



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

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THE DATE OF ENTRY IS ON
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The following constitutes the ruling of the court and has the force and effect therein described.

Signed March 22, 2019

Handwritten signature of Mark X. Mullin in cursive script.

United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re:	§	
	§	
Preferred Care, Inc. et al.,	§	Case No. 17-44642-mxm-11
	§	Jointly Administered
Debtors.	§	Chapter 11
	§	

**MEMORANDUM OPINION AND
ORDER DENYING THOMAS D. SCOTT'S MOTION TO ENFORCE**
Relates to ECF No. 1201

The Court entered an order approving a compromise and settlement agreement in which the debtors and their bankruptcy estates released all claims and causes of action they may have against Thomas D. Scott, Robert J. Riek, and certain of Mr. Scott's affiliated entities. That order also permanently enjoins any party from pursuing the released claims against Mr. Scott and Mr. Riek. After the Court approved that settlement and release, certain personal-injury claimants sued Mr. Scott and other non-debtor parties in Kentucky and New Mexico state courts, asserting claims "solely for the direct liability" of Mr. Scott and the other non-debtor parties. Mr. Scott now seeks

to enforce the permanent injunction included in the Court's order approving the settlement and release, arguing that the personal-injury claimants' state-court suits are asserting derivative claims that were owned and released by the debtors. Because the face of the complaints filed by the personal-injury claimants do not assert such released derivative claims, the Court denies Mr. Scott's motion.

I. JURISDICTION AND VENUE

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157(a). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. § 1409(a).

II. BACKGROUND FACTS

A. The bankruptcy cases

On November 13, 2017 (the "*Petition Date*"), Preferred Care, Inc. ("*PCI*") and thirty-three limited partnership entities (collectively, the "*LP Debtors*") filed voluntary Chapter 11 bankruptcy petitions in this Court. Later, on July 6, 2018, the general partners of each of the LP Debtors (collectively, the "*GP Debtors*," and together with PCI and the LP Debtors, the "*Debtors*") filed voluntary Chapter 11 bankruptcy petitions in this Court. The Debtors' bankruptcy cases (the "*Chapter 11 Cases*") are being jointly administered under Case No. 17-44642.

The Debtors are part of a network of entities that, as of the Petition Date, collectively operated 108 skilled nursing, assisted and independent living, and mental health facilities (each, a "*Facility*," and collectively, the "*Facilities*"). Twenty-one of the LP Debtors (collectively, the "*Kentucky Debtors*") operated twenty-one skilled nursing facilities in Kentucky (the "*Kentucky Facilities*"). Twelve of the LP Debtors (the "*New Mexico Debtors*") operated twelve skilled

nursing facilities in New Mexico (the “*New Mexico Facilities*”). The GP Debtors are the general partners of the thirty-three LP Debtors.

Pursuant to management agreements with each of the LP Debtors, affiliates of Preferred Care Partners Management Group, L.P. (collectively, the “*Management Company*”) provided management services, including management of non-clinical day-to-day operations, at each of the Facilities. Additionally, the LP Debtors employed personnel at the facility level to provide nursing and rehabilitation care to the residents of the Facilities. Mr. Scott does not own any interest in the Management Company, and the Management Company is not an affiliate of Mr. Scott or the Debtors.

The Debtors’ bankruptcy filings were necessitated by an overwhelming amount of personal-injury litigation filed in Kentucky and New Mexico. As of the Petition Date, there were approximately 163 lawsuits pending—ninety-seven in Kentucky and twenty-seven in New Mexico—in which one or more of PCI, the LP Debtors, or the GP Debtors are named as defendants (the “*Prepetition Lawsuits*”). The Prepetition Lawsuits were stayed against the Debtors upon the commencement of the Chapter 11 Cases, and to date, the automatic stay has not been lifted to allow the Prepetition Lawsuits to proceed against the Debtors.

The Debtors have sold, closed, or transferred all or substantially all of the Kentucky Facilities and New Mexico Facilities since the Petition Date.

B. The Scott Settlement Agreement, Scott Settlement Order, and permanent injunction

On May 18, 2018, PCI and the LP Debtors filed their Settlement Motion¹ requesting approval of the Scott Settlement Agreement.² The Scott Settlement Agreement provided for a global settlement and release by the Estate Releasing Parties³ of any and all Estate Claims against the Scott Released Parties. The Scott Released Parties include Mr. Scott, Robert J. Riek (an officer of PCI and a manager of each of the GP Debtors), and certain of Mr. Scott's affiliated entities (as more particularly defined in the Scott Settlement Agreement). In exchange for the release of the Estate Claims, Mr. Scott and others contributed the following consideration to the Debtors: (a) payment of a cash settlement of \$4 million; (b) release and waiver of a \$10 million back-up debtor-in-possession credit facility extended to the Debtors by Mr. Scott's affiliated entity, FSF DIP LLC; and (c) release and waiver of \$16.1 million of prepetition unsecured claims held by Mr. Scott and his affiliates against the Debtors.

On July 6, 2018, the GP Debtors filed their *Joinder and Motion to Approve Scott Settlement Agreement*.⁴ On July 26, 2018, following a contested hearing on the merits, the Court granted the Settlement Motion, and on August 1, 2018, the Court entered the Scott Settlement Order.⁵ The Scott Settlement Order approved the Scott Settlement Agreement, including the release of claims contained in the agreement. And—relevant to the current dispute—the Scott Settlement Order

¹ *Motion to Approve Scott Settlement Agreement* [ECF No. 702] (the “**Settlement Motion**”).

² Scott Ex. 2, *Release and Settlement Agreement* dated as of July 31, 2018, by and between the Debtors and Mr. Scott (the “**Scott Settlement Agreement**”). A copy of the Scott Settlement Agreement is attached to this Order as **Exhibit 1**.

³ Capitalized terms not otherwise defined in this Order have the meaning given to them in the Scott Settlement Agreement.

⁴ ECF No. 821.

⁵ Scott Ex. 1, *Order (I) Authorizing and Approving Scott Settlement Agreement, (II) Approving GP Debtors' Joinder Therein, and (III) Granting Related Relief* [ECF No. 953] (the “**Scott Settlement Order**”).

barred and enjoined any party from asserting any Released Claim against Mr. Scott and the other Scott Released Parties (the “*Injunction*”).

C. The Post-Injunction Litigation

Since the entry of the Scott Settlement Order, the following complaints were filed against certain of the Scott Released Parties by or on behalf of former residents at the Debtors’ facilities (collectively, the “*Post-Injunction Litigation*”): (a) complaint by Julie Moore (“*Moore*”) filed with the Medical Review Panel Branch of the Cabinet for Health and Family Services (the “*MRP*”) in the Commonwealth of Kentucky and assigned case number MRP-2018-0474 (the “*Moore Complaint*”);⁶ (b) complaint by Michelle Purcell (“*Purcell*”) filed with the MRP in the Commonwealth of Kentucky and assigned case number MRP-2018-0473 (the “*Purcell Complaint*”);⁷ (c) complaint by Herman Kellewood and Mikeala Kellewood (the “*Kellewoods*”) filed in the Eleventh Judicial District Court of San Juan County in the State of New Mexico and assigned case number D-1116-CV-2018-01524 (the “*Kellewood Complaint*”);⁸ (d) complaint by Sandra Vasquez (“*Vasquez*”) filed in the Third Judicial District of Dona Ana County in the State of New Mexico and assigned case number D-307-CV-2018-01919 (the “*Vasquez Complaint*”);⁹ and (e) complaint by Karen Steinhauser (“*Steinhauser*,” and together with Moore, Purcell, the Kellewoods, and Vasquez, collectively, the “*Personal-Injury Claimants*”) in the Circuit Court of Madison County in the Commonwealth of Kentucky and assigned case number 18-CI-00624 (the “*Steinhauser Complaint*,”¹⁰ and together with the Moore Complaint, Purcell Complaint,

⁶ Scott Ex. 3.

⁷ Scott Ex. 4.

⁸ Scott Ex. 5.

⁹ Scott Ex. 6.

¹⁰ Scott Ex. 7.

Kellewood Complaint, and Vasquez Complaint, collectively, the “*Complaints*”). Scott expects more post-injunction litigation complaints may be filed against him.

The Complaints assert claims for injuries allegedly suffered prior to the Petition Date by former residents of the Facilities that, at the time of such alleged injuries, were operated by certain of the LP Debtors. The injuries alleged are unique to each individual plaintiff. For example:¹¹

- Moore, as guardian of Dorothy Neighbors, alleges that Ms. Neighbors suffered (among other injuries) accelerated deterioration of her health and physical condition beyond that caused by the normal aging process, including (a) a pressure ulcer, (b) upper respiratory infection, and (c) wound infection.¹²
- Purcell, as guardian of John Michael Purcell, alleges that Mr. Purcell suffered (among other injuries) accelerated deterioration of his health and physical condition beyond that caused by the normal aging process, including (a) dislocation of right hip prosthesis, (b) pressure ulcer; (c) right hip hematoma, and (d) infections.¹³
- The Kellewoods, as co-personal representatives of the wrongful death estate of Gwendy Kellewood, deceased, allege that Ms. Kellewood suffered (among other injuries) (a) skin breakdown, (b) dehydration, and (c) infections.¹⁴
- Vasquez, as personal representative of the wrongful death beneficiaries of Petra Terrazas, alleges that Ms. Terrazas suffered (among other injuries) (a) infections,

¹¹ By noting the alleged injuries, the Court in no way finds and concludes (one way or the other) whether the injuries actually occurred or whether the defendants, including Mr. Scott, were responsible for the injuries, factually or legally.

¹² Moore Complaint ¶ 19, Scott Ex. 3.

¹³ Purcell Complaint ¶ 19, Scott Ex. 4.

¹⁴ Kellewood Complaint ¶ 49, Scott Ex. 5.

(b) redness and pustules from an ant infestation in her bed, and (c) foreign body airway obstruction.¹⁵

- Steinhauser, as executrix of the estate of Edith Sparks-Newman, alleges that Ms. Sparks-Newman suffered (among other injuries) (a) falls, including a fall resulting in a fractured pelvis, (b) urinary tract infection, (c) malnutrition, (d) dehydration, and (e) weight loss.¹⁶

Unlike the Prepetition Lawsuits, the Complaints do not name any of the Debtors as defendants in the litigation. Instead, the Complaints name as defendants only non-debtors, including certain of the Scott Released Parties. Each of the Complaints includes counts of negligence, and the Kellewood, Vasquez, and Steinhauser Complaints also include a count of wrongful death. All of the Complaints seek punitive and compensatory damages against each named individual defendant, which include certain of the Scott Released Parties.

III. PROCEDURAL POSTURE

On October 15, 2018, Mr. Scott filed his Motion to Enforce.¹⁷ Through the Motion to Enforce, as supplemented,¹⁸ Mr. Scott requests the entry of a Court order: (a) finding that the claims asserted in the Complaints against Mr. Scott and Mr. Riek (both of whom are Scott Released Parties) are Estate Claims that were released in the Scott Settlement Agreement; (b) ordering the Personal-Injury Claimants to dismiss with prejudice the Complaints as against Mr. Scott and Mr.

¹⁵ Vasquez Complaint ¶ 48, Scott Ex. 6.

¹⁶ Steinhauser Complaint ¶ 24, Scott Ex. 7.

¹⁷ *Motion to Enforce this Court's Permanent Injunction Set Forth in the Order (I) Authorizing and Approving Scott Settlement Agreement, (II) Approving GP Debtors' Joinder Therein, and (III) Granting Related Relief* [ECF No. 1201] (the "**Motion to Enforce**").

¹⁸ *See Supplement*, ECF No. 1291.

Riek; (c) otherwise enjoining the Personal-Injury Claimants, and anyone acting on behalf of the Personal-Injury Claimants, from proceeding with the Post-Injunction Litigation against Mr. Scott and Mr. Riek; and (d) granting such other and further relief as the Court deems just and proper.

The Personal-Injury Claimants filed their Joint Objection¹⁹ to the Motion to Enforce, arguing that their claims against Mr. Scott, Mr. Riek, and the other non-debtor defendants are direct claims of the Personal-Injury Claimants and not Estate Claims that were owned and released by the Debtors and their estates.

The Court held a hearing on the Motion to Enforce, where the Court considered the parties' respective briefs,²⁰ the arguments of counsel, and the admitted exhibits.

IV. ANALYSIS

The Court must determine who owns the claims asserted in the Complaints. If the Personal-Injury Claimants own the claims, they are free to pursue them. But if the Debtors own any of the claims, the Injunction bars the Personal-Injury Claimants from pursuing such Estate Claims.

“Whether a specific cause of action belongs to a bankruptcy estate is . . . a matter of law that we decide by reference to the facial allegations in the complaint.”²¹ The Fifth Circuit instructs the Court to focus on whether the Personal-Injury Claimants have suffered an alleged direct injury or one that is derivative of an injury to the Debtors.²² If the alleged harm to the Personal-Injury

¹⁹ *Joint Objection to Thomas D. Scott's Motion to Enforce this Court's Permanent Injunction Set Forth in the Order (I) Authorizing and Approving Scott's Settlement Agreement, (II) Approving GP Debtors' Joinder therein, and (iii) Granting Related Relief* [ECF No. 1292] (the “**Joint Objection**”).

²⁰ See ECF Nos. 1282 (Mr. Scott's Memorandum of Law), 1293 (Claimants' Brief).

²¹ *In re Seven Seas Petroleum, Inc.*, 522 F.3d 575, 583 (5th Cir. 2008).

²² *Id.* at 584; *In re Buccaneer Res., L.L.C.*, 912 F.3d 291, 293 (5th Cir. 2019).

Claimants came about only because of harm to the Debtors, then the Personal-Injury Claimants' injuries are derivative and such claims are property of the Debtors' bankruptcy estates.²³

If the claims do not involve *any* alleged harm to the Debtors, then that is the "simple case" where the claims cannot be part of the bankruptcy estates.²⁴ But even if the conduct allegedly harms the Debtors, the Personal-Injury Claimants may also have direct claims if their injuries do not flow from injury to the Debtors.²⁵ "This means that the estate and a creditor may have separate claims against a third party arising out of the same events."²⁶

A recent Fifth Circuit decision helps frame this Court's review of the Complaints. In *Buccaneer Resources*, the Fifth Circuit concluded that a former officer's tortious-interference claim against a secured lender for causing the Chapter 11 debtor to fire him was a direct claim and not a derivative claim. The court distinguished other opinions that demonstrated derivative injuries where the creditors' injuries (a reduced recovery) derived from injury to the debtor (a loss of estate assets).²⁷ "Unlike these derivative injuries, the harm to Burton [the former officer] from an improper firing without the required severance does not depend on any harm to the debtor. In fact, the termination of his employment contract may have saved Buccaneer [the debtor] money."²⁸ The Fifth Circuit elaborated on this point: "[C]onsider a scenario in which Buccaneer's fortunes

²³ *In re Seven Seas Petroleum*, 522 F.3d at 584; *In re Buccaneer Res., L.L.C.*, 912 F.3d at 293.

²⁴ *In re Buccaneer Res., L.L.C.*, 912 F.3d at 293.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *In re Buccaneer Res., L.L.C.*, 912 F.3d at 294 (reviewing, among other cases, *In re Lothian Oil, Inc.*, 531 F. App'x 428, 439 (5th Cir. 2013) (creditors were injured by reduced bankruptcy recovery when third parties lured debtor into transferring them oil and gas assets owned by the debtor); *In re R.E. Loans*, 2013 WL 1265205, at *5 (N.D. Tex. Mar. 28, 2013) (estate owned claim against bank for aiding the debtor's managers to encumber the debtor's assets with new liens)).

²⁸ *In re Buccaneer Res., L.L.C.*, 912 F.3d at 294.

improved after firing Burton. Burton would still have had an injury even if Buccaneer might have been able to compensate him for it. The termination injury Burton asserts thus does not depend on a depletion of Buccaneer's assets."²⁹ Therefore, "[a]s long as the injury a creditor is pursuing against a third party does not stem from the depletion of estate assets, the injury is a direct one that does not belong to the estate."³⁰

In the matter before this Court, the Complaints allege harm to the Personal-Injury Claimants (that is, harm to the residents they represent) in the form of pressure ulcers, urinary tract infections, other physical and emotional harm, and death. The Complaints also allege that Mr. Scott breached his duties to manage the applicable facilities with the appropriate standard of care.³¹ But the Complaints do not allege that the Debtors were harmed by Mr. Scott's alleged breaches of duties to the Personal-Injury Claimants. Rather, according to the Personal-Injury Claimants, Mr. Scott allegedly directed staffing levels at the facilities and approved budgets for staffing at unreasonably low levels (thereby harming the residents) despite each facility allegedly having

²⁹ *Id.* at 295 n.2.

³⁰ *Id.* at 295.

³¹ *See, e.g.*, Moore Complaint ¶ 5, Scott Ex. 3 ("The causes of action made the basis of this suit arise out of Defendant Thomas D. Scott's breach of duties to manage Bowling Green Nursing and Rehabilitation Center reasonably and in compliance with all applicable federal, state, and local laws, regulations, and codes, and within accepted professional standards and principles."); Purcell Complaint ¶ 5, Scott Ex. 4 ("The causes of action made the basis of this suit arise out of Defendant Thomas D. Scott's breach of duties to manage Cumberland Nursing and Rehabilitation Center reasonably and in compliance with all applicable federal, state, and local laws, regulations, and codes, and within accepted professional standards and principles."); Kellewood Complaint ¶ 6, Scott Ex. 5 (alleging that Mr. Scott is engaged in the business of operating nursing homes and related healthcare facilities and that "[t]he causes of action made the basis of this suit arise out of such business conducted by said Defendant in the operation, and/or control of Nursing Home."); Vasquez Complaint ¶ 6, Scott Ex. 6 (alleging that Mr. Scott is engaged in the business of operating nursing homes and related healthcare facilities and that "[t]he causes of action made the basis of this suit arise out of such business conducted by said Defendant in the operation, and/or control of Nursing Home."); Steinhauser Complaint ¶ 8, Scott Ex. 7 ("The causes of action made the basis of this suit arise out of Defendant Thomas D. Scott's breach of duties to manage Kenwood Health and Rehabilitation Center reasonably and in compliance with all applicable federal, state, and local laws, regulations, and codes, and within accepted professional standards and principles.").

access to sufficient funds to adequately staff such facilities.³² If anything, according to the Personal-Injury Claimants, the alleged understaffing may have benefitted the Debtors by saving them money. Nothing on the face of the Complaints suggests that the Claimants' alleged injuries stem from a depletion of the Debtors' assets or other harm to the Debtors. The claims, therefore, are not derivative claims owned by the Debtors, but instead are direct claims owned by the Personal-Injury Claimants.

Mr. Scott tries to avoid this straightforward conclusion with three arguments. First, he alleges that the Complaints assert classic "undercapitalization" claims that belong to the Debtors' estates. But contrary to Mr. Scott's assertion, the Complaints do not allege that the Debtors were undercapitalized. To the contrary, the Complaints allege that sufficient funds were available to pay for adequate staffing, but that Mr. Scott directed that budgets with insufficient amounts for staffing be approved.³³ This is a subtle distinction but an important one.

Second, Mr. Scott argues that the Complaints assert claims for negligent management of the Debtors' facilities by Mr. Scott. It is true that the Complaints allege that the resident injuries stem from such mismanagement, but the Complaints do not allege that the injuries stem from an *injury* to the debtor (a depletion of estate assets or other harm).³⁴ Moreover, although the LP Debtors are not named as defendants, the Personal-Injury Claimants' theory appears to be that the LP Debtors were also wrongdoers with Mr. Scott and the other defendants. It is thus not surprising

³² See Moore Complaint ¶ 5, Scott Ex. 3 (alleging that Mr. Scott understaffed the Facility despite the existence of funds "to sufficiently staff" the Facility); Purcell Complaint ¶ 5, Scott Ex. 4 (same); Kellewood Complaint ¶ 6, Scott Ex. 5 (same); Vasquez Complaint ¶ 6, Scott Ex. 6 (same); Steinhauser Complaint ¶ 8, Scott Ex. 7 (same).

³³ See note 31.

³⁴ *In re Buccaneer Res., L.L.C.*, 912 F.3d at 294 ("The injury to Burton flowed through Buccaneer's actions . . . but not through an injury to the debtor").

that the Personal-Injury Claimants' alleged injury is not derivative of an injury to the LP Debtors.³⁵ Finally, the Complaints also allege that Mr. Scott, *individually*, owed a personal duty of care directly to each of the residents at the Facilities, and it is this alleged direct duty for which the Personal-Injury Claimants seek to hold Mr. Scott accountable.

The allegations in the Complaint highlight the overlapping facts involving Mr. Scott, the Debtors, and the Personal-Injury Claimants. As noted by the Fifth Circuit, however,

the existence of common parties and shared facts between the bankruptcy and the [creditors'] suit does not necessarily mean that the claims asserted by the [creditors] are property of the estate. Indeed, . . . it is entirely possible for a bankruptcy estate and a creditor to own separate claims against a third party arising out of the same general series of events and broad course of conduct.³⁶

Even if the Debtors owned claims against Mr. Scott for negligent management, the Personal-Injury Claimants are asserting *their own* direct claims against Mr. Scott for their alleged unique injuries that do not stem from a depletion of the respective Debtors' assets or other harm to the Debtors.³⁷

This case is also distinguishable from *Educators Group Health Trust*.³⁸ In *Educators*, prior to filing bankruptcy, the debtor provided health benefits to teachers in several small school districts. Several of the school districts that participated in the trust filed a state-court lawsuit

³⁵ *In re Seven Seas Petroleum, Inc.*, 522 F.3d at 586 (“Although [the debtor] Seven Seas is not named as a defendant, the bondholders’ theory is that Seven Seas itself was a wrongdoer, in conjunction with Chesapeake and Hefner. It is thus not surprising that the injury that this claim alleges is not derivative of an injury to Seven Seas.”).

³⁶ *In re Seven Seas Petroleum, Inc.*, 522 F.3d at 585 (noting that the Fifth Circuit previously found both individual claims and derivative claims arising out of the same transaction in *In re Educators Group Health Trust*, 25 F.3d 1281 (5th Cir. 1994)). See also *In re Buccaneer Res., L.L.C.*, 912 F.3d at 295 (“It may be that Buccaneer was also injured by [secured creditor’s] control of its board . . . but a debtor and creditor can have separate claims arising from the same conduct.”).

³⁷ See *In re Seven Seas Petroleum, Inc.*, 522 F.3d at 586-87 (concluding that unsecured creditors’ state court suit against a secured creditor asserted direct fraud type claims involving misrepresentations to the unsecured creditors—and not derivative claims owned by the debtor—even though the lawsuit also contained related allegations that the secured creditor’s conduct harmed the debtor by affecting the debtor’s ability to pay creditors).

³⁸ *In re Educators Group Health Trust*, 25 F.3d 1281 (5th Cir. 1994).

alleging various causes of action against the principals of the debtor's third-party administrator, including a claim that the defendants negligently managed the debtor, causing the debtor to become insolvent and thus unable to pay the claims of the school districts' employees. That claim, the Fifth Circuit concluded, alleged only derivative harm to the plaintiff school districts (lack of payments due to depletion of the debtor's assets) and thus belonged exclusively to the bankruptcy estate.³⁹ The Personal-Injury Claimants' claims, in contrast, do not stem from an alleged depletion of estate assets and thus are not merely derivative of the Debtors' (now released) claims against Mr. Scott.

Third, Mr. Scott argues that (a) he was *not* involved in the day-to-day operations and management of the LP Debtors, and (b) the Complaints fail to state any legal or factual basis to support the allegation that Mr. Scott, individually, owed a direct duty of care to any of the Personal-Injury Claimants (or the residents they represent). This Court, however, is not tasked with determining the legal and factual merits of the Personal-Injury Claimants' claims against Mr. Scott. The Kentucky and New Mexico courts ultimately will decide the merits.⁴⁰ The Complaints, *even if* factually or legally faulty, do not allege or rely on general harm to the Debtors (through a depletion of assets or otherwise) and are not property of the Debtors' estates.

This Order addresses the *face* of the Complaints, and the face of the Complaints do not assert derivative claims, for the reasons already described. Of course, the Court presumes that the applicable trial courts will be vigilant to ensure that the Personal-Injury Claimants' theories of liability do not expand (through evidence, arguments, or other pleadings) to include the released

³⁹ *Id.* at 1284-85.

⁴⁰ See *In re Seven Seas Petroleum, Inc.*, 522 F.3d at 585 (“[W]hether the claims will ultimately prove to be legally or factually valid is not our concern. The narrow question before us is whether the claims belong to the estate or to the bondholders.”).

Estate Claims against Mr. Scott. If the Personal-Injury Claimants expand their theories of liability in that fashion, the Court retains jurisdiction to hear and determine any disputes about that issue.

V. CONCLUSION

The Scott Settlement Order approved the Scott Settlement Agreement and enjoins all parties from pursuing the released Estate Claims against Mr. Scott, including all of the Debtors' derivative claims. The face of the Complaints, however, do not assert derivative claims or any other Estate Claims that belong to the Debtors. Rather, because the injuries alleged by the Personal-Injury Claimants are unique to the residents of the Facilities and do not stem from a depletion of a Debtor's bankruptcy estate assets or from other harm to the Debtors, such claims are owned by the Personal-Injury Claimants and are not Estate Claims that have been released. Finally, it is up to the Kentucky and New Mexico courts to determine whether the Personal-Injury Claimants have alleged factually or legally valid direct claims against Mr. Scott.

For all of the reasons stated above, the Court **DENIES** the Motion to Enforce.

END OF ORDER

EXHIBIT 1

RELEASE AND SETTLEMENT AGREEMENT

This **RELEASE AND SETTLEMENT AGREEMENT** (this "Agreement") is made and entered into as of the 31st day of July, 2018 (the "Execution Date"), by and between the following parties (each, individually, a "Party" and, collectively, the "Parties"):

- (a) Preferred Care Inc., a Delaware corporation ("PCI"), each of its affiliated limited partnership debtors and debtors in possession set forth on the signature pages to this Agreement (the "Preferred Care Debtors"), and each of their affiliated general partnership debtors and debtors-in-possession set forth on the signature pages to this Agreement (the "GP Debtors" and, together with the Preferred Care Debtors, collectively, the "Company" or the "Debtors"); and
- (b) Thomas Scott, an individual ("Scott").

RECITALS

WHEREAS, Scott is or was an officer, director, partner, manager of, and/or direct or indirect owner of an interest in, each of the Debtors;

WHEREAS, Robert J. Riek, an individual ("Riek"), is or was an officer of PCI and a manager of each of the GP Debtors;

WHEREAS, there are no other officers, directors, or managers of, the Debtors;

WHEREAS, on November 13, 2017 the Preferred Care Debtors commenced chapter 11 cases in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division (the "Bankruptcy Court") by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), which chapter 11 cases are being jointly administered and are captioned *In re Preferred Care Inc., et al.*, Case No. 17-44642 (MXM) (the "Preferred Care Debtors' Cases");

WHEREAS, on November 28, 2017, the Office of the United States Trustee, Region 6, appointed an official committee of unsecured creditors in the Preferred Care Debtors' Cases (the "Committee");

WHEREAS, on July 6, 2018, the GP Debtors commenced chapter 11 cases in the Bankruptcy Court by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code, which chapter 11 cases are being jointly administered with the Preferred Care Debtors' Cases and are captioned *In re Preferred Care Inc., et al.*, Case No. 17-44642 (MXM) (together with the Preferred Care Debtors' Cases, collectively, the "Chapter 11 Cases");

WHEREAS, the Debtors, on their own behalf and on behalf of each of their respective bankruptcy estates (each, an "Estate" and, collectively, the "Estates"), hold, or could potentially assert on behalf of their respective Estates, various claims or causes of action (or potential claims or causes of action) against the Scott Released Parties (as hereinafter defined), including without limitation, (i) any and all claims and causes of action arising under Chapter 5 of the Bankruptcy

Code that could be asserted by or on behalf of any of the Debtors or their respective Estates (collectively, the "Avoidance Actions"), (ii) any and all derivative claims and causes of action that could be asserted by or on behalf of any of the Debtors or their respective Estates (the "Derivative Claims"), and (iii) any and all other potential claims and causes of action against any of the Scott Released Parties that could be asserted by or on behalf of any of the Debtors or their respective Estates (collectively, the "Other Estate Causes of Action" and, together with the Avoidance Actions and Derivative Claims, collectively, the "Estate Claims");

WHEREAS, the Scott Released Parties have denied, and continue to deny, all charges of wrongdoing or liability against them arising out of or in any way related to any of the conduct, statements, acts or omissions alleged, or that could be alleged, in connection with the Estate Claims;

WHEREAS, the Scott Released Parties believe they have meritorious defenses to the Estate Claims, and have also asserted various affirmative claims against the Debtors including, without limitation (i) prepetition unsecured claims, in the aggregate amount of \$16,111,909.59, as set forth in proofs of claim filed by Scott in the Chapter 11 Cases (the "Scott GUC Claims"), and (ii) the postpetition secured and administrative expense claims of FSF DIP, LLC ("FSF DIP") on account of any liability of any of the Debtors or their respective Estates (including the GP Debtors and their Estates) for the Debtors' Back-Up DIP Obligations (as such term is defined in the *Final Order (I) Authorizing Debtors to Obtain Back-Up Secured Postpetition Financing; (II) Granting Liens, Security Interests and Superpriority Administrative Expense Status; and (III) Modifying the Automatic Stay* entered in the Chapter 11 Cases (the "Back-Up DIP Order")) (the "DIP Claims" and, together with the Scott GUC Claims and all other claims for payment Scott could assert against the Debtors' Estates, collectively, the "Scott Claims");

WHEREAS, in order to avoid the substantial costs, risks, and uncertainties of litigation, and the resulting delay of the resolution of the Chapter 11 Cases and distributions to creditors, the Parties to this Agreement desire to fully and finally resolve any potential or actual claims or disputes that the Debtors and the Estates may have against the Scott Released Parties, without any admission of wrongdoing or liability by any Party; and

WHEREAS, the Parties (i) have conducted, and this Agreement is the product of, lengthy, good faith, arm's-length negotiations regarding a comprehensive settlement of the Estate Claims, and (ii) acknowledge that each Party will receive substantial value and benefit if the settlement contained herein is consummated.

AGREEMENT

NOW, THEREFORE, in consideration of the promises, releases, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Party, intending to be legally bound, agrees as follows:

Section 1. Incorporation of Recitals.

The Parties acknowledge and agree that the Recitals set forth above are true and accurate, and incorporate the Recitals into this Agreement as if fully set forth herein.

Section 2. Court Approval; Conditions to Effectiveness.

This Agreement is subject to approval by the Bankruptcy Court. Within three (3) days of final execution of this Agreement by all Parties, the Debtors shall file a motion requesting entry by the Bankruptcy Court of an order, substantially in the form attached hereto as Exhibit A, (a) approving this Agreement under Rule 9019 of the Federal Rules of Bankruptcy Procedure, (b) authorizing the Debtors to enter into and perform their obligations under this Agreement, and (c) granting related relief (the "Settlement Order"). If this Agreement is not approved by the Bankruptcy Court, this Agreement shall be terminated and of no further force or effect, and all Parties shall be released from any further obligations hereunder.

The effective date of this Agreement (the "Settlement Effective Date") shall be the first date upon which all of the following conditions have been satisfied: (a) entry by the Bankruptcy Court of the Settlement Order in substantially the form of Exhibit A attached hereto, which Settlement Order shall contain an injunction provision substantially in the form of Paragraph 5 of Exhibit A hereto; (b) such Settlement Order shall have become a Final Order (as hereinafter defined); and (c) the Settlement Payment (as hereinafter defined) shall have been delivered in accordance with Section 3 of this Agreement. "Final Order" means an order or judgment of the Bankruptcy Court entered by the clerk of the Bankruptcy Court on the docket in the Chapter 11 Cases, which has not been modified, amended, reversed, vacated or stayed and as to which (a) the time to appeal, petition for certiorari, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for certiorari or motion for new trial, reargument or rehearing shall then be pending or (b) if an appeal, writ of certiorari, new trial, reargument or rehearing thereof has been sought, either (i) no stay of such order or judgment shall be in effect, (ii) no motion or application for a stay of such order or judgment shall be filed and pending or such motion or application shall have been denied, or (iii) if a stay of such order or judgment has been granted, then (x) the stay shall have been dissolved or such order or judgment of the Bankruptcy Court shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, reargument or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari or move for a new trial, reargument or rehearing shall have expired, as a result of which such order shall have become final in accordance with Rule 8002 of the Federal Rules of Bankruptcy Procedure; *provided, however* that the possibility of a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Federal Rules of Bankruptcy Procedure, being filed that relates to such order, shall not cause such order not to be a Final Order. The Parties may jointly waive any one or more of the conditions to effectiveness contained herein.

Section 3. Settlement Payment.

For and in consideration of the releases contained herein, and other good and valuable consideration provided by this Agreement, within five (5) business days of the date on which the Settlement Order shall have become a Final Order, Scott shall pay to the Preferred Care Debtors

a settlement payment in the total amount of Four Million United States Dollars and 00/100 Cents (\$4,000,000.00) (the "Settlement Payment") in immediately available funds.

Section 4. Release of Scott Claims.

(a) For and in consideration of the releases contained herein, and other good and valuable consideration provided by this Agreement, effective upon the Settlement Effective Date, Scott shall cause FSF DIP to waive and release its DIP Claims as against the Debtors. For the avoidance of doubt, nothing herein shall be deemed to constitute a waiver of FSF DIP's claims and rights against, including the right to repayment of the allocable share of the Back-Up DIP Obligations from, the non-Debtor Borrowers under the Back-Up DIP Order.

(b) For and in consideration of the releases contained herein, and other good and valuable consideration provided by this Agreement, effective upon the Settlement Effective Date, Scott shall waive and release the Scott GUC Claims in full.

(c) Notwithstanding the occurrence of the Settlement Effective Date and the waiver of the DIP Claims and Scott GUC Claims, as provided herein, Scott shall retain all other claims and defenses, if any, with respect to the Debtors and the Estates.

Section 5. Debtors' Releases.

(a) For and in consideration of the Settlement Payment and other good and valuable consideration provided by this Agreement, effective upon the Settlement Effective Date, each Debtor, on behalf of itself and its Estate and any other person or entity who asserts or may purport to assert any claim or cause of action derivatively, on behalf of, under, or through any of them (collectively, the "Estate Releasing Parties"), does hereby fully and forever release, discharge and acquit (i) Scott, his executors, estates, heirs and assigns; (ii) all affiliates (as defined in the Bankruptcy Code) of Scott who are intended to be third party beneficiaries of this Agreement, (iii) Riek, his executors, estates, heirs and assigns; (iv) Hacienda Care V, L.P., (v) Hacienda Care XXII, L.P.; (vi) Hacienda Care XXIV, L.P.; (vii) PIN Computing Company L.P.; (viii) FSF DIP; and (ix) each of the foregoing's respective current and former partners, agents, officers, directors, managers, employees, representatives, attorneys, successors and predecessors (collectively, the "Scott Released Parties") from any and all Estate Claims that the Estate Releasing Parties ever had, now have or may hereafter have against the Scott Released Parties for, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world through the Settlement Effective Date (the foregoing, collectively, the "Released Claims" and each a "Released Claim"); *provided that* the Estate Releasing Parties do not release, discharge or acquit the Scott Released Parties from any Claim to enforce, or for damages for breach of, this Agreement.

(b) Notwithstanding anything to the contrary in this **Section 5**, the Parties' rights, if any, to access any insurance policies or the proceeds thereof in their respective capacities as insureds thereunder, including, but not limited to, (i) directors' and officers' insurance policies, (ii) employee liability insurance policies, (iii) property, casualty and liability insurance policies and (iv) module and other warranty insurance policies, shall not be affected or diminished by this Agreement (even if claims related thereto are released against the Scott Released Parties

pursuant to this Agreement), and the rights and defenses of all Parties are specifically reserved with respect thereto.

Section 6. Settlement Bar.

Each Debtor, on behalf of itself and its Estate, agrees not to assert any Released Claim against any of the Scott Released Parties in any jurisdiction. If any of the Debtors assert any Released Claim against any of the Scott Released Parties, such Scott Released Parties shall be entitled to recover from the Party bringing the Released Claim all costs and fees, including legal fees, incurred in defending against such released matter and in enforcing its rights under this Agreement. On and after the Settlement Effective Date, all Estate Releasing Parties shall be forever barred and enjoined from (a) asserting against any Scott Released Parties, or (b) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind against any Scott Released Parties on account of or in connection with or with respect to any Released Claim covered by the release contained in Section 5 of this Agreement.

The Parties acknowledge and agree that this Agreement is intended to discharge the Scott Released Parties from all liability to any other person for contribution or indemnity that arises from, relates to, is in any way based upon, or is in any way connected with the Estate Claims released in Section 5 hereof, to the fullest extent authorized under applicable law.

Section 7. Further Assurances.

(a) Each Party agrees to use its reasonable best efforts to take or cause to be taken all actions and to do or cause to be done all things necessary, proper or advisable under applicable laws and regulations to implement and make effective the settlement transactions contemplated by this Agreement. In that regard, each of the Parties agrees that he, she or it shall: (i) seek and support the Bankruptcy Court's entry of the Settlement Order; (ii) agree to incorporate provisions of this Agreement in any Chapter 11 plan filed by the Debtors; and (iii) cooperate in the execution of any documents necessary to ensure timely consummation and execution of the provisions of this Agreement.

(b) The Parties further agree to take whatever steps may be required to ensure the enforceability of this Agreement and the Parties' respective rights and obligations hereunder in any and all relevant jurisdictions.

Section 8. Ownership of Released Claims.

The Debtors represent and warrant that: (a) the Debtors are the holders of the Estate Claims against the Scott Released Parties that are being released hereunder; and (b) the Debtors have not sold, assigned, transferred or otherwise conveyed any such Estate Claims..

Section 9. Representations and Warranties of the Parties.

To induce each other Party to enter into and perform its obligations under this Agreement, each Party, severally but not jointly, represents, warrants and acknowledges, as of the date hereof and as of the Settlement Effective Date, as follows:

(a) Authority. (i) Each entity is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has all the requisite corporate, partnership, limited liability company or other power and authority to execute and deliver this Agreement and perform its obligations under this Agreement, and (ii) the execution, delivery and performance by each person or entity under this Agreement and the other documents and instruments contemplated hereby to which it is contemplated to be a party and the consummation of the transactions contemplated herein and therein, have been duly authorized by all necessary actions on its part, and no other actions or proceedings on its part are necessary to authorize and approve this Agreement.

(b) Validity. This Agreement has been duly executed and delivered by it and constitutes its legal, valid and binding agreement, enforceable against it in accordance with its terms.

(c) No Conflict. The execution, delivery and performance (when such performance is due) of this Agreement by each Party does not and shall not (i) violate any provision of law, rule or regulation applicable to it or any of its subsidiaries or its or their subsidiaries' certificates of incorporation or bylaws or other organizational documents, or (ii) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any material contractual obligations to which it or any of its subsidiaries is a party.

(d) Authorization of Governmental Authorities. No action by (including any authorization, consent or approval), in respect of, or filing with, any governmental authority or regulatory body is required for, or in connection with, the valid and lawful authorization, execution, delivery and performance by it of this Agreement.

(e) No Reliance. It (i) is a sophisticated party with respect to the matters that are the subject of this Agreement, (ii) has been represented and advised by legal counsel in connection with this Agreement, (iii) has adequate information concerning the matters that are the subject of this Agreement, and (iv) has independently and without reliance upon any other Party, or any of its affiliates, or any officer, employee, agent or representative thereof, and based on such information as it has deemed appropriate, made its own analysis and decision to enter into this Agreement, except that it has relied upon each other Party's express representations, warranties and covenants in this Agreement, which it enters, or as to which it acknowledges and agrees, voluntarily and of its own choice and not under coercion or duress.

Section 10. Fair and Reasonable.

The Parties acknowledge and agree that this Agreement is the product of arms' length negotiations, and that it is fair, reasonable, adequate, entered into in good faith, and in the best interest of each of the Parties.

Section 11. Miscellaneous.

(a) Entire Agreement. This Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes and nullifies all prior agreements, oral or written, among the Parties with respect thereto. The Parties each specifically

warrant that this Agreement is executed without reliance upon any statement or representation by any other Party hereto, except as expressly set forth herein.

(b) Binding Agreement. This Agreement shall be binding on the Parties as of the Settlement Effective Date.

(c) Governing Law; Jurisdiction; Waiver of Jury Trial. This Agreement shall be construed and enforced in accordance with, and the rights of the Parties shall be governed by, the laws of the State of Texas (or, as applicable, the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure), without giving effect to the conflict of laws principles thereof. Each Party agrees that it shall bring any action or proceeding in respect of any claim arising out of or related to this Agreement in the Bankruptcy Court and, solely in connection with claims arising under this Agreement: (i) irrevocably submits to the exclusive jurisdiction and the authority of the Bankruptcy Court, (ii) waives any objection to laying venue in any such action or proceeding in the Bankruptcy Court, and (iii) waives any objection that the Bankruptcy Court is an inconvenient forum, does not have jurisdiction over any party, or lacks the constitutional authority to enter final orders in connection with such action or proceeding. Each Party hereby waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal proceeding arising out of, or relating to, this Agreement or the transactions contemplated hereby (whether based on contract, tort or any other theory). Each Party (i) certifies that no representative, agent or attorney of any other Party has represented, expressly or otherwise, that such other Party would not, in the event of litigation, seek to enforce the foregoing waiver, and (ii) acknowledges that it and the other Parties have been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this **Section 11(c)**. It is understood and agreed that money damages may not be a sufficient remedy for any breach or threatened breach of this Agreement and that each Party shall be entitled to seek specific performance and injunctive or other equitable relief as a remedy for any such breach or threatened breach by the other to the extent permitted by law.

(d) Interpretation and Rules of Construction. This Agreement is the product of negotiations among the Parties and in the enforcement or interpretation hereof, is to be interpreted in a neutral manner, and any presumption with regard to interpretation for or against any Party by reason of that Party having drafted or caused to be drafted this Agreement, or any portion hereof, shall not be effective in regard to the interpretation hereof. The Parties were each represented by counsel during the negotiations and drafting of this Agreement and continue to be represented by counsel. In addition, this Agreement shall be interpreted in accordance with section 102 of the Bankruptcy Code.

(e) Section Headings. The headings contained in this Agreement are for convenience and reference purposes only and do form a part of the Agreement and in no way modify, interpret or construe the agreements and understanding of the Parties contained herein.

(f) Settlement Discussions. This Agreement and the transactions contemplated herein are part of a proposed settlement among the Parties. Nothing herein shall be deemed an admission of any kind. To the extent provided by Federal Rule of Evidence 408, and any applicable state or federal rules of evidence, all negotiations relating to this Agreement shall not

be admissible into evidence in any proceeding other than proceedings to approve the Settlement Order or to enforce the terms of this Agreement.

(g) Waiver. Any waiver (express or implied) by any Party of any provision of this Agreement shall not operate as or be construed to be a waiver of any breach of that provision or of any breach of any other provision of this Agreement. The failure of a Party to insist upon strict adherence to any term of this Agreement on one or more occasions will not be considered a waiver or deprive that Party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be in writing.

(h) Severability. If a court of competent jurisdiction holds that any provision of this Agreement is invalid, illegal, or unenforceable, the balance of this Agreement shall remain in effect, and if a court of competent jurisdiction holds that any provision is inapplicable to any Party or circumstance, it shall nevertheless remain applicable to all other Parties and circumstances.

(i) Successors and Assigns; No Third Party Beneficiaries. This Agreement is intended to bind and inure to the benefit of the Parties and their affiliates, successors and permitted assigns, as applicable. Except as otherwise explicitly set forth herein, nothing in this Agreement is intended to benefit or create any right or cause of action in or on behalf of any person other than the Parties (and their affiliated persons and entities who are expressly described as beneficiaries of the releases and settlements set forth herein).

(j) Notices. All notices hereunder shall be deemed given if in writing and delivered, if sent by electronic mail, courier, or registered or certified mail (return receipt requested) to the following addresses (or at such other addresses as shall be specified by like notice):

if to the Debtors, to:

Preferred Care Inc.
5500 W. Plano Parkway, Suite 210
Plano, Texas 75093
Attn: Robert J. Riek

with copies (which shall not constitute notice) to:

Foley Gardere
Foley & Lardner, LLP
2021 McKinney Avenue, Suite 2021
Dallas, Texas 75201
Attn: Stephen A. McCartin

and

Rochelle McCullough
325 North Saint Paul Street
Suite 4500
Dallas, TX 75201

Attn: Edwin Paul Keiffer
Kevin McCullough

if to Scott, to:

Thomas Scott
5500 W. Plano Parkway, Suite 210
Plano, Texas 75093

with copies (which shall not constitute notice) to:

Haynes and Boone, LLP
301 Commerce Street, Suite 2800
Fort Worth, Texas 76102
Attn: Stephen M. Pezanosky

or such other address as may have been furnished by a Party to each of the other Parties by notice given in accordance with the requirements set forth above. Any notice given by delivery, mail, or courier shall be effective when received.

(k) Costs and Expenses. Each Party shall bear its own costs, expenses, and attorneys' fees in connection with the negotiation and execution of this Agreement.

(l) No Admissions. The execution of this Agreement by the Parties shall not be deemed as an admission of liability by any of them with respect to any matter whatsoever, whether raised in the Chapter 11 Cases or otherwise.

(m) Amendments. This Agreement may not be altered, modified or amended in any way except by a writing duly executed by all of the Parties hereto and approved by the Bankruptcy Court.

(n) Execution of Agreement. This Agreement may be executed and delivered in any number of counterparts and by way of electronic signature and delivery, each such counterpart, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same agreement. Each individual executing this Agreement on behalf of a Party has been duly authorized and empowered to execute and deliver this Agreement on behalf of such Party.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first written above.

PREFERRED CARE INC.

By: 

Name:

Title:

Robert J. Riek
Vice President

THOMAS SCOTT, individually

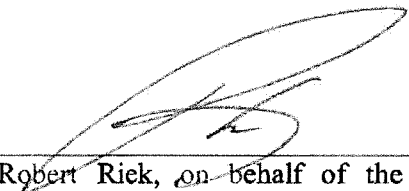
By: 

Thomas Scott

[Signature Page to Scott Settlement Agreement]

GENERAL PARTNERS	LIMITED PARTNERSHIPS
Bowling Green Health Facilities GP, LLC	Bowling Green Health Facilities, L.P.
Brandenburg Health Facilities GP, LLC	Brandenburg Health Facilities, L.P.
Cadiz Health Facilities GP, LLC	Cadiz Health Facilities, L.P.
Campbellsville Health Facilities GP, LLC	Campbellsville Health Facilities, L.P.
Elizabethtown Health Facilities GP, LLC	Elizabethtown Health Facilities, L.P.
Elsmere Health Facilities GP, LLC	Elsmere Health Facilities, L.P.
Fordsville Health Facilities GP, LLC	Fordsville Health Facilities, L.P.
Franklin Health Facilities GP, LLC	Franklin Health Facilities, L.P.
Hardinsburg Health Facilities GP, LLC	Hardinsburg Health Facilities, L.P.
Henderson Health Facilities GP, LLC	Henderson Health Facilities, L.P.
Irvine Health Facilities GP, LLC	Irvine Health Facilities, L.P.
Morganfield Health Facilities GP, LLC	Morganfield Health Facilities, L.P.
Owensboro Health Facilities GP, LLC	Owensboro Health Facilities, L.P.
Paducah Health Facilities GP, LLC	Paducah Health Facilities, L.P.
Pembroke Health Facilities GP, LLC	Pembroke Health Facilities, L.P.
Richmond Health Facilities - Kenwood GP, LLC	Richmond Health Facilities - Kenwood, L.P.
Richmond Health Facilities - Madison GP, LLC	Richmond Health Facilities - Madison, L.P.
Salyersville Health Facilities GP, LLC	Salyersville Health Facilities, L.P.
Somerset Health Facilities GP, LLC	Somerset Health Facilities, L.P.
Springfield Health Facilities GP, LLC	Springfield Health Facilities, L.P.
Stanton Health Facilities GP, LLC	Stanton Health Facilities, L.P.
Artesia Health Facilities GP, LLC	Artesia Health Facilities, L.P.
Bloomfield Health Facilities GP, LLC	Bloomfield Health Facilities, L.P.
Clayton Health Facilities GP, LLC	Clayton Health Facilities, L.P.
Desert Springs Health Facilities GP, LLC	Desert Springs Health Facilities, L.P.

Espanola Health Facilities GP, LLC	Espanola Health Facilities, L.P.
Gallup Health Facilities GP, LLC	Gallup Health Facilities, L.P.
Lordsburg Health Facilities GP, LLC	Lordsburg Health Facilities, L.P.
Pinnacle Health Facilities GP V, LLC	Pinnacle Health Facilities XXXIII, L.P.
Raton Health Facilities GP, LLC	Raton Health Facilities, L.P.
SF Health Facilities GP, LLC	SF Health Facilities, L.P.
Silver City Health Facilities GP, LLC	Silver City Health Facilities, L.P.



Robert Riek, on behalf of the General Partner Entities listed above as Manager of each such General Partner entity, and on behalf of the Limited Partnerships listed above as Manager of each General Partner of such Limited Partnership

EXHIBIT A
Settlement Order

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: PREFERRED CARE INC., et al., <b style="text-align: center;">Debtors.	: : : : : : : : : :	Chapter 11 Case No. 17-44642 (MXM) (Jointly Administered)
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ORDER (I) AUTHORIZING AND APPROVING SCOTT SETTLEMENT AGREEMENT, (II) APPROVING GP DEBTORS' JOINDER THEREIN AND (III) GRANTING RELATED RELIEF

Upon the Motion [Docket No. 702] and the Joinder therein [Docket No. 821] (together, the "**Motions**")¹ of Preferred Care Inc. and its affiliated debtors and debtors in possession (collectively, the "**Debtors**")² identified on the signature pages to the Settlement Agreement (as defined below) for entry of an order, pursuant to sections 105(a) and 363 of title 11 of the United

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motions.

² Lists of the Debtors in these procedurally consolidated chapter 11 cases, along with the last four digits of each Debtor's tax identification number, are attached to the Motions.

States Code (the “**Bankruptcy Code**”), and Rules 6004 and 9019 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) (a) authorizing and approving the Debtors’ entry into (i) that certain Settlement Agreement, dated as of July 31, 2018, by and between the Debtors and Thomas Scott, attached hereto as **Exhibit A** (the “**Settlement Agreement**”), (b) approving the Debtors’ performance of their obligations under the Settlement Agreement, and (c) approving and effectuating the releases provided by the Estate Releasing Parties as and to the full extent set forth in **Section 5** of the Settlement Agreement, effective as of the Settlement Effective Date; and upon consideration of the Motions and all related pleadings, and the argument of the parties and the evidence adduced at the hearing on the Motions held by this Court on July 24, 2018 (the “Hearing”); and due and sufficient notice of the Motions and the Hearing having been given under the circumstances; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by the Motions is in the best interests of the Debtors, their estates, their creditors, their stakeholders, and other parties in interest; and good cause appearing therefor; and based on the Court’s findings of fact and conclusions of law announced on the record on July 26, 2018, which findings of fact and conclusions of law are incorporated herein by reference; it is hereby

FOUND AND DETERMINED THAT:³

A. **Jurisdiction and Venue.** The Court has jurisdiction over the Motions pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of these cases and the Motions in this district is proper under 28 U.S.C. §§ 1408 and 1409.

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

B. **Hearing and Notice.** As evidenced by the certificate of service previously filed with the Court, and based on the representations of counsel at the Hearing, (i) proper, timely, adequate, and sufficient notice of the Motions, the Hearing, and the Settlement Agreement has been provided in accordance with Section 363 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004 and 9006, and the Local Rules of this Court, (ii) such notice was good, sufficient, and appropriate under the circumstances, and (iii) no other or further notice of the Motions, the Hearing, or the Settlement Agreement is or shall be required.

C. **Opportunity to Object.** A fair and reasonable opportunity to object or be heard with respect to the Motions and the relief requested therein has been afforded to all interested persons and entities.

D. **Settlement and Compromise.** As is more specifically described in the recitals to the Settlement Agreement, the Debtors, on their own behalf and on behalf of their respective Estates, believe they have claims against the Scott Released Parties, and the Scott Released Parties believe they have meritorious defenses to the rights and claims of the Debtors and the Estates (collectively, the “**Claims and Defenses**”). The Claims and Defenses include contentions by the Debtors that certain transfers to or for the benefit of certain Scott Released Parties or the value thereof are avoidable by or payable to the Debtors (the “**Potential Avoidance Claims**”), as well as certain other potential claims and causes of action related to Scott’s service as an officer, director and/or owner of an interest in each of the Debtors. The Motions describe, and the Settlement Agreement contemplates, a comprehensive release and settlement of certain of the Claims and Defenses (the “**Compromise and Settlement**”), which are supported by valuable consideration.

E. **Release.** The release of Claims by the Estate Releasing Parties, as and to the fullest extent set forth in the Settlement Agreement (the “**Release**”), is critical to the settlements and compromises thereunder, is supported by fair and reasonable consideration, is in the best interests of the Debtors’ estates, and, accordingly, is hereby approved pursuant to Bankruptcy Rule 9019; provided, however, that such Release is subject to the conditions, limitations, exclusions, and stipulations set forth in the Settlement Agreement in all respects, and shall be effective upon the Settlement Effective Date.

F. **Fair and Equitable/Best Interest.** Approval of the Compromise and Settlement is (i) fair and equitable, (ii) in the best interests of the Estates, and (iii) falls within the reasonable range of litigation possibilities. The balance between the likelihood of the Debtors’ success on the merits after lengthy and costly litigation when compared to the concrete and tangible benefit of the Compromise and Settlement weighs in favor of approval of the Compromise and Settlement. Moreover, it is certain that litigation of the Claims and Defenses (including the Potential Avoidance Claims) would be costly, complex and protracted. The Committee supports the Compromise and Settlement, as modified on the record at the Hearing and as further set forth herein. The Debtors relied on experienced counsel from its professionals and advisors when exercising their business judgment to enter into the Compromise and Settlement.

G. **Arm’s-Length Process.** The negotiation and execution of the Settlement Agreement was at arm’s-length and in good faith, and at all times each of Scott and the Debtors were represented by competent, independent counsel of their choosing.

H. **Legal and Factual Bases.** The legal and factual bases set forth in the Motions and at the Hearing establish just cause for the relief granted herein.

It is therefore ORDERED, ADJUDGED AND DECREED THAT:

1. The Motions are GRANTED to the extent set forth herein.
2. The Compromise and Settlement, including the Settlement Agreement and all of its provisions (including the Release), are hereby approved, and the Release is incorporated fully herein. The Debtors are authorized to enter into, perform their obligations under, and take all other actions to effect the Settlement Agreement pursuant to sections 105 and 363 of the Bankruptcy Code and Bankruptcy Rules 6004 and 9019.
3. This Order, and the Settlement Agreement approved hereunder, shall be binding on all parties in interest in the Debtors' Chapter 11 Cases (including, but not limited to, any subsequently appointed chapter 11 or chapter 7 trustee or any representative of the Debtors' estates appointed pursuant to 11 U.S.C. § 1123) and in each case, on each of their predecessors or successors.
4. The full amount of the Settlement Payment shall be deemed to be allocated to the settlement of the Avoidance Actions. The Debtors shall segregate and hold the Settlement Payment proceeds in a designated account at Wells Fargo Bank, N.A.; provided, however, that such proceeds shall not be subject to Wells Fargo Bank, N.A.'s liens or security interests. The Debtors shall not use or distribute the Settlement Payment proceeds except in accordance with the Approved Budget, as such term is used in the final debtor in possession financing orders entered by the Court at Docket Nos. 414 and 453, or further order of this Court. The Debtors shall reserve \$1,000,000 of the Settlement Payment proceeds to be used last, and only if necessary, for payment of the Estates' administrative expenses (as such may be enhanced by funds from the GP Debtors' estates (discussed below), the "Reserved Funds"). Further, as set forth on the record at the Hearing and as more specifically set forth in paragraph 8 below, any

amounts left in the estates of the GP Debtors, after payment of, or a reserve set up for, all allowed administrative claims for professionals and the noticing agent unique to the GP Debtors, upon confirmation of a chapter 11 plan for those entities (the "GP Debtors Funds") shall be paid over to the estates of the Preferred Care Debtors as part of the overall Settlement, and segregated with the Reserved Funds and shall constitute and become a part of the Reserved Funds; *provided, however,* that the GP Debtor Funds shall not under any circumstances be used to pay any administrative claims or other expenses of the Preferred Care Debtors' estates, and shall only be used to fund distributions to holders of allowed General Unsecured Claims against the Preferred Care Debtors pursuant to a chapter 11 plan. The Reserved Funds (or such part thereof as may be left upon confirmation of a chapter 11 plan) shall be used to fund distributions to holders of allowed general unsecured claims against the Preferred Care Debtors pursuant to a confirmed chapter 11 plan.

5. Effective as of the Settlement Effective Date, all Estate Releasing Parties, and any and all creditors and parties in interest in the Chapter 11 Cases, which have held or asserted, which hold or assert, or which in the future may hold or assert any Released Claim, directly or indirectly, against any of the Scott Released Parties, shall be forever barred and enjoined from (a) asserting against any Scott Released Parties, or (b) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind against any Scott Released Parties on account of or in connection with or with respect to, any Released Claim. Any of the Scott Released Parties may enforce this Order as a defense to any claim or cause of action brought against such Scott Released Party that is enjoined under the Settlement Agreement and this Order as to such Scott Released Party, and may seek to enforce such injunction in a court of competent jurisdiction. The Bankruptcy Court shall retain exclusive

jurisdiction to hear and determine any dispute as to whether any claim asserted against any of the Scott Released Parties constitutes a Released Claim.

6. For the avoidance of doubt and notwithstanding anything to the contrary in this Order or the Settlement Agreement, no creditor or other non-Debtor party shall be barred or enjoined from (a) asserting against any Scott Released Party any claim, liability, obligation or cause of action that (i) is not property of any of the Debtors' estates or derivative of a claim or cause of action that is property of any of the Debtors' estates, (ii) is based on an independent legal duty owed by a Scott Released Party to such creditor or other non-Debtor party, and (iii) may be asserted by such creditor or other non-Debtor party directly against any of the Scott Released Parties under applicable non-bankruptcy law (each, a "**Direct Third Party Claim**"), or (b) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind against any Scott Released Party on account of or in connection with or with respect to any Direct Third Party Claim.

7. Notwithstanding anything to the contrary in this Order or the Settlement Agreement, the rights of the Parties, any other Estate representative, and all other insured persons and entities, if any, to access any insurance policies or the proceeds thereof (the "Policies"), including those under which the Debtors are insured, shall not be affected or diminished by this Order or the Settlement Agreement (even if Claims and Defenses related thereto are otherwise released pursuant to the Settlement Agreement), and the rights and defenses of the Debtors, their Estates, and any representative of the Estates, are reserved with respect thereto.

8. Specifically as to the GP Debtors, the GP Debtors, Scott, the Committee and Wells Fargo and FC Domino agree that, with regard to the accounts receivable due to the GP

Debtors from Pinnacle Health Management, LLC, (“PHM”) after the payment of all allowed administrative expense claims of professionals employed by the GP Debtors as well as allowed administrative expenses of the GP Debtors’ noticing agent, that any amount remaining to be paid by PHM shall be paid by PHM to the Preferred Care Debtors’ estates (as set forth above, such funds defined as the GP Debtors Funds), shall become part of the Reserved Funds, and shall otherwise be subject to, and treated pursuant to, the terms of paragraph 4 above. Wells Fargo has agreed to, and shall, waive any claim, right or entitlement to the GP Debtors Funds. The FSF-DIP’s rights to payment on any claim of any sort, vis-a-vis the GP Debtors, are acknowledged to be waived by FSF. FC Domino acknowledges and agrees that the release of its claims under the terms of its settlement with the Preferred Care Debtors includes the release of all claims against the GP Debtors under the same terms and conditions as such settlement between FC Domino and the Preferred Care Debtors.

9. The Debtors, Scott, and the Committee represent and agree that they will each use their reasonable best efforts to obtain confirmation of a plan of liquidation in the Chapter 11 Cases, rather than a conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code. Further, the Debtors, Scott, and the Committee, and each of their respective counsel, agree to use their reasonable best efforts to minimize administrative expenses in the Chapter 11 Cases so as to maximize the funds potentially available for distribution to general unsecured creditors.

10. For the avoidance of doubt, to the extent the automatic stay provisions of section 362 of the Bankruptcy Code would otherwise apply, such provisions are vacated and modified to effectuate all of the terms of the Settlement Agreement, including to permit the parties thereto to

send any notices contemplated thereunder, or to exercise any right or perform any obligation in accordance with the terms thereof.

11. Any objections to the Motions or the relief requested therein that have not been withdrawn, waived, or settled, including all reservations of rights included therein, are hereby overruled on the merits and denied with prejudice.

12. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

13. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

14. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

15. In the event of any conflict(s) or inconsistency between this Order and the Settlement Agreement, this Order shall govern. To the extent of any conflict or inconsistency between the terms of this Order and the Settlement Agreement, on the one hand, and any plan of reorganization confirmed in these Chapter 11 Cases, on the other hand, the terms of this Order and the Settlement Agreement, as applicable, shall govern.

End of Order

Respectfully submitted by:

/s/ Stephen A. McCartin

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