

**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
	)	
	)	<b>Obj. Deadline: 11/24/21 at 4:00 p.m. (ET)</b>
	)	<b>Hrg. Date: 12/2/21 at 10:00 a.m. (ET)</b>

**MOTION OF DEBTORS FOR ENTRY OF ORDER (I) APPROVING  
GLOBAL SETTLEMENT AGREEMENT WITH LESSOR; (II) REJECTING  
LEASE AND SUBLEASE FOR CURRENT HEADQUARTERS; (III) FIXING AND  
ALLOWING LESSOR'S CLAIMS; (IV) ABANDONING CERTAIN PERSONAL  
PROPERTY TO LESSOR; AND (V) 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 (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:

**RELIEF REQUESTED**

1. By the Motion, the Debtors respectfully request entry of the Proposed Order

(i) approving the global settlement agreement attached to the Proposed Order as Exhibit 1 (the “**Global Settlement**”) with 40 South Palafox Place, LLC (“**Palafox**”), the lessor of the Debtors’ current headquarters in Pensacola, Florida, (ii) rejecting (a) the Debtors’ lease with Palafox for office space located on the fourth and fifth floors of 40 South Palafox Place, Pensacola, Florida

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 9511 Holsberry Lane, Suite B11, Pensacola, FL 32534.

32502 (the “**Leased Premises**”), and (b) the Debtors’ sublease with Premier Workforce Solutions, LLC (“**Premier**”) for the fifth floor of the Leased Premises (the “**Subleased Premises**”), (iii) fixing and allowing Palafox’s claims against the Debtors, (iv) abandoning to Palafox the furniture, fixtures, and equipment owned by the Debtors and located on the Leased Premises (the “**Property**”), and (v) 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, 363, 365, 502, and 554 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 6004, 6006, and 9019 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

4. 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.

## **BACKGROUND**

### **I. The Chapter 11 Cases**

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**”).

### **II. The Headquarters Building Lease**

9. Gulf Coast is a party to that certain Lease Agreement at the Theisen Building, dated May 21, 2013 by and between Gulf Coast and Palafox (as subsequently amended, extended, or modified, the “**Lease**”). In June 2013, Gulf Coast entered into that certain First Amendment to Lease by and between Gulf Coast and Palafox (the “**Amendment**”), and by letter dated as of February 9, 2018, Gulf Coast and Palafox extended the term of the Lease through and including October 31, 2023. The Leased Premises consists of approximately 12,900 square

feet of space on the fourth and fifth floors, as described in the Lease. The Lease commenced on October 31, 2013 and expires on October 31, 2023. Currently, monthly rent and other obligations due under the Lease total \$33,489.04 per month, with escalations during the remaining term of the Lease.

10. The Debtors owe Palafox approximately \$33,000 in prepetition rent under the Lease. In addition, the Debtors owe Palafox approximately \$105,000 on a prepetition tenant improvement loan that was provided by Palafox in connection with the Lease

**A. The Debtors' Marketing Efforts**

11. In June 2019, Gulf Coast retained Quality Investments & Brokerage Inc. (the “**Broker**”) to identify prospective subtenants for some or all of the Leased Premises. The marketing process was challenging because new office buildings were completed in the Pensacola area during this period, making older space such as the Leased Premises less attractive to potential subtenants. The marketing process continued for almost two years before the Broker identified a subtenant for the fifth floor of the Leased Premises; the process never yielded a subtenant for the fourth floor of the Leased Premises (the “**Vacant Premises**”). Moreover, while the marketing process was successful in the sense that a subtenant for the fifth floor space was identified, that subtenant pays less rent per square foot than the Debtors pay to Palafox—so the sublease is not profitable.

**B. The Headquarters' Fifth Floor Sublease**

12. Gulf Coast is party to that certain Sublease Agreement dated as of April 1, 2021 by and between Gulf Coast and Premier (the “**Sublease**”) pursuant to which Premier subleases the Subleased Premises, consisting of approximately 6,450 square feet constituting the entirety of the fifth floor of the Leased Premises. The Subleased Premises includes executive offices,

conference rooms, and windowed offices. Under the Sublease, Premier pays \$1.55 less per square foot than Gulf Coast pays Palafox under the Lease.

**C. The Headquarters' Fourth Floor**

13. On October 15, 2021, the Debtors vacated the fourth floor of the Leased Premises, which consists of cubicles, training rooms, a mail room, and a kitchen—and is far less attractive space than that on the fifth floor, which housed executive offices. As described herein, prior to leaving the fourth floor space, the Debtors searched for a potential sublessee for nearly two years, but were unable to find a party willing to sublet that space. The Debtors understand that Palafox has been able to identify a likely subtenant for the space, but only by offering significant rent concessions (*i.e.*, the prospective tenant required four months “free rent” as an incentive).

**D. The Property**

14. Both the Vacant Premises and the Subleased Premises contain the Property of the Debtors that the Debtors no longer utilize and will have no use for following the rejection of the Lease and the wind down of the Debtors' business. In particular, there are cubicles, desks, and other office furniture on both the fourth and fifth floors of the Leased Premises. Pursuant to the terms of the Sublease, Premier is able to use the Debtors' Property in the Subleased Premises only during the duration of the Sublease.

**III. The Global Settlement**

15. Shortly after the Petition Date, Palafox approached the Debtors regarding the possible resolution of all issues between the parties. After arm's-length negotiations, the Debtors and Palafox reached the Global Settlement, which resolves the issues as memorialized therein and provides valuable cost savings for the Debtors. In particular, under the Global Settlement:

- Both the Lease and Sublease will be rejected, effective as of the date of entry of an order approving the Global Settlement, and Palafox will be permitted to enter into a new lease agreement with Gulf Coast's existing subtenant;
- Palafox's unsecured claim against the Debtors will be fixed at \$180,000 and allowed;
- Gulf Coast will pay to Palafox all postpetition amounts received under the Sublease, and Palafox will waive its remaining administrative claim for postpetition rent; and
- Gulf Coast will abandon all owned furniture, fixtures, and equipment on the Leased Premises to Palafox.

16. For the reasons set forth below, the Debtors submit that the Global Settlement is in the best interests of the Debtors, their estates, their creditors, and all other parties-in-interest.

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

##### **I. Global Settlement**

17. Bankruptcy Code section 363 requires a hearing and court approval of a settlement between a debtor and an adverse party, and Bankruptcy Rule 9019 establishes the procedure by which a debtor may secure such approval. *See Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 n.2 (3d Cir. 1996). Bankruptcy Rule 9019 provides, in relevant part:

On motion by the trustee [or the debtor-in-possession] and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

Fed. R. Bankr. P. 9019(a).

18. In determining whether to approve a settlement pursuant to Bankruptcy Code section 363 and Bankruptcy Rule 9019, a bankruptcy court is required to "assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal." *Martin*, 91 F.3d at 393. The bankruptcy court will consider four criteria in applying this balancing test: "(1) the probability of success in litigation; (2) the likely

difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors.” *Id.* (citing *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968); *In re Neshaminy Office Bldg. Assocs.*, 62 B.R. 798, 803 (E.D. Pa. 1986)); *see also In re Marvel Entm’t Grp., Inc.*, 222 B.R. 243, 249 (D. Del. 1998) (relying on the same four factors to determine the fairness, reasonableness, and adequacy of a settlement). In addition, the bankruptcy court must “consider ‘all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise.’” *Marvel*, 222 B.R. at 249 (citing *TMT Trailer*, 390 U.S. at 424). The ultimate inquiry is whether, in the court’s discretion, the compromise embodied in the settlement is “fair, reasonable, and in the interest of the estate.” *Id.* (citing *In re Louise’s Inc.*, 211 B.R. 798, 801 (D. Del. 1997)). The Debtors respectfully submit that Global Settlement satisfies this standard.

19. As noted above, Gulf Coast has sublet the Subleased Premises at a loss and has vacated the fourth floor space with little chance of finding a sublessee for such space. The Debtors no longer have a need for that space and, indeed, plan to wind down their businesses pursuant to their recently-filed plan of liquidation [Docket No. 124]. Therefore, the Leased Premises provides no benefit to the estates—but rather only serves to drain the Debtors’ estates of their limited resources.

20. As part of the Global Settlement, the Debtors have agreed to abandon the Property to Palafox, which will facilitate Palafox’s efforts to find a replacement tenant and facilitate Premier’s continued occupancy of the Subleased Premises. The Debtors have no need for the Property, as they are pursuing a wind down, and believe that such assets have *de minimis* value,

particularly when compared with the benefits that will inure to the Debtors under the Global Settlement and the costs of storing, marketing, and removing such property.

21. The Global Settlement also serves to minimize the accrual of unnecessary administrative claims. Indeed, under the Global Settlement, Palafox has agreed to waive its claim for postpetition rent (less amounts that the Gulf Coast has received from its subtenant since the Petition Date). Moreover, although it is possible that Gulf Coast's subtenant, Premier, will assert a claim for rejection damages, that claim should be limited because Palafox intends to enter into a new lease with Premier (as explicitly permitted under the Global Settlement), thereby mitigating Premier's damages.

22. Finally, in the interests of avoiding potential litigation, minimizing professional fees, and resolving all outstanding matters with Palafox at once, the Debtors and Palafox have agreed to liquidate and allow Palafox's claims against the Debtors' estates as set forth in the Global Settlement.

23. Through the Global Settlement, the Debtors have avoided litigation regarding the Lease and Palafox's claims, while facilitating the wind down of their operations and the Chapter 11 Cases at a cost savings to the Debtors' estates and creditors. If the Debtors were to litigate these issues, the Debtors believe the ultimate outcome would be no better, and the Debtors would incur substantial legal fees in the process. As such, and for the reasons set forth above, the Debtors submit that the Global Settlement is in the best interests of the Debtors' estates, their creditors, and all other parties-in-interest, and should be approved.

## **II. Rejection of the Lease and Sublease**

24. Bankruptcy Code section 365(a) allows the debtor to, "subject to the court's approval, . . . reject any executory contract or unexpired lease." 11 U.S.C. § 365(a); *see Univ.*



*Med. Ctr. v. Sullivan (In re Univ. Med. Ctr.)*, 973 F.2d 1065, 1075 (3d Cir. 1992). The standard governing whether to approve a motion pursuant to section 365 is the business judgment test, which requires a showing that the proposed course of action will be advantageous to the estate and the decision is based on sound business judgment. *See e.g., In re Mkt. Square Inn, Inc.*, 978 F.2d 116, 121 (3d Cir. 1992) (“The resolution of this issue of assumption or rejection will be a matter of business judgment by the bankruptcy court.”) (citing *Grp. of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pac. R.R. Co.*, 318 U.S. 523, 550 (1943)); *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098 (2d Cir. 1993) (“[A] bankruptcy court reviewing a trustee’s or debtor-in-possession’s decision to assume or reject an executory contract should examine the contract and the surrounding circumstances and apply its best ‘business judgment’ to determine if it would be beneficial or burdensome to the estate to assume [or reject] it.”); *In re Constant Care Cmty. Health Ctr., Inc.*, 99 B.R. 697 (Bankr. D. Md. 1989) (“The issue is ‘whether the decision of the debtor that rejection will be advantageous is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, whim or caprice.’”); *see also Commercial Fin. Ltd. v. Haw. Dimensions, Inc. (In re Haw. Dimensions, Inc.)*, 47 B.R. 425, 427 (D. Haw. 1985) (“Under the business judgment test, a court should approve debtor’s proposed rejection if such rejection will benefit the estate.”).

25. In applying the “business judgment” standard, courts show great deference to a debtor’s decision to reject executory contracts. *See Summit Land Co. v. Allen (In re Summit Land Co.)*, 13 B.R. 310, 315 (Bankr. D. Utah 1981) (reasoning that absent extraordinary circumstances, court approval of a debtor’s decision to assume or reject an executory contract “should be granted as a matter of course”). As long as the decision to reject is a reasonable exercise of business judgment, a court should approve the rejection of an executory contract or

unexpired lease. *See, e.g., NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984); *Grp. of Institutional Investors*, 318 U.S. at 549-50.

26. Here, the Debtors submit that their decision to reject the Lease is based on their sound and prudent business judgment. The Debtors no longer occupy any of the Leased Premises. The Sublease allows the Debtors to offset some expense under the Lease, but the Debtors sublet the Subleased Premises at a loss. Indeed, the Debtors' current rent and other obligations under the Lease total \$33,489.04 per month, while they only recoup \$12,881.19 each month under the Sublease, resulting in a loss of more than \$20,000 per month. Rejecting the Lease therefore will significantly reduce the Debtors' administrative expenses. For these reasons, the Debtors submit that rejection of the Lease is a sound exercise of their business judgment and should be approved. Moreover, the Debtors intend to wind down their business and, as such, will not have a need for the Leased Premises in the future.

27. The Debtors also believe that rejection of the Sublease is in the best interests of their estates, creditors, and parties-in-interest, as the Sublease does not generate any value for the Debtors because the Sublease rent rate is below the rate that the Debtors pay under the Lease for the Subleased Premises. As such, rejection of the Sublease will preserve the resources of the Debtors' estates.

### **III. Abandonment of Property**

28. Section 554 of the Bankruptcy Code provides that "[a]fter notice and a hearing, the trustee [or debtor-in-possession] may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a).

29. Courts give great deference to the decision by a debtor-in-possession to abandon property under section 554 of the Bankruptcy Code. *See in re Vel Rey Props., Inc.*, 174 B.R.

859, 867 (Bankr. D.C. 1994) (“Clearly, the court should give deference to the trustee’s [or debtor-in-possession’s] judgment in such matters.”); *see also In re Cult Awareness Network, Inc.*, 205 B.R. 575, 579 (Bankr. N.D. Ill 1997) (“The party seeking to make the trustee [or debtor-in-possession] act or prevent him or her from acting has the burden to show an abuse of discretion”). A decision to abandon property “must rest on a reasonable basis.” *Cult Awareness*, 205 B.R. at 579 Unless the property is harmful to the public, once the debtor-in-possession has shown that the property is burdensome or of inconsequential value and benefit, the court should approve the abandonment. *See Vel Rey Props.*, 174 B.R. at 868; *Cult Awareness*, 205 B.R. at 579 (the court need only ensure that the decision to abandon “reflects a business judgment made in good faith.”).

30. The Debtors no longer require the use of the Property, as they have vacated the Leased Premises. While the Debtors likely would be able to sell some or all of the Property, the Debtors believe they would incur significant removal, storage, and marketing costs in doing so, such that the ultimate proceeds of any such sale would be minimal. On the other hand, the Property is valuable to Palafox in that it will assist Palafox in marketing and reletting the Leased Premises and facilitate the continued tenancy of the Subleased Premises, which will minimize damages from the Debtors’ rejection of the Sublease. Accordingly, the Debtors have determined, in their business judgment, that the abandonment of the Property is in the best interests of the Debtors’ estates, their creditors, and all other parties-in-interest.

#### **IV. Fixing of Claim**

31. To avoid uncertainty and delay in fixing and allowing Palafox’s claims against the Debtors’ estates, the Debtors and Palafox have stipulated to the amount, classification, and allowance of Palafox’s claims as part of the Global Settlement. Pursuant to the terms of the

Global Settlement, upon rejection of the Lease, Palafox will have an allowed general unsecured claim in the amount of \$180,000 (the “**Claim**”), which will comprise Palafox’s claims arising from the rejection of the Lease and the tenant improvement loan. The Debtors believe that the allowance of Palafox’s claim at this amount provides significant benefit to the estates, as Palafox’s rejection damages alone—without taking into account the tenant improvement loan—total approximately \$400,000, subject to potential mitigation.

32. Thus, the Debtors have determined that it is in the best interests of the Debtors’ estates, their creditors, and all other parties-in-interest to avoid litigation and quickly and consensually fix and allow Palafox’s claims as set forth in the Global Settlement, particularly in light of the substantial benefits the Debtors will realize under the Global Settlement.

#### **NOTICE**

33. 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) counsel for Palafox; (l) Premier; and (m) 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**

34. 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 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 10, 2021

**MCDERMOTT WILL & EMERY LLP**

/s/ David R. Hurst

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