

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

In re:	)	
	)	Chapter 11
	)	
GENESIS CARE PTY LIMITED, <i>et al.</i> , ¹	)	Case No. 23-90614 (MI)
	)	
Debtors.	)	(Jointly Administered)
	)	

**DEBTORS' MEMORANDUM OF LAW
IN SUPPORT OF CONFIRMATION OF THE DEBTORS'
FIRST AMENDED JOINT PLAN OF REORGANIZATION PURSUANT TO
CHAPTER 11 OF THE BANKRUPTCY CODE (TECHNICAL MODIFICATIONS)**

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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/GenesisCare>. The location of the Debtors' principal place of business and the Debtors' service address in these chapter 11 cases is: 1419 SE 8th Terrace, Suite 200, Cape Coral, Florida 33990.

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Other Authorities

H.R. Rep. No. 95-595, *reprinted in* 1978 U.S.C. C.A.N. 5963 (1977) 11, 21

S. Rep. No. 95-989, *reprinted in* 1978 U.S.C. C.A.N. 5787 (1978).....11, 21

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) submit this memorandum of law (this “Memorandum”) in support of the approval of the *First Amended Disclosure Statement for Debtors’ First Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 829] (the “Disclosure Statement”) and Confirmation of the *Debtors’ First Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code (Technical Modifications)* [Docket No. 1024] (as modified, amended, or supplemented from time to time, the “Plan”).² In support of Confirmation of the Plan and approval of the Disclosure Statement on a final basis, the Debtors respectfully state as follows.

Preliminary Statement

1. As detailed in the First Day Declaration, the Debtors are a leading cancer care provider, offering life-changing treatment and support to their patients. While the Debtors have always maintained an unwavering commitment to providing the highest-quality care to their patients, they faced severe liquidity strain in the months prior to the Petition Date as a result of investment in unprofitable global initiatives, critical operational challenges, particularly with respect to their United States business (“GC U.S.”), industry and regulatory headwinds, and the lingering impacts of COVID-19, requiring the Debtors’ business outside of the United States (“ROW”) to fund the unprofitable GC U.S. operations.

2. The Debtors commenced these chapter 11 cases to provide a pathway to reorganize around the ROW business and implement a marketing and sale strategy with respect to GC U.S. After months of hard fought, good faith negotiations with the Debtors’ stakeholders and a robust

² Capitalized terms used but not defined in this Memorandum shall have the meanings ascribed to such terms in the Plan, the Disclosure Statement, or the *Order (I) Conditionally Approving the Adequacy of the Disclosure Statement, (II) Approving the Solicitation and Notice Procedures with Respect to Confirmation of the Debtors’ Proposed Joint Plan of Reorganization, (III) Approving the Form of Ballot and Notices in Connection Therewith, and (IV) Scheduling Certain Dates with Respect Thereto* [Docket No. 851] (the “Conditional Disclosure Statement Order”), as applicable.

and thorough marketing process for the GC U.S. business, the Company stands poised to confirm a Plan that provides for value maximizing sale transactions for GC U.S. or an equitization alternative that will allow GC U.S. to continue operating as a going concern, pays ROW unsecured creditors in full, and allows the ROW business to continue operating as a going concern providing critical cancer treatment to its patients around the world.

3. Reaching this outcome is no small accomplishment. The Debtors have spent the last several months engaged in hard-fought, good faith, arm's length negotiations with each of their critical stakeholders, while simultaneously running a robust and thorough marketing process for the GC U.S. business. The results of those discussions, particularly with the DIP Lenders, have borne fruit. The backbone of the Plan is the support of the Debtors' DIP Lenders, who have agreed to (a) treatment other than payment in full in cash, which preserves liquidity for the go forward business, (b) provide new money in the form of the New Money Exit Facility, and (c) support the transactions contemplated by the Plan.

4. The Debtors have also used the last several months to run a robust marketing and sale process, which the Debtors believe will create substantial distributable value for the benefit of the Debtors' stakeholders. The Debtors, with the assistance of their investment banker, PJT Partners ("PJT"), reached out to 118 potentially interested counterparties, executed more than forty non-disclosure agreements, and provided data room access to all parties under NDA. The data room was robust, supplemented throughout the marketing process, and hosted thousands of diligence items. The Debtors and PJT held multiple diligence sessions and management presentations with interested parties. Given the complexity and structure of the Debtors' business, PJT spent countless hours structuring a "critical path"—amalgamating bids for regions and groups of practices of the GC U.S. business to create a series of sale transactions that will provide the

most value to the Debtors' estates. Due to this structural complexity, the Debtors continue to work towards finalizing the various sale transactions comprising the "critical path," and work with the Debtors' stakeholders, including the DIP Lenders, to ensure that such "critical path" is truly the most value-maximizing outcome for the Debtors. In the event that, in consultation with the Debtors' stakeholders, the "critical path" is not the most value-maximizing path, the Debtors have also significantly advanced with the DIP Lenders an equitization alternative for the GC U.S. business, which may incorporate certain asset sales for physician practices in certain geographic regions. Accordingly, the Plan, allows for most value-maximizing outcome for the Debtors and their stakeholders to occur in all circumstances.

5. The Debtors, the DIP Lenders, and the Committee continue to engage in negotiations to reach consensus on the execution and mechanics of the transactions contemplated in the Plan. Although the Committee does not currently support the Plan, the Debtors are optimistic that these negotiations will be fruitful and produce a global settlement to the satisfaction of the Debtors' key stakeholders. Regardless of the outcomes of these negotiations, the Plan represents the best and value maximizing path forward for the Debtors and their stakeholders and, most importantly, provides a pathway for the Debtors to continue to provide cancer care to their thousands of patients.

6. The Debtors have also ensured that all stakeholders received the due process and transparency critical to the chapter 11 process. The Debtors' robust noticing program provided every known stakeholder—including parties not entitled to vote on the Plan—with notice of the (a) commencement of these chapter 11 cases and (b) combined hearing to consider approval of the Disclosure Statement on a final basis and Confirmation of the Plan (the "Confirmation Hearing"). The Combined Hearing Notice also included information on other key dates, methods by which

parties could request copies of the Plan and Disclosure Statement, and key terms of the Plan, including the full text of the Debtor Release, Third-Party Release, Exculpation, and Injunction provisions set forth in the Plan, and the manner in which parties could object to confirmation of the Plan. In addition, the Debtors caused service of notices of non-voting status to each party classified under the Plan, and such notices included, among other things, notice of the terms of the Third-Party Release and directions for how a party may opt out from the Third-Party Release.

7. For the reasons set forth herein, the Debtors submit that the Plan satisfies the applicable requirements of the Bankruptcy Code, achieves an extraordinary result in challenging circumstances that is in the best interests of the Debtors and all of their stakeholders, and should be confirmed.

Background

I. Procedural Background.

8. On June 1, 2023 (the “Petition Date”), each of the Debtors filed a voluntary petition with the United States Bankruptcy Court for the Southern District of Texas (the “Court”). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. These chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b). On June 15, 2023, the United States Trustee for the Southern District of Texas (the “U.S. Trustee”) appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the “Committee”) [Docket No. 174].³ On July 7, 2023, the U.S. Trustee appointed the patient care ombudsman.⁴ No party has requested the appointment

³ See *Notice of Appointment of Official Committee of Unsecured Creditors* [Docket No. 174].

⁴ See *Appointment of Patient Care Ombudsman, Susan Nielsen Goodman* [Docket No. 250].

of another examiner or trustee and the Court has not appointed any other examiner or trustee in these chapter 11 cases.

II. Results of the Solicitation and Noticing Process.

9. On September 27, 2023, the Debtors filed the Plan and then, on October 1, 2023, the Disclosure Statement. On October 2, 2023, the Court entered the Conditional Disclosure Statement Order approving, among other things, the Disclosure Statement on a conditional basis and the proposed procedures for solicitation of the Plan and related notices, forms, and ballots (collectively, the “Solicitation Packages”).

10. Pursuant to the Conditional Disclosure Statement Order, on October 5, 2023, the Debtors caused Kroll Restructuring Administration LLC (“Kroll”) to commence distribution of the Solicitation Packages to all Holders of Claims entitled to vote on the Plan—*i.e.*, Holders of SFA Claims and Swap Claims—by the voting deadline, November 15, 2023 (the “Voting Deadline”).⁵ The Debtors served the Combined Hearing Notice on nearly the entire creditor matrix and served Non-Voting Status Notices on all Non-Voting Classes. Additionally, the Debtors also caused the Combined Hearing Notice (as defined in the Conditional Disclosure Statement Order) to be published in *The New York Times* (national edition) on October 6, 2023 and the *Financial Times* (global edition) on October 9, 2023 in accordance with the Conditional Disclosure Statement Order.⁶

11. In compliance with the Bankruptcy Code and the Conditional Disclosure Statement Order, only Holders of Claims in Impaired Classes entitled to receive or retain property on account

⁵ See *Affidavits of Service of Solicitation Materials* [Docket No. 1003, 1004].

⁶ See *Affidavit of Publication of the New York Times* [Docket No 875]; *Affidavit of Publication of the Financial Times* [Docket No. 876].

of such Claims were permitted to vote to accept or reject the Plan.⁷ Holders of Claims and Interests were not entitled to vote if their rights are (a) Unimpaired under the Plan (in which case such Holders were conclusively presumed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code) or (b) Impaired and such Holders are not entitled to receive any distribution under the Plan (in which case such Holders were conclusively deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code).

12. Specifically, and as set forth in the Plan, Holders of Claims in Class 1 (Other Secured Claims), Class 2 (Other Priority Claims), and Class 5A (General Unsecured Claims against the GC U.S. Debtors) (collectively, the “Deemed Accepting Classes”) are Unimpaired and conclusively presumed to have accepted the Plan and, therefore, were not entitled to vote to accept or reject the Plan. Holders of Claims in Class 4 (Shareholder Loan Claims), Class 5B (General Unsecured Claims against the GC U.S. Debtors), and Class 9 (Section 510(b) Claims), and Holders of Interests in Class 8A (Existing TopCo Interests) and Class 8B (Existing GC U.S. TopCo Interests) (collectively, the “Deemed Rejecting Classes”) are fully Impaired, are entitled to no recovery under the Plan, and are deemed to have rejected the Plan, and, therefore, were not entitled to vote to accept or reject the Plan. Holders of Claims in Class 6 (Intercompany Claims) and Holders of Interests in Class 7A (Intercompany Interests in ROW Debtors) and Class 7B (Intercompany Interests in GC U.S. Debtors) (the “Deemed Accepting/Rejecting Classes,” and together with the Deemed Accepting Classes and the Deemed Rejecting Classes, the “Non-Voting Classes”) are Unimpaired and conclusively presumed to have accepted the Plan (to the extent Reinstated) or are Impaired and deemed to have rejected the Plan (to the extent cancelled and released), and, in either event, are not entitled to vote to accept or reject the Plan.

⁷ See 11 U.S.C. § 1126.

13. The deadline to file objections to Confirmation to the Plan is November 15, 2023, at 4:00 p.m. (prevailing Central Time). The Confirmation Hearing is scheduled for November 21, 2023, at 3:30 p.m., prevailing Central Time.

Argument

14. This memorandum is divided into three parts. **First**, the Debtors request approval of the Disclosure Statement and a finding that the Debtors have satisfied all notice requirements approved in the Conditional Disclosure Statement Order. **Second**, the Debtors present their “case in chief” that the Plan satisfies section 1129 of the Bankruptcy Code and, accordingly, request that the Court confirm the Plan.⁸ **Third**, as part of the Debtors’ “case in chief,” the Debtors set forth how the release, exculpation, and injunction provisions comply with the Bankruptcy Code, prevailing law, and are in the best interests of the Debtors’ Estates.

I. Approval of the Disclosure Statement is Warranted.

A. The Disclosure Statement Contains Adequate Information as Required by Section 1125 of the Bankruptcy Code.

15. The primary purpose of a disclosure statement is to provide “adequate information” to allow parties entitled to vote on a proposed plan to make an informed decision about whether to vote to accept or reject the plan.⁹ “Adequate information” is a flexible standard, based on the facts

⁸ See *In re Lakeside Glob. II, Ltd.*, 116 B.R. 499, 505 (Bankr. S.D. Tex. 1989) (“In order to confirm a reorganization plan, the bankruptcy court must be satisfied that the plan complies with all of the requirements of § 1129(a) of the Bankruptcy Code.”); *In re Lone Star Utils., LLC*, No. 13-34302-SGJ-11, 2014 WL 4629129, at *2 (Bankr. N.D. Tex. Sept. 15, 2014) (“The Debtor has the burden of proving the elements of Bankruptcy Code section 1129(a) by a preponderance of the evidence.”); see also *In re Armstrong World Indus., Inc.*, 348 B.R. 111, 119-20 (D. Del. 2006) (“To confirm the Plan, the Court must determine whether it meets the specific requirements of Section 1129.”).

⁹ See, e.g., *In re J.D. Mfg., Inc.*, No. 07-36751, 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.”); *In re U.S. Brass Corp.*, 194 B.R. 420, 423 (Bankr. E.D. Tex. 1996) (“The purpose of the disclosure statement is . . . to provide enough information to interested persons so they may make an informed choice.”); *In re Applegate Prop., Ltd.*, 133 B.R. 827, 831 (Bankr. W.D. Tex. 1991) (“A court’s legitimate concern under Section 1125 is assuring that hypothetical reasonable investors receive such information as will enable them to

and circumstances of each case.¹⁰ Courts within the Fifth Circuit and elsewhere acknowledge that determining what constitutes “adequate information” for the purpose of satisfying section 1125 of the Bankruptcy Code resides within the broad discretion of the court.¹¹

16. Courts generally look for certain information when evaluating the adequacy of the disclosures in a proposed disclosure statement, including:

- a. the events which led to the filing of a bankruptcy petition;
- b. the relationship of a debtor with the affiliates;
- c. a description of the available assets and their value;
- d. the anticipated future of the company;
- e. the source of information stated in the disclosure statement;
- f. the present condition of a debtor while in chapter 11;
- g. the claims asserted against a debtor;
- h. the estimated return to creditors under a chapter 7 liquidation;
- i. the future management of a debtor;
- j. the chapter 11 plan or a summary thereof;

evaluate for themselves what impact the information might have on their claims and on the outcome of the case.”) (emphasis in original).

¹⁰ 11 U.S.C. § 1125(a)(1) (“[A]dequate information’ means 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.”); *In re Cajun Elec. Power Coop., Inc.*, 150 F.3d 503, 518 (5th Cir. 1998) (“The legislative history of § 1125 indicates that, in determining what constitutes ‘adequate information’ with respect to a particular disclosure statement, both the kind and form of information are left essentially to the judicial discretion of the court and that the information required will necessarily be governed by the circumstances of the case.”) (internal citations omitted); *Floyd v. Hefner*, No. CIV.A. H-03-5693, 2006 WL 2844245, at *30 (S.D. Tex. Sept. 29, 2006) (noting that what constitutes “adequate information” is a flexible standard); *In re Applegate Prop., Ltd.*, 133 B.R. at 829 (“The issue of adequate information is usually decided on a case by case basis and is left largely to the discretion of the bankruptcy court.”).

¹¹ See, e.g., *Tex. Extrusion Corp. v. Lockheed Corp. (In re Tex. Extrusion Corp.)*, 844 F.2d 1142, 1157 (5th Cir. 1988) (“The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court.”); *Kirk v. Texaco, Inc.*, 82 B.R. 678, 682 (S.D.N.Y. 1988) (“The legislative history could hardly be more clear in granting broad discretion to bankruptcy judges under § 1125(a).”).

- k. the financial information, data, valuations, and projections relevant to the creditors' or equityholders' decision to accept or reject the chapter 11 plan;
- l. the information relevant to the risks posed to claimants under the plan;
- m. the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; and
- n. the litigation likely to arise in a nonbankruptcy context; and
- o. the tax attributes of a debtor.¹²

17. Disclosure regarding all topics is not necessary in every case.¹³ The Disclosure Statement contains an adequate description of the Debtors' business operations, assets and liabilities, and circumstances leading to these chapter 11 cases. In addition, the Disclosure Statement includes a thorough description of: (a) the DIP Facility and the Plan (Article IV); (b) the statutory requirements for Confirmation of the Plan (Article X); and (c) the recommendations of the Debtors regarding the Plan (Article XIII). Additionally, the Disclosure Statement contains information allowing Holders of Claims in the Voting Class to make an informed decision about whether to vote to accept or reject the Plan, including, among other things, information regarding:

- a. the Debtors' corporate history, corporate structure, business operations, and prepetition capital structure and indebtedness, Article V;
- b. the events leading to the filing of chapter 11 cases, Article VI;
- c. the material developments in the chapter 11 cases, Article VII;

¹² See, e.g., *In re U.S. Brass*, 194 B.R. at 424–25; *Westland Oil Dev. Corp. v. MCorp Mgmt. Sols., Inc.*, 157 B.R. 100, 102 (S.D. Tex. 1993) (listing factors courts have considered in determining the adequacy of information provided in a disclosure statement); *In re Scioto Valley Mortg. Co.*, 88 B.R. 168, 170–71 (Bankr. S.D. Ohio 1988) (same); *In re Metrocraft Publ'g Servs., Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984) (same).

¹³ See *In re U.S. Brass*, 194 B.R. at 425 (stating that “[d]isclosure of all factors is not necessary in every case”); *In re Phx. Petroleum Co.*, 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001) (“certain categories of information which may be necessary in one case may be omitted in another; no one list of categories will apply in every case”).

- d. the classification and treatment of Claims and Interests under the Plan, Article III. C;
- e. the anticipated recoveries of Holders of Claims and Interests, Ex. B;
- f. the Plan and a summary thereof, Article IV.B; Ex. A;
- g. the provisions governing distributions under the Plan, Article IV.B;
- h. a description of the settlement, release, exculpation, injunction, and related provisions of the Plan, Article III.W-X;
- i. the estimated return to creditors under a hypothetical chapter 7 liquidation, Article X.B, Exhibit D;
- j. financial information and valuations that would be relevant to a creditor's determinations of whether to accept or reject the Plan, Exhibit F;
- k. risk factors related to the Plan and alternatives to confirming and consummating the Plan, Article XIII; and
- l. certain U.S. federal income tax consequences arising from implementation of the Plan, Article XII.

18. Accordingly, the Disclosure Statement contains adequate information within the meaning of section 1125(a) of the Bankruptcy Code in satisfaction of section 1126(b)(2) of the Bankruptcy Code.

B. The Debtors Complied with the Applicable Notice Requirements.

19. The Conditional Disclosure Statement Order granted final relief regarding solicitation and noticing procedures and materials including, among other things, approving: (a) the Solicitation and Voting Procedures; (b) the form and manner of the Combined Hearing Notice; (c) the Non-Voting Status Notices; (d) the Ballots, (e) the cover letter, (f) the Solicitation Packages, and (g) certain dates and deadlines with respect to the Confirmation of the Plan. The Debtors are complying with the procedures and timeline approved by the Conditional Disclosure Statement Order.

C. Solicitation of the Plan Complied with the Bankruptcy Code and Was in Good Faith.

20. Section 1125(e) of the Bankruptcy Code provides that “a person that solicits acceptance or rejection of a plan, in good faith and in compliance with the applicable provisions of this title . . . is not liable” on account of such solicitation for violation of any applicable law, rule, or regulation governing solicitation of acceptance or rejection of a plan.¹⁴

21. As set forth in the Disclosure Statement and Disclosure Statement Motion, and as demonstrated by the Debtors’ compliance with the Conditional Disclosure Statement Order, the Debtors took appropriate actions in connection with the solicitation of the Plan in compliance with section 1125 of the Bankruptcy Code. Therefore, the Debtors request that the Bankruptcy Court grant the parties the protections provided under section 1125(e) of the Bankruptcy Code.

II. The Plan Satisfies Each Requirement for Confirmation.

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

22. Under section 1129(a)(1) of the Bankruptcy Code, a plan must “compl[y] with the applicable provisions of [the Bankruptcy Code].”¹⁵ The legislative history of section 1129(a)(1) of the Bankruptcy Code explains that this provision also encompasses the requirements of sections 1122 and 1123 of the Bankruptcy Code, which govern the classification of claims and the contents of a plan of reorganization, respectively.¹⁶ As explained below, the Plan complies with

¹⁴ 11 U.S.C. § 1125(e).

¹⁵ 11 U.S.C. § 1129(a)(1).

¹⁶ S. Rep. No. 95-989, at 126, *reprinted in* 1978 U.S.C. C.A.N. 5787, 5912 (1978); H.R. Rep. No. 95-595, at 412, *reprinted in* 1978 U.S.C. C.A.N. 5963, 6368 (1977); *In re S & W Enter.*, 37 B.R. 153, 158 (Bankr. N.D. Ill. 1984) (“An examination of the Legislative History of [section 1129(a)(1)] reveals that although its scope is certainly broad, the provisions it was most directly aimed at were Sections 1122 and 1123.”); *In re Nutritional Sourcing Corp.*, 398 B.R. 816, 824 (Bankr. D. Del. 2008) (noting that a plan must comply with Sections 1122 and 1123).

the requirements of sections 1122 and 1123 of the Bankruptcy Code, as well as other applicable provisions.

1. The Plan Satisfies the Classification Requirements of Section 1122 of the Bankruptcy Code.

23. The classification requirement of section 1122(a) of the Bankruptcy Code provides, in pertinent part, as follows:

Except as provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.¹⁷

24. For a classification structure to satisfy section 1122 of the Bankruptcy Code, not all substantially similar claims or interests need to be grouped in the same class.¹⁸ Instead, claims or interests designated to a particular class must be substantially similar to each other.¹⁹ Courts in this jurisdiction and others have recognized that plan proponents have significant flexibility in placing similar claims into different classes, provided there is a rational basis to do so.²⁰

¹⁷ 11 U.S.C. § 1122(a).

¹⁸ See *In re Sentry Operating Co. of Tex., Inc.*, 264 B.R. 850, 860 (Bankr. S.D. Tex. 2001) (recognizing that section 1122 is broadly “permissive of any classification scheme that is not specifically proscribed, and that substantially similar claims may be separately classified”).

¹⁹ *In re Vitro Asset Corp.*, No. 11-32600-HDH, 2013 WL 6044453, at *5 (Bankr. N.D. Tex. Nov. 14, 2013) (“[A] plan may provide for multiple classes of claims or interests so long as each claim or interest within a class is substantially similar to other claims or interests in that class.”).

²⁰ Courts have identified grounds justifying separate classification, including: (a) where there are good business reasons for separate classification, and (b) where members of a class possess different legal rights. *Heartland Fed. Sav. & Loan Assoc. v. Briscoe Enters., Ltd., II* (*In re Briscoe Enters., Ltd., II*), 994 F.2d 1160, 1167 (5th Cir. 1993) (recognizing that “there may be good business reasons to support separate classification”); *John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assocs.*, 987 F.2d 154, 158–59 (3d Cir. 1993) (holding that a classification scheme is proper as long as each class represents a voting interest that is “sufficiently distinct and weighty to merit a separate voice in the decision whether the proposed reorganization should proceed”); see also *In re Pisces Energy, LLC*, No. 09-36591-H5-11, 2009 WL 7227880, at *8 (Bankr. S.D. Tex. Dec. 21, 2009) (“[A] plan proponent is afforded significant flexibility in classifying claims under section 1122(a) of the Bankruptcy Code provided there is a reasonable basis for the classification scheme and all claims within a particular class are substantially similar.”); *In re Heritage Org., L.L.C.*, 375 B.R. 230, 303 (Bankr. N.D. Tex.

25. The Plan's classification of Claims and Interests satisfies the requirements of section 1122 of the Bankruptcy Code because the Plan places Claims and Interests into 12 separate Classes, with each Class differing from the Claims and Interests in each other Class in a legal or factual nature or based on other relevant criteria.²¹ Specifically, the Plan provides for the separate classification of Claims and Interests into the following Classes:

- m. Class 1: Other Secured Claims;
- n. Class 2: Other Priority Claims;
- o. Class 3: SFA Claims and Swap Claims;
- p. Class 4: Shareholder Loan Claims;
- q. Class 5A: General Unsecured Claims against the ROW Debtors;
- r. Class 5B: General Unsecured Claims against the GC U.S. Debtors;
- s. Class 6: Intercompany Claims;
- t. Class 7A: Intercompany Interests in the ROW Debtors;
- u. Class 7B: Intercompany Interests in the GC U.S. Debtors;
- v. Class 8A: Existing TopCo Interests;
- w. Class 8B: Existing GC U.S. TopCo Interests; and
- x. Class 9: Section 510(b) Claims.

26. Claims and Interests assigned to each particular Class described above are substantially similar to the other Claims and Interests in such Class. In addition, valid business, legal, and factual reasons justify the separate classification of the particular Claims or Interests into the Classes created under the Plan, and no unfair discrimination exists between or among

2007) (“[T]he only express prohibition on separate classification is that it may not be done to gerrymander an affirmative vote on a reorganization plan.”).

²¹ Plan, Art. III.

holders of Claims and Interests. Namely, the Plan separately classifies the Claims because each holder of such Claims or Interests may hold (or may have held) rights in the Estates legally dissimilar to the Claims or Interests in other Classes or because substantial administrative convenience resulted from such classification. For example, Claims (rights to payment) are classified separately from Interests (representing ownership in the business). Secured Claims are classified separately from unsecured Claims because the Debtors' obligations with respect to the former are secured by collateral. Accordingly, the Plan satisfies section 1122(a) of the Bankruptcy Code.

2. The Plan Satisfies the Mandatory Plan Requirements of Section 1123(a) of the Bankruptcy Code.

27. Section 1123(a) of the Bankruptcy Code sets forth seven criteria that every chapter 11 plan must satisfy.²² The Plan satisfies each of these requirements.

a. *Designation of Classes of Claims and Equity Interests (Section 1123(a)(1)).*

28. Section 1123(a)(1) of the Bankruptcy Code requires that the Plan designate "classes of claims, other than claims of a kind specified in section 507(a)(2), 507(a)(3), or 507(a)(8) of this title, and classes of interests."²³ For the reasons set forth above, Article III of the Plan properly designates Classes of Claims and Interests and thus satisfies this requirement of the Bankruptcy Code.

²² See 11 U.S.C. § 1123(a).

²³ *Id.* § 1123(a)(1).

b. *Specification of Unimpaired Classes (Section 1123(a)(2)).*

29. Section 1123(a)(2) of the Bankruptcy Code requires that the Plan “specify any class of claims or interests that is not impaired under the plan.”²⁴ The Plan meets this requirement by identifying each Class in Article III that is Unimpaired.

c. *Treatment of Impaired Classes (Section 1123(a)(3)).*

30. Section 1123(a)(3) of the Bankruptcy Code requires that the Plan “specify the treatment of any class of claims or interests that is impaired under the plan.”²⁵ The Plan meets this requirement by setting forth the treatment of each Class in Article III that is Impaired.

d. *Equal Treatment within Classes (Section 1123(a)(4)).*

31. Section 1123(a)(4) of the Bankruptcy Code requires that the Plan “provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest.”²⁶ The Plan meets this requirement because holders of Allowed Claims or Interests will receive the same rights and treatment as other holders of Allowed Claims or Interests within such holders’ respective Class.²⁷ Thus, the Plan satisfies section 1123(a)(4) of the Bankruptcy Code.

²⁴ *Id.* § 1123(a)(2).

²⁵ *Id.* § 1123(a)(3).

²⁶ *Id.* § 1123(a)(4).

²⁷ Plan, Art. III.B.

e. *Means for Implementation (Section 1123(a)(5)).*

32. Section 1123(a)(5) of the Bankruptcy Code requires that the Plan provide “adequate means” for its implementation.²⁸ The Plan provides a detailed blueprint for the transactions that underlie the Plan.

33. Articles IV and V of the Plan, in particular, set forth the means for implementation of the Plan and the transactions underlying the Plan, including: (a) the general settlement of Claims and Interests; (b) authorization for the Debtors, the Reorganized Debtors, and the Post Effective Date Debtors, as applicable, to take all actions necessary to effectuate the Plan, including those actions necessary or appropriate to effect the Restructuring Transactions, including, without limitation, any restructuring transaction steps set forth herein or in the Restructuring Transactions Memorandum, as applicable, as the same may be modified or amended from time to time prior to the Effective Date; (c) the adoption, authorization, and entry of the New Organizational Documents; (d) the funding and sources of consideration for the Plan distributions; (e) the reservation of equity for future distribution in accordance with the terms and conditions of the Management Incentive Plans and the Physician Incentive Plans, as applicable; (f) the vesting of assets in the Post Effective Date Debtors or the Reorganized Debtors, as applicable; (g) except as otherwise provided in the Plan and Confirmation Order, the cancellation of existing securities and agreements; (h) the authorization and approval of the New Money Exit Facilities (if any), the Takeback Facilities, the New Equity Interests, the Rights Offering (if any), the New Warrants, and the transactions contemplated in connection therewith and entry into any agreements related to the same as set forth in the Plan or the Plan Supplement; (i) the authorization, approval, and entry of corporate actions under the Plan; (j) the appointment of the directors, officers, or managers for

²⁸ See 11 U.S.C. § 1123(a)(5).

the Reorganized ROW Debtors and the Post Effective Date Debtors, as applicable; (k) the granting of new Liens and security interests to secure the New Money Exit Facilities (if any) and the Takeback Facilities, as applicable; and (l) the effectuation and implementation of documents and further transactions.²⁹ The precise terms governing the execution of these transactions will be set forth in greater detail in the applicable definitive documents or forms of agreements included in a further amended Plan Supplement.³⁰ Thus, the Plan satisfies section 1125(a)(5) of the Bankruptcy Code.

f. *Issuance of Non-voting Securities (Section 1123(a)(6)).*

34. Section 1123(a)(6) of the Bankruptcy Code requires that a debtor's corporate constituent documents prohibit the issuance of non-voting equity securities.³¹ Article IV.B.1.h and Article IV.B.2.b.vii of the Plan provide that the New Organizational Documents shall contain a provision prohibiting the issuance of non-voting equity securities to the extent required by section 1123(a)(6) of the Bankruptcy Code.³² In accordance with Article IV.B.1.h and Article IV.B.2.b.vii of the Plan, as applicable, on or immediately prior to the Effective Date, the New Organizational Documents shall be automatically adopted by the applicable Reorganized Debtors and will prohibit the issuance of non-voting equity securities. Accordingly, the Plan satisfies section 1123(a)(6) of the Bankruptcy Code.

²⁹ Plan, Arts. IV–V.

³⁰ See *Notice of Filing of Plan Supplement* (as modified, amended, or supplemented from time to time, the “Plan Supplement”) [Docket No. 991].

³¹ See 11 U.S.C. § 1123(a)(6).

³² Plan, Arts. IV.B.1.h; IV.B.2.b.vii.

g. Directors and Officers (Section 1123(a)(7)).

35. Section 1123(a)(7) of the Bankruptcy Code requires that plan provisions with respect to the manner of selection of any director, officer, or trustee, or any other successor thereto, be “consistent with the interests of creditors and equity security holders and with public policy.”³³ The Plan satisfies this requirement by providing that as of the Effective Date, the terms of the current members of the boards of directors of U.S. TopCo and TopCo shall expire and the new directors and officers of the Reorganized ROW Debtors and the Post Effective Date Debtors, as applicable, shall be appointed.³⁴ Accordingly, the Plan satisfies section 1123(a)(7) of the Bankruptcy Code.

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

36. Section 1123(b) of the Bankruptcy Code sets forth various discretionary provisions that may be incorporated into a chapter 11 plan. Among other things, section 1123(b) of the Bankruptcy Code provides that a plan may: (a) impair or leave unimpaired any class of claims or interests; (b) provide for the assumption or rejection of executory contracts and unexpired leases; (c) provide for the settlement or adjustment of any claim or interest belonging to the debtor or the estates; and (d) include any other appropriate provision not inconsistent with the applicable provisions of chapter 11.³⁵

37. The Plan is consistent with section 1123(b) of the Bankruptcy Code. Specifically, under Article III of the Plan, Classes 1, 2, and 5A are Unimpaired because the Plan leaves unaltered

³³ See 11 U.S.C. § 1123(a)(7).

³⁴ See Plan, Art. IV.B.1.i-j; Art. IV.B.2.b.viii-ix.

³⁵ 11 U.S.C. §§ 1123(b)(1)–(3), (6).

the legal, equitable, and contractual rights of the holders of Claims within such Classes.³⁶ On the other hand, Classes 3, 4, 5B, 8A, 8B, and 9 are Impaired because the Plan modifies the rights of the holders of Claims and Interests within such Classes as contemplated in section 1123(b)(1) of the Bankruptcy Code.³⁷ Classes 6, 7A, and 7B may be Impaired or Unimpaired under the Plan at the option of the Debtors.

38. In addition, under section 1123(b)(2) of the Bankruptcy Code, Article V of the Plan provides that, on the Effective Date, except as otherwise provided in the Plan, each Executory Contract and Unexpired Lease for the ROW Debtors shall be assumed, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, as of the Effective Date under section 365 of the Bankruptcy Code. Further, all Executory Contracts or Unexpired Leases will be deemed rejected by the applicable Reorganized GC U.S. Debtor or Post Effective Date Debtor in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, other than those that: (a) are identified on the Assumed Executory Contracts and Unexpired Leases Schedule; (b) have been previously assumed or rejected by the Debtors pursuant to a Final Order; (c) are the subject of a motion to assume filed on or before the Confirmation Date; (d) are to be assumed by the Debtors or assumed by the Debtors and assigned to another third party, as applicable, in connection with any sale transaction including the Sale Transaction Restructuring; (e) are a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan; or (f) are a D&O Liability Insurance Policy.

39. Articles IV.B.1.l and IV.B.2.d of the Plan provides that, unless otherwise provided in the Plan, and subject to Article V thereof, the Reorganized Debtors or Post Effective Date

³⁶ Plan, Art. III.

³⁷ *Id.*

Debtors, as applicable, shall: (a) assume all employment agreements, indemnification agreements, or other agreements with current and former members of any Governing Body, employees, officers, directors, or managers of the GC U.S. Debtors or the ROW Debtors, as applicable, in each case, subject to the Required Lenders' consent, not to be unreasonably withheld; or (b) enter into new agreements with such persons on terms and conditions acceptable to the Reorganized ROW Debtors or the Post Effective Date Debtors, as applicable, the Required Lenders, and such person.

40. Finally, the Plan contains release, exculpation, and injunction provisions, which for the reasons set forth below, are consistent with section 1123(b) of the Bankruptcy Code.

4. The Plan Complies with Section 1123(d) of the Bankruptcy Code.

41. Section 1123(d) of the Bankruptcy Code provides that “if it is proposed in a plan to cure a default the amount necessary to cure the default shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.”³⁸

42. The Plan complies with section 1123(d) of the Bankruptcy Code. The Plan provides for the satisfaction of Cures under each Executory Contract and Unexpired Lease to be assumed under the Plan by payment of the Cure, if any, on the Effective Date or as soon as reasonably practicable thereafter or on such other terms as the parties to such Executory Contracts or Unexpired Leases may agree.³⁹ To the extent there is a dispute related to any such Cure, the Debtors, Reorganized Debtors, or the Post Effective Date Debtors, as applicable, may reconcile and settle in the ordinary course of the Debtors' business any dispute (following a timely filed objection) regarding any Cure or any other matter pertaining to assumption without any further notice to or action, order, or approval of the Bankruptcy Court.

³⁸ 11 U.S.C. § 1123(d).

³⁹ Plan, Art. V.C.

B. The Debtors Complied with the Applicable Provisions of the Bankruptcy Code (Section 1129(a)(2)).

43. The Debtors have satisfied section 1129(a)(2) of the Bankruptcy Code, which requires that the proponent of a plan of reorganization comply with the applicable provisions of the Bankruptcy Code.⁴⁰ The legislative history to section 1129(a)(2) of the Bankruptcy Code reflects that this provision is intended to encompass the disclosure and solicitation requirements set forth in sections 1125 and 1126 of the Bankruptcy Code.⁴¹ The Debtors have complied with sections 1125 and 1126 of the Bankruptcy Code regarding disclosure and solicitation of the Plan.

1. The Debtors Complied with Section 1125 of the Bankruptcy Code.

44. As discussed above, the Debtors complied with the notice and solicitation requirements of section 1125 of the Bankruptcy Code.⁴²

2. The Debtors Will Address Satisfaction of the Plan Acceptance Requirements of Section 1126 of the Bankruptcy Code in Their Reply Brief.

45. Section 1126 of the Bankruptcy Code specifies the requirements for acceptance of a plan of reorganization. Specifically, under section 1126 of the Bankruptcy Code, only holders of allowed claims and allowed interests in impaired classes of claims or interests that will receive

⁴⁰ See 11 U.S.C. § 1129(a)(2).

⁴¹ S. Rep. No. 95-989, at 126, *reprinted in* 1978 U.S.C. C.A.N. 5787, 5912 (1978); H.R. Rep. No. 95-595, at 412, *reprinted in* 1978 U.S.C. C.A.N. 5963, 6368 (1977); *In re Lapworth*, No. 97-34529 (DWS), 1998 WL 767456, at *3 (Bankr. E.D. Pa. Nov. 2, 1998) (“The legislative history of § 1129(a)(2) specifically identifies compliance with the disclosure requirements of § 1125 as a requirement of § 1129(a)(2).”); *In re WorldCom, Inc.*, No. 02-13533 (AJG), 2003 WL 23861928, at *49 (Bankr. S.D.N.Y. Oct. 31, 2003) (stating that section 1129(a)(2) requires plan proponents to comply with applicable provisions of the Bankruptcy Code, including “disclosure and solicitation requirements under sections 1125 and 1126”).

⁴² See *supra* Sections I.A–I.B.

or retain property under a plan on account of such claims or interests may vote to accept or reject such plan.⁴³ Section 1126 of the Bankruptcy Code provides, in pertinent part, that:

- (a) The holder of a claim or interest allowed under section 502 of [the Bankruptcy Code] may accept or reject a plan.

* * * *

- (f) Notwithstanding any other provision of this section, a class that is not impaired under a plan, and each holder of a claim or interest of such class, are conclusively presumed to have accepted the plan, and solicitation of acceptances with respect to such class from the holders of claims or interests of such class is not required.⁴⁴

46. As set forth above, in accordance with section 1125 of the Bankruptcy Code, the Debtors solicited acceptances or rejections of the Plan from the holders of Allowed Claims in Class 3—the only Class entitled to vote on the Plan. The Debtors were not required to solicit votes from holders of Claims and Interests in Classes 1, 2, 3, 5A, 5B, 6, 7A, 7B, 8A, 8B, and 9 because holders of such Claims and Interests are either Unimpaired and deemed to accept the Plan under section 1126(f) or Impaired and conclusively presumed to have rejected the Plan under section 1126(g). Thus, pursuant to section 1126(a) of the Bankruptcy Code, only holders of Claims in Class 3 are entitled to vote to accept or reject the Plan.

47. Sections 1126(c) and 1126(d) of the Bankruptcy Code specify the requirements for acceptance of a plan by classes of claims and interests:

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

⁴³ See 11 U.S.C. § 1126.

⁴⁴ *Id.* §§ 1126(a), (f).

designated under subsection (e) of this section, that have accepted or rejected such plan.

- (d) A class of interests has accepted a plan if such plan has been accepted by holders of such interests, other than any entity designated under subsection (e) or this section, that hold at least two-thirds in amount of the allowed interests of such class held by holders of such interests, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.⁴⁵

48. The voting results for the Voting Class will remain unknown until the Voting Deadline. However, the Debtors anticipate that the members of Class 3 who are entitled to vote on the Plan will accept the Plan in sufficient number and in sufficient amount to constitute an accepting Class under the Bankruptcy Code. Following the tabulation of the votes and the filing of the Voting Report by November 19, 2023, the Debtors will address the satisfaction of section 1126 in their reply in support of Confirmation.

C. The Plan Was Proposed in Good Faith and Not by Any Means Forbidden by Law (Section 1129(a)(3)).

49. Section 1129(a)(3) of the Bankruptcy Code requires that a chapter 11 plan be “proposed in good faith and not by any means forbidden by law.”⁴⁶ In assessing good faith, courts in the Fifth Circuit consider whether the plan was proposed with “the legitimate and honest purpose to reorganize and has a reasonable hope of success.”⁴⁷ A plan must also achieve a result consistent with the Bankruptcy Code.⁴⁸ The fundamental purpose of chapter 11 is to enable a distressed business to reorganize its affairs to prevent job losses and the adverse economic effects associated

⁴⁵ *Id.* §§ 1126(c), (d).

⁴⁶ *See* 11 U.S.C. § 1129(a)(3).

⁴⁷ *See In re Sun Country Dev., Inc.*, 764 F.2d 406, 408 (5th Cir. 1985).

⁴⁸ *See In re Block Shim Dev. Company-Irving*, 939 F.2d 289, 292 (5th Cir. 1991).

with disposing of assets at liquidation value.⁴⁹ To determine whether a plan seeks relief consistent with the Bankruptcy Code, courts consider the totality of the circumstances surrounding the development of the plan.⁵⁰

50. The Plan satisfies section 1129(a)(3) of the Bankruptcy Code. Here, the Plan and the accompanying Restructuring Transactions will enable the Debtors to deleverage their balance sheet while ensuring their patients continue to receive the cancer treatment care they require. As stated in the First Day Declaration, the Debtors sought to conduct a chapter 11 process that would stabilize business operations, consummate a value-maximizing sale of its United States-based business, and grow the ROW Debtors' business, all while remaining committed to the Debtors' "patient first" personalized care experience.⁵¹ To that end, the Plan and the related transactions put the Debtors on a path to continue to provide healthcare to patients with minimal patient care disruptions and facility closures. The Debtors respectfully submit they appropriately balanced their need to implement a comprehensive restructuring solution while also prioritizing the maintaining the level of care provided to patients and the public.⁵² The Plan and all the related documents were negotiated, proposed, and entered into by the Debtors and the respective parties thereto in good faith and from arm's-length bargaining positions, without any collusion, fraud, or

⁴⁹ *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984); *B.D. Int'l Disc. Corp. v. Chase Manhattan Bank (In re B.D. Int'l Disc. Corp.)*, 701 F.2d 1071, 1075 n.8 (2d Cir. 1983) ("[T]he two major purposes of bankruptcy [are] achieving equality among creditors and giving the debtor a fresh start.").

⁵⁰ *E.g.*, *In re T-H New Orleans Ltd. P'ships*, 116 F.3d 790, 802 (5th Cir. 1997) (quoting *In re Sun Country Dev., Inc.*, 764 F.2d at 408); *In re W.R. Grace & Co.*, 475 B.R. 34, 87 (D. Del. 2012); *In re Century Glove*, Nos. 90-400-SLR, 90-401-SLR, 1993 WL 239489, at *4 (D. Del. Feb. 10, 1993).

⁵¹ See First Day Declaration [Docket No. 19], ¶ 3, 18.

⁵² The Patient Care Ombudsman has reported that the level of care in each of the Debtors' facilities did not materially or substantially decline within the meaning of section 333 of the Bankruptcy Code. See Patient Care Ombudsman's First Interim Report [Docket Nos. 683-85].

attempt to take unfair advantage of any party. Rather, the Debtors and their advisors are working diligently to consensually resolve issues with disparate parties. As set forth herein, the Plan complies with bankruptcy and applicable nonbankruptcy law. Accordingly, the Plan satisfies section 1129(a)(3) of the Bankruptcy Code.

D. The Plan Provides that the Debtors' Payment of Professional Fees and Expenses Are Subject to Court Approval (Section 1129(a)(4)).

51. Section 1129(a)(4) of the Bankruptcy Code requires that certain fees and expenses paid by the plan proponent, by the debtor, or by a person receiving distributions of property under the plan, be subject to approval by the Court as reasonable.⁵³ Courts have construed this section to require that all payments of professional fees paid out of estate assets be subject to review and approval by the Court as to their reasonableness.⁵⁴ The Fifth Circuit has held this is a “relatively open-ended standard” that involves a case-by-case inquiry and, under appropriate circumstances, does not necessarily require that a bankruptcy court review the amount charged.⁵⁵ As to routine legal fees and expenses that have been approved as reasonable in the first instance, “the court will ordinarily have little reason to inquire further with respect to the amount charged.”⁵⁶

52. The Plan satisfies section 1129(a)(4) of the Bankruptcy Code. Payment of Professional Fee Claims is the only category of payments that fall within the ambit of

⁵³ 11 U.S.C. § 1129(a)(4).

⁵⁴ See *In re Cajun Elec. Power Coop.*, 150 F.3d 503, 518 (5th Cir. 1998) (emphasis omitted) (citations omitted) (“Section 1129(a)(4) by its terms requires court approval of any payment made or to be made by the proponent . . . for services or for costs and expenses in or in connection with the case.”); *In re Chapel Gate Apartments, Ltd.*, 64 B.R. 569, 573 (Bankr. N.D. Tex. 1986) (noting that before a plan may be confirmed, “there must be a provision for review by the Court of any professional compensation”).

⁵⁵ *Cajun Elec.*, 150 F.3d at 517 (“What constitutes a reasonable payment will clearly vary from case to case and, among other things, will hinge to some degree upon who makes the payments at issue, who receives those payments, and whether the payments are made from assets of the estate.”).

⁵⁶ *Id.*

section 1129(a)(4) of the Bankruptcy Code in these chapter 11 cases, and the Debtors may not pay Professional Fee Claims absent Court approval.⁵⁷ Further, all such Professional Fee Claims and corresponding payments are subject to prior Court approval and the reasonableness requirements under sections 328 and/or 330 of the Bankruptcy Code.⁵⁸ Article II.B.1 of the Plan, moreover, provides that Professionals shall file all final requests for payment of Professional Fee Claims no later than 45 days after the Effective Date, thereby providing an adequate period of time for interested parties to review such Professional Claims.⁵⁹

E. The Debtors Have Complied with the Bankruptcy Code's Governance Disclosure Requirement (Section 1129(a)(5)).

53. Section 1129(a)(5)(A) of the Bankruptcy Code requires that the proponent of a plan disclose the identity and affiliations of the proposed officers and directors, to the extent known, of the reorganized debtors.⁶⁰ It further requires that the appointment or continuance of such officers and directors be consistent with the interests of creditors and equity security holders and with public policy.⁶¹ Lastly, it requires that the plan proponent have disclosed the identity of insiders to be retained by the reorganized debtor and the nature of any compensation for such insider.⁶²

⁵⁷ See Plan, Arts. I.A, II.B.

⁵⁸ 11 U.S.C. §§ 328(a), 330(a)(1)(A).

⁵⁹ Plan, Art. II.B.1.

⁶⁰ 11 U.S.C. § 1129(a)(5)(A)(i).

⁶¹ *Id.* § 1129(a)(5)(A)(ii).

⁶² *Id.* § 1129(a)(5)(B).

Courts have held that these provisions ensure that the post-confirmation governance of a reorganized debtor is in good hands.⁶³

54. The Debtors have satisfied section 1129(a)(5) of the Bankruptcy Code. The Plan provides that as of the Effective Date, the terms of the current members of the board of directors of TopCo and U.S. TopCo shall expire and the new directors and officers of the Reorganized Debtors shall be appointed.⁶⁴ The Debtors believe control of the Reorganized Debtors by the individuals to be appointed in accordance with the Plan and New Organizational Documents will be consistent with public policy. Therefore, the requirements under section 1129(a)(5)(A)(ii) of the Bankruptcy Code are satisfied.

F. The Plan Does Not Require Governmental Regulatory Approval Over Rate Changes (Section 1129(a)(6)).

55. Section 1129(a)(6) of the Bankruptcy Code permits confirmation only if any regulatory commission that has or will have jurisdiction over a debtor after confirmation has approved any rate change provided for in the plan.⁶⁵ No such rate changes are provided for in the Plan. Section 1129(a)(6) of the Bankruptcy Code is therefore inapplicable to these chapter 11 cases.

⁶³ See *In re Landing Assocs.*, 157 B.R. 791, 817 (Bankr. W.D. Tex. 1993) (“In order to lodge a valid objection under § 1129(a)(5), a creditor must show that a debtor’s management is unfit or that the continuance of this management post-confirmation will prejudice the creditors.”).

⁶⁴ Plan, Arts. IV.B.1.i-j, IV.B.2.b.viii-ix. In the event of a U.S. Equitization Restructuring, the terms of the current directors of the board of directors of U.S. Topco shall expire, and the new directors and officers of the Reorganized GC U.S. Debtors shall be appointed. In the event of a Sale Transaction Restructuring, the terms of the current directors of the board of directors of U.S. Topco shall expire, and the new directors and officers of the Post Effective Date Debtors shall be appointed.

⁶⁵ 11 U.S.C. § 1129(a)(6).

G. The Plan Is in the Best Interests of All the Debtors' Creditors (Section 1129(a)(7)).

56. Section 1129(a)(7) of the Bankruptcy Code, commonly known as the “best interests test,” provides, in relevant part:

With respect to each impaired class of claims or interests—

(A) each holder of a claim or interest of such class—

(i) has accepted the plan; or

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of [the Bankruptcy Code] on such date ⁶⁶

57. The best interests test applies to individual dissenting holders of impaired claims and interests—rather than classes—and is generally satisfied through a comparison of the estimated recoveries for a debtor’s stakeholders in a hypothetical chapter 7 liquidation of that debtor’s estate against the estimated recoveries under that debtor’s plan of reorganization.⁶⁷ As section 1129(a)(7) of the Bankruptcy Code makes clear, the best interests test applies only to holders of non-accepting impaired claims or interests. All holders of Claims and Interests in all Impaired Classes will recover at least as much as a result of the Confirmation of the Plan as they

⁶⁶ 11 U.S.C. § 1129(a)(7).

⁶⁷ *Bank of Am. Nat’l Trust & Sav. Ass’n v. 203 N. LaSalle St. P’ship*, 526 U.S. 434, 441 n.13 (1999) (“The ‘best interests’ test applies to individual creditors holding impaired claims, even if the class as a whole votes to accept the plan.”); *In re Century Glove*, Nos. 90–400–SLR, 90–401–SLR, 1993 WL 239489, at *7 (D. Del. Feb. 10, 1993); *In re Adelphia Commc’ns Corp.*, 368 B.R. 140, 251 (Bankr. S.D.N.Y. 2007) (stating that section 1129(a)(7) is satisfied when an impaired holder of claims would receive “no less than such holder would receive in a hypothetical chapter 7 liquidation”).

would in a hypothetical chapter 7 liquidation.⁶⁸ Accordingly, the Plan satisfies section 1129(a)(7) of the Bankruptcy Code and the best interests test.

58. As set forth in Exhibit D of the Disclosure Statement,⁶⁹ the Debtors, with the assistance of their advisors, prepared a liquidation analysis that estimates recoveries for members of each Class under the Plan. The projected recoveries under the Plan are equal to or in excess of the recoveries estimated in a hypothetical chapter 7 liquidation.⁷⁰ Accordingly, the Plan complies with section 1129(a)(7).

H. The Plan Will Address Acceptance by Impaired Classes Pursuant to the Requirements of Section 1129(a)(8) of the Bankruptcy Code in Their Reply Brief.

59. Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests must either accept a plan or be unimpaired under a plan.⁷¹ If not, the plan must satisfy the “cram down” requirements of section 1129(b) with respect to the claims or interests in that class.⁷²

60. Classes 1, 2, and 5A constitute the Unimpaired Classes, each of which is conclusively presumed to have accepted the Plan in accordance with section 1126(f) of

⁶⁸ See *In re Neff*, 60 B.R. 448, 452 (Bankr. N.D. Tex. 1985), *aff’d*, 785 F.2d 1033 (5th Cir. 1986) (stating that “best interests” of creditors means “creditors must receive distributions under the Chapter 11 plan with a present value at least equal to what they would have received in a Chapter 7 liquidation of the Debtor as of the effective date of the Plan”); *In re Lason, Inc.*, 300 B.R. 227, 232 (Bankr. D. Del. 2003) (citations omitted) (“Section 1129(a)(7)(A) requires a determination whether ‘a prompt chapter 7 liquidation would provide a better return to particular creditors or interest holders than a chapter 11 reorganization.’”).

⁶⁹ Disclosure Statement, Exhibit D.

⁷⁰ Disclosure Statement, Exhibit D. Each row in the Liquidation Analysis chart included associated notes that provided further detail and information with respect to the estimated recoveries presented therein. The full text of these notes is included in Exhibit D of the Disclosure Statement.

⁷¹ 11 U.S.C. 1129(a)(8).

⁷² *Id.* § 1129(b).

the Bankruptcy Code. Although solicitation of the Plan is ongoing, the Debtors expect the Voting Class, an Impaired Class under the Plan, will vote to accept the Plan. The voting results for the Voting Class will remain unknown until the Voting Deadline. Holders of Claims and Interests in Classes 6, 7A, and 7B are Unimpaired and conclusively presumed to have accepted the Plan (to the extent reinstated) or are Impaired and deemed to reject the Plan (to the extent cancelled), and, in either event, are not entitled to vote to accept or reject the Plan. Pursuant to the Plan, Holders of Claims and Interests in Classes 4, 5B, 8A, 8B, and 9 receive no recovery on account of their Claims and Interests and are deemed to reject the Plan.

I. The Plan Provides for Payment in Full of Allowed Priority Claims or Otherwise Satisfies Section 1129(a)(9).

61. Section 1129(a)(9) of the Bankruptcy Code requires that certain priority claims be paid in full on the effective date of a plan and that the holders of certain other priority claims receive deferred cash payments.⁷³ In particular, pursuant to section 1129(a)(9)(A) of the Bankruptcy Code, holders of claims of a kind specified in section 507(a)(2) of the Bankruptcy Code—administrative claims allowed under section 503(b) of the Bankruptcy Code—must receive on the effective date cash equal to the allowed amount of such claims.⁷⁴ Section 1129(a)(9)(B) of the Bankruptcy Code requires that each holder of a claim of a kind specified in section 507(a)(1) or (4) through (7) of the Bankruptcy Code—generally domestic support obligations, wage, employee benefit, and deposit claims entitled to priority—must receive deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim (if such class has accepted the plan), or cash of a value equal to the allowed amount of such claim on the

⁷³ See *id.* § 1129(a)(9).

⁷⁴ *Id.* § 1129(a)(9)(A).

effective date of the plan (if such class has not accepted the plan).⁷⁵ Finally, section 1129(a)(9)(C) provides that the holder of a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code—*i.e.*, priority tax claims—must receive cash payments over a period not to exceed five years from the petition date, the present value of which equals the allowed amount of the claim.⁷⁶

62. The Plan satisfies section 1129(a)(9) of the Bankruptcy Code. **First**, Article II.A of the Plan satisfies section 1129(a)(9)(A) of the Bankruptcy Code. Except to the extent that a Holder of an Allowed General Administrative Claim and the applicable Debtor(s) agree to less favorable treatment with respect to such Allowed General Administrative Claim, each Holder of an Allowed General Administrative Claim shall receive, in full and final satisfaction, compromise, settlement, and release of and in exchange for its Claim, an amount of Cash equal to the amount of such Allowed General Administrative Claim, or otherwise receive treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code on the Effective Date or as soon as reasonably practicable thereafter. Unless a Holder of an Allowed Administrative Claim has objected to Confirmation on grounds of the treatment proposed by the Plan on account of such Claim, such Holder shall be deemed to have consented to receive treatment for such Claim other than as set forth in section 1129(a)(9)(A) of the Bankruptcy Code.

63. Further, as the Debtors have generally been paying administrative claims current on a postpetition basis in the ordinary course, the quantum of the Allowed General Administrative Claims is expected to be significantly less than the total amount of administrative claims accrued by the Debtors during these Chapter 11 Cases.⁷⁷ **Second**, the Plan satisfies section 1129(a)(9)(B)

⁷⁵ *Id.* § 1129(a)(9)(B).

⁷⁶ *Id.* § 1129(a)(9)(C).

⁷⁷ *See id.* n.4.

of the Bankruptcy Code because no holders of the types of Claims specified by section 1129(a)(9)(B) are Impaired under the Plan. **Third**, Article II.D of the Plan satisfies section 1129(a)(9)(C) of the Bankruptcy Code because it specifically provides that each holder of an Allowed Priority Tax Claim shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code. Thus, the Plan satisfies each of the requirements set forth in section 1129(a)(9) of the Bankruptcy Code.

J. The Debtors Will Address Acceptance by At Least One Class of Impaired, Non-Insider Claims (Section 1129(a)(10)) in Their Reply Brief.

64. Section 1129(a)(10) of the Bankruptcy Code provides that, to the extent there is an impaired class of claims, at least one impaired class of claims must accept the plan “without including any acceptance of the plan by any insider.”⁷⁸

65. As set forth above the Debtors anticipate that the Voting Class—which is an Impaired Class under the Plan— will vote to accept the Plan independent of any insiders’ votes. The Debtors will further address compliance with section 1129(a)(10) in their Confirmation reply brief to the extent necessary.

K. The Plan Is Feasible (Section 1129(a)(11)).

66. Section 1129(a)(11) of the Bankruptcy Code requires that the Court find that a plan is feasible as a condition precedent to confirmation. Specifically, the Court must determine that:

Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.⁷⁹

⁷⁸ *Id.* § 1129(a)(10).

⁷⁹ 11 U.S.C. § 1129(a)(11).

To demonstrate that a plan is feasible, it is not necessary for a debtor to guarantee success.⁸⁰ Rather, a debtor must provide only a reasonable assurance of success.⁸¹ There is a relatively low threshold of proof necessary to satisfy the feasibility requirement.⁸² As demonstrated below, the Plan is feasible within the meaning of section 1129(a)(11) of the Bankruptcy Code.

67. In determining standards of feasibility, courts have identified the following probative factors:

- a. the adequacy of the capital structure;
- b. the earning power of the business;
- c. the economic conditions;
- d. the ability of management;
- e. the probability of the continuation of the same management;
and
- f. any other related matter which determines the prospects of a sufficiently successful operation to enable performance of the provisions of the plan.⁸³

⁸⁰ *In re T-H New Orleans Ltd P'ship*, 116 F.3d 790, 801 (5th Cir. 1997) (citations omitted) (“[T]he [bankruptcy] court need not require a guarantee of success . . . , [o]nly a reasonable assurance of commercial viability is required.”); *Kane v. Johns-Manville Corp.*, 843 F.2d 636, 649 (2d Cir. 1988) (“[T]he feasibility standard is whether the plan offers a reasonable assurance of success. Success need not be guaranteed.”); *In re Lakeside Glob. II, Ltd.*, 116 B.R. 499, 506 (Bankr. S.D. Tex. 1989) (noting that the feasibility standard “has been slightly broadened and contemplates whether the debtor can realistically carry out its plan”).

⁸¹ *Kane*, 843 F.2d at 649; *In re Flintkote Co.*, 486 B.R. 99, 139 (Bankr. D. Del. 2012); *In re W.R. Grace & Co.*, 475 B.R. 34, 115 (D. Del. 2012); *see also Pizza of Haw., Inc. v. Shakey's, Inc. (In re Pizza of Haw., Inc.)*, 761 F.2d 1374, 1382 (9th Cir. 1985) (citations omitted) (“The purpose of section 1129(a)(11) is to prevent confirmation of visionary schemes which promise creditors and equity security holders more under a proposed plan than the debtor can possibly attain after confirmation.”); *accord In re Capmark Fin. Grp. Inc.*, No. 09-13684 (CSS), 2011 WL 6013718, at *61 (Bankr. D. Del. Oct. 5, 2011) (same).

⁸² *E.g., In re Prussia Assocs.*, 322 B.R. 572, 584 (Bankr. E.D. Pa. 2005) (citations omitted) (quoting approvingly that “[t]he Code does not require the debtor to prove that success is inevitable, and a relatively low threshold of proof will satisfy § 1129(a)(11) so long as adequate evidence supports a finding of feasibility”); *Berkeley Fed. Bank & Trust v. Sea Garden Motel & Apartments (In re Sea Garden Motel & Apartments)*, 195 B.R. 294, 305 (D.N.J. 1996); *In re Tribune Co.*, 464 B.R. 126, 185 (Bankr. D. Del. 2011).

⁸³ *In re M & S Assocs. Ltd.*, 138 B.R. 845, 849 (Bankr. W.D. Tex. 1992).

68. The Debtors submit that the Plan is feasible. In the event the Sale Transaction Restructuring, the U.S. Equitization Restructuring, or the U.S. Asset Sales occur, upon the Effective Date, the Debtors expect to have sufficient funds and proceeds from (a) the New Money Exit Facilities and Takeback Facilities; (b) Cash on hand, (c) the issuance of the ROW New Equity Interests, AUS Holdco New Equity Interests, EUR Holdco New Equity Interests, and GC U.S. New Equity Interests (if any), (d) the Rights Offering (if any), and (e) the issuance of New Warrants.

69. Following emergence, the Reorganized Debtors will be well positioned to execute their business plan, service their significantly reduced debt obligations, and successfully operate their businesses. The reduction of debt on the Reorganized Debtors' balance sheet will substantially reduce future interest expense and improve future cash flows, thus allowing the Debtors to have sufficient cash flow to pay and service their post-restructuring debt obligations and to operate their business. Thus, the Plan satisfies section 1129(a)(11) of the Bankruptcy Code.

L. All Statutory Fees Have Been or Will Be Paid (Section 1129(a)(12)).

70. Section 1129(a)(12) of the Bankruptcy Code requires the payment of “[a]ll fees payable under section 1930 of title 28 [of the United States Code], as determined by the court at the hearing on confirmation of the plan.”⁸⁴ Section 507(a)(2) of the Bankruptcy Code provides that “any fees and charges assessed against the estate under [section 1930 of] chapter 123 of title 28” are afforded priority status.

71. The Plan satisfies section 1129(a)(12) of the Bankruptcy Code because Article XII.C of the Plan provides that all fees payable pursuant to section 1930(a) of the Judicial Code, as determined by the Bankruptcy Court at a hearing pursuant to section 1128 of

⁸⁴ 11 U.S.C. § 1129(a)(12).

the Bankruptcy Code, shall be paid shall be paid by each of the Reorganized Debtors or Post Effective Date Debtors, as applicable (or the Distribution Agent on behalf of the Reorganized Debtors or Post Effective Date Debtors), for each quarter (including any fraction thereof) until the earlier of entry of a final decree closing such Chapter 11 Cases or an order of dismissal or conversion, whichever comes first.

M. All Retiree Benefits Will Continue Post-Confirmation (Section 1129(a)(13)).

72. Section 1129(a)(13) of the Bankruptcy Code requires that all retiree benefits continue post-confirmation at any levels established in accordance with section 1114 of the Bankruptcy Code.⁸⁵

73. The Plan satisfies the requirements of section 1129(a)(13) of the Bankruptcy Code because Article IV.B.2.d of the Plan provides that from and after the Effective Date, all retiree benefits, as defined in section 1114 of the Bankruptcy Code, if any, will be paid in accordance with applicable law.

N. Sections 1129(a)(14) Through 1129(a)(16) Do Not Apply to the Plan.

74. Section 1129(a)(14) of the Bankruptcy Code relates to the payment of domestic support obligations.⁸⁶ Since the Debtors are not subject to any domestic support obligations, the requirements of section 1129(a)(14) of the Bankruptcy Code do not apply.

75. Likewise, section 1129(a)(15) of the Bankruptcy Code applies only in cases in which the debtor is an “individual” as defined in the Bankruptcy Code.⁸⁷ Since the Debtors are not individuals, the requirements of section 1129(a)(15) of the Bankruptcy Code do not apply.

⁸⁵ *Id.* § 1129(a)(13).

⁸⁶ *Id.* § 1129(a)(14).

⁸⁷ *Id.* § 1129(a)(15).

76. Finally, section 1129(a)(16) of the Bankruptcy Code provides that property transfers by a corporation or trust that is not a moneyed, business, or commercial corporation or trust be made in accordance with any applicable provisions of nonbankruptcy law.⁸⁸ None of the Debtors are nonprofit corporations. Accordingly, section 1129(a)(16) of the Bankruptcy Code is not applicable to these chapter 11 cases.

O. The Debtors Will Address Satisfaction of the “Cram Down” Requirements of Section 1129(b) of the Bankruptcy Code in Their Reply Brief.

77. Section 1129(b)(1) of the Bankruptcy Code provides that, if all applicable requirements of section 1129(a) of the Bankruptcy Code are met other than section 1129(a)(8) of the Bankruptcy Code, a plan may be confirmed so long as the requirements set forth in section 1129(b) of the Bankruptcy Code are satisfied.⁸⁹ To confirm a plan that has not been accepted by all impaired classes (thereby failing to satisfy section 1129(a)(8) of the Bankruptcy Code), the plan proponent must show that the plan does not “discriminate unfairly” and is “fair and equitable” with respect to the non-accepting impaired classes.⁹⁰

78. The voting results for the Voting Class will remain unknown until the Voting Deadline but the Debtors anticipate that Holders of Class 3 SFA Claims and Swap Claims will vote to accept the Plan. The Classes that are deemed to reject or may be deemed to reject the Plan consist of: (a) Shareholder Loan Claims in Class 4; (b) General Unsecured Claims against the GC U.S. Debtors in Class 5B; (c) Intercompany Claims in Class 6; (d) Intercompany Interests in the

⁸⁸ See *id.* § 1129(a)(16).

⁸⁹ *Id.* § 1129(b)(1).

⁹⁰ *John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assocs.*, 987 F.2d 154, 157 n.5 (3d Cir. 1993); *Liberty Nat’l Enters. v. Ambanc La Mesa Ltd. P’Ship (In re Ambanc La Mesa Ltd. P’ship)*, 115 F.3d 650, 653 (9th Cir. 1997) (“[T]he Plan satisfies the ‘cramdown’ alternative . . . found in 11 U.S.C. § 1129(b), which requires that the Plan ‘does not discriminate unfairly’ against and ‘is fair and equitable’ towards each impaired class that has not accepted the Plan.”).

ROW Debtors in Class 7A; (e) Intercompany Interests in the GC U.S. Debtors in Class 7B; (f) Existing TopCo Interests in Class 8A; (g) Existing GC U.S. TopCo Interests in Class 8B; and (h) Section 510(b) Claims in Class 9. Although the Plan does not satisfy section 1129(a)(8) of the Bankruptcy Code with respect to the Deemed Rejecting Classes, the Debtors expect the Plan will satisfy section 1129(b) of the Bankruptcy Code because the Debtors expect that at least one impaired class of claims will vote to accept the Plan and the Plan does not discriminate unfairly and is fair and equitable with respect to the Deemed Rejecting Classes. The Debtors will further address section 1129(b) of the Bankruptcy Code in their Confirmation reply brief.

1. The Plan Is Fair and Equitable (Section 1129(b)(2)(B)(ii)).

79. A plan is “fair and equitable” with respect to an impaired class of claims or interests that rejects a plan (or is deemed to reject a plan) if it follows the “absolute priority” rule.⁹¹ The absolute priority rule provides that a junior stakeholder (*e.g.*, an equity holder) may not receive or retain property under a plan of reorganization “on account of” its junior interests unless all senior classes either (a) are paid in full or (b) vote in favor of the plan.⁹²

80. With respect to Impaired Classes that are deemed to have rejected and with respect to Class 6, the Plan satisfies the absolute priority rule. Class 4 (Shareholder Loan Claims),

⁹¹ *Bank of Am. Nat’l Trust & Sav. Ass’n v. 203 N. LaSalle St. P’ship*, 526 U.S. 434, 441–42 (1999) (“As to a dissenting class of impaired unsecured creditors, such a plan may be found to be ‘fair and equitable’ only if the allowed value of the claim is to be paid in full, § 1129(b)(2)(B)(i), or, in the alternative, if ‘the holder of any claim or interest that is junior to the claims of such [impaired unsecured] class will not receive or retain under the plan on account of such junior claim or interest any property,’ § 1129(b)(2)(B)(ii). That latter condition is the core of what is known as the ‘absolute priority rule.’”).

⁹² See 11 U.S.C. § 1129(b)(2)(B)(ii); see also *DISH Network Corp. v. DBSD N. Am., Inc. (In re DBSD N. Am., Inc.)*, 634 F.3d 79, 88 (2d Cir. 2011) (citations omitted) (the absolute priority rule “provides that a reorganization plan may not give ‘property’ to the holders of any junior claims or interests ‘on account of’ those claims or interests, unless all classes of senior claims either receive the full value of their claims or give their consent”); *In re Armstrong World Indus., Inc.*, 432 F.3d 507, 512 (3d Cir. 2005) (citations omitted) (“Under the statute, a plan is fair and equitable with respect to an impaired, dissenting class of unsecured claims if (1) it pays the class’s claims in full, or if (2) it does not allow holders of any junior claims or interests to receive or retain any property under the plan ‘on account of’ such claims or interests.”).

Class 5B (General Unsecured Claims against the GC U.S. Debtors), Class 8B (Existing GC U.S. TopCo Interests), and Class 9 (Section 510(b) Claims) are Impaired Classes which are deemed to reject the Plan. The Plan satisfies the absolute priority rule (and is fair and equitable) as to these Classes, because, as to such Classes there is no Class that is junior to such Classes will receive or retain any property on account of the Claims or Interests in such Class. The treatment of Intercompany Interests under the Plan provides for the mere technical preservation of equity as a device to maintain the Debtors' corporate organizational structure and does not constitute a distribution under the Plan on account of such Interests, and therefore such treatment complies with the requirement of section 1129(b)(2)(B)(ii) of the Bankruptcy Code. Further, the Plan satisfies the absolute priority rule corollary because no Class is receiving greater than a 100% recovery.

2. The Plan Does Not Unfairly Discriminate with Respect to the Impaired Classes that Have Not Voted to Accept the Plan (Section 1129(b)(1)).

81. Although the Bankruptcy Code does not provide a standard for determining when “unfair discrimination” exists, courts typically examine the facts and circumstances of the particular case to make the determination.⁹³ In general, courts have held that a plan unfairly discriminates in violation of section 1129(b) of the Bankruptcy Code only if it provides materially different treatment for creditors and interest holders with similar legal rights without compelling

⁹³ *In re 203 N. LaSalle St. Ltd. P'ship*, 190 B.R. 567, 585 (Bankr. N.D. Ill. 1995), *rev'd on other grounds*, 203 N. LaSalle, 526 U.S. 434 (1999) (noting “the lack of any clear standard for determining the fairness of a discrimination in the treatment of classes under a Chapter 11 plan” and that “the limits of fairness in this context have not been established”); *In re Aztec Co.*, 107 B.R. 585, 589 (Bankr. M.D. Tenn. 1989) (“Courts interpreting language elsewhere in the Code, similar in words and function to § 1129(b)(1), have recognized the need to consider the facts and circumstances of each case to give meaning to the proscription against unfair discrimination.”); *In re Freymiller Trucking, Inc.*, 190 B.R. 913, 916 (Bankr. W.D. Okla. 1996) (holding that a determination of unfair discrimination requires a court to “consider all aspects of the case and the totality of all the circumstances”).

justifications for doing so.⁹⁴ A threshold inquiry to assessing whether a proposed plan of reorganization unfairly discriminates against a dissenting class is whether the dissenting class is equally situated to a class allegedly receiving more favorable treatment.⁹⁵

82. Here, the Plan's treatment of the Impaired Classes is proper because all similarly situated creditors and interest holders in the Deemed Rejecting Classes and Impaired Classes will receive substantially similar treatment on account of their Claims and Interests irrespective of Class, and the Plan's classification scheme rests on a legally acceptable rationale.⁹⁶ Thus, the Plan does not discriminate unfairly in contravention of section 1129(b)(1) of the Bankruptcy Code, and the Plan may be confirmed notwithstanding the deemed rejection by the Deemed Rejecting Classes.

⁹⁴ See *In re Idearc Inc.*, 423 B.R. 138, 171 (Bankr. N.D. Tex. 2009) (“[T]he unfair discrimination standard prevents creditors and equity interest holders with similar legal rights from receiving materially different treatment under a proposed plan without compelling justifications for doing so.”); *In re Lernout & Hauspie Speech Prods., N.V.*, 301 B.R. 651, 661 (Bankr. D. Del. 2003) (permitting different treatment of two classes of similarly situated creditors upon a determination that the debtors showed a legitimate basis for such discrimination); *In re Johns-Manville Corp.*, 68 B.R. 618, 636 (Bankr. S.D.N.Y. 1986) (finding no unfair discrimination where the interests of objecting class were not similar or comparable to those of any other class).

⁹⁵ See *In re Aleris Int'l, Inc.*, No. 09-10478 (BLS), 2010 WL 3492664, at *31 (Bankr. D. Del. May 13, 2010) (citing *In re Armstrong World Indus.*, 348 B.R. at 121).

⁹⁶ Classes 3, 4, 5B, 6, 7A, 7B, 8A, 8B, and 9 are not similarly situated to any other classes, given their distinctly different legal character from all other Claims and Interests. Class 3 is SFA Claims and SWAP Claims. Class 4 is Shareholder Loan Claims. Class 5B is General Unsecured Claims against the GC U.S. Debtors which have a distinctly different legal character from Class 5A General Unsecured Claims against the ROW Debtors. Class 6, Class 7A, and Class 7B are Intercompany Claims, Intercompany Interests in the ROW Debtors, and Intercompany Interests in the GC U.S. Debtors, respectively. Class 8A and Class 8B are Existing TopCo Interests and Existing GC U.S. TopCo Interests, respectively. Class 9 is Section 5109b) Claims.

P. The Plan Complies with the Other Provisions of Section 1129 of the Bankruptcy Code (Sections 1129(c)–(e)).

83. The Plan satisfies the remaining provisions of section 1129 of the Bankruptcy Code. Section 1129(c) of the Bankruptcy Code, which prohibits confirmation of multiple plans,⁹⁷ is not implicated because there is only one proposed Plan.

84. The purpose of the Plan is not to avoid taxes or the application of section 5 of the Securities Act of 1933. Moreover, no governmental unit or any other party has requested that the Court decline to confirm the Plan on such grounds. Accordingly, the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.

85. Lastly, section 1129(e) of the Bankruptcy Code is inapplicable because none of the Debtors' chapter 11 cases is a "small business case."⁹⁸

86. In sum, the Plan satisfies all of the Bankruptcy Code's mandatory chapter 11 plan Confirmation requirements.

Q. Confirmation of the Plan is in the Public Interest

87. The Debtors are an independent, patient-focused healthcare company and leading cancer care provider that provides life-changing treatment and support to the communities they serve across the globe. The Debtors operate globally and are one of the world's largest integrated oncology organizations and the world's largest provider of radiotherapy.⁹⁹ The Debtors' cancer care centers provide their patients with access to diagnostics, medical oncology, surgical oncology, radiotherapy, cutting-edge therapies, and the ability to participate in some of the latest clinical

⁹⁷ See 11 U.S.C. § 1129(c).

⁹⁸ See 11 U.S.C. § 1129(e); *see also id.* § 101(51D)(B) (A "small business debtor" cannot be a member "of a group of affiliated debtors that under this title that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than \$3,024,725[] (excluding debt owed to 1 or more affiliates or insiders)").

⁹⁹ See First Day Declaration [Docket No. 19], ¶ 2.

trials.¹⁰⁰ The Debtors' cancer care centers have served communities across the globe for almost two decades and have provided specialized care to approximately 450,000 patients annually.¹⁰¹ Given the nature of the Debtors' business, Confirmation of the Plan will allow the Debtors to continue to provide stable patient care to patients around the world, including in communities where access to advanced cancer treatment may otherwise be limited or unavailable. Accordingly, the Debtors submit that consideration of the public interest, including the Debtors' continued provision of stable patient care, supports Confirmation of the Plan.¹⁰²

III. The Plan's Release, Exculpation, and Injunction Provisions Are Appropriate and Comply with the Bankruptcy Code.

88. The Bankruptcy Code identifies various additional provisions that may be incorporated into a chapter 11 plan, including "any other appropriate provision not inconsistent with the applicable provisions of this title."¹⁰³ Among other discretionary provisions, the Plan contains a debtor release, consensual third-party releases, an exculpation provision, and an injunction provision.¹⁰⁴ These provisions are the product of extensive good faith, arms'-length negotiations, comply with the Bankruptcy Code and prevailing Fifth Circuit law, and should be approved. Further, these provisions are bargained-for provisions that were necessary to generate consensus with certain of the Debtors' stakeholders regarding the Plan.

¹⁰⁰ *Id.*

¹⁰¹ *See Id.* at ¶¶ 23, 26.

¹⁰² *See e.g. Fed. Energy Regulatory Comm'n v. Ultra Res. (In re Ultra Petroleum Corp.)*, No. 20-20623 (5th Cir. Mar. 14, 2022).

¹⁰³ *Id.* §§ 1123(b)(1)-(6).

¹⁰⁴ Plan, Art. VIII.

89. Thus, and as set forth more fully below, the releases, exculpations, and injunction provisions, are reasonable under the circumstances, appropriate, and in the best interests of the Debtors, their Estates, and all of the Debtors' stakeholders.

A. The Plan Appropriately Incorporates a Settlement of Claims and Causes of Action.

90. The Bankruptcy Code states that a plan may “provide for . . . the settlement or adjustment of any claim or interest belonging to the debtor or to the estate.”¹⁰⁵ The court may approve a settlement under a plan only when it is “fair and equitable.”¹⁰⁶ In particular, the Fifth Circuit applies a five-factor test for considering motions to approve settlements under Bankruptcy Rule 9019, weighing:¹⁰⁷ “(1) the probability of success in litigation with due consideration for uncertainty in fact and law; (2) the complexity and likely duration of the litigation and any attendant expense, inconvenience, and delay, including the difficulties, if any, to be encountered in the matter of collection; (3) the paramount interest of the creditors and a proper deference to their respective views; (4) the extent to which the settlement is truly the product of arm’s-length bargaining and not fraud or collusion; and (5) all other factors bearing on the wisdom of the compromise.”¹⁰⁸

91. Although the debtor bears the burden of establishing that a settlement is fair and equitable based on the balance of the above factors, “the [debtor’s] burden is not high.”¹⁰⁹ Indeed,

¹⁰⁵ 11 U.S.C. § 1123(b)(3)(A).

¹⁰⁶ See *Feld v. Zale Corp. (In re Zale Corp.)*, 62 F. 3d 746, 754 n. 22 (5th Cir. 1995) (citing *In re AWECO, Inc.*, 725 F.2d 293, 297 (5th Cir. 1984)).

¹⁰⁷ Fed. R. Bankr. P. 9019.

¹⁰⁸ See *In re Moore*, 608 F.3d 253, 263 (5th Cir. 2010).

¹⁰⁹ See *In re Roqumore*, 393 B.R. 474, 480 (Bankr. S.D. Tex. 2008).

the court need only determine that the settlement does not “fall beneath the lowest point in the range of reasonableness.”¹¹⁰

92. The Plan embodies a settlement of numerous Claims and Causes of Action, issues, and disputes designed to achieve a beneficial and efficient resolution of the Chapter 11 Cases for all parties in interest. The settlement embodied in the Plan is fair and equitable and consistent with the Bankruptcy Rule 9019 factors as applied in this jurisdiction. The Plan resolves a host of alleged Claims and Causes of Action, which were thoroughly analyzed by the Debtors, the Special Committees, and each of their advisors, all of which are highly uncertain to succeed and have an immense capacity to cause extensive delay, cost, and uncertainty in these chapter 11 cases and otherwise. The Plan also provides for certain Claims and Causes of Action to be retained by the Reorganized Debtors, based on the recommendations from the Special Committees that the retention of such claims would benefit the Debtors’ estates. This global settlement, which was the result of arm’s-length negotiations, is in the best interests of creditors and all parties in interest.

93. The releases of the Debtors’ directors and officers (other than the Excluded Parties)¹¹¹ are an integral component of the negotiated settlement. The Debtors’ current directors and officers made a substantial and valuable contribution to the Debtors’ restructuring and estates. The Debtors’ current officers invested significant time and effort to make the restructuring a success and preserve the value of the Debtors’ estates in a challenging environment. The Debtors’ current directors attended dozens of board meetings related to the restructuring and formed the Special Committees, which met frequently and were involved in negotiations related to the DIP

¹¹⁰ See *In re Idearc Inc.*, 423 B.R. at 182 (citations omitted); *In re Roqumore*, 393 B.R. at 480 (“The Trustee need only show that his decision falls within the ‘range of reasonable litigation alternatives.’” (citations omitted)).

¹¹¹ “Excluded Parties” has the meaning set forth in Article I.A. of the Plan.

Facility, the Plan, the GC U.S. sale process, and the various deals with stakeholders incorporated into the Plan. The Debtors are not aware of any colorable claims or causes of action against their directors and officers other than the Excluded Parties. Moreover, even if any such claims existed, they would likely be circular given that such parties are entitled to indemnification from the Debtors under state law, organizational documents, and agreements. In addition, litigation against current directors and officers would be a distraction to the Debtors' business and restructuring and would destroy the value of the global closure embodied in the Plan for all stakeholders. As a result, the releases should be approved as a component of the settlement embodied in the Plan.

B. The Debtor Release Is Appropriate and Complies with the Bankruptcy Code.

94. Article VIII.C of the Plan sets forth the Debtor releases (the "Debtor Release"). The Debtor Release releases, among others, the Debtors, the Reorganized Debtors, the Post-Effective Date Debtors, the DIP Lenders, the DIP Agent and each DIP Lender, the Prepetition Agents and each Prepetition Secured Party, the Shareholder Lenders, the Plan Sponsor, the Committee and each member thereof, all Holders of Interests, and current and former Affiliates and Related Parties of the foregoing; *provided*, that, as set forth in the Plan, any Entity that opts out of the releases or that objects to the releases contained in Article VIII.D of the Plan (that is not resolved before Confirmation) shall not be a Released Party.¹¹²

95. Section 1123(b)(3)(A) of the Bankruptcy Code provides that a chapter 11 plan may provide for "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate."¹¹³ Accordingly, pursuant to section 1123(b)(3)(A), the Debtors may release Estate Causes

¹¹² See Plan, Arts. I.A.177, VIII.C. The foregoing description is meant as a summary of the operative Plan provisions only. To the extent there is any conflict between the foregoing summary and the Plan, the Plan shall control.

¹¹³ 11 U.S.C. § 1123(b)(3).

of Action as consideration for concessions made by various stakeholders pursuant to the Plan.¹¹⁴ In considering the appropriateness of such releases, courts in the Fifth Circuit generally consider whether the release is (a) “fair and equitable” and (b) “in the best interests of the estate.”¹¹⁵ Courts in this Circuit generally interpret the “fair and equitable” prong, consistent with that term’s usage in section 1129(b) of the Bankruptcy Code, to require compliance with the Bankruptcy Code’s absolute priority rule.¹¹⁶ Courts generally determine whether a release is “in the best interest of the estate” by reference to the following factors:

- a. the probability of success of litigation;
- b. the complexity and likely duration of the litigation, any attendant expense, inconvenience, or delay, and possible problems collecting a judgment;
- c. the interest of creditors with proper deference to their reasonable views; and
- d. the extent to which the settlement is truly the product of arm’s-length negotiations.¹¹⁷

Ultimately, courts afford the Debtors some discretion in determining for themselves the appropriateness of granting plan releases of estate causes of action.¹¹⁸

¹¹⁴ See, e.g., *In re Bigler LP*, 442 B.R. 537, 547 (Bankr. S.D. Tex. 2010) (finding that plan release provision “constitutes an acceptable settlement under § 1123(b)(3) because the Debtors and the Estate are releasing claims that are property of the Estate in consideration for funding of the Plan”); *In re Heritage Org., L.L.C.*, 375 B.R. 230, 259 (Bankr. N.D. Tex. 2007); *In re Mirant Corp.*, 348 B.R. 725, 737–39 (Bankr. N.D. Tex. 2006); *In re Gen. Homes Corp.*, 134 B.R. 853, 861 (Bankr. S.D. Tex. 1991).

¹¹⁵ *In re Mirant Corp.*, 348 B.R. at 738; see also *In re Heritage Org.*, 375 B.R. at 259.

¹¹⁶ *In re Mirant Corp.*, 348 B.R. at 738.

¹¹⁷ *Id.* at 739–40 (citing *Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop., Inc. (In re Cajun Elec. Power Coop., Inc.)*, 119 F.3d 349, 355–56 (5th Cir. 1997)).

¹¹⁸ See *In re Gen. Homes Corp.*, 134 B.R. at 861 (“The court concludes that such a release is within the discretion of the Debtor.”).

96. The Debtor Release meets the controlling standard. As an initial matter, the terms of the Debtor Release comply with the Bankruptcy Code's absolute priority rule. While certain Classes are deemed to have rejected the Plan, the Debtor Release and settlements embodied therein, and in the Plan, do not result in any junior Classes receiving or retaining any property on account of junior Claims or Interests. In addition, as set forth more fully above, the Debtors believe that granting the Debtor Release is a reasonable exercise of their business judgment that falls well within the standard for settlements pursuant to Bankruptcy Rule 9019. Thus, the Debtor Release is fair and equitable in line with Fifth Circuit precedent.

97. In addition to being fair and equitable, the Debtor Release is in the best interest of the Estates. **First**, the probability of success in litigation with respect to claims the Debtors may have against the Released Parties is uncertain at best, as are the benefits of pursuing litigation in light of the settlement embodied in the Plan. Prior to the Petition Date, the board of directors of TopCo determined that it was in the best interest of the Debtors and their stakeholders to appoint certain independent and disinterested directors at various entities in the Debtors' corporate structure. Accordingly, the board of directors of TopCo appointed Jonathan Foster as a Disinterested Director to form the TopCo Special Committee, and the board of directors of GC Finance appointed Carol Flaton to form the GC Finance Special Committee.

98. Specifically, the resolution forming the TopCo Special Committee delegated sole authority to the TopCo Special Committee to act on behalf of TopCo with respect to any matters in which a conflict of interest exists or is reasonably likely to exist between TopCo and any Related Party thereto, including in connection with a potential restructuring, reorganization, and/or recapitalization transaction, as determined in the sole judgement of the TopCo Special Committee (the "TopCo Conflict Matters"). In that capacity, the TopCo Special Committee conducted an

investigation with respect to the TopCo Conflict Matters, including, among other things, with respect to: (i) matters related to a potential restructuring transaction that constitute TopCo Conflict Matters; (ii) potential claims or causes of action of TopCo, if any, against the Related Parties; and (iii) any release, settlement, or retention of potential claims or causes of action of TopCo or its subsidiaries, if any, against the Related Parties (collectively, the “TopCo Independent Investigation”). The TopCo Special Committee retained Katten Muchin Rosenman LLP to assist it in this investigation and with respect to other TopCo Conflict Matters. This TopCo Independent Investigation included: (i) conducting certain interviews of the Debtors’ management personnel, current and former officers and directors of the Company, representatives of the Company’s shareholders, and certain of the Company’s outside advisors; (ii) reviewing and analyzing diligence materials provided by the Debtors (including, without limitation, board minutes, corporate governance documents, Related Party transaction documents, including intercompany transaction documents, financial and accounting information, and internal company communications); (iii) analyzing approximately 5,800 documents provided by the Debtors in response to TopCo Special Committee’s requests and/or requests from other parties in interest; (iv) reviewing and analyzing certain investigation materials from Clayton Utz, including more than 1,500 additional documents produced by the Debtors in connection with the GC Specialist Special Committee Investigation (as defined below); and (v) reviewing a subset of targeted documents from over 308,700 custodial emails produced by the Debtors.

99. Similarly, the resolution forming the GC Finance Special Committee delegated the GC Finance Special Committee the sole authority to act on behalf of GC Finance with respect to any matters in which a conflict of interest exists or is reasonably likely to exist between GC Finance and any Related Party thereto, including in connection with a potential restructuring,

reorganization, and/or recapitalization transaction (the “GC Finance Conflict Matters”). In that capacity, the GC Finance Special Committee conducted an investigation with respect to the GC Finance Conflict Matters, including, among other things, (i) matters related to prepetition transactions that constitute GC Finance Conflict Matters; (ii) potential claims or causes of action of GC Finance and its wholly-owned Debtor subsidiaries, if any, against the Related Parties; and (iii) any release, settlement, or retention of potential claims or causes of action of GC Finance or its subsidiaries, if any, against the Related Parties (collectively, the “GC Finance Independent Investigation”). The GC Finance Special Committee retained Kobre & Kim LLP to assist it in this investigation and with respect to other GC Finance Conflict Matters. The GC Finance Independent Investigation included: (i) evaluating the facts and circumstances surrounding certain transactions involving the Genesis Care group (the “Group”) that may have affected GC Finance, its subsidiaries and/or their creditors, including the Group’s acquisition of 21st Century Holdings and the Group’s spin-off of its Australian cardiology business, as well certain intercompany and external transfers; (ii) conducting witness interviews and collecting and reviewing relevant documents, including court filings, documents and records of the Debtors, and other materials; and (iii) analyzing the legal framework that would govern potential claims of GC Finance and its estate (including pursuant to the Bankruptcy Code and applicable state and foreign law), and potential defenses to those claims.

100. Based on the TopCo Independent Investigation and the GC Finance Independent Investigation, the TopCo Special Committee and the GC Finance Special Committee each concluded that, other than certain potential claims that are preserved under the Plan, resolution of all other potential claims under the Plan, including the Debtor Release, was fair, reasonable, and in the best interests of the Debtors’ estates. The Disinterested Directors of the TopCo Special

Committee and the GC Finance Special Committee will file declarations in support of these conclusions prior to the Confirmation Hearing.

101. **Second**, the Debtor Release is an essential *quid pro quo* for the Released Parties' contributions to, and support of, the Debtors' restructuring. **Third**, the Debtors considered the costs, delay, and inconveniences that would result from litigating any Causes of Action the Debtors may have against the Released Parties covered by the Debtor Release as compared against any potential value of such causes of action. The Debtors concluded that the potential benefits associated with pursuing litigation against the Released Parties were far outweighed by the costs and uncertainties of such an effort, as well as by the benefits of the settlement reflected in the Plan. Accordingly, the Debtor Release is fair, equitable, and in the best interest of their Estates, is justified under the controlling Fifth Circuit standard, and should be approved.

C. The Third-Party Release Is Appropriate and Complies with the Bankruptcy Code.

102. Article VIII.D of the Plan contains a third-party release provision (the "Third-Party Release"). It provides that each Releasing Party—including all holders of Claims and Interests who do not specifically opt out to their inclusion as a Releasing Party—and Related Parties shall release any and all Causes of Action (including a list of specifically enumerated claims) such parties could assert against the Released Parties.¹¹⁹

103. While the Fifth Circuit has not directly addressed what constitutes a consensual third-party release, the *Republic Supply*¹²⁰ court found that the Bankruptcy Code does not preclude

¹¹⁹ The foregoing description is meant as a summary of the operative plan provisions only. Certain of the Releasing Parties are defined as such in multiple capacities. To the extent there is any conflict between the foregoing summary and the definition of "Releasing Party" contained in Article I of the Plan, the Plan shall control.

¹²⁰ *Republic Supply Co. v. Shoaf*, 815 F.2d 1046, 1050 (5th Cir. 1987).

a third-party release provision where “it has been accepted and confirmed as an integral part of a plan of reorganization.”¹²¹ *Republic Supply* and its progeny¹²² ultimately stand for the proposition that “[c]onsensual nondebtor releases that are specific in language, integral to the plan, a condition of settlement, and given for consideration do not violate” the Bankruptcy Code.¹²³ At the core of the analysis is whether the third-party release is consensual.

104. Bankruptcy courts in Texas have applied this standard in recent chapter 11 bankruptcies when approving third-party releases similar to this Third-Party Release. In doing so, these courts have focused on *process*—*i.e.*, whether “notice has gone out, parties have actually gotten it, they’ve had the opportunity to look it over, [and] the disclosure is adequate so that they can actually understand what they’re being asked to do and the options that they’re being given.”¹²⁴ Ultimately, these courts acknowledge that parties in interest waive their rights with respect to a third-party release if they do not opt out of the releases.¹²⁵

¹²¹ *Id.*

¹²² See, e.g., *Hernandez v. Larry Miller Roofing, Inc.*, 628 Fed. App’x 281, 286–88 (5th Cir. 2016); *FOM Puerto Rico, S.E. v. Dr. Barnes Eyecenter, Inc.*, 255 Fed. App’x 909, 911–12 (5th Cir. 2007); *Applewood Chair Co. v. Three Rivers Planning & Dev. Dist. (In re Applewood Chair Co.)*, 203 F.3d 914, 919 (5th Cir. 2000).

¹²³ *In re Wool Growers*, 371 B.R. 768, 776 (N.D. Tex. 2007) (citing *Republic Supply*, 815 F.2d at 1050); see also *Dr. Barnes Eyecenter*, 255 Fed. App’x at 911–12.

¹²⁴ Confirmation Hr’g Tr. at 47, *In re Energy & Exploration Partners, Inc.*, No. 15 44931 (Bankr. N.D. Tex. April 21, 2016) [Docket No. 730] (hereinafter “ENXP Tr.”); see also Confirmation Hr’g Tr. at 32, *In re Ameriforge Group, Inc.*, No. 17-32660 (Bankr. S.D. Tex. May 24, 2017) [Docket No. 144]; Confirmation Hr’g Tr. at 7–8, *In re Hornbeck Offshore Servs., Inc.*, No. 20-32679 (Bankr. S.D. Tex. June 19, 2020) [Docket No. 227].

¹²⁵ ENXP Tr. at 47 (“[T]he [*Republic Supply*] case being that the Debtor is authorized, I think, I don’t think there’s anything that’s necessarily bad faith about the Debtor putting release provisions like this into a plan. And if we assume that the Debtor has otherwise satisfied procedural due process . . . and then they choose not to participate one way or the other, can they be bound by it? I would say that this is one of those situations where [*Republic Supply*] says those people can waive substantive rights by not affirmatively participating in the case.”); *In re Southcross Holdings, LP*, No. 16-20111 (MI) (Bankr. S.D. Tex. April 11, 2016), Hr’g Tr. at 42 (approving as consensual a third party release provision in favor of the debtors’ prepetition equity sponsors that bound all holders of claims and interest).

105. The Third-Party Release meets this standard. As a threshold matter, the Third-Party Release is **consensual**. Parties in interest were provided extensive notice of these chapter 11 proceedings, the Plan, the deadline to object to Confirmation of the Plan, and the ability to opt out of the Third Party Release.¹²⁶ Parties in interest not entitled to vote on the Plan were provided notice, which expressly apprised such parties of the existence of the Third Party Release and their ability to opt out of the release or object to the release if they did not wish to be bound.¹²⁷ In particular, an option to check a box to opt out of the Third Party Release was included in both the ballots and the Non-Voting Status Notices, meaning every known stakeholder, including Unimpaired creditors and equity interest holders of record, were actually served with the means by which they could opt out of the Third-Party Release. Courts have approved similar release provisions when parties received sufficient notice of their ability to opt out or object to the release.¹²⁸

106. In addition to being consensual, the Third-Party Release satisfies the other factors referenced in *Republic Supply* and its progeny. **First**, the Third-Party Release is sufficiently

¹²⁶ See Conditional Disclosure Statement Order; *Affidavit of Service* (Notice of Chapter 11 Bankruptcy Case) [Docket No. 62]; *Affidavit of Publication of the New York Times* [Docket No 875]; *Affidavit of Publication of the Financial Times* [Docket No. 876]; *Affidavits of Service of Solicitation Materials* [Docket No. 1003, 1004].

¹²⁷ See *Affidavits of Service of Solicitation Materials* [Docket No. 1003, 1004].

¹²⁸ See *In re Carlson Travel, Inc.*, No. 21-90017 (MI) (S.D. Tex. Nov. 12, 2021) (“[T]he Third-Party Release was integral to the formulation of the Plan . . . The Combined Hearing Notices sent to Holders of Claims and Interests, the Publication Notices, the Ballots sent to all Holders of Claims and Interests entitled to vote on the Plan, and the Opt-Out Notices served on all Holders of Claims in the Unimpaired Classes and on the Supplemental Solicitation Noteholders, in each case, unambiguously stated that the Plan contains the Third-Party Release and informed parties in interest of their ability to opt out of the Third-Party Release.”); *In re Genon Energy, Inc.*, No. 17-33695 (DRJ) (S.D. Tex. Dec. 12, 2017) (approving the Third-Party Release because it allowed opt-out and “the release provisions of the Plan were conspicuous, emphasized with boldface type in the Plan, the Disclosure Statement, the ballots, and the applicable notices”); *In re Kattera, Inc.*, No. 21-31861 (DRJ) (S.D. Tex. Oct. 21, 2021) (same); *In re Neiman Marcus Grp. LTD LLC*, No. 20-32519 (DRJ) (S.D. Tex. Sept. 04, 2020) (same); *In re Ultra Petroleum Corp.*, No. 16-32202 (MI) (S.D. Tex. Mar. 14, 2017) (“[T]he Third Party Release is consensual as the parties in interest were provided notice of the chapter 11 proceedings, each Plan, and the deadline to object to confirmation of the Plan [and] were given the opportunity to opt out of the Third Party

specific—listing potential Causes of Action to be released—so as to put the Releasing Parties on notice of the released claims.¹²⁹ **Second**, the Third-Party Release (together with the Debtor Release) are key components of the Debtors’ restructuring and key inducement to bring stakeholder groups to the bargaining table. Put simply, the Debtors’ key stakeholders are unwilling to support the Plan without the assurance that they and their collateral would not be subject to post-emergence litigation or other disputes related to restructuring. The Third-Party Release therefore not only benefits the non-Debtor Released Parties, but also the Debtors’ post-emergence enterprise as a whole.

107. **Third**, the Third-Party release was given for consideration. The significant consideration provided by the Released Parties inures not only to the benefit of the Debtors as described above, but also to the benefit of all stakeholders by allowing the chapter 11 cases to efficiently proceed, and thus maximize the value of the Debtors’ business. All parties in interest benefit from the restructuring transactions contemplated by the Plan, which will greatly improve the Debtors’ liquidity profile and position them for future success. However, the *quid pro quo* for the contributions, concessions, and support offered by the Released Parties under the Plan is the Third-Party Release.

108. Accordingly, the Debtors submit that the Third-Party Release should be approved.

Release, and the release provisions of each Plan were conspicuous, emphasized with boldface type in each Plan, each Disclosure Statement, and the applicable ballots.”).

¹²⁹ Plan, Art. VIII.D (specifically describing the nature and type of claims released); Art. I.A.177 (specifically describing the parties released).

D. The Exculpation Provisions Are Appropriate and Comply with the Bankruptcy Code.

109. Article VIII.E of the Plan provides that each Exculpated Party—*i.e.*, (a) each of the Debtors and (b) the Committee and each member of the Committee, solely in their respective capacities as such—shall be released and exculpated from any Cause of Action arising out of acts or omissions in connection with these chapter 11 cases and certain related transactions, except for acts or omissions that are found to have been the product of actual fraud, willful misconduct, or gross negligence (the “Exculpation Provision”).¹³⁰

110. At the outset, it is important to underscore the difference between the Third-Party Release and the Exculpation Provisions. Unlike the Third-Party Release, the Exculpation Provisions do not affect the liability of third parties *per se*, but rather sets a standard of care of gross negligence or actual fraud in hypothetical future litigation against an Exculpated Party for acts arising out of the Debtors’ restructuring.¹³¹ A bankruptcy court has the power to approve an exculpation provision in a chapter 11 plan because a bankruptcy court cannot confirm a chapter 11 plan unless it finds that the plan has been proposed in good faith.¹³² As such, an exculpation provision represents a legal conclusion that flows inevitably from several different findings a bankruptcy court must reach in confirming a plan.¹³³ Once the court makes its good faith finding, it is appropriate to set the standard of care of the fiduciaries involved in the formulation of that

¹³⁰ The foregoing description is meant as a summary of the operative plan provisions only. To the extent there is any conflict between the foregoing summary and the definition of “Exculpated Party” contained in Article I of the Plan, the Plan shall control.

¹³¹ *See, e.g., In re PWS Holding Corp.*, 228 F.3d 224, 245 (3d Cir. 2000) (holding that an exculpation provision “is apparently a commonplace provision in Chapter 11 plans, [and] does not affect the liability of these parties, but rather states the standard of liability under the Code”).

¹³² *See* 11 U.S.C. § 1129(a)(3).

¹³³ *See id.* § 157(b)(2)(L).

chapter 11 plan.¹³⁴ Exculpation provisions, therefore, appropriately prevent future collateral attacks against fiduciaries of the Debtors' Estates.

111. Here, the Exculpation Provisions in the Plan are an integral piece of the settlement embodied by the Plan. It is limited to parties who have performed valuable services in connection with the Debtors' restructuring, and are narrowly tailored to exclude acts of actual fraud, willful misconduct, or gross negligence, and relate only to acts or omissions in connection with, or arising out of, the Debtors' restructuring. The Exculpation Provisions are a critical component of the Plan, and along with the Debtor Release, form an integral piece of the overall settlement embodied in the Plan.

E. The Injunction Provision Is Appropriate and Complies with the Bankruptcy Code.

112. The injunction provision set forth in Article VIII.F of the Plan (the "Injunction Provision") is a necessary part of the Plan because it enforces the discharge, release, and exculpation provisions that are critically important to the Plan. The Injunction Provision affords the Debtors and their stakeholders (including, among others, the Released Parties and the Exculpated Parties) a greater degree of certainty with respect to the chapter 11 cases and the Restructuring Transactions by requiring the Court's authorization for parties to commence or pursue Claims, Causes of Action, or Covered Claims that relate to or are reasonably likely to relate to any act or omission in connection with, relating to, or arising out of a Claim, Cause of Action, or Covered Claim subject to the Debtor Release, the Third-Party Release, or the Exculpation. Finally, the Injunction Provision is consensual as to any party who did not specifically object to it.

¹³⁴ See *In re PWS Holding Corp.*, 228 F.3d at 246 (observing that creditors providing services to the debtors are entitled to a "limited grant of immunity . . . for actions within the scope of their duties").

As such, to the extent the Court finds that the Plan's Exculpation and Release Provisions are appropriate, the Court should approve the Injunction Provision.¹³⁵

Waiver of Bankruptcy Rule 3020(E)

113. To implement the Plan, the Debtors seek a waiver of the 14-day stay of an order confirming a chapter 11 plan under Bankruptcy Rule 3020(e). These chapter 11 cases and the Restructuring Transactions contemplated in the Plan have been negotiated in good faith, implemented with a high degree of transparency, and premised on preserving the value of the Debtors as a going concern. The Debtors' swift emergence from chapter 11 is an important component of their restructuring, and requiring the Debtors to pause before Confirmation would be prejudicial to all parties in interest that continue to incur the cost and expense of the Debtors' chapter 11 cases. For these reasons, the Debtors request a waiver of stay imposed by the Bankruptcy Rules.

Conclusion

114. For all of the reasons set forth herein, and as will be further shown at the Confirmation Hearing, the Debtors respectfully request that the Court confirm the Plan as fully satisfying all of the applicable requirements of the Bankruptcy Code.

¹³⁵ See, e.g., *In re Camp Arrowhead, Ltd.*, 451 B.R. 678, 701–02 (Bankr. W.D. Tex. 2011) (“[T]he Fifth Circuit does allow permanent injunctions *so long as there is consent*. Without an objection, this court was entitled to rely on . . . silence to infer consent at the confirmation hearing . . .” (citing *Pac. Lumber*, 584 F.3d at 253)).

Houston, Texas
November 6, 2023

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Certificate of Service

I certify that on November 6, 2023, 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/ Jennifer F. Wertz

Jennifer F. Wertz