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

IN RE:	.	Case No.: 25-80121-MVL-11
	.	(Jointly Administered)
HIGHER GROUND EDUCATION, INC., *et al.*	.	
Debtors.	.	Monday, November 24, 2025
	.	1:34 P.M.

TRANSCRIPT OF CONFIRMATION HEARING RE: AMENDED CHAPTER 11 PLAN FILED BY DEBTOR HIGHER GROUND EDUCATION, INC. (549) AND FINAL HEARING RE: AMENDED DISCLOSURE STATEMENT FILED BY DEBTOR HIGHER GROUND EDUCATION, INC. (551) AND FINAL HEARING RE: MOTION FOR RELIEF FROM STAY FILED BY CREDITOR SHEENA WATKINS (511)

BEFORE THE HONORABLE MICHELLE V. LARSON
UNITED STATES BANKRUPTCY COURT JUDGE

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THE COURT: Please be seated.

All right. Good afternoon, everyone. As you can see, I returned from the Westbrook Conference with my voice a little worse for wear. I feel fine. I have all my faculties. However, as like I said, my voice is shot so I apologize for that. Given that I had two confirmations today, I decided that I would soldier on.

All right. We have one matter on the docket this afternoon and that is Case Number 25-80121, Higher Ground Education, Inc. I'll take appearances for the record, and I'll start with those in the Courtroom.

MS. O'NEIL: Good afternoon, Your Honor.

Holly O'Neil with the law firm of Foley & Lardner on behalf of the Debtors. With me in the Courtroom today are my colleagues, Mr. Tim Mohan who will be the ringmaster of most of the show, also Nora McGuffey, Nate Walsh, Tom Scannell, all from Foley. Did I forget anybody?

And then, Your Honor, also with us today is our independent director, Mr. Mark Kirschbaum.

Mark, can you stand up?

THE COURT: Thank you.

MS. O'NEIL: We also have our financial advisors with SierraConstellation Partners, Mr. Carl Moore and Mr. Sean Corwin.

Gentlemen?

THE COURT: Thank you.

MS. O'NEIL: And then also, we have Adam Gorman with Veritas, who is our noticing and claims agent. Thank you, Your Honor.

THE COURT: All right, thank you.

Ms. Carson?

MS. CARSON: Good afternoon, Your Honor.

Amber Carson from Gray Reed on behalf of the Official Committee of Unsecured Creditors. And I believe with us virtually today is Ms. Terry Nugent, co-chair of the Committee.

THE COURT: All right, thank you very much.

MS. KIPPES: Good afternoon, Your Honor.

Meredyth Kippes on behalf of the United States Trustee.

THE COURT: Thank you.

MR. BINFORD: Good afternoon, Your Honor.

Jason Binford with the law firm of Kane Russell Coleman & Logan, jointly on behalf of Guidepost Global Education and Learn Capital and related entities.

THE COURT: Okay, thank you.

MS. SMITH: Good afternoon, Your Honor.

Laura Smith, O'Melveny & Myers, on behalf of RTS Orchards, LLC. They are the co-chair of the Official Committee of Unsecured Creditors and Ms. Nugent is the representative of

RTS.

THE COURT: All right, thank you very much.

MR. HOFFMAN: Good afternoon, Your Honor.

Trevor Hoffman from Cozen O'Connor, here on behalf of YYYYY, LLC, which is the senior DIP lender, and 2HR Learning, which is the plan sponsor.

THE COURT: Thank you very much.

All right. In terms of Webex, on behalf of Guidepost Financial Partners I, with the Pachulski firm, have Jordan Kroop. With EB5AN Investment Management, Inc. with the Sheehan Phinney firm, I have Christopher Candon. Let's see, everyone else I think we have an announcement for.

I'll now take any appearances on Webex.

MR. WRIGHT: Good afternoon, Your Honor.

This is Keron Wright, and I'm appearing on behalf of Creditor Sheena Watkins --

THE COURT: All right.

MR. WRIGHT: -- on a motion to lift stay.

THE COURT: Thank you very much. We'll probably take that up first once I take appearances. Thank you very much, Mr. Wright.

Mr. Monsour, would you like to make an appearance?

(No audible response)

THE COURT: Mr. Ferretti, Ms. Chiarello, would any of you like to make an appearance?

MR. FERRETTI: I will, Your Honor.

Good afternoon. Dan Ferretti on behalf of three EB5 investors, Duc Nguyen, Thuy Nguyen, and Dixit Vora. We did file a withdrawal of our objection to the plan, and so -- but if the Court has any questions, I'm here.

THE COURT: Thank you very much, Mr. Ferretti.

Anyone else?

MR. MONSOUR: I'm sorry, Your Honor.

Trey Monsour from Fox Rothschild on behalf of WTI and Venture Lending and Leasing. I had it on mute, I didn't realize that and I apologize.

THE COURT: No problem, thank you.

Anyone else?

MR. DESIDERIO: Good afternoon, Your Honor.

Chris Desiderio from Nixon Peabody on behalf of Yu Capital and its affiliates.

THE COURT: Okay, thank you.

All right. Anyone else?

(No audible response)

THE COURT: All right. What I'd ask is if you are on the phone, please fill in your appearance with your name because when we get to the evidentiary portion, if you don't represent a party or if you are not a party, then we'll have to disconnect you. So just make sure that you fill in your affiliation when we get to that portion of the program.

Thank you.

All right, Mr. Mohan, does it make sense to take up that lift stay first?

MR. MOHAN: Again, Tim Mohan, Foley & Lardner, on behalf of the Debtors.

Yes, Your Honor. I believe that makes sense.

THE COURT: Okay. Please proceed, sir.

MR. MOHAN: So, yes, Your Honor. As Mr. Wright announced, his client, Ms. Watkins, filed a motion for relief from automatic stay to pursue recoveries under insurance policies. Mr. Wright, Ms. Carson with the Committee, and the Debtors have worked together to come to an agreed order, which I believe Mr. Wright has uploaded with the Court this morning. And so all parties, all three parties are in agreement with the order. We are consensual. And if the Court wishes to enter that order, we would appreciate that.

THE COURT: All right. Thank you very much, Mr. Mohan.

Mr. Wright, anything further on behalf of your motion?

MR. WRIGHT: No, Your Honor. That is correct.

THE COURT: All right. Is there anyone who wishes to be heard with respect to the motion to lift stay filed by Ms. Watkins?

Give me just one moment with it.

(Pause)

THE COURT: All right. Mr. Wright, given the form of agreed order, which is about as complete as it can be, the Court will grant it. I'll let you know I'm giving you a little bit of grace today. I don't think I saw a notice of hearing getting it onto the docket today. But given it is an agreed form of order and it was forecasted at the last hearing, I'll go ahead and enter that, okay?

MR. WRIGHT: Thank you very much, Your Honor.

THE COURT: You're very welcome.

All right. And to the extent that you don't have any interest in the greater part of confirmation, you may be excused, but of course, you're welcome to stick around.

MR. WRIGHT: Thank you, Your Honor. I'll excuse myself.

THE COURT: Have a great day.

All right. Mr. Mohan.

MR. MOHAN: Thank you, Your Honor.

Again, Tim Mohan, Foley & Lardner, on behalf of the Debtors.

Your Honor, we're here today for confirmation of a vastly consensual plan, value-maximizing plan, that has been put together through the extreme hard work of the Debtors, the Committee, our plan sponsor, our settlement parties, to get to this point.

We started this case with a restructuring support agreement and a proposed plan that was filed at that time. The Committee, obviously, using their judgment and their duties, fought to make certain changes to that plan, which resulted in the plan settlement that is incorporated in the plan. And that is also where the Committee is a joint proponent of the plan with the Debtors here. And so we're here today bringing this together in, again, an almost consensual confirmation hearing.

I would like to just say my thanks to the Debtors' team, the Committee, the U.S. Trustee for working with us even during the shutdown. We're glad to have them back. They did a fantastic job in accommodating us, as well. One last thing I would do, I want to wish my wife a happy birthday. I want to thank her for being okay with me scheduling this hearing on her birthday and being out of town. But no, she was very sweet for that.

But one item that we have here today is the voting report. We have unsecured creditors did vote to reject the plan. We met the numerosity requirement by well over 50 percent. Unfortunately, the dollar amount of claims that rejected the plan were slightly below the required two-thirds that we needed here.

THE COURT: All right.

MR. MOHAN: Notwithstanding that, Your Honor, I believe that the plan provides for us for confirmation and the

ability to cram down the general unsecured class as needed. And as stated at the last hearing, again, this is a value maximizing plan. It provides for significant returns, recoveries for unsecured creditors, approximately 10 percent from what we thought. I don't know how that compares to the initial plan that we provided. Probably higher, I bet. But getting here has been a significant task.

I think there was a period here where we thought that this was going to turn into a significant litigation with various parties that was going to add substantial costs and time to this case. And through mediation, through time-consuming negotiations, we were able to get here in a consensual manner. And so, again, that's credit to the parties for working in a collaborative manner on this case.

I also want to reiterate one comment that I made at our first day hearing, which was the Debtors' goals with these cases were three things: keeping as many employees employed, allowing for as many students as possible to remain at the schools, and then continuing the mission of providing the best Montessori-based education in the United States. While the Debtors are not the entities that are providing that, Guidepost Global, Cosmic Education Americas, and some TNC schools are, these cases allow for that to continue through the terms of the plan.

And so, I'd like to say that those goals are coming

to fruition today, hopefully, with confirmation of the plan. So, if it's okay with Your Honor, I propose the following process today. Start with the admission of evidence, then address the solicitation process and voting results, and then we'll turn to the one outstanding objection, the U.S. Trustee's objection with respect to the third-party releases and injunction provisions.

THE COURT: All right, thank you.

Is there anyone else who wishes to be heard with respect to the process?

(No audible response)

THE COURT: All right. Then let's proceed.

MR. MOHAN: All right, Your Honor. So, I'll start with evidence. The Debtors filed their amended witness and exhibit list at Docket Number 646. The Debtors have four declarations. The Committee has one declaration, as well. I spoke with Ms. Carson, and she is okay with me seeking the admission of that declaration on her behalf.

So, we have, first, the declaration of John McCarthy in support of his first day declaration as Exhibit Number 26. The declaration of Mr. Mark Kirschbaum, our independent director, in support of final approval of the disclosure statement and confirmation of the plan, that's Exhibit 7. Declaration of Sean Corwin, our financial advisor, in support of confirmation, Exhibit 8. Declaration of Adam Gorman from

Veritas in support of the voting report. That's Exhibit 27.

And all three of those, all four of those, Mr. Kirschbaum, Mr. Gorman, and Mr. Corwin are here in the court today. And Mr. McCarthy is joining us virtually by Webex. And so, and then the declaration of Terry Nugent is from the Committee in support of the plan. Again, that is Exhibit 10 of the Debtors' witness and exhibit list, as well. So, like I said, and she, I understand, is also on Webex, as well. So, all declarants are available for cross-examination if required.

Unless there are any objections, Your Honor, I would move to admit all five declarations into evidence.

THE COURT: All right. Is there any objection to the admission of each of those exhibits into evidence?

(No audible response)

THE COURT: Okay, hearing no objection, the Court, again, would note for the record that the Debtors' witness and exhibit list can be found on Docket 657. And the Court will admit the declarations, the McCarthy declaration at 26, the Kirschbaum declaration at 7, the Corwin declaration at 8, the Gorman declaration at 27, and the Nugent declaration at 10. All admitted.

(Debtors' Exhibit Numbers 7, 8, 10, 26, and 27 admitted into evidence)

MR. MOHAN: Thank you, Your Honor.

THE COURT: You're welcome.

MR. MOHAN: And then next, with respect to the rest of the documents included in our witness and exhibit list at Docket Number 657, I would ask that we admit them all at once, Your Honor. That's Exhibits 1 through 6, 9 through 25, and 28 through 31.

THE COURT: All right. Does anyone have an objection to the admission of the Debtors' remaining exhibits?

(No audible response)

THE COURT: Okay, hearing no objection, Debtors' 1 through 6, 9 through 25, and 28 through 31 are hereby admitted.

(Debtors' Exhibit Numbers 1 through 6, 9 through 25, and 28 through 31 admitted into evidence)

MR. MOHAN: Thank you, Your Honor.

So next, Your Honor, I'd like to go through the solicitation process and the voting results.

THE COURT: All right.

MR. MOHAN: So, Your Honor, following the entry of the solicitation order, all materials were distributed on or before October 17th, 2025. Since the objection deadline and voting deadline was November 17th, that provided 31 days for parties to return their ballots, including opt-out releases and/or object to the plan and disclosure statement on a final basis.

As supported by the voting declaration, we believe

that the service of the solicitation packages, notice of non-voting status, and opt-out forms were all properly done. We received over 100 responses; 96 creditors voted. Five ballots were excluded for either a defective ballot or a late-filed ballot. Sixty-four parties returned an opt-out form, with 22 of those parties being non-voting creditors.

There, we believe, based on the process, that it was a thorough process, it was robust, and provided adequate due process for parties to vote on the plan, and if they were not eligible to vote on the plan, to submit their opt-out forms as required here. As indicated in the voting report, which was filed at Exhibit 27 and filed at Document 652, we solicited votes from Classes 1, 2, 3, 4, 5, and 8. Class 6 and 7 were unimpaired and deemed to accept. Class 9, 10, and 11 were impaired and deemed to reject. The classes entitled to vote -- Class 1, Class 2, Class 3, Class 4, and Class 5 -- all voted to accept the plan, 100 percent of those classes in favor.

As previewed earlier, Class 8, the general unsecured claims class, voted to reject. And thinking of wanting to talk about that, we received a total of 81 votes in Class 8. Sixty-six creditors voted to accept the plan, which satisfies the numerosity requirement again. However, there were three ballots that constituted approximately $90 million of claims, 90 million of the 95.9 million of claims that voted to reject there. These three claims are related to rejection damage

claims or litigation claims that are unliquidated and disputed at this time.

So, regardless, rather than filing any objections to any claims to try to juke the stats, I'll say, we wanted to make sure that our plan is confirmable on its own, notwithstanding the fact that we didn't have all classes vote in favor of the plan.

With respect to that and 1129(b), Your Honor, the plan doesn't discriminate or does not unfairly discriminate against claims and is fair and equitable with respect to rejecting classes. With respect to each, the rejected classes are properly classified and not similar to other classes. General unsecured creditors are included in one intercompany claims in Class 9. And then equity is divided between equity interests in Class 10 and in Class 11, as well.

The plan is also fair and equitable with respect to each rejecting class as the plan follows the absolute priority rule. No claim or interest that is junior to those classes will receive any distribution under the plans. And I also think it's important to highlight that an integral part of the plan settlement provides that holders of claims in Classes 1, 2, 3, 4, and 5 are waiving distributions under the plan to allow for a recovery for Class 8 general unsecured creditors here.

And as reflected in the liquidation analysis that was

filed at the disclosure statement and the updated liquidation analysis filed as an attachment to Mr. Corwin's declaration, it's evident, according to our analysis, that this plan provides a recovery that is not possible under Chapter 7 liquidation.

With that, Your Honor, based on where we are, I believe the disclosure statement is ready for final approval and, after our discussion today, the plan is ready to be confirmed, as well. Unless any other parties have anything to discuss with regard to that part, I'll keep moving forward, Your Honor.

THE COURT: Okay. Does anyone else wish to be heard with respect to evidence?

(No audible response)

THE COURT: And you still have an opening, right? Correct?

MR. MOHAN: What's that, Your Honor?

THE COURT: Do you still have a separate opening, Mr. Mohan, or does that primarily constitute your opening?

MR. MOHAN: That was kind of my opening, Your Honor. Yes.

THE COURT: Okay, that's what I thought.

MR. MOHAN: Yes.

THE COURT: Does anyone wish to be heard by way of opening?

Ms. Kippes.

MS. KIPPES: Very briefly, Your Honor.

Mr. Mohan's correct that we are down to just whether an opt-out confers consent and --

THE COURT: Sure.

MS. KIPPES: -- kind of consider these part of the same package, the injunction that enforces the opt-out release. We have resolved the definition of "related party." It has been pared down. And prior to the filing of the U.S. Trustee's objection, we came to agreement on governmental entity language, and that is in the proposed confirmation order. The "related party" new language is in the latest version of the plan.

I want to thank the Committee and the Debtors for working with us on those two issues in helping narrow the issues today. So we don't have a lot to talk about when we get to when we need to talk about it.

THE COURT: Sure.

MS. KIPPES: And I also want to thank the Court for hearing us, even though it's hard for her to talk. Thank you.

THE COURT: Thank you very much, Ms. Kippes.

And my thanks to the Debtor, the Committee, and all of the parties. This was an extremely trying time over the course of this case for the United States Trustee's Office, in particular. And the Court certainly depends upon the services

that they provide in connection with the Chapter 11s. And so my thanks to you in particular and to your office, because I know it was during a very, very difficult time due to the government shutdown and all of Congress' wisdom that was imparted during that time.

I mean, I know I feel more informed now of why we did that. But in any event, thanks to the parties and to your office.

So, Mr. Mohan, ready when you are.

MR. MOHAN: Thank you, Your Honor.

As we -- again, Tim Mohan, Foley & Lardner, on behalf of the Debtors.

As previously stated, there were four objections, Your Honor. Hallandale withdrew his objection on Friday at Docket Number 694. The EB5 investors, represented by Mr. Ferretti, withdrew their objection after we added language to the plan. And I can walk through those provisions if you would like. If not, I'd just move forward here. And so they withdrew their objection based on that.

The Tennessee Department of Revenue added their objection, we believe, has been resolved through the addition of Paragraph 53 of the confirmation order which provides that, under Section 503(b)(1)(D) of the Bankruptcy Code, the Tennessee Department of Revenue shall not be required to file a request for payment of an administrative claim. They have not

withdrawn their objection, but we believe it's been resolved completely.

And then, like we said with the U.S. Trustee's objection, we added language with respect to the governmental units. One thing I do want to point, Your Honor, I believe we missed one proviso that we agreed to with Ms. Kippes. It's to add in the provisions of Section 362 of the Bankruptcy Code excepting certain governmental actions in the language. So we will add that language to the revised form of order that we will submit to Your Honor here.

THE COURT: All right.

MR. MOHAN: And as you said, we revised the definition of related parties as well to narrow it, consistent with Your Honor's -- with the CareMax plan, and provide it that way.

So as Ms. Kippes said, we're here on specifically with third-party releases here. Ms. Kippes did have one question in her objection with respect to students and families and whether or not they are entitled, they're released parties here, or releasing parties, and that depends. If they had a claim and they filed a proof of claim or if we scheduled a claim, then obviously they would be included in Class 8 general unsecured creditors and have the ability to opt out there.

If we did not have a scheduled claim or if they did not file a claim, then they would not be included in any of the

voting or non-voting classes. And at that point, they would not have received an opt-out form and would not have had the opportunity to opt out. And obviously, we would not try to seek them as a releasing party or force that on them, notwithstanding the publication notice. But we're not going to try to force them into the definition of releasing party if they did not receive a ballot or they did not receive the non-voting notice there.

THE COURT: All right, thank you.

MR. MOHAN: With respect to the third-party releases, Your Honor, again, these are only granted with the consent of those parties, whether it be expressed or implied. That consent is approved by Fifth Circuit precedent in front of Your Honor, including cases like Kidcraft, CareMax, Zips, and does not run afoul of the Supreme Court's ruling in Purdue. Consent here can be deduced from our opt-out mechanism here, and our definition says that releasing parties are only those who have consented to the third-party releases.

We're not forcing a third-party release on any party here. Again, it's consent. There was ample notice given to all holders of claims and interest, regardless of whether they were entitled to vote, that they could either consent to an opt-out or they could either consent or they could opt out of the third-party release. Every ballot and notice included, contained the full text of Article 10-3 of the plan,

third-party releases, in addition to the definition of the Debtors' releases, or the section of exculpation in the section for injunction. That language was bold. It was conspicuous.

Indeed, we moved that language further up in the notices and the ballots at the request of the U.S. Trustee to make it clear that it wasn't getting lost in the shuffle of all the paper that was being distributed to parties here. And there was clear instructions that their claims would be released, that they did not opt out of the third-party release or object to the plan.

The combined hearing notice provided details, as well. Again, we didn't distribute that to everybody because that would be massive, especially for parties who had not filed anything with the Court or weren't included in our schedules. But for that part, we believe that the process allowed for a thorough, robust effort to have voting parties and non-voting parties the ability to provide an opt-out of the release. And we also think that that was reflected in the results here.

As stated in the voting report here, there were 64 parties that voted, that elected to opt out of the third-party releases. Two holders of CM1 claims opted out. Forty of the 66 general unsecured creditors that voted opted out. Twenty-two non-voting parties opted out, as well. Again, we believe that the process provides for a consensual, thorough process that allowed for parties to make an informed decision

as to whether they were going to perform the opt-out as well.

And then, because the third-party releases are consensual, again, the injunction provision, which again was bold and conspicuous in the notices and in the ballots, also follows proper Fifth Circuit precedent. It's clear, and as precedent provides here, that injunctions are permissible to provide for a third-party release so long as they are consensual. Again, through implied consent, the same method that is used to determine whether or not third-party releases are consensual here.

Here, the injunction applies only, again, to those third-party releases and only to those consensual third-party releases, which we believe satisfies the requirements set forth by this Court and its precedent. And the process, again, provides for a robust process for parties if they wanted to, to opt-out of that injunction, as well.

Your Honor, based on that process, I don't want to dive into -- our pleadings speak for themselves. I don't need to reiterate that. But based on our pleadings, based on the statements I made today, we believe that the U.S. Trustee's objection, while we appreciate it, should be overruled, and that the releases and the injunction provisions of the plan are approved -- or should be approved, and the plan should be confirmed.

THE COURT: Thank you very much, Mr. Mohan.

Before I turn to you, Ms. Kippes, Ms. Carson, do you wish to have any input as a joint proponent?

MS. CARSON: Yes. Thank you, Your Honor. Just very briefly.

The Committee does, of course, support confirmation of the plan, as indicated in Ms. Nugent's declaration, which was admitted into evidence as Debtors' Exhibit 10. The plan, among other things, as Mr. Mohan indicated, incorporates a global settlement among the main parties in the cases, and the Committee does believe that the global settlement is in the best interest of the Debtors' estates and results in the most value for creditors under the circumstances.

This settlement does not release all estate causes of action, and the Committee believes that claims of significant value are being preserved and transferred to the liquidating trust for the benefit of the Debtors' estates and creditors. For the releases that are being granted through the plan, the Committee believes that fair and equitable consideration is being received in exchange, and that the settlement meets all of the Jackson Brewing/Foster Mortgage factors. The Committee also concurs with the Debtors that the third-party releases are consensual and that the U.S. Trustee's objections should be overruled.

Mr. Mohan touched on this, but I wanted to reiterate again that the parties did have the opportunity to opt out of

those releases, and 64 parties did opt out, as shown by the voting report, filed at Docket Number 652 and admitted into evidence as Debtors' Exhibit 27, which illustrates that notice of the opt-out was effective.

We believe that all the elements under 1125 and 1129 have been met here, as supported by the evidence today, and the Committee respectfully requests that the Court approve the disclosure statement on a final basis as containing adequate information and confirm the modified second amended plan as filed at Docket Number 649. Thank you.

THE COURT: All right. Thank you very much, Ms. Carson. And am I correct that Mr. John Madden has been appointed under the documents as the Liquidating Trustee?

MS. CARSON: That's correct, Your Honor.

THE COURT: Okay. Thank you very much.

All right. Anyone, let's just say, not objecting, that wishes to be heard at all by way of argument?

(No audible response)

THE COURT: All right. Hearing no takers. Ms. Kippes, please.

MS. KIPPES: Thank you, Your Honor. I will be brief.

First, I appreciate Mr. Mohan clarifying the information about the releases and students. So, first of all, as I think I always say now, the United States Trustee stands upon her pleadings. And I'm not going to reiterate all of

those.

The reason I'm standing here today is because the issue of whether the opt-out mechanism is sufficient to confer consent is not settled in the Fifth Circuit. The Court, I'm sure, is aware of the Southern District of Texas Container Store appeal of third-party release. And so, the United States Trustee's position remains that an opt-out is not sufficient to confer consent. Rather, it should be an opt-in. And therefore, the injunction that enforces an opt-out release should also not be approved. Thank you.

THE COURT: All right. Thank you very much, Ms. Kippes.

All right. Anyone else wish to be heard?

(No audible response)

THE COURT: Okay. Let me get my things in order.

(Pause)

THE COURT: All right. The Court is going to approve confirmation today. The Court would note that the plan as embodied in the latest filed modified second amended joint plan not only addresses the various objections that were filed to the greater part, except for the UST objection, which I will address separately, but also embodies an overall plan settlement and not the RSA and plan settlement that the Debtors came in on the first day with.

The Court has no doubt that it was heavily negotiated

with the Unsecured Creditors Committee and other secured lenders that were party to it, including, as I recall, some of the Debtors' principals, the Girns. But it's also the subject of efforts at mediation that didn't take right away. But, again, things continue to percolate until we could get a primarily consensual plan before us.

I recognize that the Unsecured Creditors Committee did not vote to accept it. But, again, on behalf of the Committee itself, I do have the Committee as a plan proponent of this particular plan. So, again, for the most part, there is no substantive objection to the 1125, 1122, 1129 factors, save and except third-party releases. Again, I believe that this plan, number one, satisfies the 1129 factors and that I will approve the third-party releases as they have been narrowed in the plan.

I'd specifically note, as I have, I'm sure that coming into this case, everyone has reviewed my CareMax transcript, at least I hear quoted back to me from time to time. I had a voice that day. It was great. But as I said then and as I believe today, facts matter and due process matters. And the bigger of those two is probably due process. For me, when I've approved opt-outs in my Court, it's always based upon the evidence that affected parties were afforded constitutional due process and a meaningful opportunity to opt out. And that was certainly made to bear in this particular

case.

I think that this might be some of the higher percentages that I've seen in the case. As Mr. Mohan pointed out, there were 64 opt-outs out of, I think, 90-something returned ballots and other documents, 22 CN holders, 40 of the 66 general unsecured creditors. And in addition, 22 non-voting creditors turned in their opt-out forms. That's probably one of the more significant numbers that the Court has heard. And so where there is a mechanism that includes ballots containing the release and injunction provisions that is bold, that is conspicuous -- and that process allows for the robust level of turnout the Court has seen -- the Court does believe that from a due process and a notice process that the system worked. And I think that it did work in this case.

The Court, again, would note that the Committee is in support of this process. It was certainly hard-fought. I'd separately note, as I did in the CareMax ruling, that there was no occasion for the Supreme Court to express a view on what constitutes a consensual release in Purdue Pharma, and the Supreme Court confirmed its decision or confined its decision then to the question presented. I have certainly, as most of my colleagues in this district have, approved opt-outs in the past and would, under these facts, do so today.

Taking a look at the term of the plan that is primarily at issue, I would find that entry of the confirmation

order would constitute the Court's approval of the third-party releases contained in the plan, which includes by reference each of the related provisions and definitions contained in the plan and, further, as they've been narrowed, I would note. And I'd find that a third-party release is consensual, is essential to the confirmation of the plan based upon the declarations presented, is given in exchange for good and valuable consideration provided by the released parties, including their contributions to facilitating the transactions contemplated in the plan and implementing the plan. It's in the best interest of the Debtors and the estates, fair, equitable, and reasonable, and given and made after due notice and opportunity for a hearing.

And likewise, I would note that the releases do contain the carve-outs that the Court would otherwise look for, including willful misconduct, actual criminal fraud, and gross negligence on behalf of any released party. So again, to the extent the releasees receive notice, to the extent the releasees receive the consideration that the plan refers to, the Court would approve the releases.

The Court would also note that Article 12, with respect to retention of jurisdiction, reserves this Court's right to enforce its orders, judgments, injunctions, releases, and exculpations in it in connection with the Chapter 11 cases. So if there's an argument that a release should not be

effective because someone did not receive notice or anything like that, the Court would reserve its right to interpret its own order in that instance.

I think that would constitute the greater part of the Court's ruling. Other than that, the Court would certainly adopt, by way of signature, the other findings and conclusions relative to third-party releases that is found in the proposed form of confirmation order. The Court would certainly, again, compliment the parties on the process. You certainly brought me more agreements than you did open court fights. And I, again, would just echo again the efforts that you made to allow for the United States Trustee's participation and also working with her as it related to the different agreements that could be achieved under a plan.

And the same would go out for the professionalism and courtesy that I saw amongst the parties over the course of the case. This is a big case with a lot of players. And so I am sure that it was a scuffle a time or two. But I appreciate that, at least from the Court's perspective, the professionalism that I saw and also the quality of the work, of course.

Anything else, Mr. Mohan? Am I missing anything?

MR. MOHAN: Your Honor, Tim Mohan, Foley & Lardner, on behalf of the Debtors.

One further item.

THE COURT: Yes.

MR. MOHAN: Mr. Hoffman, sent me a note and --

THE COURT: Okay.

MR. MOHAN: -- to get to an effective date, it requires that the settlement payment be made and the plan sponsor consideration be paid, but the Liquidating Trustee doesn't become an actual entity until the effective date.

THE COURT: Okay.

MR. MOHAN: And so it's somewhat circular. So we are going to add some language to the confirmation order that gives the Liquidating Trustee the authority to obtain an EIN and open a bank account to allow for that to occur. And so that will be included in the form.

THE COURT: Okay. That's fine with me, Mr. Mohan. And if there's any changes that are made from the hearing on, if you could send those to Ms. Harden by way of redline, or even if you can just pop a notice on the docket of the redline from the hearing to what's uploaded, that'd be fine. I can review it then. From the Court's perspective, I don't have any issues with that.

MR. MOHAN: Okay.

THE COURT: Does anyone else wish to be heard with respect to this timing issue?

(No audible response)

THE COURT: No, all right.

MR. MOHAN: Thank you, Your Honor.

THE COURT: You're very welcome.

All right. So in case I never said the words, the plan is approved. Confirmation is approved. You guys have a great day, and the Court will stand adjourned.

THE CLERK: All rise. Travel safe.

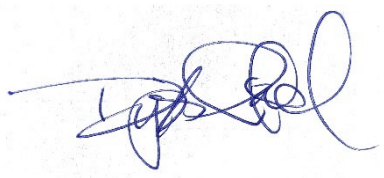
UNIDENTIFIED SPEAKER: Hope you feel better, Judge. Thank you.

(Proceedings adjourned at 2:18 p.m.)

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C E R T I F I C A T I O N

I, DIPTI PATEL, court-approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.



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DIPTI PATEL, AAERT CET-997

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