IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

In re HOSPITAL FOR SPECIAL SURGERY, LLC *Dba* ONECORE HEALTH, Debtor.	Chapter 11 Case No. 24-12862-JDL

DEBTOR'S MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF CHAPTER 11 PLAN OF REORGANIZATION OF HOSPITAL FOR SPECIAL SURGERY, LLC dba ONECORE HEALTH

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Dated: May 9, 2025
Oklahoma City, Oklahoma

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The Debtor submits this memorandum of law in support of confirmation of the *Chapter 11 Plan of Reorganization of Hospital for Special Surgery, LLC dba OneCore Health* [Dkt. No. 254] (including the Plan Supplement and all other exhibits and schedules thereto and as may be amended, modified or supplemented from time to time, the "Plan"),[1] pursuant to section 1129 of chapter 11 of title 11 of the United States Code, 11 U.S.C. 101 *et seq.* (the "Bankruptcy Code"). The Debtor respectfully states as follows.

Preliminary Statement

1. From the outset of this chapter 11 case, the Debtor resolved to work collaboratively with parties in interest to reach consensus on a restructuring that would allow the Debtor to continue as a going concern and maintain continued high-quality patient care, while maximizing value for creditors. The Debtor has proposed a confirmable plan which has received the overwhelming support of the creditor body. The sole objection to the Plan was filed by a non-creditor who is a party in interest purely as a matter of statute. With the confirmation of the Plan, the Debtor will accomplish its goal of a consensual restructuring that will provide it the fresh start needed to ensure its long-term viability.

2. For the reasons set forth herein and in the declarations submitted in support of confirmation, the Debtor respectfully submits that the Plan satisfies the requirements of section 1129 of the Bankruptcy Code, is in the best interests of creditors, and should be confirmed and the lone objection should be overruled.

Filings and Evidence in Support of Confirmation

3. On March 27, 2025, the Debtor filed the *Debtor's Motion for an Order (I) Approving the Disclosure Statement, (II) Establishing a Voting Record Date, (III) Approving*

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan.

Solicitation Packages and Solicitation Procedures, (IV) Approving the Forms of Ballots, (V) Establishing Voting and Tabulation Procedures, and (VI) Establishing Notice and Objection Procedures for the Confirmation of the Plan [Dkt. No. 222] (the "Disclosure Statement Motion").

4. On April 16, 2025, the Court entered its *Order (I) Approving the Disclosure Statement, (II) Establishing a Voting Record Date, (III) Approving Solicitation Packages and Solicitation Procedures, (IV) Approving the Forms of Ballots, (V) Establishing Voting and Tabulation Procedures, and (VI) Establishing Notice and Objection Procedures for the Confirmation of the Plan* [Dkt. No. 252] (the "Disclosure Statement Order").

5. In further support of the Plan, the Debtor filed the following declarations:

i. *Declaration of Angela Nguyen with Respect to the Tabulation of Votes on the Chapter 11 Plan of Reorganization of Hospital for Special Surgery, LLC dba OneCore Health* [Dkt. No. 286] (the "Voting Certification");
ii. *Declaration of Carrie McEntire in Support of Confirmation of Chapter 11 Plan of Reorganization of Hospital for Special Surgery, LLC dba OneCore Health* [Dkt. No. 287].

6. The Debtor also refers to the record of this chapter 11 case for facts that bear on confirmation of the plan. Any testimony and other declarations that may be adduced or submitted at or in connection with the Confirmation Hearing are incorporated herein.

7. The Debtor will give notice of the proposed form of order confirming the Plan (the "Confirmation Order") in advance of the Confirmation Hearing.

Summary of Plan

8. The Plan provides for, among other things, (i) a comprehensive restructuring of the Debtor's prepetition obligations, (ii) the provision of the going-concern value of the Debtor's business, (iii) maximization of creditor recoveries, (iv) an infusion of new capital, (v) an equitable distribution to the Debtor's stakeholders, (vi) continuation of high-quality medical care to the Debtor's patients, and (vii) optimal protection of the Debtor's providers and other employees,

including, without limitation, the Debtor's retention of all employees.

9. The restructuring contemplated by the Plan provides the Debtor with a viable path forward and a framework to successfully exit chapter 11 with the support of the creditor body and new exit financing. The widespread support for the Plan speaks to the good-faith efforts that culminated in the Plan, and its fairness and overall compliance with the Bankruptcy Code.

Plan Solicitation

10. On April 16, 2025, the Bankruptcy Court entered the Disclosure Statement Order that, among other things, (i) approved the Disclosure Statement as containing adequate information pursuant to section 1125 of the Bankruptcy Code; (ii) scheduled the hearing to consider confirmation of the Plan (the "Confirmation Hearing"); (iii) established May 5, 2025 at 5:00 p.m. (prevailing Central Time) as the deadline to (a) vote to accept or reject the Plan (the "Voting Deadline") and (b) object to confirmation of the Plan (the "Plan Objection Deadline"); (iv) approved the proposed procedures for (a) soliciting, receiving, and tabulating votes to accept or reject the Plan, (b) voting to accept or reject the Plan, and (c) filing objections to the Plan (the "Solicitation and Voting Procedures"); (v) approved the form of ballots with voting instructions (the "Ballots") and certain other notices; and (vi) approved the form and manner of notice of the Confirmation Hearing (the "Confirmation Hearing Notice").

11. On April 23, 2025, the Debtor commenced solicitation of votes on the Plan by causing the Debtor's claims and noticing agent and administrative agent, Kurtzman Carson Consultants LLC *dba* Verita Global ("Verita"), to serve the applicable solicitation packages and appropriate notices on holders of Claims and Interests in accordance with the Disclosure Statement Order. *See* Voting Certification, ¶ 5.

Plan Supplement

12. On April 25, 2025, the Debtor filed the *Notice of Filing of Plan Supplement* [Dkt. No. 266], which included the (i) Settlement Agreement between the Debtor and Emma Base, (ii) Litigation Trust Agreement, and (iii) Reorganization Transaction Steps.

13. On April 28, 2025, the Debtor filed the *Notice of Filing of Supplement to Plan Supplement* [Dkt. No. 271], which included the Commitment Letter from First United Bank & Trust Co. dated April 28, 2025.

Tabulation

14. After the Voting Deadline, and following a complete review by Verita of all Ballots received, Verita finalized the tabulation of the Ballots, as described in the Voting Certification. As set forth in the Voting Certification, the Voting Classes voted as follows:

Received Ballots

	Accept		Reject	
CLASS	**NUMBER (% of Number Voted)**	**AMOUNT (% of Amount Voted)**	**NUMBER (% of Number Voted)**	**AMOUNT (% of Amount Voted)**
Class 2 (Critical Vendors Claims)	9 (100.00%)	$277,717.04 (100.00%)	0 (0.00%)	$0.00 (0.00%)
Class 3 (GUC Claims)	11 (78.57%)	68,980.99 (99.26%)	3 (21.43%)	$511.92 (0.74%)
Class 4 (Emma Base Claim)	1 (100.00%)	$15,265,541.26 (100.00%)	0 (0.00%)	$0.00 (0.00%)

Argument

The Plan Satisfies Section 1129 of the Bankruptcy Code and Should be Confirmed.

15. Herein, the Debtor addresses the applicable requirements for confirmation of the Plan under section 1129 of the Bankruptcy Code. As set forth herein, the Plan satisfies section 1129 of the Bankruptcy Code and should be confirmed.

16. Under section 1129(a)(1) of the Bankruptcy Code, a plan must comply with the

applicable provisions of the Bankruptcy Code. The legislative history of section 1129(a)(1) explains this provision encompasses the requirements of sections 1122 and 1123 of the Bankruptcy Code governing classification of claims and contents of a plan, respectively. *See* H.R. Rep. No. 95-595, at 412 (1977), *as reprinted in* 1978 U.S.C.C.A.N. 5963, S. Rep. No. 95-989, at 126 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 5787, 5912; *see also In re Greate Bay Hotel & Casino, Inc.*, 251 B.R. 213, 223 (Bankr. D.N.J. 2000) ("The legislative history reflects that 'the applicable provisions of chapter 11 [includes sections] such as section 1122 and 1123, governing classification and contents of plan.'") (alteration in original) (quoting H.R. Rep. 95-595, at 412). The Plan fully complies with the requirements of the Bankruptcy Code.

A. The Plan Complies with Section 1122 of the Bankruptcy Code.

17. Section 1122(a) of the Bankruptcy Code provides that "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class." 11 U.S.C. § 1122(a). Section 1122(b) of the Bankruptcy Code further provides that "[a] plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience." 11 U.S.C. § 1122(b).

18. Under this section, a plan may provide for multiple classes of claims or interests as long as each claim or interest within a class is substantially similar to the other claims or interests in that class. A plan proponent has significant flexibility in classifying claims and interests into multiple classes, provided that there is a reasonable basis to do so and that all claims or interests within a given class are "substantially similar." *In re Coastal Broad. Sys., Inc.*, 570 F. App'x. 188, 193 (3d Cir. 2014); *see also In re Idearc Inc.*, 423 B.R. 138, 160 (Bankr. N.D. Tex. 2009) ("[A] plan may provide for multiple classes of claims or interests so long as each claim or interest within

a class is substantially similar to other claims or interests in that class."), *aff'd sub nom. Spencer ad hoc Equity Comm. v. Idearc, Inc. (In re Idearc, Inc.)*, 662 F.3d 315 (5th Cir. 2011).

19. To determine whether claims are "substantially similar," courts have held that the proper focus is on "the legal character of the claim as it relates to the *assets of the debtor*." *In re AOV Indus. Inc.*, 792 F.2d 1140, 1150–51 (D.C. Cir. 1986) (emphasis in original) (citation omitted); *see also In re Tribune Co.*, 476 B.R. 843, 855 (D. Del. 2012) (concluding that phrase "substantially similar" reflects "the legal attributes of the claims, not who holds them") (internal quotations and citation omitted), *aff'd as modified*, No. 12-CV-1072 (GMS), 2014 WL 2797042 (D. Del. June 18, 2014), *aff'd in part, rev'd in part*, 799 F.3d 272 (3d Cir. 2015).

20. Though claims classified together must be sufficiently similar, the Bankruptcy Code does not forbid "the presence of similar claims in different classes. Although the legislative history behind [section] 1122 is inconclusive regarding the significance (if any) of this omission, it remains clear that Congress intended to afford bankruptcy judges broad discretion to decide the propriety of plans in light of the facts of each case." *In re Jersey City Med. Ctr.*, 817 F.2d 1055, 1060–61 (3d Cir. 1987).

21. Except for Administrative Expense Claims, Professional Fee Claims, Priority Tax Claims, and DIP Claims, which need not be designated as Classes under the Plan, Article III of the Plan provides for, with respect to the Debtor, the separate classification of Claims and Interests in the Debtor based upon differences in the legal nature and/or priority of such Claims and Interests in accordance with applicable law. In total there are five (5) Classes of Claims against, and Interests in, the Debtor:

i. Class 1 is comprised of Other Secured Claims;
ii. Class 2 is comprised of Critical Vendor Claims;
iii. Class 3 is comprised of General Unsecured Claims;
iv. Class 4 is comprised of the Emma Base Claim; and

v. Class 5 is comprised of Existing OneCore Interests.

22. The classification scheme of the Plan is rational and complies with the Bankruptcy Code. Generally, the Plan incorporates a "waterfall" classification and distribution scheme that strictly follows the statutory priorities prescribed by the Bankruptcy Code. All Claims and Interests within a single Class have the same or substantially similar rights against the Debtor. With respect to the separate classification of Class 4, Emma Base has an interest in an applicable policy of general liability insurance maintained by the Debtor which other General Unsecured Creditors lack. Accordingly, the classification scheme of the Plan complies with section 1122 of the Bankruptcy Code and should be approved.

B. The Plan Complies with Section 1123 of the Bankruptcy Code.

1. The Plan Complies with Section 1123(a) of the Bankruptcy Code (The Mandatory Plan Provisions)

23. Section 1123(a) of the Bankruptcy Code sets forth seven (7) applicable requirements that the proponent of a chapter 11 plan must satisfy, *see* 11 U.S.C. § 1123(a), each of which is discussed below.

i. ***Section 1123(a)(1) (Designate Classes).*** Section 1123(a)(1) requires that a plan must designate classes of claims and equity interests subject to section 1122 of the Bankruptcy Code. See 11 U.S.C. § 1123(a)(1). The Plan designates five (5) classes of Claims and Interests.

ii. ***Section 1123(a)(2) (Unimpaired Classes).*** Section 1123(a)(2) requires a plan to specify which classes of claims or interests are unimpaired by the plan. See 11 U.S.C. § 1123(a)(2). The Plan specifies that Class 1 (Other Secured Claims) is unimpaired under the Plan, and Class 5 (Existing OneCore Interests) is either unimpaired or impaired under the Plan such that they are presumed to accept or deemed to reject the Plan.

iii. ***Section 1123(a)(3) (Impaired Classes).*** Section 1123(a)(3) requires a plan to specify the treatment of Impaired classes of claims or interests. See 11 U.S.C. § 1123(a)(3). The Plan sets forth the treatment of Claims and Interests in Class 2 (Critical Vendor Claims), Class 3 (General Unsecured Claims), and Class 4 (Emma Base Claim), each of which constitutes an

impaired class under the Plan. Class 5 (Existing OneCore Interests) is either unimpaired or impaired under the Plan such that they are presumed to accept or deemed to reject the Plan.

iv. ***Section 1123(a)(4) (Same Treatment).*** Section 1123(a)(4) requires that a plan provide the same treatment for each claim or interest within a particular class unless any claim or interest holder agrees to receive less favorable treatment than other class members. See 11 U.S.C. § 1123(a)(4). Pursuant to Article IV of the Plan, except to the extent that a holder of an Allowed Claim has agreed to less favorable treatment of its Claim, the treatment of each Claim or Interest in each respective Class is the same as the treatment of each other Claim or Interest in such Class.

v. ***Section 1123(a)(5) (Adequate Means of Implementation).*** Section 1123(a)(5) requires that a plan provide "adequate means for the plan's implementation[.]" 11 U.S.C. § 1123(a)(5). As detailed in Article V of the Plan, a critical aspect of the Debtors' Plan is the implementation of the Reorganization Transaction upon the Effective Date, both to fund distributions to holders of Allowed Claims under the Plan, including any unpaid Administrative Expenses, and to provide the necessary capital for the Reorganized Debtor's go-forward operations. The Plan provides for adequate means of implementation through the Debtor's cash on hand, a $2.8MM equity infusion made by eligible participating members of the Debtor, the Debtor's entry into the $5MM Exit Facility Credit Agreement, and the Insurer's funding of the Litigation Trust Funded Amount.

vi. ***Section 1123(a)(7) (New Officers, Directors and Trustees).*** For the avoidance of doubt, this provision is inapplicable. The Debtor is maintaining its existing officers.

24. Accordingly, the Plan complies with each applicable requirement set forth in section 1123(a) of the Bankruptcy Code.

2. The Plan Complies with Section 1123(b) of the Bankruptcy Code (The Permissive Plan Provisions).

25. Section 1123(b) of the Bankruptcy Code sets forth permissive provisions that may be incorporated into a chapter 11 plan, each of which is discussed below.

i. ***Section 1123(b)(1) (Impaired or Unimpaired Classes)*** As contemplated by section 1123(b)(1) of the Bankruptcy Code and pursuant to section 1124 of the Bankruptcy Code, the Plan provides that (a) Class 1 (Other Secured Claims) are unimpaired, (b) Class 2 (Critical Vendor Claims), Class 3 (General Unsecured Claims, and Class 4 (Emma Base Claim) are impaired,

and (c) Class 5 (Existing OneCore Interests) are either impaired or unimpaired.

ii. ***Section 1123(b)(2) (Assumption or Assumption and Assignment of Executory Contracts and Unexpired Leases).*** As permitted by section 1123(b)(2) of the Bankruptcy Code, Article VIII of the Plan provides for the assumption (or assumption and assignment) and rejection of certain executory contracts and unexpired leases. The Debtor gave notice of an Assumption Schedule (that may be amended through and including the Effective Date) that sets forth executory contracts to be assumed by the Debtor under the Plan on the Effective Date. Article VIII of the Plan further provides, as of and subject to the occurrence of the Effective Date of the Plan, except as set forth in the Plan and the Confirmation Order, all executory contracts and unexpired leases (each, a "Contract") to which the Debtor is a party shall be deemed assumed or assumed and assigned, as applicable, except for any Contract that (i) was previously assumed or rejected by the Debtor pursuant to an order of the Bankruptcy Court; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a separate motion to assume or reject filed by the Debtor on or before the Confirmation Date; (iv) is specifically designated as a Contract to be included on the Rejection Schedule; or (v) is the subject of a pending Cure Dispute. *See* Plan, Art. VIII.

Further, Section 8.2(b) of the Plan provides that, if there is a dispute pertaining to the assumption of an executory contract or unexpired lease (other than a dispute pertaining to a Cure Amount), such dispute shall be heard by the Bankruptcy Court prior to the assumption being effective; provided that the Debtor or the Reorganized Debtor may settle any such dispute without any further notice to, or action by, any party or order of the Bankruptcy Court. *See* Plan, § 8.2(b). To the extent a dispute relates to Cure Amounts, the Debtor may assume and/or assume and assign the applicable executory contract or unexpired lease prior to the resolution of such cure dispute, provided that the Debtor or the Reorganized Debtor reserves Cash in an amount sufficient to pay the full amount reasonably asserted as the Cure Amount by the counterparty to such executory contract or unexpired lease. *See* Plan, § 8.2(c).

iii. ***Section 1123(b)(3) (Settlements, Releases or Retention of Claims and Causes of Action).*** As permitted by section 1123(b)(3)(A) of the Bankruptcy Code, the Plan provides for (i) a release of certain claims and Causes of Action by the Debtor and its Estate in favor of the Released Parties (Plan, § 10.6(a)), and (ii) the compromise and settlement of Claims, Interests, and controversies (Plan, § 5.1), including with respect to the Base Settlement. As permitted by section 1123(b)(3)(B) of the Bankruptcy Code, notwithstanding the Debtor's Release, Sections 5.8 and 10.9 of the Plan

preserves the Reorganized Debtor's rights with respect to the Retained Causes of Action. For the avoidance of doubt, the Debtor presently is not aware of any Retained Causes of Action having a material value to the Estate.

iv. ***Section 1123(b)(5) (Modified Rights of Claimholders).*** As permitted by section 1123(b)(5) of the Bankruptcy Code and as explained elsewhere herein, the Plan modifies the rights of Holders of Claims and Interests in Classes 2 – 5.

v. ***Section 1123(b)(6) (Other Appropriate Provision).*** Under section 1123(b)(6) of the Bankruptcy Code, a plan may "include any other appropriate provision not inconsistent with the applicable provisions of [the Bankruptcy Code]." 11 U.S.C. § 1123(b)(6). The Plan (i) contains certain release and exculpation provisions consistent with the applicable provisions of the Bankruptcy Code and Tenth Circuit law, (ii) provides that the Bankruptcy Court will retain jurisdiction over all matters arising out of, or related to this chapter 11 case, and (iii) provides that the issuance of the New OneCore Interests and the Litigation Trust Interests under the Plan will be exempt from registration under the Securities Act of 1933 and any other applicable securities law pursuant to Section 4(a)(2) of the Securities Act and/or Regulation D thereunder. No provision of the Plan is inconsistent with the Bankruptcy Code.

3. The Plan Complies with Section 1123(d) of the Bankruptcy Code.

26. Under section 1123(d) of the Bankruptcy Code, if it is proposed in a plan to cure a default, "the amount necessary to cure the default shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law." 11 U.S.C. § 1123(d). As noted above, Article VIII of the Plan provides for the assumption of certain Contracts and the process for determination of disputes with respect to assumed Contracts or Cure Amounts. *See* Plan, Art. VIII. No provision of the Plan is inconsistent with section 1123(d) of the Bankruptcy Code.

4. The Debtor Release Should be Approved.

27. The Debtor Release in Section 10.6(a) of the Plan releases certain claims and Causes of Action that the Debtor's Estate could assert against the Released Parties relating, in whole or in part, to among other things, the Debtor, its affiliates, or this Chapter 11 Case.

28. When considering releases by a debtor of non-debtor third parties pursuant to section 1123(b)(3)(A), the appropriate standard is whether the releases are a valid exercise of the debtor's business judgment and are fair, reasonable, and in the best interests of a debtor's estate. *See*, *e.g.*, *U.S. Bank Nat'l Ass'n v. Wilmington Tr. Co. (In re Spansion, Inc.)*, 426 B.R. 114, 143 (Bankr. D. Del. 2010) ("[A] debtor may release claims in a plan pursuant to Bankruptcy Code § 1123(b)(3)(A), if the release is a valid exercise of the debtor's business judgment, is fair, reasonable, and in the best interests of the estate."); *In re Aleris Int'l, Inc.*, No. 09-10478 (BLS), 2010 WL 3492664, at *20 (Bankr. D. Del. May 13, 2010) (stating that where debtor's releases are "an active part of the plan negotiation and formulation process, it is a valid exercise of the debtor's business judgment to include a settlement of any claims a debtor might own against third parties as a discretionary provision of a plan.").

29. As an exercise of its business judgment, a debtor's decision to release claims against third parties under a plan is afforded deference. *See*, *e.g.*, *In re Spansion*, 426 B.R. at 140 ("It is not appropriate to substitute the judgment of the objecting creditors over the business judgment of the Debtors . . . ."); *Marvel Ent. Grp., Inc. v. MAFCO Holdings, Inc. (In re Marvel Ent. Grp., Inc.)*, 273 B.R. 58, 78 (D. Del. 2002) ("[U]nder the business judgment rule . . . a court will not interfere with the judgment of a board of directors unless there is a showing of gross and palpable overreaching. Thus, under the business judgment rule, a board's decisions will not be disturbed if they can be attributed to any rational purpose and a court will not substitute its own notions of what is or is not sound business judgment.") (internal quotations and citations omitted).

30. It is well settled that debtors are authorized to settle or adjust any claim or interest belonging to the debtor or to the estate. 11 U.S.C. § 1123(b)(3)(A). Debtors may also release their claims in a chapter 11 plan. *See*, *e.g.*, *In re Midway Gold US, Inc.*, 575 B.R. 475, 509 (Bankr. D.

Colo. 2017) ("A plan may provide for releases by a debtor of non-debtor third parties after considering the specific facts and equities of each case."). In reviewing releases in a plan, courts use the "best interests of the estate" standard for approval of a settlement under Bankruptcy Rule 9019. *In re Rich Global, LLC*, 652 F. App'x 625 (10th Cir. 2016). When making such a determination, courts often consider, among other factors, if the release is a valid exercise of the debtor's business judgment, and is fair, reasonable, and in the best interests of the estate. *In re Midway Gold US, Inc.*, 575 B.R. at 509 ("a debtor may release claims in a plan pursuant to 11 U.S.C. § 1123(b)(3)(A) if the release is a valid exercise of the debtor's business judgment, is fair, reasonable, and in the best interests of the estate"); *In re BSD Medical Corp.*, 2016 WL 7985366 (Bankr. D. Utah Dec. 28, 2016) (holding that the debtor's release represented a valid exercise of the debtor's business judgment and that pursuit of the claims against the released parties is not in the best interest of the estate).

31. The Debtor Release is in the best interest of the Debtor's Estate and a sound exercise of the Debtor's business judgment. Without *ex ante* assurance of protection from liability, the Debtor's stakeholders would not have participated in the negotiations and compromises that led to this confirmable Plan.

32. The above points apply with equal force to the Debtor's determination to waive and release all preferential transfer claims against Critical Vendors (the "Preference Waiver") who (i) signed a Vendor Trade Agreement, (ii) performed under such Agreement in accordance with its terms from the date of execution through the date of entry of the Confirmation Order, (iii) accepted the Plan, and (iv) did not opt-out of the Third-Party Release by Holders of Claims and Interests.

33. The Debtor Release and the Preference Waiver are valid exercises of the Debtor's business judgment and both should be approved. Moreover, the Debtor's Release and the

Preference Waiver were given by the Debtor in exchange for the good and valuable consideration provided by the Released Parties and the Critical Vendors, respectively; were essential to the formulation of the Plan, as provided in section 1123 of the Bankruptcy Code; and were given and made after due notice and opportunity for a hearing. Importantly, no party has filed an objection to the Debtor's Release or the Preference Waiver.

5. The Third-Party Releases Should be Approved.

34. The Debtor incorporates by reference its arguments and authorities set forth in the *Debtor's Reply to the Objection of the United States Trustee to the Disclosure Statement for Chapter 11 Plan of Reorganization of Hospital for Special Surgery, LLC dba OneCore Health* [Dkt. No. 244] in support of its request that the Court approve the Third-Party Releases on the basis that they are consensual and consistent with Tenth Circuit precedent.

6. The Exculpation Provision Should be Approved.

35. Section 10.7 of the Plan contains customary exculpation for the Exculpated Parties for claims arising out of or related to, among other things, the Debtor or this chapter 11 case (the "Exculpation Provision").

36. Each of the Exculpated Parties has participated in the Debtor's chapter 11 case in good faith. Without the support of the Exculpated Parties, the Debtor would not have been able to commence this chapter 11 case, execute its chapter 11 strategy, and propose a confirmable plan. The Exculpation Provision is necessary to protect fiduciaries of the Debtor's Estate that have made substantial contributions to the chapter 11 case from collateral attacks related to good faith acts or omissions related to the Debtor's chapter 11 case.

37. Further, the scope of the Exculpation Provision is appropriately tailored to cover only acts or omissions occurring between the Petition Date and the Effective Date, and will not

affect any liability that arises from fraud, gross negligence, or willful misconduct, as determined by a Final Order. Further, although the Exculpation Provision does extend to the Debtor's employees and certain other Related Parties, the protection is expressly limited "solely to the extent such Related Parties are Estate fiduciaries." Plan, § 1.58, which treatment is consistent with similar exculpations approved by this Court. *See*, *e.g.*, *In re GMX Resources, Inc.*, Case No. 13-11456 (Bankr. W.D. Okla. Oct. 25, 2013), Doc. 1033; *In re White Star Petr. Hldgs., LLC*, Case No. 19-12521 (Bankr. W.D. Okla. Apr. 16, 2020), Doc. 1152. Accordingly, the Exculpation Provision is consistent with applicable law and should be approved.

7. The Injunction Should be Approved.

38. Section 10.5 of the Plan provides for a customary injunction (the "Injunction Provision") and merely seeks to ensure that parties do not interfere with the consummation and implementation of the Plan and the Reorganization Transaction contemplated thereby. The Injunction Provision implements the Debtors Release, the Third-Party Releases, and the Exculpation Provision embodied in the Plan by, among other things, permanently enjoining all persons and entities from commencing or continuing in any manner any claim that was released or exculpated pursuant to such provisions. See Plan, § 10.5. The Injunction Provision is narrowly tailored to achieve that purpose and therefore should be approved.

8. The Settlements and Compromises Contained in the Plan are Reasonable, Satisfy Bankruptcy Rule 9019, and Should be Approved.

39. The Plan embodies a good faith compromise of Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a creditor or an Interest holder may have with respect to any Allowed Claim or Allowed Interest or any distribution to be made on account thereof. Bankruptcy Rule 9019 governs the procedural prerequisites to approval of a settlement to which the debtor is a party and provides that "on the trustee's motion and after notice

and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a). Taken together, section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019(a) grant a bankruptcy court the power to approve a proposed compromise and settlement when it is in the best interests of the debtor's estate and its creditors. *See In re Marvel Ent. Grp., Inc.*, 222 B.R. 243, 249 (D. Del. 1998); *In re Louise's, Inc.*, 211 B.R. 798, 801 (D. Del. 1997).

40. Authority to approve a compromise or settlement proposed by a trustee is within the sound discretion of the bankruptcy court. *See*, *e.g.*, *In re Stewart*, 603 B.R. 138, 147 (Bankr. W.D. Okla. 2019). "In exercising [its] discretion, the bankruptcy court must determine whether the compromise is fair, reasonable and in the best interests of the estate." *Id.* A bankruptcy court's exercise of discretion should be guided by "the general public policy that 'compromises are favored in bankruptcy.'" *Id.* (quoting *In re Southern Medical Arts Companies, Inc.*, 343 B.R. 250, 255 (10th Cir. B.A.P.)); *see also Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968) (noting that "[c]ompromises are a normal part of the process of reorganization") (internal quotation marks and citation omitted).

41. To approve a proposed settlement, a bankruptcy court is not required to decide numerous issues of law and fact raised by the settlement. Instead, a bankruptcy court should "canvass the issues and see whether the settlement 'fall[s] below the lowest point in the range of reasonableness.'" *Finkelstein v. W.T. Grant Co. (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983) (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972)); *see also In re Purofied Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993) (noting that "the court need not conduct a 'mini-trial' to determine the merits of the underlying [dispute]"). "Because compromise is favored in bankruptcy and the Trustee need only show that his decision falls within the 'range of reasonable litigation alternatives,' the Trustee's burden is not high." *In re Stewart*, 603 B.R. at

147 (quoting *In re Roguemore*, 393 B.R. 474, 480 (Bankr. S.D. Tex. 2008).

42. Bankruptcy courts in the Tenth Circuit typically consider four factors when determining whether a compromise is in the best interests of the estate: "(1) the chance of success on the litigation on the merits; (2) possible problems in collecting the judgment; (3) the expense and complexity of the litigation; and (4) the interest of the creditors." *In re Southern Medical Arts Co., Inc.*, 343 B.R. 250, 256 (10th Cir. B.A.P. 2006) (citing *In re Kopexa Realty Venture Co.*, 213 B.R. 1020, 1022 (10th Cir. B.A.P. 1997). Additionally, some courts "give consideration as to whether the proposed settlement promotes the integrity of the judicial system." *In re Stewart*, 603 B.R. at 147.

43. The settlements set forth in the Plan, including the Base Settlement, are the result of months of good-faith, arm's-length negotiations among the parties. Such parties are all represented by experienced and competent counsel who vigorously negotiated the terms of the Plan, including the settlements and compromises embodied therein, and unanimously agree that approval of the Plan is a significantly better outcome than the alternatives. Accordingly, the settlements and compromises embodied in the Plan, taken together, represent a reasonable resolution of the issues raised in this chapter 11 case, result in a Plan that is fair and equitable and in the best interest of the Debtor's estate, and should therefore be approved by the Bankruptcy Court.

C. The Plan Complies with Section 1129(a)(2) of the Bankruptcy Code.

44. Section 1129(a)(2) of the Bankruptcy Code requires that plan proponents comply with the applicable provisions of the Bankruptcy Code. 11 U.S.C. § 1129(a)(2). The legislative history to section 1129(a)(2) indicates that this provision is intended to encompass the disclosure and solicitation requirements under sections 1125 and 1126 of the Bankruptcy Code. *See* H.R.

Rep. No. 95-595, at 412 (1977), as reprinted in 1978 U.S.C.C.A.N. 5963, 6368 ("Paragraph (2) [of section 1129(a)] requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure."); *see also In re PWS Holding Corp.*, 228 F.3d 224, 248 (3d Cir. 2000) ("[Section] 1129(a)(2) requires that the plan proponent comply with the adequate disclosure requirements of § 1125."); *In re Drexel Burnham Lambert Grp., Inc.*, 138 B.R. 723, 759 (Bankr. S.D.N.Y. 1992).

45. The Debtor, as plan proponent, complied with the applicable provisions of the Bankruptcy Code, namely sections 1125 and 1126, as well as the Disclosure Statement Order, by, among other things, providing notice of the Confirmation Hearing to all known holders of Claims or Interests through the filing and mailing of such notice, and therefore, have satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code.

1. The Plan Complies with Section 1125 of the Bankruptcy Code.

46. Under section 1125 of the Bankruptcy Code, prior to the solicitation of votes on a plan of reorganization, a debtor must disclose information that is adequate to permit an informed judgment by creditors and shareholders entitled to vote on the Plan. *See* 11 U.S.C. § 1125. On April 16, 2025, the Bankruptcy Court entered the Disclosure Statement Order. The Disclosure Statement Order approved the Debtor's Disclosure Statement pursuant to section 1125(b) as containing "adequate information" of a kind and in sufficient detail to enable hypothetical, reasonable investors typical of the Debtor's creditors to make an informed judgment regarding whether to accept or reject the Plan. Debtor complied with each of the requirements concerning the Solicitation Package set forth in the Disclosure Statement Order and fully complied with section 1125 of the Bankruptcy Code. The Debtor did not solicit acceptances of the Plan from any creditor or equity interest holder prior to the transmission of the Disclosure Statement.

2. The Plan Complies with Section 1126 of the Bankruptcy Code.

47. Section 1126 of the Bankruptcy Code specifies the requirements for acceptance of the Plan. Under section 1126, only holders of Allowed Claims and Interests in Impaired Classes that will receive or retain property under the Plan on account of such Claims or Interests may vote to accept or reject the Plan. *See* 11 U.S.C. § 1126(a). In accordance with section 1126 of the Bankruptcy Code and Articles III and IV of the Plan, the Debtor solicited acceptances from the holders of Claims in Classes 2-4, such Holders being Impaired.

48. Section 1126(c) of the Bankruptcy Code specifies the requirements for acceptance of a plan by impaired classes of claims entitled to vote to accept or reject a plan of reorganization:

> A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

11 U.S.C. § 1126(c).

49. As set forth in the Voting Certification, the Plan has been accepted by at least two-thirds in amount and more than one-half in number of Claims in Classes 2-4. *See* Voting Certification, ¶ 11.

50. As detailed herein and in the Voting Certification, the Debtor has obtained the acceptances of all Impaired Classes entitled to vote on the Plan and the Plan should be confirmed. Based on the foregoing, the Debtor has satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code.

D. The Plan Complies with Section 1129(a)(3) of the Bankruptcy Code (Good Faith)

51. Section 1129(a)(3) of the Bankruptcy Code requires that a plan be "proposed in

good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). While "good faith" is not defined in the Bankruptcy Code, courts in this Circuit have explained that the Bankruptcy Court should look to the "totality of circumstances" and consider "(1) whether a plan comports with the provisions and purpose of the Code and the chapter under which it is proposed, (2) whether a plan is feasible, (3) whether a plan is proposed with honesty and sincerity, and (4) whether a plan's terms or the process used to seek its confirmation was fundamentally fair." *See In re Global Water Techs., Inc.*, 311 B.R. 896, 903 (Bankr. D. Colo. 2004) (quoting *In re Mount Carbon Metro. Dist.*, 242 B.R. 18, 40-41 (Bankr. D. Colo. 1999). In assessing good faith, "courts have looked to whether the debtor intended to abuse the judicial process and the purposes of the reorganization provisions." *In re Paige*, 685 F.3d 1160, 1178 (10th Cir. 2012); *see also*, *In re Pikes Peak Water Co.*, 779 F.2d 1456, 1460 (10th Cir. 1985).

52. Here, the Debtor has proposed the Plan in good faith with good intentions in order to effectuate a restructuring that is fair for all stakeholders. The Plan is not proposed for any purpose forbidden by law, but rather is consistent with the letter and policy of the Bankruptcy Code as well as the fiduciary duties of the Debtor and its managers. The Plan is the product of arm's-length negotiations with stakeholders. For the reasons stated herein, the Debtor submits the Plan furthers the objectives and purposes of the Bankruptcy Code and has been proposed in good faith.

E. The Plan Complies with Section 1129(a)(4) of the Bankruptcy Code (Payments to Professionals)

53. Section 1129(a)(4) of the Bankruptcy Code requires that "[a]ny payment made or to be made by the proponent . . . for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable." 11 U.S.C. § 1129(a)(4). Section 2.2 of the Plan

provides that all Professional Fee Claims must be approved by the Bankruptcy Court pursuant to final fee applications as reasonable; therefore, the Plan complies with the requirements of section 1129(a)(4) of the Bankruptcy Code.

F. The Plan Complies with Section 1129(a)(5) of the Bankruptcy Code (Identities of New Officers, Directors, and Trustees)

54. Section 1129(a)(5) of the Bankruptcy Code requires that the plan proponent, among other things, disclose the identity and affiliations of the proposed officers and directors of the reorganized debtor and that the appointment or continuance of such officers and directors "be consistent with the interests of creditors and equity security holders and with public policy." 11 U.S.C. § 1129(a)(5). As set forth in the Reorganization Transaction Steps, there will be no changes to the identities of the officers of the Debtor when the Reorganization Transaction is effectuated so as to establish the Reorganized Debtor.

G. Section 1129(a)(6) of the Bankruptcy Code Does Not Apply to the Plan (Rate Changes)

55. Section 1129(a)(6) of the Bankruptcy Code provides that "[a]ny governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval." 11 U.S.C. § 1129(a)(6). The Plan does not provide for any rate changes by the Debtor, and, therefore, section 1129(a)(6) is inapplicable.

H. The Plan Complies with Section 1129(a)(7) of the Bankruptcy Code (Best Interests of Creditors)

56. Section 1129(a)(7) of the Bankruptcy Code requires:

> [w]ith respect to each impaired class of claims or interests[,] each holder of a claim or interest of such class (i) has accepted the plan; or (ii) will receive or retain under the plan . . . property of a value . . . that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of [the Bankruptcy Code.]

11 U.S.C. § 1129(a)(7).

57. This test applies if a class of claims or interests does not vote unanimously to accept a plan, even if the class as a whole votes to accept the plan. *See Bank of Am. Nat'l Trust and Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 441 n. 13 (1999). Satisfaction of the best interests of creditors test can be evidenced by a credible liquidation analysis demonstrating that an impaired class will receive no less than under a chapter 7 liquidation. *See In re Smith*, 357 B.R. 60, 67 (Bankr. M.D.N.C. 2006) ("In order to show that a payment under a plan is equal to the value that the creditor would receive if the debtor were liquidated, there must be a liquidation analysis of some type that is based on evidence and not mere assumptions or assertions."), *appeal dismissed*, 2007 WL 1087575 (M.D.N.C. Apr. 4, 2007). To demonstrate compliance with section 1129(a)(7) of the Bankruptcy Code, the Debtor included as an exhibit to the Disclosure Statement, a liquidation analysis estimating and comparing the range of proceeds generated under the Plan and a hypothetical chapter 7 liquidation (the "Liquidation Analysis").

58. As demonstrated by the Liquidation Analysis, the Plan satisfies the best interests test with respect to Holders that were deemed to reject the Plan because recoveries to creditors and equity interests under the Plan exceed the recoveries available to such parties in a hypothetical chapter 7 liquidation. Accordingly, the Debtor submits that the Plan satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code.

I. The Plan Satisfies Section 1129(a)(8) of the Bankruptcy Code (Class Acceptance)

59. Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests must either accept the Plan or be unimpaired thereby. Under section 1126(c) of the Bankruptcy Code, a class of claims accepts a plan if holders of at least two-thirds in amount and more than one-half in number of the allowed claims in that class vote to accept the plan. Under

section 1126(d) of the Bankruptcy Code, a class of interests accepts a plan if holders of at least two-thirds in amount of the allowed interests in that class vote to accept the plan. A class that is not impaired under a plan, and each holder of a claim or interest in such a class, is conclusively presumed to have accepted the plan. *Id.* § 1126(f); *see also* S. Rep. No. 95-989, at 123 (section 1126(f) of the Bankruptcy Code "provides that no acceptances are required from any class whose claims or interests are unimpaired under the Plan or in the order confirming the Plan.") On the other hand, a class is deemed to have rejected a plan if the plan provides that the claims or interests of that class do not receive or retain any property under the plan on account of such claims or interests.

60. Class 1 is deemed to accept the Plan because such Holders are unimpaired. As detailed in the Voting Certification, Classes 2 and 3 accepted the Plan. Class 4 unanimously accepted the Plan. Class 5 is deemed to reject the Plan because Existing OneCore Interests are terminated thereunder. Nevertheless, the Debtor meets the alternative requirement of section 1129(b) with respect to this deemed rejecting Class, as will be demonstrated in Section O, below.

J. The Plan Complies with Section 1129(a)(9) of the Bankruptcy Code (Administrative and Priority Claims)

61. Section 1129(a)(9) of the Bankruptcy Code requires that persons holding allowed claims entitled to priority under section 507(a) receive specified cash payments under a plan. 11 U.S.C. § 1129(a)(9). Unless the holder of a particular claim agrees to a different treatment with respect to such claim, section 1129(a)(9) of the Bankruptcy Code sets forth the treatment a plan must provide. *Id.*

62. The Plan complies with section 1129(a)(9) of the Bankruptcy Code. The Debtor will pay in full in Cash all accrued priority tax claims on or before the Effective Date. All Allowed Priority Tax Claims that are not due and payable on or before the Effective Date shall be paid in

the ordinary course of business or under applicable non-bankruptcy law as such obligations become due. The DIP Claim is being paid in full in Cash on or before the Effective Date.

63. Moreover, the Plan provides that, except to the extent a holder of an Allowed Priority Tax Claim agrees to less favorable treatment, each holder of an Allowed Priority Tax Claim shall receive, in full and final satisfaction of such Allowed Priority Tax Claim, at the option of the Debtor or the Reorganized Debtor, as applicable, Cash in an amount equal to such Allowed Priority Tax Claim on, or as soon as practicable thereafter, the later of (i) the Effective Date, to the extent such Claim is an Allowed Priority Tax Claim on the Effective Date, (ii) the first Business Day after the date that such Priority Tax Claim becomes an Allowed Priority Tax Claim, and (iii) the date such Allowed Priority Tax Claim is due and payable in the ordinary course as such obligation becomes due; provided that the Debtor and the Reorganized Debtor reserves the right to prepay all or a portion of any such amounts at any time under this option at their discretion. *See* Plan § 2.3. All Allowed Priority Tax Claims that are not due and payable on or before the Effective Date shall be paid in the ordinary course of business or under applicable non-bankruptcy law as such obligations become due. *See id.* The Plan, therefore, satisfies the requirements of sections 1129(a)(9)(A) and 1129(a)(9)(B).

K. The Plan Complies with Section 1129(a)(10) of the Bankruptcy Code (Acceptance by at Least One Impaired Class)

64. Section 1129(a)(10) of the Bankruptcy Code requires the affirmative acceptance of the plan by at least one class of Impaired Claims, "determined without including any acceptance of the plan by any insider." 11 U.S.C. § 1129(a)(10).

65. As set forth in the Voting Certification, Classes 2-4 accepted the Plan and no insider's vote is included in such calculation. Such Classes are impaired under the Plan.

L. The Plan Complies with Section 1129(a)(11) of the Bankruptcy Code (Feasibility)

66. Section 1129(a)(11) of the Bankruptcy Code requires that the Bankruptcy Court find that the Plan is feasible as a condition precedent to confirmation. 11 U.S.C. § 1129(a)(11). Specifically, it requires that confirmation is not likely to be followed by liquidation or the need for further financial reorganization of the debtor, unless such liquidation or reorganization is proposed in a plan. *Id.*; *see also In re Am. Cap. Equip.*, LLC, 688 F.3d 145, 155– 56 (3d Cir. 2012). The feasibility test set forth in section 1129(a)(11) requires that the bankruptcy court determine whether the plan may be implemented and has a reasonable likelihood of success. *See United States v. Energy Res. Co.*, 495 U.S. 545, 549 (1990); *Kane v. Johns-Manville Corp.*, 843 F.2d 636, 649 (2d Cir. 1988).

67. Section 1129(a)(11) "does not require a plan's success to be guaranteed." *Am. Cap. Equip.*, 688 F.3d at 156. Rather, the appropriate inquiry is whether a plan offers a reasonable assurance of success. *See id.; W.R. Grace*, 475 B.R. at 115 ("[T]he bankruptcy court need not require a guarantee of success, but rather only must find that the plan present[s] a workable scheme of organization and operation from which there may be reasonable expectation of success.") (internal citation and quotation marks omitted). The purpose of the feasibility test is to "prevent confirmation of visionary schemes which promise creditor and equity security holders more under a proposed plan than the debtor can possibly attain after confirmation." *In re Kreider*, No. BANKR. 05–15018ELF, 2006 WL 3068834, at *5 (Bankr. E.D. Pa. Sept. 27, 2006) (citation omitted). The mere prospect of financial uncertainty cannot defeat confirmation on feasibility grounds. *See In re U.S. Truck Co.*, 47 B.R. 932, 944 (E.D. Mich. 1985), *aff'd sub nom. Teamsters Nat'l Freight Indus. Negotiating Comm. v. U.S. Truck Co. (In re U.S. Truck Co.)*, 800 F.2d 581 (6th Cir. 1986).

68. For purposes of determining whether the Plan satisfies section 1129(a)(11) of the Bankruptcy Code, the Debtor prepared a feasibility analysis (the "Feasibility Analysis") which was included as an exhibit to the Solicitation Version of the Disclosure Statement. Based on the Feasibility Analysis, the Debtor will be able to satisfy all of its go-forward obligations, including all payments required by the Plan, upon emergence from this chapter 11 case, and therefore, confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization.

69. Accordingly, the Plan satisfies the feasibility standard of section 1129(a)(11) of the Bankruptcy Code.

M. The Plan Complies with Section 1129(a)(12) of the Bankruptcy Code (Payment of Statutory Fees)

70. Section 1129(a)(12) of the Bankruptcy Code requires the payment of "[a]ll fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan[.]" 11 U.S.C. § 1129(a)(12).

71. In accordance with section 1129(a)(12) of the Bankruptcy Code, Section 12.1 of the Plan provides that on the Effective Date, and thereafter as may be required, the Debtors or the Reorganized Debtors, as applicable, shall pay all Statutory Fees when due and payable. See Plan § 12.1.

N. The Plan Complies with Section 1129(a)(13) of the Bankruptcy Code (Retiree Benefits)

72. Section 1129(a)(13) of the Bankruptcy Code requires that the Plan provide for the continuation after the Effective Date of payment of all retiree benefits, as such term is defined in § 1114 of the Bankruptcy Code, at the level established under the same section. 11 U.S.C. § 1129(a)(13). The Debtor is not seeking to modify any "retiree benefits" (as defined in section 1114

of the Bankruptcy Code) under the Plan. Consequently, the Plan satisfies section 1129(a)(13) of the Bankruptcy Code.

O. The Plan Satisfies the "Cram Down" Requirements Under Section 1129(b) of the Bankruptcy Code

73. Section 1129(b) of the Bankruptcy Code provides a mechanism (known colloquially as "cram down") for confirmation of a chapter 11 plan in circumstances where the plan is not accepted by all impaired classes of claims or interests. Under section 1129(b), the Bankruptcy Court may "cram down" a plan over the dissenting vote of an impaired class or classes of claims or interests as long as (i) the plan satisfies the requirements of section 1129(a) of the Bankruptcy Code, other than section 1129(a)(8), and (ii) the plan does not "discriminate unfairly" and is "fair and equitable" with respect to such dissenting class or classes.

74. "Cram down" is only relevant as to Class 5 (Existing OneCore Interest Owners). The Plan may nevertheless be confirmed as to such impaired class given that the "cram down" requirements of section 1129(b) of the Bankruptcy Code are satisfied by the Plan.

1. No Unfair Discrimination.

75. The Bankruptcy Code does not set forth any one standard for determining if a plan discriminates unfairly against impaired, rejecting Classes. *See In re 203 N. LaSalle St. Ltd. P'ship*, 190 B.R. 567, 585 (Bankr. N.D. Ill. 1995) (noting "the lack of any clear standard for determining the fairness of a discrimination in the treatment of classes under a Chapter 11 plan" and that "the limits of fairness in this context have not been established"), *rev'd on other grounds*, 526 U.S. 434 (1999). Courts typically examine the facts and circumstances of the particular case to determine whether "unfair discrimination" exists. The unfair discrimination standard generally prevents creditors and interest holders with similar legal rights from receiving materially different treatment

under a proposed plan without a compelling justification for doing so. *See*, *e.g.*, *In re Ambanc La Mesa Ltd. P'ship*, 115 F.3d 650, 656 (9th Cir. 1997). Here, there is no unfair discrimination against Class 5 Holders. There are no other Classes containing creditors with Claims similar to those in Class 5 and each Class contains claims and interests that are similarly situated. Class 5 ranks junior to all other Classes as a matter of law. Accordingly, the Plan does not unfairly discriminate with respect to the Deemed Rejecting Class.

2. The Plan Is Fair and Equitable.

76. For a plan to be "fair and equitable" with respect to an impaired class of unsecured claims or interests that rejects a plan (or is deemed to reject a plan), the plan must follow the "absolute priority" rule (or satisfy the exception thereto) and satisfy the requirements of section 1129(b)(2). 11 U.S.C. § 1129(b)(b)(2)(B)(ii); 11 U.S.C. § 1129(b)(2)(C)(ii); *see also 203 N. LaSalle*, 526 U.S. at 441-42 ("As to a dissenting class of impaired unsecured creditors, such a plan may be found to be 'fair and equitable' only if the allowed value of the claim is to be paid in full, § 1129(b)(2)(B)(i), or, in the alternative, if 'the holder of any claim or interest that is junior to the claims of such [impaired unsecured] class will not receive or retain under the plan on account of such junior claim or interest any property,' § 1129(b)(2)(B)(ii)."). Generally, this requires that the impaired rejecting class of claims or interests either be paid in full or that any class junior to the impaired rejecting class not receive any distribution under a plan on account of its junior claim or interest. *See id.*

77. The Plan's treatment of Class 5 satisfies the absolute priority rule. Section 1129(b)(2)(C)(ii) of the Bankruptcy Code provides that a plan satisfies the absolute priority rule with respect to a class of interests that is not receiving full value where:

> (ii) the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such

junior interest any property.

Id.

78. Here, there is no Class junior to Class 5 that is receiving or retaining any property on account of such interest under the Plan. Accordingly, the Debtor submits that the Plan satisfies the requirements of section 1129(b)(2) of the Bankruptcy Code for all Classes of Claims and Equity Interests and, therefore, is "fair and equitable."

P. Section 1129(c) of the Bankruptcy Code Is Inapplicable.

79. The Plan is the only operative plan currently on file in this chapter 11 case. Accordingly, section 1129(c) of the Bankruptcy Code is inapplicable to this case.

Q. The Plan Complies with Section 1129(d) of the Bankruptcy Code.

80. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of section 5 of the Securities Act of 1933. The Plan, therefore, satisfies the requirements of section 1129(d) of the Bankruptcy Code.

R. Section 1129(e) of the Bankruptcy Code Is Inapplicable.

81. The provisions of section 1129(e) of the Bankruptcy Code apply only to "small business cases." *See* 11 U.S.C. § 1129(e). This chapter 11 case is not a "small business case" as defined in the Bankruptcy Code. Accordingly, such section is inapplicable.

Conclusion

For the reasons set forth herein, the Plan satisfies fully all applicable requirements of the Bankruptcy Code. Therefore, the Debtor respectfully requests the Court confirm the Plan pursuant to section 1129 of the Bankruptcy Code.

Dated: May 9, 2025
Oklahoma City, Oklahoma

Respectfully submitted,

ONECORE

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