IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	**Chapter 11**
CANO HEALTH, INC., *et al.*,	:	**Case No. 24–10164 (KBO)**
Debtors.[1]	:	**(Jointly Administered)**
	:	**Re: Docket No. 864**

DEBTORS' MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF FOURTH AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF CANO HEALTH, INC. AND ITS AFFILIATED DEBTORS

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Wilmington, Delaware

[1] The last four digits of Cano Health, Inc.'s tax identification number are 4224. A complete list of the Debtors in the chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at https://www.kccllc.net/CanoHealth. The Debtors' mailing address is 9725 NW 117th Avenue, Miami, Florida 33178.

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Cano Health, Inc. ("**CHI**") and certain of its subsidiaries, as debtors and debtors in possession (collectively, the "**Debtors**" or the "**Company**") in the above-captioned chapter 11 cases (the "**Chapter 11 Cases**"), hereby file this memorandum of law and omnibus reply (this "**Memorandum**") in support of confirmation of the *Fourth Amended Joint Chapter 11 Plan of Reorganization of Cano Health, Inc. and Its Affiliated Debtors* [Docket No. 864] (together with all exhibits and schedules thereto and as may be amended, modified, supplemented, or restated from time to time, the "**Plan**").[2]

PRELIMINARY STATEMENT

1. From the outset of these chapter 11 cases, the Debtors resolved to work collaboratively with parties in interest to reach consensus on a restructuring that would allow the Debtors to continue as a going concern and maintain continued high-quality patient care, while maximizing value for creditors. After less than five months, the Debtors are on the precipice of accomplishing that goal and obtaining the fresh start needed to ensure their long-term viability.

2. The Debtors and their advisors have worked tirelessly to negotiate and propose a Plan that represents a comprehensive restructuring of both the Debtors' balance sheet and their operations. In addition, as part of the Debtors' transformation plan designed to improve operational efficiencies, simplify the Debtors' organizational structure, and reduce costs (the "**Transformation Plan**"), management is targeting to achieve approximately $290 million of cost reductions by the end of 2024 (inclusive of the $65 million of planned cost reductions announced in August 2023). The savings under the Transformation Plan combined with the transactions contemplated under the Plan will reduce the Debtors' funded debt by approximately

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Plan, the Disclosure Statement, or the Supporting Documents (each as defined herein), as applicable.

$1 billion and leave the Debtors poised to emerge from chapter 11 stronger and better-positioned to deliver high-quality care to their patients.

3. These achievements could not have been accomplished without the support and substantial contribution of a number of constituents, including the Consenting Creditors who, after financing the administration of these Chapter 11 Cases, agreed to invest up to an additional $50 million in new money. Importantly, the Consenting Creditors also agreed to significant concessions to provide recoveries to unsecured creditors that would not otherwise have been available. Additionally, the support of the Creditors' Committee (as defined below) and the good-faith and earnest negotiations between and among the Debtors, the Creditors' Committee, and the Consenting Creditors culminated in the Global Settlement (as defined below), which further increased recoveries for unsecured creditors, and allowed for a timely, efficient and value-maximizing confirmation process.

4. The considerable support for the Plan is also evidenced by the fact that, among the thousands of creditors and stakeholders in these Chapter 11 Cases only ten (10) formal objections to confirmation (collectively, the "**Confirmation Objections**") were filed,[3] two (2) of which, including the objection filed by the U.S. Trustee, have been consensually resolved through agreed-upon provisions in the proposed Confirmation Order (as defined below) or modifications to the Plan that will be filed in advance of the Confirmation Hearing (the "**Resolved Objections**"). In addition, four (4) objections related to the rejection of executory contracts and unexpired leases under the Plan were filed (the "**Rejection Objections**"), and fourteenth (14) objections related to the assumption of executory contracts and unexpired leases (the "**Cure Objections**"[4] and, together

[3] The Debtors received informal comments to the Plan from certain other parties, which they were able to consensually address. The Creditors' Committee (as defined below) also filed a reservation of rights.

[4] The Debtors have been working with the various parties that filed Cure Objections and expect to have many of those resolved prior to the Confirmation Hearing. As set forth in the form of Confirmation Order (as defined below) filed

with the Confirmation Objections and the Rejection Objections, the "**Objections**"), one of which has been consensually resolved and the remainder of which are addressed herein or are otherwise not pertinent to confirmation of the Plan. A summary of the Objections and the Debtors' responses thereto are set forth in the chart attached hereto as **Exhibit A** (the "**Reply Chart**") and the more substantive Objections are discussed in more detail below.

5. For the reasons set forth herein and in the declarations submitted in support of confirmation, the Debtors respectfully submit the Plan satisfies the requirements of section 1129 of the Bankruptcy Code, is in the best interests of creditors, and should be confirmed and the remaining Objections should be overruled.

BACKGROUND

I. Chapter 11 Cases

6. Beginning on February 4, 2024 (the "**Petition Date**"), the Debtors commenced the Chapter 11 Cases by filing voluntary petitions in this Court under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On February 21, 2024, the Official Committee of Unsecured Creditors (the "**Creditors' Committee**") was appointed by the Office of the United States Trustee for Region 3 (the "**U.S. Trustee**"), pursuant to section 1102 of the Bankruptcy Code to represent the interests of unsecured creditors in the Chapter 11 Cases. *See Notice of Appointment of Committee of Unsecured Creditors* [Docket No. 154]. No trustee or examiner has been appointed in these Chapter 11 Cases. These

with the Court, to the extent a Cure Dispute remains unresolved following the Confirmation Hearing, the Plan and Confirmation Order provide the subject executory contracts or unexpired leases may be assumed by the Reorganized Debtors while the parties continue to work to resolve the Cure Dispute *provided that* the Debtors or the applicable Reorganized Debtors reserve Cash in an amount sufficient to pay the full amount reasonably asserted as the Cure Amount by the counterparty to such executory contract or unexpired lease. Pursuant to Section 11.1 of the Plan, the parties may return to the Court if they are unable to consensually resolve the Cure Dispute.

Chapter 11 Cases are being jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and Rule 1015-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Bankruptcy Rules**"). The pertinent facts relating to the commencement of these Chapter 11 Cases and the key events during the cases are more fully set forth in the *Disclosure Statement for Fourth Amended Joint Chapter 11 Plan of Reorganization of Cano Health, Inc. and Its Affiliated Debtors* [Docket No. 866] (the "**Disclosure Statement**").

II. Filings and Evidence in Support of Confirmation

7. On March 22, 2024, the Debtors filed the Disclosure Statement Motion.[5] On May 21, 2024, the Court entered the Disclosure Statement Order[6] [Docket No. 865] approving the Disclosure Statement, and the Debtors commenced solicitation of the Plan.

8. In further support of the Plan, the Debtors filed the following declarations contemporaneously herewith:

i. Declaration of Conor McShane in Support of Confirmation of the Fourth Amended Joint Chapter 11 Plan of Reorganization of Cano Health, Inc. and Its Affiliated Debtors (the "**McShane Declaration**");

ii. Declaration of Jeffrey Kopa in Support of Confirmation of the Fourth Amended Joint Chapter 11 Plan of Reorganization of Cano Health, Inc. and Its Affiliated Debtors (the "**Kopa Declaration**");

[5] "**Disclosure Statement Motion**" means the *Motion of Debtors for Entry of Order (I) Approving Proposed Disclosure Statement and Form and Manner of Notice of Disclosure Statement Hearing, (II) Establishing Solicitation and Voting Procedures, (III) Scheduling Confirmation Hearing, (IV) Establishing Notice and Objection Procedures for Confirmation of Proposed Plan, and (V) Granting Related Relief* [Docket No. 501].

[6] "**Disclosure Statement Order**" means the *Order (I) Approving Proposed Disclosure Statement and Form and Manner of Notice of Disclosure Statement Hearing, (II) Establishing Solicitation and Voting Procedures, (III) Scheduling Confirmation Hearing, (IV) Establishing Notice and Objection Procedures for Confirmation of Proposed Plan, and (V) Granting Related Relief* [Docket No. 865].

iii. Declaration of Drew Talarico in Support of Confirmation of the Fourth Amended Joint Chapter 11 Plan of Reorganization of Cano Health, Inc. and Its Affiliated Debtors (the "**Talarico Declaration**");

iv. Declaration of Patricia Ferrari in Support of Confirmation of the Fourth Amended Joint Chapter 11 Plan of Reorganization of Cano Health, Inc. and Its Affiliated Debtors (the "**Ferrari Declaration**"); and

v. Certification of James Lee Regarding the Solicitation and Tabulation of Votes on the Fourth Amended Joint Chapter 11 Plan of Reorganization of Cano Health, Inc. and Its Affiliated Debtors (the "**Voting Certification**").

9. The Debtors also refer the Court to the *Declaration of Mark Kent in Support of Debtors' Chapter 11 Petitions* [Docket No. 14] (the "**Kent Declaration**") and the *Declaration of Clayton Gring in Support of the Debtors' First Day Relief* [Docket No. 15] (the "**Gring Declaration**" and together with the Kent Declaration, the Disclosure Statement, the McShane Declaration, the Kopa Declaration, the Talarico Declaration, the Ferrari Declaration, and the Voting Certification, collectively, the "**Supporting Documents**"), and the record of these Chapter 11 Cases for facts that bear on confirmation of the Plan. The Supporting Documents and any testimony and other declarations that may be adduced or submitted at or in connection with the Confirmation Hearing are incorporated herein.

10. The Debtors will file a revised proposed form of order confirming the Plan (the "**Confirmation Order**") in advance of the Confirmation hearing.

III. Summary of Plan

11. The Plan provides for, among other things, (i) a comprehensive restructuring of the Debtors' prepetition obligations, (ii) the provision of the going-concern value of the Debtors' businesses, (iii) maximization of creditor recoveries, (iv) an infusion of new capital, (v) an equitable distribution to the Debtors' stakeholders, (vi) continuation of high-quality

medical care to the Debtors' patients, and (vii) optimal protection of the jobs of the Debtors' providers and other employees. The proposed restructuring, which incorporates the terms of a global settlement reached among the Debtors, the Creditors' Committee, and the Consenting Creditors (the "**Global Settlement**"), will be effectuated pursuant to the Plan and contemplates, in relevant part, the following:

- the reorganization and substantial deleveraging of the Debtors' business;
- conversion of approximately $933 million in principal amount of secured debt into a combination of takeback debt and 100% of the New Equity Interests;
- conversion of $150 million in senior, super priority debtor-in-possession term loans (the "**DIP Facility**") into an exit facility (the "**Exit Facility**") at emergence;
- new money first priority delayed draw term loans in an aggregate amount of up to $50 million to further supplement the Debtors' liquidity post-emergence;
- assumption of executory contracts of continuing trade contract counterparties and payment in full of Allowed Cure Amounts;
- the separate classification and treatment of Non-RSA GUC Claims,[7] pursuant to which holders of Allowed Non-RSA GUC Claims shall be entitled to receive their *pro rata* share of:
    - MSP Recovery Proceeds (approximately $5.6 million in net cash proceeds from the liquidation of certain shares in MSP Recovery, Inc. held by the Debtors as of the Petition Date);
    - proceeds of certain causes of action against certain of the Debtors' former officers and directors to be assigned to a trust for the benefit of General Unsecured Creditors; and
    - incremental cash (capped at $1 million in the aggregate), comprised of a combination of one or more of the foregoing: (a) De Minimis Asset Sale Proceeds (*i.e.*, cash proceeds from pre-effective date sales of *de minimis* assets), subject to a cap of $350,000; (b) cash proceeds from the sale of CPE Assets (*i.e.*, pharmacy equipment located at 3301 NW 107th Avenue, Miami, FL 33178); and (c) up to $1 million in Simply/MSP Proceeds (i.e., first-out dollars from the net proceeds

[7] "**Non-RSA GUC Claims**" means any Claim against any of the Debtors that is not an Administrative Expense Claim, Priority Tax Claim, Other Priority Claim, Other Secured Claim, DIP Claim, First Lien Claim, Intercompany Claims, RSA GUC Claim, Convenience Claim, or Subordinated Claim. For the avoidance of doubt, Non-RSA GUC Claims include any Claim for damages resulting from or based on the Debtors' rejection of an executory contract or unexpired lease.

resulting from a judgment or settlement of the Simply Claims and/or the MSP Claims, subject, as described in the Plan, to the Simply Cashout Amount of $500,000);

- a Cash distribution to holders of Allowed Convenience Claims[8] in an amount equal to the lesser of 50% of its Allowed Convenience Claim or its *pro rata* share of $400,000, which cash shall be funded from the MSP Recovery Proceeds (and any holder of an Non-RSA GUC Claim in an allowed amount exceeding $10,000 will have the option to reduce the allowed amount of their Non-RSA GUC Claim to $10,000 and opt into Class 6 (Convenience Claims);

- *pro rata* distributions to holders of Allowed RSA GUC Claims[9] (comprised of the Allowed First Lien Deficiency Claims, Allowed Senior Note Claims, and the Allowed Kent Claims) of warrants to purchase up to 5% of the New Equity Interests; and

- prompt emergence from chapter 11 pursuant to the milestones set forth in the Restructuring Term Sheet included in the RSA (as modified by the DIP Orders, and as amended from time to time with the consent of the Consenting Creditors).

12. The restructuring contemplated by the Plan provides the Debtors with a viable path forward and a framework to successfully exit chapter 11 with the support of the Creditors' Committee and the Consenting Creditors. The widespread support of the Plan transactions speaks to the good-faith efforts that culminated in the Plan, and its fairness and overall compliance with the Bankruptcy Code.

IV. Restructuring Negotiations and Plan Settlements and Compromises

A. Restructuring Negotiations and Restructuring Support Agreement

[8] "**Convenience Claim**" means any Claim that would be a Non-RSA GUC Claim but for the fact that it (i) is scheduled or asserted as a fixed, liquidated and non-contingent Claim in the amount of $10,000 or less, or (ii) at the election of the holder of the Non-RSA GUC Claim and upon voting to accept the Plan, will be reduced to a fixed, liquidated and non-contingent Claim in the amount of $10,000; provided, however, that (x) no holder of a Non-RSA GUC Claim may subdivide its Claim into multiple Claims of $10,000 or less for purposes of receiving treatment as a Convenience Claim; (y) no Consenting Creditor may elect to have its Non-RSA GUC Claim (if any) treated as Convenience Claims; and (z) to the extent a holder of a Convenience Claim holds any joint and several liability claims, guaranty claims, or other similar claims against any other Debtor arising from or relating to the same obligations or liability as such Convenience Claim, such holder shall only be entitled to a distribution on account of one Convenience Claim against the Debtors in full and final satisfaction of all such Claims.

[9] "**RSA GUC Claim**" means the (i) First Lien Deficiency Claims, (ii) Senior Notes Claims, and (iii) Kent Claims.

13. As set forth in further detail in the Disclosure Statement, prior to the Petition Date, the Debtors, with the assistance of their investment banker Houlihan Lokey Capital, Inc. ("**Houlihan**") and other advisors, engaged in discussions and negotiations with the Consenting Creditors on the terms of a prearranged restructuring and financing options for the Debtors as part of a broader marketing process (the "**Prepetition Marketing Process**"). These negotiations ultimately led to the execution of a restructuring support agreement (the "**RSA**") on February 4, 2024 with creditors holding, at the time, approximately 86% of the Debtors' secured revolving and term loan debt and approximately 92% of the Debtors' senior unsecured notes (collectively, the "**Consenting Creditors**"). The Consenting Creditors' agreement to support the Debtors as set forth in the RSA also included an agreement to provide the DIP Facility of up to $150 million in new senior, super priority debtor-in-possession term loans to finance the Chapter 11 Cases.

14. Importantly, the RSA and the Plan terms set forth therein also embodied the settlement and compromise of certain disputes among the Debtors, the Consenting Creditors, and the Side-Car Lenders regarding the amount or allowance of make-whole premiums arising under the Side-Car Credit Agreement (the "**Side-Car Resolution**"). Pursuant to the Side-Car Resolution, and as incorporated into the Plan, the Side-Car Lenders' claims on account of such premiums are capped at the Side-Car Applicable Premium Settlement Amount. *See* Talarico Decl. ¶ 24.

15. Further, pursuant to the RSA, in addition to funding the Chapter 11 Cases, the Consenting Creditors agreed to support a dual-path process that allowed the Debtors flexibility to pursue a value-maximizing transaction. Specifically, the restructuring process set forth in the Plan and the RSA allowed the Debtors to conduct a thorough marketing process, while providing certainty they will be able to deleverage their balance sheet through a stand-alone Reorganization

Transaction in a timely manner. The Debtors conducted a marketing process, but no bids for a whole-company sale transaction were received. Accordingly, the Debtors and Consenting Creditors agreed to move forward with the stand-alone Reorganization Transaction. *See* Talarico Decl. ¶ 25. A summary of the key terms of the restructuring transactions as contemplated by the Plan and RSA is set forth in the Disclosure Statement.

16. On March 22, 2024, the Debtors filed their initial chapter 11 plan [Docket No. 498] (the "**Initial Plan**") and related disclosure statement [Docket No. 499] (the "**Initial Disclosure Statement**") in accordance with the terms of, and the milestones set forth in, the RSA. The Initial Plan provided that, in a Reorganization Transaction (as opposed to a sale), holders of allowed general unsecured claims would receive *pro rata* distributions of (i) warrants to purchase up to 5% of Reorganized Equity, (ii) net proceeds from the liquidation of certain shares in MSP Recovery, Inc. ("**MSP**") held by the Debtors as of the Petition Date and the balance of any unsold MSP shares as of the date of distribution, and (iii) proceeds of certain causes of action against certain of the Debtors' former officers and directors to be assigned to a trust for the benefit of general unsecured creditors. Under the Initial Plan, there was a single class of general unsecured creditors that included RSA and non-RSA parties alike.

B. Global Settlement

17. With the support of the Consenting Creditors' and the RSA, the Debtors had a viable path to confirmation and were moving towards a hearing to consider approval of the Initial Disclosure Statement. However, the Creditors' Committee still had a number of concerns with respect to the Plan as set forth in the Committee's objection to approval of the Debtors' Initial Disclosure Statement.[10] Following many rounds of spirited, hard-fought and arms-length

[10] *Limited Objection and Reservation of Rights of the Official Committee of Unsecured Creditors with Respect to Motion of Debtors for Entry of Order (I) Approving Proposed Disclosure Statement and Form and Manner of Notice*

negotiations, the Debtors, the Creditors' Committee, and the Consenting Creditors were able to reach agreement on the terms of the Global Settlement, which are detailed in Section I.B of the Disclosure Statement and incorporated into the terms of the Plan.

18. The Global Settlement, which will result in enhanced recoveries for holders of General Unsecured Claims that are not party to the RSA, provides the following improved terms for the benefit of creditors:[11]

- The Plan now separates general unsecured creditors into three (3) classes – Class 4 RSA GUC Claims, Class 5 Non-RSA GUC Claims, and Class 6 Convenience Claims.
- Holders of Allowed Non-RSA GUC Claims are entitled to receive their *pro rata* share of:
    - MSP Recovery Proceeds (approximately $5.6 million in net cash proceeds from the liquidation of certain shares in MSP Recovery, Inc. held by the Debtors as of the Petition Date);
    - proceeds of certain causes of action against (among others) certain of the Debtors' former officers and directors to be assigned to a trust for the benefit of General Unsecured Creditors; and
    - incremental cash (capped at $1 million in the aggregate), comprised of a combination of one or more of the foregoing: (a) De Minimis Asset Sale Proceeds (*i.e.*, cash proceeds from pre-effective date sales of *de minimis* assets) subject to a cap of $350,000; (b) cash proceeds from the sale of CPE Assets (*i.e.*, pharmacy equipment located at 3301 NW 107th Avenue, Miami, FL 33178); and (c) up to $1 million in Simply/MSP Proceeds (i.e., first-out dollars from the net proceeds resulting from a judgment or settlement of the Simply Claims and/or the MSP Claims, subject, as described in the Plan, to the Simply Cashout Amount of $500,000).
- Holders of Allowed RSA GUC Claims (comprised of the Allowed First Lien Deficiency Claims, Allowed Senior Note Claims, and the Allowed Kent Claims) are entitled to receive warrants to purchase up to 5% of the New Equity Interests;
- Holders of Allowed Convenience Claims are entitled to receive Cash in an amount equal to the lesser of (a) 50% of its Allowed Convenience Claim or (b) its *pro rata* share of

of Disclosure Statement Hearing, (II) Establishing Solicitation and Voting Procedures, (III) Scheduling Confirmation Hearing, (IV) Establishing Notice and Objection Procedures for Confirmation of Proposed Plan, and (V) Granting Related Relief [Docket No. 759].

[11] The terms of the Global settlement are more fully set forth in Section I.B of the Disclosure Statement and in the Plan.

$400,000, which cash shall be funded from the MSP Recovery Proceeds (and any holder of an Non-RSA GUC Claim in an allowed amount exceeding $10,000 will have the option to reduce the allowed amount of their Non-RSA GUC Claim to $10,000 and opt into Class 6 (Convenience Claims);

- The Creditors' Committee may reallocate all or any portion of the Cash (other than the Convenience Class Cash Amount) otherwise distributable to Class 5 holders of Non-RSA GUC Claims, including all or any portion of the MSP Cash Amount or the Incremental Non-RSA GUC Cash, to instead fund the Litigation Trust and the Litigation Trust Expenses;
- With respect to the Litigation Trust: (a) Non-RSA GUC Claims shall be entitled to 100% of the Litigation Trust Interests; (b) the Litigation Trust shall be assigned the Litigation Trust Causes of Action; (c) the Creditors' Committee shall select the Litigation Trustee (in consultation with the DIP Lenders and the Ad Hoc First Lien Group) and such selection must be reasonably acceptable to the Debtors; (d) the Litigation Trust Agreement shall be acceptable to the Debtors and the Creditors' Committee, and subject to consultation with the Ad Hoc First Lien Group; and (e) the Released Parties are agreed upon as described in the Plan.
- The Debtors or Reorganized Debtors, as applicable, shall perform and pay for all work related to Claims reconciliation subject to the oversight process (including, without limitation, governance, reporting and consent or consultation rights) to be agreed by the Debtors and Creditors' Committee and set forth in the Litigation Trust Agreement;
- The Debtors shall use commercially reasonable efforts to consummate the sale of their CPE Assets prior to the Effective Date (or as soon as reasonably practicable thereafter), and will reasonably consult with Genesis Credit Partners, financial advisor to the Creditors' Committee, during the marketing process in respect of such assets;
- Certain Claims asserted against the Debtors are classified and treated as Subordinated Claims under the Plan;

19. Pursuant to the terms of the Global Settlement, the Creditors' Committee agreed to, among other things, (i) support confirmation of the Plan, (ii) not directly or indirectly object to, delay, impede, or take any other action to interfere with, the Chapter 11 Cases, including, but not limited to, acceptance, confirmation, and implementation of the Plan, and (iii) use reasonable efforts to maintain the June 28, 2024 Confirmation Hearing date.

20. The Global Settlement in in the best interest of all parties. It enhances recoveries for general unsecured creditors and avoids costly, time-consuming, wasteful litigation

and any delays in distributions to creditors. The Global Settlement will also reduce the duration of these Chapter 11 Cases and the expenses attendant to protracted litigation.

V. Exit Financing Negotiations

21. The RSA and DIP Credit Agreement provided for, among other things, (i) $150 million in new senior, super priority debtor-in-possession term loans (the "**DIP Facility**"), which will convert into, or be replaced by, an exit facility (the "**Exit Facility**") at emergence pursuant to the Plan, and (ii) the raising of a new money superpriority credit facility for up to $75 million on terms acceptable to the Requisite Consenting Creditors to further supplement the Debtors' liquidity post-emergence in the event of a Reorganization Transaction (the "**New Money Exit Facility**").

22. On or around February 22, 2024, the Debtors, through Houlihan, commenced their initial outreach to potential providers of the New Money Exit Facility. This outreach included certain parties solicited as a part of the Prepetition Marketing Process, as well as other lenders. The Debtors, through Houlihan, reached out to the Ad Hoc First Lien Group and 38 additional parties including banks and non-banking institutions. Solicitation included sharing publicly-available information about the Debtors, along with a projected pro forma exit capital structure. Among the parties solicited, the Ad Hoc First Lien Group and nine additional parties executed confidentiality agreements. From this outreach, the Debtors, through Houlihan, received three proposals, including an initial proposal from the Ad Hoc First Lien Group on May 21, 2024 (the "**Initial Proposal**"). *See* Talarico Decl. ¶ 26.

23. Upon reviewing the three proposals, it was evident the proposal from the Ad Hoc First Lien Group was superior to the other two proposals received, due to a variety of reasons, including a lower interest rate, more flexibility on payment of fees in equity vs. cash, fewer restrictions on the Company, lower execution risk given the Ad Hoc First Lien Group's

existing familiarity with the Debtors' business, documentation simplicity, no cash reserves required, a longer term, and the highest resulting projected liquidity. *See Id.* ¶ 27.

24. After rigorous negotiations with the Ad Hoc First Lien Group after the Initial Proposal to secure additional non-economic concessions such as no financial covenants, and engaging in multiple rounds of discussions and careful consideration, the Debtors ultimately determined that the offer from the Ad Hoc First Lien Group regarding a $50 million new term loan was the best financing option available to the Debtors with respect to the New Money Exit Facility. *See* Talarico Decl. ¶ 28. The terms of the Exit Facility and the New Money Exit Facility are memorialized in the Exit Facility Credit Agreement, filed with the Plan Supplement (as defined below).

VI. Finance Committee and Debtors Investigations

25. In December 2023, the special finance committee (the "**Finance Committee**") of the Board of Directors of CHI (the "**Board**") was established to oversee and make recommendations to the Board regarding potential financing alternatives and strategic transactions for the Debtors. The Finance Committee is comprised of Carol Flaton (chair of the Finance Committee), Patricia Ferrari, and Angel Morales. Patricia Ferrari and Carol Flaton, both independent directors, were appointed to the Board in December 2023 (the "**2023 Directors**"). Since its establishment, the Finance Committee has overseen the restructuring process to date, including through its approval of the RSA, the Global Settlement, and the terms of the Plan.

26. In January 2024 when the Debtors were negotiating the terms of the RSA and considering a potential in-court restructuring process, the Company retained Quinn Emanuel Urquhart & Sullivan, LLP ("**Quinn Emanuel**") as legal counsel to conduct an investigation, at the exclusive direction of the 2023 Directors, into potential claims and causes of action against current and former officers and directors of Cano, relating to corporate transactions and other corporate

actions taken by the Company, while the directors and officers served in their roles, in each case from and after April 10, 2022.[12] *See* Ferrari Decl. ¶ 9.

27. Also at the Direction of the 2023 Directors, Weil conducted an investigation (together with Quinn Emanuel's investigation, the "**Debtors Investigations**"), into any other potential claims and causes of action the Debtors may have against the current or former directors or officers of the Company, relating to or arising from corporate transactions and other corporate actions taken by the Debtors from four years prior to the Petition Date up until April 10, 2022.[13] *See* Ferrari Decl. ¶ 20.

28. Importantly, the release of claims and causes of action by the Debtors contemplated in the RSA, which were eventually incorporated into the proposed Plan, remained subject to the conclusion of the Debtors Investigations. Specifically, at the 2023 Directors' instruction and direction, Quinn Emanuel and Weil considered potential causes of action that would be covered by the releases contained in Article 10.6(a) of the Plan (the "**Debtors Releases**"), including claims for (i) breach of fiduciary duty, (ii) corporate waste, and (iii) avoidance actions under the Bankruptcy Code. *See* Ferrari Decl. ¶¶ 17, 26. As detailed herein, following review of the factual record and consideration of the investigation results, the 2023 Directors voted to approve the Debtors Releases. *Id.* ¶¶ 29, 30. Additional information regarding the scope and conclusion of the Debtors Investigations is set forth in the Ferrari Declaration.

[12] On April 10, 2022, the Board retained Weil, Gotshal & Manges LLP ("**Weil**") as corporate counsel. Accordingly, to the extent the investigations considered claims related to events that took place or decisions that were made on or after Weil was retained, in order to avoid any appearance of conflict, Quinn Emanuel was tasked with investigating those events and decisions.

[13] Because Cano retained Weil as corporate counsel on April 10, 2022, Weil did not investigate potential claims from April 10, 2022 to the present, which is the time period covered by Quinn Emanuel's investigation.

VII. Plan Solicitation

29. On May 21, 2024, the Bankruptcy Court entered the Disclosure Statement Order that, among other things, (i) approved the Disclosure Statement as containing adequate information pursuant to section 1125 of the Bankruptcy Code; (ii) scheduled the hearing to consider confirmation of the Plan (the "**Confirmation Hearing**"); (iii) established June 21, 2024 at 5:00 p.m. (Prevailing Eastern Time) as the deadline to (a) vote to accept or reject the Plan (the "**Voting Deadline**") and (b) object to confirmation of the Plan (the "**Plan Objection Deadline**"); (iv) approved the proposed procedures for (a) soliciting, receiving, and tabulating votes to accept or reject the Plan, (b) voting to accept or reject the Plan, and (c) filing objections to the Plan (the "**Solicitation and Voting Procedures**"); (v) approved the form of ballots with voting instructions (the "**Ballots**") and certain other notices; and (vi) approved the form and manner of notice of the Confirmation Hearing (the "**Confirmation Hearing Notice**").

30. On May 24, 2024, the Debtors commenced solicitation of votes on the Plan by causing the Debtors' claims and noticing agent and administrative agent, Kurtzman Carson Consultants, LLC dba Verita Global ("**Verita**"),[14] to serve the applicable solicitation packages and appropriate notices on holders of Claims and Interests in accordance with the Disclosure Statement Order. *See* Voting Certification. ¶ 6.

VIII. Plan Supplement

31. On June 14, 2024, the Debtors filed the Plan Supplement [Docket No. 1023], which included the following documents and agreements: (i) a governance term sheet for the Reorganized Debtors, (ii) a description of the steps to implement and effectuate the Restructuring Transaction, (iii) the Assumption Schedule, (iv) the Rejection Schedule, (v) forms

[14] On June 11, 2024, Kurtzman Carson Consultants LLC changed its name to KCC dba Verita Global. There has not been any change in the company's ownership structure.

of the Senior Executive Employment Agreements, (vi) the MIP Term Sheet, (vii) a draft of the Litigation Trust Agreement, (viii) a draft GUC Warrant Agreement, (ix) a draft Schedule of Retained Causes of Action, (x) certain of the Exit Facility Documents, and (xi) certain disclosures required under section 1129(a)(5) of the Bankruptcy Code.

32. On June 20, 2024, the Debtors filed a supplement to the Plan Supplement [Docket No. 1063], which included: (i) certain amendments to the Assumption Schedule and Rejection Schedule, (ii) substantially final forms of the Senior Executive Employment Agreements, (iii) substantially final form of the GUC Warrant Agreement, and (iv) certain disclosure related to the 1L Exit Facility Loans.

33. The Debtors may file further supplements to the Plan Supplement in advance of the Confirmation Hearing.

IX. Tabulation

34. After the Voting Deadline, and following a complete review by Verita of all Ballots received, Verita finalized the tabulation of the Ballots, as described in the Voting Certification. As set forth in the Voting Certification, the Voting Classes voted as follows:

i. **Class 3 (First Lien Claims)** and **Class 4 (RSA GUC Claims)** voted to accept the Plan at each of the thirty-six Debtors that have Class 3 and Class 4 Claims. *See* Voting Certification, Ex. A.

ii. **Class 5 (Non-RSA GUC Claims)** voted to accept the Plan at all but eleven of the Debtors.[15] *Id*.

iii. **Class 6 (Convenience Claims)** voted to accept the Plan at each of the Debtors except for Debtor Cano Health of Florida, LLC. *Id.*

[15] Class 5 (Non-RSA GUC Claims) voted to reject the Plan for the following eleven Debtors: (i) Cano Health, Inc., (ii) DGM MSO, LLC, (iii) Orange Accountable Care Organization of South Florida LLC, (iv) Orange Accountable Care Organization, LLC, (v) Orange Care Group South Florida Management Services Organization, LLC, (vi) Orange Care IPA of New Jersey, LLC, (vii) Orange Care IPA of New York, LLC, (viii) Orange Healthcare Administration, LLC, (ix) Physicians Partners Group of FL, LLC, (x) Total Care ACO, LLC, and (xi) University Health Care Pharmacy, LLC (collectively, the "**Class 5 Rejecting Debtors**").

35. Accordingly, as detailed herein and in the Voting Certification, the Debtors have obtained at least one Impaired accepting Class on the Plans for forty of the forty-eight Debtors and those Plans should be confirmed. In addition, of the remaining eight Debtors, five of those Debtors have no asserted Impaired Claims (other than scheduled intercompany claims) and, therefore, section 1129(a)(8) of the Bankruptcy Code does not apply and those Debtors also satisfy the requirements for confirmation. With respect to the remaining three Debtors where claims were asserted but no votes were received on the Plan, the Debtors submit such classes should be deemed to accept the Plan and that such Debtors also satisfy the requirements for confirmation, as further detailed herein. Votes were received and counted on a Debtor-by-Debtor basis and a chart summarizing the voting results by Debtor is included in the Voting Certification. However, for ease of review, the Debtors have included a chart below summarizing the voting results on an aggregate basis:

Aggregate Voting Results[16]					
Class	**Accept**		**Reject**		**Result**
	Amount (% of Amount Voted)	**Number (% of Number Voted)**	**Amount (% of Amount Voted)**	**Number (% of Number Voted)**	
Class 3 (First Lien Claims)	$14,845,860,080.64 (100.00%)	6516 (100.00%)	$0.00 (0.00%)	0 (0.00%)	Accept
Class 4 (RSA GUC Claims)	$26,074,692,212.76 (100.00%)	8640 (100.00%)	$0.00 (0.00%)	0 (0.00%)	Accept

[16] A chart of the voting results on a Debtor-by-Debtor basis is included in the Voting Certification.

Aggregate Voting Results[16]					
Class	**Accept**		**Reject**		**Result**
	Amount (% of Amount Voted)	**Number (% of Number Voted)**	**Amount (% of Amount Voted)**	**Number (% of Number Voted)**	
Class 5 (Non-RSA GUC Claims)	$74,963,051.97 (46.03%)	61 (66.30%)	$87,900,722.24 (53.97%)	31 (33.70%)	Reject[17]
Class 6 (Convenience Claims)	$304,459.52 (99.19%)	75 (97.40%)	$2,500.09 (0.81%)	2 (2.60%)	Accept

ARGUMENT

36. This argument is divided into two parts. In Part I, the Debtors address the applicable requirements for confirmation of the Plan under section 1129 of the Bankruptcy Code, address the requirements for approval of releases, exculpation and injunction provisions under section 1123 of the Bankruptcy Code, and demonstrate how the Plan satisfies each requirement and achieves the objectives of chapter 11. In Part II, the Debtors respond to certain of the Confirmation Objections. The Debtors also have summarized each of the Confirmation Objections and have provided their responses thereto in the Reply Chart attached hereto as **Exhibit A**.

I. The Plan Satisfies Section 1129 of the Bankruptcy Code and Should be Approved

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

37. Under section 1129(a)(1) of the Bankruptcy Code, a plan must comply with the applicable provisions of the Bankruptcy Code. The legislative history of section 1129(a)(1) explains this provision encompasses the requirements of sections 1122 and 1123 of the Bankruptcy Code governing classification of claims and contents of a plan, respectively. *See* H.R. Rep. No. 95-595, at 412 (1977), *as reprinted in* 1978 U.S.C.C.A.N. 5963, 6368; S. Rep. No. 95-989, at 126

[17] For the avoidance of doubt, Class 5 (Non-RSA GUC Claims) only rejected the Plan at eleven Debtors.

(1978), *as reprinted in* 1978 U.S.C.C.A.N. 5787, 5912; *see also In re Greate Bay Hotel & Casino, Inc.*, 251 B.R. 213, 223 (Bankr. D.N.J. 2000) ("The legislative history reflects that 'the applicable provisions of chapter 11 [includes sections] such as section 1122 and 1123, governing classification and contents of plan.'") (alteration in original) (quoting H.R. Rep. 95-595, at 412). The Plan fully complies with the requirements of the Bankruptcy Code.

1. The Plan Complies with Section 1122 of the Bankruptcy Code

38. Section 1122(a) of the Bankruptcy Code provides that "[a] plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class." 11 U.S.C. § 1122(a). Section 1122(b) of the Bankruptcy Code further provides that "[a] plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience." 11 U.S.C. § 1122(b).

39. Under this section, a plan may provide for multiple classes of claims or interests as long as each claim or interest within a class is substantially similar to the other claims or interests in that class. A plan proponent has significant flexibility in classifying claims and interests into multiple classes, provided that there is a reasonable basis to do so and that all claims or interests within a given class are "substantially similar." *In re Coastal Broad. Sys., Inc.*, 570 F. App'x. 188, 193 (3d Cir. 2014); *see also In re Idearc Inc.*, 423 B.R. 138, 160 (Bankr. N.D. Tex. 2009) ("[A] plan may provide for multiple classes of claims or interests so long as each claim or interest within a class is substantially similar to other claims or interests in that class."), *aff'd sub nom. Spencer ad hoc Equity Comm. v. Idearc, Inc.* (*In re Idearc, Inc.*), 662 F.3d 315 (5th Cir. 2011).

40. To determine whether claims are "substantially similar," courts have held that the proper focus is on "the legal character of the claim as it relates to the *assets of the debtor*."

In re AOV Indus. Inc., 792 F.2d 1140, 1150–51 (D.C. Cir. 1986) (emphasis in original) (citation omitted); *see also In re Tribune Co.*, 476 B.R. 843, 855 (D. Del. 2012) (concluding that phrase "substantially similar" reflects "the legal attributes of the claims, not who holds them") (internal quotations and citation omitted), *aff'd as modified*, No. 12-CV-1072 (GMS), 2014 WL 2797042 (D. Del. June 18, 2014), *aff'd in part, rev'd in part*, 799 F.3d 272 (3d Cir. 2015).

41. Though claims classified together must be sufficiently similar, the Bankruptcy Code does not forbid "the presence of similar claims in different classes. Although the legislative history behind [section] 1122 is inconclusive regarding the significance (if any) of this omission, it remains clear that Congress intended to afford bankruptcy judges broad discretion to decide the propriety of plans in light of the facts of each case." *In re Jersey City Med. Ctr.*, 817 F.2d 1055, 1060–61 (3d Cir. 1987).

42. Except for Administrative Expense Claims, Professional Fee Claims, Priority Tax Claims, and DIP Claims, which need not be designated as Classes under the Plan, Article III of the Plan provides for, with respect to each Debtor (as applicable), the separate classification of Claims and Interests in the Debtors based upon differences in the legal nature and/or priority of such Claims and Interests in accordance with applicable law. In total there are twelve (12) Classes of Claims against, and Interests in, the Debtors:

i. Class 1 is comprised of Other Priority Claims;

ii. Class 2 is comprised of Other Secured Claims;

iii. Class 3 is comprised of First Lien Claims;

iv. Class 4 is comprised of RSA GUC Claims;

v. Class 5 is comprised of Non-RSA GUC Claims;

vi. Class 6 is comprised of Convenience Claims;

vii. Class 7 is comprised of Intercompany Claims;

viii. Class 8 is comprised of Subordinated Claims;

ix. Class 9 is comprised of Existing Subsidiary Interests;

x. Class 10 is comprised of Existing CH LLC Interests;

xi. Class 11 is comprised of Existing PCIH Interests; and

xii. Class 12 is comprised of Existing CHI Interests.

43. The classification scheme of the Plan is rational and complies with the Bankruptcy Code. *See* McShane Decl. ¶ 10. Generally, the Plan incorporates a "waterfall" classification and distribution scheme that strictly follows the statutory priorities prescribed by the Bankruptcy Code. All Claims and Interests within a single Class have the same or substantially similar rights against the Debtors. *Id*. With respect to the separate classification of Class 6 (Convenience Claims), section 1122(b) of the Bankruptcy Code explicitly provides that "[a] plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience." 11 U.S.C. § 1122(b). Accordingly, the classification scheme of the Plan complies with section 1122 of the Bankruptcy Code and should be approved.

2. The Plan Complies with Section 1123 of the Bankruptcy Code

a. The Plan Complies with Section 1123(a) of the Bankruptcy Code (The Mandatory Plan Provisions)

44. Section 1123(a) of the Bankruptcy Code sets forth seven (7) applicable requirements that the proponent of a chapter 11 plan must satisfy.[18] *See* 11 U.S.C. § 1123(a). Each of which is discussed below.

i. ***Section 1123(a)(1) (Designate Classes).*** Section 1123(a)(1) requires that a plan must designate classes of claims and equity interests subject to section 1122 of the Bankruptcy Code. *See* 11 U.S.C. § 1123(a)(1). With respect to each Debtor,

[18] An eighth requirement, set forth in 11 U.S.C. § 1123(a)(8), only applies in a case in which the debtor is an individual and, thus, is inapplicable to these chapter 11 cases.

Section 3.3 of the Plan designates twelve (12) classes of Claims and Interests. *See* McShane Decl. ¶ 13.

ii. ***Section 1123(a)(2) (Unimpaired Classes).*** Section 1123(a)(2) requires a plan to specify which classes of claims or interests are unimpaired by the plan. *See* 11 U.S.C. § 1123(a)(2). With respect to each Debtor (as applicable), Section 3.3 of the Plan specifies that Class 1 (Other Priority Claims) and Class 2 (Other Secured Claims) are Unimpaired under the Plan. Class 7 (Intercompany Claims), Class 9 (Existing Subsidiary Interests), Class 10 (Existing CH LLC Interests), and Class 11 (Existing PCIH Interests) are either Unimpaired or Impaired under the Plan such that they are presumed to accept or deemed to reject the Plan. *Id*. ¶ 14.

iii. ***Section 1123(a)(3) (Impaired Classes).*** Section 1123(a)(3) requires a plan to specify the treatment of Impaired classes of claims or interests. *See* 11 U.S.C. § 1123(a)(3). With respect to each Debtor, Article IV of the Plan sets forth the treatment of Claims and Interests in Class 3 (First Lien Claims), Class 4 (RSA GUC Claims), Class 5 (Non-RSA GUC Claims), Class 6 (Convenience Claims), Class 8 (Subordinated Claims), and Class 12 (Existing CHI Interests) as applicable, each of which constitutes an Impaired Class under the Plan. Class 7 (Intercompany Claims), Class 9 (Existing Subsidiary Interests), Class 10 (Existing CH LLC Interests), and Class 11 (Existing PCIH Interests) are either Unimpaired or Impaired under the Plan such that they are presumed to accept or deemed to reject the Plan. *Id*. ¶ 15.

iv. ***Section 1123(a)(4) (Same Treatment).*** Section 1123(a)(4) requires that a plan provide the same treatment for each claim or interest within a particular class unless any claim or interest holder agrees to receive less favorable treatment than other class members. *See* 11 U.S.C. § 1123(a)(4). Pursuant to Article IV of the Plan, except to the extent that a holder of an Allowed Claim has agreed to less favorable treatment of its Claim, the treatment of each Claim or Interest in each respective Class is the same as the treatment of each other Claim or Interest in such Class. *Id*. ¶ 16.

v. ***Section 1123(a)(5) (Adequate Means of Implementation).*** Section 1123(a)(5) requires that a plan provide "adequate means for the plan's implementation[.]" 11 U.S.C. § 1123(a)(5). As detailed in Article V of the Plan, a critical aspect of the Debtors' Plan is the implementation of the Reorganization Transaction upon the Effective Date, both to fund distributions to holders of Claims under the Plan, including any unpaid Administrative Expenses, and to provide the necessary capital for the Reorganized Debtors' go-forward operations. The Reorganization Transaction provides, among other things, that on the Effective Date, the Restructuring Transactions will occur by way of one of the following alternatives: (i) a CHI Successor Transaction where CHI is the issuer of the New Equity Interests and the GUC Warrants ("**Alternative Transactions 1**") or (ii) a CHI Successor Transaction where a NewCo is the issuer of the New Equity Interests and the GUC Warrants ("**Alternative Transactions 2**" and collectively with Alternative

Transactions 1, the "**Alternative Transactions**"), each as described in the Plan Supplement.

Further, the Plan provides for adequate means of implementation of the Reorganization Transaction, including by way of (i) the compromise and settlement of Claims, Interests, and controversies (Plan, § 5.2), including with respect to the Side-Car Resolution and the Global Settlement; (ii) the Debtors' effectuation of Reorganization Transaction, inclusive of entry into the Exit Facility Credit Agreement and the other Exit Facility Documents (Plan, § 5.5(a)); (iii) the authorization of the Reorganized Debtors' issuance and distribution of the New Equity Interests (Plan, § 5.5(b)) and GUC Warrants (Plan, § 5.5(c)); (iv) the establishment of the New Board (Plan, § 5.5(e)) and the Reorganized Debtors' continued corporate existence (Plan, § 5.7); (v) establishment of the Litigation Trust and the funding and administering of the same in accordance with the terms of the Plan (Plan, § 5.8); (vi) the cancellation of certain of the existing securities and agreements of the Debtors (Plan, § 5.9); (vii) the retention of the Retained Causes of Action (Plan, § 5.10); (viii) the cancellation of any Liens securing any Secured Claims that is satisfied in full (Plan, § 5.11); and (ix) the assumption of certain employee agreements and benefits plans on the Effective Date (Plan, § 5.12). *See* McShane Decl. ¶¶ 17-18.

Additionally, the Plan Supplement includes, among other things, the following documents related to the Plan and its implementation: (i) certain New Governance Documents, (ii) the Description of Transaction Steps, (iii) the Assumption Schedule, (iv) the Rejection Schedule, (v) the Senior Executive Employment Agreements, (vi) the MIP Term Sheet, (vii) the Litigation Trust Agreement, (viii) the GUC Warrant Agreement, (ix) the schedule of Retained Causes of Action, (x) the form of Exit Facility Credit Agreement, and (xi) information related to the New Board. *Id*. ¶ 19.

vi. ***Section 1123(a)(6) (Non-Voting Securities).*** Section 1123(a)(6) prohibits the issuance of non-voting equity securities, and requires amendment of a debtor's charter to so provide. *See* 11. U.S.C. § 1123(a)(6). This section also requires that a corporate charter provide an appropriate distribution of voting power among the classes of securities possessing voting power. *Id*. In accordance with section 1123(a)(6) of the Bankruptcy Code, to the extent necessary, the New Governance Documents have been, or will be, amended on or prior to the Effective Date to prohibit the issuance of non-voting equity securities and set forth an appropriate distribution of voting power among classes of equity securities possessing voting power. *See* McShane Decl. ¶ 20. Draft versions of the New Governance Documents are, or will be, included in the Plan Supplement. *See* Plan Supplement, Ex. A.

vii. ***Section 1123(a)(7) (New Officers, Directors and Trustees).*** Section 1123(a)(7) requires a plan to "contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any

successor to such officer, director, or trustee[.]" 11 U.S.C. § 1123(a)(7). Here, the Plan provides that the New Board shall consist of (x) the Chief Executive Officer and (y) such other additional members, as determined by the Requisite Consenting Creditors in consultation with the Debtors. *See* Plan § 5.5(e)(i); McShane Decl. ¶ 21. Accordingly, the manner of selection of officers and directors is consistent with the interests of creditors, equity security holders, and public policy.

45. Accordingly, the Plan complies with each applicable requirement set forth in section 1123(a) of the Bankruptcy Code.

b. The Plan Complies with Section 1123(b) of the Bankruptcy Code (The Permissive Plan Provisions)

46. Section 1123(b) of the Bankruptcy Code sets forth permissive provisions that may be incorporated into a chapter 11 plan each of which is discussed below.

i. ***Section 1123(b)(1) (Impaired or Unimpaired Classes).*** As contemplated by section 1123(b)(1) of the Bankruptcy Code and pursuant to section 1124 of the Bankruptcy Code, Section 3.3 and Article IV of the Plan provide that: (a) Class 1 (Other Priority Claims) and Class 2 (Other Secured Claims) are Unimpaired; (b) Class 3 (First Lien Claims), Class 4 (RSA GUC Claims), Class (5) Non-RSA GUC Claims), Class 6 (Convenience Claims), Class 8 (Subordinated Claims), and Class 12 (Existing CHI Interests) are Impaired; and (c) Class 7 (Intercompany Claims), Class 9 (Existing Subsidiary Interests), Class 10 Existing CH LLC Interests, and Class 11 (Existing PCIH Interests) are either Impaired or Unimpaired. *See* McShane Decl. ¶ 23.

ii. ***Section 1123(b)(2) (Assumption or Assumption and Assignment of Executory Contracts and Unexpired Leases).*** As permitted by section 1123(b)(2) of the Bankruptcy Code, Article VIII of the Plan provides for the assumption (or assumption and assignment) and rejection of certain executory contracts and unexpired leases. The Plan Supplement contains an Assumption Schedule (that may be amended through and including the Effective Date) that sets forth executory contracts to be assumed by the Debtors under the Plan on the Effective Date [Docket Nos. 989-1, 1023-3, and 1024-1]. Article VIII of the Plan further provides, as of and subject to the occurrence of the Effective Date of the Plan, except as set forth in the Plan and the Confirmation Order, all executory contracts and unexpired leases (each, a "**Contract**") to which any of the Debtors are party shall be deemed assumed or assumed and assigned, as applicable, except for any Contract that (i) was previously assumed or rejected by the Debtors pursuant to an order of the Bankruptcy Court; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a separate motion to assume or reject filed by the

Debtors on or before the Confirmation Date; (iv) is a Senior Executive Employment Agreement (which shall be treated as set forth in Section 5.12 of the Plan); (v) is specifically designated as a Contract to be included on the Rejection Schedule; or (vi) is the subject of a pending Cure Dispute; *provided*, that the proposed assumption or rejection of a Contract shall be reasonably acceptable to the Requisite Consenting Creditors. *See* Plan, Art. VIII; McShane Decl. ¶ 24.

Further, Section 8.2(c) of the Plan provides that, if there is a dispute pertaining to the assumption of an executory contract or unexpired lease (other than a dispute pertaining to a Cure Amount), such dispute shall be heard by the Bankruptcy Court prior to the assumption being effective; *provided that* the Debtors or the applicable Reorganized Debtors may settle any such dispute without any further notice to, or action by, any party or order of the Bankruptcy Court. *See* Plan, § 8.2(c); McShane Decl. ¶ 25. To the extent a dispute relates to Cure Amounts, the Debtors may assume and/or assume and assign the applicable executory contract or unexpired lease prior to the resolution of such cure dispute, *provided that* the Debtors or the applicable Reorganized Debtors reserve Cash in an amount sufficient to pay the full amount reasonably asserted as the Cure Amount by the counterparty to such executory contract or unexpired lease. *See* Plan, § 8.2(d); McShane Decl. ¶ 25.

iii. ***Section 1123(b)(3) (Settlements, Releases or Retention of Claims and Causes of Action).*** As permitted by section 1123(b)(3)(A) of the Bankruptcy Code, the Plan provides for (i) for a release of certain claims and Causes of Action by the Debtors and their Estates in favor of the Released Parties[19] (Plan, § 10.6(a)), and (ii) the compromise and settlement of Claims, Interests, and controversies (Plan, § 5.2), including with respect to the Side-Car Resolution and the Global Settlement. *See* McShane Decl. ¶ 26. As permitted by section 1123(b)(3)(B) of the Bankruptcy Code, notwithstanding the Debtors Release, Sections 5.10 and 10.9 of the Plan preserves the Reorganized Debtors' rights with respect to the Retained Causes of Action identified in the Plan Supplement. *See* Plan Supp., Ex.

[19] "**Released Parties**" means, collectively, and in each case, solely in their capacities as such: (a) the Debtors, (b) the Reorganized Debtors, (c) each Consenting Creditor, (d) the DIP Agent, (e) the DIP Lenders and the DIP Backstop Parties, (f) the Fronting Lender, (g) the Escrow Agent, (h) the Ad Hoc First Lien Group and the Prepetition Secured Parties, (i) the Senior Notes Indenture Trustee, (j) the Patient Care Ombudsman, (k) the Exit Facility Agent, (l) the Exit Facility Lenders, (m) the Creditors' Committee and its members, (n) the Total Health Sellers, (o) Mark D. Kent, (p) Frederick Green, in his capacity as former officer of the Debtors, (q) Jacqueline Guichelaar, in her capacity as former director of the Debtors, and (r) with respect to each of the foregoing, all Related Parties. For the avoidance of doubt and notwithstanding anything in the Plan or in any Definitive Document to the contrary, (x) the Debtors' officers, directors, and the Debtor Professionals employed at any time on and after the Petition Date through the Effective Date shall be Released Parties under the Plan and (y) the Debtors' former employees, officers and directors, or any former employee, member, manager, officer or director of any predecessor in interest of the Debtors employed prior to, but not on or after, the Petition Date (other than as enumerated in (p) and (q) herein) shall not be Released Parties under the Plan.

I; McShane Decl. ¶ 26. Further, pursuant to the Global Settlement, Section 5.8 of the Plan provides that the Debtors shall transfer all of their right, title, and interest in and to all the Litigation Trust Causes of Action to the Litigation Trust on the Effective Date for the benefit of the Litigation Trust Beneficiaries. *See* Plan, § 5.8; McShane Decl. ¶ 26.

As discussed in greater detail below, the settlements, releases, and compromises embodied in the Plan are fair, reasonable, and in the best interest of the Debtors' Estates and were an integral component of the complex negotiations and compromises underlying the Plan. *See* McShane Decl. ¶ 27.

iv. ***Section 1123(b)(4) (Sale of All or Substantially All the Debtors' Assets)***. The Plan does not provide for the sale, transfer, or assignment of all or substantially all of the property of the Estates and, therefore, section 1123(b)(4) of the Bankruptcy Code is inapplicable to these Chapter 11 Cases. *See* McShane Decl. ¶ 28.

v. ***Section 1123(b)(5) (Modified Rights of Claimholders).*** As permitted by section 1123(b)(5) of the Bankruptcy Code, the Plan (i) modifies the rights of Holders of Claims and Interests in Class 3 (First Lien Claims), Class 4 (RSA GUC Claims), Class 5 (Non-RSA GUC Claims), Class 6 (Convenience Claims), and Class 12 (Existing CHI Interests), as applicable, each of which constitutes an Impaired Class under the Plan, (ii) leaves Unimpaired the rights of holders of Claims and Interests in Class 1 (Other Priority Claims) and Class 2 (Other Secured Claims) which are Unimpaired under the Plan, and (iii) modifies or leaves unimpaired the rights of holders in and Class 7 (Intercompany Claims), Class 9 (Existing Subsidiary Interests), Class 10 (Existing CH LLC Interests), and Class 11 (Existing PCIH Interests) which are either Unimpaired or Impaired under the Plan such that they are presumed to accept or deemed to reject the Plan. *See* Plan Art. IV; McShane Decl. ¶ 29.

vi. ***Section 1123(b)(6) (Other Appropriate Provision).*** Under section 1123(b)(6) of the Bankruptcy Code, a plan "may include any other appropriate provision not inconsistent with the applicable provisions of [the Bankruptcy Code]." 11 U.S.C. §1123(b)(6). As permitted by section 1123(b)(6) of the Bankruptcy Code, the Plan (i) contains certain release and exculpation provisions consistent with the applicable provisions of the Bankruptcy Code and Third Circuit law, (ii) provides that the Bankruptcy Court will retain jurisdiction over all matters arising out of, or related to, these chapter 11 cases, and (iii) provides that the issuance of the New Equity Interests, the GUC Warrants, and the Litigation Trust Interests under the Plan will be exempt from registration under the Securities Act of 1933 and any other applicable securities law pursuant to Section 4(a)(2) of the Securities Act and/or Regulation D thereunder. No provision of the Plan is inconsistent with the Bankruptcy Code. *See* McShane Decl. ¶ 30.

47. Accordingly, each provision of the Plan is consistent with section 1123(b) of the Bankruptcy Code.

c. The Plan Complies with Section 1123(d) of the Bankruptcy Code (Cure of Defaults)[20]

48. Under section 1123(d) of the Bankruptcy Code, if it is proposed in a plan to cure a default, "the amount necessary to cure the default shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law." 11 U.S.C. § 1123(d). As noted above, Article VIII of the Plan provides for the assumption of certain Contracts and the process for determination of disputes with respect to assumed Contracts or Cure Amounts. *See* Plan, Art. VIII; McShane Decl. ¶ 32. No provision of the Plan is inconsistent with section 1123(d) of the Bankruptcy Code. *See* McShane Decl. ¶ 32.

d. The Debtors Release Should be Approved

49. The Debtors Release in Section 10.6(a) of Plan releases certain claims and Causes of Action that the Debtors' Estates could assert against the Released Parties relating, in whole or in part, to, among other things, the Debtors, their affiliates, or these Chapter 11 Cases.

i Applicable Legal Standard

50. When considering releases by a debtor of non-debtor third parties pursuant to section 1123(b)(3)(A), the appropriate standard is whether the releases are a valid exercise of the debtor's business judgment and are fair, reasonable, and in the best interests of a debtor's estate. *See, e.g.*, *U.S. Bank Nat'l Ass'n v. Wilmington Tr. Co. (In re Spansion, Inc.)*, 426 B.R. 114, 143 (Bankr. D. Del. 2010) ("[A] debtor may release claims in a plan pursuant to Bankruptcy Code § 1123(b)(3)(A), if the release is a valid exercise of the debtor's business judgment, is fair, reasonable, and in the best interests of the estate."); *In re Aleris Int'l, Inc.*, No. 09-10478 (BLS),

[20] Section 1123(c) only applies to individual debtors and is inapplicable in these Chapter 11 Cases.

2010 WL 3492664, at *20 (Bankr. D. Del. May 13, 2010) (stating that where debtor's releases are "an active part of the plan negotiation and formulation process, it is a valid exercise of the debtor's business judgment to include a settlement of any claims a debtor might own against third parties as a discretionary provision of a plan.").

51. As an exercise of its business judgment, a debtor's decision to release claims against third parties under a plan is afforded deference. *See, e.g.*, *In re Spansion*, 426 B.R. at 140 ("It is not appropriate to substitute the judgment of the objecting creditors over the business judgment of the Debtors . . . ."); *Marvel Ent. Grp., Inc. v. MAFCO Holdings, Inc.* (*In re Marvel Ent. Grp., Inc.*), 273 B.R. 58, 78 (D. Del. 2002) ("[U]nder the business judgment rule . . . a court will not interfere with the judgment of a board of directors unless there is a showing of gross and palpable overreaching. Thus, under the business judgment rule, a board's decisions will not be disturbed if they can be attributed to any rational purpose and a court will not substitute its own notions of what is or is not sound business judgment.") (internal quotations and citations omitted).

52. In evaluating whether a debtor's release of claims is appropriate, courts in this district also have considered the following list of non-exclusive and disjunctive factors (the "**Zenith Factors**"), which were first articulated as the standard for a third-party release: (i) an identity of interest between the debtor and the third party; (ii) substantial contribution by the non-debtor of assets to the reorganization; (iii) the essential nature of the injunction to the reorganization to the extent that, without the injunction, there is little likelihood of success; (iv) an agreement by a substantial majority of creditors to support the injunction, specifically if the impacted class or classes "overwhelmingly" votes to accept the plan; and (v) a provision in the plan for payment of all or substantially all of the claims of the class or classes affected by the injunction. *See In re Zenith Elecs. Corp.*, 241 B.R. 92, 110 (Bankr. D. Del. 1999); *see also In re*

Indianapolis Downs, LLC, 486 B.R. 286, 303 (Bankr. D. Del. 2013) ("These factors are neither exclusive nor are they a list of conjunctive requirements."); *In re Wash. Mut., Inc.*, 442 B.R. 314, 346 (Bankr. D. Del. 2011) (stating that the Zenith Factors "simply provide guidance in the [c]ourt's determination of fairness."); *In re Exide Techs.*, 303 B.R. 48, 72 (Bankr. D. Del. 2003) (finding that Zenith Factors are not exclusive or conjunctive requirements). As a list of non-conjunctive factors, these factors provide a way of "weighing the equities of the particular case after a fact-specific review." *In re Indianapolis Downs*, 486 B.R. at 303.

53. Here, approval of the Debtors Release is both a valid exercise of the Debtors' business judgment and appropriate under the *Zenith* Factors. Accordingly, the Debtors Release should be approved.

ii Approval of the Debtors Release Is a Valid Exercise of the Debtors' Business Judgment

54. The Debtors Release: (i) is in exchange for the good and valuable consideration provided by the Released Parties; (ii) is essential to the formulation and implementation of the Plan, as provided in section 1123 of the Bankruptcy Code; and (iii) was given and made after due notice and opportunity for a hearing. Importantly, no party has filed an objection to the Debtors Release.

55. *First*, the Released Parties have made substantial contributions to the Chapter 11 Cases. Courts have emphasized that an analysis of substantial contribution must be approached on a case-by-case basis. *See Quad/Graphics, Inc. v. One2One Commc'ns, LLC* (*In re One2One Commc'ns, LLC*), No. 12-27311 (JLL), 2016 WL 3398580, at *8 (D.N.J. June 14, 2016) (surveying cases and noting that courts frequently reach different conclusions about whether similar types of contributions are substantial in the context of different cases); *In re Indianapolis Downs*, 486 B.R. at 303–04 (describing the release analysis in the Third Circuit as "fact-specific").

Such contributions and efforts were, and continue to be, critical in prosecuting these Chapter 11 Cases, reaching a Confirmation Hearing on the Plan, and performing the duties required to confirm the Plan and reach the Effective Date. In particular, the Ad Hoc First Lien Group, DIP Lenders, and the Consenting Creditors, which are Released Parties, agreed to (i) provide debtor-in-possession financing (which is not being paid on the Effective Date and rather is being converted into the Exit Facility) to fund the Chapter 11 Cases, (ii) make significant concessions to provide recoveries for general unsecured creditors, and (iii) provide the New Money Exit Facility that will ensure the Reorganized Debtors are positioned for success upon emergence. Further, the Debtors' current directors and officers, who are Released Parties, have worked tirelessly to maintain the business, all while exploring, negotiating, and supporting efforts to reach a comprehensive and holistic restructuring solution for the Company. Additionally, the Creditors' Committee and its members contributed to the success of the Chapter 11 Cases by negotiating in good faith with the Debtors and the Consenting Creditors to come to a result that will materially increase recoveries for its unsecured constituents.

56. *Second*, the Debtors Release is essential to the success of the Plan, was integral to the settlements and compromises embodied in the Plan, including with respect to the RSA and the Global Settlement, and is supported by the Creditors' Committee. The Debtors Release facilitated the development of and benefits provided by the Plan, including the meaningful distributions to holders of RSA GUC Claims and Non-RSA GUC Claims.

57. *Third*, the support for the Plan and the acceptance by every Class of voting creditors, except Class 5 (Non-RSA GUC Claims), which accepted the Plan at all but eleven applicable Debtors, is compelling evidence that the Debtors Release constitutes a valid exercise of the Debtors' business judgment and is beneficial to the consummation of the Plan. *See In re*

Master Mortg. Inv. Fund, Inc., 168 B.R. 930, 938 (Bankr. W.D. Mo. 1994) (stating that creditor approval of a release is "the single most important factor" to determine whether a release is appropriate); *see also In re Key3Media Grp., Inc.,* 336 B.R. 87, 97–98 (Bankr. D. Del. 2005) (granting a settlement of estate causes of action over creditor's objection because, among other things, a majority of creditors approved of the settlement), *aff'd*, No. 03-10323 (MFW), 2006 WL 2842462 (D. Del. Oct. 2, 2006).

58. *Finally*, with respect to the Debtors Release provided to current officers and directors, and certain former officers, of the Company, the Debtors, led by the 2023 Directors, conducted the Debtors Investigations into potential Causes of Action held by the Debtors against those individuals, including potential claims of breach of fiduciary duty, corporate waste, and avoidance actions under the Bankruptcy Code. *See* Ferrari Decl. ¶¶ 17, 26. Following the conclusions of the Debtors Investigations, based on review of the factual record and the results of the Debtors Investigations, the 2023 Directors voted to approve the Debtors Release provided to current officers and directors, as well as former director Jacqueline Guichelaar, and former officer Frederick Green. *See* Ferrari Decl. ¶¶ 29, 30.

59. When determining whether or not a debtor's release should be granted, Courts also assess whether (i) the releases were a result of a full and fair investigation into the settled debtor's claims, (ii) an estate fiduciary, such as a Creditors' Committee, performed its own investigation and supports the release, and (iii) any colorable claims exist. *See* Hr'g Tr. at 24:4–14, *In re Gulf Coast Health Care*, *LLC*, No. 21-11336 (KBO) (Bankr. D. Del. May 4, 2022), Docket No. 1236 (approving debtor releases where "the committee, serving as estate fiduciary, support[ed] the . . . plan, including the debtors' releases contained therein."); *see also* Hr'g Tr. at 5:25–6:7, *In re Akorn, Inc.*, No. 20-11177 (KBO) (Bankr. D. Del. Sept. 4, 2020), Docket No. 686

("A much [needed] constituency has decided to support their judgment, including the committee who is an estate fiduciary and who performed its own investigation . . . ."); *see also Cal. Dep't of Toxic Substances Control v. Exide Holdings, Inc. (In re Exide Holdings, Inc.)*, No. 20-11157-CSS, 2021 WL 3145612, at *15 (D. Del. July 26, 2021) (holding that a debtor release was appropriate because, among other things, an independent subcommittee and a creditors' committee did not identify any colorable claims held by the debtors against third parties after an investigation).

60. As set forth in the Ferrari Declaration, the Debtors Investigations did not identify any valuable causes of action that the Debtors may have against their current directors and officers, former director Jacqueline Guichelaar, or former officer Frederick Green. Ferrari Decl. ¶¶ 19, 27. Accordingly, after consideration of the results of the investigation, the 2023 Directors voted to approve the Debtors Release.

61. Accordingly, the Debtors Release is a valid exercise of the Debtors' business judgment, is in the best interests of creditors, and should be approved.

e. The Third-Party Releases Should be Approved

62. Section 10.6(b) of the Plan contains certain consensual releases by the Releasing Parties[21] against the Released Parties for liability relating to, among other things, the Debtors or these chapter 11 cases (the "**Third-Party Releases**"). The Third-Party Releases apply only to the Consenting Creditors who agreed to provide a release under the RSA and to creditors who affirmatively voted to accept the Plan and do not opt out of granting the releases set forth in

[21] As defined in Section 1.187 of the Plan, "**Releasing Parties**" means, collectively, and in each case solely in their capacity as such: (a) the Debtors, (b) the Reorganized Debtors, (c) the Consenting Creditors, (d) the DIP Agent, (e) the DIP Lenders and the DIP Backstop Parties, (f) the Fronting Lender, (g) the Escrow Agent, (h) the Ad Hoc First Lien Group and the Prepetition Secured Parties, (i) the Senior Notes Indenture Trustee, (j) the Patient Care Ombudsman, (k) the Exit Facility Agent, (l) the Exit Facility Lenders, (m) the Total Health Sellers, (n) Mark D. Kent, (o) the Creditors' Committee and its members, (p) the Holders of Claims or Interests that vote to accept the Plan and do not opt out of granting the releases set forth in the Plan; provided, that, if a Person or Entity is not a "Releasing Party," then its Related Parties (in their capacities as such) are not Releasing Parties.

the Plan. To be clear, and to address concerns raised in the Objections by MedCloud (as defined in the Reply Chart) and other objecting parties, the Third-Party Releases do not apply to (i) any creditors who voted to reject the Plan, (ii) creditors or interest holders not in a Voting Class, or (iii) claimants that abstained or refrained from voting to accept or reject the Plan. As such, the Third-Party Releases are fully consensual, limited in scope, and only affect the stakeholders that have expressed their support for the Plan. Further, as noted above, the Released Parties are parties that have contributed to the success and stability of the Company leading up to and during the Chapter 11 Cases and, with respect to the current and former directors and officers included in "Released Parties," the releases are supported by Debtors Investigations. The Third-Party Releases are essential components of the Plan, were negotiated as part of the settlements and compromises embodied in the Plan, and are fully consensual, and therefore, should be approved.

63. Numerous courts have recognized that a chapter 11 plan may include a release of non-debtors by other non-debtors when such release is consensual. *See, e.g.*, *In re Indianapolis Downs*, 486 B.R. at 305 (collecting cases); *In re Spansion,* 426 B.R. at 144 (recognizing that "[c]ourts have determined that a third party release may be included in a plan if the release is consensual and binds only those creditors voting in favor of the plan."). Consensual releases are permissible on the basis of general principles of contract law. *In re Coram Healthcare Corp.*, 315 B.R. 321, 336 (Bankr. D. Del. 2004). And a third party release will be consensual so long as parties that have taken an affirmative action in respect of confirmation and therefore manifested their consent to the release. *In re Indianapolis Downs*, 486 B.R. at 305 ("Courts in this jurisdiction have consistently held that a plan may provide for a release of third party claims against a non-debtor upon consent of the party affected."); *In re Zenith Elecs.*, 241 B.R. at 111 (approving non-debtor releases for creditors that voted in favor of plan); *In re Spansion,* 426 B.R. at 144

(recognizing that "[c]ourts have determined that a third party release may be included in a plan if the release is consensual and binds only those creditors voting in favor of the plan.").

64. It is undeniable that the Third-Party Releases in the Plan are consensual. The Third-Party Releases apply only to parties that have taken an affirmative action in respect of confirmation of the Plan and therefore manifested consent. *In re Emerge Energy Servs. LP*, No. 19-11563 (KBO), 2019 WL 7634308, at *18 (Bankr. D. Del. Dec. 5, 2019) (denying third-party release only as to those parties who took no affirmative act). Here, the grantors of the Third-Party Releases either (i) voted to accept the Plan, or (ii) agreed to provide the Third-Party Release in the RSA. The Third-Party Releases were conspicuously disclosed in boldface type in the Plan, Disclosure Statement, and court-approved ballots, which all provided sufficient notice and explanation of the Third-Party Releases for those entitled to vote on the Plan. Moreover, the ballots plainly indicated that a vote to accept the Plan constituted automatic consent to the Third-Party Releases unless the Holder opted out of granting the releases set forth in the Plan. Courts in this jurisdiction have routinely approved similar constructs for third-party releases. *See, e.g., In re Western Global Airlines, Inc.,* Case No. 23-11093 (KBO) (Bankr. D. Del. 2023) (approving releases granted by all holders of claims or interests within an accepting class that voted to accept the plan); *In re Smartours, LLC,* Case No. 20-12625 (KBO) (Nov. 17, 2020 Hr'g Tr. at 11:11-16) (finding affirmative consent in connection with ballots that chose not to opt-out); *In re Zenith Elecs. Corp.*, 241 B.R. 92, 111 (Bankr. D. Del. 1999) (approving non-debtor releases for creditors that voted in favor of plan); *In re Spansion, Inc.,* 426 B.R. at 144 (recognizing that "[c]ourts have determined that a third party release may be included in a plan if the release is consensual and binds only those creditors voting in favor of the plan"). As such, the Third-Party Releases are consensual and should be approved.

f. The Exculpation Provision Should Be Approved

65. Section 10.7 of the Plan contains customary exculpation for the Exculpated Parties[22] for claims arising out of or related to, among other things, the Debtors or these chapter 11 cases (the "**Exculpation Provision**").

66. Each of the Exculpated Parties has participated in the Debtors' chapter 11 cases in good faith. Without the support of the Exculpated Parties, the Debtors would not have been able to commence these chapter 11 cases, execute their chapter 11 strategy, and propose a confirmable plan. The Exculpation Provision is necessary to protect fiduciaries of the Debtors' Estates that have made substantial contributions to the chapter 11 cases from collateral attacks related to good faith acts or omissions related to the Debtors' chapter 11 cases.

67. Further, the scope of the Exculpation Provision is appropriately tailored to cover only acts or omissions occurring between the Petition Date and the Effective Date, and will not affect any liability that arises from fraud, gross negligence, or willful misconduct, as determined by a Final Order. Further, although the Exculpation Provision does extend to the Debtors' employees and certain other Related Parties,[23] the protection is expressly limited "solely to the extent such Related Parties are Estate fiduciaries" Plan, § 1.99, which treatment is consistent

[22] As provided in Section 1.99 of the Plan, "**Exculpated Parties**" means, collectively, in each case, solely in their capacities as such: (a) the Debtors, (b) the Debtors' managers, directors, and officers who served at any time between the Petition Date and the Effective Date, (c) Professionals retained by order of the Bankruptcy Court to represent the Debtors or the Creditors' Committee, including professionals retained pursuant to the OCP Order, (d) the Creditors' Committee and its members, (e) the Patient Care Ombudsman, and (h) with respect to each of the foregoing, all Related Parties who acted on their behalf in connection with the matters as to which exculpation is provided herein, solely to the extent such Related Parties are Estate fiduciaries.

[23] "**Related Parties**" means an Entity's predecessors, successors and assigns, parents, subsidiaries, affiliates, managed accounts or funds, and all of their respective current and former officers, directors (other than the Debtors' former officers and directors employed prior to, but not on or after, the Petition Date), principals, shareholders (and any fund managers, fiduciaries or other agents of shareholders with any involvement related to the Debtors), members, partners, employees, agents, trustees, advisory board members, financial advisors, attorneys, accountants, actuaries, investment bankers, consultants, representatives, management companies, fund advisors and other professionals, and such persons' respective heirs, executors, estates, servants and nominees.

with similar exculpations approved by this Court. *See, e.g., In re Medley LLC,* Case No. 21-10526 (KBO) (Bankr. D. Del. Oct. 7, 2021) (approving inclusion of related parties as exculpated parties after debtors' revision indicating that such related parties include only fiduciaries of the debtors); *In re Quorum Health Corp.*, Case No. 20-10766 (KBO) (Bankr. D. Del. Jun. 30, 2020) (approving inclusion of non-debtor affiliates as exculpated parties to the extent they are estate fiduciaries). Accordingly, the Exculpation Provision is consistent with applicable law and should be approved.

g. The Injunction Provision Should be Approved

68. Section 10.5 of the Plan provides for a customary injunction (the "**Injunction Provision**") and merely seeks to ensure that parties do not interfere with the consummation and implementation of the Plan and the Reorganization Transaction contemplated thereby. The Injunction Provision implements the Debtors Release, the Third-Party Releases, and the Exculpation Provision embodied in the Plan by, among other things, permanently enjoining all persons and entities from commencing or continuing in any manner any claim that was released or exculpated pursuant to such provisions. *See* Plan § 10.5. The Injunction Provision is narrowly tailored to achieve that purpose and therefore should be approved.

h. The Settlements and Compromises Contained in the Plan are Reasonable, Satisfy Bankruptcy Rule 9019, and Should be Approved

69. The Plan embodies a good faith compromise of Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a creditor or an Interest holder may have with respect to any Allowed Claim or Allowed Interest or any distribution to be made on account thereof. Bankruptcy Rule 9019 governs the procedural prerequisites to approval of a settlement to which the debtor is a party and provides that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a). Taken together, section 105(a) and Bankruptcy Rule 9019(a) grant a bankruptcy court

the power to approve a proposed compromise and settlement when it is in the best interests of the debtor's estate and its creditors. *See In re Marvel Ent. Grp., Inc.*, 222 B.R. 243, 249 (D. Del. 1998); *In re Louise's, Inc.*, 211 B.R. 798, 801 (D. Del. 1997).

70. The Third Circuit has enumerated a four-factor test for courts to use when deciding whether to approve a settlement: "(1) the probability of success in litigation, (2) the likely difficulties in collection, (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors." *Fry's Metals, Inc. v. Gibbons (In re RFE Indus., Inc.)*, 283 F.3d 159, 165 (3d Cir. 2002) (citing *In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996)). No one factor is determinative, and a court should "assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal." *Martin*, 91 F.3d at 393.

71. Here, the settlements and compromises embodied in the Plan, including the Side-Car Resolution and the Global Settlement, are the result of months of good-faith, arm's-length negotiations among the parties. Such settlements and compromises, among other things:

- provided for a clear path to the present Plan and the Debtors' exit from chapter 11 as a private company with a de-leveraged balance sheet, providing the Debtors stability to run their businesses on a go-forward basis;
- represent a comprehensive restructuring transaction, which facilitates a significant deleveraging of the Debtors, through the reduction of the Debtors' balance sheet liabilities with conversion of approximately $933 million in principal amount of secured debt into a combination of takeback debt and 100% of the New Equity Interests upon emergence;
- provide significantly improved recoveries to holders of Non-RSA GUC Claims as compared to their potential recovery in a liquidation; and
- have the support of the Creditors' Committee and the Consenting Creditors.

72. Further, such settlements and compromises enabled the Debtors to build additional support for the Plan and resolve potential disputes with certain stakeholders, which in

the case of the Creditors' Committee, will prevent the needless expense of additional discovery in connection with confirmation.

73. The Debtors, the Consenting Creditors, and the Creditors' Committee are all represented by experienced and competent counsel who vigorously negotiated the terms of the Plan, including the settlements and compromises embodied therein, and unanimously agree that approval the Plan is a significantly better outcome than the alternatives. Accordingly, the settlements and compromises embodied in the Plan, taken together, represent a reasonable resolution of the issues raised in these Chapter 11 Cases, result in a Plan that is fair and equitable and in the best interest of the Debtors' estates, and should therefore be approved by the Bankruptcy Court.

B. The Plan Complies with Section 1129(a)(2) of the Bankruptcy Code (The Plan Proponents)

74. Section 1129(a)(2) of the Bankruptcy Code requires that plan proponents comply with the applicable provisions of the Bankruptcy Code. 11 U.S.C. § 1129(a)(2). The legislative history to section 1129(a)(2) indicates that this provision is intended to encompass the disclosure and solicitation requirements under sections 1125 and 1126 of the Bankruptcy Code. *See* H.R. Rep. No. 95-595, at 412 (1977), *as reprinted in* 1978 U.S.C.C.A.N. 5963, 6368 ("Paragraph (2) [of section 1129(a)] requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure."); *see also In re PWS Holding Corp.*, 228 F.3d 224, 248 (3d Cir. 2000) ("[Section] 1129(a)(2) requires that the plan proponent comply with the adequate disclosure requirements of § 1125."); *In re Drexel Burnham Lambert Grp., Inc.*, 138 B.R. 723, 759 (Bankr. S.D.N.Y. 1992).

75. The Debtors, as plan proponents, complied with the applicable provisions of the Bankruptcy Code, namely sections 1125 and 1126, as well as the Disclosure Statement

Order, by, among other things, providing notice of the Confirmation Hearing to all known holders of Claims or Interests through the filing and mailing of such notice, in addition to providing notice through publication in *The Wall Street Journal*, *Miami Herald*, and *Sun Sentinel*, as evidenced in the Publication Affidavit,[24] and, therefore, have satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code. *See* Voting Certification. ¶ 12.

1. The Plan Complies with Section 1125 of the Bankruptcy Code

76. Under section 1125 of the Bankruptcy Code, prior to the solicitation of votes on a plan of reorganization, a debtor must disclose information that is adequate to permit an informed judgment by creditors and shareholders entitled to vote on the Plan. *See* 11 U.S.C. § 1125. On May 21, 2024, the Bankruptcy Court entered the Disclosure Statement Order. The Disclosure Statement Order approved the Debtors' Disclosure Statement pursuant to section 1125(b) of the Bankruptcy Code as containing "adequate information" of a kind and in sufficient detail to enable hypothetical, reasonable investors typical of the Debtors' creditors to make an informed judgment regarding whether to accept or reject the Plan. As set forth in the Certificate of Service,[25] with respect to each Debtor, each holder of an Impaired Claim or Interest entitled to vote was sent a Solicitation Package required by the Disclosure Statement Order, including: (i) the Confirmation Hearing Notice; (ii) a USB flash drive containing the Plan, Disclosure Statement, and the Disclosure Statement Order; and (iii) an appropriate form of ballot and return envelope for holders entitled to vote on the Plan. The Solicitation Package was transmitted in connection with the solicitation of votes to accept the Plan in compliance with

[24] "**Publication Affidavit**" means the *Affidavit of Publication of the Notice of (I) Approval of Disclosure Statement, (II) Establishment of Voting Record Date, (III) Hearing on Confirmation of the Proposed Plan, (IV) Procedures for Objection to the Confirmation of the Proposed Plan, (V) Procedures and Deadline for Voting on the Proposed Plan in the Wall Street Journal, Miami Herald and Sun Sentinel*, filed on June 6, 2024 [Docket No. 983].

[25] "**Certificate of Service**" means the *Certificate of Service*, dated June 13, 2024 [Docket No. 1006].

section 1125 of the Bankruptcy Code and as set forth in the Certificate of Service. *See* Voting Certification ¶¶ 9-10. The Debtors did not solicit acceptances of the Plan from any creditor or equity interest holder prior to the transmission of the Disclosure Statement.

2. The Plan Complies with Section 1126 of the Bankruptcy Code

77. Section 1126 of the Bankruptcy Code specifies the requirements for acceptance of the Plan. Under section 1126, only holders of Allowed Claims and Interests in Impaired Classes that will receive or retain property under the Plan on account of such Claims or Interests may vote to accept or reject the Plan. *See* 11 U.S.C. § 1126(a).

78. In accordance with section 1126 of the Bankruptcy Code and Articles III and IV of the Plan, with respect to each Debtor, the Debtors solicited acceptances of the Plan from the holders of Claims in Class 3 (First Lien Claims), Class 4 (RSA GUC Claims), Class 5 (Non-RSA GUC Claims), and Class 6 (Convenience Claims).

79. In accordance with section 1126(f) of the Bankruptcy Code, the Disclosure Statement Order, and Articles III and IV of the Plan, the Debtors did not solicit acceptances from the holders of Claims in Class 1 (Other Priority Claims) or Class 2 (Other Secured Claims) as the holders of such Claims are Unimpaired under the Plan and thus are presumed to accept the Plan.

80. In accordance with section 1126(g) of the Bankruptcy Code, the Disclosure Statement Order, and Articles III and IV of the Plan, the Debtors did not solicit acceptances from the holders of Claims and Interests in Class 8 (Subordinated Claims) or Class 12 (Existing CHI Interests), as holders of such Claims and Interests are Impaired but will not receive any distribution or property on account of their Claims and Interests and thus are deemed to have rejected the Plan.

81. In accordance with sections 1126(f) and (g) of the Bankruptcy Code, the Disclosure Statement, and Articles III and IV of the Plan, the Debtors did not solicit acceptances from the holders of Claims and Interests in Class 7 (Intercompany Claims), Class 9 (Existing

Subsidiary Interests), Class 10 (Existing CH LLC Interests), or Class 11 (Existing PCIH Interests), as holders of such Claims and Interests are either (i) Unimpaired and conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code, or (ii) Impaired and conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code.[26]

82. Section 1126(c) of the Bankruptcy Code specifies the requirements for acceptance of a plan by impaired classes of claims entitled to vote to accept or reject a plan of reorganization:

> A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

11 U.S.C. § 1126(c).

83. As set forth in the Voting Certification, the Plan has been accepted by at least two-thirds in amount and more than one-half in number of Claims in (i) Class 3 (First Lien Claims) and Class 4 (RSA GUC Claims) at each applicable Debtor, (ii) Class 6 (Convenience Claims) at each applicable Debtor except Debtor Cano Health of Florida, LLC, and (iii) Class 5 (Non-RSA GUC Claims) at all but the eleven Class 5 Rejecting Debtors. *See* Voting Certification, Ex. A.

84. As detailed herein and in the Voting Certification, the Debtors have obtained at least one Impaired accepting Class on the Plans for forty of the forty-eight Debtors and those Plans should be confirmed. In addition, of the remaining eight Debtors, five of those Debtors

[26] In accordance with Sections 4.7, 4.9, 4.10 and 4.11 of the Plan, Claims and Interests in Classes 7, 9, 10 and 11 will be reinstated, cancelled, compromised, or provided such other treatment as determined by the Debtors or Reorganized Debtors, as applicable, and subject to the consent, as applicable, of the Requisite Consenting Creditors.

have no asserted Impaired Claims (other than scheduled intercompany claims) and, therefore, section 1129(a)(8) of the Bankruptcy Code does not apply and those Debtors also satisfy the requirements for confirmation. With respect to the remaining three Debtors where claims were asserted but no votes were received, the Debtors submit such classes should be deemed to accept the Plan, as detailed herein. *See infra.* 103-104. Based on the foregoing, the Debtors have satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code.

C. The Plan Complies with Section 1129(a)(3) of the Bankruptcy Code (Good Faith)

85. Section 1129(a)(3) of the Bankruptcy Code requires that a plan be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). The Third Circuit has said that the good faith standard requires a showing that "there is a reasonable likelihood that the plan will achieve a result consistent with the standards prescribed under the Code." *In re PPI Enters. (U.S.), Inc.*, 228 B.R. 339, 347 (Bankr. D. Del. 1998) (quoting *In re Toy & Sports Warehouse, Inc.*, 37 B.R. 141, 149 (Bankr. S.D.N.Y. 1984), *aff'd sub nom. Solow v. PPI Enters. (U.S.), Inc.* (*In re PPI Enters. (U.S.), Inc.*), 324 F.3d 197 (3d Cir. 2003)); *see also PWS Holding Corp.*, 228 F.3d at 242 ("[F]or purposes of determining good faith under section 1129(a)(3). . . the important point of inquiry is the plan itself and whether such a plan will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code.") (alterations in original) (quoting *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 150 n.5 (3d Cir. 1986); *In re Chemtura Corp.*, 439 B.R. 561, 608 (Bankr. S.D.N.Y. 2010) (quoting *In re Bush Indus., Inc.*, 315 B.R. 292, 304 (Bankr. W.D.N.Y. 2004)) ("Whether a [chapter 11] plan has been proposed in good faith must be viewed in the totality of the circumstances, and the requirement of [s]ection 1129(a)(3) 'speaks more to the process of plan development than to the content of the plan.'"). The court is given "considerable discretion in finding good faith." *In re W.R. Grace & Co.*, 475

B.R. 34, 87 (D. Del. 2012) (quoting *In re Coram Healthcare Corp.*, 271 B.R. 228, 234 (Bankr. D. Del. 2001)), *aff'd*, 532 F. App'x 264 (3d Cir. 2013), *and aff'd*, 729 F.3d 332 (3d Cir. 2013), *and aff'd*, 729 F.3d 311 (3d Cir. 2013).

86. The restructuring embodied in the Plan is the culmination of extensive, good faith negotiations between the Debtors and a number of their key economic stakeholders, including the Consenting Creditors, the Creditors' Committee, and various other claimants and constituencies. The history of negotiations among the key stakeholders and the resulting settlements and compromises achieved under the Plan, including with respect to the Side-Car Resolution and the Global Settlement, are clear evidence the Plan is proposed in good faith. *See* McShane Decl. ¶ 34.

87. The Plan furthers the Debtors' initial objectives in seeking chapter 11 relief, all while providing recoveries to creditors who would not otherwise be entitled to such recoveries in a liquidation. The Plan allows the Debtors to continue as a going concern by de-levering the Debtors' balance sheet, assuming certain key customer and vendor contracts with necessary long-term modifications negotiated during the pendency of these chapter 11 cases, and providing the Debtors with an appropriate level of liquidity post-emergence. *Id.* ¶ 35.

88. For the reasons stated herein, the Debtors submit the Plan furthers the objectives and purposes of the Bankruptcy Code and has been proposed in good faith.

D. The Plan Complies with Section 1129(a)(4) of the Bankruptcy Code *(Payments to Professionals)*

89. Section 1129(a)(4) of the Bankruptcy Code requires that "[a]ny payment made or to be made by the proponent . . . for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable." 11 U.S.C. § 1129(a)(4). Section 1129(a)(4)

has been construed to require that all payments of professional fees which are made from estate assets be subject to review and approval as to their reasonableness by the Bankruptcy Court. *See In re TCI 2 Holdings, LLC*, 428 B.R. 117, 172 (Bankr. D. N.J. 2010) ("Under its clear terms, 'any payment' made or to be made by the plan proponent or the debtor for services 'in or in connection with' the plan or the case be approved by or 'subject to the approval of' the bankruptcy court as 'reasonable.'") (citation omitted); *accord Lisanti v. Lubetkin* (*In re Lisanti Foods, Inc.*), 329 B.R. 491, 503 (D.N.J. 2005) ("Pursuant to § 1129(a)(4), a Plan should not be confirmed unless fees and expenses related to the Plan have been approved, or are subject to the approval, of the Bankruptcy Court."), *aff'd sub nom. In re Lisanti Foods, Inc.*, 241 F. App'x 1 (3d Cir. 2007).

90. All payments made or to be made by the Debtors for services, costs, or expenses in connection with these chapter 11 cases must be approved by the Bankruptcy Court as reasonable in accordance with section 1129(a)(4) of the Bankruptcy Code. *See* McShane Decl. ¶ 36. Specifically, Section 2.2 of the Plan provides that all Professional Fee Claims must be approved by the Bankruptcy Court pursuant to final fee applications as reasonable. *See* Plan § 2.2.

91. Therefore, the Plan complies with the requirements of section 1129(a)(4) of the Bankruptcy Code.

E. The Plan Complies with Section 1129(a)(5) of the Bankruptcy Code *(Identities of New Officers, Directors and Trustees)*

92. Section 1129(a)(5) of the Bankruptcy Code requires that the plan proponent, among other things, disclose the identity and affiliations of the proposed officers and directors of the reorganized debtors and that the appointment or continuance of such officers and directors be consistent with the interests of creditors and equity security holders and with public policy. 11 U.S.C. § 1129(a)(5). Here, the Plan provides that the New Board shall consist of the Chief Executive Officer and such other additional members, as determined by the Requisite Consenting

Creditors in consultation with the Debtors. *See* Plan § 5.5(e)(i). To the extent known, the Debtors will disclose in advance of the Confirmation Hearing the identity and affiliation of any individual proposed to serve on the initial board of directors or managers, as applicable, or as an officer of any Reorganized Debtor. Additionally, META Advisors has been selected to serve as Litigation Trustee of the Litigation Trust. *See* Plan Supplement, Ex K; McShane Decl. ¶ 37.

93. Accordingly, the Plan complies with the requirements of section 1129(a)(5) of the Bankruptcy Code.

F. Section 1129(a)(6) of the Bankruptcy Code Does Not Apply to the Plan *(Rate Changes)*

94. Section 1129(a)(6) of the Bankruptcy Code provides that "[a]ny governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval." 11 U.S.C. § 1129(a)(6). The Plan does not provide for any rate changes by the Debtors, and, therefore, section 1129(a)(6) is inapplicable. *See* McShane Decl. ¶ 38.

G. The Plan Complies with Section 1129(a)(7) of the Bankruptcy Code*) (Best Interests of Creditors).*

95. Section 1129(a)(7) of the Bankruptcy Code requires:

> [w]ith respect to each impaired class of claims or interests[,] each holder of a claim or interest of such class (i) has accepted the plan; or (ii) will receive or retain under the plan . . . property of a value . . . that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of [the Bankruptcy Code.]

11 U.S.C. § 1129(a)(7).

96. This test—the "best interests" test—is satisfied if the estimated recoveries for holders of impaired claims or interests in a hypothetical chapter 7 liquidation are less than or

equal to the estimated recoveries for such holders under a debtor's plan of reorganization. *See id.*; *Spansion*, 426 B.R. at 140 ("[I]n order to meet their obligations under Section 1129(a)(7) of the Bankruptcy Code, Plan Proponents must prove that the distribution to creditors under the Plan is no less valuable, as of the Effective Date of the Plan, than the distribution such creditors would receive if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code.") (quoting *In re Celotex Corp.*, 204 B.R. 586, 611–12 (Bankr. M.D. Fla. 1996)).

97. As demonstrated in the Liquidation Analysis attached as Exhibit E to the Disclosure Statement and as set forth in the Kopa Declaration, the Plan satisfies the best interests test because the Plan provides such holders with the same or greater recoveries than they would receive in a hypothetical chapter 7 liquidation. *See* Disclosure Statement at Ex. K; Kopa Decl. ¶ 9.

H. The Plan Satisfies Section 1129(a)(8) of the Bankruptcy Code *(Class Acceptance).*

98. Section 1129(a)(8) of the Bankruptcy Code requires that each class of impaired claims or interests accepts a plan, as follows: "With respect to each class of claims or interests – (A) such class has accepted the plan; or (B) such class is not impaired under the plan." 11 U.S.C. § 1129(a)(8).

99. As set forth above, holders of Claims in Class 1 (Other Priority Claims) and Class 2 (Other Secured Claims) are Unimpaired under the Plan and, therefore, are presumed to accept the Plan. Thus, as to such Classes, the requirement of section 1129(a)(8)(B) has been satisfied.

100. As to the Classes of Impaired Claims, the requirements of section 1129(a)(8) have been satisfied as follows:

i. Class 3 (First Lien Claims) and Class 4 (RSA GUC Claims): The Plan has been accepted by in excess of two-thirds in amount and one-half in number by the holders of Claims in Class 3 (First Lien Claims) and Class 4 (RSA GUC Claims) at each of the forty Debtors

that have Class 3 and Class 4 Claims. Accordingly, the Plan satisfies the requirements of section 1129(a)(8)(A) with respect to Class 3 and Class 4. *See* Voting Certification. Ex. A.

ii. Class 5 (Non-RSA GUC Claims): The Plan has been accepted by in excess of two-thirds in amount and one-half in number by the holders of Claims in Class 5 (Non-RSA GUC Claims) at all but the eleven Class 5 Rejecting Debtors. Accordingly, the Plan satisfies the requirements of section 1129(a)(8)(A) with respect to Class 5 for each of the Debtors, other than the eleven Class 5 Rejecting Debtors. *Id.*

iii. Class 6 (Convenience Claims): The Plan has been accepted by in excess of two-thirds in amount and one-half in number by the holders of Claims in Class 6 (Convenience Claims) at each of the Debtors except for Debtor Cano Health of Florida, LLC. Accordingly, the Plan satisfies the requirements of section 1129(a)(8)(A) for Class 6 except for Debtor Cano Health of Florida, LLC. *Id.*

iv. Classes 7 – 12: As mentioned above and discussed below, the "cram down" requirements are satisfied under section 1129(b) and the applicable Debtors may obtain confirmation of the Plan notwithstanding the deemed rejection by Classes 5, 6, 7, 8, 9, 10, 11, and 12.

101. As set forth above, the Debtors have obtained at least one Impaired accepting Class on the Plans for forty of the forty-eight Debtors and those Plans should be confirmed. In addition, of the remaining eight Debtors, five of those Debtors have no asserted Impaired Claims (other than scheduled intercompany claims) and, therefore, section 1129(a)(8) of the Bankruptcy Code does not apply.

102. The remaining three Debtors where claims were asserted but no votes were received are: (i) Cano Health Illinois 1 MSO, LLC, (ii) Cano Health CA1, LLC, and (iii) CHPR MSO LLC. Cano Health Illinois 1 MSO, LLC and Cano Health CA1, LLC, have only one allowed Claim comprising the entirety of Class 5 (Non-RSA GUC Claims) and Class 6 (Convenience

Claims), respectively, and no Claims in any other Classes,[27] while CHPR MSO LLC has one incomplete asserted Claim, and no Claims in any other Classes. *See* Voting Certification, Ex. A. Verita sent Solicitation Packages, including Ballots, to the two Claim holders at Cano Health Illinois 1 MSO, LLC and Cano Health CA1, LLC, and the Notice of Confirmation Hearing to the Claim holder at CHPR MSO LLC, which included the Voting Deadline and procedures for objecting to the Plan and disputing classification of Claims. *Id.* ¶ 19. As of the Voting Deadline, no ballots were returned, or objections received, for any of these Debtors. As a result, no votes were received on the Plans for any of these three Debtor entities. Although no votes for these Debtors were received, the Plans for Cano Health Illinois 1 MSO, LLC, Cano Health CA1, LLC, and CHPR MSO LLC should nonetheless be confirmed as each of the creditors at these Debtors was given a full and fair opportunity to vote on the Plan or, with respect to the Claim holder at CHPR MSO LLC, a full and fair opportunity to contest the treatment of their Claim for voting purposes, but opted not to exercise that right.[28] Accordingly, the failure of any creditors to vote on the Plans or object to Claim classification for these three Debtors should be deemed acceptance by those Impaired Classes of those Plans for purposes of Plan confirmation.[29]

103. Further, the Debtors believe the three claimants at these Debtors would receive at least as much under the Debtors' proposed Plans for Cano Health Illinois 1 MSO, LLC,

[27] The remaining Classes for each of these two Debtors are Vacant Classes and will be eliminated pursuant to Section 3.5 of the Plan.

[28] For the avoidance of doubt, the creditors at these Debtors will not be have deemed to grant the Third-Party Releases.

[29] In *Sweetwater*, the court addressed the issue of whether a creditor that did not vote on or object to a plan of reorganization could be deemed to have accepted the plan. The court concluded that claimants voluntarily failing to vote on a plan and failing to object to a plan before its confirmation may be deemed to have accepted the plan. *See Heins v. Ruti-Sweetwater (In re Sweetwater)*, 57 B.R. 748 (D. Utah 1985), *aff'd*, 836 F.2d 1263, 1266-67 (10th Cir. 1988) ("We hold that the district court correctly affirmed the bankruptcy court's ruling that [the creditors'] inaction constituted an acceptance of the Plan."); *see also, cf., In re Szostek*, 886 F.2d 1405, 1413 (3d Cir. 1989) (citing *Sweetwater* and deeming a creditor in a chapter 13 proceeding to have accepted the plan through its failure to make a timely objection); *In re Tribune Co.*, 464 B.R. 126, 183 (Bankr. D. Del. 2011) (finding that a non-voting impaired class may be deemed to accept a proposed plan).

Cano Health CA1, LLC, CHPR MSO LLC as they would receive under state dissolution proceedings.

104. As a result, solely with respect to Class 5 (Non-RSA GUC Claims) at the Class 5 Rejecting Debtors, Class 6 (Convenience Claims) at Cano Health of Florida, LLC, Class 8 (Subordinated Claims), Class 12 (Existing CHI Interests) and, to the extent Impaired under the Plan, Class 7 (Intercompany Claims), Class 9 (Existing Subsidiary Interests), Class 10 (Existing CH LLC Interests), and Class 11 (Existing PCIH Interests), the Plan does not satisfy the requirements of section 1129(a)(8) of the Bankruptcy Code and must be confirmed pursuant to section 1129(b) of the Bankruptcy Code. *See infra* ¶¶ 119-129.

I. The Plan Complies with Section 1129(a)(9) of the Bankruptcy Code *(Administrative and Priority Claims).*

105. Section 1129(a)(9) of the Bankruptcy Code requires that persons holding allowed claims entitled to priority under section 507(a) receive specified cash payments under a plan. 11 U.S.C. § 1129(a)(9). Unless the holder of a particular claim agrees to a different treatment with respect to such claim, section 1129(a)(9) of the Bankruptcy Code sets forth the treatment a plan must provide. *Id.*

106. The Plan complies with section 1129(a)(9) of the Bankruptcy Code. The Plan provides that, except to the extent a holder of an Allowed Administrative Expense Claim agrees to less favorable treatment, each holder of an Allowed Administrative Expense Claim (other than a DIP Claim, Adequate Protection Fees, Restructuring Expenses, or a Professional Fee Claim) shall receive, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Claim, Cash in an amount equal to the unpaid portion of such Allowed Administrative Expense Claim on the latest of: (a) the Effective Date; (b) the first Business Day after the date that is 30 days after the date on which such Administrative Expense Claim becomes an Allowed

Administrative Expense Claim; (c) the date on which such Administrative Expense Claim becomes payable under any agreement with the Debtors or the applicable Reorganized Debtors relating thereto; (d) in respect of liabilities incurred by the Debtors in the ordinary course of business, the date upon which such liabilities are payable in the ordinary course of business by the Debtors or the applicable Reorganized Debtors, as applicable, consistent with the Debtors' past practice; or (e) such other date as may be agreed upon between the holder of such Allowed Administrative Expense Claim and the Debtors or the applicable Reorganized Debtors, as the case may be. *See* Plan § 2.1. While the DIP Claims are not being paid in full in Cash on the Effective Date, the holders of such Claims have consented to their treatment under the Plan.

107. Moreover, the Plan provides that, except to the extent a holder of an Allowed Priority Tax Claim agrees to less favorable treatment, each holder of an Allowed Priority Tax Claim shall receive, in full and final satisfaction of such Allowed Priority Tax Claim, at the option of the Debtors or the Reorganized Debtors, as applicable, Cash in an amount equal to such Allowed Priority Tax Claim on, or as soon as practicable thereafter, the later of (i) the Effective Date, to the extent such Claim is an Allowed Priority Tax Claim on the Effective Date, (ii) the first Business Day after the date that such Priority Tax Claim becomes an Allowed Priority Tax Claim, and (iii) the date such Allowed Priority Tax Claim is due and payable in the ordinary course as such obligation becomes due; provided that the Debtors and the Reorganized Debtors reserve the right to prepay all or a portion of any such amounts at any time under this option at their discretion. *See* Plan § 2.3. All Allowed Priority Tax Claims that are not due and payable on or before the Effective Date shall be paid in the ordinary course of business or under applicable non-bankruptcy law as such obligations become due. *See id*. The Plan, therefore, satisfies the requirements of sections 1129(a)(9)(A) and 1129(a)(9)(B).

J. The Plan Complies with Section 1129(a)(10) of the Bankruptcy Code *(Impaired Accepting Class).*

108. Section 1129(a)(10) of the Bankruptcy Code requires the affirmative acceptance of the plan by at least one class of Impaired Claims, "determined without including any acceptance of the plan by any insider." 11 U.S.C. § 1129(a)(10).

109. As set forth above and in the Voting Certification, holders of Claims in each of the following Classes are Impaired and have voted to accept the Plan, without including the acceptance of the Plan by any insiders in such Class: (i) Class 3 (First Lien Claims) and Class 4 (RSA GUC Claims) at each applicable Debtor, (ii) Class 6 (Convenience Claims) at each applicable Debtor except for Debtor Cano Health of Florida, LLC, and (iii) Class 5 (Non-RSA GUC Claims) at all but the eleven Class 5 Rejecting Debtors. *See* Voting Cert. ¶ 16. Notwithstanding the rejecting Impaired Classes noted above, the Debtors have obtained at least one Impaired accepting Class on the Plans for forty of the forty-eight Debtors and those Plans should be confirmed. In addition, of the remaining eight Debtors, five of those Debtors have no asserted Impaired Claims (other than scheduled intercompany claims) and, therefore, section 1129(a)(8) of the Bankruptcy Code does not apply and those Debtors also satisfy the requirements for confirmation. As set forth above, with respect to the remaining three Debtors where claims were asserted but no votes were received, the Debtors submit such classes should be deemed to accept the Plan. Accordingly, the Plan satisfies section 1129(a)(10) of the Bankruptcy Code.

K. The Plan Complies with Section 1129(a)(11) of the Bankruptcy Code *(Feasibility)*

110. Section 1129(a)(11) of the Bankruptcy Code requires that the Bankruptcy Court find that the Plan is feasible as a condition precedent to confirmation. 11 U.S.C. § 1129(a)(11). Specifically, it requires that confirmation is not likely to be followed by liquidation or the need for further financial reorganization of the debtor, unless such liquidation or

reorganization is proposed in a plan. *Id.*; *see also In re Am. Cap. Equip., LLC*, 688 F.3d 145, 155–56 (3d Cir. 2012). The feasibility test set forth in section 1129(a)(11) requires that the bankruptcy court determine whether the plan may be implemented and has a reasonable likelihood of success. *See United States v. Energy Res. Co.*, 495 U.S. 545, 549 (1990); *Kane v. Johns-Manville Corp.*, 843 F.2d 636, 649 (2d Cir. 1988).

111. Section 1129(a)(11) "does not require a plan's success to be guaranteed." *Am. Cap. Equip.,* 688 F.3d at 156. Rather, the appropriate inquiry is whether a plan offers a reasonable assurance of success. *See id.*; *W.R. Grace*, 475 B.R. at 115 ("The bankruptcy court need not require a guarantee of success, but rather only must find that the plan presents a workable scheme of organization and operation from which there may be reasonable expectation of success.") (alterations omitted) (internal quotation marks). The purpose of the feasibility test is to "prevent confirmation of visionary schemes which promise creditor and equity security holders more under a proposed plan than the debtor can possibly attain after confirmation." *In re Kreider*, No. BANKR. 05–15018ELF, 2006 WL 3068834, at *5 (Bankr. E.D. Pa. Sept. 27, 2006) (citation omitted). The mere prospect of financial uncertainty cannot defeat confirmation on feasibility grounds. *See In re U.S. Truck Co.*, 47 B.R. 932, 944 (E.D. Mich. 1985), *aff'd sub nom. Teamsters Nat'l Freight Indus. Negotiating Comm. v. U.S. Truck Co.* (*In re U.S. Truck Co.*), 800 F.2d 581 (6th Cir. 1986).

112. For purposes of determining whether the Plan satisfies section 1129(a)(11) of the Bankruptcy Code, the Debtors have analyzed their ability to fulfill their obligations under the Plan. *See* McShane Decl. ¶ 51. As part of this analysis, the Debtors, with the assistance of their financial advisors, prepared financial projections for the Debtors for the post-Effective Date period of August 1, 2024 through fiscal year 2028 (the "**Financial Projections**"). *Id.* The

Financial Projections, and the assumptions on which they are based, are annexed to the Disclosure Statement as Exhibit D thereto. Based on the Financial Projections, and as set forth in the McShane Declaration, the Debtors will be able to satisfy all of their go-forward obligations, including all payments required by to the Plan, upon emergence from these chapter 11 cases, and therefore, confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization. *Id.* at ¶ 52-54.

113. Accordingly, the Plan satisfies the feasibility standard of section 1129(a)(11) of the Bankruptcy Code.

L. The Plan Complies with Section 1129(a)(12) of the Bankruptcy Code *(Statutory Fees)*

114. Section 1129(a)(12) of the Bankruptcy Code requires the payment of "[a]ll fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan[.]" 11 U.S.C. § 1129(a)(12). Section 507 of the Bankruptcy Code provides that "any fees and charges assessed against the estate under [section 1930] of title 28" are afforded priority as administrative expenses. 11 U.S.C. § 507(a)(2).

115. In accordance with sections 507 and 1129(a)(12) of the Bankruptcy Code, Section 12.1 of the Plan provides that on the Effective Date, and thereafter as may be required, the Debtors or the Reorganized Debtors, as applicable, shall pay all Statutory Fees when due and payable. *See* Plan § 12.1; McShane Decl. ¶ 55.

M. The Plan Complies with Section 1129(a)(13) of the Bankruptcy Code *(Retiree Benefits).*

116. Section 1129(a)(13) of the Bankruptcy Code requires that the Plan provide for the continuation after the Effective Date of payment of all retiree benefits, as such term is defined in § 1114 of the Bankruptcy Code, at the level established under the same section. 11 U.S.C. § 1129(a)(13). The Debtors are not seeking to modify any "retiree benefits" (as defined

in section 1114 of the Bankruptcy Code) under the Plan. Consequently, the Plan satisfies § 1129(a)(13) of the Bankruptcy Code. *See* McShane Decl. ¶ 56.

N. Sections 1129(a)(14), 1129(a)(15), and 1129(a)(16) of the Bankruptcy Code Do Not Apply to the Plan

117. Certain provisions of section 1129(a) of the Bankruptcy Code do not apply to the Debtors: (i) section 1129(a)(14) of the Bankruptcy Code relates to the payment of domestic support obligations; (ii) section 1129(a)(15) of the Bankruptcy Code applies only in cases in which the debtor is an "individual" (as that term is defined in the Bankruptcy Code); and (iii) section 1129(a)(16) of the Bankruptcy Code applies to transfers of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

118. The Debtors do not have any domestic support obligations, no Debtor is an "individual" as I understand that term to be used in the Bankruptcy Code, and the Debtors are each a moneyed, business, or commercial corporation, and these Chapter 11 Cases are not "small business cases." Accordingly, sections 1129(a)(14)–(16) are inapplicable to the Plan. *See* McShane Decl. ¶ 57.

O. The Plan Satisfies the "Cram Down" Requirements under Section 1129(b) of the Bankruptcy Code

119. Section 1129(b) of the Bankruptcy Code provides a mechanism (known colloquially as "cram down") for confirmation of a chapter 11 plan in circumstances where the plan is not accepted by all impaired classes of claims or interests. Under section 1129(b), the Bankruptcy Court may "cram down" a plan over the dissenting vote of an impaired class or classes of claims or interests as long as (i) the plan satisfies the requirements of section 1129(a) of the Bankruptcy Code, other than section 1129(a)(8), and (ii) the plan does not "discriminate unfairly" and is "fair and equitable" with respect to such dissenting class or classes.

120. "Cram down" is only relevant as to:

- Class 5 (Non-RSA GUC Claims) at the Class 5 Rejecting Debtor Entities which voted to reject the Plan;
- Class 6 (Convenience Claims) at Debtor Cano Health of Florida, LLC, which voted to reject the Plan;
- Classes 8 (Subordinated Claims) and 12 (Existing CHI Interests), which are deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code; and
- Classes 7 (Intercompany Claims), 9 (Existing Subsidiary Interests), 10 (Existing CH LLC Interests), and 11 (Existing PCIH Interests), to the extent holders of Claims and Interests therein are Impaired under the Plan and deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code.

The Plan may nevertheless be confirmed as to the Impaired Classes given that the "cram down" requirements of section 1129(b) of the Bankruptcy Code are satisfied by the Plan.

1. The Plan Does Not Discriminate Unfairly

121. Section 1129(b)(1) does not prohibit discrimination between classes. Rather, it prohibits discrimination that is unfair. Under section 1129(b) of the Bankruptcy Code, a plan unfairly discriminates where similarly situated classes are treated differently without a reasonable basis for the disparate treatment. *See In re Armstrong World Indus., Inc.*, 348 B.R. 111, 121 (D. Del. 2006) (noting that the "hallmarks of the various tests have been whether there is a reasonable basis for the discrimination, and whether the debtor can confirm and consummate a plan without the proposed discrimination") (quoting *In re Lernout & Hauspie Speech Prods., N.V.*, 301 B.R. 651, 660 (Bankr. D. Del. 2003), *aff'd sub nom. Stonington Partners, Inc. v. Official Comm. of Unsecured Creditors* (*In re Lernout & Hauspie Speech Prods., N.V.*), 308 B.R. 672 (D. Del. 2004)); *accord In re WorldCom, Inc*., No. 02-13533 (AJG), 2003 WL 23861928, at *59 (Bankr. S.D.N.Y. Oct. 31, 2003); *In re Johns-Manville Corp.*, 68 B.R. 618, 636 (Bankr. S.D.N.Y. 1986), *aff'd in part*, 78 B.R. 407 (S.D.N.Y. 1987), *aff'd sub nom. Kane v. Johns-Manville Corp.* (*In re Johns-Manville Corp.*), 843 F.2d 636 (2d Cir. 1998); *Coastal Broad. Sys.,* 570 F. App'x at

193 ("[G]rouping of similar claims in different classes is permitted so long as the classification is reasonable.") (internal quotation marks omitted).

122. The Bankruptcy Code does not set forth the standard for determining when "unfair" discrimination exists. *See In re Tribune Co.*, 972 F.3d 228, 242–43 (3d Cir. 2020) (summarizing the various standards applied to unfair discrimination and affirming under *de novo* review the Delaware Bankruptcy Court's application of the rebuttable presumption test); *Idearc*, 423 B.R. at 171; *In re Sea Trail Corp.*, No. 11-07370-8-SWH, 2012 WL 5247175, at *7 (Bankr. E.D.N.C. Oct. 23, 2012) ("Courts have developed different tests for determining whether a reorganization plan unfairly discriminates against a class in violation of Section 1129(b)(1). . . . These tests range from a rigid, mechanical approach in which almost any form of discriminatory treatment violates Section 1129(b)(1) to a broad, flexible one in which the outcome depends heavily on the facts and circumstances of each case.").

123. The Plan does not discriminate unfairly with respect to Classes 5 – 12. As discussed above, the Debtors have a reasonable basis for separately classifying such Classes of Claims and interests. The holders of Claims and Interests of each of such Classes are legally distinct in nature from the holders of Claims and Interests in all other Classes, were classified separately as a result of the Global Settlement or as expressly permitted for administrative convenience under section 1122(b) of the Bankruptcy Code, and are each entitled to recover nothing under the Plan in accordance with the absolute priority rule.

124. Specifically, Class 5 consists of Non-RSA GUC Claims. *See* Plan § 3.3. As part of the Global Settlement with the Creditors' Committee and Consenting Creditors, holders of general unsecured claims, who were previously classified together, were separated into Class 5 (Non-RSA GUC Claims) and Class 4 (RSA GUC Claims) in order to, in part, remove large secured

lender deficiency claims from the general unsecured claims pool and provide enhanced recoveries to general unsecured claimants who were not parties to the RSA, including potential to recover from the Litigation Trust. The separate classification of Class 5 (Non-RSA GUC Claims) is an integral aspect of the Global Settlement, which the Debtors have clearly demonstrated is in the best interest of the Estates and is certainly in the best interests of unsecured claimants who would not otherwise be entitled to recover. Therefore, the Debtors clearly have a reasonable basis for separately classifying Class 5 (Non-RSA GUC Claims) and the Plan does not discriminate unfairly with respect to such Class.

125. Additionally, the Plan does not unfairly discriminate against Class 6 (Convenience Claims), which consists of any Claim that would otherwise be a Non-RSA GUC Claim but for the fact that it (i) is scheduled or asserted as a fixed, liquidated and non-contingent Claim in the amount of $10,000 or less, or (ii) at the election of the holder of the Non-RSA GUC Claim and upon voting to accept the Plan, will be reduced to a fixed, liquidated and non-contingent Claim in the amount of $10,000. *See* Plan § 1.43. Section 1122(b) of the Bankruptcy Code explicitly provides that "[a] plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience." 11 U.S.C. § 1122(b). Accordingly, the Plan does not discriminate unfairly with respect to such Class.

126. Class 7 consists of Intercompany Claims. *See* Plan § 3.3. Class 7 is the only Class of Claims against a Debtor held by another Debtor that is classified and treated under the Plan. Therefore, there is no other Class that is similarly situated to Class 7 and is receiving better treatment than Class 7. Class 8, which consists of Subordinated Claims, is the only Class of prepetition Claims against the Debtors that are subject to subordination pursuant to section 510

of the Bankruptcy Code or otherwise and any Claim for reimbursement, indemnification, or contribution allowed under section 502 of the Bankruptcy Code on account of such Claim that is classified and treated under the Plan. Therefore, there is no other Class that is similarly situated to Class 8 and is receiving better treatment than Class 8.

127. In addition, Class 9, which consists of Existing Subsidiary Interests, is the only Class of Interests in a direct or indirect subsidiary of CH LLC that is classified and treated under the Plan. Therefore, there is no other Class that is similarly situated to Class 9 and is receiving better treatment than Class 9. Class 10, which consists of Existing CH LLC Interests, is the only Class of Interests in CH LLC that is classified and treated under the Plan. Therefore, there is no other Class that is similarly situated to Class 10 and is receiving better treatment than Class 10. Class 11, which consists of Existing PCIH Interests, is the only Class of Interests in PCIH that is classified and treated under the Plan. Therefore, there is no other Class that is similarly situated to Class 11 and is receiving better treatment than Class 11. Finally, Class 12, which consists of Existing CHI Interests, is the only Class of Interests in CHI that is classified and treated under the Plan. Therefore, there is no other Class that is similarly situated to Class 12 and is receiving better treatment than Class 12. As demonstrated herein, the Debtors have sound bases for classifying Claims or Interests in Classes 5 – 12 differently. Accordingly, the Plan does not "discriminate unfairly" with respect to those Classes. *See* McShane Decl. ¶ 58-63.

2. The Plan Is Fair and Equitable

128. To be "fair and equitable" as to holders of unsecured claims, section 1129(b)(2)(B) of the Bankruptcy Code requires a plan to provide either: (i) that each holder of the nonaccepting class will receive or retain on account of such claim property of a value equal to the allowed amount of such claim; or (ii) that a holder of any claim or interest that is junior to the claims of the nonaccepting class will not receive or retain any property under the plan. *See* 11

U.S.C. § 1129(b)(2)(B). To be "fair and equitable" as to holders of interests in a debtor, section 1129(b)(2)(C) of the Bankruptcy Code requires a plan to provide either: (i) that each holder of an equity interest in a nonaccepting class will receive or retain under the plan property of a value equal to the greatest of the fixed liquidation preference to which such holder is entitled, the fixed redemption price to which such holder is entitled, or the value of the interest; or (ii) that a holder of any interest that is junior to the nonaccepting class will not receive or retain any property under the plan. *See* 11 U.S.C. § 1129(b)(2)(C). The Plan is "fair and equitable" with respect to holders of Claims and Interests in Classes 5 – 12 because no Claims or Interests junior to each such Class, as applicable, will receive or retain any property under the Plan on account of such junior Claims or Interests. *See* McShane Decl. ¶ 64-65.

129. Accordingly, the Plan satisfies both cram down requirements of section 1129(b) of the Bankruptcy Code as to Classes 5 – 12 and may be confirmed despite the deemed rejection by such Classes, as applicable.

P. Section 1129(c) of the Bankruptcy Code Is Not Applicable

130. The Plan is the only operative plan currently on file in these Chapter 11 Cases. *See* McShane Decl. ¶ 66. Accordingly, section 1129(c) of the Bankruptcy Code is inapplicable to these cases.

Q. The Plan Complies with Section 1129(d) of the Bankruptcy Code

131. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of section 5 of the Securities Act of 1933. *See* McShane Decl. ¶ 67. The Plan, therefore, satisfies the requirements of section 1129(d) of the Bankruptcy Code.

R. Section 1129(e) of the Bankruptcy Code Does Not Apply to the Plan

132. The provisions of section 1129(e) of the Bankruptcy Code apply only to "small business cases." *See* 11 U.S.C. § 1129(e). These Chapter 11 Cases are not "small business

cases" as defined in the Bankruptcy Code. *See* McShane Decl. ¶ 68. Accordingly, section 1129(e) of the Bankruptcy Code is inapplicable to these cases.

II. Each Remaining Objection Should be Overruled

A. The Humana Entities' Rejection Objection Should be Overruled

133. The Humana Entities[30] filed a Rejection Objection with the Court [Docket No. 1093] contending that the Debtors' notice of proposed rejection of that certain *Amended and Restated Right of First Refusal Agreement* dated June 3, 2021 (the "**ROFR Agreement**"), by and between the Humana Entities and Cano Health, Inc., was improper because the ROFR Agreement is not executory and may not be rejected. The ROFR Agreement is governed by and construed in accordance with the law of the State of Delaware.

134. Under Third Circuit law, "[a]n executory contract is a contract under which the obligation of both the bankrupt and the other party to the contract are so far underperformed that the failure of either to complete performance would constitute a material breach excusing the performance of the other." *Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 39 (3d Cir. 1989) (quoting Countryman, Executory Contracts in Bankruptcy, Part 1, 57 Minn. L. Rev. 439, 460 (1973)).

135. Delaware courts have held that rights of first refusal ("**ROFR**") are executory contracts that may be assumed or rejected, since they impose burdens on both parties and the failure of either party to perform their obligations would excuse the performance of the other. *See, e.g., In re Kellstrom Indus., Inc.*, 286 B.R. 833, 835 (Bankr. D. Del. 2002) (holding that a ROFR was an executory contract that could be assumed or rejected under section 365

[30] "**Humana Entities**" means Humana Insurance Company, Humana Health Plan, Inc., Humana Government Business, Inc., CarePlus Health Plans of Florida, Inc., CarePlus Health Plans, Inc., and their related entities and their affiliates that underwrite or administer health plans.

because it imposed burdens on both sides); *In re LG Philips Displays USA, Inc.*, No. 06-10245 (BLS), 2006 WL 1748671, at 5* (Bankr. D. Del. June 21, 2006) (same).

136. Indeed, in *CB Holdings Corp.*—as the Humana Entities concede— the Court ruled that a right of first refusal was an executory contract subject to rejection under section 365 of the Bankruptcy Code. 448 B.R. 684, 689 (Bankr. D. Del. 2011). Yet, the Humana Entities attempt to distinguish the "format" of their ROFR Agreement as "different" and "not support[ive] [of] such a conclusion." Humana Entities Objection, ¶ 13. The *CB Holdings* court specifically found that material obligations were still required to be performed by both parties: the Debtors were required to offer to sell their licenses and the party was required to respond within 30 days. *CB Holdings Corp.*, 448 B.R. at 689.

137. Here, the ROFR Agreement is no different from other ROFRs. The Court should permit the debtors in possession to reject it as part of these restructuring proceedings and the Humana Entities' Rejection Objection should be overruled.

138. However, even if the Court were to find that the ROFR Agreement is not executory, the Debtors' obligations thereunder would still constitute prepetition liabilities, which would be treated as prepetition general unsecured claims and receive the treatment afforded to such claims under the Plan. *See In re Weinstein Co. Holdings LLC*, 997 F.3d 497, 504 (3d Cir. 2021) (noting for non-executory contracts "the performance the nonbankrupt owes the debtor constitutes an asset, and the performance the debtor owes the nonbankrupt is a liability") (citing 3 Collier, supra ¶ 365.02[2](a)).

139. Whether the ROFR is executory and rejected, or non-executory and treated as a liability of the Debtors, there is no scenario in which the ROFR obligations would or should continue with the Reorganized Debtors. Accordingly, while the Debtors' maintain the ROFR is

an executory contract subject to rejection, to the extent the Court determines the ROFR is non-executory, the Debtors and, upon emergence, the Reorganized Debtors reserve all rights to assert than any obligations arising under the ROFR remain liabilities of the Debtors and not obligations of the Reorganized Debtors.

B. The MSP Objection Should be Overruled

140. MSP Recovery LLC ("**MSP**") filed an Objection [Docket No. 1076] (the "**MSP Objection**") objecting to confirmation of the Plan on the bases that (i) the Plan is a *de facto* substantive consolidation with respect to Class 5, (ii) the Plan fails to comply with section 1129 of the Bankruptcy Code with respect to setoff and recoupment rights of creditors, (iii) the Injunction Provision is too broad and violates applicable Third Circuit law, (iv) the Exculpation Provision is overly broad, (v) the Plan violates the absolute priority rule, and (vi) the Plan unfairly discriminates against Class 5 (Non-RSA GUC Claims). For the reasons set forth above and herein, each of these assertions is without merit and the MSP Objection should be overruled.

141. *First*, the Plan does not provide for the substantive consolidation of the Debtors. *See* Plan § 5.1. As detailed in the Liquidation Analysis included in the Disclosure Statement, which was analyzed on an entity-by-entity basis, in a liquidation scenario, holders of Non-RSA GUC Claims would not receive any recoveries. *See* Disclosure Statement, Ex. E. Solely, for convenience, the Plan groups the Debtors for the purpose of describing treatment under the Plan, confirmation of the Plan, and making distributions in accordance with the Plan, but does not result in a substantive consolidation of any Estates. *See* Plan § 3.2. To the extent a creditor holds more than one Non-RSA GUC Claim against the Debtors, such creditor would be entitled to receive its Pro Rata share of the Class 5 recovery on account of each such Claim. Accordingly, the Plan is not a *de facto* substantive consolidation with respect to Class 5.

142. *Second*, as set forth above, the Plan complies with section 1129 of the Bankruptcy Code. Specifically, with respect to setoff and recoupment rights, Section 10.5(b) of the Plan provides a carve-out for rights of setoff in the Plan Injunction provision to the extent a holder asserts such rights in a timely filed Proof of Claim or timely filed objection to the confirmation of the Plan. *See* Plan § 10.5(b). Accordingly, MSP's rights of setoff and recoupment, if any, are preserved in accordance with the Plan and as provided under the Bankruptcy Code, and the Objection should be overruled.

143. *Third*, as set forth in paragraph 68 above, the Injunction Provision contained in the Plan is a customary provision and merely seeks to ensure that parties do not interfere with the consummation and implementation of the Plan and the Reorganization Transaction contemplated thereby. The Injunction Provision implements the Debtors Release, the Third-Party Releases, and the Exculpation Provision embodied in the Plan by, among other things, permanently enjoining all persons and entities from commencing or continuing in any manner any claim that was released or exculpated pursuant to such provisions. *See* Plan § 10.5. The Injunction Provision is narrowly tailored to achieve that purpose and therefore should be approved.

144. The Injunction Provisions are consistent with those authorized in the Third Circuit in *Millenium Lab Holdings* and, more recently, by this district in *Patriot National*. *See In re Millennium Lab Holdings II, LLC*, 945 F.3d 126, 137 (3d Cir. 2019) (approving injunction and release provisions as critical to the plan's success); *see also Navarro v. Patriot Nat'l, Inc. (In re Patriot Nat'l, Inc.)*, 623 B.R. 696, 706-07 (D. Del. 2020) (approving bankruptcy court's allowance of plan injunction provisions, including the bankruptcy court's retention of exclusive jurisdiction).

145. *Fourth,* as discussed above, the scope of the Exculpation Provision is appropriately tailored to cover only acts or omissions occurring between the Petition Date and the

Effective Date, and will not affect any liability that arises from fraud, gross negligence, or willful misconduct, as determined by a Final Order. Further, although the Exculpation Provision does extend to the Debtors' employees and certain other Related Parties,[31] the protection is expressly limited "solely to the extent such Related Parties are Estate fiduciaries" Plan, § 1.99, which treatment is consistent with similar exculpations approved by this Court. *See, e.g., In re Medley LLC,* Case No. 21-10526 (KBO) (Bankr. D. Del. Oct. 7, 2021) (approving inclusion of related parties as exculpated parties after debtors' revision indicating that such related parties include only fiduciaries of the debtors); *In re Quorum Health Corp.*, Case No. 20-10766 (KBO) (Bankr. D. Del. Jun. 30, 2020) (approving inclusion of non-debtor affiliates as exculpated parties to the extent they are estate fiduciaries). Accordingly, the Exculpation Provision is consistent with applicable law and should be approved.

146. Finally, MSP incorrectly asserts that the Plan fails to company with section 1129(b) of the Bankruptcy Code, which allows confirmation of a plan over the objection of an impaired rejecting class if the plan does not discriminate unfairly and is fair and equitable, "with respect to each class of claims or interests that is impaired under, and has not accepted, the plan." 11 U.S.C. § 1129(b)(1). Here, MSP, a holder of claims in Class 5 of Debtor Cano Health LLC, is the only party asserting the Plan fails to satisfy section 1129(b) and Class 5 at Cano Health LLC voted to accept the Plan. *See* Voting Certification. Courts in several jurisdictions have held that the absolute priority rule only applies "to each class as a whole, and not to minority dissenters

[31] "**Related Parties**" means an Entity's predecessors, successors and assigns, parents, subsidiaries, affiliates, managed accounts or funds, and all of their respective current and former officers, directors (other than the Debtors' former officers and directors employed prior to, but not on or after, the Petition Date), principals, shareholders (and any fund managers, fiduciaries or other agents of shareholders with any involvement related to the Debtors), members, partners, employees, agents, trustees, advisory board members, financial advisors, attorneys, accountants, actuaries, investment bankers, consultants, representatives, management companies, fund advisors and other professionals, and such persons' respective heirs, executors, estates, servants and nominees.

within a class. *In re Winters*, 99 B.R. 658, 663 (Bankr. W.D. Pa. 1989); *see also, In re Wetdog, LLC*, 518 B.R. 126, 139-40 (Bankr. S.D. Ga. 2014) ("A plan does not need to satisfy the absolute priority rule with respect to an impaired class that votes to accept the plan"); *Official Comm. of Equity Sec. Holders v. Official Comm. of Unsecured Creditors (In re Adelphia Communs. Corp.)*, 544 F.3d 420, 426 (2d Cir. 2008) ("a plan need not satisfy the Absolute Priority Rule so long as any class adversely affected by the variation accepts the plan."). The same is true with respect to unfair discrimination arguments. *See In re Tribune Co.,* 972 F.3d 228, 242 (3d Cir. 2020) (finding that unfair discrimination applies only to classes of creditors, not the individuals within the class, and only if such classes reject a plan). Accordingly, MSP does not have standing to object on these bases.

147. In any event, notwithstanding MSP's inability to bring such challenges, as set forth in more detail in paragraphs 121-127 above, the Plan neither violates the absolute priority rule, nor unfairly discriminates against Class 5 (Non-RSA GUC Claims). The Debtors have a reasonable basis for separately classifying such Classes of Claims and Interests. The holders of Claims and Interests of each of such Classes are legally distinct in nature from the holders of Claims and Interests in all other Classes, were classified separately as a result of the Global Settlement or as expressly permitted for administrative convenience under section 1122(b) of the Bankruptcy Code, and are each entitled to recover nothing under the Plan in accordance with the absolute priority rule.

148. Specifically, Class 5 consists of Non-RSA GUC Claims. *See* Plan § 3.3. As part of the Global Settlement with the Creditors' Committee and Consenting Creditors, holders of general unsecured claims, who were previously classified together, were separated into Class 5 (Non-RSA GUC Claims) and Class 4 (RSA GUC Claims) in order to, in part, remove large secured

lender deficiency claims from the general unsecured claims pool and provide enhanced recoveries to general unsecured claimants who were not parties to the RSA, including potential to recover from the Litigation Trust. The separate classification of Class 5 (Non-RSA GUC Claims) is an integral aspect of the Global Settlement, which the Debtors have clearly demonstrated is in the best interest of the Estates and is certainly in the best interests of unsecured claimants who would not otherwise be entitled to recover. Therefore, the Debtors clearly have a reasonable basis for separately classifying Class 5 (Non-RSA GUC Claims) and the Plan does not discriminate unfairly with respect to such Class.

149. For the reasons set forth above the MSP Objection should be overruled.

C. The Cure Objections Should be Overruled

150. As noted above, the Debtors' received fourteenth (14) Cure Objections, one of which has been resolved. The remaining Cure Objections, including the Cure Objection filed by the Former Executives (as defined in the Reply Chart), should not delay confirmation of the Plan and may be resolved post-confirmation, with the assistance of the Court as needed. Section 8.2(d) of the Plan provides, in relevant part, "[t]o the extent a dispute relates to Cure Amounts, the Debtors may assume and/or assume and assign the applicable executory contract or unexpired lease prior to the resolution of such cure dispute, *provided that* the Debtors or the applicable Reorganized Debtors reserve Cash in an amount sufficient to pay the full amount reasonably asserted as the Cure Amount by the counterparty to such executory contract or unexpired lease." Plan, § 8.2(d).

151. As stated in the McShane Declaration, the aggregate amount of disputed Cure Amounts is approximately $1.25 million[32] and the Reorganized Debtors will have sufficient liquidity to pay those amounts in the event they are determined to be owed. *See* McShane Decl. ¶ 25.

152. Further, to the extent parties are unable to reach consensual resolution of the Cure Objections, Section 11.1(a) of the Plan provides that the Bankruptcy Court shall retain jurisdiction on and after the Effective Date "to hear and determine motions and/or applications for the assumption, assumption and assignment, or rejection of executory contracts or unexpired leases, including disputes over Cure Amounts, and the allowance, classification, priority, compromise, estimation, or payment of Claims resulting therefrom." *Id*. § 11.1(a).

153. Accordingly, the Cure Objections should be overruled with respect to confirmation of the Plan and disputes regarding Cure Amounts should be resolved pursuant to the terms of the Plan with each of the parties' respected rights preserved as set forth in the Plan and the Confirmation Order.

D. Other Remaining Unresolved Objections Should be Overruled and the Plan Should be Confirmed

154. As set forth in this Memorandum and in the Reply Chart, the Debtors have worked and continue to work, to resolved or address the Objections to the Plan. The remaining unresolved or unaddressed Objections should be overruled on the basis they (i) should not to delay confirmation of the Plan, as the remaining issues can be addressed on a post-confirmation basis, (ii) contest the Debtors' rejection of executory contracts or unexpired leases without asserting a basis for questioning the Debtors' business judgment, or (iii) otherwise have no merit and should

[32] This estimate excludes Cure Amounts asserted in Objections that are resolved or that the Debtors anticipate resolving in advance of the Confirmation Hearing.

be overruled. The Debtors have responded to each of these Objections above or in the attached Reply Chart. The Debtors continue to work with objectors to resolve the remaining outstanding Objections in advance of the Confirmation Hearing.

155. Nevertheless, to the extent that the Debtors do not resolve the outstanding Objections, the Debtors respectfully request that the Court overrule each such unresolved Objection for the reasons set forth in this Memorandum and in the Reply Chart.

III. Cause Exists to Waive the Stay of the Confirmation Order

156. The Debtors respectfully request that the Bankruptcy Court direct that the Confirmation Order shall be effective immediately upon its entry, notwithstanding the fourteen (14)-day stay imposed by operation of Bankruptcy Rule 3020(e). Bankruptcy Rule 3020(e) provides that "[a]n order confirming a plan is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 3020(e). As such, and as the Advisory Committee Notes to Bankruptcy Rule 3020(e) state, "[t]he court may, in its discretion, order that Rule 3020(e) is not applicable so that the plan may be implemented and distributions may be made immediately." Fed. R. Bankr. P. 3020(e) advisory committee's note to 1999 amendment.

157. Under the circumstances, it is appropriate for the Bankruptcy Court to exercise its discretion to order that Bankruptcy Rule 3020(e) is not applicable and permit the Debtors to consummate the Plan and commence its implementation as soon as possible following entry of the Confirmation Order. The Debtors are required by the milestones under the RSA, as modified by the Final DIP Order, to have the Plan go effective and emerge from chapter 11 by July 1, 2024, subject to an automatic extension of up to 45 days (*i.e.*, August 29, 2024) if the effective date has not occurred solely due to any pending healthcare-related regulatory approvals or any pending approvals under the Hart-Scott-Rodino Act—which extension is not applicable

here. Moreover, each day that the Debtors remain in chapter 11, they incur significant additional administrative and professional costs.

158. For these reasons, the Debtors, their advisors, and other key constituents are working to expedite the Debtors' entry into and consummation of the documents and Reorganization Transaction necessary to effectuate the Plan so that the Effective Date may occur as soon as possible after the entry of the Confirmation Order. Based on the foregoing, the requested waiver of the fourteen (14)-day stay is in the best interests of the Debtors' estates and creditors and will not prejudice any party in interest. *See* McShane Decl. ¶ 69.

CONCLUSION

159. The Plan complies with all of the requirements of section 1129 of the Bankruptcy Code and should be confirmed.

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Dated: June 26, 2024
Wilmington, Delaware

/s/ Michael J. Merchant

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Exhibit A

Reply Chart

IN RE CANO HEALTH, LLC
CH. 11 CASE NO. 24-10164 (KBO)

SUMMARY CHART OF CONFIRMATION OBJECTIONS[1]

No.	Docket No.	Objecting Party	Summary of Objection	Debtors' Response
1.	1061	UnitedHealthcare Insurance Company, UnitedHealthcare of Florida, Inc., Preferred Care Network, Inc., and Preferred Care Partners, Inc. (collectively, the "**United Entities**")	Confirmation Objection. The United Entities assert that: a) To the extent the Plan allows the Debtors to reject any Risk Agreements or the Medical Group Agreement on less than sixty (60) days' notice, the Plan fails to comply with sections 1123(a) and 1129(a)(1) and (3) because it does not provide the United Entities with the requisite notice under nonbankruptcy law. b) Out of an abundance of caution, they preserve their rights of setoff in accordance with Section 10.5(b) of the Plan.	The Debtors will work with the United Entities to transition the rejected Risk Agreements and the Medical Group Agreement, and satisfy any applicable regulatory noticing requirements imposed on the Debtors. In accordance with the Plan, because the United Entities have asserted a purported right of setoff or recoupment in a timely filed proof of claim or objection to confirmation, the United Entities' rights of setoff and recoupment, if any, are preserved in accordance with the Plan and as provided under the Bankruptcy Code. *See* Plan § 10.5(b).
2.	1066	Cigna Health and Life Insurance Company and certain of its affiliates (collectively, "**Cigna**")	Confirmation Objection. Cigna asserts that: a) The Debtors' Rejection Schedule includes one generic, ambiguous Cigna reference that does not specifically identify precise contracts with Cigna. The Plan should not be confirmed until the Debtors provide Cigna with definitive notice of the Plan's proposed disposition of contracts with Cigna by definitively and accurately identifying the Cigna contracts to be rejected. b) Because amounts due under the contracts with Cigna vary, accrue on a rolling basis, and are subject to adjustments, actual cure amounts cannot be determined prior to the Effective Date and any order permitting the	**Resolved.** The Debtors are rejecting all of the Cigna contracts, which have been added to the Rejection Schedule, rendering this objection moot.

[1] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the *Debtors' Memorandum of Law In Support of Confirmation of Fourth Amended Joint Chapter 11 Plan of Reorganization of Cano Health, Inc. and Its Affiliated Debtors* (the "**Confirmation Brief**"), the applicable Objection, the Plan, or the Disclosure Statement, as applicable. This chart summarizes certain key issues raised in the Objections. To the extent that an Objection or a specific point raised in an Objection is not addressed herein, the Debtors reserve the right to respond to such Objection up to and at the Confirmation Hearing.

No.	Docket No.	Objecting Party	Summary of Objection	Debtors' Response
			assumption of Cigna contracts shall direct the Debtors to pay the full amounts due as of the Effective Date.	
3.	1067	Marlow Hernandez, Richard Aguilar, Jason Conger, and Pedro Cordero (collectively, the "**Former Employees**")	Cure Objection. The Former Employees assert their previously-filed cure objections with respect to their employment and separation agreements should be addressed at the Confirmation Hearing, to the extent their cure objections are unresolved. The Former Employees restate their objections to the $0 cure amounts listed for their employment and separation agreements.	**Unresolved.** In accordance with Section 8.2(d) of the Plan, the Debtors will reserve Cash an amount sufficient to pay the full amount reasonably asserted as by the counterparties to the extent not resolved prior to the Effective Date. Accordingly, the Cure Dispute may be resolved post-confirmation. *See* Brief ¶¶ 150-53.
4.	1068	Andrew R. Vara, United States Trustee for Region 3 (the "**U.S. Trustee**")	Confirmation Objection. The U.S. Trustee asserts the Plan's definition of "Exculpated Parties," which includes "Related Parties" violates applicable Third Circuit Law because it could exculpate parties who may not have acted as estate fiduciaries. The U.S. Trustee further argues the Plan is unconfirmable under section 1129(a)(1) of the Bankruptcy Code because medical malpractice claims are improperly included in the Plan's third-party releases and any releases by patients would not be supported by consideration, which violates section 524(e) of the Bankruptcy Code.	**Resolved.** The Debtors have negotiated in good faith with the U.S. Trustee to reach a consensual resolution regarding its concerns about third-party releases of medical malpractice claims.
5.	1070	Sunshine State Health Plan, Inc., WellCare Health Insurance of Arizona, Inc. (together, "**WellCare**") and Centene Corporation ("**Centene**")	Confirmation Objection. WellCare asserts that its rights of setoff under section 553 of the Bankruptcy Code or under provider agreements should not be invalidated or eliminated by the Section 10.5 of the Plan. Centene asserts that it may have recoupment rights, and preserves its setoff and recoupment rights against the Debtors.	In accordance with the Plan, because WellCare and Centene have asserted a purported right of setoff or recoupment in a timely filed proof of claim or objection to confirmation, WellCare's and Centene's rights of setoff and recoupment, if any, are preserved in accordance with the Plan and as provided under the Bankruptcy Code. *See* Plan § 10.5(b).
6.	1071	The Official Committee of Unsecured Creditors (the "**Creditors' Committee**")	Reservation of Rights. The Creditors' Committee supports confirmation of the Plan, but notes some components of the Global Settlement have not yet been implemented, and reserves its rights to be heard at the Confirmation Hearing in the event the issues are not resolved.	**Reservation of Rights.** The Debtors acknowledge the Creditors' Committee's Reservation of Rights and have continued to negotiate in good faith to address the Creditors' Committee's concerns.
7.	1072	Frank and Lissette Exposito (the "**Expositos**")	Confirmation Objection. The Expositos assert the Plan violates section 1129 of the Bankruptcy Code because the Debtors' subordination of the Expositos' claims under section 510 of the Bankruptcy Code is improper and, their claims should be treated as general unsecured claims instead of other unsecured claims.	**Adjourned.** The Debtors, Expositos, Consenting Creditors, and the Creditors' Committee have agreed to address or otherwise litigate the matters raised in the Exposito Objection post-confirmation.

No.	Docket No.	Objecting Party	Summary of Objection	Debtors' Response
			Cure Objection. The Expositos assert if the Debtors take the position that the employment agreements have provisions that remain in force against the Expositos, the Debtors must cure $6 million in bonuses earned during the Expositos' employment with the Debtors. In addition, the Expositos argue that if the Debtors (i) reject the employment agreements or (ii) deem them terminated prepetition, the $6 million in bonuses should not be subordinated and be treated as general unsecured claims.	**Adjourned.** The Parties have agreed that, if necessary, the issues raised in the Expositos' objection may be addressed or resolved by the Court.
8.	1074	Elevance Health, Inc., and its subsidiaries and affiliates (collectively, "**Elevance**")	Confirmation Objection. Elevance asserts that Section 10.5 of the Plan should not restrain it or any of its affiliates from asserting any counterclaim against any Debtors in connection with the Simply Litigation or exercising any right of setoff or recoupment. Elevance requests that any proposed confirmation order provide that Section 10.5 of the Plan shall not be construed to bar it from defending itself in the Simply Litigation or any litigation commenced against it by any Debtor.	In accordance with the Plan, because Elevance has asserted a purported right of setoff or recoupment in a timely filed proof of claim or objection to confirmation, Elevance's rights of setoff and recoupment, if any, are preserved in accordance with the Plan and as provided under the Bankruptcy Code. *See* Plan § 10.5(b). Additionally, nothing in the Confirmation Order or Plan bars any party from defending itself in any litigation commenced against it by the Debtors or the Reorganized Debtors. The Debtors have agreed to include the following language in the proposed Confirmation Order: To the extent that any provider agreement (each such agreement, an "**Elevance Agreement**") between any Debtor and Elevance is assumed, then, notwithstanding any other provision of the Plan, the Plan Supplement, this Confirmation Order or any other order entered in these Chapter 11 Cases, or section 365 of the Bankruptcy Code, after the Effective Date, pursuant to, and solely to the extent permitted by, and arising under, the terms of such the applicable Elevance Agreement, Elevance shall be authorized, in the ordinary course of business, to offset, recover or recoup any amounts due by Elevance to the applicable Debtor or Reorganized Debtor that is party to such Elevance Agreement against any amounts due by the applicable Debtor or Reorganized Debtor to Elevance under such Elevance Agreement, including any overpayments due to Elevance arising or relating to any period

No.	Docket No.	Objecting Party	Summary of Objection	Debtors' Response
				prior to the Effective Date. The rights, claims, and defenses of Elevance, the Debtors, the Debtors' Estates and the Reorganized Debtors under each such Elevance Agreement, to the extent that they exist, are hereby reserved. Nothing in the Confirmation Order or Plan bars any party from defending itself in any litigation commenced against it by the Debtors or the Reorganized Debtors.
9.	1075	MedCloud Depot, LLC ("**MedCloud**")	Confirmation Objection. MedCloud objects to the releases, exculpations, and/or injunctions in the Plan to the extent they restrict MedCloud's rights to prosecute against any of the Debtors, their Estates, their employees, including Robert Camerlink, or restrict any setoff and recoupment, counter-claim, cross-claim, or third-party claim that MedCloud could assert.	MedCloud opted out of the Plan's Third-Party Releases and, accordingly, may continue to prosecute their claims in accordance with the Plan. *See* Brief ¶¶ 62-64. In accordance with the Plan, because MedCloud has asserted a purported right of setoff or recoupment in a timely filed proof of claim or objection to confirmation, MedCloud's rights of setoff and recoupment, if any, are preserved in accordance with the Plan and as provided under the Bankruptcy Code. *See* Plan § 10.5(b).
10.	1076	MSP Recovery LLC ("**MSP**")	Confirmation Objections. MSP objects on the following bases: a) Substantive Consolidation. MSP asserts the Plan is a de facto substantive consolidation because the Debtors classify claims against each of them into one aggregate group for distribution but fail to explain the recoveries if distributions were based on assets held by each separate Debtor entity. b) Setoff and Recoupment Rights. MSP asserts the Plan does not comply with section 1129 of the Bankruptcy Code because it seeks to extinguish or limit prepetition setoff and recoupment rights of all creditors under section 553 of the Bankruptcy Code. MSP asserts that its right of recoupment survives confirmation. c) Plan Injunction. MSP asserts the discharge injunctions in Section 10.5 of the Plan are too broad and violate	MSP's objection should be overruled. The Plan does not provide for the substantive consolidation of the Debtors. *See* Plan § 5.1; *see also* Brief ¶ 141. In accordance with the Plan, because MSP has asserted a purported right of setoff or recoupment in a timely filed proof of claim or objection to confirmation, MSP's rights of setoff and recoupment, if any, are preserved in accordance with the Plan and as provided under the Bankruptcy Code. *See* Plan § 10.5(b). The Injunction Provisions contained in the Plan are consistent with Third Circuit law and are customary

No.	Docket No.	Objecting Party	Summary of Objection	Debtors' Response
			applicable Third Circuit law because they cover non-debtor third parties from future claims, irrespective of whether a creditor has elected to opt out of the releases, which would release non-Debtors that are not entitled to a discharge. MSP asserts there is no evidence the releases provided to the Released Parties as supported by consideration.	provisions that seek to assure that parties do not interfere with the consummation and implementation of the Plan and the Reorganization Transaction contemplated thereby. *See* Brief ¶¶ 143–44.
			d) Exculpation. MSP asserts the exculpation provisions in Section 10.7 of the Plan are overly broad because the exculpation provisions are not limited to estate fiduciaries and the time period covers acts and omissions for both prepetition and post-Effective Date periods.	The scope of the Exculpation Provision is appropriately tailored to cover only acts or omissions occurring between the Petition Date and the Effective Date, and will not affect any liability that arises from fraud, gross negligence, or willful misconduct, as determined by a Final Order. *See* Brief ¶¶ 145.
			e) Absolute Priority Rule. MSP asserts that the Plan violates the section 1129(b) of the Bankruptcy Code because it allows creditors with junior claims within the Debtors' corporate structure to receive pro rata distributions from assets of other Debtor entities when the claims of creditors at those entities have not been paid in full, by consolidating assets, claims, and recoveries of general unsecured creditors at various different Debtor entities.	As demonstrated in the Brief, the Plan satisfies the absolute priority rule. *See* Brief ¶¶ 121-127, 140-148.
			f) Unfair Discrimination. MSP asserts that the Plan also violates section 1129(b) of the Bankruptcy Code because it unfairly discriminates against Class 5. MSP asserts that Class 5 will distribute value received from all of the Debtors' causes of action and assets to all of the Debtors' GUCs, irrespective of which creditor holds which claim, or which Debtor holds which assets, rendering recoveries to the creditors diluted and unfairly distributed.	As demonstrated in the Brief, the Plan does not include impermissible classifications and does not unfairly discriminate between Holders of Claims. *See* Brief ¶¶ 121–27.
11.	1094	Humana Insurance Company, Humana Health Plan, Inc., Humana Government Business, Inc., CarePlus Health Plans of Florida, Inc., CarePlus Health	Confirmation Objection. The Humana Entities assert the Plan should not be confirmed because the Debtors wrongfully rejected the *Amended and Restated Right of First Refusal Agreement* dated June 3, 2021 (the "**ROFR Agreement**"). The Humana Entities incorporate by reference their objection to the Debtors'	The Humana Entities' objection should be overruled. In Delaware, courts have held that rights of first refusal are executory contracts that may be assumed or rejected. *See* Brief ¶¶ 46, 133-39.

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		Plans, Inc. and their related entities and their affiliates that underwrite or administer health plans (collectively, the "**Humana Entities**")	notice of proposed rejection of the ROFR Agreement, filed at Docket No. 1093 (see below). The Humana entities also object to the Plan that to the extent the Plan's confirmation is dependent on the assumption of contracts in which the Humana Entities are counterparties and such contracts are not cured in full as required under section 365 of the Bankruptcy Code.	
Objections to Rejection Schedules (Regarding Rejection Only)				
1.	1087	Compudile, Inc. ("**Compudile**")	Objection to Notice of Proposed Rejection. Objects to the rejection of four (4) Compudile contracts as listed in the Rejection Schedule and asserts damages amounting to $100,681.36.	*See* Brief ¶¶ 46(ii), 154-55.
2.	1092	Devoted Health, Inc. ("**Devoted**")	Limited Objection / Reservation of Rights. Devoted files its limited objection solely to reserve its rights in the event the parties do not reach consensus concerning the rejection of their payor agreement.	*See* Brief ¶ 46(ii), 154-55.
3.	1093	The Humana Entities	Objection to Notice of Proposed Rejection. The Humana Entities object to the Debtors' rejection of the *Amended and Restated Right of First Refusal Agreement* dated June 3, 2021 (the "**ROFR Agreement**"), between certain of the Humana Entities and Cano Health, Inc. The Humana Entities assert that the ROFR Agreement is not executory and may not be rejected.	*See* Brief ¶¶ 46(ii), 133-39.
4.	1101	CD Support LLC ("**CDS**")	Objection to Notice of Proposed Rejection. CDS objects to the listing of one of its contracts, the Dental Services Administration Agreement, by and between CDS and Cano Health, LLC, effective as of April 13, 2022 (the "DSAA") in the Rejection Schedule. CDS asserts the DSAA was terminated pre-petition and therefore is not executory and should not be listed on the Debtors' Rejection Schedule.	*See* Brief ¶¶ 46(ii), 154-55. The Debtors are rejecting this contract.
Cure Objections (Regarding Cure and Assumption Only)				
1.	1031	AmerisourceBergen Drug Corporation ("**Amerisource**")	Cure Amount. Amerisource objects to the amounts listed in the Cure Notice for a total of 11 agreements and asserts a total cure amount of $773,464.57.	Amerisource's rights are preserved under the Plan and Confirmation Order to be dealt with post-confirmation. The Debtors are in the process of reconciling the disputed cure. In accordance with the section 8.2(d) of the Plan, the

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			Contract Description. Amerisource objects to the description of the agreements. Contract Identification. Amerisource claims the 11 agreements relate to 1 single contractual relationship and the descriptions in the Cure Notice are insufficient to determine the items that are proposed to be assumed. Amerisource requests that if the prime vendor agreement is assumed, it include all amendments and ancillary agreements.	Debtors will reserve Cash an amount sufficient to pay the full amount reasonably asserted as by the counterparties to the extent not resolved prior to the Effective Date. In accordance with Section 8.2(d) of the Plan, the Debtors will reserve Cash an amount sufficient to pay the full amount reasonably asserted as by the counterparties to the extent not resolved prior to the Effective Date. Accordingly, the Cure Dispute may be resolved post-confirmation. *See* Brief ¶¶ 150-53.
2.	1032	BOF FL Flagler Station LLC ("**BOF**")	Cure Amount. BOF objects to the Cure Amount provided ($62,303.00) and asserts the amount due is $172,044.91.	The Debtors updated the Cure Amount to reflect the amount asserted by BOF. *See* Plan Supplement [Docket No. 1023]. Accordingly, the Debtors believe this Objection is resolved.
3.	1035, 1083	Verdant Commercial Capital, LLC ("**Verdant**"), assignee of Barlop Business Systems	Cure Amount. Verdant objects to the Cure amount provided ($0) and asserts the amount due is $63,005.22, plus any additional rent payments that become due, and requests legal fees incurred to date of $5,270; total alleged Cure Amount of $68,275.22.	Verdant's rights are preserved under the Plan and Confirmation Order to be dealt with post-confirmation. The Debtors are in the process of reconciling the disputed cure. In accordance with the section 8.2(d) of the Plan, the Debtors will reserve Cash an amount sufficient to pay the full amount reasonably asserted as by the counterparties to the extent not resolved prior to the Effective Date. In accordance with Section 8.2(d) of the Plan, the Debtors will reserve Cash an amount sufficient to pay the full amount reasonably asserted as by the counterparties to the extent not resolved prior to the Effective Date. Accordingly, the Cure Dispute may be resolved post-confirmation. *See* Brief ¶ ¶ 150-53.
4.	1036	Cigna Health and Life Insurance Company ("**Cigna**")	Contract Identification. Cigna asserts the Cure Notice only references one Cigna agreement with Express Scripts, Inc. ("**ESI**"). Cigna alleges that it has no record of the contract with ESI. Assumption Order. Cigna asserts that any order permitting the assumption of any of the Cigna contracts must direct the Debtors to pay all amounts due as of the Effective Date as a condition precedent to assumption, and that amounts will continue to accrue and actual cure amounts cannot be determined prior to the Effective Date.	The Debtors are rejecting all of the Cigna contracts, which have been added to the Rejection Schedule, rendering this objection moot.

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			Reservation of Rights. Cigna reserves its rights to full and adequate cure amounts because the default of the Plan is assumption.	
5.	1039	Laboratory Corporation of America Holdings ("**LabCorp**")	Cure Amount. LabCorp asserts it is unable to confirm the proposed Debtors' proposed cure amount of $2,045.48. LabCorp claims the Debtors were party to at least 9 contracts, and it filed a Proof of Claim for $107,211.96. Contract Identification. LabCorp objects to the description because it cannot identify the listed agreement.	Labcorp's rights are preserved under the Plan and Confirmation Order to be dealt with post-confirmation. The Debtors are in the process of reconciling the disputed cure. In accordance with the section 8.2(d) of the Plan, the Debtors will reserve Cash an amount sufficient to pay the full amount reasonably asserted as by the counterparties to the extent not resolved prior to the Effective Date. In accordance with Section 8.2(d) of the Plan, the Debtors will reserve Cash an amount sufficient to pay the full amount reasonably asserted as by the counterparties to the extent not resolved prior to the Effective Date. Accordingly, the Cure Dispute may be resolved post-confirmation. *See* Brief ¶¶ 150-53.
6.	1040	GRI-EQY (Concord) LLC ("**Concord**")	Cure Amount. Concord objects to the Debtors' cure amount of $202,002.00 and asserts it should be $226,493.28. Adequate Assurance. Concord requests adequate assurance information from any proposed assignee of the Lease. Reservation of Rights. Concord asserts that the Debtors must satisfy any Adjustment Amounts that have not yet been billed or come due under the lease, and comply with all contractual obligations, including indemnification.	Concord's rights are preserved under the Plan and Confirmation Order to be dealt with post-confirmation. The Debtors are in the process of reconciling the disputed cure. In accordance with the section 8.2(d) of the Plan, the Debtors will reserve Cash an amount sufficient to pay the full amount reasonably asserted as by the counterparties to the extent not resolved prior to the Effective Date. In accordance with Section 8.2(d) of the Plan, the Debtors will reserve Cash an amount sufficient to pay the full amount reasonably asserted as by the counterparties to the extent not resolved prior to the Effective Date. Accordingly, the Cure Dispute may be resolved post-confirmation. *See* Brief ¶¶ 150-53.
7.	1041	De Paz Holdings, LLC and V&L Investment Group, Inc. ("**De Paz**")	Cure Amount. De Paz objects to the Debtors' cure amounts totaling $51,560 for eight contracts and asserts it should total $160,257.44. Assumption Order. De Paz requests that any order establishing cure amounts must provide for the payment of all charges due in the ordinary course, including charges after the lease is assumed and indemnification charges.	DePaz's rights are preserved under the Plan and Confirmation Order to be dealt with post-confirmation. The Debtors are in the process of reconciling the disputed cure. In accordance with the section 8.2(d) of the Plan, the Debtors will reserve Cash an amount sufficient to pay the full amount reasonably asserted as by the counterparties to the extent not resolved prior to the Effective Date. In accordance with Section 8.2(d) of the Plan, the Debtors will reserve Cash an amount sufficient to pay the full amount reasonably asserted as by the counterparties to the extent not resolved prior to the

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			Contract Identification. De Paz asserts it is unsure of the Debtors' intentions regarding the unexpired lease for 1248 N.W. 119th Street, Miami, Florida. Joinder. De Paz also joins in the objections raised by the other landlords.	Effective Date. Accordingly, the Cure Dispute may be resolved post-confirmation. *See* Brief ¶¶ 150-53.
8.	1042	Elevance Health, Inc. ("**Elevance**")	Cure Amount. Elevance objects to the $0 cure amounts provided by the Debtors for the assumption of five agreements. Contract Identification. Elevance asserts it cannot ascertain which contracts the Debtors propose to assume and cannot reasonably evaluate the cure amounts because of the generic contract descriptions relating to Elevance.	*See Debtors' response to Elevance Confirmation Objection above*.
9.	1043	Sunshine State Health Plan, Inc. and WellCare Health Insurance of Arizona, Inc. ("**Health Plans**")	Cure Amount. Health Plans dispute the Debtors' proposed Cure amounts of $0. Contract Identification. Health Plans assert it is unclear if the rejection of Ambetter refers to a contract with Health Plans, and that the Debtors' rejection of Sunshine Health does not correctly identify the legal name of the counterparty. Defaults. Health Plans assert the following defaults must be cured: (1) non-monetary default whereby the Debtors breached the minimum member contract threshold (of persons having at least one office visit per year) pursuant to the Second PPA and (ii) monetary default whereby the Debtors have deficits under the First PPA ($1,127,354) and Second PPA ($3,627,545), to the extent the Debtors are seeking to assume the First and Second PPA agreements.	Health Plan's rights are preserved under the Plan and Confirmation Order to be dealt with post-confirmation. The Debtors are in the process of reconciling the disputed cure. In accordance with the section 8.2(d) of the Plan, the Debtors will reserve Cash an amount sufficient to pay the full amount reasonably asserted as by the counterparties to the extent not resolved prior to the Effective Date. In accordance with Section 8.2(d) of the Plan, the Debtors will reserve Cash an amount sufficient to pay the full amount reasonably asserted as by the counterparties to the extent not resolved prior to the Effective Date. Accordingly, the Cure Dispute may be resolved post-confirmation. *See* Brief ¶¶ 150-53.
10.	1044–46	Marlow Hernandez, Jason Conger, and Richard Aguilar (the "**Former Employees**")	Cure Amount. The Former Employees assert the cure amounts in the Assumption Schedule of $0 are incorrect and assert the following cure amounts are due under the agreements: $284,777.27 (Hernandez); $216,891.65 (Conger); and $263,096.12 (Aguilar).	The Debtors are in the process of reconciling the disputed cure. In accordance with the section 8.2(d) of the Plan, the Debtors will reserve Cash an amount sufficient to pay the full amount reasonably asserted as by the counterparties to the extent not resolved prior to the Effective Date. In accordance with Section 8.2(d) of the Plan, the Debtors will reserve Cash an amount sufficient to pay the full amount reasonably asserted as by the counterparties to the extent not resolved prior to the Effective Date. Accordingly, the Cure Dispute may be resolved post-confirmation. *See* Brief ¶¶ 150-53.

No.	Docket No.	Objecting Party	Summary of Objection	Debtors' Response
11.	1049	UnitedHealthcare Insurance Company, UnitedHealthcare of Florida, Inc. (together, "**UHC**"), Preferred Care Network, Inc. ("**PCN**"), Preferred Care Partners, Inc. ("**PCP**"), and Change Healthcare Solutions, LLC ("**United**", and collectively, the "**United Entities**")	Cure Amount. United objects to the Assumption Notice based upon the Debtors' provision of incorrect cure amounts. As of May 28, 2024, United claims the total amounts due total $31,038,922.07. Further, United alleges the Debtors have defaulted under the Risk Agreements by failing to cure the deficits in the Operating Funds and by failing to fund the Security Reserve Accounts, which must be cured upon assumption. Contract Identification. United asserts the information provided is insufficient to allow United to identify any of their additional contracts that may be implicated.	The Debtors will work with the United Entities to transition the rejected Risk Agreements and the Medical Group Agreement, and satisfy any applicable regulatory noticing requirements. In accordance with the Plan, because the United Entities have asserted a purported right of setoff or recoupment in a timely filed proof of claim or objection to confirmation, the United Entities' rights of setoff and recoupment, if any, are preserved in accordance with the Plan and as provided under the Bankruptcy Code. *See* Plan § 10.5(b).
12.	1088	Pedro Cordero ("**Cordero**")	Cure Amount. Cordero objects to the Debtors' proposed cure amount of $0 and instead asserts a cure amount of $153,3286.95.	The Debtors are in the process of reconciling the disputed cure. In accordance with the section 8.2(d) of the Plan, the Debtors will reserve Cash an amount sufficient to pay the full amount reasonably asserted as by the counterparties to the extent not resolved prior to the Effective Date. In accordance with Section 8.2(d) of the Plan, the Debtors will reserve Cash an amount sufficient to pay the full amount reasonably asserted as by the counterparties to the extent not resolved prior to the Effective Date. Accordingly, the Cure Dispute may be resolved post-confirmation. *See* Brief ¶¶ 150-53.
13.	1089	Hemisphere Holdings I, LLC ("**Hemisphere**")	Cure Amount. Hemisphere objects to the proposed cure amount of $0 and instead asserts a cure amount of $5,768.93.	Hemisphere's rights are preserved under the Plan and Confirmation Order to be dealt with post-confirmation. The Debtors are in the process of reconciling the disputed cure. In accordance with the section 8.2(d) of the Plan, the Debtors will reserve Cash an amount sufficient to pay the full amount reasonably asserted as by the counterparties to the extent not resolved prior to the Effective Date. In accordance with Section 8.2(d) of the Plan, the Debtors will reserve Cash an amount sufficient to pay the full amount reasonably asserted as by the counterparties to the extent not resolved prior to the

No.	Docket No.	Objecting Party	Summary of Objection	Debtors' Response
				Effective Date. Accordingly, the Cure Dispute may be resolved post-confirmation. *See* Brief ¶¶ 150-53.
14.	1091	Humana Insurance Company, Humana Health Plan, Inc., Humana Government Business, Inc., CarePlus Health Plans of Florida, Inc., CarePlus Health Plans, Inc., and their related entities and their affiliates that underwrite or administer health plans (collectively, the "**Humana Entities**")	Cure Amount. The Humana Entities objects to the proposed cure amounts and asserts there are ambiguities regarding the method of calculation of these amounts. The Humana Entities assert that due to the number of contracts and complexity in calculating the balances, the Humana Entities cannot fully confirm the cure amounts. In addition, the Humana Entities allege that specific sums for particular contracts are not clear, and that the Transition Claims should be included as part of the cure amounts. Contract Identification. The Humana Entities asserts the Debtors fail to provide an adequate description of parties to the contracts.	*See* Brief ¶¶ 46(ii), 133-39.