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April 24, 2024

VIA EMAIL

The Honorable Sean H. Lane  
U.S. Bankruptcy Judge  
Southern District of New York  
300 Quarropas Street  
White Plains, New York 10601-4140

Re: *Genesis Global Holdco, LLC*, Case No. 23-10063

Your Honor:

Pursuant to Your Honor's direction at the April 16, 2024 hearing, we are writing on behalf of the debtors and debtors-in-possession (the "Debtors") in the above-captioned case to update the Court with respect to the status of the U.S. Trustee's outstanding objections to the *Debtors' Joint Amended Chapter 11 Plan* (ECF No. 1392) (as may be revised, amended, restated, supplemented, altered or modified from time to time, the "Plan"),<sup>1</sup> which update was shared in draft form with the U.S. Trustee, the Ad Hoc Group Counsel, and the Dollar Group Counsel on April 23, 2024 and with counsel to Gemini on April 24, 2024 and which reflects comments from each of the Ad Hoc Group Counsel, the Dollar Group Counsel, and counsel to Gemini.

Following further discussions among the Debtors, the U.S. Trustee, the Ad Hoc Group Counsel, the Dollar Group Counsel, and counsel to Gemini, the Debtors understand that each of the U.S. Trustee's objections that were described in the Debtors' *Letter to the Honorable Sean H. Lane* (ECF No. 1483) remain unresolved. Specifically, these objections pertain to the following issues: (i) the Plan's proposed payment of the Ad Hoc Group Counsel's and Dollar Group Counsel's fees and expenses without the filing of an application by either the Ad Hoc Group Counsel or the Dollar Group Counsel that it has made a substantial contribution to the Chapter 11

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan. The *Objection of the United States Trustee to the Confirmation of the Debtors' Joint Amended Chapter 11 Plan* (ECF No. 1202) is defined herein as the "UST Obj."

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Cases, UST Obj. 16–17 (the “Creditor Group Fee Issue”); (ii) the Plan’s proposed exculpation of non-estate fiduciaries, namely, the Ad Hoc Group SteerCo and, solely in its capacity as such and to the extent it is implementing the Plan, the Gemini Distribution Agent, UST Obj. 11 (the “Exculpation of Non-Fiduciaries Issue”); (iii) the “No Liability” provision in Article VI.B.3 of the Plan, which provides that the Gemini Distribution Agent and its Related Parties will have no liability for certain actions taken directly in furtherance of the performance by the Gemini Distribution Agent of its duties under the Plan after the Effective Date, UST Obj. 10–11 (the “No Liability Issue”); and (iv) the Plan language enjoining “any Causes of Action solely to the extent released or exculpated pursuant to this Plan, including the Enjoined Actions, against any Released Party or Exculpated Party other than the Debtors or the Wind-Down Debtors,” UST Obj. 7 (the “Injunction Language Issue”).

An update on each of these issues is included below:

- 1) Creditor Group Fee Issue: The Debtors understand that each of the Ad Hoc Group Counsel and the Dollar Group Counsel provided the U.S. Trustee with time records pertaining to the Chapter 11 Cases and that the Ad Hoc Group Counsel is in the process of providing additional time records that have been requested by the U.S. Trustee. However, the U.S. Trustee’s position is that, notwithstanding the sharing of time records and the evidence presented at the Confirmation Hearing, each of the Ad Hoc Group Counsel and the Dollar Group Counsel must file an application that meets the standards under section 503 of the Bankruptcy Code. The Ad Hoc Group Counsel and the Dollar Group Counsel have informed the Debtors that they are not willing to file such an application because it is not legally required, would result in additional administrative expenses, and is inconsistent with the Court’s guidance at the Confirmation Hearing.<sup>2</sup> Accordingly, the Debtors believe this dispute will need to be resolved by the Court. To assist in the Court’s consideration of these issues, we refer Your Honor to (a) paragraphs 43–44 of the Debtors’ Confirmation Brief, (b) paragraphs 21–22 and 58–59 of the *Proposed Findings of Fact and Conclusions of Law Submitted by Plan Proponents and Supporters in Support of Confirmation of the Debtors’ Amended Joint Chapter 11 Plan of Genesis Global Holdco, LLC et al.* (ECF No. 1540), (c) the arguments of Debtors’ counsel, the Ad Hoc Group Counsel, and the Dollar Group Counsel in support of the Plan’s proposed payment of the Ad Hoc Group Counsel’s and Dollar Group Counsel’s fees and expenses during the Confirmation Hearing, Hr’g Tr. 60:13–63:1, 106:6–110:7, 115:14–122:22, March 18, 2024, and (d) Your Honor’s colloquy with counsel for the U.S. Trustee during the Confirmation Hearing, Hr’g Tr. 257:16–264:22, March 18, 2024.

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<sup>2</sup> At the Confirmation Hearing on March 18, 2024, the Court suggested that the dispute with respect to the Plan’s payment of the fees and expenses of the Ad Hoc Group Counsel and the Dollar Group Counsel “may be a fixable problem in the sense of sharing what the fees are and having the U.S. Trustee’s office take a look.” Hr. Tr. 260:13–15, March 18, 2024. In response to the U.S. Trustee’s position that the Ad Hoc Group Counsel and the Dollar Group Counsel should instead be required to file substantial contribution applications, the Court pushed back stating that “I did ask that question about applications earlier . . . [a]nd I think I was trying to avoid something that was not a meaningful addition to the . . . circumstances. . . . I just didn’t want to have somebody say in order to check this box, I need to file this piece of paper that says exactly what I just said standing up. We’ll try to avoid that, I would think.” Hr. Tr. 261:5–261:13, March 18, 2024.

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- 2) Exculpation of Non-Fiduciaries Issue: The Plan’s exculpation of non-fiduciaries is narrow, as it applies only to the Ad Hoc Group SteerCo and the Gemini Distribution Agent, but it is an integral component of the Plan and neither the Ad Hoc Group SteerCo nor the Gemini Distribution Agent is willing to be carved out of the exculpation provisions in the Plan. Moreover, the Debtors are limited in their ability to make unilateral amendments to the Plan as a result of the PSA and the Plan itself. Accordingly, the Debtors believe this dispute will need to be resolved by the Court. To assist in the Court’s consideration of these issues, we refer Your Honor to (a) paragraph 82 of the *Memorandum of Law in Support of Confirmation and Omnibus Reply to Objections to Confirmation of the Plan of Reorganization or Genesis Global Holdco, LLC et al., Under Chapter 11 of the Bankruptcy Code* (the “Debtors’ Confirmation Brief”), (b) the arguments of Debtors’ counsel during the Confirmation Hearing, Hr’g Tr. 254:25–255:25, March 18, 2024, and (c) Your Honor’s colloquy with counsel for the U.S. Trustee during the Confirmation Hearing, Hr’g Tr. 266:24–267:16, March 18, 2024.
- 3) No Liability Issue: The “No Liability” provision was an important component of the overall settlement between the Debtors and Gemini to resolve Gemini’s objection to Confirmation of the Plan and, as such, the Debtors are constrained in eliminating this provision in the Plan. Accordingly, the Debtors believe this dispute will need to be resolved by the Court. To assist in the Court’s consideration of these issues, we refer Your Honor to (a) the arguments of Debtors’ counsel during the Confirmation Hearing, Hr’g Tr. 256:1–8, March 18, 2024, and (b) Your Honor’s colloquy with counsel for the U.S. Trustee during the Confirmation Hearing, Hr’g Tr. 264:25–266:23, March 18, 2024.
- 4) Injunction Language Issue: The Debtors believe the Plan language at issue is part of the overall settlement with creditors and cannot be adjusted at this point. Accordingly, the Debtors believe this dispute will need to be resolved by the Court. To assist in the Court’s consideration of these issues, we refer Your Honor to (a) paragraph 83 of the Debtors’ Confirmation Brief, (b) the arguments of Debtors’ counsel during the Confirmation Hearing, Hr’g Tr. 256:9–25, March 18, 2024, and (c) Your Honor’s colloquy with counsel for the U.S. Trustee during the Confirmation Hearing, Hr’g Tr. 268:4–270:7, March 18, 2024.

We are available to discuss any questions at the Court’s convenience.

Respectfully submitted,

/s/ Sean A. O’Neal

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