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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

In re
CYPRESS URGENT CARE, INC., et al.,
Debtors and Debtors in Possession.

Case Nos. 8-17-bk-13089-TA and 8-17-bk-13090-TA (Jointly Administered)

Chapter 11

Affects:

- All Debtors
- Cypress Urgent Care, Inc., a California corporation, ONLY
- Laguna-Dana Urgent Care, Inc., a California corporation, ONLY

DEBTORS AND DEBTORS IN POSSESSIONS' NOTICE OF MOTION AND MOTION FOR ORDER APPROVING THE FIRST AMENDED DISCLOSURE STATEMENT WITH RESPECT TO THE FIRST AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF CYPRESS URGENT CARE, INC. AND LAGUNA-DANA URGENT CARE, INC., NOVEMBER 14, 2018

Hearing:

Date: December 5, 2018

Time: 11:00 a.m.

Place: Courtroom 5B
U.S. Bankruptcy Court
411 West Fourth Street
Santa Ana, CA 92701

1 **TO THE HONORABLE THEODORE C. ALBERT, UNITED STATES BANKRUPTCY**
2 **JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, ALL INTERESTED**
3 **PARTIES, AND/OR THEIR COUNSEL OF RECORD**

4 **PLEASE TAKE NOTICE** that on December 5, 2018 at 11:00 a.m., or as soon thereafter
5 as the matter may be heard, in courtroom 5B of the United States Bankruptcy Court for the
6 Central District of California, Santa Ana Division (the “Court”) located at 411 West Fourth
7 Street, Santa Ana, California 92701, Cypress Urgent Care, Inc. (“CUC”) and Laguna-Dana
8 Urgent Care, Inc. (“LDUC”), the debtors and debtors-in-possession in the above-captioned jointly
9 administered bankruptcy case (collectively, the “Bankruptcy Case”) (collectively, the “CL
10 Debtors”) will move and hereby do move (the “Motion”) for entry of an order approving the
11 adequacy of the CL Debtors’ First Amended Disclosure Statement with Respect to the First
12 Amended Joint Chapter 11 Plan of Reorganization of Cypress Urgent Care, Inc. and Laguna-
13 Dana Urgent Care, Inc., Dated November 14, 2018 (the “Disclosure Statement”), filed with the
14 Court on or about November 14, 2018. This Motion is made pursuant to section 1125 of the
15 United States Code (the “Bankruptcy Code”) and rules 3016 and 3017 of the Federal Rules of
16 Bankruptcy Procedure (the “FRBP”) on the grounds that the Disclosure Statement contains
17 adequate information as that term is defined by section 1125 of the Bankruptcy Code and
18 therefore be approved for dissemination to creditors.

19 **PLEASE TAKE FURTHER NOTICE** that this Motion is based on this notice, the
20 Motion, the memorandum of points and authorities in support thereof, the Disclosure Statement,
21 any and all documents of which this Court can take judicial notice, and any and all evidence
22 offered at oral argument on the Motion.

23 **PLEASE TAKE FURTHER NOTICE** that any opposition to the Motion must be in
24 writing and must be filed with the clerk of the Court and served upon counsel for the CL Debtors
25 and interested parties as required by applicable law and not less than 14 days before the hearing
26 on the Disclosure Statement at the address set forth in the upper left-hand corner of the first page
27 of this Motion.

1 **PLEASE TAKE FURTHER NOTICE** that failure to file and serve a timely opposition
2 or objection to the Motion or the Disclosure Statement may be deemed as consent to the approval
3 of the Disclosure Statement.

4 DATED: November 14, 2018

Respectfully submitted,

FOLEY & LARDNER LLP

7 By: /s/ Ashley M. McDow

Ashley M. McDow

Fahim Farivar

9 Counsel for Debtors and Debtors in Possession

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 The CL Debtors hereby submit this Motion for entry of an order (i) approving the
3 Disclosure Statement, (ii) approving the form of the ballot and establishing procedures for voting
4 on the Plan; (iii) establishing a voting deadline to accept or reject the Plan; (iv) establishing
5 procedures for vote tabulations; and (v) establishing confirmation hearing date and objection
6 procedures thereof. In support of the Motion, the CL Debtors respectfully represent as follow:

7 **I. JURISDICTION AND VENUE**

8 This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This
9 matter relates to the administration of the CL Debtor’s bankruptcy estates and the confirmation of
10 the Plan and is, accordingly, a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper
11 pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein is
12 section 1125 of the Bankruptcy Code and rules 3017 and 3018 of the FRBP.

13 **II. STATEMENT OF FACTS**

14 **A. Background**

15 The CL Debtors each operate one urgent care clinic (the “Clinics”) in Orange County,
16 California. On or about August 2, 2017, the CL Debtors and certain affiliates filed voluntary
17 petitions for relief under chapter 11 of the Bankruptcy Code – thereby commencing the
18 Bankruptcy Case.

19 CUC is a California professional corporation, within the meaning of Title 1, Division 3,
20 Part 4 of the California Corporations Code, with its principal place of business at 6876 Katella
21 Avenue, Cypress, California 90630. CUC is wholly owned by Robert Craig Amster, M.D. (“Dr.
22 Amster”). Dr. Amster serves as the president, chief executive officer, secretary, chief financial
23 officer, and sole director of CUC.

24 LDUC is a California professional corporation, within the meaning of Title 1, Division 3,
25 Part 4 of the California Corporations Code, with its principal place of business at 24060 Camino
26 Del Avion, Unit A, Monarch Beach, California 92629. LDUC is wholly owned by Dr. Amster.
27 Dr. Amster serves as the president, chief executive officer, secretary, chief financial officer, and
28

1 sole director of LDUC.

2 **B. Events Precipitating Bankruptcy**

3 In 2011, the CL Debtors (and/or their predecessors) began to work with George Logan of
4 Global Capital Markets in an effort to effectively and efficiently expand the business and
5 operations. On or about September 26, 2013, the CL Debtors entered into the Opus Loans¹ in
6 order to refinance then-existing debt. In association with the Opus Loans, Opus Bank (“Opus”)
7 purportedly obtained a security interest in certain assets of the Clinics. Unfortunately, the
8 business did not expand as forecasted—despite the fact that the CL Debtors followed the
9 recommendations of Mr. Logan by, among other things, increasing staffing and making certain
10 capital outlays—which ultimately made it difficult for the CL Debtors to meet their obligations
11 under the Opus Loans, among others.

12 In early 2017, Opus filed a lawsuit against the CL Debtors, as well as related debtor and
13 non-debtor entities, including Your Neighborhood Urgent Care, LLC (“YNUC”), in Los Angeles
14 Superior Court (the “State Court”), which commenced the State Court Action. Therein, Opus
15 averred that the CL Debtors, amongst others, had violated the terms of the Opus Loans.

16 In an effort to appease Opus and permit the amicable discussions between the parties to
17 continue, the parties agreed to the appointment of a receiver over the Clinics. To this end, on or
18 about May 25, 2017, the CL Debtors and Opus entered into the Receivership Stipulation in which
19 they, among other things, agreed to the appointment of the Former Receiver. The Receivership
20 Stipulation was filed in the State Court Action, and on or about May 25, 2017, the State Court
21 entered the Receivership Order.

22 When it became clear that the Former Receiver did not intend to act in the best interest of
23 the CL Debtors, among others, the CL Debtors, among others, filed voluntary petitions for relief
24 under chapter 11 of the Bankruptcy Code—thereby commencing the Bankruptcy Cases. On or
25 about July 13, 2018, the Bankruptcy Court entered an order approving the joint administration of

26 _____
27 ¹ All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Disclosure
28 Statement (as defined herein) or, if such term is not defined therein but is defined in the Bankruptcy Code, as defined
therein.

1 the Bankruptcy Cases. The CL Debtors remain in control of the administration of the Estates as
2 debtors and debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3 **C. Events Following Bankruptcy**

4 Following the commencement of the Bankruptcy Cases, the CL Debtors immediately took
5 action to preserve the Clinics and establish a foundation for reorganization, including, without
6 limitation, obtaining interim authorization to use purported cash collateral and payment of
7 adequate protection, entering into an agreement with the UST for the appointment of a patient
8 care ombudsman, entering into agreements with utility providers, vendors, and locum tenens
9 services to ensure ongoing staffing and services for the Clinics, and filing a motion to assume the
10 real property leases as they pertain to the real property occupied by the CL Debtors.

11 Since the commencement of the Bankruptcy Cases, the CL Debtors have generally
12 operated much better than projected, particularly with respect to the number of provider visits.
13 As a result, the projected net operating cash flow for the CL Debtors continue to be very strong,
14 and overall operations are expected to continue to improve. Moreover, following the Petition
15 Date, the CL Debtors have stayed current with their critical vendors, so no such accounts payable
16 are being rolled forward.

17 **D. Appointment of Patient Care Ombudsman**

18 On or about August 31, 2017, the Bankruptcy Court approved the appointment of the
19 Ombudsman by and through the entry of the Ombudsman Order. On or about September 19,
20 2017, the Notice of Appointment was filed with the Bankruptcy Court. On February 26, 2018,
21 the UST appointed Tamar Terzian as the successor Ombudsman.

22 As set forth in the Ombudsman Order and the Appointment Notice, the Ombudsman was
23 appointed to monitor the quality of patient care provided by the CL Debtors, to the extent
24 necessary under the circumstances, including the interview of patients/clients, administration,
25 staff, and other interested parties. In accordance with the terms of the Notice of Appointment, a
26 one-page notice was posted at each of the Clinics, which contained contact information for the
27 Ombudsman.

1 As provided in the periodic reports prepared and filed by the Ombudsman, all care
2 provided to the patients by the CL Debtors has been well within the standard of care. More
3 specifically, in her most recent report dated June 22, 2018, the Ombudsman made the following
4 findings with respect to the CL Debtors:

5 **i. CUC**

- 6 a. The center is relatively small with 2 trauma beds and 7 exam rooms. All
7 areas are clean, well-supplied and affords secure and appropriate
8 interactions with patients and families. Average daily patient census 40-60
9 patients. Approximately 2-3 Workers compensation cases per day and
10 approximately 4-6 Pre-Employment Screening per week.
- 11 b. Staffing, as reported, aside from a Physician Assistants (PA) or Nurse
12 Practitioners (NP) or an MD (one of which is always available) equals 5
13 Medical Assistants (MA) personnel plus 2 MA personnel X-ray technicians
14 who can work both the front and back and alternate. (Reception and patient
15 care areas). Staff friendly, helpful, accommodating.
- 16 c. Licenses of staff posted and current.
- 17 d. CLIA (Clinical Laboratory Improvement Amendment) license is current.
- 18 e. Medications are dated property [sic] and no outdates.
- 19 f. Medical records well maintained.

20 **ii. LDUC**

- 21 a. The center is relatively small with 2 trauma beds and 3 exam rooms. All
22 areas are clean, well-supplied and affords secure and appropriate
23 interactions with patients and families. Staff attitude helpful and
24 accommodating.
- 25 b. Average daily patient census 35-40 patients.
- 26 c. Staffing, as reported, aside from a NP or PA or an MD (one of which is
27 always available) equals 2 Medical Assistants (MA) who are also X-ray
28

1 technicians and Three other MA personnel who can work both the front
2 and back. (Reception and patient care areas).

- 3 d. Staff friendly, helpful, accommodating.
4 e. Licenses of staff posted and current.
5 f. Supplies are appropriately labeled and stored.
6 g. Medication (multi-dose) appropriately dated.

7 The Ombudsman will continue to monitor the CL Debtors and is available to respond to
8 any concerns or questions of the Court or any interested party.

9 **E. Pending Litigation**

10 On March 30, 2017, Opus commenced the State Court Action against CUC, LDUC,
11 YNUC, Dr. Amster, and Doe defendants.

12 On September 26, 2017, the CL Debtors filed their Notice of Removal of State Court
13 Action seeking to remove the State Court Action to the Court under 28 U.S.C. § 1452 and FRBP
14 9027, thereby initiating the CUC-LDUC Adversary. On same day, the Court issued its Notice of
15 Status Conference and Order to Show Cause Re: Remand (Removed Proceeding) with respect to
16 the CUC-LDUC Adversary.

17 On or about October 9, 2017, Opus filed a motion for entry of an order remanding the
18 CUC-LDUC Adversary to the State Court, which was granted by entry of a Final Order of the
19 Bankruptcy Court on or about November 21, 2017. The State Court Action is currently stayed
20 due to the Bankruptcy Cases.

21 **F. The Assumption of CUC Lease and the LDUC Lease**

22 The salient terms of the CUC Lease are as follows:

- 23 a. Lessor: Warland Investments Company²
24 1299 Ocean Avenue, Suite 300
25 Santa Monica, California 90401
26 b. Term: 10 years
27 c. Rent: \$9,044.00 per month, which is subject to annual

28 ² As used herein, "Warland" refers to Warland Investments Company.

1 increases of four percent (4%), plus a pro rata share of the
2 common area operating expenses (1.85% based on square
footage of the unit occupied by CUC)

3 Prior to the appointment of the Former Receiver, CUC remained current on its obligations
4 under the CUC Lease and otherwise complied with the terms thereof. Following his appointment,
5 the Former Receiver failed to make one or more rental payments. As of the Petition Date, CUC
6 owed Warland \$8,887.78 on account of past-due rent. CUC has remained current on its rental
7 obligations following the Petition Date.

8 The salient terms of the LDUC Lease are as follows:

- 9 a. Lessor: Retail Realty Fund³
One Upper Newport Plaza
10 Newport Beach, California 92660
- 11 b. Term: 7 years, 6 months, with two (2) options for (5) years each
- 12 c. Rent: \$11,761.00 per month, which is subject to annual
13 increases of three percent (5%), plus a pro rata share of the
common area operating expenses

14 Thereafter, LDUC utilized the LDUC Property in the operation of the LDUC Clinic in
15 accordance with the terms of the LDUC Lease. Prior to the Petition Date, LDUC remained
16 current on its obligations under the LDUC Lease and otherwise complied with the terms thereof.
17 LDUC has remained current on its rental obligations Post-Petition. Following the Petition Date,
18 the CL Debtors continued to utilize the CL Properties to operate the CL Clinics while devising
19 the most beneficial exit strategy for the Bankruptcy Cases. In association therewith, the CL
20 Debtors have continued to remit payments to the CL Landlords in accordance with the terms of
21 the respective Leases.

22 **III. THE COURT SHOULD APPROVE THE DISCLOSURE STATEMENT**

23 **A. The Disclosure Statement Contains Adequate Information**

24 Pursuant to section 1125 of the Bankruptcy Code, the CL Debtors must provide holders of
25 impaired claims with “adequate information” regarding the CL Debtors’ proposed Plan. Section
26 1125(a)(1) of the Bankruptcy Code provides:

27 _____
28 ³ As used herein, “Retail Realty” refers to Retail Realty Fund.

1
2 “[A]dequate information” means information of a kind, and in sufficient
3 detail, as far as is reasonably practicable in light of the nature and history
4 of the debtor and the condition of the debtor's books and records, including
5 a discussion of the potential material Federal tax consequences of the plan
6 to the debtor, any successor to the debtor, and a hypothetical investor
7 typical of the holders of claims or interests in the case, that would enable
8 such a hypothetical investor of the relevant class to make an informed
9 judgment about the plan, but adequate information need not include such
information about any other possible or proposed plan and in determining
whether a disclosure statement provides adequate information, the court
shall consider the complexity of the case, the benefit of additional
information to creditors and other parties in interest, and the cost of
providing additional information.

10 11 U.S.C. § 1125(a)(1).

11 The purpose of a disclosure statement is to give all creditors a source of information which
12 allows them to make an informed choice regarding the approval or rejection of a plan." Duff v.
13 U.S. Trustee (In re California Fidelity, Inc.), 198 B.R. 567, 571 (9th Cir. B.A.P. 1996). Section
14 1125(b) of the Bankruptcy Code "seeks to guarantee that a creditor receives adequate information
15 about a plan before the creditor is asked for a vote." Id.

16 The determination of whether a particular disclosure statement provides adequate
17 information is "subjective and made on a case by case basis . . . [and] . . . is largely within the
18 discretion of the bankruptcy court." In re Texas Extrusion Corp., 844 F.2d 1142, 1157 (5th Cir.),
19 cert. denied, 488 U.S. 926 (1988); accord, e.g., Menard-Sanford v. Mabey (In re A.H. Robins
20 Co.), 880 F.2d 694, 696 (4th Cir.), cert. denied, 493 U.S. 959 (1989); In re Lisanti Foods, Inc., 329
21 B.R. 491, 507 (D.N.J. 2005).

22 Generally, the disclosure statement should contain pertinent information bearing on the
23 success or failure of the proposed plan. In re Stanley Hotel, Inc., 13 B.R. 926, 929 (Bankr. D.
24 Colo. 1981); In re Ferretti, 128 B.R. 16, 19 (Bankr. D.N.H. 1991) ("In short, a proper disclosure
25 statement must clearly and succinctly inform the average unsecured creditor what it is going to
26 get, when it is going to get it, and what contingencies there are to getting its distribution."). A
27 disclosure statement must provide creditors entitled to vote on the plan with information that is

1 "reasonably practicable" to permit an "informed judgment". Cohen v. Tic Fin. Sys (In re Ampace
2 Corp.), 279 B.R. 145, 158 n.26 (Bankr. D. Del. 2002). The general purpose of the disclosure
3 statement is to set forth sufficient facts and information to permit a creditor to make an informed
4 evaluation of the merits of the plan. See Century Glove, Inc. v. First American Bank of New
5 York, 860 F.2d 94, 100 (3rd Cir. 1988); In re Phoenix Petroleum Co., 278 B.R. 385, 393 (Bankr.
6 E.D. Pa. 2001).

7 In determining whether a disclosure statement contains adequate information as required
8 by section 1125 of the Bankruptcy Code, courts typically look for disclosures regarding topics
9 such as:

- 10 • The events that led to the filing of a bankruptcy petition;
- 11 • The relationship of the debtors and their affiliates;
- 12 • A description of the available assets and their value;
- 13 • The anticipated future of the debtors;
- 14 • The source of information stated in the disclosure statement;
- 15 • The present condition of the debtors while in chapter 11;
- 16 • Claims asserted against the debtors;
- 17 • The estimated return to creditors under a chapter 7 liquidation;
- 18 • The future management of the debtors;
- 19 • The chapter 11 plan or a summary thereof;
- 20 • Financial information, valuations, and projections relevant to the creditors' decision
21 to accept or reject the chapter 11 plan;
- 22 • Information relevant to the risks pose to creditors under the plan;
- 23 • The actual or projected realizable value from recovery of preferential or otherwise
24 voidable transfers;
- 25 • Litigation likely to arise in a non-bankruptcy context; and
- 26 • Tax attributes of the debtors.
- 27
- 28

1 See In re U.S. Brass Corp., 194 B.R. 420, 424-25 (Bankr. E.D. Tex. 1996); *see also* In re
2 Metrocraft Pub. Servs. Inc., 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984); accord, e.g., In re Scioto
3 ValleyMortg. Co., 88 B.R. 168, 170-71 (Bankr. S.D. Ohio 1988) (listing factors courts have
4 considered in determining the adequacy of information provided in a disclosure statement); In re
5 Reilly, 71 B.R. 132, 134 (Bankr. D. Mont. 1987). However, disclosure regarding all topics is
6 not necessary in every case. U.S. Brass, 194 B.R. at 425; *see also* In re Phoenix Petroleum Co.,
7 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001) (cautioning that “no one list of categories will apply
8 in every case.”).

9 The Disclosure Statement meets the burden imposed by section 1125 of the Bankruptcy
10 Code, as it contains information concerning, but not limited to:

- 11 a. A description of the events leading to the commencement of the Bankruptcy Case;
- 12 b. Descriptions of the CL Debtors’ assets;
- 13 c. A discussion of the anticipated future of the CL Debtors’ operations;
- 14 d. A description of claims asserted against the CL Debtors and the proposed treatment of
15 such claims under the Plan;
- 16 e. Detailed information regarding the Plan, the assumptions underlying the Plan, and
17 future projections;
- 18 f. A summary of significant events that occurred during the Bankruptcy Case and the CL
19 Debtors’ present condition;
- 20 g. Detailed information regarding how the CL Debtors intends to satisfy its obligations to
21 creditors under the Plan;
- 22 h. The CL Debtors’ estimated administrative expenses and professional fees, and
23 information regarding the CL Debtor’s current cash on hand and the CL Debtors’
24 ability to make the proposed cash contribution as of the Effective Date;
- 25 i. Financial information and data relevant to a creditor’s decision to accept or reject the
26 Plan;
- 27 j. Explanation of source and the amount of money available for payment of
28 administrative expenses and/or claims on the Effective Date;
- k. A discussion of the potential risks under the Plan;

- 1 l. A discussion of the Plan's tax consequences;
- 2 m. Liquidation analysis demonstrating that pursuant to the CL Debtor's proposed Plan,
3 creditors will be paid at least what they would receive if the CL Debtor's case was
4 converted to one under Chapter 7; and
- 5 n. Feasibility analysis by explaining that the CL Debtors will have enough cash on hand
6 on the Effective Date to pay all the claims and expenses, which are entitled to be paid
7 on such date.

8 The Disclosure Statement provides precisely the information a "hypothetical, reasonable
9 investor" would want and need to know before voting on the Plan. Further, the CL Debtors have
10 attempted to ensure that the information in the Disclosure Statement is complete and accurate to
11 the best of the CL Debtors' knowledge, information, and belief. As demonstrated above, the
12 Disclosure Statement provides creditors and interest holders with adequate information to make
13 an informed judgment regarding whether to vote to accept or reject the Plan. Accordingly, the CL
14 Debtors request that the Court approve the Disclosure Statement as containing "adequate
15 information," as defined in section 1125(a) of the Bankruptcy Code.

16 **B. The Disclosure Statement Provides Sufficient Notice of Injunction, Discharge,
17 and Release Provisions in the Plan**

18 FRBP 3016(c) requires that, if a plan provides for an injunction against conduct not
19 otherwise specifically enjoined under the Bankruptcy Code, the plan and disclosure statement
20 must describe in specific and conspicuous language, the acts to be enjoined and the entities
21 subject to the injunction. Section VI.E.1-2 of the Disclosure Statement describes in detail
22 injunction, discharge, and release provisions, and the entities subject to these provisions under the
23 Plans and the acts that they are enjoined from pursuing. Accordingly, the CL Debtors respectfully
24 submit that the Disclosure Statement complies with FRBP 3016(c).

25 **IV. THE PROPOSED SOLICITATION AND VOTING PROCEDURES SHOULD BE
26 APPROVED.**

27 **A. The Court Should Approve the Proposed Form of Ballot.**

28 FRBP 3017(d) generally requires that a ballot for accepting or rejecting a plan conform to
the Official Form. As the proposed ballot, appended to the Plan as **Exhibit 6**, is substantially the

1 same as Official Form B14, the CL Debtors respectfully request that the Court approve the CL
2 Debtors' proposed form ballot.

3 **B. The Court Should Schedule the Confirmation Hearing and Fix Related Time**
4 **Periods for Filing Objections and Voting to Accept or Reject the Plan.**

5 FRBP 3017(c) provides that "[o]n or before approval of the disclosure statement, the
6 court shall fix a time within which the holders of claims and interests may accept or reject the
7 plan and may fix a date for the hearing on confirmation." Pursuant to FRBP 2002(b) and
8 3020(b)(2), at least 28 days' notice must be given by mail to all creditors and equity security
9 holders of the time fixed for filing objections to, and the hearing to consider confirmation of, a
10 plan of reorganization. Finally, FRBP 3020(b) provides that, within a time specified by the
11 Court, objections to plan confirmation must be filed with the Court and served on the debtor, the
12 trustee, any committee appointed under the Bankruptcy Code, and any other entity designated
13 by the bankruptcy court.

14 The Disclosure Statement does not currently contain deadlines for when votes to accept
15 or reject the Plan are due, when the proposed Confirmation Hearing will be held, or when
16 objections to the confirmation of the Plan are due. The CL Debtors request that the Court
17 provide dates for the deadline to submit votes, the confirmation hearing, and the deadline to
18 submit objections to the confirmation of the Plan. The CL Debtors will provide all missing
19 information prior to circulation of the final Disclosure Statement for solicitation.

20 **C. The Court Should Approve the Proposed Procedures for Soliciting and**
21 **Tabulating Votes as Being in Accordance with Applicable Provisions of the**
22 **Bankruptcy Code and the Bankruptcy Rules.**

23 FRBP 2002(b) requires that notice of confirmation be given to all creditors. FRBP
24 2002(g) generally provides that notices must be addressed as requested by certain parties in their
25 last request filed in a case, and that a proof of claim that designates a mailing address constitutes a
26 filed request to mail notices to such address. FRBP 3017(d) sets forth the contents of the notice
27 that must be given in connection with the solicitation of votes to accept or reject a chapter 11
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1 plan. FRBP 3017(d) gives the Court discretion to order that unimpaired creditors need not be
2 served with a copy of the Plan and Disclosure Statement. FRBP 3017(d) also requires that a form
3 of ballot be mailed to creditors and equity security holders entitled to vote on a plan.

4 FRBP 3018(a) authorizes the Court, after notice and a hearing, to set a record date for
5 purposes of voting to accept or reject a Plan. FRBP 3003(c)(2) provides that any creditor whose
6 claim or interest is not scheduled, or is scheduled as disputed, contingent, or unliquidated, must
7 file a proof of claim or interest within such time as set by the Court, and that any creditor who
8 fails to do so "shall not be treated as a creditor with respect to such claim for the purposes of
9 voting and distribution." In addition, FRBP 3018 provides that "[n]otwithstanding objection . . .
10 the court after notice and hearing may temporarily allow the claim or interest in an amount which
11 the court deems proper for the purpose of accepting or rejecting a plan."

12 The proposed procedures set forth herein for soliciting and tabulating votes to accept or
13 reject the Plan conform with applicable rules and statutes. The CL Debtors will cause a
14 confirmation hearing notice, which will set forth the time fixed for filing objections to the Plan
15 and the date, time and place of the Confirmation Hearing, to be mailed to all creditors and equity
16 interest holders and certain other parties in interest. The CL Debtors shall serve a copy of the
17 Disclosure Statement and Plan, and confirmation hearing notice (collectively, the "Solicitation
18 Package") on all necessary parties, and shall provide a ballot to those entities allowed to vote on
19 the Plan.

20 ***1. Voting Tabulation Procedures***

21 In order to calculate accurately votes cast for or against the Plan, the CL Debtors propose
22 a method for tabulating votes in accordance with the Bankruptcy Code and the FRBP as follows:

- 23 (a) The amount of a claim for voting purposes will be the amount listed in the Schedules
24 if such claim is listed as not contingent, not unliquidated, and not disputed (the
25 "Scheduled Amount") and for which there is no Liquidated Amount (as defined
26 below), unless a proof of claim in a specified liquidated amount has been timely filed
27 and is neither the subject of an objection to claim filed before the Confirmation
28

1 Hearing nor been disallowed prior to the Confirmation Hearing (the "Liquidated
2 Amount"), whereupon the amount of the claim for voting purposes shall be such
3 specified Liquidated Amount, unless an amount has been temporarily allowed by
4 order of the Court for voting purposes after notice and a hearing in accordance with
5 FRBP 3018(a), in which event the claim will be counted in such amount (the
6 "Temporary Amount"). In the event a proof of claim is filed for an unliquidated,
7 unknown, or unstated amount and there is no Scheduled Amount, then subparagraph
8 below shall govern the amount of the claim for voting purposes. If any creditor seeks
9 to challenge the allowance of its claim for voting purposes in accordance with such
10 procedures, the CL Debtors request that the Court direct such creditor to serve on the
11 CL Debtors and file with the Court a motion for an order pursuant to FRBP 3018(a)
12 temporarily allowing such claim in a different Class and/or amount for purposes of
13 voting to accept or reject the Plan within ten (10) days from service of the
14 confirmation hearing notice. The CL Debtors further propose, in accordance with
15 FRBP 3018, that as to any creditor filing such a motion, such creditor's Ballot should
16 not be counted unless temporarily allowed by the Court for voting purposes, after
17 notice and a hearing;⁴

18 (b) If a creditor submits a Ballot that asserts a claim amount that is different from the
19 Scheduled Amount, the Liquidated Amount, or, if applicable, the Temporary
20 Amount, then the amount of such claim, for voting purposes, shall be: (i) the
21 Scheduled Amount, if there is no Liquidated Amount; (ii) the Liquidated Amount, if
22 there is a Liquidated Amount; or (iii) if applicable, the Temporary Amount,
23 regardless of the Liquidated Amount or the Scheduled Amount;

24 (c) If a creditor submits a Ballot for a claim for which there is no proof of claim filed, or
25

26 ⁴ This proposed procedure is consistent with section 1126 of the Bankruptcy Code, which provides that a plan may be
27 accepted or rejected by the holder of a claim allowed under section 502 of the Bankruptcy Code. Section 502 of the
28 Bankruptcy Code provides that a filed proof of claim is deemed allowed, "unless a party in interest . . . objects." 11
U.S.C. § 502.

- 1 the amount of the proof of claim is not a specified Liquidated Amount, or which is
2 not listed on the Schedules or is listed thereon as contingent, unliquidated, or
3 disputed, then the Ballot will not be counted unless otherwise ordered by the Court;
- 4 (d) Ballots cast by creditors who have filed proofs of claim in unliquidated, unknown, or
5 unstated amounts that are not the subject of an objection and for which there are no
6 Scheduled Amounts will not be counted;
- 7 (e) If a member of a Voting Class casts more than one Ballot voting the same claim
8 before the Voting Deadline, the last Ballot received prior to the Voting Deadline shall
9 supersede any prior Ballot(s); and
- 10 (f) Votes cast by a member of a Voting Class pursuant to a Ballot that is incomplete or is
11 not timely received shall not be counted.

12 The CL Debtors will mail the Solicitation Package/proposed ballot to the address set
13 forth in the most recently filed proof of claim for each creditor, or to the address listed in the
14 Schedules if no proof of claim was filed. Finally, the CL Debtors will tabulate all votes pursuant
15 to applicable provisions of the Bankruptcy Code and FRBP, including FRBP 3018(a).
16 Accordingly, the Court should approve the proposed procedures for soliciting and tabulating
17 votes to accept or reject the Plan.

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1 **V. CONCLUSION**

2 WHEREFORE, the CL Debtors respectfully request that the Court enter an order: (a)
3 approving the Disclosure Statement on a final basis; (b) authorizing the CL Debtors to
4 immediately distribute the Plan and Disclosure Statement, and to solicit acceptance of the Plan;
5 (c) approving the solicitation and voting tabulation procedures set forth herein; (d) approving the
6 form of ballot appended as **Exhibit 6** to the Plan; (e) fixing the dates in connection with the
7 solicitation, voting, and confirmation process; and (f) granting the CL Debtors such other and
8 further relief as just and proper.

9
10 DATED: November 14, 2018

Respectfully submitted,

11 **FOLEY & LARDNER LLP**

12 By: /s/ Ashley M. McDow
13 Ashley M. McDow
14 Fahim Farivar

Counsel for Debtors and Debtors in Possession

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 555 South Flower Street, Suite 3300, Los Angeles, CA 90071-2411.

A true and correct copy of the foregoing document entitled: **DEBTORS AND DEBTORS IN POSSESSIONS' NOTICE OF MOTION AND MOTION FOR ORDER APPROVING THE FIRST AMENDED DISCLOSURE STATEMENT WITH RESPECT TO THE FIRST AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF CYPRESS URGENT CARE, INC. AND LAGUNA-DANA URGENT CARE, INC. DATED AUGUST 8, 2018**

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) November 14, 2018, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Michael T Delaney mdelaney@bakerlaw.com
- Caroline Djang caroline.djang@bbklaw.com, sansanee.wells@bbklaw.com;paul.nordlund@bbkaw.com
- Michael J Hauser michael.hauser@usdoj.gov
- Ashley M McDow amcdow@foley.com, Khernandez@foley.com;Ffarivar@foley.com
- Anthony J Napolitano anapolitano@buchalter.com, IFS_filing@buchalter.com;salarcon@buchalter.com
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- Steven M Spector sspector@buchalter.com, IFS_efiling@buchalter.com;salarcon@buchalter.com
- Cathy Ta cathy.ta@bbklaw.com, paul.nordlund@bbklaw.com;sansanee.wells@bbklaw.com
- United States Trustee (SA) ustpreion16.sa.ecf@usdoj.gov

2. SERVED BY UNITED STATES MAIL: On (date) November 14, 2018, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Presiding Judge

Hon. Theodor C. Albert
U.S. Bankruptcy Court
411 W. Fourth St., Ste. 5085
Santa Ana, CA 92701

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

November 14, 2018
Date

Susie Vasquez
Printed Name

/s/ Susie Vasquez
Signature

2. SERVED BY UNITED STATES MAIL:

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This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

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