UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
NEIGHBORS LEGACY HOLDINGS, INC., *et al.*,	§	**Case No. 18-33836 (MI)**
	§	**(Jointly Administered)**
Debtors.[1]	§	

DEBTORS' (A) MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF THE DEBTORS' CHAPTER 11 PLAN OF REORGANIZATION AND (B) RESPONSE TO OBJECTIONS

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ATTORNEYS FOR THE DEBTORS AND DEBTORS IN POSSESSION

Dated: March 21, 2019

[1] Due to the large number of Debtors in these chapter 11 cases, a complete list of the Debtors and the last four digits of their tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed claims and noticing agent at www.kccllc.net/neighbors. The location of Debtors' principal place of business and the Debtors' service address is: 10800 Richmond Avenue. Houston, Texas 77042.

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Neighbors Legacy Holdings, Inc. ("Neighbors") and certain of its affiliates, debtors and debtors-in-possession in the above-captioned cases (the "Debtors"), respectfully submit this memorandum of law in support of confirmation of the *First Amended Joint Plan of Liquidation of Neighbors Legacy Holdings, Inc. and Its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [Docket No. 772] (as modified, amended, or supplemented from time to time in accordance with its terms, the "Plan").[2]

PRELIMINARY STATEMENT

1. The Debtors have sold the vast majority of their assets pursuant to the Sale Order entered by this Court. The Plan governs the liquidation of the Debtors' remaining assets, distributions to holders of allowed claims, and the wind down of the entities. The Plan creates two trusts. The Liquidating Trust will primarily be responsible for winding down the entities, collecting accounts receivable and making distributions to holders of allowed priority and administrative claims. The Unsecured Creditor Trust Assets will consist of the GUC Settlement Cash ($275,000) and the Retained Causes of Action and recoveries thereof, including recoveries under D&O Policies. Holders of Allowed General Unsecured Claims will receive a Pro Rata share of the Unsecured Creditor Trust Interests. Prepetition Deficiency Claims will collect from the Unsecured Creditor Trust subject to the conditions set forth in Article III of the Plan. Holders of Other Priority Claims and Holders of Other Secured Claims will receive Cash distributions from the Liquidating Trust Cash. In the case where the Other Secured Claim is greater than the value of the collateral securing the Other Secured Claim, and there are no Liens on such collateral senior to the Lien securing the Holder of the Claim, the Holder will receive the collateral in full satisfaction of such Claim. Prepetition Secured Loan Claims will receive all

[2] Capitalized terms used but not otherwise defined in this Memorandum have the meanings set forth in the Plan.

Available Cash, plus the proceeds of the Remaining Prepetition Collateral up to the amount of the Claim. The Debtors believe the distributions under the Plan will provide Holders of Claims against and Interests in the Debtors at least the same recovery on account of Allowed Claims and Allowed Interests as would a liquidation of the Debtors' assets conducted under chapter 7 of the Bankruptcy Code. Distributions under this Plan will be made more quickly than distributions by a chapter 7 trustee, and this Plan will avoid the substantial fee that a chapter 7 trustee would charge, reducing the amount available for distribution on account of the Allowed Claims and Interests.

2. The Classes entitled to vote on the Plan (Classes 3 and 4) voted overwhelmingly to accept the Plan, with 100% of Class 3 Prepetition Secured Loan Claims voting to accept the Plan, and 86% in amount and 97.69% in number of Class 4 General Unsecured Claims voting to accept the Plan.

3. As discussed below, the Debtors believe that confirmation and consummation of the Plan is in the best interests of Holders of Claims and Interests and that the Plan satisfies the applicable provisions of the Bankruptcy Code. For the reasons discussed below, the Court should confirm the Plan.[3]

I. BACKGROUND

A. Procedural History

4. On July 12, 2018 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (collectively, the "Chapter 11 Cases"). The Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) [Docket No. 10].

[3] Attached as **Exhibit A** is the Debtors' *Summary of Objections to Confirmation of the Debtors' First Joint Plan of Liquidation of Neighbors Legacy Holdings, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code*.

5. Pursuant to the Sale Order and the approved Asset Purchase Agreements, the Debtors have sold substantially all of their assets through five separate Purchase agreements.[4]

6. On February 20, 2019, the Court entered its *Order (1) Conditionally Approving Disclosure Statement; (2) Scheduling Confirmation Hearing; (3) Establishing Voting Deadline and Procedures for Filing Objections to Confirmation; (4) Approving Form of Ballots; and (5) Establishing Solicitation and Tabulation Procedures* [Docket No. 775] (the "Disclosure Statement Order"). The Disclosure Statement Order approved, among other things, the proposed procedures for solicitation of the Plan and related notices, forms, and ballots. The Disclosure Statement Order set March 20, 2019, at 5:00 p.m. (Prevailing Central Time) as the deadline to submit a ballot; March 20, 2019, at 5:00 p.m. (Prevailing Central Time) as the deadline to object to the Disclosure Statement and the Plan; and March 22, 2019 at 9:30 a.m. (Prevailing Central Time) for the combined hearing on final approval of the Disclosure Statement and confirmation of the Plan.

7. Concurrently with this memorandum, the Debtors have submitted a proposed order confirming the Plan (the "Confirmation Order").

B. The Solicitation Process and Voting Results.

8. The deadline for all Holders of Claims entitled to vote on the Plan to cast their ballots was March 20, 2019, at 5:00 p.m. (Prevailing Central Time). The deadline for parties in interest to file objections to the Plan was March 20, 2019, at 5:00 p.m. (Prevailing Central Time).

9. In accordance with the Bankruptcy Code, only Holders of Claims in Impaired Classes receiving or retaining property on account of such Claims were entitled to vote on the

[4] AEC ER 4, LLC on October 31, 2018 [Docket No. 601]; Tenet Business Services Corporation on October 31, 2018 [Docket No. 601]; Altus Health Systems OPCO, LLC and Altus Health System Realty, LLC on November 5, 2018 [Docket No. 637]; Greater Texas Emergency Centers, LLC on November 5, 2018 [Docket No. 637]; and Exceptional H.C., Inc. on November 13, 2018 [Docket No. 680].

Plan. *See* 11 U.S.C. § 1126. In addition, Holders of Claims and Interests were not entitled to vote if their rights are: (a) Unimpaired by the Plan; or (b) Impaired by the Plan such that they will receive no distribution of property under the Plan. The following table summarizes whether each Class of Claims or Interests is entitled to vote:

Class	Claim or Interest	Status	Entitled to Vote
1	Other Priority Claims	Unimpaired	No (Deemed to Accept)
2	Other Secured Claims	Unimpaired	No (Deemed to Accept)
3	Prepetition Secured Loan Claims	Impaired	Yes
4	General Unsecured Claims	Impaired	Yes
5	Section 510(b) Claims	Impaired	No (Deemed to Reject)
6	Intercompany Claims	Impaired	No (Deemed to Reject)
7	Intercompany Interests	Impaired	No (Deemed to Reject)
8	Neighbors Equity Interests	Impaired	No (Deemed to Reject)

10. Accordingly, the Debtors only solicited votes on the Plan from Holders of Claims in Class 3 (Prepetition Secured Loan Claims) and Class 4 (General Unsecured Claims), which are Impaired Classes receiving or retaining property on account of such Claims. The voting results are reflected in the *Certification of Leanne V. Rehder Scott With Respect to the Tabulation of Votes on the Debtors' First Amended Joint Plan of Liquidation* [Docket No. 832] (the "Voting Affidavit").

11. As set forth in the Voting Affidavit, the Classes entitled to vote on the Plan (Classes 3 and 4) voted overwhelmingly to accept the Plan, with 100% of Class 3 Prepetition Secured Loan Claims voting to accept the Plan, and 86% in amount and 97.69% in number of Class 4 General Unsecured Claims voting to accept the Plan.

C. Plan Modifications

12. The Confirmation Order includes certain modifications to the Plan to address formal and informal objections raised by various parties. The Debtors submit that none of the

Plan modifications will adversely affect the treatment of those Classes of Claims that voted to accept the Plan. *See* 11 U.S.C. § 1127(a) ("The proponent of a plan may modify such plan at any time before confirmation, but may not modify such plan so that such plan as modified fails to meet the requirements of sections 1122 and 1123 of this title. After the proponent of a plan files a modification of such plan with the court, the plan as modified becomes the plan."). Therefore, such modifications will not require the Debtors to re-solicit acceptances for the Plan. *See* FED. R. BANKR. P. 3019(a); *In re Am. Solar King Corp.*, 90 B.R. 808, 826 (Bankr. W.D. Tex. 1988) ("[I]f a modification does not 'materially' impact a claimant's treatment, the change is not adverse and the court may deem that prior acceptances apply to the amended plan as well.").

II. ARGUMENT

A. The Plan Satisfies the Requirements of Section 1129 of the Bankruptcy Code.

13. To confirm the Plan, the Court must find that the Debtors have satisfied the applicable provisions of section 1129 of the Bankruptcy Code by a preponderance of the evidence. *See In re Briscoe Enters*, 994 F. 2d 1160, 1165 (5th Cir. 1993); *In re Armstrong World Indus., Inc.*, 348 B.R. 111, 120 (D. Del. 2006) ("[T]he Debtors' standard of proof that the requirements of § 1129 are satisfied is preponderance of the evidence.").

1. The Plan Complies with the Applicable Provisions of Section 1129(a)(1) of the Bankruptcy Code.

14. The Plan must be confirmed because it complies with the applicable provisions of the Bankruptcy Code as required by section 1129(a)(1), including the rules governing the classification of claims and interests and the contents of a plan of reorganization. *See* 11 U.S.C. § 1129(a)(1). Congressional legislative history indicates that section 1129(a)(1) requires that a plan of reorganization satisfy the provisions of sections 1122 and 1123 of the Bankruptcy Code. *See* S. Rep. No. 95-989, 95th Cong., 2d Sess. 126 (1978); H.R. Rep. No. 95595, 95th Cong., 1st

Sess. 412 (1977); *see also In re Nutritional Sourcing Corp.*, 398 B.R. 816, 824 (Bankr. D. Del. 2008) (same); *In re S&W Enter.*, 37 B.R. 153, 158 (Bankr. N.D. Ill. 1984) ("An examination of the Legislative History of [section 1129(a)(1)] reveals that although its scope is certainly broad, the provisions it was more directly aimed at were Sections 1122 and 1123."). As set forth herein, the Plan fully complies with all relevant sections of the Bankruptcy Code—including sections 351, 1122, and 1123 as well as sections 1125, 1126, and 1129—the Bankruptcy Rules, and applicable non-bankruptcy law.

a. The Plan Satisfies the Classification Requirements of Section 1122 of the Bankruptcy Code.

15. Section 1122 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). Because claims only need to be "substantially" similar to be placed in the same class, plan proponents have broad discretion in determining to classify claims together. *See In re Sentry Operating Co. of Texas, Inc.*, 264 B.R. 850, 860 (Bankr. S.D. Tex. 2001) (recognizing that section 1122 is broadly permissive of any classification scheme that is not specifically proscribed, and that substantially similar claims may be separately classified). Likewise, the Fifth Circuit has recognized that plan proponents may place similar claims into *different* classes, provided there is a rational basis to do so. *Phoenix Mut. Life Ins. Co. v. Greystone III Joint Venture (Matter of Greystone III Joint Venture)*, 995 F.2d 1274, 1279 (5th Cir. 1991) (holding that section 1122(a) permits classification of "substantially similar" claims in different classes if undertaken for reasons other than to secure the vote of an impaired, assenting class of claims); *see In re Couture Hotel Corp.*, 536 B.R. 712, 733 (Bankr. N.D. Tex. 2015).

16. The Plan's classification of Claims and Interests satisfies the requirements of section 1122 of the Bankruptcy Code because the Plan places Claims and Interests into eight separate Classes, with each Class differing from the Claims and Interests in each other Class in a legal or factual nature or based on other relevant criteria. Specifically, the Plan provides for the separate classification of Claims and Interests into the following Classes:

Class 1: Other Priority Claims;

Class 2: Other Secured Claims;

Class 3: Prepetition Secured Loan Claims;

Class 4: General Unsecured Claims;

Class 5: Section 510(b) Claims;

Class 6: Intercompany Claims;

Class 7: Intercompany Interests;

Class 8: Neighbors Equity Interests

17. The Plan's classification of creditor Classes rests firmly on the different legal relationships with the Debtors giving rise to each Class of Claims or Interests. Equity interests (Class 8) are classified separately from debt Claims. Thus, Class 3 (Prepetition Secured Loan Claims) all arise from the Debtors' secured obligations under the Prepetition Financing Agreement. Moreover, due to their unique nature, Class 6 and 7 (Intercompany Claims) have been classified separately from the Class 4 General Unsecured Claims. *See* Plan, Art. III.B.

18. Other aspects of the classification scheme are related to the different legal nature of each Class—Class 1 (Other Priority Claims), Class 2 (Other Secured Claims), and Class 5 (Section 510(b) Claims) are classified separately due to their treatment under the Bankruptcy

Code. *See In re Riggel*, 142 B.R. 199, 203 (Bankr. S.D. Ohio 1992) (approving classification based on special treatment of certain claims under the Bankruptcy Code).

19. Claims and Interests assigned to each particular Class described above are substantially similar to the other Claims and Interests in such Class. In addition, valid business, legal, and factual reasons justify the separate classification of the particular Claims or Interests into the Classes created under the Plan, and no unfair discrimination exists between or among Holders. Namely, the Plan separately classifies the Claims because each Holder of such Claims or Interests may hold (or may have held) rights in the Debtors' Estates legally dissimilar to the Claims or Interests in other Classes. For example, Claims (rights to payment) are classified separately from Interests (representing ownership in the business) and Secured Claims are classified separately from Unsecured Claims. These classifications facilitate the ease of distributions on the Effective Date.

20. Because each Class is composed of substantially similar Claims or Interests, and each instance of separate classification of similar Claims and Interests reflects valid business, factual, and legal reasons, the Plan's classification of Claims and Interests fully satisfies section 1122 of the Bankruptcy Code.

b. The Plan Satisfies the Mandatory Requirements of Section 1123 of the Bankruptcy Code.

21. The Plan satisfies the seven mandatory requirements of section 1123(a) of the Bankruptcy Code because:

- the Plan designates classes of claims and interests;
- the Plan identifies unimpaired classes of claims and interests;
- the Plan specifies treatment of impaired classes of claims and interests;

- the Plan provides the same treatment for each claim or interest of a particular class, unless the Holder of a particular claim agrees to a less favorable treatment of such particular claim or interest;
- the Plan provides adequate means for its implementation;
- the Plan and related documents provide for the prohibition of nonvoting equity securities and provide an appropriate distribution of voting power among the classes of securities; and
- the Plan is consistent with the interests of the creditors and equity security holders and with public policy with respect to the manner of selection of the reorganized company's officers and directors.

See 11 U.S.C. § 1123(a)(1)–(7).

22. Specifically, Article III of the Plan satisfies the first four requirements of section 1123(a) by: (a) properly designating Classes of Claims and Interests, as required by section 1123(a)(1) of the Bankruptcy Code; (b) specifying the Classes of Claims and Interests that are Unimpaired under the Plan, as required by section 1123(a)(2) of the Bankruptcy Code; (c) specifying the treatment of each Class of Claims and Interests that is Impaired, as required by section 1123(a)(3) of the Bankruptcy Code; and (d) specifying that the treatment of each Claim or Interest within a Class is the same, unless the Holder of a Claim or Interest consents to less favorable treatment on account of its Claim or Interest, as required by section 1123(a)(4) of the Bankruptcy Code.

23. Article V and the various other provisions of the Plan provide adequate means for the Plan's implementation, thus satisfying section 1123(a)(5). Section 1123(a)(5) specifies that adequate means for implementation of a plan may include: (a) retention by the debtor of all or part of its property; (b) the transfer of property of the estate to one or more entities; (c) sale of all or any part of the property of the estate or the distribution of all or any part of the property of the estate among those having an interest in such property of the estate; (d) cancellation or modification of any indenture; (e) curing or waiving of any default; (f) amendment of the

Debtors' charter; or (g) issuance of securities for cash, for property, for existing securities, in exchange for claims or interests or for any other appropriate purpose. *See* 11 U.S.C. § 1123(a)(5). Among other things, Article V and various other provisions of the Plan provide for:

- the Deemed Consolidation of the Debtors solely for purposes of voting on the Plan, confirming the Plan, and making Distributions pursuant to the Plan.

- the creation of a Liquidating Trust to accept all Liquidating Trust Cash and all other Liquidating Trust Assets with the primary purpose of liquidating its assets (as applicable) and for making Distributions in accordance with the Plan and the Liquidating Trust Agreement.

- the creation of an Unsecured Creditor Trust to accept the GUC Settlement Cash, the Retained Causes of Action, and the claims under and proceeds of D&O Policies. The Unsecured Creditor Trust shall be established for the primary purpose of administering the Unsecured Creditor Trust Assets and making all distributions to the Unsecured Creditor Trust beneficiaries.

- the Liquidating Trustee shall have authority, among other things, to receive, manage, invest, supervise, and protect the Liquidating Trust Assets; supervise the receipt, deposit, and reconciliation of accounts receivable collected by the Purchasers; reasonably cooperate to provide the Purchasers with information relevant to the Purchasers' collection of accounts receivable; administer Debtors' employee claims under the Consolidated Omnibus Budget Reconciliation Act of 1986 ("COBRA"); pay taxes and other obligations incurred by the Liquidating Trust; retain and compensate the services of employees, professionals, and consultants to advise and assist the Liquidating Trustee; calculate and implement Distributions to Holders of Claims, other than Class 4 Claims; reconcile, object to and resolve issues involving all Claims, other than Class 4 Claims; and undertake all administrative functions of the Chapter 11 Cases that are not granted to the Unsecured Creditor Trustee.

- the Unsecured Creditor Trustee shall have authority, among other things, to reconcile, objet to and resolve issues involving Class 4 Claims; pay taxes incurred by the Unsecured Creditor Trust; calculate and implement Distributions to be made under the Plan to Class 4 Claims; and retain and compensate the services of employees, professionals, and consultants to advise and assist the Unsecured Creditor Trustee;

- the Unsecured Creditor Trustee shall have exclusive rights, powers, and interests of the Estates to pursue, settle, or abandon Retained Causes of Action;

- the continued existence of the Liquidating Debtors until each Liquidating Debtor satisfies its duties under the Transition Services Agreements. After each

Liquidating Debtor satisfies its duties under any applicable Transition Services Agreements, such Liquidating Debtor shall be deemed dissolved;

- all employment, severance, retirement, indemnification, and other similar employee-related agreements or arrangements that have not been previously terminated shall be terminated as of the Effective Date;
- the exemption from mortgage recording taxes and other taxes of any transfers of property pursuant to the Plan under section 1146(a);
- the good-faith compromise and general settlement of Claims by the Plan Trustees;
- the cancellation of Intercompany Claims, Intercompany Interests, and Neighbors Equity Interests
- the preservation of certain Causes of Action.

24. The Plan provides for the dissolution of the Debtors and does not provide for the issuance of non-voting securities, thereby satisfying the section 1123(a)(6). Finally, the Plan satisfies section 1123(a)(7) because, under Art. VII.L, the board of managers or directors of each Debtor shall be terminated and all other officers and directors of the Debtors shall be deemed to have resigned their respective positions with the debtor. 11 U.S.C. § 1123(a)(7).

25. Accordingly, the Debtors respectfully submit that the Plan satisfies section 1123(a) of the Bankruptcy Code.

c. The Plan Satisfies the Discretionary Requirements of Section 1123 of the Bankruptcy Code.

26. The Plan's discretionary provisions are in accord with section 1123(b) and section 1123(d) of the Bankruptcy Code. In addition to the provisions required by section 1123(a) of the Bankruptcy Code, section 1123(b) sets forth various discretionary provisions that may be incorporated into a Chapter 11 plan. *See* 11 U.S.C. § 1123(b). Among other things, section 1123(b) provides that a plan may: (1) impair or leave unimpaired any class of claims or interests; (2) provide for the assumption or rejection of executory contracts and unexpired leases; (3)

provide for the settlement or adjustment of any claim or interest belonging to the debtor or the estates; (4) provide for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests; and (5) include any other appropriate provision not inconsistent with the applicable provisions of chapter 11. *See* 11 U.S.C. § 1123(b)(1)–(4), (6). Section 1123(d) sets forth the requirements for the payment of cure amounts for executory contracts and unexpired leases that the debtors elect to assume. *See* 11 U.S.C. § 1123(d).

27. The Plan impairs Classes 3–8 and leaves Class 1 and 2 unimpaired. The Plan provides for the preservation and retention of certain Causes of Action by the Debtors, s*ee* Plan Art. XI, and rejection of Executory Contracts and Unexpired Leases not previously assumed or rejected or expired on their own. *See* Plan Art. VI. The settlement embodied in the Plan is fair and equitable and consistent with the Bankruptcy Rule 9019 factors as applied in this jurisdiction. As further reflected by the support of creditors for the Plan, this settlement, which was the result of arm's-length negotiations, is in the best interests of creditors and all parties in interest. *See* Plan Arts. V.E; XI. Accordingly, the discretionary provisions of the Plan are consistent with and permissible under section 1123(b) of the Bankruptcy Code. Absent a settlement, the Prepetition Lenders would have been able to exercise their rights under the Prepetition Financing Agreement, including possibly declaring defaults for non-payment and foreclosing on their collateral.

d. The Plan Satisfies the Requirements for the Disposal of Patient Records under Section 351 of the Bankruptcy Code.

28. Section 351 of the Bankruptcy Code governs the disposal of patient records where a health care business commences a chapter 11 case, and the debtor in possession has insufficient

funds to pay for the storage of patient records in the manner required by federal or state law. 11 U.S.C. § 351; FED. R. BANKR. P. 6011.

29. The Plan complies in all respects with section 351 and rule 6011. *See* Plan, Art. IX. The Plan provides for the publication of notice; the service of notice on patients; the maintenance and storage of Patient Records for the required Patient Records Maintenance Period; the notification of HHS with the HHS Records Request; and the ultimate destruction of the Patient Records should the HHS Records Request be denied and the Patient Records be unclaimed. *See id.* The Plan is therefore in conformity with the requirements for the disposal of patient records under the Code.

2. The Debtors Have Complied with the Applicable Provisions of the Bankruptcy Code (Section 1129(a)(2)).

30. The Debtors have satisfied section 1129(a)(2) of the Bankruptcy Code, which requires the plan proponent to comply with the applicable provisions of the Bankruptcy Code. *See* 11 U.S.C. § 1129(a)(2). The legislative history to section 1129(a)(2) provides that it is intended to encompass the disclosure and solicitation requirements set forth in section 1125 and the plan acceptance requirements set forth in section 1126 of the Bankruptcy Code. *See* H.R. Rep. No. 95-595, at 412 (1977); S. Rep. No. 95-989, at 126 (1978) ("Paragraph (2) [of § 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 Lapworth*, No. 9734529 (DWS), 1998 WL 767456, at *3 (Bankr. E.D. Pa. Nov. 2, 1998) ("The legislative history of § 1129(a)(2) specifically identifies compliance with the disclosure requirements of § 1125 as a requirement of § 1129(a)(2)."); *In re Worldcom, Inc.*, No. 02-13533 (AJG), 2003 WL 23861928, at *49 (Bankr. S.D.N.Y. Oct. 31, 2003) (stating that section 1129(a)(2) requires plan proponents to comply with

applicable provisions of the Bankruptcy Code, including "disclosure and solicitation requirements under sections 1125 and 1126 of the Bankruptcy Code").

31. As set forth below, the Debtors have complied with these provisions, including sections 1125 and 1126, as well as Bankruptcy Rules 3017 and 3018, by distributing the Plan and the Disclosure Statement and soliciting votes on acceptance of the Plan through Kurtzman Carson Consultants, LLC as Debtors' Voting Agent ("KCC") in accordance with the Disclosure Statement Orders [Docket No. 791].

a. The Debtors Have Complied with the Disclosure and Solicitation Requirements of Section 1125.

32. Section 1125 of the Bankruptcy Code provides that no proponent may solicit acceptances or rejections of a plan of reorganization "unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information." 11 U.S.C. § 1125(b). Section 1125 ensures that parties in interest may make an informed decision whether to approve or reject the plan based upon "adequate information" regarding the Debtors' financial condition. *See* 11 U.S.C. § 1125(a)(1).

33. The Court conditionally approved the Disclosure Statement in accordance with section 1125 [Docket No. 775]. The Court also conditionally approved the contents of the Solicitation Packages provided to Holders of Claims entitled to vote on the Plan, the non-voting materials provided to parties not entitled to vote on the Plan, and the relevant dates for voting and objecting to the Plan [Docket No. 775]. The Debtors, through KCC, complied with the content and delivery requirements of the Amended Disclosure Statement Order thereby satisfying sections 1125(a) and (b) of the Bankruptcy Code. *See Certificate of Service of Leanne V. Rehder re: Solicitation Materials Served on February 22, 2019* [Docket No. 791].

34. The Debtors also satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure statement must be transmitted to each Holder in a particular Class. Here, the Debtors caused the Disclosure Statement to be transmitted to all parties entitled to vote on the Plan. *See id*. Thus, the Debtors have complied in all respects with the solicitation requirements of section 1125 of the Bankruptcy Code and the Disclosure Statement Orders.

b. The Debtors Have Satisfied the Plan Acceptance Requirements of Section 1126.

35. Section 1126 of the Bankruptcy Code provides that only Holders of allowed claims and equity interests in impaired classes that will receive or retain property under a plan on account of such claims or equity interests may vote to accept or reject a plan. *See* 11 U.S.C. § 1126. The Debtors did not solicit votes on the Plan from the following Classes:

- Classes 1 (Other Priority Claims) and 2 (Other Secured Claims) because they are Unimpaired under the Plan (collectively, the "Unimpaired Classes"). *See* Plan, Art. III.C. Pursuant to section 1126(f) of the Bankruptcy Code, Holders of Claims in the Unimpaired Classes are conclusively presumed to have accepted the Plan and, therefore, will not be entitled to vote on the Plan.

- Class 5 (Section 510(b) Claims), including all Series LLC Claims, is Impaired under the Plan. Each Holder of a Section 510(b) Claim will be conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, each Holder of a Section 510(b) Claim will not be entitled to vote on the Plan.[5]

- Classes 6 (Intercompany Claims) and 7 (Intercompany Interests) shall be cancelled and discharged, with Holders of such Class 6 Intercompany Claims and Holders of Class 7 Intercompany Interests receiving no Distribution on account of such Intercompany Claims or Intercompany Interests. Classes 6 and 7 are Impaired. Holders of Class 6 Intercompany Claims and Holders of Class 7 Intercompany Interests will be deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and will thus not be entitled to vote to accept or reject the Plan.

- Class 8 (Neighbors Equity Interests) shall be cancelled and discharged, with Holders of Class 8 Neighbors Equity Interests receiving no Distribution on

[5] The Debtors provided notice to each Holder of Claims in the Deemed Rejecting Classes of the Plan and such Holder's treatment thereunder. *See Certificate of Service* [Docket No.791].

> account of such Neighbors Equity Interests. Class 8 is Impaired. Holders of Class 8 Neighbors Equity Interests will be deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and will thus not be entitled to vote to accept or reject the Plan.

Accordingly, the Debtors solicited votes only from Holders of Allowed Claims in Classes 3 and 4 (collectively, the "Voting Classes") because each of these Classes is impaired and entitled to receive a distribution under the Plan. *See* Plan, Art. III.C. With respect to the Voting Classes, section 1126(c) of the Bankruptcy Code provides that:[6]

> 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 [section 1126], 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 [section 1126], that have accepted or rejected such plan.

11 U.S.C. § 1126(c).

The Voting Affidavit reflects the results of the voting process in accordance with section 1126 of the Bankruptcy Code. *See* Voting Affidavit. As set forth in the Voting Affidavit, Class 3 (Prepetition Secured Loan Claims) and Class 4 (General Unsecured Claims), voted to accept the Plan in accordance with section 1126(c). Based on the foregoing, the Debtors submit that they have satisfied the requirements of section 1129(a)(2) with respect to Class 5, Class 6, and Class 7.

3. The Plan Has Been Proposed in Good Faith and Not By Any Means Forbidden By Law (Section 1129(a)(3)).

36. Section 1129(a)(3) of the Bankruptcy Code requires that a chapter 11 plan be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). The Debtors negotiated, developed, and proposed the Plan in good faith in accordance with section

[6] No Classes of Interests were entitled to vote on the Plan. *See* Plan, Art. III.C. Therefore, the Debtors do not need to comply with section 1126(d) of the Bankruptcy Code.

1129(a)(3). Section 1129(a)(3) addresses the process of the plan development more so than the contents of the plan. *See In re Star Ambulance Serv., LLC*, 540 B.R. 251, 262 (S.D. Tex. 2015) (citation omitted). Where the plan proponent proposes the plan with the legitimate and honest purpose to reorganize or liquidate and has a reasonable hope of success, the plan proponent satisfies the good faith requirement of section 1129(a)(3) of the Bankruptcy Code. *See In re Sun Country Dev. Inc.*, 764 F.2d 406, 408 (5th Cir. 1985); *In re NII Holdings, Inc.*, 288 B.R. 356, 362 (Bankr. D. Del. 2002) (concluding that 1129(a)(3) is satisfied when "the Plan has been proposed with the legitimate purpose of reorganizing the business affairs of each of the debtors and maximizing the returns available to creditors of the Debtors."); *see In re Sandy Ridge Dev. Corp.*, 881 F.2d 1346, 1352 (5th Cir. 1989) ("although Chapter 11 is titled 'Reorganization,' a plan may result in the liquidation of the debtor"). "Good faith" is evaluated in light of the totality of the circumstances surrounding the development of the plan. *In re Sun Country Dev., Inc.*, 764 F.2d at 408.

37. Here, the Debtors have acted, and are presently acting, in good faith in conjunction with all aspects of the Plan. All the transactions contemplated by the Plan—including the Liquidating Trust Agreement and Unsecured Creditor Trust Agreement—were negotiated and consummated at arm's length, in good faith and without collusion, fraud, or attempt to take grossly unfair advantage of any party. The Debtors proposed the Plan with legitimate purposes including (1) facilitating the sale to the Purchasers thus maximizing asset value to the benefit of all Debtors; (2) providing a prompt and efficient liquidation under chapter 11; and (3) maximizing the recovery to Holders of Claims and Interests under the circumstances. Consequently, the Debtors believe that the Plan has been proposed in good faith and satisfies all of the requirements of section 1129(a)(3) of the Bankruptcy Code.

4. The Plan Provides for Court Approval of Certain Administrative Payments (Section 1129(a)(4)).

38. Section 1129(a)(4) of the Bankruptcy Code requires that certain professional fees and expenses paid by the plan proponent, by the debtor, or by a person issuing securities or acquiring property under the plan be subject to approval of the Court as reasonable. *See* 11 U.S.C. § 1129(a)(4); *see also In re Chapel Gate Apartments, Ltd.*, 64 B.R. 569, 573 (Bankr. N.D. Tex. 1986) (noting that before a plan may be confirmed, "there must be a provision for review by the Court of any professional compensation").

39. The Plan Trustees shall receive compensation for services rendered and expenses incurred in fulfilling their duties pursuant to the Plan and the Plan Trust Agreements. The Liquidating Trustee shall be compensated pursuant to Schedule 1, attached to the Liquidating Trust Agreement. The Unsecured Creditor Trustee shall be compensated pursuant to an agreement to be negotiated with the Committee prior to the Effective Date. The Plan Trustees shall also be entitled to reimbursement for all reasonable out-of-pocket expenses incurred in connection their duties pursuant to the Plan and the Plan Trust Agreements. Compensation and reimbursement of the Plan Trustees' expenses shall not be subject to approval of the Bankruptcy Court.

40. All payments made or to be made by the Debtors for services or for costs or expenses in connection with these Chapter 11 Cases prior to the Effective Date, including all Professional Fee Claims, have been approved by, or are subject to approval of, the Court. *See* Plan, Art. II.A. Article II.A of the Plan provides that all final requests for payment of Professional Fee Claims shall be filed within 45 days of the Effective Date for determination by the Court, and such applications and objections thereto (if any) shall be filed in accordance with

the Bankruptcy Code, the Bankruptcy Rules, and the applicable local rules. *Id.* Accordingly, the Plan fully complies with the requirements of section 1129(a)(4) of the Bankruptcy Code.

5. Plan Trustees Have Been Disclosed and Their Appointment is Consistent with Public Policy (Section 1129(a)(5)).

41. The Debtors have complied with the requirements of section 1129(a)(5) of the Bankruptcy Code in the Plan. The Bankruptcy Code requires a plan proponent to disclose the identities and affiliations of any individual proposed to serve as a director, officer, or voting trustee of the debtor or a successor to the debtor after confirmation of the plan. 11 U.S.C. § 1129(a)(5)(A)(i). Section 1129(a)(5)(A)(ii) further requires 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. *Id.*

42. In this case, the Plan and the Plan Trust Agreements satisfy section 1129(a)(5)(A)(i) of the Bankruptcy Code because the debtors have disclosed the identities and affiliations of all persons proposed to serve as the Plan Trustees as of the Effective Date. The Plan Trustees were selected after taking into account the interests of creditors in accordance with section 1129(a)(5)(A)(ii). The Plan Trustees are competent, and Debtors believe they will undertake their duties under the Plan Trust Agreements in an adequate manner.

43. Additionally, section 1129(a)(5)(B) requires that a plan proponent disclose the identity of any "insider" (as defined by 11 U.S.C. § 101(31)) to be employed or retained by the reorganized debtor and the nature of any compensation for such insider. 11 U.S.C. § 1129(a)(5)(B). The Liquidating Trustee and her compensation are fully disclosed in the Liquidating Trust Agreement and Schedule 1 attached thereto. Additionally, on and after the Effective Date, the board of managers or directors of each Debtor will be terminated and all of the officers and all of the officers and directors of the Debtors, to the extent they have not

already done so, shall be deemed to have resigned from their respective positions with the Debtors. Plan Art. V.M.

44. Accordingly, the Plan fully complies with, and satisfies, the requirement of section 1129(a)(5) of the Bankruptcy Code.

6. The Plan Does Not Require Governmental Approval of Rate Changes (Section 1129(a)(6)).

45. Section 1129(a)(6) of the Bankruptcy Code requires that any regulatory commission that will have jurisdiction over a debtor after confirmation has approved any rate change provided for in a plan. 11 U.S.C. § 1129(a)(6). The Plan does not provide for any such rate changes, and therefore, section 1129(a)(6) of the Bankruptcy Code is inapplicable.

7. The Plan Is In the Best Interests of Creditors and Interest Holders (Section 1129(a)(7)).

46. The Plan is in the best interests of creditors thus satisfying section 1129(a)(7). Section 1129(a)(7) of the Bankruptcy Code—the "best interests of creditors" test—requires that with respect to each impaired class of claims or interests, either: (a) each Holder of a claim or interest of such class has accepted the plan; or (b) will receive or retain under the plan property of a value, as of the effective date of the plan, that is not less than the amount that such Holder would receive or retain if the debtors liquidated under chapter 7 of the Bankruptcy Code. 11 U.S.C. § 1129(a)(7)(A). The best interests test applies if a claim or interest entitled to vote does not vote to accept a plan, even if the class as a whole votes to accept the plan. *See In re 203 N. LaSalle St. P'ship*, 526 U.S. at 441 n.13 ("The 'best interests' test applies to individual creditors holding impaired claims, even if the class as a whole votes to accept the plan."); *see, e.g., In re Cypresswood Land Partners, I*, 409 B.R. 396, 428 (Bankr. S.D. Tex. 2009) ("This provision is known as the 'best-interest-of-creditors-test' because it ensures that reorganization is in the best interest of individual claimholders who have not voted in favor of the plan.").

Generally, the best interests test is satisfied by a liquidation analysis demonstrating that an impaired class will receive no less under the plan than under a chapter 7 liquidation. *See In re Adelphia Commc'ns. Corp.*, 361 B.R. 337, 366-67 (S.D.N.Y. 2007), *citing In re Smith*, 357 B.R. 60, 67 (Bankr. M.D.N.C. 2007), *appeal dismissed*, No. 1:07CV30, 2007 WL 1087575 (M.D.N.C. Apr. 4, 2007) ("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.") (citations omitted).

47. The Debtors, with the assistance of Debtors' advisors, prepared a liquidation analysis estimating the range of recoveries under a hypothetical chapter 7 liquidation (the "Liquidation Analysis"). *See* Liquidation Analysis [Docket No. 763]. As set forth in the Liquidation Analysis, in a hypothetical chapter 7 liquidation, Secured Claims (Class 2 and Class 3) are estimated to receive recoveries of approximately 32.5 percent. *See id.* Administrative Claims and Priority Claims (Class 1), and General Unsecured Claims (Class 4) are estimated to receive nothing. *See id.* Likewise, Classes 5–8 would receive nothing.

48. As a result, the Plan's recoveries to creditors are expected to yield: (a) to all Holders of Class 1 Allowed Other Priority Claims and Class 2 Other Secured Claims payment in full; (b) to Holders of Class 3 Allowed Prepetition Secured Loan Claims all Available Cash plus the proceeds of the Remaining Prepetition Collateral; (c) to Holders of Class 4 General Unsecured Claims Pro Rata shares of the Unsecured Creditor Trust Interests equal to or greater than what they would have received under chapter 7;[7] (d) to Holders of Class 5 Allowed Section 510(b) Claims Pro Rata shares of the Unsecured Creditor Trust Cash, if any. Accordingly, and

[7] The Prepetition Agent, the DIP Agent, the Prepetition Lenders and the DIP Lenders have agreed with the Committee and the Debtors to pay GUC Settlement Cash ($275,000 of the proceeds from the sale of the Collateral and/or DIP Collateral pursuant to paragraph 45 of the Final DIP Order) to the Unsecured Creditor Trust for the initial funding of the Unsecured Creditor Trust. Plan, Art. V.E.

because the recoveries provided under the Plan either equal or far exceed the recoveries available in a chapter 7 liquidation, the Plan satisfies section 1129(a)(7) of the Bankruptcy Code.

8. The Plan Can Be Confirmed Notwithstanding the Requirements of Section 1129(a)(8).

49. Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests either accept a plan or be unimpaired under a plan. 11 U.S.C. § 1129(a)(8). As discussed above, Class 3 (Prepetition Secured Loan Claims) and Class 4 (General Unsecured Claims) voted to accept the Plan. *See* Voting Affidavit.

9. The Plan Complies with Statutorily Mandated Treatment of Administrative and Priority Tax Claims (Section 1129(a)(9)).

50. Section 1129(a)(9) of the Bankruptcy Code requires that certain priority claims be paid in full on the effective date of a plan and that the Holders of certain other priority claims receive deferred cash payments. 11 U.S.C. § 1129(a)(9). In particular, pursuant to section 1129(a)(9)(A) of the Bankruptcy Code, holders of claims of a kind specified in section 507(a)(2) of the Bankruptcy Code—administrative expenses allowed under section 503(b) of the Bankruptcy Code—must receive on the effective date cash equal to the allowed amount of such claims.

51. In accordance with 1129(a)(9), each Holder of an Allowed Administrative Claim shall be paid in full in Cash from the Administrative Claims Reserve or the Liquidating Trust Cash on the later of (i) the Effective Date or as soon as reasonably practical thereafter, (ii) the date on which such Administrative Claim becomes an Allowed Claim; or (iii) such other date as the Liquidating Trustee and the Holder of the Allowed Administrative Claim shall agree. *See* Plan, Art. II.A.

52. In addition, Allowed Priority Tax Claims will be paid in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code. *See* Plan, Art. II.C.

Accordingly, the Plan complies with the requirements of section 1129(a)(9) of the Bankruptcy Code.

10. At Least One Impaired Class of Claims Has Accepted the Plan, Excluding the Acceptance of Insiders (Section 1129(a)(10)).

53. The Plan satisfies the voting requirements of section 1129(a)(10). Section 1129(a)(10) of the Bankruptcy Code provides that if any class of claims is impaired under a plan, at least one impaired class of claims must accept the plan, excluding acceptance by any insider. 11 U.S.C. § 1129(a)(10).

54. As detailed herein and in the Voting Affidavit, Class 3 (Prepetition Secured Loan Claims) and Class 4 (General Unsecured Claims) are impaired and have accepted the Plan. *See* Voting Affidavit. None of these Classes included the votes of insiders. Because the Plan has been accepted by impaired accepting classes, it satisfies the requirement of section 1129(a)(10).

11. The Plan is Feasible (Section 1129(a)(11)).

55. Section 1129(a)(11) of the Bankruptcy Code requires that a plan be feasible as a condition precedent to confirmation; in order to be confirmable, confirmation of a plan must not be likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is provided for in the plan. *See* 11 U.S.C. § 1129(a)(11). The feasibility inquiry is fact intensive and requires a case-by-case analysis, but has a relatively low threshold of proof necessary to satisfy the feasibility requirement. *See id.*; *see also Mercury Capital Corp. v. Milford Conn. Assocs., L.P.*, 354 B.R. 1, 9 (D. Conn. 2006), *remanded*, 2008 WL 687266 (Bankr. D. Conn. March 10, 2008), ("[A] 'relatively low threshold of proof' will satisfy the feasibility requirement.") (quoting *In re Brotby*, 303 B.R. 177, 191–92 (B.A.P. 9th Cir. 2003)). "Where the projections are credible, based upon the balancing of all testimony, evidence, and documentation, even if the

projections are aggressive, the court may find the plan feasible. . . . Debtors are not required to view business and economic prospects in the worst possible light." *In re T-H New Orleans LP*, 116 F.3d 790, 802 (5th Cir. 1997) (citing *In re Lakeside Global II, Ltd.*, 116 B.R. 499, 508 n.20 (Bankr. S.D. Tex. 1989) and *In re Western Real Estate Fund, Inc.*, 75 B.R. 580, 585 (Bankr. E.D. Okla. 1987)).

56. In this Circuit, courts have required a determination that the plan "has a reasonable likelihood of success" and "a reasonable assurance of commercial viability." *See Briscoe*, 994 F.2d at 1165-66 ("As numerous courts have explained 'the court need not require a guarantee of success' . . . '[o]nly a reasonable assurance of commercial viability is required'" to meet the feasibility test); *Financial Sec. Assurance, Inc. v. T-H New Orleans Ltd. P'ship (In re T-H New Orleans Ltd. P'ship)*, 116 F.3d 790, 801 (5th Cir. 1997) (explaining that "[a]ll the bankruptcy court must find is that the plan offers 'a reasonable probability of success.'"); *id.* (citing *In re Sandy Ridge Dev. Corp.*, 881 F.2d 1346 (5th Cir. 1989) and explaining that even a liquidating chapter 11 plan does not violate Bankruptcy Code section 1129(a)(11)); *In re Cypresswood Land Partners, I*, 409 B.R. at 432-33 (citing *Kane v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 843 F.2d 636, 649 (2d Cir. 1988)); *see also In re Eddington Thread Mfg. Co.*, 181 B.R. 826, 832-33 (Bankr. E.D. Pa. 1995) (finding a plan is feasible "so long as there is a reasonable prospect for success and a reasonable assurance that the proponents can comply with the terms of the plan."). A liquidating plan does not exempt a plan from meeting the requirements under section 1129(a)(11), but it does reduce the emphasis on future performance after the plan becomes effective. *See U.S. v. Haas (In re Haas)*, 162 F.3d 1087, 1090 (11th Cir. 1998).

57. To demonstrate that a liquidating plan is feasible, a plan proponent need only show that "the successful performance of [the plan's] terms is not dependent or contingent upon any future, uncertain event." *In re Heritage Org., L.L.C.*, 375 B.R. 230, 311 (N.D. Tex. 2007) (holding that the creation of a creditor trust with *res* consisting of estate cash and the proceeds of any future successful litigation in addition to a fixed trust governance mechanism qualified as feasible). A plan proponent does not need to establish that the success of any future litigation is guaranteed or that a trust's funds will never run out. *In re T-H New Orleans L.P.*, 116 F.3d 790, 801 (5th Cir. 1997) (stating that a court "need not require a guarantee of success").

58. The Plan is feasible because the performance of the terms under the Plan are not based on any future, uncertain event. The proceeds from the sale of substantially all of the Debtors' assets will be distributed entirely to the Holders of Prepetition Loan Claims, other than the distributions provided for under the Plan to Holders of Other Priority Claims, Other Secured Claims, and General Unsecured Claims and certain reserves to pay Administrative Expenses and to fund the Debtors' post-sale wind-down. Any assets remaining in the Debtors' Estates as of the Effective Date will vest in the Liquidating Trust for the liquidation for the benefit of Holders of Allowed Claims. The Plan provides for the liquidation of the Debtors' remaining assets and a distribution of Cash to creditors in accordance with the priority scheme of the Bankruptcy Code and the terms of the Plan. The Unsecured Creditor Trust shall administer its Unsecured Creditor Trust Assets (GUC Settlement Cash, Retained Causes of Action, and claims under and proceeds of D&O Policies) and make all distributions to the Unsecured Creditor Trust Beneficiaries. Since none of the requirements for carrying out the Plan are contingent upon future, uncertain events (as any future litigation is not considered a contingent, uncertain future event) and the Plan

provides fixed trust governance mechanisms for both Trusts, the Plan is feasible. *See T-H New Orleans*, 116 F.3d at 801.

59. Additionally, the Debtors have the overwhelming support of their DIP Lenders and the Committee. The Debtors provided ample opportunity for the various parties to these Chapter 11 Cases to evaluate the feasibility of the Plan throughout these proceedings and during the negotiation of the current Plan. Accordingly, the Plan satisfies the feasibility requirements of section 1129(a)(11).

12. The Plan Provides for All Fees Under 28 U.S.C. § 1930 (Section 1129(a)(12)).

60. Section 1129(a)(12) of the Bankruptcy Code requires the payment of all fees payable under 28 U.S.C. § 1930. *See* 11 U.S.C. § 1129(a)(12). Article II.D of the Plan provides that on and after the Effective Date, the Debtors shall pay all fees due and payable, and shall file with the Court quarterly reports in a form reasonably acceptable to the U.S. Trustee, which shall include a schedule of disbursements made by the Liquidating Trustee during the applicable period, attested to by an authorized representative of the Liquidating Trustee. *See* Plan, Art. II.D. Accordingly, the Plan complies with section 1129(a)(12) of the Bankruptcy Code.

13. The Remaining Requirements of Section 1129(a) are Inapplicable (Sections 1129(a)(13)-(16)).

61. Section 1129(a)(13) of the Bankruptcy Code requires that chapter 11 plans continue all retiree benefits (as defined in section 1114 of the Bankruptcy Code). The Debtors do not have any obligations to pay retiree benefits, so section 1129(a)(13) is inapplicable. Sections 1129(a)(14) and (15) of the Bankruptcy Code apply only to debtors who are individuals and therefore do not apply here. Section 1129(a)(16) of the Bankruptcy Code applies only to debtors that are nonprofit entities or trusts and therefore does not apply here.

B. The Principal Purpose of the Plan is Not Avoidance of Taxes or Section 5 of the Securities Act (Section 1129(d)).

62. Section 1129(d) of the Bankruptcy Code provides that "the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933." *See* 11 U.S.C. § 1129(d). The purpose of the Plan is not to avoid taxes or the application of section 5 of the Securities Act. Moreover, no governmental unit or any other party has requested that the Court decline to confirm the Plan on such grounds. Accordingly, the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.

C. The Discretionary Contents of the Plan Are Appropriate.

63. The Bankruptcy Code identifies various additional provisions that may be incorporated into a chapter 11 plan, including "any other appropriate provision not inconsistent with the applicable provisions of this title." 11 U.S.C. § 1123(b)(6). Among other things, section 1123(b) of the Bankruptcy Code provides that a plan may: (a) impair or leave unimpaired any class of claims or interests; (b) provide for the assumption or rejection of executory contracts and unexpired leases; (c) provide for the settlement or adjustment of any claim or interest belonging to the debtor or the estates; (d) provide for the sale of all or substantially all of the property of the estate; and (e) include any other appropriate provision not inconsistent with the applicable provisions of chapter 11. 11 U.S.C. § 1123(b)(1)–(4), (6). As set forth below, the Plan includes certain of these discretionary provisions, including releases by the Debtors and third parties of Claims and Causes of Action, exculpation and injunction provisions, *see* Plan Art. XI.

1. Debtors Shall Be Deemed Consolidated.

64. The Plan constitutes a motion for deemed consolidation of the Debtors and their respective Estates solely for purposes of voting on the Plan, confirming the Plan, and making

Distributions pursuant to the Plan. Deemed consolidation is for the limited purpose of making Distributions to holders of Allowed Claims to ease an administrative burden on the Debtors, their Estates, and the Plan Trustees. It is part of the overall Plan package agreed to by the Prepetition Agent, the DIP Agent and Committee, and accordingly, is required by those parties.

65. Substantive consolidation is an equitable doctrine that permits a bankruptcy court to disregard distinctions between parent companies, subsidiary companies, and their affiliates that operate together in a corporate group. *See Clyde Bergemann, Inc. v. Babcock & Wilcox Co. (In re Babcock & Wilcox Co.)*, 250 F.3d 955, 958 (5th Cir. 2001). Substantive consolidation "treats separate legal entities as if they were merged into a single survivor left with all the cumulative assets and liabilities (save for inter-entity liabilities, which are erased). The result is that claims of creditors against separate debtors morph to claims against the consolidated survivor." *In re Owens Corning*, 419 F.3d 193, 205 (3d Cir. 2005) (quotation omitted). However, courts will hold debtor companies "deemed consolidated" so that creditors of the various entities can assert claims and vote *as if* he assets and liabilities of the consolidated group belong to a single entity for plan voting and plan distribution purposes only. *See In re Babcock & Wilcox Co.*, 250 F.3d at 958 n. 6 ("Administrative consolidation is merely a procedural device used to deal efficiently with multiple estates, however, while substantive consolidation affects the substantive rights of the parties and therefore is subject to heightened judicial scrutiny") (citation omitted).

66. The Fifth Circuit has not developed its own standard to determine when substantive consolidation is appropriate, *In re Introgen Therapeutics*, 429 B.R. 570, 582 (W.D. Tex. 2010), but the Fifth Circuit has acknowledged that bankruptcy courts have the power to order substantive consolidation "sparingly." *Bank of New York Trust Co., N.A. v. Official*

Unsecured Creditors' Comm. (In re Pac. Lumber Co.), 584 F.3d 229, 249 (5th Cir. 2009). In dicta, the Fifth Circuit called substantive consolidation an "extreme and unusual remedy." *Pac. Lumber*, 584 F.3d at 249.

67. There is "no universally accepted legal standard for when substantive consolidation is appropriate." *In re ADPT DFW Holdings, LLC*, 574 B.R. 87, 93 (Bankr. N.D. Tex. 2017). In most cases, "the analysis is highly facts specific . . . [and] precedents are of little value, thereby making each analysis on a case-by-case basis." 2 COLLIER ON BANKRUPTCY ¶ 105.09 (16th ed. 2018). Two standards have developed for determining when substantive consolidation is appropriate: (1) a multi-factor test (involving similar factors to those for piercing the corporate veil), *see Union Savs. Bank v. Augie/Restivo Baking Co., Ltd (In re Augie/Restivo Baking Co., Ltd.)*, 860 F.2d 515, 518 (2d Cir. 1988); and (2) a balancing of harm test. *See Eastgroup Props. v. S. Motel Ass'n, Ltd.*, 935 F.2d 245 (11th Cir. 1991).

68. The multi-factor test is distillable into two factors: (1) "whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit;" or (2) "whether the affairs of the debtors are so entangled that consideration would benefit all creditors." *ADPT*, 574 B.R. at 95–96; *see Owens Corning*, 419 F.3d at 205 (distilling the multi-factor test into two factors).[8] As *ADPT* noted, "some courts pick and choose elements

[8] The multi-factor test may consider: (1) the presence or absence of consolidated financial statements; (2) the unity of interests and ownership between the various corporate entities; (3) the existence of parent and intercorporate guaranties on loans; (4) the degree of difficulty in segregating and ascertaining individual assets and liabilities; (5) the transfer of assets without formal observance of corporate formalities; (6) the commingling of assets and business functions; (7) the profitability of consolidation at a single physical location; (8) the parent corporation owns all or a majority of the capital stock of the subsidiary; (9) the parent and subsidiary have common officers and directors; (10) the parent finances the subsidiary; (11) the parent is responsible for incorporation of the subsidiary; (12) the subsidiary has grossly inadequate capital; (13) the parent pays salaries, expenses, or losses of the subsidiary; (14) the subsidiary has substantially no business except with the parent; (15) the subsidiary has essentially no assets except for those conveyed by the parent; (16) the parent refers to the subsidiary as a department or division of the parent; (17) the directors or officers of the subsidiary do no act in the interests of the subsidiary but at the direction of the parent; and (18) the formal legal requirements of the subsidiary as a separate and independent corporation are not observed. *ADPT*, 574 B.R. at 94–95 (citing *In re Augie/Restivo*, 860 F.2d 515).

out of [the] laundry list of factors, focusing on which factors they believe to be important," so there is no universal standard for which factors of the multi-factor test should be given more weight relative to the others. *ADPT* 574 B.R. at 87.

69. Under the harm-balancing test, a proponent of substantial consolidation must show that (1) there is substantial identity between the entities to be consolidated, and (2) consolidation is necessary to avoid some harm or to realize some benefit. *Eastgroup*, 935 F.2d at 248. Once the proponent has established these factors, a presumption arises that "creditors have not relied solely on the credit of one of the entities involved." *Id.* at 249. The burden then shifts to the party opposing consolidation to show that (1) it relied on the separate credit of one of the entities to be consolidated; and (2) it would be prejudiced by consolidation. *Id.* Even if the opponent carries its burden, the court may still order substantive consolidation where the benefits of consolidation "heavily" outweigh the harm. *Id.*

70. *ADPT*, like the instant Cases, involved free-standing emergency room centers. In *ADPT*, the court concluded under both tests that consolidation was appropriate, and even though the consolidation was "deemed consolidation" rather than substantive consolidation, the analysis was the same. *ADPT* 574 B.R. at 104. The court found that "the time and expense to allocate assets and liabilities between estates" would be "enormous." *Id.* The debtors' lenders, the creditors' committee, and the equity security committee supported consolidation, and the court found it appropriate based on the consideration of many of the traditional factors. *Id.* at 101–102.

71. *ADPT* ultimately held that based on a preponderance of the evidence substantive consolidation was appropriate under both tests. *Id.* at 102. "[C]reditors tended to deal with the Debtors as a single economic unit and did not rely on their separate identity in extending credit."

Id. (emphasis removed). Additionally, "there was no evidence of prejudice to any particular creditor." *Id.* The court concluded,

> "as a result of the Debtors' integrated and interdependent operations, substantial intercompany obligations and guaranties, common officers and directors, common control and decision making, reliance on a consolidated cash management system, and dissemination of principally consolidated financial information to third parties, the Debtors operated, and creditors dealt with the Debtors, as a single, integrated economic unity." *Id.*

72. Under both the multi-factor and the balancing of harm tests, deemed consolidation is appropriate. The creditors dealt with the Debtors as a single economic unit and did not rely on the separate identity of the Debtors when extending credit. All 51 Debtors, with the exception of Neighbors Legacy Holdings, Inc., are guarantors under the Prepetition Secured Loan Claims and the Emergency Centers are guarantors under certain real property lease obligations.

73. There is also substantial identity between the Debtors such that the affairs of the Debtors are so entangled that deemed consolidated treatment will benefit all creditors. The Debtors maintained a centralized cash management system, the Debtors' management and corporate functions were centralized in five entities, and the Debtors' payroll was centralized in just two entities. The Debtors were also controlled by common officers and directors. Here, consolidation is necessary to avoid the substantial time and expense of allocating assets and liabilities between the Debtors' estates, which would be an enormous cost to the estates and their creditors.

74. The Debtors believe that deemed consolidation will minimize costly disputes over allocation of assets to be distributed, and it will also facilitate the compromise reached among Debtors, the Committee, the Prepetition Agent, the DIP Agent, the Secured Creditors (as defined in the Final DIP Order), and the DIP Lenders as embodied in paragraph 45 of the Final DIP Order [Docket No. 193]. Any Claim filed or asserted against any of the Debtors will be deemed a

Claim against all the Debtors solely for the purposes of voting and Distributions pursuant to the Plan. Deemed consolidation will not affect any Retained Causes of Action or the legal and corporate structure of the Debtors. It will not affect or impair any valid, perfected and unavoidable Lien to which the assets of any Debtors are subject, and deemed consolidation will not cause any such Lien to secure any Claim which such Lien would not otherwise secure in the absence of deemed consolidation.

75. Deemed consolidation is allowed under both the multi-factor test and the harm test and the Court is therefore justified in granting the Debtors' motion for deemed consolidation.

2. Class 5 (Section 510(b) Claims) are Properly Subordinated.

76. Section 510(b) of the Bankruptcy Code provides that "a claim . . . for damages arising from the purchase or sale of [a security of the debtor or an affiliate of the debtor] . . . shall be subordinated to all claims or interests that are senior to or equal to the claim or interest presented by such security." 11 U.S.C. § 510(b).

77. "Section 510(b) serves to effectuate one of the general principles of corporate and bankruptcy law: that creditors are entitled to be paid ahead of shareholders in the distribution of corporate assets." *SeaQuest Diving, LP*, 579 F.3d 411, 417 (5th Cir. 2009) (quoting *In re Am. Wagering, Inc.*, 493 F.3d 1067, 1071 (9th Cir. 2007) (internal quotation marks omitted)). There are three distinct categories of claims subject to mandatory subordination under section 510(b) of the Bankruptcy Code:

> (1) a claim arising from rescission of a purchase or sale of a security of the debtor (the rescission category); (2) a claim for damages arising from the purchase or sale of a security of the debtor (the damages category); and (3) a claim for reimbursement or contribution allowed under 11 U.S.C. § 502 on account of either (1) or (2).

SeaQuest, 579 F.3d. at 418, 422 (conclusively determining the "damages prong" includes claims for post-issuance conduct, such as a breach of contract); *In re Deep Marine Holdings, Inc.*, No.

09-39313, 2011 WL 160595, at *7 (Bankr. S.D. Tex. Jan. 19, 2011). "Congress's larger concern was the effort of disaffected stockholders to recapture their investments from the debtors, regardless of the exact nature of their claims." *SeaQuest*, 579 F.3d at 421. "The most important policy rationale behind section 510(b) is that claims seeking to recover a portion of claimants' equity investments should be subordinated." *In re Am. Hous. Found.*, 785 F.3d 143, 153 (5th Cir. 2015), *as revised* (June 8, 2015) (alterations and internal quotation marks omitted). *See In re WorldCom, Inc.*, 2006 WL 3782712, at *6 (Bankr. S.D.N.Y. Dec. 21, 2006) ("So long as the claimant's interest enabled him to participate in the success of the enterprise and the distribution of profits, the claim will be subordinated pursuant to section 510(b).").

78. The Series LLC Claims included under Class 5 relate to the purchase of any Series LLC Interest. The Series LLC Interests are interests in the profits and losses of specific series LLCs, which are the limited partners of each of the Debtors' emergency centers. Each series LLC is owned by a combination of Class A physicians and Class B physicians, who hold interests in the profits and losses in specific series LLCs. NHS Emergency Centers, LLC, one of the Debtors in this case, houses the series LLCs and owns 99% of the emergency centers (LPs). The underlying series LLCs are non-debtors.

79. Each Series LLC Interest qualifies as a "security" under section 101(49) of the Bankruptcy Code because the interests are either a "transferable share" or they fall within the broad residual category as debt or equity interests commonly known as securities. 11 U.S.C. § 101(49)(A)(iii), (xiv); *see also In re Alta+Cast, LLC*, 301 B.R. 150, 154–55 (Bankr. D. Del. 2003) (holding that a claim based on the debtor's failure to purchase claimant's LLC membership interest was subject to mandatory subordination).

80. Each Series LLC Claim arose from the purchase of a security of an affiliate of the Debtors. For a claim to "arise from" the purchase or sale of a security, there must be some nexus or causal relationship between the claim and the sale. *SeaQuest Diving, LP*, 579 F.3d at 421 (citing *In re Telegroup, Inc.*, 281 F.3d 133, 142 (3d Cir. 2002)). A claim arising from the purchase or sale of a security may include a claim predicated on post-issuance conduct, such as claims for breach of contract, fraud, breach of fiduciary duties, and money-had-and-received. *See id.*; *see also In re Am. Hous. Found.*, 785 F.3d at 153 (affirming bankruptcy court decision subordinating claims for fraud, breach of fiduciary duties, and money-had-and-received). Similarly, this Court has interpreted section 510(b) broadly to include claims that arise during the course of a claimant's ownership of a security. *See In re Deep Marine Holdings, Inc.*, No. 09-39313 (MI), 2011 WL 160595, at *4 (Bankr. S.D. Tex. Jan. 19, 2011) (subordinating claims asserting the right of appraisal, fraud, and an accounting because the claims were causally linked to the defendants' status as shareholders of the debtor). The Series LLC Claims, to the extent that there are any, qualify for mandatory subordination under section 510(b) of the Bankruptcy Code.

a. Infinity Emergency Management Group, LLC's Claim Is Properly Subordinated Under Section 510(b).

81. In particular, Infinity Emergency Management Group, LLC's ("Infinity") Claim No. 223 (the "Claim") is correctly treated as a Section 510(b) Claim. Infinity contends that it has a general unsecured claim, but to the extent that it has a claim at all, it is properly subordinated under section 510 of the Bankruptcy Code.

82. Infinity filed a state court lawsuit against various defendants, including Debtors Neighbors Health LLC and Neighbors GP, LLC, which was removed to this Court by commencing adversary no. 18-3276 (the "Adversary Case"). On December 14, 2018, Infinity filed its *Third Amended Complaint*, which is the live complaint, in the Adversary Case [Docket

No. 17]. In the complaint, Infinity explicitly asserts various derivative claims, none of which Infinity has standing to assert. Infinity likely does not even have an allowed claim, only a derivative claim, which is property of the Estate.

83. Infinity filed its Claim on November 2, 2018, asserting a general unsecured claim of $8,646,313.01 with a single one-page document attached to support its claim. The Debtors have objected to Infinity's Claim on the grounds that it has insufficient supporting documentation to establish (1) the amount of the Claim; (2) the basis for the Claim; (3) that the Claim is properly asserted against the Debtors; (4) that Infinity has standing to assert the Claim at all; and (5) why the Claim, if there is one, is a general unsecured claim instead of one subordinated under section 510 of the Bankruptcy Code. *Debtor's Objection to Infinity Emergency Management Group, LLC's Claim No. 223* [Docket No. 792] ("Debtors' Objection"). Infinity has a limited interest (as a Class B interest holder) in the limited partner of a Series Limited Liability Company (NHS Emergency Centers, LLC referred to in Debtors' Objection as "NHS LLC") and in particular a limited interest in Series 114 Eastside ("Eastside") and Series 115 Zaragoza ("Zaragoza"). Infinity's rights under the contracts at issue do not include the right to bring claims or lawsuits, but are merely limited to a partial share of the net profits or losses of Eastside and Zaragoza. In the Adversary Case, Infinity asserts derivative claims and additional claims, all of which are property of the Estate. Debtors can only assume that Infinity's Claim is based on the claims asserted in the Adversary Case. To the extent that Infinity's Claim is based on those derivative claims, Infinity does not have standing to assert its Claim because the underlying derivative claims are property of the Estate. *See Torch Liquidating Trust v. Stockstill*, 561 F.3d 377, 386 (5th Cir. 2009); *In re Educators Group Health Trust*, 25 F.3d 1281, 1284 (5th Cir. 1994).

84. Nevertheless, to the extent that Infinity does have an allowed claim, the Claim is properly subordinated under section 510(b). The Claim that Infinity filed "arises from" the purchase of a security insofar as the Claim is predicated on post-issuance conduct of the Debtors. *See SeaQuest Diving, LP*, 579 F.3d at 421; *In re Am. Hous. Found.*, 785 F.3d at 153. Infinity's Adversary Case, which includes the only discernible bases for Infinity's Claim, concerns alleged intercompany advances to separate series LLCs within NHS LLC after Infinity acquired its interests in Eastside and Zaragoza. This post-issuance conduct falls within the Fifth Circuit's understanding of the phrase "arises from" in section 510(b), which includes acts of fraud, breach of fiduciary duties, and money-had-and-received. *See SeaQuest Diving, LP*, 579 F.3d at 421; *In re Am. Hous. Found.*, 785 F.3d at 153. Infinity should not be allowed to bootstrap its way to a recovery of its equity investment by asserting similar claims—the very thing section 510(b) was designed to prevent. *See In re Am. Hous. Found.*, 785 F.3d at 153. Therefore, Infinity's Claim is correctly subordinated under section 510(b).

85. The Series LLC Claims, including Infinity's Claim, are therefore properly subordinated to the General Unsecured Claims pursuant to section 510(b) of the Bankruptcy Code.

3. The Plan Appropriately Incorporates a Settlement of Claims and Causes of Action.

86. The Bankruptcy Code states that a plan may "provide for . . . the settlement or adjustment of any claim or interest belonging to the debtor or to the estate." 11 U.S.C. § 1123(b)(3)(A). A court may approve a settlement only when it is "fair and equitable." *See Feld v. Zale Corp. (In re Zale Corp.)*, 62 F.3d 746, 754 n.22 (5th Cir. 1995) (c*iting In re AWECO, Inc.*, 725 F.2d. 293, 297 (5th Cir. 1984)). In particular, the Fifth Circuit applies a five-factor test for considering settlements under Bankruptcy Rule 9019, weighing: "(1)

the probability of success in litigation with due consideration for uncertainty in fact and law; (2) the complexity and likely duration of the litigation and any attendant expense, inconvenience, and delay, including the difficulties, if any to be encountered in the matter of collection; (3) the paramount interest of the creditors and a proper deference to their respective views; (4) the extent to which the settlement is truly the product of arm's-length bargaining and not fraud or collusion; and (5) all other factors bearing on the wisdom of the compromise." *In re Moore*, 608 F.3d 253, 263 (5th Cir. 2010).

87. The Plan embodies a settlement of certain Claims, Interests, and controversies among the Debtors and all major parties in interest, including the Debtors, the Consenting Creditors, and the Committee. The settlement embodied in the Plan is fair and equitable and consistent with the Bankruptcy Rule 9019 factors as applied in this jurisdiction. The Plan resolves a host of alleged Claims and Causes of Action, which were thoroughly analyzed by the Debtors, the consenting stakeholders, and their advisors, all of which are uncertain to succeed and could cause extensive delay, cost, and uncertainty in these Chapter 11 Cases and otherwise. The Plan, which was the result of an arm's-length negotiations, is in the best interests of creditors and interest holders.

88. The releases of the Prepetition Secured Parties, the DIP Secured Parties, and the Chief Restructuring Officer, in his individual capacity and with respect to the Prepetition Secured Parties and DIP Secured Parties, are an integral component of the negotiated settlement. The Plan does not release the Debtors' current and former subsidiaries, Affiliates, directors, members, managers, officers, principals, partners, agents, employees, shareholders, holders of Series LLC Interests, or holders of Neighbors Equity Interests. The Debtors are not aware of any colorable claims or causes of action against their Prepetition Secured Parties, the DIP Secured

Parties, or the Chief Restructuring Officer. As a result, the releases should be approved as a component of the settlement embodied in the Plan.

4. The Debtor Releases are Appropriate and Comply with the Bankruptcy Code.

89. Article XI of the Plan provides for the release of any past or present claims Debtors may have against Prepetition Secured Parties, the DIP Secured Parties, and the Chief Restructuring Officer, in his individual capacity and with respect to the Prepetition Secured Parties and DIP Secured Parties.[9] The Debtor Releases are an essential *quid pro quo* for the Released Parties' contributions to the Debtors' restructuring.

90. The Bankruptcy Code supports the inclusion of debtor releases in a chapter 11 plan. Section 1123 states that a chapter 11 plan may provide for "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate." 11 U.S.C. § 1123(b)(3)(A). This provision allows the Debtors to release estate causes of action as consideration for concessions made by their various stakeholders pursuant to the Plan. *See, e.g.*, *In re Bigler LP*, 442 B.R. 537, 547 (Bankr. S.D. Tex. 2010) (plan release provision "constitutes an acceptable settlement under § 1123(b)(3) because the Debtors and the Estate are releasing claims that are property of the Estate in consideration for funding of the Plan"); *In re Heritage Org., LLC*, 375 B.R. 230, 259 (Bankr. N.D. Tex. 2007); *In re Mirant Corp.*, 348 B.R. 725, 737-39 (Bankr. N.D. Tex. 2006); *In re General Homes Corp.*, 134 B.R. 853, 861 (Bankr. S.D. Tex. 1991). In determining the appropriateness of such releases, courts in the Fifth Circuit generally consider whether the release is (a) "fair and equitable" and (b) "in the best interests of the estate." *Mirant*, 348 B.R. at 738; *see also Heritage*, 375 B.R. at 259. The "fair and equitable" prong is generally interpreted,

[9] The foregoing description is meant as a summary of the operative Plan provisions only. To the extent there is any conflict between the forgoing summary and the definition of "Released Party" contained in Article I of the Plan, the Plan shall control.

consistent with that term's usage in section 1129(b) of the Bankruptcy Code, to require compliance with the Bankruptcy Code's absolute priority rule. *Mirant*, 348 B.R. at 738.

91. Courts generally determine whether a debtor release is "in the best interest of the estate" by considering the following factors:

a. the probability of success of the litigation being settled;

b. the complexity and likely duration of the litigation, any attendant expense, inconvenience, or delay, and possible problems collecting a judgment;

c. the interest of creditors with proper deference to their reasonable views; and

d. the extent to which the settlement is truly the product of arm's-length negotiations.

Id. at 739-40 (citing *Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop.* (*In re Cajun Elec. Power Coop.*), 119 F.3d 349, 355-56 (5th Cir. 1997)). Courts afford debtors some discretion in determining the appropriateness of granting plan releases of estate causes of action. *See General Homes*, 134 B.R. at 861 ("[t]he court concludes that such a release is within the discretion of the Debtor").

92. The Debtor Releases easily meet the controlling standard. As an initial matter, the terms of the Debtor Releases comply with the Bankruptcy Code's absolute priority rule. As set forth above, while certain Classes are deemed to have rejected the Plan, the Debtor Releases and settlements embodied therein and in the Plan do not result in any junior Classes receiving or retaining any property on account of junior Claims or Interests. Thus, the Debtor Releases are fair and equitable in line with Fifth Circuit precedent.

93. In addition to being fair and equitable, the Debtor Releases are in the best interests of the estates. *First*, the probability of success in litigation with respect to the released Causes of Action supports the Debtor Releases. In negotiations between the Debtors and the interested parties, parties identified various potential Causes of Action held by the Debtors. With

respect to each of these potential Causes of Action, parties could assert colorable defenses and the probability of success is at best highly uncertain.

94. *Second*, prosecution of the Claims and Causes of Action released under the Debtor Releases would be complex and time consuming and could mire parties in interest in litigation rather than effectuation of a consensual liquidation. The Debtors do not believe that they have material causes of action against any of the Released Parties that would justify the risk, expense, and delay of pursuing any such causes of action as compared to the results and benefits achieved under the Plan.

95. *Third*, the Debtors' creditors and stakeholders have overwhelmingly voted in favor of the Plan, including the Debtor Releases. *Fourth*, the Plan, including the Debtor Releases, was vigorously negotiated prepetition and postpetition by sophisticated entities that were represented by able counsel and financial advisors. The result is a compromise that reflects the give-and-take of a true arm's-length negotiation process. The Released Parties that benefit from the Debtor Releases are providing (directly or through related parties) the consideration discussed above and are consenting to the releases, which were a necessary component of the overall bargain that has put the Debtors on the path to a value-maximizing chapter 11 liquidation. Such releases are permissible under applicable Fifth Circuit law.

96. Ultimately, the Debtors are giving up very little through the Debtor Releases. In return, the Debtors were able to facilitate an efficient plan of liquidation for the benefit of creditors. Accordingly, the Debtor Releases are fair, equitable, and in the best interest of the Debtors' estates, are justified under the controlling Fifth Circuit standard, and should be approved.

5. The Third-Party Releases in the Plan Are Appropriate.

97. In *Republic Supply Co. v. Shoaf*, the Fifth Circuit held that the Bankruptcy Code does not preclude a Third Party release provision where "it has been accepted and confirmed as an integral part of a plan of reorganization." 815 F.2d 1046, 1050 (5th Cir. 1987). The *Republic Supply* Court ultimately found that the Third Party release provision at issue was binding and enforceable. *Id.* at 1053. Although a line of Fifth Circuit cases limits non-consensual Third-Party releases,[10] these decisions do not prohibit consensual Third-Party releases. *See, e.g.*, *In re Camp Arrowhead, Ltd.*, 451 B.R. 678, 701-2 (Bankr. W.D. Tex. 2011) ("[T]he Fifth Circuit does allow permanent injunctions so long as there is consent . . . .") (emphasis in original).

98. In particular, "[c]onsensual nondebtor releases that are specific in language, integral to the plan, a condition of the settlement, and given for consideration do not violate [the Bankruptcy Code]." *In re Wool Growers Cent. Storage Co.*, 371 B.R. 768, 775-76 (Bankr. N.D. Tex. 2007) (citing *FOM Puerto Rico S.E. v. Dr. Barnes Eyecenter Inc.*, No. 05-CV-00333-R, 2006 WL 228982, at *4 (N.D. Tex. 2006) and *Republic Supply*, 815 F.2d at 1050). Under this standard, the critical factor in determining whether a release is consensual is whether, after the Debtors' due process obligations have been satisfied, including the provision of appropriate notice, "the affected creditor *timely objects* to the provision." *Id.* at 776 (citing *In re Zale Corp.*, 62 F.3d at 761) (emphasis added).

99. Here, the Plan releases Claims against the Debtors held by: (a) the Debtors, (b) the Prepetition Secured Parties, (c) the DIP Secured Parties, (d) the Committee, (e) each Holder of a Claim or Interest that accepts or is deemed to accept the Plan and does not both, (f) each other Holder of a Claim that is entitled to vote on the Plan and does not both (x) vote to reject the

[10] *See Ad Hoc Grp. of Vitro Noteholders v. Vitro S.A.B. de C.V. (In re Vitro S.A.B. de C.V.)*, 701 F.3d 1031, 1059 (5th Cir. 2012); *Bank of New York Trust Co. v. Official Unsecured Creditors' Comm. (In re The Pac. Lumber Co.)*, 584 F.3d 229, 252 (5th Cir. 2009); *In re Zale Corp.*, 62 F.3d at 760-61.

Plan or abstain from voting to accept or reject the Plan and (y) elect the Release Opt-Out on its Ballot (the "Releasing Parties" and "Third Party Releases").[11] Plan, Art. I.A.121; Art. XI.C.

100. The Third-Party Releases meet the standard set forth in *Republic Supply*, *Wool Growers*, and its progeny. *First*, the Third-Party Releases are consensual. As set forth above, consensual third-party releases are permitted under applicable law and have previously been approved by Courts in this district.[12] Furthermore, the Plan provides for a Release Opt-Out on the voting Ballot such that a Holder of a Claim or Interest who is entitled to vote on the Plan and who votes to reject the plan or abstains from voting to accept or reject the plan *and* elects the Release Opt-Out on its ballot will not be a Releasing Party. *See* Plan, Art. IA.

101. *Second*, the Third-Party Releases are sufficiently specific to put the Releasing Parties on notice of the released claims. *See, e.g.*, *FOM Puerto Rico S.E. v. Dr. Barnes Eyecenter Inc.*, 255 Fed. Appx. 909, 910, 912 (5th Cir. 2007) (approving release language that provided for release of any and all claims "based in whole or in part on any act or omission, transaction, or occurrence from the beginning of time through the Effective Date in any way relating to [the debtor], its Bankruptcy Case, or the Plan"). All parties in interest were provided extensive notice of these Chapter 11 Cases, the Plan, and the deadline to object to confirmation of the Plan. Both the Disclosure Statement (transmitted to all members of Voting Classes and otherwise publicly

[11] With respect to each of the foregoing Entities in clauses (b) through (e), such Entity's current or former subsidiaries and Affiliates, and its and their managed accounts or funds, officers, directors, managers, managing members, principals, partners, members, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other Professionals. Plan, Art. I.A.121.

[12] *See*, *e.g.*, *Republic Supply*, 815 F.2d at 1050 (finding third-party release enforceable since Bankruptcy Code does not proscribe such release where "it has been accepted and confirmed as an integral part of a plan of reorganization"); *Wool Growers*, 371 B.R. at 775–76 ("Most courts allow consensual [third-party] releases to be included in a plan . . . Consensual nondebtor releases that are specific in language, integral to the plan, a condition of the settlement, and given for consideration do not violate section 524(e)"); *see also Pilgrim's Pride*, 2010 WL 200000, at *5 (under *Pacific Lumber* "the court may not, *over objection*, approve through confirmation of the Plan third-party protections") (emphasis added); *Camp Arrowhead*, 451 B.R. at 701–02 ("the Fifth Circuit does allow permanent injunctions *so long as there is consent*.").

available) and the Disclosure Statement Order expressly state in bold and capitalized text that the Plan includes certain release provisions.

102. Specifically, each ballot also contains the below disclaimers and includes the full text of Article XI.C (Releases by Holders of Claims and Interests).

Notice Regarding Certain Release,
Exculpation, and Injunction Provisions in Plan

PLEASE BE ADVISED THAT THE PLAN CONTAINS CERTAIN RELEASE, EXCULPATION, AND INJUNCTION PROVISIONS . . .

If you (i) vote to accept the Plan, (ii) abstain from voting on the Plan the releases provided by the Plan, or (iii) vote to reject the Plan and do not provided by the Plan, you shall be deemed to have consented to the releases XI of the Plan. **Please carefully read the instructions set forth below regarding grant or opt-out of the releases contained in Article XI of the Plan.**

YOU ARE ADVISED AND ENCOURAGED TO CAREFULLY REVIEW AND CONSIDER THE PLAN AS YOUR RIGHTS MIGHT BE AFFECTED.

Prior to voting on the Plan, please note the following important information regarding releases by Holders of Claims and Interest:

If you vote to accept the Plan, you shall be deemed to have consented to the release, injunction, and exculpation provisions set forth in Articles XI.B., XI.C., XI.D. and XI.E. of the Plan.

If you (i) vote to accept the Plan, (ii) abstain from voting on the Plan and do not check the box in Item 3 below, or (iii) vote to reject the Plan and do not check the box in Item 3 below, you shall be deemed to have consented to the releases contained in Article X of the Plan.

The Disclosure Statement and the Plan must be referenced for a complete description of the release, injunction, and exculpation.

If you submit a rejecting Ballot, or an abstention Ballot, and in each case, you do not check the box below, you will be deemed to consent to the releases contained in Article XI.C of the Plan to the fullest extent permitted by applicable law.

By submitting a rejecting Ballot or an abstention Ballot, and checking the box below electing not to grant the releases contained in Article XI.C of the Plan, you are not forfeiting your right to receive a recovery on account of your Class 3 Prepetition Secured Loan Claim provided that the Plan is otherwise confirmed by the Bankruptcy Court

103. *Third*, the Third-Party Releases are integral to the Plan and a condition of the settlement embodied therein. The provisions of the Plan were heavily negotiated by sophisticated parties, each of whom are represented by competent counsel. The consensual Third-Party Releases (together with the Debtor Releases) are key components of the Debtors' Plan and are a key inducement to bring stakeholder groups to the bargaining table. Put simply, the Debtors' key stakeholders are unwilling to support the Plan without assurances that they and their collateral would not be subject to post-emergence litigation or other disputes related to the liquidation. The Third-Party Releases therefore not only benefit the non-Debtor Released Parties, but also the Debtors' process of liquidation as a whole.

104. *Fourth*, the Third-Party Releases are given for consideration. All parties in interest benefit from the liquidating Plan. General unsecured creditors will receive as much if not more than they would receive in a chapter 7 liquidation, and the Prepetition Secured Parties, the DIP Secured Parties, and the Committee have agreed to the releases in supporting the Plan. The Prepetition Secured Parties and the DIP Secured Parties are receiving mutual releases of Causes of Action held by the debtors and other consenting third parties.

a. The Third-Party Releases are Consensual.

105. For the reasons set forth above in the Debtors' case in chief and those summarized below, the Debtors respectfully submit that they have met the legal standard for consensual third-party releases, and that the Third-Party Releases in the Plan are therefore appropriate:

- all parties in interest have received extensive notice and opportunity to opt out of or object to the Third-Party Releases (*see, e.g.*, ballots, the Plan, the Disclosure Statement);
- Various Holders of Class 4 General Unsecured Claims have opted out of the Third-Party Releases by checking the "opt out" box on the ballots—the failure to do so constitutes consent under applicable law;

- the Third-Party Releases are widely supported by the Debtors' stakeholders, with 100% of Class 3 Prepetition Secured Loan Claims and 97.69% of Class 4 General Unsecured Claims accepting the Plan—those who opted out of the Third-Party Releases are carved out from the definition of Releasing Party;

- the Third-Party Releases are appropriately limited to the facts and circumstances of these Chapter 11 Cases;

- the Third-Party Releases are integral to the Plan and the Restructuring Support Agreement, each vigorously negotiated at arms'-length by sophisticated parties and necessary to forge consensus;

- the Third-Party Releases have been given for consideration, enabling General Unsecured Creditors to receive recoveries higher than they would otherwise be entitled to; and

- the Third Party Releases are typical to those approved in comparable chapter 11 cases in this district.

106. The Third-Party Releases operate to maximize the distributions to creditors by minimizing the possibility of costs associated with the continuation of disputes related to the Debtors' restructuring. Courts in this district and others have confirmed chapter 11 plans containing releases similar to the Third-Party Releases in comparable cases.[13] Accordingly, the Third-Party Releases are justified under the principles set forth in *Republic Supply*, *Wool Growers*, and their progeny.

[13] *See, e.g., In re GenOn Energy, Inc.*, No. 17-33695 (DRJ) (Bankr. S.D. Tex. Dec. 12, 2017) (approving third-party releases as consensual over objections from parties in interest, including U.S. Trustee); *Ameriforge Grp., Inc.*, No. 17-32660 (DRJ) (Bankr. S.D. Tex. May 22, 2017) (overruling U.S. Trustee objection and confirming chapter 11 plan where general unsecured creditors were unimpaired and deemed to have consented to third-party release provisions unless they asserted an objection to same); *In re Ultra Petrol. Corp.*, No. 16-32202 (MI) (Bankr. S.D. Tex. Mar. 14, 2017) (confirming chapter 11 plan where general unsecured creditors were unimpaired and deemed to have consented to third-party release provisions unless they asserted an objection to same); *In re CJ Holding Co.*, No. 16-33590 (DRJ) (Bankr. S.D. Tex. Dec. 16, 2016) (confirming chapter 11 plan where general unsecured creditors were impaired and deemed to have consented to third-party release provisions unless they asserted an objection to same); *In re Light Tower Rentals, Inc.*, No. 16-34284 (DRJ) (Bankr. S.D. Tex. Sept. 30, 2016) (confirming chapter 11 plan where general unsecured creditors were unimpaired and deemed to have consented to third-party release provisions unless they asserted an objection to same); *In re Southcross Holdings LP*, No. 16-20111 (MI) (Bankr. S.D. Tex. Apr. 11, 2016) (same).

6. The Plan's Exculpation Provisions are Appropriate.

107. The Plan provides that the Debtors, the Prepetition Secured Parties, the DIP Secured Parties, the Committee and each of its members, but solely in their capacities as such, and not individually, the Chief Restructuring Officer, and the Patient Care Ombudsman, including the Debtors' officers, if any, that are terminated after the closing of all the Purchase Agreements, are exculpated from any Cause of Action arising out of acts or omissions that occurred after the Petition Date in connection with these Chapter 11 Cases, except for acts or omissions that occurred after the Petition Date in connection with the Debtor that this is determined in a Final Order to have constituted actual fraud, willful misconduct, or gross negligence (the "Exculpation Provision"). *See* Plan, Art. XI.D. The Plan's Exculpation Provision is narrowly tailored to include only fiduciaries of the Debtors' Estates. Courts in this district have confirmed numerous plans with identical and similar exculpation provisions.[14]

108. Unlike the Third-Party Releases, the Exculpation Provision does not affect the liability of third parties *per se*, but rather sets a standard of care of actual fraud, willful misconduct, or gross negligence in hypothetical future litigation against an exculpated party for acts arising out of the Debtors' restructuring. *See, e.g.*, *In re PWS Holding Corp.*, 228 F.3d 224, 245 (3d Cir. 2000) (holding that an exculpation provision "is apparently a commonplace provision in Chapter 11 plans, [and] does not affect the liability of these parties, but rather states the standard of liability under the Code."). A bankruptcy court has the power to approve an exculpation provision in a chapter 11 plan because a bankruptcy court cannot confirm a chapter 11 plan unless it finds that the plan has been proposed in good faith. *See* 11 U.S.C. § 1129(a)(3).

[14] *See, e.g.*, *In re GenOn Energy, Inc., No. 17-33695* (DRJ) (Bankr. S.D. Tex. Dec. 12, 2017); *In re Ultra Petroleum Corp.*, No. 16-32202 (MI) (Bankr. S.D. Tex. March 14, 2017); *In re Goodrich Petroleum Corp.*, No. 16-31975 (MI) (Bankr. S.D. Tex. Sept. 28, 2016); *In re Midstates Petroleum Co., Inc.*, No. 16-32237 (DRJ) (Bankr. S.D. Tex. Sept. 28, 2016); *In re Sandridge Energy, Inc.*, No. 16-32488 (DRJ) (Bankr. S.D. Tex. Sept. 9, 2016).

As such, an exculpation provision represents a legal conclusion that flows inevitably from several different findings a bankruptcy court must reach in confirming a plan, *see* 28 U.S.C. § 157(b)(2)(L), as well as the statutory exculpation in section 1125(e) of the Bankruptcy Code. *See* 11 U.S.C. § 1125(e).

109. There can be no doubt that the Debtors themselves are entitled to the relief embodied in the Exculpation Provision. Having acted in "good faith" within the meaning of section 1125(e) of the Bankruptcy Code, the Debtors are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and the Exculpation Provision. *See In re Sears Methodist Ret. Sys., Inc.*, No. 14-32821-11, 2015 WL 1066882, at *9 (Bankr. N.D. Tex. Mar. 6, 2015). Courts in the Fifth Circuit that have approached plan exculpation provisions with skepticism have done so *only* where the provision at issue exculpates *non-debtor-affiliated* parties. *See, e.g.*, *Pac. Lumber*, 584 F.3d at 251-52. In *In re Pacific Lumber Co.*, the Fifth Circuit also carved out an exception in favor of exculpatory relief for non-debtor parties where such parties owe duties in favor of the debtors or their estates and act within the scope of those duties (*i.e.*, excluding acts of fraud or gross negligence). *Id.* at 253.

110. Here, in addition to the Debtors, the principal exculpated parties owe duties in favor of the Debtors' estates. The directors, officers, and advisors that have acted on the Debtors' behalf in these Chapter 11 Cases owe the Debtors similar duties. *See, e.g. In re Pilgrim's Pride Corp.*, No. 08-45664-DML-11, 2010 WL 200000, at *5 (Bankr. N.D. Tex. Jan. 14, 2010) ("Debtors, serving through their management and professionals as debtors in possession, acted in the capacity of trustees for the benefit of their creditors . . . [t]o the extent Debtors acted in the Chapter 11 Cases, other than in bad faith, pursuant to the authority granted by the Code or as directed by court order, Debtors' management and professionals presumptively should not be

subject to liability"). The exculpation of the Exculpated Parties is permissible under Fifth Circuit precedent in that it is narrowly tailored and limited to the extent that the exculpated representatives of the Exculpated Parties "worked for or otherwise represented the Debtors after the Petition Date." Plan, Art. I.51. The exculpation of the Committee and its members, but solely in their capacities as such, and not individually, is acceptable under *Pacific Lumber*. 584 F.3d at 253.

111. The Exculpation Provision represents an integral piece of the overall settlement embodied by the Plan, which is the product of good faith, arm's-length negotiations. Further, no party has objected to the Exculpation Provision. Accordingly, the Exculpation Provision should be approved.

7. The Injunction Sought Is Necessary to Enforce the Releases and Exculpations Contained in the Plan.

112. Pursuant to its terms, the Plan permanently enjoins certain Holders of Claims or Interests and the Releasing Parties from bringing any actions against the Debtors or any Released Parties in connection with any Claims or Interests released or settled pursuant to the Plan (the "Injunction"). *See* Plan, Art. XI.E. The Injunction provision is necessary to preserve and enforce the Releases and the Exculpations and by extension the global settlement upon which the Plan is founded. Moreover, the Injunction is narrowly tailored to achieve this purpose. The Injunction is a key provision of the Plan because it enforces the Releases and the exculpations that are centrally important to the Plan. *See In re Drexel Burnham Lambert Grp., Inc.*, 960 F.2d 285, 293 (2d Cir. 1992) (court may approve injunction provision in settlement contained in plan of reorganization where such provision "plays an important part in the Debtors' reorganization plan"). As such, the Injunction was also necessary to secure the participation of the Consenting Creditors in the final formulation of the Plan. Without the Injunction, the Plan's other release and

exculpation provisions would lose their impact and the Plan would fail. Thus, the Court should approve the Injunction.

Conclusion

113. The Debtors submit that the Plan complies with section 1123(d) of the Bankruptcy Code. In light of the foregoing, and because the Plan fully complies with section 1122 and 1123 of the Bankruptcy Code, the Plan fully complies with and satisfies the requirements of section 1129(a)(1) of the Bankruptcy Code. For all of the reasons set forth herein, the Debtors respectfully request that the Court confirm the Plan as fully satisfying all of the applicable requirements of the Bankruptcy Code by entering the Confirmation Order, overrule any remaining objections, and grant such other and further relief as may be appropriate under the circumstances.

Dated: Houston, Texas
March 21, 2019

PORTER HEDGES LLP

By: */s/ John F. Higgins*

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COUNSEL FOR DEBTORS AND DEBTORS IN POSSESSION

In re Neighbors Legacy Holdings, Inc., et al.
No. 18-33836 (MI)

Summary of Objections to Confirmation of the Debtors'[1] First Joint Plan of Liquidation of Neighbors Legacy Holdings, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code

OBJECTION[2]	SUMMARY OF ARGUMENT	SUMMARY OF DEBTORS' POSITION/RESPONSE	AGREED RESOLUTION OR DEBTORS' PROPOSED RESOLUTION
[828] Alam's Objection to Confirmation of Debtors' Proposed Chapter 11 Plan	• Apparent arguments with respect to alleged claim • Feasibility • Plan proposed in bad faith • Alleged improper transfers by D&Os	• Objection is untimely • No valid objection to the Plan; the objection appears to relate to Alam's alleged claim • Plan is a liquidating plan that creates two trusts that are funded • Debtors will present evidence that the Plan was proposed in good faith • D&Os are not getting a release	• Debtors request Court to overrule objection
[825] Century Square Commercial Venture, LLC's Limited Objection to Debtors' Second Amended Disclosure Statement and First Amended Plan	**DISCLOSURE STATEMENT** • Provide disclosure of claims against Century **PLAN** **Release Provisions** • Objects to the alleged release of any of Century's claims or defenses relevant to Debtors' alleged contract claim against Century • Objects to enjoining Century from pursuing its claims or defenses relevant to Debtors' alleged contract claim	**DISCLOSURE STATEMENT** • Retention of potential claim is disclosed in Plan Supplement. • Century can object to standing or retention of cause of action if post-confirmation action is brought. **PLAN** **Release Provisions** • Plan does not release or enjoin Century's defenses or any claims that were properly asserted in a proof of claim.	• Debtors request Court to overrule objection
[822] [*Ad Valorem Taxing Authorities*]	**Other Secured Claims** • Provide specifically how and when the secured tax claims will be paid	**Other Secured Claims** • Debtors do not owe 2019 ad valorem taxes. • Secured creditors are not entitled to postpetition interest without a showing that they are oversecured.	• Parties discussing agreed language to include in Confirmation Order

[1] Due to the large number of Debtors in these chapter 11 cases, a complete list of the Debtors and the last four digits of their tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed claims and noticing agent at www.kccllc.net/neighbors. The location of Debtors' principal place of business and the Debtors' service address is: 10800 Richmond Avenue, Houston, Texas 77042.

[2] Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to such terms in the applicable objection or the Plan.

EXHIBIT A

OBJECTION[2]	SUMMARY OF ARGUMENT	SUMMARY OF DEBTORS' POSITION/RESPONSE	AGREED RESOLUTION OR DEBTORS' PROPOSED RESOLUTION
Angelina County, et al.	• Provide for retention of the Taxing Authorities' liens on the collateral, or proceeds of such collateral • Provide for payment of interest on Taxing Authorities' claims at the rate of 12% per annum • Provide that administrative expense claims be paid in the ordinary course of business without the need to file administrative claims		
[821] Infinity Emergency Management Group, LLC's Objection to Second Amended Disclosure Statement and First Amended Joint Plan of Liquidation of Neighbors Legacy Holdings, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code	**DISCLOSURE STATEMENT** • Does not provide disclosure of the Infinity Litigation (*Infinity Emergency Management Group, LLC v. Neighbors Health System, Inc.*, AP No. 18-3276, pending in the United States Bankruptcy Court for the Southern District of Texas) (the "Infinity Litigation") • Does not provide disclosure of Debtors' D&O claims against D&O insurance or Debtors' former officers and directors • Does not provide disclosure of D&O policy **PLAN** **Transfer of Claims** • Objects to transferring all proceeds of D&O policies to Unsecured Creditor Trust • Objects to transferring Infinity's claims in the Infinity Litigation to the Unsecured Creditor Trust **Settlement and Release of Claims** • Objects to the extent that Section A of Article XI seeks to resolve and settle Infinity's claims against	**DISCLOSURE STATEMENT** • Objector did not request disclosure of its lawsuit prior to solicitation and had ample opportunity to do so (*Disclosure Statement for Joint Plan of Liquidation of Neighbors Legacy Holdings, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* filed on February 8, 2019 [Docket No. 758]; *Second Amended Disclosure Statement for Joint Plan of Liquidation of Neighbors Legacy Holdings, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* filed on February 20, 2019 [773]; hearing held on February 20, 2019, to approve *Debtors' Emergency Motion to (1) Conditionally Approve Disclosure Statement; (2) Schedule Confirmation Hearing; (3) Establish Voting Deadline and Procedures for Objections to Confirmation; (4) Approve Form of Ballots; and (5) Establish Solicitation and Tabulation Procedures*) • Objector is already aware of the lawsuit, and the D&O policy. • Objector filed a proof of claim, and all parties in interest can analyze the impact of the claim if it is allowed over the Debtors' objection, • Debtors did disclose potential D&O claims. The Debtors did not investigate potential claims against D&Os.	**Debtors' Proposed Confirmation Order Language:** For the avoidance of doubt, the terms of the Confirmed Plan and creation of the Unsecured Creditor Trust under Article V of the Confirmed Plan shall not affect the rights, if any, of the former officers and directors of the Debtors designated as Insureds under the D&O Policies to seek and receive coverage for losses under the D&O Policies, including but not limited to reimbursement of defense costs, or the rights, if any, of the Unsecured Creditors Trust to oppose, in any fashion, any such

OBJECTION[2]	SUMMARY OF ARGUMENT	SUMMARY OF DEBTORS' POSITION/RESPONSE	AGREED RESOLUTION OR DEBTORS' PROPOSED RESOLUTION
	the Debtors in the Infinity Litigation • Objects to releases of Infinity's claims made in the Infinity Litigation • Objects to Plan enjoining Infinity from pursuing its claims in the Infinity Litigation	**PLAN** **Transfer of Claims** • See Debtors' proposed language. • Plan does not transfer third party claims to either Trust. **Settlement and Release of Claims** • Plan does not resolve or settle any of Infinity's claims.	efforts by the former officers and directors of the Debtors.
[820] Limited Objection and Reservation of Rights of Paul Alleyne, M.D., Cyril Gilman, M.D., and Dharmesh Patel, M.D. Regarding First Amended Joint Plan of Liquidation of Neighbors Legacy Holdings, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code	**Jurisdiction** • Reservation of rights with regard to seeking jury trial or withdrawing reference • Propose following language for Confirmation Order: *Nothing in the Amended Plan or Confirmation Order shall be construed as a waiver by the former and/or current Neighbors' D&Os to their right to a trial by jury under the Seventh Amendment of the United States Constitution, their right to seek that a suit be remanded to state court, and/or their right to withdraw the reference to the federal district court for the Southern District of Texas. Neither shall the approval of the Amended Plan have any negative inference toward the former and/or current Neighbors' D&Os regarding these rights.* **KeyBank Release** • Release is overly broad • D&Os not willing to release	**Jurisdiction:** • Retention of jurisdiction language was heavily negotiated, and does not purport to take away any party's right to a jury trial. • Creditors don't have the right to require that the Plan include the precise verbiage they desire. These parties voted against the plan and that was their recourse for not agreeing with the language. • Objectors' proposed language is unacceptable because, among other things, it presupposes that they have a jury trial right. The Plan should not assume that conclusion, particularly when these parties have filed proofs of claim. **KeyBank Release** • Debtors have already released KeyBank and release in Plan is appropriate given consideration given by	**Agreed Confirmation Order Language:** Paul Alleyne, Cyril Gilman, Dharmesh Patel, Hitesh Patel, Quang Henderson, Setul Patel, Michael Chang, Andy Chen (the "Objecting Directors") are not Releasing Parties under the Plan. Any objection by the Objecting Directors to releases under the Plan and to deemed consolidation under the Plan are hereby withdrawn.

OBJECTION[2]	SUMMARY OF ARGUMENT	SUMMARY OF DEBTORS' POSITION/RESPONSE	AGREED RESOLUTION OR DEBTORS' PROPOSED RESOLUTION
	KeyBank **Substantive Consolidation** • Object to deemed substantive consolidation	KeyBank. • Third party releases are subject to opt-out provision.[Non creditors are not Releasing Parties] **Substantive Consolidation** • Unclear what standing directors have to object to deemed consolidation. • Deemed consolidation is appropriate for the reasons set forth in brief, including but not limited to the fact that the secured lenders have a lien on all assets.	
[819] Limited Objection and Reservation of Rights of Certain Neighbors D&Os Regarding First Amended Joint Plan of Liquidation of Neighbors Legacy Holdings, Inc. and its Debtor Affiliates Under Chapter 11 of The Bankruptcy Code	**Jurisdiction** • Reservation of rights with regard to seeking jury trial or withdrawing reference • Propose following language for Confirmation Order: *Nothing in the Amended Plan or Confirmation Order shall be construed as a waiver by the former and/or current Neighbors' D&Os to their right to a trial by jury under the Seventh Amendment of the United States Constitution, their right to seek that a suit be remanded to state court, and/or their right to withdraw the reference to the federal district court for the Southern District of Texas. Neither shall the approval of the Amended Plan have any negative inference toward the former and/or current Neighbors' D&Os regarding these rights.* **Objects to Alleged Transfer of D&O Policy Proceeds to Trust**	**Jurisdiction** • Retention of jurisdiction language was heavily negotiated, and does not purport to take away any party's right to a jury trial. • Creditors don't have the right to require that the Plan include the precise verbiage they desire. These parties voted against the plan and that was their recourse for not agreeing with the language. • Objectors' proposed language is unacceptable because, among other things, it presupposes that they have a jury trial right. The Plan should not assume that conclusion, particularly when these parties have filed proofs of claim. • See Debtors' proposed language.	**Debtors' Proposed Confirmation Order Language:** For the avoidance of doubt, the terms of the Confirmed Plan and creation of the Unsecured Creditor Trust under Article V of the Confirmed Plan shall not affect the rights, if any, of the former officers and directors of the Debtors designated as Insureds under the D&O Policies to seek and receive coverage for losses under the D&O Policies, including but not limited to reimbursement of defense costs, or the rights, if any, of the Unsecured Creditors Trust to oppose, in any fashion, any such

OBJECTION[2]	SUMMARY OF ARGUMENT	SUMMARY OF DEBTORS' POSITION/RESPONSE	AGREED RESOLUTION OR DEBTORS' PROPOSED RESOLUTION
			efforts by the former officers and directors of the Debtors.
[810] Gerald H. Phipps, Inc.'s Limited Objection to the First Amended Joint Plan of Liquidation of Neighbors Legacy Holdings, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code and Notice of Reservation of Rights	**Alleged Transfer of Phipps' Direct Claims to Trust** • Objects to transfer of Phipps' direct claims (and non-estate property) to Trust **Third-Party Releases** • Objects to releases of certain non-debtor third parties • Objects to enjoining parties from pursuing claims against non-debtor third parties • Does not consent to Court's jurisdiction of Phipps' rights and obligations related to any non-debtor • Requests that Confirmation Order specifically deny Plan as to any provision that releases Debtors' D&O (or any other non-debtor third party) from any claims that could be asserted by Phipps **Retention of Jurisdiction** • Includes the word "Discharge"	**Alleged Transfer of Phipps' Direct Claims to Trust** • The Plan does not purport to transfer claims or causes of actions that belong to third parties. It only transfers claims owned by the Debtors. • Debtors and Court should not be required to determine whether alleged claims that Phipps wants to assert are direct or derivative claims based on a draft petition. **Third-Party Releases** • Plan does not release D&Os from any claims. They are not a Released Party. • Ballots contained opt out for third party releases. Phipps opted out so no standing to raise this issue. **Retention of Jurisdiction** • Retention of jurisdiction section does not grant a discharge. It retains jurisdiction over any dispute about whether a discharge exists.	**Debtors' Proposed Confirmation Order Language**: Notwithstanding anything to the contrary in this Order or the Confirmed Plan, direct claims and causes of action owned by Gerald H. Phipps, Inc. ("Phipps"), if any, shall not be transferred to or vest in the Plan Trusts. The Debtors, the Plan Trustees, and Phipps reserve all rights regarding the characterization of any particular claim as direct or derivative, or as owned by Phipps or the Estates • The objection to "retention of jurisdiction" language has been resolved by agreement of the parties.
[Informal Objection] Taxing Authorities (Perdue Brandon)	Certain Texas Counties seek to retain their statutory liens until taxes are paid in full and seek interest of 12% per annum.	• See agreed language in Confirmation Order	**Agreed Language in Confirmation Order:** The Debtors shall pay all unpaid Allowed Other Secured Claims owing to [insert names of her clients] (the "Taxing Entities") within 15 days of the Effective Date. All Taxing Entities with Allowed Other Secured Claims shall retain all tax liens until their respective Allowed tax claims have been paid in full. Taxing Entities shall be paid at the applicable non-bankruptcy interest rates for

OBJECTION[2]	SUMMARY OF ARGUMENT	SUMMARY OF DEBTORS' POSITION/RESPONSE	AGREED RESOLUTION OR DEBTORS' PROPOSED RESOLUTION
			pre-petition Allowed Other Secured Claims. In the event of a Default in payment to a Taxing Entity as herein provided, the Taxing Entity shall send written notice of default to the Liquidating Trustee. If the default is not cured within thirty (30) days after notice of the default is mailed, the Taxing Entity may exercise any and all rights and remedies under applicable non-bankruptcy law to collect all delinquent taxes, penalties, interest, attorney's fees, and costs assessed under Texas law.