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Bankruptcy Counsel to Proposed Lead Plaintiffs

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
ADPT DFW Holdings LLC, *et al.*,	§	Case No. 17-31432
Debtors	§	Jointly Administered under Case No. 17-31432

PROPOSED LEAD PLAINTIFFS' OBJECTION TO APPROVAL OF DISCLOSURE STATEMENT FOR DEBTORS' FIRST AMENDED JOINT PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

Alameda County Employees' Retirement Association ("ACERA") and Arkansas Teacher Retirement System ("Arkansas Teacher"), proposed lead plaintiffs ("Proposed Lead Plaintiffs") in the consolidated securities class action styled as *Oklahoma Law Enforcement Retirement System v. Adeptus Health Inc.*, No. 17-cv-00449-ALM (E.D. Tex.) (the "Securities Litigation"),[1] pending

[1] On June 23, 2017, four related securities class actions were consolidated and transferred from the Tyler Division of the Eastern District of Texas to the Sherman Division of the Eastern District of Texas. *See id.*, ECF No. 69 (E.D. Tex. filed June 23, 2017). The four actions were previously styled as: *Oklahoma Law Enforcement Retirement System v. Adeptus Health Inc.*, No. 6:16-cv-01243-RWS (E.D. Tex.); *Laborers' Local 235 Benefit Funds v. Adeptus Health Inc.*, No. 6:16-cv-01391-RWS (E.D. Tex.) (the "Laborers Action"); *Kim v. Adeptus Health Inc.*, No. 6:17-cv-00150-RWS (E.D. Tex.) (the "Kim Action"); and *Troll v. Adeptus Health Inc.*, No. 6:17-

in the United States District Court for the Eastern District of Texas (the "EDTX District Court"), hereby submit this objection (the "Objection") to approval of the proposed disclosure statement (the "Amended Disclosure Statement") [ECF No. 452] for the *Debtors' First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (the "Plan") [ECF No. 451]. In support of the Objection, Proposed Lead Plaintiffs respectfully submit as follows:

RELEVANT BACKGROUND

A. The Securities Litigation

1. The Securities Litigation is a class action seeking damages pursuant to Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§ 78j(b) and 78t(a); Rule 10b-5 promulgated thereunder ("Rule 10b-5"), 17 C.F.R. § 240.1b-5; and Sections 11, 12(a)(2), and 15 of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. §§ 77k, 77*l*(a)(2), and 77o, from (a) Adeptus Health Inc., the publicly traded Debtor ("PubCo"), (b) its current CEO/Chairman and CFO, (c) its former CEO and CFO, (d) six of its current and/or former directors, (e) its private equity sponsor, Sterling Partners, and (f) the underwriters of its June 25, 2014 initial public offering of common stock (the "IPO") and its May 5, 2015, July 29, 2015, and June 20, 2016 secondary public offerings of common stock (the "SPOs") (collectively, (b) through (f) are the "Non-Debtor Defendants").

2. Specifically, through the Securities Litigation, Proposed Lead Plaintiffs, on behalf of themselves and the Class, seek remedies from PubCo and the Non-Debtor Defendants pursuant to the Securities Act, the Exchange Act, and Rule 10b-5. The complaints[2] in the now-consolidated Securities Litigation allege, among other things, that the registration statements for the IPO and

cv-00241-RWS (E.D. Tex.) (the "Troll Action"). For purposes of this Objection, references to the Securities Litigation shall also include the now-consolidated Laborers Action, Kim Action, and Troll Action.

[2] As the Securities Litigation was only recently consolidated, a consolidated amended complaint has not yet been filed.

the SPOs contained untrue statements of material fact and omitted material facts, risk disclosures, and other information.

3. The Securities Litigation seeks damages on behalf of all purchasers (other than defendants) who purchased the Class A common stock of PubCo pursuant and/or traceable to the IPO and/or the SPOs, as well as purchasers of the company's securities between June 25, 2014, and March 1, 2017, inclusive (as such class definition may be amended, supplemented, and modified from time to time, the "Class").

4. On December 27, 2016, ACERA and Arkansas Teacher filed a motion for appointment as lead plaintiff, approval of selection of counsel, and consolidation of several related putative class actions.

5. On April 20, 2017, PubCo filed a *Notice of Bankruptcy Filing by Defendant Adeptus Health Inc.* in the Securities Litigation. On May 11, 2017, the EDTX District Court entered an order sua sponte staying all claims against PubCo in the Securities Litigation by operation of the automatic stay under Section 362 of the Bankruptcy Code, directing that the Securities Litigation shall proceed against the remaining defendants, and directing the parties to appear for a status conference and motion hearing on June 5, 2017 (later continued until June 22, 2017).

6. On June 23, 2017, the four related securities class actions were consolidated and transferred from the Tyler Division of the Eastern District of Texas to the Sherman Division of the Eastern District of Texas. *See id.*, ECF No. 69 (E.D. Tex. filed June 23, 2017). ACERA and Arkansas Teacher's motion for appointment as lead plaintiff remains pending.

B. The Amended Plan and Amended Disclosure Statement

7. On April 19, 2017, the same day they filed their chapter 11 cases (the "Petition Date"), the Debtors filed the *Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (the "Original Plan") [ECF No. 15] and the accompanying disclosure statement (the "Original Disclosure Statement") [ECF No. 16]. The Debtors filed the Amended Plan and Amended Disclosure Statement on July 19, 2017, together with a *Notice of Revisions to Plan and Disclosure Statement* [ECF No. 453] containing blacklines reflecting substantial, material revisions from the Original Plan to the Amended Plan and the Original Disclosure Statement to the Amended Disclosure Statement.

OBJECTION

8. A chapter 11 debtor may only solicit votes to accept or reject a chapter 11 plan of reorganization once the Court has approved the debtor's written disclosure statement for that plan as containing "adequate information." 11 U.S.C. § 1125(b). Section 1125(a) of the Bankruptcy Code defines "adequate information" as follows:

> information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to . . . a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan[.]

11 U.S.C. § 1125(a); Matter of Tex. Extrusion Corp., 844 F.2d 1142, 1157 (5th Cir. 1988).

9. The purpose of a disclosure statement for a chapter 11 plan "is to provide 'adequate information' to creditors to enable them to decide whether to accept or reject the proposed plan." In re Feretti, 128 B.R. 16, 18 (Bankr. D.N.H. 1991) (citations omitted). Although courts assess adequacy on a case-by-case basis, a disclosure statement must contain "simple and clear language delineating the consequences of the proposed plan on [creditors'] claims and the possible . . .

alternatives so that [creditors] can intelligently accept or reject the Plan." In re Copy Crafters Quickprint, Inc., 92 B.R. 973, 981 (Bankr. N.D.N.Y. 1988); see also Tex. Extrusion, 844 F.2d at 1157. In essence, a disclosure statement "must clearly and succinctly inform the average . . . creditor what it is going to get, when it is going to get it, and what contingencies there are to getting its distribution." Ferretti, 128 B.R. at 19. In its current form, the Amended Disclosure Statement does not contain adequate information for Proposed Lead Plaintiffs to decide whether to accept or reject the Amended Plan, and thus the Amended Disclosure Statement should not be approved.

10. Courts also will not approve disclosure statements that describe plans that are "so fatally flawed that confirmation is impossible." In re U.S. Brass Corp., 194 B.R. 420, 422 (Bankr. E.D. Tex. 1996). Because, as discussed more fully below, the Amended Plan cannot be confirmed in its current form, it would be counterproductive to approve the Amended Disclosure Statement and authorize the Debtors to expend estate resources soliciting votes on an unconfirmable Plan.

A. The Amended Disclosure Statement fails to provide adequate information regarding the proposed substantive consolidation of the Debtors' estates.

11. The Original Plan expressly provided that recoveries from the Debtors would be on an entity-by-entity basis, with no substantive consolidation of any of the Debtors, as follows:

> [T]he Litigation Trust shall be structured to ensure that any distribution to be made therefrom, and any proceeds derived from Litigation Trust Assets, shall be separated by appropriate Debtor entity and distributed according to Debtor-by-Debtor recoveries set forth in this Plan **and there shall be no substantive consolidation of Debtor-entity recoveries**.

Original Plan at 22 (emphasis added). This structure apparently was of sufficient importance to the Debtors that it could not be modified absent unanimous consent of all unsecured creditors holding interests in the litigation trust called for by the Original Plan. See id. ("The Litigation Trust shall be administered on a Debtor-by-Debtor basis, effectively as a separate trust for each

Debtor entity. This principle may not be changed in the Litigation Trust Agreement by anything less than 100% consent of the Litigation Trust Beneficiaries.").

12. Fast forward three months, and suddenly the Amended Plan calls for the substantive consolidation of all 140 debtors – a heterogeneous mixture of PubCo, various operating entities, real estate holding companies, joint venture participants, and other entities, all bound together solely by the common thread of having some relationship to the Debtors' business. See Amended Plan at 15-16. The Amended Plan now provides in pertinent part that

> Except as expressly provided in this Plan, (a) all Litigation Trust Assets (and all proceeds thereof) and all liabilities of each of the Debtors **shall be deemed merged or treated as though they were merged into and with the assets and liabilities of each other**, (b) no distributions shall be made under this Plan on account of Intercompany Claims among the Debtors, and all such Claims shall be eliminated and extinguished. . . [and] (d) each and every Claim filed or to be filed in any of the Chapter 11 Cases shall be treated [as] filed against the consolidated Debtors and shall be treated [as] one Claim against and obligation of the consolidated Debtors. . . .

Id. at 15 (emphasis added).

13. Substantive consolidation "treats separate legal entities as if they were merged into a single survivor left with all the cumulative assets and liabilities (save for inter-entity liabilities, which are erased). The result is that claims of creditors against separate debtors morph to claims against the consolidated survivor.' Consolidation restructures (and thus revalues) rights of creditors and for certain creditors this may result in significantly less recovery." In re Owens Corning, 419 F.3d 195, 205 (3d Cir. 2005) (quoting Genesis Health Ventures, Inc. v. Stapleton (In re Genesis Health Ventures, Inc.), 402 F.3d 416, 423 (3d Cir. 2005)).

14. In light of the fact that substantive consolidation can completely rewrite the rights of various creditor constituencies (for instance, by enabling creditors of a hopelessly insolvent debtor to receive recoveries from the assets of an affiliate that is flush with cash, while

simultaneously diluting the claims of that affiliate's own creditors), courts apply the doctrine sparingly. See, e.g., In re Gandy, 299 F.3d 489, 499 (5th Cir. 2002) (noting that "substantive consolidation is an *extreme and unusual* remedy") (emphasis added); In re Pacific Lumber Co., 584 F.3d 229, 249 (5th Cir. 2009); Owens Corning, 419 F.3d at 211 ("[B]ecause substantive consolidation is extreme . . . and imprecise, this 'rough justice' remedy should be rare and, in any event, *one of last resort* after considering and rejecting other remedies.") (emphasis added).

15. The Fifth Circuit has not adopted a specific test for determining whether substantive consolidation is appropriate. Courts consider a variety of factors in evaluating requests for substantive consolidation, but the evaluation has generally been distilled down to two key criteria: "(i) whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit . . . or (ii) whether the affairs of the debtors are so entangled that consolidation will benefit all creditors." In re Introgen Therapeutics, Inc., 429 B.R. 570, 582-83 (Bankr. W.D. Tex. 2010). If either of these factors is present, substantive consolidation might be appropriate. Id. at 583 (quoting In re Augie/Restivo Baking Co., 860 F.2d 515, 519 (2d Cir. 1988)).

16. The mere fact that untangling the affairs of related debtors *might be difficult* is insufficient to justify substantive consolidation. See In re Flora Mir Candy Corp., 432 F.2d 1060, 1062 (2d Cir. 1970) (noting that substantive consolidation "is no mere instrument of procedural convenience . . . but a measure vitally affecting substantive rights"). Rather, the entanglement of multiple debtors' affairs must be "either impossible or so costly as to consume the assets" of the estate, and "can justify substantive consolidation '*only* where the time and expense necessary even to attempt to unscramble them is so substantial as to threaten the realization of any net assets for

all the creditors, or where no accurate identification and allocation of assets *is at all possible*." Introgen, 429 B.R. at 583 (citation omitted, emphasis added).

17. Given that substantive consolidation is an "extreme and unusual remedy" and a remedy "of last resort" to be used only where multiple debtors' affairs are so inextricably intertwined that untangling them would eviscerate the assets of the estate, one might expect the Amended Disclosure Statement to provide a fulsome explanation of the basis for the Debtors' decision to jettison the strict entity-by-entity recovery scheme embodied in the Original Plan in favor of the current, blunderbuss consolidation contained in the Amended Plan. It does not.

18. Instead, the Amended Disclosure Statement provides only a perfunctory explanation of why the Debtors now "believe that substantive consolidation under the [Amended] Plan is appropriate[,]" including the scope of their lenders' liens (which did not extend to PubCo prepetition), the fact that the Debtors maintain consolidated books and records and a centralized cash management system, a conclusory assertion that "[m]any creditors of the Debtors view the Debtors as a single economic unit[,]" and that the Debtors share common directors and officers. Amended Disclosure Statement at 37-38. Most of these factors are common to any chapter 11 case involving multiple debtors, especially where the parent debtor is publicly held, and none of these factors justify substantive consolidation. Even taken at face value, the Debtors' disclosure statement does not suggest that substantive consolidation is appropriate or even permissible here.

19. The most glaring omission from the Disclosure Statement with respect to this issue is the absence of any assertion that the Debtors' affairs are sufficiently intertwined, and their assets are so thoroughly commingled, that it would be impossible or destructively costly to sort them out. The reason for this omission is simple: the necessary circumstances to justify substantive consolidation do not appear to exist. Indeed, as of the date hereof, the Debtors have filed schedules

of assets and liabilities for most of the Debtors. Most importantly from the standpoint of Proposed Lead Plaintiffs, the Debtors have filed schedules of assets and liabilities for PubCo [Case No. 17-31434, ECF No. 11] – obviating any argument that there is a legitimate need to substantively consolidate PubCo into any other Debtor.

20. PubCo's schedules of assets and liabilities reveal that, as of the Petition Date, Pubco:

- owned $134,838,012.28 of personal property of known value, consisting primarily of approximately $120 million of intercompany receivables due from other related entities, as well as 77.27% of the equity interests in Adeptus Health LLC, which in turn owns the remaining Debtors directly or indirectly,[3]
- had no secured debt, and
- was subject to $7,034,606.52 of unsecured claims.

21. The Amended Disclosure Statement does not describe the intercompany receivables owned by PubCo, which would be summarily eviscerated by substantive consolidation under the Amended Plan. Significant additional disclosure is necessary to remedy this defect. For instance:

- Which affiliates – both Debtors and non-Debtors – owe intercompany balances to PubCo (the "Intercompany Obligors")?
- Are all of the Intercompany Obligors borrowers or guarantors under the Debtors' prepetition secured loans? If not, which Intercompany Obligors are not?
- What assets are owned by each of the Intercompany Obligors, and particularly the non-guarantor/non-borrower Intercompany Obligors?

[3] The Debtors' first-day declaration indicates that PubCo owns 100% of Adeptus Health LLC.

- Do any of the Intercompany Obligors that *are* borrowers or guarantors nevertheless own any unencumbered assets? What is the value of those assets?

22. Without sufficient information to answer to these questions, the Amended Disclosure Statement lacks sufficient information for creditors of PubCo, like Proposed Lead Plaintiffs and the Class, to make an informed judgment whether to accept or reject the Amended Plan. In addition, unless the Amended Disclosure Statement provides adequate information to assess the propriety of substantive consolidation, which currently appears to be off limits to the Debtors as a matter of law absent consent of all affected parties, the Amended Plan appears to be unconfirmable on its face. As a result, the Amended Disclosure Statement cannot be approved.

B. The Amended Disclosure Statement does not provide adequate disclosure or justification for the broad third-party releases contained in the Amended Plan.

23. The Amended Plan contains a deemed release (the "Third-Party Release") of claims against a litany of non-Debtor parties (the "Released Parties") by, among others, holders of claims and interests (a) who vote to accept the Amended Plan or (b) whose vote is solicited but who either (i) do not return a ballot or (ii) return a ballot without checking a box indicating their election to opt out of the Third-Party Release. Plan, Art. 11.7(b).

24. The Released Parties include, among others, the Debtors' current and former officers and directors, principals, shareholders, members, partners, managers, employees, subcontractors, agents, and investment bankers (which would appear to include the underwriters of the IPO and SPOs), as well as such entities' respective heirs, executors, estates, servants, and nominees, each in their capacity as such. See Plan at 11. This definition initially appears to encompass all of the Non-Debtor Defendants, but is subsequently modified by another section of the Plan to exclude the Debtors' past or current officers, directors, Sterling Partners, and a number of parties related to Sterling Partners. Id. Art. 11.8. Thus, for some unspecified reason, the only

Non-Debtor Defendants remaining as Released Parties are the underwriters of the prepetition IPO and the SPOs.[4]

25. The Amended Disclosure Statement provides no justification whatsoever for granting the gratuitous, sweeping Third-Party Release to *any* of the Released Parties, much less the underwriters of the IPO and SPOs. Rather, the Amended Disclosure Statement simply repeats the Third-Party Release provisions of the Amended Plan verbatim, with no further explanation or disclosure of why the Debtors believe such parties are entitled to releases, what consideration they are providing for the releases, or what extraordinary circumstances the Debtors believe are present in this case that would justify granting gratuitous third-party releases. Absent such disclosure, the Amended Disclosure Statement cannot be approved.[5]

C. The Amended Disclosure Statement does not adequately describe the Debtors' post-confirmation obligations to preserve evidence that is potentially relevant to the Securities Litigation.

26. As the issuer of the securities that are the subject of the Securities Litigation, and as the employer or former employer of the individual Non-Debtor Defendants, the Debtors undoubtedly have books, records, electronically stored information, and other evidence potentially relevant to the Securities Litigation in their possession, custody, and/or control.

27. The Securities Litigation is subject to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. § 78u-4, which mandates that

> any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations

[4] The Amended Plan qualifies the list of Released Parties as "in each case in their capacities as such during the Chapter 11 Cases[.]" See Amended Plan at 11. Due to the lack of adequate disclosure on this issue, it is unclear whether (a) this qualification applies to the list of related parties, such as investment bankers, that are also Released Parties and (b) the underwriters who are Non-Debtor Defendants have an ongoing relationship with the Debtors, such that they would constitute Released Parties. If the Debtors do not intend for the underwriters of the IPO and SPOs to be Released Parties, they should be added to the list of categorical exclusions from Released Parties set forth in Article 11.8 of the Amended Plan.

[5] The improper Third-Party Release may also render the Amended Plan unconfirmable.

> (including electronically recorded or stored data), and tangible objects that are in the custody or control of such person and that are relevant to the allegations, as if they were the subject of a continuing request for production of documents from an opposing party under the Federal Rules of Civil Procedure.

15 U.S.C. § 78u-4(b)(3)(C)(i). This mandatory requirement is subject to "sanction for willful violation." 15 U.S.C. § 78u-4(b)(3)(C)(ii).

28. PubCo is a defendant in the Securities Litigation (subject to the automatic stay) and thus presently is subject to the document preservation requirements under the PSLRA. Preservation of PubCo's books, records, electronically stored information, and other items of evidence that are potentially relevant to the Securities Litigation is absolutely crucial to avoid prejudice to Proposed Lead Plaintiffs and the Class.

29. The Amended Plan provides that neither the Amended Plan nor the confirmation order will affect the obligations of the Debtors, the trustee of the litigation trust created under the First Amended Plan (the "Litigation Trust"), or any transferee or custodian "to maintain all books and records that relate to the Causes of Action . . . ." See Amended Plan at 26.

30. There are various instances in the Amended Plan and the Amended Disclosure Statement where the term "Cause of Action," which is defined very broadly and would encompass all of the claims and causes of action asserted in the Securities Litigation, appears to refer narrowly to only "Causes of Action" held by the Debtors' estates. Applying that limitation to the document preservation provision of the Amended Plan could potentially enable the Debtors to later attempt to argue that the document preservation provision in the Amended Plan does not apply to the retention of books, records, electronically stored information, and other items of evidence that are potentially relevant to the Securities Litigation.

31. The Amended Disclosure Statement merely reiterates the document preservation language in the Amended Plan, without providing any meaningful explanation of what the Debtors intend to preserve or for how long. For the avoidance of any future doubt or uncertainty, the Amended Plan should provide as follows (together with related disclosures in the Amended Disclosure Statement):

> Until the entry of a final and non-appealable order of judgment or settlement with respect to all defendants now or hereafter named in the litigation captioned *Oklahoma Law Enforcement Retirement System v. Adeptus Health Inc.*, No. 17-cv-00449-ALM (E.D. Tex.), as consolidated (the "Securities Litigation"), the Reorganized Debtors, the Litigation Trust Trustee, and any transferee or custodian of the Debtors' books, records, documents, files, electronic data (in whatever format, including native format), or any tangible object or other item of evidence potentially relevant to the Securities Litigation, wherever stored (collectively, the "Potentially Relevant Books and Records"), shall preserve and maintain the Potentially Relevant Books and Records as though they were the subject of a continuing request for production of documents and/or a subpoena, and shall not destroy, abandon, transfer, or otherwise render unavailable such Potentially Relevant Books and Records.

D. The Amended Disclosure Statement does not provide adequate information with respect to the claims and causes of action anticipated to be brought by the Litigation Trust.

32. The Amended Plan calls for the creation of the Litigation Trust to pursue certain claims and causes of action against third parties. However, the Amended Disclosure Statement provides only a cursory description of those claims, with no description of the anticipated recoveries therefrom other than a statement as to the amount of D&O insurance coverage carried by the Debtors. See Amended Disclosure Statement at 35. Despite the fact that the Litigation Trust is the *only* source of recovery contemplated by the plan for holders of general unsecured claims, subordinated claims, and equity interests, the Litigation Trust itself appears to be an

afterthought, ancillary to the Amended Plan's primary purpose of expeditiously shifting ownership of the Debtors to their secured lenders.

33. Significant additional disclosure is necessary in the Amended Disclosure Statement with respect to the Litigation Trust's activities. At a minimum, the Amended Disclosure Statement should indicate whether the claims that would be brought by the Litigation Trust fall into the same policy periods under any relevant insurance policies as the claims asserted in the Securities Litigation, disclose the amount of coverage exhausted and remaining under the applicable insurance policies, and describe any coverage disputes, denials, or disclaimers the Debtors' insurers have made with respect to both the Securities Litigation and the notice of claim provided to the carriers by the Official Committee of Unsecured Creditors, as this information could have a material impact on Proposed Lead Plaintiffs' assessment of their potential recovery on behalf of the Class and their decision to vote on the Plan..

RESERVATION OF RIGHTS

34. Proposed Lead Plaintiffs reserve all rights with respect to confirmation of the Amended Plan (as may be amended from time to time), or any other chapter 11 plan proposed in the Debtors' bankruptcy cases, including but not limited to objecting to confirmation of any plan on any and all grounds, regardless of whether such grounds are raised in this Objection. Proposed Lead Plaintiffs further reserve all rights to object to any further amended Amended Disclosure Statement or any new disclosure statement for any other plan on any basis whatsoever.

CONCLUSION

35. Unless the issues set forth herein are addressed through appropriate revisions to the Amended Disclosure Statement and/or the Amended Plan, the Amended Disclosure Statement should not be approved.

Dated: July 28, 2017

Respectfully Submitted,

/s/ Daniel P. Winikka

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Bankruptcy Counsel to Proposed Lead Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to the Court's Amended Order Continuing Hearings on Disclosure Statement [Doc #440], the undersigned hereby certifies, that on this 28th day of July 2017, he caused to be served a true and correct copy of this Proposed Lead Plaintiffs' Objection to Approval of Disclosure Statement for Debtors' First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, by electronically filing it with the Court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF system and on Debtor's counsel via email (louis.strubeck@nortonrosefulbright.com, john.schwartz@nortonrosefulbright.com, liz.boydston@nortonrosefulbright.com and tim.springer@nortonrosefulbright.com).

/s/ Daniel P. Winikka
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