IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	**Chapter 11**
CANO HEALTH, INC., *et al.*,	:	**Case No. 24-10164 (KBO)**
Debtors.[1]	:	**(Jointly Administrated)**

REPLY OF DIP LENDERS AND AD HOC FIRST LIEN GROUP IN SUPPORT OF [PROPOSED] DISCLOSURE STATEMENT FOR AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF CANO HEALTH, INC. AND ITS AFFILIATED DEBTORS

The DIP Lenders and Ad Hoc First Lien Group hereby file this reply (the "***Reply***") in support of the *[Proposed] Disclosure Statement for Amended Joint Chapter 11 Plan of Reorganization of Cano Health, Inc. and Its Affiliated Debtors* [Docket No. 672] (as amended, modified, or supplemented from time to time, and together with all exhibits and schedules thereto, the "***Disclosure Statement***"),[2] join in the *Debtors' Reply in Support of Motion to Approve Disclosure Statement and Related Solicitation Procedures*, filed contemporaneously herewith (the "***Debtors' Omnibus Reply***"), and respond to the *Limited Objection and Reservation of Rights*

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

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Disclosure Statement, the *Amended Joint Chapter 11 Plan of Reorganization of Cano Health, Inc. and Its Affiliated Debtors* [Docket No. 671] (as amended, modified, or supplemented from time to time, and together with all exhibits and schedules thereto, the "***Plan***"), the *Motion of Debtors for Entry of Order (I) Approving Proposed Disclosure Statement and Form and Manner of Notice of Disclosure Statement Hearing, (II) Establishing Solicitation and Voting Procedures, (III) Scheduling Confirmation Hearing, (IV) Establishing Notice and Objection Procedures for Confirmation of Proposed Plan, and (V) Granting Related Relief* [Docket No. 501] (the "***Motion***"), or the *Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 507, and 552 and Fed. R. Bankr. P. 2002, 4001, 6003, 6004, and 9014 for (I) Authority to (A) Obtain Postpetition Financing, (B) Use Cash Collateral (C) Grant Liens and Provide Superpriority Administrative Expense Status, (D) Grant Adequate Protection, and (E) Modify the Automatic Stay, and (II) Related Relief* [Docket No. 271] (the "***Final DIP Order***"), as applicable.

of the Official Committee of Unsecured Creditors with Respect to Motion of Debtors for Entry of Order (I) Approving Proposed Disclosure Statement and Form and Manner of Notice of Disclosure Statement Hearing, (II) Establishing Solicitation and Voting Procedures, (III) Scheduling Confirmation Hearing, (IV) Establishing Notice and Objection Procedures for Confirmation of Proposed Plan, and (V) Granting Related Relief [Docket No. 716] (the "***Committee Objection***") filed by the Official Committee of Unsecured Creditors (the "***Committee***"). In support thereof, the DIP Lenders and Ad Hoc First Lien Group respectfully represent as follows:

PRELIMINARY STATEMENT

1. The Motion before the Court seeks fairly customary and straightforward relief: the approval of (i) the Disclosure Statement on the basis that it contains adequate information pursuant to section 1125 of the Bankruptcy Code and (ii) related solicitation procedures and forms of notice and balloting. The Committee has identified several topics for inclusion in the Disclosure Statement, many of which the Debtors have reasonably accommodated. Indeed, the Disclosure Statement contains a plethora of information across an array of subject matter and is sufficiently clear and detailed for purposes of delivering adequate information for the hypothetical reasonable investor to decide whether to accept or reject the Plan, which is the relevant standard for the Court to consider. Given the breadth and depth of the Disclosure Statement, that standard is clearly met here. Therefore, the Motion should be granted.

2. It is understandable that the Committee seeks more information about the events leading up to these Chapter 11 Cases—however, no one is denying them this information. In fact, the Committee's counsel has participated in the witness interviews held in connection with the ongoing Debtors' Investigations—an opportunity that has not even been afforded to the DIP

Lenders and Ad Hoc First Lien Group's counsel, despite such parties having the most at stake economically in these Chapter 11 Cases. Further, the Plan has already assigned nearly all of the potential Claims and Causes of Action related to the alleged prepetition misconduct to the Litigation Trust and the Debtors rightfully reserve on these issues until the Debtors' Investigations are completed. As such, despite the length and breadth of the Committee Objection, there isn't much daylight between what the Committee is demanding with respect to the Releases and Litigation Trust and what the Debtors are already providing them.

3. Moreover, the Committee's request for a further two-week extension of the confirmation schedule, which was already previously extended in connection with the Final DIP Order at the Committee's request, is not warranted. Not only have the Debtors provided extraordinary access and information to the Committee to date, both with respect to the Debtors' Investigations and generally, there is no basis to augment the ample confirmation period of seven weeks on top of the many weeks that have transpired since the Committee's appointment. As such, the DIP Lenders and the Ad Hoc First Lien Group support the Debtors' proposed confirmation schedule and contend that it is more than adequate.

4. The remainder of the Committee Objection focuses on matters that are not presently before the Court and which are preserved and may be more appropriately raised at confirmation or in other contexts (if at all) on the basis of a full and complete record containing admissible evidence, not supposition and conjectural statements of no probative value. All parties' rights are preserved in connection with any such further proceedings.

5. Notwithstanding the preservation of confirmation issues for a later date, the Committee Objection declares the Committee's displeasure with the amount of distributable value the Plan makes available for holders of Allowed General Unsecured Claims. In contrast to the

view of the creditors comprising the Committee, holders of over 80% of estimated General Unsecured Claims disagree with that position and support the Plan. That said, it is worth considering whether the cause of the Committee's displeasure is simply the product of math, as is often the case in chapter 11. A debtor's valuation only results in so much distributable value, and in these Chapter 11 Cases the Debtors' valuation shows that the Prepetition Lenders have a greater than $500 million deficiency claim—which is not the result they were hoping for after having loaned over $900 million in real dollars to the Debtors on a secured basis as recently as early 2023. The holders of Senior Notes—which securities now trade at less than a quarter of one cent—likewise did not provide $300 million to the Debtors solely to effectively lose all of their principal. Yet, the DIP Lenders and Prepetition Lenders—who, unlike the Committee, have serious skin in the game with respect to the Debtors' future—recognize the economic realities of these Chapter 11 Cases and the damage a prolonged stay in chapter 11 may inflict on the Debtors' businesses. They are, therefore, prepared to promptly move forward with the Plan in the interest of preserving and maximizing the value of the Debtors' businesses, which provides all holders of Allowed General Unsecured Claims a reasonable amount of gross consideration despite the valuation shortfall and, in the interest of fairness and equity and in accordance with the Bankruptcy Code, distributes such consideration to such holders equally and ratably. There is nothing improper with that, as will be demonstrated at confirmation. The Debtors, the DIP Lenders, and the Ad Hoc First Lien Group nonetheless remain open to continue a reasonable and constructive dialogue with the Committee regarding the Plan, with the goal of reaching consensus.

REPLY

I. Disclosure Statement Satisfies the Requirements of Bankruptcy Code Section 1125

6. The only issue currently before the Court is whether the Disclosure Statement provides voting creditors with *adequate information* regarding the Plan so as to permit such

creditors to make an informed decision as they consider whether to vote in favor of or against it. *See, e.g.*, *Century Glove, Inc. v. First Am. Bank of N.Y.*, 860 F.2d 94, 100 (3d Cir. 1988) ("[Section] 1125 seeks to guarantee a minimum amount of information to the creditor asked for its vote"); *In re Phoenix Petroleum Co.*, 278 B.R. 385, 392 (Bankr. E.D. Pa. 2001) ("[T]he general purpose of the disclosure statement is to provide 'adequate information' to enable 'impaired' classes of creditors and interest holders to make an informed judgment about the proposed plan and determine whether to vote in favor of or against that plan."). Adequate information does not mean *all* information or even *substantially all* information regarding any particular topic—it simply 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, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan.

11 U.S.C. § 1125(a)(1).

7. As set forth both in the Motion and the Debtors' Omnibus Reply, the Debtors have more than met this burden. Further, in response to the Committee's requests, the Debtors have further revised the Disclosure Statement to include additional disclosures. Moreover, the Committee remains free to prepare and seek any necessary approvals to provide creditors with its own communications and materials.

8. Accordingly, the DIP Lenders and the Ad Hoc First Lien Group respectfully request that the Court overrule the Committee Objection and approve the Disclosure Statement.

II. Debtors' Proposed Confirmation Schedule Provides Ample Time for Discovery

9. The Committee's assertion that the Debtors' proposed confirmation schedule, which provided nearly seven weeks' notice for the Disclosure Statement Hearing and provides five and a half weeks between the Disclosure Statement Hearing and the Confirmation Objection Deadline, is insufficient to afford the Committee with adequate time to diligence the Debtors' valuation, assets, secured obligations and liens, or proposed Releases is not credible.

10. Indeed, the Debtors filed the Valuation Analysis two weeks ago and the Committee has had (and still does have) ample opportunity to formally or informally request any related discovery if it has not already done so. Likewise, the Committee has been analyzing where there exists any source of potential unencumbered value, as well as the validity and extent of the Prepetition Obligations and Prepetition Liens since the Final DIP Order was approved two months ago.[3] Further, the Committee—unlike even the DIP Lenders and the Ad Hoc First Lien Group—is participating in the witness interviews being held in connection with the ongoing Debtors' Investigations and otherwise receiving real time information as the investigations unfold. Accordingly, there is no reason that the Committee cannot execute on its diligence and discovery agenda within the Debtors' proposed confirmation schedule.

11. While the addition of time may seem innocuous on the surface, the DIP Lenders and the Ad Hoc First Lien Group—as parties with a vested interest in the continuation of the Debtors' businesses—are seriously concerned that the undue prolongation of the Chapter 11 Cases may serve to cause avoidable damage to the Debtors' businesses. As such, the DIP Lenders and

[3] The Committee's Challenge Period Termination Date, which they negotiated concurrently with the Required Milestones within which the Debtors' current schedule falls, is May 12, 2024 (the date 95 calendar days after entry of the *Interim Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 507 and 552 and Fed. R. Bankr. P. 2002, 4001, 6003, 6004, and 9014 for (I) Authority to (A) Obtain Postpetition Financing, (B) Use Cash Collateral (C) Grant Liens and Provide Superpriority Administrative Expense Status, (D) Grant Adequate Protection, (E) Modify the Automatic Stay, and (F) Schedule a Final Hearing, and (II) Related Relief* [Docket No. 89]).

the Ad Hoc First Lien Group respectfully request that the Court overrule the Committee Objection and approve the confirmation schedule set forth in the revised form of Proposed Order expected to be filed contemporaneously herewith.

III. Committee Objection Contains Numerous Incorrect, Misleading, and/or Misguided Assertions

12. Although the various "previewed" Plan objections raised by the Committee are fully reserved for confirmation and inappropriate for consideration at this juncture, all are without merit. The Prepetition Lenders have valid and perfected security interests on substantially all of the Debtors' assets (including the Debtors' contracts with payors and other general intangibles that are the predominant sources of the Debtors' revenue and value), which comprise all of the distributable value under the Plan, and there simply is no additional value available for distribution to holders of Allowed General Unsecured Claims. Moreover, belying the Committee's conjectural allegations regarding the alleged existence of unencumbered value (with which the DIP Lenders and Ad Hoc First Lien Group wholeheartedly disagree) is the fact that the Plan already provides a significant quantum of gross consideration to holders of Allowed General Unsecured Claims. Likewise, the First Lien Claims and First Lien Deficiency Claims that the Committee seeks to challenge (including certain premium amounts under the Side-Car Credit Agreement, certain of which are being settled under the Plan) arose out of valid secured lending transactions in which fair consideration was given or are not even First Lien Claims or First Lien Deficiency Claims in the first place.[4]

[4] For example, the Committee's assertion that the First Lien Claims are subject to challenge on account of "unmatured interest in the form of approximately $37 million in unamortized original issue discount arising from the issuance of penny warrants under the Side-Car Facility" is a red herring and unequivocally false. The Plan clearly specifies the Allowed amount of both the First Lien Claims and the First Lien Deficiency Claims, not a penny of which is on account of such alleged unamortized original issue discount. Further, such alleged original issue discount is not what the Side-Car Lenders received or inherent in their claims. They received *the Warrants*, which warrants were the product of a valid and fair exchange of value and fully earned when they were issued. The Warrants are an equity-linked instrument and are not "interest," much less "unmatured" interest. In any

13. Further, the Committee's accusations of gerrymandering are utterly unfounded. Under section 1122(a) of the Bankruptcy Code, "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class." 11 U.S.C. § 1122(a). Whether claims are "substantially similar" turns on "the legal character of the claim as it relates to the assets of the debtor." *In re W.R. Grace & Co.*, 729 F.3d 311, 326 (3d Cir. 2013); *see also In re Quigley Co.*, 377 B.R. 110, 116 (Bankr. S.D.N.Y. 2007) ("Claims are similar if they have substantially similar rights to the debtor's assets."). The Committee does not (and cannot) explain how the legal character of the First Lien Deficiency Claims and/or the Senior Notes Claims differs from the other General Unsecured Claims in Class 4, as all are entitled to the same priority of payment from the Debtors' estates under the Bankruptcy Code. In fact, it is black letter law that unsecured deficiency claims are "substantially similar" to other unsecured claims and it is not the case that unsecured bond claims are dissimilar to other unsecured claims.[5]

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event, the Warrants were exercised and converted into Existing CHI Interests—which are now worthless and are not receiving a scintilla of recovery under the Plan. Finally, even assuming *arguendo* that the issuance of the Warrants may have required the *Debtors*, in adherence to mandatory tax or accounting conventions, to characterize in their tax and accounting books *their* act of issuing the Warrants (not the lenders' act of receiving them) as original issue discount for tax or accounting purposes, the Debtors' implementation of such a tax or accounting convention does not alter this analysis. As multiple circuit courts have held, the tax treatment of a transaction does not dictate its legal treatment under the Bankruptcy Code. *See, e.g.*, *In re Chateaugay Corp.*, 961 F.2d 378 (2d Cir. 1992) (debt exchange did not create original issue discount that resulted in disallowable unmatured interest, notwithstanding the fact that the exchange resulted in original issue discount under the Tax Code); *In re Pengo Indus., Inc.*, 962 F.2d 543, 550 (5th Cir. 1992) ("[T]his is not a tax case. We stress that the tax treatment of original issue discounting does not control our inquiry, which is placed firmly within the bankruptcy framework."); *In re Residential Cap., LLC*, 501 B.R. 549, 587 (Bankr. S.D.N.Y. 2013) ("Even though the Exchange may have generated OID under the Tax Code, that does not dictate that it created disallowable unmatured interest").

5 *See, e.g.*, *In re Route 37 Bus. Park Assoc.*, 987 F.2d 154, 161 (3d Cir. 1993) (rejecting classification scheme which classified deficiency claim separately from other unsecured claims); *In re Bryson Properties, XVIII*, 961 F.2d 496, 502 (4th Cir. 1992) (holding that classifying a deficiency claim separately from other unsecured claims was "clearly for the purpose of manipulating voting and it may not stand"); *In re Barakat*, 99 F.3d 1520, 1525 (9th Cir. 1996) (finding that a deficiency claim was similar to general unsecured claims and holding that, absent a legitimate economic justification, it is impermissible to separately classify such claims); *In re Bos. Post Rd. Ltd. P'ship*, 21 F.3d 477, 482 (2d Cir. 1994) (finding that a deficiency claim and general unsecured claims enjoyed similar rights under the Bankruptcy Code, and finding that the debtor could not separately classify an unsecured deficiency claim unless there was a "credible proof of any legitimate reason" for such separate classification),

14. Indeed, the Committee Objection implies that the vote of holders of First Lien Deficiency Claims and Senior Notes Claims will overwhelm the vote of other general unsecured creditors in Class 4 (again, a simple matter of incontrovertible math), and that this outcome somehow proves that the Debtors acted "in the hope of suppressing creditor dissent." Committee Objection ¶ 43. Not so. The fact that the vote of the First Lien Deficiency Claims and Senior Notes Claims may determine the voting outcome of Class 4 is simply a function of the size of their claims. As the United States Court of Appeals for the Second Circuit has explained, there is no reason to be concerned that an undersecured lender may have undue influence over a debtor's ability to reorganize on account of its deficiency claim. *In re Bos. Post Rd. Ltd. P'ship*, 21 F.3d 477, 483 (2d Cir. 1994). In *Boston Post*, the court's concern was just the opposite—that the "overwhelmingly largest" unsecured creditor should not be disenfranchised by the debtor's ability to separately classify its deficiency claim. *See id.* The court reasoned that approving a plan that aims to disenfranchise the overwhelmingly largest unsecured creditor through artificial classification is simply inconsistent with the principles underlying the Bankruptcy Code:

> A key premise of the Code is that creditors holding greater debt should have a comparably greater voice in reorganization. . . . Chapter 11 is far better served by allowing those creditors with the largest unsecured claims to have a significant degree of input and participation in the reorganization process, since they stand to gain or lose the most from the reorganization of the debtor.

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cert. denied, 513 U.S. 1109 (1995); *In re Lumber Exch. Bldg. Ltd. P'ship*, 968 F.2d 647, 649 (8th Cir. 1992) (rejecting argument that unsecured deficiency claim should be classified separately from unsecured trade claims); *Matter of Greystone III Joint Venture*, 995 F.2d 1274 (5th Cir. 1991) (noting that "the Code has eliminated the legal distinction between non-recourse deficiency claims and other unsecured claims"), *cert. denied*, 506 U.S. 821 (1992); *In re 266 Washington Assocs.*, 141 B.R. 275, 282 (Bankr. E.D.N.Y. 1992) ("Generally, unsecured creditors hold substantially similar claims; they are claimants of equal legal rank entitled to share pro rata in values remaining after payment of secured and priority claims. It has accordingly been observed that '[u]nsecured claims will, generally speaking, comprise one class, whether trade, tort, publicly held debt or *a deficiency of a secured creditor*.'"), *aff'd sub nom.*, 147 B.R. 827 (E.D.N.Y. 1992); *In re JRV Industries, Inc.*, 342 B.R. 635, 638 (Bankr. M.D. Fla. 2006) ("The Court agrees with the Second, Third, Fourth, Fifth, Eighth and Ninth Circuits and holds that a . . . deficiency claim is not sufficiently dissimilar from other unsecured claims to mandate separate classification.").

Id. The United States Court of Appeals for the Third Circuit has similarly rejected the argument that because "the deficiency claim would 'dilute' and 'dominate[] the vote of those truly acting in their interests as unsecured creditors,'" there is anything untoward in placing an unsecured deficiency claim in the same class as other unsecured claims. *In re Route 37 Bus. Park Assoc.*, 987 F.2d at 161. Importantly, in that case the court observed that "[t]he distinction between those who do and do not 'truly act[ ] in their interests as unsecured creditors' finds no support in the [Bankruptcy] Code and seems inconsistent with economic reality." *Id.* Accordingly, "[a]bsent bad faith or illegality [within the meaning of 11 U.S.C. § 1126(e)], the [Bankruptcy] Code is not concerned with a claim holder's reason for voting one way or the other, and undoubtedly most claim holders vote in accordance with their overall economic interests as they see them." *Id.*

RESERVATION OF RIGHTS

15. The DIP Lenders and Ad Hoc First Lien Group expressly reserve all of their respective rights, claims, defenses, and remedies under the DIP Documents, the Prepetition Loan Documents, the Bankruptcy Code, the Plan, orders of the Court, and applicable law, including, without limitation, the right to amend, modify, or supplement this Reply, seek discovery and diligence with respect to same, and introduce evidence at any hearing relating to the Motion or this Reply.

CONCLUSION

WHEREFORE, for the reasons set forth above, as well as the reasons set forth in the Motion and the Debtors' Omnibus Reply, the DIP Lenders and the Ad Hoc First Lien Group respectfully request that the Court (i) overrule the Committee Objection, (ii) grant the relief requested in the Motion, and (iii) grant such other and further relief as the Court may deem just and proper.

Dated: May 6, 2024

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

CERTIFICATE OF SERVICE

I, Laura Davis Joes, hereby certify that on the 6th day of May, 2024, I caused a copy of the following document Jones be served on the individuals on the attached service list(s) in the manner indicated:

REPLY OF DIP LENDERS AND AD HOC FIRST LIEN GROUP IN SUPPORT OF [PROPOSED] DISCLOSURE STATEMENT FOR AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF CANO HEALTH, INC. AND ITS AFFILIATED DEBTORS.

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

Cano Health 2002 Service List
(FCM & Email)
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Document No. 4885-0695-7987
06 – First Class Mail
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