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

In re:	Chapter 11
CARBON HEALTH TECHNOLOGIES, INC., et al.,	Case No. 26-90306 (CML)
Debtors. [1]	(Jointly Administered)

DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING AND APPROVING (A) KEY EMPLOYEE INCENTIVE PLAN, AND (B) KEY EMPLOYEE RETENTION PLAN; AND (II) GRANTING RELATED RELIEF

IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE ELECTRONICALLY AT HTTPS://ECF.TXSB.USCOURTS.GOV WITHIN TWENTY-ONE (21) DAYS FROM THE DATE THIS APPLICATION WAS FILED. IF YOU DO NOT HAVE ELECTRONIC FILING PRIVILEGES, YOU MUST FILE A WRITTEN OBJECTION THAT IS ACTUALLY RECEIVED BY THE CLERK WITHIN TWENTY-ONE (21) DAYS FROM THE DATE THIS MOTION WAS FILED. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

The above-captioned debtors and debtors in possession (collectively, the "Debtors") state the following in support of this motion (this "Motion"):

RELIEF REQUESTED

1. By this Motion, the Debtors seek entry of an order substantially in the form attached hereto (the "Order"): (a) approving the Debtors' proposed key employee incentive plan for certain employees (respectively, the "KEIP," a copy of which is attached as Exhibit A to the Hoeinghaus

[1] A complete list of each of the Debtors in these Chapter 11 Cases may be obtained on the website of the Debtors' proposed claims and noticing agent at https://restructuring.ra.kroll.com/CarbonHealth.The location of Carbon Health Technologies, Inc.'s principal place of business and the Debtors' service address in these Chapter 11 Cases is 500 East Remington Drive, Suite 20, Sunnyvale, CA 94087.

Declaration (as defined below), and the eligible employees as the "KEIP Participants");[2] (b) approving the Debtors' proposed key employee retention plan for certain employees (the "KERP," a copy of which is also attached as Exhibit B to the Hoeinghaus Declaration, and the eligible employees as the "KERP Participants") (respectively, the KEIP and KERP are the "Programs"); and (c) granting related relief.[3]

2. The Programs apply to just forty-three (43) individuals who are essential to the success of these cases. In light of the fact that the Debtors must accomplish multiple transactions over a very short timeframe, the Debtors must retain and incent certain key individuals.

3. In further support of the Motion, the Debtors respectfully state as follows:

BACKGROUND

4. On February 2, 2026 (the "Petition Date"), the Debtors each commenced with this Court a voluntary case 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. No trustee or examiner has been appointed in these chapter 11 cases.

5. On February 16, 2025, the Office of the United States Trustee (the "U.S. Trustee") appointed the Official Committee of Unsecured Creditors (the "Committee"). *See* Docket No. 115.

6. Additional information regarding the Debtors' business and capital structure and the circumstances leading to the commencement of these Chapter 11 Cases is set forth in the

[2] To protect the privacy of the KERP Participants and KEIP Participants, the names of the KERP and KEIP Participants, as well as their positions within the Company, are being filed under seal, but will be provided to the Court, the Office of the United States Trustee, and counsel to the Committee.

[3] A summary of the KEIP and KERP is attached to the Hoeinghaus Declaration as Exhibit C.

Declaration of Kerem Ozkay, in Support of the Debtors' Chapter 11 Petitions and First Day Relief (the "First Day Declaration"),[4] which is incorporated by reference herein.

PRELIMINARY STATEMENT

7. The Debtors commenced the Chapter 11 Cases either to reorganize or, in the alternative, conduct an expedited sale process and to wind down the Debtors' remaining business. To do so, they must administer their existing assets and business in an efficient manner under challenging circumstances.

8. The remaining employees will have substantial responsibilities as they work toward a reorganization or, in the alternative, an expedited sale of the Debtors' businesses. The Debtors must incentivize performance to preserve the business during these Chapter 11 Cases. Accordingly, the Debtors have formulated cash-based employee incentive and retention programs to support the restructuring process contemplated over the initial stages of the case. The participants' continued focus, energy and efforts are critical to the Debtors' ability to maximize creditor recoveries in these Chapter 11 Cases.

9. The Debtors, with their advisors, have developed the Programs, which are designed to retain the services of the KERP Participants and to incentivize the KEIP Participants, as the Debtors continue to operate, pursue an expedited restructuring, and maximize and preserve value for all stakeholders. Without this relief, KERP and KEIP Participants will not be properly incentivized to achieve the Debtors' objectives, which will imperil the success of these Chapter 11 Cases. For the avoidance of doubt, the proposed Programs seek to supplement compensation and benefits approved on an interim basis under the First Day wage motion and to replace any

[4] A capitalized term used but not otherwise defined herein shall have the meaning ascribed to it in the First Day Declaration.

expectations key employees may have to an existing payment for severance, whether provided by the terms of contract or under the Debtors' informal prepetition practice.

10. In support of this Motion, the Debtors have concurrently filed the *Declaration of Allison Hoeinghaus* (the "Hoeinghaus Declaration") and the *Declaration of Robert Warshauer* (the "Warshauer Declaration"), and the previously filed First Day Declaration. For these reasons, and as more fully explained below, the Debtors respectfully request that this Court grant the relief requested herein.

11. Importantly, the Programs comply with the Bankruptcy Code. Except for one case that the Debtors believe satisfies the requirements of section 503(c)(1) of the Bankruptcy Code (as later defined), retention payments will only be made to non-insider employees. As set forth in the Hoeinghaus Declaration and Warshauer Declaration, the Programs are reasonable, within the range of comparable plans, and reflect a sound exercise of the Debtors' business judgment. Accordingly, the Debtors respectfully request the Court authorize the Debtors to implement the Programs.

JURISDICTION AND VENUE

12. The United States Bankruptcy Court for the Southern District of Texas (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), to the entry of a final order by the Court.

13. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

14. The bases for the relief requested herein are sections 105(a), 363(b), 363(c), 503(c)(1), and 503(c)(3) of title 11 of the United States Code (the "Bankruptcy Code"),

Bankruptcy Rules 6003 and 6004, and rule 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "Bankruptcy Local Rules").

THE PROGRAMS

A. The Development of the KEIP and the KERP

15. As explained in this Motion, the Debtors determined that there is an acute need to incentivize and retain their key employees for the success of their Chapter 11 Cases. The Debtors enlisted the services of their financial advisor, Alvarez & Marsal ("A&M"), to support the development of the KEIP and the KERP. A&M has significant experience in designing executive and employee incentive, retention, and severance plans for companies in Chapter 11 and has access to extensive industry compensation data. The Debtors, their legal counsel, and A&M reviewed the Debtors' employment requirements during these Chapter 11 Cases, and the attendant necessary features of incentive and retention plans. A&M assisted the Debtors in designing the KEIP and KERP, keeping in mind the Debtors' goals of maximizing value, enhancing the Debtors' financial condition, and ensuring effective management throughout these Chapter 11 Cases. The KEIP and KERP were designed to promote appropriate and reasonable incentives and to retain non-insider personnel essential to the success of these Chapter 11 Cases.

16. A&M also worked closely with the Debtors to ensure that the KEIP and KERP were competitive within the industry, and that the incentives set for the executives participating in the KEIP were appropriate. The Debtors and A&M reviewed market comparisons within a bankruptcy context and, for the KEIP Participants, against market-based compensation levels. With regard to the market comparisons within the bankruptcy context, A&M reviewed many sale-based incentive programs and retention-based programs that have been approved for similarly-sized companies going through chapter 11 in recent years (respectively, the "Comparable KEIPs"

and "Comparable KERPs"). The Comparable KEIPs and Comparable KERPs were selected based on their respective size, participant count, and the fact they have been recently approved, as described more in the Hoeinghaus Declaration.

17. Accordingly, the Debtors and A&M developed the Programs to be comparable to plans similar in design and scope that have been recently approved by bankruptcy courts. A&M and the Debtors used this market research in preparing proposals for the KEIP and KERP, which underwent several rounds of revisions before being submitted for consideration to the Debtors' board of directors (the "Board of Directors").

18. The Debtors also consulted with and addressed questions from their prepetition and proposed postpetition secured lender, Future Solution Investments LLC and certain of its affiliates (together, "FSI"). FSI supports the Programs and agrees to payments thereunder. The Debtors will engage with and provide reasonable information about the Programs to the UST and the Creditor's Committee, if one is appointed, in an effort to obtain their consent or at least eliminate or minimize any objection.

B. The KEIP

1. The KEIP Participants and their Value

19. The KEIP Participants are three (3) members of the Debtors' senior leadership team. This team is responsible for executing the Debtors' operating and strategic plans, including maintaining the Debtors' business operations with the reduced staff, overseeing and addressing issues during these Chapter 11 Cases, and maintaining employee morale and a positive culture among the Debtors' employees during these Chapter 11 Cases. Further, the KEIP Participants are also responsible for managing the sale and marketing process. The KEIP Participants are vital to the on-going stability, continuity, and strength of the Debtors during these Chapter 11 Cases.

20. This challenge is compounded by the nature of the Debtors' business, which is built on trust, reputation and communication that the KEIP Participants have earned from counterparties. Vendors, partners and patients may be cautious to continue to do business with the Debtors in the face of a challenging market and press coverage. The KEIP Participants have offset such fears through outreach and open communication with their employees and the marketplace.

2. The Terms of the KEIP

21. Under the proposed KEIP, there is a single tranche of bonuses (the "KEIP Bonuses," and with payments of these bonuses as the "KEIP Bonus Payments"). The KEIP Bonuses are payable based upon one of two scenarios: (1) a sale or series of sales of substantially all of the Debtors' assets, or (2) confirmation of a plan of reorganization ("Plan") which may occur following the sale of a portion of the Debtors' assets. Exhibit A to the Hoeinghaus Declaration provides the amount of KEIP Bonuses to be earned at one of three levels ("threshold," "target," and "maximum"), as compared to base salary of the KEIP Participants.

22. Earning the KEIP Bonuses is contingent on the Debtors achieving specific levels of "Total Consideration Provided," defined as the sum of (i) the dollar value of current debt converted to equity; (ii) the dollar value of all debt assumed; and (iii) all proceeds realized from the sale of the Debtors' assets during the period of time the Debtors are in chapter 11 bankruptcy protection. Total KEIP Bonuses at the target level of Total Consideration Provided are $1.2 million (the "KEIP Target Bonus Pool"), with the opportunity to earn fifty percent (50%) of such amounts if "threshold" performance is attained and two hundred percent (200%) of such amounts if "maximum" performance is attained. If the "threshold" level of performance is not attained in a sale, no KEIP Bonus will be earned. Any KEIP Bonus earned shall be paid within thirty (30) days following Plan confirmation following (a) emergence from bankruptcy protection or (b) the closing of the sale process.

23. The KEIP Program supersedes and obviates any severance obligation that might become due and owing to a KEIP Participant. If a KEIP Participant is terminated for cause, or voluntarily resigns his or her employment prior to the time the KEIP Bonus Payment is paid, he or she will not receive a KEIP Bonus Payment. If a KEIP Participant is terminated without cause, resigns for Good Reason, dies or becomes disabled prior to the time the KEIP Bonus Payment is paid, he or she will remain eligible for the earned KEIP Bonus Payment, to be paid at the time it would have otherwise been paid had the KEIP Participants remained employed.

24. To receive and retain their KEIP Bonus Payments, all KEIP Participants will be required to execute one or more releases of any claim for severance or for any other claim, including under any existing bonus program.

25. The Debtors' prepetition secured lender, FSI, supports the KEIP.

C. The KERP

1. The KERP Participants and their Value

26. The KERP Participants serve crucial roles in and are an integral part of the Debtors' business. The Debtors have determined that the KERP Participants' services are necessary to the success of the Debtors' Chapter 11 Cases.

27. The KERP Participants, with the exception of one executive, are not responsible for setting company policy and generally do not attend senior management meetings or participate in meetings of the Debtors' Board of Directors or any of its committees. In fact, many of the KERP Participants' duties are limited to implementing tasks within a particular division or department. The KERP Participants' respective scopes of authority are limited. As such, their titles reflect their relative position below upper management and functions within the organization and do not reflect any real insider status or responsibility. *See infra*.

2. The Terms of the KERP

28. Under the proposed KERP, each KERP Participant[5] will receive a monetary award (the "KERP Award") through a series of payments (the "KERP Payments" and each a "KERP Payment"), which amount is equivalent to a set percentage, on an individualized basis, of that KERP Participant's base salary, if they remain an active employee for the six (6) month period beginning January 30, 2026 and ending July 30, 2026; provided that the retention period would end earlier than July 30, 2026 upon the earlier occurrence of (a) emergence from the Chapter 11 Cases, or (b) a change in control of the Debtors ("KERP Retention Period").

29. For the avoidance of doubt, in addition to the KERP Award, KERP Participants who remain active employees through the KERP Retention Period and who execute required waivers and releases will also receive payment in full of all accrued and unpaid PTO. However, all separate Severance benefits that may have otherwise existed are being terminated and will not be payable upon a KERP Participant's separation from employment. Moreover, if the KERP Participant voluntarily leaves employment prior to the conclusion of the KERP Retention Period or Debtors' designated date of separation, or such KERP Participant is terminated for cause, that KERP Participant will forfeit all installments of the KERP Award not yet paid.

30. If every KERP Participant remains eligible until the KERP Retention Period, total payments under the KERP formula will be approximately $1.59 million. Thirty percent (30%) of the KERP Bonus shall be paid within fifteen (15) days after the Court enters an order approving this motion, while seventy percent (70%) shall be paid upon conclusion of the KERP Retention Period, in each case contingent on the KERP Participant remaining employed through such dates.

[5] A list of the KERP Participants, their titles, their salary and their proposed KERP Award, is attached as Exhibit B to the Hoeinghaus Declaration.

31. In order to receive any KERP Payment, a KERP Participant will be required to sign one or more releases (collectively, the "KERP Release"), which KERP Release will release any and all claims that the KERP Participant has or may acquire against the Debtors related to their employment or termination of employment, whether arising pre or postpetition, and including any claim to severance. KERP Payments will be in lieu of any compensation that is due or owing, *except* for accrued, ordinary course salary, commissions, and PTO.

32. FSI supports the KERP.

BASIS FOR RELIEF

A. The KEIP Should Be Approved

1. Implementation of the KEIP Is Warranted Under § 363(b)(1) as an Appropriate Exercise of the Debtors' Business Judgment.

33. Section 363(b)(1) of the Bankruptcy Code provides that a debtor "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). A debtor must show that the decision to use the property outside of the ordinary course of business was based on the debtor's business judgment. *See In re Cont'l Air Lines*, 780 F.2d 1223, 1226 (5th Cir. 1986) ("For a debtor in possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business."); *In re Viking Offshore (USA), Inc.*, 2008 WL 1930056, at *2 (Bankr. S.D. Tex. Apr. 30 2008) (applying the business judgment rule to determine whether the debtors' proposed bonuses were justified outside the ordinary course of business); *see also In re Mesa Air Grp., Inc.*, 2010 WL 3810899, at *3 (Bankr. S.D.N.Y. Sept. 24, 2010) (employee bonus programs can be approved as "valid exercise of their business judgment" under section 363(b)).

34. Courts give great deference to a debtor's business judgment. "The business judgment rule is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992). "Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." *Johns-Manville*, 60 B.R. at 616; *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) ("Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task."). That is because courts are "loath to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence." *In re Integrated Res., Inc.*, 147 B.R. at 656.

35. The reasonable use of incentives and performance bonuses are considered the proper exercise of a debtor's business judgment. *See In re Global Home Prods., LLC*, 369 B.R. 778, 784 (Bankr. D. Del. 2007) (citing *In re U.S. Airways, Inc.*, 329 B.R. 793, 795 (Bankr. E.D. Va. 2005)). The KEIP is an incentive plan for four key senior executives that is designed to motivate them to achieve the best possible outcome in these Chapter 11 Cases. Consequently, the KEIP is not prohibited under the inapplicable § 503(c)(1) (concerning solely retentive programs) or § (c)(2) (concerning severance programs), but, rather, is permitted under § 503(c)(3). *See*, *e.g.*, *In re Alpha Natural Res., Inc*., 546 B.R. 348, 356 (Bankr. E.D. Va. 2016) ("On its face, § 503(c)(1) does not apply to a KEIP because the payments thereunder are incentive and not purely retentive."); *In re Nobex Corp*., 2006 Bankr. LEXIS 417, at *8 (Bankr. D. Del. Jan. 19, 2006) ("The sale-related incentive pay to [senior management] is not governed by §§ 503(c)(1) or 503(c)(2) of the Bankruptcy Code.").

36. Therefore, the implementation of the proposed KEIP – a classic incentive plan, but tailored for the unique circumstances of the Chapter 11 Cases – is a sound exercise of the Debtors' business judgment and, as such, should be approved under § 363(b) of the Bankruptcy Code. The KEIP Participants are essential to the Debtors' operations and their services are necessary to maximize the value of these Debtors' estates. The KEIP establishes goals for the KEIP Participants that, if achieved, will have a meaningful impact on the Debtors' restructuring efforts. The payment levels under the KEIP are reasonable in light of the size of the Debtors' estates and the amounts that comparable companies have provided as incentives to their senior leadership in other chapter 11 cases. As a result, the Debtors, in their sound business judgment believe that the implementation of the KEIP is well justified under the circumstances and will benefit the Debtors' estates and their creditor constituencies; and therefore the Court should approve the KEIP.

B. Approval of the Proposed KEIP Is Justified by the Facts and Circumstances of these Chapter 11 Cases and Therefore Satisfies § 503(c)(3)

37. Section 503(c)(3) prohibits transfers or obligations outside the ordinary course of business "not justified by the facts and circumstances of the case, including transfers made to, or obligations incurred for the benefit of, officers, managers, or consultants hired after the date of the filing of the petition." 11. U.S.C. § 503(c)(3).

38. Certain courts have held that section 503(c)(3)'s "facts and circumstances" justification test "creates a standard no different that the business judgment standard under section 363(b) of the Bankruptcy Code." *In re Velo Holdings, Inc.*, 472 B.R. 201, 209 (Bankr. S.D.N.Y. 2012); *In re Alpha Nat. Res., Inc.*, 546 B.R. 348, 356 (Bankr. E.D. Va. 2016) ("a majority of courts…agree that the 'facts and circumstances' test of 503(c)(3) is identical to the business judgment standard under 363(b)(1)"); *In re Patriot Coal Corp.*, 492 B.R. 518, 530–31 (Bankr. E.D. Mo. 2013) (using the business judgment test to analyze an incentive plan under section

503(c)(3)); *In re Dana Corp.*, 358 B.R. 567. 576-77 (Bankr. S.D.N.Y. 2006) (describing six factors that courts may consider when determining whether the structure of a compensation proposal meets the "sound business judgment test" in accordance with section 503(c)(3) of the Bankruptcy Code). Other courts have determined that section 503(c)(3) of the Bankruptcy Code requires the court "to make its own determination that the transaction will serve the interests of creditors and the debtor's estate." *In re Pilgrim's Pride Corp.*, 401 B.R. 229, 237 (Bankr. N.D. Tex. 2009); *In re Country Fresh Holding Co.*, 2021 Bankr. LEXIS 1839, *35 (Bankr. S.D. Tex. July 12, 2021) (same) (citing *Pilgrim's Pride*). A court should make this determination based on whether the proposed compensation is justified on the facts of a particular case. *Id.*

39. Under either the business judgment standard or the standard proposed by *Pilgrim's Pride*, courts have analyzed compensation plans using six factors identified in *Dana Corp.* to determine whether a compensation proposal is permitted by 503(c)(3). *See, e.g.*, *In re FirstEnergy Sol. Corp.*, 591 B.R. at 698 (analyzing a proposed KERP using the *Dana Corp.* factors without deciding whether section 503(c)(3) modifies the business judgment standard); *GT Advanced Tech. Inc. v. Harrington*, 2015 WL 4459502, at *8 (D. N.H. July 21, 2015) (determining that a heightened standard of review was appropriate and instructing the bankruptcy court to apply the *Dana* factors on remand); *Patriot Coal*, 492 B.R. at 531 (applying the business judgment standard and analyzing an insider incentive plan and a non-insider retention plan using the *Dana Corp.* factors). The six factors are:

1. Does a reasonable relationship exist between the proposed plan and the desired results?
2. Is the cost of the plan reasonable in light of the overall facts of the case?
3. Is the scope of the plan fair and reasonable?
4. Is the plan consistent with industry standards?

5. Has the debtor put forth sufficient due diligence efforts in formulating the plan?

6. Has the debtor received sufficient independent counsel in performing any due diligence and formulating the plan?

In re Dana Corp., 358 B.R. at 576-77; *see also In re Residential Capital, LLC*, 491 B.R. 73, 85−86 (Bankr. S.D.N.Y. 2013) (applying the *Dana Corp.* factors to the debtors' retention plan for non-insiders and approving the plan as an exercise of sound business judgment).

40. No single factor is dispositive, and a court has discretion to weigh each of these factors based on the specific facts and circumstances before it. *See, e.g.*, *FirstEnergy Sol. Corp.*, 591 B.R. at 697 (stating the *Dana Corp.* factors are "neither exhaustive nor of inherently equal weight"). Even the total absence of a factor may be permissible, so long as the interests of the Debtors are sufficiently protected. *See In re Borders Grp. Inc.*, 453 B.R. 459, 477 (Bankr. S.D.N.Y. 2011) (finding that the lack of independent counsel was "not fatal" where the presence of other factors ensured "that the [d]ebtors' interests were sufficiently protected"); *In re Glob. Aviation Holdings Inc.*, 478 B.R. 142, 154 (Bankr. E.D.N.Y. 2012) (noting that "the relatively modest size of the proposed bonus payouts made the retention of independent legal counsel economically inefficient"). The Debtors respectfully submit that the KEIP satisfies the standards set forth above, each as discussed more fully below.

41. ***Factor (a): The KEIP is Structured to Achieve the Desired Performance and is an Incentive Plan***.[6] The KEIP incentivizes the Debtors' senior management team to achieve value-driving financial targets. As discussed at length above, to earn KEIP Bonuses, performance

[6] The KEIP was not designed to retain the KEIP Participants, although a prerequisite to receiving a payment under the KEIP is that the KEIP Participant must be employed at the time of the payment unless such employee's employment was terminated without cause. *See, e.g., In re Global Home Prods., LLC,* 369 B.R. at 786 ("The fact, as Debtors pointed out, that all compensation has a retention element does not reduce the Court's conviction that Debtors' primary goal [is] to create value by motivating performance. All companies seek to retain employees they value by fairly compensating them.").

will require substantial outperformance from KEIP Participants. The process of scaling down, preserving their business and managing remaining employees pending a restructuring is an immense challenge. With this backdrop, the prerequisites of achieving the goals in the KEIP, including meeting the DIP Budget, and expediently consummating a restructuring, are not faits accomplis and are proper goals to motivate the KEIP Participants. *See In re Residential Capital, LLC*, 478 B.R. 154, 171–73 (Bankr. S.D.N.Y. 2012) (distinguished between KEIPs which merely paid insiders based on any occurrence of a sale or plan (as retentive), and those that tied compensation to set, non-fait-accompli sale amounts and/or which were tied to meeting budgets, including DIP Budgets (as incentivizing)); *United Mine Workers of Am. 1974 Pension Plan & Tr. v. Alpha Nat. Res., Inc.*, 553 B.R. 556 (E.D. Va. 2016) ("Notably, the [participants] can earn a 'target' level payout for confirmation of a Chapter 11 plan or a sale of substantially all of the Debtors' assets. However, this payout is only earned if the sale or confirmation takes place prior to June 30, 2016."); *In re Borders Group, Inc.*, 453 B.R. 459, 473 (Bankr. S.D.N.Y. 2011) ("As further evidence that the KEIP is primarily incentivizing, the size of the KEIP award is dependent on how quickly the Debtors emerge from bankruptcy. As the time spent in chapter 11 increases, KEIP bonus opportunities decrease. Thus, in addition to meeting the incentives of total Sale Proceeds (and budget goals for the Entity KEIP Participants), payments are also keyed to meeting fairly aggressive time-based goals."). The conditions to earn the KEIP Bonuses are not only essential for success in these Chapter 11 Cases, they also require substantial outperformance and dedication by the KEIP Participants.

42. ***Factors (b) and (c): The Costs and Scope of the KEIP Are Reasonable***. The KEIP concerns a narrow scope of employees – three out of an approximate total of approximately 1,420 employees, and is targeted towards those with the most macro-influence over the Debtors' business

and responsibility for achievement of Chapter 11 goals. As to cost, notably here, FSI agrees that the KEIP is reasonable under the Debtors' business judgment and has explicitly agreed for its collateral and money, the DIP funds, to be used to pay for the KEIP. FSI has no incentive to rubber-stamp the spending of its cash and its approval speaks volumes to the cost and necessity for the program. *See In re Glob. Home Products, LLC*, 369 B.R. 778, 787 (Bankr. D. Del. 2007 (approving KEIP where KEIP was "part of Debtors' budget which the DIP lenders, whose money is at risk and whose financial acumen is apparent, approved. . .").

43. The KEIP will cost a total of approximately $1.2 million, assuming the requisite target performance is actually achieved. As set forth in the Hoeinghaus Declaration, the KEIP's proposed cost is a reasonable, market-based approach that is consistent with award opportunities approved in comparable chapter 11 cases. Also as set forth in the Hoeinghaus Declaration, KEIP Participants' total direct compensation opportunities will remain within the range of market-based compensation levels (specifically, falling at the approximate market median of similarly-sized companies in aggregate) for their respective positions.

44. **Factors (d), (e), and (f): The Debtors Developed the KEIP with Independent Advice and Oversight and were Diligent in this Development.** The Debtors actively sought input from their advisors during the KEIP development process. This process included A&M's specific compensation-related expertise and the oversight and approval of the Board. The Debtors, with the assistance of A&M and their other restructuring advisors, performed considerable diligence on their Employees' existing compensation levels (both with and without some form of incentive-based compensation) and market comparables vis-à-vis the Debtors' resources and Chapter 11 goals.

C. The KERP Should Be Approved

45. The KERP should be approved under the business judgement rule as applied under the statutory authority cited above for approval of the KEIP. *See* 11 U.S.C. §§ 105(a) and 503(b). The KERP is different than the KEIP in that the employees who would benefit from it may receive time-based retention bonuses because either (1) they are not insiders of the Debtors, or (2) as to the sole executive in the KERP, has received "a bona fide job offer from another business at the same or greater rate of compensation." 11 U.S.C. § 503(c).

1. Because the KERP does not Include Any Insiders Who Have Not Received a Bona Fide Job Offer From Another Business, it is not Subject to §§ 503(c)(1) and (2) of the Bankruptcy Code

46. The KERP is not subject to the restrictions set forth in §§ 503(c)(1) and (2) of the Bankruptcy Code because the KERP is not applicable to any "insiders" (as such term is defined by § 101(31)) who have not received a bona fide job offer from another business. Generally, the Bankruptcy Code defines an "insider" to include, among other things, "an officer of the debtor" and a "person in control of the debtor." 11 U.S.C. § 101(31). Courts have also concluded that an employee may be an "insider" if that employee has "***at least a controlling interest in the debtor or . . . exercise[s] sufficient authority over the debtor so as to unqualifiedly dictate corporate policy and the disposition of corporate assets***." *In re Velo Holdings, Inc.*, 472 B.R. 201, 208 (Bankr. S.D.N.Y. 2012) (citation omitted) (emphasis added).

47. Although certain of the KERP Participants hold titles such as "vice president," "senior manager," "manager", "senior director" or "director," they do not take part in the strategic management or decide "critical financial decisions" of the Debtors, and thus are not "insiders" within the meaning of the Bankruptcy Code. *See In re Foothills Texas, Inc.*, 408 B.R. 573, 579 (Bankr. D. Del. 2009) (holding that the "mere title of a person does not end the inquiry" of whether they are an insider) (cited by *In re Glob. Aviation Holdings Inc.*, 478 B.R. 142, 148 (Bankr.

E.D.N.Y. 2012) ("[T]itles such as 'vice president' are not determinative [as to insider status]. For example, in *In re NMI Systems, Inc.*, 179 B.R. 357, 370 (Bankr. D.D.C. 1995), the court found that a vice president was not an insider because [et. al. he was not] 'in the inner circle making the company's critical financial decisions.'"). Only one of the KERP Participants is a member of the senior executive team, and that participant has received a bona fide job offer from another business at the same or greater rate of compensation than such employee's rate of compensation. The KERP Participants' respective scopes of authority on the whole are limited and their titles reflect only their relative position below upper management and functions within the organization and not any real insider status or responsibility. As a consequence, the KERP Participants are not "insiders" as defined in the Bankruptcy Code, and, accordingly, the Debtors maintain that §§ 503(c)(1) and 503(c)(2) do not apply to the KERP.

48. Because the KERP does not include any insiders who have not received a bona fide job offer from another business, the applicable standard for evaluating the appropriateness of the KERP is provided by § 503(c)(3). As stated above, § 503(c)(3) permits payments to a debtor's employees outside the ordinary course of business if those payments are justified by "the facts and circumstances of the case." 11 U.S.C. § 503(c)(3). As discussed above, courts have generally held that this standard is no different from the business judgment standard applied by courts in determining whether to authorize the use, sale or lease of property outside the ordinary course of business under § 363(b). Accordingly, the KERP should be approved as a valid exercise of the Debtors' business judgment pursuant to § 363(b).

2. The KERP Satisfies the *Dana* Factors

49. Also, the KERP satisfies each of the *Dana* factors. The Debtors incorporate their analysis of the *Dana* factors above as to the KERP, and add the following. As to the first and third

Dana factors, the KERP was designed to motivate the KERP Participants for their significant efforts in these Chapter 11 Cases and to ensure that they continue to focus their full effort and attention on the Debtors' day-to-day operations and steady and position themselves for a sale or reorganization. The KERP provides a fair amount of a retention premium given the uncertainty created by the Chapter 11 Cases. Further, this amount is justified given the high attrition risk that the Debtors are facing. *See In re Glob. Aviation Holdings Inc.*, 478 B.R. at 151 ("no showing of a bona fide job offer or any other evidence of an intent to leave is required to pay a bonus to non-insiders [under a KERP]") (finding KERP reasonable under business judgment where Debtors concluded that "at least one" KERP employee would, without the KERP, leave). Finally, the KERP Release provides a material benefit to the Debtors.

50. As to the remaining *Dana* factors, as stated above and as described further in the Hoeinghaus Declaration, the KERP was designed by the Debtors with the assistance of A&M, which (a) priced the KERP based on comparisons with similar retention plans of other comparable companies; (b) designed the KERP to be within industry standards; (c) performed due diligence for purposes of designing and implementing the KERP; and (d) provided independent counsel in performing due diligence and formulating the KERP.

51. Accordingly, the Debtors respectfully submit that the KERP is justified by the facts and circumstances of these Chapter 11 Cases, is a sound exercise of business judgment, and that implementation of the KERP is in the best interests of the Debtors, their estates, creditors and all other stakeholders. For the reasons discussed above, the Debtors' KERP should be approved.

D. <u>The KEIP and KERP May be Approved Under 11 U.S.C. § 105</u>

52. Bankruptcy courts may "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Courts use their section

105(a) powers to authorize payments essential to the operation of the debtor's business and maximizing the value of the estate. *Just for Feet, Inc.*, 242 B.R. 821, 824-26 (D. Del. 1999) (debtors may make payments that are essential to the continued operation of the business while in chapter 11); *Mich. Bureau of Workers' Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 287 (S.D.N.Y. 1987) (authorizing payments to employees on grounds that the fundamental purpose of reorganization and equity powers of bankruptcy courts "is to create a flexible mechanism that will permit … payment of creditors in full or at least proportionately"). Here, approval of KEIP and KERP is an appropriate use of the Court's section 105(a) powers because the programs are necessary to the continued operation of the Debtors' business and to the maximization of the value of the Debtors' chapter 11 estates for all stakeholders.

E. The KEIP and KERP Payments are Warranted under § 503(b)(1) as Actual, Necessary Costs and Expenses of Preserving the Debtors' Chapter 11 Estates

53. Section 503(b) of the Bankruptcy Code states in pertinent part that "[a]fter notice and a hearing, there shall be allowed administrative expenses . . . including – (1)(A) the actual necessary costs and expenses of preserving the estate including – (i) wages, salaries, and commissions for services rendered after commencement of the case. . . ." 11 U.S.C. § 503(b); *see also In re APF Co*., 270 B.R. 567, 570-71 (Bankr. D. Del. 2001) (postpetition employee bonus is an administrative expense claim under section 503(b)(1)(A)). As discussed above, the KEIP and KERP are appropriately designed to maximize the value of these estates and are appropriately categorized as wages earned after the Petition Date.

NOTICE

54. Notice of the hearing on the relief requested in this Application will be provided by the Debtors in accordance and compliance with Bankruptcy Rules 9013, as well as the Local Rules,

and is sufficient under the circumstances. The Debtors will provide notice to parties-in-interest, including on the Debtors' Master Service List.

CONCLUSION

WHEREFORE, the Debtors request that the Court enter the Order granting the relief requested herein and such other and further relief as may be just and proper under the circumstances.

Dated: February 17, 2026

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Proposed Counsel to the Debtors and Debtors in Possession

Certificate of Service

I certify that on February 17, 2026, I caused a copy of the foregoing document to be served via the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Maxim B. Litvak
Maxim B. Litvak

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

In re:	Chapter 11
CARBON HEALTH TECHNOLOGIES, INC., et al.,	Case No. 26-90306 (CML)
Debtors. [1]	(Jointly Administered)

ORDER (I) AUTHORIZING AND APPROVING (A) KEY EMPLOYEE INCENTIVE PLAN, AND (B) KEY EMPLOYEE RETENTION PLAN; AND (II) GRANTING RELATED RELIEF

(Related Docket No. _____)

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (this "Order"), authorizing the Debtors to adopt the Non-Insider KERP as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C.§§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion; and this Court having determined that the legal and factual bases set forth in the Motion

[1] A complete list of each of the Debtors in these Chapter 11 Cases may be obtained on the website of the Debtors' proposed claims and noticing agent at https://restructuring.ra.kroll.com/CarbonHealth.The location of Carbon Health Technologies, Inc.'s principal place of business and the Debtors' service address in these Chapter 11 Cases is 500 East Remington Drive, Suite 20, Sunnyvale, CA 94087.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The KEIP and the KERP, attached to the Hoeinghaus Declaration as Exhibits A and B, respectively, and as described in the Summary attached to the Hoeinghaus Declaration as Exhibit C, are authorized and approved in their entirety.

2. The Debtors are authorized, pursuant to sections 363(b), 363(c), and 503(c) of the Bankruptcy Code, to take all actions necessary to implement the KEIP and the KERP on the terms and conditions set forth in the Motion and the Hoeinghaus Declaration, including making any payments that come due pursuant to the terms thereof during these Chapter 11 Cases and without the need for further Court approval.

3. Notwithstanding anything to the contrary contained in the Motion or herein, any payment to be made hereunder, and any authorization contained herein, shall be subject to and in accordance with any interim and final orders, as applicable, authorizing or approving any postpetition debtor-in-possession financing or use of cash collateral for the Debtors (such orders, the "DIP Order") and any budget in connection with any such post-petition debtor-in-possession financing or use of cash collateral authorized herein. To the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

4. Notice of the Motion satisfies the requirements of Bankruptcy Rule 6004(a).

5. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

6. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2026

CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY JUDGE