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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

ADPT DFW Holdings LLC, *et al.*,

Debtors.

§
§ Chapter 11
§
§ Case No. 17-31432
§
§ Jointly Administered under
§ Case No. 17-31432
§
§ **Objection Deadline: September 15, 2021**
§
§

**NINTH MOTION OF THE ADEPTUS LITIGATION TRUST FOR AN
ORDER FURTHER EXTENDING THE DEADLINE TO OBJECT TO CLAIMS**

NO HEARING WILL BE CONDUCTED HEREON UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT THE EARLE CABELL FEDERAL BUILDING 1100 COMMERCE ST., DALLAS, TX 75242-1496 BEFORE CLOSE OF BUSINESS ON **SEPTEMBER 15, 2021**, WHICH IS AT LEAST 21 DAYS FROM THE DATE OF SERVICE HEREOF.

ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK, AND A COPY SHALL BE SERVED UPON BRADFORD J. SANDLER AND SHIRLEY S. CHO, COUNSEL FOR THE TRUST PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS FILED A HEARING MAY BE HELD WITH NOTICE ONLY TO THE OBJECTING PARTY.

IF NO HEARING ON SUCH NOTICE OR MOTION IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE NOTICED ACTION MAY BE TAKEN.

The Adeptus Litigation Trust (the “Trust”) hereby moves this Court (the “Motion”) for entry of an order in the above-captioned chapter 11 cases of ADPT DFW Holdings, LLC, et al. (collectively, the “Debtors”), in substantially the form attached hereto as **Exhibit A** pursuant to section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) further extending the period within which the Trust may object to claims filed against the Debtors in the above-captioned cases for a period of one hundred eighty (180) days from September 25, 2021, to and including March 24, 2022. In support of the Motion, the Trust respectfully states as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and Article 12.1 of Plan (as defined below). This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue of this proceeding and this Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory and rule bases for the relief requested herein are section 105(a) and Bankruptcy Rule 9006(b)(1).

Background

4. On April 19, 2017 (the “Petition Date”), each of the Debtors filed a voluntary petition with this Court under chapter 11 of the Bankruptcy Code.

5. On September 13, 2017, the Debtors filed their *Ninth Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code* (the “Plan”) [Docket No. 719]. On September 29, 2017, the Court confirmed the Plan pursuant to the *Order Confirming Debtors’ Ninth Amended Joint Plan of Reorganized Under Chapter 11 of the Bankruptcy Code* (the

“Confirmation Order”) [Docket No. 821]. The Plan became effective on October 2, 2017 (the “Effective Date”). See Docket No. 826. Following the Effective Date of the Plan, the Trust was vested with authority to resolve the Medical Malpractice Claims, General Unsecured Claims, Subordinated Claims, and Convenience Class Claims. Confirmation Order ¶ 30.

6. According to the Plan and Confirmation Order, “the deadline to object to Claims (including Claims which may be entitled to priority under section 507 of the Bankruptcy Code) is the later of (a) one hundred eighty (180) days after the Effective Date or (b) such later date as may be fixed by this Court upon any request by the Reorganized Debtors or the Litigation Trust Trustee, as applicable, which is filed prior to the expiration of any deadline set forth herein, and to the extent any such request is timely filed, the date shall automatically be extended until the Court resolves the request to extend the deadline.” Confirmation Order ¶ 30; see Plan, Article 8.1. Therefore, pursuant to the Plan, the original Claims Objection Deadline was March 31, 2018 (the “Claims Objection Deadline”).

7. The Trust has filed several motions to extend the Claims Objection Deadline, the most recent of which was the Eighth Motion of the Adeptus Litigation Trust Pursuant to Section 105(a) of the Bankruptcy Code and Fed. R. Bankr. P. 9006(b)(1) For an Order Extending the Deadline to Object to Claims [Docket 1653] (the “Eighth Extension Motion”). On March 23, 2021, the Court entered an order granting the Eighth Extension Motion [Docket No. 1639], extending the deadline to object to claims from March 25, 2021 to September 25, 2021 (the “Current Claims Objection Deadline”).

8. On June 15, 2018, the Court entered the *Order Granting Litigation Trust’s Motion to Establish Claim Objection Procedures* [Dkt. No. 1338] (“Claims Procedures Order”). The entry of the Claims Procedures Order has greatly expedited the Trust’s ability to prosecute routine

objections to claims. Since the Eighth Extension Motion, the Trust has negotiated two additional stipulations resolving claims on a consensual basis and is in the process of negotiating a third.

Litigation Update

9. As the Court is aware, the Trust is pursuing litigation in other venues that may resolve disputed claims here and expedite the claim reconciliation process.

10. On May 17, 2019, the Trust filed a lawsuit in Delaware Chancery Court, styled *Drivetrain, LLC v. Hall, et al.*, No. 2019-0365-JYL (the “Delaware Action”), against several defendants who have filed proofs of claim that are currently pending and remain unresolved against the Debtors’ estates. In the Delaware action, the Trust seeks damages exceeding \$500 million arising from, *inter alia*, breaches of fiduciary duties that the defendants in that case owed to Debtors Adeptus Health Inc. and Adeptus Health LLC. On September 18, 2019, the defendants filed a motion to dismiss, which the Chancery Court denied on January 21, 2020. The parties have completed fact discovery and have exchanged expert witness reports. Per the current scheduling order in that case, the Trust anticipates that trial will occur within the year.

11. On May 17, 2019, the Trust also filed the lawsuit styled *Drivetrain, LLC v. Hall, et al.*, No. 4:19-cv-371 (the “Texas Action”), in the United States District Court for the Eastern District of Texas. In that action, the Trust sought over \$50 million in damages caused by breaches of the fiduciary duties that Thomas Hall, Timothy Fielding, and Graham Cherrington owed to First Choice ER, LLC, as its Chief Executive Officer, Chief Financial Officer, and Chief Operating Officer, respectively.

12. The Trust has since reached settlements with Messrs. Fielding, Cherrington, and Hall, in connection with both the Delaware Action and the Texas Action. Those settlements’ terms include resolving their claims against the Debtors’ estates, as set forth in the Stipulations and

Agreed Orders that this Court entered on February 10, 2020 [Docket No. 1617], on May 29, 2020 [Docket No. 1630], and on December 10, 2020 [Docket No. 1645]. Those settlements also resulted in the Trust's dismissal of the Texas Action.

13. The Trust has also now settled claims in the Delaware Action against Larry Richard Covert and Covert Family Limited Partnership (the "Covert Parties"). The Covert Parties had been creditors of the Debtors' estates. *See* Claim Nos. 792, 1256, and 1695. The terms of the Trust's settlement with the Covert Parties include resolving their claims against the Debtors' estates, as set forth in the *Stipulation and Agreed Order* that this Court entered on July 21, 2021 [Docket No. 1671].

14. In addition, the Trust negotiated and settled the claims of PST Services LLC, which were filed in the amount of \$5,155,144.50 for \$340,000.00 as set forth in the *Stipulation and Agreed Order* that this Court entered on July 16, 2021 [Docket No. 1670].

15. While the Trust has reconciled the vast majority of unsecured claims filed in these cases, the claims reconciliation process remains ongoing. Specifically, the Trust is in the process of reviewing disputed contingent, litigation, and lease rejection claims, among other categories, which, in some cases, are contingent on pending non-bankruptcy litigation including those described above and pending pre-petition class actions filed outside of the Bankruptcy Court that are still pending. On December 11, 2020, the Trust filed its 20th and 21st Omnibus Claims Objections [Docket Nos. 1646 and 1647, respectively], which are currently pending and which, as to certain claimants, an extension of time to respond has been granted to allow for discussions regarding a consensual resolution of such claims.

16. A further extension of time of the Current Claims Objection Deadline will permit the Trust the ability to reach out to disputed claimants in an effort to resolve claims prior to filing

claim objections to the extent possible. Therefore, the Trust respectfully submits that a further extension is in the best interest of the Trust and its beneficiaries as it will aid the efficient resolution of the remaining disputed claims.

Relief Requested

17. By this Motion and pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9006(b)(1), the Trust seeks an extension of the Current Claims Objection Deadline for a period of one hundred eighty (180) days from September 25, 2021, to and including March 24, 2022.

18. The Trust further requests that the order approving this Motion be without prejudice to the rights of the Trust to seek further extensions of the applicable claim objection deadline.

Basis for Relief

19. Section 105(a) of the Bankruptcy Code provides that “the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Furthermore, nothing in the Bankruptcy Code may be construed to preclude the Court from “taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.” *Id.*

20. Bankruptcy Rule 9006(b)(1) provides:

[W]hen an act is required or allowed to be done at or within a specified period . . . by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefore is made before expiration of the period originally prescribed or as extended by a previous order. . . .

Fed. R. Bankr. P. 9006(b)(1). The Trust is making the request in this Motion before the Current Claims Objection Deadline and, accordingly, per the Confirmation Order, the Claims Objection Deadline “shall automatically be extended until the Court resolves the request to extend the

deadline. An automatic extension under this rule shall not require the issuance or entry of an order extending the time.” Confirmation Order ¶ 30; *see also* Bankruptcy Rule 9006(b)(1).

21. Although Bankruptcy Rule 9006 does not define “cause,” it has been noted that “courts should be liberal in granting extensions of time sought before the period to act has elapsed, as long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions has not been abused” 10 *Collier on Bankruptcy* (Alan N. Resnick & Henry J. Sommer, eds., 15th ed. rev. 2009) at 9006-14.

22. In the context of determining whether “cause” exists regarding requests for extension of time, courts have considered such factors as the size and complexity of the issues involved, the debtors’ good faith progress in resolving issues, the amount of time elapsed in the case, and whether any prejudice will result to the creditors. *See, e.g., In re Express One Int’l, Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996).

23. The Trust submits that cause exists to extend the Current Claims Objection Deadline. The Trust is continuing the claims reconciliation process, and while it has made substantial progress and has filed twenty-one omnibus objections to date, the Trust requires additional time to conclude the review and reconciliation of claims, and to attempt to resolve any disputed claims consensually. The Trust will endeavor to resolve disputed claims consensually.

24. The Trust submits that the requested extension will not prejudice the Debtors’ creditors or other parties in interest. To the contrary, granting the requested extension will assist the Trust in fairly and properly administering the Trust and resolving claims consensually to the extent possible. As such, the Trust respectfully submits that an extension of the Current Claims Objection Deadline for an additional period of 180 days from September 25, 2021, to and including March 24, 2022 is warranted.

25. Courts in this district have granted similar relief to that requested herein in other chapter 11 cases. *See, e.g., In re Dependable Auto Shippers, Inc.*, Case No. 16-34855 (Bankr. N.D. Tex. Oct. 30, 2017) (granting liquidating trustee's motion to extend claims objection deadline for approximately 180 days); *In re Energy & Exploration Partners, Inc.*, Case No. 15-44931 (Bankr. N.D. Tex. Sept. 7, 2016) (granting reorganized debtors' and creditor trust's motion to extend claims objection deadline for approximately six months).

Notice

26. The Trust has provided notice of this Motion to (i) the Office of the United States Trustee; (ii) counsel to the Reorganized Debtors; and (ii) any persons who have filed a request to receive documents pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Trust respectfully submits that no further notice is necessary.

Conclusion

WHEREFORE, for the reasons stated, the Trust requests the Court enter the proposed order granting the Motion, substantially in the form attached hereto as **Exhibit A**, and grant such other and further relief as is just and proper.

Dated: August 25, 2021

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Steven W. Golden

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Counsel for the Adeptus Litigation Trust

Exhibit A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

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

**ORDER GRANTING NINTH MOTION OF THE ADEPTUS LITIGATION
TRUST FOR AN ORDER EXTENDING THE DEADLINE TO OBJECT TO CLAIMS**
[Relates to Docket No. ____]

Upon consideration of the *Ninth Motion of the Adeptus Litigation Trust for an Order Extending the Deadline to Objection to Claims* (the “Motion”)¹ filed by the Adeptus Litigation Trust (the “Trust”) and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that no other or further notice need be provided; and

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

the Trust has shown good, sufficient and sound justification for the relief requested in the Motion and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, the Court hereby finds that the Motion should be granted as provided herein,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. The Current Claims Objection Deadline is extended to and including March 24, 2022.
3. This Order shall be without prejudice to the Trust's right to seek a further extension or extensions of the March 24, 2022 claims objection deadline.
4. This Court shall retain jurisdiction over any and all matters arising from the interpretation or implementation of this Order.

END OF ORDER