

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

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

**DEBTORS' OMNIBUS REPLY TO OBJECTIONS TO
DISCLOSURE STATEMENT AND SOLICITATION PROCEDURES MOTION**

ModivCare Inc. and its debtor affiliates in the above-captioned cases, as debtors and debtors in possession, respectfully submit this omnibus reply (the “**Reply**”) to the three objections (collectively, the “**Objections**”)² filed to the *Disclosure Statement for the Joint Chapter 11 Plan of Reorganization of ModivCare Inc. and its Debtor Affiliates* [Docket No. 120]³ and the *Emergency Motion of Debtors for Entry of an Order (A) Approving the Adequacy of the 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 the Procedures for Assumption of Executory Contracts and Unexpired Leases; (F) Approving Equity Rights Offering Procedures and Related*

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’ 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 The Debtors received two letters prior to the Disclosure Statement objection deadline. One letter was delivered to Verita, the Debtors’ proposed claims agent, and the other letter was filed [Docket No. 381]. After reviewing the letters, the Debtors believe the letters are not objections to the Disclosure Statement. Accordingly, this Reply does not address those letters. The Debtors are, however, investigating the issues raised in the letters.

³ The Debtors filed the *Disclosure Statement for the First Amended Joint Chapter 11 Plan of Reorganization of ModivCare Inc. and its Debtor Affiliates* (as amended, the “**Disclosure Statement**”) contemporaneously herewith.



Materials; and (G) Granting Related Relief [Docket No. 122] (the “***Solicitation Procedures Motion***”).⁴

PRELIMINARY STATEMENT

1. The Debtors commenced the Chapter 11 Cases to implement a value-maximizing restructuring for the benefit of all stakeholders.⁵ The restructuring is supported by holders of approximately 93% of First Lien Claims and 70% of Second Lien Claims. Since the Petition Date, the Debtors have made substantial progress in furtherance of this goal.

2. Now, the Debtors are seeking approval of the Disclosure Statement, a key milestone in the Chapter 11 Cases, so the Debtors can commence solicitation of votes on the Plan. The Debtors are moving on a timeline necessary to protect the underlying business and taking all necessary steps to emerge from bankruptcy in an efficient manner. In furtherance of that goal the Debtors have, notwithstanding the Committee’s assertion, been working cooperatively with the Committee to provide them documents and information in response to their discovery requests. To date, the Debtors have provided the Committee with approximately 2,500 documents and roughly 4,000 more responsive items, including email communications and Board materials and presented Debtor witnesses at two depositions. The Debtors will continue to provide documents and information as the Chapter 11 Cases progress to further enable the Committee to conduct necessary diligence and discharge their duties. The Debtors have also made substantial changes to the Disclosure Statement to allay the concerns of the Committee and other objectors (*see* [Docket No. 446]) (the “***Revised Disclosure Statement***”).

⁴ The Debtors are filing a revised Solicitation Procedures Order (the “***Revised Solicitation Procedures Order***”), substantially concurrently with this Reply.

⁵ Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Solicitation Procedures Motion or the Disclosure Statement, as applicable.

3. Many of the Committee's and U.S. Trustee's objections are, however, matters that are not relevant to the Court's consideration of the Disclosure Statement or the Solicitation Procedures Motion and cannot be resolved by further disclosure. Their objections raise plan issues that should be addressed in the lead up to confirmation. It is premature to explore those issues at this stage.

4. With respect to the actual matter at hand—whether the Disclosure Statement contains adequate information—the Debtors maintain that the Disclosure Statement does and always has included adequate information. Nonetheless, the Debtors have made certain modifications to the Disclosure Statement as set forth in the chart attached hereto as **Exhibit A** (the “***Reply Chart***”) in an attempt to resolve the Objections. The Reply Chart also responds to certain other open issues to the extent not discussed in more detail below.

5. While not an issue pertaining to the adequacy of the information in the Disclosure Statement, the terms of the Plan have also been revised (*see* [Docket No. 447]) (the “***Revised Plan***”). For the Court's benefit and other parties in interests, the revised terms of the Plan are broadly as follows:

Term	Initial Plan	Revised Plan
Treatment of Second Lien Notes Claims	The initial Plan classified Second Lien Notes Claims in their own Class (Class 4). Holders of Second Lien Notes Claims would receive a Pro Rata Share of 2% of the New Common Interests (subject to dilution) and the New Warrants.	Second Lien Notes Claims are no longer classified in their own Class. Instead, they are classified in the General Unsecured Claims Class. This reflects the economic reality that the Second Lien Notes Claims are entirely unsecured, as is evidenced by the Debtors' valuation and the fact that the First Lien Claims are not receiving 100% recovery on account of their Claims.

Term	Initial Plan	Revised Plan
Treatment of General Unsecured Claims	Under the initial Plan, Holders of General Unsecured Claims did not receive any distribution on account of their Claims. Eligible Holders received a right to participate in the Equity Rights Offering.	Holders of General Unsecured Claims now receive the treatment that was initially afforded only to Second Lien Notes Claims, though the New Warrants will only be given to Eligible Holders. Additionally, Holders of General Unsecured Claims of less than \$1,000,000 can elect to receive a cash distribution in lieu of the New Common Interests. Eligible Holders retain the right to participate in the Equity Rights Offering.
Treatment of Subordinated Unsecured Notes Claims	Under the initial Plan, Holders of Subordinated Unsecured Notes Claims were in the same Class as other General Unsecured Claims (and would thus receive the treatment listed above).	Under the revised Plan, Subordinated Unsecured Notes Claims are classified in their own Class (Class 5). Notwithstanding, Eligible Holders retain the right to participate in the Equity Rights Offering. This revised structure reflects the economic, structural, and contractual realities of the Subordinated Unsecured Notes Claims, which are (a) against ModivCare Inc. only, and (b) subordinated in right of payment to the First Lien Claims and Second Lien Notes Claims, meaning Holders of Subordinated Unsecured Notes Claims are not entitled to receive any recovery until such time as the First Lien Claims and Second Lien Notes Claims are paid in full, which is not occurring as demonstrated by the Debtors' valuation.

Term	Initial Plan	Revised Plan
Price of Equity Rights Offering	The Equity Rights Offering under the initial Plan proposed to value the New Common Interests such that Holders of First Lien Claims would recover 100% on account of their Allowed First Lien Claims, and Holders of Second Lien Claims would recover 75% on account of their Allowed Second Lien Claims.	Under the revised Plan, the Equity Rights Offering will be at a valuation equal to the amount at which Holders of First Liens Claims will recover 100% on account of their Allowed First Lien Claims. To the extent parties believe, notwithstanding the Debtors' valuation, that the value of the Debtors exceeds the First Lien Claims, then the Equity Rights Offering would offer significant value to such parties.

6. Based on the above and the matters set forth herein, the Debtors respectfully request that the Court overrule the Objections and find that the Disclosure Statement complies with the Bankruptcy Code and contains adequate information.

THE OBJECTIONS

7. The Objections to the Disclosure Statement and the Solicitation Procedures Motion were filed by: (a) the Official Committee of Unsecured Creditors (the “**Committee**”) [Docket No. 421] (the “**Committee Objection**”); (b) the United States Trustee for Region 7 (the “**U.S. Trustee**”) [Docket No. 397] (the “**U.S. Trustee Objection**”); and (c) Mr. Christopher Skrypski, for himself and on behalf of the proposed class in the securities class action captioned as *Kalera v. ModivCare Inc. et al.*, Case No. 25-cv-00306 (D. Colo.) (the “**Kalera Plaintiff**”) [Docket No. 382] (the “**Kalera Plaintiff Objection**”).

8. The arguments raised in the Objections can be grouped into three general categories: (a) the adequacy of the disclosure contained in the Disclosure Statement; (b) the case timeline and Milestones under the DIP Facility and Restructuring Support Agreement; and (c) the Debtors' Plan, including the Releases, and other plan confirmation issues. At this juncture, the

only Objections of relevance are those in category (a). The remaining issues raised by the Objections should not preclude the Court's approval of the Disclosure Statement.

9. As detailed below and in the Reply Chart, the Debtors believe they have addressed the Objections that relate to the adequacy of information in the Disclosure Statement. The Debtors further believe the level of disclosure argued for in the Objections extends well beyond the scope of "adequate information" under section 1125 of the Bankruptcy Code—a standard that, as detailed below, the Debtors easily have satisfied.

REPLY

I. THE DISCLOSURE STATEMENT PROVIDES ADEQUATE INFORMATION AS REQUIRED BY SECTION 1125(B) OF THE BANKRUPTCY CODE

10. Section 1125 of the Bankruptcy Code requires that the Disclosure Statement enable a "hypothetical investor typical of the holders of claims or interest in the case" to cast an informed vote on the Plan. 11 U.S.C. § 1125(a)(1). The issue, therefore, is whether the information provided in the Disclosure Statement is "adequate" under this standard.

11. Section 1125(a)(1) of 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).

12. This standard does not require a debtor to explain why its plan of reorganization is superior to other hypothetical plans. See 11 U.S.C. § 1125(a)(1) ("[A]dequate information need not include such information about any other possible or proposed plan . . ."). It likewise does not require a valuation of the debtor or an appraisal of the debtor's assets. See 11 U.S.C. § 1125(b)

(“The court may approve a disclosure statement without a valuation of the debtor or an appraisal of the debtor’s assets.”).

13. Moreover, this determination does not require a plan proponent to clutter its disclosure statement with endless responses to a myriad of discovery requests. *See, e.g., In re Stanley Hotel, Inc.*, 13 B.R. 926, 933 (Bankr. D. Colo. 1981) (“[C]ompounding a disclosure statement for the sake of a lawyer’s notion of completeness, or because some additional information might enhance one’s understanding, may not always be necessary or desirable, and the length of a document should not be the test of its effectiveness.”).

14. The determination of whether a disclosure statement contains adequate information is made on a case-by-case basis, focusing on the unique facts and circumstances of each case. *See Mabey v. S.W. Elec. Power Co. (In re Cajun Elec. Power Coop., Inc.)*, 150 F.3d 503, 518 (5th Cir. 1998) (explaining that “in determining what constitutes ‘adequate information’ with respect to a particular disclosure statement . . . the kind and form of information are left essentially to the judicial discretion of the court”); *In re J.D. Mfg., Inc.*, 2008 WL 4533690, at *2 (Bankr. S.D. Tex. Oct 2, 2008) (“Adequacy of information is a determination that is relative both to the entity (e.g. assets/business being reorganized or liquidated) and to the sophistication of the creditors to whom the disclosure statement is addressed.”) (internal quotations omitted); *Oneida Motor Freight, Inc. v. United Jersey Bank (In re Oneida Motor Freight, Inc.)*, 848 F.2d 414, 417 (3d Cir. 1988) (“From the legislative history of § 1125 we discern that adequate information will be determined by the facts and circumstances of each case.”). In particular, courts have identified categories of information that generally should be included in a disclosure statement. *See In re Phoenix Petroleum Co.*, 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001) (listing certain categories of information); *In re Scioto Valley Mortg. Co.*, 88 B.R. 168, 170-71 (Bankr. S.D. Ohio 1988) (same).

15. In this case, the Disclosure Statement contains those categories of information necessary for creditors to make an informed decision, including (among other things):

- The approximate recovery percentage that each creditor can expect to receive under the Plan versus in a proposed liquidation of the Debtors (Art. I.B);
- The Debtors' corporate history and structure, business operations, and prepetition capital structure and indebtedness (Art. III.A-C);
- Events leading up to the Chapter 11 Cases, including the Debtors' restructuring negotiations (Art. IV);
- Significant events in the Chapter 11 Cases (Art. VI);
- The classification and treatment of claims and interests under the Plan, including who is entitled to vote and how to vote on the Plan (Arts. I.B and VII.A);
- How the Plan will be implemented and certain important effects of confirmation the Plan (Art. VII.C, H);
- Releases contemplated by the Plan that are integral to the overall settlement of claims pursuant to the Plan (Art. V.I.2-3);
- Certain securities law matters with respect to the Plan (Art. VIII);
- Certain U.S. federal income tax consequences of the Plan (Art. IX);
- Certain risk factors that holders of claims should consider before voting to accept or reject the Plan and information regarding alternatives to confirmation of the Plan (Arts. X, XIII); and
- The statutory requirements for confirming the Plan (Art. XII.C).

16. Such disclosures are consistent with those courts have identified in considering, on a case-by-case basis, whether a disclosure statement contains "adequate information" in within the

meaning of section 1125 of the Bankruptcy Code.⁶ Therefore, the Disclosure Statement provides creditors with “adequate information” as that term is defined in section 1125(a)(1) of the Bankruptcy Code.

II. THE OBJECTIONS SHOULD BE OVERRULED BECAUSE THE DEBTORS HAVE ADDRESSED THE OBJECTIONS WITH RESPECT TO ADEQUACY OF INFORMATION IN THE DISCLOSURE STATEMENT

17. The Debtors believe they have addressed the Objections that relate to the adequacy of the disclosure in the Disclosure Statement by including additional language as summarized below and in the Reply Chart. To the extent that any of the points raised in the Objections are not addressed by specific changes to the Disclosure Statement, the Debtors respectfully submit that the Objections should be overruled because the Debtors have provided “adequate” disclosure, even if the Committee or Kalera Plaintiff overstate the disclosure standard in an effort to raise issues with the Plan that are not ripe for discussion.⁷

A. Information Regarding the Treatment of Unsecured Claims and the Equity Rights Offering

18. The Committee alleges that the Disclosure Statement does not contain adequate information with respect to the treatment of Unsecured Claims and the Equity Rights Offering. *See* Committee Objection ¶¶ 6, 25–27. The Debtors disagree. In Article I, the Disclosure Statement (as revised) prominently states the proposed treatment of Allowed General Unsecured Claims: “each Holder of an Allowed General Unsecured Claim shall receive a Pro Rata Share of . . . 2% of the New Common Interests, subject to dilution by the DIP Backstop Premium, the Equity Rights Offering (if applicable), the New Warrants, and the MIP . . . ” The Disclosure Statement

⁶ *See In re Metrocraft Pub. Serv., Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984) (identifying topics of disclosures courts look for in assessing whether a disclosure statement contains adequate information).

⁷ The Debtors requested that certain objectors provide proposed language to include with the Disclosure Statement. While the Debtors have incorporated some of these suggestions, they are not obligated to include every sentence or detail provided by the objectors.

provides additional detail regarding the treatment of General Unsecured Claims in Article V. In relation to the Equity Rights Offering, the Debtors have included additional language in the Disclosure Statement to clearly explain which parties are entitled to participate in the Equity Rights Offering. *See* Disclosure Statement Art. I. The Debtors have also added detail regarding the potential value of the equity to be issued under the Equity Rights Offering. *See* Disclosure Statement Art. IV.C. The Debtors believe that this level of disclosure, which is both clear and concise, more than satisfies the requirements of section 1125(a).

19. The Committee alleges that there are four categories of unsecured creditors within Class 5 and that each category of unsecured creditors is being treated differently by the Plan, thereby implying potential plan classification issues. *See* Committee Objection, ¶ 25. This objection, while styled as an objection to the Disclosure Statement, is a veiled plan objection that is irrelevant to the approval of the Disclosure Statement. Further, the Debtors believe that this objection is no longer relevant given the new composition of Class 5 in the revised Plan, under which many of the previous Class 5 creditors now sit within Class 4. This revised structure reflects the economic, structural, and contractual realities that (a) the Second Lien Notes Claims are entirely unsecured based on the Debtors' valuation and should be considered General Unsecured Claims, and (b) the Subordinated Unsecured Notes Claims are solely obligations of ModivCare Inc. and are payment subordinated to the First Lien Claims and Second Lien Notes Claims.⁸ Accordingly, because such Claims are not being repaid in full, the Subordinated Unsecured Notes Claims cannot be repaid at all, or if they were, the funds so distributed to the Subordinated Unsecured Notes Claims would have to be remitted directly to the Holders of First

⁸ As more fully set forth in the Disclosure Statement, the requisite holders of Subordinated Unsecured Notes Claims entered into that certain Fifth Supplemental Indenture, dated as of March 7, 2025, which, among other things, released all guarantors under the Subordinated Notes Indenture and authorized the Subordination Agreement.

Lien Claims and Second Lien Notes Claims or, if received by Holders of Subordinated Unsecured Notes Claims, immediately turned over to the Holders of First Lien Claims or Second Lien Notes Claims (as applicable) pursuant to the Subordination Agreement. Nonetheless, the Debtors believe that the Disclosure Statement contains adequate information on the classification and treatment of those Claims in both Class 4 and Class 5.

B. Information Regarding the Proposed Releases

20. The Committee and the Kalera Plaintiff assert that the Disclosure Statement inadequately discloses the effect, nature, and value of the Releases contemplated by the Plan. *See* Committee Objection, ¶¶ 28-29; Kalera Plaintiff Objection ¶¶ 55-58. The Debtors again disagree. First, the Debtors repeatedly refer to, explain, and emphasize the importance of, the Releases throughout the Disclosure Statement. *See, e.g.*, Disclosure Statement Article VII. Second, the description of the Releases is presented prominently in bold and/or capitalized font. Third, the claims and causes of action subject to the Releases are clearly identified and described in a manner consistent with many other disclosure statements that have been approved in this District. *See, e.g., In re DocuData Solutions, L.C., et al.*, No. 24-90052 [Docket No. 834] (Bankr. S.D. Tex. 2025) (approving a similar disclosure statement because it “contain[ed] “adequate information” (as such term is defined in Section 1125(a)(1) and used in Section 1126(b)(2) of the Bankruptcy Code)”). Accordingly, the Debtors believe that the Disclosure Statement provides adequate information regarding the Releases.

C. Information Regarding the Debtors’ Internal Investigations

21. The Committee improperly alleges that the Debtors are required to disclose or justify “why it is a worthwhile use of estate resources to conduct their own internal investigation.” *See* Committee Objection, ¶ 29. That issue simply has no bearing on the adequacy of information

in the Disclosure Statement or the ability of a hypothetical creditor to make an informed judgment on whether to vote on the Plan.

22. The Debtors are entitled, and in fact obligated, to investigate the potential estate claims and causes of action that may be released under the Plan and come to their own conclusions with respect to the appropriateness of a release or otherwise.⁹ This is common in complex restructurings and is far more efficient than the Debtors relying on the Committee for their own findings. The Debtors have nonetheless supplemented the Disclosure Statement to include further details regarding the Investigation, including the retention of Quinn Emanuel and the reasons for such retention. This is more than is necessary for the adequate information requirements of section 1125 of the Bankruptcy Code.

D. Information Regarding the Unencumbered Assets

23. The Committee alleges the Disclosure Statement provides inadequate information regarding the nature and value of the assets that are not subject to valid prepetition liens. *See* Committee Objection, ¶ 32. The updated Disclosure Statement filed concurrently herewith contains new information that reflects the Debtors' present understanding that there are no prepetition unencumbered assets that could provide value for the Holder of General Unsecured Claims. Even if there are, those assets are now subject to the liens of the DIP Lenders. Further, those assets could only be litigation assets which, by their very nature, are inherently uncertain and

⁹ 11 U.S.C. 1106(a)(3). *In re Sabine Oil & Gas Corp., et al.*, 562 B.R. 211, 216 (S.D.N.Y. 2017) ("The STN standing inquiry requires a bankruptcy court to determine whether "the committee presents a colorable claim or claims for relief that on appropriate proof would support a recovery," and "to decide whether the debtor unjustifiably failed to bring suit so as to give the creditors' committee standing to bring an action. . . ." Further, the Committee must show that "pursuing the colorable claims would likely benefit the debtor's estate."); *see also In re Adelpia Commc'ns Corp.*, 544 F.3d 420, 424 (2nd Cir. 2008) (affirming "the debtor's central role in handling the estate's legal affairs or the court's responsibility to monitor for abuses by the parties."); *Wooley v. Haynes & Boones, L.L.P. (In re SI Restructuring Inc.)*, 714 F.3d 860, 863-64 (5th Cir. 2013) (recognizing standard for creditors to obtain derivate standing to pursue estate causes of action requires satisfying all three of the following requirements, "(1) the claim is colorable, (2) the debtor-in-possession has refused unjustifiably to pursue it, and (3) the creditor obtains bankruptcy court approval to do so.").

difficult to value. In any event, as noted above, section 1125(b) of the Bankruptcy Code expressly states that a valuation of the debtor's assets is not required.

III. THE CASE TIMELINE OBJECTION SHOULD BE OVERRULED AS IT NOT RELEVANT TO THE ADEQUACY OF THE INFORMATION IN THE DISCLOSURE STATEMENT

24. The Committee contends that the timeline contemplated by the Solicitation Procedures Motion is overly aggressive and untenable. *See* Committee Objection, ¶¶ 11-19. The Committee's objection is misplaced: the timeline of the Chapter 11 Cases is designed to limit disruption to the Debtors' business which is subject to risk on account of, among other things, ongoing bidding for state contracts and the fact that many of the Debtors' contracts with state governments are terminable for convenience. The milestones, which were approved on an interim basis under the DIP Facility [Docket No. 106] and conditionally approved on a final basis by the Court on October 3, 2025, are a reflection of those same efforts to preserve the Debtors' business. Further, the milestones comply with all relevant notice periods contained in the Bankruptcy Code and Bankruptcy Rules. The Debtors' request for approval of the Disclosure Statement is not an opportunity for the Committee to relitigate the previously approved milestones or to contest a case timeline that is already longer than the notice periods required by the Bankruptcy Code and Bankruptcy Rules.

25. The Committee has ample time to prepare for the Confirmation Hearing and fulfill their fiduciary duties. There are still 45 days until the Confirmation Hearing. If the Committee requires additional time, it can come back to this Court to seek an extension and provide justifications for why such an extension is appropriate despite the risks it would present to the Debtors' business. Attempting to do so now, where the only issue to be considered is the adequacy of the Disclosure Statement, is not appropriate.

26. The Debtors disagree with the Committee's allegations that the Debtors are "slow-moving" and impeding the Committee in its efforts to conduct its investigations. *See* Committee Objection, ¶ 18. Such allegations are not relevant to the approval of the Disclosure Statement and wholly inaccurate. The Debtors and their advisors have worked diligently to produce thousands of responsive materials to the Committee. Specifically, the Debtors and their advisors have (a) uploaded approximately 2,500 documents to a virtual data room for the benefit of the Committee's advisors, (b) shared with the Committee's advisors roughly 4,000 more responsive items, including email communications and Board materials with the Committee's counsel, and (c) presented Debtor witnesses at two depositions.

27. The Committee mischaracterizes the Debtors' productions as being primarily related to the Debtors' DIP Facility. The Debtors have produced thousands of documents (comprising nearly 50,000 pages) that address various requests from the Committee, beyond just the DIP Facility, including plan-related discovery. The Committee's line of questioning at the DIP Hearing on September 30, 2025, during which it prematurely tried to inquire about several confirmation issues and used a number of plan-related documents the Debtor produced in discovery, demonstrates that the Committee has received substantial plan-related materials. The Debtors will continue to work cooperatively with the Committee on discovery issues, further productions, and depositions during the pendency of the Chapter 11 Cases. The Committee has ample time to consider the relevant discovery in connection with any confirmation related objections the Committee may file. This is no issue here with respect to approving the Disclosure Statement.

IV. THE COMMITTEE'S OBJECTION THAT CLASS 5 SHOULD BE DEEMED TO REJECT

28. The Committee contends that creditors in Class 5 (General Unsecured Claims) should be deemed to reject the Plan pursuant to Section 1126(g) of the Bankruptcy Code and that the Debtors should not be permitted to send ballots to them. *See* Committee Objection, ¶¶ 20–22. This argument was premised on Holders of General Unsecured Claims receiving no recovery. Following the changes to the Plan, this is now moot.

29. To the extent that the Committee raises the same argument in respect of the new Class 5 creditors (Holders of Subordinated Unsecured Notes Claims), the Debtors would disagree with the Committee's assertions. Section 1126(g) of the Bankruptcy Code does not prohibit solicitation of votes; it merely states that a class is deemed not to have accepted a plan if no distribution is made on account of their claims under such plan.

30. Further, the Holders of Subordinated Unsecured Notes Claims are receiving the right to participate in the Equity Rights Offering on improved terms (as more fully set forth above and in the Disclosure Statement). Accordingly, they may wish to vote in favor of the Plan. In any event, the Debtors have determined, in their business judgment, that it is prudent to solicit the votes of the Holders of Subordinated Unsecured Notes Claims to give such Holders the opportunity to cast their votes on the Plan and weigh in on the merits of the Plan. The Debtors are simply giving claimants a chance to vote, which should be encouraged by the Committee. The Committee has provided no evidence that such solicitation of votes is impermissible and, therefore, it should be allowed.

V. THE REMAINING OBJECTIONS SHOULD BE OVERRULED BECAUSE THEY ARE CONFIRMATION OBJECTIONS

A. Release and Opt-Out Mechanism

31. The U.S. Trustee has objected to the Disclosure Statement on the basis that the Releases and the opt-out mechanisms render the Plan patently unconfirmable. *See* U.S. Trustee Objection, ¶¶ 18–55. Though these are quintessential confirmation objections and premature at this stage, the U.S. Trustee’s objections should be overruled because consensual third-party releases are unequivocally permitted in Fifth Circuit.¹⁰ Indeed, bankruptcy courts in the Fifth Circuit “commonly exercise jurisdiction to approve [consensual third-party] release[s]”¹¹ Here, the Release is fully consensual by virtue of the opt-out mechanism in the Ballots. Though the U.S. Trustee takes issue with an opt-out mechanism constituting consent, “what constitutes consent, including opt-out features and deemed consent for not opting out, has *long been settled in this District*.”¹²

32. In *Robertshaw*, this Court, over objections from the U.S. Trustee, upheld an opt-out process similar in all material respects to what is proposed in this case.¹³ The Third-Party Release and opt-out procedures in the Chapter 11 Cases are almost identical to the provisions and procedures approved in numerous cases in this district, both pre-and post-*Purdue*¹⁴ and the U.S. Trustee has not introduced any new arguments to suggest the outcome should be different here.¹⁵ Accordingly, the Debtors believe that the U.S. Trustee objections with respect to the

¹⁰ *In re CJ Holding Co.*, 597 B.R. 597, 608-09 (S.D. Tex. 2019) (“The Fifth Circuit does not preclude bankruptcy courts from approving a ‘consensual non-debtor release’”) (citation omitted).

¹¹ *Id.*

¹² *Id.* (emphasis added).

¹³ *See, e.g., In re Robertshaw US Holding Corp.*, 662 B.R. 300, 322-24 (Bankr. S.D. Tex. 2024).

¹⁴ *Harrington v. Purdue Pharma, L.P.*, 603 U.S. 204 (2024).

¹⁵ *In re Robertshaw US Holding Corp.*, 662 B.R. at 322-24; *see also In re Independence Contract Drilling, Inc., et al.*, Case No. 24-90612 (ARP) (Bankr. S.D. Tex. 2024); *In re The Container Store Grp. Inc., et al.*, No. 24-90627

Releases and opt-out should be overruled as it relates to approval of the Disclosure Statement (the U.S. Trustee is free to raise this issue at the appropriate time e.g., confirmation).

B. Injunction and Gatekeeper Provisions

33. The injunction provision set forth in Article X.5 of the Plan implements the Plan's discharge, release, and exculpation provisions, in part, by permanently enjoining all Persons from commencing or maintaining any action against the Debtors or the Reorganized Debtors, as applicable, on account of or in connection with or with respect to any Claims or Interests discharged, released, exculpated, or settled under the Plan. Accordingly, the U.S. Trustee's objection to the injunction provision is simply another objection to the Debtors' Plan and Releases. Again, these are issues for confirmation. Raising them now, when the focus is on the adequacy of the Disclosure Statement, is misplaced.

34. The Plan also provides for a gatekeeping provision to implement the Plan's exculpation and release provisions. *See* Plan, Article X. The U.S. Trustee has made similar objections to this provision, though these issues are not disclosure statement issues.

35. Nonetheless, if the Court were to consider the permissibility of the injunction and gatekeeping provisions at this stage, the Debtors believe that both provisions are permissible under the Bankruptcy Code and Fifth Circuit precedent. Courts in this District have confirmed plans of reorganization, over similar objections from the U.S. Trustee, that feature injunction and gatekeeping provisions consistent with those proposed here by the Debtors.¹⁶ In addition, the U.S.

(ARP) (Bankr. S.D. Tex. 2024); *In re DocuData Sols., L.C., et al.*, No. 25-90023 (CML) (Bankr. S.D. Tex. 2025); *In re Wolfsped, Inc., et al.*, No. 25-90163 (CML) (Bankr. S.D. Tex. 2025).

¹⁶ *See In re Wolfsped, Inc., et al.*, No. 25-90163 (CML) [Docket No. 285] (Bankr. S.D. Tex. Sep. 8, 2025) (approving a plan with similar gatekeeper provisions over the objection of the U.S. Trustee (*In re Wolfsped, Inc., et al.*, No. 25-90163 (CML) [Docket No. 233] (Bankr. S.D. Tex. Aug. 21, 2025))). *See also In re Plenty Unlimited Tex., et al.*, No. 25-90105 (CML) [Docket No. 368] (S.D. Tex. May 15, 2025) (approving similar gatekeeping provisions over the objection by the U.S. Trustee [Docket No. 301]) ("The injunction, including the gatekeeping provision, set forth in [the plan of reorganization] is necessary to implement, preserve, and enforce the Debtors' discharge, the Debtor Release, the Third-Party Release, and the Exculpation, and is narrowly tailored to achieve

Trustee's reliance on *Highland Capital* is misplaced and a misapplication of the case.¹⁷ In *Highland*, the Fifth Circuit clarified that the scope of the injunction and gatekeeping provisions can be no broader than the underlying claims being exculpated.¹⁸ The injunction and gatekeeping provisions at issue here are narrowly tailored to apply to the permissible exculpation and release provisions set forth in the Plan. Accordingly, the Debtors believe that the U.S. Trustee Objection should be overruled if the Court were to opine on the merits of the underlying argument.

C. Waiver of Automatic Stay Under Bankruptcy Rule 3020(e)

36. 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.” This stay can be modified or waived by a Court order. The Plan contemplates the Debtors seeking such a waiver in the Confirmation Order. The waiver of Bankruptcy Rule 3020(e) is not an issue that calls into question the adequacy of the Disclosure Statement. Therefore, the Debtors believe the U.S. Trustee's objection on this point is premature and should be overruled.

CONCLUSION

37. For all the reasons set forth herein, the Debtors respectfully request that the Court approve the Disclosure Statement on a final basis.

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this purpose. The Injunction is appropriately tailored to achieve those purposes and appropriate under applicable law, including *In re Highland Capital Mgmt., L.P.* (citation omitted).

¹⁷ *Highland Cap. Mgmt. Fund Advisors, L.P. v. Highland Cap. Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.)*, 132 F.4th 353 (5th Cir. 2025) (holding that injunction and gatekeeping provisions may be no broader than the underlying claims being exculpated).

¹⁸ *Id.*

WHEREFORE, the Debtors respectfully request that the Court enter the Revised Solicitation Procedures Order approving the Disclosure Statement and such other and further relief as may be just and proper.

Dated: October 5, 2025
Houston, Texas

Respectfully submitted,

/s/ Timothy A. ("Tad") Davidson II

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CERTIFICATE OF SERVICE

I certify that on October 5, 2025, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on those parties registered to receive electronic notices.

/s/ Timothy A. ("Tad") Davidson II

Timothy A. ("Tad") Davidson II

Exhibit A

Reply Chart

DEBTORS' RESPONSES TO OBJECTIONS TO DISCLOSURE STATEMENT¹

Objection	Debtors' Response
I. Securities and Exchange Commission ("SEC") Objection [Provided to the Debtors via email on September 17, 2025]	
1. Additional information is required in the Disclosure Statement to determine whether the Equity Rights Offering's New Common Interests will be issued through section 1145 of the Bankruptcy Code, section 4(a)(2) of the Securities Act, or some other exemption.	<u>RESOLVED.</u> The Debtors added language to the Disclosure Statement to address this objection. <i>See</i> Revised Disclosure Statement, Article VIII. Further, the Debtors have been in communication with the SEC and have agreed that the SEC's concerns with respect to Section 1145 are reserved for confirmation.
2. SEC should receive a carveout to the releases in the Plan and Proposed Confirmation Order.	<u>RESOLVED.</u> The Debtors added language to the Plan carving out governmental units from the releases. <i>See</i> Revised Plan, Article X.

¹ Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to such terms in each applicable Objection or the Reply, as applicable. For the avoidance of doubt, the Debtors reserve the right to respond to any and all objections asserted in the Objections in connection with confirmation of the Plan and otherwise.

Objection	Debtors' Response
II. U.S. Trustee Objection [Docket No. 397]	
1. The Debtors seek to impose nonconsensual releases on third parties in violation of the Bankruptcy Code. <i>See</i> U.S. Trustee Objection ¶¶ 18-22.	Any issue regarding the scope of the release provisions is a plan confirmation issue that the Debtors will address at the time of plan confirmation. Nonetheless, the third-party releases are consensual and have been previously approved in this district. Moreover, the scope of the releases is consistent with those regularly approved in this jurisdiction. <i>See</i> Reply ¶¶ 31-32.
2. The Debtors' proposed opt out provision in the Ballots and the Non-Voting Notices cannot demonstrate affirmative consent to the Releases. <i>See</i> U.S. Trustee Objection ¶¶ 23-42.	The proposed opt out provisions are permissible and establish affirmative consent. Further, this form of opt out has consistently been approved in this district. <i>See</i> Reply ¶¶ 31-32.
3. The proposed exculpation provision impermissibly includes parties or entities not entitled to exculpation. <i>See</i> U.S. Trustee Objection ¶¶ 56-58.	<u>RESOLVED.</u> The Debtors revised the definition of Exculpated Parties in the Plan to address this objection. <i>See</i> Revised Plan, Article I.A.
4. The Plan's gatekeeper provisions are in violation of the Bankruptcy Code. <i>See</i> U.S. Trustee Objection ¶¶ 59-71.	Any alleged issues with respect to the gatekeeper injunction should only be dealt with at confirmation. Nonetheless, the proposed gatekeeper injunction is permissible under the Bankruptcy Code and consistent with precedent in this District, including <i>Highland Cap. Mgmt. Fund Advisors, L.P. v. Highland Cap. Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.)</i> , 132 F.4th 353 (5th Cir. 2025). <i>See</i> Reply ¶¶ 33-35.

Objection	Debtors' Response
5. The Plan should clarify that it does not release claims asserted by governmental entities acting under their police and regulatory authority. <i>See</i> U.S. Trustee Objection ¶¶ 72-73.	<u>RESOLVED.</u> The Debtors revised the Plan to carve out governmental units from releases. <i>See</i> Revised Plan, Article X.
6. The Plan seeks a waiver of the 14-day automatic stay set forth in Bankruptcy Rule 3020(e) without proper basis. <i>See</i> U.S. Trustee Objection ¶¶ 74-76.	The Debtors are not seeking this waiver through the Disclosure Statement and will not do so until the time of plan confirmation. Accordingly, this objection is premature.
III. Committee Objection [Docket No. 421]	
1. The Debtors proposed case timeline is too short and should be extended. <i>See</i> Committee Objection ¶¶ 11-20.	This is irrelevant to the adequacy of information contained in the Disclosure Statement or the Court's consideration thereof.
2. The Holders of General Unsecured Claims (Class 5 under the initial Plan, and Class 4 under the Revised Plan) who are not eligible to receive a distribution under the Plan should be Deemed to Reject the Plan. <i>See</i> Committee Objection ¶¶ 20-22.	Under the Revised Plan, Holders of General Unsecured Claims will receive a distribution. Therefore, this objection is moot.
3. The Disclosure Statement lacks adequate information regarding the treatment of Unsecured Claims and the Equity Rights Offering. <i>See</i> Committee Objection ¶¶ 25-27.	The Disclosure Statement has adequate information on the treatment of Unsecured Claims. The Debtors revised the Disclosure Statement to provide additional information regarding the Equity Rights Offering. <i>See</i> Revised Disclosure Statement, Article IV.C.

Objection	Debtors' Response
4. The Prepetition Second Lien Lenders are slated to receive a recovery while other General Unsecured Claims are not eligible to any recovery. <i>See</i> Committee Objection ¶ 25.	The Debtors believe this objection has been addressed by revisions to the Plan.
5. The Disclosure Statement lacks adequate information regarding the Releases. <i>See</i> Committee Objection ¶¶ 28-29.	The Disclosure Statement contains plain language describing the Releases and the mechanism to opt out of such Releases. In addition, the text used to describe the Releases is displayed in bold, all caps text to call attention to these key provisions. <i>See</i> Reply ¶ 20.
6. The Disclosure Statement lacks adequate information regarding the Investigation. <i>See</i> Committee Objection ¶¶ 30-31.	The Debtors revised the Disclosure Statement to provide additional information regarding the Investigation. <i>See</i> Revised Disclosure Statement, Article VI.E.
7. The Disclosure Statement lacks adequate information regarding the Debtors' unencumbered assets. <i>See</i> Committee Objection ¶ 32.	The Debtors revised the Disclosure Statement to provide additional information regarding the unencumbered assets. <i>See</i> Revised Disclosure Statement, Article I.
8. The Assumption Notice misstates the effect of assumption and assignment done pursuant to the Plan. <i>See</i> Committee Objection ¶ 33.	The Debtors revised the Assumption Notice to address this objection. <i>See</i> Exhibit 6 to proposed Solicitation Procedures Order.
9. The Debtors should include the statement from the Committee attached to the Committee Objection. <i>See</i> Committee Objection ¶ 32; Ex. A to Committee Objection.	<u>RESOLVED.</u> The Debtors have included the Committee's requested statement in the Revised Disclosure Statement with slight modifications.

Objection	Debtors' Response
IV. Kalera Plaintiff Objection [Docket No. 382]	
1. The Disclosure Statement cannot be approved because the Debtors cannot provide any legitimate factual or legal justification for the Releases as applied to the Kalera Plaintiff and an uncertified class in an ongoing securities litigation matter. <i>See</i> Kalera Plaintiff Objection ¶¶ 32-52.	These issues are irrelevant to the adequacy of information contained in the Disclosure Statement or the Court's consideration thereof. The Kalera Plaintiff has filed a motion seeking authority to opt out of the Releases, and the Court should address this issue when such motion is set for hearing. <i>See Motion of Securities Litigation Proposed Lead Plaintiff for Entry of an Order (I) Authorizing Proposed Lead Plaintiff to Opt Out of Third-party Release on Behalf of the Proposed Class or Confirming Such Authority or, Alternatively, (II) Certifying the Proposed Class for a Limited Purpose</i> [Docket No. 409] (the "Kalera Motion"). Furthermore, the Debtors will work with the Kalera Plaintiff on a potential resolution of their objection and pending motion.
2. The Disclosure Statement does not contain adequate information regarding the ongoing securities litigation involving the Kalera Plaintiff and the impact of the Releases on such litigation. <i>See</i> Kalera Plaintiff Objection ¶¶ 53.	The Debtors revised the Disclosure Statement to provide additional information regarding the ongoing securities litigation. <i>See</i> Revised Disclosure Statement, Article V.
3. The Disclosure Statement fails to disclose the scope of the Releases and the Injunction in the Plan. <i>See</i> Kalera Plaintiff Objection ¶¶ 55-58.	The Disclosure Statement contains plain language describing the Releases and the Injunction. In addition, the text used to describe the Releases, and the Injunction is displayed in bold, all caps text to call attention to these key provisions. <i>See</i> Reply ¶ 20.

Objection	Debtors' Response
4. The Disclosure Statement does not contain adequate information regarding the preservation of the Proposed Lead Plaintiff's claim against Debtors and their insurance. <i>See</i> Kalera Plaintiff Objection ¶¶ 59-60.	The Debtors expect to resolve this issue in connection with the potential resolution of the Kalera Motion.
5. The Disclosure Statement does not provide adequate information regarding the Debtors' document preservation practices. <i>See</i> Kalera Plaintiff Objection ¶¶ 61-65.	The Debtors revised the Disclosure Statement to provide additional information regarding the Debtors' document preservation practices. <i>See</i> Revised Disclosure Statement, Article V.