

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

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In re: )  
MODIVCARE, INC, *et al.*<sup>1</sup> ) Chapter 11  
Debtors. ) Case No. 25-90309 (ARP)  
) (Jointly Administered)  
\_\_\_\_\_)

**OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
TO CONFIRMATION OF THE FIRST AMENDED JOINT CHAPTER 11 PLAN OF  
REORGANIZATION OF MODIVCARE INC. AND ITS DEBTOR AFFILIATES**

The Official Committee of Unsecured Creditors (the “**Committee**”) appointed in the cases of the above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**,” “**ModivCare**” or the “**Company**”) states as follows in support of this objection (the “**Objection**”) to confirmation of the *First Amended Joint Chapter 11 Plan of Reorganization of ModivCare Inc. and Its Debtor Affiliates* [Docket No. 465] (the “**Plan**”):<sup>2</sup>

**PRELIMINARY STATEMENT**

1. From the very first hours of these Chapter 11 Cases, the Debtors and their “Consenting Creditors” have fought to advance a narrative to convince this Court that the underlying business is so challenged that it will be lucky to make it to a confirmation hearing, much less reorganize under a plan that cancels more than a billion dollars in debt. That narrative

<sup>1</sup> A complete list of each of the Debtors in these chapter 11 cases (the “**Chapter 11 Cases**”) and the last four digits of each Debtor’s taxpayer identification number (if applicable) may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://www.veritaglobal.net/ModivCare>. Debtor ModivCare Inc.’s principal place of business and the Debtors’ service address in these Chapter 11 Cases is 6900 E. Layton Avenue, Suite 1100 & 1200, Denver, Colorado 80237.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.



has included such assertions as:

- If the Chapter 11 Cases last a day into 2026, the Company is at substantial risk of liquidation;
- If the Debtors did not use every penny of their \$181 million of prepetition trade claims (including invoices as small as \$2.00), their regulators will shut them down;
- Every single contract they have, and have had for years, is subject to cancellation at will and, if terminated, will never come back;
- Even if the Debtors delever by more than a billion dollars, they will be in such financial distress at exit that they must use more than \$100 million in liquidity to cash collateralize letters of credit, on a dollar-for-dollar basis; and
- Their business is so fundamentally challenged that it will be a stretch for them to add any incremental EBITDA per year beyond their conservative projections post-emergence, while delivering de minimis revenue growth relative to the standard rate of inflation, even as they spend \$41 million to \$48 million per year in CapEx.

2. The Court can expect the Debtors to carry on with those protests at trial, having their witnesses continue to denigrate the business and the over 23,000 employees who have built it, all in an attempt to justify a distribution scheme premised on the notion that their enterprise value is a third of what it was just a year ago. But, in the end, that is a narrative ungrounded in facts.

3. The Court will hear at the confirmation hearing from AlixPartners and those pro-business officers and directors (who the Debtors are unsurprisingly choosing not to bring to Court) that ModivCare is a fundamentally great business. ModivCare provides niche services as one of the largest providers of supportive care solutions in the United States. It serves millions of members in a growing nationwide market. And the Company's employees and business line leaders are doing an exemplary job of running the day-to-day operations and growing the business. The nature of the Company's business is that it loses and gains contracts all the time. And ModivCare's prospects are generally far, far brighter than the Company's business plan indicates.

4. The Debtors' pessimistic projections and constant denigrating of their business are driven entirely by management and advisors that are recklessly driving these bankruptcy cases to an exit that solely benefits the Consenting Creditors. The business has not collapsed during these Chapter 11 Cases and has consistently beaten projections. In fact, the only thing that has gone negative to plan are the professional fees in these Chapter 11 Cases, largely because the Debtors' assumption that an official committee could prosecute a contested confirmation hearing in a billion dollar case for \$2.8 million was naïve, especially in light of the Consenting Creditors' refusal to even consider the possibility of a higher valuation.

5. This is not to say that the Company is without challenges. But the Company's real problem has been that its management has not run the business appropriately on a capital structure that was outsized and has engaged in financial manipulation that has only added fuel to the fire. That can all be fixed and should have been done in an organized restructuring process utilizing the benefits of chapter 11 for all creditors, rather than as a sword swung on behalf of certain creditors. In the end, the valuation of the Debtors' business will come down to a battle of the experts. The Committee's experts are Greg Magrisi, who leads AlixPartner's healthcare practice, and Marc Brown, a life-long valuation expert with top-of-the-line healthcare expertise. They will demonstrate that with necessary corrective adjustments to the business plan and taking appropriate valuation methodologies into account, the Company has more than enough value to satisfy claims of the First Lien Lenders and the Second Lien Noteholders, with residual value flowing to unsecured creditors.

6. Even using the Debtors' demonstrably flawed business plan (with some minor adjustments or rightfully ignoring the DIP backstop fee, which is only payable under this Plan if confirmed), there is sufficient value to satisfy the claims of the First Lien Lenders and leave

residual value on account of the Second Lien Claims. This residual value would require a distribution under the Plan to Second Lien Noteholders that would be greater than the pro rata share of 2% of reorganized equity being offered, and the First Lien Lenders' equity share would have to be reduced accordingly. In that case, distributions to the Second Lien Noteholders would need to be escrowed pending resolution of the Committee's challenge to the Company's prepetition Uptier Transaction. If that challenge is successful, the reallocation of equity shares would benefit unsecured creditors.

7. In short, the Committee's experts are going to show that, using reasonable valuation assumptions, this Plan fails.<sup>3</sup>

8. But, even if the Court were to accept the testimony of the Debtors' tainted valuation expert,<sup>4</sup> the Plan is incorrectly premised on the First Lien Lenders' secured claim being \$881 million. As demonstrated in the Committee's standing motion seeking to challenge those liens (and those of the Second Lien Noteholders), it is the First Lien Lenders' burden to establish that their liens extend to all of the Debtors' assets. Section 552 of the Bankruptcy Code provides that they do not. The distribution of value must be reevaluated in light of the First Lien Lenders' significantly reduced secured claim and the existence of valuable unencumbered assets, further demonstrating that the Plan is unconfirmable.

9. In addition, if the Committee's challenge to the Uptier Transaction is successful, the Plan fails as described above and all releases in the Plan related to it have to fall away. That problem is not fixed by the Company's special committee of one—Daniel Silvers—who has ties

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<sup>3</sup> The secured lender group, on the other hand, will offer zero valuation evidence to support their consistent refrain of being "obviously" underwater.

<sup>4</sup> Moelis would receive a release under the Plan, which would include the \$4.3 million in fees that it received in connection with the Uptier Transaction.

to the secured lenders and refuses to disclose the legal analysis that he relied on. Further, in contrast to the broad releases of insiders, the Plan seeks to transfer all of the Debtors' other estate claims and causes of action to the reorganized Company, even though the Consenting Creditors have no liens on any of them.

10. All of this points to the fact that there needs to be a significant revision to the equity splits and paring back of the Debtors' releases. But the secured parties have dug in. So, it is now up to the Court to determine three things: (1) the secured amount of the First Lien Lenders' and the Second Lien Noteholders' claims; (2) the appropriate equity splits and allocation of litigation trust interests; and (3) whether the Debtors are justified in giving away free releases to all of their insiders and supporting creditors. If the secured creditors do not want to abide by the Court's ruling as to the extent of their claims (for which they bear the burden of proof) or do not like the appropriate equity splits, it will be their decision how to proceed. If they agree, then none of this will require a resolicitation of unsecured creditors. The Consenting Creditors have the keys for the Debtors to exit bankruptcy by year end if they choose to use them. As such, the Court should have no qualms about denying confirmation and requiring that the Plan be modified to provide a fair allocation of distributable value.

### **BACKGROUND**

11. **The Company.** ModivCare is "one of the nation's largest providers of supportive care solutions, serving millions of members annually . . . through a workforce of approximately 23,675 employees and thousands of contracted third-party transportation providers and their respective drivers who are employed by the Debtors and their non-Debtor affiliates."<sup>5</sup> ModivCare operates four business segments: (i) non-emergency medical transportation (NEMT) services;

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<sup>5</sup> First Day Decl. ¶ 7.

(ii) personal care services (PCS); (iii) remote patient monitoring (RPM); and (iv) its corporate segment.<sup>6</sup> The corporate segment includes ModivCare’s 43.6% minority interest in CCHN Group Holdings, Inc., which (together with its subsidiaries) operates under the Matrix Medical Network brand (“**Matrix**”), which is a national provider network of community-based clinicians delivering in-home and on-site services.<sup>7</sup> The Debtors’ revenue is primarily derived from the services rendered by the Debtors’ thousands of employees including, for example, routing patients to drivers (NEMT), providing care in patients’ homes (PCS), monitoring patients (RPM), and monitoring Higi systems (Corporate).<sup>8</sup>

12. ModivCare’s outstanding debt includes (i) a \$100 million DIP facility (described below), (ii) a purported \$881 million of prepetition first lien secured debt (the holders of which, the “**First Lien Lenders**” and the related claims, the “**First Lien Claims**”), inclusive of outstanding interest, (iii) a purported \$328.4 million of prepetition second lien secured notes (the holders of which, the “**Second Lien Noteholders**” and the related claims, the “**Second Lien Claims**”), inclusive of outstanding interests, (iv) \$228.8 million of principal amount of prepetition unsecured notes (the “**Unsecured Notes**” and the related claims, the “**Unsecured Notes Claims**”), and (v) other prepetition unsecured claims (the “**General Unsecured Claims**”).<sup>9</sup> The Debtors

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*; ModivCare Inc. Annual Report (Form 10-k) (Dec. 31, 2024) <https://www.sec.gov/ix?doc=/Archives/edgar/data/0001220754/000122075425000008/modv-20241231.htm>, at 7.

<sup>8</sup> *See Omnibus Motion of the Official Committee of Unsecured Creditors (I) Objecting to Claims and (II) For (A) Leave, Derivative Standing, and Authority to Commence and Prosecute Certain Lien Challenge Claims Causes of Action on Behalf of the Debtors’ Estates and (B) Exclusive Settlement Authority* (the “**Lien Challenge Standing Motion**”) [Docket No. 729 (sealed), 733 (redacted)] ¶ 44; Sampson Dep. Tr. at 30:17-20. (“Q: Would you agree with me that ModivCare’s most valuable asset is its people? A. I would.”), attached as **Exhibit C** to the *Declaration of Erin M. Smith in Support of the Objection of the Official Committee of Unsecured Creditors to Confirmation of the First Amended Joint Chapter 11 Plan of Reorganization of ModivCare Inc. and Its Debtor Affiliates* (the “**Smith Declaration**”), filed concurrently herewith.

<sup>9</sup> First Day Decl. ¶ 33.

estimate of the pool of General Unsecured Claims is approximately \$258 million.<sup>10</sup>

13. The General Unsecured Claims pool has yet to be reconciled. Based on the Committee’s review of the unsecured claims filed on the Debtors’ claims register, the aggregate amount of General Unsecured Claims could exceed \$1 billion.<sup>11</sup> Many of these claims, which have yet to be objected to, have been filed against Debtors other than ModivCare Inc.

14. **The Uptier Transaction.** In January 2025, ModivCare announced a “liability management” transaction (the “**Uptier Transaction**”) that would result in the incurrence of an additional \$75 million of first lien secured debt, \$30 million of second lien secured debt and the exchange of approximately \$271 million of Unsecured Notes into newly-issued second lien secured notes.<sup>12</sup>

15. In March 2025, ModivCare consummated the Uptier Transaction at a time when the Company knew that ModivCare was insolvent (both before and after the transaction) and that the Uptier Transaction would not put the Company in a position to avoid a near-term bankruptcy filing.<sup>13</sup>

16. Simultaneously with improperly exchanging \$271 million of Unsecured Notes

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<sup>10</sup> Under the Plan, the Debtors provide that General Unsecured Claims will receive their share of approximately 1.5% of the Debtors’ equity after dilution by the Backstop Fee and the Management Incentive Plan. Plan, Art. 4.4. At the low end of the Debtors’ valuation, the value of that equity is approximately \$5.88 million. The Disclosure Statement provides that this equals a 1.0% recovery for creditors in Class 4 at the low end of the Debtors’ valuation. [Docket No. 550], Art. I.B. As such, the Debtors’ estimate that the total amount of claims in Class 4 is approximately \$585.9 million. Of that amount, the Debtors stipulate that \$328.4 million are Second Lien Claims. *Id.* at Art. III.B.iii.C. Therefore, the remaining \$258 million of claims are General Unsecured Claims.

<sup>11</sup> The complete claims register is maintained by the Debtors’ claims agent (Verita Global) and is accessible at: <https://www.veritaglobal.net/modivcare/info/14540>.

<sup>12</sup> First Day Decl. ¶ 48.

<sup>13</sup> *See generally Motion of the Official Committee of Unsecured Creditors for (I) Leave, Derivative Standing, and Authority to Commence and Prosecute Certain Uptier Transaction Claims and Causes of Action on Behalf of the Debtors’ Estates and (II) Exclusive Settlement Authority* [Docket No. 728 (sealed), 732 (redacted)] (the “**Uptier Challenge Standing Motion**”).

dollar for dollar into second lien secured notes, the Consenting Creditors stripped the Unsecured Notes of numerous rights and subsidiary guarantees and directed the trustee for the Unsecured Notes to enter into an agreement providing for payment subordination of the Unsecured Notes to the First Lien Claims and the Second Lien Claims (the “**Subordination Agreement**”).

17. **The Chapter 11 Cases.** Five months later, on August 20, 2025 (the “**Petition Date**”), the Debtors filed these Chapter 11 Cases.<sup>14</sup> They did so having signed earlier that day a Restructuring Support Agreement (the “**RSA**”) with an ad hoc group consisting of holders of approximately 90% of First Lien Claims and 70% of Second Lien Claims (the “**Consenting Creditors**”). The RSA requires the Debtors to (among other things) pursue confirmation of a plan of reorganization that would deliver 98% of the reorganized equity of the Company (subject to dilution) to the First Lien Lenders according to milestones that would require confirmation of such plan within 90 days and consummation within 110 days.<sup>15</sup> In response to concerns raised by the Committee on the proposed timetable, the Court set the proposed confirmation hearing three weeks later than requested (starting December 8) and the Debtors, the Consenting Creditors and the Committee agreed to a scheduling order setting various deadlines in connection with confirmation (the “**Scheduling Order**”).<sup>16</sup>

18. **The DIP Facility.** Immediately upon filing these Chapter 11 Cases, the Debtors filed a motion seeking approval of a \$100 million DIP facility.<sup>17</sup> The motion was approved on an interim basis at uncontested “first day” hearing before the Committee was appointed.<sup>18</sup> On

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<sup>14</sup> First Day Decl. ¶ 16.

<sup>15</sup> *Id.* ¶¶ 14; 57.

<sup>16</sup> [Docket No. 548]

<sup>17</sup> [Docket No. 4]

<sup>18</sup> [Docket No. 106]

September 23, the Committee objected to final approval of the DIP facility, arguing (among other things) that (i) a backstop fee of 20% of reorganized equity (the “**Backstop Fee**”), which is only payable in the event the plan described in the RSA is confirmed,<sup>19</sup> should not be approved, (ii) DIP and adequate protection liens should not be granted on unencumbered assets, and (iii) the DIP order should not act as a cap on the Committee’s professional fees.<sup>20</sup> At a hearing on the DIP motion, the Court indicated that it would enter the final order (the “**Final DIP Order**”) subject to certain modifications. Among those modifications is the requirement that the DIP lenders and the prepetition first lien secured lenders use commercially reasonable efforts to recover first (*i.e.*, marshal) from prepetition collateral before previously unencumbered assets.<sup>21</sup> In the Final DIP Order, the Debtors stipulate that they believe the First Lien Claims, the Second Lien Claims and the liens securing each to be valid, enforceable and non-avoidable.<sup>22</sup> If the Debtors were to challenge this assumption, it would be a violation of the RSA.<sup>23</sup>

19. **The Plan.** On September 4, the Debtors filed the original version of their proposed plan (the “**Original Plan**”).<sup>24</sup> They filed an amended version on October 4. One significant change in the Plan (compared to the Original Plan) is that the Second Lien Claims and General Unsecured Claims, originally in separate classes and receiving different treatment, are now classified together and offered the same distribution to share pro rata. The Debtors have made no

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<sup>19</sup> *Id.*, Ex. B ¶ 2 (stating that the Backstop Fee is “payable on the Effective Date of the Plan contemplated under the Restructuring Support Agreement”).

<sup>20</sup> [Docket No. 346]

<sup>21</sup> [Docket No. 463] ¶ 20(f).

<sup>22</sup> Final DIP Order ¶¶ D, E.

<sup>23</sup> First Day Decl., Ex. A. §§ 7.02(i)(x), 7.03(d)(x) (the filing of “any motion seeking to avoid, disallow, subordinate, invalidate, limit or recharacterize, in any respect,” any First Lien Claim or related interest or Second Lien Claim or related interest shall be a termination event under the RSA).

<sup>24</sup> [Docket No. 119]

attempt to identify which General Unsecured Claims sit at each of the Debtor entities. Instead, the Plan provides for the substantive consolidation of the Debtors for purposes of voting, determining acceptance by classes of claims, confirmation, the treatment of claims, and distributions.<sup>25</sup>

20. On October 6, the Court approved the Debtors' disclosure statement and authorized the solicitation of the Plan.<sup>26</sup> A summary of the Plan's treatment of claims is as follows:

<u>Claim</u>	<u>Amount Allowed</u>	<u>Treatment</u>
DIP Claims	\$100,000,000	Conversion to a portion of an exit facility, except for the Backstop Fee, which is payable in 20% of reorganized equity <sup>27</sup>
First Lien Claims (Class 3)	\$880,960,834	Conversion to a portion of an exit facility 98% of the reorganized equity (subject to dilution by the Backstop Fee, the Equity Rights Offering (as defined below), the New Warrants (as defined below) and an 8.0% management incentive plan (the "MIP")) Cash proceeds of the Equity Rights Offering, if applicable <sup>28</sup>
Second Lien Claims (Class 4)	\$328,432,981	Pro rata share of the general unsecured creditor distribution <sup>29</sup>
General Unsecured Claims (Class 4)	Debtors estimate at \$285 million but do not deem any General Unsecured Claims to be Allowed	2% of the reorganized equity (subject to dilution by the Backstop Fee, the Equity Rights Offering, the New Warrants and the MIP) Three series of warrants exercisable at different strike prices (all above the high end of the Debtors' valuation) (the "New Warrants") If the creditor is an "Eligible Holder," a pro rata opportunity to participate in the Equity Rights

<sup>25</sup> Plan §§ 3.1, 5.3.

<sup>26</sup> [Docket No. 457]

<sup>27</sup> Plan §§ 2.7-2.8.

<sup>28</sup> *Id.* § 4.3.

<sup>29</sup> *Id.* § 4.4

<u>Claim</u>	<u>Amount Allowed</u>	<u>Treatment</u>
		Offering with the Unsecured Noteholders <u>Provided</u> that, in lieu of the foregoing, any general unsecured creditor with a claim of less than \$1 million can elect to receive its pro rata share of the “GUC Cashout Value” <sup>30</sup> (calculated as though all Second Lien Claims and General Unsecured Claims elect to receive cash, regardless of their size and whether or not they make the election) <sup>31</sup>
Unsecured Notes Claims (Class 5)	\$ 228,835,000	The right to purchase up to \$200 million of reorganized equity through a rights offering at a valuation premised on the First Lien Lenders being paid in full (the “ <b>Equity Rights Offering</b> ”) <sup>32</sup>

21. The Plan states that “[n]otwithstanding anything in this Plan to the contrary, no Holder of an Allowed Claim shall receive, on account of such Allowed Claim, distributions in excess of the Allowed amount of such Claim.”<sup>33</sup> The Plan also includes broad releases by the Debtors (the “**Debtor Releases**”) in favor of numerous parties, including the secured creditors and all current and former directors, managers, officers, equity holders and other insiders of the Debtors (collectively, the “**Released Parties**”), for all matters related to the Company prior to the Petition Date.<sup>34</sup> The Released Parties do not receive the Debtor Releases if they opt out of granting releases to the Debtors and the other Released Parties.<sup>35</sup>

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<sup>30</sup> *Id.*

<sup>31</sup> The Committee currently estimates that the amount of cash distributed to Class 4 creditors through the GUC Cashout Value will be approximately \$3 million, assuming (i) that the aggregate amount of claims which individually are less than one million dollars is approximately \$55 million and (ii) that the total pool of claims in Class 4 will be approximately \$586 million. If the Debtors’ estimate of General Unsecured Claims of \$258 million is correct, that would represent an approximately 5.5% recovery.

<sup>32</sup> Plan § 4.5.

<sup>33</sup> *Id.* § 6.21.

<sup>34</sup> *Id.* § 10.6(a).

<sup>35</sup> *Id.*

22. On November 14, the Debtors filed a plan supplement for their Plan (the “**Plan Supplement**”).<sup>36</sup> The Plan Supplement provided, among other things, that the Debtors intend to retain certain claims and causes of action, including certain commercial tort claims against shareholders Coliseum and AI Catalyst and that those claims will be held for the benefit of the Company’s new stakeholders.<sup>37</sup> On November 24, 2025, the Debtors filed a second plan supplement, dropping claims against Coliseum from the schedule of retained claims and causes of action with no explanation.<sup>38</sup>

23. **Debtors’ Valuation and Liquidation Analysis.** On September 23, the Debtors filed their liquidation analysis, financial projections, and valuation summary.<sup>39</sup> In the valuation summary, the Debtors estimate a range of the Company’s total enterprise value as \$750 million and \$925 million.<sup>40</sup>

24. Subsequently, the Debtors exchanged the Expert Report of Zul Jamal (the “**Jamal Report**”), which illustrated that Mr. Jamal arrived at this valuation by preparing a consolidated income approach (specifically the discounted cash flow (DCF) method) and a sum-of-the-parts for the market approach (specifically the guideline company and transaction methods).

25. The Debtors’ Liquidation Analysis “represents an estimate of cash distributions and recovery percentages based on a hypothetical chapter 7 liquidation of the Debtors’ assets.”<sup>41</sup> The Debtors’ Liquidation Analysis assumes a chapter 7 trustee-run liquidation sale of each of the

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<sup>36</sup> [Docket No. 725]

<sup>37</sup> Plan Supplement, Ex. A.

<sup>38</sup> [Docket No. 802]

<sup>39</sup> [Docket Nos. 350, 452]

<sup>40</sup> *Id.*, Ex. E.

<sup>41</sup> [Docket No. 452], Ex. A (the “**Liquidation Analysis**”).

Debtors' business segments that goes from September 30, 2025 to March 31, 2026. It concludes that, in this hypothetical process, DIP claims would be paid in full, the First Lien Claims would receive a 28–42% recovery and there would be no assets remaining to satisfy any junior claims. The midpoint of the Debtors' estimate of "Realizable Value" of the Debtors' business in their liquidation analysis is \$299 million.

26. **Committee's Valuation.** On November 10, 2025, the Committee sent the Debtors and the Consenting Creditors two rebuttal reports from AxiPartners: one authored by Greg Magrisi (the "**Magrisi Report**"), attached to the Smith Declaration as Exhibit A, and the other by Marc J. Brown (the "**Brown Report**"), attached to the Smith Declaration as Exhibit B. The Magrisi Report and Brown Report demonstrate that, with appropriate valuation adjustments, the value of the Company is enough to pay all First Lien Claims—and likely all Second Lien Claims—in full.

27. **Debtors' Independent Investigation.** On August 14, 2025, the Debtors' board of directors (the "**Board**") appointed Daniel Silvers, an "independent" director nominated by the Consenting Creditors, to investigate potential claims and causes of action and make recommendations to the Board regarding whether to pursue those claims and causes of action.<sup>42</sup> Mr. Silvers hired Quinn Emanuel Urquhart & Sullivan ("**Quinn Emanuel**") to conduct the investigation.<sup>43</sup> Mr. Silvers has investigated the Uptier Transaction, prepetition intercompany transfers and prepetition payments made to insiders—he did not investigate the First Lien Lenders and Second Lien Noteholders' purported liens or any of the Company's other prepetition

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<sup>42</sup> *Declaration of Daniel B. Silvers, Investigating Director of ModivCare Inc., In Support of Joint Chapter 11 Plan of Reorganization of ModivCare Inc. and its Debtor Affiliates* [Docket No. 687] (the "**Silvers Declaration**") ¶ 8.

<sup>43</sup> Disclosure Statement § VI.E.

activities.<sup>44</sup>

28. The Scheduling Order set November 10, 2025 as the deadline for Mr. Silvers to submit an investigation report, findings or declaration. On that date, the Debtors filed the Silvers Declaration, stating that, having reviewed an undisclosed report exceeding 85 pages authored by Quinn Emanuel, Mr. Silvers' ongoing investigation has not yet identified any claims that, in his view, put the Plan's free releases into dispute.<sup>45</sup> Three days later, during his deposition, Mr. Silvers clarified that, in fact, *none* of the statements in the Silvers Declaration were final.<sup>46</sup> On November 24, 2025, Mr. Silvers filed a supplemental declaration, identifying additional calls and videoconferences with Quinn Emanuel, the substance of which remains undisclosed, stating that—having reviewed additional facts—he had not identified any claims or causes of action that change his view that the Debtor Releases are appropriate.<sup>47</sup>

29. **Committee's Standing Motions.** On November 14, 2025, the Committee filed two motions (the "**Standing Motions**") seeking derivative standing to pursue estate causes of action: the Lien Challenge Standing Motion, objecting to the First Lien Lenders' and Second Lien Noteholders' claims and seeking standing to pursue certain challenges to the purported liens of the First Lien Lenders and the Second Lien Noteholders (the "**Lien Challenge**") and the Uptier Challenge Standing Motion to bring fraudulent transfer and other claims in connection with the Uptier Transaction (the "**Uptier Challenge**"). In each of the Standing Motions, the Committee argues that it should be granted standing (to the extent necessary) because the Debtors refuse to

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<sup>44</sup> Silvers Dep. Tr. 169:10-23, 253:10-254:14, attached as Exhibit D to the Smith Declaration.

<sup>45</sup> Silvers Decl. ¶¶ 35-38.

<sup>46</sup> Mr. Silvers caveated his testimony over twenty times by making clear that the investigation remains "open" and "ongoing" and that his views are "preliminary" and not "final." *See, e.g.*, Silvers Dep. Tr. at 91:20-92:6, 98:23-99:10, 154:18-155:13, 157:9-22, 208:3-7, 277:8-25, 351:5-7.

<sup>47</sup> [Docket No. 803]

bring the claims the Committee has identified in light of (i) the stipulations in the Final DIP Order, (ii) the Debtors' prohibition on bringing such claims under the RSA, (iii) the Debtor Releases that would extinguish such claims for no consideration, and (iv) Mr. Silvers' failure to identify any valuable claims.

30. At trial, the Committee will demonstrate that the First Lien Lenders cannot meet their burden to establish that they have prepetition liens on all assets because (i) section 552(a) of the Bankruptcy Code cuts off the prepetition liens of the First Lien Lenders and Second Lien Noteholders on all of the Debtors' property generated postpetition due to postpetition services delivered through the labor of the Company's employees and the exceptions in section 552(b) do not apply, (ii) the proceeds of the Debtors' settlement with UnitedHealthcare (the "**UHC Settlement**") are similarly unencumbered under section 552 of the Bankruptcy Code due to the estate resources used to create those proceeds, (iii) prepetition liens on vehicles are unperfected and should be avoided, and (iv) prepetition liens on bank accounts not subject to control agreements should be avoided. On November 24, 2025, the Committee filed a supplement to the Lien Challenge Standing Motion seeking standing to avoid purported liens on commercial tort claims.<sup>48</sup>

31. Additionally, the Committee intends to prove at trial that there are colorable claims, including that (i) the Uptier Transaction was an actual fraudulent transfer because the Debtors entered into the transaction with actual intent to hinder and delay unsecured creditors, (ii) the Uptier Transaction was a constructive fraudulent transfer because the Debtors did not receive reasonably equivalent value in the transaction at a time when they were insolvent, and (iii) in the alternative, the uptiering of \$20 million of Unsecured Notes by Coliseum was an avoidable

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<sup>48</sup> [Docket No. 806]

preference.<sup>49</sup>

### OBJECTION

32. To confirm a plan, a plan proponent must prove by a preponderance of the evidence that it has satisfied all of the requirements set forth in section 1129(a) of the Bankruptcy Code. *Heartland Fed. Sav. & Loan Ass'n v. Briscoe Enters. (In re Briscoe Enters.)*, 994 F.2d 1160, 1165 (5th Cir. 1993) (“[P]reponderance of the evidence is the debtor’s appropriate standard of proof both under [section] 1129(a) and in a cramdown.”); *In re Premiere Network Servs.*, No. 04-33402-HDH-11, 2005 Bankr. LEXIS 2298, at \*4 (Bankr. N.D. Tex. July 1, 2005) (“The proponent of a plan of reorganization must show by a preponderance of evidence that the requirements of subsection 1129(a) are met.”).

33. Further, this Court “has a mandatory independent duty to determine whether the plan has met all of the requirements necessary for confirmation.” *In re Digerati Techs., Inc.*, No. 13-33264, 2014 Bankr. LEXIS 2352, at \*24 (Bankr. S.D. Tex. May 27, 2014) (quoting *Williams v. Hibernia Nat’l Bank (In re Williams)*, 850 F.2d 250, 253 (5th Cir. 1988)); *see also In re Cypresswood Land Partners, I*, 409 B.R. 396, 421 (Bankr. S.D. Tex. 2009) (noting that “this duty extends not only to the requirements of § 1129(a), but also to the elements of § 1129(b)”).

34. Here, the Debtors cannot carry their evidentiary burden of demonstrating that the Plan satisfies all of the confirmation requirements because the Plan (i) is premised on an unsupported view that the First Lien Claims are secured by all of the Debtors’ assets, (ii) violates the “corollary to the absolute priority rule” in section 1129(b) of the Bankruptcy Code, (iii) unfairly discriminates under section 1129(b), (iv) fails the best interests of creditors test under section 1129(a)(7), (v) improperly classifies claims in violation of section 1122, and (vi) includes

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<sup>49</sup> Uptier Challenge Standing Motion ¶¶ 58-90.

improper Debtor releases.

**I. The Plan is Premised on an Unsupported View that the First Lien Claims Are Secured By All of the Debtors' Assets**

35. The Plan is premised on (i) the First Lien Claims being Allowed at \$881 million and (ii) the First Lien Claims being secured by liens on all of the Debtors' prepetition and postpetition assets. These assumptions lead to a distribution scheme under the Plan where (based on the Debtors' understated valuation) the First Lien Lenders receive all distributable value other than what they choose to gift away to junior classes. At the confirmation hearing, the Committee will demonstrate that the value of the Company is sufficient to pay the First Lien Claims in full. In any event, the Debtors' assumptions disregard the fact that the Debtors have numerous unencumbered assets that are not subject to prepetition liens for which unsecured creditors are receiving no credit and instead would remain with the reorganized Company or be released under the Plan. As set forth in detail in Section II below, these unencumbered assets include the following:

- The difference between the going concern value of the Company's business and its liquidation value in light of section 552 of the Bankruptcy Code (between \$501.4 million and \$576.2 million of value, using the Debtors' own understated valuation and liquidation analysis) or, at a minimum, the Debtors' projected cash on hand at emergence (estimated at \$136 million);
- The UHC Settlement proceeds (\$25 million);
- The Debtors' 43.6% ownership stake of Matrix (worth \$56 million);
- Avoidance Actions;
- The Debtors' vehicles;
- The Debtors' bank accounts not subject to control agreements or requisite control (holding approximately \$402,297 of cash as of the Petition Date); and

- Commercial tort claims (worth at least \$11.2 million according to the Debtors' schedules, if such scheduled causes of action are found to be commercial tort claims).

36. Through the Lien Challenge Standing Motion, the Committee has objected to the secured claim of the First Lien Lenders. Until that motion and related claims are resolved, the First Lien Claims cannot be deemed to be Allowed. As such, the Plan distribution scheme cannot be considered, let alone be deemed credible, until such time as the Lien Challenge dispute is adjudicated.

## **II. The Plan Violates Section 1129(b) Because the First Lien Lenders Would Receive More Than the Value of Their Allowed Claims**

37. The voting results with respect to the Plan are not yet known but, given the paltry recovery offered to General Unsecured Creditors, the Committee assumes that Classes 4 and 5 will vote to reject the Plan. If Class 4 or Class 5 (or both) votes to reject the Plan, the Debtors must make the necessary showing to cram the claims in that class down, which requires that the Plan be "fair and equitable" under section 1129(b)(1) of the Bankruptcy Code.

38. To be fair and equitable, the Plan must comply with the "corollary of the absolute priority rule" that a senior class of creditors cannot receive property in excess of their claims. *Ahuja v. LightSquared, Inc. (In re LightSquared, Inc.)*, 534 B.R. 522, 533 (S.D.N.Y. 2015), *aff'd*, 644 Fed. App'x. 24 (2d Cir. 2016); *In re Idearc, Inc.*, 423 B.R. 138, 169-170 (Bankr. N.D. Tex. Dec. 22, 2009) (noting that the absolute priority rule is a "central tenet" of bankruptcy law which is required for satisfaction of section 1129 and describing the principle that senior classes thus cannot receive a recovery greater than 100 percent of the allowed amount of their claim).

39. "The safeguard[] that no claim or interest receive more than 100 percent of the allowed amount of such claim or interest . . . insure[s] that the plan is fair and equitable with respect to the dissenting class of interests." *In re MCorp Fin., Inc.*, 137 B.R. 219, 235 (Bankr. S.D. Tex.

1992) (denying confirmation of a plan that violated the fair and equitable test because “the Junior Creditors may receive distributions of more than 100 percent of the allowed amount of their claim”); *see also In re Granite Broad. Corp.*, 369 B.R. 120, 140 (Bankr. S.D.N.Y. 2007) (“There is no dispute that a class of creditors cannot receive more than full consideration for its claim, and that excess value must be allocated to junior classes of debt or equity, as the case may be.”); *In re Trans Max Techs., Inc.*, 349 B.R. 80, 89 (Bankr. D. Nev. 2006) (“One component of fair and equitable treatment is that a plan may not pay a premium to a senior class.”); *In re Genesis Health Ventures, Inc.*, 266 B.R. 591, 612 (Bankr. D. Del. 2001) (“A corollary of the absolute priority rule is that a senior class cannot receive more than full compensation for its claims”).

40. The burden of proof to establish the extent of a secured claim rests with the creditor asserting a secured interest. *See* 11 U.S.C. § 363(p) (“In any hearing under this section . . . the entity asserting an interest in property has the burden of proof on the issue of the validity, priority, or extent of such interest.”); *In re Titan Indus., Inc.*, 2001 WL 36381910, at \*4 (B.A.P. 1st Cir. June 29, 2001) (“The burden to establish that the exception provided by § 552(b) applies rests with the creditor asserting a lien on postpetition proceeds, profits, products or offspring.”).

41. The Bankruptcy Code expressly requires bifurcation of an undersecured claim into secured and unsecured components. *See* 11 U.S.C. § 506(a)(1) (“An allowed claim of a creditor secured by a lien on property . . . is a secured claim to the extent of the value of such creditor’s interest” in the collateral, and “an unsecured claim to the extent that the value of such creditor’s interest . . . is less than the amount of such allowed claim”); *United Sav. Ass’n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 372 (1988) (discussing the bifurcating effects of § 506(a)(1) and holding that postpetition interest should not accrue to the benefit of undersecured creditors at the expense of unsecured creditors); *Assocs. Commer. Corp. v. Rash*, 520 U.S. 953,

961 (1997) (“a secured creditor's claim is to be divided into secured and unsecured portions, with the secured portion of the claim limited to the value of the collateral.”).

42. Therefore, if the assets over which the First Lien Lenders are able to prove they have liens on are worth less than the entire First Lien Claims, the First Lien Lenders’ claims must be bifurcated between their secured claim and their deficiency claim.

43. If Class 4 votes to accept the Plan, the votes in that class need to be retabulated assuming that the Second Lien Claims are separately classified for the reasons stated in Section V below. But even in the unlikely event that both Class 4 and Class 5 are determined to accept the Plan, the Committee has an independent statutory right to object to the Plan for having violated the corollary to the absolute priority rule as a “party in interest.” *See* 11 U.S.C. §§ 1109(b), 1128(b); *Truck Ins. Exch. v. Kaiser Gypsum Co.*, 602 U.S. 268, 285 (2024) (noting that § 1109(b) “provides parties in interest a voice in bankruptcy proceedings,” permitting them to “object to a Chapter 11 plan of reorganization”); *see also In re Adelpia Commc'ns Corp.*, 285 B.R. 848, 855 (Bankr. S.D.N.Y. 2002) (“The right to ‘raise, appear and be heard’ there gives the parties, who typically have an interest in the maximization of the size of the res, and/or in getting their lawful share or piece of it, the ability to raise, appear and be heard on issues that affect their interests in that regard, without first requiring them to establish their pecuniary interest in the matter at the bankruptcy court level.”); *In re EBP, Inc.*, 171 B.R. 601, 602 (Bankr. N.D. Ohio 1994) (holding that a Committee objection to confirmation would not be “necessarily incongruous” with the class of unsecured creditors voting to approve the plan).

44. In that event, notwithstanding Class 4 and Class 5 accepting, the Plan would still violate the fundamental principle that creditors cannot recover more than the full amount of their claims. *See Ivanhoe Bldg. & Loan Ass’n of Newark, N.J. v. Orr*, 295 U.S. 243, 245-46 (1935) (in

articulating the “single satisfaction rule,” holding that a creditor can assert its full claim against each obligor but cannot receive a distribution in excess of its claim); *see also Reconstruction Fin. Corp. v. Denver & R.G.W.R. Co.*, 328 U.S. 495, 530-31 (1946) (reaffirming *Ivanhoe* and stating that creditors “are not entitled to more than full payment and . . . they are under a duty to account to the [debtors] for any surplus remaining after they have been made whole”); *Nuveen Mun. Tr. v. Withumsmith Brown, P.C.*, 692 F.3d 283, 295 (3d Cir. 2012) (“[A] creditor cannot collect more, in total, than the amount it is owed.”); *In re Sacred Heart Hosp.*, 182 B.R. 413, 417 (Bankr. E.D. Pa. 1995) (“[A] creditor can seek to prove its entire claim in the bankrupt’s case . . . so long as the claimant does not seek to recover more than one full payment of its claim from whatever source.”); *In re F.W.D.C., Inc.*, 158 B.R. 523, 527-28 (Bankr. S.D. Fla. 1993) (stating that a creditor may not collect more than the total amount of its claim).

45. The Plan acknowledges the corollary to the absolute priority rule, providing that no holder of a claim can receive distributions in excess of the Allowed amount of such claim.<sup>50</sup> And yet the Plan fails to adhere to this principal because (i) a correct valuation of the Company demonstrates that the 98% of reorganized equity to be distributed to First Lien Lenders (subject to dilution) is worth more than the First Lien Claims and (ii) the secured portion of the First Lien Claims should be reduced in light of the existence of unencumbered assets, resulting in the value of the equity to be distributed to the First Lien Lenders being in excess of their secured claim. Therefore, the Debtors cannot demonstrate that the Plan adheres to section 1129(b) of the Bankruptcy Code and fundamental principles of bankruptcy law.

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<sup>50</sup> Plan § 6.21.

**A. The True Value of the Company Shows That the First Lien Lenders Would Receive More Than Their Claims**

46. At trial, Mr. Magrisi and Mr. Brown will demonstrate that the value of the Debtors' business is sufficient to pay the First Lien Claims and the Second Lien Claims in full.

47. Mr. Magrisi will testify that the Debtors' business plan suffers from a number of flaws that cause the Debtors to underestimate earnings capacity including: (i) the Debtors unreasonably extrapolate current revenue headwinds;<sup>51</sup> (ii) the Debtors' business plan retains pre-bankruptcy operating costs with only modest margin expansion; (iii) the Debtors' business plan projects elevated capital expenditures compared to historical spend with any resulting benefit; and (iv) the Debtors' business plan is impaired by inconsistent projections of 2025 and 2026.<sup>52</sup>

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<sup>51</sup> Among the many other flaws described in the Magrisi Report, Mr. Shandler, the Company's Chief Transformation Officer, testified that projections should [REDACTED] yet the Company has decided to exclude *any* potential revenue from UnitedHealthcare after February 2026. *See* Shandler Dep. Tr. at 96:22-97:24, 153:14-154:24, attached as Exhibit E to the Smith Declaration.

<sup>52</sup> Testimony provided in connection with the depositions of L. Heath Sampson, the Company's Chief Executive Officer, and Chad Shandler of FTI Consulting Inc., the Company's Chief Transformation Officer, further supports the proposition that the Company's business plan overstates the Company's challenges. Mr. Shandler agreed that he [REDACTED]. *See* Shandler Dep. Tr. at 99:5-23. FTI has [REDACTED]. As way of example, Mr. Shandler testified that the [REDACTED]. *Id.* 49:8-20; 56:10-25. Despite these grim views, Mr. Shandler admitted that [REDACTED]. *Id.* at 42:3-8; *see also* Sampson Dep. Tr. at 32:4-17 (" [REDACTED]"); *id.* at 33:12-19 (" [REDACTED]").

Testimony from former board member David Mounts Gonzales further reinforces the notion that FTI's projections for the Company have been, and continue to be, overly conservative. Mr. Gonzales testified that a [REDACTED]. *See* Gonzales Dep. Tr. 121:8-12, attached as Exhibit F to the Smith Declaration. Mr. Gonzales testified to his belief that [REDACTED]. *Id.* at 121:13-18; 173:20-24. These conservative projections, as Mr. Gonzales testified, favor the First Lien Lenders and Second Lien Noteholders to the detriment of equity holders and unsecured creditors. *See id.* at 181:4-20. Mr. Gonzales expressed the same frustration with Moelis, noting that both the [REDACTED].

48. Making adjustments to remedy these infirmities, Mr. Magrisi will testify that (i) the Company's 2026 adjusted EBITDA should be projected at \$176 million relative to the Debtors' projected \$127 million and (ii) the Company will increase 2027 adjusted EBITDA to \$206 million relative to Debtors' projection of \$147 million. By comparison, the Debtors operated at an EBITDA in excess of \$200 million from 2021 through 2023.

49. Mr. Brown will testify that the Debtors' valuation summary in turn underestimates the total enterprise value of ModivCare due to a reliance on understated business plan projections and underlying valuation assumptions that are flawed or erroneous. Specifically, Mr. Jamal's valuation approach contains flaws and inconsistencies that render his valuation understated. Mr. Jamal has made inappropriate guideline public company and transaction selections, made errors in the computation of his discount rate, incorrectly computed working capital assumptions, and assumed unreasonably low expectations for residual growth. Further, Mr. Jamal testified at his deposition that, in selecting the end points of his valuation range, there was [REDACTED] used to conclude that the low end was \$750 million or that the high end was \$925 million.<sup>53</sup> Instead, Mr. Jamal explained his approach was [REDACTED]

[REDACTED]

[REDACTED]<sup>54</sup>

50. Mr. Jamal has also acknowledged that, as identified by the Committee's expert,

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[REDACTED]. See *id.* at 203:25-204:16. Overall, Mr. Gonzales expressed his frustration with the [REDACTED]. See *id.* at 121:8-122:6, 173:3-24, 179:13-181:20, 183:23-184:16, 202:6-203:9, 203:25-204:16, 204:17-205:10.

<sup>53</sup> Jamal Dep. Tr. at 196:17-20, attached as Exhibit G to the Smith Declaration (“[REDACTED]”); *id.* at 197:14-19 (“[REDACTED]”).

<sup>54</sup> *Id.* at 196-17-198:20.

the Debtors' valuation overstates 2026 working capital requirements by \$35 million.<sup>55</sup> However, Mr. Jamal has not yet [REDACTED] and could not say when he planned to update the valuation.<sup>56</sup> Moreover, Mr. Jamal has testified that he did not value any of the claims identified in the Debtors' Schedule of Retained Causes of Action in reaching his conclusions with respect to the total enterprise value and equity value of the Debtors.<sup>57</sup> Mr. Jamal's understated valuation is consistent with the Company's advisors and management's continued efforts to denigrate ModivCare's business.<sup>58</sup>

51. Correcting the errors in Mr. Jamal's valuation analysis and employing the revised business plan prepared by the Committee's expert results in a total enterprise value of between \$1.46 billion and \$1.62 billion. Adding to that the value of the Debtors' 43.6% ownership stake

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<sup>55</sup> *Id.* at 192:7-18 (“[REDACTED]”).

<sup>56</sup> *Id.* at 192:19-193:5.

<sup>57</sup> *Id.* at 234:18-239:8.

<sup>58</sup> During the deposition of Mr. Brown, several of the Debtors' counsel's lines of questioning involved negative assumptions about the Debtors' business, including with respect to the “low” or “non-highly skilled” employees of the Debtors' PCS and RPM business segments and the Debtors' NEMT drivers and as compared to other comparable companies. *See* Brown Dep. Tr. at 66:20-22 (“[REDACTED]”); 73:10-16 (“[REDACTED]”); 74:12-15 (“[REDACTED]”); 255:18-20 (“[REDACTED]”) attached as Exhibit I to Smith Declaration. Similarly, Debtors' counsel's questions to Mr. Brown implied other negatives assumptions about the Debtors' business, including, for example, that Modivcare faces significant (and unique) regulatory pressures. *Id.* at 135:18-25 (“[REDACTED]”); 99:11-14 (“[REDACTED]”).

of Matrix (worth \$56 million) and excess cash (\$61 million), this results in an amount between \$1.58 billion and \$1.74 billion being distributable to creditors. Taking these adjustments into account (and ignoring the Lien Challenge and the Uptier Challenge), the 98% of reorganized equity to be provided to the First Lien Lenders is worth well in excess of the First Lien Lenders' claim of \$881 million. In that scenario, the reorganized equity to First Lien Lenders' results in a 134.7% to 145.7% recovery for First Lien Lenders, even after accounting for the warrant dilution.<sup>59</sup>

52. Even if the Court accepts the Debtors' flawed business plan, Mr. Brown will demonstrate that, using appropriate valuation methodologies and assumptions, the total enterprise value of the Company is between \$1.02 billion and \$1.12 billion. This results in distributable value between \$1.14 billion and \$1.24 billion. In that scenario (and again ignoring the Lien Challenge and the Uptier Challenge), the 98% of reorganized equity to be provided to the First Lien Lenders (disregarding the Backstop Fee) would result in a 102.6% to 111.6% recovery for First Lien Lenders. And, even if the Backstop Fee is taken into account, only minor modifications to the business plan would result in the First Lien Lenders being paid in full.

**B. The Existence of Unencumbered Assets Demonstrates That the Secured Claim of the First Lien Lenders Would Receive More Than Payment in Full**

53. The Lien Challenge Standing Motion and the supplement thereto acknowledges that, in order to avoid prepetition liens on vehicles, bank accounts not subject to control agreements and commercial tort claims, the Committee must be granted derivative standing. The Committee does not, however, need derivative standing to argue that section 552 of the Bankruptcy Code cuts off prepetition liens on (i) property generated postpetition and (ii) the proceeds of the UHC

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<sup>59</sup> Given that the Backstop Fee should not be considered in an illustrative waterfall outside of the Plan (because it is only payable if this Plan is confirmed and, in any event, it is not part of the DIP facility claim), the First Lien Lenders actually would recovery well in excess of that in this scenario. Even taking dilution by the Backstop Fee into account (which the Court should not, given that it is only relevant if the Plan is confirmable), this results in a 112.3% to 121.1% recovery for First Lien Lenders.

Settlement. Section 552 operates automatically as a matter of law by its terms, without action by a debtor or trustee. Accordingly, an action to enforce Section 552 is akin to a claim objection, and any party in interest, including the Committee, may seek to bring such a claim objection. *See* 11 U.S.C. §§ 502(a), 1109(b).

54. As set forth in detail in the Lien Challenge Standing Motion, section 552 of the Bankruptcy Code cuts off liens on revenue earned postpetition, unless such revenues are proceeds, product, offspring, rents or profits of prepetition property subject to a lien. Many courts have held that revenue earned by services companies through the labor of the Company’s employees cannot be proceeds of prepetition property, thus rendering those earnings unencumbered.<sup>60</sup> Courts have also held that property derived from the use of estate resources also cannot be proceeds of prepetition collateral.<sup>61</sup> The vast majority of the Debtors’ value as a going concern is attributable to its future earnings, which are earnings of exactly this type—income that is specifically derived from the postpetition services delivered by the Debtors’ thousands of employees or income derived from the use of estate assets.<sup>62</sup> This includes the \$25 million of proceeds of the UHC Settlement

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<sup>60</sup> Lien Challenge Standing Motion ¶¶ 40-42; ; *see also*, *In re Cafeteria Operators, L.P.*, 299 B.R. at 408-09 (holding that section 552 cut off prepetition liens on postpetition cash generated by the operation of debtors’ restaurants, when such cash was “derived primarily from the time and energy expended by the [d]ebtors’ employees who provide services for which the [d]ebtors’ customers pay”); *Arkison v. Frontier Asset Mgmt., LLC (In re Skagit Pac. Corp.)*, 316 B.R. 330, 336 (B.A.P. 9th Cir. 2004) (finding that a prepetition lien does not attach to postpetition revenue “if such revenue represents compensation for goods and services rendered by the debtor in its everyday business performance”); *Far East Nat’l Bank v. U.S. Trustee (In re Premier Golf Props., LP)*, 477 B.R. 767, 776 (B.A.P. 9th Cir. 2012) (holding that postpetition revenue, largely the result of the debtor’s postpetition labor and estate resources, was not subject to prepetition security interests); *Official Comm. of Unsecured Creditors v. UMB Bank, N.A. (In re Residential Capital)*, 501 B.R. 549, 612 (Bankr. S.D.N.Y. 2013) (holding that goodwill on account of prepetition collateral generated through postpetition efforts and realized through a postpetition sale conducted by the debtors, was not subject to any liens under section 552).

<sup>61</sup> *Official Comm. of Unsecured Creditors v. UMB Bank, N.A. (In re Residential Capital)*, 501 B.R. 549, 612 (Bankr. S.D.N.Y. 2013) (holding that goodwill on account of prepetition collateral generated through postpetition efforts and realized through a postpetition sale conducted by the debtors, was not subject to any liens under section 552).

<sup>62</sup> Lien Challenge Standing Motion ¶¶ 15-23.

and the cash currently held by the Debtors.<sup>63</sup> Importantly, because these assets were earned by the Debtors' postpetition on account of services delivered in the ordinary course of business, and not through the disposition of collateral, the exception in section 552(b) of the Bankruptcy Code regarding proceeds of prepetition collateral does not apply.<sup>64</sup> As a result, the First Lien Lenders cannot satisfy their burden of demonstrating that their collateral includes these future earnings, thus reducing the value of the First Lien Lenders' collateral and, in turn, the secured portion of their claims.<sup>65</sup> Therefore, the First Lien Lenders' prepetition liens are limited to the Debtors' liquidation value (*i.e.*, the value of the Company's business segments if they were sold today)).<sup>66</sup>

55. The Debtors' valuation analysis estimates the total enterprise value of the Company at between \$750 million and \$925 million. Compare this to the Debtors' Liquidation Analysis, which states the gross sale proceeds of the Debtors' four business segments in a hypothetical chapter 7 scenario is between \$248.6 million and \$348.8 million. Taking these numbers at face value, despite the Debtors' valuation being grossly understated, for the reasons set forth above, and the Debtors having failed to proffer any expert testimony to support their liquidation values,<sup>67</sup>

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<sup>63</sup> *Id.* ¶¶ 52-53.

<sup>64</sup> *Id.* ¶¶ 46-51; *see also Skagit Pac. Corp.*, 316 B.R. at 336 (“[W]here it is only post-petition acts which generate an account receivable, those post-petition receivables will not be considered proceeds because there is no interest in, or connection to, the right in the account receivable created prepetition.”); *U.S. Trust Nat’l Assoc. v. Venice MP LLC*, 92 F. App’x. 948, 954 (4th Cir. 2004) (affirming the holding that gross revenues were not proceeds of collateral because such revenues resulted from the “‘use’ rather than the ‘disposition’ of the collateral”).

<sup>65</sup> *Id.* at ¶ 5.

<sup>66</sup> *Id.*

<sup>67</sup> Mr. Jamal testified that

See Jamal Dep. Tr. at 52:7-14 (“

”); *id.* at 53:18-24 (“

”); *id.* at 54:15-21 (“

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shows that the unencumbered value under section 552 is the difference between these amounts: \$501.4 million to \$576.2 million of value. Similarly, the secured portion of the First Lien Claims should be capped at \$299 million (i.e., the midpoint of “Realizable Value” in the Debtors’ liquidation analysis), representing the liquidation value of the Debtors’ business that the First Lien Lenders were receive after payment of senior claims.

56. Even if the Court does not agree that the going concern value of the Company’s business (less the liquidation value of its assets) is entirely unencumbered, at a minimum, the Company’s cash on hand as of emergence is unencumbered, which is projected at \$136 million. Further, if the Lien Challenge Standing Motion is granted and the Lien Challenge is successful, the value of the Debtors’ vehicles, their bank accounts not subject to control agreements and their commercial tort claims would also be determined to be unencumbered, further increasing the amount of the Debtors’ unencumbered value.<sup>68</sup> Add to all of that the value of the Debtors’ minority interest in Matrix, which the Debtors concede is unencumbered by prepetition and DIP liens, and Avoidance Actions, which cannot be subject to prepetition liens by definition.<sup>69</sup> Taking into account this unencumbered value, it is evident that the First Lien Lenders would receive dramatically more than the full amount of their claims under the Plan (\$314 million to 494 million of equity value even under the Debtors’ understated valuation compared to a secured claim of approximately \$299 million) and that unsecured creditors are not receiving an adequate share of the unencumbered assets.

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<sup>68</sup> Lien Challenge Standing Motion ¶¶ 54-56; [Docket No. 806] ¶¶ 12-15.

<sup>69</sup> *See In re Res. Cap., LLC*, 497 B.R. 403, 414 (Bankr. S.D.N.Y. 2013) (“Avoidance actions, including those arising under state law, can only be brought by the trustee after the petition is filed under the trustee’s section 554(b) rights. These claims, therefore, arise post-petition and must be considered after-acquired property belonging to the estate. Further, because the Debtor does not own the right to pursue a fraudulent transfer action in bankruptcy (since that action belongs to the trustee post-petition under section 554(b)), the Debtor could not have encumbered or assigned that right prepetition.”).

### III. The Plan Fails the Unfair Discrimination Test Under Section 1129(b) of the Bankruptcy Code

57. Under section 1129(b)(1) of the Bankruptcy Code, a 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).

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 Tex., Inc.*, 264 B.R. 850, 865-65 (Bankr. S.D. Tex. 2001).

58. 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 (stating that a 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.”).

59. As set forth in Section II above, the Debtors have significant unencumbered value, including their minority interest in Matrix (worth \$56 million) and Avoidance Actions. Further, in light of section 552 of the Bankruptcy Code, the First Lien Lenders’ and Second Lien Noteholders’ prepetition liens on the Debtors’ postpetition cash generated by their employees and the going concern value preserved by that cash is also unencumbered and is worth as much as

\$576.2 million even in the Debtors' understated valuation. At a minimum, section 552 renders the Debtors' postpetition cash on hand unencumbered, which is projected to be \$136 million at emergence. And, if the Lien Challenge is successful, the value of the Debtors' vehicles, cash in bank accounts not subject to control agreements and commercial tort claims would be also be rendered unencumbered.

60. If successful, the Lien Challenge would result in the secured portion of the First Lien Claims being capped at approximately \$299 million and the Second Lien Noteholders' secured claims being worth \$0. In this scenario, even if the First Lien Lenders were no longer willing to waive their deficiency claim, this would result in a massive reallocation of value to unsecured creditors. Using the Debtors' understated valuation in an illustrative waterfall of recoveries, this would result in the First Lien Lenders receiving a 51.0% to 64.0% total recovery on account of their secured and deficiency claims and the Second Lien Noteholders and the holders of all other General Unsecured Claims receiving a 25.8% to 45.5% recovery.

61. Further, if the Uptier Challenge is pursued and is ultimately successful, it will result in (i) the conversion of the Second Lien Notes (other than the \$30 million paid for directly) back to Unsecured Notes, (ii) the reinstatement of guarantees for the Unsecured Notes, (iii) the nullification of the Subordination Agreement, and (iv) disgorgement of certain transaction fees. In that event, the holders of Second Lien Notes and the holders of Unsecured Notes (the "**Unsecured Noteholders**") would be entitled to share *pari passu* in any distribution to holders of Unsecured Claims.<sup>70</sup>

62. Given this substantial amount of unencumbered value, holders of General Unsecured Claims (the "**General Unsecured Creditors**") should be receiving a substantially

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<sup>70</sup> Uptier Challenge Standing Motion ¶ 57.



65. As provided in the Uptier Challenge Standing Motion, the fact that the Company was aware of its inevitable path to bankruptcy provides some of the basis for unwinding the Uptier Transaction. The Committee seeks standing bring various claims and causes of action, including (among others) as (i) actual and constructive fraudulent transfer claims under both section 544 and section 548 of the Bankruptcy Code, and applicable non-bankruptcy law and (ii) avoidance and recovery of preferential transfers pursuant to section 547 of the Bankruptcy Code.<sup>73</sup> Section 548(a)(1) provides that transfers may be avoidable as fraudulent if the debtor voluntarily or involuntarily:

- (A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or
- (B) (i) received less than a reasonably equivalent value in exchange or such transfer or obligation; and
  - (ii) (I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;
  - (II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital;
  - (III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or
  - (IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider; under an employment contract and not in the ordinary course of business.

11 U.S.C. § 548(a)(1).

66. The Uptier Transaction meets the standards set forth in Sections 548(a)(1)(A) and

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\_\_\_\_\_”).

<sup>73</sup> See Uptier Challenge Standing Mot. §§ II(a), (b).

548(a)(1)(B). The Uptier Transaction clearly involved a transfer of the Debtors' interest in property and an incurrence of obligations by the Debtors, as the Company issued \$271 million in Second Lien Notes, secured by liens on substantially all of the Company's property. *See* Uptier Challenge Standing Motion ¶ 55.

67. That transfer was made with "actual intent to hinder, delay, or defraud any entity to which the debtor was or became . . . indebted." 11 U.S.C. § 548(a)(1)(A). The requisite "intent" needed to avoid a transfer as actually fraudulent is merely knowledge that the challenged transfer will hinder, delay or defraud its creditors. Such hindrance or delay need not be the debtors' primary purpose in entering the transaction.<sup>74</sup> Here, a natural and obvious consequence of the Uptier Transaction was that unsecured creditors were hindered and delayed in recovering on their claims, which was confirmed by the Debtors' CEO.<sup>75</sup>

68. But even without this direct evidence, actual intent to hinder creditors can be inferred from circumstantial evidence and the presence of so-called "badges of fraud." *See Cipolla v. Roberts (In re Cipolla)*, 476 F. App'x 301, 306-7 (5th Cir. 2012). As described in the Uptier Challenge Standing Motion, numerous badges of fraud are present here, including the fact that the Company knew it was hopelessly insolvent both before and after the transaction.<sup>76</sup>

69. The Uptier Challenge Standing Motion also asserts colorable claims for

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<sup>74</sup> *In re Sentinel Mgmt. Group*, 728 F.3d 660, 667 (7th Cir. 2013) ("[The debtor's] primary purpose may not have been to render the funds permanently unavailable to [creditors] ... [it] certainly should have seen this result as a natural consequence of its actions. In our legal system, every person is presumed to intend the natural consequences of his acts.").

<sup>75</sup> *See* Uptier Challenge Standing Motion ¶ 60.

<sup>76</sup> *See* Uptier Challenge Standing Motion ¶ 63; *see Faulkner v. Ford Motor Credit Co., LLC (In re Reagor-Dykes Motors, LP)*, No. 18-50214 (RLJ) 2022 Bankr. LEXIS 2815, at \*34 (Bankr. N.D. Tex. Oct. 4, 2022) (explaining that transfers made in furtherance of a fraudulent scheme while the transferee knew or should have known that solvency was unachievable is evidence of a fraudulent intent because "the transferor understands that it is making a transfer only to delay inevitable collapse, thus intending to defraud (or hinder or delay) creditors and delay potential recovery.").

constructive fraudulent conveyance under Section 541(a)(1)(B). Through the Uptier Challenge Standing Motion, and as noted by in the statements above, the Committee establishes that at all relevant times the Debtors were insolvent under all applicable tests for insolvency.<sup>77</sup> Moreover, the Debtors never received “reasonably equivalent value” in connection with the liens granted.<sup>78</sup> Importantly, as noted in the Uptier Challenge Standing Motion, reasonable equivalence cannot be found when the transfer of value in question was made in exchange for opportunity to avoid a potential default or bankruptcy when, as here, it only delayed the inevitable.<sup>79</sup>

70. If the Uptier Challenge is successful, the treatment offered to Second Lien Noteholders and General Unsecured Creditors under the Plan (a combination of their pro rata share of 2% of reorganized equity (subject to dilution), the New Warrants and the ability to participate in the Equity Rights Offering) is inherently and unfairly disparate from the treatment offered to Unsecured Noteholders (solely the ability to participate in the Equity Rights Offering). And, as set forth above, the Unsecured Noteholders would then share in the unencumbered value of the Debtors’ enterprise, rather than it being allocated almost entirely to the First Lien Lenders. Therefore, the Debtors cannot demonstrate that the Plan does not unfairly discriminate between the Unsecured Noteholders and the Second Lien Noteholders. The only way to remedy this is for any distribution earmarked for Second Lien Noteholders to be escrowed until the Uptier Challenge is resolved.

#### **IV. The Plan Fails the Best Interests of Creditors Test**

71. Section 1129(a)(7)(A) of the Bankruptcy Code, known as the “best interests of

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<sup>77</sup> See Uptier Challenge Standing Motion ¶¶ 69-78.

<sup>78</sup> See Uptier Challenge Standing Motion ¶¶ 79-86.

<sup>79</sup> See *Feltman v. Wells Fargo Bank, N.A. (In re TS Emp., Inc.)*, 597 B.R. 494, 528 (Bankr. S.D.N.Y. 2019) (“The opportunity to avoid a default or bankruptcy may not necessarily constitute ‘reasonably equivalent value.’”).

creditors” test, is satisfied when each holder of an impaired claim “has accepted the plan; or will receive . . . property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive . . . if the debtor were liquidated under chapter 7.” *See In re Ultra Petroleum Corp.*, 624 B.R. 178, 201 (5th Cir. 2020). Section 1129(a)(7)(A) must be met for each individual dissenting creditor, rather than for any class of claims. *See Bank of Am. v. 203 N. LaSalle St. P’ship*, 526 U.S. 434, 441 n.13 (1999) (stating that the “‘best interest’ test applies to individual creditors holding impaired claims, even if the class as a whole votes to accept the plan”).

72. To satisfy the best interest test, the plan proponent must demonstrate, by evidence, that every creditor that holds an impaired claim and did not accept the plan fares better under the plan than it would under a hypothetical liquidation of the debtor under chapter 7 of the Bankruptcy Code. *See also In re MCorp Fin.*, 137 B.R. at 225 (“Proponents of a plan have the burden of proving by a preponderance of the evidence that all of the requirements of § 1129(a) have been met.”); *see also id.* at 228 (stating that the hypothetical liquidation analysis must be based on “evidence, not assumptions,” in order to meet the best interests of creditors test).

73. As described in Section II above and as the Committee will demonstrate at trial, the Debtors have a number of sources of unencumbered value given assets excluded from the prepetition and DIP collateral packages, the fact that Avoidance Actions are inherently unencumbered, and the effect of section 552 of the Bankruptcy Code. If the Lien Challenge is successful, that would free up even more unencumbered value. In the Debtors’ Liquidation Analysis, however, First Lien Lenders are presumed to have liens on all assets and they, thus, soak up all value after the payment of administrative and DIP claims. The Debtors, thus, fail to account for unencumbered value that would flow to unsecured creditors, even in a liquidation scenario. Taking this value into account, the Plan fails the best interests of creditors test for unsecured

creditors.

**V. The Plan's Classification Scheme Violates Section 1122(a)**

74. Section 1129(a)(1) of the Bankruptcy Code requires that a plan comply with the applicable provisions of the Bankruptcy Code. Pursuant to section 1122 of the Bankruptcy Code, “a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests in such class.” “Substantially similar claims” are “those which share common priority and rights against the debtor’s estate.” *In re Heritage Org., L.L.C.*, 375 B.R. 230, 298 (Bankr. N.D. Tex. 2007) (internal citations omitted).

75. As the Committee’s experts will demonstrate at trial, the value of the Debtors’ business is well in excess of the Debtors’ claimed value. If the Committee’s valuation is accepted, Second Lien Claims would be paid in full. Even if the Debtors’ understated business plan is determined to be legitimate (despite the Committee’s arguments to the contrary), the Committee will demonstrate that appropriate valuation methodologies and assumptions result in the First Lien Claims being paid in full and the Second Lien Claims receiving a recovery well in excess of what the Plan provides. But the Plan assumes that the Second Lien Claims are entirely undersecured and, thus, classifies them with General Unsecured Claims in Class 4. Case law is clear, however, that secured claims and unsecured claims cannot be classified together under section 1122 of the Bankruptcy Code. See *In re Premiere Network Servs.*, No. 04-33402-HDH-11, 2005 Bankr. LEXIS 2286, at \*13 (Bankr. N.D. Tex. June 20, 2005) (finding that creditor’s secured claim was not “substantially similar” to claims in the unsecured class and such creditor had “legally different rights” against the debtor and holding that the secured creditor’s claim “must” be separately classified); *Gypsum Res., LLC v. REP-Clark, LLC (In re Gypsum Res. Materials, LLC)*, No. 19-14796-MKN, 2021 Bankr. LEXIS 3273, at \*13 n. 16 (Bankr. Nev. Nov. 8, 2021) (“Generally, secured and unsecured claims must be classified separately in a proposed Chapter 11 plan . . . and

must be treated differently in any proposed plan.”); *In re Storage Masters JYP, LLC*, No. 6:12-bk-00044-KSJ2012, Bankr. LEXIS 6284, at \*28 (Bankr. M.D. Fla. 2012) (“Unsecured and secured claims of a creditor are *always* considered unique because they come with distinctive rights under the Code. They must be independently classified.”).

76. Even if the Court adopts the Debtors’ flawed valuation analysis, the Second Lien Claims are sufficiently distinct from other General Unsecured Claims such that they should not be classified together. Courts have identified grounds justifying separate classification, including (a) members of a class possessing different legal rights and (b) good business reasons existing for separate classification. See *John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assocs. (In re Route 37 Bus. Park Assocs.)*, 987 F.2d 154, 158–59 (3d Cir. 1993); see also *In re Pac. Lumber Co.*, 584 F.3d 229, 251 (5th Cir. 2009) (“Under the Bankruptcy Code, classes must contain ‘substantially similar’ claims, but similar claims can be separated into different classes for ‘good business reasons.’”) (citing *Matter of Greystone III Joint Venture*, 995 F.2d 1274, 1278 (5th Cir. 1991)).

77. The Plan should recognize the varying legal entitlements between the Second Lien Claims and other General Unsecured Claims. The Second Lien Claims are funded debt and are guaranteed by substantially all of the ModivCare subsidiaries, entitling the Second Lien Claims to recover against each of these Debtor guarantors. By contrast, the remainder of the class generally consists of trade and operating liabilities incurred in the ordinary course of business or claims on account of litigation that are frequently against only one Debtor entity. Further, the Second Lien Claims are deemed Allowed under the Plan while General Unsecured Claims are not. And the Second Lien Claims are potentially subject to fraudulent transfer and preference claims related to the Uptier Transaction that General Unsecured Claims are not party to. The Second Lien Claims

and other Unsecured Claims therefore arise from fundamentally different transactions and relationships and have disparate legal rights and payment expectations. Accordingly, separate classification is appropriate. *In re Robertshaw US Holding Corp.*, 662 B.R. 300, 318–19 (Bankr. S.D. Tex. 2024) (holding separate classification of funded debt deficiency claims and non-go-forward trade claims was proper in part because such deficiency claimants’ right to recovery from the debtors was determined by a waterfall scheme in a credit agreement and because the debtors may need to utilize the trade creditors in the future); *Save Our Springs Alliance, Inc. v. WSI (II)-COS, L.L.C.*, 632 F.3d 168, 174 (5th Cir. 2011) (explaining that a “non-creditor interest” that gives a creditor a “different stake in the future viability” of the debtors and that may cause such creditor to “vote for reasons other than its economic interest in [its] claim” can justify separate classification) (citing *Teamsters Nat’l Freight Indus. Negotiating Comm. v. U.S. Truck Co. (In re U.S. Truck Co.)*, 800 F.2d 581, 587 (6th Cir. 1986)).

78. Even if the Court does not view the distinct legal rights and nature of the Second Lien Claims and other Unsecured Claims to warrant separate classification, the Fifth Circuit’s clear policy against allowing debtors to “manipulate[] classifications to obtain a favorable vote” instructs that the Second Lien Claims must be separately classified. *In re Greystone III Joint Venture*, 995 F.2d at 1276. In the Original Plan, Second Lien Claims were separately classified and receiving different treatment. In a cynical attempt to sway the votes of Class 4, particularly in light of approximately 70% of the Second Lien Noteholders being contractually obligated under the RSA to vote in favor of the Plan, the Debtors have classified Second Lien Claims with General Unsecured Claims in an attempt to silence unsecured creditors, similar to the debtor’s attempt to silence the claimholder in *Greystone*. In light of unequivocal Fifth Circuit precedent, the Debtor’s bad faith “gerrymandering” should preclude approval of this classification scheme. *In re Heritage*

*Org., L.L.C.*, 375 B.R. at 303 (explaining that “the only express prohibition on separate classification is that it may not be done to gerrymander an affirmative vote on a reorganization plan”).

79. In light of the distinctions between the Second Lien Claims and General Unsecured Claims and the Debtors’ attempts to gerrymander votes by classifying them together, the Debtors’ classification scheme violates section 1122(a) of the Bankruptcy Code, rendering the Plan unconfirmable.

## **VI. The Plan Includes Improper Debtor Releases**

80. Section 1129(a)(1) of the Bankruptcy Code requires that a plan comply with the applicable provisions of the Bankruptcy Code. Section 1123(b)(3)(a) of the Bankruptcy Code allows a plan to provide for “the settlement or adjustment of any claim or interest belonging to the debtor or the estate.” If a plan includes debtor releases, “such releases must satisfy the requirements of a valid settlement of claims under the [Bankruptcy] Code” and “require, *inter alia*, consent and consideration by each participant in the agreement to be valid.” *In re Bigler LP*, 442 B.R. 537, 544 (Bankr. S.D. Tex. 2010). The Debtor Releases should not be approved because (i) there is insufficient evidence in the record to support them, (ii) they are being given for no consideration, and (iii) they are not fair and equitable or in the best interest of the estates.

### **A. There is Insufficient Evidence in the Record to Support the Debtor Releases**

81. In support of their claim that there are no viable claims or causes of action held by the Debtors against the Released Parties, the Debtors rely on the Silvers Declaration, which suffers from material infirmities. *First*, Mr. Silvers is anything but an “independent” director. Mr. Silvers is one of the Debtors’ directors who was nominated by the Consenting Creditors. The second

largest Consenting Creditors is HG Vora.<sup>80</sup> Mr. Silvers and HG Vora have had a prosperous, ongoing relationship. For instance, Mr. Silvers [REDACTED],<sup>81</sup> Mr. Silvers and HG Vora recently [REDACTED] together,<sup>82</sup> and HG Vora was an investor in at least [REDACTED].<sup>83</sup>

82. Mr. Silvers determined that it was unnecessary to seek any documents from the First Lien Lenders specific to his investigation,<sup>84</sup> let alone have Quinn Emanuel spend the time necessary to review documents they received in response to the Committee's request in advance of reaching the non-final determinations in the Silvers Declaration.<sup>85</sup> Mr. Silvers did not even request to interview any of the First Lien Lenders during the investigation. Mr. Silvers did, however, interview Coliseum, a Second Lien Noteholder outside of the ad hoc group of Consenting Creditors.<sup>86</sup>

83. **Second**, the record does not indicate that either Mr. Silvers or his counsel, Quinn Emanuel, conducted a sufficient investigation into the claims to be released, such as avoidance actions.<sup>87</sup> And it appears that no investigation occurred at all with respect to any of the Company's

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<sup>80</sup> *Verified Statement Pursuant to Bankruptcy Rule 2019* [Docket No. 791] (disclosing that HG Vora holds \$139,246,612 of the First Lien Claims and \$36,750,000 of the Second Lien Claims).

<sup>81</sup> Silvers Dep. Tr. at 55:10-56:6 ([REDACTED]).

<sup>82</sup> Glodowski Dep. Tr. at 47:19-48:4, attached as Exhibit H to the Smith Declaration.

<sup>83</sup> Silvers Dep. Tr. at 52:21-55:9.

<sup>84</sup> Silvers Decl., ¶ 12.

<sup>85</sup> Silvers Dep. Tr. at 151:11-158:20.

<sup>86</sup> Silvers Decl., ¶ 14; Silvers. Dep. Tr. at 168:13-169:14.

<sup>87</sup> Silvers Dep. Tr. at 270:9-273:19, 329:22-330:23 (“[REDACTED]”); *id.* 111:10-112:8 (Q. “[I]s it fair to say that the conclusions in this declaration are not final and are subject to change based on developments in the ongoing investigation? A. Yes. Q. Okay. And that includes conclusions with respect to the plan releases, right? A. Correct.”).

prepetition conduct outside the Uptier Transaction, intercompany transfers, and payments to insiders. Mr. Silvers failed to instruct Quinn Emanuel to review the Debtors' privileged documents, notwithstanding the fact that such documents could have been made available.<sup>88</sup> And Mr. Silvers ignored potential lien infirmities, despite issues related to section 552 of the Bankruptcy Code being raised by the Committee numerous times in advance of the deadline for the Silvers Declaration.<sup>89</sup>

84. **Third**, the criteria Mr. Silvers employed when considering whether a claim should be pursued is improper. According to Mr. Silvers, claims are only worth pursuing if value would [REDACTED]<sup>90</sup> As an initial matter, this position assumes the Debtors' valuation is correct, which the evidence will show it is not.<sup>91</sup> Mr. Silvers also apparently ignored the fact that many, if not all, of the claims to be released (particularly Avoidance Actions and commercial tort claims) are unencumbered and, thus, any value received on account of such claims would inure to the benefit of unsecured creditors.

85. **Fourth**, in defending his position that the proposed releases are appropriate, Mr. Silvers testified that he considered all of the releases collectively.<sup>92</sup> As such, Mr. Silvers never considered that certain proposed Released Parties could be carved out from the current releases to preserve the ability to bring value into the estates. Rather, in his view, carving out any Debtor

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<sup>88</sup> Silvers Dep. Tr. at 160:15-25.

<sup>89</sup> See *Objection of the Official Committee of Unsecured Creditors to Final Approval of the DIP Motion* [Docket No. 346] ¶¶ 26-28.; *Objection of the Official Committee of Unsecured Creditors to the Debtors' Emergency Motion for Approval of Disclosure Statement and Related Solicitation Procedures* [Docket No. 421] ¶ 32.

<sup>90</sup> Silvers Dep. Tr. at 353:23.

<sup>91</sup> *Supra* ¶¶ 48-49.

<sup>92</sup> Silvers Dep. Tr. at 331:19-332:15 (“[REDACTED]

[REDACTED]”).

Releases would imperil confirmation of the entire Plan—the Debtors could not [REDACTED] [REDACTED]<sup>93</sup> But this ignores the fact that a number of Released Parties have no say in the terms of the Plan or a vote on the Plan. Moreover, it undermines the entire exercise of investigating potential claims and causes of action that are to be evaluated on an individual basis compared to the consideration provided for their release, rather than in the aggregate. *See In re Genesis Health Ventures, Inc.*, 266 B.R. 591, 606 (Bankr. D. Del. 2001) (finding plan releases impermissible where “as to the debtor’s management personnel . . . there is no showing that the individual releasees have made a substantial contribution of assets to the reorganization.”); *In re 710 Long Ridge Road Operating Co., II, LLC*, No. 13-13653, 2014 WL 886433, at \*18 (Bankr. D.N.J. Mar. 5, 2014) (holding that each party seeking a release must provide its own consideration in exchange for that release, as “consideration . . . must be provided by the party actually receiving the release”).

86. **Finally**, Mr. Silvers did not assess whether the proposed releases were proper under the law. Mr. Silvers did not deem the releases necessary for confirmation of the Plan<sup>94</sup> and he did not testify that the lack of consideration for the releases was a basis to find them improper.<sup>95</sup>

#### **B. The Debtor Releases Are Being Given For No Consideration**

87. The Debtor Releases are “opt out” releases, which are based upon contract principles. *In re Smallhold, Inc.*, 665 B.R. 704, 722-23 (Bankr. D. Del. 2024). Contracts require consideration to be enforceable; *c.f.*, *In re Bigler LP*, 442 B.R. 537, 547 (Bankr. S.D. Tex. 2010) (holding that releases under chapter 11 plan were appropriate because the debtors were “releasing claims that [were] property of the [e]state in consideration for funding of the [p]lan”). And the

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<sup>93</sup> See Silvers Dep. Tr. at 332 8:15.

<sup>94</sup> Silvers Dep. Tr. at 332:16–335:15.

<sup>95</sup> Silvers Dep. Tr. at 358:7-359:25.

consideration provided by those given releases under chapter 11 plans is scrutinized by courts, which have determined not to approve releases for which no consideration was provided. *See In re Caremax, Inc.*, Case No. 24-80093 (MVL) (Bankr. N.D. Tex. 2024), Hr’g Tr. Dec. 17, 2024, at 96:12-97:9 (stating that the standard for approving plan releases had to be met at confirmation and that “I think the evidence has to be there. There has to be some reliance upon this release. There has to be a consideration factor.”); *Feld v. Zale Corp. (In re Zale Corp.)*, 62 F.3d 746, 762 (5th Cir. 1995) (temporary enjoinder of claims permissible where settlement provided “substantial consideration” to the bankruptcy estate); *In re Spirit Airlines, Inc.*, 668 B.R. 689, 701-02 (Bankr. S.D.N.Y. 2025) (approving releases for those who “provided hundreds of millions of dollars in value through the Restructuring Transactions, all of which provide the basis for the Plan leaving the vast majority of affected creditors unimpaired. Those creditors that were asked to provide the Third-Party Releases had reason to know of this bargain and the related benefits . . .”); *In re 710 Long Ridge Road Operating Co. II LLC*, No. 13-13653 (DHS), 2014 WL 886433, at \*18 (Bankr. D.N.J. Mar. 5, 2014) (stating that “the record is devoid of proof the individuals seeking to be released have made a necessary contribution toward funding the Plan and . . . without such demonstration, the proposed releases to managers, directors, officers, or employees are not warranted and cannot be approved”).

88. The burden of showing the estate will receive fair consideration rests with the debtors. *See In re Goodrich Petroleum Corp.*, No. 16-31975 (MI) (Bankr. S.D. Tex., Sept 28, 2016) (Sept 28, 2016 Hr’g Tr. at 17:1-25) [Docket No. 541] (explaining that the debtors had the evidentiary burden of proving that the benefits to the company resulting from the release of the debtor’s officer outweighed the claims against the officer). The Debtors, however, have not identified any consideration provided by the Released Parties in exchange for the Debtor Releases.

The Plan simply states that the releases being given are “in exchange for good and valuable consideration.”<sup>96</sup> Mr. Silvers identified [REDACTED] as the only consideration given, noting that he did not [REDACTED] whether the release was given for consideration.<sup>97</sup> Further, it cannot be credibly argued that the releases of the Debtors provided by the Released Parties is consideration for the Debtor Releases because the Debtors are already slated to be absolved of all claims to be released by virtue of the bankruptcy discharge and related injunction provisions of the Plan.<sup>98</sup> The complete absence of any consideration for the Debtor Releases results in the Debtors effectively abandoning the related claims and causes of action, despite there being no investigation of a host of prepetition conduct that would be cleansed and the Committee having identified a number of valuable claims in the Standing Motions.<sup>99</sup> This lack of consideration alone prevents the Court from approving the releases being given to the Released Parties under the Plan.<sup>100</sup>

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<sup>96</sup> Plan § 10.6. The Silvers Declaration includes one unsupported statement “that the Debtors are receiving valuable consideration in exchange for the Plan Releases.” Silvers Decl. ¶ 36.

<sup>97</sup> Silvers Dep. Tr. at 336:13-338:6.

<sup>98</sup> See Plan §§ 10.3; 10.5.

<sup>99</sup> To abandon an asset, a debtor must demonstrate that the asset “is burdensome to the estate or that is of inconsequential value and benefit to the estate.” 11 U.S.C. § 554; see also *In re Killebrew*, 888 F.2d 1516, 1521 (5th Cir. 1989) (discussing the requirements for abandonment under § 554). The Debtors cannot meet this burden with respect to the claims and causes of action to be released here.

<sup>100</sup> Merely facilitating the Debtors’ restructuring is not sufficient consideration in exchange for broad releases under a chapter 11 plan. See e.g., *U.S. Bank Nat’l Assoc. v. Wilmington Trust Co. (In re Spansion, Inc.)*, 426 B.R. 114, 145 (Bankr. D. Del. 2010) (“While I have little doubt that many of the Debtor Releasees undertook substantial (and certainly sometimes exhausting) efforts to formulate and negotiate the current (and former) Plans, I do not believe that those contributions rise to the level of the critical financial contribution contemplated in Continental and Genesis that is needed to obtain approval of non-consensual releases.”); *Gillman v. Continental Airlines (In re Continental Airlines)*, 203 F.3d 215 (3rd Cir. 2000), 203 F.3d 215 (“[W]e have found no evidence that the non-debtor D&Os provided a critical financial contribution to the Continental Debtors’ plan that was necessary to make the plan feasible in exchange for receiving a release”); *In re Genesis Health Ventures, Inc.*, 266 B.R. 591, 606-607 (Bankr. D. Del. 2001) (“[T]here is no showing that the individual releasees have made a substantial contribution of assets to the reorganization. As in Zenith, the officers and directors of the debtors no doubt made meaningful contribution to the reorganization by designing and implementing the operational restructuring of the companies, and negotiating the financial restructuring with parties in interest. However, the officers, directors and employees have been otherwise compensated for their contributions, and the management functions they

**C. The Debtor Releases Are Not Fair And Equitable or in the Best Interest of the Estates**

89. The proposed Debtor Releases are, in effect, a settlement of claims the Debtors have (or may have) against the Released Parties. Under the Bankruptcy Code, a valid settlement must be “fair, equitable, and in the best interest of the estate.” *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602 (5th Cir. 1980) (citing *Protective Comm. for Indep. S’holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1986)).<sup>101</sup>

90. When considering whether a settlement is “fair, equitable, and in the best interest of the estate” courts within the Fifth Circuit consider the following factors: (1) the probability of success in the litigation, with due consideration for the uncertainty in fact and law; (2) the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay; and (3) all other factors bearing on the wisdom of the compromise. *In re Roqumore*, 393 B.R. 474, 479 (Bankr. S.D. Tex. 2008) (citing *Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop., Inc. (In re Cajun Elec. Power Coop.)*, 119 F.3d 349, 356 (5th Cir. 1997); see also *Jackson Brewing*, 624 F.2d 599 (same). For the third factor, courts in the Fifth Circuit consider “(i) the best interest of the creditors, with proper deference to their reasonable views; and (ii) the extent to which the settlement is the product of arms-length bargaining, and not of fraud or collusion.” *In re Age Refining, Inc.*, 801 F.3d 530, 540 (5th Cir. 2015) (citing *Cajun Elec. Power Coop., Inc.*, 119 F.3d at 356) (quoting *In re Foster Mortg. Corp.*, 68 F.3d 914, 917 (5th Cir. 1995)).

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performed do not constitute contributions of ‘assets’ to the reorganization.”); *c.f.*, *Hernandez v. Larry Miller Roofing, Inc.*, 628 Fed. Appx. 281, 288 n.7 (5th Cir. 2016) (holding third-party release provision was not sufficiently specific and citing to Fifth Circuit precedent explaining that such provisions should explain that releases are given in return for something of value).

<sup>101</sup> As plan proponents, the Debtors bear the burden of proving compliance with all Code requirements, including the validity of settlements. See *In re Trenton Ridge Invs., LLC*, 461 B.R. 440, 459 (Bankr. S.D. Ohio 2011) (“Courts universally agree that the burden of proof lies with the proponent of the plan . . . .”); *In re Ditech Holding Corp.*, 606 B.R. 544, 616 (Bankr. S.D.N.Y. 2019); *In re Washington Mut., Inc.*, 442 B.R. 314, 328 (Bankr. D. Del. 2011).

91. An insider settlement is presumptively not an arm's length transaction. *See U.S. Bank Nat'l Ass'n v. Vill. At Lakeridge, LLC*, 583 U.S. 387, 402 (2018) (Sotomayor, J., concurring) (“The concept of ‘insider’ generally rests on the presumption that a person or entity alleged to be an insider is so connected with the debtor that any business conducted between them necessarily cannot be conducted at arm's length.”) (citing BLACK'S LAW DICTIONARY 915 (10th ed. 2014) (defining “insider” as “[a]n entity or person who is so closely related to a debtor that any deal between them will not be considered an arm's-length transaction and will be subject to close scrutiny”)).

92. The Debtor Releases do not satisfy the necessary factors for approval of a settlement. **First**, the Debtors have a high chance of success in pursuing certain claims and causes of action that are slated to be released. As set forth in detail in the Standing Motions, the Lien Challenge and the Uptier Challenge are strong claims that should be pursued. And the Debtors cannot satisfy their burden with respect to other claims and causes of action being released that they cannot specifically identify. **Second**, the expense and duration of the litigation do not weigh in favor of granting the Debtor Releases. Instead, the Debtors' claims and causes of action could be transferred to a litigation trust, with the beneficiaries of that trust determining whether the cost and effort of pursuing those claims is worth it (which could potentially be mitigated if such claims are brought on a contingency fee arrangement). **Third**, the Debtor Releases are not in the best interests of creditors because the Debtors are relinquishing potentially valuable estate claims and causes of action, the value of which could be a crucial source of recovery for unsecured creditors (that the Debtors argue are otherwise out of the money) for no consideration. As discussed in detail above, the Lien Challenge and the Uptier Challenge in particular, could be huge value-movers in favor of unsecured creditors. **Finally**, the Debtor Releases were not negotiated with any of the

beneficiaries of the releases who are providing nothing in exchange for them, let alone negotiated at arm's length. Moreover, the Released Parties under the Debtor Releases would include the same board of directors and management that would be receiving the Debtor Releases, demonstrating that they were not negotiated at arm's length.

## **VII. The Court Should Not Waive the Stay Imposed by Bankruptcy Rule 3020(e)**

93. The Committee objects to the Debtors' request to shorten the 14-day stay imposed by rule 3020(e) of the Federal Rules of Bankruptcy Procedure, which provides that "[a]n order confirming a plan is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 3020(e). The Advisory Committee notes for Bankruptcy Rule 3020 state that subsection (e) was "added to provide sufficient time for a party to request a stay pending appeal of an order confirming a plan under chapter 9 or chapter 11 of the Code before the plan is implemented and an appeal becomes moot." *Id.*

94. Plan proponents frequently include stay waiver provisions to invoke the doctrine of "equitable mootness" as a sword to evade appellate review. *See In re Chemtura Corp.* No. 09–11233, 2010 WL 4607822, at \*1 (Bankr. S.D.N.Y. Nov. 3, 2010). Courts, however, should be "wary of wholly denying any party at least an opportunity to seek a stay to avoid the mootness of its appeal" in deciding whether to waive Bankruptcy Rule 3020(e)'s 14-day stay. *Id.*; *see also In re Adelpia Comm. Corp.*, 368 B.R. 140, 282 (Bankr. S.D.N.Y. 2007) (denying request to waive automatic stay because "fairness to [objecting creditors] . . . requires that I not take an affirmative step that would foreclose all opportunities for judicial review"). "An orderly bankruptcy process depends on a concomitantly efficient appeals process," *In re Syncora Guarantee Inc.*, 757 F.3d 511, 517 (6th Cir. 2014) (citations omitted), and a waiver of the 14-day stay undermines this goal by forcing parties to seek an emergency stay.

95. The Debtors have presented no exigencies that would justify departing from the

imposition of an automatic 14-day stay and impeding the ability to obtain appellate review. The Court should thus deny their request to waive Bankruptcy Rule 3020(e)'s stay.

### **RESERVATION OF RIGHTS**

96. The Committee reserves all rights with respect to the Plan, including any revised, amended, or modified plan the Debtors may file. The Committee submits this Objection without prejudice to, and with a full reservation of, the Committee's rights to supplement or amend this Objection at or before the confirmation hearing and present evidence at such hearing. Nothing herein is intended to be a waiver by the Committee of any right, objection, argument, claim or defense with respect to any matter, including matters involving the Plan, any revised, amended, or modified versions thereof, or the Standing Motions, all of which are hereby expressly reserved.

### **CONCLUSION**

97. For the reasons stated above, the Court should deny confirmation of the Plan and grant such other and further relief as the Court deems just and proper.

Dated: November 25, 2025  
Houston, Texas

*/s/ Charles R. Koster*

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**Certificate of Service**

I certify that on November 25, 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 R. Koster*

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Charles R. Koster