UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
www.flsb.uscourts.gov

In re: MBMG HOLDING, LLC, *et al.*,[1] Debtors.	Chapter 11 Cases Case No. 24-20576-CLC (Jointly Administered)

DECLARATION OF BRIAN BONAVIRI IN SUPPORT OF CONFIRMATION

1. My name is Brian Bonaviri. I am over 21 years of age and fully competent to make this declaration (the "Declaration"). Unless otherwise stated, I have personal knowledge of the facts set forth in this Declaration.

2. I am the Assistant Chief Restructuring Officer (the "Assistant CRO") of Debtor MBMG Holding, LLC and its affiliated debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases"). I am authorized to submit this Declaration on behalf of the Debtors.

3. I am a Managing Director of Meru, LLC ("MERU"). I have over 10 years' experience advising a variety of stakeholders in restructuring matters, including financial modeling, interim management and strategic planning. On July 15, 2024, the Debtors engaged

[1] The address of the Debtors is 7500 S.W. 8th Street, Ste. 400, Miami, Florida 33144. The last four digits of the Debtors' federal tax identification numbers are: (i) CCMG Wind Down, LLC f/k/a Care Center Medical Group, LLC (9052); (ii) CCN Wind Down, LLC f/k/a Care Center Network, LLC (5784); (iii) CCMC Wind Down, Inc. f/k/a CCMC Physician Holdings, Inc. (4532); (iv) CCP Wind Down, LLC f/k/a Clinical Care Pharmacy, LLC (2103); (v) FFPCC Wind Down, LLC f/k/a Florida Family Primary Care Center, LLC (5005); (vi) FFPCCP Wind Down, LLC f/k/a Florida Family Primary Care Center of Pasco, LLC (8570); (vii) FFPCCO Wind Down, LLC f/k/a Florida Family Primary Care Centers of Orlando, LLC (3086); (viii) FFPCCPN Wind Down, LLC f/k/a Florida Family Primary Care Centers of Pinellas, LLC (7075); (ix) FFPCCT Wind Down, LLC f/k/a Florida Family Primary Care Centers of Tampa, LLC (0631); (x) MBMO Wind Down, LLC f/k/a MB Medical Operations, LLC (8450); (xi) MBMT Wind Down, LLC f/k/a MB Medical Transport, LLC (3476); (xii) MBMG Holding, LLC (3880); (xiii) MBMG Intermediate Holding, LLC (9320); (xiv) RD Wind Down, Inc. f/k/a Miami Beach Medical Centers, Inc. (3933); (xv) MBMC Wind Down, LLC f/k/a Miami Beach Medical Consultants, LLC (2737); and (xvi) MMWC Wind Down, LLC f/k/a Miami Medical & Wellness Center, LLC (2474).

MERU to provide the services of my colleague, Nicholas K. Campbell as Chief Restructuring Officer, and my services as the Assistant Chief Restructuring Officer ("Assistant CRO"), as well as the services of additional MERU personnel to provide financial advisory services.

4. I have assisted the Debtors with respect to managing liquidity, seeking additional capital, analyzing potential strategic alternatives for the Debtors, advancing and consummating a sale of substantially of the Debtors' assets, and implementing an orderly wind-down of the Debtors. I am familiar with the Debtors' businesses, financial affairs, debt structure, assets, contractual arrangements, operations and strategic challenges.

5. I am generally familiar with the Debtors' day-to-day operations, businesses, affairs, books and records, and I have played an active role in the formulation of the Debtors' chapter 11 plan.

6. I submit this declaration in support of (i) final approval of the *First Amended Disclosure Statement for the Second Amended Joint Chapter 11 Plan for MBMG Holding, LLC and its Debtor Affiliates*, dated January 22, 2025 [ECF No. 360] (as it may be amended, modified, or supplemented, the "First Amended Disclosure Statement" or the "Disclosure Statement"), (ii) confirmation of the *Second Amended Joint Chapter 11 Plan for MBMG Holding, LLC and its Debtor Affiliates*, dated March 6, 2025 [ECF No. 443], (as it may be amended, modified or supplemented, the "Second Amended Plan" or the "Plan"),[2] and (iii) *Debtors' Memorandum of Law in Support of Confirmation of Debtors' Second Amended Joint Chapter 11 Plan for MBMG Holding, LLC and its Debtor Affiliates* (the "Memorandum of Law"), filed concurrently with this Declaration. I am familiar with the terms of the Plan, Disclosure Statement and Memorandum of Law.

[2] Capitalized terms used in this declaration and not otherwise defined herein shall have the meanings ascribed to such terms in the Second Amended Plan.

7. Unless otherwise indicated, all facts and opinions set forth in this Declaration are based upon: (i) my personal knowledge; (ii) my experience, knowledge, and information concerning the operations of the Debtors, the Debtors' financial condition and the Debtors' industry as a whole; (iii) my review of relevant business records; (iv) information provided to me by current or former agents of the Debtors or others working under my direction; (v) a review of pleadings and orders on the Court's docket for the Debtors' Chapter 11 Cases; and (vi) as to matters involving United States bankruptcy law or rules or other applicable laws, my reliance on the advice of counsel of the Debtors. Additionally, in making statements herein based upon my review of the Debtors' books and records, I have relied upon the accurate recordation, preparation and collection of all relevant data by the Debtors' former management and employees. If I were called upon as a witness, I could and would testify competently to the facts and opinions set forth herein.

General Background

8. On October 13, 2024 (the "Petition Date"), each of the Debtors filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code commencing the Chapter 11 Cases.

9. As of the Petition Date, the Debtors were liable for approximately $480 million in aggregate funded debt obligations (excluding trade payables). These obligations arose under a senior secured credit facility, two note issuances, and other debt instruments. In the ordinary course, the Debtors incurred pre-petition trade debt with certain landlords, vendors, suppliers, and taxing authorities in connection with the operation of their business.

10. For a detailed description of the Debtors, their operations, the circumstances leading to the commencement of these Chapter 11 Cases and information regarding the Debtors'

businesses and pre-petition capital structure, I respectfully refer the Court and parties-in-interest to the *Declaration of Nicholas K. Campbell in Support of Chapter 11 Petitions and First Day Pleadings* [ECF No. 31] (the "First Day Declaration")[3] which is incorporated herein by reference.

11. The Debtors commenced the Chapter 11 Cases with the primary goal of obtaining approval of and consummating a going concern sale of substantially all their assets to the Buyer pursuant to the Purchase Agreement, which ensures continuity of care to their approximately 35,000 patients. The Debtors also sought to provide continued employment to the majority of their employees and preserve an enterprise which will continue to be a trading partner to many contract counterparties and vendors, and of course to maximize the value of its enterprise for their creditors.

12. In order to facilitate the sale and the orderly administration of these Chapter 11 Cases, the Debtors sought and received approval from the Bankruptcy Court to obtain, (i) on an interim basis, post-petition financing from the DIP Lenders (the "Interim DIP Financing") as reflected in the interim order authorizing such post-petition financing [ECF No. 82] (the "Interim DIP Financing Order"), and (ii) on a final basis, post-petition financing from the DIP Lenders (the "Final DIP Financing" and together with the Interim DIP Financing, collectively, the "DIP Financing"), as reflected in the final order authorizing such post-petition financing [ECF No. 167] (the "Final DIP Financing Order" and together with the Interim DIP Financing Order, collectively, the "DIP Financing Orders"). The total DIP Financing advanced to the Debtors pursuant to the DIP Financing Orders was $10 million.

[3] The First Day Declaration was admitted into evidence at the first day hearing in these Chapter 11 Cases held by the Court on October 16, 2024. [ECF No. 74].

13. Beginning prior to the Petition Date and continuing into these Chapter 11 Cases, the Debtors were engaged in a process to sell all or substantially all of their assets.

14. On the Petition Date, the Debtors filed the *Motion for Entry of an Order (I) Approving Asset Purchase Agreement and Authorizing the Private Sale of Substantially All of the Assets of the Debtors Outside the Ordinary Course of Business, (II) Authorizing the Sale of Assets Free and Clear of All Liens and Interests Except for Permitted Liens and Assumed Liabilities, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* (the "Sale Motion") [ECF No. 29]. Pursuant to the Sale Motion, the Debtors sought authority to sell substantially all their assets (the "Purchased Assets") to Conviva Medical Center Management, LLC, an affiliate of Humana, Inc. (the "Buyer") for $45,000,000.00, subject to the terms of the Asset Purchase Agreement.

15. On November 20, 2024, the Bankruptcy Court entered its *Order Granting Debtors' Motion for Entry of an Order (I) Approving Asset Purchase Agreement and Authorizing the Private Sale of Substantially All of the Assets of the Debtors Outside the Ordinary Course of Business, (II) Authorizing the Sale of Assets Free and Clear of All Liens and Interests Except for Permitted Liens and Assumed Liabilities, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* [ECF No. 218] (the "Sale Order") authorizing the sale. The transactions contemplated by the Sale Order and the Asset Purchase Agreement closed on December 12, 2024. At closing, the Debtors repaid the Final DIP Financing in full, paid other liabilities as provided in the Sale Order, and retained the Post-Sale Reserves (as defined in the Final DIP Financing Order).

Chapter 11 Plan

16. On January 13, 2025, the Debtors filed (i) the original *Disclosure Statement for the Joint Chapter 11 Plan for MBMG Holding, LLC and its Debtor Affiliates* [ECF No. 336] (the "Initial Disclosure Statement"); and (ii) the original *Joint Chapter 11 Plan for MBMG Holding, LLC and its Debtor Affiliates* [ECF No. 335].

17. On January 13, 2025, the Debtors filed the *Expedited Motion for Entry of an Order (I) Conditionally Approving the Disclosure Statement for Debtors' Joint Chapter 11 Plan; (II) Approving Solicitation Procedures; (III) Approving Customized Form of Ballot and Establishing and Approving Procedures for Voting on the Debtors' Joint Chapter 11 Plan of Liquidation; (IV) Establishing Notice and Objection Procedures in Respect of Confirmation of the Debtors' Joint Chapter 11 Plan; and (V) Shortening Time for Filing Final Applications for Compensation and for Providing Notice of the Hearing Thereon* (the "Confirmation Procedures Motion") [ECF No. 337].

18. On January 22, 2025, the Debtors filed (i) the *First Amended Disclosure Statement for the First Amended Joint Chapter 11 Plan for MBMG Holding, LLC and its Debtor Affiliates* [ECF No. 360] (the "First Amended Disclosure Statement"); and (ii) *First Amended Joint Chapter 11 Plan for MBMG Holding, LLC and its Debtor Affiliates* [ECF No. 359] (the "First Amended Plan").

19. On January 23, 2025, the Court entered its *Order (I) Conditionally Approving Disclosure Statement for the Debtors' Joint Chapter 11 Plan; (II) Approving Solicitation Procedures; (III) Approving Customized Form of Ballot and Establishing Procedures for Voting on the Debtors' Chapter 11 Plan; (IV) Establishing Notice and Objection Procedures in Respect of Confirmation of the Debtors' Chapter 11 Plan; and (V) Shortening Time for Filing Final*

Applications for Compensation and for Providing Notice of Hearing Thereon [ECF No. 363] (the "Disclosure Statement Order").

20. The Disclosure Statement Order, among other things: (i) conditionally approved the Initial Disclosure Statement, as subsequently amended by the First Amended Disclosure Statement (as defined herein), as containing "adequate information" in accordance with section 1125(a) of the Bankruptcy Code; (ii) authorized the Debtors to serve the solicitation packages on creditors entitled to vote for or against confirmation of the First Amended Plan (as defined therein, the "Solicitation Packages"); (iii) authorized the Debtors to include the Debtors' recommendation letter in support of confirmation of the First Amended Plan in the Solicitation Packages; (iv) approved the form of the ballots to be included in the Solicitation Packages (the "Ballots"), including the Ballots for the following six voting Classes—Class 3 (First Lien Credit Agreement Claims), Class 4 (Second Lien Note Claims), Class 5 (Unsecured Note Claims), and Class 6 (General Unsecured Claims); (v) set forth solicitation procedures and deadlines; and (vi) scheduled a hearing to consider final approval of the Disclosure Statement and confirmation of the Plan on March 12, 2024, at 10:00 a.m. (Prevailing Eastern Time) (the "Confirmation Hearing").

21. On January 31, 2025, the Debtors filed the *Certificate of Service* [ECF No. 385] reflecting service of the Disclosure Statement Order and Solicitation Packages in compliance with the Disclosure Statement Order.

22. On February 4, 2025, the Debtors filed their *Notice of Filing Affidavit of Publication* reflecting, among other things, that the Debtors published notice of the Confirmation Hearing on January 29, 2025 in the Miami Herald. [ECF No. 392].

23. On March 3, 2025, the Debtors filed the Plan Supplement, which consists of the Plan Administrator Agreement attached thereto as Exhibit A. The Plan Administrator Agreement sets forth the rights, obligations, and authority of the Plan Administrator. The Plan and Plan Administrator Agreement contemplate that I will be the Plan Administrator.

24. I am familiar with the contents of the Ballots, the Solicitation Packages, and the Plan Administrator Agreement.

25. On March 6, 2025, the Debtors filed the Second Amended Plan [ECF No. 443]. The Second Amended Plan incorporates certain clarifying changes which do not materially or adversely affect any creditor or party in interest. The Debtors also filed a redline which reflects the changes between the First Amended Plan and the Second Amended Plan [ECF No. 444].

26. Both before and during the course of these Chapter 11 Cases, the Debtors have engaged in extensive, arms-length negotiations with the DIP Agent and the First Lien Agent, in consultation with the Office of the United States Trustee, regarding the terms of the Plan, and in particular with respect to the proposed distributions to the holders of Allowed General Unsecured Claims in Class 6 of the Plan. As a direct result of the above-identified parties' good faith and consensual negotiations, and in consultation with the Office of the United States Trustee, the Debtors, the DIP Agent and the First Lien Agent have agreed to the terms of a distributional structure under the Plan which will create what the Debtors believe is a meaningful distribution to the holders of Allowed General Unsecured Claims in Class 6 of the Plan. Importantly, in the absence of the proposed distribution structure reflected in the Plan, the Debtors believe that there would be no possible distribution to holders of Allowed General Unsecured Claims in Class 6 of the Plan due to the existence of hundreds of millions of dollars of secured claims (*i.e.*, First Lien Credit Agreement Claims and Second Lien Note Claims) in the

Debtors' bankruptcy cases possessing a higher priority of repayment under the Bankruptcy Code compared to Allowed Claims of General Unsecured Creditors in Class 6 of the Plan.

27. The principal terms of the distribution structure under the Plan in favor of the Class of General Unsecured Claims (Class 6) include:

a. A portion of the Winddown Reserve will be used to fund the Plan Cash. The holders of Allowed General Unsecured Claims (Class 6) will receive a *pro rata* distribution in Cash under the Plan in the amount of \$495,000.00, minus any amounts to pay Priority Claims. Both the Winddown Reserve and the Plan Cash are each the result of a carve-out from the DIP Collateral and/or the Prepetition Collateral.

b. To the extent any Allowed General Unsecured Claims remain unpaid after receiving the Plan Cash, the remaining Allowed General Unsecured Claims will receive a *pro rata* distribution of the Winddown Assets in accordance with the Recovery Waterfall.

The First Amended Disclosure Statement and Second Amended Plan Comply with Chapter 11 Requirements

28. On the basis of my understanding of the First Amended Disclosure Statement and the Second Amended Plan, the events that have occurred throughout the Debtors' Chapter 11 Cases, discussions I have had with the Debtors' legal advisors regarding the obligations imposed upon the Debtors as a result of various orders entered during the Chapter 11 Cases, and the requirements of the Bankruptcy Code, I believe that the First Amended Disclosure Statement and Second Amended Plan comply with the applicable provisions of the Bankruptcy Code, including but not limited to sections 1125 and 1129, for approval of a disclosure statement and confirmation of a chapter 11 plan of reorganization.

The First Amended Disclosure Statement Satisfies Section 1125 of the Bankruptcy Code

29. The Debtors' Compliance with the Bankruptcy Code (11 U.S.C. § 1125). On the basis of my review of the First Amended Disclosure Statement, I believe that the First Amended Disclosure Statement complies with section 1125(a)(1) of the Bankruptcy Code as containing

"adequate information." The First Amended Disclosure Statement describes, among other things, the Debtors' businesses, assets and liabilities, the circumstances leading to these Chapter 11 Cases, and the significant events occurring during these Chapter 11 Cases. The First Amended Disclosure Statement also includes a summary of the First Amended Plan, the effect of the First Amended Plan on the holders of Claims and Interests, and the treatment of Claims and Interests. The modifications contained in the Second Amended Plan are not material. The modifications consist of clarifying language, including language proposed by certain creditors in informal comments to the First Amended Plan.

The Second Amended Plan Satisfies Section 1129 of the Bankruptcy Code

30. The Debtors' Compliance with the Bankruptcy Code (11 U.S.C. § 1129(a)(1)). On the basis of my understanding and discussions with the Debtors' legal advisors, I believe that the Second Amended Plan complies with section 1129(a)(1) of the Bankruptcy Code, as follows:

a. Section 1122 of the Bankruptcy Code: Article III of the Second Amended Plan sets forth the classification of Claims and Interests. The Second Amended Plan provides for the separate classification of Claims against and Equity Interests in the Debtors based upon differences in the legal nature and/or priority of such Claims and Equity Interests. The Plan designates the following nine classes of Claims and one class of Interests: Class 1 (Other Secured Claims), Class 2 (Other Priority Claims), Class 3 (First Lien Credit Agreement Claims), Class 4 (Second Lien Note Claims), Class 5 (Unsecured Note Claims), Class 6 (General Unsecured Claims), Class 7 (Intercompany Claims), Class 8 (Subordinated Claims), and Class 9 (Existing Equity Interests). Classes 1 through 8 constitute classes of Claims, and Class 9 constitutes a class of Interests. Each of the Claims in each particular Class of Claims is substantially similar to the other

Claims in such Class. All Claims with security interests in the Debtors' collateral (other than First Lien Credit Agreement Claims and Second Lien Note Claims) are classified in Class 1. All Claims entitled to priority treatment under section 507(a) of the Bankruptcy Code are classified in Class 2. The First Lien Credit Agreement Claims are classified in Class 3. The Second Lien Note Claims are classified in Class 4. The Unsecured Note Claims are separately classified in Class 5. All General Unsecured Claims held by the Debtors' creditors are separately classified in Class 6. All Intercompany Claims are classified in Class 7. All Subordinated Claims are separately classified in Class 8. All Existing Equity Interests are classified in Class 9. I have been advised that the classification of Claims and Interests under the Second Amended Plan complies with section 1122 of the Bankruptcy Code because each Class contains only Claims or Interests that are substantially similar to each other.

b. <u>Section 1123(a)(1) of the Bankruptcy Code</u>: Article III of the Second Amended Plan designates the classes of Claims and Equity Interests, other than Priority Claims of the type described in sections 507(a)(2), 507(a)(3), and 507(a)(8) of the Bankruptcy Code.

c. <u>Section 1123(a)(2) of the Bankruptcy Code</u>: Article III of the Second Amended Plan specifies any Class of Claims that is not impaired under the Second Amended Plan within the meaning of section 1124 of the Bankruptcy Code.

d. <u>Section 1123(a)(3) of the Bankruptcy Code</u>: Article IV of the Second Amended Plan sets forth the treatment of each Class of Claims and Equity Interests that are impaired under the Second Amended Plan.

e. Section 1123(a)(4) of the Bankruptcy Code: Article IV of the Second Amended Plan sets forth the treatment for holders of Claims and Interests in each Class, and the treatment within each Class is the same among the Class members.

f. Section 1123(a)(5) of the Bankruptcy Code: The Second Amended Plan sets forth adequate means for implementation of the Second Amended Plan. Specifically, it provides for: (i) the sources for distributions under the Plan (*see* Plan, Art. III; Art. IV; Art. V; Art. VII); (ii) the provisions governing distributions under the Plan (*see* Plan, Art. V; Art. VII); (iii) the funding of administrative expense, priority, and DIP Claims (*see* Plan, Art. II; Art. VII); (iv) the appointment of the Plan Administrator and the vesting of the Winddown Assets in the Winddown Estates (*see* Plan, Art. V; Art. VI); (v) the provisions governing the post-Effective Date winding down of the Debtors (*see* Plan, Art. VI); (vi) the procedures for disputed Claims (*see* Plan, Art. VIII); and (vii) the rejection or assumption of any remaining Executory Contracts (*see* Plan, Art. IX).

g. Section 1123(a)(6) of the Bankruptcy Code: As set forth in Article IV of the Second Amended Plan, holders of Existing Equity Interests shall not receive nor retain any property under the Plan and such Equity Interests shall be deemed cancelled as of the Effective Date of the Plan. As a liquidating plan, the Second Amended Plan does not provide for the issuance of nonvoting equity securities. Thus, there is no provision in the Second Amended Plan for the issuance of nonvoting equity securities.

h. Section 1123(a)(7) of the Bankruptcy Code: Article VI.E of the Plan provides that, effective as of immediately prior to the Effective Date, automatically and without further action, each existing member of the Debtors' management and board of managers, as applicable, will be deemed to have resigned or to have been terminated and, on and after the Effective Date, the Plan Administrator, in substitution for the management and the board of managers, shall be authorized and empowered to act for the Debtors and take any and all actions the Plan Administrator may determine in its business judgment to implement, effectuate, consummate and perform pursuant to the Plan or the Plan Confirmation Order as reasonably necessary to implement the Plan and wind up the Debtors. Article VI.E of the Plan further provides that, on and after the Effective Date, the Plan Administrator shall take commercially reasonable actions to dissolve, liquidate, strike off or take such similar action with respect to each Debtor, including cancellation of all Interests in a Debtor pursuant to the Plan Confirmation Order, and complete the winding down of such Debtor as expeditiously as practicable without the need for any further actions to be taken by or for the Debtor or its shareholders or members, or any payments to be made subject to the filing of a certificate of dissolution. The Debtors submit that the provisions of the Second Amended Plan regarding the dissolution of the Debtors and the appointment of a plan administrator are typical for liquidating plans, and therefore, consistent with the interests of creditors and with public policy, and therefore, satisfy section 1123(a)(7) of the Bankruptcy Code.

31. Permissive Provisions in the Second Amended Plan (11 U.S.C. § 1123(b)). The Second Amended Plan also contains several provisions that I understand to be permissive, rather than mandatory, under the requirements of the Bankruptcy Code.

a. Impairment/Unimpairment of Claims/Equity Interests (11 U.S.C. § 1123(b)(1)). As discussed above, Claims and Interests in Classes 3, 4, 5, 6, 7, 8, and 9 are impaired while Claims in Classes 1 and 2 are unimpaired. *See* Plan, Art. III.C. Therefore, I believe that the Second Amended Plan complies with section 1123(b)(1).

b. Assumption of Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)). Article IX of the Second Amended Plan provides that any remaining executory contracts and unexpired leases that exist between the Debtors and any Person or Entity shall be deemed automatically rejected by the Debtors on the Effective Date of the Plan, unless such executory contract or unexpired lease: (i) has been identified for assumption in the Plan Supplement, (ii) as of the Effective Date, is subject to a pending motion to assume; (iv) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan; or (v) is a D&O Policy. Therefore, I believe that the Second Amended Plan complies with section 1123(b)(2).

c. Releases by the Debtors; Settlement of Claims and Causes of Action; Retention of Causes of Action (11 U.S.C. § 1123(b)(3)).

i. Mutual Release (11 U.S.C. § 1123(b)(3)(A)). Article XI.J of the Second Amended Plan contains a Mutual Release involving claims between the Debtors and the Released Parties (which includes the Debtors). Based upon my participation in the Debtors' Chapter 11 Cases, I believe that the Mutual Release is an integral part of the Second Amended Plan and was required in order to induce the Debtors, the First Lien Lenders, the First Lien Agent, the Unsecured Noteholders, the Unsecured Noteholder Representative, the DIP Lenders, and the DIP Agent to support the Second Amended Plan. The Mutual Releases are supported by adequate consideration given by the various parties pursuant to the Second Amended Plan, as well as the agreements and compromises contained therein. The Debtors have engaged in good faith, arms-length negotiations with the DIP Agent, the DIP Lenders, the

First Lien Agent, and the First Lien Lenders, in consultation with the Office of the United States Trustee, regarding the terms of the Second Amended Plan, and in particular with respect to the proposed distributions to the Holders of Allowed General Unsecured Claims in Class 6 of the Second Amended Plan. As a result of these good faith and consensual negotiations, the Debtors, DIP Agent, the DIP Lenders, the First Lien Agent, and the First Lien Lenders agreed to the terms of a structure for distributions to creditors under the Second Amended Plan which will create what the Debtors believe is a meaningful distribution to the Holders of Allowed General Unsecured Claims in Class 6 of the Second Amended Plan. Importantly, in the absence of the proposed distribution structure reflected in the Second Amended Plan, the Debtors believe that there would be no possible distribution at all to Holders of Allowed General Unsecured Claims in Class 6 of the Second Amended Plan due to the amount and extent of the priority and secured claims asserted in the Debtors' Chapter 11 Cases which are accorded a higher priority under the Bankruptcy Code as compared to Allowed General Unsecured Claims in Class 6 of the Second Amended Plan. The extent of the releases provided to the Released Parties is subject to the provisions in Article XI.M of the Second Amended Plan. Moreover, the Mutual Release is subject to significant carve-outs. The Mutual Release is an essential component of the Second Amended Plan and constitutes a sound exercise of the Debtors' business judgment.

ii. <u>Preservation of Rights of Action (11 U.S.C. § 1123(b)(3)(B)).</u> Article VIII.G of the Plan provides for the Debtors' preservation of certain Claims, rights, Causes of Action, suits or proceedings, as appropriate in accordance with section 1123(b)(3)(B) of the Bankruptcy Code and the right of the Plan Administrator to pursue such retained Claims, Disputed Claims, rights, Causes of Action rights, Causes of Actions, suits or proceedings as appropriate, on and after the Effective Date. I believe that the provisions regarding Retained Causes of Action in the Second Amended Plan are appropriate and are in the best interests of Debtors, their estates, Creditors, and other parties in interest.

d. Modification of Creditor Rights (11 U.S.C. § 1123(b)(5)). As set forth in Article III of the Second Amended Plan, the Second Amended Plan modifies the rights of holders of Claims and Equity Interests in Classes Class 3 (First Lien Credit Agreement Claims), Class 4 (Second Lien Note Claims), Class 5 (Unsecured Note Claims), Class 6 (General Unsecured Claims), and Class 7 (Intercompany Claims), Class 8 (Subordinated Claims), and Class 9 (Existing Equity Interests). The Second Amended Plan also leaves unaffected the rights of holders of Claims in Class 1 (Other Secured Claims) and in Class 2 (Other Priority Claims). Therefore, I believe that the Second Amended Plan complies with section 1123(b)(5).

e. Retention of Jurisdiction and Exculpation (11 U.S.C. § 1123(b)(6)).

i. Retention of Jurisdiction. Article XII of the Second Amended Plan provides that, among other things, the Court will retain jurisdiction as to twenty (20) enumerated matters therein, including, (a) to hear and determine motions and/or applications for the assumption or rejection of Executory Contracts and the allowance, classification, priority, compromise, estimation or payment of Claims resulting therefrom; (b) to determine any motion, adversary proceeding, application, contested matter, or other litigated matter pending on or commenced after the Confirmation Date; (c) to ensure that distributions to holders of Allowed Claims are accomplished as provided herein; (d) to consider Claims or the allowance, classification, priority, compromise, estimation or payment of any Claim; and (e) to enter, implement or enforce such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked, modified or vacated. I understand from the Debtors' counsel that the matters for which the Court retains jurisdiction are appropriate because the Court would have otherwise had jurisdiction over all of these matters during the pendency of the Debtors' Chapter 11 Cases, and that a bankruptcy court may retain jurisdiction over the debtor or the property of the estate following confirmation. Therefore, I believe that the continuing jurisdiction of the Court for matters described in the Second Amended Plan is consistent with applicable law and therefore permissible under section 1123(b)(6) of the Bankruptcy Code.

ii. Exculpation. I understand that the exculpation provision in Article XI.H of the Second Amended Plan limits liability arising out of postpetition acts and omissions of the Exculpated Parties, including the Debtors, the Estates, and the Plan Administrator (solely with respect to the period prior to the Effective Date), and each of their respective predecessors, successors, assigns, direct and indirect subsidiaries, and affiliates; principals, shareholders, members, partners, managers, the Chief Restructuring Officer, officers and directors as of the Petition Date (including, without limitation, Elizabeth Abrams), and any other professionals retained by the Debtors pursuant to order of the Bankruptcy Court, including, without limitation, officers, accountants, investment bankers, attorneys and other professionals, in each case in their capacity as such and whether currently serving or having previously served postpetition. More specifically, I understand that the Exculpated Parties participated in good faith and played critical roles in the Debtors' Chapter 11 Cases, including involvement in arms-length negotiation of the Second Amended Plan, Disclosure Statement, solicitation of votes for and pursuit of confirmation of the Second Amended Plan, all of which participation will facilitate a successful restructuring. I further understand that this participation was undertaken with the expectation that the Second Amended Plan would include exculpation provisions to protect those who, like the Exculpated Parties, contributed to the Debtors' liquidation process, from collateral attacks related to any good faith acts or omissions related to the Debtors' Chapter 11 Cases. I further understand that all of the Exculpated Parties have provided significant contributions in the Debtors' Chapter 11 Cases. The exculpation provision expressly carves out Claims against the Exculpated Parties resulting from an act or omission determined by a Final Order of the Bankruptcy Court to have constituted fraud, willful misconduct or gross negligence. Moreover, nothing in the Second Amended Plan shall limit the liability of attorneys to their respective clients pursuant to rule 4-1.8(h) of the Florida Rules of Professional Conduct. I understand from the Debtors' legal advisors that exculpation provisions, like the Exculpation Provision here, are commonplace in Chapter 11 plans and are routinely approved when they are limited to persons and entities involved with the administration of Chapter 11 Cases and the confirmation process and contain carve-outs for acts or omissions constituting fraud, willful misconduct or gross negligence.

f. Cure of Defaults (11 U.S.C. § 1123(d)). Under Article IX.B of the Second Amended Plan, any Cure due under each Executory Contract to be assumed pursuant to the Plan or the Asset Purchase Agreement shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment in Cash on the Effective Date, subject to the limitation described below and the terms of the Asset Purchase Agreement, by the Debtors or the Plan Administrator, as applicable, or on such other terms as the parties to such Executory Contracts may otherwise agree. Furthermore, in the event of a dispute regarding (i) the amount of the Cure; (ii) the ability of the Debtors or any other applicable assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract; or (iii) any other matter pertaining to assumption or assumption and assignment (as applicable), the obligations of section 365 of the Bankruptcy Code shall be deemed satisfied following the entry of a Final Order or orders resolving the dispute and approving the assumption or assumption and assignment (as applicable); *provided, however*, that the Debtors or the

Plan Administrator, as applicable, may settle any dispute regarding the amount of any Cure without any further notice to any party or any action, order, or approval of the Bankruptcy Court. Finally, assumption of any Executory Contract pursuant to the Plan, or otherwise, shall result in the full release and satisfaction of any defaults, subject to satisfaction of the Cure, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract at any time before the Effective Date of such assumption and/or assignment. Accordingly, I believe that the Second Amended Plan complies with section 1123(d) of the Bankruptcy Code.

32. The Debtors Have Complied with the Applicable Provisions of the Bankruptcy Code (11 U.S.C. § 1129(a)(2)). On the basis of my understanding and discussions that I have had with the Debtors' legal advisors, I believe that the Debtors have complied with the applicable provisions of the Bankruptcy Code, including sections 1125 and 1126 of the Bankruptcy Code, as well as the Disclosure Statement Order, regarding disclosure and Second Amended Plan solicitation. In addition, the First Amended Disclosure Statement contains adequate information as required by the Bankruptcy Code. To the best of my knowledge and belief, and as evidenced by this Court's Disclosure Statement Order, prior orders of this Court, and the filings submitted by the Debtors and Epiq Corporate Restructuring LLC ("Epiq"), the Debtors' noticing, claims and solicitation agent, the Debtors have complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Disclosure Statement Order, in transmitting the First Amended Disclosure Statement, the First Amended Plan, and related documents and notices to known holders of Claims for purposes of soliciting and tabulating votes on the First Amended Plan. *See* Ballot Report (as defined below). The Second Amended

Plan includes clarifying revisions and does not materially or adversely affect the rights of any party in interest. Counsel for the Debtors has advised me that good, sufficient, and timely notice of the Confirmation Hearing has been provided to all known record holders of Claims and Interests and all other parties in interest to whom notice was required to have been provided. Additionally, it is my understanding, as is shown in the *Debtors' Certificate of Proponents of Plan on Acceptance of Plan, Report on Amount to be Deposited, Certificate of Amount Deposited and Payment of Fees*, filed concurrently with this Declaration (the "Ballot Report"), that the Debtors have properly solicited and tabulated votes with respect to the Second Amended Plan. Accordingly, I believe that the Debtors have complied with the requirements of section 1129(a)(2) of the Bankruptcy Code.

33. Second Amended Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). I believe that the Second Amended Plan was proposed in good faith and not by any means forbidden by law because the Second Amended Plan has been proposed with the legitimate and honest purpose of liquidating the Debtors' finances, business and affairs, and maximizing the value available for distribution to creditors. The Second Amended Plan is the product of extensive, good faith, arms-length negotiations various stakeholders, including the Debtors, the DIP Agent, the DIP Lenders, the First Lien Agent, and the First Lien Lenders, in consultation with the Office of the United States Trustee.

34. The good faith and consensual negotiations led to the terms of a distributional structure under the Second Amended Plan which will create what the Debtors believe is a meaningful distribution to the Holders of Allowed General Unsecured Claims in Class 6 of the Second Amended Plan. In my opinion, each of these parties acted in good faith. The Second Amended Plan (including all documents necessary to effectuate the Second Amended Plan) will

fund the Winddown Estates and permit the Plan Administrator to make distributions to Holders of Allowed Claims.

35. The Second Amended Plan achieves one of the primary objectives underlying a chapter 11 case: that is, the equitable distribution of value to creditors. Further, the provisions of the Second Amended Plan, including the Mutual Release and the Exculpation, have been agreed to in good faith and represent a valid exercise of the Debtors' business judgment, are fair and reasonable, and in the best interests of the estates and creditors. I believe that, inasmuch as the Second Amended Plan promotes the objectives and purposes of the Bankruptcy Code, while also providing for a recovery to creditors, the Second Amended Plan and the related documents have complied with the requirement of section 1129(a)(3) of the Bankruptcy Code that the Second Amended Plan be proposed in good faith.

36. <u>Payments to Retained Professionals (11 U.S.C. § 1129(a)(4))</u>. Pursuant to the interim compensation procedures established in these Chapter 11 Cases, the Bankruptcy Court has authorized and approved the payment of certain fees and expenses of retained Professionals, subject to final review for reasonableness by the Bankruptcy Court under section 330. *See* [ECF No. 170]. Article II.B of the Plan provides that each retained Professional is required to file with the Bankruptcy Court its final fee application for services rendered and reimbursement of expenses incurred from the Petition Date through the Confirmation Hearing Date. Moreover, the Disclosure Statement Order provides that final fee applications are to be filed by March 5, 2025. Accordingly, I believe that the Second Amended Plan complies with the requirements of section 1129(a)(4) of the Bankruptcy Code.

37. <u>Officers and Directors of the Reorganized Debtors (11 U.S.C. § 1129(a)(5))</u>. As discussed herein, the Second Amended Plan provides for the appointment of a Plan

Administrator who will oversee the Winddown Estates post-Effective Date and make distributions on account of Allowed Claims. I will be the Plan Administrator post-Effective Date and the Debtors filed the proposed Plan Administrator Agreement in their Plan Supplement. [ECF No. 436]. Based upon the foregoing, I believe that the provisions of the Second Amended Plan and the Plan Administrator Agreement are consistent with the interests of Creditors, the holders of Interests, and public policy, and therefore, the Second Amended Plan meets the requirements of section 1129(a)(5) of the Bankruptcy Code.

38. No Rate Changes (11 U.S.C. § 1129(a)(6)). I understand that the Debtors are not changing any rates that require approval by a governmental agency. Additionally, the Second Amended Plan is a liquidating plan. Therefore, section 1129(a)(6) is inapplicable.

39. The Best Interest of Creditors Test (11 U.S.C. § 1129(a)(7)). On the basis of my understanding, as well as discussions that I have had with the Debtors' legal advisors, I believe that the Second Amended Plan complies with section 1129(a)(7) of the Bankruptcy Code. In order to satisfy the "best interests" test under this section, each holder within an Impaired Class must either (a) vote to accept the Second Amended Plan or (b) receive no less than such holder would have received in a liquidation.

40. The Debtors, with the assistance of other MERU personnel, prepared the Liquidation Analysis (attached as Exhibit 2 to the Disclosure Statement). I believe that the assumptions underlying the Liquidation Analysis are reasonable and that the Liquidation Analysis provides a reasonable estimate of the chapter 11 liquidation value of the Debtors' assets and the distribution that holders of Claims and Interests would receive in a chapter 7 liquidation of the Debtors.

41. In particular, the Liquidation Analysis reflects that if the Debtors were liquidated under chapter 7 of the Bankruptcy Code, the holders of Other Secured Claims (Class 1) and Other Priority Claims (Class 2) will receive an amount equal to one hundred (100%) percent of their Allowed Claims, the holders of First Lien Credit Agreement Claims (Class 3) will receive a range of 0.7% to 3.1% recovery of their Allowed Claims, Second Lien Note Claims (Class 4) will recover nothing, Unsecured Note Claims (Class 5) will recover nothing, General Unsecured Claims will receive a range of 1.1% to 4.6% recovery of their Allowed Claims, and all other Classes (Classes 7 – 9) will recover nothing because of the additional administrative expense of a chapter 7 trustee and its professionals.

42. Based upon that analysis, I believe that each holder of an impaired Claim, and each holder of an Interest, would receive a distribution or retain property under the Second Amended Plan, on account of its respective Claim or Equity Interest, of a value as of the Effective Date of the Second Amended Plan that is not less than the amount that such holder of a Claim or Equity Interest would receive or retain were the Debtors liquidated under chapter 7 of the Bankruptcy Code.

43. <u>Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8))</u>. The holders of Claims in Class 1 (Other Secured Claims) and Class 2 (Other Priority Claims) are not Impaired by the Second Amended Plan and therefore not entitled to vote. Claims in Class 7 (Intercompany Claims) are Impaired; however, the vote of holders of such Claims will not be solicited because they are claims held by the Plan Proponents and are therefore deemed to accept the Plan. The holders of Claims in Classes 1, 2, and 7 are conclusively presumed to have accepted the Second Amended Plan.

44. The Ballot Report reflects the compilation of the votes to accept or reject the Second Amended Plan by Classes 3 – 6 (the Impaired classes of claims entitled to vote on the Plan). As has been demonstrated in the Ballot Report, Creditors in Classes 3 – 6 voted to accept the First Amended Plan in accordance with section 1126(c) of the Bankruptcy Code.

45. Based upon my discussions with the Debtors' counsel, I understand that the holders of Claims in Class 8 (Subordinated Claims) and Class 9 (Existing Equity Interests) are impaired, will not receive a distribution, and conclusively deemed to reject the Second Amended Plan.

46. On the basis of my understanding, as well as discussions that I have had with the Debtors' legal advisors, I therefore believe that the Second Amended Plan complies with section 1129(a)(8) of the Bankruptcy Code.

47. <u>Treatment of Administrative Claims, Priority Tax Claims and Other Priority Claims (11 U.S.C. § 1129(a)(9))</u>. On the basis of my understanding, as well as discussions that I have had with the Debtors' legal advisors, I believe that the Second Amended Plan complies with section 1129(a)(9) of the Bankruptcy Code because Article II.A of the Second Amended Plan provides that each Holder of an Allowed Administrative Expense Claim shall receive, in full and final satisfaction of such Claim, Cash in an amount equal to such Allowed Administrative Expense Claim on, or as soon thereafter as is reasonably practicable, the later of (a) the Effective Date and (b) the first Business Day after the date such Administrative Expense Claim becomes an Allowed Administrative Expense Claim, and shall be paid solely from the Admin Claim Reserve. Article II.B provides for the payment of Fee Claims. Article II.C provides that except to the extent that a holder of an Allowed Priority Tax Claim agrees to a different treatment, each holder of an Allowed Priority Tax Claim shall receive, in full and final

satisfaction, settlement, and release of, and in exchange for such Allowed Priority Tax Claim, Cash in an amount equal to such Allowed Priority Tax Claim on, or as soon thereafter as is reasonably practicable, the later of (a) the Effective Date, (b) the first Business Day after the date that is thirty (30) calendar days after the date such Priority Claim becomes an Allowed Priority Claim, and (c) the date such Allowed Priority Claim is due and payable in the ordinary course

48. I believe the Debtors or the Plan Administrator, as applicable, will have sufficient Cash to pay or reserve for the full amount of the asserted Administrative Expense Claims and Priority Claims.

49. Acceptance of the Second Amended Plan by At Least One Impaired Classes of Claims (11 U.S.C. § 1129(a)(10)). As has been set forth in the Ballot Report, Classes 3, 4, 5, and 6 are Impaired under the Second Amended Plan and have affirmatively accepted the Second Amended Plan by the requisite majority in such Class, without including the acceptance of the Second Amended Plan by insiders. Accordingly, I believe the Second Amended Plan will satisfy section 1129(a)(10) of the Bankruptcy Code because at least one class of impaired Claims has accepted the Second Amended Plan, determined without including any acceptance of the Second Amended Plan by an insider in such Classes.

50. Feasibility (11 U.S.C. § 1129(a)(11)). Based on discussions I have had with the Debtors' legal advisors, I understand that under section 1129(a)(11) of the Bankruptcy Code a bankruptcy court can confirm a Chapter 11 plan if confirmation is not 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 proposed in the plan. I understand that the standard bankruptcy courts apply is whether the debtor can realistically carry out the provisions of a Chapter 11 plan, and whether the plan offers a reasonable prospect of

success. I believe that the Second Amended Plan satisfies the requirements of section 1129(a)(11). The Debtors, with assistance from MERU, prepared the Liquidation Analysis attached as Exhibit 2 to the Disclosure Statement and the monthly operating reports filed by the Debtors. The Debtors will have sufficient cash on hand to pay the amounts required to be paid on the Effective Date, including the fees due to the United States Trustee as they become due.

51. Based upon the foregoing, I believe that the Debtors have established that confirmation of the Second Amended Plan is not likely to be followed by the need for further reorganization or liquidation of the Debtors, and therefore, the Second Amended Plan meets the standards set forth in section 1129(a)(11) of the Bankruptcy Code.

52. <u>Payment of Statutory Fees (11 U.S.C. § 1129(a)(12))</u>. It is my understanding that Debtors have paid all chapter 11 statutory and operating fees required to be paid during these chapter 11 cases and filed all fee statements required to be filed. Article XIII.A of the Second Amended Plan provides that the Plan Administrator shall pay the U.S. Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6), on the Effective Date. Article XIII.A of the Second Amended Plan further provides that after the Effective Date such fees shall only be payable until such time as a final decree is entered closing the Chapter 11 Cases, a Final Order converting such cases to cases under chapter 7 of the Bankruptcy Code is entered or a Final Order dismissing the Chapter 11 Cases is entered.

53. <u>Inapplicability of Sections 1129(a)(13)-(16)</u>. I have been advised by counsel that sections 1129(a)(13), 1129(a)(14), 1129(a)(15) and 1129(a)(16) of the Bankruptcy Code are inapplicable to the Debtors.

54. <u>Fair and Equitable; No Unfair Discrimination (11 U.S.C. § 1129(b))</u>. As explained herein, Classes 3, 4, 5 and 6 have voted to confirm the Second Amended Plan.

However, Class 8 (Subordinated Claims) and Class 9 (Existing Equity Interests) are deemed to have rejected the Second Amended Plan. For the reasons discussed herein, I believe that the Second Amended Plan should nonetheless be confirmed over the presumptive rejection by such Classes pursuant to section 1129(b) of the Bankruptcy Code because the Second Amended Plan does not discriminate unfairly and is fair and equitable with respect to both deemed non-accepting Impaired Classes.

55. I believe that the Second Amended Plan does not discriminate unfairly because the Claims in Class 8 (Subordinated Claims) and Class 9 (Existing Equity Interests) and the legal rights of such claims and interests are substantially dissimilar from the Classes of Claims receiving distributions under the Second Amended Plan, as well as the fact that such Claims in Class 8 and Interests in Class 9 are substantially similar to each other within their respective Classes.

56. Furthermore, based upon my communications with the Debtors' counsel, I believe that the treatment under the Second Amended Plan is "fair and equitable" as to each holder of a Claim or an Interest in Classes 8 and 9. Specifically, no claims or interests junior to either Class 8 or 9 will receive or retain any property under the Second Amended Plan on account of such junior claims or interests. Accordingly, I believe that the Second Amended Plan does not unfairly discriminate and is fair and equitable with respect to holders of Claims in Class 8 and Interests in Class 9, and therefore, the Second Amended Plan satisfies the requirements of Section 1129(b)(2) of the Bankruptcy Code.

57. <u>Principal Purpose of the Plan (11 U.S.C. § 1129(d))</u>. I believe that the Second Amended Plan has not been filed for the purpose of avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933.

III. Conclusion

58. Based upon the facts and opinions set forth herein and the law as I understand it, I believe that the Debtors have formulated, negotiated, and proposed a Second Amended Plan that treats all Classes of Claims and Equity Interests fairly, equitably, and reasonably, and satisfies all of the Confirmation requirements contained in the Bankruptcy Code, and that the Disclosure Statement contained adequate information to permit creditors to make an informed choice as to whether to accept or reject the Second Amended Plan. I further believe that due and adequate notice of the Confirmation Hearing, the deadline for Creditors in impaired classes entitled to vote to determine whether to vote to accept or reject the Second Amended Plan, and the deadline for objecting to Confirmation of the Second Amended Plan was properly given. I believe the Debtors have sufficient funds to carry out the provisions of the Second Amended Plan, and that the Second Amended Plan is feasible.

Therefore, I respectfully request that the Bankruptcy Court enter an order confirming the Second Amended Plan, and granting the Debtors such other and further relief as is just and proper.

28 U.S.C. § 1746 Declaration

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my information, knowledge, and belief.

Executed this the 10th day of March, 2025.

Brian Bonaviri
Assistant Chief Restructuring Officer