IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	**Chapter 11**
CANO HEALTH, INC.,	:	**Case No. 24–10164 (KBO)**
Reorganized Debtor.[1]	:	**Re: Docket Nos. 1127–1131, 1183, 1388**

REORGANIZED DEBTORS' REPLY IN SUPPORT OF
MOTION TO QUASH MEDCLOUD DEPOT LLC'S DEPOSITION NOTICES

Cano Health, Inc. (together with the Closed Case Debtors, the "**Reorganized Debtors**," and prior to being reorganized pursuant to the Plan,[2] the "**Debtors**"), file this reply ("**Reply**") in support of their motion to quash [Docket No. 1183] (the "**Motion to Quash**") the notices served by MedCloud Depot LLC ("**MedCloud**") to depose five of the Reorganized Debtors' employees, purportedly in connection with MedCloud's *Verified Renewed Motion for Payment of Administrative Expense and Notice of Debtors' Breach of Settlement Stipulation* [Docket No. 1062] (the "**Renewed Motion**"). The Reorganized Debtors respectfully state as follows:

1. As set forth in the Motion to Quash, MedCloud has filed a series of meritless motions, and is now seeking discovery to support its baseless claim that, since before filing for chapter 11, the Debtors have been "reverse engineering" MedCloud's software in breach of the

[1] The Reorganized Debtor in this chapter 11 case, along with the last four digits of the Reorganized Debtor's federal tax identification number, is Cano Health, Inc. (4224) ("**CHI**"). On August 13, 2024, the Court entered an order closing the chapter 11 cases of CHI's debtor affiliates, (collectively, the "**Closed Case Debtors**"). A complete list of the Closed Case Debtors may be obtained on the website of the Reorganized Debtor's claims and noticing agent at https://veritaglobal.net/canohealth. The Reorganized Debtor's mailing address is 9725 NW 117th Avenue, Miami, Florida 33178.

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

parties' pre-petition license agreement. Based on nothing other than MedCloud's CEO's mere "good-faith belief" that the Debtors purportedly continued to reverse engineer MedCloud's software post-petition, MedCloud argues in its Renewed Motion that the Debtors' alleged conduct violates the parties' *Stipulation Resolving MedCloud Depot LLC's Administrative Expense Motion and Related Discovery Disputes* [Docket No. 639] (the "**Stipulation of Settlement**"), giving rise to a post-petition administrative expense claim. For the reasons discussed in the Motion to Quash, MedCloud's argument for an administrative expense claim is wholly without merit. *See, e.g.*, Motion to Quash ¶¶ 21–27.

2. In its latest pursuit of something that might confirm its CEO's hunch that the Debtors reversed engineered MedCloud's software, MedCloud improperly seeks to use its facially meritless Renewed Motion as basis to subject the Reorganized Debtors to burdensome discovery in the form of five depositions of its employees. *See id.* ¶ 4. But MedCloud's transparent effort to obtain pre-litigation discovery to support a pre-petition breach of contract claim under the guise of an administrative expense motion cannot be countenanced.

3. In response to the Motion to Quash, MedCloud does not raise any new arguments in support of the discovery it seeks, despite having the burden to justify such discovery. *In re NewStarcom Holdings, Inc*., 514 B.R. 394, 400 (Bankr. D. Del. 2014); *see also In re Touch Am. Holdings, Inc*., No. 03-11915 (KJC), 2015 WL 6460260, at *2 (Bankr. D. Del. Oct. 26, 2015) ("The burden is on the party seeking discovery to 'explain how or why the [discovery] would be relevant to her claims.'"). Rather, MedCloud merely reiterates the arguments from its Renewed Motion: (i) the Debtors' "potential post-petition violation" of the parties' Stipulation of Settlement gives rise to an administrative expense claim; (ii) an objection to an administrative expense claim

creates a contested matter; and (iii) Bankruptcy Rule 9014 generally permits depositions in contested matters.

4. The Reorganized Debtors have already addressed each of these arguments in the Motion to Quash, explaining that, most fundamentally, MedCloud has not demonstrated (nor could it) that its claim satisfies both prongs of the test for administrative expense treatment. *See* Motion to Quash ¶¶ 21–27. Therefore, MedCloud lacks any basis to seek discovery. *Id*.

5. MedCloud's argument for administrative expense treatment hinges on its allegation that the Debtors, post-petition, purportedly continued attempting to reverse engineer the Syncrasy Software System, including following the execution of the Stipulation of Settlement, in breach of both the pre-petition Syncrasy Software License Agreement and the Stipulation of Settlement. *See* Renewed Motion ¶¶ 16–17. However, as set forth in the Motion to Quash, the Stipulation of Settlement was entered into by the parties to resolve disputes that had arisen under the pre-petition Syncrasy Software License Agreement, and it simply set forth certain amounts Debtors agreed would be due under the pre-petition Syncrasy Software License Agreement, and reaffirmed that Debtors would not facilitate infringement of MedCloud's Syncrasy Software System IP.

6. The provision of the Syncrasy Software License Agreement prohibiting the reverse engineering of the Syncrasy Software System, was merely reaffirmed in the parties' Stipulation of Settlement, as the parties agreed that the Debtors would continue to use the Syncrasy Software System under the terms of the pre-petition license agreement at least through May 2024. *See* Stipulation of Settlement, ¶ 3 ("Cano Health … may continue to use the Syncrasy Software System for themselves, as set forth in the Syncrasy Software License Agreement"); ¶ 9 ("*[f]or the avoidance of doubt*, nothing herein shall limit or otherwise affect in any way the restrictions set for in paragraph 1 and all subparts thereof, of the Syncrasy Software License Agreement"). In

fact, MedCloud itself acknowledged that efforts to reverse engineer the Syncrasy Software System "already were prohibited by the License Agreement but were *emphasized and reiterated* in the Settlement Stipulation." Renewed Motion ¶ 16 (emphasis added). The mere existence of the Stipulation of Settlement cannot convert MedCloud's pre-petition claims, under a pre-petition contract the Debtors ultimately rejected, to post-petition administrative expense claims. *See* Motion to Quash ¶¶ 21-24.

7. Moreover, because MedCloud seeks alleged damages for breach of contract, as opposed to costs for services it rendered to the Debtors—which it conceded the Debtors paid in full—it cannot "carry the heavy burden of demonstrating that the costs and fees for which it seeks payment provided an actual benefit to the estate and that such costs and expenses were necessary to preserve the value of the estate assets." *In re O'Brien Env't Energy, Inc.*, 181 F.3d 527, 533 (3d Cir. 1999).

8. In order to avoid this benefit requirement, MedCloud attempts to rely on an inapplicable exception for post-petition tort claims. *See* Renewed Motion ¶ 18. But as already explained in the Motion to Quash, the *Reading* exception for tort claims does not apply to claims for breaches of contract, which is plainly what MedCloud's Renewed Motion arises from (*i.e.* the alleged breach of paragraph 9 of the Stipulation of Settlement). *See* Motion to Quash ¶¶ 25–26; MedCloud's Response ¶ 26. Tellingly, despite the Reorganized Debtors' making this point in their moving brief, MedCloud's response fails to cite any authority to the contrary.

9. Finally, the fact that Bankruptcy Rule 9014 permits depositions in contested matters does not justify the depositions MedCloud seeks here because the evidence MedCloud hopes to discover could not support its claim for administrative expense treatment. *See* Motion to Quash ¶¶ 15-18, 22, 27-28. Moreover, it would be procedurally improper—and extraordinarily

burdensome and prejudicial to the Reorganized Debtors—for MedCloud to depose the Reorganized Debtors' employees to seek pre-litigation discovery to support its pre-petition breach of contract claims, which have not been asserted in an adversary complaint. *See In re NewStarcom Holdings, Inc.*, 514 B.R. at 400.

Conclusion

10. For the reasons set forth herein and in the Motion to Quash, the Reorganized Debtors respectfully request the Court (i) grant the Motion to Quash, and (ii) grant the Reorganized Debtors such other relief that is just and proper.

Dated: August 28, 2024
Wilmington, Delaware

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