

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

LEISURE INVESTMENTS HOLDINGS LLC,  
*et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 25-10606 (LSS)

(Jointly Administered)

**Re: Docket Nos. 299, 402, 512, 563, 582, 636,  
639–644, 650, 657–661, 669, 679 & 680**

**DEBTORS' REPLY IN SUPPORT OF THE  
PROPOSED SALE OF THE MARINELAND PROPERTY  
(9600 N. OCEANSHORE BLVD., FLAGLER COUNTY, FLORIDA)**

Leisure Investments Holdings LLC and certain of its affiliates (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”) hereby file this reply (this “**Reply**”) in support of the proposed sale (the “**Proposed Sale**”) of the Debtors’ real property located at 9600 N. Oceanshore Blvd., Flagler County, Florida (the “**Marineland Property**” and the marine park operated at such location, “**Marineland**”) and in response to the objections [Docket Nos. 636, 639–644, 650, & 657–661] (collectively, the “**Responses**”) to the Proposed Sale filed by various individuals (collectively, “**Respondents**”). In further support of the Proposed Sale, the Debtors rely upon the (i) *Declaration of Robert Wagstaff in Support of the Proposed Sale of the Marineland Property (9600 N. Oceanshore Blvd., Flagler County, Florida)* (the “**Wagstaff Declaration**”); (ii) *Declaration of Harold J. Bordwin in Support of the Proposed Sale of the Real Property Located at 9600 N. Oceanshore Blvd., Flagler County, Florida* (the “**Bordwin**

<sup>1</sup> Due to the large number of Debtors in these chapter 11 cases a complete list of the Debtors is not provided herein. A complete list of the Debtors along with the last four digits of their tax identification numbers, where applicable, may be obtained on the website of the Debtors’ noticing and claims agent at <https://veritaglobal.net/dolphinco>, or by contacting counsel for the Debtors. For the purposes of these chapter 11 cases, the address for the Debtors is Leisure Investments Holdings LLC, c/o Riveron Management Services, LLC, 600 Brickell Avenue, Suite 2550, Miami, FL 33131.



2510606251105000000000006

**Declaration”**); and (iii) *Declaration of Jakub Mleczko in Support of the (I) Proposed Sale of the Marineland Property to Delightful Development LLC, and (II) Transfer of Certain Animals to Theater of the Sea, Inc.*, filed concurrently herewith.<sup>2</sup>

### **PRELIMINARY STATEMENT**

1. The Debtors have a duty to maximize the value of their assets for the Debtors’ estates and stakeholders. To discharge this duty, the Debtors have marketed and solicited bids for the purchase of their Assets, including Marineland; held a public and competitive auction process pursuant to court-approved procedures; and selected Delightful Development LLC (the “**Purchaser**”) as the winning bidder for the Marineland Property, which has submitted a compelling bid (the “**Successful Bid**”)—an all-cash offer, with no material contingencies from a well-financed buyer that is prepared to promptly close (collectively, the “**Sale Process**”). The record establishes that the Successful Bid was obtained after arm’s length negotiations, with the benefit of professional advisors and counsel, and in consultation with the parties that are primarily affected by the Proposed Sales.

2. The Successful Bid will provide the Debtors’ estates with \$7.1 million (less transaction costs) of liquidity,<sup>3</sup> which will be used to fund operations (including employee wages and benefits, animal food, medicine, housing, and other care, among other expenses) and the costs of the Chapter 11 Cases, and will provide the Debtors with the time necessary to transition their animals to new, licensed, accredited homes in an organized process and in full compliance with all applicable laws.

---

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the *Declaration of Steven Strom in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 2], the Sale Motion, or the Bidding Procedures Order (as defined herein), as applicable.

<sup>3</sup> The Sale of the Transferred Dolphins (as such capitalized terms are defined in the Wagstaff Declaration) to Theater of the Seas, Inc., to which the Respondents also object, provides an additional \$500,000 in consideration that the Debtors would fail to realize if the Proposed Sale was not approved.

3. The Debtors selected the Successful Bid after engaging in an exhaustive process and having considered all options available to them and the related circumstances, including animal welfare, execution risk, transaction costs, the cost of continuing to operate in chapter 11, liquidity constraints, and applicable regulatory laws and licensing challenges.

4. To date, the Debtors have never received a Qualified Bid for the Marineland Property as a going concern. The only alternative bid received for the Marineland Property is the Backup Bid for the Marineland Property, which is identical to the Successful Bid, except for a lower purchase price, and no party has asserted (nor could a party assert) that the Backup Bid provides greater value than the Successful Bid. Therefore, the Successful Bid is unequivocally the highest and best offer received by the Debtors for the Marineland Property and should be approved.

5. Respondents, who have no fiduciary duties to the economic parties in interest in the Chapter 11 Cases and have never submitted a Qualified Bid to the Debtors for Marineland, ask this Court to reject the Proposed Sale because doing so would close Marineland and require the Debtors to transfer their animals to new homes. Respondents, however, ignore obvious issues and practical realities, for which they offer no solution. First, as noted above, the Debtors have not received any Qualified Bids for Marineland that would allow Marineland to continue operating as a going concern. This is at least the second instance Respondents have been unable to produce a Qualified Bid, despite repeated accommodations by the Debtors, including extending their Bid Deadlines multiple times. Second, even if the Debtors had received a Qualified Bid from Respondents at the level proposed by certain Respondents pursuant to the Rubel Letter of Intent (as defined below), the total cash value of such proposal is far less than the value that the Debtors will receive pursuant to the Successful Bid. Third, the Debtors have a duty to their estates and creditors to deliver the highest possible value for Marineland, which as it stands is indisputably

the Successful Bid. Fourth, the Debtors cannot turn over their operations involving live animals to a group of individuals who lack regulatory counsel, financial wherewithal, operational knowledge and expertise, and the ability to satisfy regulatory approvals that are necessary to take ownership of Marineland as a going concern. None of the Respondents has demonstrated the requisite preparation and wherewithal to assume the significant responsibility associated with operating an oceanarium with live animals, evidenced by Respondents' inability to submit a Qualified Bid, after now having had several opportunities to do so, and lack of engagement with the Debtors on diligence and other matters. Fifth, Marineland is operating at a deficit. It cannot operate without supplemental funding, and the Debtors are facing the maturity of their DIP Loan in the near term. Therefore, to maximize value, the Debtors have an obligation to mitigate costs and cannot continue to hold open the Sale Process or continue to operate Marineland without a near-term solution for funding losses. Sixth, no party other than the Debtors currently has the requisite licensing and permits for the maintenance of the Debtors' animals at Marineland, and no party has provided the Debtors with a plan or timeline for obtaining such licenses and permits in connection with a going concern transaction, leaving the Successful Bid as the only realistic option. Seventh, any going concern transaction will impose significant closing risk associated with licensing and regulatory challenges and the substantial time and cost commitments to consummate, which is avoided entirely under the terms of the Successful Bid. Eighth, to have to reopen, restart, or reconsider the Sale Process, after repeated delays caused by Respondents, is unfair to all parties involved.

6. The Debtors have considered all of the relevant circumstances, including those listed above, consulted with professional advisors, veterinary staff, and the parties in interest in the Chapter 11 Cases, and made a determination that the Proposed Sale is the most viable and

value-maximizing outcome under the circumstances. The evidentiary record will reflect that the Proposed Sale has been submitted in good faith, with sufficient notice, and pursuant to an exercise of the Debtors' reasonable business judgment. No Respondent has alleged any legal defect with the Proposed Sale, and it should be approved.

### **BACKGROUND**

#### **A. General Background**

7. On March 31, 2025, certain of the Debtors filed voluntary petitions for relief pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "**Bankruptcy Code**"). On April 16, 2025 and May 4, 2025, affiliates Controladora Dolphin, S.A. de C.V. and Embassy of the Seas Limited, respectively, also filed voluntary petitions for relief pursuant to chapter 11 of the Bankruptcy Code. The Chapter 11 Cases are being jointly administered for procedural purposes only. *See* Docket Nos. 32, 68 & 126. 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.

8. On May 6, 2025, the Office of the United States Trustee for the District of Delaware appointed an official committee of unsecured creditors. *See* Docket Nos. 128 & 151.

#### **B. Procedural Background**

9. On July 2, 2025, the Debtors filed a motion with the Court, seeking approval of certain bidding procedures, the sale of substantially all of the Debtors' assets, and related relief [Docket No. 299] (the "**Sale Motion**"). On July 29, 2025, the Court entered an order approving the Sale Motion [Docket No. 402] (the "**Bidding Procedures Order**"), which, among other things, approved the bidding procedures for the Sale(s) of the Debtors' Assets (the "**Bidding Procedures**").

10. On September 5, 2025, the Debtors filed the *Notice of Proposed Sale, Bidding Procedures, Auction, and Sale Hearing* [Docket No. 512] for the Debtors' Other Florida Assets, which, among other things, established the bid deadline and objection deadline for the Other Florida Assets (including the Marineland Property), and scheduled an Auction.

11. On October 2, 2025, the Debtors filed a proposed form of order approving the Sale of the Assets [Docket No. 563], and on October 14, 2025, the Debtors filed a notice of successful bidder [Docket No. 582], which named the Purchaser as the Successful Bidder for the Marineland Property.

12. On October 22, 2025, the Debtors filed a revised form of sale order, along with an executed real estate purchase agreement for the Marineland Property, under certification of counsel because the Debtors had not received any timely objections that had not been withdrawn or otherwise resolved. *See* Docket No. 630.

13. Thereafter, Respondents filed the Responses, and the sale hearing to consider the Proposed Sale of the Marineland Property was continued to November 10, 2025 to enable the Debtors to respond to the Responses and provide the Coalition (as defined below) with additional time to submit a bid for the Marineland Property. *See* Docket No. 670. In connection with that continuance, the Debtors informed counsel for the Coalition that the Debtors would extend the Bid Deadline for the Coalition to 12:00 p.m. (ET) on October 31, 2025. On October 30, 2025, counsel for the Coalition requested a further extension of the Bid Deadline. Given a November 5, 2025 deadline to file a reply in advance of the adjourned sale hearing scheduled for November 10, 2025, the Debtors offered to extend the Bid Deadline to 4:00 p.m. (ET) on November 3, 2025. To date, the Debtors have not received a Qualified Bid from the Coalition.

### C. Sale and Marketing Process

#### i. Keen and Greenhill's Marketing Efforts

14. To advance their chapter 11 objective to sell all or substantially all of the Debtors' assets for the benefit of the Debtors' estates and stakeholders, the Debtors retained real estate consultant and advisor, Keen-Summit Capital Partners LLC ("**Keen**") and investment banker, Greenhill & Co., LLC ("**Greenhill**"), to jointly conduct broad outreach to generate interest in the Sale of the Debtors' Other Florida Assets, including the Marineland Property, as either a going concern pursuant to a real property transaction. *See* Docket Nos. 300 & 301.

15. Keen's marketing efforts included, without limitation, the following:

- (a) creating a teaser for the portfolio of properties and a confidential information memorandum ("**CIM**") for the Other Florida Assets (approved on July 9, 2025), which was made available to prospective bidders and interested parties;
- (b) coordinating drone and exterior photography, which were used for the marketing materials, property listings and property videos;
- (c) creating a virtual data room with a dedicated URL address, [www.Keen-DolphinRealEstate.com](http://www.Keen-DolphinRealEstate.com) (made live on July 14, 2025) from which prospective bidders, subject to a non-disclosure agreement (an "**NDA**"), could access items such as architectural drawings, the CIM, environmental reports, property maps and site plans, title reports, and related documents;
- (d) directly soliciting strategic buyers and developers in Florida, regionally and nationally;
- (e) coordinating advertising the Other Florida Assets in *The Miami Herald*, *el nuevo Herald*, *Sun Sentinel*, *Florida Times Union*, *St. Augustine Record*, *WSJ – Florida Edition*, and the *South Florida Business Journal*;
- (f) coordinating digital advertising via internet listings, advertisements on websites, industry publications, and in electronic newsletters including *The Miami Herald Digital*, *Sun-Sentinel Digital*, *Miami Today*, *NAIOP Source Weekly eNews*, *Wealth Management Real Estate*, *Globestreet National Spotlight*, *Investor's Business Daily*, *IHIF Hotel HM Invest*, *IHIF Hotel Dev/RE Watch*, Keen's website, *CoStar.com*, *Crexi.com*, *LoopNet.com*, *RCM*, and several commercial real estate marketing websites that connect tens of thousands of investors and developers; and

- (g) engaging in numerous mass emails to over 20,000 contacts in Keen's proprietary database and specialty commercial real estate services.

16. Greenhill's outreach also included, without limitation, the following:

- (a) Contacting 277 parties and sharing a "teaser" with them introducing them to the opportunity and explaining how they could learn more; and
- (b) executing NDAs with 31 interested parties, and sharing a CIM with them.
- (c) Excluding the Rubel Letter of Intent, Greenhill received two (2) non-binding letters of intent for Marineland as a going concern. Greenhill did not receive any binding bids for Marineland as of the bid deadline.

17. These marketing efforts proved successful and resulted in strong engagement ahead of the Auction, including tens of thousands of views of the Debtors' properties across several platforms, over 180 parties executing confidentiality agreements to access Keen's virtual data room and conduct due diligence, and extensive dialogue with various parties regarding a variety of prospective transactions. Of those, several strategic bidders conducted purposeful due diligence, which included reviewing the Debtors' financials, contracts, and engaging in multiple discussions with Keen, Greenhill, the Debtors' counsel and advisors. The Debtors and their advisors engaged in meetings with potential bidders, provided tours of facilities and access to key personnel, vendors, and landlords. The Debtors also provided notice of the sale of the Property to all parties in interest, including the entire creditor matrix for the Chapter 11 Cases.

18. In consultation with their advisors and the Consultation Parties, and to establish a floor for the value of certain of the Other Florida Assets, the Debtors secured stalking horse bids (together, the "**Stalking Horse Bids**" and the corresponding bidders, the "**Stalking Horse Bidders**") for two of their commercial real estate assets, including a Qualified Bid from Hutson Companies, L.L.C. in the amount of \$3,500,000 for the Marineland Property.

19. Following the Debtors' designation of the Stalking Horse Bidders, the Debtors received several additional expressions of interest and ultimately obtained one additional Qualified



Bid, in the amount of \$3,700,000 (\$200,000 more than the applicable Stalking Horse Bid) for the Marineland Property.

*ii. The Coalition's Involvement in the Sale Process*

20. Throughout the Debtors' process of marketing the Marineland Property, Keen and Greenhill interacted with certain Respondents who have asserted Responses to the Proposed Sale of the Marineland Property. Specifically:

- (a) On May 29, 2025, Keen and Jim Jacoby, a developer and owner of property adjacent to the Marineland Property, discussed a potential sale transaction for the Marineland Property. Communications with Mr. Jacoby continued over the course of the following month with the intention of preparing Mr. Jacoby to submit a Qualified Bid.
- (b) On June 23, 2025, Mr. Jacoby submitted a non-binding letter of intent (the "**Jacoby Letter of Intent**") to acquire the Marineland Property. The Jacoby Letter of Intent consists of only two pages and lacked information required by the Bidding Procedures Order, including but not limited to executed transaction documents, designations of assumed and assigned executory contracts and leases, evidence of corporate authority to submit a bid, proof of financial ability to perform, proof of pro forma capital structure, and proof of necessary regulatory approvals.
- (c) The Debtors learned, in August 2025, that Mr. Jacoby was working with various other individuals, including certain Respondents, in connection with a bid for Marineland as a going concern. Specifically, the Debtors learned that (i) Jack Kasewitz, a self-published author of books regarding dolphins<sup>4</sup> and researcher into "complex musical form within dolphin vocalizations,"<sup>5</sup> as well as the husband of Donna Brewer Kasewitz, a prepetition (and current) shareholder of the Debtors' parent, who appears to market "Dolphin Energy Medicine" retreats on her website;<sup>6</sup> and (ii) Felicia Cook, who worked prepetition as a general manager of Marineland, toured Marineland with Mr. Jacoby and members of the Debtors' management team. The Debtors' advisors continued to work with Mr. Jacoby before and after the visit to the Marineland Property with the hope of obtaining a Qualified Bid from the group for Marineland as a going concern.
- (d) On September 23, 2025, Felicia Cook executed an NDA to obtain access to the Keen data room, which provided potential bidders with documents and data related to the Marineland Property. The data room tracking software maintained by Keen

---

<sup>4</sup> <https://kasewitz.com/speakdolphinbook.html>.

<sup>5</sup> <https://kasewitz.com/aboutjack.html>.

<sup>6</sup> <https://www.speakdolphin.com/dolphin-energy-medicine/>.

reflects that Ms. Cook reviewed property condition assessment reports and the bid procedures in connection with the sale of the Marineland Property.

- (e) On September 28, 2025, Ms. Cook again accessed the Keen data room and reviewed title work and Greenhill's going-concern teaser relating to the Marineland Property.
- (f) On September 28, 2025, the Debtors became aware upon information and belief, that Ms. Cook requested the Debtors' employees in Mexico provide her directly with information related to the Marineland Property. The Debtors' information technology team was, at a minimum, uncertain about Ms. Cook's authority to receive the information requested. In any event, the Debtors believe Ms. Cook should have at all times followed the diligence protocols established by the Bidding Procedures to obtain privileged information about the Sale. The Bidding Procedures were implemented to ensure a level playing field for all participants.
- (g) On September 29, 2025, Keen sent Ms. Cook an email highlighting the October 6, 2025 bid deadline and the requirement to place a Qualified Bid by the bid deadline in order to participate in the October 10, 2025 auction. Keen received no response from Ms. Cook to this email.
- (h) On October 1, 2025, Keen sent Ms. Cook another email, once again highlighting the October 6, 2025 bid deadline and the requirement to place a Qualified Bid by the bid deadline in order to participate in the October 10, 2025 auction. Keen received no response from Ms. Cook to this email.
- (i) On October 8, 2025, two days after the bid deadline for the Other Florida Assets, Greenhill received an email communication from Barbara Rubel stating that she and her husband, Jon Rubel (together with Mrs. Rubel, the "**Rubels**" and together with Jack and Donna Brewer Kassewitz and Felicia Cook, the "**Coalition**"), were out of the country, but were very interested in the Marineland Property. In their email, the Rubels asked Greenhill to outline the process for submitting a Qualified Bid.
- (j) After the Rubels' first outreach, the Debtors and Greenhill continued to engage with the Coalition to obtain a Qualified Bid for Marineland.
- (k) Although Mr. Kassewitz had been involved in and aware of the Sale Process for several months, he never personally executed an NDA prior to the Bid Deadline, and the Debtors are unaware of any meaningful diligence conducted by Mr. Kassewitz with respect to the Marineland Property. Without such information, Mr. Kassewitz would not have been in a position to construct detailed business plans in connection with the Marineland Property or to ascertain the capital requirements necessary to operate the Marineland Property as a going concern.
- (l) On October 10, 2025 (the Friday before the Monday auction), Greenhill received additional email correspondence from the Rubels, copying the rest of the Coalition. In these emails, the Rubels sent (i) proof of funds, up to a total amount of available cash in the amount of approximately \$5.8 million; and (ii) a non-binding letter of intent to purchase the Marineland Assets (the "**Rubel Letter of Intent**"). The Rubels later wired \$25,000 as a deposit to Verita Global, the Debtors' claims and

noticing agent who is acting as escrow agent with respect to the Sale. The Rubel Letter of Intent spanned three pages in length and failed to include any of the information necessary for the Debtors to determine whether the Coalition could reasonably and responsibly assume the Marineland operations and consummate a sale transaction. Specifically, the Rubel Letter of Intent lacked (i) transaction documents of any kind; (ii) designations of assumed and assigned executory contracts and leases; (iii) evidence of corporate authority to submit a bid; (iv) proof of financial ability to perform; (v) proof of pro forma capital structure; and (vi) a listing of and a plan to obtain the necessary regulatory approvals to consummate a transaction. The Rubel Letter of Intent was contingent on obtaining the necessary licensing and permits from the USDA and all other applicable governing agencies to operate Marineland, which licensing and permits were not identified with any specificity. The Rubel Letter of Intent also made clear that the Coalition had not yet retained counsel. In addition, Jack Kassewitz executed an NDA on behalf of the “Working Group for Jon and Barbara Rubel” to access financial and other data regarding Marineland in the Debtors’ data room. Thereafter, Barbara Rubel was provided access to the data room, where the Debtors understand that she reviewed certain transaction documents and the bidding procedures.

- (m) The next day, on October 11, 2025, Greenhill engaged in additional email correspondence with the Rubels about the structure of their bid. Because the Rubel Letter of Intent provided no evidence that would give the Debtors any assurance that the Coalition had any ability to obtain the regulatory approvals required to take possession of the animals at the Marineland Property, Greenhill advised (at the direction of the Debtors) that, while the Debtors were willing to cooperate with the Rubels in obtaining the necessary regulatory approvals after the Auction, the Rubels’ bid could not be conditioned upon obtaining such regulatory approvals because the Debtors had absolutely no evidence that the Rubels had either a plan to obtain the approvals or any prospect of success in obtaining such approvals.
- (n) On October 12, 2025 (the Sunday before the Monday auction), Greenhill was copied on various email correspondences between the Debtors’ professionals and the Coalition. A Qualified Bid from the Rubels on behalf of the Coalition never materialized despite efforts in the preceding days and months to procure one. Having not submitted a Qualified Bid, and in accordance with the Bidding Procedures, the Debtors commenced the Auction on October 13, 2025 with the Qualified Bidders (who had all complied with the Bidding Procedures and had submitted the documentation and information necessary to transact). Delightful Development submitted the winning bid—an all-cash offer in the amount of \$7.1 million—for the sale of the Marineland Property.
- (o) On October 16, 2025, the deadline to object to conduct of the Auction passed, and the Debtors did not receive any timely responses or other objections, including from the Coalition, to the conduct of the Auction.
- (p) On October 23, 2035, the Debtors learned of the Coalition’s Responses for the first time, which were docketed on the Friday before the sale hearing scheduled for October 27, 2025.

- (q) On October 27, 2025 and October 28, 2025, following the conclusion of the initial sale hearing for the Marineland Property, the Debtors communicated with counsel for the Coalition (who had been retained shortly before the hearing) and provided, among other things, an overview of prior communications with the Coalition, a detailed overview of the bid requirements, a copy of the Bidding Procedures Order (including the Bidding Procedures), a copy of the form of going concern asset purchase agreement available to all bidders, and a request for information about any connections that the Coalition may have had with prior management and the Debtors. In addition, the Debtors requested that any bid submitted by the Coalition be received on or before Friday, October 31, 2025 to provide the Debtors with sufficient time to consider the bid in advance of the continued sale hearing.
- (r) On October 30, 2025, counsel for the Coalition contacted Debtors' counsel and requested additional time to submit a bid for Marineland. The Debtors further extended the deadline to submit a bid for Marineland as a going concern, to November 3, 2025. However, the Debtors never received a bid from the Coalition.

21. As detailed above, quite the opposite of being "shut out" of the process, the Coalition has been provided with ample opportunity to obtain funding and submit a Qualified Bid. Ultimately, the Responses submitted by the Coalition amount to a Hail Mary strategy that the Debtors have carefully considered, but ultimately had no alternative but to reject because the Coalition has never to date submitted any binding bid, much less a Qualified Bid, for Marineland as a going concern. Moreover, the Rubel Letter of Intent poses unacceptable closing and other risks and costs for the Debtors that were identified to the Coalition's counsel following the initial hearing for the Proposed Sale, which have never been addressed.

#### **D. The Auction and Proposed Sales**

22. On October 13, 2025, the Debtors commenced by videoconference the Auction for certain of the Other Florida Assets, including the Marineland Property. At the outset, the Debtors' advisors met with each of the Qualified Bidders, who were all unaffiliated third parties, to address any questions that the bidders may have had, and to review the applicable Bidding Procedures. Harold Bordwin, of Keen, presided over the Auction, with the assistance of the Debtors' bankruptcy counsel. Counsel for the Consultation Parties were present, along with the Qualified

Bidders and their counsel, as applicable. Prior to commencing the bidding, each of the Qualified Bidders confirmed that they had not colluded with any other bidder and had complied with and agreed to be bound by the Bidding Procedures, as set forth in the Bidding Procedures Order. The Debtors determined to proceed with bid increments in the amount of \$50,000.

23. The Auction for the Marineland Property commenced with an overbid of \$3,750,000. Bidding proceeded for 34 rounds, after which the Debtors designated Delightful Development LLC as the Successful Bidder, with a final cash bid of \$7,100,000, and Hutson Companies, LLC as the Backup Bidder, with a final cash bid of \$7,050,000. *See* Docket No. 582.

### **REPLY**

#### **I. The Proposed Sale Satisfies Section 363 of the Bankruptcy Code and Should Be Approved**

24. Section 363(b) of the Bankruptcy Code provides that a debtor “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b). “The standard under § 363(b) is well-settled—a debtor may sell assets outside the ordinary course of business when it has demonstrated that the sale of such assets represents the sound exercise of business judgment.” *In re Antunes*, No. BR 15-16553-MDC, 2019 WL 913704, at \*8 (Bankr. E.D. Pa. Feb. 19, 2019). In applying this standard, courts in the Third Circuit will approve the sale if the debtor demonstrates that “(1) there is a sound business purpose for the sale; (2) the proposed sale price is fair; (3) the debtor has provided adequate and reasonable notice; and (4) the buyer has acted in good faith.” *In re Decora Indus., Inc.*, No. 00-4459 (JJF), 2002 WL 32332749, at \*2 (D. Del. May 20, 2002) (citing *Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991)); *see also In re Exaeris, Inc.*, 380 B.R. 741, 744 (Bankr. D. Del. 2008) (applying heightened scrutiny due to debtor’s insider relationship with buyer and finding standard

not satisfied in light of “dearth of evidence of marketing, the absence of any evidence of the value of assets, no evidence whatsoever about the negotiations”).

25. An objecting party has an obligation to provide sufficient evidence in support of its position. *See In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 155 (D. Del. 1999) (citing *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983)); *see also In re Howard*, No. 2:10CV962, 2011 WL 578777, at \*5 (W.D. Pa. Feb. 9, 2011) (“[A] party objecting to an order of authorization under § 363(b) has the burden of advancing sufficient grounds to support its position.”).

**A. The Debtors Reasonably Determined in Their Business Judgment That the Proposed Sale Optimizes Value and Certainty for All Constituents.**

26. The Court should defer to the Debtors’ business judgment for selling the Marineland Property, because the credible evidence before the Court establishes that the Debtors considered all relevant circumstances and determined that the Successful Bid was the bid most likely to optimize value and provide certainty for all constituents. *See Stanizale v. Nachtomi (In re Tower Air, Inc.)*, 416 F.3d 229, 234 (3d Cir. 2005) (indicating the “business judgment rule is a presumption that directors making a business decision, not involving self-interest, act on an informed basis, in good faith and in the honest belief that their actions are in the corporation’s best interest”); *Culp v. Stanziale (In re Culp)*, 545 B.R. 827, 844 (D. Del. 2016) (“Where the trustee articulates a reasonable basis for the business decision, courts will generally not entertain objections. If a valid business justification exists, then a strong presumption follows that the agreement was negotiated in good faith and is in the best interests of the estate.”) (internal citations omitted); *see also In re Johns–Manville Corp.*, 60 B.R. 612, 616 (Bankr.S.D.N.Y.1986). ““If a valid business justification exists, then a strong presumption follows that the agreement at issue was negotiated in good faith and is in the best interests of the estate; the burden of rebutting that presumption falls to parties opposing the transaction.”” *In re Filene’s Basement*, No. 11-13511

(KJC), 2014 WL 1713416, at \*12 (Bankr. D. Del. Apr. 29, 2014). Accordingly, the Court should approve an asset sale, like the Proposed Sale, as long as the Sale “constitutes a reasonable and sound exercise of the Debtor’s business judgment[.]” *In re Dura Auto. Sys., Inc.*, No. 06-11202 (KJC), 2007 WL 7728109, at \*7 (Bankr. D. Del. Aug. 15, 2007).

27. The Debtors, in consultation with their advisors and counsel, evaluated the Successful Bid and determined, in their business judgment, that the Successful Bid presented a value-maximizing opportunity for the estates that would mitigate substantial transaction risk and cost, allow for a coordinated and organized transfer of the Debtors’ animals to new homes with accredited institutions, and provide much needed liquidity (which will be used to fund operations and animal welfare initiatives). Specifically, as detailed in the Wagstaff Declaration, the Debtors will be facing liquidity constraints in the near term when their DIP Loan matures on January 4, 2026, and Marineland currently operates in a deficit, requiring supplemental funding to satisfy ongoing obligations. If proceeds of the Proposed Sale are not realized before year end, the Debtors’ estates will be insolvent absent further funding. This reality requires the Debtors to implement an efficient and prompt sale transaction that minimizes transaction risks and costs. The proceeds of the Proposed Sale will be used to fund the Debtors’ operations and other obligations through year end and into the first quarter of 2026.

28. In sum, the evidentiary record reflects that the Debtors thoughtfully considered, among other things, the Debtors’ current business performance, the Debtors’ ongoing financial and other obligations, the Debtors’ current liquidity and the upcoming maturity of the Debtors’ postpetition financing, the interests of the Debtors’ creditors, the welfare of the Debtors’ animals, and all applicable regulatory laws. The Debtors’ decision to accept the Successful Bid provides the Debtors and their stakeholders with a clear path to a value maximizing transaction that avoids

substantial cost and delay and contemplates a reasonable timeline to wind down the Debtors' operations, and is therefore a reasonable exercise of the Debtors' business judgment.

**B. The Debtors Have a Fiduciary Duty to Maximize Value**

29. After a full and fair marketing process, the Successful Bid was selected because it will maximize the value of the Debtors' estates. *See Official Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery*, 330 F.3d 548, 573 (3d Cir. 2003) (holding that, where no trustee is appointed, 11 U.S.C. § 1107(a) provides that the debtor-in-possession enjoys the powers that would otherwise vest in the bankruptcy trustee, which include the fiduciary duty to maximize the value of the bankruptcy estate); *In re Marvel Ent. Grp., Inc.*, 140 F.3d 463, 474 (3d Cir. 1998) (stating that the debtor-in-possession's fiduciary duty to maximize includes the "duty to protect and conserve property in its possession for the benefit of creditors"); *In re Pack Liquidating, LLC*, 658 B.R. 305, 319 (Bankr. D. Del. 2024) (applying the fiduciary duty to maximize creditor recoveries to the debtor-in-possession).

30. A debtor's fiduciary duty to maximize value extends to sales of property and assets under section 363 of the Bankruptcy Code. *See In re Family Christian, LLC*, 533 B.R. 600, 621 (Bankr. W.D. Mich. 2015) (ruling that debtors, "in conducting the sale process, have a fiduciary duty to maximize the value of their estates"); *In re Mountain States Rosen, LLC*, 619 B.R. 750, 754 (Bankr. D. Wyo. 2020) (stating that "[r]egardless of a debtor's discretion, debtors, in conduction the sale process, have a fiduciary duty to maximize the value of their estates"); and *In re Integrated Res., Inc.*, 135 B.R. 746, 750 (Bankr. S.D.N.Y. 1992), *aff'd*, 147 B.R. 650 (S.D.N.Y. 1992) (stating that "[w]hen a debtor desires to sell an asset, its main responsibility, and the primary concern of the bankruptcy court, is the maximization of the value of the asset sold"); *see also In re Parkcliffe Dev., LLC*, No. 24-30814, 2025 WL 320909, \*10 (Bankr. N.D. Oh. Jan. 28, 2025)



(holding that the purpose behind the sale of the debtor's assets was "to maximize the recovery on, and realizable value of [d]ebtor's real estate").

31. The Successful Bid will, among other things: (i) provide the estates with much needed liquidity to, among other things, care for the Debtors' animals, satisfy ongoing operational liabilities, and satisfy chapter 11 expenses; (ii) allow the Debtors to promptly and efficiently consummate the Sale transaction; (iii) provide the Debtors with a post-close opportunity to safely and efficiently transfer their animals to new, accredited homes; and (iv) mitigate execution risk and expense.

32. Notwithstanding that the Rubel Letter of Intent is not a Qualified Bid, and is not an actionable proposal on that basis alone, the Debtors have also determined that the Rubel Letter of Intent does not maximize the value of the Marineland Property for the Debtors' estates and creditors because it provides millions of dollars less value to the Debtors' estates, imposes substantial execution risk and other costs associated with implementing the transaction proposal, delays access to an important source of funding for the Chapter 11 Cases, and would require the Debtors to obtain additional funding to support Marineland in the amount of approximately \$200,000 per month for approximately the next six months.

**C. The Robust Marketing Process and Competitive Auction Produced a Fair and Reasonable Price for the Marineland Property.**

33. The Debtors have established the fairness and reasonableness of the proposed sale price for the Marineland Property, because, absent evidence of fraud or collusion, a market test—such as the robust marketing process and public Auction in the Chapter 11 Cases—generally establishes fair value. *See, e.g., Cohen v. KB Mezzanine Fund II, LP (In re SubMicron Sys. Corp.)*, 432 F.3d 448, 461 (3d Cir. 2006) ("Section 363 attempts to avoid the complexities and inefficiencies of valuing collateral altogether by substituting the theoretically preferable

mechanism of a free market sale to set the price. The provision is premised on the notion that the market's reaction to a sale best reflects the economic realities of assets' worth."); *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 149 (3d Cir. 1986) (acknowledging general rule that auctions establish asset value, but remanding sale order to bankruptcy court due to evidence of collusion because "no 'auction' took place [if it was tainted by collusion]; thus the 'bidding' could not, by definition, serve as the final arbiter of the 'value' of [the debtor's] assets"); *Kravitz v. Samson Energy Co., LLC (In re Samson Res. Corp.)*, No. 15-11934 (BLS), 2023 WL 4003815, at \*1 (Bankr. D. Del. June 14, 2023) ("It is black letter law in this Circuit that the gold standard for determining the value of an asset is to sell it in an open and fair market.").<sup>7</sup>

34. As noted above and in the Bordwin Declaration, the value of the Marineland Property was subject to a full and fair public market test and evaluation that spanned months, and on appropriate notice to interested parties, pursuant to which two Qualified Bidders submitted Qualified Bids and then proceeded to vie over the appropriate purchase price for Marineland over 34 rounds of bidding at the Auction. In addition, the Proposed Sale is the result of arm's-length negotiations between the Debtors and the Purchaser. No other bidders emerged to offer a higher

---

<sup>7</sup> See also *In re 388 Route 22 Readington Holdings, LLC*, No. 20-2629, 2021 WL 4811409, at \*2 (3d Cir. Oct. 15, 2021) (noting that "a competitive auction is highly probative and, if competitive, can be sufficient to determine an asset's fair value" in finding that district court property concluded non-conclusive auction was strong evidence that purchaser paid fair value); *In re Champion Enters., Inc.*, No. 09-14019 (KG), 2012 WL 3778872, at \*35 (Bankr. D. Del. Aug. 30, 2012) ("A market test is the best evidence of a company's value at a given point in time. Here, Champion sold its assets under Court supervision, providing a true market test of the fair market value of Champion."); *In re Smurfit-Stone Container Corp.*, No. BKR. 09-10235 (BLS), 2010 WL 2403793, at \*10 n.6 (Bankr. D. Del. June 11, 2010) ("The Court freely acknowledges that the 'market test,' consisting of a court-approved solicitation and auction process, represents the format utilized in the overwhelming majority of asset sales seen by this Court."); *In re Allonhill, LLC*, No. 14-10663 (KG), 2019 WL 1868610, at \*40 (Bankr. D. Del. Apr. 25, 2019), *aff'd in part, remanded in part*, No. 13-11482 (KG), 2020 WL 1542376 (D. Del. Mar. 31, 2020) (finding that "a market test – reflecting the actual price a willing buyer agrees to pay – is the best determination of fair market value" and an alternative "after the fact valuation cannot be substituted for the parties' actual agreement on value" once "the market has spoken" in context of post-sale claims arising from purchase agreement).

or otherwise better bid for the Marineland Property, and no party has suggested, let alone presented evidence of, fraud or collusion as to the Proposed Sale.

35. In sum, the Successful Bid reflects the results of extensive marketing, followed by good faith, arm's-length negotiations between sophisticated parties, all of which establishes compelling, uncontroverted evidence that the resulting price is both fair and reasonable. Accordingly, the Debtors have met their burden with respect to value, and the Proposed Sale should be approved.

**D. The Debtors Provided Accurate, Reasonable Notice of the Sale to All Potentially Interested Bidders and Parties in Interest.**

36. The Debtors have satisfied the requirement to provide notice by providing timely notice of the Sale, Auction, and sale hearing to the Debtors' creditors and all other parties in interest that are entitled to notice, as well as all parties that expressed a bona fide interest in acquiring the Marineland Property in accordance with the Bidding Procedures and the Bidding Procedures Order. *See* Docket Nos. 466, 471, 495, 498, 527, 533, & 581. The Debtors' service of the Sale Notice went above and beyond the minimum requirements under Bankruptcy Rules 2002(a) and (c), which require the Debtor to notify *creditors* of the Sale, the terms and conditions of the Sale, the time and place of the Auction, and the deadline for filing any objections. In addition, to maximize the exposure of the Marineland Property to the market, the Debtors published notice of the sale in *The New York Times*. *See* Docket No. 681. Importantly, no party in interest has challenged the adequacy of the notices provided by the Debtors.

**E. The Successful Bidder Acted in Good Faith.**

37. The Debtor has satisfied the good faith requirement because the extensive evidence before the Court regarding the marketing process, bid negotiations, and Auction provides no reason to suspect that the Successful Bidder acted in a way that would undermine the integrity of the sale

process. *See Abbotts Dairies*, 788 F.2d at 147 (“The requirement that a purchaser act in good faith . . . speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a purchaser’s good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.”) (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)). The Bordwin and Wagstaff Declarations establish that the parties who participated in the Auction acted in good faith, without collusion, or fraud, and no party has alleged any such wrongful acts. Therefore, the good faith purchaser requirement has been satisfied.

## **II. The Court Should Overrule the Responses**

38. None of the assertions raised in the Responses provide any valid legal basis to deny approval of the Successful Bid, and no binding bid (no less a Qualified Bid that is actionable) has been submitted by any of the Respondents. Therefore, the Proposed Sale should be approved.

### **A. Respondents Lack Standing to Object to the Proposed Sale**

39. To the extent Respondents assert a general concern for animal welfare, a desire to see the Marineland operations continue as a local landmark or attraction, or are objecting to the Proposed Sale in the capacity of a “disappointed bidder,” such Respondents lack legal standing to object to the Proposed Sale. Standing in bankruptcy cases is governed by the terms of 11 U.S.C. § 1109(b), which states that,

[a] party in interest, including the debtor, the trustee, a creditors’ committee, an equity security holders’ committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter.

40. Although the list of potential parties in interest in 11 U.S.C. § 1109(b) is not exclusive, this section has been construed to apply to “anyone who has a legally protected interest that could be affected by a bankruptcy proceeding.” *In re Glob. Indus. Techs., Inc.*, 645 F.3d 201,

210 (3d Cir. 2011) (quoting *In re James Wilson Associates*, 965 F.2d 160, 169 (7th Cir.1992)). Disappointment in the auction process (for example, that Marineland may be sold to a real estate developer or other bidder) or generalized grievances about the closing of a historical local attraction are not interests to be addressed by the Bankruptcy Code and this Court’s approval of the Proposed Sale, and they should not be considered. *See In re MTE Holdings LLC*, No. 19-12269 (CTG), 2021 WL 3743201, at \*10 (Bankr. D. Del. Aug. 17, 2021) (“Aside from circumstances that bear on the integrity of the auction process, a disappointed bidder is thus outside the “zone of interests” protected by Section 363 of the Bankruptcy Code.”); *In re O’Brien Env’t Energy, Inc.*, 181 F.3d 527, 531 (3d Cir. 1999) (holding that appellate standing in the context of a sale is available to creditors, but not to “disappointed prospective purchasers”); *see also In re Colony Hill Assocs.*, 111 F.3d 269, 273 (2d Cir. 1997) (“an unsuccessful bidder—whose only pecuniary loss is the speculative profit it might have made had it succeeded in purchasing property at an auction—usually lacks standing to challenge a bankruptcy court’s approval of a sale transaction”).

**B. The Coalition Had Ample Opportunity to Participate in the Sale and Auction Process**

41. As noted in detail above, various individuals associated with the Coalition, which asserts that it was “shut out” of the Auction, had been working for *months* on submitting a bid for Marineland as a going concern. First, members of the Coalition attempted to pair up with a local developer, but when that failed, they attempted a last-ditch, untimely, and rushed effort to submit a non-binding letter of intent with the Rubels on the eve of an Auction, which was poised to go forward with various other bidders who had timely submitted Qualified Bids and complied with the Bidding Procedures.

42. Had the Coalition actually submitted a binding bid, conducted thorough diligence regarding the Marineland operations, hired counsel to inform its decisions and assist it in

submitting the documentation and obtaining the approvals necessary to transact, provided any evidence as to the Coalitions' ability to obtain required licensing or accreditation that would allow them to take possession and legal control over the animals, or provided business plans and other financial documents indicating that the Coalition could reasonably operate Marineland as a going concern, the Debtors may have been willing to risk delaying the Auction—even if such action may have risked alienating the bidders that had submitted Qualified Bids—to provide the Coalition with additional time to transact. As it was, however, nothing about the Coalition's preparation, documentation, or financial wherewithal gave the Debtors any indication that providing the Coalition with additional time would lead to an actionable proposal, particularly given that the Debtors had been facilitating certain of the Coalition's members' inquiries for months. As the Coalition had never submitted a Qualified Bid in advance of the Auction, the Debtors reasonably relied upon the Bidding Procedures, which provided that only Qualified Bidders were eligible to participate in the Auction, and Respondents' objection as it relates to the Auction must be overruled.<sup>8</sup>

43. The Debtors' assessment of the Coalition's ability to transact appears to have been justified. Since the initial hearing for approval of the Sale Process, on October 27, 2025, the Debtors provided the Coalition with additional time to submit a Qualified Bid, and provided straight-forward instructions on how to submit a bid, a draft asset purchase agreement, copies of the Bidding Procedures Order (including the Bidding Procedures), and a request to provide financial wherewithal information, among other requests. The Coalition has been unable to

---

<sup>8</sup> See Bidding Procedures at pp. 4 (“To be eligible to participate in the Auction, each offer, solicitation, or proposal . . . must satisfy each of the conditions set forth below, as determined by the Debtors, in consultation with the Consultation Parties. A Bid will not be considered qualified for the Auction if such Bid does not satisfy each of the following conditions . . .”), 10 (“Only Qualified Bidders may participate in the Auction.”), and 11 (“Unless otherwise ordered by the Bankruptcy Court for cause shown, only the Qualified Bidders are eligible to participate at the Auction . . .”).

provide a Qualified Bid or the information necessary for the Debtors to assess the Coalition's ability to take possession of Marineland and its animals. Without such information, the Debtors cannot reasonably turnover their significant assets to the Coalition, and have no actionable alternative to proceeding with the Proposed Sale.

### **CONCLUSION**

At the conclusion of a comprehensive Sale Process, implemented by experienced professionals and overseen by an independent director and professional management team, the Debtors determined that the Successful Bid from the Purchaser is the highest and best offer to acquire the Marineland Property under all of the various circumstances. The Proposed Sale to the Purchaser can be executed promptly with minimal risk, preserves the Debtors ability to safely transfer their animals to other accredited institutions in accordance with applicable law, and otherwise maximizes the value of the estates. Therefore, the Court should approve the Proposed Sale and overrule the Responses.

Dated: November 5, 2025

*/s/ Allison S. Mielke*

**YOUNG CONAWAY STARGATT & TAYLOR, LLP**

Robert S. Brady (No. 2847)

Sean T. Greecher (No. 4484)

Allison S. Mielke (No. 5934)

Jared W. Kochenash (No. 6557)

Rodney Square

1000 North King Street

Wilmington, Delaware 19801

Telephone: (302) 571-6600

Email: [rbrady@ycst.com](mailto:rbrady@ycst.com)

[sgreecher@ycst.com](mailto:sgreecher@ycst.com)

[amielke@ycst.com](mailto:amielke@ycst.com)

[jkochenash@ycst.com](mailto:jkochenash@ycst.com)

*Counsel to the Debtors and Debtors in Possession*