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COUNSEL TO DEBTORS AND DEBTORS IN POSSESSION

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
Higher Ground Education, Inc., *et al.*,[1]	§	Case No.: 25-80121-11 (MVL)
Debtor.	§	(Jointly Administered)

DEBTORS' REPLY IN SUPPORT OF DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) CONDITIONALLY APPROVING THE DISCLOSURE STATEMENT; (II) SCHEDULING A COMBINED DISCLOSURE STATEMENT APPROVAL AND PLAN CONFIRMATION HEARING; (III) ESTABLISHING A PLAN AND DISCLOSURE STATEMENT OBJECTION DEADLINE AND RELATED PROCEDURES; (IV) APPROVING THE SOLICITATION AND NOTICE PROCEDURES; AND (V) GRANTING RELATED RELIEF

Higher Ground Education, Inc. ("**HGE**") and its affiliated debtors and debtors in possession (collectively, the "**Debtors**") in the above-captioned chapter 11 cases (the "**Chapter 11**

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal identification number, are: Higher Ground Education Inc. (7265); Guidepost A LLC (8540); Prepared Montessorian LLC (6181); Terra Firma Services LLC (6999); Guidepost Birmingham LLC (2397); Guidepost Bradley Hills LLC (2058); Guidepost Branchburg LLC (0494); Guidepost Carmel LLC (4060); Guidepost FIC B LLC (8609); Guidepost FIC C LLC (1518); Guidepost Goodyear LLC (1363); Guidepost Las Colinas LLC (9767); Guidepost Muirfield Village LLC (1889); Guidepost Richardson LLC (7111); Guidepost South Naperville LLC (8046); Guidepost St Robert LLC (5136); Guidepost The Woodlands LLC (6101); Guidepost Walled Lake LLC (9118); HGE FIC D LLC (6499); HGE FIC E LLC (0056); HGE FIC F LLC (8861); HGE FIC G LLC (5500); HGE FIC H LLC (8817); HGE FIC I LLC (1138); HGE FIC K LLC (8558); HGE FIC L LLC (2052); HGE FIC M LLC (8912); HGE FIC N LLC (6774); HGE FIC O LLC (4678); HGE FIC P LLC (1477); HGE FIC Q LLC (3122); HGE FIC R LLC (9661); LePort Emeryville LLC (7324); AltSchool II LLC (0403). The Debtors' mailing address is 1321 Upland Dr. PMB 20442, Houston, Texas 77043.

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Cases") hereby file this reply (the "**Reply**") in support of *Debtors' Motion for Entry of an Order (I) Conditionally Approving the Disclosure Statement; (II) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing; (III) Establishing a Plan and Disclosure Statement Objection Deadline and Related Procedures; (IV) Approving the Solicitation and Notice Procedures; and (V) Granting Related Relief* [Docket No. 98] (the "**Motion**").[2] In support of this Reply, the Debtors respectfully represent as follows:

I.
PRELIMINARY STATEMENT

A. Overview of the Chapter 11 Cases.

1. In the months leading up to the Petition Date, the Debtors worked with several of their key stakeholders (the "**Supporting RSA Parties**")[3] to formulate a joint pre-arranged chapter 11 plan pursuant to a restructuring support agreement (the "**RSA**"). Shortly after the commencement of these Chapter 11 Cases, on June 26, 2025, the Debtors filed their RSA Plan and RSA Disclosure Statement in accordance with the RSA.[4] After its appointment, however, the Committee raised various concerns with the RSA Plan, and in an effort to avoid the costs and

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion, the *Second Amended Disclosure Statement for the Second Amended Joint Plan of Reorganization of the Higher Ground Education, Inc., its Affiliated Debtors, and the Official Committee of Unsecured Creditors* [Docket No. 551] (the "**Second Amended Disclosure Statement**" or as may be amended, supplemented, or otherwise modified from time to time, the "**Disclosure Statement**"), or the *Second Amended Joint Plan of Reorganization of the Higher Ground Education, Inc., its Affiliated Debtors, and the Official Committee of Unsecured Creditors* [Docket No. 549] (the "**Second Amended Plan**" or as may be amended, supplemented, or otherwise modified from time to time, the "**Plan**"), as applicable.

[3] The "Supporting RSA Parties" included: (i) 2HR Learning, Inc., (ii) YYYYY, LLC, (iii) Guidepost Global, Education, Learn, (iv) CEA, (v) Venn Growth GP Limited LP ("**Venn**"), (vi) Venture Lending & Leasing IX, Inc. and WTI Fund X (together, "**WTI**"), (vii) Yu Capital LLC, YuATI LLC, YuFICB LLC, YuHGE A LLC, NTRC Equity Partners LP (collectively, "**Yu Capital**"), and (viii) Ramandeep (Ray) Girn and Rebecca Girn (the "**Girns**").

[4] *See Disclosure Statement for the Joint Plan of Reorganization of Higher Ground Education, Inc. and Its Affiliated Debtors* (the "**RSA Disclosure Statement**") [Docket No. 97]; *Joint Plan of Reorganization of Higher Ground Education, Inc. and Its Affiliated Debtors* (the "**RSA Plan**") [Docket No. 94].

uncertainty of a protracted contested confirmation process, the Debtors agreed to explore terms for a consensual plan through mediation and settlement negotiations.

2. During this time, the Debtors, with the consent of the DIP Lenders, agreed to postpone the hearing on the Motion to help facilitate and advance settlement discussions. The continuances were critical and necessary. Indeed, following numerous weeks of settlement negotiations and plan mediation, the Debtors, the Committee, and the majority of the Supporting RSA Parties reached a settlement in principle that resolves the Committee's concerns (the "**Plan Settlement**"). To that end, on September 12, 2025, the Debtors exercised their "fiduciary out" under the RSA and notified the Supporting RSA Parties that the Debtors were terminating the RSA to pursue confirmation of the Plan, which embodies the Plan Settlement between Debtors, Committee, and a majority of the Supporting RSA Parties (the "**Settlement Parties**").[5] Specifically, the Plan Settlement contemplates:

- Creation of Liquidating Trust. The Plan will provide for the creation of a Liquidating Trust to hold and monetize certain assets for the benefit of the Liquidating Trust Beneficiaries.

- Settlement Party Payment. On the Effective Date, the Settlement Parties shall pay or cause to be paid to the Debtors or Liquidating Trustee, as applicable, aggregate Cash in the amount of $1,950,000 (the "**Settlement Party Payment**"). The amount of the Settlement Party Payment shall be reduced on a dollar-for-dollar basis by the amount of the Excess Surplus DIP Cash. For example, if the Excess Surplus DIP Cash is $100,000, then the Settlement Party Payment will be reduced by $100,000 to $1,895,000.

- Settlement Party Payment True-Up Mechanism. In the event the Debtors or the Liquidating Trustee, as applicable, receive Excess Surplus DIP Cash after the Settlement Parties contribute the Settlement Party Payment, then the Debtors or the Liquidating Trustee, as applicable, shall return such Excess Surplus DIP

[5] As defined in the Plan, the Settlement Parties include the following: "2HR Learning, Inc.; YYYYY, LLC; Guidepost Global; Learn; CEA; Yu Capital; WTI; TNC; and each of the aforementioned parties' Related Parties; provided, however, that no Non-Released D&O shall be considered a Settlement Party." Plan, Art. 1.1.139. The Girns are ***not*** considered Settlement Parties.

Cash to Reorganized HGE or otherwise true-up such Excess Surplus DIP Cash as agreed upon by the Settlement Parties.

- Plan Sponsor Consideration. On the Plan Effective Date, the Plan Sponsor shall distribute the Plan Sponsor Consideration, if any, to the Liquidating Trust.

- Junior DIP Lender Consideration. On the Effective Date, in the event the Junior DIP Lender has not fully funded the Junior DIP Loan, the Junior DIP Lender shall contribute all remaining amounts outstanding and available to the Debtors under the Junior DIP Loan to the Liquidating Trust. Notwithstanding the foregoing, the Debtors shall be permitted to setoff valid amounts owed by the Debtors to the Junior DIP Lender against the Junior DIP Lender's remaining funding obligations under the Junior DIP Loan.

- D&O Claim Resolution. On the Effective Date, all Debtors' Retained Causes of Action against all Non-Released D&Os shall be transferred and assigned to, and shall vest in, the Liquidating Trust for the benefit of the Liquidating Trust Beneficiaries.

- Settlement Party Release of Certain Claims. On the Effective Date, unless as otherwise expressly set forth in the Plan, the Settlement Parties shall release and waive all Claims and Causes of Action against the Debtors' Estates.

- Settlement Party Mutual Releases. On the Effective Date and upon payment in full of the Settlement Party Payment, the Releasing Parties and the Settlement Parties shall be mutually released as set forth in Article 10.3 of the Plan.

3. On October 6, 2025, the Debtors and the Committee (together, the "**Proponents**") filed the *First Amended Disclosure Statement for the First Amended Joint Plan of Reorganization of the Higher Ground Education, Inc., its Affiliated Debtors, and the Official Committee of Unsecured Creditors* [Docket No. 530] (the "**First Amended Disclosure Statement**") and the *First Amended Joint Plan of Reorganization of the Higher Ground Education, Inc., its Affiliated Debtors, and the Official Committee of Unsecured Creditors* [Docket No. 528] (the "**First Amended Plan**"), memorializing the terms of the Plan Settlement. A Liquidation Analysis was also provided with the First Amended Disclosure Statement. *See* First Amended, Disclosure Statement, Ex. B. The Debtors also filed revised a proposed order approving the Motion and related

solicitation materials (the "**Solicitation Materials**") in accordance with the Plan and to address various comments raised by the U.S. Trustee. *See* Docket Nos. 531 & 552.

4. This Plan Settlement and the First Amended Plan is the result of a hard-fought, good faith negotiation between the Debtors, the Committee, and the Settlement Parties. Importantly, while the Girns participated in the settlement discussions, but were not formally "Settlement Parties," the Proponents understood, in good faith, that the Girns had agreed to their treatment set forth in the First Amended Plan. However, after learning about an informational dispute between the Girns and Guidepost Global, it was brought to the Debtors' attention that the Girns were now second-guessing their agreement and proposed treatment under the First Amended Plan.

5. On October 13, 2025, the Proponents filed their Second Amended Disclosure Statement and Second Amended Plan, which, as detailed below, the Debtors believe primarily addresses the Girns' accusations.

B. The Objections to Conditional Approval.

6. Prior to the Plan Settlement, the Debtors received three (3) objections from 214 E. Hallandale Beach LLC ("**Hallandale**"), Carl Barney ("**Mr. Barney**"), and the U.S. Trustee to the Motion. *See* Docket Nos. 169, 285, 390. On October 9, 2025, Hallandale withdrew its objection as the amended Disclosure Statement addressed its concerns. *See* Docket No. 538. On October 13, 2025, Mr. Barney withdrew its objection, but reserved all rights to object to the Plan in the future. *See* Docket No. 547.

7. Also on October 13, the Girns filed their *Objection to Debtors' [sic] First Amended Disclosure Statement* [Docket No. 545] (the "**Girn Objection**," together with the U.S. Trustee Objection, the "**Objections**").

8. The U.S. Trustee objects to the Motion, arguing, *inter alia*: (a) the facts of these Chapter 11 Cases do not support conditional approval of the Disclosure Statement; and (b) conditional approval is not appropriate because the Plan is "patently" unconfirmable due to the opt-out mechanism for the Third-Party Releases and the injunction provision. The U.S. Trustee also raises the concern that the proposed form of Ballot and Notice of Non-Voting Status do not provide parties with sufficient information with respect to the Third-Party Releases. UST Objection, at ¶¶ 31-35. In particular, the U.S. Trustee noted that the proposed Ballot does not contain the Third-Party Release language, and the Notice of Non-Voting Status should alert recipients about the opportunity to opt-out before page 3 of such notice. *Id.*

9. The Girn Objection is premised on the fact that they are now reneging their agreement to the First Amended Plan and are not considered "Settlement Parties." To that end, the Girns argue the Disclosure Statement lacks adequate information under section 1125 of the Bankruptcy Code, specifically with respect to prepetition foreclosures, their claims, and the Plan Settlement. Girn Objection, at ¶¶ 31-34. They also contend that the Plan is patently unconfirmable because of the treatment of their claims under the First Amended Plan and purported releases. *Id.* at ¶¶ 13-25. They further challenge the Plan's confirmability under section 1129(a) of the Bankruptcy Code. *Id.* at ¶¶ 16, 26-30.

10. The Debtors believe that the proposed Plan and Disclosure Statement and revised Solicitation Materials, all of which have been revised to address the concerns set forth in the Objections, adequately address the Objections pertaining to *conditional approval* of the Disclosure Statement. Specifically, the Debtors have:

- Revised the proposed form of Ballot to include the Third-Party Release language from Article 10.3 of the Plan and moved the Third-Party Release disclaimer to the top of the proposed form of the Notice of Non-Voting Status. *See* Docket No. 531, Exs. I & K.

- Revised the proposed Scheduling Order to include reservation of rights language, reserving all objections to the Disclosure Statement under section 1125 and the Plan under section 1129. *See* Docket No. 552, Ex. A.

- Revised the Disclosure Statement to state that all of their claims are considered "Disputed Claims" under the Plan. *See* Second Amended Disclosure Statement, Art. IV.C.7; Second Amended Plan, Art. 3.

- Revised the Disclosure Statement to state that the "Girns have questioned the legitimacy" of the foreclosures by WTI and Learn Fund XXXVII. *See* Second Amended Disclosure Statement, Art. IV.F.2(a) & (b).

- Revised the Disclosure Statement to further clarify that the Girns are not Settlement Parties. *See* Second Amended Disclosure Statement, Art. II, n.2.

- Revised the Third-Party Release provision under Article 10.3 of the Plan to remove the Girns from releasing any claims against third parties, including the Settlement Parties. Second Amended Plan, Art. 10.3.

11. Moreover, in light of the settlement discussions with the Committee, the overall confirmation timeline has been extended considerably, thereby affording creditors with ample time to consider the *conditional approval* of the Disclosure Statement. Final approval of the Disclosure Statement, and thus, whether it contains adequate information (which is does), is reserved for the Combined Hearing, which is proposed to occur on November 24, 2024.

12. As detailed herein, the remaining Objections are plan confirmation objections and can be addressed at the Combined Hearing and with respect to confirmation of the Plan. The Motion is not requesting, nor is the Court considering, whether the Disclosure Statement contains adequate information under section 1125 or whether the Plan satisfies the requirements of confirmation under section 1129, and such determinations are reserved for the Combined Hearing. The Objections should not, and do not, present any basis for the Court to delay *conditional approval* of the Disclosure Statement and solicitation of the Plan. For the reasons set forth herein, the Debtors respectfully request the Court overrule the Objections, grant the Motion, and enter an order conditionally approving the Disclosure Statement, approving the Solicitation Procedures and

the forms of certain documents in the Solicitation Materials, and authorizing the Debtors to commence solicitation in accordance therewith.

II.
REPLY

A. The Disclosure Statement Provides Adequate Information and Has Been Amended to Include Additional Information Regarding the Girns' Claims.

13. The Girns allege that the Disclosure Statement lacks adequate information with respect to (i) prepetition foreclosures, (ii) their claims against the Debtors, and (iii) the D&O Claim Resolution component in the Plan Settlement. Girn Objection, at ¶ 34. While these objections are not appropriate for conditional approval, the Debtors believe that the proposed revised Disclosure Statement adequately address these concerns.

14. Pursuant to section 1125 of the Bankruptcy Code, a disclosure statement must only provide "adequate information" regarding that plan to holders of impaired claims and interests entitled to vote on the plan. 11 U.S.C. § 1125. The Fifth Circuit and courts in other circuits acknowledge that determining what constitutes "adequate information" for the purpose of satisfying section 1125 of the Bankruptcy Code resides within the broad discretion of the court. *See, e.g., Mabey v. Sw. Elec. Power Co.* (*In re Cajun Elec. Power Coop., Inc.*), 150 F.3d 503, 518 (5th Cir. 1998) ("The legislative history of § 1125 indicates that, in determining what constitutes 'adequate information' with respect to a particular disclosure statement, 'both the kind and form of information are left essentially to the judicial discretion of the court' and that 'the information required will necessarily be governed by the circumstances of the case.'" (internal citations omitted)), *cert. denied*, 526 U.S. 1144 (1999); *Tex. Extrusion Corp. v. Lockheed Corp.* (*In re Tex. Extrusion Corp.*), 844 F.2d 1142, 1157 (5th Cir. 1988) ("The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court."); *In re PC Liquidation Corp.*, 383 B.R. 856, 865 (E.D.N.Y.

2008) ("The standard for disclosure is, thus, flexible and what constitutes 'adequate disclosure' in any particular situation is determined on a case-by-case basis, with the determination being largely within the discretion of the bankruptcy court."); *In re Lisanti Foods, Inc.*, 329 B.R. 491, 507 (Bankr. D.N.J. 2005) ("The information required will necessarily be governed by the circumstances of the case.").

15. As noted above, the Disclosure Statement has been amended again to disclose the Girns' belief about the legitimacy about the prepetition foreclosures, their claims, and the Plan Settlement. Specifically, the Disclosure Statement notes that the Girns do not believe the prepetition foreclosures by WTI and Learn Capital were legitimate. The Debtors also clearly state that they dispute all of the Girns' Claims and intend to treat such claims "Disputed Claims" under the Plan. The Debtors further note that they believe there are potential Causes of Actions against the Girns that they intend to pursue. The Plan and Disclosure Statement have also been revised to exclude the Girns as giving any releases to third parties under Article 10 of the Plan. *See* Second Amended Plan, Art. 10.3.

16. Based on the foregoing, the Debtors assert that the Disclosure Statement complies with section 1125 of the Bankruptcy Code and addresses the above matters in a manner that provides adequate information to Holders of Claims and Interests entitled to vote on the Plan. Accordingly, the Disclosure Statement not only satisfies the requirements of section 1125 but should be *conditionally* approved for solicitation purposes.

B. The Disclosure Statement Should Be Conditionally Approved as the Plan is Not Patently Unconfirmable.

17. The Objections contend approval of the Disclosure Statement is not appropriate because the Plan is "patently" unconfirmable. Specifically, the U.S. Trustee argues that the Third-Party Release and injunction provisions make the Plan "patently" unconfirmable. UST Objection,

at ¶¶ 44-80. The Girns also argue the Plan is patently unconfirmable because it fails to satisfy section 1129(a) of the Bankruptcy Code. Girn Objection, at ¶¶ 16, 26-30. Each of these objections relate to the confirmability of the Plan and prosecution of such objections is not appropriate at this juncture.

18. Regardless, none of these objections render the Plan "patently unconfirmable." Indeed, "a plan is patently unconfirmable where (1) confirmation 'defects [cannot] be overcome by creditor voting results' and (2) those defects 'concern matters upon which all material facts are not in dispute or have been fully developed at the disclosure statement hearing.'" *In re Am. Capital Equip., LLC*, 688 F.3d 145, 154-55 (3d Cir. 2012) (quoting *In re Monroe Well Serv., Inc.*, 80 B.R. 324, 333 (Bankr. E.D. Pa. 1987)); *see also In re U.S. Brass Corp.*, 194 B.R. 420, 422 (Bankr. E.D. Tex. 1996) (noting that a disclosure statement that provides adequate information should be denied only in the rare circumstances where the corresponding plan is "patently unconfirmable"—or so "fatally flawed" as to render confirmation "***impossible***." (emphasis added)).[6]

19. While the Debtors will more fully brief their response to the remaining objections in advance of the Combined Hearing and expressly reserve all rights with respect thereto, the following reasons provide an overview of the Debtors' arguments in support of the Plan and explain why the Objections fail to demonstrate that the Plan is unconfirmable.

[6] *See also In re Sanders*, Case No. 14-02271-NPO, 2015 WL 7568469, at *5 (Bankr. S.D. Miss. Nov. 23, 2015) ("Here, however, the Court does not consider the [d]ebtor's [p]lan to be so 'fatally flawed' as to render confirmation impossible."); *In re Scioto Valley Mortg. Co.*, 88 B.R. 168, 172 (Bankr. S.D. Ohio 1988) ("If the creditors oppose their treatment in the plan, but the [d]isclosure [s]tatement contains adequate information, issues respecting the plan's confirmability will await the hearing on [c]onfirmation. Therefore, the [d]ebtor need not obtain creditors' approval of the plan; it need only provide them with adequate information as that term is defined in 11 U.S.C. § 1125(a)(1).").

i. The Third-Party Release Provisions are Consistent with U.S. Supreme Court and Fifth Circuit Precedent and Should Be Approved.

20. The Objections first argue that the Third-Party Releases make the Plan "patently" unconfirmable. Specifically, the U.S. Trustee asserts the Plan is patently unconfirmable because the opt out structure of the Third-Party Release makes it nonconsensual and therefore disallowed by the Supreme Court's decision in *Harrington v. Purdue Pharma, L.P.*, 603 U.S. 204 (2024). U.S. Trustee Obj. ¶¶ 47-80. The Girns contend that the Third-Party Releases are not consensual because they have not consented to the releasing the Settlement Parties. Girn Objection, at ¶¶ 21-25. Neither argument should nor would preclude final approval of the Disclosure Statement under section 1125, much less *conditional* approval which is the only relief sought at this time.

21. As a preliminary matter, under the revised amended Plan filed with the Committee's consent, the Girns have been removed from Article 10 of the Plan and are no longer granting (or receiving) any releases to any third parties, including the Settlement Parties. *See* Second Amended Plan, Art. 10.3. As such, the Girns' objection to the releases is moot.

22. Additionally, as this Court as well as others within the Fifth Circuit have consistently held, objections to Third-Party Releases are not proper disclosure statement objections, but rather, plan objections that should be addressed at confirmation. *See, e.g.*, *In re Zips Car Wash*, No. 25-80069 (MVL) (Bankr. N.D. Tex. Mar. 18, 2025), Hr'g Tr. at 36:4-6 ("[W]hen it comes to third-party releases, and specifically with respect to the opt-in or opt-out process, the Court considers those to be confirmation issue."); *In re CareMax, Inc.*, No. 24-80093 (MVL) (Bankr. N.D. Tex. Dec. 17, 2024), Hr'g Tr. at 83: 6–7 ("Whether or not an opt-out release constitutes a consensual release is a confirmation issue"); *In re GVS Texas Holdings*, No. 21-31121 (MVL) (Bankr. N.D. Tex. Feb. 3, 2022), Hr'g Tr. at 275:7–10 ("With respect to the governmental releases and opt outs and exculpations, from the Court's perspective as I've said prior, I consider

most of those to be confirmation issues.").[7] For that reason, the Court should overrule these objections as they are not appropriate nor necessary for conditional approval.

23. Even so, the Third-Party Releases under the Plan are appropriate pursuant to applicable under Supreme Court and Fifth Circuit precedent. ***First***, despite the U.S. Trustee's persistence to the contrary, the Third-Party Releases here would only be granted through consent. *Purdue* is thus inapplicable to the Third-Party Release proposed under the Plan. *Purdue* established that a ***nonconsensual*** third-party release cannot be imposed by a chapter 11 plan. *Purdue,* 603 U.S. at 226 ("Nothing in what we have said should be construed to call into question *consensual* third-party releases offered in connection with a bankruptcy reorganization plan[.]") To that end, this Court has recognized that *Purdue* is inapposite where, like here, the Third-Party Release is ***consensual***:

> So harkening back again to opt-outs, there was no occasion for the Supreme Court in Purdue, in this Court's estimation, to take a view on what constitutes a consensual release. The Supreme Court confined its decision to the question presented, which was about non-consensual releases. When I have approved opt-outs here in my court, it's always been based upon the evidence that the affected parties were afforded constitutional due process and a meaningful opportunity to opt-out.

In re Zips Car Wash, No. 25-80069 (MVL) (Bankr. N.D. Tex. Apr. 18, 2025), Hr'g Tr. at 65:14-22; *see also In re CareMax, Inc.*, No. 24-80093 (MVL) (Bankr. N.D. Tex. Dec. 17, 2024), Hr'g

[7] *See also In re Diamond Sports Grp., LLC*, No. 23-90116 (CML) (Bankr. S.D. Tex. Oct. 9, 2024), Hr'g Tr. at 22:21–22, 23:7–10 ("[O]bviously plan confirmation issues are separate than what we're doing today" and that the U.S. Trustee's objection to "the content of the release parties and the scope of the release parties . . . [is] a plan confirmation objection as well."); *In re Envision Healthcare Corp.*, No. 23-90342 (CML) (Bankr. S.D. Tex. Aug. 2, 2023), Hr'g Tr. at 136:4–5 (noting that the official committee of unsecured creditors' objection to the Debtors' releases, injunction, discharge, and exculpation provisions of the Plan should be appropriately addressed at confirmation); *In re iHeartMedia, Inc.*, No. 18-31274 (Bankr. S.D. Tex. Sept. 13, 2018), Hr'g Tr. at 17:4–19 (noting that objections to releases are best addressed at confirmation); *In re Drexel Burnham Lambert Group*, 1992 WL 62758, at *1 (Bankr. S.D.N.Y. Mar. 5, 1992) (stating that objections to a plan of reorganization's releases and injunction provisions were in the nature of confirmation objections and therefore improperly raised as objections to the disclosure statement).

Tr. at 92:8–10 ("There was no occasion for the Supreme Court to express a view on what constitutes a consensual release in its decision in *Purdue Pharma*.").

24. Consistent with this Court's precedent, the proposed Plan contemplates granting Third-Party Releases to only those creditors who have *consented—i.e.,* those who were given the opportunity to opt-out of the releases and failed to do so. *See* Plan, Art. 1.138. Moreover, as established in the Solicitation Procedures, the Proponents will provide conspicuous and robust notice that the Plan contains releases, including the full text of the Third-Party Release, the parties being released under the Plan, and will provide all Holders of Claims and Interests with detailed instructions explaining how to timely opt out of the Third-Party Release.

25. Each of the Disclosure Statement, the Combined Notice, the Publication Notice, the Ballot, the Notice of Non-Voting Status, and Opt-Out Form expressly state that Holders of Claims and Interests that do not specifically opt out of the Third-Party Release will be bound by it. The proposed Combined Notice, Ballot, and Notice of Non-Voting Status (which contains the Opt-Out Form) also include the full text of the Third-Party Release language contained in Article 10.3 of the Plan and which parties are being released. Additionally, the Combined Notice, Publication Notice, and Notice of Non-Voting Status provide detailed instructions on how any party may access the Plan, Disclosure Statement, and other materials in the Solicitation Packages, and includes a disclaimer informing parties-in-interest that the Plan contains the Third-Party Release. Each Holder then may determine, in its sole discretion, whether to opt out of the Third-Party Release in accordance with the clearly labeled procedures set forth on the applicable Ballot or Opt-Out Form. This opt-out structure and clear noticing scheme are consistent with precedent from within the Fifth Circuit where third-party releases have been approved.[8] Such releases were

[8] *See, e.g.*, *In re Zips Car Wash, LLC,* No. 25-80069 (MVL) (Bankr. N.D. Tex. Apr. 18, 2025) [Docket No. 366] (confirming a plan containing a third-party release where creditors had the opportunity to opt out); *In re KidKraft,*

also approved as consensual with respect to holders that voted to reject or were deemed to reject the plan.[9]

26. *Second*, the Fifth Circuit has consistently held that the Bankruptcy Code does not preclude a third-party release provision where "it has been accepted and confirmed as an integral part of a plan of reorganization." *Republic Supply Co. v. Shoaf*, 815 F.2d 1046, 1050 (5th Cir. 1987) (holding third-party release was binding and enforceable where no party timely objected). Specifically, *Republic Supply* and its progeny[10] stand for the proposition that "[c]onsensual nondebtor releases that are specific in language, integral to the plan, a condition of settlement, and given for consideration do not violate" the Bankruptcy Code. *In re Wool Growers Cent. Storage Co.*, 371 B.R. 768, 775–76 (Bankr. N.D. Tex. 2007). Courts in the Fifth Circuit have specifically applied the *Republic Supply* standard to find that an opt-out mechanism meets the requisite level of consent to impose third-party releases.[11]

Inc., No. 24-80045 (MVL) (Bankr. N.D. Tex. June 24, 2024) [Docket No. 241] (same); *In re Sunland Med. Found.*, No. 23-8000 (MVL) (Bankr. N.D. Tex. Apr. 25, 2024) [Docket No. 528] (same); *In re Impel Pharm.*, 23-80016 (SGJ) (Bankr. N.D. Tex. Apr. 2, 2025) [Docket No. 321] (same); *In re Red River Waste Solutions, LP*, No. 21-42423 (ELM) (Bank. N.D. Tex. Sept. 30, 2022) [Docket No. 1183] (same); *In re Bainbridge Uinta, LLC*, No. 20-42794 (MXM) (Bankr. N.D. Tex. June 28, 2021) [Docket No. 358] (same); *In re Genesis Care Pty Limited*, No. 23-90614 (MI) (Bankr. S.D. Tex. Nov. 21, 2023) [Docket No. 1192] (same); *In re Benefytt Techs., Inc.*, No. 23-90566 (CML) (Bankr. S.D. Tex. Aug. 30, 2023) [Docket No. 481] (same); *In re QualTek Services Inc.*, No. 23-90584 (CML) (Bankr. S.D. Tex. June 30, 2023) [Docket No. 234] (same).

[9] *See, e.g.*, *In re Zips Car Wash, LLC,* No. 25-80069 (MVL) (Bankr. N.D. Tex. Apr. 18, 2025) [Docket No. 366] (approving a plan with the definition of "Releasing Party" including "all Holders of Claims that are deemed to reject this Plan and who do not affirmatively opt out of the releases provided by this Plan"); *In re CareMax, Inc.*, No. 24-80093 (MVL) (Bankr. N.D. Tex. Jan. 31, 2025) (same); *In re Digital Media Solutions, Inc.*, No. 90468 (ARP) (Bankr. S.D. Tex. Jan. 15, 2025) (same); *In re QualTek Services Inc.*, No. 23-90584 (CML) (Bankr. S.D. Tex. June 30, 2023) (same); and *In re Lannett Company, Inc.*, No. 23-10559 (JKS) (Bankr. D. Del. June 8, 2023) (same).

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

[11] *See, e.g.*, *In re Cypress Environmental Partners, LP*, No. 22-90039 (MI) (Bankr. S.D. Tex. June 21, 2022) [Docket No. 259] (approving a chapter 11 plan with a consensual third-party release in the style of an opt-out provision); *In re CiCi's Holdings, Inc.*, No. 21-30146 (SGJ), 2021 WL 819330, at *9-10 (Bankr. N.D. Tex. Mar. 3, 2021) (construing silence or a lack of a timely objection as consent in light of the party receiving appropriate notice of the proceeding, plan, and objection deadline, having an opportunity to be heard, and the emphasis of the release language with conspicuous typeface); *In re Sandridge Energy, Inc.*, No. 16-32488 (DRJ), 2016 Bankr. LEXIS

27. The U.S. Trustee argues that the Holders who receive a Notice of Non-Voting Status are not provided with sufficient notice of the Third-Party Release and opportunity to opt-out because they would not receive a Solicitation Package. *See* UST Objection, at ¶ 83. The U.S. Trustee further argues that the Ballot provides insufficient notice to Holders because it does not provide the relevant language from Article 10.3. *Id.* at ¶ 84. Through the Solicitation Materials, the Proponents are providing all Holders with conspicuous notice of the releases contained in the Plan, including the full text of the Third-Party Release, the parties being released under the Plan, and detailed instructions explaining how to opt out by the Voting Deadline. Specifically, the Notice of Non-Voting Status states, in bold and on the first two pages that the Plan contains the Third-Party Release and that:

> **HOLDERS OF CLAIMS OR INTERESTS NOT ENTITLED TO VOTE ON THE PLAN AND THAT DO NOT ELECT TO OPT-OUT OF THE THIRD-PARTY RELEASES CONTAINED IN ARTICLE 10.3 OF THE PLAN USING THE ENCLOSED OPT-OUT FORM ON OR BEFORE THE VOTING DEADLINE WILL BE BOUND BY THE THIRD-PARTY RELEASES CONTAINED IN ARTICLE 10.3 OF THE PLAN.**

See Docket No.531-11, Exhibit K (emphasis in original). Further, the Ballot and Notice of Non-Voting Status, which includes the Opt-Out Form, includes all definitions relevant to the Third-Party Release, including the definitions of "Consenting Creditors," "Related Parties," "Released Parties" "Releasing Parties," and includes the relevant provisions of the Plan, such that each Holder will have all information needed to make an informed decision as to whether to opt out of the Third-Party Release. *See* Docket No. 531, Exhibit I (Ballot) & Exhibit K (Notice of Non-Voting Status).

4622, at *47 (Bankr. S.D. Tex. Sep. 20, 2016) (finding an adequately noticed, conspicuous opportunity for opt-out is consent for a third-party release); *In re Vista Proppants & Logistics, LLC*, No. 20-42002 (ELM), 2020 WL 6325526, at *7 (Bankr. N.D. Tex. Oct. 28, 2020).

28. The Third-Party Release meets the *Republic Supply* standard because, among other reasons: (a) the Debtors have clearly described the Third-Party Release in clear, plain language in the Disclosure Statement, the Solicitation Materials, and the Plan; (b) the Third-Party Release is a necessary component of the Plan and the Debtors' underlying reorganization; (c) the Debtors, the Committee, and the Settlement Parties have agreed to the Third-Party Release after weeks of arm's-length negotiations; (d) the Third-Party Release is given in consideration of the classification, distributions, releases, and other benefits provided under the Plan; and (e) the Plan Proponents have adhered to the solicitation and noticing scheme discussed above. At this stage, the Proponents only need to prove that the Third-Party Release does not make the Plan patently unconfirmable, which they have done.

ii. The Plan Injunction is Permissible Under Fifth Circuit Precedent and Does Not Render the Plan Unconfirmable.

29. The U.S. Trustee argues that the injunction provision improperly extends to enforce exculpations and the release provisions because: (a) this Court lacks jurisdiction to enter permanent injunctions barring claims between non-debtors; (b) no Bankruptcy Code provision authorizes chapter 11 plans to include injunctions to enforce releases or exculpations; and (c) the Debtors have not demonstrated a need for the injunction provision. UST Objection, at ¶¶ 86-93.

30. *First*, similar to the release, this Court has repeatedly ruled that objections to injunction provisions are an issue for confirmation. *See, e.g., In re Zips Car Wash*, No. 25-80069 (MVL) (Bankr. N.D. Tex. Mar. 18, 2025).

31. *Second*, while the Bankruptcy Code may not specifically provide a provision authorizing injunctions to enforce releases or exculpations, such an injunction is permissible under prevailing Fifth Circuit law so long as such injunction is consensual. *See, e.g.*, *In re Camp Arrowhead*, 451 B.R. 678, 701–02 (Bankr. W.D. Tex. 2011) ("the Fifth Circuit does allow

permanent injunctions *so long as there is consent* . . . [w]ithout an objection, this court was entitled to rely on . . . silence to infer consent at the confirmation hearing") (citations omitted). Because, as described above, the Third-Party Release is consensual, a Holder that consents to the Third-Party Release is also consenting to the corresponding injunction enforcing such release.

32. Accordingly, the U.S. Trustee's objection to the injunction should be overruled.

iii. The Plan Satisfies Section 1129 of the Bankruptcy Code.

33. The Girns further argue that the Plan is patently unconfirmable because it does satisfy the requirements of section 1129 of the Bankruptcy Code. Girn Objection, at ¶¶ 16, 26-30. In particular, the Girns assert that the Plan incorrectly waives or extinguishes their claims in order to "funnel" recoveries to junior classes of creditors. *Id.* at ¶¶ 15-17. The Girns also argue that the Plan cannot pass the good faith requirement under section 1129(a)(3) of the Bankruptcy Code. This argument, while wholly unsupported, rests on the fact that the Plan Settlement includes a D&O Claim Resolution. *Id.* at ¶¶ 26-30.

34. While these objections are more properly addressed at confirmation, the Debtors nevertheless contend that the Second Amended Disclosure Statement and the Plan address these concerns raised under section 1129 of the Bankruptcy Code and ultimately prove that the Plan and the Plan are proposed in good faith.

35. As detailed in the Second Amended Disclosure Statement and the Plan, the Girns' claims are considered "Disputed Claims" and will be treated as such under the Plan. This is specifically disclosed in the Disclosure Statement:

> The Girns filed proofs of claims against the Debtors' estates. See Claim Nos. 468 and 469. Specifically, Mr. Girn asserts claims in the amount of not less than $5,356,445.59 and Mrs. Girn asserts claims in the amount of note less than $1,272,917. Potential recoveries for other Creditors may be negatively affected if the Girns Claims are deemed Allowed.

> The Debtors have deemed the Girns' Claims as Disputed Claims and the Debtors or their successors intend to file objections to the Girns' Claims. The Debtors also believe that they have Causes of Actions against the Girns for fraudulent and preferential transfers and the Debtors intend to file adversary proceedings against the Girns to recover these transfers. Potential recoveries from the Causes of Actions against the Girns are considered Liquidating Trust Assets.

See Second Amended Disclosure Statement, Art. IV.C.7. The Second Amended Plan then specifies under each class treatment that the Girns' claims are treated as a "Disputed Claim." *See, e.g.,* Second Amended Plan, Art. 3.7.2 ("The Bridge CN-3 Secured Lender Claim held by the Girns is deemed a Disputed Claim under this Plan."), Art. 3.9 ("The CN-1 Note Claim held by the Girns is deemed a Disputed Claim under this Plan."), Art. 3.11.2 ("[T]he CN-3 Note Claim held by the Girns is deemed a Disputed Claim under this Plan."), Art. 3.12.3 ("[A]ny Other Secured Claim held by the Girns is deemed a Disputed Claim under this Plan."); Art. 3.13.2 ("[A]ny Non-Tax Priority Claim held by the Girns is deemed a Disputed Claim under this Plan."); Art. 3.14.2 ("[A]ny General Unsecured Claim held by the Girns is deemed a Disputed Claim under this Plan."). The objections to the treatment and disclosure of the Girns' claims should be overruled.

36. With respect to the Girns' challenges under section 1129(a)(3) of the Bankruptcy Code, the Debtors vehemently dispute the unsupported accusations that the Plan was not proposed in good faith. *See In re Phoenix Petroleum*, 278 B.R. 385, 394 (Bankr. E.D. Pa. 2001) ("[T]he disclosure statement should be disapproved at the threshold only where the plan it describes displays fatal facial deficiencies or the ***stark absence*** of good faith."). All aspects of the Plan Settlement and the Plan were formulated through extensive, good faith negotiations between the Debtors, the Committees, the Settlement Parties, and the Girns. There is nothing untoward about the Plan Settlement, particularly with respect to the D&O Claim Resolution.

37. Indeed, as part of the Plan Settlement, the Debtors agreed to stipulate and confer derivative standing to the Committee for the purposes of sending one or more demands to the

"Non-Released D&Os," which includes the Girns, and/or the applicable D&O Insurance Carriers. From there, on the Effective Date, the Debtors' Retained Causes of Action against all Non-Released D&Os shall be transferred and assigned to, and shall vest in, the Liquidating Trust for the benefit of the Liquidating Trust Beneficiaries. This claim resolution process has been disclosed at great lengths in the Disclosure Statement. *See* Disclosure Statement, Art. V.I.3. Simply because the Girns do not like, or agree with, this process does not mean the Plan Settlement or Plan were done in bad faith.

38. Thus, the Girns' objection pursuant to section 1129(a)(3) of the Bankruptcy Code should be overruled.

C. Conditional Approval of the Disclosure Statement is Appropriate Under these Facts and Circumstances.

39. The U.S. Trustee further objects to the conditional approval of the Disclosure Statement, arguing that under the facts and circumstances here do not support conditional approval. Specifically, both appear to argue that the Motion should be given a full 28 days' notice. UST Objection, at ¶ 43.

40. The Complex Case Procedures explicitly allow for conditional approval of disclosure statements on ***fourteen (14) days' notice*** in non-small-business chapter 11 cases. Complex Procedures, § H. The Debtors' have far surpassed that notice requirement here as the Motion was filed on June 27, 2025. Moreover, because this Motion only seeks *conditional* approval of the Disclosure Statement, all parties' rights are reserved to object to final approval of the Disclosure Statement, which is anticipated to be heard on November 24, 2025. With an objection deadline of November 17, 2025, parties have over thirty (30) days to review and prepare objections to the Disclosure Statement, which is well within the noticing requirements under the Bankruptcy Rules. *See* Fed. R. Bankr. P. 2002(b) & 3017(a).

41. Furthermore, and as detailed herein, the Debtors have satisfied the relevant disclosure requirements and conditional approval of the Disclosure Statement is warranted and necessary under the circumstances of these Chapter 11 Cases. The Debtors are currently funding these Chapter 11 Cases from the DIP Facility, which is projected to support the Debtors and facilitate the Plan Settlement through the end of November. The DIP Lenders have already stated they are not willing to provide any additional funding, particularly in light of the Plan Settlement. At this juncture any delay in the Debtors' timeline—such as requiring 28 days' notice of the Disclosure Statement—would severely jeopardize the Proponents ability to confirm a Plan as the Debtors would not have the necessary funds to extend confirmation beyond November 24, 2025.

42. As such, the Debtors contend that parties have received ample time notice of the Motion and conditional approval of the Disclosure Statement is necessary and warranted based on the facts and circumstances of these Chapter 11 Cases.

III.
RESERVATION OF RIGHTS

43. The Debtors expressly reserve all rights to provide additional legal arguments and/or briefing or to present additional evidence prior to or at the Combined Hearing (a) with respect to seeking approval of the Disclosure Statement and confirmation of the Plan or (b) in response to the Objections or any other objections with respect to approval of the Disclosure Statement or confirmation of the Plan.

IV.
CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter the proposed Order, and grant the relief requested in the Motion and such other relief as the Court deems appropriate.

[*Signature page to follow*]

DATED: October 13, 2025

Respectfully submitted by:

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COUNSEL TO DEBTORS AND DEBTORS IN POSSESSION

CERTIFICATE OF SERVICE

I certify that on October 13, 2025, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas.

/s/ Nora J. McGuffey
Nora J. McGuffey