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

In re:	Chapter 11
WELLPATH HOLDINGS, INC., *et al.*,[1]	Case No. 24-90533 (ARP)
Debtors.	(Jointly Administered)

DEBTORS' REPLY AND MEMORANDUM OF LAW IN SUPPORT OF FINAL APPROVAL OF THE DISCLOSURE STATEMENT AND CONFIRMATION OF THE FIRST AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF WELLPATH HOLDINGS, INC. AND CERTAIN OF ITS DEBTOR AFFILIATES

[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.

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Wellpath Holdings, Inc. and certain of its affiliates (collectively, the "Debtors"), each of which is a Debtor in the Chapter 11 Cases,[2] hereby File this memorandum of law and reply (this "Memorandum") in support of final approval of the *Disclosure Statement for the Joint Chapter 11 Plan of Reorganization of Wellpath Holdings, Inc. and Certain of Its Debtor Affiliates* [Docket No. 1835-1] (as altered, amended, modified, or supplemented from time to time in accordance with the terms thereof (including all appendices, exhibits, schedules, and supplements thereto), the "Disclosure Statement") and the confirmation of the *First Amended Joint Chapter 11 Plan of Reorganization of Wellpath Holdings, Inc. and Certain of its Debtor Affiliates* [Docket No. 2376-1] (including all appendices, exhibits, schedules, and supplements (including any Plan Supplement) thereto, the "Plan"),[3] pursuant to section 1129 of title 11 of the Bankruptcy Code. This Memorandum is supported by the *Declaration of Timothy J. Dragelin in Support of Confirmation of the First Amended Joint Chapter 11 Plan of Reorganization of Wellpath Holdings, Inc. and Certain of its Debtor Affiliates* (the "Dragelin Declaration"), the *Declaration of Christian Tempke in Support of Confirmation of the First Amended Joint Chapter 11 Plan of Reorganization of Wellpath Holdings, Inc. and its Debtor Affiliates* (the "Tempke Declaration" and, together with the Dragelin Declaration, the "Confirmation Declarations"), each of which was Filed substantially contemporaneously herewith and is incorporated herein by reference, and the *Declaration of Emily Young, on Behalf of Epiq Corporate Restructuring, LLC, Regarding Solicitation and Tabulation of Ballots Case in Connection the First Amended Joint Chapter 11 Plan of Reorganization of*

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[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan (as defined below), which is incorporated herein by reference, or the Solicitation Order, as applicable. The rules of interpretation set forth in Article I.B of the Plan shall apply hereto. For the avoidance of doubt, unless otherwise specified, all references herein to "Articles" refer to articles of the Plan.

[3] Any summaries of the Plan contained herein are qualified in their entirety by reference to the applicable provisions of the Plan. To the extent that there is any conflict between such summaries and the Plan, the Plan shall control.

Wellpath Holdings, Inc. and Certain of its Debtor Affiliates [Docket No. 2497] (the "Tabulation Declaration"), which is incorporated herein by reference. In further support of final approval of the Disclosure Statement and Confirmation of the Plan, and in response to the unresolved objections thereto (the "Objections"),[4] the Debtors respectfully state as follows:

Preliminary Statement

1. The Debtors' restructuring efforts have been a remarkable success to date, forging consensus among multiple stakeholder groups across the Debtors' capital structure through restructuring transactions pursuant to the Plan and Restructuring Support Agreement. Approximately five months after filing the chapter 11 cases, the Debtors are poised to confirm a Plan that will not only provide meaningful recoveries to the Debtors' stakeholders, but will also preserve thousands of jobs and allow the Debtors to continue providing critical medical care to the vulnerable patient populations that they serve. Significantly, the Plan incorporates the terms of a global settlement between the Debtors, the Ad Hoc Group, the Committee, and H.I.G. Capital, LLC. This settlement, which is the product of months of tireless negotiations, clears a path for the Debtors to confirm a chapter 11 plan with the support of their largest economic stakeholders and to emerge from chapter 11 as a stronger go-forward enterprise.

2. Throughout the Chapter 11 Cases, the Debtors have worked diligently to effectuate value-maximizing transactions for the benefit of all of their stakeholders. After exhaustive marketing and sale processes, and obtaining the Bankruptcy Court's approval to sell the Recovery Solutions Business, the Debtors successfully closed the Recovery Solutions Sale on January 27, 2025. Around that same time, it became apparent to the Debtors and the Ad Hoc Group that

[4] A summary chart of substantive Objections is attached hereto as **Exhibit A**. The Debtors have also received a number of informal comments or objections from various parties in interest, which were resolved through agreed revisions to the Confirmation Order. Due to the volume of such informal comments or objections, a summary is not included herein.

the Debtors would not receive an actionable offer for the sale of the Corrections Business by the January 27, 2025 bid deadline. As a result, the Debtors, after consulting with the Consultation Parties, elected to pursue an equitization of the Corrections Business through the Plan and consistent with the terms of the RSA. The Plan is the outcome of these extensive, good-faith, and arm's-length negotiations.

3. The Debtors filed the Chapter 11 Cases with an approximately $362 million debtor-in-possession financing facility, including $105 million in new money, and the support of the Ad Hoc Group on a dual-path sale process and Plan that contemplated the sale of the Recovery Solutions business under section 363 of the Bankruptcy Code and the substantial de-levering the Corrections Business through an equitization of a portion of the Debtors' secured debt, while also exploring potential sale transactions for those assets. From the outset of these cases, the Debtors and their advisors have worked tirelessly to resolve issues, forge consensus among their stakeholders, and drive resolutions that ultimately formed the backbone of the Plan. Specifically:

- **Recovery Solutions Sale**: pursuant to the Restructuring Support Agreement, RS Purchaser LLC agreed to serve as the Stalking Horse Bidder (as defined in the Bidding Procedures) for the Recovery Solutions Business. As a result, the Debtors were able to close the Recovery Solutions Sale within 77 days after the Petition Date, dismiss the Chapter 11 Cases of the Recovery Solutions Debtors, and preserve critical vendor and customer relations.
- **Equity Financing**: the Ad Hoc Group agreed to commit up to $55,000,000 in new funds to the Debtors in the form of the Equity Financing, providing critical liquidity to the go-forward business.
- **Takeback Facility**: certain First Lien Lenders have agreed to roll a portion of their First Lien Secured Claims into the Takeback Facility instead of being paid in Cash, thereby preserving critical liquidity for the reorganized business.
- **General Unsecured Creditor Recoveries**: the Plan incorporates the terms of a global settlement with the Ad Hoc Group and the Committee, which provides meaningful recoveries to Holders of General Unsecured Claims.

- **H.I.G. Settlement**: the Debtors, the Special Committee, and the H.I.G. Releasees negotiated a settlement that, among other things, will fund an additional $3,000,000 to the Debtors' estates in exchange for releases from the Debtors in favor of the H.I.G. Releasees.
- **Trade Counterparties and Customer**: the Debtors have agreed to consensual amendments to contractual arrangements, settled numerous cure issues with countless key vendors, and maintained critical customer contracts, boosting the Debtors' go-forward liquidity and ensuring the operational continuity with the Debtors' key trade partners.
- **Professional Corporations**: the Debtors will assume the vast majority of the master services agreements with the Professional Corporations, providing a means of recovery for individuals with claims against the Professional Corporations, including personal injury claimsholders.
- **NBH Sale**: the Debtors negotiated the sale of certain hospitals located in Palm Beach, Florida (the "NBH Facilities"), avoiding a potential shut-down of those facilities. The sale of the NBH Facilities was supported by the Ad Hoc Group and the Committee and eliminated certain liabilities from the Debtors' estates.

4. Concessions provided by other stakeholders in the forms of deferrals, voluntary repayment plans, and releases of deposits will also provide critical liquidity for the Debtors upon emergence from chapter 11. In short, the Plan, and the resolutions embodied therein, provide the framework for the Debtors to emerge from chapter 11 as a stronger, better-capitalized enterprise.

5. As the Plan is the culmination of months-long negotiations with key stakeholders across the Debtors capital structure, it has unsurprisingly met the voting requirements in sections 1126 and 1141 of the Bankruptcy Code. Indeed, Classes 3 and 5 unanimously voted to accept the Plan. While Class 6 (General Unsecured Claims) voted to reject the Plan, the Committee supports confirmation of the Plan, which provides for material recoveries to Holders of General Unsecured Claims.

6. Importantly, the Debtors have ensured that all stakeholders received due process and transparency critical to the chapter 11 process. The Debtors' robust noticing program provided every known stakeholder—including parties not entitled to vote on the Plan—with notices of the (a) commencement of the Chapter 11 Cases and (b) Confirmation Hearing. The notices also

included other key dates, methods by which parties could request copies of the Plan and Disclosure Statement, and key terms of the Plan, including the full text of the Third-Party Release set forth in Article IX.D of the Plan. Additionally, to ensure that unsecured creditors, including patients, were afforded as much notice as possible, the Debtors, in consultation with the U.S. Trustee and the Committee, agreed to certain revisions to the Solicitation Order. Among other things, the Debtors agreed to (a) accept, as proof of an election to opt out of the Third-Party Release, any written communication from an incarcerated individual within 60 days after the Confirmation Date, (b) consider any timely Filed objection to the Plan's release provisions as an election to opt out of the Third-Party Release, and (c) carve out from the definition of "Releasing Parties" the Release Objectors and any Holder of a Claim or Interest that Filed a Lift Stay Motion, Automatic Stay Objection, or Pro Se Objection in advance of the Plan Objection Deadline.[5]

7. The Debtors have worked diligently and in good faith to resolve as many formal and informal objections as possible. While the Debtors received numerous objections to the Confirmation of the Plan and informal comments to the Confirmation Order, as of the filing of this Memorandum, only a handful of Objections remain outstanding, including those outlined on **Exhibit A** hereto (the "Objection Summary Chart").

8. For these and other reasons set forth more fully in this Memorandum, and based on the evidence to be presented at the Confirmation Hearing, the Debtors respectfully request that the Bankruptcy Court overrule the Objections and confirm the Plan.

[5] In addition, to ensure that Holders of General Unsecured Claims carefully review and consider the terms of the Third-Party Release, the Debtors included on the Ballots for Holders of General Unsecured Claims (a) frequently asked questions (including a plain English explanation of the Third-Party Release), (b) an easily identifiable opt-out election box, and (c) comprehensive voting instructions.

Background

I. Commencement of the Chapter 11 Cases

9. On November 11, 2024, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors remain in possession of their property and continue to operate and manage their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

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

11. On November 25, 2024, the U.S. Trustee appointed the Creditors' Committee pursuant to section 1102 of the Bankruptcy Code. *See Notice of Appointment of Unsecured Creditors' Committee* [Docket No. 169]. No trustee or examiner has been appointed in the Chapter 11 Cases.

12. Additional information about the Debtors' businesses and affairs, capital structure, and prepetition indebtedness, and the events leading up to the Petition Date, can be found in Articles V and VI of the Disclosure Statement, as well as the *Declaration of Timothy R. 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 Proceedings and First Day Pleadings* [Docket No. 20]. A summary of certain events that occurred following the commencement of the Chapter 11 Cases can be found in Article VII of the Disclosure Statement.

II. The Disclosure Statement and Plan

13. On December 20, 2024, the Debtors contemporaneously filed (a) initial versions of the Plan [Docket No. 564] and Disclosure Statement [Docket No. 566] and (b) the *Debtors' Motion*

for Entry of an Order (I) Approving the Adequacy of the Disclosure Statement, (II) Approving the Solicitation and Notice Procedures with Respect to Confirmation of the Debtors' Proposed Joint Plan of Reorganization, (III) Approving the Forms of Ballots and Notices in Connection Therewith, (IV) Scheduling Certain Dates with Respect Thereto, and (V) Granting Related Relief [Docket No. 567] (the "Solicitation Motion").

14. On February 17, 2025, in support of the Solicitation Motion, the Debtors filed the *Debtors' Omnibus Reply in Support of, and in Response to Objections to, Approval of the (I) Adequacy of the Disclosure Statement for the Joint Chapter 11 Plan of Reorganization of Wellpath Holdings, Inc. and Certain Its Debtors Affiliates, (II) Solicitation of Notice Procedures, (III) Forms of Ballots and Notices, and (IV) Confirmation Schedule* [Docket No. 1425] (the "Solicitation Reply").

15. On March 18, 2025, the Bankruptcy Court entered the *Order (I) Approving the Adequacy of the Disclosure Statement on a Conditional Basis, (II) Approving the Solicitation and Notice Procedures with Respect to Confirmation of the Debtors Proposed Joint Plan of Reorganization, (III) Approving the Forms of Ballots and Notices in Connection Therewith, (IV) Scheduling Certain Dates with Respect Thereto, and (V) Granting Related Relief* [Docket No. 1867] (the "Solicitation Order") that, among other things, conditionally approved the Disclosure Statement as containing adequate information, in compliance with section 1125 of the Bankruptcy Code, for the purpose of soliciting votes to accept or reject the Plan, and, on a final basis, (a) approved the Solicitation and Voting Procedures, (b) approved the forms of Ballots, Solicitation Package, and other related notices, (c) authorized the Debtors to solicit votes to accept or reject the Plan in accordance with the Solicitation and Voting Procedures in compliance with the Bankruptcy Code, Bankruptcy Rules, Local Rules, and *Procedures for Complex Cases in*

the Southern District of Texas (the "Complex Procedures"), (d) set April 30, 2025 at 8:30 a.m. (prevailing Central Time), as the date and time for the commencement of the Confirmation Hearing, and (e) set the (i) Voting Record Date, (ii) deadline to File Rule 3018 Motions, (iii) Voting Deadline, and (iv) Plan Objection Deadline.

16. On April 16, 2025, the Bankruptcy Court entered the *Order Extending the Deadline to File the Plan Supplement* [Docket No. 2280], which extended the deadline for the Debtors to File the applicable Plan Supplement documents to April 18, 2025.

III. Solicitation of the Plan

17. With the goal of emerging from the Chapter 11 Cases as quickly as possible, promptly following entry of the Solicitation Order, in compliance therewith and, to the extent applicable, with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Complex Procedures, the Debtors (including through the Claims and Solicitation Agent) effectuated the timely and proper:

a. Filing and service of the Confirmation Hearing Notice (which included the Voting Deadline, the Plan Objection Deadline, the date, time, and location of the Confirmation Hearing, information relating to the Plan's release, exculpation, and injunction provisions, and various procedures regarding Plan solicitation, objecting to Confirmation of the Plan, and opting out of the third-party release contained in Article XI.D of the Plan (the "Third-Party Release")) on all parties on the 2002 List as of the Voting Record Date,[6] in addition to posting copies of the Confirmation Hearing Notice on information bulletin boards accessible to the patient population within each respective correctional facility serviced by the Debtors;

b. service of (i) the Solicitation Packages on each Holder of a Claim in a Voting Class (*i.e.*, Class 3 (First Lien Secured Claims) and Class 5 (Second Lien Deficiency Claims), and Class 6 (General Unsecured Claims), which included (A) a copy of the Solicitation and Voting Procedures, (B) the Confirmation Hearing Notice, (C) a cover letter, including instructions on how to return a Ballot and other pertinent information, (D) the applicable Ballot (which included a conspicuous opt-out box and pertinent information

[6] To the extent that a Holder of a Claim validly filed a Proof of Claim after the Voting Record Date, but on or prior to the General Bar Date, (a) the Claims and Solicitation Agent distributed a Solicitation Package to such Holder as soon as reasonably practicable after receipt of the Proof of Claim and (b) on account of such Claim, such Holder was entitled to vote to accept or reject the Plan notwithstanding the expiry of the Voting Record Date.

and instructions), (E) the Disclosure Statement (and exhibits thereto, including the Plan), (F) the Solicitation Order, (G) solely with respect to Holders of a Claim in Class 6 (General Unsecured Claims), the Committee Letter, and (H) a pre-addressed, postage prepaid reply envelope, as applicable; and

c. publication of the Confirmation Hearing Notice in the *New York Times, USA Today*, and *Prison Legal News*.

See Docket Nos. 2013, 2014, 2121, 2037, 2258.

IV. Description of the Plan

18. The Plan provides a framework for, among other things, a significant reduction of the Debtors' prepetition funded indebtedness and an operational restructuring of the Corrections Business to further advance the Debtors' efforts in positioning itself for long-term success. In doing so, the Plan contemplates, among other things, (a) the satisfaction in full of the approximately $125,000,000 Class 3 First Lien Secured Claims with 3% of the New Class A Common Equity (subject to dilution on account of the MIP Interests) and $124,213,836 of the Takeback Facility, (b) the issuance of $63,250,000 in Preferred Equity to the Equity Financing Participants in exchange for up to $55,000,000 in Equity Financing, (c) the issuance of New Common Equity, which will be split between (i) New Class A Common Equity distributed to the Equity Financing Participants and the Holders of Allowed First Lien Secured Claims and (ii) New Class B Common Equity distributed to the Liquidating Trust, (d) the Pro Rata distribution of the beneficial interests in the Liquidating Trust to Holders of Allowed Second Lien Deficiency Claims and Allowed General Unsecured Claims, (e) funding the Liquidating Trust with the Liquidating Trust Assets, which assets are sufficient to administer the Liquidating Trust, pursue the Liquidating Trust Causes of Action, and distribute proceeds therefrom in accordance with the Liquidating Trust Documents, (f) payment in full in Cash or such other treatment rendering such claim Unimpaired of all other Allowed Other Secured Claims and Other Priority Claims, (g) the cancellation of the Existing Parent Interests, (h) the full and final discharge of Claims against and Interests in the

Debtors, and the good-faith compromises thereof and with respect thereto, (i) customary exculpation, release, and injunction provisions, (j) the retention of certain Causes of Action by the Post-Restructuring Debtors and transfer of the Liquidating Trust Causes of Action to the Liquidating Trust, (k) customary assumption and rejection provisions regarding the Debtors' Executory Contracts, Unexpired Leases, insurance policies, and indemnification obligations, (l) provisions regarding the New Organizational Documents, and (m) committed Equity Financing sufficient to fund the Debtors' emergence from bankruptcy (including the payment of all Allowed Administrative Claims (including Professional Fee Claims, U.S. Trustee Fees, and Restructuring Expenses and Agent Fees), Other Secured Claims, and Other Priority Claims), and provide working capital required by the Post-Restructuring Debtors' businesses at emergence, each as more fully described in, and subject to the terms of, the Plan.

19. Upon emergence, the Post-Restructuring Debtors' capital structure will consist of (a) approximately $135,000,000 in aggregate principal amount of the Takeback Facility, (b) up to $55 million in Equity Financing, pursuant to the Equity Financing Documents, and (c) 100% of the New Common Equity, subject to dilution on account of the Management Incentive Plan in accordance with Article IV.F of the Plan, and New Preferred Equity. As described herein and in the Confirmation Declarations, the Debtors are confident that, upon emergence, the new capital structure will position the Post-Restructuring Debtors to create value for all of its economic stakeholders. The Debtors also believe that the Plan (a) is reflective of a global compromise among the Debtors and their key stakeholders, including the Ad Hoc Group and the Committee and (b) treats Holders of Claims against and Interests in the Debtors in an economic and fair manner in accordance with the Bankruptcy Code's priority scheme and the good-faith

compromises and settlements of certain claims and controversies among the Debtors and key stakeholders.

V. The Plan Supplement

20. On March 17, 2025, the Debtors filed a preliminary Schedule of Liquidating Trust Causes of Action, which was attached to the Disclosure Statement as Exhibit G [Docket No. 1835-1].

21. On April 18, 2025, the Debtors Filed an initial Plan Supplement [Docket No. 2321], which included forms of the following: (a) New Organizational Documents; (b) the Rejected Executory Contracts and Unexpired Leases Schedule; and (c) the Schedule of Liquidating Trust Causes of Action. The Debtors intend to file an amended Plan Supplement prior to the Confirmation Hearing.

VI. Voting Results for the Plan

22. In compliance with the Bankruptcy Code and the Solicitation Order, only Holders of Claims in Impaired Classes entitled to receive or retain property on account of such Claims were permitted to vote to accept or reject the Plan. Holders of Claims and Interests were not entitled to vote if their rights were (a) Unimpaired under the Plan (in which case such Holders were conclusively presumed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code) or (b) Impaired and such Holders were not entitled to receive any distribution under the Plan (in which case such Holders were conclusively deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code).

23. The deadline to file objections to Confirmation of the Plan was April 22, 2025 at 4:00 p.m. (prevailing Central Time). The Debtors received a number of Objections, each of which is outlined in **Exhibit A** attached hereto, and informal comments to the Confirmation Order. The Confirmation Hearing is scheduled for April 30, 2025 at 8:30 a.m. (prevailing Central Time).

24. As set forth above and in the Tabulation Declaration, Holders of Claims in Classes 3, 5, and 6 were entitled to vote to accept or reject the Plan (each a "Voting Class" and, collectively, the "Voting Classes"). The voting results, as reflected in the Tabulation Declaration, are summarized as follows:

CLASSES	TOTAL BALLOTS RECEIVED			
	Accept		Reject	
	AMOUNT (% of Amount Voting)	NUMBER (% of Number Voting)	AMOUNT (% of Amount Voting)	NUMBER (% of Number Voting)
Class 3 First Lien Secured Claims	$236,665,549.44 (100.00%)	80 (100.00%)	$0.00 (0.00%)	0 (0.00%)
Class 5 Second Lien Deficiency Claims	$90,173,571.78 (100%)	15 (100.00%)	$0.00 (0.00%)	0 (0.00%)
Class 6 General Unsecured Claims	$194,075,715.13 (18.57%)	367 (35.95%)	$851,149,263.67 (81.43%)	654 (64.05%)

VII. Cure Costs

25. During the course of the Chapter 11 Cases, as part of the sale of the Recovery Solutions Business and in accordance with the Bidding Procedures, the Debtors Filed and served upon each non-Debtor counterparty the *Notice of Potential Assumption and Assignment of Executory Contracts or Unexpired Leases and Cure Amount* [Docket No. 194] and the *Notice of First Supplemental Schedule of Potential Assumption and Assignment of Executory Contracts or Unexpired Leases and Cure Amount* [Docket No. 467] (collectively, the "Assumption Notices"). The Assumption Notices listed (a) the Executory Contracts and Unexpired Leases that the Debtors believed to be available for assumption, assumption and assignment, or rejection under section 365 of the Bankruptcy Code and (b) the associated proposed Cure Costs reflected in the Debtors' books and records. The deadline for parties to object to the proposed Cure Costs of each Executory Contract and Unexpired Lease listed on the Assumption Notices expired.

Argument

VIII. The Plan Satisfies the Confirmation Requirements

26. As proponents of the Plan, the Debtors bear the burden of proving that all elements necessary for Confirmation of the Plan under section 1129(a) of the Bankruptcy Code have been met by a preponderance of the evidence. *See Matter of Briscoe Enters., Ltd., II*, 994 F.2d 1160, 1165 (5th Cir. 1993) (concluding that "preponderance of the evidence is the debtor's appropriate standard of proof both under § 1129(a) and in a cramdown"). As set forth below, and as evident or will be evident from the Record (as defined in the proposed Confirmation Order), the Plan complies with all relevant sections of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Complex Procedures, and applicable non-bankruptcy law. Accordingly, the Plan should be confirmed.

A. The Plan Complies with Section 1129(a)(1) of the Bankruptcy Code

27. Section 1129(a)(1) of the Bankruptcy Code requires that a chapter 11 plan "compl[y] with the applicable provisions of [the Bankruptcy Code]." 11 U.S.C. § 1129(a)(1). The legislative history of section 1129(a)(1) of the Bankruptcy Code explains that this provision "requires that the plan comply with the applicable provisions of chapter 11, such as section[s] 1122 and 1123 [of the Bankruptcy Code], governing classification and contents of plan." H.R. Rep. No. 95-595, 412, 1978 U.S.C.C.A.N.; *see also Matter of Cajun Elec. Power Co-op., Inc.*, 150 F.3d 503, 513 n.3 (5th Cir. 1998), *cert. denied*, 526 U.S. 1144 (1999) (suggesting, in light of this legislative history, that violating section 1123 of the Bankruptcy Code is grounds for denying confirmation on account of section 1129(a)(1) of the Bankruptcy Code). The Debtors respectfully submit that the Plan properly complies with sections 1122 and 1123 of the Bankruptcy Code in all respects.

(i) The Plan Properly Classifies Claims and Interests (11 U.S.C. §§ 1122 and 1123(a)(1))

28. Section 1123(a)(1) of the Bankruptcy Code requires that a chapter 11 plan classify all claims (except for certain administrative and priority claims) and interests, and that such classifications comply with section 1122 of the Bankruptcy Code. 11 U.S.C. § 1123(a)(1). Section 1122(a) of the Bankruptcy Code, in turn, provides that "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class." 11 U.S.C. § 1122(a). The Fifth Circuit has recognized that, under section 1122 of the Bankruptcy Code, plan proponents have flexibility to place similar claims into different classes if there is a valid business, factual, or legal justification for doing so. *See In re Pac. Lumber Co.*, 584 F.3d 229, 251 (5th Cir. 2009) ("Under the Bankruptcy Code, classes must contain 'substantially similar' claims, but similar claims can be separated into different classes for 'good business reasons.'"). Courts are also afforded broad discretion in approving a plan proponent's classification structure and should consider the specific facts of each case when making such a determination. *See In re LeBlanc*, 622 F.2d 872, 879 (5th Cir. 1980) ("The fact that bankruptcy courts are courts of equity, however, allows exceptions to any strict rules of classification of claims."); *Matter of Jersey City Med. Ctr.*, 817 F.2d 1055, 1060–61 (3d Cir. 1987) ("Congress intended to afford bankruptcy judges broad discretion to decide the propriety of plans in light of the facts of each case").

29. Article III of the Plan designates all Claims and Interests, other than the Claims of the type described in sections 507(a)(2) or 507(a)(8) of the Bankruptcy Code (which are addressed in Article II of the Plan), into the following ten Classes:

Class	Claims or Interests
1	Other Secured Claims
2	Other Priority Claims

Class	Claims or Interests
3	First Lien Secured Claims
4	First Lien Deficiency Claims
5	Second Lien Deficiency Claims
6	General Unsecured Claims
7	Intercompany Claims
8	Intercompany Interests
9	Existing Parent Interests
10	Section 510(b) Claims

30. Under the Plan, all Claims and Interests within each designated Class have the same or substantially similar rights against the Debtors. Furthermore, this classification scheme is premised on, among other things, the secured or unsecured status, and the differences in the legal nature or priority, of the applicable underlying obligation. Specifically, the Plan separately classifies unsecured claims into Class 4 (First Lien Deficiency Claims), Class 5 (Second Lien Deficiency Claims), Class 6 (General Unsecured Claims), and Class 10 (Section 510(b) Claims) due to the different legal character or rights of such Claims. *See In re Gen. Homes Corp.*, 134 B.R. 853, 863 (Bankr. S.D. Tex. 1991) ("The legal character of a claim may also itself justify both disparate classification and treatment."). Therefore, the Debtors respectfully submit that the Plan's classification scheme fully satisfies the requirements of sections 1122 and 1123(a)(1) of the Bankruptcy Code.

(ii) The Plan Identifies the Unimpaired Classes (11 U.S.C. § 1123(a)(2))

31. Section 1123(a)(2) of the Bankruptcy Code requires a plan to "specify any class of claims or interests that is not impaired under the plan." 11 U.S.C. § 1123(a)(2). Article III of the Plan identifies each Unimpaired Class under the Plan (*i.e.*, Class 1 (Other Secured Claims) and Class 2 (Other Priority Claims)) and each potentially Unimpaired Class (*i.e.*, Class 7 (Intercompany Claims) and Class 8 (Intercompany Interests)) within the meaning of section 1124

of the Bankruptcy Code. Accordingly, the Debtors respectfully submit that the Plan complies with section 1123(a)(2) of the Bankruptcy Code.

(iii) The Plan Specifies the Treatment of the Impaired Classes (11 U.S.C. § 1123(a)(3))

32. Section 1123(a)(3) of the Bankruptcy Code requires a plan to "specify the treatment of any class of claims or interests that is impaired under the plan." 11 U.S.C. § 1123(a)(3). Article III of the Plan sets forth the treatment of each of Impaired Class under the Plan (*i.e.*, Class 3 (First Lien Secured Claims), Class 4 (First Lien Deficiency Claims), Class 5 (Second Lien Deficiency Claims), Class 6 (General Unsecured Claims), Class 9 (Existing Parent Interests), and Class 10 (Section 510(b) Claims)) and each potentially Impaired Class (*i.e.*, Class 7 (Intercompany Claims) and Class 8 (Intercompany Interests)) within the meaning of section 1124 of the Bankruptcy Code. Accordingly, the Debtors respectfully submit that the Plan complies with section 1123(a)(3) of the Bankruptcy Code.

(iv) The Plan Treats Each Holder in a Given Class Similarly (11 U.S.C. § 1123(a)(4))

33. Section 1123(a)(4) of the Bankruptcy Code requires a plan to "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest." 11 U.S.C. § 1123(a)(4). Article III of the Plan provides for the same treatment for each Claim or Interest of a particular Class, except to the extent that a Holder of a particular Claim or Interest agrees in writing to a less favorable treatment. Accordingly, the Debtors respectfully submit that the Plan complies with section 1123(a)(4) of the Bankruptcy Code.

(v) The Plan Provides Adequate Means for its Implementation (11 U.S.C. § 1123(a)(5))

34. Section 1123(a)(5) of the Bankruptcy Code requires a chapter 11 plan to "provide adequate means for [its] implementation." 11 U.S.C. § 1123(a)(5). The Plan (including the Plan Supplement), in accordance with its terms, provide adequate means for implementing the Plan by providing for or containing, among other things, the following:

a. the authorization to take all actions as may be deemed necessary or appropriate to effectuate any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan (Articles IV.B, IV.M, and IV.Q);

b. the sources of consideration for Plan Distributions (Article IV.D);

c. the consummation of the Equity Financing (Article IV.D);

d. the entry into the Takeback Facility Documents and the incurrence of Liens and security interests in connection therewith (Article IV.D);

e. the issuance of the New Common Equity and New Preferred Equity (Article IV.D);

f. the continued existence and vesting of certain assets in the Post-Restructuring Debtors (Article IV.K);

g. the adoption of the New Organizational Documents (Article IV.I);

h. the creation of the Liquidating Trust (including entry into the Liquidating Trust Documents) (Articles IV.N and VII), the appointment of the Liquidating Trustee (Article VII), and the vesting of the Liquidating Trust Assets in the Liquidating Trust (Articles IV.N and VII);

i. the cancellation of all notes, instruments, certificates, credit agreements, indentures, Securities, or other documents governing Claims or Interests (other than those Claims or Interests Reinstated under the Plan (Article IV.P);

j. provisions governing Plan Distributions, Disputed Claims, and claims reconciliation (Articles VI and VIII);

k. the assumption and rejection of Executory Contracts, Unexpired Leases, indemnification obligations, and insurance contracts and the payment of Cure Costs (Articles IV.R, IV.T, and V);

l. the release of Liens (Article IX.B); and

m. the exemption of transfers of property pursuant to section 1146(a) of the Bankruptcy Code (Article IV.S).

35. In light of the implementation process set forth in the Plan (including what is summarized in the previous paragraph), the Debtors respectfully submit that the Plan satisfies the requirements of section 1123(a)(5) of the Bankruptcy Code.

(vi) The Equity Issuance Requirements are Met (11 U.S.C. § 1123(a)(6))

36. Section 1123(a)(6) of the Bankruptcy Code requires that a chapter 11 plan provide for the inclusion, in a corporate debtor's charter, of provisions (a) prohibiting the issuance of nonvoting equity securities and (b) providing for an "appropriate distribution" of voting power among those securities possessing voting power. 11 U.S.C. § 1123(a)(6). Article IV.I of the Plan provides that the New Organizational Documents, which will be deemed executed and authorized in all respects on the Effective Date, will include a provision prohibiting the issuance of nonvoting equity securities pursuant to (and only to the extent required by) section 1123(a)(6) of the Bankruptcy Code. Accordingly, the Debtors respectfully submit that the Plan satisfies the requirements of section 1123(a)(6) of the Bankruptcy Code.

(vii) The Plan (including the Plan Supplement) Appropriately Provides for the Selection of the Post-Restructuring Debtors' Boards of Directors (or Similar Governing Entities) and Their Successors (11 U.S.C. § 1123(a)(7))

37. Section 1123(a)(7) of the Bankruptcy Code requires that a chapter 11 plan's provisions with respect to the manner of selection of any director, officer, or trustee, or any successor thereto, be "consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director, or trustee." 11 U.S.C. § 1123(a)(7). Article IV.J of the Plan provides for the termination of each Wellpath Parent's current directors in that role and sets forth the parameters of the Post-Restructuring Debtors' boards of directors (or similar

governing entities) except as otherwise set forth in the Plan Supplement. Furthermore, in accordance with section 1129(a)(5) of the Bankruptcy Code, the known identities of the individuals proposed to serve on Reorganized Wellpath's board of managers will be set forth in the Plan Supplement. The Debtors respectfully submit that these provisions are consistent with stakeholder interests and public policy and, accordingly, satisfy the requirements of section 1123(a)(7) of the Bankruptcy Code.

(viii) Post-petition Personal Service Payments are not Applicable to the Plan (11 U.S.C. § 1123(a)(8))

38. Section 1123(a)(8) of the Bankruptcy Code requires that a debtor, "in a case in which the debtor is an individual, provide for the payment to creditors under the plan of all or such portion of earnings from personal services performed by the debtor after the commencement of the case or other future income of the debtor as is necessary for the execution of the plan." 11 U.S.C. § 1123(a)(8). The Debtors respectfully submit that section 1123(a)(8) of the Bankruptcy Code is inapplicable because the Debtors are not individuals.

B. The Debtors Have Complied with Section 1129(a)(2) of the Bankruptcy Code

39. Section 1129(a)(2) of the Bankruptcy Code obligates a plan proponent to "comply with the applicable provisions of [the Bankruptcy Code]." 11 U.S.C. § 1129(a)(2). The legislative history of section 1129(a)(2) of the Bankruptcy Code explains that this provision "requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 [of the Bankruptcy Code] regarding disclosure." H.R. Rep. No. 95-595, 412, 1978 U.S.C.C.A.N.; *see also In re Cypresswood Land Partners, I*, 409 B.R. at 424 ("Bankruptcy courts limit their inquiry under § 1129(a)(2) to ensuring that the plan proponent has complied with the solicitation and disclosure requirements of § 1125."); *Matter of Cajun Elec. Power Co-op., Inc.*, 150 F.3d at 513 n.3 (presuming that noncompliance with section 1125 of the Bankruptcy Code is grounds for

denying confirmation on account of section 1129(a)(2) of the Bankruptcy Code). Courts also interpret section 1129(a)(2) of the Bankruptcy Code as referring to section 1126 of the Bankruptcy Code. *See In re Star Ambulance Serv., LLC*, 540 B.R. 251, 262 (Bankr. S.D. Tex. 2015) ("Courts interpret [section 1129(a)(2) of the Bankruptcy Code] to require that the plan proponent comply with the disclosure and solicitation requirements set forth in Bankruptcy Code §§ 1125 and 1126.").

40. Section 1125(b) of the Bankruptcy Code provides:

> An acceptance or rejection of a plan may not be solicited after the commencement of the case under this title from a holder of a claim or interest with respect to such claim or interest, unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information. The court may approve a disclosure statement without a valuation of the debtor or an appraisal of the debtor's assets.

11 U.S.C. § 1125(b).[7]

41. As described above, ¶ 15 *supra*, the Bankruptcy Court conditionally approved the Disclosure Statement prior to the Debtors soliciting votes to accept or reject the Plan. Upon entry of the Solicitation Order, the Debtors (a) transmitted (i) the Solicitation Packages to Holders of Claims in Voting Classes and (ii) the Non-Voting Status Notices and Confirmation Hearing Notice to Holders of Claims of Interests in Non-Voting Classes, (b) published the Confirmation Hearing Notice in the *New York Times, USA Today, and Prison Legal News*, (c) to the extent reasonably practicable, posted copies of the Confirmation Hearing Notice on informational bulletin boards accessible to the patient population within each respective correctional facility

[7] The Debtors are presently seeking entry of the Confirmation Order that, among other things, approves the Disclosure Statement on a final basis. The basis for such relief is set forth in paragraphs 19-30 of the Solicitation Motion and in paragraphs 6-22 of the Solicitation Reply, which are incorporated herein by reference.

serviced by a Debtor; (d) solicited and tabulated votes with respect to the Plan, and (e) provided good, sufficient, and timely notice of the Confirmation Hearing to each Holder of a Claim or Interest (regardless of whether such Claim or Interest was in a Voting Class or Non-Voting Class) and to other parties in interest in compliance with the Solicitation Order (including the Solicitation and Voting Procedures) and, to the extent applicable, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Complex Procedures. Additionally, the Debtors have made the Solicitation Order, the Disclosure Statement, the Plan, and all other documents publicly Filed in the Chapter 11 Cases available on the case information website located at https://dm.epiq11.com/Wellpath.

42. The Debtors have also fully complied with section 1126 of the Bankruptcy Code, which sets forth the requirements for acceptance of a chapter 11 plan. Under section 1126 of the Bankruptcy Code, only holders of allowed claims and allowed equity interests in impaired classes of claims or equity interests that will retain property under a plan on account of such claims or equity interests may vote to accept or reject such plan. *See* 11 U.S.C. § 1126(a). As detailed in the Tabulation Declaration, (a) the Debtors solicited votes on the Plan from Holders in the three Voting Classes (*i.e.*, Class 3 (First Lien Secured Claims), Class 5 (Second Lien Deficiency Claims), and Class 6 (General Unsecured Claims)), (b) the Debtors were not required to, and did not, solicit votes on the Plan from Holders in the Non-Voting Classes (*i.e.*, Class 1 (Other Secured Claims), Class 2 (Other Priority Claims), Class 4 (First Lien Deficiency Claims),[8] Class 7 (Intercompany Claims), Class 8 (Intercompany Interests), Class 9 (Existing Parent Interests), and

[8] The initial version of the Plan contemplated recoveries to Holders of Class 4 First Lien Deficiency Claims. Pursuant to the global settlement among the Debtors, the Ad Hoc Group, and the Committee, Holders of Class 4 First Lien Deficiency Claims agreed to waive all recoveries on account of such Claims. Accordingly, Holders of Claims in Class 4 received a Solicitation Package, but were not entitled to vote under the amended version of the Plan.

Class 10 (Section 510(b) Claims)), since each Claim or Interest in each such Class is, or will deemed to be, either (y) Unimpaired and deemed to accept the Plan under section 1126(f) of the Bankruptcy Code or (z) will receive no Plan Distributions and deemed to reject the Plan under section 1126(g) of the Bankruptcy Code, and (c) the Plan has been accepted by more than the requisite number and amount of Claims in at least one Impaired Class of Claims entitled to vote on the Plan.

43. Accordingly, the Debtors respectfully submit that (a) they have complied with the requirements of sections 1125 and 1126 of the Bankruptcy Code and, thereby, section 1129(a)(2) of the Bankruptcy Code and (b) entry of the Confirmation Order approving the Disclosure Statement on a final basis is similarly appropriate.

C. The Plan was Proposed in Good Faith (11 U.S.C. § 1129(a)(3))

44. Section 1129(a)(3) provides that a court "shall confirm a plan only if . . . [t]he plan has been proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). The Fifth Circuit evaluates good faith "in light of the totality of the circumstances surrounding establishment of the plan, mindful of the purposes underlying the Bankruptcy Code." *In re Vill. at Camp Bowie I, L.P.*, 710 F.3d 239, 247 (5th Cir. 2013) (cleaned up) (quoting *In re Cajun Elec. Power Co-op., Inc.*, 150 F.3d 503, 519 (5th Cir. 1998)); *see also In re Sun Country Dev., Inc.*, 764 F.2d 406, 408 (5th Cir. 1985). "Where the plan is proposed with the legitimate and honest purpose to reorganize and has a reasonable hope of success, the good faith requirement of § 1129(a)(3) [of the Bankruptcy Code] is satisfied . . . even though the plan may not be one which the creditors would themselves design and indeed may not be confirmable." *Matter of T-H New Orleans Ltd. P'ship*, 116 F.3d 790, 802 (5th Cir. 1997) (cleaned up). Moreover, a court's assessment of good faith is based exclusively on the proposed plan of reorganization and not on the behavior of the debtor before the bankruptcy filing. *See In re Gen. Homes Corp.*, 134 B.R. at 862 (citing

In re Texas Extrusion Corp., 68 B.R. 712, 723 (Bankr. N.D. Tex. 1986), *aff'd*, 844 F.2d 1142 (5th Cir. 1988)).

45. The Record demonstrates or will demonstrate that the Plan was proposed by the Debtors in good faith, with the legitimate and honest purpose of effectuating a reorganization of the Corrections Business and positioning the Post-Restructuring Debtors for long-term success, while enabling creditors to realize the highest possible recoveries under the circumstances of the Chapter 11 Cases, all as overseen by the Debtors' Independent Directors. *See Bank of Am. Nat'l Tr. & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 435 (1999) ("[T]he two recognized policies underlying Chapter 11 [are] preserving going concerns and maximizing property available to satisfy creditors."). The Plan itself and the process of formulating it provide independent evidence of the Debtors' good faith, serve the public interest, and assure fair treatment of Holders of Claims and Interests. The Plan is the culmination of months of rigorous, good-faith, and arm's-length negotiations between the Debtors and certain of their key constituents—including the Ad Hoc Group, the Committee, and the H.I.G. Releasees—without any collusion, fraud, or attempt to take unfair advantage of any party in connection with such negotiations. The Debtors have consistently sought to maximize distributable value for their economic stakeholders, including through the sale of assets during the Chapter 11 Cases and, ultimately, through the proposed transactions contemplated by the Plan. In addition to achieving a result consistent with the objectives of the Bankruptcy Code, the Plan allows the Debtors' economic stakeholders to realize the highest possible recoveries under the circumstances.

46. Accordingly, and for the reasons set forth herein, the Debtors respectfully submit that the Plan has been proposed with the legitimate and honest purpose of effectuating a

reorganization and the Record establishes or will establish that "the plan has been proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3).

D. Payments to Professionals Under the Plan are Subject to Court Approval (11 U.S.C. § 1129(a)(4))

47. Section 1129(a)(4) of the Bankruptcy Code requires that any payments by the Debtors "for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case," either be approved by, or be subject to approval of, the Bankruptcy Court as reasonable. 11 U.S.C. § 1129(a)(4); *see also In re Cypresswood Land Partners, I*, 409 B.R. at 427 ("Section 1129(a)(4) [of the Bankruptcy Code] requires that any payment made or promised by the proponent under the plan for services, costs, or expenses in connection with the Chapter 11 case be disclosed to the Court."); *In re Cajun Elec. Power Co-op., Inc.*, 150 F.3d at 514–15.

48. The payment of Professional Fee Claims is and will continue to be subject to the Bankruptcy Court's approval. In particular, the Professional Fee Claims are already subject to the Bankruptcy Court's approval and the reasonableness requirements under section 330 of the Bankruptcy Code, since they are subject to the procedures established by the *Order (I) Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals and (II) Granting Related Relief* [Docket No. 374]. Furthermore, all other payments covered by section 1129(a)(4) of the Bankruptcy Code that are not on account of Professional Fee Claims have been or will be made with express Bankruptcy Court approval (*e.g.*, pursuant to the Financing Orders) or pursuant to procedures established by the Bankruptcy Court (*e.g.*, the procedures in the Bankruptcy Court's *Order Approving Procedures for the Retention and Compensation of Ordinary Course Professionals* [Docket No. 439]). Accordingly, the Debtors

respectfully submit that the Plan satisfies the requirements of section 1129(a)(4) of the Bankruptcy Code.

E. The Plan Properly Discloses Adequate Information Regarding the Post-Restructuring Debtors' Boards of Managers or Directors (or Similar Governing Bodies) (11 U.S.C. § 1129(a)(5))

49. Section 1129(a)(5) of the Bankruptcy Code requires that the proponent of a chapter 11 plan disclose (a) the identity and affiliations of any individual proposed to serve as a director, officer, or voting trustee after the confirmation of such plan, with the appointment of such individuals being consistent with the interests of the debtor's economic stakeholders and with public policy and (b) the identity and the nature of any compensation of any insider that will be employed or retained by the reorganized debtor. 11 U.S.C. § 1129(a)(5).

50. The known identities and affiliations of any and all Persons to serve as a director of the board of the Post-Restructuring Debtors will be set forth in the Plan Supplement. The identity of any "insider" (as defined in section 101(31)(b) of the Bankruptcy Code) currently contemplated to be employed or retained by the Post-Restructuring Debtors, and the nature of such insider's compensation, will be fully disclosed before the Confirmation Hearing. Selection of members of the Post-Restructuring Debtors' boards (or similar governing bodies) was, and is, in compliance with the procedures set forth in the New Organizational Documents. The appointment to, or continuance in, such offices and roles of such individuals will allow the Post-Restructuring Debtors to operate smoothly and in accordance with applicable law and is, thus, consistent with the interests of the Debtors' economic stakeholders and with public policy. Accordingly, the Debtors respectfully submit that the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

F. The Plan Does Not Require Regulatory Approval of Rate Changes (11 U.S.C. § 1129(a)(6))

51. Section 1129(a)(6) of the Bankruptcy Code permits confirmation of a chapter 11 plan only if any governmental regulatory commission that will have jurisdiction over the rates charged by the reorganized debtor has approved any rate change provided for in the plan. 11 U.S.C. § 1129(a)(6). The Debtors are not subject to any regulatory approval over rate changes and the Plan does not provide for any such rate changes by the Post-Restructuring Debtors; therefore, section 1129(a)(6) of the Bankruptcy Code is not applicable for purposes of Confirmation.

G. The Plan Satisfies the Best Interests Test (11 U.S.C. § 1129(a)(7))

52. Section 1129(a)(7) of the Bankruptcy Code (*i.e.*, the "best interests test") requires a court to find either that all holders of claims or interests in an impaired class have accepted the plan or that the plan will provide each such holder who has not accepted the plan with a recovery of property of a value, as of the effective date of the plan, that is not less than the amount that such holder would recover if the debtor's estate was, hypothetically, liquidated under chapter 7 of the Bankruptcy Code. 11 U.S.C. § 1129(a)(7)(A); *see also Matter of Briscoe Enters., Ltd., II*, 994 F.2d at 1167 ("[Section] 1129(a)(7) [of the Bankruptcy Code] requires that each holder of a claim in a class either accept the plan or receive at least as much as it would receive in a chapter 7 liquidation."); *In re Pearl Res. LLC*, 622 B.R. 236, 262 (Bankr. S.D. Tex. 2020) (holding that the "best interests test" requires each dissenting creditor receive at least as much as they would in a hypothetical Chapter 7 liquidation of the debtor). Accordingly, if the Bankruptcy Court finds that each non-consenting Holder of a Claim or Interest in an Impaired Class will receive at least as much under the Plan as it would receive in a chapter 7 liquidation, the Plan satisfies the Best Interests Test. *See Bank of Am. Nat'l Tr. & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. at

434, n.13 (1999) ("The 'best interests' test applies to individual creditors holding impaired claims, even if the class as a whole votes to accept the plan.").

53. Satisfaction of the best interests test is generally demonstrated through a liquidation analysis setting forth projected distributions under a hypothetical chapter 7 scenario. *See* 7 Collier on Bankruptcy P 1129.02 (16th 2023) ("[Section 1129(a)(7)(A) of the Bankruptcy Code] essentially requires every plan proponent to perform a liquidation analysis of the estate."). To calculate the probable distribution to non-consenting holders of claims or interests in an impaired class in a hypothetical liquidation, a court must first determine the aggregate dollar amount that would be generated from a debtor's assets if its chapter 11 case was converted to a chapter 7 case under the Bankruptcy Code. To determine if a plan is in the best interests of each such non-consenting holder, the value of the distributions from the proceeds of a hypothetical liquidation of the debtor's assets, after subtracting the amounts attributable to the costs, expenses, and administrative claims associated with a chapter 7 liquidation, must be compared with the value received or retained by such non-consenting holder under the plan. If the hypothetical liquidation distribution to holders of claims or interests in any impaired class is greater than the distributions to be received or retained by such parties under the plan, then such plan is not in the best interests of the holders of claims or interests in such impaired class.

54. Here, the Debtors' management team, with the assistance of the Debtors' financial advisor, prepared the Liquidation Analysis, a copy of which is attached to the Disclosure Statement as Exhibit D, estimating and comparing the range of proceeds generated under the Plan and a hypothetical chapter 7 liquidation.[9] As reflected in the Liquidation Analysis (subject to the

[9] The Liquidation Analysis was prepared on a consolidated basis for all Debtor entities. As further described herein, the Plan seeks administrative consolidation solely for the purposes of voting on the Plan, tabulating the votes to determine which Class or Classes have accepted the Plan, confirming the Plan, and the resulting treatment of all Claims and Interests and Plan Distributions, but shall not constitute a transfer of assets or liabilities between

limitations and disclaimers contained therein) and the Dragelin Declaration, in a hypothetical chapter 7 liquidation, the value of distributions would be less than the value of distributions under the Plan.

55. Notwithstanding the difficulties in quantifying recoveries to Holders of Claims with precision, the Debtors believe that, based on the Liquidation Analysis and the fact that the Post-Restructuring Debtors will continue operating as a going concern, the Plan satisfies the best interests test. As the Plan and Liquidation Analysis indicate, Confirmation of the Plan would provide each Holder of an Allowed Claim in an Impaired Class with an equal or greater recovery than the value of any distributions if the Chapter 11 Cases were converted to cases under chapter 7 of the Bankruptcy Code. Therefore, the Debtors respectfully submit that the Plan meets the "best interests of creditors" test set forth in section 1129(a)(7) of the Bankruptcy Code.

H. The Plan Satisfies the Voting Requirements of the Bankruptcy Code

(i) Acceptance by Impaired Classes (11 U.S.C. § 1129(a)(8))

56. Subject to the exceptions contained in section 1129(b) of the Bankruptcy Code, including the "cramdown" provisions discussed below, section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or equity interests must either accept the plan or be unimpaired under the plan. 11 U.S.C. § 1129(a)(8). A class of claims accepts a plan if the holders of at least two-thirds of the dollar amount and more than one-half of the number of claims that actually vote on the plan (excluding certain disallowed votes) vote to accept the plan. *See* 11 U.S.C. § 1126(c). A class of interests accepts a plan if holders of at least two-thirds of the amount of allowed interests

Debtors for any other purpose. For those reasons, and because there would be no distributable value to Holders in a hypothetical chapter 7 liquidation, other than Holder of First Lien Secured Claims, the Debtors submit that a Liquidation Analysis for the Debtors on a consolidated basis is appropriate.

that actually vote on the plan (excluding certain disallowed votes) vote to accept the plan. *See* 11 U.S.C. § 1126(d).

57. As reflected in the Tabulation Declaration, the Debtors have satisfied the voting requirements under the Bankruptcy Code. Holders of Claims in Class 3 (First Lien Secured Claims) and Class 5 (Second Lien Deficiency Claims) voted unanimously to accept the Plan.

58. In addition, as set forth above, Holders of Claims in Class 1 (Other Secured Claims) and Class 2 (Other Priority Claims) are Unimpaired under the Plan and are, therefore, deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Accordingly, the requirements of section 1129(a)(8) of the Bankruptcy Code have been satisfied with respect to the Voting Classes and the Unimpaired Non-Voting Classes.

59. To the extent that they do not receive any Plan Distributions, Holders of Claims or Interests in Class 4 (First Lien Deficiency Claims), Class 7 (Intercompany Claims), Class 8 (Intercompany Interests), and Class 9 (Existing Parent Interests) are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code.[10] As to these Classes, the Plan may nonetheless be confirmed over such rejections because, as set forth below, the Plan satisfies the requirements for cramdown under section 1129(b) of the Bankruptcy Code.

(ii) At Least One Impaired Class Voted in Favor of the Plan (11 U.S.C. § 1129(a)(10))

60. Section 1129(a)(10) of the Bankruptcy Code requires that, if any class of claims is impaired under the plan, at least one impaired class of claims must accept the plan, excluding acceptance by any insider. 11 U.S.C. § 1129(a)(10). As set forth in the Tabulation Declaration and as discussed above, Class 3 (First Lien Secured Claims) and Class 5 (Second Lien Deficiency

[10] Class 10 (Section 510(b) Claims) did not contain any Claims and is, therefore, deemed eliminated from the Plan pursuant to paragraph D.29 of the Solicitation and Voting Procedures and Article III.D of the Plan.

Claims), which are Impaired Classes, voted to accept the Plan without counting the acceptance of insiders. Accordingly, the Debtors submit that the Plan satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code, as the Plan has been accepted by at least one Impaired Class.

61. As further discussed herein, the Plan seeks administrative consolidation for voting and distribution purposes only. Several courts—including those in the Fifth Circuit—have approved plans that consolidate the debtors for voting and/or distribution purposes. *See* ¶ 140 *infra*. In approving these plans, courts interpret section 1129(a)(10) of the Bankruptcy Code to require at least one impaired accepting class on a "per plan" basis (*i.e.*, where an impaired class of claimants with claims against *any* debtor votes to accept the plan), rather than a "per debtor" basis (*i.e.*, where an impaired class of claimants of *each individual* debtor votes to accept the plan).[11] *See MPCC 2007-C1 Grasslawn Lodging LLC v. Transwest Resort Props. Inc., et al. (In re Transwest Resort Props.)*, 881 F.3d 724 (9th Cir. 2018) (adopting a "per plan" approach to 1129(a)(10)).

62. The Fifth Circuit has not affirmatively adopted the "per plan" or "per debtor" approach. *See In re ADPT DFW Holdings, LLC*, 574 B.R. 87, 104 (Bankr. N.D. Tex. 2017). Nevertheless, courts in this district routinely confirm plans seeking administrative consolidation without requiring the debtors to meet the more onerous standard for substantive consolidate. *See e.g., In re Independence Contract Drilling Inc.*, Case No. 24-90612 (ARP) (Bankr. S.D. Tex. Jan 9, 2025) (approving a plan that "consolidate[s] Allowed Claims on a per Class basis for voting purposes" without any evidentiary showing of substantive consolidation); *In re Robertshaw US Holding Corp.*, Case No. 24-90052 (CML) (Bankr. S.D. Tex. Aug. 16, 2024) (approving a plan

[11] A minority of courts have adopted the "per debtor" approach, including the Second Circuit. *See In re Tribune Co.,* 464 B.R. 126 (Bankr. D. Del. 2011).

that consolidates "*solely* for the purposes of voting, determining which Class or Classes have accepted the Plan, confirming the Plan, and the resulting treatment of all Claims and Interests and Plan Distributions" without any evidentiary showing of substantive consolidation); *In re CEC Entertainment, Inc.*, Case No. 20-33163 (MI) (Bankr. S.D. Tex. Dec. 15, 2020) (approving a plan that "groups the Debtors together *solely* for the purpose of describing treatment under the Plan, tabulating votes on and confirmation of the Plan, and making Plan Distributions" without any evidentiary showing of substantive consolidation).

63. Even if this Court chooses to adopt the "per debtor" approach, however, the Plan satisfies section 1129(A)(10) of the Bankruptcy Code because the Debtors meet the standard for substantive consolidation, as set forth more fully herein. *See* ⁋⁋ 140 to 148 *infra*.

I. The Plan Provides for Payment of Administrative and Tax Claims (11 U.S.C. § 1129(a)(9))

64. Section 1129(a)(9) of the Bankruptcy Code requires that, except as to holders of claims that have agreed to different treatment, a chapter 11 plan must provide for all holders of claims of the kind specified in sections 507(a)(2) and 507(a)(3) of the Bankruptcy Code to be paid in full in cash on the effective date of the plan and for all holders of allowed priority claims to be paid in full in cash (depending on the specific type of claim, either on the effective date of the plan or over time with interest). 11 U.S.C. § 1129(a)(9).

65. Article II.A of the Plan provides that, with respect to Administrative Claims, except to the extent that (a) an Allowed Administrative Claim has already been paid or satisfied during the Chapter 11 Cases or (b) a Holder of an Allowed Administrative Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, discharge, and release of each Allowed Administrative Claim, on the applicable Distribution Date, each Holder of an Allowed

Administrative Claim shall receive an amount of Cash equal to the aggregate amount of such Allowed Administrative Claim.

66. Similarly, Article II.D of the Plan provides that, except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, discharge, and release of each Allowed Priority Tax Claim, on the applicable Distribution Date, each Holder of an Allowed Priority Tax Claim shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code.

67. Accordingly, the Debtors respectfully submit that the Plan satisfies section 1129(a)(9) of the Bankruptcy Code.

J. The Plan is Feasible (11 U.S.C. § 1129(a)(11))

68. Section 1129(a)(11) of the Bankruptcy Code requires the bankruptcy court to determine that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." 11 U.S.C. § 1129(a)(11). In the Fifth Circuit, a plan proponent must establish feasibility based upon a preponderance of the evidence. *See In re Save Our Springs (S.O.S.) Alliance, Inc.*, 632 F.3d 168, 172 (5th Cir. 2011) ("To obtain confirmation of its reorganization plan, a debtor must show by a preponderance of the evidence that its plan is feasible, which means that it is 'not likely to be followed by . . . liquidation, or the need for further financial reorganization.'") (quoting 11 U.S.C. § 1129(a)(11)).

69. Courts in this district have referred to the feasibility requirement under section 1129(a)(11) of the Bankruptcy Code as "relaxed," *see In re Samurai Martial Sports, Inc.*, 644 B.R. 667, 698 (Bankr. S.D. Tex. 2022), and not requiring a bankruptcy court to find that success is guaranteed; "a reasonable assurance of commercial viability" is sufficient. *See Matter of T-H New Orleans Ltd. P'ship*, 116 F.3d at 801 (quoting *Matter of Briscoe Enters., Ltd., II*, 994 F.2d at 1166);

see also In re Northbelt, LLC, 630 B.R. 228, 279 (Bankr. S.D. Tex. 2020) ("The court need not require a guarantee of success. Essentially, Debtor must be able to show that it can accomplish what it proposes to do, in the time period allowed, and on the terms set forth in the plan.") (cleaned up). "When assessing feasibility, courts consider factors such as the adequacy of the debtor's capital structure, the earning power of the business, economic conditions, the ability of management, the probability of the continuation of the same management, and any other related matter," though "courts have discretion in weighing which factors to apply (or ignore) in each case." *In re Northbelt, LLC*, 630 B.R. at 279 (citation omitted); *see also In re Pearl Res. LLC*, 622 B.R. at 263–64 (finding that the plan was feasible and satisfied section 1129(a)(11) of the Bankruptcy Code when the evidence established, among other things, the debtor's ability to service its debt through operations and a capital infusion contemplated by the plan and the post-emergence debtor's earning power).

70. For purposes of demonstrating that the Plan meets the "feasibility" standard, the Debtors, with the assistance of their financial advisor, analyzed the ability of the Post-Restructuring Debtors to meet their obligations under the Plan and to retain sufficient liquidity and capital resources to conduct their businesses. As set forth in Article IV.D of the Plan, Plan Distributions will be funded, as applicable, with (a) the issuance of New Common Equity, including through the Equity Financing, (b) the issuance of the Takeback Facility, (c) the issuance of New Preferred Equity in connection with the Equity Financing, (d) the Liquidating Trust Assets, and (e) Cash on hand. Accordingly, the Debtors will be able to make all payments required under the Plan. In addition, the Financial Projections attached as Exhibit E to the Disclosure Statement, taken together with the Confirmation Declarations, further support the Debtors' expectation that the cash flow from operations will be sufficient to support the Post-Restructuring Debtors' capital

structure, including servicing their post-emergence debt obligations and paying all of their operating expenses as they come due in the ordinary course of business and that Confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization.

71. As outlined in Exhibit A hereto, the Capaci Claimants (as defined in the Objection Summary Chart) assert that the Plan is not feasible, arguing that the Post-Restructuring Debtors will lose customer contracts and incur professional liability costs after the Effective Date that will result in a subsequent reorganization or liquidation. This argument is unfounded. As the Record will demonstrate, the Post-Restructuring Debtors will be adequately capitalized and well-positioned to succeed as a stronger go-forward business. The reduction of debt on the Post-Restructuring Debtors' balance sheet will substantially reduce future expense and improve future cash flows, thus allowing the Debtors to have sufficient cash flow to pay and service their post-restructuring debt obligations and to operate their business. This reduction in debt, paired with the Post-Restructuring Debtors successful emergence from Chapter 11, will bolster their retention of critical customer contracts and allow the management team to re-focus on maintain and improving operational efficiency.

72. Providing best-in-class care to their patients has always been a priority for the Debtors. Indeed, the mortality rate in the Debtors' local government facilities in the last 18 months is approximately third of the national average—a testament to the Debtors' long-term commitment to providing quality care. *See* Dragelin Declaration, ¶ 38. Nevertheless, the Debtors are also committed to continually improving and have implemented a number of operational improvements that are intended to positively impact patient care and should mitigate professional liability. *See id.*, ¶ 27. For example, as part of the Debtors' contract rationalization efforts, the Debtors terminated approximately 65 underperforming contracts that carried outsized risk. *Id.*

The remaining active contracts have historically lower risk profiles (*i.e.*, fewer claims and lower claim expenses per average daily population). *Id.*

73. Additionally, the Debtors have devoted significant resources to enhance staff training and awareness, including a $6,700,000 increase to its training budget for 2025. *Id.* at ¶ 31. The additional training budget includes specialized training and increased employee tuition reimbursements, which helps eligible employees obtain certifications, complete degrees, and take courses relevant to providing care in a correctional setting. *Id.* In 2025, the Debtors have already provided approximately $270,000 in tuition reimbursements, compared to $180,000 for all of 2024. *Id.* at ¶ 32.

74. The Debtors also have invested more than $600,000 in software programs that allow the Debtors to (a) better monitor and report patient care with real time tracking and (b) monitor state and federal government screening lists and state clinical licensing bodies. *Id.* at ¶ 33. The Debtors have invested an additional $200,000 this year to maintain and upgrade these software programs. *Id*.

75. The Debtors have elevated and enhanced their compliance department (which is an independent c-suite level department), including by putting their credentialing, quality, and risk management departments in the compliance department, and charging it with monitoring the patient safety hotline available to employees, patients, clients, patients, and family members. *Id.* at ¶ 34. The latter change has already produced results, with complaints addressed on average within seven to ten days, well below the debtors' minimum required response time of 60 days. *Id*.

76. The Debtors also remain committed to providing highly competitive compensation to patient care practitioners, targeting compensation at the 75th percentile in the individual markets in which the Debtors operate. *Id.* at ¶ 37.

77. Accordingly, the Debtors respectfully submit that the Plan satisfies section 1129(a)(11) of the Bankruptcy Code and that they have provided sufficient evidence to support such assertion.

K. The Plan Provides for Payment of U.S. Trustee Fees (11 U.S.C. § 1129(a)(12))

78. Section 1129(a)(12) of the Bankruptcy Code requires the payment of all fees payable under 28 U.S.C. § 1930. 11 U.S.C. § 1129(a)(12). Article XIII.C of the Plan provides that, on and after the Effective Date, the Debtors shall (a) file all monthly reports and pay all fees payable pursuant to section 1930(a) of the Judicial Code, as determined by the Bankruptcy Court, or as agreed by the U.S. Trustee for each quarter (including any fraction thereof) until the earlier of that particular Debtor's case being closed, dismissed, or converted to a case under Chapter 7 of the Bankruptcy Code and (b) in the event that any Post-Restructuring Debtor's case remains open solely on account of the Liquidating Trust, the Liquidating Trust shall file all quarterly reports and pay all fees payable pursuant to section 1930(A) of the Judicial Code, as determined by the Bankruptcy Court at a hearing pursuant to section 1128 of the Bankruptcy Code or as agreed by the U.S. Trustee, for each quarter (including any fraction thereof) until the termination of the Liquidating Trust. On and after the Effective Date, the Post-Restructuring Debtors shall file all quarterly reports and pay all U.S. Trustee Fees for each open Chapter 11 Case for each quarter (including any fraction thereof) until the first to occur of the Chapter 11 Cases being converted, dismissed, or closed. Accordingly, the Debtors respectfully submit that the Plan satisfies section 1129(a)(12) of the Bankruptcy Code.

L. The Plan Provides for the Continuation of Retiree Benefits (11 U.S.C. § 1129(a)(13))

79. Section 1129(a)(13) of the Bankruptcy Code requires that a plan provide for the continuation of retiree benefit payments after the plan effective date. 11 U.S.C. § 1129(a)(13).

Article IV.G of the Plan provides that, following the Effective Date, all of the Debtors' retirement benefits (as such term is defined in section 1114 of the Bankruptcy Code), if any, shall continue to be paid in accordance with applicable law. Accordingly, the Debtors have satisfied section 1129(a)(13) of the Bankruptcy Code.

M. The Remaining Provisions of 11 U.S.C. § 1129(a) Do Not Apply to the Plan (11 U.S.C. §§ 1129(a)(14)–(16))

80. The Debtors are not required to pay any domestic support obligations and the Debtors are not individuals. *See* 11 U.S.C. §§ 1129(a)(14)–(15). Accordingly, the Debtors respectfully submit that sections 1129(a)(14) and 1129(a)(15) of the Bankruptcy Code do not apply.

81. Finally, section 1129(a)(16) of the Bankruptcy Code provides that "all transfers of property under [a chapter 11] plan shall be made in accordance with any applicable provisions of non-bankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust." 11 U.S.C. § 1129(a)(16). The legislative history of section 1129(a)(16) of the Bankruptcy Code states that this section was intended "to restrict the authority of a trustee to use, sell, or lease property by a nonprofit corporation or trust." H.R. Rep. No. 109-31(I), 145 (2005); *see also In re Cypresswood Land Partners, I*, 409 B.R. at 433 ("Here, the Debtor is a for-profit entity, so § 1129(a)(16) is inapplicable."). No Debtor is a nonprofit entity and, therefore, the Debtors respectfully submit that section 1129(a)(16) of the Bankruptcy Code is inapplicable.

IX. The Plan Satisfies Cramdown Requirements for the Non-Accepting Classes (11 U.S.C. § 1129(b))

82. Section 1129(b) of the Bankruptcy Code provides that, upon request of the plan proponent, if all applicable requirements of section 1129(a) of the Bankruptcy Code are met other than subsection (a)(8) (*e.g.*, acceptance by all impaired classes), the court "shall confirm [a chapter

11] plan . . . if the plan does not discriminate unfairly, and is fair and equitable, with respect to each [non-accepting impaired] class." 11 U.S.C. § 1129(b)(1). Here, Holders of more than one third in amount and more than one half in number of the General Unsecured Claims that voted on the Plan did not vote to accept the Plan, thereby resulting in a rejecting Impaired Class. In addition, Holders of Claims and Interests in Class 4 (First Lien Deficiency Claims), Class 7(Intercompany Claims), Class 8 (Intercompany Interests(, and Class 9 (Existing Parent Interests) are deemed to have (or potentially have) rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code.[12] Nonetheless, for the reasons detailed below, the Debtors respectfully submit that the Plan satisfies the "cramdown" requirements of section 1129(b) of the Bankruptcy Code with respect to such Classes and, therefore, the Bankruptcy Court should confirm the Plan.

A. The Plan Does Not Unfairly Discriminate with Respect to the Rejecting Impaired Classes (11 U.S.C. § 1129(b)(1))

83. Section 1129(b)(1) of the Bankruptcy Code does not prohibit *all* discrimination, only *unfair* discrimination. *See In re Sentry Operating Co. of Texas, Inc.*, 264 B.R. 850, 863 (Bankr. S.D. Tex. 2001) ("[Section 1129(b) of the Bankruptcy Code] obviously permits some discrimination, since it only prohibits unfair discrimination."). "The Bankruptcy Code does not provide a standard for determining when 'unfair discrimination' exists." *In re Idearc, Inc.*, 423 B.R. 138, 171 (Bankr. N.D. Tex. 2009), *aff'd*, 662 F.3d 315 (5th Cir. 2011) (cleaned up). "At a minimum, however, the unfair discrimination standard prevents creditors and equity interest holders with similar legal rights from receiving materially different treatment under a proposed plan without compelling justifications for doing so." *Id.* (citations omitted); *see also In re Cypresswood Land Partners, I*, 409 B.R. at 434 ("The concept of unfair discrimination was

[12] Class 10 (Section 510(b) Claims) did not contain any Claims and, therefore, is deemed eliminated from the Plan pursuant to paragraph (ii) of the Solicitation and Tabulation Voting Procedures and Article III.D.

designed to maintain equity among creditors of equal priority.") (citation omitted); *In re Sentry Operating Co. of Texas, Inc.*, 264 B.R. 850, 865 (Bankr. S.D. Tex. 2001) ("The 'does not discriminate unfairly' requirement in § 1129(b) protects each class of creditors against involuntary loss of their equal distribution rights *vis a vis* (*sic*.) other creditors of equal rank."). "Courts may examine the facts and circumstances of the particular case to determine whether unfair discrimination exists." *In re Idearc Inc.*, 423 B.R. at 171 (citations omitted).

84. Here, the Plan does not discriminate unfairly with respect to any rejecting Class. As described above, Claims and Interests in the rejecting Impaired Classes—Class 4 (First Lien Deficiency Claims), Class 6 (General Unsecured Claims), Class 7 (Intercompany Claims), Class 8 (Intercompany Interests), Class 9 (Existing Parent Interests), and Class 10 (Section 510(b) Claims)—are specifically classified in such manner because of, among other things, the unsecured status (as opposed to secured status of the First Lien Secured Claims in Class 3), or the differences in the legal nature or priority, of the underlying obligations, *see In re Cypresswood Land Partners, I*, 409 B.R. at 434–35 (quoting *Matter of Bradley*, 705 F.2d 1409, 1411 (5th Cir. 1983)), and there are no other Classes of similarly situated Claims or Interests.

85. Even if Classes 8 and 9 are similarly situated, the Plan does not discriminate unfairly against such Holders because there is a reasonable basis for any disparate treatment. Specifically, the Interests in Class 9 are Interests in Wellpath Parent held by non-Debtors (potentially including insiders of the Debtors), whereas the Interests in Class 8 are those of the other Debtors held by another Debtor (including Wellpath Parent). Because of the legally distinct nature of the Interests in Wellpath Parent and the Interests in the other Debtors, such Interests are separately classified. Nonetheless, all Interests in Wellpath Parent are classified together in one

Class, and all Interests in the other Debtors are classified together in another Class. Therefore, the Plan does not discriminate unfairly among the Holders of Interests in Classes 8 or 9.

86. Accordingly, the Debtors respectfully submit that the Plan satisfies section 1129(b)(1) of the Bankruptcy Code.

B. The Plan is Fair and Equitable with Respect to the Rejecting Impaired Classes (11 U.S.C. §§ 1129(b)(2)(B)(ii), (C)(ii))

87. Sections 1129(b)(2)(B)(ii) and 1129(b)(2)(C)(ii) of the Bankruptcy Code provide, among other things, that a chapter 11 plan is fair and equitable with respect to a class of impaired unsecured claims or interests if, under the plan, no holder of any junior claim or interest will receive or retain property under the plan on account of such junior claim or interest. 11 U.S.C. §§ 1129(b)(2)(B)(ii), (C)(ii); *Bank of Am. Nat'l Tr. & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. at 441–42 (discussing the "absolute priority rule"). This standard is clearly satisfied as no Holder of a Claim or Interest junior to Claims or Interests in any of the rejecting Impaired Classes—(a) Class 4 (First Lien Deficiency Claims), (b) Class 6 (General Unsecured Claims), (b) Class 7 (Intercompany Claims), (c) Class 8 (Intercompany Interests), (d) Class 9 (Existing Parent Interests), and (e) Class 10 (Section 510(b) Claims)—will receive or retain any property or distribution under the Plan or such Class has consented to such treatment (*e.g.,* Class 4). Specifically, the entire equity value of Reorganized Wellpath at emergence is attributable to the Preferred Equity and there is no residual value to Holders of New Common Equity (including the beneficiaries of the Liquidating Trust in Classes 5 and 6) at the time of emergence. Tempke Declaration, ¶ 15. The Plan is, therefore, "fair and equitable" with respect to such Classes. Accordingly, the Debtors respectfully submit that the Plan satisfies the absolute priority rule of section 1129(b)(2) of the Bankruptcy Code and is "fair and equitable" in all respects.

X. The Remaining Confirmation Requirements are Satisfied or Inapplicable (11 U.S.C. §§ 1129(c)–(e))

88. Section 1129(c) of the Bankruptcy Code states, among other things, that "the court may only confirm one plan." 11 U.S.C. § 1129(c). No chapter 11 plan other than the Plan has been Filed in the Chapter 11 Cases, and the Plan is the only chapter 11 plan being considered for confirmation at this time. Accordingly, the Debtors respectfully submit that the requirements of section 1129(c) of the Bankruptcy Code are satisfied.

89. In addition, section 1129(d) of the Bankruptcy Code states, among other things, that "on request of a party in interest that is a governmental unit, the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933." 11 U.S.C. § 1129(d). The principal purpose of the Plan is to maximize distributable value to the Debtors' stakeholders and not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act, and no Governmental Unit has requested that the Bankruptcy Court deny Confirmation on these grounds. Accordingly, the Debtors respectfully submit that the requirements of section 1129(d) of the Bankruptcy Code are satisfied.

90. Finally, the Chapter 11 Cases are not "small business case[s]" (as defined in section 101(51C) of the Bankruptcy Code) and, accordingly, section 1129(e) of the Bankruptcy Code is inapplicable. *See* 11 U.S.C. § 1129(e).

XI. The Plan's Release, Exculpation, and Injunction Provisions are Appropriate and Comply with the Bankruptcy Code

91. The Bankruptcy Code identifies various additional provisions that may be incorporated into a chapter 11 plan, including "any other appropriate provision not inconsistent with the applicable provisions of this title." 11 U.S.C. §§ 1123(b)(1)-(6). Among other discretionary provisions, the Plan contains a debtor release, consensual third-party releases, an

exculpation provision, and an injunction provision. *See* Plan, Art. IX. These provisions are the product of extensive good faith arm's-length negotiations, comply with the Bankruptcy Code and prevailing Fifth Circuit law, and should be approved. Further, these provisions are bargained-for provisions that were necessary to generate consensus with certain of the Debtors' stakeholders regarding the Plan. As reflected by the overwhelming support for the Plan, the compromises and settlement under the Plan are the successful result of hard-fought, pre-and post-petition negotiations.

92. Thus, and as set forth more fully below, the releases, exculpation, and injunction provisions are reasonable under the circumstances, appropriate, and in the best interests of the Debtors, their Estates, and all of the Debtors' stakeholders.

A. The Plan's Debtor Releases, Settlements, and Compromises are Appropriate

(i) The Plan Appropriately Incorporates Settlements of Claims and Causes of Actions

93. The Bankruptcy Code states that a plan may "provide for . . . the settlement or adjustment of any claim or interest belonging to the debtor or to the estate." 11 U.S.C. § 1123(b)(3)(A). The court may approve a settlement under a plan only when it is "fair and equitable." *See Feld v. Zale Corp. (In re Zale Corp.)*, 62 F. 3d 746, 754 n. 22 (5th Cir. 1995) (citing *In re AWECO, Inc.*, 725 F.2d 293, 297 (5th Cir. 1984)). In particular, the Fifth Circuit applies a five-factor test for considering motions to approve settlements under Bankruptcy Rule 9019, weighing the following: "(1) the probability of success in litigation with due consideration for uncertainty in fact and law; (2) the complexity and likely duration of the litigation and any attendant expense, inconvenience, and delay, including the difficulties, if any, to be encountered in the matter of collection; (3) the paramount interest of the creditors and a proper deference to their respective views; (4) the extent to which the settlement is truly the product of

arm's-length bargaining and not fraud or collusion; and (5) all other factors bearing on the wisdom of the compromise." *See In re Moore*, 608 F.3d 253, 263 (5th Cir. 2010).

94. Although the debtor bears the burden of establishing that a settlement is fair and equitable based on the balance of the above factors, the "[debtor's] burden is not high." *See In re Roqumore*, 393 B.R. 474, 480 (Bankr. S.D. Tex. 2008). Indeed, the court need only determine that the settlement does not "fall beneath the lowest point in the range of reasonableness." *See In re Idearc Inc.*, 423 B.R. at 182 (citations omitted); *In re Roqumore*, 393 B.R. at 480 ("The Trustee need only show that his decision falls within the 'range of reasonable litigation alternatives.'" (citations omitted)).

95. The Plan and Confirmation Order embody a global settlement of certain Claims and Causes of Action between the Debtors and key parties in interest, including the Debtors, certain of the Debtors' directors and officers, each DIP Lender, the DIP Agent, each First Lien Lender, the First Lien Agent, each Second Lien Lender, the Second Lien Agent, the Committee, and the H.I.G. Releasees. The global settlement embodied in the Plan and Confirmation Order, including the settlements with the Committee and the H.I.G. Releasees, is fair, equitable, and consistent with the Bankruptcy Rules 9019 factors as applied in this jurisdiction. The Plan and Confirmation Order resolve a host of alleged Claims and Causes of Action, which were thoroughly analyzed by the Debtors, the Special Committee, the Ad Hoc Group, the Committee, and each of their advisors, all of which are highly uncertain to succeed and have an immense capacity to cause extensive delay, cost, and uncertainty in the Chapter 11 Cases and otherwise. As reflected by the overwhelming support of the Plan, this global settlement, which was the result of arm's-length negotiations, is in the best interests of creditors and all parties in interest.

96. It is undeniable that litigating chapter 11 case disputes would have been complex and time-consuming and would have unnecessarily extended the Debtors' stay in chapter 11, all while the Debtors continue to incur administrative costs. The Debtors have been clear from the outset of the Chapter 11 Cases that their overarching goal was to confirm a Plan that allows the Post-Restructuring Debtors to continue providing vital medical care and to preserve critical customer contracts. Factoring in the costs and risks of litigation, the Debtors, after careful review with the Special Committee and their independent advisors, determined in their sound business judgment that (a) the value of prevailing on the merits in cost-intensive litigation would not result in improved recoveries to any creditors under the Plan and, most importantly, (b) pursing this risky litigation would jeopardize the Debtors' ability to continue operations.

97. The releases of certain of the Debtors' directors and officers are an integral component of the negotiated global settlement. Those Debtors' directors and officers made a substantial and valuable contribution to the Debtors' restructuring and estates and may continue in such roles for the Post-Restructuring Debtors. The Debtors' officers invested significant time and effort to render the restructuring a success and to preserve the value of the Debtors' estates in a challenging environment. The Debtors' directors attended dozens of board meetings related to the restructuring and formed the Special Committee, which met frequently and was involved in negotiations related to the Restructuring Support Agreement, DIP Facility, the Plan, the Recovery Solutions sale, the NBH sale, and the various resolutions with stakeholders incorporated into the Plan. The Debtors are not aware of any colorable claims or causes of action against their directors and officers. Moreover, even if any claims existed, they would likely be circular given that such parties are entitled to indemnification from the Debtors under state law, the Debtors' organizational documents, and agreement. In addition, litigation against the directors and officers

would be a distraction to the Debtors' business and restructuring and would destroy the value of the global closure embodied in the Plan and Confirmation Order for all stakeholders. Finally, as demonstrated by the voting results, the director and officer releases garnered the support of the Debtors and their critical stakeholders. As a result, the releases should be approved as a component of the global settlement embodied in the Plan.

(ii) The Debtor Releases are Consensual and Appropriate

98. Article IX.C of the Plan provides for the Debtors to release certain claims, rights, and causes of action that the Debtors, the Post-Restructuring Debtors, and their Estates may have against the Released Parties (the "Debtor Releases"). The Debtor Releases do not release (a) any Cause of Action enumerated on the Schedule of Retained Causes of Action or the Schedule of Liquidating Trust Causes of Action, (b) any claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct, gross negligence, or actual fraud, or (c) any obligation of any party under the Plan or any document, instrument, or agreement executed to implement the Plan (including the Plan Supplement).

99. Under section 1123(b)(3)(A) of the Bankruptcy Code, a chapter 11 plan may provide for "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate." 11 U.S.C. § 1123(b)(3)(A). In considering the appropriateness of the release, courts in the Fifth Circuit generally consider whether the release is (a) "fair and equitable" and (b) "in the best interests of the estate." *In re Mirant Corp.*, 348 B.R. 725, 738 (Bankr. N.D. Tex. 2006). Courts in the Fifth Circuit generally interpret the "fair and equitable" prong consistent with that term's usage in section 1129(b) of the Bankruptcy Code to require compliance with the Bankruptcy Code's absolute priority rule. *Id.* Courts generally determine whether a release is "in the best interests of the estate" by reference to the following factors:

a. the probability of success of litigation;

b. the complexity and likely duration of the litigation, any attendant expense, inconvenience, delay, and possible problems collecting a judgment;

c. the interests of creditors with proper deference to their reasonable view; and

d. the extent to which the settlement is truly the product of arms' length negotiations.

Id. at 739–40 (citing *Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop., Inc. (In re Cajun Elec. Power Coop., Inc.)*, 119 F.3d 349, 355–56 (5th Cir. 1997)). Ultimately, courts afford the Debtors some discretion in determining for themselves the appropriateness of granting releases of estate causes of action. *See In re Gen. Homes Corp.,* 134 B.R. at 861 ("The court concludes that such a release is within the discretion of the Debtor.").

100. The Debtor Release meets the controlling standard. As an initial matter, the Debtor Release complies with the absolute priority rule. While certain Classes have rejected or are deemed to have rejected the Plan, the Debtor Release and settlements embodied therein and in the Plan do not result in any junior Class receiving or retaining any property on account of junior Claims or Interests. In addition, as set forth more fully above, the Debtors believe that granting the Debtor Release is a reasonable exercise of their business judgment that falls well-within the standard for settlements pursuant to Bankruptcy 9019. Thus, the Debtor Release is fair and equitable and in line with Fifth Circuit precedent.

101. In addition to being fair and equitable, the Debtor Release is in the best interests of the Estates. ***First***, the probability of success in litigation with respect to claims the Debtors may have against the Released Parties is uncertain at best, as are the benefits of pursuing litigation in light of the settlement embodied in the Plan.[13] As described in the Dragelin Declaration, in August

[13] As described in the *Motion of the Debtors for Entry of Order (I) Authorizing and Approving the Settlement Agreement with H.I.G. Capital, LLC Under Bankruptcy Rules 9019, and (II) Granting Related Relief* [Docket

2024, to ensure a fair and thorough review of the Debtors' strategic alternatives, the board of managers of CCS-CMGC Parent GP, LLC (the "Parent Board") appointed Carol Flaton and Patrick J. Bartels to the Parent Board as disinterested directors (the "Independent Directors"). *See* Dragelin Declaration, ¶ 56. In November 2024, the Independent Directors were also appointed to the board of directors of CCS-CMGC Intermediate Holdings 2, Inc. (the "Intermediate 2 Board"). *See id.* At the same time, the Intermediate 2 Board formed a special committee (the "Special Committee") to negotiate, evaluate, and authorize certain strategic and/or financial alternatives available to Wellpath, including authorizing the filing of the Chapter 11 Cases. *See id.*

102. At the Special Committee's direction, Wellpath requested that McDonald Hopkins LLC ("McDonald Hopkins") assist the Special Committee in an independent investigation (the "Investigation") to determine whether the Debtors' estates may have any viable claims or causes of action against (a) the Debtors' majority equity owner, an HIG entity (the "HIG Target"), or (b) any of the Debtors' current and former members, officers, directors, or affiliates (the "Company Targets" and, together with the HIG Target, collectively, the "Targets"). *See id*, ¶57. McDonald Hopkins' mandate was to investigate any and all potential, material claims against each of the Targets that might be released by the Debtors under the proposed Plan. *See id.* Consistent with that mandate, McDonald Hopkins focused on types of claims that, in the context of the Debtors' businesses and transactional history and facts of these cases, might be asserted against any potential Target, including, without limitation, (w) potential fraudulent conveyances and other avoidance actions, (x) breach of fiduciary duty claims, (y) alter ego and related claims,

No. 2157] (the "9019 Motion"), the Special Committee conducted an investigation of certain potential claims held by the Debtors against H.I.G Capital, LLC. The Debtors are also seeking Court approval of certain Debtor releases of H.I.G Capital, LLC and certain of H.I.G. personnel pursuant to the 9019 Motion.

and (z) equitable subordination and recharacterization claims (collectively, the "Potential Claims"). *See id.*

103. As described at length in the HIG Settlement Motion, the investigation by the Special Committee and its counsel included (a) reviewing and analyzing more than 23,500 documents provided by the Debtors related to aspects of the Investigation and Potential Claims, (b) conducting a detailed legal analysis of the applicable statutory and common law framework and evaluating the Potential Claims under multiple legal theories, and (c) conducting interviews with eight current and former management personnel. Based on their diligence and Investigation, the Special Committee concluded that resolution of any Potential Claims under the Plan, including the Debtor Release, was fair, reasonable, and in the best interests of the Debtors' Estates.

104. ***Second***, key stakeholders were extensively involved in the negotiation process that resulted in broad support for the Plan among the Debtors' major stakeholders. In particular, the restructuring embodied in the Plan (including the Debtor Release) was negotiated by sophisticated parties and counsel, including weeks of prepetition and post-petition negotiations among the Debtors, the Ad Hoc Group, the Committee, and the Debtors' various stakeholders.

105. ***Third***, the Debtor Release is an essential *quid pro quo* for the Released Parties' contributions to, and support of, the Debtors' restructuring. ***Fourth***, the Debtors considered the costs, delay, and inconveniences that would result from litigating any Causes of Action that the Debtors may have against the Released Parties, including (a) the actual potential validity of any litigation, (b) the delay, expense, and risk associated with litigation, and (c) the limited upside for creditors, if any, even in the event that such litigation was successful. The Debtors, the Ad Hoc Group, and the Committee concluded that the costs and uncertainties of litigating any Claims

against the Released Parties were far outweighed by the benefits of the global settlement reflected in the Plan.

106. ***Fifth***, the scope of the Debtor Release is appropriately tailored and limited to various aspects of the Chapter 11 Cases and related transactions and subject to (a) the standard exclusion of willful misconduct, actual fraud, and gross negligence, (b) the carve out of the Retained Causes of Action and the Liquidating Trust Causes of Action, and (c) any obligation of any party under the Plan or any document, instrument, or agreement executed to implement the Plan (including the Plan Supplement). Accordingly, the Debtor Release is fair, equitable, and in the best interests of the Debtors' Estates, is justified under controlling Fifth Circuit precedent, and should be approved.

B. The Consensual Third-Party Release Should be Approved

107. Article IX.D of the Plan contains the consensual Third-Party Release of certain claims, rights, and causes of action that each Releasing Party may have against a Released Party. Third-party releases are permitted in the Fifth Circuit so long as they (a) are consensual, (b) are specific in language, (c) are integral to the plan, (d) satisfy the conditions of a settlement under Bankruptcy Rule 9019, and (e) are supported by valid consideration. *See In re CJ Holding Co.*, 597 B.R. 597, 608 (S.D. Tex. 2019); *In re Bigler LP*, 442 B.R. at 543–44 (holding that section 1123(b)(3)(A) of the Bankruptcy Code permits third-party releases that, among other things, satisfy Bankruptcy Rule 9019, are consensual, and are supported by consideration); *In re Wool Growers Cent. Storage Co.*, 371 B.R. 768, 776 (Bankr. N.D. Tex. 2007).

108. The Third-Party Release in the Plan conform to similar provisions approved in this district, meet the applicable standard, and should be approved.

(i) The Third-Party Release are Consensual

109. First, and perhaps most importantly, the Third-Party Release are consensual. Under the Plan, the only stakeholders who will be bound by the Third-Party Release are those that do not affirmatively opt out of being a Releasing Party.[14] Courts in the Fifth Circuit have explicitly confirmed that consent may be determined by a process that provides parties sufficient notice and a clear option to opt out of, or object to, a proposed treatment or release. *See, e.g.*, *In re CJ Holding Co.*, 597 B.R. at 609 ("Allowing the bankruptcy court to approve the Plan releases, including construing [a claimant's] silence as consent, serves the bankruptcy law's purpose of quick and efficient resolution of claims to permit a debtor's business to continue."); *In re Belk, Inc.*, Case No. 21-30630 (MI) (Bankr. S.D. Tex. Feb. 26, 2021) [Docket No. 96], Hr'g Tr. at 31:1-10 (ensuring that third parties can opt out of releases and receive adequate notice of such ability); *see also In re Digital Media Solutions, Inc. et al.*, Case No. 24-90468 (ARP) (Bankr. S. D. Tex., January 15, 2025) [Docket No. 649] (confirming a plan with an opt-out mechanism). Moreover, the Complex Procedures expressly recognize and adopt this standard as well:

> If a proposed plan seeks consensual pre- or post-petition releases with respect to claims that creditors may hold against non-debtor parties, then a ballot must be sent to creditors entitled to vote on the proposed plan and notices must be sent to non-voting creditors and parties in interest. The ballot and the notice must inform the creditors of such releases and provide a box to check to indicate assent or opposition to such consensual releases together with a method for returning the ballot or notice.

Complex Procedures, § O.

[14] In the case of incarcerated individuals, such individuals may also opt out of the Third-Party Release by submitting any form of written communication, including a Ballot or an Opt Out Form, indicating such individual's election to opt out of the Third-Party Release. Moreover, the Plan affords incarcerated individuals a significant amount of time to opt out of the Third-Party Release by allowing them to do so ***60 days after the Confirmation Date***.

110. To sum it up, bankruptcy courts in the Fifth Circuit largely analyze whether third-party releases are consensual by focusing on applicable facts and circumstances—*i.e.*, whether "notice has gone out, parties have actually gotten it, they've had the opportunity to look it over [and] the disclosure is adequate so that they can actually understand what they're being asked to do and the options that they're being given." *In re Energy & Expl. Partners, Inc.*, Case No. 15-44931 (RFN) (Bankr. N.D. Tex. Apr. 21, 2016), Hr'g Tr. 47:7-11; *see also In re Robertshaw US Holding Corp.*, 662 B.R. at 323-24 (holding that third-party releases in the plan were consensual and appropriate because affected parties were afforded constitutional due process and a meaningful opportunity to opt out).

111. To satisfy due process notice requirements under the Fourteenth Amendment, notice must be "reasonably calculated under all of the circumstances to inform interested parties of the pendency" of the proceeding. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950). In the context of potential claimants of a debtor, the adequacy of notice turns on whether a particular claimant is known or unknown to the debtor. *Williams v. Placid Oil Co.* (*In re Placid Oil Co.),* 753 F.3d 151, 154 (5th Cir. 2014). Claimants are "known" when the debtor has actual knowledge of their identity or the claimant can be "reasonably ascertained" through reasonably diligent efforts. *See id*. at 154 (quoting *Tulsa Prof'l Collection Servs., Inc. v. Pope*, 485 U.S. 478, 489–90 (1988)) (observing that known creditors include claimants who are actually known to the debtor or whose identities are "reasonably ascertainable" through "reasonably diligent efforts"). A claimant is "reasonably ascertainable" when the debtor has at least some information that suggests both the claim for which the debtor may be liable to the claimant, and the claimant to whom it would be liable. *La. Dep't of Envtl. Quality v. Crystal Oil Co. (In re Crystal Oil Co.)*, 158 F.3d 291, 297 (5th Cir. 1998). Where a

claimant is unknown, or not known or reasonably ascertainable, constructive notice via publication is adequate to satisfy the Fourteenth Amendment's due process requirements. *See In re Placid Oil Co.*, 753 F.3d at 155 ("[T]he debtor need only provide 'unknown creditors' with constructive notice by publication," and that "[p]ublication in a national newspaper such as the Wall Street Journal is sufficient.")

112. The Debtors satisfied the foregoing due process requirements. ***First***, Holders of Claims that were actually known by the Debtors received notice of the Third-Party Release. Specifically, starting on March 19, 2025, Epiq served the (a) Confirmation Hearing Notice on the parties listed in the creditor matrix and all other parties entitled to receive such notice pursuant to the Solicitation Order, (b) Solicitation Packages on Holders of Claims in the Voting Classes, and (c) Non-Voting Status Notices on Non-Voting Classes.[15]

113. Importantly, the Ballots and Non-Voting Status Notices were unambiguous that Holders could either consent to or opt out of the Third-Party Release. Among other things, the Plan, Disclosure Statement, the Ballots, the Non-Voting Status Notices, and the relevant notices conspicuously disclosed in boldface the proposed Third-Party Release in the Plan, along with the defined terms related thereto. Additionally, to ensure that unsecured creditors, including incarcerated individuals, were afforded as much notice as possible, the Debtors accepted numerous comments from the Bankruptcy Court, the U.S. Trustee, and the Committee regarding the Ballots and Non-Voting Status Notices. To ensure that Holders of General Unsecured Claims can carefully review and consider the terms of the Third-Party Release and the consequences of their opt out election, the Ballots and Non-Voting Status Notices incorporated the following:

[15] There were no Filed or scheduled claims that were subject to a pending objection by the Debtors. As such, no parties were served with the Non-Voting Status Notices for Holders of Disputed Claims in Class. 6.

a. ***Frequently Asked Questions.*** The first page of the General Unsecured Claims Ballot included a list of frequently asked questions, which included a plain English explanation of the Third-Party Release and its importance. The Debtors also indicated at the outset of the General Unsecured Claims Ballot that the Holders of General Unsecured Claims are "encouraged to carefully read Item 2 of [the] Ballot, the Plan, and Disclosure Statement for more information regarding the releases contained in the Plan" in bold font.

b. ***Easily Identifiable Opt Out Mechanism.*** To ensure Holders of Claims and Interests did not overlook the opt out election check box, it was bolded and located at the beginning of Item 2 in the Ballot (immediately following the voting check box in Item 1), or at beginning of Item 1 in the Non-Voting Status Notice.

c. ***Easily Identifiable and Comprehendible Language.*** To ensure Holders of Claims or Interest would carefully review and consider the terms of the Third-Party Release and consequences of the opt out election, each Ballot and Non-Voting Status Notice included the following language in boldfaced and large font format right before the Opt Out Election: "**UNLESS YOU CHECK THIS BOX, YOU MAY WAIVE YOUR RIGHTS AGAINST CERTAIN NON-DEBTORS**".

d. ***Comprehendible Voting Instructions.*** The General Unsecured Claims Ballot included voting instructions drafted by the Committee that provided a step-by-step guide on how to opt out of the Third-Party Release.

114. In sum, such materials provide ample notice and information regarding the Third-Party Release with respect to what parties are being asked to do and what benefits they would forego should they choose to opt out, and were approved by the Bankruptcy Court on a final basis. *See, e.g.*, *In re Robertshaw US Holding Corp.*, 662 B.R. 300 (finding that "[t]he ballots and the Notice of Non-Voting Status allowed parties to carefully review and consider the terms of the third-party release and the consequences of electing not to opt-out"); *In re Erickson Inc.*, 2017 WL 1091877, at *7 (Bankr. N.D. Tex. Mar. 22, 2017) (finding the third party releases consensual "because they were conspicuously disclosed in boldface type in the [p]lan, the [d]isclosure [s]tatement, and on the [b]allots, which provided parties in interest with sufficient notice of the releases, and holders of [c]laims or [i]nterests entitled to vote on the [p]lan were given the option to opt out of the releases"); *In re CiCi's Holdings, Inc.*, 2021 WL 819330 (Bankr. N.D. Tex.

Mar. 3, 2021) ("The [t]hird-[p]arty [r]eleases are consensual because . . . the release provisions of the [p]lan were emphasized with conspicuous typeface in the [p]lan and the [d]isclosure [s]tatement.").

115. ***Second***, the Debtors undertook reasonably diligent efforts to identify all entities that may have claims against the Debtors and, to the extent reasonably practicable, provided actual notice to these entities, thereby satisfying the Fourteenth Amendment's due process notice requirements. To meet the "reasonably diligent" standard, a debtor must, at a minimum, conduct a careful search of its own records. *In re Crystal Oil Co.*, 158 F.3d at 297 (quoting *Chemetron Corp. v. Jones*, 72 F.3d 341, 346–48 (3d Cir. 1995)) (explaining that reasonably diligent efforts include "only a careful search of the debtor's own records," and that claimants "whose claims are not discoverable therein or otherwise apparent are not 'known creditors' for bankruptcy purposes"). This has been interpreted to mean that, at a minimum, a debtor must possess specific information about a manifested injury. *See, e.g., In re Placid Oil Co.*, 753 F.3d at 156 (observing that for a claimant to be known, the debtor must have specific information about a manifested injury).

116. The Debtors have met this standard. The Debtors conducted a careful review of their of their books and records to ascertain all known creditors. In addition, the Debtors went above and beyond to ensure all Holders of Claims or Interests, including unknown creditors and the Debtors' patient population, were provided sufficient notice and ability to opt out of the releases. These noticing efforts included (a) publishing the Confirmation Hearing Notice in *The New York Times*, *USA Today*, and *Prison Legal News*, (b) to the extent reasonably practicable, posting easy-to-read posters (translated in various languages) on bulletin boards accessible to the patient population within each respective correctional facility serviced by the Debtors, and (c) to

the extent reasonably practicable, playing instructional videos at the Debtors' respective correctional facilities, thereby satisfying the Fourteenth Amendment's due process notice requirements for the Third-Party Release for all unknown claimants to be bound by the Third-Party Release.

117. Additionally, to further ensure that all Holders of Claims or Interests were provided an opportunity to opt out of the releases, the Plan carves out from the definition of "Releasing Parties" all Holders of Claims or Interests that (a) are incarcerated individuals that submit a written communication to the Debtors, the Claims and Solicitation Agent, or the Bankruptcy Court within 60 days from the Confirmation Date that indicates their intent to opt out, (b) timely file an objection to the Plan's release provisions, and (c) file a Lift Stay Motion, an Automatic Stay Objection, or a Pro Se Objection prior to the Plan Objection Deadline. *See* Plan, Art. I.A.149.

118. Further supporting that the Debtors' noticing efforts were successful, of the 9,698 parties that were sent a Ballot or a Non-Voting Status Notice, 969 timely and properly opted out of the Third-Party Release, including 351 incarcerated individuals.[16] In addition, 312 individuals affirmatively opted out of the Third-Party Release by Filing Lift Stay Motions, Automatic Stay Objections, or Pro Se Objections. The fact that 1,291 individuals successfully opted out of the Third-Party Release thus far confirms that the Debtors' extraordinary efforts and process worked as intended. *See, e.g.*, *In re iHeartMedia, Inc.*, Case No. 18-31274 (MI), Hr'g. Tr. at 125:24–126:6 (S.D. Tex. Jan. 22, 2019) ("It gave [the court] some comfort that [the] opt-out provisions were clear enough that [450] people could opt-out (*sic*.) which in some perverse way . . . strengthen[s] the opt-ins.").

[16] Pursuant to the Plan, incarcerated individuals may submit an opt out election up to 60 days after the Confirmation Date.

119. Nevertheless, the U.S. Trustee and several Objectors object to the Third-Party Release, arguing that the "opt out" mechanism cannot manifest affirmative consent to the Third-Party Release, rendering them impermissible under *Harrington v. Purdue Pharma L.P.,* 144 S. Ct. 2071 (2024).

120. The U.S. Trustee and the Objectors misinterpret *Purdue*. There, the Supreme Court held that ***non-consensual*** third-party releases are impermissible in a chapter 11 plan of reorganization. Significantly, however, the Supreme Court did not find that all third-party releases are impermissible, nor did it opine on what constitute "consensual" third-party releases contained in a chapter 11 plan:

> As important as the question we decide today are ones we do not. ***Nothing in what we have said should be construed to call into question consensual third-party releases*** offered in connection with a bankruptcy reorganization plan; those sorts of releases pose different questions and may rest on different legal grounds than the nonconsensual release at issue here . . . ***Nor do we . . . express a view on what qualifies as a consensual release*** or pass upon a plan that provides for the full satisfaction of claims against a third-party nondebtor.

Harrington v. Purdue Pharma, L. P., 144 S. Ct. at 2087–88 (emphasis added). Accordingly, contrary to the U.S. Trustee's assertions, the Supreme Court explicitly preserved the viability of consensual third-party release and did not restrict nor impact a court's ability to determine their validity and define "consent" in this context.

121. Indeed, this Bankruptcy Court recently came to the same conclusion regarding *Purdue*'s impact when confirming a chapter 11 plan with an opt out mechanic similar to the one proposed by the Debtors:

> Nothing [in *Purdue*] is construed to question consensual third-party release offered in connection with a chapter 11 plan. There was also no occasion for the Supreme Court to express a view on what constitutes a consensual release. The Supreme Court confined its

> decision to the question presented. This Court will not narrow or expand the scope of the Supreme Court's holding. These words must be read literally.

See In re Robertshaw US Holding Corp., 662 B.R. at 323 ("*Purdue* did not change the law in this Circuit."). Moreover, the Bankruptcy Court found that "[t]here is nothing improper with an opt-out feature for consensual third-party releases in a chapter 11 plan," when parties giving such releases receive a "meaningful opportunity to opt out." *Id.* (noting that "[h]undreds of chapter 11 cases have been confirmed in this District with consensual third-party releases with an opt-out").

(ii) The Third-Party Release is Specific

122. The Third-Party Release is specific in language. The Plan provides in precise detail the nature and type of claims released and the parties released.[17] Moreover, all parties in interest have received extensive notice of the Third-Party Release through the Disclosure Statement and the court-approved Ballots, Non-Voting Status Notices, Opt Out Forms, and Confirmation Hearing Notice. Indeed, the fact that 1,291 parties in interest have exercised their right to opt out of the Third-Party Release thus far demonstrates that parties were properly put on notice.

(iii) The Third-Party Release is Critical to the Success of the Plan

123. The Third-Party Release is integral to the Plan and the various settlements under the Plan. The provisions in the Plan and Restructuring Support Agreement were heavily negotiated. The Third-Party Release (together with the Debtor Release) is a key component of the Debtors' restructuring and a key inducement to bring stakeholder groups to the bargaining table. Simply put, the Debtors and their key stakeholders would be unwilling to support the Plan without assurances that they would not be subject to post-emergence litigation or other disputes

[17] Plan, Art. I.156 (specifically listing the entities being released), Art. IX.D (specifically listing the types of actions being released.

related to the restructuring. The Third-Party Release therefore not only benefits the non-Debtor Released Parties, but also the Debtors' post-emergence enterprise as a whole as it provides finality and closure for the Debtors and the Chapter 11 Cases. Because the Third-Party Release was and is integral to the incredibly positive result for the Debtors contained in the Plan and the settlements reflected therein, that release is justified under the principles set forth in *CJ Holding* and other cases before this Bankruptcy Court.

(iv) The Third-Party Release Was Given For Consideration

124. The Released Parties made significant contributions to the Chapter 11 Cases, which benefited the Debtors and all parties in interest; thus, their inclusion in the Third-Party Release is supported by valid consideration (*i.e.*, their funding, participation, negotiation, and ultimate resolution of the Chapter 11 Cases through, and the transactions contemplated under, the Plan).

125. Accordingly, the Debtors respectfully represent that the Third-Party Release should be approved.

C. The Exculpation Provision is Appropriate

126. Article IX.E of the Plan provides for standard exculpation of the fiduciaries of the Debtors' Estates for acts or omissions in connection with, related to, or arising out of the Chapter 11 Cases (the "Exculpation Provision"). As further set forth below, the Exculpation Provision complies with applicable law and should be approved.

127. Exculpation provisions, which are common in chapter 11 plans, are different from releases. *See In re McDermott Int'l, Inc.*, No. 21-CV-3369, 2023 WL 8215341, at *4 (S.D. Tex. Jan. 9, 2023). The Fifth Circuit describes releases as "eliminating a covered party's liability altogether while exculpation provisions set forth the applicable standard of liability in future litigation" arising out of acts taken during a bankruptcy case. *Matter of Highland Cap. Mgmt., L.P.*, 48 F.4th 419, 435–36 (5th Cir. 2022) (cleaned up) (summarizing the Third Circuit's holding

in *In re PWS Holding Corp.*, 228 F.3d 224 (3d Cir. 2000)). "[Exculpation provisions] are necessary to eliminate subjecting individuals to second guessing and to allow parties to engage in the give and take of the bankruptcy process without fear of subsequent litigation." *In re McDermott Int'l, Inc.*, No. 21-CV-3369, 2023 WL 8215341, at *4 (citation omitted).

128. The Fifth Circuit allows the exculpation of debtors and bankruptcy trustees for actions short of gross negligence. *See In re Hilal*, 534 F.3d 498, 501 (5th Cir. 2008); *Matter of Ondova Ltd. Co.*, 914 F.3d 990, 993 (5th Cir. 2019). The exculpation of non-debtors is permitted as well, so long as there is a separate basis for it. *See Highland*, 48 F.4th at 436–37 ("[Section] 524(e) [of the Bankruptcy Code] does not permit absolving the non-debtor from any negligent conduct that occurred during the course of the bankruptcy absent another source of authority.") (cleaned up); *In re Smyth*, 207 F.3d 758, 762 (5th Cir. 2000) (holding that an exculpation provision's scope could be established based on, among other things, policy goals and the recommendations of a congressionally-appointed commission); *In re Hilal*, 534 F.3d at 501 (holding that "binding Fifth Circuit precedent" can be used to delineate the scope of an exculpation provision). For example, exculpation of a creditors' committee and its members (except with respect to willful misconduct and gross negligence) is allowed because section 1103(c) of the Bankruptcy Code "implies [that] committee members have qualified immunity for actions within the scope of their duties." *In re Pac. Lumber Co.*, 584 F.3d at 253 (5th Cir. 2009) (also citing Collier for the proposition that, absent discouraging actions against committee members, it would otherwise "be extremely difficult to find members to serve on an official committee" (citing 7 Collier on Bankruptcy P 1103.05 (15th 2018))).

129. In *In re Instant Brands Acquisition Holdings, Inc. et al.*, the U.S. Trustee argued that *Highland* stands for the proposition that the exculpation of independent directors is only

appropriate where they are "appointed post-petition pursuant to a court order authorizing them to act as a trustee." No. 23-90716, 2025 WL 685756, at *3 (Bankr. S.D. Tex. Mar. 3, 2025). Judge Isgur declined to accept this argument, instead ruling that the independent directors, who were appointed prepetition, were entitled to an exculpation because "the disinterested fiduciaries of a debtor-in-possession act pursuant to the same authority and perform the same functions as a bankruptcy trustee, they are afforded identical protections. . . . A bankruptcy trustee and the disinterested fiduciaries of a debtor-in-possession may be exculpated for conduct within their scope of their (*sic.*) duties, absent gross negligence or willful misconduct." *Id*. Here, an identical rationale applies: the Independent Directors acted as disinterested fiduciaries to the Debtors with the same authority as a bankruptcy trustee and, therefore, they may be exculpated for conduct within the scope of their duties.

130. In addition, controlling case law (including from the Supreme Court) supports the Court's conclusion in *Instant Brands*. Under section 1107(a) of the Bankruptcy Code, a chapter 11 debtor in possession has the same duties—including fiduciary duties—as a trustee. *See* 11 U.S.C. § 1107(a). As this Court acknowledged, "[i]n a chapter 11 case in which no trustee is appointed, the fiduciary duties to the [e]state rest with a debtor-in-possession's directors" and "the debtor's directors bear essentially the same fiduciary obligation to creditors and shareholders as would the ***trustee*** for a debtor out of possession." *In re Houston Reg'l Sports Network, L.P.*, 505 B.R. 468, 481 (Bankr. S.D. Tex. 2014) (emphasis added) (quoting *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 355 (1985)). "Indeed, the willingness of courts to leave debtors in possession 'is premised upon an assurance that the ***officers and managing employees*** can be depended upon to carry out the fiduciary responsibilities of a trustee.'"

Commodity Futures Trading Comm'n v. Weintraub, 471 U.S. at 355 (emphasis added) (quoting *Wolf v. Weinstein*, 372 U.S. 633, 651 (1963)).

131. Like the other Exculpated Parties under the Plan (*i.e.*, the Debtors and the Committee) and the independent directors in *Instant Brands*, the Independent Directors had, and adequately discharged, the fiduciary duties they owed to the Debtors and their Estates in accordance with section 1107(a) of the Bankruptcy Code and, therefore, deserve to be an Exculpated Party under the Plan. The Record shows that the Independent Directors exercised, and continue to exercise, these fiduciary duties to the Debtors and their Estates. The Independent Directors assisted with, advised on, oversaw, and (where applicable) authorized various aspects of the Debtors' restructuring and the Chapter 11 Cases with the utmost level of care, loyalty, good faith, and diligence, including the formulation, preparation, marketing, dissemination, negotiation, filing, and pursuit of approval, confirmation, and consummation of, among other things, (a) the Chapter 11 Cases themselves, (b) the DIP Facility, (c) the sales of the Recovery Solutions Business and the NBH Facilities, (d) the Disclosure Statement, and (f) the Plan (including the Plan Supplement) and the transactions contemplated thereby. The Independent Directors also oversaw the Debtors' businesses and operations during the Chapter 11 Cases and supervised and advised the Debtors' management and professionals with respect to the foregoing, all while knowing that they had fiduciary duties to the Debtors and their Estates to maximize value. Furthermore, the Exculpation Provision is narrowly tailored to protect the Exculpated Parties from inappropriate litigation "in connection with, related to, or arising out of the Chapter 11 Cases" and does not apply to "any act or omission that is determined in a Final Order to have constituted actual fraud, willful misconduct, or gross negligence." Plan, Art. IX.E.

132. Aside from the ruling in *Instant Brands*, since September 7, 2022 (the date of the Fifth Circuit's *Highland* opinion), this Bankruptcy Court has approved multiple exculpation provisions similar to the Exculpation Provision. *See, e.g.*, *In re Talen Energy Supply, LLC*,[18] No. 22-90054 (MI) (Bankr. S.D. Tex. Dec. 20, 2022) [Docket No. 1760] (confirming a plan that exculpated the debtors' independent directors, expressly stating that the exculpation provision in the debtors' plan was appropriate under applicable law, including *Highland*); *In re Pipeline Health Sys., LLC*, No. 22-90291 (MI) (Bankr. S.D. Tex. Jan. 13, 2023) [Docket No. 1041] (same); *In re Altera Infrastructure L.P.*,[19] No. 22-90130 (MI) (Bankr. S.D. Tex. Nov. 4, 2022) [Docket No. 533] (same); *In re Nautical Solutions, L.L.C.*, No. 23-90002 (CML) (Bankr. S.D. Tex. Feb. 16, 2023) [Docket No. 204] (confirming a plan that exculpated the debtors' independent directors).[20]

133. For all the foregoing reasons, the Debtors respectfully request that the Bankruptcy Court approve the Exculpation Provision.

D. Injunctions are Narrowly Tailored and Should be Approved

134. The Plan's injunction provisions are necessary to effectuate and implement various provisions in the Plan, including the discharge provision, the Debtor Releases, the Third-Party Release, and the Exculpation Provision. Moreover, the injunctions are essential to protect the beneficiaries of such provisions from any action or other proceeding after the Effective Date from

[18] At the confirmation hearing in *Talen*, this Court expressly held that "independent directors are entitled to the broad exculpations, consistent with *Highland Capital*." *In re Talen Energy Supply, LLC*, No. 22-90054 (MI) (Bankr. S.D. Tex. Dec. 15, 2022) [Docket No. 1766], Hr'g Tr. at 32:16–17. There, the debtors' exculpation provision was initially much broader than the Exculpation Provision and the U.S. Trustee objected to confirmation on such grounds. Ultimately, the *Talen* debtors agreed to narrow their plan to align with the Exculpation Provision, leading to a consensual resolution of the U.S. Trustee's objection. Events unfolded similarly in *Pipeline Health*.

[19] Notably, the U.S. Trustee did not object to the exculpation of the debtors' independent directors in *Altera*.

[20] While, in *In re Serta Simmons Bedding*, *Highland* was construed narrower than this Court interpreted *Highland* in the other cases cited herein, and, therefore, a contrary conclusion was reached, such decision was not published and is not binding on this Court. *See* No. 23-90020, 2023 WL 3855820 (Bankr. S.D. Tex. June 14, 2023). In any event, for the reasons set forth herein, the Debtors respectfully submit that the conclusion reached by this Bankruptcy Court in *Instant Brands* and the aforementioned cases should be followed.

all Entities who held, hold, or may hold claims or interests that arose prior to the Effective Date and all other parties in interest (along with their respective Related Parties). Any such proceeding would hinder the efforts of the Post-Restructuring Debtors to effectively fulfill their responsibilities contemplated in the Plan, thereby undermining the Post-Restructuring Debtors' efforts to maximize value for all of their stakeholders. Additionally, the Plan's injunction provisions are narrowly tailored to achieve their purpose, and similar injunctions are routinely approved by courts in this district. *See, e.g.*, *In re Core Scientific, Inc.*, No. 23-90341 (CML) (Bankr. S.D. Tex. Jan. 16, 2024) [Docket No. 1749] ("The injunction provisions contained in the Plan are essential to the Plan and are necessary to implement the Plan and to preserve and enforce the discharge, release, and exculpation provisions of the Plan. The injunction provisions are appropriately tailored to achieve those purposes."); *In re Air Methods Corp.*, No. 23-90886 (MI) (Bankr. S.D. Tex. Dec. 6, 2023) [Docket No. 217] (same); *In re Soft Surroundings Holdings, LLC*, No. 23-90769 (CML) (Bankr. S.D. Tex. Nov. 3, 2023) (same); *In re Party City Holdco Inc.*, No. 23-90005 (DRJ) (Bankr. S.D. Tex. Sep. 6, 2023) (same).

135. Further, Article IX.F complies with the requirements of Bankruptcy Rule 3016(c), which provides that a plan must "describe in specific and conspicuous language (bold, italic, or underlined text) all acts to be enjoined and identify the entities that would be subject to the injunction." Fed. R. Bankr. P. 3016(c). The injunction provision is clearly identified in the Plan, is displayed in bold font, and specifically identifies all acts to be enjoined and all entities that would be subject to the injunction.

136. Accordingly, to allow the Post-Restructuring Debtors to comply with their obligations under the Plan, the Debtors respectfully request that the Bankruptcy Court approve the Plan's injunction provisions.

XII. The Plan's Other Provisions Comply with Applicable Law and are Appropriate

A. The Plan's Treatment of Personal Injury or Wrongful Death Administrative Claims Complies with Fifth Circuit Law

137. Section 101(5) of the Bankruptcy Code defines a "claim" as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. § 101(5). Courts have consistently remarked that that Bankruptcy Code's "definition of claim is of its nature quite broad." *United Ref. Co. v. Dorrion*, 688 F. Supp. 3d 558, 564 (S.D. Tex. 2023). In addition, as described herein, the Plan provides for the satisfaction in full of all Allowed Administrative Claims, consistent with section 1129(a)(9) of the Bankruptcy Code. *See* ⁋⁋ 64 to 66 *supra.*

138. The Plan appropriately categorizes as Administrative Claims any personal injury, wrongful death, or similar Claim or Cause of Action arising from conduct that occurs during the Chapter 11 Cases. In general, rights created by state law will be honored by a Bankruptcy Court unless a specific provision of the Bankruptcy Code applies. *Butner v. U.S.*, 440 U.S. 48 (1979). In determining when a claim arises for purposes of its treatment under the Bankruptcy Code, courts—including the Fifth Circuit—apply the Bankruptcy Code, not state law. *See United Ref.*, 688 F. Supp. at 563 (rejecting an argument that a Pennsylvania law governed when a wrongful death claim occurred for purposes of a discharge and applying Fifth Circuit precedent). *See also Placid Oil Co. v. Williams (In re Placid Oil Co.)*, 463 B.R. 803 (Bankr. N. D. Tex. 2012) (ruling an asbestos claim arose prepetition at the time of exposure and noting that several bankruptcy courts "have all found that, for purposes of determining whether there is a claim under section 101 of the Bankruptcy Code, an asbestos claim arises when **exposure to asbestos occurs**") (emphasis added). Specifically, to determine when a Claim arises for purposes of its treatment pursuant to

the Bankruptcy Code, the Fifth Circuit adopted the "relationship test,"[21] which provides that a "claim arises at the time of the debtor's negligent conduct forming the basis of liability only if the claimant had some type of specific relationship with the debtor at that time." *Lemelle v. Universal Mfg. Corp.*, 18 F.3d 1268, 1276 (5th Cir. 1994) (ruling that a wrongful death claim was not discharged by a chapter 11 plan where (a) the actual injury and manifestation of that injury occurred after the plan was confirmed and (b) where the debtor had no pre-confirmation contact, privity or relationship with the victim). Thus the relevant question for determining whether a personal injury Claim is an "actual, necessary" cost of preserving the estate pursuant to section 503(b) of the Bankruptcy Cody—*i.e.*, an Administrative Claim—is whether it arises from conduct that occurred after the petition date and prior to the effective date of a plan.

139. Consistent with Fifth Circuit precedent, the Plan does not contemplate a bar date for Administrative Claims arising out of alleged personal injury or wrongful death arising from conduct during the chapter 11 cases that have not manifested—and therefore are unknown to the Holder—as of the Effective Date. Specifically, Article I.5 of the Plan provides that "there shall not be a Bar Date for the assertion of any Claim for alleged personal injury, wrongful death, or other similar Claim or Cause of Action against any Debtor arising out of, relating to, or in connection with, an injury or death that occurred on or after the Petition Date, but prior to the Effective Date." Plan, Art. I (definition of "Administrative Claims Bar Date"). Thus, Holders of these types of Administrative Claims will retain their rights to assert these claims against the

[21] Courts in other Circuits have adopted various other tests, including: (a) the "fair contemplation test," which provides that a claim may qualify as a prepetition claim only if it was within the fair contemplation of the parties at the time of the bankruptcy filing, *see United Ref.*, 688 F. Supp. at 563, and (b) the "conduct test," which provides that a claim arises whenever the conduct prompting the alleged liability occurs. *See id.* Note that the Third Circuit had adopted an "accrual test," which held that a claim for bankruptcy purposes when it accrues under applicable non-bankruptcy law. *Id*. However, that test was subsequently overruled in the Third Circuit in favor of the conduct test. *In re Grossman's Inc.*, 607 F.3d 114, 125 (3d Cir. 2010).

Debtors after the Effective Date, even if such Holder did not file a Proof of Claim prior to the Administrative Claims Bar Date.

B. The Debtors Meet the Standard for Substantive Consolidation

140. As discussed herein, the Plan contemplates administrative consolidation for voting and distribution purposes. *See* ⁋⁋ 60 to 63 *infra.* Administrative consolidation as proposed in the Plan is not unusual; many courts in this district and others have confirmed plans that consolidated debtors for purposes of voting and distributions purposes, while providing for the continued separate existence of the debtors following consummation of the plan. *See id*.

141. The Debtors do not seek substantive consolidation. However, to the extent that the Bankruptcy Court adopts the "per debtor" approach to section 1129(a)(10) of the Bankruptcy Code or otherwise determines that administrative consolidation for voting and distribution purposes is inappropriate, the Debtors also meet the standard for substantive consolidation. Accordingly, the Plan satisfies section 1129(a)(10) of the Bankruptcy Code and should be approved.

142. The bankruptcy court's power to substantively consolidate debtor entities is premised on the broad language of section 105(a) of the Bankruptcy Code, which provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this Title." 11 U.S.C. § 105(a). Accordingly, the Bankruptcy Court has discretion to fashion equitable remedies not explicitly authorized by the Bankruptcy Code. *See Law v. Siegel*, 134 S. Ct. 1188, 1198 (2014); *In re Stillwater Asset Backed Offshore Fund Ltd.*, 559 B.R. 563, 585 (Bankr. S.D.N.Y. 2016) ("Courts have long recognized that bankruptcy courts have general equitable power under section 105(a) of the Bankruptcy Code to order substantive consolidation."); *In re Stone & Webster, Inc.*, 286 B.R. 532, 540–41

(Bankr.D.Del.2002) ("[T]he Bankruptcy Code [in section 1123(a)(5)] recognizes that, in appropriate circumstances, consolidation of one debtor with one or more debtors is authorized.").

143. In function, substantive consolidation "treat[s] separate legal entities as if they were merged into a single survivor left with all cumulative assets and liabilities (save for inter-entity liabilities, which are erased). The result is that claims of creditors against separate debtors morph to claims against the consolidated survivor." *In re Owens Corning*, 419 F.3d 195, 205 (3d Cir. 2005); (quoting *Genesis Health Ventures, Inc. v. Stapleton (In re Genesis Health Ventures, Inc.)*, 402 F.3d 416, 423 (3d Cir. 2005)); *In re Archdiocese of Saint Paul & Minneapolis*, 888 F.3d 944, 951 (8th Cir. 2018) (noting that substantive consolidation combines the assets and liabilities of multiple debtors to satisfy creditors from a combined pool of assets). The primary purpose of substantive consolidation is to promote the fair and equitable treatment of all creditors. *See Eastgroup Props. v. S. Motel Ass'n, Ltd.*, 935 F.2d 245, 250 (11th Cir. 1991). In the context of section 1129 of the Bankruptcy Code, if a plan properly seeks substantive consolidation, then it will satisfy section 1129(a)(10) of the Bankruptcy Code so long as at least one impaired class accepts the plan, regardless of which debtor entity the voting creditors in such class hold claims against. *See Tribune*, 464 B.R. at 183 (adopting the minority view that section 1129(a)(10) of the Bankruptcy Code contemplates a "per debtor" approach and observing "I find nothing ambiguous in the language of § 1129(a)(10), which, absent substantive consolidation or consent, must be satisfied by each debtor in a joint plan.").

144. The Fifth Circuit has not adopted its own criteria for determining when substantive consolidation is appropriate, but it has acknowledged it to be a highly fact-specific analysis made on a case-by-case basis. *See In re ADPT DFW Holdings, LLC*, 574 B.R. at 94. However, other Circuits that have considered this issues have adopted either the multi-factor test or the balancing of harms test. *See Eastgroup Props. v. S. Motel Ass'n, Ltd.*, 935 F.2d 245, 250 (11th Cir. 1991) (adopting the "multi-factor" test); *Union Sav. Bank v. Augie/Restivo Baking Co., Ltd. (In re*

Augie/Restivo Baking Co., Ltd.), 860 F.2d 515, 518 (2d Cir. 1988) (adopting the "balancing of harms" test). Regardless of which test is applied, the Debtors meet the standard for substantive consolidation.

145. Under the "multi-factor" test, courts look to a number of factors to determine whether substantive consolidation is appropriate, including:

- the presence or absence of consolidated financial statements;
- the unity of interests and ownership between various corporate entities;
- the existence of parent and intercorporate guarantees on loans;
- the degree of difficulty in segregating and ascertaining individual assets and liabilities;
- the existence of transfers of assets without formal observance of corporate formalities;
- the commingling of assets and business functions;
- the profitability of consolidation at a single physical location;
- the parent owning the majority of the subsidiary's stock;
- the entities having common officers and directors;
- the subsidiary being grossly undercapitalized;
- the subsidiary transacting business solely with the parent; and
- entities disregarding the legal requirements of the subsidiary as a separate organization.

Eastgroup Props. v. S. Motel Ass'n, Ltd., 935 F.2d 245, 250 (11th Cir. 1991).[22]

146. Under the "balancing of harms" test, courts weigh the following two factors to determine whether substantive consolidation is warranted: if either (a) "creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit" or (2) "the affairs of the debtors are so entangled that consolidation will benefit all creditors . . . ."

[22] The foregoing list serves as "examples of information" that courts may consider when determining whether entities should be substantively consolidated. *Eastgroup*, 935 F.2d 245, at 250. However, no single factor should be determinative in the court's inquiry. *Id.*

Union Sav. Bank v. Augie/Restivo Baking Co., Ltd. (In re Augie/Restivo Baking Co., Ltd.), 860 F.2d 515, 518 (2d Cir. 1988).

147. The Debtors submit that they meet the standard for substantive consolidation under either the "multi-factor" or the "balancing of harms" test. The Debtors as a whole file consolidated financial statements and use a consolidated cash management system for collection and disbursement activities. *See* Dragelin Declaration at 69. Further, the Debtors are all directly or indirectly owned by CCS-CMGC Parent GP, LLC and have common directors and officers. *See id*. Pursuant to the First Lien Credit Agreement, substantially all of the assets of certain of the Debtors were encumbered by Liens held by the Holders of First Lien Secured Claims. *See id*. Additionally, a majority of the Debtors' assets and liabilities are concentrated at a single entity (*i.e.*, Wellpath, LLC) on an integrated basis. *See id*. The Debtors also engage in voluminous intercompany transactions with one another on a daily basis. *See id*. Given these factors, there is clearly a "substantial identity" among the Debtors, justifying their substantive consolidation.

148. Moreover, the Liquidating Trust Assets will include the Liquidating Trust Causes of Action that are either jointly owned by all of the Debtors' Estates or would be difficult to allocate between the individual Debtors. Therefore, if the Debtors are not administratively consolidated for Plan Distribution purposes, the Plan may need to establish over 30 different trusts and appoint more than 30 different trustees, which may result in risk of delay, disruption, and the additional costs for the Debtors' emergence from the Chapter 11 Cases. Moreover, requiring distinct trusts may involve the respective trustees to spend substantial time and money contesting the ownership of the Liquidating Trust Causes of Action, all at the expense of their respective beneficiaries.

149. Accordingly, the consolidation of the Debtors' affairs will benefit the Holders of Second Lien Deficiency Claims and General Unsecured Claims, who are the beneficiaries of the Liquidating Trust.

Waiver of Bankruptcy Rule 3020(e)

150. Bankruptcy Rule 3020(e) provides that "[a]n order confirming a plan is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 3020(e). Bankruptcy Rules 6004(h) and 6006(d) provide similar stays to orders authorizing the use, sale, or lease of property (other than cash collateral) and orders authorizing a debtor to assign Executory Contracts or Unexpired Leases under section 365(f) of the Bankruptcy Code. Each Bankruptcy Rule also permits modification of the imposed stay upon court order. *See* Fed. R. Bankr. P. 3020(e), Adv. Comm. Notes, 1999 Amend. ("The court may, in its discretion, order that Rule 3020(e) is not applicable so that the plan may be implemented and distributions may be made immediately.").

151. The Debtors submit that cause exists for waiving the stay of entry of the proposed Confirmation Order pursuant to Bankruptcy Rules 3020, 6004, and 6006 such that the proposed Confirmation Order will be effective immediately upon its entry. First, as noted above, the Chapter 11 Cases have been negotiated and implemented in good faith and with a high degree of transparency and public dissemination of information. Second, each day the Debtors remain in chapter 11 they incur significant administrative and professional costs. Third, pursuant to the terms of the Restructuring Support Agreement, the Effective Date must occur by May 8, 2025. For these reasons, the Debtors, their advisors, and other key constituents are working to expedite the Debtors' reorganization so that the Effective Date of the Plan may occur as soon as possible after the Confirmation Date.

152. Based on the foregoing, the Debtors request a waiver of any stay imposed by the Bankruptcy Rules so that the proposed Confirmation Order may be effective immediately upon its entry.

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WHEREFORE, the Debtors respectfully submit that the Plan complies with, and satisfies all of, the applicable requirements of the Bankruptcy Code and request that the Bankruptcy Court (a) enter an order, substantially in the form of the proposed Confirmation Order, (i) approving the Disclosure Statement on a final basis and (ii) confirming the Plan and (b) grant such other and further relief as the Bankruptcy Court may deem just and proper.

Dated: April 28, 2025
Dallas, Texas

/s/ Marcus A. Helt

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Certificate of Service

I certify that, on April 28, 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

Objection Summary Chart

Exhibit A

Plan Objection Summary Chart[1]

	Objection	Bases of Objection	Debtors' Response
1.	*United States Trustee's Objection to Approval of Disclosure Statement for the Joint Chapter 11 Plan of Wellpath Holdings, Inc. and Certain of its Debtor Affiliates* [Docket No. 1271] (the "UST DS Objection") and *United States Trustee's Limited Objection to (A) Final Approval of Disclosure Statement (5th Amended) for the Joint Chapter 11 Plan of Reorganization (5th Amended) of Wellpath Holdings, Inc. and Certain of its Debtor Affiliates and (B) Objection to Confirmation of the First Amended Joint Chapter 11 Plan of Reorganization of Wellpath Holdings, Inc. and Certain of its Debtor Affiliates* [Docket No. 2420] (the "UST Plan Objection") filed by Kevin M. Epstein, the United States Trustee for the Southern District of Texas (the "U.S. Trustee")	**Third Party Release** • The U.S. Trustee argues that the Third Party Releases and the opt out mechanism are nonconsensual and in violation of *Purdue*. UST Plan Obj., ¶ 3. • The U.S. Trustee argues that the exculpation provision is too broad, in contravention of Fifth Circuit authority. *See* UST DS Obj., ¶¶ 64–70. **Injunction and Gatekeeper Provision** • The U.S. Trustee argues that the Plan impermissibly imposes a gatekeeper provision on entities other than the Debtors and the other Exculpated Parties. UST Plan Obj., ¶¶ 3-4, 11. **Fed. R. Bankr. P. 3020(e) Stay** • The U.S. Trustee argues that the Court should not waive the 14-day stay on effectiveness on the Confirmation Order under Fed. R. Bankr. P. 3020(e). Obj., ¶¶ 4-5.	• The Third-Party Releases and opt-out mechanism are consensual, in compliance with applicable law, and are essential to the reorganization. *See* Memorandum, ¶¶ 109-129. • The Exculpation complies with applicable law and should be approved. *See* Memorandum, ¶ 130-137. • The Debtors believe that this objection will be resolved by the filing of a further amended Plan. • The Debtors intend for the Effective Date of the Plan to occur as quickly as possible after the Plan is confirmed. The Debtors' swift emergence from chapter 11 is an important component of their restructuring, and requiring the Debtors to pause before confirmation of the Plan would be prejudicial to all parties in interest that continue to incur the cost and expense of the Debtors' chapter 11 cases. In addition, pursuant to the Restructuring Support Agreement, the Effective Date must occur no later than May 8, 2025.

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan, the Memorandum, or the applicable Objection.

	Objection	Bases of Objection	Debtors' Response
2.	*Objection to Chapter 11 Reorganization Plan and Disclosure Statement* [Docket No. 1578] (the "Huffman Plan Objection") filed by James Richard Huffman ("Huffman")	**Bad Faith** • Huffman alleges that Debtors filed bankruptcy in bad faith with the intent to improperly discharge debt. Huffman Plan Obj., ¶ 5. • Huffman argues that the opt-out provision prejudices unsecured creditors by convincing them to opt out rather than vote against the plan. Huffman Plan Obj., ¶ 6. **Releases** • Huffman argues that the Third-Party Releases are non-consensual, vague, and overbroad. Huffman Plan Obj., ¶ 7. **Liquidating Trust** • Huffman argues that the funding set aside for the Liquidating Trust is insufficient. Huffman Plan Obj., ¶ 8. **Discharge** • Huffman argues that his alleged claims under the 8th Amendment are nondischargeable under §523(a) of the Bankruptcy Code. Huffman Plan Obj., ¶¶ 8-9.	• The Plan complies with all confirmation requirements under the Bankruptcy Code, including the good faith requirement set forth in section 1129(a)(3) of the Bankruptcy Code. *See* Memorandum, ¶¶ 46-48. • The options to opt out of the releases and vote to reject the plan are not mutually exclusive. The concern that unsecured creditors who elect to opt out of the releases cannot or will not vote to reject the Plan is unfounded. • The releases, including the Third-Party Release, are consensual, specific, and comply with applicable law in the Fifth Circuit. *See* Memorandum, ¶¶ 109-129. • The Plan reflects the global settlement reached between the Debtors, the Committee, and the Ad Hoc Group and provides meaningful recoveries to General Unsecured Creditors. As outlined in the Memorandum, the Plan complies with all confirmation requirements under section 1129 of the Bankruptcy Code. • The Plan provides that the Debtor Release and the Third-Party Release are granted to the fullest extent permitted by applicable law. *See* Plan, Art. IX.C-D. In addition, section 523(a) of the Bankruptcy Code only applies to individual debtors and therefore is inapplicable to the Debtors. 11 U.S.C. § 523(a).
3.	*Glavin Ivy's Objection to the Debtors' Disclosure Statement and Plan of Reorganization on Grounds that Adequate Notice if not Provided*	• Ivy claims he was not given timely notice of the bankruptcy proceedings. Ivy Obj., ¶ 15 - 18.	• The Debtors have complied with the applicable notice requirements. *See* Memorandum, ¶ 17; Tabulation Declaration ¶¶ 8-13. In addition, Ivy states that he received notice of the bankruptcy proceedings, including the Disclosure Statement and Plan on February 20, 2025. Ivy Obj., ¶ 17.

	Objection	Bases of Objection	Debtors' Response
	Sufficient for Unsecured Creditors to Make Informed Decisions Regarding their Rights and Timely Notice was not Otherwise Provided [Docket No. 1974] (the "Ivy Objection") filed by Glavin Ivy ("Ivy")	• Ivy argues that it is unclear whether the submission of a Proof of Claim would bar claims against the Debtors' employees or whether a Proof of Claim must be submitted to seek determination of the dischargeability of a debt under 523(a)(6) of the Bankruptcy Code through an adversary proceeding. Ivy Obj., ¶ 21.	• The Debtors' employees are Released Parties solely in their capacities as employees of the Debtors. *See* Plan, Art. I (definition of "Released Parties" and "Related Parties"). • The Plan provides that the Debtor Release and the Third-Party Release are granted to the fullest extent permitted by applicable law. *See* Plan, Art. IX.C-D. Section 523(a) of the Bankruptcy Code only applies to individual debtors and therefore is inapplicable to the Debtors. 11 U.S.C. § 523(a).
4.	*The Metropolitan Government of Nashville and Davidson County's (I) Objection to Confirmation of Joint Chapter 11 Plan of Reorganization of Wellpath Holdings, Inc. and Certain of its Debtor Affiliates and (II) Opt-Out of Third-Party Releases and Injunction* [Docket No. 2202] (the "Metro Objection") filed by the Metropolitan Government of Nashville and Davidson County ("Metro")	**Third-Party Releases** • Metro objects to the Third-Party Releases, arguing that they are nonconsensual and that General Unsecured Creditors will be given no consideration. Metro Obj., ¶ 19, 27. **Exculpation** • Metro objects to the Exculpation Provision, arguing that it should not include the Independent Directors. Metro Obj., ¶ 30.	• The Third-Party Releases are consensual, in compliance with applicable law, and should be approved. *See* Memorandum, ¶¶ 109-129. In addition, Holders of General Unsecured Claims will receive a distribution under the Plan. *See* Plan, Art. III.B.6. • The Exculpation complies with applicable law and should be approved. *See* Memorandum, ¶ 130-137.

	Objection	Bases of Objection	Debtors' Response
5.	*Objection to Plan and Declaration of Claims* [Docket No. 2085] (the "Jackson Objection") filed by Jon Jackson ("Jackson") and *Motion for Order Pursuant to Bankruptcy Rule 3018(a) Allowance of Claim for Purpose of Voting to Accept or Reject the Plan* [Docket No. 2102] (the "Adams Objection") filed by Eric Johnny Adams ("Adams") and *Objection to Plan and Declaration of Claims* [Docket No. 2108] (the "Douse Objection") filed by Sammy James Douse ("Douse")	• Jackson, Adams, and Douse argue that the Debtors failed to give timely notice of the Voting Record Date, preventing Jackson, Adams, and Douse from voting upon and objecting to the Plan. Jackson Obj., p.1; Adams Obj., p. 4; Douse Obj., p. 1.	• The Voting Record Date occurred on March 11, 2025 and the Voting Deadline and Plan Objection Deadline occurred on April 22, 2025. *See Solicitation Order,* ¶3. • In addition, all Holders of Claims who submitted a Proof of Claim prior to the Claims Bar Date, but after the Voting Record Date, were entitled to vote to accept or reject the Plan if the Proof of Claim was submitted at least 10 days before the Voting Deadline. *See Order Establishing Deadline and Procedures for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof* [Docket No. 491].
6.	*Emergency Motion to Stay Solicitation and Voting on Chapter 11 Plan and to Strike Improper Third-Party Releases, Injunctions, and Discharge Provisions* [Docket No. 2049] (the "Gill Motion") and *Supplemental Motion for Relief from the Automatic Stay, Emergency Motion to Stay Plan Solicitation and Voting, and Motion to Strike Improper Third-Party Releases* [Docket No. 2223]	**Third-Party Releases** • Gill objects to the Third-Party Release, arguing that they are nonconsensual, overbroad and do not give consideration to creditors. Gill Motion, § II.A; Supp. Motion, p. 25. Gill also argues that the Third-Party Release is not essential to the reorganization. • Gill argues that ERISA imposes fiduciary duties on administrators and sponsors of qualified retirement plans; therefore, the Plan's third-party release could conflict with ERISA's anti-exculpation rule. Supp. Motion, p. 31. • Gill also argues that the Third Party Release would release certain parties from liability for allegations of whistleblower retaliation and breaches of fiduciary duty and tax compliance failures. Supp. Motion, p. 6	• The Third-Party Releases and opt-out mechanism are consensual, in compliance with applicable law, and are essential to the reorganization. *See* Memorandum, ¶¶ 109-129. In addition, Holders of General Unsecured Claims will receive a distribution. *See* Plan, Art. III.B.6. • The Plan provides that the Debtor Release and the Third-Party Release are granted to the fullest extent permitted by applicable law. *See* Plan, Art. IX.C-D.

	Objection	Bases of Objection	Debtors' Response
	(the "Supplemental Motion") and Notice of Supplemental Evidence in Support of Objection to Dkt. Nos. 2157 and 218 [Docket No. 2308] filed by Dr. Kanwar Partap Singh Gill ("Gill")[2]	**Injunctions** • Gill objects to the Plan's injunctions, arguing that they violate due process by preventing creditors from asserting claims against non-debtors without their knowing and voluntary waiver. Gill Motion, § II.B.	• The injunction provisions are necessary to effectuate and implement various provisions in the Plan, including the discharge provision, the Debtor Release, the Third-Party Release, and the Exculpation provision. Moreover, the injunctions are essential to protect the beneficiaries of such provisions. *See* Memorandum, ¶¶ 138-139. Further, the Third-Party Releases are consensual. *See* Memorandum, ¶¶ 104-124. • Article IX.F of the Plan complies with the requirements of Bankruptcy Rule 3016(c). *See* Memorandum, ¶ 134.
		Deferred Compensation Claims • Gill argues that the Plan should provide for cure of any delinquent contributions to retirement plans, breaches of contract for nonqualified deferred compensation agreements, and breaches of fiduciary duty for improper maintenance of such plans. Supp. Motion, pp. 31-32. • Gill alleges that the termination of the nonqualified deferred compensation plan would result in adverse tax consequences to the participants. *Supp. Motion.* at 33-34.	• The Plan complies with the applicable requirements of the Bankruptcy Code, including providing for the continuation of retiree benefits under section 1129(a)(13) and payment of Allowed Priority Tax Claims under section 1129(a)(9). • The termination of the nonqualified deferred compensation plan complied with section 409A of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder. *See* Wages Motion, ¶ 75.
		Corporate Practice of Medicine • Gill argues that the Plan sanctions the Debtors' business model, which he posits is illegal under California corporate practice of medicine (CPOM) laws. Supp. Motion, p. 6.	• No regulatory authority has alleged any violation of CPOM and this objection is unfounded.

[2] On April 24, 2025, Gill filed the *Verified Emergency Motion Suite* [Docket No. 2422] (the "Second Gill Supplemental Motion"). The Second Gill Supplemental Motion requests various kinds of relief, including to reject all ballots and votes, invalidate solicitation, and to strike the Plan Supplement. First, to the extent the Second Gill Supplemental Motion seeks relief relating to solicitation of the Plan and Disclosure Statement, such relief was considered and denied at the hearing held by the Bankruptcy Court on April 22, 2024. Second, to the extent that it includes objections to the Plan, other than the objections contained in the Gill Motion and the Supplemental Motion, the Second Gill Supplemental Motion was filed after the Plan Objection Deadline on April 22, 2025 and is untimely. Third, the other relief requested in the Second Gill Supplemental Motion is unfounded and should be denied.

	Objection	Bases of Objection	Debtors' Response
		Good Faith • Gill argues that the Plan was not proposed in good faith. Supp. Motion, p. 35.	• The Plan complies with all confirmation requirements under the Bankruptcy Code, including the good faith requirement set forth in section 1129(a)(3) of the Bankruptcy Code. *See* Memorandum, ¶¶ 46-48.
7.	*Motion* [Docket No.2251] (the "Frye Motion") filed by Timothy Michael Frye Jr. ("Frye")	• Frye filed this objection indicating that he wishes to reject and partially accept the Plan, but did not provide further context.	• Pursuant to the Plan, Frye was deemed to have submitted an opt out election. *See* Plan, Art. I (definition of "Releasing Parties"). The Debtors do not believe any further response is necessary.
8.	*Notice to the Court and Motion for Simplified Instructions* (the "De Rossitte Motion") filed by Christiana E. De Rossitte ("De Rossitte")	• De Rossitte objects to the solicitation materials, arguing that they are difficult to read and to understand. De Rossitte Obj., p. 2. In addition, De Rossitee argues that the number of documents received by *pro se* incarcerated litigants in relation to the proceedings is excessively voluminous. De Rossitte Obj., p. 1.	• This objection to the content of the Solicitation Materials, which have already been approved, is untimely. *See* Order Approving Disclosure Statement Solicitation Materials [Docket No. 1867]. The applicable objection deadline was February 15, 2025. *See* Stipulation and Agreed Order [Docket No. 1195], ¶ 2. Further, the Solicitation Materials are the product of compromise between the Debtors and the Committee, wherein the Debtors made every effort to make materials as simple and readable as possible while maintaining factual accuracy. • The Debtors have complied with the applicable notice requirements. *See* Memorandum, ¶ 17; Tabulation Declaration ¶¶ 8-13. • De Rossittee successfully completed and returned the ballot and opt-out election form. *See* De Rossitte Obj., Exhibit A. In addition, by filing the objection, De Rossittee successfully opted out of the Third-Party Release. *See* Plan, Art. I (definition of "Releasing Parties").

	Objection	Bases of Objection	Debtors' Response
9.	*Texas Comptroller of Public Accounts' and Texas Workforce Commission's Objection to Confirmation* [Docket No. 2295] (the "Texas Objection") filed by The Texas Comptroller of Public Accounts, Revenue Accounting Division (the "Comptroller"), and the Texas Workforce Commission (the "TWC", and, collectively, the "Texas Movants")	• The TWC objects to various provisions in the Plan, including the payment of Priority Tax claims, the Third-Party Releases, payment of Administrative Claims, and the preservation of setoff rights.	• The Debtors believe that this objection will be resolved through agreed language in the Confirmation Order.
10.	*Objection to Proposed Plan of Reorganization and Third Party/Non-Debtor Releases* [Docket No. 2329] (the "Henderson Objection") filed by Arthur Lamont Henderson ("Henderson")	• Henderson objects to the Plan, arguing that it was not proposed in good faith.	• The Plan complies with all confirmation requirements under the Bankruptcy Code, including the good faith requirement set forth in section 1129(a)(3) of the Bankruptcy Code. *See* Memorandum, ¶¶ 46-48.

	Objection	Bases of Objection	Debtors' Response
11.	*El Paso County and the El Paso County Sheriff's Office's (A) Limited Objection to the Debtors' First Amended Joint Plan of Reorganization and (B) Election to Opt Out of Non-Debtor Releases* [Docket No. 2341] (the "El Paso Objection") filed by The Board of County Commissioners of El Paso County, Colorado, and the El Paso County Sheriff's Office (collectively, "El Paso County")	• El Paso County argues that it should be able to retain its right to setoff pursuant to section 553 of the Bankruptcy Code. El Paso Obj., ¶ 67.	• The Plan provides that the injunction in Article IX.F does not apply to any parties that opt out of the Third-Party Release to preserve their claims against the Released Parties. Plan, Art. IX.F. El Paso County opted out of the Third-Party Release and, accordingly, it preserves any valid claim for a right of defensive setoff against the Released Parties. The Debtors are engaging in negotiations with El Paso County to resolve any of its remaining objections to confirmation through agreed language to the Confirmation Order.
12.	*Objection of Cobb County, Georgia, and Cobb County Sheriff to Confirmation of Joint Chapter 11 Plan of Reorganization of Wellpath Holdings, Inc. and Certain of its Debtor Affiliates and Opt-Out of Third-Party Releases* [Docket No. 2332] (the "Cobb County	**Releases** • Cobb County argues that the Third-Party Releases are nonconsensual and prohibited under *Purdue*, noting that the Third-Party Release will apply to (a) incarcerated individuals and (b) law enforcement officials or employees who are unaware of the proceedings but who may be eventually named as co-defendants in tort litigation with the debtor's employees and wish to bring common law or contractually-based indemnity claims against non-debtor defendants. Cobb County Obj., ¶ 21.	• The Third-Party Releases and opt-out mechanism are consensual, in compliance with applicable law, and are essential to the reorganization. *See* Memorandum, ¶¶ 109-129. • The Debtors have complied with all of the applicable notice requirements. *See* Memorandum, ¶ 17; Tabulation Declaration ¶¶ 8-13. Incarcerated individuals have up to 60 days after the Confirmation Date to opt out of the Third-Party Release. *See* Plan, Art. I (definition of "Releasing Parties").

	Objection	Bases of Objection	Debtors' Response
	Objection") filed by Cobb County, Georgia and the Cobb County Sheriff (collectively, "Cobb County")[3]	• Citing *Lemelle*, Cobb County argues that, in order to discharge claims, the Debtors must provide evidence that they noticed all potential tort victims. Cobb County Obj., ¶ 31. Cobb County argues that the Debtors have not and cannot identify all future claimants.	• Cobb County misinterprets *Lemelle*, which held that a wrongful death claim was not discharged where (a) the actual injury and manifestation of that injury occurred after the plan was confirmed and (b) where the debtor had no pre-confirmation contact, privity or relationship with the victim. *Lemelle*, 18 F.3d at 1276; *see also* Memorandum, ¶¶ 143-145. • The Debtors have complied with the applicable notice requirements. Memorandum, ¶ 17. In addition, the Plan's discharge provision in Art. IX.A discharges claims "pursuant to, and to the maximum extent permitted by, section 1141(d) of the Bankruptcy Code."
		• Cobb County argues that the Third-Party Releases are not given in exchange for consideration. County Obj., ¶ 38-39.	• The Released Parties made significant contributions to the Chapter 11 Cases, which benefitted the Debtors and all parties in interest. *See* Memorandum, ¶ 123. In addition, the Plan provides material recoveries to Holders of Allowed General Unsecured Claims in Class 6.
		Exculpation and Gatekeeper Provision	
		• Cobb Country argues that the Exculpation Provision improperly includes the Independent Directors. Cobb County Obj., ¶ 48. • Cobb County argues that the Plan's gatekeeper provision must be limited to the Exculpated Parties. Cobb County Obj., ¶ 52.	• The Exculpation complies with applicable law and should be approved. *See* Memorandum, ¶¶ 130-137. • The Debtors believe this objection will be resolved through the filing of a further amended Plan.
		Dischargeability	
		• Cobb County argues that Plan should not be confirmed to the extent that it purports to discharge nondischargeable debt. Cobb County Obj., ¶ 54-55.	• The Debtors believe that this objection will be resolved by agreed language in the Confirmation Order.

[3] Marion County filed a joinder to the Cobb County Objection, adopting the arguments of Cobb County and objections filed by other municipalities and government entities who hold executory contracts with the Debtors for the provision of medical services. Marion County Obj., ¶¶ 8-9.

	Objection	Bases of Objection	Debtors' Response
13.	*Limited Objection of Raquel S. Lande as Administrator Ad Litem of the Estate of Charles N. Johnson, Deceased to Confirmation and Notice of Opt-Out of Third-Party Releases* [Docket No. 2343] (the "Lande Objection") filed by Raquel S. Lande, as Administrator Ad Litem of the Estate of Charles N. Johnson ("Lande")	• Lande argues that creditors lack adequate information to vote to accept or reject the Plan or submit an opt out election because the Liquidating Trust Agreement was not filed on April 18, 2025. Lande Obj., ¶ 1. • Lande notes that no amended Plan containing the terms of the global settlement has yet been filed. Lande Obj., ¶ 3.	• Holders of Claims in the Voting Classes were entitled to vote to accept or reject the Plan, including if they rejected the Plan for lack of information about the Liquidating Trust Agreement. In addition, Holders of Claims or Interests in any Class were entitled to opt out of being deemed a Releasing Party. *See* Plan, Art. I (definition of "Releasing Party"). • The Liquidating Trust Agreement will be filed with the Plan Supplement. • An amended version of the Plan, including the global settlement was Filed on April 22, 2025 [Docket No. 2376].
14.	*Limited Objection of Select Medical Corporation to Confirmation of Chapter 11 Plan* [Docket No. 2355] (the "Select Objection") filed by Select Medical Corporation ("Select")	• Select objects to the Plan to the extent it could be deemed to cause assumption of only part of its contract. Select Obj., ¶ 20. Select also argues that the Debtors must cure defaults under its contract. Select Obj., ¶ 23.	• The Debtors believe that this objection will be resolved through agreed language in the Confirmation Order.

	Objection	Bases of Objection	Debtors' Response
15.	*Shannon Plaintiff's (A) Reservation of Rights with Respect to Confirmation of Plan of Reorganization and (B) Limited Objection to Third-Party Releases to Effectuate Opt Out* [Docket No. 2352] (the "Shannon Objection") filed by the plaintiffs indicated in Docket No. 1779-1 (the "Shannon Plaintiffs") and *Liza Pizarro's (A) Reservation of Rights with Respect to Confirmation of Plan of Reorganization and (B) Limited Objection to Third-Party Releases to Effectuate Opt Out* [Docket No. 2356] (the "Pizarro Objection") filed by the plaintiffs indicated in Docket No. 1779-1 ("Pizarro")	• The Shannon Plaintiffs and Pizarro reserved their rights to object to the Plan, subject to their review of the Liquidating Trust Agreement and Rejected Executory Contract Schedule. Shannon Obj., ¶ 3; Pizarro Obj., ¶ 3.	• The Rejected Executory Contracts and Unexpired Leases Schedule was filed on April 18, 2024. *See* Plan Supplement, Exhibit E [Docket No. 2321]. The Liquidating Trust Agreement will be filed with the Plan Supplement.
16.	*Objection to Confirmation* [Docket No. 2359] (the "Tulane Objection") filed by The Administrators of the Tulane Education Fund o/b/o Tulane University School of Medicine ("Tulane")	**KEIP** • Tulane argues that the Plan's key employee incentive plan is a disguised improper executive retention plan, prohibited by section 503(c). Tulane Obj., ¶ 8.	• To the extent that any payments are made to key employees, such payments will be made after the Effective Date and, therefore, are not subject to section 503(c) of the Bankruptcy Code.

	Objection	Bases of Objection	Debtors' Response
		Liquidating Trust and Feasibility • Tulane argues that the Liquidating Trust is underfunded. Tulane Obj., ¶¶ 8, 12-13. • Tulane argues that the Liquidating Trust Causes of Action are not described in any meaningful way. Tulane Obj., ¶ 8. **Third-Party Releases** • The Plan provides impermissible non-consensual third-party releases and overbroad exculpation provisions in violation of 11 U.S.C. § 524(e) and Fifth Circuit precedent. Tulane Obj., ¶ 16.	• The Plan represents a global settlement between the Debtors, the Committee, and the Ad Hoc Group. As a result of the hard-fought, arms' length negotiations, the Liquidating Trust will be funded by the Liquidating Trust Initial Funding and the Liquidating Trust Subsequent Funding. Plan, Art. IV.N. • The Schedule of Liquidating Trust Causes of Action was filed with the Plan Supplement on April 18, 2025 [Docket No. 2321]. • The Third-Party Releases are consensual, in compliance with applicable law, and should be approved. *See* Memorandum, ¶¶ 109-129. • The Exculpation complies with applicable law and should be approved. *See* Memorandum, ¶¶ 130-137.
17.	*Bell Ambulance, Inc.'s Protective Objection to the Debtor's Plan* [Docket No. 2362] (the "Bell Objection") filed by Bell Ambulance, Inc. ("Bell")	• Bell argues that it lacks confirmation on its cure amount, including the payment of attorney's fees, and when the cure will be paid. Bell Obj., ¶¶ 8, 10.	• The Debtors and Bell are engaging in negotiations to reach a resolution on the cure amount for Bell's contract. Nevertheless, the Debtors or the Post-Restructuring Debtors reserve the right, up to 45 days after the Effective Date, to supplement the Rejected Executory Contracts and Unexpired Leases Schedule with any Executory Contract or Unexpired Lease subject to a dispute relating to the amount of a Cure Cost. *See* Plan, Art. V.A.

	Objection	Bases of Objection	Debtors' Response
18.	*McLaren Health Care Corporation's Limited Objection to the Debtors' Chapter [sic] 11 Plan as to Assumption and Assignment of Executory Contracts* [Docket No. 2365] (the "McLaren Objection") filed by McLaren Health Care Corporation ("McLaren")	• McLaren objects, seeking clarity on whether its contract will be rejected. McLaren Obj., ¶ 3. • Further, McLaren argues that the Debtors must pay its administrative expense claim in full upon the Effective Date. *Id.* at 7.	• Pursuant to the *Third Notice of Rejection of Certain Executory Contracts* [Docket No. 2498], McLaren's contract will be rejected. • All Allowed Administrative Claims will be paid in full on the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Administrative Claim is due or as soon as reasonably practicable thereafter). *See* Plan, Art. II.A.
19.	*Objections of Claimants to Confirmation of the Debtors' Proposed Plan of Reorganization* [Docket No. 2366] (the "Capaci Objection") filed by Layla Capaci, as administrator of the Estate of Niki Capaci, Teesha (Ontiveros) Graham, as personal representative for Frankie Jacquez, and Cary Moone, as power of attorney for Jerry Moone (the "Capaci Claimants")	**Feasibility** • The Capaci Claimants claim that the Plan is not feasible, in violation of 1129(a)(11), arguing that the Post-Restructuring Debtors will be inadequately capitalized and be unable to pay debts as they come due. Capaci Obj., pp. 6-7. The Capaci Claimants also argue that the Plan is not feasible because the Debtors have failed to made certain operational improvements. The Debtors should be required to submit a detailed list of improvements to operations and quality of care. Capaci Obj., p. 11.	• The Plan is feasible and satisfies section 1129(a)(11) of the Bankruptcy Code. *See* Memorandum, ¶¶ 70-79.

	Objection	Bases of Objection	Debtors' Response
		Tort Claims • If the Debtors do not commit to operational improvements, the Capaci Claimants argue that the Court should not discharge active tort claims against the Debtors, as this would condone abuse of the bankruptcy system. Capaci Obj., p. 11. **Good Faith** • The Capaci Claimants argue that Plan was not filed in good faith because it was not filed with a legitimate and honest purpose to reorganize and reasonable hope of success. Capaci Obj., p. 12	• The Debtors have implemented a number of operational improvements that are intended to positively impact patient care and mitigate professional liability. *See* Memorandum, ¶¶74-78. • The Plan was proposed in good faith and with the legitimate and honest purpose of effectuating a reorganization of the Debtors' businesses. *See* Memorandum, ¶¶ 46-48.
20.	*Andrew Poronto's Reservation of Rights Regarding Confirmation of Debtors' Plan* [Docket No. 2369] (the "Poronto Objection") filed by Andrew Poronto ("Poronto")	• Poronto reserved his rights to object to the amended Plan, specifically citing his right to pursue insurance proceeds post-confirmation and overcoming SIR thresholds. Poronto Obj., ¶ 2.	• Consistent with applicable law, the Plan provides that any obligation of the Debtors or the Post-Restructuring Debtors, as applicable, to satisfy any deductible, retention, or other financial obligation under any such insurance policy shall constitute a General Unsecured Claim. Plan, Art. V.E.
21.	*Barry Jones' Limited Objection to Plan and Opt Out of Third Party Release* [Docket No. 2101] (the "Jones Objection") filed by Barry Jones ("Jones")	• Jones objects to the extent the Plan seeks to release claims he has asserted against third parties and opts out of the release. Jones Obj., ¶ 5.	• Pursuant to the Plan, Jones was deemed to have submitted an opt out election. *See* Plan, Art. I (definition of "Releasing Parties"). The Debtors do not believe any further response is necessary.