

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

LEISURE INVESTMENTS HOLDINGS LLC,
et al.,¹

Debtors.

Chapter 11

Case No. 25-10606 (LSS)

(Jointly Administered)

**Re: Docket Nos. 299, 402, 512, 563, 636, 639–
644, 650, 657–661, 669, 679, 680 & 685**

**DEBTORS' REPLY IN SUPPORT OF THE PROPOSED ANIMAL
TRANSFER AGREEMENT AND THE SALE OF CERTAIN ANIMALS, FREE
AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES**

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 transfer (the “**Proposed Transfer**”) of certain of the Debtors’ marine animals (the “**Transferred Animals**”) currently residing at the Debtors’ property located at 9600 N. Oceanshore Blvd., Flagler County, Florida, which is generally known as “Marineland” (“**Marineland**”) and in response to the objections [Docket Nos. 636, 639–644, 650, 657–661, 669, 679, 680 & 685] (collectively, the “**Responses**”) to the Proposed Transfer filed by various individuals (collectively, the “**Respondents**”).² In further support of the Proposed Transfer, the Debtors rely upon the *Declaration of Robert Wagstaff in Support of the Proposed*

¹ 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.

² 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, the Bidding Procedures Order (as defined herein), or the Marineland Reply, as applicable.



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Sale of Certain of the Marineland Property (9600 B. 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 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.* (the “**Mleczko Declaration**” and collectively with the Wagstaff Declaration and the Bordwin Declaration, the “**Supporting Declarations**”), filed concurrently herewith. In addition, to avoid duplication, the Debtors incorporate by reference, as applicable, the arguments set forth in the *Debtors’ Reply in Support of the Proposed Sale of the Marineland Property (9600 N. Oceanshore Blvd., Flagler County, Florida)* (the “**Marineland Reply**”), also filed concurrently herewith, and further state as follows:

PRELIMINARY STATEMENT

1. The Debtors have identified an accredited, licensed, unaffiliated third party that operates a marine facility in Florida that emphasizes educational programming and maintains natural saltwater lagoons to provide a home for three of the Debtors’ dolphins—a bonded family comprising two siblings and a mother. The arrangement, which has been codified in an animal transfer agreement (the “**ATA**”) among the Debtors and Theater of the Sea, Inc. (“**Theater of the Sea**”), will provide the Debtors with \$500,000 of additional liquidity, will cover the costs to transfer the Transferred Animals to Theater of the Sea’s facility, and will ensure that the Transferred Animals can be transferred together to a suitable home.

2. Since entering into the ATA with the Debtors, Theater of the Sea has arranged and paid for its own personnel to be on site at Marineland to care for and bond with the Transferred

Animals pending court approval and a close of the transaction, demonstrating Theater of the Sea's commitment to the health and well-being of the Transferred Animals.

3. Given the above, the circumstances detailed in the Supporting Declarations, and the Marineland Reply, the Debtors have determined, in an exercise of their reasonable business judgment, that transfer of the Transferred Animals to Theater of the Sea will maximize value for the Debtors' estates and creditors and is the best outcome, both for the Debtors' animals and the Debtors' estates and creditors. The Debtors have provided the requisite notice of the Proposed Transfer, and the Proposed Transfer has been submitted in good faith, as demonstrated by Theater of the Sea's actions to date and the Supporting Declarations. Not only have the Debtors met their evidentiary burden for approval of the Proposed Transfer, such transfer also makes abundant practical sense, from both a business perspective and an animal health and welfare perspective, and it should be approved.

4. The Court's decision to approve the Proposed Transfer rests on the business judgment standard, which is highly deferential to debtors in possession, acting as fiduciaries for those creditors with an actual, pecuniary interest in the Debtors' estates. Under that standard, so long as a debtor can demonstrate that it possesses a valid business justification and that the process was fair, then a proposed sale must be approved.

5. Here, no party disputes that this standard has been met. The Proposed Transfer is supported by the DIP Lenders, Prepetition First Lien Noteholders, as well as the Committee, and the Office of the United States Trustee also does not object. Respondents have not articulated any valid legal basis to withhold approval of the Proposed Transfer, and they lack standing to object because they do not have any economic or other property interests in the Proposed Transfer. To the extent that the Responses implicate the integrity of the sale and marketing process, they are

meritless and incidental to the Proposed Transfer, which can and should be approved irrespective of the Sale of Marineland as a going concern, as detailed below.

BACKGROUND

A. General Background

6. 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.

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

B. Procedural Background

8. 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**").

9. On July 3, 2025, the Court entered orders authorizing the Debtors to retain Greenhill & Co., LLC ("**Greenhill**") as their investment banker and Keen-Summit Capital Partners LLC ("**Keen**") as their real estate advisor. Since their retention, Greenhill and Keen have assisted the Debtors in conducting a comprehensive marketing process for the Debtors' assets and operations, as set forth in detail in the Bordwin Declaration and the Mleczko Declaration and discussed in further detail in the Marineland Reply.

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, and scheduled an Auction.

11. On October 2, 2025, the Debtors filed a proposed form of order approving the Sale of the Debtors' Assets [Docket No. 563], and on October 14, 2025, the Debtors filed a notice of successful bidder [Docket No. 603], which named Theater of the Sea as the Successful Bidder for the Transferred Animals.³

12. On October 22, 2025, the Debtors filed a revised form of sale order, along with an executed animal transfer agreement for the Transferred Animals, under certification of counsel because the Debtors had not received any timely objections that had not been withdrawn or otherwise resolved. *See* Docket No. 631.

³ The combined aggregate consideration for the Proposed Transfer and the proposed sale of the real property associated with Marineland is \$7,600,000.

13. Thereafter, Respondents filed the Responses, and the sale hearing to consider the Proposed Transfer was continued to November 10, 2025 to enable the Debtors to respond to the Responses and provide certain Respondents with additional time to submit a bid for Marineland as a going concern. *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.

REPLY

I. The Court Should Approve the Proposed Transfer

14. 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”). An objecting party has an obligation to provide sufficient evidence in support of its position. *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.”).

15. The Debtors have demonstrated by a preponderance of the evidence that the Proposed Transfer satisfies the applicable standard for approval under section 363 of the Bankruptcy Code. The sale and marketing process for the Debtors’ Assets, including the Transferred Animals, was conducted in a manner consistent with the Bidding Procedures approved by this Court after a four-month marketing process conducted by experienced professionals. As detailed above, the Proposed Transfer is the highest or otherwise best bid for the Transferred Animals because it provides the highest value received for the Transferred Animals, while also providing the Transferred Animals an opportunity to stay together as a bonded family at an accredited, licensed, and educational facility in Florida. Therefore, the Proposed Transfer should be approved.

A. The Debtors Reasonably Determined in Their Business Judgment That the Proposed Transfer Optimizes Value for All Constituents and Provides the Best Outcome for the Transferred Animals.

1. The Debtors’ Business Judgment Is Entitled to Deference

16. The Court must approve the Sale if it finds that it was a valid exercise of the Debtors’ business judgment. The business judgment standard is highly deferential, and “[w]here

the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct.” *In re Filene's Basement, LLC*, No. 11-13511 (KJC), 2014 WL 1713416, at *12 (Bankr. D. Del. Apr. 29, 2014) (quoting *In re Johns–Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986)). Likewise, in the context of an auction and sale, courts defer to the debtor’s business judgment when selecting the highest and best bid. *In re Borders Grp., Inc.*, 453 B.R. 477, 482 (Bankr. S.D.N.Y. 2011) (“[T]he trustee or DIP is entitled to great judicial deference in deciding which bid to accept as the best and highest bid . . . the Court should not step in and assume a role and responsibility properly placed by the Code in another’s hands.”).

17. Here, the Court should defer to the Debtors’ business rationale for transferring the Transferred Animals, because the credible evidence before the Court establishes that the Debtors considered all relevant circumstances and determined that the Proposed Transfer would optimize value. *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.”” *Filene’s*

Basement, 2014 WL 1713416, at *12 (quoting *MF Global*, 467 B.R. at 730). Accordingly, the Court should approve an asset sale, like the Proposed Transfer, as long as it “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).

18. The Debtors, in consultation with their advisors and counsel, evaluated the Proposed Transfer and ATA and determined, in their business judgment, that the Proposed Transfer presented a value-maximizing opportunity for the estates that would provide the Transferred Animals with a suitable home at an accredited institution, allow the Transferred Animals to remain together as a bonded family, increase the quality of the habitat for the remaining dolphins at Marineland, and provide much needed liquidity (which will be used to fund operations and animal welfare initiatives). As noted above, based on its actions to date in connection with the care and oversight of the Transferred Animals, as well as its preparedness for completing the necessary documentation required to legally transfer the Transferred Animals to their accredited, licensed facility, Theater of the Sea has demonstrated its readiness to immediately accept responsibility and care for the Transferred Animals.

19. 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. This reality requires the Debtors to promptly commence their animal relocation efforts without delay. In addition, the Debtors considered that the Proposed Transfer of the Transferred Animals to Theater of the Sea will incrementally reduce operational costs, and will also benefit the remaining dolphins housed at Marineland, which is currently operating at maximum capacity, by decreasing animal density at the Marineland habitat.

20. In contrast, the Coalition has never submitted a Qualified Bid, or even any binding bid, even after having been given additional time and assistance, and after months of discussions with the Debtors. The Coalition's inability to comply with the threshold requirements for submitting a Qualified Bid is a factor when considering the value of any potential transaction offered by the Coalition because the Debtors require a prompt closing to ensure that the Debtors have a source of liquidity, and cannot afford to incur unnecessary costs and expenses addressing issues and deficiencies that may arise in the context of a transaction contemplated by the Coalition. Moreover, the Debtors have significant concerns about whether they could reasonably transfer their operations, including the Transferred Animals and the 14 other dolphins housed at Marineland, to parties that do not appear to be sufficiently prepared to discharge such significant responsibilities.

21. 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 pursuit of speculative proposals that are unlikely to lead to any actionable transaction for the Marineland Property, will only cause delay, and have already hampered the Debtors' efforts to promptly secure an alternative home for the Transferred Animals. 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 cost and delay and is therefore a reasonable exercise of the Debtors' business judgment.

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

22. 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).

23. 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. 42-30814, 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").

24. As detailed above, the Proposed Transfer will, among other things, provide the estates with much needed liquidity to, among other things, care for the Debtors' animals, satisfy ongoing operational liabilities and chapter 11 expenses, and reduce operational costs, thereby maximizing the value of the Debtors' assets for the benefit of creditors and stakeholders.

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

25. The Debtors have established the fairness and reasonableness of the proposed consideration for the Transferred Animals, because, absent evidence of fraud or collusion, a market test—such as the robust marketing process 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.”).⁴ As noted in the Supporting Declarations, the value of the

⁴ *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

Transferred Animals was subject to a full and fair public market test and evaluation that spanned months, and on appropriate notice to interested parties. In addition, the Proposed Transfer is the result of arm's-length negotiations between the Debtors and the Purchaser. No other bidders emerged to offer a higher or otherwise better bid for the Transferred Animals, and no party has suggested, let alone presented evidence of, fraud or collusion as to the Proposed Transfer.

26. In sum, the Successful Bid reflects the results of extensive marketing, followed by good faith, arm's-length negotiations between unaffiliated 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 Transfer should be approved.

C. The Debtors Provided Accurate, Reasonable Notice of the Proposed Transfer to All Potentially Interested Bidders and Parties in Interest.

27. The Debtors have satisfied the requirement to provide notice by providing timely notice of the Proposed Transfer, related deadlines, 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 Transferred Animals 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

Champion."); *In re Smurfit-Stone Container Corp.*, No. BKR. 09-1025 (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).

terms and conditions of the Sale, the time and place of the Auction, and the deadline for filing any objections. The Debtors also 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.

D. The Successful Bidder Acted in Good Faith.

28. The Debtor has satisfied the good faith requirement because the extensive evidence before the Court regarding the marketing process, bid negotiations, and Theater of the Sea's efforts to support the Proposed Transfer 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)). Therefore, the good faith purchaser requirement has been satisfied.

II. The Court Should Overrule the Responses

29. None of the assertions raised in the Responses provide any valid legal basis to deny approval of the Proposed Transfer, and no binding bid (no less a Qualified bid that is actionable) has been submitted by any of the Respondents for the reasons set forth above. Therefore, the Proposed Transfer should be approved.

A. Respondents Lack Standing to Object to the Proposed Transfer.

30. To the extent Respondents assert a general concern for animal welfare, a desire for Marineland operations continue as a local landmark or attraction, or are objecting to the Proposed Transfer in the capacity of a “disappointed bidder,” such Respondents lack legal standing to object

to the Proposed Transfer. 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.

31. 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 Transfer, 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”). Therefore, the Responses should be overruled for lack of standing.

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

32. As provided in the Marineland Reply, the Debtors reasonably exercised their business judgment and relied upon the Bidding Procedures, which provided that only Qualified Bidders were eligible to participate in the Auction; therefore, Respondents' objection as it relates to the Auction must be overruled.⁵ However, even if the Debtors were to accept a bid from the Coalition for Marineland as a going concern, such a transaction would not preclude the Debtors from proceeding with the Proposed Transfer, which provides the Debtors' estates with substantial consideration and additional benefits. As detailed above, Marineland is currently operating at capacity, and transfer of the Transferred Dolphins would improve the Marineland habitat, benefit the remaining animals at the Marineland facility, and incrementally reduce operational costs. Therefore, the Responses should be overruled.

C. To the Extent the Court Considers Mr. Kassewitz's "Request for Protective Order," It Should Deny the Request.

33. On November 3, 2025, rather than submit a Qualified Bid for the Transferred Animals, Mr. Kassewitz submitted a letter to the Court (the "**Kassewitz Letter**") requesting that it "consider a unique 'protective order' for the numerous dolphins that are being relocated during this bankruptcy proceedings [sic] of Leisure Investment Holdings, et al." It is unclear if this letter constitutes an objection to the Proposed Transfer or if Mr. Kassewitz is seeking affirmative relief. Either way, the Court should overrule the Kassewitz Letter and/or, to the extent the Court determines the Kassewitz Letter seeks affirmative relief, deny the request for protective order.

⁵ 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 . . .").

34. As a threshold matter, to the extent Mr. Kasewitz seeks injunctive relief against the Debtors, there are obvious procedural flaws, not the least of which is that Rule 7001(g) of the Federal Rules of Bankruptcy Procedure require an adversary proceeding to be brought for injunctive relief. Moreover, the Kasewitz Letter provides no specificity as to what the injunctive relief is or how such an order would “protect” the animals. In fact, the Debtors and the Chapter 11 Cases are already accomplishing what the Kasewitz Letter seeks: (1) preventing creditors from repossessing or harming animals; (2) allowing debtors to care for animals during the bankruptcy process; and (3) authorizing the use of estate funds for animal care.

35. As the record in the Chapter 11 Cases, including the Supporting Declarations, amply demonstrates, the Debtors have undertaken Herculean efforts to stabilize a business fraught with fraud, mismanagement, and animal neglect. The Proposed Transfer represents another step forward in that process. It returns significant value to the estates while providing the Transferred Animals a home with a well-regarded institution. Indeed, Mr. Kasewitz himself recognizes that Theater of the Sea has an “illustrious reputation.” Moreover, as detailed in the ATA, Theater of the Sea is entirely responsible for the transport of the Transferred Animals to Theater of the Sea’s facility. Therefore, any concerns Mr. Kasewitz may have had about the Debtors’ ability to safely transport the Transferred Dolphins are moot. Thus, there can be no debate that the Proposed Transfer represents a reasonable exercise of the Debtors’ business judgment, and the Proposed Transfer should not be derailed by any Response, especially a belated letter with a vague request for a “protective order” by a party with no standing.

CONCLUSION

For all the foregoing reasons, as well as those set forth in the Marineland Reply, the Court should overrule the Responses and approve the Proposed Transfer.

Dated: November 5, 2025

/s/ Allison S. Mielke

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