

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

WELLPATH HOLDINGS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-90533 (ARP)

(Jointly Administered)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER
(I) AUTHORIZING AND APPROVING THE DEBTORS'
(A) KEY EMPLOYEE INCENTIVE PLAN AND (B) NON-INSIDER
KEY EMPLOYEE RETENTION PLAN AND (II) GRANTING RELATED RELIEF**

If you object to the relief requested, you must respond in writing. Unless otherwise directed by the court, you must file your response electronically at <https://ecf.txsb.uscourts.gov> within 21 days from the date this motion was filed. If you do not have electronic filing privileges, you must file a written objection that is actually received by the clerk within 21 days from the date this motion was filed. Otherwise, the court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on February 10, 2025 at 11:30 a.m. (prevailing Central Time) in Courtroom 400, 4th floor, 515 Rusk Street, Houston, Texas 77002. You may participate in the hearing either in person or by an audio and video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at (832) 917-1510. Once connected, you will be asked to enter the conference room number. Judge Perez's conference room number is 282694. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Perez's homepage. The meeting code is "JudgePerez". Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in person hearings. To make your appearance, click the "Electronic Appearance" link on Judge Perez's homepage. Select the case name, complete the required fields and click "Submit" to complete your appearance.

¹ A complete list of the Debtors (as defined below) in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at <https://dm.epiq11.com/Wellpath>. The Debtors' service address for these chapter 11 cases is 3340 Perimeter Hill Drive, Nashville, Tennessee 37211.

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state as follows in support of this motion (the “Motion”):

Preliminary Statement

1. Wellpath is the premier provider of localized, high quality, compassionate care to vulnerable patients in challenging clinical environments. To provide this high quality of care to the vulnerable populations that Wellpath serves, the Debtors rely on their greatest asset: their highly skilled and dedicated workforce of approximately 13,700 employees (the “Employees”).² The Employees perform a variety of critical functions to manage their cash flows and adapt to current market trends so that the Debtors can continue their tradition of providing industry-leading care to their patients. The skills and experience of the Employees are essential to the Debtors’ ongoing operations and key to the Debtors’ ability to pursue the sale and reorganization transactions contemplated by the Restructuring Support Agreement, dated November 11, 2024, a copy of which is attached to the First Day Declaration (as amended, the “RSA”). In many instances, the Employees are distinctly familiar with the Debtors’ services, clinical practices, processes, and systems and possess specialized knowledge, skills, or experience that cannot be easily replaced. Due to the high demand for individuals with these skill sets, if such an Employee were to leave, it would be extremely difficult to replace them with someone with similar expertise.

2. It is equally important to properly incentivize the Debtors’ management team in light of the ongoing sale and restructuring processes contemplated by the RSA. Not only are the Employees tasked with executing a chapter 11 transition and turnaround plan, but they are also

² Additional information about the Debtors’ businesses and affairs, capital structure, and prepetition indebtedness, and the events leading up to the filing of these chapter 11 cases, can be found in the *Declaration of Timothy J. Dragelin as Chief Restructuring Officer and Chief Financial Officer of Wellpath Holdings, Inc. and Certain of its Affiliates and Subsidiaries in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* [Docket No. 20] (the “First Day Declaration”). Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the First Day Declaration.

required to devote a significant amount of time and attention to ongoing marketing and sale efforts—in addition to fulfilling their daily duties.

3. Furthermore, maintaining a properly incentivized senior management team throughout the Debtors' organization is critical to the efficient and effective completion of the great deal of work necessary to consummate the transactions contemplated by the RSA and emerge from chapter 11. At the same time, senior management must maintain a high level of business performance to minimize disruption to patients, vendors, and Employees. To properly incentivize the Debtors' senior leadership team, and thereby facilitate a value-maximizing resolution of these chapter 11 cases, the Debtors seek approval of an incentive-based plan (the "KEIP") for certain members of the Debtors' senior leadership team (each a "KEIP Participant" and, collectively, the "KEIP Participants").

4. In addition, for the Debtors to maintain ordinary course operations and continue providing quality patient care during these chapter 11 cases, it is essential that the Debtors retain a core group of non-insider Employees who are key to the Debtors' realization of these goals. To that end, the Debtors developed a cash-based retention plan (the "Non-Insider KERP" and, together with the KEIP, the "Compensation Plans") for these non-insider Employees (each a "KERP Participant" and, collectively, the "KERP Participants" and, together with the KEIP Participants, the "Participants"). Because the KERP Participants are essential to the Debtors' ability to maintain ordinary course operations and continue providing quality patient care during these chapter 11 cases, approval of the Non-Insider KERP is critically important to the success of the Debtors' chapter 11 process.

5. This motion seeks approval of the (a) KEIP, which includes 12 members of the Debtors' senior management team and (b) Non-Insider KERP, which includes 32 KERP

Participants.³ The Compensation Plans are market-based compensation programs. The Debtors, with input from their advisors, including FTI Consulting, Inc. (“FTI”), developed the Compensation Plans based on a practical assessment of the Debtors’ organizational and operational structure, their historical employee retention and incentive programs, and with reference to prevailing terms of market-based compensation programs. Both the KEIP and the Non-Insider KERP contemplate cash payments and are contingent on the waiver by the applicable Participants of any 2024 annual bonus in its entirety. The anticipated aggregate cost for the KEIP and Non-Insider KERP is approximately \$4,588,000 and \$3,022,000, respectively. The average cost per participant for the KEIP is approximately \$380,000 and is in the 50th percentile compared to the KEIP Peer Group (as defined below), while the maximum cost of the program is in the 36th percentile.

6. The Non-Insider KERP contemplates cash retention payments to 32 non-insider Employees, in addition to the Discretionary KERP Participants, in the aggregate amount of approximately \$3,022,000. The average per participant retention payment is equal to approximately 31% of a KERP Participant’s base salary (the “Retention Payment Amount”). The Debtors’ advisors assisted the Debtors in ensuring that the Compensation Plans were designed to achieve the desired operational performance, within the market range of compensation offered at comparable companies, and reasonable in terms of size and scope. For the Non-Insider KERP, the aggregate payments would approximate the 62nd percentile compared to the KERP Peer Group.

³ In addition, the Non-Insider KERP contemplates that the Debtors’ Chief Restructuring Office (the “CRO”) may designate, in his sole discretion, additional non-insider Employees as KERP Participants (collectively, the “Discretionary KERP Participants”) and award such Employees discretionary amounts totaling \$675,000 in the aggregate the “Discretionary Pool”). The CRO may also utilize the Discretionary Pool, in his sole discretion, to increase Retention Payment Amounts (as defined below) to certain KERP Participants whose roles and workload increased due to departures by other Employees.

7. Importantly, no retention payments shall be made to insiders, and the Compensation Plans otherwise comply with the Bankruptcy Code. Payments under the KEIP are incentive-based and will be paid only if KEIP Participants achieve objective performance goals. These goals represent a mix of difficult-to-reach targets and challenging, incentive-based benchmarks, which were developed to align incentives with positive outcomes for all of the Debtors' stakeholders. Accordingly, the Debtors respectfully request that the Court authorize the Debtors to implement the Compensation Plans.

Relief Requested

8. By this Motion, and pursuant to sections 105(a), 363(b), 363(c), and 503(c) of title 11 of the United States Code (the "Bankruptcy Code") and rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Debtors seek entry of an order, substantially in the form annexed hereto (the "Order"), (a) authorizing and approving the KEIP and the Non-Insider KERP and (b) granting related relief. In support of this Motion, the Debtors submit the *Declaration of Gilbert Jones in Support of Debtors' Motion for Entry of an Order (I) Authorizing and Approving the Debtors' (A) Key Employee Incentive Plan and (B) Non-Insider Key Employee Retention Plan and (II) Granting Related Relief*, attached hereto as **Exhibit A** (the "Jones Declaration").

Jurisdiction and Venue

9. The United States Bankruptcy Court for the Southern District of Texas (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Order of Reference to Bankruptcy Judges*, General Order 2012-6 (S.D. Tex. May 24, 2012) (Hinojosa, C.J.).

10. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). In addition, the Debtors confirm their consent to the entry of a final order by the Court in connection with

this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter a final order or judgment in connection herewith consistent with Article III of the United States Constitution.

11. Venue of these chapter 11 cases and related proceedings is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

12. On November 11, 2024 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

13. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

14. The chapter 11 cases are being jointly administered for procedural purposes only pursuant to Bankruptcy Rule 1015(b) and the *Order Directing Joint Administration of Chapter 11 Cases* [Docket No. 27] entered by the Court, on November 12, 2024, in each of these chapter 11 cases.

15. On November 25, 2024, the Office of the United States Trustee for the Southern District of Texas (the “U.S. Trustee”) appointed an Official Committee of Unsecured Creditors (the “Committee”) pursuant to section 1102 of the Bankruptcy Code. *See Notice of Appointment of Committee of Unsecured Creditors* [Docket No. 169]. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases.

Key Employee Incentive Plan

I. Overview of KEIP.

16. The KEIP Participants are comprised of 12 members of the Debtors’ senior management team. The KEIP Participants have played, and will continue to play, a central role in the overall strategy and direction of the Debtors’ business enterprise, as well as the Debtors’

restructuring. The KEIP Participants include the (a) Chief Executive Officer, (b) Chief Operating Officer, (c) Chief Compliance Officer, (d) Chief Legal Officer, (e) Division President, State and Federal, (f) Chief Information Officer, (g) Senior Vice President of Operations, Local Government, (h) Chief Human Resources Officer, (i) Senior Vice President of Operations, Local Government, (j) Chief Accounting Officer, (k) Interim Chief Medical Officer, and (l) Senior Vice President of Finance and Treasurer. The KEIP Participants may be considered “insiders” under the Bankruptcy Code.

17. In addition to their substantial day-to-day responsibilities running a highly complex enterprise, these individuals have seen their workloads expand significantly as the Debtors have transitioned their operations into chapter 11. The additional challenges these responsibilities pose should be factored into consideration of the KEIP Participants’ ability to achieve targeted business performance.

18. The Debtors are sensitive to concerns about executive compensation, but the Debtors believe that appropriate, incentive-based compensation opportunities for their senior management team—goals that, if achieved, would ensure that the KEIP Participants are paid within the ballpark of the market—remain an important tool to drive performance and would inure to the benefit of the Debtors’ stakeholders. Thus, the Debtors have evaluated the need for a KEIP with the benefit of independent oversight and guidance from their advisors. The proposed award opportunities reflect FTI’s benchmarking analysis versus the Debtors’ industry peers (the “Industry Market Peer Group” or “Industry Market”),⁴ which consists of five healthcare services companies with (a) revenues between approximately \$135,000,000 and \$3,200,000,000

⁴ The 14 companies comprising the Industry Market Peer Group include the following: Mallinckrodt plc (2021 & 2022); Genesis Care Pty Ltd.; 24 Hour Fitness Worldwide, Inc.; Amyris Inc.; LSC Communications, Inc.; NPC International, Inc.; Exide Holdings, Inc.; Clovis Oncology Inc.; Ebix Inc.; Instant Brands Inc.; Stage Stores, Inc.; Basic Energy Services, Inc.; Endologix, Inc.

and (b) funded debt between \$226,000,000 and \$5,300,000,000, as well as a review of incentive-based compensation plans approved in other chapter 11 cases (the “KEIP Peer Group” or “KEIP Market”). FTI also evaluated the KEIP Participants’ compensation against the Mercer U.S. Executive Remunerations Survey for healthcare services companies with revenues between approximately \$1,000,000,000 and \$5,000,000,000 (the “Mercer Survey Data”).

19. The proposed KEIP contains the following primary design features:

- **KEIP Awards.** Each KEIP award will be a cash amount provided (to the extent earned based on actual performance) upon the conclusion of the applicable performance period described below; *provided, however*, that the KEIP awards are subject to clawback in the event that a KEIP Participant’s employment terminates for “cause” or voluntarily without “good reason” (each as defined below) prior to December 31, 2025. Potential payments are tied to achieving specified performance metrics for each performance period and subject to the KEIP Participant’s continued employment through the end of that performance period (except as provided below).
- **Performance Targets.** KEIP payouts to KEIP Participants will be based on four performance metrics: (a) the closing of a sale transaction for the Recovery Solution Assets (the “Recovery Solutions Sale Transaction”); (b) the closing of a Corrections Asset(s) Sale Transaction or the consummation of a chapter 11 plan of reorganization involving the Corrections Assets (each as defined in the Bidding Procedures Motion);⁵ (c) certain financial metrics, including meeting or outperforming the Initial DIP Budget⁶ (as defined in the Interim DIP Order⁷),

⁵ See Debtors’ Emergency Motion for Entry of Orders (I)(A) Approving the Bidding Procedures for the Sale of the Debtors’ Assets, (B) Approving Entry into a Stalking Horse Purchase Agreement for The Recovery Solutions Assets, (C) Authorizing the Recovery Solutions Expense Reimbursement, (D) Authorizing Potential Selection of Stalking Horse Bidders for the Corrections Assets and Approving Related Corrections Asset(s) Bid Protections, (E) Establishing Related Dates and Deadlines, (F) Approving the Form and Manner of Notice Thereof, and (G) Approving the Assumption and Assignment Procedures, (II)(A) Approving the Sale of the Debtors’ Assets Free and Clear of Liens, Claims, Interests, and Encumbrances (B) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases, and (III) Granting Related Relief [Docket No. 21] (the “Bidding Procedures Motion”).

⁶ In the event of satisfaction in full of the DIP Obligations (as defined in the *Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, and (B) Use Cash Collateral; (II) Granting Liens and Providing Superpriority Administrative Expense Claims; (III) Granting Adequate protection to the Prepetition Secured Parties; (IV) Modifying the Automatic Stay; and (V) Granting Related Relief* [Docket No. 388] (the “Final DIP Order”)), references to the Interim DIP Budget shall mean the Cash Collateral (as defined in the Final DIP Order) budget agreed between the Debtors and the Ad Hoc Group.

⁷ See *Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, and (B) Use Cash Collateral; (II) Granting Liens and Providing Superpriority Administrative Expense Claims; (III) Granting Adequate Protection to the Prepetition Secured Parties; (IV) Modifying the Automatic Stay; (V) Scheduling Final Hearing;*

achieving minimum liquidity of no less than \$35 million upon consummation of the chapter 11 plan (if applicable), and achieving performance levels such that the business will require an Equity Financing Amount (if applicable) of no greater than \$55 million; and (d) meeting or exceeding a threshold for the retention or renewal of certain contracts, such that the aggregate gross profit of such contracts that are terminated, or at risk of termination, does not exceed \$40 million.

- ***KEIP Payout Ranges.*** The KEIP will provide for potential payments for achieving the performance targets set forth in the KEIP.
- ***Performance Periods.*** Performance related to a Recovery Solutions Sale Transaction would be measured as of the date of a successful closing of such transaction, including pursuant to a Credit Bid. Performance related to the Corrections Assets would be measured as of the date of a successful closing of a Corrections Asset(s) Sale Transaction or consummation of a chapter 11 plan of reorganization involving the Corrections Assets. Performance related to the financial metrics and the retention or renewal of the Debtors' contracts will be measured as of the date of a Corrections Asset(s) Sale Transaction or consummation of a chapter 11 plan of reorganization involving the Corrections Assets.
- ***KEIP Payment Timing.*** Payments to KEIP Participants, to the extent earned, would occur as soon as reasonably practicable after the conclusion of the applicable performance period.
- ***Termination of Employment.*** If (a) the Debtors terminate a KEIP Participant's employment without "cause"⁸ or due to disability, (b) a KEIP Participant's employment terminates due to their death, or (c) the KEIP Participant resigns for "good reason,"⁹ in each case, during the applicable performance period, subject to the KEIP Participant's timely execution, delivery, and

and (VI) *Granting Related Relief* [Docket No. 81] (the "Interim DIP Order").

⁸ "Cause" shall mean (a) the commission of a felony or other crime involving moral turpitude or the commission of any other act or omission involving embezzlement, theft, misappropriation, dishonesty, unethical business conduct, disloyalty, fraud, or breach of fiduciary duty, (b) reporting to work under the influence of alcohol, (c) the use of illegal drugs (whether or not at the workplace) or other conduct, even if not in conjunction with his or her duties to the Debtors, which could reasonably be expected to, or which does, cause the Debtors public disgrace or disrepute or economic harm, (d) repeated failure to perform duties as reasonably directed in good faith by the Board (as defined below), (e) gross negligence or willful misconduct with respect to any Debtors or in the performance of your duties as an employee, (f) obtaining any personal profit not thoroughly disclosed to and approved by the Debtors in connection with any transaction entered into by, or on behalf of, or in relation to, any Debtor, (g) violating any of the terms of a Debtor's established rules or policies, or (h) any breach of any agreement between you and any Debtor, including the violation of any restrictive covenants.

⁹ "Good Reason" shall mean the occurrence of any of the following conditions, without the Participant's consent, (a) a material diminution in their duties, authority, or responsibilities, (b) the Debtors requiring the Participant to be principally based at any office more than 25 miles from Nashville, Tennessee (solely for the sake of clarity, excluding ordinary travel consistent with their duties and responsibilities), or (c) any material breach of the Participant's offer letter by the Debtors.

non-revocation of a release of claims in favor of the Debtors and such KEIP Participant's compliance with their obligations to the Debtors, the KEIP Participant would be entitled to its *pro rata* share of the KEIP award that would otherwise have been earned for such performance period based on (y) actual performance during the performance period and (z) the percentage of the performance period that the KEIP Participant was employed by the Debtors measured from the Petition Date to the date of termination of such KEIP Participant's employment, which will be paid at such time payments are paid to other KEIP Participants. If a KEIP Participant's employment is terminated by the KEIP Participant due to a voluntary resignation without "good reason", any remaining unpaid portion of the KEIP payment would be forfeited. If the Debtors terminate a KEIP Participant's employment for "cause", the KEIP Participants entire KEIP award, whether or not earned, would be forfeited.

- **No Reallocation.** Any portion of the KEIP that is forfeited and/or not earned, shall not be reallocated to any other KEIP Participant or otherwise.

20. If approved, the KEIP would provide aggregate (for all KEIP Participants) target opportunities of approximately \$4,588,000 respectively. The individual award opportunities available to each KEIP Participant are summarized as follows:

Participant's Title	Target Award Opportunity
Chief Executive Officer	\$1,607,000
Chief Operating Officer	\$450,000
Chief Compliance Officer	\$250,000
Chief Legal Officer	\$300,000
Division President, State and Federal	\$271,000
Chief Information Officer	\$250,000
Senior Vice President of Operations, Local Government	\$300,000
Chief Human Resources Officer	\$250,000
Senior Vice President of Operations, Local Government	\$300,000
Chief Accounting Officer	\$180,000
Interim Chief Medical Officer	\$250,000

Senior Vice President of Finance and Treasurer	\$180,000
Total Award Values	\$4,588,000

21. As set forth in the Jones Declaration, the proposed target total direct compensation for the KEIP Participants in the aggregate would approximate the 50th percentile of the Mercer Survey Data. The target cost per participant is at the 50th percentile of the KEIP Market, while the target total cost of the KEIP would be at the 79th percentile.

II. The Performance Targets.

22. Under the KEIP, awards are payable only upon the Debtors' achievement of certain sale, reorganization, and operational performance targets, all as set forth in more detail in the Jones Declaration. Achievement of these performance targets have required and will require substantial efforts from the KEIP Participants. Indeed, the KEIP Participants worked tirelessly to support the sale process relating to the Recovery Solutions Assets, including negotiating and finalizing the transactions contemplated by the Recovery Solutions Stalking Horse Agreement and related agreements and documents and preparing for the closing of such transactions. Absent the KEIP Participants' herculean efforts, the parties could not finalize the Recovery Solutions Sale Transaction. The performance targets – including (a) the closing of a Corrections Asset(s) Sale Transaction or the consummation of a chapter 11 plan of reorganization involving the Corrections Assets, (b) (i) meeting or outperforming the Initial DIP Budget, (ii) achieving minimum liquidity of no less than \$35 million upon consummation of the chapter 11 plan (if applicable), (iii) achieving performance levels such that the business will require an Equity Financing Amount (if applicable) of no greater than \$55 million, and (c) meeting or exceeding a threshold for the retention or renewal of certain contracts, such that the aggregate gross profit of such contracts that are terminated, or at risk of termination, does not exceed \$40 million – were approved by the

Special Committee (as defined below), with the support of the DIP Lenders and the Ad Hoc Group, and developed carefully to ensure that they are an appropriate “reach” to drive performance, on the one hand, but will not present unrealistic or unattainable goals, on the other hand—which would thwart the incentivizing nature of the KEIP. The Debtors developed the performance targets in consultation with the Debtors’ restructuring advisors and coupled with an independent review of the total compensation award levels by FTI.

III. The Need for a KEIP.

23. The Debtors face severe business pressures due to recent challenges in the market, including market headwinds, inflated operating expenses due to increased costs for labor and medical supplies, and certain underperforming contracts. In light of these pressures and the additional challenges of these chapter 11 cases, it is critical that the Debtors implement the KEIP immediately to ensure that the key employees remain with the Debtors during the pendency of these chapter 11 cases and are properly incentivized to consummate the transactions contemplated by the RSA and to maximize value for all stakeholders.

24. In recent months, the KEIP Participants have seen a substantial increase in their workloads without any concomitant increase in their compensation, including facilitating the Recovery Solutions Sale Transaction. In fact, even if the KEIP is approved and the Debtors achieve the target KEIP metrics, the fiscal year 2025 total direct compensation of the Debtors’ Chief Executive Officer at target would approximate the 50th percentile of the Mercer Survey Data. The Debtors’ senior executives have continued to perform their preexisting job functions and have taken on more responsibilities as a result of the chapter 11 process. The KEIP Participants’ responsibilities now also include developing and implementing the Debtors’ reorganization strategy, participating in Court hearings, continuing to negotiate with stakeholders and other parties, reviewing Court filings, assisting in the ongoing sale process for all of the Debtors’ assets,

and responding to creditor inquiries and requests from the U.S. Trustee. The dedication of the Debtors' senior management team would help communicate stability throughout all facets of the Debtors' operations, as well as to customers, vendors, suppliers, and other parties who work alongside the Debtors. In addition, providing incentive opportunities through the KEIP would enable the Debtors to (a) not only achieve, but possibly exceed, their near-term operational goals and (b) consummate the transactions contemplated by the RSA, in both cases for the benefit of the Debtors, the Debtors' estates, and all parties in interest.

Key Employee Retention Plan

IV. Overview of the Non-Insider KERP.

25. The Debtors employ approximately 13,700 Employees. The KERP Participants include 32 key non-insider Employees and additional key Employees to be identified by the CRO in his sole discretion (*i.e.*, the Discretionary KERP Participants), all of whom are non-Insiders and whose knowledge and experience are essential to preserving operational stability and maximizing the value of the Debtors' estates. These Employees include highly trained and knowledgeable personnel that would be extremely difficult to replace without a negative effect on the Debtors' business. Indeed, since the beginning of 2024, several key employees at the senior manager level and above have resigned from the Debtors (including nine vice presidents)¹⁰. Given the increasing demands placed upon the potential KERP Participants during these chapter 11 cases, providing compensation designed to motivate key Employees to remain with the Debtors throughout the restructuring process is essential.

¹⁰ The nine senior level non-insider Employees include a Vice President of Business Development, a Vice President of Financial Planning & Analysis, a Vice President of Business Development, a Senior Vice President of Procurement and Accounts Payable, a Division Vice President of Financial Planning & Analysis, a Vice President of Mental Health Innovations, two Division Presidents, and a Senior Vice President of AGC Risk Management and Litigation.

26. Due to the importance of the KERP Participants to the success of the Debtors' businesses and their restructuring, the Debtors, along with their advisors, developed a compensation plan designed to offer competitive, fair compensation that motivates the KERP Participants to remain with the Debtors through these chapter 11 cases. The key terms of the Non-Insider KERP are summarized as follows:

- ***Eligible Participants.*** The Non-Insider KERP awards will be provided to approximately 32 non-insider Employees who were eligible under the Company's prepetition incentive plans based on grade level and position, as well as certain Discretionary KERP Participants. Specifically, the KERP Participants do not include any Employee who (a) is appointed or hired directly by the board of directors of CCS-CMGC Parent GP, LLC (the "Board"), (b) reports directly to the Board or the Debtors' Chief Executive Officer, (c) regularly attends Board meetings, (d) exercises managerial control over, or has responsibility for, the Debtors' operations as a whole, or (e) dictates the Debtors' overall corporate policy, governance, or disposition of corporate assets. Grants to Discretionary KERP Participants will be capped at \$675,000 in the aggregate and shall only be made prior to the conclusion of the KERP Retention Period.
- ***Non-Insider KERP Awards.*** The Non-Insider KERP awards represent fixed cash amounts payable based on continued employment through the closing of a Corrections Asset(s) Sale Transaction or the consummation of a chapter 11 plan of reorganization involving the Corrections Assets (the "KERP Retention Period").
- ***Maximum Amount of Non-Insider KERP.*** The total amount of the Non-Insider KERP would not exceed \$3,022,000.
- ***Payment Dates.*** Each KERP Participant would be paid 100% of the KERP award upon the effective date of a chapter 11 plan confirmed in these chapter 11 cases (the "Plan Effective Date"); *provided, however*, that the Non-Insider KERP awards are subject to clawback in the event that a KERP Participant's employment terminates for "cause" or voluntarily without "good reason" prior to December 31, 2025.
- ***Performance Criteria.*** The Non-Insider KERP has no performance criteria.
- ***Termination of Employment.*** If (a) the Debtors terminate a KERP Participant's employment prior to the end of the applicable KERP Retention Period without "cause" or due to disability or (b) a KERP Participant's employment terminates due to their death, in each case, during the applicable KERP Retention Period, subject to the KERP Participant's timely execution,

delivery, and non-revocation of a release of claims in favor of the Debtors and such KERP Participant's compliance with his or her obligations to the Debtors, the KERP Participant would be entitled to the full KERP award. If a KERP Participant's employment is terminated prior to the end of the applicable KERP Retention Period due to a voluntary resignation, the KERP award payment would be forfeited. If the Debtors terminate a KERP Participant's employment for "cause" prior to the KERP award payment, the KERP award, whether or not vested, would be forfeited.

- ***Reallocation.*** The CRO may reallocate any portion of the Non-Insider KERP that is forfeited by a KERP Participant or Discretionary KERP Participants to any other non-insider employee; *provided*, that in no event shall more than \$50,000 in the aggregate be reallocated to any one KERP Participant or Discretionary KERP Participant.

V. Reasonableness of the Non-Insider KERP.

27. The Debtors and their advisors evaluated whether the Non-Insider KERP's design, structure, and cost are reasonable and consistent with market practice—keeping in mind their financial and operational restructuring goals and the Debtors' commitment to continue providing quality patient care throughout these chapter 11 cases and into the future. In particular, FTI analyzed 13 comparable non-insider plans approved in recent chapter 11 cases of companies with (a) revenues between approximately \$135,000,000 and \$3,200,000,000 and (b) funded debt between \$226,000,000 and \$1,800,000,000 (collectively, the "KERP Peer Group" or "KERP Market").¹¹ For the Non-Insider KERP, the aggregate payments would approximate the 62nd percentile compared to the KERP Peer Group. Based on this review of comparable retention plans, the Debtors believe that the total cost of the Non-Insider KERP is reasonable relative to the KERP Market.

¹¹ The 13 companies comprising the KERP Peer Group include the following: Genesis Care Pty Ltd.; 24 Hour Fitness Worldwide, Inc.; Amyris Inc.; LSC Communications, Inc.; NPC International, Inc.; Exide Holdings, Inc.; Clovis Oncology Inc.; Ebix Inc.; Stage Stores, Inc.; Basic Energy Services, Inc.; Invacare Corp.; Gulf Coast Health Care, LLC; Endologix, Inc.

Basis for Relief

I. The Compensation Plans are Ordinary Course Transactions Under Section 363(c) of The Bankruptcy Code.

28. Under section 363(c)(1) of the Bankruptcy Code, a debtor in possession “may enter into transactions . . . in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). Courts in the Fifth Circuit and elsewhere apply a two-prong test to determine if a transaction is in the ordinary course of a debtor’s business. *See, e.g., In re Cowin*, 2014 WL 1168714, at *40 (Bankr. S.D. Tex. Mar. 21, 2014); *In re Patriot Place, Ltd.*, 486 B.R. 773, 793 (Bankr. W.D. Tex. 2013) (applying the “horizontal” and “vertical” tests); *In re Dana Corp.*, 358 B.R. 567, 576-77 (Bankr. S.D.N.Y. 2006); *In re Johns-Manville Corp.*, 60 B.R. 612, 616, 618 (Bankr. S.D.N.Y. 1986). Under the horizontal dimension test, the Court analyzes if “the transaction was of the sort commonly undertaken by companies in the industry.” *Patriot Place*, 486 B.R. at 793; *Cowin*, 2014 WL 1168714, at *40 n.55 (noting the “horizontal dimension test” is also known as the “comparable businesses test”). Under the vertical dimension test, the court analyzes whether a hypothetical creditor would view the transaction as an ordinary or unusual business practice. *Cowin*, 2014 WL 1168714, at *41. If the transaction was ordinary, such hypothetical creditor would not expect notice and a hearing with the opportunity to object. *Id.*

29. First, the Compensation Plans satisfy the horizontal dimension test because they are consistent with such plans within the Debtors’ industry. *See In re Blitz U.S.A. Inc.*, 475 B.R. 209, 215 (Bankr. D. Del. 2012) (approving incentive bonus plans under section 363(c)(1) of the Bankruptcy Code where the debtor sought to continue prepetition plans that were common in the industry). To establish a reference point for the competitiveness of the Compensation Plans, FTI examined the KEIP Peer Group’s and KERP Peer Group’s compensation practices. The KEIP

would result in the KEIP Participants receiving total direct compensation in the aggregate would approximate the 50th percentile of the Industry Market. The average total cost per participant for the KEIP correspond to the 50th percentile of the KEIP Market. For the Non-Insider KERP, the aggregate payments would approximate the 62nd percentile compared to the KERP Peer Group. Based on the comparisons of the Compensation Plans to other compensation plans in the KEIP Market and KERP Market, the Compensation Plans are consistent with compensation practices within the Debtors' industry.

30. Second, the Compensation Plans meet the vertical dimension test because they represent a substantial continuation of the Debtors' prepetition compensation practices. *See Dana Corp.*, 358 B.R. at 579, 581 (finding that the debtor's post-petition compensation program was a "refinement" of historical practices and therefore within the ordinary course of debtor's business). The Debtors have historically offered cash bonus plans to supplement the Employees' salary compensation. The Compensation Plan awards are entirely cash-based and do not include stock awards. Moreover, the Compensation Plan target awards are generally in line with an Employee's prepetition target annual awards.

31. Because the Compensation Plans are consistent with both the Debtors' prepetition practice and industry practice for companies in and out of chapter 11, the Debtors respectfully request that the Court approve the Compensation Plans as an ordinary course transaction pursuant to section 363(c) of the Bankruptcy Code.

II. Even if the Compensation Plans are Not an Ordinary Course Transaction, Implementing the Compensation Plans is a Proper Exercise of the Debtors' Sound Business Judgment Under Section 363(b) of the Bankruptcy Code.

32. Even assuming the Compensation Plans are not an ordinary course transaction, the Compensation Plans constitute a sound exercise of the Debtors' business judgment. Section 363(b)(1) of the Bankruptcy Code empowers a court to allow a debtor to "use, sell, or

lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). A debtor’s decision to use, sell, or lease assets outside the ordinary course of business must be based upon the sound business judgment of the debtor. *See In re Cont’l Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986) (“[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business”). Courts emphasize that the business judgment standard is not an onerous standard; rather it “is flexible and encourages discretion.” *In re ASARCO, L.L.C.*, 650 F.3d 593, 601 (5th Cir. 2011); *In re Perez*, 339 B.R. 385, 399 n. 14 (Bankr. S.D. Tex. 2006), *aff’d sub nom. Perez v. Peake*, 373 B.R. 468 (S.D. Tex. 2007) (“Section 363(b) should be interpreted liberally to provide a bankruptcy judge with substantial freedom to tailor his orders to meet differing circumstances and to avoid shackling the judge with unnecessary rigid rules.” (cleaned up)). As such, courts exhibit “[g]reat judicial deference . . . to [a debtor’s] exercise of business judgment.” *GBL Holding Co., Inc. v. Blackburn/Travis/Cole, Ltd.*, 331 B.R. 251, 254 (N.D. Tex. 2005). Indeed, as long as a transaction “appears to enhance a debtor’s estate, court approval of a debtor-in-possession’s decision to [enter into the transaction] should only be withheld if the debtor’s judgment is clearly erroneous, too speculative, or contrary to the Bankruptcy Code.” *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985) (cleaned up).

33. There is no question that the Debtors possess an articulable business purpose to implement the Compensation Plans. The Participants are integral to the day-to-day operations of the Debtors’ businesses and are experiencing increasing demands as a result of this challenging market, the Debtors’ filing for chapter 11, and the transactions contemplated by the RSA. The

Debtors also cannot easily replace the Participants or without adversely affecting the Debtors' operations or restructuring efforts.

34. Moreover, the cost of the Compensation Plans is reasonable for the size and earnings potential of the Debtors. To measure the reasonableness of the KEIP, FTI analyzed incentive plans approved in chapter 11 cases involving companies with (a) revenues between approximately \$135,000,000 and \$3,200,000,000 and (b) funded debt between \$226,000,000 and \$5,300,000,000 that had filed for chapter 11 since 2020 and sought approval of sale-based or dual-track incentive plans. FTI also evaluated the KEIP Participants' compensation against the Mercer Survey Data. Finally, FTI examined non-insider compensation plans approved in the chapter 11 cases since 2020 for companies outside the healthcare sector with (a) revenues between approximately \$260,000,000 and \$3,200,000,000 and (b) funded debt between \$226,000,000 and \$1,500,000,000. Against these different measures, both the KEIP and the KERP fall within the norm of the industry practice. Indeed, the target cost per participant of the KEIP is \$382,000, which ranks in the 50th percentile of companies in the KEIP Peer Group, and the target cost per participant of the Non-Insider KERP as a percentage of base-salary is 31%, which ranks in the 80th percentile of the KERP Market (based on those in the KERP Peer Group that disclosed such information). The Compensation Programs apply to only a fraction of the Debtors' Employees. Finally, the Debtors developed the Compensation Plans in reliance on their advisors and they were reviewed and approved by the members of the Special Committee, whose members are not current Employees of the Debtors nor Participants. For these reasons, the Debtors' decision to implement the Compensation Plans is a valid exercise of the Debtors' sound business judgment and, therefore, should be approved.

III. The Compensation Plans are Justified by the Facts and Circumstances of These Chapter 11 Cases.

35. Section 503(c)(3) of the Bankruptcy Code prohibits certain transfers made to managers, consultants, and others that are not justified by the facts and circumstances of a bankruptcy case. *See* 11 U.S.C. § 503(c)(3). Certain courts have held that section 503(c)(3) of the Bankruptcy Code’s “facts and circumstances” justification test “creates a standard no different than the business judgment standard under section 363(b) of the Bankruptcy Code.” *In re Velo Holdings, Inc.*, 472 B.R. 201, 212 (Bankr. S.D.N.Y. 2012); *In re Alpha Nat. Res., Inc.*, 546 B.R. 348, 356 (Bankr. E.D. Va. 2016) (finding that “a majority of courts . . . agree that the ‘facts and circumstances’ test of 503(c)(3) is identical to the business judgment standard under 363(b)(1)”; *In re Patriot Coal Corp.*, 492 B.R. 518, 530–31 (Bankr. E.D. Mo. 2013) (using the business judgment test to analyze an incentive plan under section 503(c)(3) of the Bankruptcy Code); *Dana Corp.*, 358 B.R. at 576–77 (describing six factors to evaluate if a compensation plan meets the “sound business judgment test” under section 503(c)(3) of the Bankruptcy Code). Other courts have determined that section 503(c)(3) of the Bankruptcy Code requires a court to “make its own determination that the transaction will serve the interests of creditors and the debtor’s estate.” *In re Pilgrim’s Pride Corp.*, 401 B.R. 229, 237 (Bankr. N.D. Tex. 2009). A court should make this determination based on whether the proposed compensation plan is justified on the facts of a particular case. A court should make this determination based on whether the proposed compensation plan is justified on the facts of a particular case. *See id.*; *In re Country Fresh Holding Co. Inc.*, No. 21-30574, 2021 WL 2932680, at *12 (MI) (Bankr. S.D. Tex. July 12, 2021) (“Section 503(c)(3)’s language makes clear that courts must consider all relevant facts and circumstances surrounding a proposed KEIP.”).

36. Under either the business judgment standard or the facts and circumstances analysis proposed by *Pilgrim's Pride*, courts have analyzed compensation plans using the six factors identified in *Dana Corporation* to determine whether a compensation proposal is permitted by 503(c)(3). *See, e.g., In re FirstEnergy Sol. Corp.*, 591 B.R. 688, 697698 (Bankr. N.D. Ohio 2018) (analyzing a proposed KERP using the *Dana Corp.* factors without deciding whether section 503(c)(3) modifies the business judgment standard); *Patriot Coal*, 492 B.R. at 531 (applying the business judgment standard and analyzing an insider incentive plan and a non-insider retention plan using the *Dana Corp.* factors). In order to determine whether a compensation proposal meets the “sound business judgment test” courts consider the following six factors: (a) whether the plan is calculated to achieve the desired performance; (b) whether the cost of the plan is reasonable in the context of a debtor’s assets, liabilities, and earning potential; (c) whether the scope of the plan is fair and reasonable or discriminates unfairly among employees; (d) whether the plan is consistent with industry standards; (e) whether the debtor performed due diligence in investigating the need for the plan; and (f) whether the debtor received independent advice in performing due diligence, creating, and authorizing the plan. *See Dana Corp.*, 358 B.R. at 576–77; *see also In re Residential Capital, LLC*, 491 B.R. 73, 85–86 (Bankr. S.D.N.Y. 2013) (applying the *Dana Corp.* factors to the debtors’ retention plan for non-insiders and approving the plan as an exercise of sound business judgment).

37. No single factor is dispositive, and a court has discretion to weigh each factor based on the specific facts and circumstances before it. *See, e.g., FirstEnergy Sol. Corp.*, 591 B.R. at 697 (*Dana Corp.* “factors are neither exhaustive nor of inherently equal weight.”). Even the total absence of a factor may be permissible, so long as the Debtors’ interests are sufficiently protected. *See In re Borders Grp. Inc.*, 453 B.R. 459, 477 (Bankr. S.D.N.Y. 2011) (finding that the lack of

independent counsel was “not fatal” where the presence of other factors ensured “that the [d]ebtors’ interests were sufficiently protected”); *In re Glob. Aviation Holdings Inc.*, 478 B.R. 142, 154 (Bankr. E.D.N.Y. 2012) (noting “the relatively modest size of the proposed bonus payouts made the retention of independent legal counsel economically inefficient”). The Debtors respectfully submit that the KEIP satisfies the standards set forth above.

A. The KEIP is Justified by The Facts and Circumstances of These Chapter 11 Cases.

38. The KEIP is a sound exercise of the Debtors’ business judgment and is justified by the facts and circumstances of these chapter 11 cases.

- **The KEIP is Calculated to Achieve the Desired Performance.** The KEIP is tied to the Debtors’ ability to meet and exceed certain threshold metrics, each of which are tied to the stability and future success of the Debtors’ businesses, as well as the transactions contemplated by the RSA. KEIP awards for the KEIP Participants are tied to both the sale or equitization of certain of the Debtors’ assets and achieving certain operational performance targets. These metrics help ensure that the Debtors maintain access to essential post-petition financing while also achieving certain operational goals that would likely be challenging to achieve while implementing a sale and reorganization process. Indeed, the KEIP Participants worked tirelessly to support the sale process relating to the Recovery Solutions Assets, including negotiating and finalizing the transactions contemplated by the Recovery Solutions Stalking Horse Agreement and related agreements and documents and preparing for the closing of such transactions. Absent the KEIP Participants’ herculean efforts, the parties could not finalize the Recovery Solutions Sale Transaction.
- **The Cost of the KEIP is Reasonable.** The estimated aggregate payout at target performance levels under the KEIP is \$4,588,000. Compared to court-approved incentive plans of the Debtors’ chapter 11 peers, the target cost of the KEIP would be at the 79th percentile of the KEIP Market (primarily driven by the KEIP’s large number of participants), with the target cost per participant at the 50th percentile of the KEIP Market. The proposed target total direct compensation for the KEIP Participants in the aggregate would approximate the 50th percentile of the Mercer Survey Data.
- **The Scope of the KEIP is Reasonable.** The KEIP is reasonably limited to senior management whose efforts are critical to the Debtors’ restructuring and maximizing the value of the Debtors’ estates. The scope of the KEIP is fair, reasonable, and does not discriminate unfairly among the KEIP Participants.

- **The KEIP is Consistent with Industry Practices.** FTI gathered external market compensation data from data sources, encompassing a representative database of compensation information for comparable executives, including from the Mercer Survey Data. Absent the KEIP, FTI determined that the KEIP Participants would be compensated below industry standards for their positions. The KEIP Participants' total direct compensation (including potential KEIP payouts) in the aggregate would approximate the 50th percentile of the Mercer Survey Data.
- **The Debtors Performed Due Diligence in Developing the KEIP.** The Debtors retained and relied on FTI in developing the KEIP. This process involved a review of the market and peer group data, including data regarding the structure and specific performance metrics ultimately included in the KEIP.
- **The Debtors Received Independent Counsel in Developing the KEIP.** The Debtors actively sought input from their legal and financial consultants during the KEIP development process and hired and consulted with FTI for its specific compensation-related expertise. In addition, the special committee of the Board of Directors of CCS-CMGS Intermediate Holdings 2, Inc. (the "Special Committee"), comprised solely of disinterested directors, evaluated and approved the KEIP.

39. Because the KEIP will incentivize the KEIP Participants to meet specific objective performance goals, the achievement of which would facilitate a value-maximizing resolution of these chapter 11 cases, the KEIP reflects a sound exercise of the Debtors' business judgment and is justified by the facts and circumstances of these chapter 11 cases. Accordingly, the KEIP satisfies section 503(c)(3) of the Bankruptcy Code.

B. The KERP Is Justified by the Facts and Circumstances of these Chapter 11 Cases.

40. The Debtors' Non-Insider KERP is a sound exercise of the Debtors' business judgment and is justified by the facts and circumstances of these chapter 11 cases.

- **The Non-Insider KERP is Calculated to Achieve the Desired Performance.** The Non-Insider KERP was carefully designed by the Debtors and their advisors to ensure that key, non-insider Employees are fairly compensated and remain with the Debtors through the Plan Effective Date. Through the Non-Insider KERP, these Employees' total direct compensation would be relatively flat year-over-year, whereas any significant reduction in that compensation might prompt those Non-Insider KERP Participants' voluntary departure during

the chapter 11 cases. Accordingly, the Non-Insider KERP and the desired retention outcome are strongly correlated.

- **The Cost of the Non-Insider KERP is Reasonable.** The Non-Insider KERP's total cost will not exceed \$3,022,000. The Non-Insider KERP awards correspond to the 80th percentile of the KERP Market based on the target cost as a percent of the KERP Participants' base salaries and the aggregate payments would approximate the 62nd percentile compared to the KERP Peer Group. The KERP Participant pool includes many highly skilled, highly trained Employees necessary to the Debtors' success while in chapter 11, reinforcing the reasonableness of these costs.
- **The Scope of the Non-Insider KERP is Fair and Reasonable.** The 32 KERP Participants represent a small portion of the Debtors' total Employee base. The scope of the Non-Insider KERP is fair and reasonable because the KERP Participants' retention is necessary to the Debtors' restructuring process.
- **The Non-Insider KERP is Consistent with Industry Standards.** The Debtors and their advisors undertook a benchmarking analysis examining non-insider compensation plans of 13 companies that filed petitions since 2020, with (a) revenues between approximately \$135,000,000 and \$3,200,000,000 and (b) funded debt between \$226,000,000 and \$1,800,000,000. FTI's comparison of the Non-Insider KERP's structure and terms with this peer groups' plans confirmed that the Non-Insider KERP is consistent with market practices.
- **The Debtors Performed Due Diligence in Developing the Non-Insider KERP.** The Debtors actively sought the advice of FTI and their other advisors in designing an appropriate retention plan for their non-insider Employees. The Debtors also engaged their advisors in the selection process to ensure that no KERP Participant was an "insider" and that each KERP Participant was essential to the Debtors' ongoing business and restructuring processes.
- **The Debtors Received Independent Counsel in Developing the Non-Insider KERP.** FTI and the Debtors' legal advisors counseled the Debtors regarding the development and implementation of the Non-Insider KERP. The Special Committee also reviewed and approved the Non-Insider KERP.

41. Because implementing the Non-Insider KERP would motivate the Debtors' Employees for the benefit of all parties in interest, the Non-Insider KERP reflects a sound exercise of the Debtors' business judgment and is justified by the facts and circumstances of these chapter 11 cases. Accordingly, the Non-Insider KERP satisfies section 503(c)(3) of the Bankruptcy Code.

IV. Section 503(c)(1) is Inapplicable to the Compensation Plans.

42. Section 503(c)(1) of the Bankruptcy Code generally prohibits payments to “insiders” made for the sole or primary purpose of inducing the “insider” to remain with a debtor’s business—*i.e.*, those insider plans that are essentially “pay to stay” plans. *See, e.g., Borders Grp.*, 453 B.R. at 471. The Compensation Plans are not barred under section 503(c)(1) of the Bankruptcy Code.

A. Section 503(C)(1) Is Inapplicable to the KEIP.

43. Section 503(c)(1) of the Bankruptcy Code does not apply to performance-based incentive plans. *See, e.g., Velo Holdings*, 472 B.R. at 209 (finding an incentive-based plan alleviated the need for analysis under section 503(c)(1) of the Bankruptcy Code); *Borders Grp.*, 453 B.R. at 471 (finding that “the Debtors [had] met their burden of establishing that the [compensation program was] incentivizing, thereby alleviating the need for a section 503(c)(1) analysis”).

44. In determining if a compensation plan is primarily incentivizing, courts consider whether the plan is “designed to motivate insiders to rise to a challenge or merely report to work.” *In re Hawker Beechcraft, Inc.*, 479 B.R. 308, 313 (Bankr. S.D.N.Y. 2012). “[I]ncentivizing plans with some components that arguably have a retentive effect do not necessarily violate section 503(c).” *Dana Corp.*, 358 B.R. at 572; *see also Glob. Home Prod.*, 369 B.R. 778, 786 (Bankr. D. Del. 2007) (“The fact . . . that all compensation has a retention element does not reduce the Court’s conviction that [the] Debtors’ primary goal [is] to create value by motivating performance.”). Rather, the focus remains on whether the plan is, on the whole, incentivizing in nature by demanding a “reach” before an award opportunity is achieved. *Dana Corp.*, 358 B.R. at 581.

45. Because the KEIP is incentive-based, section 503(c)(1) of the Bankruptcy Code does not apply. The KEIP provides award opportunities only if the KEIP Participants satisfy

threshold levels of performance tagged to metrics that are subject to considerable challenges in these chapter 11 cases. While the KEIP Participants are integral to the Debtors' restructuring process, they cannot obtain an award simply as a result of "showing up." *Cf. Hawker Beechcraft*, 479 B.R. at 315 (denying KEIP approval where lower threshold was attainable so long as debtor did not encounter "any 'whoopsies.'"). Instead, the KEIP Participants must achieve results for the benefit of all of the Debtors' stakeholders to be compensated. Accordingly, the Debtors submit that the KEIP should be approved.

B. Section 503(c)(1) is Inapplicable to the KERP.

46. Section 101(31) of the Bankruptcy Code provides that where a debtor is a corporation, insiders include any "(i) director of the debtor; (ii) officer of the debtor; (iii) person in control of the debtor . . . or (iv) relative of a . . . director, officer or person in control of the debtor." 11 U.S.C. § 101(31)(B). An employee may be an "insider" if such employee has "at least a controlling interest in the debtor or . . . exercise[s] sufficient authority over the debtor so as to unqualifiably dictate corporate policy and the disposition of corporate assets." *Velo Holdings*, 472 B.R. at 208 (citations omitted). An employee's job title, alone, does not make that employee an "insider." *See Borders Grp.*, 453 B.R. at 469 (noting that "[c]ompanies often give employees the title 'director' or 'director-level,' but do not give them decision-making authority akin to an executive" and concluding that certain "director level" employees in that case were not insiders).

47. Here, none of the KERP Participants are "insiders" under section 101(31) of the Bankruptcy Code. The KERP Participants lack discretionary control over substantial budgetary amounts as well as significant control with respect to the Debtors' corporate policies or governance. None of these Employees was hired or appointed by the Board or reports directly to the Board. Thus, although certain KERP Participants hold titles like "director," "vice president," or "chief," none is an "insider" of the Debtors, which renders section 503(c)(1) of the Bankruptcy

Code inapplicable to the Non-Insider KERP. Accordingly, the Debtors submit that the Non-Insider KERP should be approved.

Compliance with Bankruptcy Rule 6004(a) and Waiver of Bankruptcy Rule 6004(h)

48. To implement successfully the relief sought herein, the Debtors request that the Court find that notice of the Motion is adequate under Bankruptcy Rule 6004(a) under the circumstances. The Debtors also request that, to the extent applicable to the relief requested in this Motion, the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary to achieve the transactions contemplated by the RSA and to preserve and maximize value for the Debtors’ estates and economic stakeholders. Accordingly, the Debtors respectfully submit that ample cause exists to justify the (a) finding that the notice requirements under Bankruptcy Rule 6004(a) have been satisfied and (b) waiving of the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

Notice

49. Notice of this Motion will be provided to the following parties or their respective counsel: (a) the U.S. Trustee; (b) Stinson LLP and Proskauer Rose LLP, as counsel to the Committee; (c) counsel to the DIP Lenders; (d) counsel to the Ad Hoc Group; (e) counsel to the Prepetition First Lien Administrative Agent; (f) counsel to the Prepetition Second Lien Administrative Agent; (g) the U.S. Trustee; (h) the state attorneys general for states in which the Debtors conduct business; and (i) any party identified in section E of the *Procedures for Complex Cases in the Southern District of Texas* (collectively, the “Notice Parties”). A copy of this Motion and the Order approving it will also be made available on the Debtors’ case information website

located at <https://dm.epiq11.com/Wellpath>. Based on the circumstances surrounding this Motion and the nature of the relief requested, the Debtors respectfully submit that no other or further notice is required.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request that the Court enter the Order, substantially in the form annexed hereto, granting the relief requested herein and such other and further relief as the Court deems appropriate under the circumstances.

Dated: January 17, 2025
Dallas, Texas

/s/ Marcus A. Helt

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Counsel to the Debtors and Debtors in Possession

Certificate of Service

I certify that, on January 17, 2025, I caused a copy of the foregoing document to be served via the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Marcus A. Helt

Marcus A. Helt

Exhibit A

Jones Declaration

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

WELLPATH HOLDINGS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-90533 (ARP)

(Jointly Administered)

**DECLARATION OF GILBERT JONES IN SUPPORT
OF DEBTORS' MOTION FOR ENTRY OF AN ORDER
(I) AUTHORIZING AND APPROVING THE DEBTORS'
(A) KEY EMPLOYEE INCENTIVE PLAN AND (B) NON-INSIDER
KEY EMPLOYEE RETENTION PLAN AND (II) GRANTING RELATED RELIEF**

I, Gilbert Jones, hereby declare as follows under penalty of perjury:

1. I am a Senior Managing Director—Human Capital at FTI Consulting, Inc. (“FTI”). In November 2024, above-captioned debtors and debtors in possession (collectively, the “Debtors”) engaged FTI to provide financial advisory services both before and after the commencement of these chapter 11 cases. I am familiar with the pre- and post-petition structure of the Debtors’ compensation plans, including the Debtors’ proposed Key Employee Incentive Plan (the “KEIP”) and Key Employee Retention Plan (the “Non-Insider KERP” and, together with the KEIP, the “Compensation Plans”) as they are described in the *Debtors’ Motion for Entry of an Order (I) Authorizing and Approving the Debtors’ (A) Key Employee Incentive Plan and (B) Non-Insider Key Employee Retention Plan and (II) Granting Related Relief* (the “Motion”).²

¹ A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://dm.epiq11.com/Wellpath>. The Debtors’ service address for these chapter 11 cases is 3340 Perimeter Hill Drive, Nashville, Tennessee 37211.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

2. I submit this declaration (the “Declaration”) on behalf of FTI in support of the Motion. Except as otherwise indicated, I have personal knowledge of all facts in this Declaration, which are based on my review of the Debtors’ businesses and compensation practices, my research into compensation practices for similarly situated companies, my research into the designs of retention- and incentive-based plans approved in recent chapter 11 cases, my experience in developing similar plans, and information supplied to me by the Debtors’ management team and the Debtors’ other advisors. As explained below, it is my opinion that the Compensation Plans, including the design, structure, cost, and award opportunities, are reasonable and consistent with market practice, including programs implemented by similarly situated companies that have sought relief under chapter 11 of the Bankruptcy Code. If called upon to testify, I could and would testify competently to the facts and opinions set forth in this Declaration. I am over the age of 18 years and authorized to submit this Declaration.

Background and Qualifications

3. I joined FTI in 2022 and have more than ten years of experience related to executive compensation, organization design, right-sizing, labor forecasting, and operational improvements. In my current role at FTI, I specialize in assisting clients globally in navigating the challenges related to executive compensation, organizational design, right-sizing, labor forecasting, and operational improvement. My experience includes advising organizations in a variety of industries on human capital related matters as part of business transformations, restructurings, mergers, and acquisitions. Past projects include, retention and incentive plan construction, workforce transparency and optimization, union negotiations, labor cost forecasting, and organizational design.

4. Prior to joining FTI, I served as a Co-Founder and Managing Director at Strategy X Partners, a boutique consultancy focusing on human capital and workforce transformation, analytics, and strategy. Prior to this, I was a project leader at Seabury Consulting where I led human capital consulting engagements. I have also previously worked within United Airlines' Flight Operations division, providing analysis and recommendations targeted at improving pilot safety, compliance, productivity, and reliability. I received a Bachelor of Science in Aviation Technology in 2013 and a Master of Science in Aerospace Management in 2014 from Purdue University.

FTI's Involvement with the Debtors

5. The Debtors retained FTI in June 2024 to provide financial advisory services to the Debtors in connection with potential chapter 11 cases and to assist the Debtors in their restructuring. Our team was subsequently asked to assist with compensation matters. As a result, I have familiarized myself with the Debtors' operations, businesses, and restructuring challenges as they relate to employee compensation. FTI has reviewed and analyzed the structure of the Debtors' existing compensation arrangements, including compensation programs, participating employees, payout frequency, and target payout level.

6. My team and I then collaborated closely with the Debtors' management and other outside advisors, including McDermott Will & Emery LLP, as counsel to the Debtors, in reviewing and advising on the Compensation Plans. Part of FTI's mandate was to provide the Debtors an independent assessment of the Compensation Plans that drew directly upon relevant market data, as well as on my experience in designing comparable plans for similarly-situated companies. As part of that assessment, my team and I provided input and advice to the Debtors on the reasonableness of the Compensation Plans' design, structure, total

cost, and award opportunities. On one or more occasions, I presented this analysis to the Debtors' senior management, the Special Committee, and counsel to the DIP Lenders and the Ad Hoc Group.

7. FTI's work culminated in the Compensation Plans. The Debtors, in consultation with FTI, determined that entering into the Compensation Plans is necessary and appropriate to properly incentivize and compensate the Debtors' senior management and other key corporate employees and physicians, and retain their key non-insider corporate employees and physicians during these chapter 11 cases. Importantly, I understand that the Compensation Plans comply with the Bankruptcy Code.

Background

8. Wellpath is the premier provider of localized, high quality, compassionate care to vulnerable patients in challenging clinical environments. To provide this high quality of care to the vulnerable populations that Wellpath serves, the Debtors rely on their greatest asset: their highly skilled and dedicated workforce of approximately 13,700 employees (the "Employees"). The Employees perform a variety of critical functions to manage their cash flows and adapt to current market trends so that the Debtors can continue their tradition of providing industry-leading care to their patients. The skills and experience of the Employees are essential to the Debtors' ongoing operations and key to the Debtors' ability to pursue the sale and reorganization transactions contemplated by the RSA. It is my understanding that, in many instances, the Employees are distinctly familiar with the Debtors' services, clinical practices, processes, and systems and possess specialized knowledge, skills, or experience that cannot be easily replaced. Due to the high demand for individuals with these skill sets, if such an Employee were to leave, it would be extremely difficult to replace them with someone with similar expertise.

9. I believe that it is equally important to properly incentivize the Debtors' management team in light of the ongoing sale and restructuring processes contemplated by the RSA. Not only are the Employees tasked with executing a chapter 11 transition and turnaround plan, but they are also required to devote a significant amount of time and attention to ongoing marketing and sale efforts—in addition to fulfilling their daily duties.

10. Furthermore, I believe that maintaining a properly incentivized senior management team throughout the Debtors' organization is critical to the efficient and effective completion of the great deal of work necessary to consummate the transactions contemplated by the RSA and emerge from chapter 11. At the same time, senior management must maintain a high level of business performance to minimize disruption to patients, vendors, and Employees. To properly incentivize the Debtors' senior leadership team, and thereby facilitate a value-maximizing resolution of these chapter 11 cases, I worked with the Debtors to formulate a cash incentive-based plan (the "KEIP") for certain members of the Debtors' senior leadership team (each a "KEIP Participant") and, collectively, the "KEIP Participants").

11. In addition, for the Debtors to maintain ordinary course operations and continue providing quality patient care during these chapter 11 cases, I believe that it is essential that the Debtors retain a core group of non-insider Employees who are key to the Debtors' realization of these goals. To that end, I worked with the Debtors to develop a cash-based retention plan (the "Non-Insider KERP" and, together with the KEIP, the "Compensation Plans") for these non-insider Employees (each a "KERP Participant" and, collectively, the "KERP Participants"). Because the KERP Participants are essential to the Debtors' ability to maintain ordinary course operations and continue providing quality patient care during these chapter 11 cases, I believe that

approval of the Non-Insider KERP is critically important to the success of the Debtors' chapter 11 process.

The KEIP

12. The KEIP provides for cash incentives to 12 KEIP Participants. I understand that these KEIP Participants have played, and will continue to play, a central role in maintaining a high level of business performance to minimize disruption to patients, vendors, and Employees, consummating the transactions contemplated by the RSA, and emerging from chapter 11. The KEIP provides the KEIP Participants with the opportunity to earn cash payments only if certain incentive-based performance goals are achieved over the course of the applicable performance period. The KEIP provides aggregate (for all KEIP Participants) target opportunities of approximately \$4,588,000.

13. The KEIP Participants include the (a) Chief Executive Officer, (b) Chief Operating Officer, (c) Chief Compliance Officer, (d) Chief Legal Officer, (e) Division President, State and Federal, (f) Chief Information Officer, (g) Senior Vice President of Operations, Local Government, (h) Chief Human Resources Officer, (i) Senior Vice President of Operations, Local Government, (j) Chief Accounting Officer, (k) Interim Chief Medical Officer, and (l) Senior Vice President of Finance and Treasurer. The KEIP Participants may be considered "insiders" under the Bankruptcy Code. In addition to their substantial day-to-day responsibilities running a highly complex enterprise, these individuals have seen their workloads expand significantly as the Debtors have transitioned their operations into chapter 11. The additional challenges these responsibilities pose should be factored into consideration of the KEIP Participants' ability to achieve targeted business performance.

14. In my experience, incentive programs are regularly used by similarly situated companies to incentivize the performance of senior executives.

15. The proposed KEIP contains the following primary design features:

- ***KEIP Awards.*** Each KEIP award will be a cash amount provided (to the extent earned based on actual performance) upon the conclusion of the applicable performance period described below; *provided, however*, that the KEIP awards are subject to clawback in the event that a KEIP Participant's employment terminates for "cause" or voluntarily without "good reason" (each as defined below) prior to December 31, 2025. Potential payments are tied to achieving specified performance metrics for each performance period and subject to the KEIP Participant's continued employment through the end of that performance period (except as provided below).
- ***Performance Targets.*** KEIP payouts to KEIP Participants will be based on four performance metrics: (a) the closing of a Recovery Solutions Sale Transaction; (b) the closing of a Corrections Asset(s) Sale Transaction or the consummation of a chapter 11 plan of reorganization involving the Corrections Assets (each as defined in the Bidding Procedures Motion); (c) certain financial metrics, including meeting or outperforming the Initial DIP Budget³ (as defined in the Interim DIP Order), achieving minimum liquidity of no less than \$35 million upon consummation of the chapter 11 plan (if applicable), and achieving performance levels such that the business will require an Equity Financing Amount (if applicable) of no greater than \$55 million; and (d) meeting or exceeding a threshold for the retention or renewal of certain contracts, such that the aggregate gross profit of such contracts that are terminated, or at risk of termination, does not exceed \$40 million.
- ***KEIP Payout Ranges.*** The KEIP will provide for potential payments for achieving the performance targets set forth in the KEIP.
- ***Performance Periods.*** Performance related to a Recovery Solutions Sale Transaction would be measured as of the date of a successful closing of such transaction, including pursuant to a Credit Bid. Performance related to the Corrections Assets would be measured as of the date of a successful closing of a Corrections Asset(s) Sale Transaction or consummation of a chapter 11 plan of reorganization involving the Corrections Assets. Performance related to the financial metrics and the retention or renewal of the Debtors' contracts will be measured as of the date of a Corrections Asset(s) Sale Transaction or

³ In the event of satisfaction in full of the DIP Obligations (as defined in the Final DIP Order), references to the Interim DIP Budget shall mean the Cash Collateral (as defined in the Final DIP Order) budget agreed between the Debtors and the Ad Hoc Group.

consummation of a chapter 11 plan of reorganization involving the Corrections Assets.

- ***KEIP Payment Timing.*** Payments to KEIP Participants, to the extent earned, would occur as soon as reasonably practicable after the conclusion of the applicable performance period.
- ***Termination of Employment.*** If (a) the Debtors terminate a KEIP Participant's employment without "cause"⁴ or due to disability, (b) a KEIP Participant's employment terminates due to their death, or (c) the KEIP Participant resigns for "good reason,"⁵ in each case, during the applicable performance period, subject to the KEIP Participant's timely execution, delivery, and non-revocation of a release of claims in favor of the Debtors and such KEIP Participant's compliance with their obligations to the Debtors, the KEIP Participant would be entitled to its *pro rata* share of the KEIP award that would otherwise have been earned for such performance period based on (y) actual performance during the performance period and (z) the percentage of the performance period that the KEIP Participant was employed by the Debtors measured from the Petition Date to the date of termination of such KEIP Participant's employment, which will be paid at such time payments are paid to other KEIP Participants. If a KEIP Participant's employment is terminated by the KEIP Participant due to a voluntary resignation without "good reason", any remaining unpaid portion of the KEIP payment would be forfeited. If the Debtors terminate a KEIP Participant's employment for "cause", the KEIP Participants entire KEIP award, whether or not earned, would be forfeited.
- ***No Reallocation.*** Any portion of the KEIP that is forfeited and/or not earned, shall not be reallocated to any other KEIP Participant or otherwise.

⁴ "Cause" shall mean (a) the commission of a felony or other crime involving moral turpitude or the commission of any other act or omission involving embezzlement, theft, misappropriation, dishonesty, unethical business conduct, disloyalty, fraud, or breach of fiduciary duty, (b) reporting to work under the influence of alcohol, (c) the use of illegal drugs (whether or not at the workplace) or other conduct, even if not in conjunction with his or her duties to the Debtors, which could reasonably be expected to, or which does, cause the Debtors public disgrace or disrepute or economic harm, (d) repeated failure to perform duties as reasonably directed in good faith by the Board (as defined below), (e) gross negligence or willful misconduct with respect to any Debtors or in the performance of your duties as an employee, (f) obtaining any personal profit not thoroughly disclosed to and approved by the Debtors in connection with any transaction entered into by, or on behalf of, or in relation to, any Debtor, (g) violating any of the terms of a Debtor's established rules or policies, or (h) any breach of any agreement between you and any Debtor, including the violation of any restrictive covenants.

⁵ "Good Reason" shall mean the occurrence of any of the following conditions, without the Participant's consent, (a) a material diminution in their duties, authority, or responsibilities, (b) the Debtors requiring the Participant to be principally based at any office more than 25 miles from Nashville, Tennessee (solely for the sake of clarity, excluding ordinary travel consistent with their duties and responsibilities), or (c) any material breach of the Participant's offer letter by the Debtors.

16. The individual award opportunities available to each KEIP Participant are summarized as follows:

Participant's Title	Target Award Opportunity
Chief Executive Officer	\$1,607,000
Chief Operating Officer	\$450,000
Chief Compliance Officer	\$250,000
Chief Legal Officer	\$300,000
Division President, State and Federal	\$271,000
Chief Information Officer	\$250,000
Senior Vice President of Operations, Local Government	\$300,000
Chief Human Resources Officer	\$250,000
Senior Vice President of Operations, Local Government	\$300,000
Chief Accounting Officer	\$180,000
Interim Chief Medical Officer	\$250,000
Senior Vice President of Finance and Treasurer	\$180,000
Total Award Values	\$4,588,000

Analysis of KEIP

17. In assessing the reasonableness of the KEIP, I worked with my team to review the proposed target total direct compensation—an industry-standard benchmark—for each of the KEIP Participants. A critical initial step in this analysis was to define the relevant market. As the primary reference point to assess the competitiveness of compensation of all KEIP Participants, my team and I referenced the Debtors' industry peers (the "Industry Market Peer Group" or

“Industry Market”),⁶ which consists of five healthcare services companies with (a) revenues between approximately \$135,000,000 and \$3,200,000,000 and (b) funded debt between \$226,000,000 and \$5,300,000,000 that had filed for chapter 11 since 2020 and sought approval of sale-based or dual-track incentive plans (the “KEIP Peer Group” or “KEIP Market”). My team and I also evaluated the KEIP Participants’ compensation against the Mercer U.S. Executive Remunerations Survey for healthcare services companies with revenues between approximately \$1,000,000,000 and \$5,000,000,000 (the “Mercer Survey Data”).

18. The foregoing analysis matched the KEIP Participants to executive positions with comparable organizational roles, responsibilities, and position rank. As part of this analysis, compensation data was sourced from the Mercer Survey Data. Subsequently, my team and I analyzed the Debtors’ proposed annualized target total direct compensation, inclusive of the target KEIP awards, for KEIP Participants against market target total direct compensation pay levels.

19. If the Debtors do not receive approval for the KEIP, total direct compensation for the KEIP Participants will generally only reflect current base salaries. As a result, the total direct compensation of the KEIP participants would be significantly below the 50th percentile of the Mercer Survey Data in the aggregate. In my opinion, this outcome could significantly undermine the Debtors’ ability to motivate their senior management to achieve desired business objectives that are necessary to carry out these chapter 11 cases and the transactions contemplated by the RSA. Assuming the KEIP is approved, the annualized target total direct compensation for all KEIP Participants would be approximately \$10,637,000, and the fiscal year 2025 total direct

⁶ The 14 companies comprising the Industry Market Peer Group include the following: Mallinckrodt plc (2021 & 2022); Genesis Care Pty Ltd.; 24 Hour Fitness Worldwide, Inc.; Amyris Inc.; LSC Communications, Inc.; NPC International, Inc.; Exide Holdings, Inc.; Clovis Oncology Inc.; Ebix Inc.; Instant Brands Inc.; Stage Stores, Inc.; Basic Energy Services, Inc.; Endologix, Inc.

compensation of the Debtors' Chief Executive Officer at target would approximate the 50th percentile of the Mercer Survey Data.

20. Moreover, the proposed target total direct compensation for the KEIP Participants in the aggregate would approximate the 50th percentile of the Mercer Survey Data. The target cost per participant of the KEIP is \$382,000, which ranks in the 50th percentile of the KEIP Market, while the target total cost of the KEIP would be at the 79th percentile.

21. Under the KEIP, awards are payable only upon the Debtors' achievement of certain sale, reorganization, and operational performance targets. Achievement of these performance targets have required and will require substantial efforts from the KEIP Participants. Indeed, the KEIP Participants worked tirelessly to support the sale process relating to the Recovery Solutions Assets, including negotiating and finalizing the transactions contemplated by the Recovery Solutions Stalking Horse Agreement and related agreements and documents and preparing for the closing of such transactions. Absent the KEIP Participants' herculean efforts, the parties could not finalize the Recovery Solutions Sale Transaction. The performance targets – including (a) the closing of a Corrections Asset(s) Sale Transaction or the consummation of a chapter 11 plan of reorganization involving the Corrections Assets, (b) (i) meeting or outperforming the Initial DIP Budget, (ii) achieving minimum liquidity of no less than \$35 million upon consummation of the chapter 11 plan (if applicable), (iii) achieving performance levels such that the business will require an Equity Financing Amount (if applicable) of no greater than \$55 million, and (c) meeting or exceeding a threshold for the retention or renewal of certain contracts, such that the aggregate gross profit of such contracts that are terminated, or at risk of termination, does not exceed \$40 million – were approved by the Special Committee (as defined below), with the support of the DIP Lenders and the Ad Hoc Group, and developed carefully to ensure that they are an appropriate

“reach” to drive performance, on the one hand, but will not present unrealistic or unattainable goals, on the other hand—which would thwart the incentivizing nature of the KEIP. I worked with the Debtors to develop the performance targets in consultation with the Debtors’ restructuring advisors and coupled with an independent review of the total compensation award levels by me and my team.

22. The Debtors face severe business pressures due to recent challenges in the market, including market headwinds, inflated operating expenses due to increased costs for labor and medical supplies, and certain underperforming contracts. In light of these pressures and the additional challenges of these chapter 11 cases, I believe that it is critical that the Debtors implement the KEIP immediately to ensure that the key Employees remain with the Debtors during the pendency of these chapter 11 cases and are properly incentivized to consummate the transactions contemplated by the RSA and to maximize value for all stakeholders.

23. I believe that the KEIP is a sound exercise of the Debtors’ business judgment and is justified by the facts and circumstances of these chapter 11 cases.

- **The KEIP is Calculated to Achieve the Desired Performance.** The KEIP is tied to the Debtors’ ability to meet and exceed certain threshold metrics, each of which are tied to the stability and future success of the Debtors’ businesses, as well as the transactions contemplated by the RSA. KEIP awards for the KEIP Participants are tied to both the sale or equitization of certain of the Debtors’ assets and achieving certain operational performance targets. These metrics help ensure that the Debtors maintain access to essential post-petition financing while also achieving certain operational goals that would likely be challenging to achieve while implementing a sale and reorganization process. Indeed, the KEIP Participants worked tirelessly to support the sale process relating to the Recovery Solutions Assets, including negotiating and finalizing the transactions contemplated by the Recovery Solutions Stalking Horse Agreement and related agreements and documents and preparing for the closing of such transactions. Absent the KEIP Participants’ herculean efforts, the parties could not finalize the Recovery Solutions Sale Transaction.
- **The Cost of the KEIP is Reasonable.** The estimated aggregate payout at target performance levels under the KEIP is \$4,588,000. Compared to court-approved incentive plans of the Debtors’ chapter 11 peers, the target cost of the KEIP

would be at the 79th percentile of the KEIP Market (primarily driven by the KEIP's large number of participants), with the target cost per participant at the 50th percentile of the KEIP Market. The proposed target total direct compensation for the KEIP Participants in the aggregate would approximate the 50th percentile of the Mercer Survey Data.

- **The Scope of the KEIP is Reasonable.** The KEIP is reasonably limited to senior management whose efforts are critical to the Debtors' restructuring and maximizing the value of the Debtors' estates. I believe that the scope of the KEIP is fair, reasonable, and does not discriminate unfairly among the KEIP Participants.
- **The KEIP is Consistent with Industry Practices.** My team and I gathered external market compensation data from data sources, encompassing a representative database of compensation information for comparable executives, including from Mercer Survey Data. Absent the KEIP, my team and I determined that the KEIP Participants would be compensated below industry standards for their positions. The KEIP Participants' total direct compensation (including potential KEIP payouts) in the aggregate would approximate the 50th percentile of the Mercer Survey Data.
- **The Debtors Performed Due Diligence in Developing the KEIP.** The Debtors retained and relied on FTI to develop the KEIP. This process involved a review of the market and peer group data, including data regarding the structure and specific performance metrics ultimately included in the KEIP.
- **The Debtors Received Independent Counsel in Developing the KEIP.** The Debtors actively sought input from their legal and financial consultants during the KEIP development process and hired and consulted with FTI for our specific compensation-related expertise. In addition, the Special Committee comprised solely of disinterested directors evaluated and approved the KEIP.

24. In recent months, the KEIP Participants have seen a substantial increase in their workloads without any concomitant increase in their compensation, including facilitating the Recovery Solutions Sale Transaction. In fact, even if the KEIP is approved and the Debtors achieve the target KEIP metrics, the fiscal year 2025 total direct compensation of the Debtors' Chief Executive Officer at target would approximate the 50th percentile of the Mercer Survey Data. The Debtors' senior executives have continued to perform their preexisting job functions and have taken on more responsibilities as a result of the chapter 11 process. The KEIP Participants' responsibilities now also include developing and implementing the Debtors'

reorganization strategy, participating in Court hearings, continuing to negotiate with stakeholders and other parties, reviewing Court filings, assisting in the ongoing sale process for all of the Debtors' assets, and responding to creditor inquiries and requests from the U.S. Trustee. The dedication of the Debtors' senior management team would help communicate stability throughout all facets of the Debtors' operations, as well as to customers, vendors, suppliers, and other parties who work alongside the Debtors. In addition, I believe that providing incentive opportunities through the KEIP would enable the Debtors to (a) not only achieve, but possibly exceed, their near-term operational goals and (b) consummate the transactions contemplated by the RSA, in both cases for the benefit of the Debtors, the Debtors' estates, and all parties in interest.

25. Based on the results of these benchmarking analyses, and my experience in other incentive compensation arrangements implemented in comparable chapter 11 cases, I believe that the KEIP and the total direct compensation are reasonable in light of competitive market practice. The absence of an incentive opportunity for the KEIP Participants would negatively impact the Debtors' ability to motivate and retain current senior management who are essential to the Company's stability during these chapter 11 cases. Additionally, providing incentive opportunities through the KEIP will enable the Debtors to not only achieve, but also possibly exceed, their near-term operational goals for the benefit of the Debtors, the Debtors' estates, and all parties in interest.

26. Accordingly, I believe the design, structure, cost, and individual opportunities available under the Debtors' KEIP are reasonable and consistent with market practice.

The Non-Insider KERP

27. The Non-Insider KERP provides for cash incentives to 32 key non-insider Employees and additional key Employees to be identified by the CRO in his sole discretion (*i.e.*, the Discretionary KERP Participants), all of whom are non-Insiders and whose knowledge and experience are essential to preserving operational stability and maximizing the value of the Debtors' estates. These Employees include highly trained and knowledgeable personnel that would be extremely difficult to replace without a negative effect on the Debtors' business. Indeed, since the beginning of 2024, several key Employees at the senior manager level and above have resigned from the Debtors (including nine vice presidents).⁷ It is my understanding that, given the increasing demands placed upon the potential KERP Participants during these chapter 11 cases, providing compensation designed to motivate key Employees to remain with the Debtors throughout the restructuring process is essential. Additionally, it is my understanding that the Debtors' competitors continue to contact certain of the Debtor's key Employees to encourage them to terminate their employment with the Debtors, and that the Non-Insider KERP likely allows the Debtors to effectively counter their competitors' efforts to recruit these key Employees.

28. In my experience, incentive programs are regularly used by similarly situated companies to incentivize the performance of senior executives. The Non-Insider KERP target awards are generally in line with a corporate employee's prepetition target annual incentive opportunities.

29. The non-Insider KERP contains the following primary design features:

⁷ The nine senior level non-insider Employees include a Vice President of Business Development, a Vice President of Financial Planning & Analysis, a Vice President of Business Development, a Senior Vice President of Procurement and Accounts Payable, a Division Vice President of Financial Planning & Analysis, a Vice President of Mental Health Innovations, two Division Presidents, and a Senior Vice President of AGC Risk Management and Litigation.

- ***Eligible Participants.*** The Non-Insider KERP awards will be provided to approximately 32 non-insider Employees who were eligible under the Company's prepetition incentive plans based on grade level and position, as well as certain Discretionary KERP Participants. Specifically, the KERP Participants do not include any Employee who (a) is appointed or hired directly by the board of directors of CCS-CMGC Parent GP, LLC (the "Board"), (b) reports directly to the Board or the Debtors' Chief Executive Officer, (c) regularly attends Board meetings, (d) exercises managerial control over, or has responsibility for, the Debtors' operations as a whole, or (e) dictates the Debtors' overall corporate policy, governance, or disposition of corporate assets. Grants to Discretionary KERP Participants will be capped at \$675,000 in the aggregate and shall only be made prior to the conclusion of the KERP Retention Period.
- ***Non-Insider KERP Awards.*** The Non-Insider KERP awards represent fixed cash amounts payable based on continued employment through the closing of a Corrections Asset(s) Sale Transaction or the consummation of a chapter 11 plan of reorganization involving the Corrections Assets (the "KERP Retention Period").
- ***Maximum Amount of Non-Insider KERP.*** The total amount of the Non-Insider KERP would not exceed \$3,022,000.
- ***Payment Dates.*** Each KERP Participant would be paid 100% of the KERP award upon the effective date of a chapter 11 plan confirmed in these chapter 11 cases (the "Plan Effective Date"); *provided, however*, that the Non-Insider KERP awards are subject to clawback in the event that a KERP Participant's employment terminates for "cause" or voluntarily without "good reason" prior to December 31, 2025.
- ***Performance Criteria.*** The Non-Insider KERP has no performance criteria.
- ***Termination of Employment.*** If (a) the Debtors terminate a KERP Participant's employment prior to the end of the applicable KERP Retention Period without "cause" or due to disability or (b) a KERP Participant's employment terminates due to their death, in each case, during the applicable KERP Retention Period, subject to the KERP Participant's timely execution, delivery, and non-revocation of a release of claims in favor of the Debtors and such KERP Participant's compliance with his or her obligations to the Debtors, the KERP Participant would be entitled to the full KERP award. If a KERP Participant's employment is terminated prior to the end of the applicable KERP Retention Period due to a voluntary resignation, the KERP award payment would be forfeited. If the Debtors terminate a KERP Participant's employment for "cause" prior to the KERP award payment, the KERP award, whether or not vested, would be forfeited.

- **Reallocation.** The CRO may reallocate any portion of the Non-Insider KERP that is forfeited by a KERP Participant or Discretionary KERP Participants to any other non-insider; *provided*, that in no event shall more than \$50,000 in the aggregate be reallocated to any one KERP Participant or Discretionary KERP Participant .

Analysis of the Non-Insider KERP

30. In assessing the Non-Insider KERP’s design, structure, and cost, my team and I reviewed the Non-Insider KERP for reasonableness and to ensure its consistency with market practice – keeping in mind the Debtors’ financial and operational restructuring goals and the Debtors’ commitment to continue providing quality patient care throughout these chapter 11 cases and into the future. In particular, my team and I analyzed 13 comparable non-insider plans approved in recent chapter 11 cases with (a) revenues between approximately \$135,000,000 and \$3,200,000,000 and (b) funded debt between \$226,000,000 and \$1,800,000,000 (collectively, the “KERP Peer Group” or “KERP Market”).⁸ My team and I also examined non-insider compensation plans approved in the chapter 11 cases since 2020 for companies outside the healthcare sector with (a) revenues between approximately \$260,000,000 and \$3,200,000,000 and (b) funded debt between \$226,000,000 and \$1,500,000,000. For the Non-Insider KERP, the aggregate payments would approximate the 62nd percentile compared to the KERP Peer Group.

31. I believe that the Non-Insider KERP is a sound exercise of the Debtors’ business judgment and is justified by the facts and circumstances of these chapter 11 cases.

- **The Non-Insider KERP is Calculated to Achieve the Desired Performance.** The Non-Insider KERP was carefully designed by the Debtors and their advisors to ensure that key, non-insider Employees are fairly compensated and remain with the Debtors through the Plan Effective Date. Through the Non-Insider KERP, these Employees’ total direct compensation would be relatively flat year-over-year, whereas any significant reduction in that compensation

⁸ The 13 companies comprising the KERP Peer Group include the following: Genesis Care Pty Ltd.; 24 Hour Fitness Worldwide, Inc.; Amyris Inc.; LSC Communications, Inc.; NPC International, Inc.; Exide Holdings, Inc.; Clovis Oncology Inc.; Ebix Inc.; Stage Stores, Inc.; Basic Energy Services, Inc.; Invacare Corp.; Gulf Coast Health Care, LLC; Endologix, Inc.

might prompt those Non-Insider KERP Participants' voluntary departure during the chapter 11 cases. Accordingly, I believe that the Non-Insider KERP and the desired retention outcome are strongly correlated.

- **The Cost of the Non-Insider KERP is Reasonable.** The Non-Insider KERP's total cost will not exceed \$3,022,000. The Non-Insider KERP awards correspond to the 80th percentile of the KERP Market based on the target cost as a percent of the KERP Participants' base salaries and the aggregate payments would approximate the 62nd percentile compared to the KERP Peer Group. The KERP Participant pool includes many highly skilled, highly trained Employees necessary to the Debtors' success while in chapter 11, reinforcing the reasonableness of these costs.
- **The Scope of the Non-Insider KERP is Fair and Reasonable.** The 32 KERP Participants represent a small portion of the Debtors' total Employee base. I believe that the scope of the Non-Insider KERP is fair and reasonable because the KERP Participants' retention is necessary to the Debtors' restructuring process.
- **The Non-Insider KERP is Consistent with Industry Standards.** The Debtors and their advisors undertook a benchmarking analysis examining non-insider compensation plans of 13 companies that filed petitions since 2020, with (a) revenues between approximately \$135,000,000 and \$3,200,000,000 and (b) funded debt between \$226,000,000 and \$1,800,000,000. My comparison of the Non-Insider KERP's structure and terms with this peer groups' plans confirmed that the Non-Insider KERP is consistent with market practices.
- **The Debtors Performed Due Diligence in Developing the Non-Insider KERP.** The Debtors actively sought the advice of FTI and their other advisors in designing an appropriate retention plan for their non-insider Employees. The Debtors also engaged their advisors in the selection process to ensure that no KERP Participant was an "insider" and that each KERP Participant was essential to the Debtors' ongoing business and restructuring processes.
- **The Debtors Received Independent Counsel in Developing the Non-Insider KERP.** FTI and the Debtors' legal advisors counseled the Debtors regarding the development and implementation of the Non-Insider KERP. The Special Committee also reviewed and approved the Non-Insider KERP.

32. Accordingly, I believe that the design, structure, cost, and award opportunities of the Debtors' Non-Insider KERP are reasonable and consistent with market practice.

Conclusion

33. Based on my education, experience, and the work I have done in these chapter 11 cases and in similar cases, it is my opinion that the Compensation Plans, including the design, structure, cost, and award opportunities, are reasonable and consistent with market practice, including programs implemented by similarly situated companies that have sought relief under chapter 11.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: January 17, 2025

/s/ Gilbert Jones

Gilbert Jones
Senior Managing Director—Human Capital
FTI Consulting, Inc.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

WELLPATH HOLDINGS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-90533 (ARP)

Jointly Administered

Re: Docket No.

**ORDER (I) AUTHORIZING AND APPROVING THE
DEBTORS' (A) KEY EMPLOYEE INCENTIVE PLAN AND (B) NON-INSIDER
KEY EMPLOYEE RETENTION PLAN AND (II) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")² of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (a) authorizing and approving the KEIP and the Non-Insider KERP and (b) granting related relief, as more fully described in the Motion; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334 and the *Order of Reference to Bankruptcy Judges*, General Order 2012-6 (S.D. Tex. May 24, 2012) (Hinojosa, C.J.); and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of these chapter 11 cases and related proceedings being proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties, such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and this Court having reviewed and

¹ A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at <https://dm.epiq11.com/Wellpath>. The Debtors' service address for these chapter 11 cases is 3340 Perimeter Hill Drive, Nashville, Tennessee 37211.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

considered the Motion and the Jones Declaration; and this Court having held a hearing, if necessary, to consider the relief requested in the Motion on a final basis (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and the Jones Declaration and at the Hearing, if any, establish just cause for the relief granted herein; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and all objections and reservations of rights filed or asserted in respect of the Motion, if any, having been withdrawn, resolved, or overruled; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The KEIP is authorized and approved in its entirety on the terms set forth in the Motion with respect to all of the KEIP Participants.
2. The Non-Insider KERP is authorized and approved in its entirety on the terms set forth in the Motion with respect to all of the KERP Participants.
3. The Debtors are authorized to take any and all actions necessary or appropriate to implement the KEIP and Non-Insider KERP on the terms and conditions set forth in the Motion, including making any payments contemplated by the KEIP or the Non-Insider KERP in accordance with such terms and conditions.
4. Once earned, the Debtors’ obligations to pay amounts that become due and owing under the KEIP or the Non-Insider KERP shall constitute administrative expenses pursuant to section 503(b) of the Bankruptcy Code, thereby entitled to priority payment pursuant to section 507(a)(2) of the Bankruptcy Code.

5. Any Bankruptcy Rule or Bankruptcy Local Rule that might otherwise delay the effectiveness of this Order is hereby waived, and the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

6. The Debtors are authorized to take any action necessary or appropriate to implement and effectuate the terms of, and the relief granted in, this Order without seeking further order of this Court.

7. This Court retains exclusive jurisdiction over any matter arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2025
Houston, Texas

ALFREDO R. PÉREZ
UNITED STATES BANKRUPTCY JUDGE