

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

In re:)	Chapter 11
)	
LifeScan Global Corporation, <i>et al.</i> , ¹)	Case No. 25-90259 (ARP)
)	
Debtors.)	(Jointly Administered)
)	

**OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO
JOINT CHAPTER 11 PLAN OF REORGANIZATION OF LIFESCAN GLOBAL
CORPORATION AND ITS DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF
THE BANKRUPTCY CODE**

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are: LifeScan Global Corporation (1872); DUV Holding Corp. (2522); DUV Intermediate Holding Corp. (2645); LifeScan Texas LLC (1307); DUV Intermediate Holding II Corp. (4829); LifeScan Inc. (8188); LifeScan IP Holdings, LLC (7450); LifeScan China, LLC (N/A) and LifeScan Institute LLC (8188). The location of Debtor LifeScan Global Corporation's principal place of business and the Debtors' service address in the Chapter 11 cases is 75 Valley Stream Parkway, Suite 201, Malvern, PA 19355.

TABLE OF CONTENTS

	Page
BACKGROUND	4
I. General Case Background.....	4
II. Committee’s Investigation, Standing Motion, and Proposed Complaint	5
A. LifeScan’s Corporate History and Capital Structure	6
B. LifeScan’s Business	8
C. [REDACTED]	10
D. [REDACTED]	12
E. [REDACTED]	13
F. [REDACTED]	14
III. Plan Overview.....	15
IV. Sale Process	17
V. 2025 First Lien Debt Repurchases and Repayments	18
VI. Consequences of Rebate Harvest Scheme	18
ARGUMENT.....	23
I. Plan Releases Are Overbroad and Impermissible.....	23
A. Release of Sponsor and Its Related Parties Should Not Be Approved.....	26
B. Releases of Debtors’ Sponsor-Affiliated Directors and Officers Should Not Be Approved.....	29
C. Release of Prepetition Lenders Under the Plan Should Not Be Approved.....	30
II. Plan Distribution to Sponsor Violates the Absolute Priority Rule	36
III. Plan Unfairly Discriminates Against General Unsecured Creditors.....	45
IV. Plan Does Not Comply with Good Faith Requirements Under Section 1129(a)(3) of the Bankruptcy Code	49
A. The Plan Is Not Proposed in Good Faith	50
B. The Transactions Under the Plan, and the Plan Itself, Do Not Comply With Applicable Delaware Law.....	54
RESERVATION OF RIGHTS	56
CONCLUSION.....	57

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>In re Abri Health Servs., LLC</i> , No. 21-30700 (SGJ), 2021 WL 5095489 (Bankr. N.D. Tex. Oct. 26, 2021).....	25
<i>In re ACandS, Inc.</i> , 311 B.R. 36 (Bankr. D. Del. 2004).....	50
<i>In re Acis Cap. Mgmt., L.P.</i> , 604 B.R. 484 (N.D. Tex. 2019), <i>aff'd sub nom. Matter of Acis Cap. Mgmt., L.P.</i> , 850 F. App'x 302 (5th Cir. 2021)	43
<i>In re Age Ref., Inc.</i> , 801 F.3d 530 (5th Cir. 2015)	24
<i>In re Ambanc La Mesa Ltd. P'ship</i> , 115 F.3d 650 (9th Cir. 1997)	42
<i>In re Armstrong World Indus., Inc.</i> , 432 F.3d 507 (3d Cir. 2005).....	41, 44
<i>In re Aztec Co.</i> , 107 B.R. 585 (Bankr. M.D. Tenn.1989).....	47
<i>Bank of Am. Nat. Tr. & Sav. Ass'n v. 203 N. LaSalle St. P'ship</i> , 526 U.S. 434 (1999).....	37, 42, 43
<i>In re Barney & Carey Co.</i> , 170 B.R. 17 (Bankr. D. Mass. 1994)	47
<i>Begier v. IRS</i> , 496 U.S. 53 (1990).....	33
<i>In re Bigler LP</i> , 442 B.R. 537 (Bankr. S.D. Tex. 2010)	23
<i>In re Braniff Airways, Inc.</i> , 700 F.2d 935 (5th Cir. 1983)	41
<i>In re Bullough</i> , No. 05-31531-BJH-11, 2006 WL 6510983 (Bankr. N.D. Tex. Apr. 7, 2006).....	49
<i>Burtch v. Opus, LLC (In re Opus E., LLC)</i> , 528 B.R. 30 (Bankr. D. Del. 2015).....	31, 55

TABLE OF AUTHORITIES
(Cont'd.)

	Page(s)
<i>In re Chemtura, Corp.</i> , 439 B.R. 561 (Bankr. S.D.N.Y. 2010).....	50
<i>Matter of Clark Pipe and Supply Co., Inc.</i> , 893 F.2d 693 (5th Cir. 2001)	33
<i>In re Convergeone Holdings, Inc.</i> , No. 4:24-cv-02001 (S.D. Tex. Sept. 25, 2025)	38
<i>In re Convergeone Holdings, Inc.</i> , No. 24-90194 (Bankr. S.D. Tex. May 23, 2024) (Lopez, J.)	56
<i>In re Coram Healthcare Corp.</i> , 271 B.R. 228 (Bankr. D. Del. 2001)	50
<i>In re Cranberry Hill Assocs., L.P.</i> , 150 B.R. 289 (Bankr. D. Mass. 1993)	47
<i>Cred Inc. Liquidation Tr. v. Uphold HQ Inc. (In re Cred Inc.)</i> , 658 B.R. 783 (D. Del. 2024).....	31
<i>In re Crosscreek Apartments, Ltd.</i> , 213 B.R. 521 (Bankr. E.D. Tenn. 1997)	47
<i>In re Cypresswood Land Partners, I</i> , 409 B.R. 396 (Bankr. S.D. Tex. 2009)	43
<i>Czyzewski v. Jevic Holding Corp.</i> , 580 U.S. 451 (2017).....	41
<i>In re DBSD N. Am., Inc.</i> , 634 F.3d 79 (2d Cir. 2011).....	38
<i>DeepRock Venture Partners LP v. Beach</i> , No. 3:16-CV-1552-M, 2017 WL 1293090 (N.D. Tex. Apr. 4, 2017), <i>aff'd sub</i> <i>nom. Matter of Beach</i> , 731 F. App'x 322 (5th Cir. 2018)	25
<i>In re Dernick</i> , 624 B.R. 799 (Bankr. S.D. Tex. 2020)	50, 54
<i>Dunn v. Chappelle (In re Alta Mesa Resources, Inc.)</i> , No. 19-35133, 2022 WL 7750353 (Bankr. S.D. Tex. Oct. 13, 2022).....	54
<i>Fabricators Inc. v. Tech. Fabricators, Inc. (In re Fabricators, Inc.)</i> , 926 F.2d 1458 (5th Cir. 1991)	25, 32

TABLE OF AUTHORITIES
(Cont'd.)

	Page(s)
<i>Matter of Fiesta Homes of Georgia, Inc.</i> , 125 B.R. 321 (Bankr. S.D. Ga. 1990).....	50
<i>In re Gregg</i> , 179 B.R. 828 (Bankr. E.D. Tex. 1995).....	46
<i>Hargreaves v. Nuverra Env't Sols., Inc. (In re Nuverra Env't. Sols., Inc.)</i> , 590 B.R. 75 (D. Del. 2018).....	46
<i>In re Herby's Foods</i> , 134 B.R. 207 (Bankr. N.D. Tex. 1991).....	26
<i>In re HyLoft, Inc.</i> , 451 B.R. 104 (Bankr. D. Nev. 2011)	26
<i>In re Idearc Inc.</i> , 423 B.R. 138 (Bankr. N.D. Tex. 2009), <i>subsequently aff'd sub nom. In re Idearc, Inc.</i> , 662 F.3d 315 (5th Cir. 2011).....	45
<i>Matter of Jasik</i> , 727 F.2d 1379 (5th Cir. 1984)	49
<i>In re Jasper Pellets, LLC</i> , 656 B.R. 166 (Bankr. D.S.C. 2023).....	24
<i>In re Kaiser</i> , 722 F.2d 1574 (2d Cir. 1983).....	34
<i>Kelly v. Armstrong</i> , 141 F.3d 799 (8th Cir. 1998)	35
<i>LaMonica v. Tilton (In re Transcare Corp.)</i> , 81 F.4th 37 (2d Cir. 2023)	55
<i>In re LATAM Airlines Grp. S.A.</i> , 620 B.R. 722 (Bankr. S.D.N.Y. 2020).....	<i>passim</i>
<i>In re Lehman Bros. Holdings, Inc.</i> , 855 F.3d 459 (2d Cir. 2017).....	37
<i>Life Partners Creditors' Trust v. Black Diamond Lifeplan Fund</i> , No. 4:17-cv-00225-O, 2018 WL 4076491 (N.D. Tex. June 22, 2018).....	32
<i>In re LightSquared Inc.</i> , 513 B.R. 56 (Bankr. S.D.N.Y. 2014).....	45

TABLE OF AUTHORITIES
(Cont'd.)

	Page(s)
<i>In re Lincolnshire Campus, LLC</i> , 441 B.R. 524 (Bankr. N.D. Tex. 2010).....	25
<i>In re Lion Capital Grp.</i> , 49 B.R. 163 (Bankr. S.D.N.Y. 1985).....	28
<i>In re Lizama Carriers, LLC</i> , No. 20-40283, 2020 WL 6928620 (Bankr. N.D. Tex. Nov. 24, 2020).....	25
<i>In re Malkus, Inc.</i> , No. 03-07711-GLP, 2004 WL 3202212 (Bankr. M.D. Fla. Nov. 15, 2004)	50
<i>In re Manhattan Inv. Fund Ltd.</i> , 397 B.R. 1 (S.D.N.Y. 2007).....	34
<i>In re Memorial Prod. Partners, LP</i> , No. 17-30262-H1-11 (Bankr. S.D. Tex. April 4, 2017) (Isgur, J.).....	41
<i>In re Multiut Corp.</i> , 449 B.R. 323 (Bankr. N.D. Ill. 2011)	53
<i>In re Nat'l Reality Inv. Advisors, LLC, No. 22-14539</i> , 2025 WL 1419506 (Bankr. D. N.J. May 15, 2025).....	35
<i>In re Northbelt, LLC</i> , 630 B.R. 228 (Bankr. S.D. Tex. 2020)	50
<i>Northwest Bank Worthington v. Ahlers</i> , 485 U.S. 197 (1988).....	37
<i>In re OCA, Inc.</i> , 357 B.R. 72 (Bankr. E.D. La. 2006)	43, 44
<i>Official Committee of Unsecured Creditors v. Morgan Stanley & Co. (In re Sunbeam Corp.)</i> , 284 B.R. 355 (Bankr. S.D.N.Y. 2011).....	35
<i>Official Unsecured Creditors' Comm. of Broadstripe, LLC v. Highland Capital Mgmt., L.P. (In re Broadstripe, LLC)</i> , 444 B.R. 51 (Bankr. D. Del. 2010).....	31
<i>Orr v. Kinderhill Corp.</i> , 991 F.2d 31 (2d Cir. 1994).....	35

TABLE OF AUTHORITIES
(Cont'd.)

	Page(s)
<i>In re Partsearch Techs., Inc.</i> , 453 B.R. 84 (Bankr. S.D.N.Y. 2011).....	24
<i>Phoenix Premier Props. LLC v. Fannie Mae</i> , No. CV-12-187-PHX-GMS, 2012 WL 2389955 (D. Ariz. June 25, 2012).....	50
<i>Public Finance Corp. v. Freeman</i> , 712 F.2d 219 (5th Cir. 1983)	49
<i>Quadrant Structured Prods. Co. v. Vertin</i> , 102 A.3d 155 (Del. Ch. Oct. 1, 2014).....	27
<i>In re RAMZ Real Estate Co.</i> , LLC, 510 B.R. 712 (Bankr. S.D.N.Y. 2014)	42
<i>In re Sentry Operating Co. of Texas, Inc.</i> , 264 B.R. 850 (Bankr. S.D. Tex. 2001)	44, 46
<i>Shandler v. DLJ Merchant Banking, Inc.</i> , C.A. No. 4797-VCS, 2010 WL 2929654 (Del. Ch. July 26, 2010).....	30
<i>Soza v. Hill (In re Soza)</i> , 542 F.3d 1060 (5th Cir. 2008)	34
<i>In re Spin City EC, L.L.C.</i> , 578 B.R. 635 (Bankr. W.D. Wis. 2017).....	43
<i>In re Stegall</i> , 85 B.R. 510 (C.D. Ill. 1987), <i>aff'd sub nom. Matter of Stegall</i> , 865 F.2d 140 (7th Cir. 1989).....	44
<i>In re Tesla Motors, Inc. S'holder Litig.</i> , 298 A.3d 667 (Del. 2023)	54
<i>In re Texas Rangers Baseball Partners</i> , 431 B.R. 706 (Bankr. N.D. Tex. 2010).....	25
<i>In re The Student Loan Corp. Deriv. Litig.</i> , No. C.A. 17799, 2002 WL 75479 (Del. Ch. Jan. 8, 2002)	29
<i>Think3 Litig. Tr. v. Zuccarello (In re Think3, Inc.)</i> , 529 B.R. 147 (Bankr. W.D. Tex. 2015).....	25
<i>In re Trinity Fam. Prac. & Urgent Care PLLC</i> , 661 B.R. 793 (Bankr. W.D. Tex. 2024).....	49

TABLE OF AUTHORITIES
(Cont'd.)

	Page(s)
<i>In re Tucson Self-Storage, Inc.</i> , 166 B.R. 892 (9th Cir. BAP 1994).....	47
<i>Voest-Alpine Trading USA Corp. v. Vantage Steel Corp.</i> , 919 F.2d 206 (3d Cir. 1990).....	35
<i>W. Real Estate Equities, L.L.C. v. Vill. at Camp Bowie I, L.P. (In re Vill. at Camp Bowie I, L.P.)</i> , 710 F.3d 239 (5th Cir. 2013)	49
<i>Weinberger v. UOP, Inc.</i> , 457 A.2d 701 (Del. 1983)	55
<i>Matter of Yasparro</i> , 100 B.R. 91 (Bankr. M.D. Fla. 1989).....	44
<i>In re Zenith Elecs. Corp.</i> , 241 B.R. 92 (Bankr. D. Del. 1999).....	54
 Statutes	
11 U.S.C. § 1129(b)(1)	7, 45
11 U.S.C. § 1129(b)(2)(B)	37, 38
11 U.S.C. § 101(31)(E).....	26
11 U.S.C. § 363.....	17
11 U.S.C. § 510(c)	23
11 U.S.C. § 548.....	34
11 U.S.C. § 548(a)(1)(A)	34
11 U.S.C. § 1107(a)	5
11 U.S.C. § 1108.....	5
11 U.S.C. § 1123(b)(3)(A).....	23
11 U.S.C. § 1129(a)(3).....	49, 50, 54, 56

The Official Committee of Unsecured Creditors (the “Committee”) of the above-captioned debtors and debtors in possession (collectively, the “Debtors” and together with their non-debtor subsidiaries and affiliates, “LifeScan” or the “Company”), by and through its undersigned counsel, hereby files this objection (the “Objection”) to the *Joint Chapter 11 Plan of Reorganization of LifeScan Global Corporation and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 257] (the “Plan”).² In support hereof, the Committee respectfully states as follows:

PRELIMINARY STATEMENT

1. The Plan is deeply flawed and should not be confirmed. The Plan’s lopsided treatment of general unsecured creditors is the result of a well-orchestrated scheme (the “Rebate Harvest Scheme”) developed and implemented by the Sponsor, the Company’s officers and directors, and certain prepetition lenders that shifted hundreds of millions of dollars in their favor, at the direct expense of general unsecured creditors. As detailed in the Committee’s Standing Motion and Proposed Complaint, the Ad Hoc Group, the Sponsor, and certain others:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

² Capitalized terms not defined herein shall have the meaning ascribed to such terms in the Plan, in the *Disclosure Statement for Joint Chapter 11 Plan of LifeScan Global Corporation and its Debtor Affiliates* [Docket No. 278] (the “Disclosure Statement”), the Standing Motion (as defined below), or the Proposed Complaint (as defined below). In addition, exhibits referenced herein mean and refer to the exhibits attached to the *Declaration of G. Alexander Bongartz in Support of the Objection of the Official Committee of Unsecured Creditors to Joint Chapter 11 Plan of Reorganization of LifeScan Global Corporation and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the “Bongartz Declaration”), filed contemporaneously herewith.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Of that amount, approximately \$344 million was repaid to the first lien term lenders prior to the Petition Date,³ and an additional \$133 million (at least) is expected to be paid on the Effective Date to the first lien term lenders under the Plan. Even after giving effect to this pay down, the Reorganized Debtors are estimated to still have \$100 million in cash remaining on their balance sheet, which, coupled with the borrowing capacity under the new ABL exit revolver facility, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. In any case, the Debtors' estimate of "total distributable value" in their Disclosure Statement fails to account for this significant amount of excess cash remaining on the balance sheet.

³ An additional \$94 million in first lien revolving loans was also repaid in the weeks prior to the Petition Date.

3. As further detailed in the Standing Motion, based on the Rebate Harvest Scheme and other actions, the Committee has identified a number of valuable estate claims against various Defendants, and the Committee respectfully submits that the broad releases of estate claims proposed under the Plan simply cannot be approved. The Debtors have failed to demonstrate that these claims were even investigated, let alone that the release of such claims is fair or that any consideration is being offered in exchange for such releases.

4. In addition to the Plan's inappropriate attempt to shield certain parties from their misconduct, the Plan also suffers from a number of other infirmities that render it patently non-confirmable. *First*, the Plan violates the absolute priority rule by distributing 5% of the equity in the Reorganized Debtors to the Sponsor while offering general unsecured creditors a recovery of less than 1%. The proposed distribution of reorganized equity to the Sponsor cannot be shielded from the absolute priority rule by disguising it as an "advisory fee." [REDACTED]

[REDACTED]

[REDACTED]

5. *Second*, the Plan unfairly discriminates against the class of general unsecured creditors by providing the third lien lenders (whom the Debtors believe to be entirely *unsecured*) with a recovery *30 times* larger than the recovery provided to general unsecured creditors. The Debtors have asserted that the discriminatory treatment should be viewed as a settlement to resolve some purported intercreditor dispute. However, the Debtors cannot use the phantom threat of litigation to enter into an unreasonable settlement. At no point since the 2023 liability management exercise (*i.e.*, the transaction that resulted in the "layering" of the non-participating lenders' liens) did the third lien lenders initiate any formal legal proceedings against the Debtors or the other lenders. Moreover, based on the Committee's analysis, the 2023 transaction complied with the

9. On July 28, 2025, the Office of the United States Trustee for the Southern District of Texas (the “U.S. Trustee”) filed a notice appointing the Committee [Docket No. 122].

II. Committee’s Investigation, Standing Motion, and Proposed Complaint

10. On August 18, 2025, the Court entered a final order authorizing the Debtors’ use of cash collateral [Docket No. 482] (the “Final Cash Collateral Order”). The Final Cash Collateral Order, among other things, established September 26, 2025, as the Challenge Deadline (as defined therein) for the Committee to assert a challenge with respect to the Debtors’ various stipulations, waivers, and admissions in favor of the Debtors’ prepetition lenders under the Final Cash Collateral Order.

11. Since its formation on July 28, 2025, the Committee has worked diligently to conduct its investigation into whether the Debtors’ estates possessed claims and causes of action against the Debtors’ prepetition lenders, as well as any claims or causes of action existed against the Debtors’ offices and directors and the Sponsor.

12. On September 26, 2025, the Committee filed its motion [Docket No. 381] (the “Standing Motion”) seeking standing to pursue certain estate claims identified in the Committee’s proposed complaint attached thereto as Exhibit 1 (the “Proposed Complaint”).

13. In the Proposed Complaint, the Committee asserts several colorable and valuable claims (the “Proposed Claims”) arising from the Rebate Harvest Scheme orchestrated by, among others, (i) Platinum Equity Advisors, LLC (“PE Advisors”), (ii) PE LifeScan Holdings, LLC (“PE Holdings”) and, together with PE Advisors, the “Sponsor Entities”), (iii) Mary Ann Sigler, (iv) John G. Holland, (v) Brandon Crawley, (vi) Matthew Louie, (vii) Kevin Smith, (viii) Michael Fabiano, (ix) Jacob Kotzubei ((i) through (ix), collectively, the “Sponsor Defendants”), (x) Brigade Capital Management LP, (xi) Canyon Capital Advisors LLC, (xii) Canyon CLO Advisors L.P., (xiii) FS Investment Solutions, LLC, (xiv) Sound Point Capital Management, LP, as lenders, and

(xv) Does 1 – 100 ((x) through (xv), collectively, the “Lender Defendants” and, together with the Sponsor Defendants, the “Defendants”).⁴

14. As detailed in the Proposed Complaint, the Committee’s investigation—which remains pending, including because depositions have not yet occurred—determined the following (based upon information and belief):

A. LifeScan’s Corporate History and Capital Structure

15. In 2018, PE Holdings acquired LifeScan for approximately \$2.1 billion. As of the Petition Date, PE Holdings owned approximately 80% of the equity interests in the Debtors. As the Debtors acknowledge in their Disclosure Statement, at all relevant times, the DUV Board has consisted solely of employees of Sponsor or its affiliates, and at no relevant time was any independent director or special committee appointed.⁵

16. In connection with PE Holdings’ acquisition of LifeScan, on or about October 1, 2018, LifeScan entered into a \$1.9 billion financing, consisting of (a) \$125 million in revolving loans due on October 1, 2023 (the “Initial Revolving Loans”), (b) \$1.475 billion in first lien term loans due on October 1, 2025 (the “Initial First Lien Term Loans”), and (c) \$275 million in second lien term loans due on October 1, 2025 (“Initial Second Lien Term Loans”).

17. On or about May 19, 2023, LifeScan entered into a liability management transaction (the “2023 Transaction”)⁶ pursuant to which:

(a) the Initial Revolving Loans were amended into two separate revolving loans with extended maturity dates of July 2, 2025, and October 1, 2026 (the “Revolving Loans”), and

⁴ The Proposed Complaint also names (a) Bank of America, N.A., in its capacity as First Lien Agent and lender, and (b) Wilmington Savings Fund Society, FSB, in its capacity as Second Lien Agent, as Lender Defendants.

⁵ See Disclosure Statement at 21.

⁶ See generally, *id.*

97% of the Initial First Lien Term Loans were exchanged into new first lien term loans with an extended maturity date of December 31, 2026 (the “First Lien Term Loans”), pursuant to that certain First Lien Credit Agreement, dated as of May 19, 2023 (“First Lien Credit Agreement”), by and between LifeScan Global Corporation, as borrower, Bank of America, N.A., as administrative agent and collateral agent (the “First Lien Agent”), and various lenders party thereto;⁷

(b) 100% of the Initial Second Lien Term Loans were exchanged into new second lien term loans with an extended maturity date of March 31, 2027 (the “Second Lien Term Loans”), pursuant to that certain Second Lien Credit Agreement, dated as of May 19, 2023 (the “Second Lien Credit Agreement”), by and between LifeScan Global Corporation, as borrower, Wilmington Savings Fund Society, FSB, as administrative agent and collateral agent (the “Second Lien Agent”), and various lenders party thereto; and

(c) LifeScan entered into a new intercreditor agreement and separate credit agreement (the “Third Lien Credit Agreement”, and together with the First Lien Credit Agreement and the Second Lien Credit Agreement, the “Credit Facilities”), by and between LifeScan Global Corporation, as borrower, Ankura Trust Company, as administrative agent and collateral agent, and various lenders party thereto, pursuant to which the Initial First Lien Term Loans held by lenders that elected not to participate in the 2023 Transaction became “third lien” term loans (the “Third Lien Term Loans”), with an unchanged maturity date of October 1, 2024.

⁷ See *id.* at 21.

18. In connection with the 2023 Transaction, the exchanging lenders received additional collateral. Also, the Sponsor (or an affiliate thereof) contributed approximately \$50 million in cash to the Company.⁸

19. As of the Petition Date, according to the Debtors, the principal amount outstanding under the Credit Facilities was as follows:

Credit Facility	Principal Balance Outstanding
First Lien Term Loans:	\$364.73 million
Second Lien Term Loans:	\$275.00 million
Third Lien Term Loans:	\$27.39 million
Total:	\$667.12 million

20. Debtors LifeScan, Inc., LifeScan China, LLC, LifeScan IP Holdings, LLC, and LifeScan Institute, LLC guaranteed LifeScan Global Corporation's obligations under the Credit Facilities. The Credit Facilities are secured by a pledge by DUV Intermediate Holding II Corporation of its equity interests in LifeScan Global Corporation and substantially all assets of the other Debtor subsidiaries (other than excluded collateral, as defined therein).

B. LifeScan's Business

21. LifeScan develops, manufactures, and markets blood glucose monitoring ("BGM") devices and other diabetes-related products, digital applications and services.

22. Historically, approximately 80% of LifeScan's revenue in the United States has been derived through contracts ("Rebate Agreements") with managed care organizations, pharmacy benefit managers ("PBMs") and State Medicaid partners (together with the PBMs, the

⁸ See Declaration of Valerie Asbury in Support of the Debtors' Chapter 11 Petitions and First Day Motions [Docket No. 20] (the "First Day Declaration") ¶12.

“Rebate Counterparties” and each individually, a “Rebate Counterparty”), who manage patient access, formulary placement, and product reimbursement across major insured payers and retail channels.⁹

23. Generally, health plans that contract with PBMs select which products are covered under the health plan’s member benefits plans by placement on formularies, and in what position (*i.e.*, a plan may cover a single “exclusive” BGM product, or a plan may offer LifeScan’s product and other BGM options). In turn, the Rebate Counterparties negotiate with LifeScan concerning rebate amounts and discounts for LifeScan’s products in an otherwise highly commoditized and competitive BGM market.

24. The Rebate Agreements generally set the schedules of covered medical products and the rebate amounts LifeScan must pay each Rebate Counterparty for purposes of providing competitive terms (in terms of net cost) to insurers or group health plans for the utilization of LifeScan’s products by qualifying individuals.

25. As the Debtors admit in their Disclosure Statement:

In the managed care industry, rebates, *i.e.*, negotiated per-claim payments from a manufacturer to a PBM as a retrospective discount on the cost the PBM pays pharmacies to cover drugs dispensed to the PBM’s client’s members-are generally negotiated between PBMs or other similar counterparties and manufacturers as part of contractual agreements governing patient access to insurance coverage for the manufacturer’s products. ***These agreements are critical to a manufacturer’s ability to provide their products to as wide of a patient base as possible: without the agreements, a manufacturer’s products would be unlikely to be covered by major insurance plans, and thus patients would have to pay out of pocket for such manufacturer’s products.***

This is the case for LifeScan, which is party to various contracts with PBMs, state Medicaid entities, and other managed care organizations.

⁹ See Disclosure Statement, Ex. C (Financial Projections) at 9.

Those contracts govern rebates and discounts, manage lists of covered drugs, and process claims for LifeScan’s diabetes products.¹⁰

26. In addition, the Debtors have been attempting to enter the market for continuous glucose monitoring (“CGM”) products through partnering with a third-party manufacturer. However, following entry into a development agreement in 2019 (with a projected product launch in late 2020 or early 2021), the CGM development has been continuously delayed such that, more than six years later, the Debtors have not been able to enter the CGM market, with FDA approval not expected until the first half of 2027, and a CGM product launch not expected until late 2027.¹¹ And even then, it is unlikely that the Debtors would see substantial revenues for some time. In fact, the Debtors’ Financial Projections in the Disclosure Statement do not include CGM.¹²

C. [REDACTED]

[REDACTED]

[REDACTED] In the interim, LifeScan would reject their Rebate Agreements, generate more than \$1

¹⁰ See Disclosure Statement at 18 (emphasis added).

¹¹ See Disclosure Statement at 24-25 and Ex. C (Financial Projections) at 5.

¹² See Disclosure Statement Ex. C (Financial Projections) at 5.

billion in general unsecured claims and Rebate Counterparty rejection damages, and offer them less than a 1% recovery.

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

-
- [REDACTED]
 - [REDACTED]
 - [REDACTED]

Rebate Agreements. *The Forbearance Agreement required the Company to stop making rebate payments to the Rebate Counterparties*, in an effort to preserve liquidity while those negotiations were conducted.²⁰

■ [REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

²⁰ First Day Declaration ¶ 21 (emphasis added).

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

effective as of the Petition Date. By orders dated August 21, 2025 [Docket No. 225] and September 8, 2025 [Docket No. 304], the Court granted the Rebate Rejection Motion.

41. On August 1, 2025, the Debtors filed an updated version of their chapter 11 plan [Docket No. 136], an updated disclosure statement [Docket No. 137], as well as their motion seeking conditional approval of the disclosure statement [Docket No. 138].

42. On August 28, 2025, the Committee filed an objection to the adequacy of the Debtors' disclosure statement [Docket No. 250]. As a result, the Debtors supplemented their disclosures, and, on September 1, 2025, the Debtors filed a further revised plan [Docket No. 257] (the "Plan") and a further revised disclosure statement [Docket No. 259].

43. On September 2, 2025, the Court held a hearing and entered an order conditionally approving the Debtors' disclosure statement [Docket No. 273]. The solicitation version of the Disclosure Statement was filed with the Court at Docket No. 279 (the "Disclosure Statement").

III. Plan Overview

44. The Plan contemplates a toggle approach, pursuant to which the Debtors are pursuing confirmation of a chapter 11 reorganization under the Plan, while, at the same time, marketing their assets for sale, such that, in the event the Plan is not confirmed, and a third-party refinancing bid does not materialize, the Debtors will pivot to a sale to the prepetition lenders in the form of a credit bid (which would carry-over the treatment sections of the Plan).

45. ***First Lien Lender Treatment.*** Under the Plan, the holders of First Lien Term Loans (the "First Lien Lenders") would receive (a) the New First Lien Term Loans,²⁸ entitling them to excess cash flow sweeps following the Effective Date, (b) the right to forego up to \$30

²⁸ In Note 13 ("Capital Structure") to their Financial Projections in the Disclosure Statement, the Debtors indicate they expect to issue a new term loan in the approximate amount of \$185 million, which is expected to accrue interest at SOFR + 5.50% (paid quarterly) and amortize 2% per year (paid quarterly).

million of New First Lien Term Loans in exchange for up to 20% of the New Equity Interests (the “Equitization Election”), and (c) the payment of excess cash (as contractually prescribed under the Plan) as of the Effective Date of at least \$132.5 million (although the actual pay down amount is expected to be even higher). The Disclosure Statement estimates \$376 million in claims arising under the First Lien Term Loans, and further estimates that the First Lien Lenders will recover 97% to 100% under the Plan.

46. ***Second Lien Lender Treatment.*** Under the Plan, the holders of Second Lien Term Loans (the “Second Lien Lenders”) would receive their *pro rata* share of 100% of the New Equity Interests, subject to dilution by the New Equity Interests issued in connection with Equitization Election, the “Advisory Equity” (described below), and the MIP. The Disclosure Statement estimates that the Second Lien Term Loans are secured in the amount of \$176 million, with an estimated Plan recovery of 37% to 63%, leaving an unsecured deficiency claim of \$134 million, to be treated as a General Unsecured Claim under the Plan.

47. ***Third Lien Lender Treatment.*** The Third Lien Term Loans, in the outstanding amount of \$31 million, are described in the Disclosure Statement as *entirely unsecured for purposes of the Plan*. Nonetheless, under the Plan, the holders of Third Lien Term Loans (the “Third Lien Lenders”) would receive \$9.25 million in cash, plus the reimbursement of expenses in the amount of \$500,000, representing an approximately 30% recovery (in contrast to the less than 1% recovery being offered to similarly-situated general unsecured creditors, as described below).

48. ***Sponsor Treatment.*** The Plan nominally purports to cancel all existing prepetition equity interests without a distribution. But in a spurious attempt to work around the absolute priority rule, the Plan provides that the Sponsor will be entitled to 5% of the New Equity Interests

purportedly as a fee in exchange for entering into an “advisory agreement.” The Sponsor will also be entitled to (a) the reimbursement of legal fees and expenses of up to \$1 million, (b) continuing indemnification, and (c) valuable releases without any consideration being provided in exchange.

49. **General Unsecured Claims Treatment.** The class of General Unsecured Claims, estimated to be approximately \$1.116 billion (inclusive of the Rebate Counterparty rejection damage claims and the Second Lien Lenders’ purported deficiency claims), would receive only \$10 million in cash, *representing a recovery of less than 1%*, according to the Disclosure Statement.

50. **Releases.** The Plan provides for the release by the Debtors and all “Releasing Parties” (which includes creditors that vote to accept the Plan or who were given notice of the opportunity to opt out of the releases but do not affirmatively opt out) of a broadly-defined universe of “Released Parties” (including, among others, the Debtors, the Sponsor, the Consenting Lenders, and each of their Related Parties) from practically all claims and causes of action that may be asserted against the Released Parties.

IV. Sale Process

51. As noted above, upon commencement of the Chapter 11 Cases, the Debtors embarked on a dual track plan and sale process. PJT Partners LP (“PJT”) was retained by the Debtors on June 27, 2025, approximately two weeks before the bankruptcy filing, as its investment banker, in order to assist with the facilitation of a sale of the Debtors’ assets under Section 363 of the Bankruptcy Code.²⁹ The Debtors acknowledge in their Disclosure Statement that they “did not market the Company or its assets for sale or solicit any interest from third parties prior to the

²⁹ Disclosure Statement at 31.

Petition Date.”³⁰ No unsolicited offers were received prior to the Petition Date.³¹ [REDACTED]

V. 2025 First Lien Debt Repurchases and Repayments

52. Beginning in March 2025, while withholding rebate payments to the Rebate Counterparties, LifeScan voluntarily paid a total amount of approximately \$281 million to repay approximately \$421 million in face value of First Lien Term Loans (the “First Lien Debt Repayments”), as follows:

- **March 5, 2025:** \$167 million in face value of First Lien Term Loans was repurchased for \$100 million (representing a 40% discount);
- **March 11, 2025:** \$114 million in face value of First Lien Term Loans was repurchased for \$62 million (representing a 45% discount); and
- **July 15, 2025** (*i.e.*, the same date as the Petition Date): \$140 million in face value of First Lien Term Loans was repurchased for \$119 million (representing a 15% discount).³²

VI. Consequences of Rebate Harvest Scheme

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

³⁰ *Id.*

³¹ *Id.*

³² Separately, in July 2025, the Revolving Loans, in the amount of approximately \$94 million, were fully repaid.

[REDACTED]

[REDACTED]

[REDACTED]

-
- [REDACTED]
 - [REDACTED]
 - [REDACTED]

[REDACTED]

56. Even *after* giving effect to the Plan’s Effective Date pay-down of the First Lien Lenders, the Reorganized Debtors are estimated to benefit from approximately \$175 million in total liquidity (*i.e.*, \$100 million in cash and \$75 million in assumed availability under the ABL exit revolver).³⁹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] One of the unintended consequences of the Rebate Harvest Scheme was that LifeScan incurred previously unanticipated tax liabilities for 2024, and may be liable for up to \$128 million in tax liabilities for 2025 unless the restructuring closes before year-end.⁴¹ Consequently, the Debtors filed their Chapter 11 Cases on July 15, 2025,

³⁶ The Disclosure Statement’s Financial Projections are based on a monthly forecast and use November 30, 2025 as a proxy for the Assumed Effective Date.

[REDACTED]

³⁹ Disclosure Statement, Ex. C (Financial Projections) at 4 (noting that the “Assumed Effective Date” is November 14, 2025).

[REDACTED]

⁴¹ See Disclosure Statement at 28.

60. Elsewhere in their Disclosure Statement, the Debtors make clear the value-destructive effect of ending the Company's business relations with the PBMs on its CGM business:

Though the Company has prepared a CGM forecast based on ongoing discussions with potential CGM partners, there have been multiple factors which materially impact likelihood of achieving the forecast, including:

Potential inability to access the US managed care market with a CGM offering given rejection of contracts with key PBM counterparties; . . .

Potential reputational and brand damage to LifeScan and OneTouch following the chapter 11 filing and restructuring process. . . .⁴⁷

61. In the end, unsecured creditors are left holding the proverbial bag. Due to the non-payment of Rebate Payments and the subsequent rejection of the Rebate Agreements, the Debtors' general unsecured claims pool has grown to more than \$1 billion as of the Petition Date.⁴⁸ Under the Plan, general unsecured creditors are essentially being wiped out.

62. Based on the Rebate Harvest Scheme, the Committee believes that strong claims and causes of action exist against the Defendants. Accordingly, as detailed in the Proposed Complaint, the Committee has filed its Standing Motion with the Court seeking standing to pursue, on behalf of the Debtors' estates, (a) as against the Sponsor Defendants, damages for their breaches of their fiduciary duties of care and loyalty in approving and facilitating the value-destructive Rebate Harvest Scheme for their own benefit, and (b) as against the Lender Defendants, (i) damages for aiding and abetting the breach by the Sponsor Defendants of their duties of care and loyalty, (ii) the equitable subordination of the Lender Defendants' liens and claims, pursuant to section 510(c) of the Bankruptcy Code, due to Lender Defendants' inequitable conduct that has caused irreversible harm to the Debtors' estates, (iii) the avoidance of intentional fraudulent

⁴⁷ Disclosure Statement at 30 (emphasis added).

⁴⁸ See Disclosure Statement at 13.

transfers, pursuant to section 548(a) of the Bankruptcy Code, on account of the repayments of the First Lien Term Loans made by the Debtors in the months, days, and even hours prior to the Petition Date out of funds that were generated as a result of the scheme, and (iv) the disallowance of the Lender Defendants' claims against the Debtors' estates.

63. The Standing Motion is scheduled to be heard on October 20, 2025, *i.e.*, the same date as the hearing on confirmation of the Plan.

ARGUMENT

I. Plan Releases Are Overbroad and Impermissible

64. Under the Plan, the Debtors⁴⁹ propose to release a broadly-defined universe of the Released Parties, including the Sponsor, the Consenting Lenders, and each of their Related Parties (including directors, officers, and employees), from practically all estate claims and causes of action that may be asserted against the Released Parties.⁵⁰ These releases would include a release of the Proposed Claims the Committee seeks to pursue in its Proposed Complaint. For the reasons set forth below, these releases should not be approved.

65. Under section 1123(b)(3)(A) of the Bankruptcy Code, a chapter 11 plan may provide for the settlement or adjustment of claims belonging to the estate. *See In re Bigler LP*, 442 B.R. 537, 543-44 (Bankr. S.D. Tex. 2010) (recognizing debtor's ability to settle claims under 1123(b)(3)(A), including the release of claims by the estate). A release by a debtor is essentially a settlement of a claim belonging to a debtor's estate and must satisfy the same requirements as a settlement of estate claims under the Bankruptcy Code. *See id.* (release in chapter 11 plan "must satisfy the requirements of a valid settlement of claims under the Code."). Such settlements must

⁴⁹ In addition to the Debtors, the "Releasing Parties" would also grant releases under the Plan. The Releasing Parties includes creditors that vote to accept the Plan or who were given notice of the opportunity to opt out of the releases but do not affirmatively opt out.

⁵⁰ *See* Plan § VIII.C.

be “fair and equitable and in the best interest of the estate.” *In re Age Ref., Inc.*, 801 F.3d 530, 540 (5th Cir. 2015).

66. The proponent of a settlement bears the burden of proving the relevant standard has been met. *See In re Partsearch Techs., Inc.*, 453 B.R. 84, 102 (Bankr. S.D.N.Y. 2011) (“The burden is on the settlement proponent to persuade the Court that the settlement is in the best interests of the estate.”); *In re Jasper Pellets, LLC*, 656 B.R. 166, 178 (Bankr. D.S.C. 2023) (“The burden to establish the fairness and reasonableness of the settlement falls on . . . the proponent of the settlement.”).

67. In determining whether a settlement is fair and equitable, courts compare “the terms of the compromise with the likely rewards of litigation,” by applying a test evaluating:

(1) the probability of success in litigating the claim subject to settlement, with due consideration for the uncertainty in fact and law; (2) the complexity and likely duration of litigation and any attendant expense, inconvenience, and delay; and (3) all other factors bearing on the wisdom of the compromise. These other factors . . . include: (i) the best interests of the creditors, with proper deference to their reasonable views; and (ii) the extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion.

Age Ref., Inc., 801 F.3d at 540 (internal quotation marks omitted).

68. Moreover, in evaluating releases under a chapter 11 plan, bankruptcy courts in the Fifth Circuit apply the aforementioned factors by analyzing whether the releases (i) are essential to the formulation and implementation of the plan, (ii) confer substantial benefits on the debtor’s estate, (iii) are fair, equitable and reasonable, (iv) are in the best interests of the debtor, the debtor’s estate, and parties in interest, and (v) are the product of an arm’s-length transaction. *See, e.g., In re Abri Health Servs., LLC*, No. 21-30700 (SGJ), 2021 WL 5095489, at *3 (Bankr. N.D. Tex. Oct. 26, 2021); *In re Lizama Carriers, LLC*, No. 20-40283, 2020 WL 6928620, at *8 (Bankr. N.D. Tex. Nov. 24, 2020); *In re Lincolnshire Campus, LLC*, 441 B.R. 524, 533 (Bankr. N.D. Tex. 2010).

69. In addition, when evaluating proposed settlements with insiders of the debtor, courts subject such settlements to heightened scrutiny. *See DeepRock Venture Partners LP v. Beach*, No. 3:16-CV-1552-M, 2017 WL 1293090, at *7 (N.D. Tex. Apr. 4, 2017), *aff'd sub nom. Matter of Beach*, 731 F. App'x 322 (5th Cir. 2018) (“The bankruptcy court must especially scrutinize a proposed settlement ‘when the settlement is between insiders.’”); *Fabricators Inc. v. Tech. Fabricators, Inc. (In re Fabricators, Inc.)*, 926 F.2d 1458, 1465 (5th Cir. 1991) (“A claim arising from the dealings between a debtor and an insider is to be rigorously scrutinized by the courts.”). Under heightened scrutiny review, a settlement will only be approved if it meets the entire fairness standard, *i.e.*, it is both procedurally and substantively fair. *See Think3 Litig. Tr. v. Zuccarello (In re Think3, Inc.)*, 529 B.R. 147, 175 (Bankr. W.D. Tex. 2015) (“Corporate fiduciaries who are on both sides of a transaction are engaged in ‘self-dealing.’ As a result, they lose the protection of the business judgment rule and carry the ‘burden of establishing its entire fairness, sufficient to pass the test of careful scrutiny by the court.’ Entire fairness consists of two main concepts: ‘fair dealing and fair price.’”) (internal citation omitted); *In re LATAM Airlines Grp. S.A.*, 620 B.R. 722, 769 (Bankr. S.D.N.Y. 2020) (“[A]n insider’s dealings with the debtor are subject to rigorous scrutiny by the court, with the insider bearing the burden of showing the ‘entire fairness’ of the transaction at issue.”); *In re Texas Rangers Baseball Partners*, 431 B.R. 706, 717, n. 29 (Bankr. N.D. Tex. 2010) (“To the extent . . . the Plan proposes . . . releases for [insider] at Debtor’s direct or indirect expense, absent a meaningful contribution by [insider], they are probably invalid.”).⁵¹ Because releases of insiders are effectively settlements with insiders, they

⁵¹ *See also In re Herby’s Foods*, 134 B.R. 207, 211 (Bankr. N.D. Tex. 1991) (“Insiders are held to a higher standard of fidelity than unrelated third parties and the court will apply special scrutiny to insider behavior.”) (citation omitted); *In re HyLoft, Inc.*, 451 B.R. 104, 113 (Bankr. D. Nev. 2011) (“While insider status alone is not fatal to dealings between a debtor and an insider, the court must scrutinize these dealings more carefully.”).

are also subject to heightened scrutiny, *i.e.*, they should only be approved if they meet the entire fairness standard.

70. Here, the Sponsor, as the holder of approximately 80% of the Debtors' equity, satisfies the statutory definition of an insider under section 101(31)(E) of the Bankruptcy Code. The same is the case for the Debtors' Sponsor-employed directors and officers. Accordingly, the Debtor-releases of the Sponsor and the Debtors' Sponsor-affiliated directors and officers are subject to heightened scrutiny and must meet the entire fairness standard. Because, as detailed below, the Debtor-releases of the Sponsor and those directors and officers do not meet that standard, the releases should not be approved.

71. Furthermore, even releases of non-insiders, such as the Lender Defendants, are subject to heightened scrutiny where such releases are intertwined with the Debtors' transactions with their insiders. *See In re LATAM Airlines Grp. S.A.*, 620 B.R. at 771 (applying entire fairness standard to non-insider tranche of DIP facility because it was intertwined with insider tranche of same DIP facility). Here, the Debtors' releases of the Consenting Lenders under the Plan are inextricably intertwined with the release of the Sponsor, as both releases form part and parcel of one interdependent restructuring transaction, intended to insulate the architects of the Rebate Harvest Scheme from challenge by the Debtors (whether directly or derivatively). Because, as detailed below, the releases of the Lender Defendants do not meet the entire fairness standard, those releases should not be approved. Moreover, even if the entire fairness standard were not applicable to the releases of the Lender Defendants, those releases should still be rejected because they also fail to meet the standard for approving releases of non-insiders.

A. Release of Sponsor and Its Related Parties Should Not Be Approved

72. The Debtors' proposed releases of the Sponsor and its Related Parties are not fair, equitable, or reasonable, nor are they in the best interest of the Debtors' estates. In particular, as

detailed in the Proposed Complaint and the Standing Motion (and summarized below), the Debtors' estates have strong and credible claims against the Sponsor that it breached its fiduciary duties as a controlling (indirect) shareholder of the Debtors. These claims should not be released under the Plan for effectively no consideration.

73. ***Estate Claims Against Sponsor Entities for Breach of Fiduciary Duties Are Colorable.*** At the time that the Company began negotiations with the Ad Hoc Group in the late summer of 2024, the Company was insolvent. Accordingly, the Sponsor Entities, acting as the controlling shareholder of the Debtors, owed fiduciary duties to the Debtors to maximize their value for all stakeholders, including all creditors of the Debtors, not simply themselves. *See Quadrant Structured Prods. Co. v. Vertin*, 102 A.3d 155, 184 (Del. Ch. Oct. 1, 2014) (once a corporation is insolvent, “[d]irectors continue to have an obligation to maximize the value of the firm, but now a transfer of value to the [majority] stockholder does not inure to the ratable benefit of all of the residual claimants. The payment now transfers value previously owned beneficially and indirectly by all of the residual claimants to the party in control of the corporation”). The Sponsor Entities breached these fiduciary duties, including their duties of care and loyalty, by

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

74. ***Sponsor Entities Are Not Providing Any Consideration in Return for the Releases.*** The Debtors have offered no evidence from which to conclude that the benefits of their “settlement” with the Sponsor Entities outweigh the benefits of pursuing breach of fiduciary duty

claims against those entities.⁵² Indeed, setting aside the RSA parties' attempt to disguise the Sponsor's equity distribution as a form of compensation for future advisory services—[REDACTED]
[REDACTED]—the Debtors have not demonstrated, and cannot demonstrate, that the Sponsor Entities are providing *any* incremental value to the estates.

75. ***The Debtors Cannot Show Any Arm's-Length Bargaining.*** Nor can the Debtors establish that the proposed releases to the Sponsor Entities are the product of arm's-length bargaining. To the contrary, the lack of arm's-length bargaining is particularly acute here, given that the releases were agreed to between an 80%-owned subsidiary whose directors have at all times included *only* designees appointed by the Sponsor, which directors are also employees of the Sponsor, with no independent voice in the room or oversight.⁵³

[REDACTED]

⁵² See *In re Lion Capital Grp.*, 49 B.R. 163, 189 (Bankr. S.D.N.Y. 1985) (if a motion fails to present the key facts relevant to the claims being settled or the potential defenses or counterclaims that may be asserted by the Debtors, and merely rely on conclusory statements regarding their benefits, it must be denied); *In re Novak*, 383 B.R. 660, 675 (Bankr. W.D. Mich. 2008) (“the motion should include for comparison some estimate as to what the estate could expect as the outcome if no settlement was reached and the matter went to trial instead”).

⁵³ As noted above, at no point did the Debtors appoint an independent director or special committee to assess such claims or causes of action, evaluate the value of the releases being offered, or negotiate the terms thereof with the Sponsor.

[REDACTED]

77. For all these reasons, the release of the Sponsor and its Related Entities should not be approved.⁵⁴

B. Releases of Debtors' Sponsor-Affiliated Directors and Officers Should Not Be Approved

78. Based on substantially the same facts as those underlying the breach of fiduciary duty claim against the Sponsor Entities, the releases to be provided under the Plan to the Debtors' Sponsor-affiliated directors and officers should also not be approved. As detailed in the Proposed Complaint and the Standing Motion (and summarized below), the Debtors' estates have strong and credible claims against the Debtors' Sponsor-affiliated directors and officers for breach of their fiduciary duties.

79. The Individual Defendants'⁵⁵ actions, just as those of the Sponsor Entities, are subject to heightened "entire fairness" review. It is undisputed that *none* of the Individual Defendants were independent or disinterested, as they were at all times employees of the Sponsor and depended on the Sponsor for employment and income. *See In re The Student Loan Corp. Deriv. Litig.*, No. C.A. 17799, 2002 WL 75479, at *3 n.3 (Del. Ch. Jan. 8, 2002) ("[T]he remuneration a person receives from her full-time job is typically of great consequence to her."); *see also Shandler v. DLJ Merchant Banking, Inc.*, C.A. No. 4797-VCS, 2010 WL 2929654, at *12

⁵⁴ The Committee is continuing to evaluate when the Debtors became insolvent and reserves all rights to seek standing to pursue constructive fraudulent transfer claims against the Sponsor Entities with respect to [REDACTED].

⁵⁵ The "Individual Defendants" are Defendants Sigler, Holland, Crawley, Louie, Smith, Fabiano, and Kotzubei, all of whom are directors of the Debtors and employees of the Sponsor. The Debtors' officers include individuals affiliated with the Sponsor. Certain of the Individual Defendants are also officers of the Debtors, specifically, Defendants Holland, Crawley, and Sigler. In its Proposed Complaint and the Standing Motion, the Committee did not name as defendants the Debtors' officers who are unaffiliated with the Sponsor.

(Del. Ch. July 26, 2010) (finding that complaint pled duty of loyalty claim against director-defendants who “derived their primary source of income” by working for controller and who approved an interested transaction with the controller). Moreover, at all relevant times, the Sponsor had (and continues to have) a direct financial interest in the restructuring due to the equity distributions, expense reimbursement, continuing indemnity, and valuable releases being afforded to the Sponsor and its affiliates.

80. The releases of the Individual Defendants do not satisfy the entire fairness standard.

[REDACTED]

[REDACTED]

[REDACTED]

Furthermore, like the Sponsor Defendants, the Individual Defendants are providing no consideration to the Debtors’ estates in exchange for the broad releases. Nor are the proposed releases of the Debtors’ directors and officers the product of arm’s-length bargaining. The release of the Debtors’ directors and officers should therefore not be approved.

C. Release of Prepetition Lenders Under the Plan Should Not Be Approved

81. Similarly, the proposed releases of the Lender Defendants are neither fair, equitable, nor in the best interest of the Debtors’ estates; they do not confer substantial benefits on the Debtors’ estates; and they were not the product of arm’s-length bargaining. The releases of the Lender Defendants [REDACTED]

[REDACTED], as detailed in the Committee’s Proposed Complaint and Standing Motion.

i. Aiding and Abetting Breach of Fiduciary Duty

82. The Lender Defendants knowingly and substantially aided and abetted and otherwise assisted in the breaches of fiduciary duties of the Sponsor Defendants [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

83. A cause of action for aiding and abetting a breach of fiduciary may exist against non-fiduciaries who participate in a wrongful breach of fiduciary duties by others. An aiding and abetting claim requires: (1) the existence of a fiduciary relationship, (2) breach of a fiduciary duty, (3) knowing participation in the breach, and (4) damages proximately caused by the breach. *Official Unsecured Creditors' Comm. of Broadstripe, LLC v. Highland Capital Mgmt., L.P. (In re Broadstripe, LLC)*, 444 B.R. 51, 107 (Bankr. D. Del. 2010) (applying Delaware law); *see also Cred Inc. Liquidation Tr. v. Uphold HQ Inc. (In re Cred Inc.)*, 658 B.R. 783, 793 (D. Del. 2024) (applying Delaware law). Knowing participation requires knowledge and participation in the fiduciary's decision making by giving "substantial assistance or encouragement" to the breaching party. *In re Cred Inc.*, 658 B.R. at 801 (affirming dismissal of aiding and abetting claims on grounds that suspicious circumstances were not enough to establish knowing participation). An underlying breach of fiduciary duty is a prerequisite for any claim of aiding and abetting. Therefore, an aiding and abetting claim will be dismissed absent a viable related claim for breach of fiduciary duty. *See, e.g., Burtch v. Opus, LLC (In re Opus East, LLC)*, 528 B.R. 30, 80 (Bankr. D. Del. 2015) ("Because the Court concludes that there was no breach of any fiduciary duty owed to the Debtor, no aiding and abetting clam can be upheld.").

84. Here, as detailed in the Proposed Complaint, [REDACTED]

[REDACTED]

ii. Equitable Subordination

85. As discussed in the Proposed Complaint, [REDACTED]

[REDACTED]

86. As explained by the District Court for the Northern District of Texas:

The bankruptcy court is a court of equity. *Fabricators, Inc. v. Technical Fabricators, Inc. (In re Fabricators, Inc.)*, 926 F.2d 1458, 1464 (5th Cir. 1991) (citing *Local Loan Co. v. Hunt*, 292 U.S. 234, 240, 54 S. Ct. 695, 78 L. Ed. 1230 (1934)). Its equitable powers allow it to “produce fair and just results ‘to the end that fraud will not prevail, that substance will not give way to form, [and] that technical considerations will not prevent substantial justice from being done.’” *Id.* (quoting *Pepper v. Litton*, 308 U.S. 295, 305, 60 S. Ct. 238, 84 L. Ed. 281 (1939)). One such power is subordination, an equitable defense of the bankruptcy trustee to the allowance of a creditor’s claim on the bankruptcy estate. *See id.*

Life Partners Creditors’ Trust v. Black Diamond Lifeplan Fund, No. 4:17-cv-00225-O, 2018 WL 4076491, at *3 (N.D. Tex. June 22, 2018).

87. In the instant matter, [REDACTED]

[REDACTED]

[REDACTED]

88. Under these circumstances, the Lender Defendants’ claims should be equitably subordinated and not released under the Plan.

iii. Avoidance of Fraudulent Transfers to Lender Defendants

89. The Debtors’ estates have valuable claims against the Lender Defendants for avoiding the Debtors’ First Lien Debt Repayments under section 548 of the Bankruptcy Code as intentional fraudulent transfers. Within two years of the Petition Date (actually within the four months or so prior to the Petition Date), the Debtors made the First Lien Debt Repayments (using funds in which the Debtors had an interest⁵⁶) to or for the benefit of the Lender Defendants. These

⁵⁶ Section 548’s phrase “an interest of the debtor in property” has generally been held to be the equivalent of “property of the estate.” *See Begier v. IRS*, 496 U.S. 53, 59 (1990) (“property of the debtor” is “best understood as that property that would have been part of the estate had it not been transferred before the commencement of bankruptcy proceedings”).

monies were transferred to the Lender Defendants with actual intent to hinder, delay and/or defraud the Rebate Counterparties and other unsecured creditors that had claims against the Debtors at all relevant times.

90. Section 548(a)(1)(A) of the Bankruptcy Code permits the avoidance of any transfer of an interest of the debtor in property that was made “with the actual intent to hinder, delay, or defraud any” present or future creditor. As part of the actual fraudulent transfer analysis, courts often consider “badges of fraud” including (1) the lack or inadequacy of consideration; (2) the close associate relationship between the parties; (3) the retention of possession, benefit or use of the property in question; (4) the financial condition of the party sought to be charged both before and after the transaction in question; (5) the existence or cumulative effect of the pattern or series of transactions or course of conduct after the incurring of debt, onset of financial difficulties, or pendency or threat of suits by creditors; and (6) the general chronology of events and transactions under inquiry. *Soza v. Hill (In re Soza)*, 542 F.3d 1060, 1067 (5th Cir. 2008); *Kelly v. Armstrong*, 141 F.3d 799, 802 (8th Cir. 1998); *In re Kaiser*, 722 F.2d 1574, 1582 (2d Cir. 1983). “[T]he existence of several badges of fraud can constitute clear and convincing evidence of actual intent” but “badges of fraud are not a prerequisite to a finding of actual fraudulent intent.” *In re Manhattan Inv. Fund Ltd.*, 397 B.R. 1, 10 n.13 (S.D.N.Y. 2007).

91. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

against such unencumbered assets. Finally, the Committee has objected to any liens and claims filed or asserted by the Lender Defendants against the Debtors.

94. The Debtors' proposed release of the Lender Defendants from the foregoing estate causes of action and claims objections should not be approved under the Plan.

[REDACTED]

96. Even if the proposed releases of the Defendants were subject only to a business judgment standard as to the Debtors, such releases would not pass muster and should not be approved because they completely fail to take into account the viable claims that the Committee seeks standing to bring in the Proposed Complaint, including claims for aiding and abetting breaches of fiduciary duty, equitable subordination, and intentional fraudulent conveyances, and objections to lender liens and claims, all as summarized herein.

II. Plan Distribution to Sponsor Violates the Absolute Priority Rule

97. The Plan provides for an aggregate distribution of \$10 million in cash to all holders of allowed General Unsecured Claims—a distribution that the Debtors estimate represents a recovery of less than 1% on such claims. Yet, despite that paltry recovery to the general unsecured

creditors, the Sponsor will receive 5% of the New Equity Interests, in direct contravention of the Bankruptcy Code’s “absolute priority rule.”

98. Section 1129(b) of the Bankruptcy Code sets forth the so-called cramdown requirements, which must be satisfied in order to confirm a plan that is not accepted by all impaired classes.⁵⁸ One of the cramdown requirements is that a chapter 11 plan must be “fair and equitable with respect to [each] class of claims . . . that is impaired under, and has not accepted, the plan.” 11 U.S.C. § 1129(b)(1).⁵⁹

99. For a plan to be “fair and equitable” with respect to a class of unsecured claims (i) the plan must provide that each holder of a claim of such class will be paid in full or (ii) no holder of any claim or interest that is junior to the claims of such class will receive or retain property under the plan on account of such junior claim or interest. 11 U.S.C. § 1129(b)(2)(B). This requirement is commonly referred to as the absolute priority rule and is a “bedrock principle of bankruptcy law.” *In re Lehman Bros. Holdings, Inc.*, 855 F.3d 459, 470 (2d Cir. 2017); *see also Northwest Bank Worthington v. Ahlers*, 485 U.S. 197, 202 (1988) (“Under current law, no Chapter 11 reorganization plan can be confirmed over the creditors’ legitimate objections . . . if it fails to comply with the absolute priority rule.”).

100. The Supreme Court has construed the phrase “on account of,” as used in section 1129(b)(2)(B), to mean some form of “because of.” *See Bank of Am. Nat. Tr. & Sav. Ass’n v. 203 N. LaSalle St. P’ship*, 526 U.S. 434, 450 (1999) (“Since the ‘in exchange for’ reading [of the term “on account of”] merits rejection, the way is open to recognize the more common understanding

⁵⁸ The class of General Unsecured Claims (Class 6) has voted to reject the Plan, and, accordingly, section 1129(b) applies as to that class.

⁵⁹ The second cram-down requirement, *i.e.*, that a chapter 11 plan may not discriminate unfairly, is addressed in Section II below.

of ‘on account of’ to mean ‘because of.’”). Thus, the transfer of property, under a plan, to an existing shareholder triggers application of section 1129(b)(2)(B), if the transfer is “because of” the shareholder’s interest. Even if a transfer is being made only partially on account of such interest, but also for other reasons, that is nonetheless sufficient for that transfer to be prohibited by the absolute priority rule. *See In re DBSD N. Am., Inc.*, 634 F.3d 79, 96 (2d Cir. 2011) (“[A] transfer partly on account of factors other than the prior interest is still partly ‘on account of’ that interest. ‘If Congress had intended to modify [on account of] with the addition of the words ‘only,’ ‘solely,’ or even ‘primarily,’ it would have done so. . . . [R]eceipt of property partly on account of the existing interest [is] enough for the absolute priority rule to bar confirmation of [a] plan.”).

101. Here, the Sponsor will recover 5% of the New Equity Interests *on account of* or *because of* its existing equity interests in the Debtors.⁶⁰ Such recovery, ahead of general unsecured creditors, is on its face a violation of the absolute priority rule.

102. The Committee anticipates the Debtors will claim this obvious violation of the absolute priority rule is not what it appears to be or should be overlooked by the Court. These arguments should be rejected. The Debtors will likely first argue that the distribution of 5% of the New Equity Interests is neither being provided to the Sponsor on account of its existing equity interests, nor being provided under the Plan. On September 29, 2025, the Debtors filed the Plan Supplement [Docket No. 391], which included the proposed form of Advisory Services Agreement (the “Advisory Agreement”) to be entered into between the Reorganized Debtors and the “Advisors,” affiliates of the Sponsor. While the Advisory Agreement provides that the Advisors will provide “reasonable assistance and advice with respect to strategic initiatives and transition

⁶⁰ *See, e.g., In re Convergeone Holdings, Inc.*, No. 4:24-cv-02001, (S.D. Tex. Sept. 25, 2025), Docket No. 614 [order] (exclusive backstopping opportunity offered to some members of class of bondholders constituted plan treatment on account of prepetition bond ownership and therefore subject to equal class treatment under section 1123(a)(4) of the Bankruptcy Code).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

107. Moreover, there can be no doubt that the 5% equity distribution to Sponsor is indeed being made under the Plan. The Plan provides that the Advisory Agreement is among the various “Definitive Documents” that must be executed and delivered as a condition to the effectiveness of the Plan.⁷⁰ Thus, the distribution to the Sponsor is integrated into the Plan.

108. Courts have made clear that a debtor cannot circumvent or sidestep the absolute priority rule by entering into transactions outside the plan or disguising what is otherwise a *de facto* distribution under the plan. *See In re LATAM Airlines Grp. S.A.*, 620 B.R. 722, 812 (Bankr. S.D.N.Y. 2020) (“A debtor cannot enter into a transaction that would amount to . . . an attempt to circumvent the chapter 11 requirements for confirmation of a plan of reorganization.”) (citing *In re Braniff Airways, Inc.*, 700 F.2d 935 (5th Cir. 1983)) (internal quotation marks omitted); *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 455, 471 (2017) (“[B]ankruptcy court does not have [the] power” to order “[a] distribution scheme . . . without the consent of the affected parties, [which] deviate[s] from the basic priority rules. . . . We cannot alter the balance struck by the statute, not even in ‘rare cases.’”); *In re Armstrong World Indus., Inc.*, 432 F.3d 507, 514 (3d Cir. 2005) (rejecting plan which “would encourage parties to impermissibly sidestep the carefully crafted strictures of the Bankruptcy Code, and would undermine Congress’s intention to give unsecured creditors bargaining power”); *see also* Hr’g Tr. at 332:20-23, 334:2-3, *In re Memorial*

[REDACTED]

⁷⁰ *See* Disclosure Statement at 68; Ex. B at 15 (including execution of the Definitive Documents to the RSA, including the Advisory Agreement, as a condition precedent to the Plan’s Effective Date).

Prod. Partners, LP, No. 17-30262-H1-11 (Bankr. S.D. Tex. April 4, 2017) (Isgur, J.) (“[L]ikelihood that it’s appropriate to approve a plan that includes releases for management that in the best possible light [are] structured around prohibitions in the Bankruptcy Code is very minimal,” as court is “never going to approve an intentional intent to get around [Bankruptcy Code §] 503(c).”). Here, too, the Court should find that the Advisory Agreement circumvents the absolute priority, and, thus, the Plan cannot be confirmed.

109. The Debtors cannot save their proposed distribution of 5% reorganized equity to the Sponsor by arguing that it falls within the new value exception (or new value corollary) to the absolute priority rule. Under the new value exception, “the objection of an impaired senior class does not bar junior claim holders from receiving or retaining property interests in the debtor after reorganization, if they contribute new capital in money or money's worth, reasonably equivalent to the property's value, and necessary for successful reorganization of the restructured enterprise.” *N. LaSalle*, 526 U.S. at 442; *see also In re Ambanc La Mesa Ltd. P’ship*, 115 F.3d 650, 654 (9th Cir. 1997) (“Allowing old equity to retain an interest does not violate the absolute priority rule if the former equity holders provide new value to the reorganized debtor, under the ‘new value corollary’ to the absolute priority rule.”). The new value exception might permit a debtor’s equity holders—in exchange for a contribution of *new value*—to retain their equity interests in the debtor, even as creditors are not paid in full. *See In re RAMZ Real Estate Co., LLC*, 510 B.R. 712, 718 (Bankr. S.D.N.Y. 2014) (“Recognizing that sometimes the best option for all parties is to allow old equity to participate in the reorganized debtor, the ‘new value exception’ was created.”) (citation omitted).

110. However, not every contribution qualifies as new value. Rather, new value contributed by equity holders must meet concrete requirements in order for it to fall within the

“new value” exception, including that it be “(1) a contribution that is new capital; (2) the contribution must be necessary for a successful reorganization; (3) the contribution must be in money or money’s worth; and (4) the contribution must be reasonably equivalent to the value of the property acquired by the [p]urchaser.” *In re Cypresswood Land Partners, I*, 409 B.R. 396, 438 (Bankr. S.D. Tex. 2009); *see also In re OCA, Inc.*, 357 B.R. 72, 90 (Bankr. E.D. La. 2006).

111. In addition, the new value being provided must be market tested to qualify under the exception. *See N. LaSalle*, 526 U.S. at 458 (“Plans providing junior interest holders with exclusive opportunities free from competition and without benefit of market valuation fall within the prohibition of § 1129(b)(2)(B)(ii).”); *In re Acis Cap. Mgmt., L.P.*, 604 B.R. 484, 537 (N.D. Tex. 2019), *aff’d sub nom. Matter of Acis Cap. Mgmt., L.P.*, 850 F. App’x 302 (5th Cir. 2021) (“The way to assess whether the value contributed by the old equity owners makes the senior creditors better off is to allow for a market valuation of the debtor’s equity”).

112. Here, the Advisory Agreement fails across the board to meet these requirements: it is not new capital; it is in no way needed for the Reorganized Debtors to succeed; it is not money; it is of little, if any, value to the Reorganized Debtors; and it was not market-tested, nor was it evaluated by an independent director or non-conflicted special committee. Indeed, courts have specifically held that the mere contribution of services and/or labor by existing equity holders does not constitute value for the purposes of the new value exception. *See Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 204, (1988) (“[N]o decision of this Court or any Court of Appeals, other than the decision below, has ever found a promise to contribute future labor, management, or expertise sufficient to qualify for the . . . exception to the absolute priority rule.”); *In re Spin City EC, L.L.C.*, 578 B.R. 635, 642 (Bankr. W.D. Wis. 2017) (“[Equity holder’s] promises to continue working for free and to provide cash infusions are ‘intangible, inalienable, and, in all likelihood,

unenforceable.’ For that reason, they would be valueless if offered in a market and therefore cannot be used to satisfy the new value exception.”); *In re Stegall*, 85 B.R. 510, 515 (C.D. Ill. 1987), *aff’d sub nom. Matter of Stegall*, 865 F.2d 140 (7th Cir. 1989) (“[A] future contribution of management, labor, or skill is of little or no value to the creditor.”); *Matter of Yasparro*, 100 B.R. 91, 97 (Bankr. M.D. Fla. 1989) (“A promise of future service and labor is not a contribution of ‘money's worth.’”). Thus, the Advisory Agreement in no way qualifies as new value for the purposes of justifying the Debtors’ violation of the absolute priority rule.

113. Finally, the Debtors may attempt to argue that the 5% equity in the Reorganized Debtors to be provided to the Sponsor represents a “gift” from the secured lenders to the Sponsor as a carve-out from their collateral proceeds. This argument, however, should also be rejected. Several recent decisions have prohibited gifting when an intermediate creditor class will not recover in full and has objected to the plan. *See e.g., In re OCA, Inc.*, 357 B.R. at 87 (Bankr. E.D. La. 2006) (reviewing and distinguishing cases which allowed gifting only in specific contexts, such as in chapter 7, or where the gifting creditor did so to settle active litigation, noting that “the court finds it troublesome when the creditor purports to share with other creditors or equity, over the objection of an intermediate class, through the mechanism of a plan in a Chapter 11 that this court is called upon to confirm. . . . This court therefore holds that the Participation Rights . . . of the plan violates the absolute priority rule”); *see also In re Sentry Operating Co. of Texas, Inc.*, 264 B.R. 850, 865 (Bankr. S.D. Tex. 2001) (“To accept [secured lender’s] argument that a secured lender can, without any reference to fairness, decide which creditors get paid and how much those creditors get paid, is to reject the historical foundation of equity receiverships and to read the § 1129(b) requirements out of the Code. . . . To accept that argument is simply to start down a slippery slope that does great violence to history and to positive law.”); *In re Armstrong World*

Indus., Inc., 432 F.3d at 514 (rejecting plan which would provide warrants in new company to unsecured class, which class would automatically waive receipt of the warrants effectively gifting them to equity, holding that “creditors are [not] generally free to do whatever they wish with the bankruptcy proceeds they receive. . . . We conclude that the absolute priority rule applies and is violated by this distribution scheme”).

114. For all these reasons, the Court should decline to confirm the Plan because it violates the absolute priority rule.

III. Plan Unfairly Discriminates Against General Unsecured Creditors

115. The Plan unfairly discriminates between general unsecured creditors, who would receive a recovery of 1% under the Plan, and the out-of-the-money Third Lien Lenders, who would receive a recovery of approximately 30% under the Plan, representing a more than 30x recovery compared with general unsecured creditors.⁷¹

116. Under section 1129(b)(1) of the Bankruptcy Code, a non-consensual plan can be confirmed only if it does “not discriminate unfairly . . . with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.” The unfair discrimination standard prevents creditors “with similar legal rights from receiving materially different treatment under a proposed plan without compelling justifications for doing so.” *In re Idearc Inc.*, 423 B.R. 138, 171 (Bankr. N.D. Tex. 2009), *subsequently aff’d sub nom. In re Idearc, Inc.*, 662 F.3d 315 (5th Cir. 2011); *see also In re LightSquared Inc.*, 513 B.R. 56, 99 (Bankr. S.D.N.Y. 2014) (“The purpose of the requirement is to ensure that a dissenting class will receive relative value equal to the value given to all other similarly situated classes.”).

⁷¹ The Plan assumes that the Second Lien Term Loans are the fulcrum security, which claims are receiving equity in the reorganized Debtors and estimated to recover between 37% and 63%.

117. Under the widely recognized test for unfair discrimination formulated by former Bankruptcy Judge Bruce A. Markell, unfair discrimination is presumed where “there is (1) a dissenting class; (2) another class of the same priority; and (3) a difference in the plan’s treatment of the two classes that results in either (a) a materially lower percentage recovery for the dissenting class (measured in terms of the net present value of all payments), or (b) regardless of percentage recovery, an allocation under the plan of materially greater risk to the dissenting class in connection with its proposed distribution.” *In re Sentry Operating Co. of Texas, Inc.*, 264 B.R. at 864-65.

118. When the presumption of unfair discrimination arises, the burden is on the debtor to show that unequal treatment between classes having the same priority does not constitute unfair discrimination. *See id.* at 864 (plan which unfairly discriminates is “presumptively subject to denial of confirmation. However, . . . the plan proponent may overcome the presumption”); *In re Gregg*, 179 B.R. 828, 830 (Bankr. E.D. Tex. 1995) (“The burden to prove that the classification of unsecured claims does not unfairly discriminate rests on the debtor.”); *Hargreaves v. Nuverra Env’t Sols., Inc. (In re Nuverra Env’t Sols., Inc.)*, 590 B.R. 75, 80 (D. Del. 2018) (“Because the Plan was nonconsensual, Debtors had the burden of show[ing] that the plan meets the additional requirements of § 1129(b), including the requirements that the plan does not unfairly discriminate against dissenting classes and the treatment of the dissenting classes is fair and equitable.”) (internal citations omitted).

119. Under the Debtors’ Plan, the materially different treatment of general unsecured creditors and the Third Lien Lenders gives rise to a presumption of unfair discrimination, which, as detailed below, the Debtors cannot rebut. As detailed in the Disclosure Statement, the holders of General Unsecured Claims would receive only \$10 million in cash under the Plan, representing an estimated recovery of less than 1%. By contrast, holders of the approximately \$31 million in

Third Lien Term Loans would receive \$9.25 million in cash (plus reimbursement of expenses in the amount of \$500,000), representing an estimated recovery of approximately 30%. In other words, the Third Lien Lenders would receive a recovery percentage that is more than **30 times** the recovery percentage for general unsecured creditors, which gives rise to a presumption of unfair discrimination. *See, e.g., In re Crosscreek Apartments, Ltd.*, 213 B.R. 521, 537-38 (Bankr. E.D. Tenn. 1997) (finding 50% vs. 100% recovery was unfairly discriminatory); *In re Cranberry Hill Assocs., L.P.*, 150 B.R. 289, 290-91 (Bankr. D. Mass. 1993) (same); *In re Barney & Carey Co.*, 170 B.R. 17, 25-26 (Bankr. D. Mass. 1994) (finding 15% vs. 100% recovery was unfairly discriminatory); *In re Tucson Self-Storage, Inc.*, 166 B.R. 892, 898 (9th Cir. BAP 1994) (finding 10% vs. 100% recovery was unfairly discriminatory); *In re Aztec Co.*, 107 B.R. 585, 589–91 (Bankr. M.D. Tenn. 1989) (finding 3% vs. 100% recovery was unfairly discriminatory).

120. In their Disclosure Statement, the Debtors rationalize that the grossly disparate treatment between holders of General Unsecured Claims and the Third Lien Lenders may be justified under some “settlement” standard; however, merely labelling the Third Lien Lenders’ treatment a “settlement” does not rebut the presumption of unfair discrimination, particularly where, as here, that settlement is plainly unreasonable.

121. Specifically, the Debtors note in the Disclosure Statement that they believe that the Third Lien Term Loan Claims are junior to the Second Lien Term Loan Claims by virtue of the 2023 Transaction, but that the Third Lien Lenders disagree and assert that their claims should be entitled to first lien priority, and thereby justify the settlement in order to avoid the “material risk of long and protracted litigation.”⁷²

⁷² Disclosure Statement at 30.

122. However, this cursory statement falls well short of satisfying the Debtors' burden. The 2023 Transaction was straightforward and permissible under the applicable credit documents at the time. The transaction was supported by 97% of the holders of Initial First Lien Term Loans and 100% of the holders of the Initial Second Lien Term Loans, *i.e.*, well above the requisite majorities required to amend the relevant covenants in the initial credit facilities and "layer" the non-participating lenders.

123. In particular, the exchanging holders of the Initial First Lien Term Loans, who represented 97% of the holders of the Initial First Lien Term Loans, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Moreover, the opportunity to exchange was offered to each lender, on a *pro rata* basis, on the same economic terms. Furthermore, according to the Debtors, the exchange was conducted as an open market purchase, which was expressly permitted pursuant to Section 2.21 of the initial first lien credit agreement.

124. Ultimately, the Debtors' suggestion that they have any credible litigation risk is belied by the fact that *the Third Lien Lenders have not initiated any legal proceedings to challenge the 2023 Transaction.* After having voluntarily declined to participate in the exchange, the Third Lien Lenders should be estopped from now belatedly challenging their treatment, as a general unsecured creditor (according to the Debtors), under the Plan.

125. For all these reasons, the purported “settlement” falls well beyond the range of reasonableness. The Debtors should not be permitted to use the phantom threat of litigation having little, if any, legal or factual basis in order to justify a proposed recovery to the unsecured Third Lien Lenders that is 30 times larger (on a percentage recovery basis) than the recovery for general unsecured creditors. Such treatment is blatantly discriminatory and should not be approved.

IV. The Plan Does Not Comply with Good Faith Requirements Under Section 1129(a)(3) of the Bankruptcy Code

126. The Committee submits that the Rebate Harvest Scheme precludes a finding that the Plan was “proposed in good faith and not by any means forbidden by law.” 11 U.S.C. § 1129(a)(3). The Fifth Circuit has held that the “good faith” prong of section 1129(a)(3) of the Bankruptcy Code is construed by considering the totality of the circumstances. *Matter of Jasik*, 727 F.2d 1379, 1383 (5th Cir. 1984) (citing *Public Finance Corp. v. Freeman*, 712 F.2d 219, 221 (5th Cir. 1983); *W. Real Estate Equities, L.L.C. v. Vill. at Camp Bowie I, L.P. (In re Vill. at Camp Bowie I, L.P.)*, 710 F.3d 239, 247 (5th Cir. 2013).

127. The term “good faith” is not defined in the Bankruptcy Code, but the “good faith” requirement has generally been interpreted as requiring “honesty and good intentions” in formulating and proposing a Chapter 11 plan. See *In re Trinity Fam. Prac. & Urgent Care PLLC*, 661 B.R. 793, 813 (Bankr. W.D. Tex. 2024). Critically, “[w]hether a Chapter 11 plan is proposed in good faith . . . speaks more to the process of plan development than to the content of plan.” *In re Northbelt, LLC*, 630 B.R. 228, 277 (Bankr. S.D. Tex. 2020); *In re Chemtura, Corp.*, 439 B.R. 561, 608 (Bankr. S.D.N.Y. 2010) (citations omitted). As with all confirmation requirements, “[t]he burden of proof is on Debtors to show by a preponderance of the evidence that the Plan was proposed in good faith.” *In re Dernick*, 624 B.R. 799, 811 (Bankr. S.D. Tex. 2020); *In re Bullough*, No. 05-31531-BJH-11, 2006 WL 6510983, at *1 (Bankr. N.D. Tex. Apr. 7, 2006) (“If good faith

is challenged, the Debtor bears the burden of proof on the issue by a preponderance of the evidence.”).

A. The Plan Is Not Proposed in Good Faith

128. The Debtors cannot meet their burden to show that the Plan is proposed in good faith: the Plan process has been heavily tainted by self-dealing, conflicts of interests, and overall unfairness. *See In re ACandS, Inc.*, 311 B.R. 36, 43 (Bankr. D. Del. 2004) (finding plan was not proposed in good faith “[g]iven the unbridled dominance of the committee in the debtor’s affairs and actions during the prepetition period, its continued influence flowing from its majority status on the postpetition creditors committee, and the obvious self-dealing that resulted from control of the debtor…”); *Matter of Fiesta Homes of Georgia, Inc.*, 125 B.R. 321, 325 (Bankr. S.D. Ga. 1990) (“The court found the plan was not confirmable where debtor’s management would have been obligated to pursue preference actions against several close members of the debtor’s officers’ family.”); *In re Malkus, Inc.*, No. 03-07711-GLP, 2004 WL 3202212, at *3–4 (Bankr. M.D. Fla. Nov. 15, 2004) (finding debtors plan failed to comply with section 1129(a)(3) where debtor and its principal engaged in actions which were tainted with unfairness, conflicts of interest, the appropriating of estate benefits for himself, and self-dealing); *In re Coram Healthcare Corp.*, 271 B.R. 228, 240 (Bankr. D. Del. 2001) (denying confirmation where CEO operated under conflict of interest given his separate employment contract with debtor’s largest creditor); *Phoenix Premier Props. LLC v. Fannie Mae*, No. CV-12-187-PHX-GMS, 2012 WL 2389955, *10 (D. Ariz. June 25, 2012) (affirming bankruptcy court’s decision to deny confirmation of a plan proposed in bad faith because, among other things, “[o]ne of the circumstances a court may consider in determining the good faith of the Plan is the debtor’s pre-petition conduct” and prepetition behavior of the debtor and its counsel evidenced “possible side-dealing.”).

129. As threshold matter, at all times during the development and execution of the Rebate Harvest Scheme, LifeScan lacked proper corporate governance. *All* of the Debtors' board members were, at all relevant times, employees of the Sponsor, and it is undisputed that the Sponsor was not represented by counsel separate from the Debtors during the course of the RSA negotiations. There were no independent board members appointed, nor were any special committees established to ensure fairness of the Plan process, and there is no evidence there was an independent evaluation of restructuring alternatives that may have provided less favorable treatment to insiders. That is to say, the Plan process was principally driven by insiders with no safeguards in place to ensure a fair process or a fair outcome.

130. [REDACTED]

[REDACTED]

[REDACTED] As discussed above, the Sponsor owed fiduciary duties to all of the Debtors' stakeholders, including its general unsecured creditors, and [REDACTED]. [REDACTED]. With this backdrop, it is clear that the Plan process was driven by the overriding interests of the prepetition lenders and the Sponsor, at the expense of all other stakeholders, with the First Lien Lenders to receive a full recovery, the Second Lien Lenders to receive 95% of the equity in the Reorganized Debtors (subject to dilution by the Equitization Election and the MIP), the Sponsor to retain a 5% equity interest in the Reorganized Debtors, and all Defendants to receive broad releases under the Plan, notwithstanding their wrongful conduct—all while general unsecured creditors would receive less than a 1% recovery.

131. Moreover, as detailed above, the Debtors pursued—at the behest of and with the support of the Sponsor and the Ad Hoc Group—a scheme to, among other things, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Those potential claims and causes of action are against the Debtor's insiders, . . . based on certain transfers. This failure directly bears on the Plan's good faith.”).

B. The Transactions Under the Plan, and the Plan Itself, Do Not Comply With Applicable Delaware Law

136. Section 1129(a)(3) also requires that a plan not be proposed “by any means forbidden by law.” That is a plan must comply with applicable nonbankruptcy law, including Delaware law as applicable here,⁷⁶ which subjects an insider transaction to heightened scrutiny. *See In re Zenith Elecs. Corp.*, 241 B.R. 92, 108 (Bankr. D. Del. 1999) (“We agree that section 1129(a)(3) does incorporate Delaware law (as well as any other applicable nonbankruptcy law.”); *In re Dernick*, 624 B.R. 799, 812-13 (Bankr. S.D. Tex. 2020) (looking at whether the debtor’s conduct, not the content of the plan, in proposing the plan was forbidden by law). As such, the Debtors’ decision to enter into the Plan and authorize the transactions contemplated by the Plan, including the releases, must comply with Delaware law.

137. Under Delaware law, entire fairness is comprised of two components. The first is fair dealing and “embraces questions of when the transaction was timed, how it was initiated, structured, negotiated, disclosed to the directors, and how the approvals of the directors and the stockholders were obtained.” *In re Tesla Motors, Inc. S’holder Litig.*, 298 A.3d 667, 700 (Del. 2023) (citation omitted). The second, fair price, “relates to the economic and financial considerations of the proposed [transaction], including all relevant factors: assets, market value, earnings, future prospects, and any other elements that affect the intrinsic or inherent value of [the company].” *Id.* Notably, “the entire fairness standard is ‘Delaware’s most onerous standard’”


⁷⁶ The relevant Debtor parents (including LifeScan Global Corporation) are Delaware corporations, and thus the entire fairness test under Delaware law is applicable to this Court’s review of the Plan and transactions contemplated therein. *See Dunn v. Chappelle (In re Alta Mesa Resources, Inc.)*, No. 19-35133, 2022 WL 7750353, at *5 (Bankr. S.D. Tex. Oct. 13, 2022) (for Delaware incorporated debtor, “matters of corporate governance, such as fiduciary duties, are governed by Delaware corporate law”).

LaMonica v. Tilton (In re Transcare Corp.), 81 F.4th 37, 49 (2d Cir. 2023) (quoting *Burtch v. Opus, LLC (In re Opus E., LLC)*, 528 B.R. 30, 66 (Bankr. D. Del. 2015). As the Delaware Supreme Court stated, “[t]he requirement of fairness is unflinching in its demand that where one stands on both sides of a transaction, he has the burden of establishing its entire fairness, sufficient to pass the test of careful scrutiny by the courts.” *Weinberger v. UOP, Inc.*, 457 A.2d 701, 710 (Del. 1983).

138. The entire fairness standard unquestionably applies here because the Plan provides releases to insiders, including the Sponsor and the Debtors’ directors and officers, and requires as a condition precedent that the Sponsor be given a distribution that is disguised as a payment for advisory services, but is in reality a distribution under the Plan as demonstrated above. For the reasons detailed above, the Debtors have not, and cannot, demonstrate that the releases are entirely fair given the potential claims and causes of action against the Sponsor and Debtors’ directors and officers and the lack of arm’s-length bargaining and consideration being given by the Sponsor in return for the releases.

139. Moreover, the entire fairness standard does not only apply to specific transactions with insiders under the Plan, but to the Plan as a whole. *See In re LATAM Airlines Grp. S.A.*, 620 B.R. at 771 (finding entire fairness standard applied to non-insider DIP facility because it was intertwined with insider DIP facility). The transactions contemplated by the Plan, namely the releases and equity distribution, are inextricably intertwined with the Plan as and the record shows, the releases and equity distribution to the Sponsor were essential in the Plan proposal. The entire Plan process was insider-driven, necessitating heightened scrutiny review.

140. Here, for the reasons described above, the Plan is not the result of a “fair process.”



██████, and the Plan was approved by a conflicted board, with no independent committee overseeing the Plan process. Further, the distributions made under the Plan to general unsecured creditors do not constitute a “fair price.” There is ample reason to believe the Debtors will not be able to prove entire fairness given the numerous conflicts, potential claims, insider transactions, and the Debtors’ failure to investigate claims.

141. Finally, the Committee is aware that Judge Lopez in the Southern District of Texas has taken the position that State corporate law is not considered in analyzing whether a plan is proposed “by any means forbidden by law.” *See* Hr’g Tr. at 10:11-19, 13:3-12, *In re Convergeone Holdings, Inc.*, No. 24-90194 (Bankr. S.D. Tex. May 23, 2024) (Lopez, J.). Nevertheless, he recognized the entire fairness analysis remains relevant in considering the totality of circumstances in the good faith analysis. *See id.* at 13:4-5 (“Totality of the circumstance certainly includes aspects of an entire fairness allowances.”). Accordingly, for the reasons set forth above, the Committee submits that, whether analyzed under the “good faith” prong or the “means forbidden by law” prong of section 1129(a)(3) of the Bankruptcy Code, the Plan does not pass muster under the entire fairness standard, based on the totality of the circumstances. For all these reasons, the Plan should not be confirmed.

RESERVATION OF RIGHTS

142. The Committee and its members reserve all of their respective rights, including, without limitation, the right to amend, modify, or supplement this Objection, to raise additional objections during the Confirmation Hearing, and to present testimony and cross-examine witnesses at the confirmation trial.

[Remainder of page intentionally left blank.]

CONCLUSION

WHEREFORE, based on the foregoing, the Committee respectfully requests that the Court deny confirmation of the Plan and grant the Committee such other and further relief as the Court deems just and proper.

With respect to the allegations pertaining to the Debtors, the Sponsor, and the Debtors' directors and officers:

Dated: October 9, 2025
Houston, Texas

Respectfully submitted

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*With respect to the allegations pertaining to
the First Lien Lenders and Second Lien Lenders:*

Dated: October 9, 2025
Houston, Texas

Respectfully submitted

/s/ Maxim B. Litvak

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Certificate of Service

I certify that on October 9, 2025, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Charles Persons

Charles Persons