IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	Chapter 11
MODIVCARE INC., *et al*.[1]	Case No. 25-90309 (ARP)
Debtors.	(Jointly Administered)
	Hearing Date: October 6, 2025 at 9:00 am CT Obj. Deadline: September 29, 2025 at 4:00 pm CT

OBJECTION OF PROPOSED LEAD PLAINTIFF TO THE DISCLOSURE STATEMENT AND SOLICITATION PROCEDURES RELATED TO THE JOINT CHAPTER 11 PLAN OF REORGANIZATION OF MODIVCARE INC. AND ITS DEBTOR AFFILIATES

Christopher Skrypski ("Proposed Lead Plaintiff"), as proposed lead plaintiff in the securities class action captioned as *Kalera v. ModivCare, Inc. et al.,* Case No. 25-cv-00306 (D. Colo.) (the "Securities Litigation"), pending in the United States District Court for the District of Colorado (the "District Court"), for himself and on behalf of the proposed class in the Securities Litigation (the "Proposed Class" and the members thereof, the "Class Members"), hereby submits this objection (the "Objection") to approval of (a) the *Disclosure Statement for the Joint Chapter 11 Plan of Reorganization of ModivCare Inc. and its Debtor Affiliates* [Docket No. 120] (the "Disclosure Statement"), and (b) the procedures ("Solicitation Procedures") that ModivCare Inc. ("ModivCare") and its debtor affiliates (together with ModivCare, the "Debtors") in the above-captioned chapter 11 bankruptcy cases (the "Chapter

[1] A complete list of each of the Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number (if applicable) may be obtained on the website of the Debtors' claims and noticing agent at https://www.veritaglobal.net/ModivCare. Debtor ModivCare Inc.'s principal place of business and the Debtors' service address in the Chapter 11 Cases is 6900 E. Layton Avenue, Suite 1100 & 1200, Denver, Colorado 80237.

11 Cases") have proposed for soliciting votes and confirmation of the *Joint Chapter 11 Plan of Reorganization of ModivCare Inc. and its Debtor Affiliates* [Docket No. 119] (the "Plan"),[2] as set forth in the Debtors' *Emergency Motion of Debtors for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling Confirmation Hearing; (C) Establishing Related Objection and Voting Deadlines; (D) Approving Related Solicitation Procedures, Ballots, and Release Opt-Out Forms and Form and Manner of Notice; (E) Approving Procedures for Assumption of Executory Contracts and Unexpired Leases; (F) Approving Equity Rights Offering Procedures and Related Materials; and (G) Granting Related Relief* [Docket No. 122] (the "Motion"). As and for this Objection, Proposed Lead Plaintiff respectfully states as follows:

PRELIMINARY STATEMENT[3]

1. The Disclosure Statement and Solicitation Procedures contain several problematic features, but chief among them is that they facilitate implementation of a Plan with a Third-Party Release that engineers "deemed consent" via an opt-out. Indeed, the Third- Party Release stands to eviscerate a vast array of claims and causes of action that non-Debtor third parties may have against non-Debtor third parties—including the claims that Proposed Lead Plaintiff and the Proposed Class assert against the Non-Debtor Defendants in the Securities Litigation.

2. But no rational and fully informed Class Member would ever voluntarily relinquish independent, direct claims against the insured Non-Debtor Defendants—their only potential source of recovery for the losses they sustained due to the Defendants' wrongdoing—

[2] Capitalized terms used but not defined herein shall have the meanings set forth in the Disclosure Statement, Motion, and Plan, as applicable.

[3] Capitalized terms used in this Preliminary Statement but not defined above have the meanings set forth herein.

in exchange for absolutely nothing. The only way to avoid this draconian outcome under the proposed Solicitation Procedures is to navigate a compendium of legal documents and affirmatively opt out of the Third-Party Release by completing and returning an Opt-Out Form baked into a Notice of Non-Voting Status that is facially intended to notify the Class Members (to the extent they even receive it) that they are not entitled to vote or receive anything under the Plan. Yet, despite the potential prejudice and burden placed on creditors, the Disclosure Statement does not even attempt to offer any factual or legal justification for the Third-Party Release. On this basis alone, neither the Disclosure Statement, nor the Solicitation Procedures the Debtors are attempting to use to implement the Third-Party Release, should be approved in their current form.

3. In addition, the Disclosure Statement lacks adequate information to advise Proposed Lead Plaintiff and the Proposed Class of the Plan's impact on their claims against the Non-Debtor Defendants and on the prosecution of the Securities Litigation. Among other things, the Disclosure Statement:

- does not contain a description of the Securities Litigation, the claims asserted therein, the defendants against which such claims are asserted (including whether any non-Debtor defendants are "Released Parties" under the Plan or the potential impact of the Third-Party Release on claims against those defendants), or the current status of the Securities Litigation;

- violates Bankruptcy Rule 3016(c) by failing to disclose the scope of the Third-Party Release and the related Injunction in the Plan, including but not limited to identifying with specificity all claims and parties impacted thereby;

- does not disclose whether the claims of Proposed Lead Plaintiff and the Proposed Class will be preserved against the Debtors to the extent of available insurance coverage; and

- does not provide adequate information regarding the Debtors' document preservation obligations.

6. The infirmities in the Solicitation Procedures, the Disclosure Statement, and the Plan can be resolved in one of two simply ways: (i) carve the claims of Proposed Lead Plaintiff and the Proposed Class against the Non-Debtor Defendants—who are providing no consideration for the Third-Party Release—out of the Third-Party Release, *or* (ii) authorize Proposed Lead Plaintiff to opt out of the Third-Party Release on behalf of the Proposed Class and all Class Members. Absent at least one of these modifications to the Plan and Disclosure Statement (where applicable), the Disclosure Statement and Solicitation Procedures cannot be approved.[4]

FACTUAL BACKGROUND

I. The Securities Litigation

7. The Securities Litigation is a federal securities class action commenced on January 29, 2025 in the District Court against ModivCare and certain of the Debtors' current and former directors and officers, Mr. L. Heath Sampson, Mr. Kenneth Shepard, and Ms. Barbara Gutierrez (together, the "Non-Debtor Defendants" and together with ModivCare, the "Defendants"). A true and correct copy of the complaint [Sec. Lit. Doc. No. 1] (the "Complaint") is annexed hereto as **Exhibit A**.[5]

8. The Complaint generally alleges that the Defendants made materially false and misleading statements and omissions related to ModivCare's business and operations relating to its non-emergency medical transportation segment, which artificially inflated the price of

[4] If the issues raised in this Objection are not resolved, Proposed Lead Plaintiff reserves the right to argue in connection with confirmation of the Plan that the Third-Party Release, as applied to Class Members—who are deemed to reject the Plan and are not entitled to vote—is impermissible under Fifth Circuit precedent as a *de facto* nonconsensual release and also exceeds the boundaries of this Court's jurisdiction and constitutional adjudicatory authority.

[5] Because the District Court has not yet appointed a lead plaintiff in the Securities Litigation, a consolidated amended complaint has not yet been filed. References herein to the Complaint are solely a summary and do not limit or otherwise prejudice the rights of Proposed Lead Plaintiff or any Class Member in the Securities Litigation.

ModivCare's common stock between November 3, 2022 and September 15, 2024, inclusive (the "Class Period") in violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. The Complaint also alleges wrongdoing by the Defendants on behalf on behalf of a proposed class comprised of all investors (the "Proposed Class"), other than the Defendants, who purchased or otherwise acquired ModivCare common stock during the Class Period.

9. On March 31, 2025, Proposed Lead Plaintiff, Irving Firemen's Relief and Retirement Fund ("IFRRF"), and movants Dinesh Kalera and Matt Rose filed competing motions for appointment as lead plaintiff and selection of their choice of counsel [Sec. Lit. Doc. Nos. 16, 18, 19, 21].

10. On April 21, 2025, movants Dinesh Kalera and Matt Rose filed notices withdrawing from the District Court's consideration and asserting that they did not oppose the remaining competing lead plaintiff motions [Sec. Lit. Doc. Nos. 32-33].

11. By May 5, 2025, Proposed Lead Plaintiff and IFRRF's lead plaintiff motions were fully briefed and pending [Sec. Lit. Doc. Nos. 16-17, 19-20, 34-40].

12. On September 5, 2025, ModivCare filed a *Notice of Suggestion of Bankruptcy* stating that ModivCare had filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, triggering an automatic stay (the "Automatic Stay") of continued judicial proceedings against ModivCare under 11 U.S.C. § 362(a) [Sec. Lit. Doc. No. 41] (the "Suggestion of Bankruptcy").

13. On September 19, 2025, Proposed Lead Plaintiff filed a response opposing the Suggestion of Bankruptcy to the extent it purports to suggest that the automatic stay in these Chapter 11 Cases stays proceedings in the Securities Litigation as to claims asserted against

the Non-Debtor Defendants, and any other proceedings that do not implicate ModivCare, including, but not limited to, resolution of the competing motions for appointment of a lead plaintiff and for selection of lead counsel [Sec. Lit. Doc. 42] (the "Response").

14. The Response also requested that the District Court schedule a hearing to decide the pending lead plaintiff motions and alerted the District Court that Proposed Lead Plaintiff has retained bankruptcy counsel to safeguard the rights of the Proposed Class in these Chapter 11 Cases.

15. On September 19, 2025, IFRRF submitted a joinder to the Response and proposed that the District Court appoint IFRRF and Proposed Lead Plaintiff as joint co-lead plaintiffs and approve their selections of counsel, respectively, along with their joint retention of bankruptcy counsel [Sec. Lit. Doc. No. 44].

16. After the Response was filed, the District Court judge referred the pending lead plaintiff motions of Proposed Lead Plaintiff and IFRRF to a magistrate judge. As of the date hereof, the District Court has not yet ruled on the lead plaintiff motions.

II. Relevant Bankruptcy Proceedings

17. On August 20, 2025, the Debtors commenced the Chapter 11 Cases in the United States Bankruptcy Court for the Southern District of Texas (the "Court").

18. On September 4, 2025, the Debtors filed the Plan, Disclosure Statement, and Motion, with a hearing for approval of the Disclosure Statement and the Solicitation Procedures scheduled for October 6, 2025.

A. The Third-Party Release and Injunction

19. Article X of the Plan contains a deemed release (the "Third-Party Release") of numerous non-Debtors' claims against the Debtors and myriad other non-Debtors, that states in pertinent part:

> [A]s of the Effective Date. . . each Releasing Party, in each case on behalf of itself and its respective successors, assigns, and Representatives, and any and all other Persons who may purport to assert any Claim or Cause of Action, directly or derivatively, by, through, for, or because of the foregoing Persons, has and is deemed to have, forever and unconditionally, released, and absolved each Released Party from any and all Claims, obligations, rights, suits, damages, and Causes of Action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, including any derivative claims asserted or assertable on behalf of the Debtors, the Estates, the Reorganized Parent, or the Reorganized Debtors that such Person would have been legally entitled to assert in its own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in, a Debtor or other Person, based on or relating to . . .(i) the governance, management, transactions, ownership, or operation of the Debtors or the Non-Debtor Affiliates, (ii) the purchase, acquisition, sale, merger, or rescission of any business line, Assets, or Security of the Debtors or the Non-Debtor Affiliates, . . . (iv) the business or contractual arrangements between any Debtor or Non-Debtor Affiliate and any other Person (including Consenting Creditors), . . . (xi) any other act or omission, transaction, agreement, event, or other occurrence related to any of the foregoing and taking place on or before the Effective Date; . . .
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> Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Third-Party Release, which includes by reference each of the related provisions and definitions contained in the Plan, and, further, shall constitute the Bankruptcy Court's finding that the Third-Party Release is: (1) consensual; (2) given and made after due notice and opportunity for hearing; and (3) a bar to any of the Releasing Parties asserting any Claim or Cause of Action released pursuant to the Third-Party Release.

See Plan, Art. X, Sec. 10.6(b).

20. Pursuant to the Plan, the "Releasing Parties" deemed to grant the Third-Party Release include, among numerous others, "each Holder of a Claim or Interest in a Non-Voting Class that does not affirmatively elect to 'opt-out' of the Third-Party Release as provided on its respective Release Opt-Out Form." *See* Plan, Art. I.A.

21. The "Released Parties" under the Third-Party Release comprise a similarly broad universe including, among numerous others:

> (a) the Debtors; (b) the Reorganized Debtors; . . . (j) each Holder of a Claim or Interest in a Non-Voting Class that does affirmatively elect to "opt out" of the Third-Party Releases as provided on its respective Release Opt-Out Form; and (k) with respect to each of the foregoing persons in clauses (a) through (j), all Related Parties. . .

See Plan, Art. I.A.

22. Connecting the dots further, the Plan defines "Related Party" to include:

> current and former affiliates, and such Person's and its current and former affiliates' current and former directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, predecessors, participants, successors, and assigns, subsidiaries, and each of their respective current and former equity holders, officers, directors, managers, principals, members, employees, agents, fiduciaries, trustees, advisory board members, financial advisors, limited partners, general partners, attorneys, accountants, managed accounts or funds, management companies, fund advisors, investment bankers, consultants, investment managers, investment advisors, representatives, and other professionals, and such Person's respective heirs, executors, estates, and nominees, each in their capacity as such.. . . .

Plan, Art. I.A.

23. Thus, through a web of interconnected Plan provisions that a creditor or interest holder (including Class Members, who are otherwise disenfranchised by the Plan), it appears that the Non-Debtor Defendants—who are contributing nothing in furtherance of the Plan—are included in the definition of Released Parties deemed to be released by the Releasing Parties from "any and all Claims, obligations, rights, suits, damages, and Causes of Action, remedies, and liabilities whatsoever . . . ." Plan Art. X, Sec. 10.6(b).

24. In addition, Article X, Section 10.5 of the Plan also contains a permanent injunction (the "Injunction") purporting to enjoin, among other things:

> commencing or continuing in any manner any action or other proceeding of any kind, in each case on account of or with respect to any Claim, demand, liability, obligation, debt, right, Cause of Action, Interest, or remedy released or to be released, exculpated or to be

> exculpated, settled or to be settled, or discharged or to be discharged pursuant to the Plan or the Confirmation Order against any Person so released, discharged, or exculpated (or the property or estate of any Person or Entity so released, discharged, or exculpated).

25. If claims against the Non-Debtor Defendants are released through the Third-Party Release, the Injunction would enjoin Proposed Lead Plaintiff and Class Members from continuing to pursue such claims against the Non-Debtor Defendants, who are contributing nothing to the Plan to compensate Lead Plaintiff or the Proposed Class and, in the case of the current and former directors and officers, as a matter of law, could not obtain a discharge of those claims even if they were debtors themselves (*see* 11 U.S.C. § 523(a)(19) (liabilities of an individual debtor for violations of securities laws are categorically nondischargeable)).

B. Treatment of the Claims of Proposed Lead Plaintiff and the Proposed Class

26. Pursuant to the Plan, the claims of Proposed Lead Plaintiff and Class Members, which arise from the purchase or sales of securities of ModivCare, are classified in Class 7 (Subordinated Claims) and are subordinated under Section 510(b) of the Bankruptcy Code. Class 7 Claims "shall be cancelled, released, extinguished, and of no further force or effect." *See* Plan, Section 4.7. Holders of Subordinated Claims in Class 7 are not entitled to receive a recovery or distribution under the Plan, and are thus not permitted to vote and deemed to reject the Plan. *See* Plan, Section 4.7.

27. As discussed above, holders of claims in impaired, non-voting classes such as Class 7 are nonetheless required to wade through a labyrinth of provisions and take affirmative measures to locate, read, interpret, and ultimately opt out of the Third-Party Release *even though they are receiving nothing under the Plan and are not entitled to vote*. No rational Class Member would ever knowingly and voluntarily opt *in* to the Third-Party Release if given the informed choice to do so, yet the Debtors ask the Court to simply presume their consent to

the Third-Party Release if they fail to jump through all the necessary hoops to effectuate an opt-out. That logical fallacy renders the Third-Party Release an impermissible nonconsensual release as to Class Members and, on that basis, the Plan is unconfirmable and the Court should not approve the Disclosure Statement or Solicitation Procedures being used to effectuate the Third-Party Release.

OBJECTION

28. The proponent of a chapter 11 plan may only solicit votes to accept or reject that plan once the Court has approved the written disclosure statement for that plan as containing "adequate information." 11 U.S.C. § 1125(b). Section 1125(a) of the Bankruptcy Code defines "adequate information" as follows:

> information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to . . . a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan[.]

11 U.S.C. § 1125(a); *Matter of Tex. Extrusion Corp.*, 844 F.2d 1142, 1157 (5th Cir. 1988).

29. The purpose of a disclosure statement for a chapter 11 plan "is to provide 'adequate information' to creditors to enable them to decide whether to accept or reject the proposed plan." *In re Feretti*, 128 B.R. 16, 18 (Bankr. D.N.H. 1991) (citations omitted). Although courts assess adequacy on a case-by-case basis, a disclosure statement must contain "simple and clear language delineating the consequences of the proposed plan on [creditors'] claims and the possible . . . alternatives so that [creditors] can intelligently accept or reject the Plan." *In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973, 981 (Bankr. N.D.N.Y. 1988); *see also Tex. Extrusion*, 844 F.2d at 1157. In essence, a disclosure statement "must clearly and

succinctly inform the average . . . creditor what it is going to get, when it is going to get it, and what contingencies there are to getting its distribution." *Ferretti*, 128 B.R. at 19.

30. Courts also will not approve disclosure statements that describe plans that are "so fatally flawed that confirmation is impossible." *In re U.S. Brass Corp.*, 194 B.R. 420, 422 (Bankr. E.D. Tex. 1996). Because, as discussed more fully below, the Plan cannot be confirmed in its current form due to the Third-Party Release, it would be counterproductive to approve Disclosure Statement and authorize the Debtors to expend estate resources soliciting votes on an unconfirmable Plan. For this reason alone, the Court should not approve the Disclosure Statement in its current form.

31. In addition, the Disclosure Statement does not contain adequate information to enable Proposed Lead Plaintiff and the Proposed Class to fully assess the extent to which the Plan will impact them with respect to the Securities Litigation. The Disclosure Statement fails to provide adequate information regarding (i) the Securities Litigation, (ii) the Third-Party Release and, in particular, its draconian impact, (iii) access to the Debtors' D&O Insurance, and (iv) the Debtors' document preservation obligations. Unless these deficiencies are addressed, the Court should not approve the Disclosure Statement.

I. THE DISCLOSURE STATEMENT CANNOT BE APPROVED BECAUSE THE DEBTORS CANNOT PROVIDE ANY LEGITIMATE FACTUAL OR LEGAL JUSTIFICATION FOR THE THIRD-PARTY RELEASE AS APPLIED TO PROPOSED LEAD PLAINTIFF OR CLASS MEMBERS.[6]

32. A disclosure statement describing a plan that cannot be confirmed cannot be approved, regardless of the amount of disclosure it contains. *See, e.g., In re Am. Capital Equip., LLC*, 688 F.3d 145, 154 (3d Cir. 2012); *John Hancock Mutual Life Insurance Co. v.*

[6] Proposed Lead Plaintiff reserves all rights to object to confirmation on any and all grounds, and this Objection is not, and shall not be deemed to be, an objection to the Plan (*see* Para. 50, *infra*).

Route 37 Business Park Associates, 987 F.2d 154, 157 (3d Cir. 1993); *see also In re Beyond.com*, 289 B.R. 138, 140 (Bankr. N.D. Cal. 2003) (denying approval of disclosure statement where plan could not be confirmed); *In re Phoenix Petroleum Co.,* 278 B.R. 385, 394 (Bankr. E.D. Pa. 2001) ("If the disclosure statement describes a plan that is so 'fatally flawed' that confirmation is 'impossible,' the court should exercise its discretion to refuse to consider the adequacy of disclosures."). The purpose behind this rule is pure common sense: courts will not permit a bankruptcy estate to incur the costs of soliciting votes for a plan that, even if unanimously accepted by creditors, could never be confirmed. *See, e.g., In re Main Street AC, Inc*., 234 B.R. 771, 775 (Bankr. N.D. Cal. 1999); *In re Pecht*, 57 B.R. 137, 139 (Bankr. E.D. Va. 1986) ("If, on the face of the plan, the plan could not be confirmed, then the court will not subject the estate to the expense of soliciting votes and seeking confirmation.").

33. The Plan cannot be confirmed because the Third-Party Release purports to release the claims belonging to Proposed Lead Plaintiff and the Proposed Class against the Non-Debtor Defendants—and the only recourse for Proposed Lead Plaintiff and Class Members to salvage their claims is by affirmatively opting out, a burden inequitably foisted upon them under the circumstances. This opt-out requirement places the onus on defrauded investors (assuming they are even aware of the Chapter 11 Cases or the fact that they have claims against the Debtors and the Non-Debtor Defendants) to locate and review the Disclosure Statement and the Plan, study the complicated Third-Party Release, and ascertain that *even though they are receiving nothing under the Plan* and thus are not entitled to vote, they nevertheless must take affirmative steps to preserve their rights against the Non-Debtor Defendants.

34. This exercise is excessively convoluted even for parties represented by counsel, much less absent Class Members. The Disclosure Statement provides no factual or legal justification for placing the burden of locating and interpreting complex legal documents on individual Class Members, *who cannot vote and are receiving nothing under the Plan*, and thus have no reason to suspect they need to read it at all, much less engage in an extensive legal analysis requiring the assistance of counsel—because no such justification exists.

35. The opt-out mechanism is at odds with fundamental principles of fairness and due process here, where it is proposed as a means of preemptively legislating the mechanism by which the Plan would strip non-voting, disenfranchised investors of valuable claims against third parties without any consideration. The Third-Party Release seeks to give the Non-Debtor Defendants the benefits of prevailing on a motion to dismiss without any meaningful due process whatsoever. As applied to Class Members, the Third-Party Release is a thinly disguised and legally impermissible non-consensual release that renders the Plan unconfirmable under the Bankruptcy Code.

36. "[T]he bankruptcy code does not authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seeks to discharge claims against nondebtors without the consent of affected claimants." *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 227 (2024). Even before the Supreme Court's ruling in *Purdue*, non-consensual third-party releases have long been categorically impermissible in the Fifth Circuit. *See, e.g.*, *Ad Hoc Group of Vitro Noteholders v. Vitro S.A.B. de CV (In re Vitro S.A.B. de CV)*, 701 F.3d 1031, 1059 (5th Cir. 2012) (citing *In re Pac. Lumber Co.*, 584 F.3d 229, 251–52 (5th Cir. 2009)) ("[A] non-consensual, non-debtor release through a bankruptcy proceeding[] is generally not available under United States law. Indeed, this court has explicitly prohibited

such relief."); *In re Zale Corp.*, 62 F.3d 746, 760 (5th Cir. 1995) ("Section 524 prohibits the discharge of debts of nondebtors.").

37. Although the Debtors may argue the Third-Party Release is consensual, it is not. *See Imperial Indus. Supply Co. v. Thomas*, 825 F. App'x 204, 206–07 (5th Cir. 2020) ("Tacit acquiescence between relative strangers ignores the basic tenets of contract law . . . . generally speaking, 'silence or inaction does not constitute acceptance of an offer.'") (citations omitted); *Patterson v. Mahwah Bergen Retail Grp., Inc.*, 636 B.R. 641, 686 (E.D. Va. 2022) ("[N]either Debtors nor the Bankruptcy Court identified any facts that would support the application of an exception to the general rule of contracts that silence cannot manifest assent. . . . any attempt to claim that contract law supports a finding of consent to third-party releases based on inaction rings hollow.").

38. The Court need only consider one question in evaluating whether the Third-Party Release is in fact consensual: ***Would any rational, fully informed Class Member ever voluntarily release direct claims against the insured Non-Debtor Defendants, their only potential source of recovery, in exchange for absolutely nothing?***

39. Put differently: If the Plan required Class Members to affirmatively opt *in* to the Third-Party Release, would they ever actually do so? The only legitimate answer is that they would not, and thus the supposedly "consensual" Third-Party Release is anything but. *In re Chassix Holdings, Inc.*, 533 B.R. 64, 78 (Bankr. S.D.N.Y. 2015) ("As to creditors who might vote to reject the Plan: the Court noted that it was difficult to understand why any other action should be required to show that the creditor also objected to the proposed third-party releases. . . . Finding 'consent' in these circumstances is to some extent a legal fiction."); *In re SunEdison, Inc.*, 576 B.R. 453, 460 (Bankr. S.D.N.Y 2017) ("The Debtors' argument that the

Non-Voting Releasors' silence should be deemed their consent to the release is not persuasive because the Debtors have not identified the source of their duty to speak.").

40. The court in *In re Aegean Marine Petroleum Network, Inc.* criticized the impropriety of a similar effort to use an opt-out mechanism to fabricate "judicial deemed consent" to a third-party release by holders of securities fraud claims who, like Class Members here, were deemed to reject the Plan and were not entitled to vote:

> This is all about consent and what consent means, right? So you're basically urging me to say that you need me to manufacture consent for you because we know, we know in every one of these cases, there are people who are going to get this big package and they're not going to open it, or even if they open it, they're not going to understand it, and they're not going to respond. We know that. ***So all that this opt-out approach does is it seeks to manufacture judicial deemed consent without an actual thought process on behalf of the person whose consent is being sought.***
>
> As I said in *Chassix*, there are times in the law when policies put that burden on people. The law supports class actions. It supports it for the purpose of judicial efficiency. And so it puts on people the burden of opting out, otherwise, they're included. ***There is no such policy in favor of releases. In fact, the policy is the opposite.*** What I'm told [in] Metromedia is that they ought to be rare. . . .
>
> ***If we're going to seek consent, it ought to be real consent***, and it should be on an opt-in basis, not an opt-out basis.

In re Aegean Marine Petroleum Network Inc., Case No. 18-13374-mew (Bankr. S.D.N.Y.), Transcript of Hearing Held Feb. 14, 2019 (emphasis added) (the "Aegean Transcript"), at 28:1–29:6.

41. The *SunEdison* court likewise observed that:

> The Debtors' argument that the Non-Voting Releasors' silence should be deemed their consent to the Release is not persuasive because the Debtors have not identified the source of their duty to speak. The Debtors do not contend that an ongoing course of conduct with their creditors gave rise to a duty to speak. . . .

> Instead, the Debtors essentially contend that the warning in the Disclosure Statement and the ballots regarding the potential effect of silence gave rise to a duty to speak, and the Non-Voting Releasors' failure to object to or reject the Plan should be treated as their deemed consent to the Release. Indeed, this appears to be the unspoken rationale of the authorities cited by the Debtors. ***The Debtors have failed, however, to show that the Non-Voting Releasors' silence was misleading or that it signified their consent to the Release. There are other plausible inferences that support the opposite inference. For example, the meager recoveries (here, less than 3% for the unsecured creditors) may explain their inaction without regard to the Release.***

In re SunEdison, 576 B.R. at 460–61 (emphasis added).

42. Similarly, in *In re Emerge Energy Services LP*, the court held:

> For the Court to infer consent from the nonresponsive creditors and equity holders, the Debtors must show under based contract principles that the Court may construe silence as acceptance because (1) the creditors and equity holders accepted a benefit knowing that the Debtors, as offerors, expected compensation; (2) the Debtors gave the creditors and equity holders reason to understand that assent may be manifested by silence or inaction, and the creditors and equity holders remained silent and inactive intending to accept the offer; or (3) acceptance by the creditors and equity holders can be presumed due to previous dealings between the parties. The Debtors cannot do so. The Class 6 creditors and Class 9 equity holders are receiving no distribution under the Plan and no previous dealings between the parties are in evidence.
> . . .
> A party's receipt of a notice imposing an artificial opt-out requirements, the recipient's *possible* understanding of the meaning and ramifications of such notice, and the recipient's failure to opt-out simply do not qualify. . . . Accordingly, the Court will not approve the third-party releases as proposed.

In re Emerge Energy Servs. LP, 2019 WL 7634308, at *18 (Bankr. D. Del. Dec. 5, 2019).

43. The Bankruptcy Court for the District of Delaware also came to a similar conclusion in *In re AAC Holdings, Inc.*:

> Why should the burden be on creditors and shareholders who are getting nothing to respond to say they want to opt out from these releases? And I guess along with that is: What reasonable person would get this notice and say, I'm getting nothing under this plan, but I'm going to go ahead

> and give them a release? What reasonable investor or reasonable creditor would ever do that?
> . . .
> And for creditors, they might not have gotten [the notice]. They might have gotten it and didn't pay attention to it. They might have gotten it and said why bother, I'm not getting anything under this plan, and they don't read the whole thing.

In re AAC Holdings, Inc., Case No. 20-11648 (Bankr. D. Del.), Transcript of Hearing Held Aug. 31, 2020, at 37:5–11; 38:15–19.

44. The Debtors will argue that, regardless of the Fifth Circuit's longstanding categorical prohibition on nonconsensual releases and the Supreme Court's now-nationwide prohibition of such releases in *Purdue*, this Court's jurisprudence and that of the Fifth Circuit permits "consensual" opt-out mechanisms. That might be for creditors whose claims are being paid in bankruptcy. However, Class Members are receiving nothing under the Plan and are not entitled to vote. The Delaware Bankruptcy Court in *In re Smallhold, Inc.* emphasized the change that *Harrington v. Purdue* made to third-party releases and their impact on a class of creditors:

> Judge Lopez's decision in *Robertshaw* is to similar effect, emphasizing that the third-party release was clearly and conspicuously disclosed to all creditors, and that every creditor had the opportunity to opt out of the release. *In re Robertshaw US Holding Corp.*, 662B.R. 300 (Bankr. S.D. Tex. 2024), D.I. 959 at 29.
> . . .
> Another point in *Robertshaw* warrants mention. The decision in that case emphasized that under Rule 23, opt outs are permissible in class action cases involving claims for damages. *Robertshaw* at 28 n.120. While that is true, the critical difference is that in the class action context, a class is only certified after a court makes a factual finding that the named representative is an appropriate representative of the unnamed class members. In the plan context, there is no named plaintiff, found by the court to be an adequate representative, whose actions may presumptively bind others. As set forth in Part II.E, *infra*, the Court would be open to the argument that an opt-out regime would be appropriate if the plan process were to replicate the requirements of Rule 23(b)(3).

In re Smallhold, Inc., 665 B.R. 704, 721, n.53 (Bankr. D. Del. 2024) ("Accordingly, whatever one might think about the propriety of third-party releases in the world before *Purdue Pharma*, this Court concludes that in light of that decision, there is no longer a basis to argue with the conclusion in cases like *Washington Mutual*, *Emerge Energy*, *SunEdison*, *or Chassix*.").

45. Here, Proposed Lead Plaintiff and the Proposed Class are receiving nothing under the Plan, and thus are *not even entitled to vote* on the Plan. Class Members—to the extent they are even aware of the Chapter 11 Cases or the Plan at all—have little reason to do *anything* with respect to the Plan, much less find, review, and decipher a convoluted Third-Party Release and take affirmative steps to preserve their claims against parties other than the Debtors. The proposed opt-out mechanism, like those in *Aegean*, *Chassix*, and other similar cases, is simply a means of manufacturing illusory "consent" to a release that is intended to deprive Proposed Lead Plaintiff and the Proposed Class of their fundamental right to procedural due process.

46. The Debtors cannot explain away a due process failure through any amount of incremental disclosure in the Disclosure Statement, as no legitimate legal or factual justification exists. Permitting the Debtors to proceed with the solicitation of votes on the Plan would be a waste of estate resources. Accordingly, the Disclosure Statement and Solicitation Procedures cannot be approved and the Debtors should not be authorized to solicit votes on the Plan in its current form.

47. A resolution of this defect is simple: Proposed Lead Plaintiff and the Proposed Class, and their claims against the Non-Debtor Defendants in the Securities Litigation, should be expressly excluded from the Third-Party Release and Plan Injunction, either by revisions to the definition of "Released Parties" in the Plan, with a corresponding disclosure in the

Disclosure Statement, or through an order permitting Proposed Lead Plaintiff to opt out on behalf of the Proposed Class.

48. To that end, Proposed Lead Plaintiff suggests that the following should be added to the definition of "Released Parties" in the Plan, with a corresponding disclosure in the Disclosure Statement, to clarify that the Non-Debtor Defendant named or to be named in the Securities Litigation, in their capacity as such, are not Released Parties, as follows:

> *provided, however*, that each non-Debtor defendant now or hereafter named in the securities class action captioned as *Kalera v. ModivCare, Inc. et al., Case No. 25-cv-00306 (D. Colo.)* (the "Securities Litigation"), pending in the United States District Court for the District of Colorado, in their capacity as such, shall not be a Released Party.

49. Finally, for the avoidance of any doubt or ambiguity otherwise created by the language of the Third-Party Release, the Plan should expressly indicate as follows, with a corresponding disclosure in the Disclosure Statement:

> Notwithstanding anything to the contrary in this Plan, the Plan Supplement, or the Confirmation Order, nothing herein or therein does, shall, or may be construed to release, enjoin, or otherwise adversely impact the claims and causes of action asserted against any non-Debtor defendant now or hereafter named in the securities class action captioned as *Kalera v. ModivCare, Inc. et al.*, Case No. 25-cv-00306 (D. Colo.) (the "Securities Litigation").

50. Proposed Lead Plaintiff intends to file a motion seeking authority, to the extent necessary, to opt out of the Third-Party Release on behalf of the Proposed Class, or certification of the Proposed Class for that limited purpose. However, the Plan-centric resolution proposed above would achieve the same result in a more efficient manner.

51. A simple carve-out, or Proposed Class-wide opt-out, is also particularly appropriate here because in the likely event Proposed Lead Plaintiff is confirmed as a court-

appointed fiduciary, he will have authority to preserve the rights and claims of the Proposed Class.

52. Absent the foregoing changes, the Disclosure Statement and Solicitation Procedures should not be approved.

II. THE DISCLOSURE STATEMENT CANNOT BE APPROVED BECAUSE IT DOES NOT PROVIDE ADEQUATE INFORMATION.

A. The Disclosure Statement does not contain an adequate description of the Securities Litigation or the claims asserted therein.

53. The Securities Litigation involves serious and substantial claims against ModivCare and the Non-Debtor Defendants. Despite being aware of—and, prior to the commencement of the Chapter 11 Cases, participating in—the Securities Litigation, the Debtors make no effort in the Disclosure Statement to describe or disclose the Securities Litigation, other than a passing mention that "[t]he Company is currently subject to ongoing litigation that may result in potential Claims for monetary damages." *See* Disclosure Statement, Art. V.

54. Creditors and interest holders are entitled to be advised of the pendency of the Securities Litigation when deciding how to vote on the Plan. *See In re Bally Total Fitness of Greater N.Y., Inc.*, No. 07-12395 (BRL), 2007 Bankr. Lexis 4729, at *22–23 (Bankr. S.D.N.Y. Sept. 17, 2007) (taking into account pending litigation when determining feasibility of a Plan). Yet, the Disclosure Statement contains no description of the Securities Litigation and does not even provide the case name and caption so that creditors could possibly research the Securities Litigation in light of the absence of any disclosure by the Debtors. Accordingly, the Disclosure Statement should be revised to include a description of the Securities Litigation and the potential effect confirmation of the Plan may impose on rights of the Proposed Class. For the

avoidance of doubt, though, such disclosures will not cure the due process defects in the Plan and Solicitation Procedures described in section I above.

B. The Disclosure Statement violates Bankruptcy Rule 3016(c) by failing to disclose the scope of the Third-Party Release and Injunction.

55. Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 3016(c) provides that "[i]f a plan provides for an injunction against conduct not otherwise enjoined under the [Bankruptcy] Code, the plan and disclosure statement shall describe in specific and conspicuous language (bold, italic, or underlined text) all acts to be enjoined and identify the entities that would be subject to the injunction." Fed. R. Bankr. P. 3016(c); *see also In re Keys Fitness Prods., L.P.*, No. 08-31790-HDH-11, 2008 Bankr. LEXIS 3309 at *14–15 (Bankr. N.D. Tex. Sept. 11, 2008) (noting disclosure of non-debtor release satisfies Bankruptcy Rule 3016(c)); *In re Lower Bucks Hosp.*, 471 B.R. 419, 460 (Bankr. E.D. Pa. 2012). The *Lower Bucks* court noted that although Bankruptcy Rule 3016(c) purports to address only injunctions, "[i]ts purpose is to alert parties in interest that the plan purports to restrict their rights in ways that ordinarily would not result from confirmation of a plan." 471 B.R. at 460. As here, "[w]hether 'enjoined' or merely 'released,' in this case, the Plan was designed to deprive [third parties] of their right to prosecute a claim against a non-debtor." *Id.* Thus, Bankruptcy Rule 3016(c) applies to the presentation of both the Third-Party Release and the Injunction in the Plan and Disclosure Statement.

56. The Disclosure Statement might facially comply with Bankruptcy Rule 3016(c) by presenting the language of the Third-Party Release, copied essentially verbatim from the Plan —but its nominal compliance with the rule ends there. The Disclosure Statement merely parrots the Third-Party Release language from the Plan, without describing with any specificity (or at all) the universe of claims and parties impacted by the Third-Party Release. Nor does

the Disclosure Statement "describe in specific and conspicuous language . . . all acts to be enjoined" by the Injunction. Moreover, there is no meaningful disclosure as to the basis for the Third-Party Release, all of the Released Parties entitled to a release, the consideration provided for the release, or why the release is supposedly essential to the Plan.

57. While the potential issues with the Third-Party Release cannot be cured simply by additional disclosure, the current draft will force Class Members (if they receive any notice and are aware of the impact of these Chapter 11 Cases at all) to undertake an analysis that is at best complicated and difficult to navigate, imposing a dizzying burden to cross-reference cumbersome definitions that incorporate multiple, extremely broad tiers of related parties and related parties' related parties, and with no explanatory disclosure in the Disclosure Statement. Accordingly, even if Class Members are made aware of the Disclosure Statement and Plan, there is nothing whatsoever in the Disclosure Statement to inform them of the impact the Third-Party Release and Injunction could have on their independent, direct claims against the Non-Debtor Defendants who are providing nothing to the Proposed Class in exchange for the release.

58. The prejudice to Proposed Lead Plaintiff and the Proposed Class is particularly onerous where Proposed Lead Plaintiff and the Proposed Class are not receiving any economic value under the Plan, and where members of the Proposed Class rely on Proposed Lead Plaintiff to protect their interests. Moreover, the Third-Party Release operates as a *de facto* final judgment dismissing the claims of Proposed Lead Plaintiff and the Proposed Class against the Non-Debtor Defendants, even though those claims cannot be adjudicated in Bankruptcy Court unless Proposed Lead Plaintiff and the Proposed Class consent to Bankruptcy Court adjudication (which they do not). However, although such disclosures would satisfy

Bankruptcy Rule 3016(c), they will not cure the due process defects in the Plan and Solicitation Procedures described in section I above.

C. The Disclosure Statement does not disclose whether the claims of Proposed Lead Plaintiff and the Proposed Class will be preserved against the Debtors to the extent of available insurance coverage.

59. The Debtors' prepetition director and officer liability insurance policies along with any other applicable insurance policies, including primary insurance, excess insurance, or tail insurance policies (the "D&O Policies") are left intact by the Plan and expressly deemed assumed. *See* Plan, Art. VIII, Sec. 8.6. Although the Debtors appear to have D&O Policies, the Disclosure Statement does not describe such policies or explain whether these or any other insurance policies cover the claims asserted in the Securities Litigation, and if so, how the Plan would permit Proposed Lead Plaintiff or the Proposed Class to access coverage under such policies on account of their claims against the Debtors to the extent of available insurance coverage, which would have no economic impact on the Debtors' estate.

60. This omission is particularly glaring in light of Article VIII of the Plan, which provides that no distributions will be made on account of allowed claims against the Debtors covered by the D&O Policies until the holders thereof exhaust all remedies with respect to such insurance policies. Plan, Art. 8.6(d). However, the Disclosure Statement does not explain whether or how Proposed Lead Plaintiff and the Proposed Class can comply with that mandate. Rather, the Plan purports to cancel, release and extinguish the claims asserted against the Debtors in the Securities Litigation despite the apparent availability of insurance. The Disclosure Statement must provide such information.

D. The Disclosure Statement lacks adequate information regarding preservation of evidence potentially relevant to the Securities Litigation.

61. Discovery has not yet taken place in the Securities Litigation. As the issuer of the securities that are the subject of the Securities Litigation, the Debtors undoubtedly have books, records, electronically stored information, and other evidence potentially relevant to the Securities Litigation in their possession, custody, and/or control.

62. However, the Plan does not contain, nor does the Disclosure Statement describe, any affirmative requirement that the Debtors take any action to preserve potentially relevant evidence in the Securities Litigation, nor does the Disclosure Statement contain any explanation of what, if any, measures the Debtors intend to implement to ensure they retain and preserve all such evidence through the completion of the Securities Litigation.

63. Continuing preservation of the Debtors' books, records, electronically stored information, and other items of evidence that are potentially relevant to the Securities Litigation post-confirmation is crucial to avoid prejudice to Proposed Lead Plaintiff and the Proposed Class. Additionally, The Securities Action is subject to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. § 78u-4, which mandates that:

> any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations (including electronically recorded or stored data), and tangible objects that are in the custody or control of such person and that are relevant to the allegations, as if they were the subject of a continuing request for production of documents from an opposing party under the Federal Rules of Civil Procedure. See 15 U.S.C. § 78u-4(b)(3)(C)(i).

64. This mandatory requirement is subject to "sanction for willful violation." *See* 15 U.S.C. § 78u-4(b)(3)(C)(ii).

65. Inclusion of the following provision in the Plan, and corresponding disclosure in the Disclosure Statement, would resolve Proposed Lead Plaintiff's concerns with respect to

the post-confirmation preservation of evidence that is potentially relevant to the Securities Litigations, as well as comply with the PSLRA:

> Until the entry of final and non-appealable orders of judgment or settlement with respect to all defendants now or hereafter named in the litigations captioned as *Kalera v. ModivCare, Inc. et al.*, Case No. 25-cv-00306 (D. Colo.) pending in United States District Court for the District of Colorado (the "Securities Litigation"), the Debtors, the Reorganized Debtors, and any transferee or custodian of the Debtors' books, records, documents, files, electronic data (in whatever format, including native format), or any tangible object or other item of evidence relevant or potentially relevant to the Securities Litigation, wherever stored (collectively, the "Potentially Relevant Books and Records"), shall preserve and maintain the Potentially Relevant Books and Records as if they were the subject of a continuing request for production of documents from an opposing party under the Federal Rules of Civil Procedure, and shall not destroy, abandon, transfer, or otherwise render unavailable such Potentially Relevant Books and Records.

RESERVATION OF RIGHTS

66. Proposed Lead Plaintiff reserves all rights with respect to approval of the Disclosure Statement and confirmation of the Plan or any other chapter 11 plan proposed in these Chapter 11 Cases, including but not limited to objecting to confirmation of the Plan or any other plan on any and all grounds, whether or not raised in this Objection.

67. This Objection and any subsequent pleading, appearance, argument, claim, or suit made or filed by Proposed Lead Plaintiff, either individually or for the Proposed Class or any member thereof, do not, shall not, and shall not be deemed to:

a. constitute a submission by Proposed Lead Plaintiff, either individually or for the Proposed Class or any Class Member, to the jurisdiction of the Bankruptcy Court;

b. constitute consent by Proposed Lead Plaintiff, either individually or for the Proposed Class or any Class Member, to entry by the Bankruptcy Court of any final order or judgment, or any other order having the effect of a final order or judgment, in any non-core proceeding, which consent is hereby withheld unless, and solely to the extent, expressly granted in the future with respect to a specific matter or proceeding;

c. waive any substantive or procedural rights of Proposed Lead Plaintiff or the Proposed Class or any Class Member, including but not limited to (a) the right to challenge the constitutional authority of the Bankruptcy Court to enter a final order or judgment, or any other order having the effect of a final order or judgment, on any matter; (b) the right to have final orders and judgments, and any other order having the effect of a final order or judgment, in non-core matters entered only after de novo review by a United States District Court judge; (c) the right to trial by jury in any proceedings so triable herein, in the Chapter 11 Cases, including all adversary proceedings and other related cases and proceedings (collectively, "Related Proceedings"), in the Securities Litigation, or in any other case, controversy, or proceeding related to or arising from the Debtors, the Chapter 11 Cases, any Related Proceedings, or the Securities Litigation; (d) the right to seek withdrawal of the bankruptcy reference by a United States District Court in any matter subject to mandatory or discretionary withdrawal; or (e) all other rights, claims, actions, arguments, counterarguments, defenses, setoffs, or recoupments to which Proposed Lead Plaintiff or the Proposed Class or any Class Member are or may be entitled under agreements, at law, in equity, or otherwise, all of which rights, claims, actions, arguments, counterarguments, defenses, setoffs, and recoupments are expressly reserved.

68. For the avoidance of doubt, Proposed Lead Plaintiff, on behalf of himself and the Proposed Class and the Class Members, does not, and will not impliedly, consent to this Court's adjudication of any claims now or hereafter asserted against any non-Debtor now or hereafter named in the Securities Litigation. Proposed Lead Plaintiff, on behalf of himself and the Proposed Class and the Class Members, further reserves all rights to object to confirmation of the Plan, or any other plan proposed in the Chapter 11 Case, on any basis, including but not limited to the fact that the Court lacks constitutional adjudicatory authority pursuant to *Stern v. Marshall*, 564 U.S. 462 (2011), and its progeny to approve a release of the claims of Proposed Lead Plaintiff and the Proposed Class and Class Members against any Non-Debtor Defendant.

CONCLUSION

69. For all of the foregoing reasons, Proposed Lead Plaintiff respectfully requests that the Court decline to approve of the Disclosure Statement and Solicitation Procedures in any manner unless the issues raised in this Objection are appropriately addressed.

Dated: September 29, 2025

LOWENSTEIN SANDLER LLP

/s/ Andrew Behlmann

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CERTIFICATION OF SERVICE

I certify that on September 29, 2025, I caused a true and correct copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on those parties registered to receive electronic notices.

I also caused the foregoing document to be served by e-mail upon: (a) ModivCare Inc., 6900 E. Layton Avenue, Suite 1100 & 1200, Denver, CO 80237, Attn: Faisal Khan (faisal.khan@modivcare.com) and Chad Shandler (chad.shandler@fticonsulting.com); (b) co-counsel to the Debtors, (i) Latham & Watkins LLP, 1271 Avenue of the Americas New York, NY 10020, Attn: Ray C. Schrock (ray.schrock@lw.com); Keith A. Simon (keith.simon@lw.com); George Klidonas (george.klidonas@lw.com); and Jonathan Weichselbaum (jon.weichselbaum@lw.com); and (ii) Hunton Andrews Kurth LLP, 600 Travis, Suite 4200, Houston, Texas 77002, Attn: Tad Davidson (taddavidson@hunton.com), Catherine Rankin (crankin@hunton.com), and Brandon Bell (bbell@hunton.com); (c) counsel for the Prepetition First Lien Agent, Consenting Creditors, and DIP Lenders, (i) Paul Hastings LLP, 200 Park Avenue, New York, NY 10166, Attn: Kris Hansen (krishansen@paulhastings.com; and (ii) Paul Hastings LLP 71 South Wacker Drive, Chicago, IL 60606, Attn: Matt Warren (mattwarren@paulhastings.com) and Lindsey Henrickson (lindseyhenrikson@paulhastings.com); (d) the U.S. Trustee, 515 Rusk Street, Suite 3516, Houston, TX 77002, Attn: Jana Whitworth (jana.whitworth@usdoj.gov); and (e) counsel to the Creditors' Committee, (i) White & Case LLP Charles Koster (charles.koster@whitecase.com) 609 Main Street, Suite 2900 Houston, TX 77002, (ii) White & Case LLP Gregory Pesce (gregory.pesce@whitecase.com),111 South Wacker Drive, Suite 5100 Chicago, IL 60606, and (iii) White & Case LLP Scott Greissman (sgreissman@whitecase.com), J. Christopher Shore (cshore@whitecase.com), Andrew Zatz (azatz@whitecase.com) 1221 Avenue of the Americas New York, New York 10020.

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