

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

<p>In re:</p> <p>GULF COAST HEALTH CARE, LLC, <i>et al.</i>,¹</p> <p style="text-align: center;">Debtors.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Chapter 11</p> <p>Case No. 21-11336 (KBO)</p> <p>Jointly Administered</p> <p>Obj. Deadline: 11/16/21 at 4:00 p.m. (ET)</p> <p>Hrg. Date: 11/23/21 at 10:00 a.m. (ET)</p>
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**MOTION OF DEBTORS FOR ENTRY OF ORDER EXTENDING
AUTOMATIC STAY TO CERTAIN NON-DEBTOR CO-DEFENDANTS**

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 (the “**Motion**”) for entry of an order substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**”), granting the relief described below. In support thereof, the Debtors respectfully represent as follows:

PRELIMINARY STATEMENT

1. The Debtors are licensed operators of 28 skilled nursing and assisted living facilities (the “**Facilities**”) in Florida, Georgia, and Mississippi in which they provide care for over 2,000 residents on a daily basis. As of the Petition Date, certain of the Debtors were named as defendants in dozens of state court lawsuits commenced prepetition (collectively, the “**Prepetition Litigation**”) for, among other things, personal injury and general liability torts. In many of those lawsuits, various non-Debtors have been named as co-defendants, including, without limitation: (i) certain non-Debtor affiliates, including Gulf Coast Health Care Holdings,

¹ 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.

LLC (“**Holdings**”) and Argent Properties, LLC (“**Argent**”); (ii) certain of the Debtors’ landlords, including Skyler Maitland LLC, OHI Asset (FL) Pensacola, LLC, and Skyler Florida LLC (collectively, the “**Omega Landlord Defendants**”); (iii) certain affiliated entities that provide goods or services to the Debtors, including Health Care Navigator LLC (“**HCN**”);² and (iv) certain current and former employees of the Debtors (collectively, the “**Employees**” and, collectively with Holdings, Argent, the Omega Landlord Defendants, and HCN, the “**Non-Debtor Co-Defendants**”).³ By the Motion, the Debtors seek entry of an order extending the automatic stay (the “**Automatic Stay**”) imposed pursuant to section 362(a) of title 11 of the United States Code (the “**Bankruptcy Code**”) to protect the Non-Debtor Co-Defendants and temporarily enjoin continued prosecution of the Prepetition Litigation until the effective date of a chapter 11 plan in the Chapter 11 Cases or further order of the Court.

2. Although the Prepetition Litigation has been stayed as to the Debtors following the commencement of the Chapter 11 Cases, the proceedings against the Non-Debtor Co-Defendants have not been stayed and the Prepetition Litigation has continued to proceed post-petition against certain of those defendants. Moreover, in several cases, plaintiffs have already filed postpetition briefing indicating their intent to proceed with the Prepetition Litigation against certain Non-Debtor Co-Defendants, notwithstanding the application of the Automatic Stay with

² The Omega Landlord Defendants, Holdings, Argent, and HCN are signatories to that certain Restructuring Support Agreement (the “**RSA**”) dated October 14, 2021 by and among the Debtors, OHI Asset Funding (DE), LLC (the “**DIP Lender**”), certain affiliates of the DIP Lender (the “**Omega Landlords**” and, together with the DIP Lender, the “**Omega Entities**”), New Ark Capital, LLC (“**New Ark**”), certain direct and indirect equity holders of the Debtors (the “**Equity Sponsors**”), and certain affiliated entities that provide services to the Debtors (the “**Service Providers**” and, collectively with the Omega Entities, New Ark, and the Equity Sponsors, the “**RSA Parties**”).

³ As reflected on Exhibit 1 to the Proposed Order, the Prepetition Litigation names various current and former employees of the Debtors, including but not limited to, various Facility administrators as well as Ms. Sheryl Wolf (“**Ms. Wolf**”), the current chief financial officer of Gulf Coast, and Mr. James Richardson (“**Mr. Richardson**”), the former president of Gulf Coast. None of the allegations against the individual employees involve intentional acts or conduct outside the scope of the individuals’ employment with the Debtors; therefore, the Debtors typically defend these suits on the individuals’ behalf.

respect to the Debtors. Thus, an extension of the Automatic Stay to cover the Non-Debtor Co-Defendants with respect to the Prepetition Litigation is necessary and appropriate for the following reasons:

- **First**, the Debtors anticipate that the Non-Debtor Co-Defendants likely will be released from potential liability under the Plan, making continuation of the Prepetition Litigation at this stage both premature and wasteful;
- **Second**, extending the Automatic Stay to the Non-Debtor Co-Defendants would relieve the Debtors' estates of the administrative burdens and costs associated with the Prepetition Litigation, including the payment of (i) defense costs for individual Non-Debtor Co-Defendants and (ii) indemnification obligations that would be owed to certain Non-Debtor Co-Defendants if the Prepetition Litigation were allowed to continue;
- **Third**, each of the Omega Landlord Defendants, Holdings, HCN, and Argent are party to the RSA and therefore share a common interest with the Debtors (and the other parties to the RSA) in the successful prosecution of the Chapter 11 Cases; and
- **Finally**, the Prepetition Litigation likely will distract the current Employees named as Non-Debtor Co-Defendants from their focus on the Debtors' restructuring efforts and the health and safety of the Debtors' residents.

3. As discussed herein, courts have consistently exercised their powers under Bankruptcy Code sections 362 and 105(a) to extend the Automatic Stay to non-debtors under similar circumstances and the Debtors request that the Court to do the same here with respect to the Non-Debtor Co-Defendants. By obtaining this relief, the Debtors hope to preserve the breathing room afforded to them by the Bankruptcy Code, thereby conserving estate resources and enabling Employees to prioritize resident care, effectuate a seamless transition of the Debtors' Facilities to new operators, and efficiently consummate the restructuring transactions contemplated by the RSA.

JURISDICTION AND VENUE

4. 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.

5. The legal predicates for the relief requested herein are Bankruptcy Code sections 105(a) and 362(a).

6. The Debtors confirm their consent, pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), 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.

RELIEF REQUESTED

7. By the Motion, the Debtors respectfully request entry of the Proposed Order, (i) extending the Automatic Stay to the Non-Debtor Co-Defendants named in the Prepetition Litigation until the effective date of a chapter 11 plan in the Chapter 11 Cases or further order from the Court and (ii) providing that the continued prosecution of the Prepetition Litigation against the Non-Debtor Co-Defendants would violate the Automatic Stay.

BACKGROUND

I. The Chapter 11 Cases

8. 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.

9. 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.

10. 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.

11. 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**”).⁴

12. On October 28, 2021, the Debtors filed their *Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code* [Docket No. 124] (as subsequently amended, supplemented, or modified, the “**Plan**”) and *Disclosure Statement with Respect to the Debtors’ Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code* [Docket No. 129] (as subsequently amended, supplemented, or modified, the “**Disclosure Statement**”), along with the *Motion of Debtors for Entry of Order (A) Approving Disclosure Statement; (B) Scheduling Hearing on*

⁴ Capitalized terms used but not otherwise defined in this Motion shall have the meanings ascribed to them in the First Day Declaration.

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 [Docket No. 144] (the “Solicitation Procedures Motion”).

II. The Prepetition Litigation

13. As of the Petition Date, the Non-Debtor Co-Defendants were named in approximately 50 lawsuits commenced prior to the Petition Date, which includes various state court lawsuits brought by former residents involving claims of personal injury and wrongful death. A schedule of the Prepetition Litigation is attached as Exhibit 1 to the Proposed Order. The Debtors have filed Suggestions of Bankruptcy, or similar notices, in the Prepetition Litigation in which the Debtors are defendants.

14. The complaints filed in the Prepetition Litigation generally name one or more Debtor entities as defendants, along with certain or all of the Non-Debtor Co-Defendants. In these lawsuits, the plaintiffs generally allege that all of the defendants owned, operated, controlled, managed, and/or provided services to the Facility at which the alleged resident injury or death occurred and generally do not distinguish between the defendants in the causes of action, instead alleging that defendants collectively caused the plaintiff harm. Although the specific defendants vary from complaint to complaint, the substance of the allegations and

characterizations of the relationships among the defendants in each case are substantially the same.

15. Following the Petition Date, certain of the plaintiffs involved in the Prepetition Litigation filed motions to reopen cases that were closed or stayed due to the commencement of the Chapter 11 Cases as well as motions to enforce release agreements in an effort to proceed against the Non-Debtor Co-Defendants while the Automatic Stay is in place with respect to the Debtors. For the reasons set forth herein, the Debtors request that the Automatic Stay be extended to the Non-Debtor Co-Defendants named in the Prepetition Litigation until the Plan's effective date or further order from the Court.

BASIS FOR RELIEF REQUESTED AND APPLICABLE AUTHORITY

16. When a debtor files for bankruptcy protection, the Automatic Stay prohibits further actions against the debtor outside of the bankruptcy court. Specifically, Bankruptcy Code section 362(a) operates to stay:

- (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
- (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
- (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
- ...
- (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title . . .

11 U.S.C. § 362(a)(1), (2), (3), (6).

17. The legislative history of Bankruptcy Code section 362 indicates that Congress intended for the scope of the Automatic Stay to be sweeping, in order to effectuate its protective purpose on behalf of debtors:

The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.

...

The automatic stay is one of the most important protections provided by the Bankruptcy laws. **Nevertheless, the Bankruptcy Courts must have the power to enjoin actions not covered by the automatic stay, in order that the bankruptcy case may proceed unembarrassed by multiple litigation.**

H.R. Rep. No. 595, 95th Cong., 1st Sess. 340 (1977) (emphasis added); S. Rep. No. 989, 95th Cong., 2d Sess. 49 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5840-41, 5973; *Midlantic Nat'l Bank v. New Jersey Dep't of Env'tl. Protection*, 474 U.S. 494, 503 (indicating that the automatic stay is “one of the most fundamental protections provided [to the debtor] by the bankruptcy laws”).

18. Although the Automatic Stay generally only applies to debtors, the Court has discretion to invoke Bankruptcy Code section 362 to stay proceedings against other non-debtor third parties if “unusual circumstances” exist, which typically arise where “there is such identity between the debtor and the third-party defendant that the debtor may be said to be the real party defendant and that a judgment against a third-party defendant will be in effect be a judgment or finding against the debtor.” *McCartney v. Integra Nat'l Bank N.*, 106 F.3d 506, 510 (3d Cir. 1997); *see also In re Philadelphia Newspapers, LLC*, 423 B.R. 98, 104 (E.D. Pa. 2010); *Am. Film Techs., Inc. v. Taritero (In re Am. Film Techs., Inc.)*, 175 B.R. 847, 851 (Bankr. D. Del.

1994) (quoting *A.H. Robins v. Piccinin*, 788 F.2d 994, 999 (4th Cir. 1986)). The Automatic Stay may also be extended to a non-debtor if the lack of an extension will result in an adverse impact on the debtor's restructuring efforts:

The broader rule here is that a debtor's stay may extend to a non-debtor only **when necessary to protect the debtor's reorganization**. The threatened harm may be to needed debtor funds (*e.g.*, when non-debtors are entitled to indemnification) or personnel (*e.g.*, when debtor needs the services of non-debtors facing crushing litigation). **The question is whether the action against the non-debtor is sufficiently likely to have a 'material effect upon . . . reorganization effort[s],'** that debtor protection requires an exception to the usual limited scope of the stay.

In re Uni-Marts, LLC, 399 B.R. 400, 416 (Bankr. D. Del. 2009) (emphasis added); *see also In re W.R. Grace & Co.*, 115 F. App'x 556, 570 (3d Cir. 2004) (internal citations omitted) (indicating that courts may also extend the stay to halt litigation against third-parties where continued litigation "could interfere with the reorganization of the debtor" or "would frustrate the statutory scheme of Chapter 11 or diminish the debtor's ability to formulate a plan of reorganization"); *McCartney v. Integra Nat'l Bank N.*, 106 F.3d at 510 (indicating that "unique circumstances" justifying extension of the automatic stay also arise "where stay protection is essential to the debtor's efforts to reorganize"). In the Third Circuit, courts have extended the automatic stay to non-debtor third parties where (i) "the non-debtor and debtor share an identity of interest such that a suit against the non-debtor is essentially a suit against the debtor" or (ii) "the third-party action will have an adverse impact on the debtor's ability to accomplish reorganization." *In re W.R. Grace & Co.*, 386 B.R. 17, 30 (Bankr. D. Del. 2008); *see also In re Philadelphia Newspapers, LLC*, 407 B.R. 606, 616 (Bankr. E.D. Pa. 2009) (granting extension of stay to non-debtors because (i) debtors owed potential indemnification obligations to their employees involved in state court litigation, such that the interests of the debtors and their employees

were identical and (ii) the diversion of resources involved with defending the pending state court litigation would divert debtors' resources and adversely impact the Debtors' attempted reorganization).

19. Because (i) the Non-Debtor Co-Defendants are expected to benefit from the Plan's third-party releases, (ii) a unity of interest exists between the Debtors and the Non-Debtor Co-Defendants, and (iii) the continuation of the Prepetition Litigation against the Non-Debtor Co-Defendants likely would distract the Employees' focus from the Debtors' restructuring efforts and resident care, the requested extension of the Automatic Stay to the Non-Debtor Co-Defendants is both necessary and appropriate.

A. The Debtors Anticipate that the Non-Debtor Co-Defendants Likely Will Benefit from the Plan's Third-Party Releases, Making Continuation of the Prepetition Litigation at This Time Both Premature and Wasteful.

20. The Debtors anticipate that the Non-Debtor Co-Defendants likely will be released from the Prepetition Litigation and other such claims under the Plan's third-party release provisions. Thus, in the Debtors' view, continuation of the Prepetition Litigation is premature, wasteful, and unnecessary at this juncture. The contemplated extension of the Automatic Stay with respect to the Non-Debtor Co-Defendants will terminate following the effective date of the Plan and therefore is of limited duration, alleviating potential prejudice to the plaintiffs involved with the Prepetition Litigation. As reflected in the Solicitation Procedures Motion, the Debtors' requested confirmation hearing date is January 20, 2022. *See* Solicitation Procedures Motion, at 4. The RSA indicates that the effective date of the Plan must occur no later than thirty days after the entry of the order confirming the Plan, meaning that the effective date of the Plan likely will occur in the last week of February 2022 (subject to the date of entry of the Confirmation Order). *See* RSA, § 6(a)(ix). Therefore, it is expected that the extension of the Automatic Stay with

respect to the Non-Debtor Co-Defendants will be limited to approximately three months from the date of entry of the Proposed Order. Moreover, to the extent that parties decline to vote in favor of the Plan and the Non-Debtor Co-Defendants are not released under the Plan, the plaintiffs involved with the Prepetition Litigation may pursue claims and causes of action against the Non-Debtor Co-Defendants after the effective date of the Plan—when doing so will no longer prejudice the Debtors’ efforts to prosecute the Chapter 11 Cases and protect the health and well-being of their residents.

B. The Unity of Interests Between the Debtors and the Non-Debtor Co-Defendants Justifies an Extension of the Automatic Stay.

i. The Debtors’ Indemnification Obligations to Certain Non-Debtor Co-Defendants Justify Extending the Automatic Stay.

21. It is undisputed that a contractual indemnification obligation between a debtor’s estate and a non-debtor creates an “identity of interest” justifying the extension of the stay to the indemnified party. *See, e.g., In re Am. Film Techs, Inc.*, 175 B.R. 847, 851 (Bankr. D. Del. 1994). The scope of the automatic stay protection “is not determined solely by whom a party chose to name in the proceeding, but rather, by who is the party with a real interest in the litigation.” *In re Kaiser Aluminum Corp., Inc.*, 315 B.R. 655, 658 (D. Del. 2004).

22. Here, certain of the Debtors are party to contractual indemnification provisions with certain of the Non-Debtor Co-Defendants. For example, Debtor Gulf Coast is subject to contractual indemnification obligations with HCN under that certain Consulting and Advisory Services Agreement dated July 1, 2010 by and among Gulf Coast and HCN (the “**HCN Agreement**”). The HCN Agreement provides, in relevant part, that:

Each Party (the “Indemnifying Party”) shall protect, defend, indemnify and hold the other Party and its shareholders, members, directors, officers, managers, members, employees or agents (collectively, the “Indemnified Party”) harmless from and against all liability, claims, actions, litigation, judgments, losses,

penalties, injuries, damages, suits, costs and/or expenses (including, but not limited to, attorneys' fees and costs and expenses of defense), incurred by the Indemnified Party arising out of, resulting from or in any way connected with the Indemnifying Party's breach of any of the terms of this Agreement, non-performance of any of its obligations hereunder or gross negligence or willful misconduct in the performance or non-performance of its obligations hereunder.

See HCN Agreement, § 9.2.

23. Thus, if the Prepetition Litigation is allowed to proceed and a judgment is entered against HCN, Debtor Gulf Coast would ultimately be responsible to pay any judgment entered against HCN, as well as attorneys' fees and expenses, pursuant to its indemnification obligations, which would increase the claims pool and dilute recoveries to creditors. This justifies an extension of the Automatic Stay to prevent continued prosecution of the Prepetition Litigation against HCN (and other Non-Debtor Co-Defendants with indemnification agreements with the Debtors).

ii. The Debtors and Certain of the Non-Debtor Co-Defendants Share a Common Interest Under the RSA, Further Justifying an Extension of the Automatic Stay.

24. As discussed above and in the First Day Declaration, the Debtors, as well as certain Non-Debtor Co-Defendants, are signatories to the RSA. Under the RSA, the Omega Landlord Defendants, Holdings, HCN, and Argent—and all other RSA signatories—have agreed to support and take all reasonable actions necessary to facilitate the implementation and consummation of the restructuring transactions in accordance with the terms of the RSA in a timely manner. Thus, all of these parties have a shared interest in the successful outcome of the Chapter 11 Cases. The Debtors are dependent upon the continued efforts of the Omega Landlord Defendants, Holdings, HCN, and Argent to facilitate the restructuring transactions contemplated by the RSA, and these parties in turn expect the Debtors to do their part to ensure that the Omega Landlord Defendants, Holdings, HCN, and Argent receive the benefit of the bargain they struck

under the RSA, including the release provisions contained therein. The Debtors thus have filed the Motion to further the purposes of the RSA, and respectfully submit that this is another basis for the requested extension of the Automatic Stay to those Non-Debtor Co-Defendants.

C. Continuation of the Prepetition Litigation May Have an Adverse Impact on the Debtors' Restructuring Efforts, Particularly with Respect to the Employees' Ability to Provide Resident Care.

25. Since the outset of the Chapter 11 Cases, and as reflected on the record at the Debtors' first day hearing, the Debtors have made clear that their primary goal throughout this process is to maintain and prioritize resident care in the Facilities. The current Employees named as Non-Debtor Co-Defendants in the Prepetition Litigation include Facility administrators who assist with resident care and other critical aspects of Facility operations on a daily basis. Thus, the health and safety of the Debtors' residents is dependent upon the continuation of the Employees' efforts, which could be negatively impacted if the Employees are distracted and otherwise preoccupied by their involvement in the Prepetition Litigation. In addition, the Debtors' Chief Financial Officer is also a Non-Debtor Co-Defendant—and the Debtors need her attention squarely focused on the many pressing matters facing the Debtors in prosecuting the Chapter 11 Cases, rather than on defending litigation in which she is personally named. Therefore, the Debtors submit that the Automatic Stay should be extended to the Employees named as Non-Debtor Co-Defendants in the Prepetition Litigation in order to avoid unnecessary distractions from their continued commitment to the Debtors' restructuring efforts and resident care.

NOTICE

26. The Debtors will provide notice of the Motion to: (a) the U.S. Trustee; (b) proposed counsel to the Committee; (c) the Internal Revenue Service; (d) the Securities and

Exchange Commission; (e) the United States Attorney for the District of Delaware; (f) the Centers for Medicare & Medicaid Services; (g) counsel for the Omega Entities; (h) counsel for New Ark Capital, LLC; (i) counsel for Barrow Street Capital LLC and its affiliates; (j) counsel for Eagle Arc Partners LLC (f/k/a BM Eagle Holdings); (k) the Prepetition Litigation Parties; and (l) 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

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

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WHEREFORE, the Debtors respectfully request that the Court enter the Proposed 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
November 2, 2021

MCDERMOTT WILL & EMERY LLP

/s/ David R. Hurst

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