed a third amended disclosure statement and plan which also did not provide for VIL to receive the

remaining IP Assets on account of its secured claims. (Lead Bankr. D.I. 459, 463, 465). This was the solicitation version of the disclosure statement and plan.

As there were insufficient proceeds to satisfy the Debtors' secured debt obligations, holders of interests in the Debtors, including Appellant, were not entitled to receive any distributions under the Plan and were, therefore, deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code. (A4143). Only three classes of claims (Prepetition Secured Notes Claims, General Unsecured Claims, and Convenience Claims, each as defined in the Plan) were impaired and entitled to receive or retain property under the Plan, and were, therefore, entitled to vote on the Plan. (A4143).

As to treatment of these claims and interests, the Plan allowed VIL's Class 3 claim in the principal amount of \$28,400,000. It distributed to VIL in satisfaction of this claim cash and interests in a post-confirmation litigation trust. The Debtors projected that VIL would ultimately recover less than half of the claim attributable to its DIP Loan and nothing on its prepetition secured claim. Despite this meager recovery, VIL waived its resulting unsecured deficiency claim, which increased recoveries for general unsecured creditors. Holders of Class 4 general unsecured claims received their pro rata share of a cash pool in an amount no less than \$1,100,000, certain other case, and interests in the post-confirmation trust. The projected recovery for this class was at best 1.29% to 5.46% of the claims. Class 5 general unsecured creditors that held "convenience claims" in an amount of \$5,000 or less received a higher percentage but less

than full payment. Equity interests in Class 9, like those of the Appellant, were canceled and extinguished.

The Ballot Certification was filed on July 26, 2023, two days prior to the scheduled plan confirmation hearing, indicating that the Debtors received votes from holders of claims in class 4 (General Unsecured Claims) and class 5 (Convenience Claims), and those classes of claims overwhelmingly voted to accept the Plan. (A4386; *see* Lead Bankr. D.I. 572). Also on July 26, 2023, the Debtors filed an amended proposed plan and blackline indicating that VIL would also receive on account of its secured claims “the rights to all IP Assets.” (*See* Lead Bankr. D.I. 571 (Notice of Filing of Fourth Amended Joint Chapter 11 Plan, Ex. 1, at 24-25; *id.* at Ex. 2 (blackline) at 29)). The term “IP Assets” was defined to mean “all intellectual property assets owned by the Debtors (excluding any intellectual property assets that were sold pursuant to the Existing Sale Orders), including for the avoidance of doubt, the rocket engine and rocket avionics system intellectual property.” (*Id.*, Ex. 1, at 11). A subsequent version of the proposed plan included also this treatment. (*See* Lead Bankr. D.I. 595-1 at 25). On July 28, 2023, the Bankruptcy Court held a hearing (“the Confirmation Hearing”) to consider plan confirmation. (A4486-4560). There appears no dispute that Appellant had access to, and reviewed, the pleadings filed in the chapter 11 cases but did not object to entry of the Confirmation Order. No other party raised an issue with respect to the IP Assets at the Confirmation Hearing. (*See id.*). After providing parties in interest an opportunity to be heard and upon review of the pleadings and the record of the chapter 11 cases, the Bankruptcy Court entered the Confirmation Order.

Under the Plan, a plan administrator was appointed to wind up the Debtors' affairs, liquidate remaining assets, reconcile claims (other than General Unsecured Claims, as defined in the Plan, which were assigned to a litigation trust), and make distributions. (A4450-51, Plan at 31–32). In accordance with the Plan, all rights to the remaining IP Assets were transferred to VIL, as the Prepetition Secured Noteholder, or its designee. (A4608).

C. The Motion for Revocation

On December 27, 2023, five months after the entry of the Confirmation Order and the occurrence of the effective date of the Plan, Appellant filed the Motion for Revocation, which was styled as a notice of objection to the Plan pursuant to section 1144 of the Bankruptcy Code. (A4585). The Bankruptcy Court deemed the objection to be a motion for revocation of the Confirmation Order pursuant to section 1144 of the Bankruptcy Code. (A4).

On January 23, 2024, Appellee filed an objection to the Motion for Revocation (Bankr. D.I. 30) ("the Objection"), arguing, among other things, that (a) there was no basis to revoke the Confirmation Order; (b) the Motion for Revocation amounted to untimely and improper sale and confirmation objections; and (c) the Motion for Revocation raised considerations that were irrelevant to the Bankruptcy Court's determination of whether to revoke the Confirmation Order pursuant to section 1144 of the Bankruptcy Code. (A4603).

On February 7, 2024, the Bankruptcy Court held an evidentiary hearing on the Motion for Revocation ("the Evidentiary Hearing"), which was joined by other equity holders, at which time the Appellant offered

into evidence, over the objection of Appellee, a video allegedly created by the Debtors prior to the bankruptcy highlighting their anticipated success. Appellant had also offered a series of news articles that report the alleged prepetition value of the Debtors, the private and public sector interest in the Debtors' technology and similar technologies, and the Debtors' successful satellite launches. Appellant also cited the Debtors' statements regarding indications of interest prior to the auction and promotional materials that advertised the Debtors' value. Appellant presented no evidentiary witness or valuation. Appellant generally argued that the remaining IP assets were of a unique and valuable nature, that those assets were not marketed properly and deliberately undervalued, and that VIL's participation as DIP lender and its receipt of the remaining IP Assets presented a conflict of interest. (See A4660-4674, A4684-4686).

The Debtors argued that there had been no showing of any false or materially misleading statement in connection with plan confirmation, and the time to object to the marketing and sale process had long passed. With respect to the specific allegation that the Debtors failed to market the remaining IP Assets, the Debtors argued that they ran a public and standard marketing and sale process and did not receive binding bids of any material value for the IP assets, aside from the IP assets that were related to the sale of other assets under the Sale Orders, and that those representations had not been challenged at the time the Sale Orders were entered. (A4682-4684). The Debtors argued that they relied on the values provided by that market test, and that there had been no showing that the Debtors' reliance on the court-approved sale process was somehow inappropriate. (See *id.*). The Debtors pointed out that the equity

holders were out of the money by nearly \$250 million, and the marketing process provided no bids or other indications of value that would have been in excess of that amount, nor had any contradictory evidence been submitted. (*See id.*).

The Bankruptcy Court took the matter under advisement. On March 6, 2024, the Bankruptcy Court issued the Memorandum Order. “Distilled to the simplest terms,” the Bankruptcy Court observed, “the Equity Holders argue that the Debtors were dishonest about the value of the Remaining IP Assets so that VIL could obtain them without equity holders receiving their fair share. They do not identify with precision any alleged false representations regarding the requirements for plan confirmation under § 1129 that the Debtors made to obtain confirmation of the Plan.” (Memorandum Order at 6). Although Appellant’s arguments “minimally challenge[d] statements the Debtors made to support the Plan’s compliance” with section 1129 confirmation requirements, such as good faith, the Bankruptcy Court could not “overlook the fact that [Appellant] did not submit evidence sufficient to show that the Debtors’ statements were materially false.” (*Id.*). The materials presented by Appellant did not amount to “persuasive evidence to prove the value of the Debtors’ Remaining IP Assets at the time of confirmation, let alone that such value exceeded the amounts of claims senior to equity interests such that equity holders were entitled to obtain a recovery in these cases.” (*Id.* at 7). Rather the record reflected that no actionable bids were received for the Remaining IP Assets and therefore they were not sold. (*See id.*). “There simply was not enough value in the estates to allow the Debtors’ equity holders, who are behind unsecured creditors in the priority scheme, to obtain a recovery. This is an unfortunate, typical result in

bankruptcy cases.” (*Id.*). Accordingly, the Bankruptcy Court denied the Motion for Revocation of the Confirmation Order.

D. The Appeal

On March 12, 2024, Appellant filed a timely notice of appeal. (D.I. 1). Appellant raises the following issues: (1) whether the Bankruptcy Court erred in denying the motion for revocation under section 1144 based on alleged fraud, specifically misrepresentation and lack of transparency regarding the valuation of the Debtors’ assets, and (2) whether the determination of asset value through the sale process was conducted in a manner that improperly undervalued the assets to the detriment of equity holders. (D.I. 7 at 5).

II. JURISDICTION

This Court has appellate jurisdiction to hear appeals “from final judgments, orders, and decrees.” 28 U.S.C. § 158(a). The Memorandum Order is a final order. *See In re Taylor*, 913 F.2d 102, 104 (3d Cir. 1990) (holding an order is final and immediately appealable if it “fully and finally resolved a discrete set of issues, leaving no related issues for later determination”).

The Court “review[s] the bankruptcy court’s legal determinations *de novo*, its factual findings for clear error and its exercise of discretion for abuse thereof.” *See In re Trans World Airlines, Inc.*, 145 F.3d 124, 130 (3d Cir. 1998). The Court reviews “grants or denials of relief under [Federal] Rule [of Civil Procedure] 60(b), aside from those raised under Rule 60(b)(4), under an abuse of discretion standard.” *Budget Blinds, Inc. v. White*, 536 F.3d 244, 251 (3d Cir. 2008) (internal footnote omitted) (citing *Harris v. Martin*, 834 F.2d 361, 364 (3d Cir. 1987)). “An abuse of discretion exists where the [bankruptcy] court’s decision rests upon a

clearly erroneous finding of fact, an errant conclusion of law or an improper application of law to fact. *Goodwin v. Carickhoff (In re Decade, S.A.C., LLC)*, 2020 WL 564903, at *4 (D. Del. Feb. 5, 2020) (quoting *In re In re Marvel Ent'mt Grp.*, 140 F.3d 463, 470 (3d Cir. 1998)). A finding of fact is clearly erroneous “only if it is completely devoid of a credible evidentiary basis or bears no rational relationship to the supporting data.” *Advance Cap. Partners, LLC v. Rossmann*, 495 Fed. Appx. 235, 237 (3d Cir. 2012).

III. ANALYSIS

A. The Motions to Consider New Evidence Must Be Denied

On September 17, 2024, Appellant filed the first of two motions requesting that the Court consider new evidence. The first Motion to Consider New Evidence (D.I. 21) asked the Court to consider a declaration submitted to establish the potential value of certain of the Debtors’ assets (“the Pinter Declaration”). Appellant identified no legal basis for the relief requested in this motion. *See* Fed. R. Bankr. P. 8013(a)(2)(A) (requiring a motion to state with particularity the grounds for the relief, the relief sought, and the legal argument supporting it). Appellant argues that he was unable to obtain this expert declaration earlier “due to the sensitive and geopolitically complex nature of such declarations” and because “such valuations are subject to strict regulatory controls and sensitive security protocols.” (D.I. 21 at 2).

The Pinter Declaration does not provide a competing valuation, but rather outlines the reasons why “Virgin Orbit’s rocket, particularly the LauncherOne, holds significant importance in the realm of European

national defense.” (D.I. 21-1 at 1). For example, it states that “[t]he intellectual property (IP) assets of LauncherOne are integral to its high valuation.” (*Id.* at 2). It states that “Virgin Orbit’s technology is not only crucial for the USA but would also be highly beneficial for any European country in terms of national defense and security.” (*Id.*). It further states that “[p]ossessing and utilizing such technology would provide significant strategic advantages, thereby justifying the \$3.7 billion valuation.” (*Id.*).

Although parties appearing pro se are afforded a greater degree of leniency and their pleadings are held to “less stringent standards than formal pleadings drafted by lawyers,” pro se litigants must still “abide by the same rules that apply to all other litigants.” *See Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 245 (3d Cir. 2013). It is axiomatic that evidence not presented to the Bankruptcy Court should not be considered for the first time on appeal. This concept is rooted in the tenets of fairness and finality. Appellant has requested that this Court review evidence for the first time on appeal that has never been subjected to cross-examination, is of unfamiliar origin, and could have previously been made available. *See Brokenbrough v. Capitol Cleaners & Launderers Inc.*, 2016 WL 125436, at *3 (D. Del. Jan. 8, 2016) (noting that “newly presented ‘facts’ that were available at the time of the original order, but were not then made of record . . . cannot support the grant of a motion for reconsideration”) (citing *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985)). Appellant had the opportunity to present evidence in support of the Motion for Revocation, but never presented the Pinter Declaration, or any declaration, to the Bankruptcy Court. (*See* Memorandum Order at 7). The record reflects that the parties submitted a consensual scheduling order to

govern briefing and the scheduling of a hearing, and the Bankruptcy Court scheduled not one, but two, status conferences in advance of the hearing on the Motion for Revocation for the purpose of allowing Appellant to ask questions regarding preparation for the hearing. (*See* Bankr. D.I. 18; Feb. 1, 2024 Hr’g Tr. (A4621-4630); Feb. 6, 2024 Hr’g Tr. (A4631-4654)). As the Pinter Declaration was never considered by the Bankruptcy Court, and Appellant had ample opportunity to offer such evidence but failed to do so, such evidence is not properly part of the record presented to this Court.

On December 3, 2024, Appellant filed the second Motion to Consider New Evidence. (D.I. 23). In this motion, Appellant sought relief under Rule 60(b) of the Federal Rules of Civil Procedure, asking the Court to consider “newly identified evidence” in the form of a video interview of Daniel M. Hart (the now former CEO of Virgin Orbit) which “supports the value, uniqueness and utilization of this IP Assets by Virgin Group.” (*Id.* at 2). In the video, Mr. Hart addresses a question regarding “launch one technology,” which is presumably part of the remaining IP Assets, and states that it is being licensed to other companies and has potential for various uses. According to Appellant, “[t]his statement unequivocally confirms that Virgin Group owns, licenses, and actively utilizes the technology at issue” and “corroborates the Appellant’s prior assertions regarding the value and uniqu[e]ness of the IP Assets.” (*Id.* at 3).

Neither motion meets the requirements of Rule 60(b)(2) regarding newly discovered evidence. The Third Circuit has held that a motion under Rule 60(b) should be granted only where extraordinary circumstances justify the relief. *Budget Blinds*, 536 F.3d at

255-56; *see also Pelino v. Wetzel*, 2023 WL 20861, at *2 (3d Cir. Jan. 3, 2023) (denying Rule 60(b) motion where appellant failed to show extraordinary circumstances and finding motion was “essentially an effort to re-litigate the merits” of the appellant’s amended complaint). Appellant has not established that the information contained in the video was unavailable to be presented to the Bankruptcy Court, and there are no extraordinary circumstances to justify consideration of the Hart video. Importantly, Mr. Hart, as Virgin Orbit’s CEO during the chapter 11 cases, submitted evidence in support of chapter 11 cases and entry of the Sale Orders in the Bankruptcy Court and was available for cross-examination. (*See* A-2660; A-3615; A-3870). Appellant failed to cross-examine Mr. Hart. Thus, an interview of Mr. Hart, given long after the closing of the sale of the IP Assets and confirmation of the chapter 11 Plan, is insufficient to carry Appellant’s burden under Rule 60(b)(2).

More importantly, the value of the IP Assets is irrelevant to the sole issue on appeal: whether the Bankruptcy Court erred in determining that Appellant failed to establish, pursuant to section 1144 of the Bankruptcy Code, that the Confirmation Order was procured by fraud. I agree with the Bankruptcy Court that valuation evidence is not germane to whether the Confirmation Order had been procured by fraud pursuant to section 1144 of the Bankruptcy Code – the only issue properly raised by the Motion for Revocation. (*See* Memorandum Order at 6 (“pre-confirmation sales are irrelevant to the inquiry that the Court must undertake under section 1144 to determine whether to revoke the Confirmation Order. Section 1144 allows a court to revoke a confirmation order if and only if such order was procured by fraud.”) (internal quotation marks omitted)). This Court’s

review would not be assisted by consideration of either the Pinter Declaration or the Hart video. Accordingly, Appellant's Motions to Consider New Evidence must be denied.

B. Appellant Failed to Satisfy the Standard for
Revocation of the Confirmation Order

A court may revoke a confirmation order under section 1144 of the Bankruptcy Code “*if and only if* such order was procured by fraud” on the court. *In re Melinta Therapeutics*, 623 B.R. 257, 263 (Bankr. D. Del. 2020) (emphasis added). Section 1144 of the Bankruptcy Code does not provide the standard for establishing fraud. Courts have construed section 1144 to require a showing of actual fraudulent intent. *In re Zolner*, 249 B.R. 287, 293 (N.D. Ill. 2000) (citing *In re Longardner*, 855 F.2d 455, 461 (7th Cir. 1988)). To demonstrate actual fraudulent intent, a movant must establish: (1) that the debtor made a representation regarding compliance with 11 U.S.C. § 1129, which was materially false; (2) that the representation was either known by the debtor to be false, or was made without belief in its truth, or was made with reckless disregard for the truth; (3) that the representation was made to induce the court to rely upon it; (4) that the court did rely upon it; and (5) that as a consequence of such reliance, the court entered the confirmation order. *In re Melinta*, 623 B.R. at 263-64 (citing *In re Tenn-Fla Partners*, 170 B.R. 946, 967 (Bankr. W.D. Tenn. 1994)).

To prevail, a movant must specifically allege facts showing fraud. *In re Northfield Lab's Inc.*, 467 B.R. 582, 588 (Bankr. D. Del. 2010) (citing *In re Longardner*, 855 F.2d at 461–62 (“[w]ithout a specific showing of the requisite fraudulent intent, the bankruptcy court had no authority under section 1144 to revoke its confirmation order.”)); *see also* Bankruptcy Rule 7009

(adopting rule 9(b) of the Federal Rules of Civil Procedure, requiring that a cause of action for fraud be plead with particularity). In determining whether there is fraud on the court, “[t]he important inquiry is whether the fraud harmed the integrity of the judicial process, not whether the fraud prejudiced a party or caused economic loss.” *Official Comm. Of Unsecured Creditors v. Michelson*, 141 B.R. 715, 726 (Bankr. E.D. Cal. 1992). As the Bankruptcy Court noted, “[t]his standard is high to protect the finality of confirmation orders.” (Memorandum Order at 6.)

The record reflects that Appellant did not specifically allege any instances of fraud, nor did he present any persuasive evidence to support his claims. (*See id.* (noting that “[the Equity Holders] do not identify with precision any alleged false representations regarding the requirements of section 1129 that the Debtors made to obtain confirmation of the Plan. . . . Notwithstanding the liberties the Court takes on behalf of the Equity Holders’ arguments, the Court cannot overlook the fact that they did not submit evidence sufficient to show that the Debtors’ statements were materially false.”)).

Appellant makes many unsupported allegations, including that the Debtors and their advisors wrongly obfuscated critical information necessary to participate in the chapter 11 cases; the Debtors implicitly acknowledge the “difficulty in disputing” Appellant’s arguments; the Debtors received actionable going concern bids, which they failed to act upon; and the Debtors made false representations to the Bankruptcy Court. Appellant fails to cite any evidence in the record to support any of these allegations.

Appellant’s remaining arguments are unavailing. Appellant does not argue that he did not receive notice

of the Bidding Procedures, Disclosure Statement, proposed plans, or the Confirmation Hearing. Rather, central to this appeal are Appellant's contentions that the asset sales were "complex" and "accelerated" such that equity holders did not have access to information to allow them to meaningfully participate in the sale process, leaving them with an "inability to inquire into or challenge the terms and adequacy of the bids." (D.I. 7 at 9; D.I. 20 at 3-4). These arguments are unpersuasive.

The record supports that the Debtors' failed prepetition attempts to locate an asset purchaser and their ensuing liquidity crisis precipitated the filing of the chapter 11 cases. The record supports significant efforts to undertake a marketing process to sell the Debtors' businesses as a going concern or maximize the value of the Debtors' assets through sales. The record supports that the assets sales in these cases were all approved by separate motion with notice and an opportunity to object. And the Plan's allocation of remaining IP Assets to VIL, whose claims were significantly impaired, went unchallenged by any stakeholder, including the Committee (which represented the interests of unsecured creditors whose claims were also significantly impaired under the Plan) or the equity holders.

Appellant argues that the Debtors "last-minute" addition of the plan provision allocating to VIL the remaining IP Assets as part of its recovery for its secured claims, which change was made two days prior to the plan confirmation hearing, together with the Debtors' statements that the value of the remaining IP Assets was "de minimis," is evidence that the Debtors "concealed the real value of these assets" as fraud upon the Bankruptcy Court. (*See* D.I. 20 at 12-14). But there

was no evidence that these assets were not marketed and no competing valuation for the Bankruptcy Court (or this Court) to consider. The Court does not wish to minimize the significant losses to investors; that these assets did not find a purchaser during a chapter 11 cases is unfortunate but not an uncommon outcome. The Court is also sympathetic to the challenges of representing oneself pro se in the context of complex and fast-paced bankruptcy proceedings. That said, pro se litigants must still abide by the same rules that apply to all other litigants, and there was nothing improper about making this change to the plan, which was unchallenged by any party in interest, and where all efforts to sell these unique assets prior to plan confirmation had been exhausted.

Appellant argues that “the IP assets were not properly valued as no actionable bids were received, which would allow the determination of the value of . . . the core IP Assets.” (D.I. 20 at 5). Thus, it is the “non-sale” of these assets that Appellant challenges. The Bankruptcy Court found that there was insufficient evidence to conclude that any statements the Debtors made in connection with entry of the Confirmation Order – including the Plan’s assignment of the IP Assets to VIL – were materially false or amounted to fraud. Rather, the Bankruptcy Court found unpersuasive Appellant’s evidence of purported misrepresentations regarding the value of the assets at the time of confirmation and determined that the value of the Debtors’ assets was established by the marketplace after an open and fair sale process. Such a determination was not clearly erroneous.

Finally, Appellant argues, for the first time, that equity holders were improperly denied the right to vote on the Plan. (D.I. 7 at 9). “Absent exceptional

circumstances, th[e] Court will not consider issues raised for the first time on appeal.” *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 261 (3d Cir. 2009); *see also In re Caribbean Petroleum Corp.*, 580 F. App’x 82, 90 (3d Cir. 2014) (“We decline to address the substance of these arguments because they were not raised before both the Bankruptcy Court and the District Court, and therefore are waived.”). Even assuming this argument was properly raised in the Bankruptcy Court, no vote was required for equity holders. Under section 1126(g) of the Bankruptcy Code, holders of claims and interests are deemed to reject a chapter 11 plan where, as here, such holders will not receive or retain property under such plan. As there was no requirement to give equity holders an opportunity to vote, the failure to do so is not evidence of fraud.

IV. CONCLUSION

For the reasons set forth herein, the Motions to Consider New Evidence will be denied and the Memorandum Order will be affirmed. An appropriate order will be entered.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Chapter 11

Case No. 23-10405 (KBO)

Case No. 23-10408 (KBO)

IN RE: VIRGIN ORBIT, LLC,
Debtor.

C.A. No. 24-328 (MN)

DR. TAMAS HAMPEL,
Appellant,
v.
VIRGIN ORBIT HOLDINGS, INC.,
Appellee.

ORDER

At Wilmington, this 31st day of March 2025:

For the reasons set forth in the accompanying
Memorandum Opinion, IT IS HEREBY ORDERED
that:

1. The Bankruptcy Court's March 6, 2024
Memorandum Order (Bankr. D.I. 64) is AFFIRMED.
2. The Motions to Consider New Evidence (D.I. 21,
23) are DENIED.

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3. The Clerk of the Court is directed to CLOSE
C.A. No. 24-328 (MN).

/s/ Maryellen Noreika
The Honorable Maryellen Noreika
United States District Judge

APPENDIX D

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

Chapter 11

Case No. 23-10408 (KBO)

Related to Docket No. 17

IN RE: VIRGIN ORBIT, LLC,¹

Debtor

MEMORANDUM ORDER

On July 31, 2023, the Court entered the *Order Confirming The Fifth Amended Joint Chapter 11 Plan Of Virgin Orbit Holdings, Inc. And Its Debtor Affiliates* (the “Confirmation Order”),² which confirmed the *Fifth Amended Joint Chapter 11 Plan Of Virgin Orbit Holdings, Inc. And Its Debtor Affiliates Under*

¹ The debtor in this case, along with the last four digits of the debtor’s federal tax identification number, is: Virgin Orbit, LLC (9648). The debtor’s mailing address for purposes of this case is 251 Little Falls Drive, Wilmington, DE 19808. The chapter 11 cases of the debtor’s affiliates, Virgin Orbit National Systems, LLC (3801); Vieco USA, Inc. (0492); Virgin Orbit Holdings, Inc. (6914); and JACM Holdings, Inc. (1445), were closed as of December 1, 2023. All motions and contested matters that remained open as of the closing of such cases, or that are opened after the date thereof, are administered in the remaining chapter 11 case of Virgin Orbit, LLC.

² D.I. 604. All docket references herein are to case number 23-10405 unless otherwise indicated.

Chapter 11 Of The Bankruptcy Code (the “Plan”).³ Thereafter, Dr. Tamas Hampel (“Dr. Hampel”), who had held equity in debtor Virgin Orbit Holdings Inc., sought to revoke the Confirmation Order pursuant to 11 U.S.C. § 1144.⁴ Having considered the argument and evidence put forth by the parties as well as the record of these cases, the Court finds and orders as follows:

I. RELEVANT FACTS

Prior to their bankruptcy filings, Virgin Orbit Holdings, Inc., Virgin Orbit National Systems, LLC, Vieco USA, Inc., Virgin Orbit, LLC, and JACM Holdings, Inc. (collectively, the “Debtors”) provided satellite launch services to domestic and international commercial and government customers.⁵ After unsuccessfully marketing the company for sale in 2022, the Debtors filed for chapter 11 bankruptcy protection in early April 2023 facing an immediate liquidity crisis. They entered bankruptcy with the objective of maximizing value for all stakeholders through an expedited sale of substantially all of their assets pursuant to section 363.⁶

The Debtors sought and obtained at an uncontested hearing an order approving, among other things, certain bidding procedures, an auction date, a sale hearing, and the form and manner of notice thereof (the “Bid Procedures Order”).⁷ In entering the Bid

³ See *id.*, Exh. A.

⁴ Case No. 23-10408, D.I. 17.

⁵ See *generally* D.I. 13.

⁶ *Id.* All statutory references herein are to the Bankruptcy Code.

⁷ D.I. 201, 212.

Procedures Order, the Court determined that the bidding procedures were in the best interest of the estates, fair, reasonable, appropriate, and reasonably designed to maximize value.⁸ The Court also found that the form and manner of the sale notice were appropriate, sufficient, and reasonably calculated to provide proper notice of the auction, sale hearing, and the bidding procedures.⁹

The Debtors thereafter obtained approval to designate a non-insider stalking horse purchaser (the “Stalking Horse”) for certain key assets.¹⁰ In support of the designation, a representative of the Debtors’ investment banker, Ducera Partners LLC (“Ducera”), explained that Ducera had contacted 204 potential strategic and financial bidders for the Debtors’ assets. In doing so, it solicited offers for both a going-concern sale and piecemeal asset sales.¹¹ All interested parties that executed non-disclosure agreements were given a confidential information memorandum containing an overview of the Debtors’ business, access to a virtual data room, and where appropriate, access to Debtors’ management team, operational personnel, and facilities.¹² The Debtors received over 30 indications of interest, including from multiple parties that proposed continuing to operate the business as a going concern.¹³ Ultimately, the Debtors and their advisors determined that selecting the Stalking Horse’s bid to establish a floor price for the subject assets in

⁸ D.I. 201 at 3-4.

⁹ *Id.*

¹⁰ D.I. 326.

¹¹ D.I. 275 ¶¶ 8-11.

¹² *Id.* ¶ 9.

¹³ *Id.* ¶ 10.

anticipation of the future auction would maximize recoveries for all stakeholders and was in the best interests of the Debtors.¹⁴

After securing their Stalking Horse, the Debtors and their advisors continued the marketing and sales process in accordance with the Bid Procedures Order, freely able to deal with anyone interested in acquiring their assets. Ducera contacted even more possible bidders, bringing the total to 209.¹⁵ Based upon the bids received, the Debtors exercised their business judgment in consultation with, among others, the Official Committee of Unsecured Creditors (the “Committee”), to conclude that it would be beneficial to sell their assets in five distinct groups.¹⁶ They auctioned those groups and declared four non-insider winning bidders, each for a distinct group of assets.¹⁷ The fifth asset group was not sold at the auction.

The Court then conducted an evidentiary sale hearing. Evidence was submitted from Ducera and the Debtors’ Chief Executive Officer as to the marketing of the Debtors’ assets, the competitive bidding process, the auction, the value of the winning bids, and the good faith, non-collusive behavior of the Debtors and the purchasers.¹⁸ The Court approved the four sales.¹⁹ Thereafter, the Debtors selected a non-insider

¹⁴ *Id.* ¶¶ 16-18.

¹⁵ *See, e.g.*, D.I. 340 ¶ 9.

¹⁶ *See, e.g., id.* ¶ 21.

¹⁷ *See, e.g., id.* One of these bidders was deemed a provisional successful bidder subject to finalization of definitive documentation. *See, e.g., id.* ¶ 22 n.4.

¹⁸ *See, e.g.*, D.I. 340, 348, 369, 370.

¹⁹ D.I. 364, 365, 378, 379.

purchaser for the fifth and final group of assets.²⁰ Similar evidence was submitted in support of this sale,²¹ and the Court approved it.²² In entering the five sale orders (together, the “Sale Orders”), the Court ruled that, among other things, the notice of the Bid Procedures Order, sale, auction, objection deadline, and sale hearing was sufficiently provided to all interested parties, the Debtors acted in compliance with the Bid Procedures Order, entering into the sales constituted a valid and sound exercise of the Debtors’ business judgment, the Debtors and purchasers acted in good faith, and the consideration provided by the purchasers was the highest and best offers for the purchased assets.²³

The Debtors did not generate enough from the sales to repay their post-petition debtor-in-possession financing obligations (the “DIP Claim”) to Virgin Investments Limited (“VIL”), which was also the Debtors’ indirect parent and prepetition senior secured lender. Notwithstanding, a global settlement was reached among the Debtors, the Committee, and VIL that allowed the Debtors to propose a plan to satisfy administrative expense and other priority claims and provide a small distribution to holders of allowed general unsecured creditors despite VIL receiving significantly less than full repayment on its senior secured claims.

²⁰ D.I. 455. This purchaser participated in the auction but did not submit an acceptable bid. The Debtors continued negotiations with several parties following the auction and ultimately selected the purchaser as the successful bidder. *See generally* D.I. 454.

²¹ D.I. 454, 455.

²² D.I. 481.

²³ *See generally* D.I. 364, 365, 378, 379, 481.

The Plan classifies the Debtors' claims and interests into nine classes.²⁴ Particularly relevant to this dispute are Classes 3-5 and 9. Class 3 consists of the pre-petition secured claim held by VIL. Classes 4 and 5 contain general unsecured claims. Class 9 contains equity interests like those held by Dr. Hampel.

As to treatment of these claims and interests, the Plan allowed VIL's Class 3 claim in the principal amount of \$28,400,000. It distributed to VIL in satisfaction of this claim and the DIP Claim cash, interests in a post-confirmation litigation trust, and all intellectual property assets owned by the Debtors that were not sold in the section 363 sale process (the "Remaining IP Assets").²⁵ The Debtors projected and disclosed that VIL would ultimately recover less than half of its DIP Claim and nothing on the prepetition secured claim.²⁶ Despite this meager recovery, VIL waived its resulting unsecured deficiency claim, which increased recoveries for general unsecured creditors.

Under the Plan, holders of Class 4 general unsecured claims received their pro rata share of a cash pool in an amount no less than \$1,100,000, certain other cash, and interests in the post-confirmation trust. The projected recovery for this class is, at best, 1.29% to 5.46% of the claims.²⁷ Class 5 general unsecured creditors held "convenience claims" in an amount of \$5,000 or less and received a higher percentage distribution but less than full repayment.

²⁴ D.I. 604, Exh. A, Art. III.

²⁵ The Remaining IP Assets included the Debtors' rocket engine and rocket avionics system intellectual property.

²⁶ D.I. 465, 574.

²⁷ *Id.*

Equity interests in Class 9 were canceled and extinguished.

Classes 3-5 were entitled to vote on the Plan. Classes 4 and 5 accepted, and Class 3 did not vote.²⁸ The Court then conducted a confirmation hearing. At the time of the hearing, the Plan was contested in part, but the outstanding objections did not touch on issues regarding the treatment of claims and interests, asset valuation, or the Debtors' good faith in proposing the Plan.²⁹ In fact, the Equity Holders (as defined herein) did not object to the Plan. After the objections were addressed through either agreements reached by the parties or rulings of the Court, the Court confirmed the Plan and subsequently entered the Confirmation Order.³⁰ In doing so, the Court found and concluded that, among other things, notice of the confirmation hearing was appropriate, the global settlement as incorporated and implemented by the Plan was fair, equitable, reasonable, and in the best interest of the Debtors and their estates, the Plan complied with all applicable provisions of section 1129, and the Plan was proposed in good faith and not by means forbidden by law.³¹ The Plan went effective two days after the Confirmation Order was entered.³² The Confirmation Order was not appealed and is final.

²⁸ D.I. 572. Class 9 was deemed to have rejected the Plan pursuant to section 1126(g).

²⁹ D.I. 606. Two equity holders filed an objection seeking issuance of equity in the reorganized Debtors, but they withdrew the objection prior to the confirmation hearing. *See* D.I. 587, 590, 606.

³⁰ D.I. 604.

³¹ *Id.*

³² D.I. 610.

Approximately five months after entry of the Confirmation Order, Dr. Hampel filed a submission that the Court deemed a motion pursuant to section 1144 to revoke the Confirmation Order (the “Motion”).³³ Seven other equity holders joined Dr. Hampel’s Motion.³⁴ The Court will collectively refer to Dr. Hampel and the joining equity holders as the “Equity Holders.” In accordance with the Court’s *Scheduling Order*,³⁵ Dr. Hampel timely filed further submissions in support of his Motion,³⁶ the Debtors responded,³⁷ and the Court held an evidentiary hearing to consider the contested matter.³⁸

II. LEGAL DISCUSSION

The Equity Holders’ request for revocation of the Confirmation Order rests upon an overarching belief that the Debtors’ assets were worth approximately

³³ Case No. 23-10408, D.I. 17-18.

³⁴ See docket item number 47 filed in case number 23-10408 attaching the written statements of Aydin Karahan, Chin Ho William Lee, Katalin Sebestyen, Iryna Karahan, Eric W. Fischbach, and Lubos Hhna. A seventh equity holder, Stephen Inguagiato, attended the hearing and joined Dr. Hampel. Mr. Inguagiato made a brief argument in support of his belief of the Debtors’ significant value.

³⁵ Case No. 23-10408, D.I. 18.

³⁶ *Id.*, D.I. 19, 25.

³⁷ *Id.*, D.I. 30.

³⁸ A request to revoke an order confirming a chapter 11 plan must be brought by adversary proceeding. *See* FED. R. BANKR. P. 7001(5). The Reorganized Debtors do not contest the procedural mechanism by which Dr. Hampel pursues revocation, and this Court declines to deny the relief sought on this ground. *See, e.g., Kauffman v. Moss*, 420 F.2d 1270, 1276 (3d Cir. 1970) (declining to dismiss a *pro se* civil rights complaint, explaining “litigation, where possible, should be decided on the merits.”).

\$3.7 billion as a going concern but were improperly marketed and sold in piece-meal fashion during bankruptcy “fire sales.” This unfair sale process then allowed the Debtors to misrepresent the value of the Remaining IP Assets so that they were distributed to VIL at the expense of other creditors and interest holders. The Equity Holders posit that this deliberate lack of honesty and transparency amounts to fraud and led to the unlawful cancellation of their equity interests. They urge revocation of the Confirmation Order so that the Court can remedy the alleged unjust treatment they experienced and restore the integrity of the bankruptcy process.

As a threshold matter, any arguments that the Debtors did not undertake a fair and proper marketing and sales process and did not sell assets for appropriate value are barred by *res judicata*. *Res judicata* is a judicial doctrine that precludes parties from relitigating claims that could have been raised or litigated in an earlier action.³⁹ *Res judicata* “requires: (1) a final judgment on the merits in a prior suit involving; (2) the same parties or their privities; and (3) a subsequent suit based on the same cause of action.”⁴⁰ The Equity Holders’ challenges and critiques of the sales go to the heart of the findings and conclusions this Court made when entering the Bid Procedures Order and Sales Orders.⁴¹ The orders were

³⁹ See *Bd. of Tr. of Trucking Emp. of N.J. Welfare Fund, Inc. - Pension Fund v. Centra*, 983 F.2d 495, 504 (3d Cir. 1992).

⁴⁰ *Id.*

⁴¹ See *id.* (“Whether two lawsuits are based on the identical cause of action ‘turn[s] on the essential similarity of the underlying events giving rise to the various legal claims.’ Courts should not apply this conceptual test mechanically, but should focus on the central purpose of the doctrine, to require a plaintiff

not appealed and are final.⁴² The Equity Holders had the opportunity to object and be heard at the bidding procedures and sale hearings as parties in interest.⁴³ They did not object or participate. Accordingly, they are bound by the results.

Moreover, the pre-confirmation sales are irrelevant to the inquiry that the Court must undertake under section 1144 to determine whether to revoke the Confirmation Order. Section 1144 allows a court to revoke a confirmation order “if and only if such order was procured by fraud.”⁴⁴ As explained in *In re Melinta Therapeutics, Inc.*,⁴⁵ to show that a confirmation order was procured by fraud, a moving party must demonstrate the following five elements:

- (1) that the debtor made a representation regarding compliance with Code § 1129 which was materially false;
- (2) that the representation was either known by the debtor to be false, or was made without belief in its truth, or was made with reckless disregard for the truth;

to present all claims arising out the same occurrence in a single suit.” (quoting *United States v. Athlone Indus.* 746 F.2d 977, 983 (3d Cir. 1984)).

⁴² See *In re Culp*, 550 B.R. 683, 691 (D. Del. 2015) (“The majority of courts to consider the issue have concluded that an order authorizing the sale of assets of an estate is a final, appealable order.”).

⁴³ 11 U.S.C. § 1109(b) (“A party in interest, including . . . an equity security holder . . . , may raise and may appear and be heard on any issue in a case under this chapter.”).

⁴⁴ *Id.* § 1144.

⁴⁵ 623 B.R. 257, 263-64 (Bankr. D. Del. 2020).

- (3) that the representation was made to induce the court to rely upon it;
- (4) [that] the court did rely upon it; and
- (5) that as a consequence of such reliance, the court entered the confirmation order.⁴⁶

This standard is high to protect the finality of confirmation orders.⁴⁷

The Equity Holders have not succeeded in meeting the high bar set for revocation. Distilled to the simplest terms, the Equity Holders argue that the Debtors were dishonest about the value of the Remaining IP Assets so that VIL could obtain them without equity holders receiving their fair share. They do not identify with precision any alleged false representations regarding the requirements of section 1129 that the Debtors made to obtain confirmation of the Plan. But the sum and substance of their argument minimally challenges statements the Debtors made to support the Plan's compliance with section 1129(a)(3) (that the Plan was proposed in good faith and not by any means forbidden by law), section 1129(a)(7) (that the Plan satisfied the best interests test), and section 1129(b)(1) (that the Plan did not unfairly discriminate, and was fair and equitable, with respect to Class 9).⁴⁸

Notwithstanding the liberties the Court takes on behalf of the Equity Holders' arguments, the Court cannot overlook the fact that they did not submit

⁴⁶ *Id.* (alteration in original).

⁴⁷ *See, e.g., In re E. W. Resort Dev. V, L.P., L.L.L.P.*, No. 10-10452, 2014 WL 4537500, at **9-10 (Bankr. D. Del. Sept. 12, 2014).

⁴⁸ *See generally* D.I. 465, 573, 574, 575.

evidence sufficient to show that the Debtors' statements were materially false. In advocating their position, the Equity Holders point the Court to a series of news articles that report the alleged prepetition value of the Debtors, the private and public sector interest in the Debtors' technology and similar technologies, and the Debtors' successful satellite launches. They also point to the Debtors' statements regarding the indications of interest received prior to the auction as well as promotional materials that advertised the value of the Debtors. At the hearing, Dr. Hampel submitted a short promotional video allegedly created by the Debtors prior to the bankruptcy highlighting their anticipated success. This material is not persuasive evidence to prove the value of the Debtors' Remaining IP Assets at the time of confirmation, let alone that such value exceeded the amounts of claims senior to equity interests such that equity holders were entitled to obtain a recovery in these cases.

The value of the Debtors' assets was determined by the marketplace after an open and fair sale process overseen by this Court.⁴⁹ This valuation method is the "gold standard."⁵⁰ The sales, however, did not yield the

⁴⁹ See e.g., *Cohen v. KB Mezzanine Fund II, LP (In re SubMicron Sys. Corp.)*, 432 F.3d 448, 461 (3d Cir. 2006) ("Section 363 attempts to avoid the complexities and inefficiencies of valuing collateral altogether by substituting the theoretically preferable mechanism of a free market sale to set the price. The provision is premised on the notion that the market's reaction to a sale best reflects the economic realities of assets' worth.").

⁵⁰ *Kravitz v. Samson Energy Co., LLC (In re Samson Res. Corp.)*, Adv. Pro. No. 17-51524, 2023 WL 4003815, at *1 (Bankr. D. Del. June 14, 2023) ("It is black letter law in this Circuit that the gold standard for determining the value of an asset is to sell it in an open and fair market.").

value the Debtors and their stakeholders had hoped. No actionable going-concern bids were received, resulting in the segmented sales. Moreover, no actionable bids were received for the Remaining IP Assets and therefore, they were not sold. In total, the value generated from the sales was insufficient to repay the Debtors' debtor-in-possession financing. Notwithstanding, the global settlement reached between estate fiduciaries and VIL allowed the Debtors to confirm a plan that will provide a small distribution to general unsecured creditors despite VIL's senior secured claims not being paid in full. There simply was not enough value in the estates to allow the Debtors' equity holders, who are behind unsecured creditors in the priority scheme, to obtain a recovery. This is an unfortunate, typical result in bankruptcy cases. But it does not support revocation of the Confirmation Order.

III. CONCLUSION

For the foregoing reasons, the Court hereby ORDERS that the Motion is denied.

Dated: March 6, 2024
Wilmington, DE

/s/ Karen B. Owens
Karen B. Owens
United States Bankruptcy Judge

APPENDIX E

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

Chapter 11

Case No. 23-10405 ()

(Joint Administration Requested)

IN RE: VIRGIN ORBIT HOLDINGS, INC., *et al.*,¹
Debtors.

DECLARATION OF DANIEL M. HART
IN SUPPORT OF CHAPTER 11 PETITIONS
AND FIRST DAY PLEADINGS

I, Daniel M. Hart, declare under penalty of perjury
as follows:

1. I have served as the Chief Executive Officer (“CEO”) of the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors” and together with the non-debtor subsidiaries, the “Company” or “Virgin Orbit”) since its founding in June 2017. I am authorized to submit this declaration (this “Hart First Day Declaration”) on behalf of the Debtors. I submit this Hart First Day

¹ The Debtors in these cases, along with the last four digits of each debtor’s federal tax identification number, are: Virgin Orbit Holdings, Inc. (6914); Virgin Orbit National Systems, LLC (3801); Vieco USA, Inc. (0492); Virgin Orbit, LLC (9648); and JACM Holdings, Inc. (1445). The Debtors’ address is 4022 East Conant Street, Long Beach, CA 90808.

Declaration in support of the Debtors' voluntary petitions for relief.

2. I joined the Company in March 2017 as President after more than three decades across various space and defense programs at Boeing, where I held many Engineering, Operations, and General Management positions, and last served as Vice President of Government Satellite Systems. In that position, I oversaw Boeing's government satellite programs, developing and managing missions for the U.S. Department of Defense, National Reconnaissance Office NASA, NOAA, and other national programs. I attended Harvard Business School's Advanced Management Program. I hold a bachelor's of science degree in Physics from the University of Albany, State University of New York.

3. As CEO, I am responsible for overseeing and, thus, familiar with, the Debtors' operations, businesses, and financial affairs. Unless noted, I have personal knowledge of the matters herein or have gained such knowledge from others who report to me in the ordinary course of business. If called, I would testify competently to all facts in this Declaration.

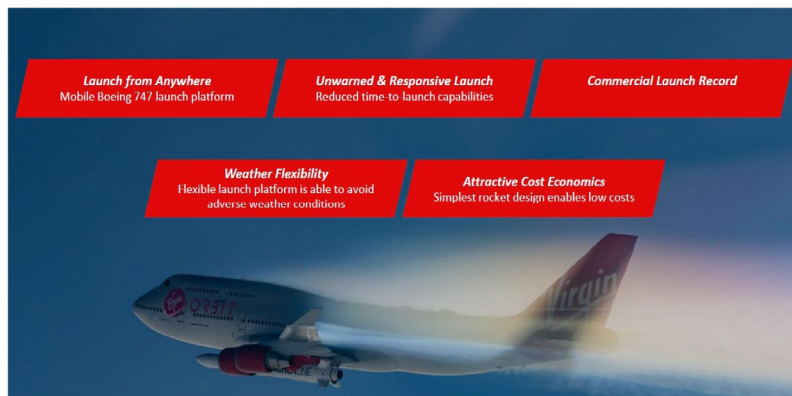
4. This Declaration is being submitted in conjunction with the *Declaration of Brian Whittman in Support of Chapter 11 Petitions and First Day Pleadings* (the "Whittman First Day Declaration").² The Whittman First Day Declaration sets forth additional background facts regarding the Debtors' prepetition capital structure, reduction in force, and certain "first-day" pleadings (collectively, the "First Day Pleadings"),

² Capitalized terms used but not defined in this declaration shall have the meaning given to them in the Whittman First Day Declaration.

which have been filed contemporaneously herewith, historical and recent financial performance, and circumstances surrounding the commencement of these chapter 11 cases (the “Chapter 11 Cases”)

PRELIMINARY STATEMENT

5. Founded in 2017, Virgin Orbit provides launch services for small satellites to domestic and international customers across commercial markets, the U.S. National Security Community, NASA and international partners. To date, Virgin Orbit has executed four successful launches and delivered approximately thirty-three satellites to their desired orbits with high precision.



6. The Company created and developed the first and only liquid air launch orbital system, composed of a modified Boeing 747 called Cosmic Girl and a two-stage rocket, named LauncherOne. This proprietary system allows Virgin Orbit to provide flexible and cost-effective launch options for small satellite operators, especially those who need to launch on short notice or to specific orbital locations and the system can originate from airports across the globe. The Debtors’ revolutionary launch technology substantially reduces the limitations and delays imposed on vertically land

launched systems by weather. Cosmic Girl is less impacted by weather, due to the well-established robustness of the 747 aircraft. Any airport that has a runway long enough to support a Boeing 747 aircraft and can be licensed can be turned into a spaceport. Furthermore, the Company's space launches generate the same environmental impact to surrounding grounds as that of a traditional commercial aircraft – a radical departure from land launch systems, which have a significant carbon footprint in regions surrounding launch sites and typically launch from undisturbed wildlife areas.

7. As an early stage space and launch company, Virgin Orbit has focused its resources on developing its proprietary technology and growing its customer base. Virgin Orbit and its indirect parent entity, Virgin Investments Limited (“VIL”, and together with any lender party under the DIP Facility or the “Secured Lender Parties”) have invested significant capital with comparatively small corresponding revenue to date.³ In July 2021, the Company announced that it planned to go public through a merger with a special purpose acquisition company, called NextGen Acquisition Corporation II (“NextGen”). The merger resulted in the Company becoming a publicly traded company in December 2021 through a de-SPAC transaction (the “de-SPAC”). While the Company raised approximately \$228 million in net proceeds in connection with the de-SPAC and related transactions, these proceeds were significantly less than the Company had anticipated. Indeed, over 82% of NextGen's total public shares were redeemed in connection with the de-SPAC, and

³ VIL is wholly owned by Virgin Group Investments LLC, whose sole managing member is Corvina Holdings Limited, which is wholly owned by Virgin Group.

accordingly, the Debtors received only \$67.8 million in gross proceeds from the de-SPAC, significantly less than the potential \$382 million that the Debtors had expected.⁴

8. Since the de-SPAC, the Company has pursued a broad range of strategic transactions designed to address its continuing liquidity needs. In the beginning of 2022, the Company began working with Goldman Sachs & Co. LLC (“Goldman Sachs”) and BofA Securities, Inc. (“BofA”) to pursue a potential sale or, alternatively, to assist with a capital raise. While, up until shortly before the Petition Date, the Company received responses from several parties potentially interested in participating in varying transactions, no transactions were consummated.⁵ Moreover, in January 2023 (during the marketing process), the Company suffered a launch failure, giving rise to negative publicity and further challenges in identifying a buyer or capital source.

9. As their liquidity needs grew more acute, the Company retained Latham & Watkins LLP (“Latham”) as restructuring counsel, Alvarez & Marsal North America, LLC (“A&M”) as financial advisor, and Ducera Partners LLC (“Ducera”) as investment banker. The Company received multiple rounds of

⁴ The remaining approximately \$160.2 million were raised in connection with the Initial PIPE, VIL PIPE and Additional PIPE transactions (each as defined and described in paragraph 38, below), which took place concurrently with the de-SPAC.

⁵ The Company was also successful in raising (a) \$50 million of unsecured third party financing in the form of a convertible note from Yorkville Capital Management (“Yorkville”) in June 2022, and (b) \$1 million of unsecured financing in the form a secured note from Yorkville on March 28, 2023, each as further described in the Whittman First Day Declaration.

funding from VIL to, among other things, continue to engage in significant diligence, discussions, and negotiations with a number of parties that had expressed interest in a capital infusion transaction. Although conversations are ongoing, unfortunately, these talks did not result in a transaction prior to the Company running out of liquidity, triggering the filing of these Chapter 11 Cases.

10. VIL, the Debtors' existing secured lender and largest equity holder, has agreed to provide a proposed debtor-in-possession financing (the "DIP Facility")⁶, which consists of a superpriority senior secured debtor-in-possession term loan credit facility comprised of new money loans consisting of (a) an aggregate principal amount of up to \$31,600,000 in DIP New Money Loans (as defined in the DIP Motion), of which (i) \$12,250,000 is proposed to be available immediately upon entry of the interim order, (ii) \$15,150,000 is proposed to be available upon entry of the final order, and (iii) \$4,200,000 in DIP Severance New Money

⁶ Additional information regarding the DIP Facility terms and negotiations related thereto can be found in the (a) the *Motion for Debtors for Entry of Interim and Final Orders (A) Authorizing Debtors to Obtain Postpetition Financing, (B) Authorizing Debtors to Use Cash Collateral, (C) Granting Liens And Providing Superpriority Administrative Expense Claims, (D) Granting Adequate Protection, (E) Modifying Automatic Stay, (F) Scheduling a Final Hearing, and (G) Granting Related Relief* (the "DIP Motion"); (b) the Whittman Declaration; and (c) the *Declaration of David Zubricki in Support of Motion for Debtors for Entry of Interim and Final Orders (A) Authorizing Debtors to Obtain Postpetition Financing, (B) Authorizing Debtors to Use Cash Collateral, (C) Granting Liens And Providing Superpriority Administrative Expense Claims, (D) Granting Adequate Protection, (E) Modifying Automatic Stay, (F) Scheduling a Final Hearing, and (G) Granting Related Relief* (the "Zubricki Declaration") each filed contemporaneously herewith.

Loans (as defined in the DIP Motion), to be made in one or more fundings, is proposed to be available immediately upon entry of (1) the interim order and (2) if any, a postpetition Severance Approval Order (as defined in the DIP Motion) and (b) an aggregate principal amount of up to \$42,500,000 in Roll-Up Loans (as defined in the DIP Motion), of which (i) \$10,900,000 is proposed to be exchanged immediately upon entry of the interim order and (ii) \$31,600,000 is proposed to be exchanged upon entry of the Final Order (collectively, the “DIP Loans”). As a further condition to entry into the DIP Facility, I understand that VIL required termination of certain trademark licenses used by the Debtors in their business. The Debtors and their advisors negotiated the terms of an agreement to phase out usage of the licenses (the “Termination Agreement”) at arm’s length and the Termination Agreement was entered into on April 2, 2023. Though Ducera ran a broad prepetition marketing process, no other party indicated a willingness to provide DIP funding to the Debtors on a full take out, junior or non-priming basis.

11. The Debtors, with support of VIL, have commenced these Chapter 11 Cases for the purposes of engaging in a going concern sale of all or substantially all of their assets. Important dates with respect to the sale process are set forth in and required by the DIP Facility and include, among others:

- a. the Debtors are to file a bidding procedures motion no later than three (3) calendar days after the Petition Date or the first business day thereafter;
- b. the deadline for submission of non-binding indications of interest for some, all, or substantially all of the Debtors’ assets to occur

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no later than thirty (30) calendar days following the Petition Date;

- c. the deadline for submission of binding bids for some, all, or substantially all of the Debtors' assets to occur no later than forty (40) calendar days following the Petition Date;
- d. an auction for some, all or substantially all (in one or multiple sales) of the Debtors' assets pursuant is to occur no later than forty-five (45) calendar days following the Petition Date; and
- e. the entry of one or more orders approving the sale of some, all, or substantially all of the Debtors' assets is to occur no later than fifty (50) calendar days following the Petition Date.

12. To familiarize the Court with the Debtors, their businesses, and the circumstances leading to these Chapter 11 Cases . This Declaration is organized as follows:

- a. Part I provides a general overview of the Debtors' company and operations; and
- b. Part II describes the circumstances leading to these Chapter 11 Cases.

I. COMPANY AND OPERATIONS



A. Corporate Organization

13. The Debtors are organized under the laws of the state of Delaware. An organizational chart of the

Debtors and certain, foreign non-Debtor affiliates is attached hereto as Exhibit A.⁷

14. The common stock and warrants to purchase common stock of Debtor Virgin Orbit Holdings Inc. (“VORB”) is publicly-traded on The Nasdaq Stock Market (“Nasdaq”) under the ticker symbols “VORB” and “VORBW,” respectively. VIL is the ultimate parent of the Debtors and that entity owns approximately 64% of VORB common stock.

B. The Debtors’ Business

15. The Debtors are a vertically-integrated space company that provides dedicated and rideshare small satellite launch capabilities to their customers, including private entities, U.S. government organizations, and allied government organizations.⁸ The Debtors’ philosophy is to operate a mobile launch system that can “launch at any time, from any place, to any orbit.” And their vision is to use space to drive positive and lasting change on Earth, from connecting communities, to advancing scientific initiatives, to supporting America’s and other nations’ space presence, and helping create the next generation of world-changing space technology. The Debtors’ operations are highly integrated, with over 90% of each rocket built in-house. Furthermore, in each technology area, the design and manufacturing is done within the

⁷ The organizational chart also include certain foreign, non-Debtor affiliates. These non-Debtor entities are financially independent of the Debtors.

⁸ A dedicated launch is one in which the customer buys the entire launch payload. A rideshare launch includes payloads from multiple customers. To date, all payloads have consisted of satellites.

Company, including avionics, propulsion, structure, systems engineering, launch control, among others.

1. *The Debtors' Air Launch System*

16. The Debtors have developed and manufactured a state of the art, proprietary, and mobile launch system, composed of the Cosmic Girl aircraft and the LauncherOne rocket. The mobility of the system allows the Debtors to bring launch capabilities to governmental and commercial customers and has the ability to provide satellite launch capability to allied governments that do not have this capability. To date, the Debtors have delivered approximately thirty-three satellites to their desired orbits with high precision.

17. Cosmic Girl is a modified Boeing 747-400 aircraft that serves as the Debtors' reusable mobile launch platform. Cosmic Girl allows the Debtors' launch system to be fully mobile and to launch payloads into orbit with an unprecedented level of flexibility. The interior of the aircraft has been modified to support minimal maintenance requirements and the upper deck has been outfitted to support onboard launch operations with just two pilots and two launch engineers. One of the most important modifications is the pylon, which is used to carry the LauncherOne rocket up to approximately 35,000 feet, from where it is released for launch. Using Cosmic Girl as an aerial launch platform enables the Debtors' rocket to be more efficient, benefiting from the initial altitude of 35,000 feet, speed of approximately 85% of the speed of sound at launch and aerodynamics with an air density approximately 30% of sea level as compared with a typical ground launch.

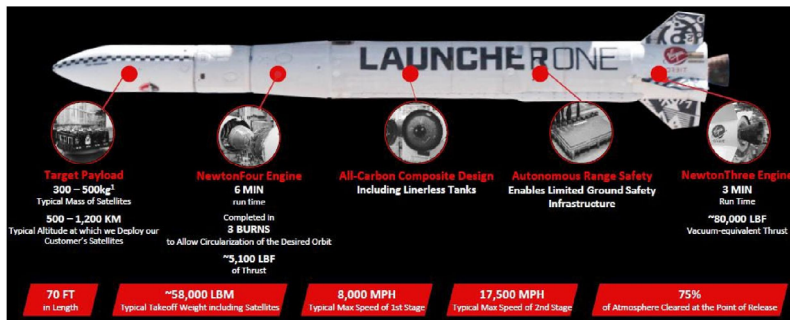


18. LauncherOne is a two-stage rocket that is the world's first and only liquid-fueled, air-launched rocket to reach orbit successfully. By beginning each rocket flight at approximately 35,000 feet above sea level and already travelling at a high speed, the simple and reliable LauncherOne rocket achieves a significant performance advantage over grounded launch sites while reducing local carbon emissions and acoustic impacts at the launch site when compared to a traditional ground launch. LauncherOne is also engineered for optimal performance in conjunction with Cosmic Girl. The rocket has an all-carbon composite design with liner-less tanks, thereby increasing system reliability and increasing production efficiency. LauncherOne is targeted to carry payloads of approximately 300 kilograms.

19. The Debtors' air-launch system is designed for a more reliable and agile launch cadence than the traditional ground-launch rideshare systems, but its modularity also allows for the Debtors to execute launches from any government licensed horizontal spaceport with a runway long enough to support a

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Boeing 747-400 aircraft. Finally, the Debtors' system is also designed to provide critical support for the operation and maintenance of satellite constellations in instances where a satellite malfunctions or is disabled, and needs urgent replacement.



C. The Debtors' Headquarters and Employees

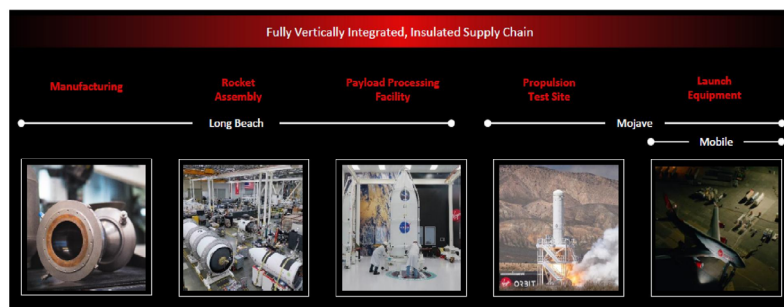
20. The Debtors develop and manufacture their proprietary launch technology from a vertically-integrated manufacturing facility in Long Beach, California, and are led by a management team with extensive experience in the aerospace industry and other key related industries.

21. The Debtors' 195,000 square foot facility is composed of: (a) a main building (Conant), which is 151,000 square feet and houses office space and a large manufacturing floor; and (b) a second building (McGowen), which is 44,000 square feet and houses training, customer experience, offices, payload processing and additional manufacturing space. The Debtors also conduct high-energy testing at facilities at the Mojave Air and Space Port in Mojave, California, where there are multiple custom-built test stands for liquid propulsion, composite tank, component, and overall stage testing.

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22. The vast majority of the Debtors' design, engineering, manufacturing, integration, assembly and test activities occur in the Conant main building. The Debtors' engineering team works directly adjacent to the LauncherOne production and assembly line, which features state-of-the-art manufacturing equipment and custom-built test rigs.

23. The Debtors' McGowen building is located near their Long Beach headquarters and houses their payload processing facility where customers' payloads are encapsulated after spacecraft receipt, and inspection and testing are completed.



24. The Debtors' manufacturing process is highly-optimized to take advantage of a variety of manufacturing techniques, including additive manufacturing, use of composite structures, and in-house developed avionics. For example, the Debtors' automated composites fabrication process enables them to build rocket tanks in days versus months. As of the Petition Date, there were six rockets in production, and the Debtors' facility is in the midst of modifications to build out the tooling, processes, and technology to support a production capacity up to approximately 20 rockets annually. The Debtors' factory is scalable with the potential for expansion of production capabilities through floor space addition and optimization and additional copies of key tooling.

25. Prior to the suspension of operations and reduction in force, which took place on March 15, 2023 and March 30, 2023, respectively, and which are further described in Section II.D of this declaration, the Debtors maintained a workforce of approximately 770 employees as well as independent contractors and temporary employees. Many of the Debtors' current or former employees have prior experience working for a wide variety of notable research, commercial and military, aerospace and non-aerospace organizations. As of the Petition Date, the Debtors employ a core group of approximately 100 employees to retain the essential IP and know-how, allowing potential buyers to scale the business to their desired level of production and rocket launch activity. The Debtors' current employees are critical to the marketing of the business, maintaining and securing the assets, and providing the necessary reporting during the Chapter 11 Cases. Importantly, the Debtors maintain the infrastructure and operational knowledge to support future expansion based upon the outcome of a sale in the Chapter 11 Cases.

D. The Debtors' Customers and Core Offerings

26. The Debtors' launches have delivered satellites to orbit for customers across commercial, civil and national security and defense markets, both domestically and internationally. The Debtors' portfolio is organized across three core offerings: (a) Commercial and Civil; (b) National Security and Defense; and (c) International Spaceports.

1. *Commercial and Civil Launch Customers*

27. The Debtors' commercial and civil launch business caters to the launch demands of commercial and civil customers both in the United States and

international markets, including customers such as iQPS, SatRevolution, and NASA. The Debtors offer these customers dedicated, primary, or secondary rideshare satellite launch services to any orbit with both timing and launch location flexibility. In a rideshare launch, there are several payload customers, including a primary rideshare customer who determines the mission parameters and secondary rideshare customers whose payloads use the remaining mass and volume capacity not used by the primary. Dedicated and primary rideshare customers can inject their payloads directly into their desired orbits. This is an attractive alternative to launching on very large rockets that typically can take small satellites in large groups or as secondary payloads into a generic orbit, but require the satellite to travel, sometimes over months to their desired orbit. The dedicated, LauncherOne approach enables commercial customers to achieve an earlier revenue stream and a longer spacecraft revenue generating life.

2. National Security and Defense Customers

28. The Debtors' national security launch and responsive space services businesses provide launch services for national security and defense customers such as the U.S. Government and its allies. The Debtors believe their launch system is particularly attractive to these customers because of its capability for anonymity and responsiveness even in challenging weather conditions. The ability to fly Cosmic Girl to, and launch from, different locations could make it difficult for adversaries to predict timing and location of launch, as compared with a static ground-based launch pad, making it highly attractive for National Security customers that prioritize operation covertness. Moreover, the resiliency and responsiveness of

the system is especially important should there be a need to replace critical satellites that go out of operation. The Debtors believe that their responsive space services offering, in which they expect to deliver turnkey capability through the sale of equipment as well as services to the U.S. Government, is of increased interest as it facilitates the necessary capabilities for the United States Space Force, and other government agencies, to responsively and independently deploy appropriate assets against the U.S. Government's adversaries, a previously non-existent capability.

29. The Debtors' launch capabilities also have missile defense targets and hypersonic applications. Hypersonics, which are high-speed systems or devices that travel at speeds over Mach 5, are a growing area of focus for the Department of Defense, especially as several foreign nations race to build military capabilities in this area for offensive purposes. With the Debtors' system's ability to achieve hypersonic speeds and their deep connectivity within the Department of Defense, the Debtors believe they are well-positioned to support and complement various hypersonic training, testing and exercising activities and develop advanced defense mechanisms for the U.S. Government. In addition, the LauncherOne system can be used to support the testing of missile defense systems by simulating the approach of enemy missiles and has the ability to simulate an attack from nearly any point of origin.

3. International Spaceports

30. With its ability to launch from any licensed airport that can support a 747 aircraft, the LauncherOne system can bring space launch to allied countries that desire launch capability, and do so without the need for significant additional

infrastructure. This was recently demonstrated in the United Kingdom where the Debtors performed the first space launch activity ever attempted from Europe. The Debtors have agreements with entities across several countries regarding providing in-country launch including: Japan, Australia, South Korea, Luxemborg, and Poland.

E. Recent Launches

31. The Debtors have had four out of five successful and important operational launches, including:

- a. a January 17, 2021 launch of 10 CubeSats for NASA's Educational Launch of Nanosatellites (ELaNa) program, project name *Tubular Bells, Part One*;
- b. a June 30, 2021 launch of 7 payloads for the Department of Defense's Space Test Program and the Netherlands' Royal Netherlands Air Force, project name *Tubular Bells, Part Two*;
- c. a December 22, 2021 launch of 12 payloads for NASA's ELaNa program and the Royal Australian Air Force, project name *Tubular Bells, Part Three*; and
- d. a July 2, 2022 launch of 7 payloads for United States Space Force and Department of Defense, project name *Straight Up*.

32. Although there was a recent failed rocket launch in the beginning of 2023, the cause has already been determined and duplicated through extensive ground testing, and the appropriate changes to LauncherOne have been made to eliminate the issue on the subsequent rocket. The Debtors expect to receive "Return to Flight" status from the FAA during the month of April and the next rocket is in final

integration and test phase in advance of a planned launch in the third quarter of 2023.

II. THE CIRCUMSTANCES LEADING TO THESE CHAPTER 11 CASES

A. The Debtors' Business Challenges

33. The Debtors operate in the highly competitive and capital-intensive space launch industry. As a growth-stage company, the Debtors have invested significant resources to developing a new method for satellite launch and proving their technology, ramping up their launch operations, and growing their customer base. The Debtors maintained the twin goals of consistently increasing the number of launches provided per year and growing into a profitable business by 2024. To achieve these goals, the Debtors planned to raise additional capital from the market.⁹

34. As mentioned above, the Debtors became a public company after the de-SPAC transaction that resulted in far less liquidity than originally anticipated. With this initial handicap the Debtors faced several additional external and operational challenges that, ultimately, prevented them from raising the necessary liquidity. *First*, the changing capital markets and higher interest rate environment made obtaining new capital difficult for the Debtors. *Second*, the Debtors faced heavy pricing pressure from well-capitalized competitors in the commercial launch market. *Third*, government markets for tactical responsive space and other arenas, although growing, have taken longer than anticipated to develop. *Fourth*, the Debtors experienced operational inefficiencies that

⁹ The Debtors have generated losses and negative cash flows from operating activities since their inception.

slowed their launch rate. These inefficiencies included: (a) a strong labor market that drove unprecedented rates of employee attrition; (b) the effects of the COVID-19 pandemic including internal delays caused by periodic shutdowns, employee sick days, inefficiencies associated with a partially virtual workforce, and supply chain interruptions; and (c) as is common in early space launch programs, technical issues which slowed production. These obstacles also caused significant delays in the Debtors' ability to quickly scale their launch services. For example, the Debtors sought to carry out six launches in 2022, but executed only two. *Fifth*, the Debtors incur substantial fixed capital costs in order to maintain their launch, manufacturing, and space services operations, resulting in significant capital expenditures. *Finally*, the Debtors' unsuccessful launch in January 2023 negatively impacted investor discussions.

B. The de-SPAC and Related Transactions

35. On December 29, 2021, VORB went public through a de-SPAC transaction in which it combined with a publicly-listed special purpose acquisition company. VORB was initially formed on January 11, 2021 as NextGen, a Cayman Islands exempted company for the purpose of effecting a merger, share exchange, asset acquisition, share purchase, reorganization or similar business combination with one or more businesses.

36. On August 22, 2021 NextGen entered into a merger agreement (the "Merger Agreement") with Pulsar Merger Sub, Inc., a Delaware corporation and wholly-owned subsidiary of NextGen ("Merger Sub"), and Vieco USA, Inc., a Delaware corporation ("Vieco USA"). Among other things, the Merger Agreement contemplated the Domestication and Business

Combination (each as defined below), which occurred in two steps on December 29, 2021:

- a. NextGen filed a notice of deregistration with the Cayman Islands Registrar of Companies, together with the necessary accompanying documents, and filed a certificate of incorporation and a certificate of corporate domestication with the Secretary of State of the State of Delaware, under which NextGen was domesticated and continued as a Delaware corporation, changing its name to “Virgin Orbit Holdings, Inc.” (the “Domestication”). As a result of the Domestication, all issued and outstanding equity interests and warrants in NexGen were cancelled and converted into equity interests and warrants of VORB common stock, and VORB became a U.S. publicly traded entity and sole owner of Merger Sub.
- b. Merger Sub was merged with and into Vieco USA, pursuant to the terms set forth in the Merger Agreement and related documents, with Vieco USA surviving the merger as a wholly owned subsidiary of VORB (the “SPAC Merger” and together with the Domestication, the “Business Combination”).

37. In connection with the de-SPAC, NextGen shareholders had the right to require NextGen to redeem their shares in exchange for a pro rata share of the funds in NextGen’s trust account in lieu of receiving shares of VORB common stock in connection with the Business Combination. Over 82% of NextGen’s total public shares were redeemed, and as a result of such high levels of redemptions, NextGen’s trust account was substantially depleted. Accordingly, the Debtors received only \$67.8 million in gross

proceeds from the trust account, significantly less than the potential \$382 million that the Debtors had expected.

38. The Debtors executed three additional transactions concurrently with the Business Combination. *First*, certain institutional and accredited investors purchased an aggregate of 10 million shares of VORB common stock for a purchase price of \$10.00 per share pursuant to certain subscription agreements, and amounting to an aggregate purchase price of approximately \$100 million (the “Initial PIPE”). *Second*, pursuant to the terms of the Merger Agreement, VIL had the right (but not the obligation) to purchase up to \$100 million of additional shares of VORB common stock at a price per share of \$10.00. Pursuant to this right, VIL purchased an aggregate of approximately 5.82 million shares of VORB common stock on December 28, 2021 for approximately \$58.2 million (the “VIL PIPE”). *Third*, and also on December 28, 2021, prior to the consummation of the Business Combination, the co-chairmen of NextGen each purchased 100,000 shares of VORB common stock for an aggregate of \$2 million (the “Additional PIPE”).

39. The Debtors raised approximately \$228 million in net proceeds in connection with the de-SPAC and related transactions.¹⁰ However, this amount was significantly less than the approximately \$382 million

¹⁰ The \$228 million consisted of (a) \$67.8 million of proceeds from the Business Combination, (b) \$100 million of proceeds from sales of VORB common stock in the Initial PIPE, (c) \$58.2 million of proceeds from sales of VORB common stock in the VIL PIPE and (d) \$2 million of proceeds from sales of VORB common stock in the Additional PIPE.

that the Debtors had anticipated to add to their balance sheet.

C. Efforts to Improve Liquidity and
Exploration of Strategic Alternatives

40. Since the de-SPAC, the Debtors have worked diligently to address their continuing liquidity needs. Beginning in 2022, the Debtors worked with Goldman and BofA to pursue a potential sale or, alternatively, to assist with a capital raise. The Debtors received one indication of interest with respect to a sale from a potential buyer, and one indication of interest with respect to a structured financing transaction. The Debtors engaged in diligence and negotiations with each interested party, but both parties ultimately terminated their discussions with the Debtors shortly before the commencement of these Chapter 11 Cases.

41. At the same time as the Debtors were exploring a sale or capital raise, the Debtors needed liquidity. As a result, the Debtors executed a series of convertible note transactions with their indirect parent entity, VIL. To that end, between November 2022 and February 2023, VORB issued, and the remaining Debtors guaranteed, four separate senior secured convertible notes to VIL, generating \$60 million in aggregate gross proceeds. These infusions kept the Debtors afloat through the sale and capital raise discussions, but the Debtors' liquidity demands became unsustainable as discussions with potential third parties concluded or continued without reaching resolution.¹¹

¹¹ Prior to the Petition Date the Debtors also briefly engaged with and worked to vet the credentials of an individual investor in connection with a potential equity investment. However, the

42. In addition, prior to the Petition Date, the Debtors executed on a number of transactions with Yorkville. Specifically (a) on March 22, 2023, VORB and Yorkville amended the Yorkville Unsecured Note, to reduce the “Floor Price” (as defined in the Yorkville Unsecured Note) from \$1.00 to \$0.746, and as a result of the adjusted Floor Price, a maximum of 57,555,366 shares of VORB common stock may be issued upon conversion of the Yorkville Unsecured Note, including shares issued on or prior to the March 22, 2023, subject to adjustment provisions included in the Yorkville Unsecured Note; and (b) VORB entered into the Yorkville Unsecured Note.

43. In addition to their work with Goldman Sachs and BofA, the Debtors also engaged Latham as restructuring counsel in December 2022, retained A&M in February 2023 to assist with cash forecasting and liquidity conservation, and Ducera in March 2023 to assist with strategic planning and debtor-in-possession financing marketing.

44. On March 10, 2023, an independent transaction committee of the Board of Directors of VORB (the “Transactional Committee”) initially composed of Susan Helms and Katharina McFarland was formed to assess strategic alternatives, including a potential restructuring, reorganization, recapitalization, or change of control of the Debtors. On March 31, 2023, the Board of Directors of VORB added Alan J. Carr and Jill Frizzley to the Transactional Committee. The Transaction Committee was formed to evaluate potential strategic alternatives, including but not limited to any debtor in possession financing and

Debtors ceased discussions after being unable to validate investors ability to provide the quantum of capital discussed.

section 363 sale transactions, particularly transactions involving majority shareholders, including VIL.

D. Reductions in Force and Other Cost-Saving Measures

45. Facing dwindling liquidity, an unwillingness of VIL to inject additional capital, and no other out-of-court funding sources, the Debtors paused operations on March 16, 2023 and placed approximately 87% of their workforce on vacation. This provided the Debtors with some cost savings to extend their runway to continue negotiations with respect to an out of court structured financing investment and equity investment. The Debtors were also able to collect a grant receivable and achieve the release of certain restricted cash to gain additional, limited liquidity.

46. On March 30, 2023, when final efforts to raise capital failed to produce fruitful results, the Company secured \$10.9 million of incremental bridge funding from VIL to pay among other things, employee termination and related costs necessary to implement a reduction in force (the “RIF”) impacting approximately 670 employees, or approximately 85% of the Debtors’ workforce.

47. Following the RIF, the Debtors have retained a core group of approximately 100 employees to maintain the essential knowledge to allow business operations to restart once a buyer can be identified. These employees will also assist with marketing the business, maintaining the Debtors’ assets, and providing the necessary reporting during the Chapter 11 Cases, among other activities and with an eye towards maximizing value.

E. The Chapter 11 Cases

48. As detailed above, the Debtors explored many paths in an attempt to address their liquidity concerns, including engaging professionals to explore a sale and pursue a capital raise or other strategic transaction. However, when those efforts proved unsuccessful, the Debtors concluded that an expedited asset sale pursuant to section 363 of the Bankruptcy Code is the most likely path to promote the interests of, and maximize value for, all stakeholders under the circumstances. When it became clear that an out-of-court transaction was unlikely to materialize, the Debtors pivoted toward negotiating the terms of a mutually agreeable in-court process, while simultaneously continuing to pursue all available out-of-court options.

49. As further defined and described in the Whittman First Day Declaration and the Zubricki Declaration, the Debtor secured a senior secured super-priority DIP Facility consisting of a superpriority senior secured debtor-in-possession term loan credit facility comprised of new money loans consisting of (a) an aggregate principal amount of up to \$31,600,000 in DIP New Money Loans and (b) an aggregate principal amount of up to \$42,500,000 in Roll-Up Loans. The DIP Facility provides the Debtors with an essential cash infusion and time to pursue a value maximizing sale transaction in these Chapter 11 Cases.

50. The Debtors intend to pursue a robust marketing process in accordance with the milestones set forth in the DIP Facility. Furthermore, the Debtors believe that certain parties identified during their prepetition marketing efforts as well as new parties will have interest in pursuing an acquisition of the Debtors or their assets either in whole or part. The

Debtors also believe that the runway provided by the DIP Facility and the framework provided by a 363 sale process, including the ability to convey assets free and clear to a potential acquirer, is likely to lead to a successful transaction and resolution of these Chapter 11 Cases.

III. CONCLUSION

51. The Debtors' ultimate goal in these Chapter 11 Cases is to maximize value for the benefit of all stakeholders. And in the near term, the Debtors' immediate objective is to preserve asset value during the early stage of these Chapter 11 Cases so that they can pursue a robust in-court marketing process. I believe that if the Court grants the relief requested in each of the First Day Pleadings, as discussed more fully in the Whittman First Day Declaration, the prospect for achieving this objective and maximizing value for the benefit of all stakeholders will be substantially enhanced.

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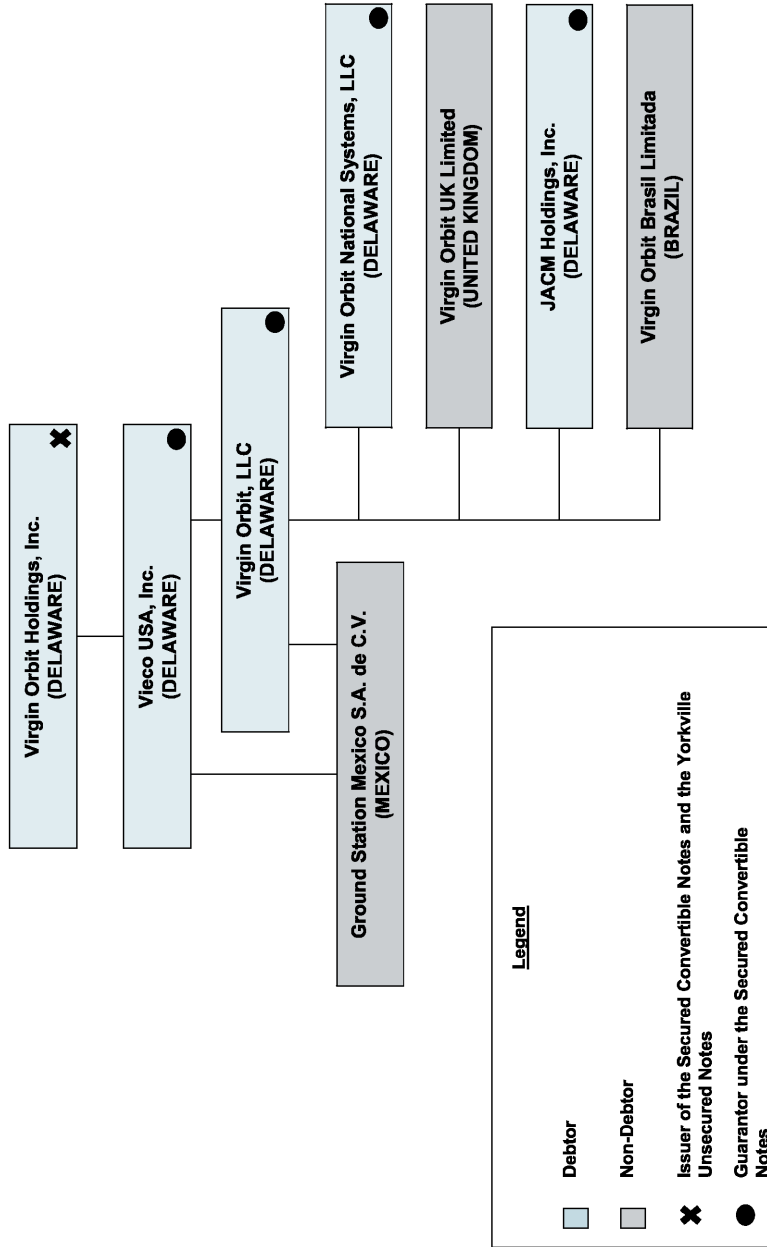
I declare under penalty of perjury that, to the best of my knowledge and after reasonable inquiry, the foregoing is true and correct.

Dated: April 4, 2023

/s/ Daniel M. Hart

Daniel M. Hart
CEO

EXHIBIT A **Organizational Chart**



APPENDIX F

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

Case No. 23-10405

Chapter 11

IN RE: VIRGIN ORBIT, LLC.

Debtor.

The debtor in this case, along with the last four digits of the debtor's federal tax identification number, is Virgin Orbit, LLC (9648). The debtor's mailing address for purposes of this case is 251 Little Falls Drive, Wilmington, DE 19808. The chapter 11 cases of the debtor's affiliates, Virgin Orbit National Systems, LLC (3801); Vieco USA, Inc. (0492), Virgin Orbit Holdings, Inc (6914); and JACM Holdings, Inc (1445), were closed as of 1.1, 2023 All motions and contested matters that remained open as of the closing of such cases, or that are opened after the date thereof, are administered in the remaining chapter 11 case of Virgin Orbit, LLC.

NOTICE OF OBJECTION TO

the order Confirming the Fifth Amended Joint Chapter 11 Plan of Virgin Orbit Holdings, Inc. and Its Debtor Affiliates, Order Signed on 7/31/2023, Ref Doc No. 604.

Upon the consideration of 11 U.S.C. § 11441 ("Objection for fraud"), Tamas Hampel as an owner of 763,044 cancelled shares in the Debtor company

Virgin Orbit (“VO”), respectfully requests the revocation of the confirmation of the Debtors’ bankruptcy plan as the confirmation order, especially the cancellation was procured by a fraud.

Cancellation of the shares is a fraud since Virgin Investment Limited received a \$3.7 billion assets for its \$74 100.000 secured credit as follows.

The key value in the company is the unique IP assets (nothing else), namely the Launcher One. “IP Assets” means all intellectual property assets owned by the Debtors (excluding any intellectual property assets that were sold pursuant to the Existing Sale Orders), including for the avoidance of doubt, the rocket engine and rocket avionics system intellectual property. (Confirmed Bankruptcy Plan)

“In connection with the Chapter 11 Case of the Company, the Board has determined that it is in the best interests of the Company to consummate the transactions under that certain senior secured super-priority debtor-in-possession credit facility consisting of (i) a new money delayed draw term loan facility denominated in U.S Dollars in an aggregate principal amount not to exceed \$31,600,000 and (ii) term loans issued thereunder in substitution and exchange of certain prepetition notes in an aggregate principal amount of \$42,500,000 pursuant to that certain Senior Secured Super priority Debtor-In-Possession Term Loan Credit Agreement, by and among, Virgin Orbit Holdings, Inc. as DIP Facility Borrower, its subsidiaries party thereto as Guarantors, and Virgin Investments Limited (“VIL”) as DIP Lender...” (Chapter 11 Voluntary Petition Fee Amount \$1738. Filed by Virgin Orbit Holdings, Inc.)

“Class 3 — Prepetition Secured Notes Claims Treatment unless the Prepetition Secured Noteholder agrees to a less favorable treatment), on the Effective Date, the Prepetition Secured Noteholder shall receive ... (iii) the rights to all IP Assets.” (Confirmed Bankruptcy Plan)

“The SPAC — co-led by George Mattson, who previously co-led Goldman Sachs’ global industrials group, and former PerkinElmer chairman and CEO Gregory Summe — values Virgin Orbit at \$3.7 billion in equity.” (<https://www.cnbc.com/2021/08/23/richard-bransons-virgin-orbit-spac-public-at-3point7-billion-valuation.html>)

I was very confident about the future of Virgin Group, the horizontal launches, especially of the horizontal satellite launch all over the world in the US’ alliance countries by VO development, Launcher One. It is now a demonstrated and working technology since, as far as I am concerned, only a filter caused the failure of the satellite launch in Cornwall.

1. VO communicated that it will continue to operate and will launch satellites in the near future as the technology, Launcher One is finished. VO also officially communicated, sale or investments are under negotiation with potential buyers and investors. In the official documents, VO management declared that there were investors willing to maintain the company without selling it in pieces. “Ultimately, the Debtors received over 30 indications of interest, including from multiple parties that proposed continuing to operate the business as a going concern.”

2. According to news articles and the shared (Kroll) time sheet of the law firm Vinson & Elkins LLP, advisor of the management of Virgin Orbit National

Defense, it seems Pentagon is keen to cooperate with VO and willing to maintain the horizontal satellite launch technology.

“The Pentagon showed a keen interest in the company and the promise that it would be able to launch small satellites quickly “(<https://www.washingtonpost.com/technology/2023/04/19/virgin-orbit-bankruptcy-plans/>)

3. My understanding on the future of VO's horizontal satellite launch system: Zakaria Mahmud, professor at Lake Superior State University also believes in this horizontal launch technology”But forget about ideas of the Upper Peninsula transforming into Cape Canaveral, with its sprawling footprint and high-profile, million dollar rocket launches The Upper Peninsula will likely see more horizontal launches into orbit. Horizontal launch needs a lot less ground station, because the satellite would be on a B-52 or some sort of airplane, they will be already flying in the sky and then it will launch from there.” (<https://www.northernontariobusiness.com/jobs-of-the-future/jobs-of-the-future-lake-superior-state-wants-to-be-the-training-base-for-space-7447795>)

4. My understanding on the future of VO's horizontal satellite launch system This video from the UK Space Agency confirms that horizontal satellite launch (beside of the vertical launch) will be a basis of the space strategy of the UK. (<https://www.youtube.com/watch?v=IIHwjye63Cg>)

Within 5 years' time, horizontal satellite launches will be valuable and current method word wild Therefore, I was very confident to hold or buy VO shares On 2 August the confirmation of the bankruptcy plan with the cancellation of the shares

and by giving all IP assets to Virgin USA Management Inc. via Virgin Investment Limited ("VIL") may be a fraud. I understand VIL is a secured creditor, but at the same time, it has a significant influence on the operation of the company and the bankruptcy procedure. It shows to shareholders that the VO bankruptcy plan is not about the satisfaction of external creditors (e.g. an external bank or external vendors), but the majority owner using Bankruptcy plan under Chapter 11 and secured credits to cancel the shares of the minority owners. I was also shocked when the bankruptcy court accepted the plan with these terms. This confirmed bankruptcy plan has just undermined the reputation and trust in the legal system of the USA. It undermines the trust in principles such as the right to property, rule of law, minority shareholder protection and rights. This effective bankruptcy plan makes it difficult to attract investors in the space sector anymore causing an obstacle for the development.

Legal basis 'Revocation of the confirmation order is an undoing or cancellation of the confirmation of a plan. A request for revocation of confirmation, if made at all, must be made by a party in interest within 180 days of confirmation. The court, after notice and hearing, may revoke a confirmation order if and only if the (confirmation) order was procured by fraud.' 11 U.S.C § 1144

As a conclusion, I kindly request the revocation of the confirmation of the Debtors' bankruptcy plan as the confirmation order, especially the cancellation was procured by a fraud.

Attachments: 1.) trading history (IBKR), 2.) trading history (KBC Equitas)

80a

Date: 21 December 2023

Kind regards,

Dr. Tamas Hampel

email: tamas.hampel@gmail.com

phone: +36 20 390 20 90

Dios arok 49d

Budapest

1125 Hungary

11/3/23, 2 12 PM

Account Management

Activity Date
January 2, 2023 - November 2, 2023

Interactive Brokers Central Europe Zrt.
Madsch Street 13 14 Floor 5, Budapest, 1075, Hungary

- Account Information
- Net Asset Value
- Multi-Account Performance Summary
- Realized & Unrealized Performance Summary
- Cash Report | Current Year Cash Balance in USD
- Open Positions

Symbol	Order/Time	Quantity	T Price	C Price	Proceeds	Commission	Sum	Realized P/L	MTM P/L	Co
USD										
SPCE	2023-07-19 12:42:29	350	2.9400	2.9400	1,379.00	-1.75	1,380.75	0.00	14.00	14.00
Total SPCE		350			-1,379.00	-1.75	1,380.75	0.00	14.00	14.00
VORBO	2023-06-30 08:00:00	60	0.012487	0.0124	-0.85	-0.01	0.84	0.00	-0.17	-0.17
VORBO	2023-06-30 11:05:26	3,000	0.0120	0.0124	-37.20	-0.37	37.57	0.00	-1.86	-1.86
VORBO	2023-06-30 11:21:53	94,500	0.01269501	0.0124	-1,239.21	12.30	1,242.53	0.00	-125.66	-125.66
VORBO	2023-06-30 11:41:53	700	0.0127	0.0124	-8.89	-0.09	8.98	0.00	-0.91	-0.91
VORBO	2023-06-01 16:38:04	100,000	0.0114	0.0120	-1,240.00	-12.40	1,252.40	0.00	-40.00	-40.00
VORBO	2023-06-01 15:41:42	3,400	0.0124	0.0120	-42.16	-0.42	42.58	0.00	-1.26	-1.26
VORBO	2023-06-05 08:00:02	2,000	0.0110	0.0125	-22.20	-0.22	22.42	0.00	3.03	3.03
VORBO	2023-06-05 10:24:29	202,142	0.0120	0.0125	-2,425.70	-24.28	2,449.98	0.00	10.07	10.07
VORBO	2023-06-08 16:23:03	14,000	0.0124	0.0125	-173.60	-1.24	175.34	0.00	1.40	1.40
VORBO	2023-06-12 10:21:18	6,000	0.0480	0.0340	-240.00	-2.40	242.40	0.00	-70.00	-70.00
VORBO	2023-06-12 11:13:58	2,000	0.0483	0.0340	-68.60	-0.67	67.57	0.00	-20.00	-20.00
VORBO	2023-06-12 14:31:01	4,000	0.0409	0.0340	-160.00	-1.60	161.60	0.00	-24.00	-24.00
VORBO	2023-06-12 15:17:55	10,000	0.0420	0.0340	-420.00	-4.20	434.30	0.00	-60.00	-60.00
VORBO	2023-06-13 10:44:09	15,000	0.0370	0.0380	-555.00	-5.55	560.55	0.00	15.00	15.00
VORBO	2023-06-14 08:26:03	2	0.0220	0.0299	-0.06	-0.01	0.07	0.00	0.02	0.02
VORBO	2023-06-14 10:12:54	15,398	0.0400	0.0399	-615.97	-4.18	622.08	0.00	-1.54	-1.54
VORBO	2023-06-15 11:10:30	1	0.0280	0.0347	-0.04	-0.01	0.05	0.00	0.00	0.00
VORBO	2023-06-16 11:49:25	14,599	0.0290	0.0347	-499.96	-4.40	545.34	0.00	-19.50	-19.50
VORBO	2023-06-16 11:11:30	15,000	0.0325	0.0375	-487.50	-4.88	492.38	0.00	-75.00	-75.00
VORBO	2023-06-16 15:25:16	17,000	0.0270	0.0275	-465.00	-4.65	469.65	0.00	8.50	8.50
VORBO	2023-06-27 12:11:44	46,571	0.03599702	0.0275	-1,752.01	-17.52	1,769.53	0.00	0.14	0.14
VORBO	2023-06-28 11:13:47	21,052	0.03999558	0.0400	-1,210.86	-12.11	1,222.97	0.00	21.48	21.48
VORBO	2023-06-29 15:30:28	7,000	0.0260	0.0260	-182.00	-1.82	183.82	0.00	-17.00	-17.00
VORBO	2023-07-02 17:16:22	400	0.03345	0.0260	-10.38	-0.15	10.53	0.00	0.62	0.62
VORBO	2023-07-05 11:00:39	90	0.0270	0.0230	-2.68	-0.04	2.82	0.00	0.09	0.09
VORBO	2023-07-05 15:48:56	800	0.0272	0.0230	-25.76	-0.26	26.02	0.00	0.64	0.64
VORBO	2023-07-05 15:51:52	20,000	0.0220	0.0230	-460.00	-4.60	464.60	0.00	0.00	0.00
VORBO	2023-07-05 15:53:25	450	0.0230	0.0230	-14.85	-0.15	15.00	0.00	0.00	0.00
VORBO	2023-07-07 16:56:17	17,000	0.0325	0.0220	-549.10	-4.49	553.59	0.00	-4.10	-4.10
VORBO	2023-07-11 11:28:00	300	0.0326	0.0300	-9.78	-0.11	9.89	0.00	-0.78	-0.78
VORBO	2023-07-11 11:22:30	1,700	0.0320	0.0300	-54.40	-0.54	54.94	0.00	-3.40	-3.40
VORBO	2023-07-12 10:08:46	208	0.0300	0.029975	-6.64	-0.09	6.73	0.00	-0.01	-0.01
VORBO	2023-07-12 10:13:27	17,712	0.0316	0.029975	-563.24	-5.63	568.87	0.00	-22.32	-22.32
VORBO	2023-07-14 10:44:36	16,338	0.0280	0.02975	-467.46	-4.57	472.04	0.00	-20.42	-20.42
Total VORBO		683,221			-14,266.81	-143.61	14,500.42	0.00	-458.84	-458.84
Total					-16,778.61	-145.36	15,880.87	0.00	-444.84	-444.84
EUR										
USD HUF	2023-06-30 04:01:02	1	344.9600	344.9600	-344.95	0.00	-	-	0.00	0.00
USD HUF	2023-06-30 08:01:02	-0.1386	344.9600	344.9600	46.74	0.00	-	-	0.00	0.00

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Account Management

- 2 Unless otherwise noted, BCE acted as agent in the execution of the above transactions. BCE may execute your orders through affiliated or subsidiary brokers who are members of the relevant exchange or market center. BCE uses its affiliates Interactive Brokers LLC and Interactive Brokers (U.K.) Limited to execute financial instruments.
- 3 BCE acts as agent or advisor principal in foreign currency exchange transactions and CDOs. Such transactions are executed against an BCE affiliate, which acts as principal in such transactions and may have a long or short position and may have profits or loss in connection with the transaction.
- 4 BCE routes orders in US products through its US affiliate Interactive Brokers LLC ("IBLLC"). IBLLC accepts liquidity rebates or other order flow payments from Alternative Trading Systems, market makers and exchanges for certain orders in US markets. IBLLC receives payment for some US option orders pursuant to exchange-mediated marketing fee programs or other arrangements.
- 5 Please promptly notify BCE of any material change in your investment objectives or financial situation or circumstances.
- 6 An up-to-date financial statement of BCE is available for your personal reference. Interactive Brokers (U.K.) or its affiliates, at a copy of the financial statement will be mailed to you upon your written request.
- 7 BCE is a member of BEVA. As with all member firms, BEVA coverage provides protection against failure of a broker-dealer. BEVA coverage is limited to a maximum payment of EUR 100,000 per investor.
- 8 The General Business Rules and client disclosures of BCE may be found at interactivetraders.lu.
- 9 Interactive Brokers Central Europe Zrt. is regulated by the MNB.

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Értékpapír-VIRGIN ORBI

Státusz Teljesült



Név	↓ Datum	Tranzakció	Db	Ár	Érték	Teljesült db	Átlagár	Státusz	Számla
/IRGIN ORBIT HOLDING	apr. 12.	Vétel	33 669	0,09 USD	2 902 USD	33 669	0,09 USD	Teljesült	Normal
/IRGIN ORBIT HOLDING	apr. 4.	Vétel	13 923	0,15 USD	2 040 USD	13 923	0,15 USD	Teljesült	Normal
/IRGIN ORBIT HOLDING	marc. 31.	Vétel	5 673	0,22 USD	1 237 USD	5 673	0,22 USD	Teljesült	Normal
/IRGIN ORBIT HOLDING	marc. 30	Vétel	5 442	0,37 USD	1 992 USD	5 442	0,37 USD	Teljesült	Normal
/IRGIN ORBIT HOLDING	marc. 28.	Vétel	7 661	0,39 USD	2 988 USD	7 661	0,39 USD	Teljesült	Normal
/IRGIN ORBIT HOLDING	marc. 27	Vétel	4 596	0,66 USD	3 010 USD	4 596	0,66 USD	Teljesült	Normal
/IRGIN ORBIT HOLDING	marc. 24.	Vétel	4 527	0,55 USD	2 490 USD	4 527	0,54 USD	Teljesült	Normal
/IRGIN ORBIT HOLDING	marc. 22.	Vétel	734	0,67 USD	492 USD	734	0,67 USD	Teljesült	Normal
/IRGIN ORBIT HOLDING	marc. 20.	Vétel	753	0,52 USD	392 USD	753	0,52 USD	Teljesült	Normal
/IRGIN ORBIT HOLDING	marc. 17	Vétel	2 845	0,72 USD	2 047 USD	2 845	0,72 USD	Teljesült	Normal

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Case 23-10408-KBO Doc 17 Filed 12/21/23 Page 7 of 7

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APPENDIX G

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

Chapter 11

Case No. 23-10408 (KBO)

Hearing Date:

February 7, 2024 at 9:30 a.m. (ET)

Ref. Docket Nos. 17, 19 & 25

IN RE: VIRGIN ORBIT, LLC,¹

Debtor

DEBTORS' RESPONSE TO OBJECTION OF TAMAS HAMPEL TO THE ORDER CONFIRMING
THE FIFTH AMENDED JOINT CHAPTER 11
PLAN OF VIRGIN ORBIT HOLDINGS, INC.
AND ITS DEBTOR AFFILIATES

The post-effective date debtor in the above-captioned chapter 11 case and its affiliated post-effective

¹ The debtor in this case, along with the last four digits of the debtor's federal tax identification number, is: Virgin Orbit, LLC (9648). The debtor's mailing address for purposes of this case is 251 Little Falls Drive, Wilmington, DE 19808. The chapter 11 cases of the debtor's affiliates, Virgin Orbit National Systems, LLC (3801); Vieco USA, Inc. (0492); Virgin Orbit Holdings, Inc. (6914); and JACM Holdings, Inc. (1445), were closed as of December 1, 2023. All motions and contested matters that remained open as of the closing of such cases, or that are opened after the date thereof, are administered in the remaining chapter 11 case of Virgin Orbit, LLC.

date debtors (collectively, the “Debtors”) hereby file this response (this “Response”) to the *Notice of Objection to the Order Confirming the Fifth Amended Joint Chapter 11 Plan of Virgin Orbit Holdings, Inc. and Its Debtor Affiliates, Order Signed on 7/31/2023, Ref. Doc. No. 604* [Docket No. 17] (the “Initial Objection”), the *Supplemental Declaration in Support of the Objection of Tamas Hampel* [Docket No. 17] to the *Order Confirming the Fifth Amended Joint Chapter 11 Plan of Virgin Orbit Holdings, Inc. and Its Debtor Affiliates, Order Signed on 7/31/2023, Ref. Doc. No. 604* [Docket No. 19] (the “Hampel Declaration”), and the *Supplemental Declaration in Support of the Objection of Tamas Hampel* [Docket No. 17, 19] to the *Order Confirming the Fifth Amended Joint Chapter 11 Plan of Virgin Orbit Holdings, Inc. and Its Debtor Affiliates, Order Signed on 7/31/2023, Ref. Doc. No. 604* [Docket No. 25] (the “Supplemental Hampel Declaration” and together with the Initial Objection and the Hampel Declaration, the “Motion”) filed by Tamas Hampel (the “Movant”). For the reasons discussed below, the Court should deny the Motion. In support of this Response, the Debtors rely upon the declaration of Brian Whittman, attached hereto as Exhibit A (the “Whittman Declaration”), and respectfully represent as follows:

PRELIMINARY STATEMENT

1. Only in extraordinary circumstances—not present here—should a court disturb a confirmed chapter 11 plan. Movant is entitled to relief only if Movant can establish that the Debtors perpetrated a fraud on the Court, which requires the Movant to plead, with specificity, that a debtor made materially false or misleading statements during the confirmation process, and such statements induced the court to enter the confirmation order. *See* 11 U.S.C. § 1144; *In re Melinta*

Therapeutics, Inc., 623 B.R. 257, 263 (Bankr. D. Del. 2020) (noting the standard for establishing fraud under section 1144 of the Bankruptcy Code).

2. Movant has not made—and cannot make—such a showing. Rather than allege fraud on the Court, of which there is no evidence, Movant requests that the order approving the Debtors’ chapter 11 plan [Docket No. 604] (the “Confirmation Order”) be revoked because, among other things, (a) the Debtors filed a routine motion to extend certain case deadlines, and (b) certain of the Debtors’ assets were allegedly undervalued. Movant’s unsubstantiated assertions are irrelevant to establishing fraud on the Court and amount to untimely sale and confirmation objections. Therefore, Movant fails to establish the requisite standard for revocation of the Confirmation Order, and the Motion should be denied.

BACKGROUND

3. The Debtors filed their chapter 11 cases (collectively, the “Chapter 11 Cases”) to sell all of their assets pursuant to a court-supervised sale process, either as a going concern or on a piecemeal basis. *See, e.g., Declaration of Daniel M. Hart in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 12] (the “Hart First Day Declaration”) at 4, 6, 18, & 21; *Declaration of Brian Whittman in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 14] (together with the Hart First Day Declaration, the “First Day Declarations”) at 20–22, 24; and *Debtors’ Motion for Entry of (I) an Order (A) Approving Certain Bidding Procedures and the Form and Manner of Notice Thereof, (B) Scheduling an Auction and a Hearing on the Approval of the Sale of All or Substantially All of the Debtors’ Assets, (C) Establishing Certain Assumption and Assignment Procedures and Approving the*

Manner of Notice Thereof, and (D) Granting Related Relief; and (II) an Order (A) Authorizing and Approving the Debtors' Entry into an Asset Purchase Agreement, (B) Authorizing the Sale of All or Substantially All of the Debtors' Assets Free and Clear of All Encumbrances, (C) Approving the Assumption and Assignment of the Assumed Contracts, and (D) Granting Related Relief [Docket No. 75] (the "Sale Motion").² Upon filing the Chapter 11 Cases, the Debtors informed interested parties that due to the Debtors' rapidly deteriorating liquidity, the Debtors had begun, prior to filing the Chapter 11 Cases, winding down their operations, including eliminating all but only a core group of employees and ceasing all operations other than those necessary to maintain the integrity of the Debtors' assets. *See* Hart First Day Declaration at 20; Whittman Declaration at 2–3.

4. The Debtors' Court-supervised sale process ultimately yielded a total of approximately \$39.5 million in cash, pursuant to asset purchase agreements with five non-insider purchasers, which were all negotiated at arms' length by sophisticated parties represented by counsel. *See* Docket Nos. 364, 365, 378, 379, 465, & 481. Such asset purchase agreements were presented to the Court and approved, after a hearing and upon notice to interested parties. *See* Docket Nos. 75, 204, 245, 249, 274, 279, 326, 334, 336, 339, 344, 347, 353, 360, 362, 364, 365, 366, 378, 379, 453, 456, & 481. Pursuant to these five transactions, the Debtors sold substantially all of the Debtors' non-intellectual property assets and a portion of the Debtors' intellectual

² Additional factual background regarding the Debtors, including their business operations, their capital and debt structures, and the circumstances leading to the commencement of the Chapter 11 Cases, is set forth in detail in the First Day Declarations.

property assets. Despite the Debtors' best efforts, including extensive prepetition and postpetition marketing processes, the Debtors were unable to identify a buyer who was willing to purchase the Debtors' assets as a going concern. *See* Whittman Declaration at 3. In addition, the Debtors were unable to identify any potential purchasers that were willing to purchase the Debtors' remaining intellectual property for more than de minimis value. *Id.*

5. Having sold substantially all of their assets in a public and Court-supervised process after comprehensive marketing and sale processes that were managed by sophisticated professionals, the Debtors filed a chapter 11 plan [Docket Nos. 96, 439 & 604-1] (as amended, modified, and supplemented, the "Plan")³ and disclosure statement [Docket Nos. 97, 440 & 465] (the "Disclosure Statement") that described in detail the liquidation value of the Debtors' assets, the proposed treatment of all Claims and Interests under the Plan, the cancellation of Interests in the Debtors, and the Debtors' proposal to wind up their businesses and affairs. Ultimately, the proceeds from the sales of the Debtors' assets were insufficient to satisfy the Debtors' substantial secured debt obligations. *See* Disclosure Statement at 11. Therefore, consistent with sections 1129(b)(2) and 1126(g) of the Bankruptcy Code, Holders of Interests in the Debtors were not entitled to receive any distributions under the Plan, and were therefore deemed to reject the Plan. *See* 11 U.S.C. § 1129(b)(2) (requiring that creditors be paid in full before equityholders are entitled to receive or retain property under a plan) and 11 U.S.C. § 1126(g) (providing that a class of claims or interests that does not

³ Capitalized terms used but not defined herein shall have the meaning given to them in the Plan.

receive or retain property under a plan is deemed to reject such plan).

6. Only three Classes of Claims (Prepetition Secured Notes Claims, General Unsecured Claims, and Convenience Claims) were impaired and entitled to receive or retain property under the Plan, and were therefore entitled to vote on the Plan. Plan at 23. The Debtors received votes from Holders of Claims in Class 4 (General Unsecured Claims) and Class 5 (Convenience Claims), and those Classes of Claims overwhelmingly voted to accept the Plan. *See* Docket No. 572.

7. As evidenced by Movant's references to the record in the Motion, Movant had access to, and reviewed, the pleadings filed in the Chapter 11 Cases, but did not object to the sale of the Debtors' assets, the adequacy of the Debtors' disclosure statement, or entry of the Confirmation Order. *See* Initial Objection at 1–2 (referencing, and quoting from, pleadings in the Chapter 11 Cases) and Hampel Declaration at 1 (same). As a Holder of Interests, Movant was not entitled to vote on the Plan because Movant was deemed to have rejected the Plan. *See* 11 U.S.C. §1126(g); Disclosure Statement at 7.

8. On July 28, 2023, the Court held a hearing to consider confirmation of the Plan. After providing parties in interest an opportunity to be heard, the Court entered the Confirmation Order. *See* Docket Nos. 466 & 604. Under the Plan, Brian Whittman (the "Plan Administrator") was appointed as plan administrator to wind up the Debtors' affairs, liquidate certain of the Debtors' remaining assets, reconcile Claims (other than General Unsecured Claims), and make distributions to certain creditors. Plan at 31–32; Whittman Declaration at 5. To date, the Plan Administrator has liquidated the remainder of the Debtors' assets, filed

six (6) omnibus objections to certain secured, priority, and administrative claims, and all but a handful of the secured, priority, and administrative claims asserted in the Chapter 11 Cases have been reconciled and paid. Under the Plan, a Litigation Trustee was also appointed for the Litigation Trust, and the Litigation Trustee continues to review and reconcile the General Unsecured Claims and Convenience Claims filed in the Chapter 11 Cases. Plan at 32–37. In accordance with the Plan, all rights to IP Assets have been transferred to the Prepetition Secured Noteholder or its designee.

9. On December 27, 2023, approximately five (5) months after entry of the Confirmation Order, Movant filed the Motion, asserting that the Confirmation Order should be revoked. As discussed herein, the Motion should be denied.

RESPONSE

I. MOVANT CANNOT ESTABLISH FRAUD ON THE COURT PURSUANT TO SECTION 1144 OF THE BANKRUPTCY CODE

10. Pursuant to section 1144 of the Bankruptcy Code, a court may revoke a confirmation order “if and only if such order was procured by fraud” on the court. 11 U.S.C. § 1144; *Melinta*, 623 B.R. at 263. Although the statute does not provide the standard for establishing fraud, courts have construed the statute to require a showing of actual fraudulent intent. *In re Zolner*, 249 B.R. 287, 293 (N.D. Ill. 2000) (citing *In re Longardner*, 855 F.2d 455, 461 (7th Cir. 1988)).

11. To demonstrate actual fraudulent intent, a movant must establish the following:

- (1) that the debtor made a representation regarding compliance with 11 U.S.C. § 1129, which was materially false;
- (2) that the representation was either known by the debtor to be false, or was made without belief in its truth, or was made with reckless disregard for the truth;
- (3) that the representation was made to induce the court to rely upon it;
- (4) that the court did rely upon it; and
- (5) that as a consequence of such reliance, the court entered the confirmation order.

Melinta, 623 B.R. at 263–64 (citing *In re Tenn-Fla Partners*, 170 B.R. 946, 967 (Bankr. W.D. Tenn. 1994)). To prevail, a movant must specifically allege the facts showing fraud. *In re Northfield Lab'ys Inc.*, 467 B.R. 582, 588 (Bankr. D. Del. 2010) (citing *In re Longardner*, 855 F.2d at 461–62 (“Without a specific showing of the requisite fraudulent intent, the bankruptcy court had no authority under section 1144 to revoke its confirmation order.”)); *see also In re Nyack Autopartstores Holding Co., Inc.*, 98 B.R. 659, 662 (Bankr. S.D.N.Y. 1989) (“A plan proponent’s intent to defraud is a specific requisite for revoking a confirmation order.”); *see also* Bankruptcy Rule 7009 (adopting rule 9(b) of the Federal Rules of Civil Procedure, requiring that a cause of action for fraud be plead with particularity). In determining whether there is fraud on the court, “[t]he important inquiry is whether the fraud harmed the integrity of the judicial process, not whether the fraud prejudiced a party or caused economic loss.” *Official Comm. of Unsecured Creditors v. Michelson*, 141 B.R. 715, 726 (Bankr. E.D. Cal. 1992) (citations omitted).

12. Movant fails to allege—let alone establish—*any* fraud on the Court. Therefore, the Motion should be denied. *In re Longardner & Assocs., Inc.*, 855 F.2d at 462 (“[W]here . . . the creditor fails to show specific acts involving fraudulent intent, it is not entitled to have a confirmed plan of reorganization revoked under Section 1144.”). Specifically, Movant does not allege that the Debtors have made any materially false or misleading misrepresentations to the Court that induced the Court to enter the Confirmation Order. Instead, Movant’s primary argument is that holders of Prepetition Secured Notes Claims received “IP Assets” under the Plan that the Movant believes were substantially undervalued; therefore, Movant asserts, the Confirmation Order was procured by fraud. Motion at 1–2; Supplemental Hampel Declaration at 1 (“In consideration of the Plan, it appears that there has been an inadequate assessment of the essential value of the IP Assets. Consequently, this has led to a disproportionate allocation of assets and rights in relation to Class 3 . . . as compared to the treatment connecting to Class 9”). In addition, Movant argues that the Debtors made misleading statements to stakeholders by (a) disclosing that the Debtors had received indications of interest from parties proposing to continue to operate the Debtors’ business as a going concern, and (b) filing a motion [Docket No. 609] (the “Exclusivity Motion”) to extend the exclusive periods to file and solicit a chapter 11 plan. Supplemental Hampel Declaration at 2. As discussed below, Movant’s arguments are unavailing.

13. *First*, neither the Debtors’ sale disclosures nor statements made in the Exclusivity Motion were made in connection with entry of the Confirmation Order or compliance with section 1129 of the Bankruptcy Code and are, therefore, irrelevant to the Court’s analysis. *See Michelson*, 141 B.R. at 725 (“the fraud is

misrepresentation, or misrepresentation by omission, of material facts in the disclosure and confirmation process”). Even if such disclosures were relevant—which they are not—the Debtors did not convey false or misleading information in connection with their sale disclosures. At all times, the Debtors had been willing to consider bids for a going concern transaction, and informed parties of such. *See* Sale Motion, n. 3 (“The Debtor will also consider proposals to acquire any and all of the Assets through a plan of reorganization. Should any such proposal be received prior to the Bid Deadline that the Debtor, in consultation with the Consultation Parties, concludes is in the best interest of the estate and its stakeholders, then the Debtor reserves the right to postpone the Auction and proceed toward the confirmation of a plan of reorganization.”). However, no such bids were received, and the Debtors proceeded to sell their assets to the purchasers who submitted the highest and best bids for the Debtors’ assets. *See*

Docket Nos. 334, 360, and 453. The Debtors clearly and unequivocally informed parties of the results of the auction, filed all of the relevant sale pleadings on the docket, and participated in a public hearing regarding approval of the sale of the Debtors’ assets. At no time did the Debtors indicate that they had obtained bids (as opposed to non-binding indications of interest) to purchase the Debtors’ assets as a going concern. To the contrary, the Debtors filed, and obtained confirmation of, the Plan, which contemplated the winding up of the Debtors and their operations.

14. *Second*, nothing in the Exclusivity Motion could have been intended to induce the Court to enter the Confirmation Order, nor could the Court have entered the Confirmation Order as a result of statements in

the Exclusivity Motion, because the Exclusivity Motion was filed *after* the Confirmation Order had been entered. Even if the filing of the Exclusivity Motion was relevant to the Court's inquiry—which it is not—the Debtors explicitly noted in that motion that, given the prior entry of the Confirmation Order, the Debtors sought the extension out of an abundance of caution only in the “unlikely event” an alternative plan was required. Exclusivity Motion, ¶ 16. As these statements were not materially false representations, were not made to induce the Court to enter the Confirmation Order, and the Court did not rely on the Exclusivity Motion in entering the Confirmation Order, which are all necessary elements to be established in seeking revocation of the Confirmation Order under section 1144, Movant's arguments cannot prevail.

15. *Third*, Movant does not—and could not—argue that (a) the Debtors mischaracterized or misstated the treatment of Prepetition Secured Notes Claims in the Plan or in connection with entry of the Confirmation Order, or (b) that the Debtors' statements to the Court, if any, about such treatment or the valuation of IP Assets was materially false. Accordingly, Movant's arguments regarding the valuation of IP Assets are irrelevant. Instead, Movant primarily expresses dissatisfaction with the treatment provided to Holders of Claims and Interests under the Plan. Initial Objection at 1 (“I regard the Plan as a worst-case scenario”). However, Movant's dissatisfaction with the Plan is not a valid basis to revoke the Confirmation Order, and Movant did not timely object to entry of the Confirmation Order. In determining whether there is fraud on the court, “[t]he important inquiry is whether the fraud harmed the integrity of the judicial process, not whether the fraud prejudiced a party or caused economic loss.” *Michelson*, 141 B.R.at 726. Movant's

untimely and unsupported assertions cannot now be raised. *Melinta*, 623 B.R. at 264 (concluding that fraud is the “sole ground for relief available for revocation of an order confirming a plan under chapter 11”).

16. Even if valuation of the Debtors’ intellectual property was relevant to the Court’s inquiry—which it is not—Movant’s conjecture is not supported by the facts and circumstances of the Chapter 11 Cases. The Debtors ran thorough and comprehensive marketing and sale processes and did not receive any bids for the Debtors’ assets as a going concern, despite extensive engagement with numerous parties that initially submitted indications of interest. In addition, following the conclusion of the auction for the Debtors’ assets, the Debtors also received only a few immaterial indications of interest (one of which was styled as a bid for \$1,000) related to the Debtors’ remaining intellectual property assets, undermining Movant’s contention that the Debtors substantially undervalued the IP Assets and eliminating the possibility of a going concern transaction. Whittman Declaration at 3. This Court has consistently held in various circumstances that objective evidence from the public market is a more reliable measure of value than the subjective estimates of an expert witness (or, under the circumstances, Movant’s unsubstantiated lay opinion). See e.g., *VFB LLC v. Campbell Soup Co.*, 482 F.3d 624, 633 (3d Cir. 2007) (noting that a market price is the most reliable measure of a stock’s value in the context of determining reasonably equivalent value); *In re SubMicron Sys. Corp.*, 432 F.3d 448, 461 (3d Cir. 2006) (“[T]he market’s reaction to a sale best reflects the economic realities of assets’ worth.”); *In re Samson Res. Corp.*, 2023 WL 4003815, at *25–26 (Bankr. D. Del. June 14, 2023) (noting the general consensus that market values are the most reliable measure of values in the

context of a fraudulent transfer analysis); *Melinta*, 623 B.R. at 268–69 (determining that Debtors’ representations regarding asset valuations were not materially false where the Debtors included the results of a court-supervised marketing process in a chapter 11 plan).

17. The facts and circumstances of the Chapter 11 Cases, including the available proceeds from the sale of the Debtors’ assets, the lack of any buyers interested in purchasing the Debtors’ assets as a going concern, and the Debtors’ substantial obligations to senior secured creditors illustrate that the Debtors’ go-forward business operations were not viable, the IP Assets were not undervalued, and that such assets could not have been a realistic source of recovery for Holders of Interests. Accordingly, the Motion lacks any evidentiary support in the record and should be denied.

II. THE CONFIRMATION ORDER SHOULD NOT BE DISTURBED

18. Not only does Movant fail to meet its burden to establish fraud on the Court pursuant to section 1144, which is the only basis to revoke the Confirmation Order, but the facts and circumstances of the Chapter 11 Cases warrant against dismantling the extensively negotiated provisions of the Plan. As the Debtors informed the Court at the Confirmation Hearing, the Plan is the culmination of an extensively negotiated resolution with the Debtors’ major stakeholders, including the holders of Prepetition Secured Notes Claims and the Official Committee of Unsecured Creditors, which provides holders of General Unsecured Claims, who were not otherwise entitled to receive distributions, with a recovery. Tr. of Confirmation Hr’g at 5 (describing the negotiations with the Debtors’ stakeholders to achieve a consensual plan). In addition, the Classes of Claims that voted on the Plan

overwhelmingly voted to support the Plan. Since entry of the Confirmation Order, the Plan has been substantially consummated, as the Plan Administrator has liquidated all the remaining assets of the Debtors' estates, distributions to all but a handful of Holders of Administrative, Secured, and Priority Claims have been made, the Plan Administrator is winding up the Debtors' affairs, and all rights to IP Assets have been transferred to the Prepetition Secured Noteholder or its designee. Accordingly, this Court should not disturb the Confirmation Order.

CONCLUSION

19. For the reasons discussed herein, the Court should deny the relief sought by the Motion.

Dated: January 23, 2024
Wilmington, Delaware

YOUNG CONAWAY STARGATT &
TAYLOR, LLP

/s/ Allison S. Mielke

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EXHIBIT A

Whittman Declaration

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

Chapter 11

Case No. 23-10408 (KBO)

IN RE: VIRGIN ORBIT, LLC,¹

Debtor.

DECLARATION OF BRIAN WHITTMAN IN
SUPPORT OF DEBTORS' RESPONSE TO
OBJECTION OF TAMAS HAMPEL TO THE ORDER
CONFIRMING THE FIFTH AMENDED JOINT
CHAPTER 11 PLAN OF VIRGIN ORBIT HOLD-
INGS, INC. AND ITS DEBTOR AFFILIATES

I, Brian Whittman, do hereby declare, pursuant to
28 U.S.C. § 1746, as follows:

1. I am a Managing Director at Alvarez & Marsal
North America, LLC ("Alvarez & Marsal"), a limited

¹ The debtor in this case, along with the last four digits of the debtor's federal tax identification number, is: Virgin Orbit, LLC (9648). The debtor's mailing address for purposes of this case is 251 Little Falls Drive, Wilmington, DE 19808. The chapter 11 cases of the debtor's affiliates, Virgin Orbit National Systems, LLC (3801); Vieco USA, Inc. (0492); Virgin Orbit Holdings, Inc. (6914); and JACM Holdings, Inc. (1445), were closed as of December 1, 2023. All motions and contested matters that remained open as of the closing of such cases, or that are opened after the date thereof, are administered in the remaining chapter 11 case of Virgin Orbit, LLC.

liability corporation, which has served as financial advisor to Virgin Orbit Holdings, Inc., a Delaware corporation, and its debtor affiliates (collectively, the “Debtors”) since February 26, 2023 and throughout the Debtors’ chapter 11 cases (the “Chapter 11 Cases”). Pursuant to the chapter 11 plan confirmed in the Chapter 11 Cases [Docket No. 604-1] (the “Plan”),² upon the Effective Date, I was appointed as Plan Administrator to administer the Chapter 11 Cases and wind up the Debtors’ business affairs.

2. As a result of my experience with the Debtors, my review of public and non-public documents (including the Debtors’ books and records), and my discussions with the Debtors’ advisors and former employees and management team, I am generally familiar with the Debtors’ business, financial condition, policies and procedures, day-to-day operations, and books and records.

3. I submit this declaration (this “Declaration”) in support of the *Debtors’ Response to Objection of Tamas Hampel to the Order Confirming the Fifth Amended Joint Chapter 11 Plan of Virgin Orbit Holdings, Inc. and Its Debtor Affiliates* (the “Response”), filed concurrently herewith, which is incorporated herein by reference.

4. Except as otherwise indicated, all facts set forth in this Declaration are based on my personal knowledge, discussions with the Debtors’ advisors, review of the relevant documents, or my opinion based on my experience, knowledge, and information concerning the Debtors’ operations and financial

² Capitalized terms used but not defined herein shall have the meaning given to them in the Plan or Response, as applicable.

condition. If called to testify, I would testify competently to the facts set forth in this Declaration.

A. Background and Sale Process

5. Virgin Orbit was founded in 2017 and specialized in providing launch services for small satellites. On April 4, 2023 (the “Petition Date”), having continuously lost money since inception and facing diminishing liquidity, the Debtors commenced the Chapter 11 Cases. Leading up to the Petition Date, the Debtors conducted a robust marketing process to raise new capital or, alternatively, sell the Debtors’ assets. Unfortunately, the Debtors were unable to procure new financing or a buyer for their assets as part of an out-of-court transaction. Therefore, the Debtors focused their efforts on two parallel initiatives, with the ultimate objective of efficiently prosecuting the Chapter 11 Cases and minimizing administrative expenses: (i) pursuing a comprehensive strategy to market and sell their assets through an in-court sale process pursuant to section 363 of the Bankruptcy Code; and (ii) efficiently prosecuting a chapter 11 plan. Prior to the Petition Date, the Debtors terminated the majority of their employees, maintaining only those needed to assist with the marketing and sale process and to maintain the core knowledge necessary to restart the business if a buyer was found on a going concern basis.

6. Following the auction held on May 22, 2023, at which the Debtors sold, subject to court approval and documentation, the majority of their assets, including machinery and equipment, inventory, the Debtors’ modified Boeing 747 airplane, which was used as a launch platform, and certain intellectual property (collectively, the “Sales”), the Debtors terminated all but a few employees and ceased all operations other than those necessary to transition the Debtors’ assets to the

purchasers. On May 25, 2023, May 26, 2023, and June 27, 2023, the Court entered orders approving the Sales of the Debtors' assets [Docket Nos. 364, 365, 378, 379, and 481], and such Sales closed shortly thereafter. Despite the Debtors' best efforts, including extensive prepetition and postpetition marketing processes and extensive engagement with numerous parties that initially submitted indications of interest, the Debtors were unable to obtain a buyer who was willing to purchase the Debtors' assets as a going concern. In addition, following the conclusion of the auction for the Debtors' assets, the Debtors received only a few inconsiderable indications of interest (one of which was styled as a bid for \$1,000) related to the Debtors' remaining intellectual property assets.

B. Solicitation and Confirmation of the Plan

7. After the Sales closed, the Debtors quickly focused on formulating a path forward to efficiently conclude the Chapter 11 Cases. To this end, the Debtors filed initial versions of the Plan and Disclosure Statement and began negotiating with various stakeholders. *See* Docket Nos. 96, 97, 410, 462, 435, 429 & 440. Ultimately, the Debtors and their major stakeholders agreed on the terms of a consensual chapter 11 plan, which the Debtors finalized and filed on the docket of the Chapter 11 Cases. On June 20, 2023, the Court entered the *Order (A) Approving the Disclosure Statement; (B) Establishing the Voting Record Date, Voting Deadline, and Other Deadlines; (C) Approving Procedures for Soliciting, Receiving, and Tabulating Votes on the Plan and for Filing Objections to the Plan; (D) Approving the Manner and Forms of Notice and Other Related Documents; and (E) Granting Related Relief* [Docket No. 462] (the "Solicitation Procedures Order"). In compliance with the Solicitation Procedures Order,

the Debtors distributed the Disclosure Statement to Holders of Claims entitled to vote on the Plan. In addition, the Court scheduled the hearing to consider confirmation of the Plan (the “Confirmation Hearing”). The Debtors provided notice of the Confirmation Hearing in accordance with the Solicitation Procedures Order, including by publishing notice of the Confirmation Hearing in the *New York Times* and the *Los Angeles Times*. See Docket No. 485.

8. Ultimately, the proceeds from the sales of the Debtors’ assets were insufficient to satisfy the Debtors’ substantial secured debt obligations. See Disclosure Statement at 11. Therefore, consistent with sections 1129(b)(2) and 1126(g) of the Bankruptcy Code, Holders of Interests in the Debtors were not entitled to receive any distributions under the Plan, and were therefore deemed to reject the Plan. See 11 U.S.C. § 1129(b)(2) (requiring that creditors be paid in full before equityholders are entitled to receive or retain property under a plan) and 11 U.S.C. § 1126(g) (providing that a class of claims or interests that does not receive or retain property under a plan is deemed to reject such plan).

9. Only three Classes of Claims (Prepetition Secured Notes Claims, General Unsecured Claims, and Convenience Claims) were impaired and entitled to receive or retain property under the Plan, and were therefore entitled to vote on the Plan. Plan at 23. The Debtors received votes from Holders of Claims in Class 4 (General Unsecured Claims) and Class 5 (Convenience Claims), and those Classes of Claims overwhelmingly voted to accept the Plan. See Docket No. 572.

10. On July 28, 2023, the Court held a hearing to consider confirmation of the Plan. After providing parties in interest an opportunity to be heard, the Court

enter the Confirmation Order. *See* Docket Nos. 466 & 604. The effective date of the Plan occurred on August 2, 2023. *See* Docket No. 610.

C. Events Following the Effective Date of the Plan

11. Under the Plan, I was appointed as plan administrator to wind down the Debtors' affairs, liquidate certain of the Debtors' remaining assets, reconcile claims (other than General Unsecured Claims), and make distributions to certain creditors. To date, the Debtors, through the Plan Administrator and counsel, have liquidated the remainder of the Debtors' assets, filed six (6) omnibus objections to certain secured, priority, and administrative claims, and all but a handful of the secured, priority, and administrative claims asserted in the Chapter 11 Cases have been reconciled and paid. I, along with my team at Alvarez & Marsal, are continuing to wind up the Debtors' affairs, including coordinating the filing of final tax returns. The Litigation Trustee for the Litigation Trust continues to review and reconcile General Unsecured Claims filed in the Chapter 11 Cases. In addition, in accordance with the Plan, all rights to IP Assets have been transferred to the Prepetition Secured Noteholder or its designee.

12. I have read the Motion and am not aware of any materially false or misleading statements made by the Debtors to induce the Court to enter the Confirmation Order.

Dated: January 23, 2024

/s/ Brian Whittman
Managing Director
Alvarez & Marsal North America, LLC

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APPENDIX H

[1] UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

Chapter 11

Case No. 23-10405(KBO)

IN RE: VIRGIN ORBIT, LLC,
Debtor.

824 Market Street
Wilmington, Delaware 19801

Tuesday, February 7, 2024

TRANSCRIPT OF HEARING RE: OBJECTION
OF TAMAS HAMPEL TO ORDER CONFIRMING
THE FIFTH AMENDED JOINT CHAPTER 11
PLAN OF VIRGIN ORBIT HOLDINGS, INC.
AND ITS DEBTOR AFFILIATES BEFORE THE
HONORABLE KAREN B. OWENS
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: (On the Record)

For the Debtor:

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(Appearances Continued)

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107a

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Also Appearing:

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Tamas Hampel, *Pro Se*

Becky Yerak
WALL STREET JOURNAL

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COURT DECISION	(Under Advisement)

[4] (Proceedings commence at 9:47 a.m.)

(Call to order of the Court)

THE COURT: We'll try this again. Good morning.
Please be seated.

MS. MIELKE: Good morning.

THE COURT: All right. Thank you to everyone that
helped out fixing the IT problem.

Dr. Hampel, are you with us and can you hear me?

(No verbal response)

THE COURT: Dr. Hampel, can you hear me and are you with us?

(No verbal response)

THE COURT: All right. Dr. Hampel, can you hear me okay?

DR. HAMPEL: Yes, I can.

THE COURT: Okay. Wonderful.

Okay. Well, we're gathered together on your submission, which I had designated as a motion to revoke the confirmation order.

As I mentioned in the pretrial discussions, it's your – you are the moving party, Dr. Hampel, so I will hear from you first.

DR. HAMPEL: Yeah. May I request to have the testimony from my witness, Mr. Inguagiato first, to start with his testimony first?

[5] THE COURT: Do you mean his argument?

DR. HAMPEL: Yes.

THE COURT: Okay. I'm happy to hear from you, sir. Why don't you approach the podium and identify who you are, and I'm happy to hear from you.

MR. INGUAGIATO: Okay.

DR. HAMPEL: Thank you so much.

THE COURT: You're welcome.

MR. INGUAGIATO: Good morning. Good morning, Judge.

THE COURT: Good morning.

MR. INGUAGIATO: I just want to say thank you for holding the courtroom today. I'm grateful to be able to come here today for this important matter.

My name is Stephen Inguagiato. I'm a New York City Firefighter. I work hard for my money, as we all do, and I put my life on the line sometimes.

I really believe in Virgin Orbit. I – I invested like no other stock I ever invested before. If it wasn't for Dr. Hampel, I wouldn't be here today. I just want to say I'm grateful to be here. But I believed in this company so much because what I do is I save lives. And this company had such a valuable asset of this intellectual property for the national security, you know, defense. And I believed in it so much, and that's why I kept investing and investing, as [6] some others did and Dr. Hampel, also. I invested 442,888 shares. And Dan Hart, the CEO, I kept investing after I heard some of his public statements and things like that, how many bids.

I just – I wanted to ask for a fair, fair trial to revoke the bankruptcy or at least have a hearing, as we are today, to see if we can come to a fairness because of myself and Dr. Hampel and others who believed in this so fully and this valuable property. I tried to seek an attorney, but nobody would take on this case, nobody. I work hard for my money, as we all do, and that's why I'm here today. I'll let – that's what I have to say.

THE COURT: Okay. Thank you very much, sir. I appreciate you coming down here and voicing your concerns and your opinion.

MR. INGUAGIATO: Thank you.

THE COURT: Okay. Let me hear – Dr. Hampel, did you want to also make an opening statement?

DR. HAMPEL: Yeah, sure.

Your Honor, I bring to your attention a serious legal matter with the bankruptcy plan that has been approved. I believe dishonest and – dishonest and goes against the rules of bankruptcy law in the United States. Your Honor, I request revocation of the approved bankruptcy plan due to its substantial legal and ethical violation, the deliberate under [7] evaluation, or I would say lack of valuation of Virgin Orbit intellectual property; notably, LauncherOne, constitutes a direct reach of honesty and transparency required in bankruptcy law, potentially amount to fraud.

This misrepresentation unfairly disadvantages creditor and equity holders and threaten national security interests (indiscernible) technological innovation. I argue this plan undermines the integrity of the bankruptcy process. I urge the Court to uphold justice by revoking this plan and ensuring the equitable and lawful treatment of all shareholders.

I plan to show you, using past cases cited by the debtors (indiscernible) and (indiscernible) that the debtor who filed this bankruptcy plan was dishonest about the value of important intellectual property (indiscernible) such as LauncherOne.

They did this on the purpose to benefit unfairly from the bankruptcy process (indiscernible) present evidence that – that proves that important property was worth almost nothing, which was not true, and it is not true. The misrepresentation was towards to get advantages that they should not have. Such actions should be not allowed and disrespect the Court and the bankruptcy process.

I am here because we must make sure the bankruptcy process is applied correctly and fairly,

without anyone fraud [8] them. I trust this Court will look at the evidence fairly and make the decision that is right.

I would like to start some citing statement from the bankruptcy plan and also from a statement which is a registration statement of the debtor.

In accordance with the bankruptcy plan, look at Number 604. “IP assets” means all intellectual property assets owned by the debtors, excluding any intellectual property assets that were – that were sold pursuant to the existing sale orders, including, for avoidance of doubt, the rocket engine and the rocket avionics system intellectual property. So I believe that this is a design of the launcher – LauncherOne rocket, this is the core asset.

The “remaining assets” definition is the disposition of any non-cash assets the debtor’s estates, including assets subject to the fire sale or inventory-related assets not sold pursuant to existing sale order prior to the confirmation date, and all IP assets. So “remaining assets,” all IP assets, involving the – the IP of the rocket system, LauncherOne.

Plus (indiscernible) treatment, secured notes, claims treatment, and as the (indiscernible) noteholder agrees to less favorable treatment on the effective date, the pre-petition second noteholder shall receive the rights to all IP assets.

[9] Yeah, in the Docket Number 30, this is the response of the – of the debtor to my motion.

First:

“In accordance with the plan, all rights to IP assets have been transferred to the pre-petition secured noteholder or its designee.”

In addition, following the conclusion of the auction for the debtor's assets, the debtors solicit only a few immaterial indication of interest, one of which was (indiscernible) as a bid for 1,000 USD, related to the debtor's remaining intellectual proper – property assets, undermining numerous contention that the debtors substantially undervalued the IP assets, and eliminating the possibility of a going concern transaction. I believe that it is a misrepresentation that the remaining IP assets has just a minimum value.

I would like to also mention to you, from the SEC documents, registration – registration statement, it was filed in 2022. The debtor stated that, by utilizing an air launch system by (indiscernible) and the launch of our rocket, we believe that we offered arguably (indiscernible) and (indiscernible) that small satellite customers need to achieve their mission objectives (indiscernible) have delivered satellites to orbit for customers across commercial (indiscernible) and national security and defense market, [10] both domestically and internationally. Leveraging the customers from these launches, we have been able to secure active contract – contracts representing approximately 575 million of potential revenue from that LauncherOne rocket system.

I would like to speak about the Bankruptcy Code in general. I suggest (indiscernible) the possibility that the approved bankruptcy plan may (indiscernible) practice aligned with the definition of “fraud” under the U.S. federal law and customary procedure with the U.S. Bankruptcy Court. It appears the debtors may have engaged in bankruptcy fraud by dishonesty (indiscernible) the bankruptcy (indiscernible) dishonestly, and securing an undue advantage.

When examining the legal principles highlighted in (indiscernible) and Longardner case in relation to Virgin Orbit bankruptcy plan, where the debtors argue that intellectual property assets including LauncherOne possess no value or minimal value, a few critical factors demand attention:

Nature of misrepresentation. The cases in (indiscernible) and Longardner concentrate on the debtor's materially (indiscernible) claims regarding (indiscernible) specific Bankruptcy Code, Chapter 11, 1129. In the Virgin Orbit case, there are certain (indiscernible) by debtors in their IP assets, including LauncherOne (indiscernible) a [11] significant misrepresentation.

Knowledge and (indiscernible) the precedent requires that the (indiscernible) claim must be (indiscernible) made without any belief in its accuracy or with an obvious disregard for the truth. The debtor's statement regarding the low value of IP assets was knowingly made.

Reliance and (indiscernible) previously stated that the precedent that the Court's reliance on the misleading claim must result in a consequence. In this bankruptcy scenario, the Court's dependency on the valuation of the IP assets or no valuation of the IP assets or hiding these kind of IP assets led to a (indiscernible) outcome (indiscernible)

This approach indicates there are issues with the bankruptcy plan being fair or (indiscernible) it suggests we should look more closely at the roles and the special details of the Virgin Orbit case.

The U.S. Bankruptcy Courts typically mandates the asset valuation must be accurate and truthful, trustworthy, as outlined in Chapter 11, Section

(indiscernible) twenty-seven. It is imperative that all information provided in bankruptcy case, particularly regarding assets valuation (indiscernible) appropriateness, accurately, and honestly. This requirement (indiscernible) to the full and precise (indiscernible) of all assets and liabilities at the outset [12] of the case. Moreover, the replacement value of each asset must be diligently determined and reported as stipulated in Section 506. Following the investigation, it was served in such way.

The debtor's intention – intentionally disregarded this obligation by attempting to report the fair market value of the assets at figures far below their actual worth, or not showing. This deliberate undervaluation or the lack of valuation, hiding the real value, aims to retain a larger portion of the property and minimize the amount owed to the equity holders.

Especially in this bankruptcy case, the debtors listed, or rather, not listed its intellectual property assets, including LauncherOne rocket system, at zero value, a figure – a figure grossly misrepresenting their true fair market value. This (indiscernible) undervaluing assets not only secures an unjust advantage for Virgin Investment Limited, but also threatens the equity (indiscernible) distribution of the bankruptcy estate. Such action disadvantaged creditors and equity holders alike and constitutes a clear case of bankruptcy fraud, especially given the significant discrepancy from fair market value of the high-value assets like LauncherOne IP assets.

Conflict of interest. Drawing from relevant precedent, the – as the North America case, where the Court [13] realized the action of E-I-S-H (indiscernible) for buying debt to influence bankruptcy outcome, I find a parallel concern in our case.

In the Virgin Orbit scenario, the majority owner, doubling as a secured creditor, appears to be positioning to acquire all intellectual property assets of the company. This maneuver raises significant questions about the equitable treatment of all parties involved in the bankruptcy. Just as the Court in the DBSD case emphasized the need to prevent manipulation of the bankruptcy process, I argue for a similar care in this case.

The attempt by the majority owner to secure all IP assets, not only undermines the fairness of the distribution of the assets, but also potentially disadvantages other creditors, stakeholders who rely on the bankruptcy process to protect their interests.

The core of our argument is simple, yet fundamental. The bankruptcy process must not be exploited by any party regardless of their position or power. The action of the majority owner in this case, aiming to acquire significant assets as a secured creditor mirrors the concerns in the DBSD case about using insider position to unduly influence the bankruptcy outcome. Therefore, I urge this Court to apply these principles upheld in DBSD North America case, ensuring that the distribution of (indiscernible) [14] assets, especially the valuation of the IP assets of the rocket system LauncherOne is conducted with fairness and integrity. This (indiscernible) casual review of the action and claims of the majority owner ensuring that they align with the overreaching goal of equitable treatment for all creditors and stakeholders.

Your Honor, I call – I call for the Court’s intervention to safeguard the interests of all parties in the Virgin Orbit bankruptcy case by preventing any attempts to manipulate the process for undue advantage, to

uphold the integrity of the bankruptcy system, and ensure that justice is served.

The next topic is the lack of transparency. The debtors overlooked the quintessential need for a transparent evaluation of the IP assets. This principle ensures equitable treatment (indiscernible) for all creditors and stakeholders and maximize the bankruptcy estate's value.

It is (indiscernible) it is lack of transparency that can erode creditor trust, complicate (indiscernible) and elongate the bankruptcy process outcome, that are in (indiscernible) no one (indiscernible) we respectfully beg the Court to confirm these principles, thereby safeguarding the interests of all parties involved and ensuring that the bankruptcy process continues to serve as a (indiscernible) and just mechanism for resolving financial distress.

[15] The evaluation, or I would say the lack of evaluation of Virgin Orbit IP assets, including LauncherOne technology, significantly undervalues over a decade of innovation and investment, totaling approximately 1.5 billion USD by more than 800 employees, rocket scientists. Such a process (indiscernible) potential revenue and strategy advantages inherent in this advanced aerospace innovation.

It negatively (indiscernible) stakeholders, creditors to receive less, shareholders lose completely, and the industry faces the loss of critical technology. Transparent evaluation of intellectual properties is crucial for Virgin Orbit long-term liability, making a proper evaluation process imperative for safeguarding the company's stakeholder interests.

The (indiscernible) manipulation of bankruptcy process has been exemplified by the Enron standards

finds a contemporary parallel in the Virgin Orbit bankruptcy case particularly regarding the undervaluation or lack of evaluation of intellectual property assets. Just as Enron's executives used complex financial structure to hide liabilities and inflate assets' values, misleading shareholders, Virgin Orbit IP distribution, including the LauncherOne technology, raises concerns for of those assets undervaluation that undermines the (indiscernible) interests of creditors, shareholders, and the broader space [16] (indiscernible)

In such scenarios, the strategic manipulation of assets' values (indiscernible) to concealment or IP assets' valuation – evaluation serves to benefit a selected few at the expense of many, highlighting (indiscernible) within bankruptcy processes.

The deliberate undervaluation of Virgin Orbit, or no valuation of Virgin Orbit's significant investments and innovations mirrors the unethical financial tactics seen in Enron – Enron's bankruptcy, underlying a systematic issue within corporate bankruptcy practice, where the true value of the company's assets and the broader implications for stakeholders and industry innovation are often obscured or reduced.

The connection between the two faces illustrates the ongoing challenges of ensuring that bankruptcy proceedings are conducted fairly and transparently, protection against the manipulation of (indiscernible) and finance (indiscernible) harm for (indiscernible) stakeholders and the integrity of the marketplace.

Lehman Brothers bankruptcy, much like Enron's, highlights how bankruptcy can misuse the layman engaging in complex transactions to manipulate its financial (indiscernible) this situation mirror concern in the Virgin Orbit case, where the issue isn't about

hiding financial [17] problem, but about the potential undervaluation or no valuation of the (indiscernible) technology assets or hiding the technical – crucial technical assets. Both cases led to significant impact on investors, creditors, and market confidence.

The key takeaway from these examples is the importance of transparency and fairness in handling company asset, especially during bankruptcy, to ensure stakeholders are treated justly and to maintain trust in the market. This calls for strict oversight and (indiscernible) financial practice to protect interests and uphold market integrity.

Intellectual property assets play an essential role in bankruptcy process, serving as a crucial lifelines for restructuring and future business access. The bankruptcy of American Apparel in 2015 underscores the significant value and strategic importance of IP assets during financial turmoil.

In this case, the separation and sale of American Apparel's trademarks and other intellectual property rights, distinct from its physical assets, highlighted the potential value embodied within the company's brand and design (indiscernible) acquisition of the IP assets, excluding the retail stores and manufacturing facilities, exemplifies how IP can be the cornerstone for revitalizing a brand by leveraging American Apparel's established brand identity and [18] intellectual property (indiscernible) the brand into the market under a new business model, effectively breathing new life into American Apparel without the burden of its previous operational liabilities.

Continuing with the theme of strategic importance of IP assets in bankruptcy, Kodak's Chapter 11 filing in January 2012 further – further exemplifies the

principle. Kodak's (indiscernible) primary due to its late adaptation to the digital photographic era, the market shift (indiscernible) by selling a significant portion of its patents, Kodak leveraged these valuable assets to navigate through bankruptcy, similar to American Apparel's use of its brand and trademark. This strategy underscores the flexibility of IP assets in bankruptcy scenarios, demonstrating how they can be used, not only to preserve existing brand, but also to facilitate a fundamental business transformation.

Virgin Orbit intellectual property, especially around the LauncherOne rocket, has the potential to exceed the value of the company's ongoing operation for several key reason. The LauncherOne rocket is at the forefront of small satellite launch technology. The patents and technology and knowledge are more valuable than Virgin Orbit current business operation, particularly now, when the company has faced challenges in profitability or market position.

[19] There is increasing demand for small satellite launch capability across commercial and science and defense sectors. Virgin Orbit IP, with its focus on LauncherOne, is well suited to capitalize on this trend, offering significant value to others in the aerospace industry looking to enhance their service.

The IP (indiscernible) LauncherOne presents lucrative licensing opportunities (indiscernible) for revenue generation without the operation complexities associated with launch services. Owning cutting-edge aerospace IP can (indiscernible) mergers or acquisitions, offering strategic advantage to aerospace firms or defense contractors.

Operating (indiscernible) involves substantial capital and risk, including regulatory and (indiscern-

ible) burdens. The IP, free from these operational challenges, can be a more attractive proposition for investors, for companies interested in the technology, rather than the business of launching – business of launching satellites.

Virgin Orbit IP provides adaptability in application and adaptation, potentially offering more – more value than the company's existing business model and operational strategies, which may be controlled by current market or technological limitation. In essence, the value of Virgin Orbit IP (indiscernible) would exceed the company's value as an ongoing entity (indiscernible) by IP innovation, [20] market demand (indiscernible) potential strategy importance, reducing operational risk, and adaptability.

Your Honor, I request the revocation of the approved bankruptcy plan due to its substantial legal and ethical violations. The deliberate undervaluation of the Virgin Orbit intellectual property, or the lack of evaluation notably around LauncherOne, constitutes the (indiscernible) of the honesty and transparency required in bankruptcy law, potentially amounting to fraud, or I would say amounting to fraud.

This misrepresentation unfairly disadvantages creditors and equity holders and threatens national security interests by undervaluing crucial technology or innovation (indiscernible) precedence and the necessary – necessity for transparency as highlighted in the Enron case, we argue this plan undermines the integrity of the bankruptcy process.

We urge the Court to uphold justice by (indiscernible) this plan, ensuring the equitable and lawful treatment of all creditors and stakeholders and

safeguard with the national interests. Thank you so much.

THE COURT: Thank you very much, Dr. Hampel.

Okay. I'm happy to hear from reorganized debtors in response.

MS. MIELKE: Thank you, Your Honor. Good morning.

THE COURT: Good morning.

[21] MS. MIELKE: Allison Mielke with Young, Conaway, Stargatt & Taylor on behalf of the debtors and the plan administrator.

Just to confirm where we are in the process, I understood that to be an opening statement argument. Is the record closed? Does Dr. Hampel intend to submit any evidence today?

THE COURT: That's a good question and I think it's worthwhile to address that now.

Dr. Hampel, did you have any further – did you have any evidence that you wished to move into the record today?

DR. HAMPEL: Today, no.

THE COURT: Okay. All right. Thank you very much for confirming.

MS. MIELKE: Well –

DR. HAMPEL: Oh, excuse. I do have one, I have one. I requested at the first status conference I would like to watch together a video that I – that I cited in my – in my – in my motion. If we have the opportunity to watch this video together, I think it would be highly appreciated.

THE COURT: Did you have – all right. Thank you, Dr. Hampel, I appreciate that.

Did you have the opportunity to review the video prior to taking – coming over to court today?

[22] MS. MIELKE: No, Your Honor. And we did ask expressly over the weekend for any documentary evidence that mister – Dr. Hampel would like to submit.

THE COURT: Okay. I do not have a copy of that video. Dr. Hampel, can you describe what the video is?

DR. HAMPEL: I cited it in my – in my – in my motion –

THE COURT: And I will –

DR. HAMPEL: – this video –

THE COURT: – acknowledge that you cited it and we were unable to find it. So could you give me a description of what the video is?

DR. HAMPEL: Yeah. This video is the video that was deleted by the debtors. It was a video of Virgin Orbit national defense system, about how crucial this development, how can save the world in case of any situation when our satellites attack by – by enemies; so, for example, by Russia or North Korea, so how key assets that they develop. Yeah, it is a very eye-catching video about the LauncherOne rocket, how can save the world in a – in case of emergency.

THE COURT: How long is the video?

DR. HAMPEL: I think it's approximately 30 second.

THE COURT: Do you have access to the video now, that, if I allowed you to share your screen, you could play it on the Zoom screen?

[23] DR. HAMPEL: I believe I can share it with you, Your Honor.

THE COURT: I understand that you perhaps may object to this. Is that true?

MS. MIELKE: It is true, Your Honor.

THE COURT: Okay. I'm going to overrule your objection and I'm going to allow Dr. Hampel to share his screen and play the video.

(Court and court personnel confer)

DR. HAMPEL: Thank you so much.

THE COURT: You're welcome.

(Court and court personnel confer)

(Pause in proceedings)

THE COURT: Okay. You have screen-sharing abilities, Dr. Hampel.

DR. HAMPEL: I need a minute to find it from my – from my declaration the link.

THE COURT: Okay.

DR. HAMPEL: Sorry for that.

THE COURT: Take your time.

DR. HAMPEL: Thank you so much.

(Pause in proceedings)

DR. HAMPEL: I found the link, but it takes time to open it, since it's an archive that side, it was deleted by the debtor. So this is the reason I believe that it's [24] crucial.

So I'm going to share my screen. Can you see?

THE COURT: We can.

DR. HAMPEL: Yeah. And it should be there, a video. If you see that it's just downloading at the moment.

Yeah, and here is the video.

THE COURT: Okay.

DR. HAMPEL: I'm just wondering if you also can hear it.

THE COURT: I'll let you know if we cannot hear it –

DR. HAMPEL: Thank you.

THE COURT: – once it starts playing.

MS. MIELKE: Your Honor, if we can, can he scroll up so we can see what this is? Is it –

THE COURT: Sure.

Dr. Hampel, can you stop the video, pause it?

DR. HAMPEL: Excuse me?

THE COURT: If you could pause the video and if you could scroll up to the top of the page, so we can see where this –

DR. HAMPEL: Yeah.

THE COURT: – comes from.

DR. HAMPEL: Yeah. This is an archive that site since it was deleted. So, if you see that it is archive.org, [25] and this was the statement of Virgin Orbit national system. The title is "Virgin Orbit National System Statement on the Russian Federation's Anti-Satellite Test."

THE COURT: Okay. For the record, I'm going to read the web link address into the record. It's web dot –

DR. HAMPEL: Yeah, yeah.

THE COURT: I'm going to read it into the record, so give me one moment. Web.archive – a-r-c-h-i-v-e- – .org/web –

DR. HAMPEL: Yeah.

THE COURT: – /20230526202543/https://www.virginorbitns.com/press/2021/11/23/fox-statement-on-the-russian-federation-anti-satellite-test.

DR. HAMPEL: It is in my second declaration, also, so I cited it.

THE COURT: All right. Thank you very much. All right.

DR. HAMPEL: Thank you.

THE COURT: Why don't you scroll down and play the video.

(Video recording played 10:25:57 to 10:28:38)

THE COURT: All right. Thank you very much.

DR. HAMPEL: Thank you.

THE COURT: Okay. You can stop sharing your screen [26] now.

(Pause in proceedings)

THE COURT: Okay. Thank you very much.

DR. HAMPEL: Thank you.

THE COURT: All right. Thank you, Dr. Hampel.

Ms. Mielke.

MS. MIELKE: Thank you, Your Honor.

Dr. Hampel has a very high burden to meet. He hasn't met it, he can't meet it. Only upon a showing of fraud can a confirmation order be revoked. To prevail, Dr. Hampel needs to establish five elements:

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That the debtor made a representation regarding compliance with Section 1129 that was false;

That the representation was known by the debtor or made with reckless disregard for the truth;

That it was made to induce the Court to rely upon it;

That the Court did, in fact, rely upon it;

And that the Court entered the confirmation order in reliance upon such representation.

The movant's pleadings and presentation today allege only legal conclusions, speculations, and cast aspersions regarding the debtor's sale process and the value of the debtor's assets. The movant has not identified any materially false representations made by the debtor, let [27] alone in connection with the confirmation process, which is the only relevant inquiry here. To put it plainly, the movant cannot prevail based on the evidentiary record here.

It's worth providing the Court with a brief overview of the sale process and the events leading up to the confirmation to put the movant's request into context.

As you will likely recall, the debtors filed petitions under Chapter 11 because of their insurmountable liquidity issues. Prior to filing the Chapter 11 cases, the debtors engaged professionals pre-petition to run a marketing process; and, despite their best efforts, the debtors were unable to find a buyer or other financing alternative outside of the Chapter 11 process.

The debtor's parent Virgin Investment Limited served as the DIP lender and agreed to fund a Chapter 11 sale process with the hope that the debtors could sell their assets, either as a going concern or on a piecemeal basis. VIL funded a DIP, which included

both a new money component and a roll-up of certain pre-petition loans, for a total DIP loan of \$74.1 million.

The debtors ran a typical Chapter 11 363 sale process, which included court-approved bid procedures; a non-insider, third-party stalking horse for the debtors' airplane. The sales culminated in a public auction, which was well attended and held in New York. The debtor submitted [28] proposed APAs to the Court, which were approved after a hearing. All of the pleadings related to that process were filed on the docket and made available to interested parties.

The sales ultimately yielded \$39.5 million in proceeds. That did not clear the DIP. And as a result, VIL had an estimated thirty-nine-million-dollar deficiency claim, and also held secured claims in the amount of \$28.4 million on account of the debtor's pre-petition loans. In total, there were \$183 million in general unsecured claims.

Following the sale process, VIL, the debtors, and the committee entered into a settlement agreement, whereby VIL agreed to gift to general unsecured creditors \$1.1 million in cash and to further waive their deficiency claims, so that the general unsecured claims pool would not be further diluted. That settlement was included in the plan, it was approved by the Court. All of the parties involved were represented by sophisticated counsel.

Based on the estimated amount of claims, which was included in the debtor's disclosure statement and plan, equity holders were junior to approximately \$250 million of senior claims.

As this Court has held on many occasions – *Samson*, *Melinta*, the Third Circuit's opinion in *Submicron* – a

public market test is the best evidence of the value of an asset.

Here, the debtors ran a public and standard [29] marketing and sale process. Unfortunately, they did not receive binding bids of any material value for the debtors' intellectual property assets, aside from the assets that were related to the APAs. The debtors relied on the values provided by that market test and there has been no showing that the debtors' reliance on their sale process is inappropriate.

Unfortunately, equity holders were out of the money by nearly \$250 million. And the marketing process provided no bids or other indications of value that would have been in excess of that amount.

As a reminder, also in this case an independent committee did an investigation into claims and causes of action against the debtor's officers and directors and ultimately concluded that there existed no colorable claims that would result in material distributions to parties-in-interest.

In support of confirmation, the debtor submitted the customary declarations, a proposed order, and a confirmation brief. The evidence at the hearing was unrefuted.

To the extent that the movant is seeking to object to the sale, the sale process, or the confirmation, the time for doing so has long passed. The movant is time-barred from doing so and is precluded by *res judicata* from revisiting the [30] Court's decisions on those matters at this time.

As this Court did in *Melinta*, when an equity holder sought a reevaluation of intangible assets in the context of 1144, this Court should also reject the

movant's reject to reassess the value of the debtor's intellectual property assets, given that there has been no showing that the debtors made any false or materially misleading statements in connection with confirmation.

The fact that the debtors relied on the court-supervised marketing process involving a public auction, and the fact that that auction resulted in no substantial bids for the debtor's remaining IP assets is consistent with the Court's – with the law in this jurisdiction. For these reasons, we request that the Court deny the motion.

To the extent – and I apologize for this, but it wasn't always clear in the recording – well, in the Zoom, for Dr. Hampel's arguments. I believe he cited some opinions in the record. I didn't understand those or hear them. To the extent they exceed what was included in his pleadings, we'd ask that the Court disregard those.

THE COURT: All right. Thank you very much.

Okay. Dr. Hampel, you're welcome to make a brief reply to the arguments and, at that point, I'll conclude the hearing and I will take the matter under advisement and I'll rule following the conclusion of today's hearing.

[31] DR. HAMPEL: Sure. I would like to respectfully request, Your Honor, that ask some evidence how wanted to - to marketed the IP assets during the fire sale. I would like to ask the debtor to show evidence on no bids that received regarding the remaining IP assets.

And I also would like to ask the debtor if, now, is willing to sell these remaining IP assets; for example,

if me, or I offer someone to buy it. So just wondering if the debtor is willing to sell it now to maximize the creditor and shareholder value.

THE COURT: The debtor –

DR. HAMPEL: And –

THE COURT: The debtor can –

DR. HAMPEL: Yeah.

THE COURT: – correct me if I’m wrong, but my understanding under the plan that’s been confirmed, the assets, the IP assets were distributed to the secured creditor in satisfaction of its claim, it’s secured claim.

So, Ms. Mielke, correct me if I’m wrong, but my understanding is the estate – the reorganized debtor does not have in its possession any IP assets that it could sell.

MS. MIELKE: That is correct.

THE COURT: Am I correct? Okay.

DR. HAMPEL: You know, I think it’s a – it’s – you know, it is not in balance, the value of the IP assets [32] and the secured creditor offer to the company. So the credit and the IP assets is not balanced. And I believe that the debtor missed the opportunity to market this for this reason, to give it, all the IP assets, to the secured creditor Virgin Investment Limited.

And I think, also, I would like to mention to you, this is a conflict of interest, since the debtor-in-possession, at the same time, the secured creditor and the debtor-in-possession missed the opportunity to market it instead of stating that now, oh, didn’t receive any bids, so I just give it to me as the secured creditor. So I think it is a conflict of interest. And this is why I believe that

it is not an honest way of bank – for bankruptcy proceeding.

If that was evaluated, I believe that it was not marketed properly, so it's – you know, the Virgin Investment Limited, as the debtor-in-possession and secured creditor, used this bankruptcy process as (indiscernible) of the best interests of creditors and shareholders, using for its purposes.

THE COURT: Okay. Thank you very much, Dr. Hampel. I understand your argument. So I had the –

DR. HAMPEL: Thank you very much.

THE COURT: I also had the chance to read your submissions, as well as the declarations that were submitted by your fellow shareholders that I'm considering to be [33] joinders. I appreciate your time for this matter today in appearing by Zoom. I also appreciate your matter – your time, sir, for coming down.

As I mentioned, I'm going to adjourn the proceedings and take the matter under advisement.

I would ask you, sir, if you could, at the conclusion of the hearing, sign in, so I have a record of your appearance.

MR. INGUAGIATO: Yes.

THE COURT: That would be very helpful, so –

MR. INGUAGIATO: Do you want a copy of – because I was busy with work, so I wasn't able to fill out that last statement that Dr. Hampel had (indiscernible)

THE COURT: That's okay. If I could just – I have your presentation on the record.

MR. INGUAGIATO: Yes.

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THE COURT: So – and if you – I just really need to have the full – your full name –

MR. INGUAGIATO: Yes.

THE COURT: – and spelled correctly for the record. But you can do that after I leave the bench. I'm just trying – I don't want you to run out after I adjourn –

MR. INGUAGIATO: I won't.

THE COURT: – the hearing. Okay. Great.

Okay. Well, listen, thank you all very much. I'll [34] consider all of the arguments and evidence and weigh them, take the matter under advisement and rule promptly. Thank you all very much. We'll consider this hearing adjourned. (Proceedings concluded at 10:40 a.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

February 16, 2024

/s/ Coleen Rand

Coleen Rand, AAERT Cert. No. 341
Certified Court Transcriptionist
For Reliable

APPENDIX I

IN THE UNITED STATES BANKRUPTCY
COURT FOR THE DISTRICT OF DELAWARE

IN RE: VIRGIN ORBIT HOLDINGS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 23-10405 (KBO)
(Jointly Administered)

Docket Ref. No. 75

ORDER (I) AUTHORIZING AND APPROVING
THE DEBTORS' ENTRY INTO THE PURCHASE
AGREEMENT WITH STRATOLAUNCH, LLC
AND (II) AUTHORIZING THE SALE OF
CERTAIN PURCHASED ASSETS FREE AND
CLEAR OF ALL ENCUMBRANCES, AND
(III) GRANTING RELATED RELIEF

Upon the above-captioned debtors and debtors in possession (the “**Debtors**”) *Debtors’ Motion for Entry of (I) an Order (A) Approving Certain Bidding Procedures and the Form and Manner of Notice Thereof, (B) Scheduling an Auction and a Hearing on the*

¹ The Debtors in these cases, along with the last four digits of each debtor’s federal tax identification number, are: Virgin Orbit Holdings, Inc. (6914); Virgin Orbit National Systems, LLC (3801) (“**VO-NS**”); Vieco USA, Inc. (0492); Virgin Orbit, LLC (9648); and JACM Holdings, Inc. (1445). The Debtors’ address, other than Debtor VO-NS, is 4022 East Conant Street, Long Beach, CA 90808. Debtor VO-NS’s address is 1960 E. Grand Avenue, El Segundo, CA 90245.

*Approval of the Sale of All or Substantially all of the Debtors Assets, (C) Establishing Certain Assumption and Assignment Procedures and Approving the Manner of Notice Thereof, and (D) Granting Related Relief; and (II) an Order (A) Authorizing and Approving the Debtors' Entry into an Asset Purchase Agreement, (B) Authorizing the Sale of All or Substantially All of the Debtors' Assets Free and Clear of All Encumbrances, (C) Approving the Assumption and Assignment of the Assumed Contracts, and (D) Granting Related Relief [Docket No. 75] (the "**Motion**")² all as more fully described in the Motion; and the Court (as defined herein) having entered the Order (A) Approving Certain Bidding Procedures and the Form and Manner of Notice Thereof, (B) Scheduling an Auction and a Hearing on the Approval of the Sale of All or Substantially All of the Debtors' Assets, (C) Establishing Certain Assumption and Assignment Procedures and Approving the Manner of Notice Thereof, and (D) Granting Related Relief [Docket No. 201], as modified by the sale process letter, dated May 10, 2023 from Ducera Partners LLC made available on the Debtors' electronic data room, and the Notices of Extension of Certain Sale-Related Deadlines [Docket Nos. 245 and 249] (the "**Bidding Procedures Order**")*; and the Court having considered each of the Debtors' Motion for Entry of an Order (I) Approving (A) the Debtors' Designation of the Stalking Horse Bidder for Certain of the Debtors' Assets as Set Forth in the Stalking Horse Agreement, (B) the Debtors' Entry into the Stalking Horse Agreement, and (C) the Bid Protections and (II) Granting

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Purchase Agreement (as defined herein), or if not defined therein, in the Motion or the Bidding Procedures Order (as defined herein).

Related Relief [Docket No. 274] and the *Declaration of David S. Zubricki in Support of Debtors' Motion for Entry of an Order (I) Approving (A) the Debtors' Designation of the Stalking Horse Bidder for Certain of the Debtors' Assets as set Forth in the Stalking Horse Agreement, (B) the Debtors' Entry into the Stalking Horse Agreement, and (C) the Bid Protections and (II) Granting Related Relief* [Docket No. 275] (the "**Zubricki Declaration**"); and the Court having entered the *Order (I) Approving (A) the Debtors' Designation of the Stalking Horse Bidder for Certain of the Debtors' Assets as Set Forth in the Stalking Horse Agreement, (B) the Debtors' Entry into the Stalking Horse Agreement, and (C) the Bid Protections and (II) Granting Related Relief* [Docket No. 326] (the "**Stalking Horse Approval Order**"); and the Court having reviewed the evidence proffered or adduced at the hearing to approve the Stalking Horse Approval Order held on May 18, 2023; and the Debtors having conducted the Auction on May 22, 2023 in accordance with the Bidding Procedures Order; and the Debtors having selected Stratolaunch, LLC as the Successful Bidder (the "**Purchaser**") with respect to the sale and purchase of the Purchased Assets which includes the Boeing model 747-41R aircraft bearing manufacturer's serial number 32745 and U.S. Registration No. N744VG and four (4) General Electric, also known as General Electric Company, model CF6-80C2B1F aircraft engines bearing manufacturer's serial numbers 704525, 706378, 706379 and 706595 (collectively, the "**Aircraft**"), identified in that certain Stalking Horse Asset Purchase Agreement by and among Virgin Orbit Holdings Inc., and the other Selling Entities thereto and the Purchaser, dated as of May 16, 2023, a copy of which is attached to this order (the "**Sale Order**") as **Exhibit 1** (as it may be amended, modified, or

supplemented in accordance with the terms thereof and of this Sale Order, the “**Purchase Agreement**”) free and clear of all Encumbrances (as defined herein); and the Sale Hearing having been held on May 24, 2023; and the Court having reviewed and considered the relief sought in the Motion, the Purchase Agreement, all objections, if any, to the Motion, and the arguments of counsel made and the evidence proffered or adduced at the Sale Hearing; and due and sufficient notice of the Sale Hearing and the relief sought in the Motion having been given under the particular circumstances of these Chapter 11 Cases (as defined herein) and in accordance with the Bidding Procedures Order; and parties in interest having been heard or having had the opportunity to be heard regarding the foregoing; and it appearing that no other or further notice need be provided; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and it appearing that the Court has jurisdiction over this matter; and it further appearing that the legal and factual bases set forth in the Motion, the First Day Declarations, and at the Sale Hearing, establish just cause for the relief granted herein; and after due deliberation thereon,

* * *

there is a direct conflict between the terms of this Sale Order and the terms of any subsequent chapter 11 plan or any order to be entered in these Chapter 11 Cases (including any order entered after conversion of these Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code), the terms of this Sale Order shall control.

39. Notwithstanding anything to the contrary set forth in this Sale Order or the Purchase Agreement, all claims (as defined herein and in the Purchase Agreement), including, without limitation, any arising under sections 544, 547, 548, 549, and 550 of the Bankruptcy Code, of the Debtors against the Representatives (as defined in the Purchase Agreement) and other “insiders” (as that term is defined under section 101(31) of the Bankruptcy Code) of the Debtors, their Affiliates and Subsidiaries (as each such term is defined in the Purchase Agreement) are Excluded Assets (as defined in the Purchase Agreement).

40. The provisions of this Sale Order are non-severable and mutually dependent.

41. The Purchaser has standing to seek to enforce the terms of this Sale Order.

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

KAREN B. OWENS
UNITED STATES BANKRUPTCY JUDGE

Dated: May 25th, 2023
Wilmington Delaware

Exhibit 1

Purchase Agreement

STALKING HORSE ASSET PURCHASE AGREEMENT BY AND AMONG VIRGIN ORBIT HOLDINGS, INC., AS THE SELLER, EACH OF THE AFFILIATES OF THE SELLER LISTED ON SCHEDULE I AND STRATOLAUNCH, LLC, AS THE BUYER DATED AS OF MAY 16, 2023

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to such corporation or similar entity, is held, directly or indirectly by such Person and (b) any partnership, limited liability company or similar entity of which (i) such Person is a general partner or managing member or has the power to direct the policies, management or affairs or (ii) such Person possesses a 50% or greater interest in the total capitalization or total income of such partnership, limited liability company or similar entity.

“Successful Bid” has the meaning given to such term by the Bidding Procedures Order.

“Successful Bidder” has the meaning given to such term in the Bidding Procedures Order.

“Tax” means all U.S. federal, state, local or non-U.S. tax of any kind whatsoever, including income, gross receipts, capital gains, license, payroll, employment, excise, severance, stamp, occupation, premium, wind-fall profits, environmental, capital stock, ad valorem, value added, inventory, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, registration, alternative or add-on minimum, estimated, or similar taxes imposed by any Governmental Authority (to the extent the foregoing are taxes or in the nature of a tax), and including any interest, penalty, or addition thereto.

“Tax Return” means any return, claim for refund, declaration, report, statement, information return or other similar document (including any related or supporting information, amendments, schedule or supplements of any of the foregoing) filed or required to be filed with any Governmental Authority with respect to Taxes and including any extension requests with respect to any of the foregoing.

“Trademarks” means any and all trade names, corporate names, logos, slogans, trade dress, trademarks, service marks, and other source or business identifiers and general intangibles of a like nature, and trademark and service mark registrations and applications therefor and all goodwill associated with the foregoing, whether protected, created, or arising under the Laws of the United States (including common law) or any other jurisdiction or under any international convention.

“Transaction Documents” means this Agreement, the Bill of Sale, the FAA Bill of Sale, the Warranty Bill of Sale, the Escrow Agreement, the Bid Consent & Waiver, the Sale Order and any other Contract to be

entered into by the Parties in connection with the Transactions.

“Transactions” means the transactions contemplated by this Agreement and the other Transaction Documents, including the purchase and sale of the Purchased Assets in exchange for the Purchase Price and the assumption of the Assumed Liabilities.

“Transfer Tax Amount” means the amount of Transfer Taxes payable as a result of the consummation of the Transactions, as determined by the Buyer in good faith, which shall not exceed \$750,000.

“Transfer Taxes” has the meaning given to such term in Section 7.8(a).

“U.S. Citizen Trustee” means Bank of Utah, a Utah corporation, not in its individual capacity, but solely as owner trustee under that certain Trust Agreement to be entered between Bank of Utah and Buyer.

“Warranty Bill of Sale” means a Warranty Bill of Sale with respect to the Aircraft, substantially in the form of Exhibit A.

Section 1.2 Construction. The terms “hereby,” “hereto,” “hereunder” and any similar terms as used in this Agreement refer to this Agreement in its entirety and not only to the particular portion of this Agreement where the term is used. The terms “including,” “includes” or similar terms when used herein shall mean “including, without limitation”, and will not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it. The word “or” when used in this Agreement is not meant to be exclusive unless expressly indicated otherwise. The word “extent” in the phrase “to the extent” means the degree to which a

subject or other thing extends, if applicable, and such phrase does not mean simply “if”. The word “will” shall be construed to have the same meaning as the word “shall”. Any reference to “days” means calendar days unless Business Days are expressly specified. The meaning of defined terms shall be equally applicable to the singular and plural forms of the defined terms, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. Any reference to any federal, state, provincial, local or foreign statute or Law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. Unless otherwise indicated, references to (a) Articles, Sections, Schedules and Exhibits refer to Articles, Sections, Schedules and Exhibits of and to this Agreement, (b) references to \$ (dollars) are to United States Dollars and (c) a Contract means such Contract as amended from time to time. All accounting terms used in this Agreement and not otherwise defined herein have the meanings assigned to them under GAAP. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period will be excluded. If the last day of such period is a day other than a Business Day, the period in question will end on the next succeeding Business Day. All references to dates and times herein, except as otherwise specifically noted, shall refer to New York City time.

ARTICLE II PURCHASE AND SALE

Section 2.1 Purchase and Sale of Assets. Pursuant to sections 105, 363 and 365 of the Bankruptcy Code and on the terms and subject to the satisfaction of the

conditions contained in this Agreement, at the Closing, the Selling Entities shall sell, assign, convey, transfer and deliver to the Buyer, and the Buyer shall purchase and acquire from the Selling Entities, all of the Selling Entities' right, title and interest, free and clear of all Claims, Liabilities, Encumbrances and any other obligations arising prior to the Closing (other than the Assumed Liabilities), in and to the specified assets of the Selling Entities set forth on Section 2.1 of the Seller Disclosure Schedule (collectively, the "Scheduled Purchased Assets"), together with all of the Selling Entities' right, title and interest in and to the following (the following items, together with the Scheduled Purchased Assets, collectively, the "Purchased Assets"):

(a) all appliances, components, parts, avionics, instruments, appurtenances, accessories, furnishings or other equipment of whatever nature incorporated or installed in or attached to the Airframe or any Engines, and all items of machinery, equipment (including group support equipment, spare parts, development tools, testing equipment and factory test equipment), tools, supplies, fixtures and other tangible personal property and fixed assets of every kind relating to the Aircraft (wherever located and whether or not carried on the books and records of any of the Selling Entities and their respective Affiliates) that are owned by the Selling Entities as of the Closing, together with any related express or implied warranty by the manufacturers, sellers or lessors of any item or component part thereof;

(b) all Aircraft Documents;

(c) all goodwill associated with, or relating to, the Scheduled Purchased Assets;

(d) all of the rights and benefits accruing under all Permits and all Permits in the Seller's possession as of the Closing Date for operation of the Purchased Assets, to the fullest extent such Permits are transferable under applicable Law;

(e) all rights of indemnity, warranty rights, rights of contribution, rights to refunds, rights of reimbursement and other rights of recovery, including rights to insurance proceeds and rights to assert claims with respect to any insurance recoveries possessed by the Selling Entities as of the Closing (regardless of whether such rights are currently exercisable) to the extent arising prior to the Closing in each case, to the extent related to the Purchased Assets.

(f) all preference or avoidance claims and actions of the Selling Entities (including any such claims and actions arising under sections 544, 547, 548, 549, and 550 of the Bankruptcy Code), solely to the extent related to the Purchased Assets; for the avoidance of doubt, the Purchased Assets shall not include any Claims, including, without limitation, all claims or causes of action arising under sections 544, 547, 548, 549, and 550 of the Bankruptcy Code, against any Representatives of the Selling Entities, any "insiders" (as that term is defined under section 101(31) of the Bankruptcy Code) of the Debtors, or the Selling Entities' non-debtor Affiliates, Subsidiaries or Representatives of any of the foregoing;

(g) all claims for refunds of Taxes that constitute Assumed Liabilities; and

(h) all Seller IP (excluding any Intellectual Property for which no tangible embodiments exist or which is solely embodied or possessed in the knowledge or know-how of an employee) primarily related to the use

and operations of the Schedule Purchased Assets (excluding any Seller IP that relates to the mating of the LauncherOne rocket to the Aircraft or the operation and launch of the LauncherOne rocket from the Aircraft) (the “Purchased IP”) together with (i) the right to sue and recover damages and payments for past, present, and future infringement, misappropriation, violation, or conflict of or any of the foregoing and all rights to protection of interests therein, (ii) all income, royalties and payments receivable with respect to any of the foregoing and (iii) all tangible embodiments of the Purchased IP, including software, works of authorship, training materials, documentation, websites, website content, and technology.

Section 2.2 Excluded Assets. Notwithstanding any provision herein to the contrary, the “Excluded Assets” shall mean any of the assets of the Selling Entities other than the Purchased Assets, including, for the avoidance of doubt, all Tax refunds, overpayments, credits or other attributes with respect to Taxes that are Excluded Liabilities and all Intellectual Property other than the Purchased IP, including the Intellectual Property set forth in Section 2.2 of the Seller Disclosure Schedule.

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APPENDIX J

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE: VIRGIN ORBIT HOLDINGS, INC., *et al.*,¹
Debtors.

Chapter 11

Case No. 23-10405 (KBO)
(Jointly Administered)

DISCLOSURE STATEMENT FOR THIRD
AMENDED JOINT CHAPTER 11 PLAN OF VIRGIN
ORBIT HOLDINGS, INC.
AND ITS DEBTOR AFFILIATES UNDER
CHAPTER 11 OF THE BANKRUPTCY CODE

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EXHIBIT A: Plan

EXHIBIT B: Organizational Chart

EXHIBIT C: Liquidation Analysis

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This plan is not an offer to sell any securities and is not soliciting an offer to buy any securities.

This plan remains subject to continuing revisions as the debtors conduct their internal investigation and continue the marketing process for a sale of their assets. In the event the debtors are unable to confirm the plan, they may seek approval of the dismissal motion or conversion of these cases to chapter 7 of the bankruptcy code. All rights of the debtors are reserved.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

Chapter 11

Case No. 23-10405 (KBO)
(Jointly Administered)

In re: VIRGIN ORBIT HOLDINGS, INC., *et al.*,¹
Debtors.

THIRD AMENDED JOINT CHAPTER 11 PLAN
OF VIRGIN ORBIT HOLDINGS, INC. AND ITS
DEBTOR AFFILIATES UNDER CHAPTER
11 OF THE BANKRUPTCY CODE

¹ The Debtors in these cases, along with the last four digits of each debtor's federal tax identification number, are: Virgin Orbit Holdings, Inc. (6914); Virgin Orbit National Systems, LLC (3801); Vieco USA, Inc. (0492); Virgin Orbit, LLC (9648); and JACM Holdings, Inc. (1445). The Debtors' mailing address for purposes of these cases is 3880 McGowen Street, Long Beach, CA 90808.

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other writing acceptable to the Debtors), to have such Claim irrevocably reduced to \$5,000 and treated as a Convenience Claim (upon Allowance) for purposes of the Plan, in full and final satisfaction of such Claim;

provided further that a General Unsecured Claim may not be subdivided into multiple Convenience Claims.

37. **“Cure Cost”** means all amounts, including an amount of \$0.00, required to cure any monetary defaults under any Executory Contract or Unexpired Lease (or such lesser amount as may be agreed upon by the parties to an Executory Contract or Unexpired Lease) that is to be assumed by the Debtors pursuant to sections 365 or 1123 of the Bankruptcy Code.

38. **“D&O Liability Insurance Policies”** means, collectively, all insurance policies (including any “tail policies” and all agreements, documents, or instruments related thereto) issued at any time to or providing coverage to of any of the Debtors for current or former directors’, managers’, and officers’ liability.

39. **“Debtor Professionals”** means Persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code, including Latham & Watkins LLP, Young Conaway Stargatt & Taylor, LLP, Alvarez & Marsal North America, LLC, Ducera Partners LLC, Kroll Restructuring Administration LLC, KPMG LLP, and Vinson and Elkins LLP.

40. **“Debtor Release”** means the releases set forth in Article IX.C of the Plan.

41. **“Debtor Releasing Parties”** means the Plan Administrator and the Debtors, in their respective individual capacities and as debtors-in-possession, and on behalf of themselves and their respective Estates, including any successor to the Debtors, any Estate representative appointed or selected pursuant to section 1123(b)(3) of the Bankruptcy Code, and any

persons who may purport to assert any Causes of Action derivatively through the foregoing persons.

42. **“DIP Agent”** means VIL or any successor thereto, in its capacities as administrative and collateral agent under the DIP Facility.

43. **“DIP Credit Agreement”** means that certain *Senior Secured Superpriority Debtor-in-Possession Term Loan Credit Agreement*, dated as of April 6, 2023, as amended by that first amendment, dated as of May 1, 2023, as further amended by that second amendment, dated as of May 15, 2023, as further amended by that third amendment, dated as of June 1, 2023, and as may be amended, supplemented, or modified from time to time, among the Debtors and the DIP Secured Parties.

44. **“DIP Facility”** means certain credit facilities the terms of which are governed by the DIP Credit Agreement and agreements entered into in connection therewith, all as approved by the DIP Orders (as may be amended, modified, ratified, extended, renewed, restated or replaced from time to time in accordance with the DIP Credit Agreement and the DIP Orders).

45. **“DIP Facility Claim”** means any Claim held by the DIP Secured Parties derived from or based upon the DIP Facility or the DIP Orders, including claims for all principal amounts outstanding, interest, fees, and expenses under the DIP Facility. For the avoidance of doubt, the “DIP Facility Claims” shall include all Obligations (as defined in the DIP Credit Agreement).

46. **“DIP Lenders”** means the lenders party to the DIP Credit Agreement from time to time.

47. **“DIP Loans”** means the New Money DIP Loans and the DIP Roll-Up Loans.

48. **“DIP Orders”** means, collectively, the Interim DIP Order and the Final DIP Order, as such orders may be modified from time to time in accordance with the terms thereof.

49. **“DIP Roll-Up Loans”** means the “Roll-Up Loans” as defined in the DIP Credit Agreement.

50. **“DIP Secured Parties”** means the “Secured Parties” as defined in the DIP Credit Agreement.

51. **“Disclosure Statement”** means the disclosure statement for the Plan, including all exhibits and schedules thereto, as amended, supplemented, or modified from time to time, that is prepared and distributed in accordance with sections 1125, 1126(b), and 1145 of the Bankruptcy Code, Bankruptcy Rule 3018, and other applicable law.

52. **“Disclosure Statement Order”** means the order of the Bankruptcy Court approving the Disclosure Statement in form and substance acceptable to the Required Consenting Creditors.

53. **“Dismissal Motion”** means a motion filed by the Debtors to seek entry of order(s) by the Bankruptcy Court that, among other things, (i) approves procedures for (a) the dismissal of these Chapter 11 Cases; (b) the reconciliation, resolution, and allowance or disallowance of certain claims against the Debtors; and (c) the abandonment of certain property; (ii) approves distributions on account of allowed administrative claims and secured claims; (iii) dismisses the Chapter 11 Cases and authorizes

the dissolution of the Debtors in accordance with applicable state law; and (iv) grants related relief.

54. **“Dismissal Order”** means the order(s) entered by the Bankruptcy Court granting the relief sought in the Dismissal Motion.

55. **“Disputed”** means, with respect to any Claim or Equity Interest, except as otherwise provided herein, a Claim or Equity Interest that is not Allowed and not disallowed under the Plan, the Bankruptcy Code, or a Final Order.

56. **“Distributable Proceeds”** means all Cash of the Debtors on or after the Effective Date, other than GUC Distributable Proceeds (if Class 4 votes to accept the Plan), including the proceeds of any retained Causes of Action of the Estates, any Sale Transaction Proceeds not previously distributed under a 363 Sale Order and the proceeds of all non-Cash assets of the Debtors’ Estates (including any IP Assets), after giving effect to: (i) the satisfaction of all Administrative Claims (other than DIP Facility Claims), Priority Tax Claims, Other Priority Claims, and Other Secured Claims in accordance with the Plan, in each case to the extent Allowed against the Debtors; (ii) the funding of the Professional Fee Escrow Account; (iii) the funding of the Wind-Down Amount; and (iv) the funding of the GUC Cash-Out Pool (if Class 4 votes to accept the Plan). For the avoidance of doubt, any proceeds of a 363 Sale Transaction distributed prior to the Effective Date shall not be considered Distributable Proceeds.

57. **“Distribution Agent”** means the Debtors or any Entity or Entities chosen by the Debtors, with the consent of the Required Consenting Creditors, which

Entities may include one or more of the Notice and Claims Agent, the Plan Administrator, and the Litigation Trustee, to make or to facilitate distributions required by the Plan.

58. “**Distribution Record Date**” means, except with respect to Holders of the Debtors publicly traded securities, the date for determining which Holders of Claims are eligible to receive initial distributions under the Plan, which date shall be the Effective Date or such other date as is agreed to by the Debtors and the Required Consenting Creditors or designated in a Final Order. The Distribution Record Date shall not apply to any Holders of the Debtors publicly traded securities.

59. “**DTC**” means The Depository Trust Company.

60. “**Effective Date**” means the date on which: (a) no stay of the Confirmation Order is in effect; and (b) all conditions specified in Article VIII.A and C of the Plan have been (i) satisfied or (ii) waived pursuant to Article VIII.D of the Plan.

61. “**Entity**” means an entity as defined in section 101(15) of the Bankruptcy Code.

62. “**Equity Interest**” means any issued, unissued, authorized, or outstanding shares of common stock, preferred stock, or other instrument evidencing an ownership interest in a Debtor, whether or not transferable, together with any warrants, equity-based awards, or contractual rights to purchase or acquire such interests at any time and all rights arising with respect thereto that existed immediately before the Effective Date; *provided* that Equity Interest does not include any Intercompany Interest.

63. “**Estate**” means, as to each Debtor, the estate created for such Debtor in its Chapter 11 Case pursuant to sections 301 and 541 of the Bankruptcy Code.

64. “**Estate Tax Refunds**” means any tax refunds due to the Estates (excluding any refunds on account of the taxes paid during the Chapter 11 Cases).

65. “**Estimated Allowed Administrative Claims**” means the Debtors’ reasonable estimate, acceptable to the Required Consenting Creditors, of the aggregate amount of Allowed Administrative Claims, including those Administrative Claims that may be Allowed following the Administrative Claims Bar Date.

66. “**Exculpated Party**” means (a) the Debtors; (b) the Committee and each of its current and former members; and (c) with respect to each of the foregoing in clauses (a) and (b), solely to the extent they are estate fiduciaries, each such Entity’s current and former affiliates,

* * *

Claim, over a period ending not later than five (5) years after the Petition Date; *provided* that any Allowed Priority Tax Claim that has been expressly assumed by a Successful Bidder under the 363 Sale Transaction Documentation shall not be an obligation of the Debtors. On the Effective Date, any Liens securing any Allowed Priority Tax Claims shall be deemed released, terminated, and extinguished, in each case without further notice to or order of the Bankruptcy Court, act, or action under applicable law,

regulation, order or rule, or the vote, consent, authorization, or approval of any Person.

D. United States Trustee Statutory Fees and Related Reporting Obligations

All U.S. Trustee Fees that are due and owing as of the Effective Date shall be paid by the Debtors in full in Cash on the Effective Date. The Debtors shall file all monthly operating reports due prior to the Effective Date, when they become due. After the Effective Date, the Plan Administrator shall file with the Bankruptcy Court post-confirmation reports, as and when they become due. After the Effective Date, the Plan Administrator shall pay any and all applicable U.S. Trustee Fees in full in Cash when due and payable. The Debtors and the Plan Administrator, as applicable, shall remain obligated to pay any applicable U.S. Trustee Fees until the earliest of the closure, dismissal, or conversion to a case under Chapter 7 of the Bankruptcy Code of the case of that particular Debtor for whom the Debtors or the Plan Administrator, as applicable, is responsible. The U.S. Trustee shall not be treated as providing any release under the Plan. U.S. Trustee Fees are Allowed. The U.S. Trustee shall not be required to file any proof of claim or any request for administrative expense for U.S. Trustee Fees. The provisions of this paragraph shall control notwithstanding any other provision(s) in the Plan to the contrary.

CLASSIFICATION AND TREATMENT
OF CLAIMS AND INTERESTS

A. Classification of Claims

The Plan constitutes a separate chapter 11 plan for each Debtor. Except for the Claims addressed in

Article II above (or as otherwise set forth herein), all Claims and Interests are placed in Classes for each of the applicable Debtors. The Plan consolidates Claims against all Debtors solely for purposes of voting, Confirmation, and distribution (for instance, a General Unsecured Claim against any Debtor is classified in Class 4, and to the extent Allowed, is entitled to share pro rata with all other Allowed Class 4 Claims, in the treatment provided for Class 4, without any allocation thereof among the Debtors) but not for any other purpose. In accordance with section 1123(a)(1) of the Bankruptcy Code, the Debtors have not classified Administrative Claims, DIP Facility Claims, and Priority Tax Claims, as described in Article II.

The categories of Claims and Interests listed below classify Claims and Interests for all purposes, including voting, Confirmation and distribution pursuant hereto and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Interest to be classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Interest qualifies within the description of such different Class. A Claim or an

Interest is in a particular Class only to the extent that any such Claim or Interest is Allowed in that Class and has not been paid or otherwise settled prior to the Effective Date.

**Summary of Classification and Treatment
of Claims and Interests**

Class	Claim	Status	Voting Rights
1	Other Priority Claims	Unimpaired	Presumed to Accept
2	Other Secured Claims	Unimpaired	Presumed to Accept
3	Prepetition Secured Notes Claims	Impaired	Entitled to Vote
4	General Unsecured Claims	Impaired	Entitled to Vote
5	Convenience Claims	Impaired	Entitled to Vote
6	Intercompany Claims	Unimpaired or Impaired	Presumed to Accept or Deemed to Reject
7	Subordinated Claims	Impaired	Deemed to Reject
8	Intercompany Interests	Unimpaired or Impaired	Presumed to Accept or Deemed to Reject
9	Equity Interests	Impaired	Deemed to Reject

B. Treatment of Claims and Interests

1. Class 1 — Other Priority Claims

- a) *Classification:* Class 1 consists of all Other Priority Claims.
- b) *Treatment:* On the Effective Date, except to the extent that a Holder of an Allowed Other Priority Claim and the Debtor against which such Allowed Other Priority Claim is asserted agree to less favorable treatment for such Holder, in full satisfaction of each Allowed Other Priority Claim, each Holder thereof shall receive payment in full in Cash or other treatment rendering such Claim Unimpaired. Any Allowed Other Priority Claim that has been expressly assumed by the applicable Successful Bidder under the applicable 363 Sale Transaction Documentation shall not be an obligation of the Debtors.
- c) *Voting:* Class 1 is Unimpaired and Holders of Class 1 Other Priority Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 1 Other Priority Claims are not entitled to vote to accept or reject the Plan.

2. Class 2 — Other Secured Claims

- a) *Classification:* Class 2 consists of all Other Secured Claims.
- b) *Treatment:* On the Effective Date, except to the extent that a Holder of an Allowed Other Secured Claim and the Debtor against which such Allowed Other Secured Claim is asserted,

with the consent of the Required Consenting Creditors, agree to less favorable treatment for such Holder, each allowed Other Secured Claim shall, at the option of the applicable Debtor (i) be paid in full in Cash, (ii) receive the collateral securing its allowed Other Secured Claim, or (iii) receive any other treatment that would render such Claim Unimpaired. Any Allowed Other Secured Claim that has been expressly assumed by the applicable Successful Bidder under the applicable 363 Sale Transaction Documentation shall not be an obligation of the Debtors.

- c) *Voting*: Class 2 is Unimpaired and Holders of Class 2 Other Secured Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 2 Other Secured Claims are not entitled to vote to accept or reject the Plan.

3. *Class 3 — Prepetition Secured Notes Claims*

- a) *Classification*: Class 3 consists of Prepetition Secured Notes Claims.
- b) *Allowance*: On the Effective Date, the Prepetition Secured Notes Claims shall be Allowed in the aggregate principal amount of \$28,400,000 plus accrued and unpaid interest on such principal amount (including interest accrued from the Petition Date through the Effective Date if permitted under the Bankruptcy Code) and all other amounts due and owing under the Prepetition Secured Notes (including professional fees and expenses

incurred by the Prepetition Secured Noteholder).

- c) *Treatment*: In full and final satisfaction, compromise, settlement, and release of its Prepetition Secured Notes Claims (unless the Prepetition Secured Noteholder agrees to a less favorable treatment), on the Effective Date, the Prepetition Secured Noteholder shall receive (i) all Distributable Proceeds remaining after payment in full in Cash of the DIP Claims pursuant to Article II.B. up to the Allowed amount of the Prepetition Secured Notes Claims and (ii) the VIL Litigation Trust Interests. If Confirmation occurs, to the extent the Distributable Proceeds and the VIL Litigation Trust Interest are insufficient to satisfy the Prepetition Secured Notes Claims in full, the Prepetition Secured Noteholder agrees not to receive any distribution on account of any resulting deficiency claims and shall not receive a Pro Rata Share of the GUC Recovery on account of such deficiency claims; *provided* that notwithstanding anything to the contrary herein, the right to receive Distributable Proceeds and proceeds of the VIL Litigation Trust Interests on account of such Prepetition Secured Notes Claims and the right to credit bid such claims up to the unpaid amount of Prepetition Notes Claims in connection with any sale of the Debtors' assets (whether prior to or after the Effective Date), other than a Remaining Asset Sale, shall be preserved until all assets in the Debtors' Estates have been liquidated.

- d) *Voting*: Class 3 is Impaired. The Prepetition Secured Noteholder is entitled to vote to accept or reject the Plan.

4. *Class 4 — General Unsecured Claims*

- a) *Classification*: Class 4 consists of General Unsecured Claims.
- b) *Allowance*: On the Effective Date, General Unsecured Claims shall be Allowed in accordance with the procedures set forth in Article VII of this Plan.
- c) *Treatment*: On the Effective Date, except to the extent that a Holder of an Allowed General Unsecured Claim agrees to less favorable treatment and subject to such Holder's ability to elect Convenience Claim treatment on account of the Allowed General Unsecured Claim (in lieu of the GUC Recovery):
 - i. If Class 4 votes to accept the Plan, each Holder of an Allowed General Unsecured Claim shall receive, in full and final satisfaction of its Allowed General Unsecured Claim, its Pro Rata Share of the GUC Recovery (including the GUC Litigation Trust Interests); or
 - ii. If Class 4 votes to reject the Plan, each General Unsecured Claim Holder shall receive no distribution on account of its General Unsecured Claim and the Debtors may seek approval of the Dismissal Motion or conversion of these Chapter 11 Cases to Chapter 7 of the Bankruptcy Code.

- d) *Voting*: Class 4 is Impaired and Holders of Class 4 General Unsecured Claims are entitled to vote to accept or reject the Plan.

5. *Class 5 — Convenience Claims*

- a) *Classification*: Class 5 consists of Convenience Claims.
- b) *Treatment*: In full and final satisfaction, settlement, release, and discharge of, and in exchange for, an Allowed Convenience Claim, each Holder of an Allowed Convenience Claim shall receive, on the Effective Date or within thirty (30) days following the date that such Convenience Claim becomes Allowed (if such Claim becomes Allowed after the Effective Date):
 - i. If the aggregate amount of all Allowed Convenience Claims does not exceed \$500,000, Cash in an amount equal to 50% of such Holder's Allowed Convenience Claim.
 - ii. If the aggregate amount of all Allowed Convenience Claims exceeds \$500,000, its Pro Rata Share of \$250,000.
- c) *Voting*: Class 5 is Impaired and Holders of Class 5 Convenience Claims are entitled to vote to accept or reject the Plan.

6. *Class 6 — Intercompany Claims*

- a) *Classification*: Class 6 consists of all Intercompany Claims.
- b) *Treatment*: Notwithstanding any other provision of the Plan, on the Effective Date, except to

the extent that a Holder of an Allowed Intercompany Claim and the Debtor against which such Allowed Intercompany Claim is asserted agree to less favorable treatment for such Holder, each Holder of an Allowed Intercompany Claim shall receive, in full and final satisfaction of its Allowed Intercompany Claim, no distribution under the Plan, and all Intercompany Claims shall be adjusted, Reinstated, or discharged in the applicable Debtor's discretion, unless otherwise agreed to by the Debtors and the applicable Successful Bidder in connection with one or more 363 Sale Transactions.

- c) *Voting*: Class 6 is either (i) Unimpaired and Holders of Class 6 Intercompany Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code or (ii) Impaired and not receiving any distribution under the Plan and Holders of Class 6 Intercompany Claims are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, in each case, Holders of Class 6 Intercompany Claims are not entitled to vote to accept or reject the Plan.

7. Class 7 — Subordinated Claims

- a) *Classification*: Class 7 consists of all Subordinated Claims
- b) *Treatment*: Allowed Subordinated Claims, if any, shall be cancelled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and Holders of

Allowed Subordinated Claims will not receive any distribution on account of such Allowed Subordinated Claims.

- a) *Voting*: Class 7 is Impaired and Holders of Class 7 Subordinated Claims are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Class 7 Subordinated Claims are not entitled to vote to accept or reject the Plan.

8. *Class 8 — Intercompany Interests*

- a) *Classification*: Class 8 consists of all Intercompany Interests.
- b) *Treatment*: On the Effective Date, except to the extent that a Holder of an Allowed Intercompany Interest and the Debtor against which such Allowed Intercompany Interest is asserted agree to less favorable treatment for such Holder, each Holder of an Allowed Intercompany Interest shall receive, in full and final satisfaction of its Allowed Intercompany Interest, no distribution under the Plan, and all Intercompany Interests shall be adjusted, Reinstated, or discharged in the applicable Debtor's discretion, unless otherwise agreed to by the Debtors and the applicable Successful Bidder in connection with one or more 363 Sale Transactions.
- c) *Voting*: Class 8 is either (i) Unimpaired and Holders of Class 8 Intercompany Interests are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code or (ii) Impaired and not receiving any distribution under the Plan and

Holders of Class 8 Intercompany Interests are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, in each case, Holders of Class 8 Intercompany Interests are not entitled to vote to accept or reject the Plan.

9. *Class 9 — Equity Interests*

- a) *Classification*: Class 9 consists of all Equity Interests.
- b) *Treatment*: Holders of Equity Interests shall receive no distribution on account of their Equity Interests. On the Effective Date, all Equity Interests will be canceled and extinguished and will be of no further force or effect.
- c) *Voting*: Class 9 is Impaired and Holders of Class 9 Equity Interests are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Class 9 Equity Interests are not entitled to vote to accept or reject the Plan.

C. *Special Provision Governing Unimpaired Claims*

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtors' or the Plan Administrator's, as applicable, rights in respect of any Unimpaired Claim, including all rights in respect of legal and equitable defenses to, or setoffs or recoupments against, any such Unimpaired Claim; *provided*, for the avoidance of doubt, notwithstanding anything to the contrary in the Plan or the Confirmation Order or any related documents, (a) the provisions of Articles IV.A, IX.A, IX.C, IX.D, and IX.F

of the Plan shall not apply with respect to any Unimpaired Claim and (b) such Unimpaired Claim shall not be deemed settled, satisfied, resolved, released, discharged, barred or enjoined by any provision of the Plan.

D. Nonconsensual Confirmation

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of the Plan by an Impaired Class of Claims, determined without including any acceptance of the Plan by any insider. The Debtors shall seek Confirmation pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests.

E. Subordination

The allowance, classification, and treatment of all Allowed Claims and Interests, and the respective distributions and treatments under the Plan, shall take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, except where otherwise provided herein, the Plan Administrator and the Debtors reserve the right to reclassify any Allowed Claim or Interest in accordance with any contractual, legal, or equitable subordination rights relating thereto.

F. Elimination of Vacant Classes

Any Class of Claims that is not occupied as of the date of commencement of the Confirmation Hearing by

the Holder of an Allowed Claim or a Claim temporarily Allowed under Bankruptcy Rule 3018 (*i.e.*, no Ballots are cast in a Class entitled to vote on the Plan) shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptances or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

G. Intercompany Claims

To the extent Reinstated under the Plan, any distributions on account of Intercompany Claims are not being received by Holders of such Intercompany Claims on account of their Intercompany Claims but for the purposes of administrative convenience and due to the importance of maintaining the corporate structure given the various foreign affiliate-subsidaries of the Debtors to preserve ordinary course intercompany operations and in exchange for the Debtors' or the Plan Administrator's, as applicable, agreement under the Plan to make certain distributions to the Holders of Allowed Claims.

MEANS FOR IMPLEMENTATION OF THE PLAN

A. General Settlement of Claims and Interests

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the Plan is and shall be deemed a good-faith compromise and settlement of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a Holder of a Claim or Interest may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest.

The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests, and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their Estates, and Holders of Claims and Interests and is fair, equitable, and reasonable. The compromises, settlements, and releases described herein shall be deemed nonseverable from each other and from all other terms of the Plan. In accordance with the provisions of the Plan, pursuant to Bankruptcy Rule 9019, without any further notice to or action, order, or approval of the Bankruptcy Court, after the Effective Date, the Plan Administrator may compromise and settle Claims against, and Interests in, the Debtors and their Estates and Causes of Action against other Entities.

B. Corporate Existence

Except as otherwise provided in the Plan, each Debtor shall continue to exist after the Effective Date as a separate corporate Entity, limited liability company, partnership, or other form,

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APPENDIX K

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

Chapter 11

Case No. 23-10405 (KBO)

(Jointly Administered)

Ref. Docket Nos. 96 & 571

IN RE: VIRGIN ORBIT HOLDINGS, INC., *et al.*,¹

Debtors.

NOTICE OF FILING OF FURTHER REVISED
AMENDED JOINT CHAPTER 11 PLAN OF VIRGIN
ORBIT HOLDINGS, INC. AND ITS DEBTOR
AFFILIATES UNDER CHAPTER 11
OF THE BANKRUPTCY CODE

PLEASE TAKE NOTICE that, on April 19, 2023, the above-captioned debtors and debtors in possession (the “**Debtors**”) filed the *Joint Chapter 11 Plan of Virgin Orbit Holdings, Inc. and Its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [Docket No. 96] (as may be amended, supplemented, or modified from time to time, the “**Plan**”) with the United States

¹ The Debtors in these cases, along with the last four digits of each debtor’s federal tax identification number, are: Virgin Orbit Holdings, Inc. (6914); Virgin Orbit National Systems, LLC (3801); Vieco USA, Inc. (0492); Virgin Orbit, LLC (9648); and JACM Holdings, Inc. (1445). The Debtors’ mailing address for purposes of these cases is 3880 McGowen Street, Long Beach, CA 90808.

Bankruptcy Court for the District of Delaware (the “Court”).

PLEASE TAKE FURTHER NOTICE that on July 26, 2023, the Debtors filed an amended version of the Plan (the “**Revised Plan**”) [Docket No. 571].

PLEASE TAKE FURTHER NOTICE that the Debtors have made certain further modifications to the Revised Plan, a copy of which is attached hereto as **Exhibit 1** (the “**Further Revised Plan**”). For the convenience of the Court and parties in interest, a blackline comparing the Revised Plan with the Further Revised Plan is attached hereto as **Exhibit 2**.

[Signature page follows]

Dated: July 28, 2023
Wilmington, Delaware

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& TAYLOR, LLP**

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Counsel for Debtors and Debtors in Possession

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EXHIBIT 1

Further Revised Plan

THIS PLAN IS NOT AN OFFER TO SELL ANY SECURITIES AND IS NOT SOLICITING AN OFFER TO BUY ANY SECURITIES.

THIS PLAN REMAINS SUBJECT TO CONTINUING REVISIONS AS THE DEBTORS CONDUCT THEIR INTERNAL INVESTIGATION AND CONTINUE THE MARKETING PROCESS FOR A SALE OF THEIR ASSETS. IN THE EVENT THE DEBTORS ARE UNABLE TO CONFIRM THE PLAN, THEY MAY SEEK APPROVAL OF THE DISMISSAL MOTION OR CONVERSION OF THESE CASES TO CHAPTER 7 OF THE BANKRUPTCY CODE. ALL RIGHTS OF THE DEBTORS ARE RESERVED.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

Chapter 11

Case No. 23-10405 (KBO)
(Jointly Administered)

IN RE: VIRGIN ORBIT HOLDINGS, INC., *et al.*,²

Debtors.

² The Debtors in these cases, along with the last four digits of each debtor's federal tax identification number, are: Virgin Orbit Holdings, Inc. (6914); Virgin Orbit National Systems, LLC (3801); Vieco USA, Inc. (0492); Virgin Orbit, LLC (9648); and JACM Holdings, Inc. (1445). The Debtors' mailing address for purposes of these cases is 3880 McGowen Street, Long Beach, CA 90808.

FOURTH AMENDED JOINT CHAPTER 11 PLAN
OF VIRGIN ORBIT HOLDINGS, INC. AND ITS
DEBTOR AFFILIATES UNDER CHAPTER 11 OF
THE BANKRUPTCY CODE

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B. Treatment of Claims and Interests

1. Class 1 — Other Priority Claims

- a) *Classification:* Class 1 consists of all Other Priority Claims.

- b) *Treatment*: On the Effective Date, (i) except in the case of Allowed Priority WARN Act Claims (the Holders of which shall receive treatment pursuant to the WARN Settlement Agreement) and (ii) except to the extent that a Holder of an Allowed Other Priority Claim and the Debtor against which such Allowed Other Priority Claim is asserted agree to less favorable treatment for such Holder, each Holder thereof shall receive payment in full in Cash or other treatment rendering such Claim Unimpaired. Any Allowed Other Priority Claim that has been expressly assumed by the applicable Successful Bidder under the applicable 363 Sale Transaction Documentation shall not be an obligation of the Debtors.
- c) *Voting*: Class 1 is Unimpaired and Holders of Class 1 Other Priority Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 1 Other Priority Claims are not entitled to vote to accept or reject the Plan.

2. *Class 2 — Other Secured Claims*

- a) *Classification*: Class 2 consists of all Other Secured Claims.
- b) *Treatment*: On the Effective Date, except to the extent that a Holder of an Allowed Other Secured Claim and the Debtor against which such Allowed Other Secured Claim is asserted, with the consent of the Required Consenting Creditors, agree to less favorable treatment for such Holder, each allowed Other Secured Claim shall, at the option of the applicable Debtor (i)

be paid in full in Cash, (ii) receive the collateral securing its allowed Other Secured Claim, or (iii) receive any other treatment that would render such Claim Unimpaired. Any Allowed Other Secured Claim that has been expressly assumed by the applicable Successful Bidder under the applicable 363 Sale Transaction Documentation shall not be an obligation of the Debtors.

- c) *Voting*: Class 2 is Unimpaired and Holders of Class 2 Other Secured Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 2 Other Secured Claims are not entitled to vote to accept or reject the Plan.

3. *Class 3 — Prepetition Secured Notes Claims*

- a) *Classification*: Class 3 consists of Prepetition Secured Notes Claims.
- b) *Allowance*: On the Effective Date, the Prepetition Secured Notes Claims shall be Allowed in the aggregate principal amount of \$28,400,000 plus accrued and unpaid interest on such principal amount (including interest accrued from the Petition Date through the Effective Date if permitted under the Bankruptcy Code) and all other amounts due and owing under the Prepetition Secured Notes (including professional fees and expenses incurred by the Prepetition Secured Noteholder).
- c) *Treatment*: unless the Prepetition Secured Noteholder agrees to a less favorable treatment), on the Effective Date, the Prepetition

Secured Noteholder shall receive (i) all Distributable Proceeds remaining after payment in full in Cash of the DIP Claims pursuant to *Article II.B* up to the Allowed amount of the Prepetition Secured Notes Claims; (ii) the VIL Litigation Trust Interests; and (iii) the rights to all IP Assets. If Confirmation occurs, to the extent the Distributable Proceeds and the VIL Litigation Trust Interest are insufficient to satisfy the Prepetition Secured Notes Claims in full, the Prepetition Secured Noteholder agrees not to receive any distribution on account of any resulting deficiency claims and shall not receive a Pro Rata Share of the GUC Recovery on account of such deficiency claims; *provided* that notwithstanding anything to the contrary herein, the right to receive Distributable Proceeds and proceeds of the VIL Litigation Trust Interests on account of such Prepetition Secured Notes Claims and the right to credit bid such claims up to the unpaid amount of Prepetition Notes Claims in connection with any sale of the Debtors' assets (whether prior to or after the Effective Date), other than a Remaining Asset Sale, shall be preserved until all assets in the Debtors' Estates have been liquidated. For the avoidance of doubt, VIL may designate another party to receive any consideration under the Plan and so designates Virgin Management USA, Inc. to receive rights to all IP Assets on the Effective Date or such later date as agreed to between VIL and the Debtors.

- d) *Voting*: Class 3 is Impaired. The Prepetition Secured Noteholder is entitled to vote to accept or reject the Plan.

4. *Class 4 — General Unsecured Claims*

- a) *Classification*: Class 4 consists of General Unsecured Claims.
- b) *Allowance*: On the Effective Date, General Unsecured Claims shall be Allowed in accordance with the procedures set forth in *Article VII* of this Plan.
- c) *Treatment*: As soon as reasonably practicable after the Effective Date and consistent with the Litigation Trust Agreement, except to the extent that a Holder of an Allowed General Unsecured Claim agrees to less favorable treatment and subject to such Holder's ability to elect Convenience Claim treatment on account of the Allowed General Unsecured Claim (in lieu of the GUC Recovery):
 - i. If Class 4 votes to accept the Plan, each Holder of an Allowed General Unsecured Claim shall receive its Pro Rata Share of the GUC Recovery (including the GUC Litigation Trust Interests); or
 - ii. If Class 4 votes to reject the Plan, each General Unsecured Claim Holder shall receive no distribution on account of its General Unsecured Claim and the Debtors may seek approval of the Dismissal Motion or conversion of these Chapter 11 Cases to Chapter 7 of the Bankruptcy Code.
- d) *Voting*: Class 4 is Impaired and Holders of Class 4 General Unsecured Claims are entitled to vote to accept or reject the Plan.

* * *

5. *Class 5 — Convenience Claims*

- a) *Classification*: Class 5 consists of Convenience Claims.
- b) *Treatment*: As soon as reasonably practicable after the Effective Date and consistent with the Litigation Trust Agreement, each Holder of an Allowed Convenience Claim shall receive:
 - i. If the aggregate amount of all Allowed Convenience Claims does not exceed \$500,000, Cash in an amount equal to 50% of such Holder's Allowed Convenience Claim.
 - ii. If the aggregate amount of all Allowed Convenience Claims exceeds \$500,000, its Pro Rata Share of \$250,000.
- c) *Voting*: Class 5 is Impaired and Holders of Class 5 Convenience Claims are entitled to vote to accept or reject the Plan.

6. *Class 6 — Intercompany Claims*

- a) *Classification*: Class 6 consists of all Intercompany Claims.
- b) *Treatment*: Notwithstanding any other provision of the Plan, on the Effective Date, except to the extent that a Holder of an Allowed Intercompany Claim and the Debtor against which such Allowed Intercompany Claim is asserted agree to less favorable treatment for such Holder, each Holder of an Allowed Intercompany Claim shall receive no distribution under the Plan, and all Intercompany Claims shall be adjusted, Reinstated, or eliminated in the applicable Debtor's discretion, unless otherwise agreed to by the Debtors and

the applicable Successful Bidder in connection with one or more 363 Sale Transactions.

- c) *Voting*: Class 6 is either (i) Unimpaired and Holders of Class 6 Intercompany Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code or (ii) Impaired and not receiving any distribution under the Plan and Holders of Class 6 Intercompany Claims are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, in each case, Holders of Class 6 Intercompany Claims are not entitled to vote to accept or reject the Plan.

7. Class 7 — Subordinated Claims

- a) *Classification*: Class 7 consists of all Subordinated Claims
- b) *Treatment*: Allowed Subordinated Claims, if any, shall be cancelled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and Holders of Allowed Subordinated Claims will not receive any distribution on account of such Allowed Subordinated Claims.
- a) *Voting*: Class 7 is Impaired and Holders of Class 7 Subordinated Claims are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Class 7 Subordinated Claims are not entitled to vote to accept or reject the Plan.