

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

In re:	)	Chapter 11
	)	
GULF COAST HEALTH CARE, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 21-11336 (KBO)
	)	
Debtors.	)	Jointly Administered
	)	
	)	Obj. Deadline: 11/26/21 at 4:00 p.m. (ET)
	)	Hrg. Date: 12/2/21 at 10:00 a.m. (ET)

**MOTION OF DEBTORS FOR ENTRY OF ORDER (A) APPROVING  
DISCLOSURE STATEMENT; (B) SCHEDULING HEARING ON CONFIRMATION  
OF PLAN; (C) ESTABLISHING DEADLINES AND PROCEDURES FOR (I) FILING  
OBJECTIONS TO CONFIRMATION OF PLAN, (II) CLAIM OBJECTIONS, AND  
(III) TEMPORARY ALLOWANCE OF CLAIMS FOR VOTING PURPOSES;  
(D) DETERMINING TREATMENT OF CERTAIN UNLIQUIDATED, CONTINGENT,  
OR DISPUTED CLAIMS FOR NOTICE, VOTING, AND DISTRIBUTION PURPOSES;  
(E) SETTING RECORD DATE; (F) APPROVING (I) SOLICITATION PACKAGES  
AND PROCEDURES FOR DISTRIBUTION, (II) FORM OF NOTICE OF HEARING  
ON CONFIRMATION AND RELATED MATTERS, AND (III) FORMS OF  
BALLOTS; (G) ESTABLISHING VOTING DEADLINE AND PROCEDURES FOR  
TABULATION OF VOTES; AND (H) GRANTING RELATED RELIEF**

Gulf Coast Health Care, LLC (“**Gulf Coast**”) and certain of its affiliates and subsidiaries, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), hereby move (this “**Motion**”) for entry of an order substantially in the form attached hereto as **Exhibit A** (the “**Solicitation Procedures Order**”), granting the relief described below. In support of the Motion, the Debtors respectfully represent as follows:

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<sup>1</sup> The last four digits of Gulf Coast Health Care, LLC’s federal tax identification number are 9281. There are 62 Debtors in these chapter 11 cases, which cases are being jointly administered for procedural purposes only. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent at <https://dm.epiq11.com/GulfCoastHealthCare>. The location of Gulf Coast Health Care, LLC’s corporate headquarters and the Debtors’ service address is 40 South Palafox Place, Suite 400, Pensacola, FL 32502.

### **RELIEF REQUESTED**

1. By the Motion, the Debtors respectfully request entry of the Solicitation Procedures Order (a) approving a disclosure statement; (b) scheduling a hearing on confirmation of a plan; (c) establishing deadlines and procedures for (i) filing objections to confirmation of the plan, (ii) claim objections, and (iii) temporary allowance of claims for voting purposes; (d) determining the treatment of certain unliquidated, contingent, or disputed claims for notice, voting, and distribution purposes; (e) setting a record date; (f) approving (i) solicitation packages and procedures for distribution, (ii) the form of notice of the hearing on confirmation and related matters, and (iii) forms of ballots; (g) establishing a voting deadline and procedures for tabulation of votes; and (h) granting related relief.

### **JURISDICTION AND VENUE**

2. The Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

3. The legal predicates for the relief requested herein are sections 105, 1125, 1126, and 1128 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rule(s) 2002, 3003, 3017, 3018, 3020, and 9006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 3017-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”).

4. The Debtors confirm their consent, pursuant to Local Rule 9013-1(f), to the entry of a final order by the Court in connection with the Motion in the event that it is later determined

that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

### **BACKGROUND**

5. On October 14, 2021 (the “**Petition Date**”), each Debtor commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code (collectively, the “**Chapter 11 Cases**”). The Chapter 11 Cases are being jointly administered for procedural purposes only.

6. The Debtors continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

7. On October 25, 2021, the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) appointed an Official Committee of Unsecured Creditors in the Chapter 11 Cases (the “**Committee**”) pursuant to Bankruptcy Code section 1102(a) [Docket No. 111]. No trustee or examiner has been appointed in the Chapter 11 Cases.

8. Additional information regarding the Debtors and these Chapter 11 Cases, including the Debtors’ business operations, capital structure, financial condition, and the reasons for and objectives of these Chapter 11 Cases, is set forth in the *Declaration of M. Benjamin Jones in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 16] (the “**First Day Declaration**”).

### **BASIS FOR RELIEF REQUESTED AND APPLICABLE AUTHORITY**

9. On October 28, 2021, the Debtors filed the *Debtors’ Joint Plan of Liquidation under Chapter 11 of the Bankruptcy Code* [Docket No. 124] (as the same may be amended, modified, or supplemented from time to time, the “**Plan**”)<sup>2</sup> and the *Disclosure Statement with Respect to the Debtors’ Joint Plan of Liquidation under Chapter 11 of the Bankruptcy Code*

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan.

[Docket No. 129] (as the same may be amended, modified, or supplemented from time to time, the “**Disclosure Statement**”). The hearing to consider the adequacy of the Disclosure Statement (the “**Disclosure Statement Hearing**”) has been set for December 2, 2021 at 10:00 a.m. (Eastern Time). To facilitate consideration of the Disclosure Statement and the Plan, the Debtors hereby seek entry of the Solicitation Procedures Order.

10. As discussed in more detail below, the Debtors propose to solicit votes on the Plan according to the following schedule:

Key Step	Date
Plan and Disclosure Statement Filed	10/28/2021
Disclosure Statement Objection Deadline	11/26/2021
Disclosure Statement Hearing	12/2/2021
Voting Record Date	12/10/2021
Deadline for Service of Confirmation Hearing Notice	12/16/2021
Claim Objection Deadline (for voting purposes)	12/23/2021
Rule 3018(a) Motion Deadline	12/30/2021
Plan Supplement Deadline	1/7/2022
Plan Objection Deadline	1/13/2022
Voting Deadline	1/13/2022
Voting Certification Deadline	1/17/2022
Confirmation Hearing	1/20/2022

#### **I. Approval of the Disclosure Statement**

11. Bankruptcy Code section 1125 requires a bankruptcy court to approve a written disclosure statement prior to allowing a party to solicit acceptances for a chapter 11 plan. *See* 11 U.S.C. § 1125(b). To approve a disclosure statement, a court must find that the disclosure statement contains “adequate information,” which is defined as “information of a kind, and in sufficient detail, . . . 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)(1).

12. The primary purpose of a disclosure statement is to provide information that is “reasonably practicable” to permit an “informed judgment” by those entitled to vote on the plan.

*See Century Glove, Inc. v. First Am. Bank of New York*, 860 F.2d 94, 100 (3d Cir. 1988) (“§ 1125 seeks to guarantee a minimum amount of information to the creditor asked for its vote”); *see also Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. Gen. Motors Corp.*, 337 F.3d 314, 321 (3d Cir. 2003).

13. Courts have broad discretion in determining whether a disclosure statement contains “adequate information,” employing a flexible approach based on the unique facts and circumstances of each case. *See Oneida Motor Freight, Inc. v. United Jersey Bank (In re Oneida Motor Freight, Inc.)*, 848 F.2d 414, 417 (3d Cir. 1988) (“From the legislative history of § 1125, we discern that adequate information will be determined by the facts and circumstances of each case.”); *Lisanti v. Lubetkin (In re Lisanti Foods, Inc.)*, 329 B.R. 491, 507 (D.N.J. 2005), *aff’d*, 241 F. App’x 1 (3d Cir. 2007) (“Section 1125 affords the Bankruptcy Court substantial discretion in considering the adequacy of a disclosure statement”); *In re River Village Assocs.*, 181 B.R. 795, 804 (E.D. Pa. 1995) (“Under § 1125(a), the Bankruptcy Court is thus given substantial discretion in considering the adequacy of a disclosure statement.”).

14. Employing a flexible approach to approval of disclosure statements, courts have identified several categories of information which, based on the facts of a particular case, should typically be included in a disclosure statement. *See, e.g., In re Scioto Valley Mtg. Co.*, 88 B.R. 168, 170-71 (Bankr. S.D. Ohio 1988) (setting forth a non-exhaustive list of 19 categories of information that may be included in a disclosure statement). Here, the Disclosure Statement, subject to being updated and/or amended prior to any hearing thereon, contains adequate information within the meaning of Bankruptcy Code section 1125 and, accordingly, should be approved by the Bankruptcy Court. Specifically, the Disclosure Statement contains descriptions and summaries of, among other things: (a) the business of the Debtors; (b) significant events that

have occurred in the Chapter 11 Cases and leading up to the Chapter 11 Cases; (c) the Plan; (d) the treatment of creditors under the Plan; (e) which parties-in-interest are entitled to vote; (f) distributions to be made under the Plan; (g) the projected recoveries by creditors under the Plan; (h) the means for implementing the Plan; (i) certain risk factors affecting the Plan; and (j) federal tax consequences of the Plan.

15. The Debtors submit that the Disclosure Statement contains “adequate information” as that phrase is defined in Bankruptcy Code section 1125. Accordingly, the Debtors request that the Disclosure Statement be approved.

## **II. Establishment of Confirmation Hearing Date**

16. Bankruptcy Code section 1128(a) provides that “[a]fter notice, the court shall hold a hearing on confirmation of a plan.” 11 U.S.C. § 1128(a). Bankruptcy Rule 3017(c) provides that “[o]n or before approval of the disclosure statement, the court . . . may fix a date for the hearing on confirmation.” Fed. R. Bankr. P. 3017(c). Additionally, Bankruptcy Rule 2002(b) requires at least 28 days’ notice by mail to all creditors and indenture trustees of the time fixed for filing objections to and the hearing to consider confirmation of a chapter 11 plan. *See* Fed. R. Bankr. P. 2002(b).

17. In accordance with the provisions of Bankruptcy Code section 1128(a) and Bankruptcy Rules 2002 and 3017, the Debtors request that the Court set **January 20, 2022 at 10:00 a.m. (Eastern Time)** (the “**Confirmation Hearing Date**”), as the date and time for the commencement of the hearing on confirmation of the Plan (the “**Confirmation Hearing**”). The Debtors also request that the Court order that the Confirmation Hearing may be continued from time to time by announcing such continuance in open court or otherwise, without further notice to parties-in-interest.

**III. Deadlines and Procedures for (i) Filing Objections to Confirmation of Plan; (ii) Claims Objections; and (iii) Temporary Allowance of Claims for Voting Purposes**

**A. Deadline and Procedures for Filing Objections to Confirmation of Plan**

18. Bankruptcy Rule 3020(b)(1) provides that objections to confirmation of a proposed plan must be filed with the bankruptcy court and served on the debtor, the trustee, the proponent of the plan, any committee appointed under the Bankruptcy Code, and on any other entity designated by the Bankruptcy Court, “within a time fixed by the court.” Fed. R. Bankr. P. 3020(b)(1). The Debtors request that the Court establish **January 13, 2022 at 4:00 p.m. (Eastern Time)** as the deadline for filing and serving objections to the Plan (the “**Plan Objection Deadline**”). The Debtors request that the Court consider only timely filed and served objections to confirmation of the Plan and that objections not timely filed and served in accordance with the provisions of the immediately following paragraph be overruled.

19. The Debtors further request that the Court direct that objections to confirmation of the Plan, if any, (a) be made in writing; (b) comply with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules; (c) state the name and address of the objecting party and the nature and amount of any claim or interest asserted by such party against the Debtors, their estates, or their property; (d) state with particularity the legal and factual bases and nature of any objection to the Plan; (e) be filed with the Court, and served on the following parties (collectively, the “**Notice Parties**”), so as to be received on or before the Plan Objection Deadline: (i) Gulf Coast Health Care, LLC, c/o Ankura Consulting Group, LLC, 485 Lexington Avenue, 10th Floor, New York, NY 10017 (Attn: M. Benjamin Jones); (ii) proposed counsel to the Debtors, McDermott Will & Emery LLP, 444 West Lake Street, Suite 4000, Chicago, IL 60606 (Attn: Daniel M. Simon and Emily C. Keil), and 1007 North Orange Street, 10th Floor, Wilmington, DE 19801 (Attn: David R. Hurst); (iii) counsel for the Omega Entities, Weil Gotshal & Manges LLP, 767

Fifth Avenue, New York, NY 10153 (Attn: Gary Holtzer, Robert Lemons, and Jason Hufendick), and Ferguson Braswell Fraser Kubasta PC, 2500 Dallas Parkway, Suite 600, Plano, TX 75093 (Attn: Leighton Aiken) and Morris Nichols Arsht & Tunnell, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, DE 19899 (Attn: Eric D. Schwartz); (iv) counsel for New Ark Capital, LLC, DLA Piper LLP (US), 1900 N. Pearl Street, Suite 2200, Dallas, TX 75201 (Attn: James Muenker); (v) counsel for Barrow Street Capital, LLC and its affiliates, Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, NY 10019 (Attn: Kelley Cornish and Alice Eaton); (vi) counsel for Eagle Arc Partners LLC (f/k/a BM Eagle Holdings), Arent Fox LLP, 1301 Avenue of the Americas, 42nd Floor, New York, NY 10019 (Attn: George Angelich and Michael Blass), and Fenigstein & Kaufman, APC, 1900 Avenue of the Stars, Suite 2300, Los Angeles, CA 90067 (Attn: S. Jack Fenigstein); and (vii) proposed counsel to the Committee; and (viii) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attn: Joseph J. McMahon, Jr.).

**B. Deadline and Procedures for Filing Objections to Claims for Voting Purposes**

20. The Debtors request that the Court set **December 23, 2021 at 4:00 p.m. (Eastern Time)** (the “**Claims Objection Deadline**”) as the deadline for filing and serving objections to claims solely for the purposes of voting on the Plan (each, a “**Claim Objection**”). Such Claims Objection Deadline, however, will not apply to claims objections which may be asserted for purposes other than voting on the Plan. The Debtors further request that the Court direct that Claims Objections: (a) be made in writing; (b) comply with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules; (c) state the name and address of the party asserting the Claims Objections; (d) state with particularity the legal and factual bases for the Claims



Objections; and (e) be filed with the Court, and served on the Notice Parties, so as to be received no later than the Claims Objection Deadline.

**C. Deadline and Procedures for Temporary Allowance of Claims for Voting Purposes**

21. Bankruptcy Rule 3018(a) provides in relevant part that “[n]otwithstanding objection to a claim or interest, the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan.” Fed. R. Bankr. P. 3018(a). The Debtors propose that the Court use its power under Bankruptcy Code section 105(a) and fix **December 30, 2021 at 4:00 p.m. (Eastern Time)** (the “**Rule 3018(a) Motion Deadline**”) as the deadline for filing and serving such motions pursuant to Bankruptcy Rule 3018(a) (the “**Rule 3018(a) Motions**”).

22. The Debtors further request that the Court direct that Rule 3018(a) Motions: (a) be made in writing; (b) comply with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules; (c) state the name and address of the party asserting the Rule 3018(a) Motion; (d) state with particularity the legal and factual bases for the Rule 3018(a) Motion; and (e) be filed with the Court, and served on the Notice Parties, so as to be received no later than the Rule 3018(a) Motion Deadline.

23. The Debtors propose that any party timely filing and serving a Rule 3018(a) Motion be provided a ballot and be permitted to cast a provisional vote to accept or reject the Plan. The Debtors further propose that if, and to the extent that, the Debtors and such party are unable to resolve the issues raised by the Rule 3018(a) Motion prior to the Confirmation Hearing, such Rule 3018(a) Motion be considered by the Court at the Confirmation Hearing, and the Court determine whether the provisional ballot should be counted as a vote on the Plan and,

if so, the amount, if any, in which the party filing the Rule 3018(a) Motion will be entitled to vote.

24. Requiring the Rule 3018(a) Motions to be filed by the Rule 3018(a) Motion Deadline will afford the Debtors sufficient time to consider and, if necessary, contest (or if appropriate, seek to resolve), the Rule 3018(a) Motions and will help to ensure that an accurate tabulation of ballots is completed by the Confirmation Hearing Date.

**D. Treatment of Certain Unliquidated, Contingent, or Disputed Claims for Notice, Voting, and Distribution Purposes**

25. Pursuant to Bankruptcy Code section 105(a), Bankruptcy Rules 2002(a)(7) and 3003(c)(2), and any order of the Court establishing a deadlines (the “**Bar Dates**”) for filing proofs of claim against the Debtors (the “**Bar Date Order**”),<sup>3</sup> creditors whose claims are not scheduled or who hold claims that are scheduled as disputed, contingent or unliquidated are required to timely file proofs of claim by the applicable Bar Date in order to be treated as creditors with respect to such claims for voting and distribution purposes.

26. For purposes of this Motion, “Non-Voting Claims” will mean claims which (a) are scheduled in Debtors’ schedules of assets and liabilities (as the same may be amended, the “**Schedules**”) as disputed, contingent, or unliquidated and which are not the subject of a timely-filed proof of claim, or a proof of claim deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or other order of the Court, or otherwise deemed timely filed under applicable law; or (b) are not scheduled and are not the subject of a timely-filed proof of claim, or a proof of claim deemed timely filed with the Bankruptcy Court pursuant to either

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<sup>3</sup> The Debtors filed the *Motion of Debtors for Entry of Order Pursuant to Bankruptcy Code Sections 105(a), 501, 502, 503, and 1111(a), Bankruptcy Rules 2002 and 3003(c)(3), and Local Rules 1009-2 and 2002-1(e) (I) Establishing Bar Dates for Filing Claims Against the Debtors and (II) Approving Form and Manner of Notice Thereof* [Docket No. 109] on October 22, 2021 (the “**Bar Date Motion**”), which seeks to establish the general bar date in the Chapter 11 Cases as December 10, 2021.

the Bankruptcy Code or any order of the Court, or otherwise deemed timely filed under applicable law.

27. The Debtors request that the Court direct that creditors holding Non-Voting Claims be denied treatment as creditors with respect to such claims for purposes of (a) voting on the Plan, (b) receiving distributions under the Plan, and (c) receiving notices, other than by publication, regarding the Plan.

28. Voting Procedures. The Debtors propose to use the following hierarchy for purposes of determining the amount of a claim used to calculate acceptance or rejection of the Plan under Bankruptcy Code section 1126:

- a. if an order has been entered by the Court determining the amount of such claim, whether pursuant to Bankruptcy Rule 3018 or otherwise, then in the amount prescribed by the order;
- b. if no such order has been entered, then in the liquidated amount contained in a timely-filed proof of claim that is not the subject of an objection as of the Claims Objection Deadline; and
- c. if no such proof of claim has been timely filed, then in the liquidated, noncontingent, and undisputed amount contained in the Debtors' Schedules.

29. In addition, the Debtors propose to use the following conditions for purposes of determining the voting amounts and/or classifications:

- a. if a claim is partially liquidated and partially unliquidated, such claim will be allowed for voting purposes only in the liquidated amount;
- b. if a scheduled or filed claim has been paid, such claim will be disallowed for voting purposes; and
- c. the holder of a timely-filed proof of claim that is filed in a wholly unliquidated, contingent, disputed, and/or unknown amount (as determined on the face of the claim or after reasonable review by the Debtors or the Voting Agent), and is not the subject of an objection as of the Claims Objection Deadline, is entitled to vote in the amount of \$1.00.

- d. if a proof of claim has been amended by a later-filed proof of claim that is filed on or prior to the Voting Record Date (as defined below), the later-filed amending claim will be entitled to vote in a manner consistent with these tabulation rules, and the earlier filed claim will be disallowed for voting purposes, regardless of whether the Debtors have objected to such amended claim.

**E. Establishment of Record Date**

30. Bankruptcy Rule 3017(d) provides that, “the date the order approving the disclosure statement is entered” will be the record date for determining the “holders of stock, bonds, debentures, notes and other securities” entitled to receive ballots and materials specified in Bankruptcy Rule 3017(d). The Court may approve a different record date for cause. *See* Bankruptcy Rule 3017(d).

31. The Debtors request that this Court exercise its power and authority under Bankruptcy Code section 105(a) and set **December 10, 2021** as the record date (the “**Voting Record Date**”) for determining (a) creditors and equity holders entitled to receive Solicitation Packages and related materials, if any, and (b) creditors entitled to vote to accept or reject the Plan and the creditor’s corresponding claim, notwithstanding anything to the contrary in the Bankruptcy Rules. As noted above, by the Bar Date Motion the Debtors have requested that the Court establish December 10, 2021 as the general bar date in the Chapter 11 Cases. By also establishing the Voting Record Date as December 10, 2021, creditors that file proofs of claim, but were not included in the Debtors Schedules, will nonetheless receive solicitation packages.

**F. Content and Transmittal of Solicitation Packages, Including Ballots and Non-Voting Packages; Approval of Forms of Notice and Ballots**

32. Bankruptcy Rule 3017(d) provides that, upon approval of a disclosure statement, a debtor-in-possession “shall mail to all creditors and equity security holders” and the United States Trustee:

- a. the plan or a court-approved summary of the plan;

- b. the disclosure statement approved by the court;
- c. the notice of the time within which acceptances and rejection of the plan may be filed; and
- d. any other information as the court may direct, including any court opinion approving the disclosure statement or a court-approved summary of the opinion.

33. Bankruptcy Rule 3017(d) further requires that a notice of the time for filing objections to and the hearing on confirmation of the plan be mailed to all creditors and equity security holders pursuant to Bankruptcy Rule 2002(b) and that a form of ballot conforming to the appropriate Official Form be mailed to creditors and equity security holders entitled to vote on the Plan.

**i. The Confirmation Hearing Notice**

34. On or before December 16, 2021, the Debtors propose to mail or cause to be mailed by first-class mail to (a) all of their known creditors; (b) equity security holders as of the Voting Record Date; and (c) all other entities required to be served under Bankruptcy Rules 2002 and 3017, a notice of, *inter alia*, the Confirmation Hearing substantially in the form attached to the Solicitation Procedures Order as Exhibit A (the “**Confirmation Hearing Notice**” and, the date on which such notice is mailed, the “**Confirmation Hearing Notice Mailing Date**”), which form the Debtors hereby request the Court approve.

**ii. The Non-Voting Packages**

35. Pursuant to Bankruptcy Code section 1126(f), creditors holding claims in Class 2 (Other Secured Claims) and Class 3 (Other Priority Claims) under the Plan are unimpaired, are deemed to have accepted the Plan and are not entitled to vote. Pursuant to Bankruptcy Code section 1126(g), holders of claims or interests in Class 8 (Intercompany Claims) under the Plan are impaired, are deemed to have rejected the Plan, and are not entitled to vote. Holders of

interests in Class 9 (Existing Equity Interests) are either unimpaired and deemed to have accepted the Plan or impaired and deemed to have rejected the plan, and are not entitled to vote. Accordingly, the Debtors submit that they should not be required to transmit Solicitation Packages to holders of claims or interests in Classes 2, 3, 8, and 9 (collectively, the “**Non-Voting Classes**”) under the Plan. Therefore, the Debtors propose to mail or cause to be mailed by first-class mail to holders of claims in Class 2 and Class 3, who are unimpaired and deemed to have accepted the Plan, a copy of the Notice Of Non-Voting Status With Respect To Unimpaired Classes, substantially in the form attached to the Solicitation Procedures Order as Exhibit B-1. The Debtors propose to mail or cause to be mailed by first-class mail to holders of claims in Class 8, who are impaired and deemed to have rejected the Plan, a copy of the Notice of Non-Voting Status With Respect To Impaired Classes, substantially in the form attached to the Solicitation Procedures Order as Exhibit B-2. The Debtors propose to mail or cause to be mailed by first-class mail to holders of interests in Class 9, who are impaired and deemed to reject the Plan or unimpaired and deemed to accept the Plan, a copy of the Notice of Non-Voting Status With Respect to Unimpaired/Impaired Classes, substantially in the form attached to the Solicitation Procedures Order as Exhibit B-3 (the Notice Of Non-Voting Status With Respect To Unimpaired Classes, the Notice of Non-Voting Status With Respect To Impaired Classes, and the Notice of Non-Voting Status With Respect To Unimpaired/Impaired Classes, each a “**Non-Voting Notice**” and, each Non-Voting Notice together with the Confirmation Hearing Notice, a “**Non-Voting Package**”). The Non-Voting Packages will be mailed on the Confirmation Hearing Notice Mailing Date, or as soon as reasonably practicable thereafter.

36. The Debtors submit that such limited disclosure is consistent with Bankruptcy Rule 3017(d). Nonetheless, out of an abundance of caution, the Debtors request that the Non-

Voting Packages be deemed to constitute adequate alternative disclosure statements to impaired non-voting classes under 11 U.S.C. § 1125(c) and summary plans under Bankruptcy Rule 3017(d).

**iii. The Solicitation Packages**

37. In addition, on the Confirmation Hearing Notice Mailing Date, or as soon as reasonably practicable thereafter, the Debtors propose to mail or cause to be mailed by first-class mail to holders of claims in Class 1 (New Ark Secured Claim), Class 4 (Omega Unsecured Claim), Class 5 (Subordinated Seller Note Claims), Class 6 (Service Provider Claims), and Class 7 (General Unsecured Claims), who are entitled to vote, a solicitation package (the “**Solicitation Package**”) containing the following:

- a. the Confirmation Hearing Notice;
- b. the Disclosure Statement, including the Plan as Exhibit A;
- c. a copy of the order approving the Disclosure Statement (without exhibits) (*i.e.*, the Solicitation Procedures Order);
- d. an appropriate ballot (the “**Ballot**”) (as described below);
- e. a pre-addressed return envelope; and
- f. such other materials as the Court may direct or approve.

38. The Debtors request permission, at their discretion, to provide the Disclosure Statement, including the Plan as Exhibit A, and the Solicitation Procedures Order (without exhibits) in an Adobe Acrobat (PDF) standard format on a flash drive or CD-ROM, rather than in paper copies. The Debtors further propose that parties may submit a written request to the Voting Agent if they prefer a paper copy of the Disclosure Statement and Plan, and all such requests will be fulfilled.

39. Bankruptcy Rule 3017(d) provides that ballots for accepting or rejecting a plan of reorganization should conform substantially to Official Form No. 14. The forms of ballots, attached as Exhibits C-1 through Exhibit C-5 to the Solicitation Procedures Order, for holders of claims in Classes 1, 4, 5, 6, and 7 are derived from Official Form No. 14, but include certain modifications and instructions necessary to facilitate voting and to meet the particular requirements of the Plan.<sup>4</sup>

40. The appropriate Ballot forms, as applicable, will be distributed to holders of claims who are entitled to vote to accept or reject the Plan:<sup>5</sup>

Exhibit C-1	Ballot for Class 1 New Ark Secured Claim
Exhibit C-2	Ballot for Class 4 Omega Unsecured Claim
Exhibit C-3	Ballot for Class 5 Subordinated Seller Note Claims
Exhibit C-4	Ballot for Class 6 Service Provider Claims
Exhibit C-5	Ballot for Class 7 General Unsecured Claims

41. So as to avoid duplication and reduce expense, and except as otherwise set forth herein, the Debtors propose that (a) creditors holding (i) unclassified claims or unimpaired claims and also (ii) claims in a class that is designated as impaired and entitled to vote under the Plan receive only the Solicitation Package appropriate for the applicable impaired class; and (b) creditors who have filed duplicate claims in any given class (i) receive only one Solicitation Package and one Ballot for voting their claims with respect to that class, and (ii) be entitled to vote their claim only once with respect to that class.

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<sup>4</sup> The Ballots will be preprinted to include the non-contingent amount carried in the claims data base maintained by the Voting Agent as the claim amount to be counted for voting purposes.

<sup>5</sup> The Debtors propose that Ballots not be sent to any creditors who (i) failed to timely file proofs of claim, and whose claims are listed as contingent, unliquidated or disputed in the Debtors' Schedules, or (ii) are otherwise not entitled to vote in accordance with the procedures set forth herein.



42. When No Notice or Transmittal Necessary. Because sending Solicitation Packages and other notices to outdated or otherwise improper addresses results in needless expense to the Debtors' estates, the Debtors request authority not to provide notice or service of any kind upon any person or entity to whom the Debtors mailed a notice of the meeting of creditors under Bankruptcy Code section 341 or notice of the bar date for filing proofs of claim and received either of such notices returned by the United States Postal Service marked "undeliverable as addressed," "moved—left no forwarding address," "forwarding order expired," or similar marking or reason, unless the Debtors have been informed in writing by such person or entity of that person's or entity's new address.

43. The Debtors anticipate that some of the Solicitation Packages or other solicitation-related notices described herein may be returned as undeliverable. The Debtors request that they not be required to re-mail undelivered Solicitation Packages or other undeliverable solicitation-related notices that were returned marked "undeliverable as addressed," "moved—left no forwarding address," "forwarding order expired," or similar marking or reason, unless the Debtors have been informed in writing by such person or entity of that person's or entity's new address.

44. The foregoing procedures regarding the provision of notice of the Confirmation Hearing and related matters comply with Bankruptcy Rules 2001 and 3017. Accordingly, the Debtors request that the Court approve the above-described notice as good and sufficient in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

45. Publication Notice. Bankruptcy Rule 2002(l) permits the Court to "order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the notice." Fed. R. Bankr. P. 2002(l). The Debtors request the Court authorize the Debtors to

publish notice of the Confirmation Hearing, substantially in the form of Exhibit D to the Solicitation Procedures Order, once within ten business days after the entry of the Solicitation Procedures Order in the national edition of *The Wall Street Journal*, *The New York Times*, or *USA Today*. The Debtors believe that publication of this notice will provide sufficient notice to persons and entities who do not receive the Confirmation Hearing Notice by mail.

**G. Establishment of Voting Deadline and Procedures for Tabulation of Votes**

**i. Voting Agent**

46. By separate application, the Debtors will seek the Court's authorization to retain Epiq Corporate Restructuring, LLC ("**Epiq**") as administrative agent in the Chapter 11 Cases. In connection therewith, the Debtors propose to utilize Epiq as the Debtors' solicitation and noticing agent to assist the Debtors in soliciting votes on and to provide notice of the Plan, including mailing solicitation packages and notices, collecting and tabulating ballots cast on the Plan, and certifying to the Court the results of the balloting (the "**Voting Agent**").

**ii. Voting Deadline**

47. Bankruptcy Rule 3017(c) requires the Court to "fix a time within which the holders of claims and interests may accept or reject the plan ...." The Debtors request that the Court fix **January 13, 2022 at 4:00 p.m. (Eastern Time)** (the "**Voting Deadline**") as the deadline by which all Ballots for accepting or rejecting the Plan must be received by the Voting Agent if they are to be counted. The Debtors also request that they be permitted, in their sole discretion, to extend, by oral or written notice to the Voting Agent, the period of time during which Ballots will be accepted for any reason from any creditor or class of creditor.

**iii. Procedures for Vote Tabulation**

48. To avoid uncertainty, to provide guidance to the Debtors and the Voting Agent, and to avoid the potential for inconsistent results, the Debtors request that the Court, pursuant to

Bankruptcy Code section 105(a), establish the guidelines set forth below for tabulating the votes to accept or reject the Plan.

49. Votes Counted. The Debtors propose that any Ballot that is properly executed and timely received, and that is cast as either an acceptance or rejection of the Plan, will be counted and will be deemed to be cast as an acceptance or rejection, as the case may be, of the Plan. The failure of a holder in classes 1, 4, 5, 6, or 7 to timely deliver a properly-executed Ballot will be deemed to constitute an abstention by such holder with respect to voting on the Plan, and such abstention will not be counted as a vote for or against the Plan.

50. For purposes of voting, classification, and treatment under the Plan, the Debtors propose that, at the election of the Debtors, (a) each holder of a claim that holds or has filed more than one claim against a Debtor in an impaired class will be treated as if such holder has only one claim against that Debtor in each applicable class; (b) the claims filed by such holder against that Debtor will be aggregated by Debtor in each applicable class; and (c) the total dollar amount of such holder's claims in each applicable class against each Debtor will be the sum of the aggregated claims of such holder against each Debtor in each applicable class.

51. For purposes of the Voting Record Date, the Debtors propose that no transfer of claims pursuant to Bankruptcy Rule 3001 will be recognized unless either (a)(i) documentation evidencing such transfer was filed with the Court on or before 21 days prior to the Voting Record Date and (ii) no timely objection with respect to such transfer was filed by the transferor; or (b) the parties to such transfer waived the 21-day period in the evidence of transfer and the evidence of transfer was docketed prior to the Voting Record Date.

52. Votes Not Counted. The Debtors further propose that the following Ballots not be counted or considered for any purpose in determining whether the Plan has been accepted or rejected:

- a. any Ballot received after the Voting Deadline (as extended by the Debtors as provided herein);
- b. any Ballot that is illegible or contains insufficient information to permit the identification of the claimant;
- c. any Ballot cast by a person or entity that does not hold a claim in a class that is entitled to vote to accept or reject the Plan;
- d. any Ballot cast for a claim which is listed in the Debtors' Schedules as contingent, unliquidated, or disputed or as zero or unknown in amount and (i) which is not the subject of a timely-filed proof of claim and (ii) for which no Rule 3018(a) Motion has been filed by the Rule 3018(a) Motion Deadline;
- e. any Ballot cast for a claim that was filed in a zero dollar amount;
- f. any Ballot that indicates neither an acceptance nor a rejection, or indicates both an acceptance and rejection, of the Plan;
- g. any Ballot that casts part of its vote in the same class to accept the Plan and part to reject the Plan;
- h. any form of Ballot other than the official form sent by the Voting Agent, or a copy thereof;
- i. any Ballot received that the Voting Agent cannot match to an existing database record;
- j. any Ballot that does not contain an original signature; *provided, however*, that for the avoidance of doubt, a Ballot submitted via the Voting Agent's Ballot portal will be deemed to contain an original signature; or
- k. any Ballot that is submitted by facsimile, email, or by other electronic means other than through the Voting Agent's Ballot portal.

53. The Debtors propose that neither the Debtors, the Voting Agent, nor any other person or entity will be under any duty to provide notification of defects or irregularities with respect to delivered Ballots. Rather, the Debtors propose that the Voting Agent may either

disregard, with no further notice, defective Ballots, or it may attempt to have defective Ballots cured.

54. The Debtors further propose that, subject to any contrary order of the Court and except as otherwise set forth herein, they may waive any defects or irregularities as to any particular Ballot at any time, either before or after the Voting Deadline, and any such waivers will be documented in the vote tabulation certification prepared by the Voting Agent.

55. Withdrawal of Vote. The Debtors propose to permit any party who has delivered a valid Ballot for the acceptance or rejection of the Plan to withdraw, subject to the Debtors' right to contest the validity of such withdrawal, such acceptance or rejection by delivering a written notice of withdrawal to the Voting Agent at any time prior to the Voting Deadline. A notice of withdrawal, to be valid, should (a) contain the description of the claim to which it relates and the aggregate amount represented by such claim(s); (b) be signed by the withdrawing party in the same manner as the Ballot being withdrawn; (c) contain a certification that the withdrawing party owns the claim(s) and possesses the right to withdraw the Ballot sought to be withdrawn; and (d) be timely received by the Voting Agent prior to the Voting Deadline.

56. Changing Votes. Notwithstanding Bankruptcy Rule 3018(a), the Debtors propose that whenever two or more Ballots that comply with these procedures are cast voting the same claim(s) prior to the Voting Deadline, the last valid Ballot received prior to the Voting Deadline will be deemed to reflect the voter's intent and thus supersede any prior Ballot without prejudice to the Debtors' right to object to the validity of the later Ballot on any basis permitted by law, including under Bankruptcy Rule 3018(a), and, if the objection is sustained, to count the first dated Ballot for all purposes. This procedure will spare the Court and the Debtors the time and

expense of responding to motions brought pursuant to Bankruptcy Rule 3018(a) attempting to show cause for changing votes.

57. No Division of Claims or Votes. The Debtors propose that the Court clarify that (a) each creditor who votes must vote the full amount of each claim voted either to accept or reject the Plan; and (b) each creditor who votes and holds multiple claims within a particular class must vote all such claims to either accept or reject the Plan. The Debtors further propose that Ballots of creditors failing to vote in the manner specified in this paragraph will not be counted for any purpose.

58. Certification of Vote. In order to provide creditors ample time to consider how to vote their claims while providing the Voting Agent sufficient time to tabulate ballots, the Debtors propose that the Voting Agent file its voting certification (the “**Voting Certification**”) on or before January 17, 2022. In addition to serving the Voting Certification on all parties listed on the master service list maintained by the Debtors in the Chapter 11 Cases, the Debtors propose to post the Voting Certification on the Debtors’ case website as soon as practicable after the Voting Certification is filed.

### **NOTICE**

59. The Debtors will provide notice of the Motion to: (a) counsel for the Omega Entities, Weil Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153 (Attn: Robert Lemons), and Ferguson Braswell Fraser Kubasta PC, 2500 Dallas Parkway, Suite 600, Plano, TX 75093 (Attn: Leighton Aiken) and Morris Nichols Arsht & Tunnell, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, DE 19899 (Attn: Eric D. Schwartz); (b) counsel for New Ark Capital, LLC, DLA Piper LLP (US), 1900 N. Pearl Street, Suite 2200, Dallas, TX 75201 (Attn: James Muenker); (c) counsel for Barrow Street Capital, LLC and its affiliates, Paul,

Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, NY 10019 (Attn: Kelley Cornish and Alice Eaton); (d) counsel for Eagle Arc Partners LLC (f/k/a BM Eagle Holdings), Arent Fox LLP, 1301 Avenue of the Americas, 42nd Floor, New York, NY 10019 (Attn: George Angelich and Michael Blass), and Fenigstein & Kaufman, APC, 1900 Avenue of the Stars, Suite 2300, Los Angeles, CA 90067 (Attn: S. Jack Fenigstein); (e) proposed counsel to the Committee; (f) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attn: Joseph J. McMahon, Jr.); and (g) all parties entitled to notice pursuant to Local Rule 2002-1(b). The Debtors submit that no other or further notice is required.

**NO PRIOR REQUEST**

60. No previous request for the relief sought herein has been made to this or any other court.

*[Remainder of Page Intentionally Left Blank]*

WHEREFORE, the Debtors respectfully request that the Court enter the Solicitation Procedures Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: Wilmington, Delaware  
October 28, 2021

**MCDERMOTT WILL & EMERY LLP**

/s/ David R. Hurst

David R. Hurst (I.D. No. 3743)  
1007 North Orange Street, 10th Floor  
Wilmington, Delaware 19801  
Telephone: (302) 485-3900  
Facsimile: (302) 351-8711  
Email: dhurst@mwe.com

- and -

Daniel M. Simon (admitted *pro hac vice*)  
Emily C. Keil (admitted *pro hac vice*)  
444 West Lake Street, Suite 4000  
Chicago, Illinois 60606  
Telephone: (312) 372-2000  
Facsimile: (312) 984-7700  
Email: dmsimon@mwe.com  
ekeil@mwe.com

*Proposed Counsel for Debtors and  
Debtors-in-Possession*