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

In re:	
MODIVCARE, INC, *et al*.[1]	Chapter 11
Debtors.	Case No. 25-90309 (ARP) (Jointly Administered)
	Re: Docket No. 122

OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE DEBTORS' EMERGENCY MOTION FOR APPROVAL OF THE DISCLOSURE STATEMENT AND RELATED SOLICITATION PROCEDURES

The Official Committee of Unsecured Creditors (the "**Committee**") appointed in the cases of the above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**") states as follows in support of this objection (the "**Objection**") to the *Emergency Motion of Debtors for Entry of an Order (A) Approving Disclosure Statement, (B) Scheduling Confirmation Hearing; (C) Establishing Related Objection and Voting Deadlines; (D) Approving Related Solicitation Procedures, Ballots, and Release Opt-Out Forms and Form and Manner of Notice; (E) Approving Procedures for Assumption of Executory Contracts and Unexpired Leases; (F) Approving Equity Rights Offering Procedures and Related Materials; and (G) Granting Related Relief* [Docket No. 122] (the "**Disclosure Statement Motion**"):[2]

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

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Disclosure Statement Motion.

PRELIMINARY STATEMENT

1. The "emergency" nature of the Disclosure Statement Motion speaks volumes. Seeking expedited consideration, the Debtors claim that they would suffer immediate and irreparable harm if the Disclosure Statement is not approved 47 days into these Chapter 11 Cases. This assertion is not correct, as the Debtors have ample liquidity to continue these Chapter 11 Cases through at least February 2026. The only real urgency here is that the Debtors' prepetition secured lenders are insisting on the proposed timeline, the implication being that—if the Debtors do not comply—the prepetition secured lenders will terminate the DIP Facility and prepetition Restructuring Support Agreement. The Court should not allow itself or the bankruptcy process to be held hostage in this way.

2. The Debtors seek a confirmation hearing of November 18, which is exactly 90 days from the filing of their petitions. Other than acceding to the demands of their prepetition secured lenders, the Debtors only explanation for this urgency is "risk to the business" by staying in bankruptcy. But this risk exists in every bankruptcy case. There has to be a balance between achieving the benefits that bankruptcy provides and absorbing the cost and delay of that process, particularly here where this Court is being asked to approve the cancellation of more than half a billion of unsecured claims in exchange for zero recovery. One such cost is the scrutiny that the Committee is required by the Bankruptcy Code to exercise to determine whether the potential elimination of that unsecured debt is justified and ensure that secured creditors do not receive a windfall. The Committee's role is particularly crucial given the facts presented in these Chapter 11 Cases including the following:

- In January 2025 and March 2025, the Debtors raised $75 million of additional first lien secured debt and $30 million of second lien secured debt and exchanged

approximately $271 million of unsecured notes for second lien secured debt, bringing their secured debt to approximately $1.17 billion.[3]

- The Debtors now claim that the total enterprise value of their business is only between $750 million and $925 million.[4]
- There are valuable assets contractually (and otherwise) excluded from the prepetition 1L Lenders' collateral package.
- The Debtors are pursuing a plan that (i) gives markedly different treatment to different types of unsecured claims, ranging from payment in full to no distribution at all and (ii) includes broad releases.
- The Debtors are proposing to release, for no consideration, their management and boards, as well as the 1L Lenders, from any and all claims and causes of action from the beginning of time forward.

These facts give rise to material issues of fact and law that will require a lengthy and complex confirmation hearing.

3. The Committee is not being provided with the necessary time to properly prepare for that confirmation hearing. The Committee only learned of the Debtors' proposed valuation on September 23, just 56 days before the requested confirmation hearing date. Valuation is an issue of crucial importance in these Chapter 11 Cases, as the Debtors' plan is only confirmable if the value of the Debtors' enterprise is less than the Debtors' outstanding secured debt. And, because the Debtors are not market testing their assets, valuation can only be established by expert evidence

[3] *Declaration of Chad J. Sandler in Support of Debtors' Chapter 11 Petitions and First Day Relief* [Docket No. 14] ¶ 11.

[4] *Notice of Filing of (I) Liquidation Analysis, (II) Financial Projections, and (III) Valuation Analysis with Respect to Disclosure Statement for Joint Chapter 11 Plan of Reorganization of ModivCare Inc. and its Debtors Affiliates* [Docket No. 350], Ex. C.

which complies with the Federal Rules of Evidence. In order to make its case, then, the Committee must thoroughly assess the Debtors' valuation analysis and obtain the necessary information to do its own work. And yet virtually no documents or communications have been produced by the Debtors on this issue other than their Disclosure Statement exhibits.

4. Specifically, as set forth in the *Declaration of Erin Smith in Support of the Objection of the Official Committee of Unsecured Creditors to the Debtors' Emergency Motion for Approval of the Disclosure Statement and Related Solicitation Procedures* (the "**Smith Declaration**"), the Debtors have only produced 276 documents in response to the plan-related discovery served on them the day after the Committee hired counsel, and still have yet to provide materials to the Committee that will be necessary to prepare for confirmation, including a single e-mail relevant to confirmation issues or any board materials prior to the year before the Petition Date. The Debtors' proposed timeline, which they seek to lock in, does not provide the Committee with sufficient time to satisfy its fiduciary duties, and should be extended by at least 45-60 days from the Debtors' substantial completion of document plan-related discovery in order to give the Committee time to process and understand the documents and information and give the parties sufficient time to take fact and expert depositions, prepare expert valuation reports and/or rebuttals and brief relevant arguments for confirmation.

5. The Disclosure Statement also improperly solicits votes from general unsecured creditors that receive no distribution under the Plan. On its face, the Plan provides "unsecured creditors" in Class 5 with the ability to participate in a rights offering for reorganized equity. In reality, only Eligible Holders of general unsecured claims (other than the prepetition secured lenders) are being offered the rights offering. Even so, the rights offering, in and of itself, does not provide economic recovery to Eligible Holders on account of their general unsecured claims.

It is merely an investment opportunity requiring additional capital from the participants without guaranteeing any recoveries on account of their claims. Accordingly, all creditors in Class 5 should be deemed to reject under section 1126(g) of the Bankruptcy Code.

6. Further, the Disclosure Statement includes a number of disclosure deficiencies resulting in voters not having adequate information. ***First***, the Disclosure Statement fails to disclose that, despite all general unsecured claims being placed in Class 5, there are actually four categories of unsecured creditors, each receiving meaningfully different treatment: trade claimants, unsecured noteholders, the purported deficiency claims of the prepetition secured lenders and all other general unsecured creditors. The Disclosure Statement fails to inform voters of the real treatment for each such category. Nor do the Debtors explain that the "value" of the equity in the rights offering provided for Eligible Holders of general unsecured claims is roughly, according to the Debtors' own valuation, half the stated $200 million purchase price.

7. ***Second***, the Disclosure Statement fails to explain and justify the releases contained in the Plan, including those to be given by the Debtors and those imposed on third parties who do not opt out. The Disclosure Statement does not explain what potential causes of action are to be released, what their potential value is, the necessity for such releases and what value (if any) the proposed releasees are provided in exchange. Further, the Disclosure Statement does not explain why the Debtors (having already once attempted to stipulate to the validity of their prepetition secured lenders' claims and liens) are paying a separate law firm to represent one director of the Debtors' board to conduct an investigation that is duplicative of the investigation being conducted by the Committee or what the effect of that investigation might be. If the Debtors intend to use the results of this investigation to justify plan releases (as appears to be the case), creditors should be given at least 30 days after the publication of a report summarizing the findings of this

investigation before the deadline to vote for a plan seeking to release those claims.

8. ***Third***, the Disclosure Statement also fails to describe unencumbered assets, what their value is, and how offering general unsecured creditors no distribution under the Plan (that they wouldn't have to pay for) can be justified in light of such unencumbered assets.

9. ***Fourth***, the notice proposed to go out to contract counterparties includes a legal conclusion regarding the lack of effect of certain contractual positions that has not yet been determined and is, thus, misleading.

10. ***Finally***, if the Court is inclined to grant the Disclosure Statement Motion, the Disclosure Statement should be modified to include a statement that the Committee does not support the Plan and encourages unsecured creditors to vote to reject it in the form attached hereto as **Exhibit A**.

OBJECTION

I. The Debtors' Proposed Timeline is Untenable and Should be Extended

11. The Disclosure Statement Motion contemplates an overly aggressive confirmation timeline which is untenable. The Debtors' proposed order includes a voting and objection deadline of November 7, 2025, and a confirmation hearing to commence and conclude on November 18, 2025.[5] Under the Debtors' proposed schedule, the Committee is being given 63 days from its appointment (and 59 days from the selection of counsel) to assess the Plan and object to it, if required.

12. As set forth in the Smith Declaration filed contemporaneously herewith, the

[5] The current milestones in the DIP require entry of a Confirmation Order on November 18, 2025. *See Emergency Motion of the Debtors for Entry of Interim and Final Orders (A) Authorizing the Debtors to Obtain Postpetition Financing, (B) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (C) Authorizing the Use of Cash Collateral, (D) Modifying the Automatic Stay, (E) Scheduling a Final Hearing, and (F) Granting Related Relief* [Docket No. 4] Ex. B.

Committee has been diligent and proactive in seeking discovery in the face of this proposed confirmation schedule. Within four days of its appointment on September 9, 2025, the Committee hired counsel, who, the same day, contacted the Debtors and previewed their forthcoming requests. Smith Decl. Ex. 1. The next day, on September 10, 2025, the Committee served their initial deposition notices and document requests to the Debtors in connection with both the second day pleadings and the Plan and Disclosure Statement. *Id.* ¶ 5. The Committee also requested that the Debtors produce their Disclosure Statement exhibits (valuation, liquidation analysis, and financial projections) which would allow the Committee to evaluate certain elements of the DIP Facility and plan valuation. *Id.* Ex. 1.

13. On September 15, 2025, following the Committee's request, counsel to the Committee and the Debtors met and conferred about plan-related discovery and the Committee requested that the Debtors (i) produce, as soon as possible, "off the shelf" priority documents, including the Disclosure Statement exhibits and all board materials for the relevant time period and (ii) propose custodians and formulate plan-related search terms which the Committee would immediately comment on. Smith Decl. ¶ 9.

14. Despite the Committee's best efforts to expedite and facilitate plan-related discovery (while simultaneously chasing the Debtors to get the discovery necessary to timely object to the DIP Motion), the Debtors have not moved with the sense of urgency required to make their chosen confirmation timeline work.[6] The Debtors refused to provide the Committee with

[6] During a September 12, 2025, meet-and-confer, counsel to the Committee agreed with Debtors' counsel suggestion that the Debtors would prioritize discovery relevant to the DIP Motion before the Debtors would begin their full custodian and search term review for plan-related documents. Smith Decl. ¶ 6. Given the Debtors' preferred schedule, however, the Committee had no reason to expect that that it would take until the morning of the first deposition (September 25) on the DIP Motion for the Debtors to complete their relatively small universe of DIP-related document production and then begin to focus on confirmation discovery. *Id.* ¶ 8. The Committee followed up with the Debtors frequently in September to request estimates on timing for both the DIP Motion and plan-related discovery and repeatedly emphasized the need for the Debtors to provide "off the shelf" plan

Disclosure Statement exhibits until they were publicly-filed on September 23, more than a month after the Petition Date (and after the Committee's deadline to object to the DIP Motion). The Debtors waited until September 28, 2025, more than three weeks into the confirmation timeline, to produce its first production responsive to the Committee's discovery requests served on September 10, 2025. Smith Decl. ¶ 20. That production contains some (but not all) of the "off the shelf" board materials that are highly relevant to the Committee's evaluation of plan valuation and its investigation of key transactions and potential prepetition claims which are subject to broad releases under the current plan, which the Committee repeatedly requested throughout September.[7]

15. To date, the Debtors have not produced a single document or e-mail from their search term and custodian document collection relevant to confirmation issues, and the Committee understands that the Debtors are only now starting to review such documents from certain custodians this week.[8] Accordingly, entire categories of documents that are necessary to the Committee's ability to evaluate the Debtors' business, value, and plan have yet to be produced.[9] The Committee's financial advisors are similarly seeking high-priority diligence items from the Debtors' advisors and have yet to have any detailed discussions with the Debtors' advisors or management that are a necessary part of an iterative process to understand, test and form views on the Debtors' business and valuation.[10]

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discovery as soon as possible. *Id.* ¶¶ 9 - 17.

[7] *Id.* ¶¶ 9, 15, 17.

[8] *Id.* ¶ 19.

[9] *Id.* ¶¶ 17, 23 (including without limitation, documents related to unencumbered assets; causes of action, intercompany claims, or avoidance actions that are or might be released under the Plan; the scope, mandate, and timeline of the 'independent" investigation; and any communications regarding the negotiation of the early 2025 transactions, the Debtors' prepetition restructuring and marketing efforts, or consideration of strategic alternatives described in the Disclosure Statement).

[10] *Id.* ¶¶ 24-28.

16. Take for example, valuation. Because the Debtors are not market testing their assets, confirmation will require evidence establishing the total enterprise value of the Debtors, an exercise that will require a detailed dive into the Debtors' business, first disclosed on September 23, 2025, and business plan model, first produced to the Committee on September 28, 2025. As the Court heard at the September 30, 2025 DIP Hearing, a complete assessment of valuation by the Committee requires (i) engagement with the Debtors' financial advisors on value, (ii) cooperation from the Debtors on formal discovery, and (iii) the opportunity to discuss the financial projections prepared by the relevant individuals at each FP&A Group or Operating Division (approximately 2-6 people at each FP&A Group or Operating Division). Establishing the total enterprise value of the Debtors will require an enormous amount of work to be done, which requires a rational schedule to be established in these Chapter 11 Cases.

17. Because the Debtors have not kept the necessary pace to meet their confirmation discovery obligations on their proposed timetable, the Committee has just 36 left days to prepare confirmation objections, with very little plan-related discovery or diligence information produced to the Committee's advisors and a significant amount of work remaining for the Debtors before they can complete their plan-related productions.[11] Any objection the Committee may make regarding valuation, or any rebuttal valuation case the Committee may present to the Court, can only be done after the Debtors' have substantially completed production of their plan-related documents and the Committee has a reasonable amount of time to review documents relevant to the Debtors' business plans, valuation, and other confirmation issues, including the broad releases proposed under the current plan in connection with potential prepetition claims.[12] Only then will

[11] *Id.* ¶ 31.

[12] *Id.* The "independent" investigation into potential prepetition transactions being conducted by Quinn Emmanuel, described in further detail below, reveals that the Debtors' proposed confirmation timeline has a structural

the parties be able to exchange expert valuation reports and rebuttal reports and conduct fact and expert depositions. And, only after those steps are completed will the Committee be able to evaluate the plan, as it is statutorily required to do, and prepare its confirmation objection.

18. Given where the Debtors stand with respect to their plan-related document productions, the proposed confirmation schedule does not allow the Committee sufficient time to prepare for confirmation and, thus, is prejudicial to unsecured creditors. The Debtors have not, and cannot, justify this rushed process, which has become even more compressed since the Petition Date because of the Debtors' slow-moving approach to their plan-related discovery obligations.

19. Accordingly, the Committee submits that the timeline proposed by the Debtors should be modified to push the confirmation hearing by at a minimum 45-60 days after the Debtors' substantial completion of document discovery so that the Committee can properly diligence the documents, take depositions, and prepare their arguments and, thus, fulfill its fiduciary obligations to ensure that unsecured creditors are not being deprived of value that they are entitled to.

II. Members of Class 5 Receiving No Distribution Should Be Deemed to Reject

20. In the Disclosure Statement, the Debtors seek the authority to send ballots to all holders of unsecured claims soliciting votes on the proposed Plan. This request should not be approved because the solicitation package seeks votes of creditors who would receive no distribution under the Plan in violation of section 1126(g) of the Bankruptcy Code.

21. Section 1126(g) of the Bankruptcy Code states that "[n]otwithstanding any other

problem, in addition to simply being too compressed. Because this investigation has only just begun, it appears likely that the conclusions of the investigation and their impact on releases under the Plan will, at best, be revealed days before a confirmation hearing under the current schedule. To the extent the independent director seeks to settle or release any claims because of the investigation, the independent directors' findings will be akin to a 9019 motion, but the Committee will not have the requisite time under the rules (at least 21 days under Federal Rule of Bankruptcy Procedure Rule 2002(a)(3)) to form a view on, and respond to, any potential "settlement."

provision of this section, a class is deemed not to have accepted a plan if such plan provides that the claims or interests of such class do not entitle the holders of such claims or interests to receive or retain any property under the plan on account of such claims and interests." The Plan acknowledges this provision, stating that – with respect to some classes – holders of claims and interests receiving no distribution under the Plan are deemed to reject and will receive Release Opt-Out Forms instead of ballots.[13]

22. The Plan fails, however, to extend this procedure to holders of general unsecured claims who are slated to receive no distribution. Among such creditors, all of whom are classified together in Class 5, only Eligible Holders are offered the ability to participate in a rights offering.[14] The prepetition secured lenders, on account of any alleged deficiency claim, and any other general unsecured creditor that is not an Eligible Holder will receive nothing in Class 5. Creditors in Class 5 that are not to receive any distribution under the Plan should not receive ballots and their votes should not be counted. At a minimum, they should be informed that, if they are not Eligible Holders, that is the case. Nonetheless, section 1126(g) of the Bankruptcy Code should equally apply to Eligible Holders of general unsecured claims who are offered the opportunity to participate in the rights offering. That is because such participants are not receiving any economic consideration on account of their general unsecured claims. Rather, they are being offered an opportunity to purchase new common interests—an opportunity that may not yield any recoveries on account of general unsecured claims held by such participants. Accordingly, all creditors in Class 5 should be deemed to reject under section 1126(g) of the Bankruptcy Code.

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[13] Plan § 3.9.

[14] *Id.* § 4.5(b).

III. The Disclosure Statement Lacks Adequate Information

23. Section 1125 of the Bankruptcy Code requires a plan proponent to provide holders of impaired claims with adequate information to enable them to reach an informed judgment about the plan. The Bankruptcy Code defines "adequate information" as:

> information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan . . . .

11 U.S.C. § 1125(a)(1); *see also In re Divine Ripe, L.L.C.*, 554 B.R. 395, 413 (Bankr. S.D. Tex. 2016) (denying approval of proposed disclosure statement that did not contain adequate information).

24. The Disclosure Statement does not contain adequate information to allow a typical unsecured creditor to make an informed judgment about whether to accept or reject the Plan for the following reasons:

25. ***Treatment of Unsecured Claims***. The Plan places all general unsecured claims in Class 5.[15] In reality, there are four categories of unsecured creditors, each receiving meaningfully different treatment. The first such category is trade claimants who have been (or will be) paid 100% of their claims in cash under the Debtors' order to pay prepetition trade claims.[16] Given that the Debtors have made no effort to differentiate "critical vendors" from any other trade claimants, this is effectively a convenience class that has now had its claims paid in full outside of a plan.[17]

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[15] *Id.* § 4.5(a).

[16] *See Final Order (A) Authorizing Debtors to Pay Prepetition Trade Claims in the Ordinary Course of Business and (B) Granting Related Relief* [Docket No. 394].

[17] *See generally Emergency Motion of Debtors for Entry of Interim and Final Orders (A) Authorizing Payment of*

The second such category is unsecured noteholders who are "Eligible Holders" and, thus, can participate in the proposed rights offering.[18] The third category is the Prepetition Second Lien Lenders. Under the Debtors' purported valuation that underlies the Plan, the high end of the Debtors' total enterprise value is $925 million.[19] There are $100 million of DIP Facility claims and over $880 million of Prepetition First Lien Obligations outstanding.[20] Therefore, the Debtors' position, which can only be tested through their experts, is that the Prepetition Second Lien Lenders are entirely undersecured. Thus, the 2.0% equity and warrants package being offered to them under the Plan is entirely on account of their unsecured deficiency claims.[21] The fourth category is all other general unsecured creditors who likely are not eligible for the rights offering and are receiving nothing under the Plan.

26. Further, the Disclosure Statement fails to inform stakeholders of the value (or lack thereof) of the rights offering of up to $200 million of reorganized equity for Eligible Holders of general unsecured claims. The price of equity under this rights offering is 100% of outstanding first lien claims (at least $880,960,833.78) and 75% of outstanding second lien claims (at least $322,459,875.21, of which 75% is $241,844,906.41).[22] Therefore, if all Eligible Holders participate in the entire rights offering, they would spend $200 million and receive equity seemingly worth 17.8% of the company. The Debtors have disclosed that their view of the value

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Prepetition Trade Claims in the Ordinary Course of Business and (B) Granting Related Relief [Docket No. 6].

[18] Plan § 4.5(b).

[19] *See Notice of Filing of (I) Liquidation Analysis, (II) Financial Projections, and (III) Valuation Analysis with Respect to Disclosure Statement for Joint Chapter 11 Plan of Reorganization of ModivCare Inc. and its Debtor Affiliates* [Docket No. 350] Ex. C.

[20] *See* Plan § 4.3(b).

[21] *Id.* § 4.4(c).

[22] *Id.* § 1.A., "Equity Rights Offering Valuation.".

of their reorganized equity, in total, is between $400 million and $631 million. At that value, the value of 17.8% ownership of the company goes down to $71,200,000 to $112,318,000. Unsecured creditors deserve the right to know that, in the Debtors' view, they are being offered the right to pay $200 million for equity worth approximately half of that.

27. Creditors eligible to vote on the Plan are entitled to full and clear information regarding the true treatment of unsecured creditors to assess the Plan. *See In re Rodriguez Gas & Oil Servs., Inc.*, No. 08-50152, 2008 WL 4533687, at *2 (Bankr. S.D. Tex. Oct. 2, 2008) (denying approval of disclosure statement because the disclosure statement did "not provide the information in a reasonable way calculated to be understandable and to be absorbed by the typical creditor"); *In re Forest Grove, LLC*, 448 B.R. 729, 737-38 (Bankr. D.S.C. 2011) (stating that "creditors should not be required to go on a treasure hunt throughout multiple filings in order to ascertain [their treatment under the plan]"); *see also In re Commonwealth Grp.-Mocksville Partners, LP*, 2013 WL 1728056, at *4 (Bankr. E.D. Tenn. Apr. 22, 2013) (holding that a disclosure statement "must clearly and succinctly inform the average unsecured creditor what it is going to get, when it is going to get it, and what contingencies there are to getting its distribution) (quoting *In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991)). Without full disclosure of the different treatment of the four categories of unsecured creditors and of the "value" of the rights offering compared to the Debtors' view of what the reorganized equity being offered is worth, the Disclosure Statement falls short of the section 1125 standard.

28. ***Proposed Releases***. The Plan contains extremely broad releases by the Debtors and the Debtors' stakeholders who do not opt out of the proposed releases of potentially valuable estate claims and causes of action against the Debtors' current and former officers and directors and the

Prepetition First Lien Lenders, among others.[23] The Disclosure Statement offers no explanation for these releases, what the value is of the causes of action proposed to be released, whether the Debtors have engaged in any analysis of the value of such causes of action or what consideration (if any) the proposed releasees have provided in exchange. *See Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. Gen. Motors Corp.*, 337 F.3d 314, 321-23 (3d Cir. 2003) (holding that section 1125(a)(1) requires a debtor to disclose all known "'legal and equitable' property interests," including "contingent assets [such] as any cause of action [the debtor] may have") (citing *In re Coastal Plains*, 179 F.3d 197, 208 (5th Cir. 1999)).

29. The Debtors are recommending that all stakeholders vote in favor of the Plan.[24] But, without being informed of the claims and causes of action either being released under the Plan or transferred to the 1L Lenders, it is impossible for stakeholders to evaluate that recommendation and decide how to vote. If the Debtors' view is that the releases are not material because there are no viable claims and causes of action (which, at least as it pertains to prepetition secured creditors, the Debtors seemed eager to do on the first day of these Chapter 11 Cases), they should say so.

30. ***Duplicative "Independent" Investigation***. The Debtors, however, are clearly not (yet) taking the position that there are no valuable claims or causes of action being released, because the amended Disclosure Statement now states that an Independent Director is in the process of investigating "numerous types" of estate claims and causes of action, including "potential fraudulent conveyances; preferences; negligence, corporate mismanagement, or waste; and breaches of fiduciary duty."[25] The Disclosure Statement fails to address how, prior to the

[23] *Id.* § 10.6.

[24] *See* Disclosure Statement at XIV.

[25] *See Id.* at VI.D.

determination to commence this investigation, the Debtors decided to grant stipulations as to the validity, enforceability and perfection of the liens and claims of the Prepetition First Lien Lenders under their proposed interim DIP order at a time when the Debtors were acting on the advice of counsel (Latham & Watkins) that was conflicted on this issue, as it had represented the agent on the First Lien Facility.[26] Moreover, the Disclosure Statement does not address what purpose this investigation would serve given that the Committee is tasked under the Bankruptcy Code with investigating the same issues.[27] Given this duplication of efforts, the Disclosure Statement should explain why it is a worthwhile use of estate resources to pay for a second, "independent" investigation in addition to the one being conducted by the Committee.

31. There is also no information regarding when the investigation of the Independent Director will conclude and whether its findings will be made public. Nor is there any indication of what the repercussions on the Plan will be if the investigation identifies valuable causes of action that are currently contemplated to be released. While the Debtors do not address this, the likely answer is that the Debtors intend to use the results of this investigation (which are not yet known, as that investigation has only just begun) to justify the Plan releases. Given that any release, in the face of such report, has to be framed as a "settlement" of identified claims and causes of action, stakeholders should be given the required amount of time (21 days under Federal Rule of

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[26] *See Interim Order (A) Authorizing the Debtors to Obtain Postpetition Financing, (B) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (C) Authorizing the Use of Cash Collateral, (D) Modifying the Automatic Stay, (E) Scheduling a Final Hearing, and (F) Granting Related Relief* [Docket No. 106] at ¶ D; *Debtors' Application for Entry of an Order Authorizing the Employment and Retention of Latham & Watkins LLP as Bankruptcy Co-Counsel Effective as of the Petition Date* [Docket No. 338], Ex. A at ¶ 30 ("L&W formerly represented JPM, as the administrative agent and collateral agent under the [First Lien Credit Agreement].").

[27] *See* 11 U.S.C. §§ 1103(c)(2), (3) & (5) (stating that a creditors committee may "investigate the acts, conduct, assets, liabilities, and financial condition of the debtor" and "any other matter relevant to the case or to the formulation of a plan," "participate in the formulation of a plan, advise those represented by such committee of such committee's determinations as to any plan formulated," and "perform such other services as are in the interest of those represented").

Bankruptcy Procedure Rule 2002(a)(3)) to asses any such settlement before being required to vote on the Plan and the hearing on the Disclosure Statement Motion should be adjourned accordingly. *See* Feb. 4, 2025 Hr'g Tr. at 43:1–4, *In re Exactech, Inc.*, Case No. 24-12441 (LSS) (Bankr. D. Del. Feb. 4, 2025) [Docket No. 565] (adjourning disclosure statement hearing until the special committee finished its investigation); *see also* Apr. 18, 2024 Hr'g Tr. at 45:5-8, *In re Thrasio Holdings, Inc.*, Case No. 24-11840 (CMG) (Bankr. D.N.J. Apr. 18, 2024) [Docket No. 426] (modifying the voting and plan objection deadline set forth in the disclosure statement until after the conclusion of the independent directors' investigation).

32. ***Unencumbered Assets***. The Disclosure Statement provides inadequate information regarding the nature and value of the assets which are not subject to valid prepetition liens. As part of its ongoing review and investigation of the Debtors' assets and liabilities, the Committee is investigating the prepetition liens and claims of the Debtors' prepetition secured creditors. Initial results indicate that excluded assets under the prepetition debt documents, the effect of section 552 of the Bankruptcy Code and the value of avoidance actions could be substantial. And yet any unsecured creditor who is not an "Eligible Holder" would receive nothing under the Plan and Eligible Holders are offered only the "opportunity" to purchase reorganized equity (at a price that is roughly double the Debtors' view of such equity's value).[28] This proposed distribution is predicated on the notion that there are ***no*** unencumbered assets upon which unsecured creditors could depend. The Disclosure Statement should inform creditors of the Debtors' position on that issue and the fact that the Committee's investigation may well uncover material unencumbered

[28] *See* Plan at § 4.5(b) ("Holders of Allowed General Unsecured Claims shall not receive or retain any distribution, property, or other value on account of such General Unsecured Claims*; provided that*, Eligible Holders of General Unsecured Claims . . . shall receive . . . their Pro Rata Share of the right to purchase up to $200,000,000, in aggregate, of New Common Interests pursuant to the Equity Rights Offering.").

assets, which would contrast with the Plan treatment of unsecured creditors (and the recovery unsecured creditors would receive in a hypothetical Chapter 7 liquidation).

IV. The Assumption Notice Misstates its Effect

33. The Assumption Notice, which should simply inform contract counterparties of the fact that their contracts may be assumed by the Debtors, misstates its effect. Specifically, it states that, to the extent that any provision in any Executory Contract or Unexpired Lease assumed or assumed and assigned pursuant to the Plan "prohibits, restricts or conditions, or purports to prohibit, restrict or condition, or is modified, breached or terminated, or deemed modified, breached or terminated" due to the occurrence of specific events in these Chapter 11 Cases, such terms will be overridden.[29] Whether or not that can be accomplished as a matter of law has yet to be determined and, until it is, should not be included in what is meant only to be informative of the existing status quo. Notices of assumption approved in this District generally do not contain such misleading provisions. *See, e.g.*, *Proposed Order Approving Disclosure Statement*, Ex. 12, *In re Sunnova Energy Int'l Inc.*, No. 25-90160 (ARP) (Bankr. S.D. Tex. Sept. 12, 2025) [Docket No. 695] at Ex. 12; *In re The Container Store Grp., Inc.*, No. 24-90627 (ARP) (Bankr. S.D. Tex. Dec. 23, 2024) [Docket No. 81] at 14; *In re Nat'l CineMedia, LLC*, No. 23-90291 (DRJ) (Bankr. S.D. Tex. May 11, 2023) [Docket No. 244] at 20.

V. Unsecured Creditors Should Be Made Aware That the Committee Does Not Support the Plan

34. To the extent the Court approves the Disclosure Statement Motion and authorizes the Debtors to commence solicitation, the Committee requests that the Disclosure Statement be amended to include a clear and broad disclaimer that the Committee does not support the Plan in

[29] *See* Disclosure Statement Motion, Ex. 6 at 5.

the form attached hereto as **Exhibit A** immediately after the box labeled "RECOMMENDATION BY THE DEBTORS" on the first page of the Disclosure Statement. This request is reasonable and appropriate under the circumstances where unsecured creditors may have a limited opportunity to review the Solicitation Package and vote on the Plan. *In re Benefytt Techs., Inc.*, Case No. 23-90566 (CML) (Bankr. S.D. Tex. July 25, 2023) [Docket No. 330] at 4 (directing that the solicitation package include a solicitation letter from the Committee).

RESERVATION OF RIGHTS

35. The Committee reserves all rights to supplement this Objection prior to the hearing on the Disclosure Statement Motion, including, but not limited to, in light of ongoing discovery.

CONCLUSION

36. For the reasons stated above, the Court should deny the Disclosure Statement Motion or condition its approval on the requests described in this Objection.

October 2, 2025
Houston, Texas

/s/ *Charles R. Koster*

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Proposed Counsel for the Official Committee of Unsecured Creditors

Exhibit A

RECOMMENDATION AND POSITION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS

THE COMMITTEE HAS REVIEWED THE PROPOSED PLAN AND, AT THIS TIME, THE COMMITTEE CANNOT SUPPORT CONFIRMATION OF THE DEBTORS' PLAN FOR THE REASONS STATED BELOW.

AS SUCH, THE COMMITTEE RECOMMENDS THAT ALL HOLDERS OF UNSECURED CLAIMS SUBMIT BALLOTS TO (I) REJECT THE PLAN AND (II) OPT OUT OF THE PLAN RELEASES BY RETURNING THEIR BALLOTS SO AS TO BE ACTUALLY RECEIVED BY THE SOLICITATION AGENT NO LATER THAN NOVEMBER 7, 2025, AT 4:00 P.M. (PREVAILING CENTRAL TIME) PURSUANT TO THE INSTRUCTIONS SET FORTH HEREIN AND IN THE BALLOTS.

AMONG OTHER THINGS, THE PLAN DOES NOT PROVIDE A RECOVERY FOR UNSECURED CREDITORS—ONLY THE OPTION FOR CERTAIN "ELIGIBLE HOLDERS" TO PURCHASE A PRO RATA SHARE OF UP TO $200 MILLION OF THE EQUITY OF THE REORGANIZED DEBTORS PURSUANT TO AN EQUITY RIGHTS OFFERING. THE COMMITTEE BELIEVES THAT THIS IS INSUFFICIENT UNDER THE CIRCUMSTANCES AND THAT UNSECURED CREDITORS ARE ENTITLED TO A BETTER RECOVERY.

THE COMMITTEE'S LEGAL AND FINANCIAL ADVISORS ARE CONTINUING TO ENGAGE WITH THE DEBTORS' ADVISORS TO SEEK TO RESOLVE THESE ISSUES.

IF YOU HAVE ANY QUESTIONS LEADING UP TO THE CONFIRMATION HEARING, PLEASE CONTACT WHITE & CASE LLP, THE LAW FIRM THAT IS ADVISING THE COMMITTEE, AT W&CMODIVCARE@WHITECASE.COM.

Certificate of Service

I certify that on October 2, 2025, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Charles R. Koster
Charles R. Koster