IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

Drivetrain, LLC, as Litigation Trustee of the Adeptus Litigation Trust, Plaintiff, v. THOMAS S. HALL, TIMOTHY L. FIELDING, GRAHAM B. CHERRINGTON, DANIEL W. ROSENBERG, DANIEL J. HOSLER, STEVEN M. TASLITZ; MERRICK M. ELFMAN; DOUGLAS L. BECKER; ERIC D. BECKER; CHRISTOPHER HOEHN-SARIC; SCP III AIV THREE-FCER CONDUIT, L.P.; SCP III AIV THREE-FCER, L.P.; SC PARTNERS III, L.P.; STERLING FUND MANAGEMENT, LLC and STERLING CAPITAL PARTNERS III, LLC, Defendants.	C.A. No. 2019-____________

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ORIGINAL COMPLAINT

Drivetrain, LLC, as Litigation Trustee (the "Trustee") of the Adeptus Litigation Trust (the "Trust"), which owns causes of action belonging to Adeptus Health Inc. and Adeptus Health LLC, hereby brings this action against: (a) Defendants Thomas S. Hall, Timothy L. Fielding, Graham B. Cherrington, Daniel W. Rosenberg, and Daniel J. Hosler (collectively, the "Insiders"); (b) Defendants SCP III AIV THREE-FCER Conduit, L.P.; SCP III AIV THREE-FCER, L.P.; SC Partners III, L.P.; Sterling Capital Partners III, LLC; and Sterling Fund Management, LLC (collectively, along with other entities related to Sterling Partners, "Sterling"); and (c) Defendants Steven Taslitz, Merrick Elfman, Douglas Becker, Eric Becker, and Christopher Hoehn-Saric (collectively, the "Sterling Principals") and alleges as follows:

NATURE OF ACTION

1. This action arises out of self-dealing, insider trading, and other breaches of the fiduciary duties of loyalty owed by Sterling Partners as a controlling stockholder and by the "yes men" that it installed as officers and directors of Adeptus Health Inc. ("Adeptus").

2. Adeptus was a publicly traded Delaware corporation that was the sole managing member of Adeptus Health LLC, a Delaware limited liability company ("Adeptus LLC"). Adeptus LLC was a holding company for First Choice ER, LLC

("FCER"), founded in 2002. Adeptus, Adeptus LLC, FCER, and related entities (collectively, the "Adeptus Enterprise") operated freestanding emergency room facilities capable of treating patients with injuries serious enough to require treatment in hospital emergency room departments.

3. In 2011, Sterling acquired a 75% stake in FCER with a $57 million capital contribution. Sterling, as the private equity "sponsor" and controller, installed Sterling loyalists as officers and directors of the company. Sterling loyalists included Defendants Thomas S. Hall ("Hall") as CEO and a director, Timothy L. Fielding ("Fielding") as CFO, and Graham B. Cherrington ("Cherrington") as COO (and later President). In addition, Sterling held two board seats, filled by Defendants Daniel W. Rosenberg ("Rosenberg") and Daniel J. Hosler ("Hosler"), who were Sterling principals. Sterling also selected additional directors for the Adeptus Enterprise. Sterling exercised pervasive control over the officers and directors it hand-selected and, in turn, the Adeptus Enterprise throughout the relevant time period.

4. Sterling's core business philosophy and trademarked stated purpose is INSPIRED GROWTH.™ Sterling adhered to that approach upon obtaining control of FCER, and set FCER and the Adeptus Enterprise on an aggressive growth path from 2012 onward.

5. But this rapid growth initiative proved disastrous for the Adeptus Enterprise's bottom line and ultimately led to bankruptcy.

6. As new facilities opened in cities with pre-existing facilities (increasing supply), the number of patients, or "patient volume," at pre-existing facilities declined as the total market of patients was spread more thinly. The same store patient volume declines hurt profitability because the business's cost structure was largely fixed (*i.e*, costs were largely the same regardless of the number of patients treated). As the Adeptus Enterprise added facilities and saw its cost structure increase while same store patient volumes declined, profitability plummeted over time from $3.2 million of net income in 2012, to $3.0 million of net <u>loss</u> in 2013, to $17.3 million of net <u>loss</u> in 2014.

7. By late 2013 and early 2014, it was evident that rapid growth initiatives pursued by Sterling and the Insiders were hurting, not helping, the Adeptus Enterprise's business. Nevertheless, Sterling opted to double-down on its aggressive growth plan in order to procure a short-term exit plan at the long-term expense of the business. By pitching the Adeptus Enterprise as a promising growth company and through financial statement engineering, Sterling and the Insiders were able to take the company public and sell large chunks of their positions in a struggling business before the house of cards they built collapsed.

8. In June 2014, Sterling and the Insiders took the Adeptus Enterprise public, utilizing a complicated structure referred to as an "Up-C" structure at Sterling's urging. Adeptus was the corporate vehicle for the initial public offering (IPO), and Adeptus used the proceeds to purchase membership units ("LLC Units") in Adeptus LLC, the holding company for the business. Sterling selected the Up-C structure for the IPO because it gave rise to hypothetical tax benefits which Sterling could capture in the future under a tax receivable agreement ("TRA"). Sterling's analysis revealed that Up-C IPOs coupled with TRAs are poorly understood by investors, meaning that future payments could be extracted under the TRA without the marketplace appropriately discounting the IPO stock price. Indeed, Sterling joked with Hall that a money laundering scheme portrayed in a television series was merely "almost as effective as an Up-C structure."

9. Following the IPO, Sterling and the Insiders continued to treat Adeptus as a means to their self-enrichment, disregarding their fiduciary duties of loyalty to the company. In particular, Sterling used Adeptus to enhance the liquidity of its investment in the Adeptus Enterprise, which consisted of large holdings of membership units (the "LLC Units") in Adeptus LLC and shares of Adeptus publicly traded stock.

10. Sterling caused Adeptus to pursue three follow-on offerings in May 2015, July 2015, and June 2016 (collectively, the "Offerings") for the sole purpose

of having Adeptus purchase Sterling's and other insiders' LLC Units at grossly inflated prices. Adeptus raised $467.8 million in net proceeds from the Offering. Every penny was transferred to Sterling and other Adeptus insiders in exchange for their LLC Units. In each instance, a majority of Adeptus's board of directors (the "Board") was interested in the transactions. Despite the fact that Sterling, the Insiders, and other directors stood on both sides of the transactions, no special precautions—such as a special committee—were ever utilized. The grossly unfair process resulted in a grossly unfair price. Adeptus paid a weighted average price of $78.07 per unit, when in reality the fair value of LLC Units in Adeptus LLC—a doomed entity—was nearly zero, as evident from Adeptus LLC's bankruptcy filing not long after the Offerings.

11. Sterling, standing on both sides of the transaction as a controlling stockholder, received $325.6 million from selling its LLC Units to Adeptus in connection with the Offerings. In addition, Sterling obtained $240.9 million in net proceeds from selling its Adeptus stock alongside Adeptus in the Offerings. In total, Sterling unloaded 75.9% of its post-IPO holdings in a 13-month period and received more than $566.5 million from the Offerings, almost 10 times its initial equity investment only a few years earlier. Hall, Fielding, and Cherrington cashed out to the tune of $46.5 million, $6.7 million, and $10.7 million, respectively.

12. The amounts received by Sterling and the Insiders constituted obscene windfalls. Just eight months after the last Offering, Adeptus, Adeptus LLC, and the Adeptus Enterprise went bankrupt. The collapse was not the result of unforeseen, intervening circumstances. Rather, financial ruin was the inevitable result of the self-serving scheme pursued by Sterling and the Insiders to unload their interests at maximum short-term profit while imposing crippling long-term cost burdens on the Adeptus Enterprise.

13. In order to promote the growth narrative sold to investors, Sterling and the Insiders caused the Adeptus Enterprise to pursue growth-for-growth's sake even after the IPO. Sterling and Hall controlled the real estate sub-committee of Adeptus's board of directors, and rubber-stamped almost all new facilities submitted for their approval. Sterling and Hall were so focused on growth that they expressly conditioned management bonuses on hitting an arbitrary number of new facility openings. All the while, the Adeptus Enterprise's performance at pre-existing facilities suffered more and more as its markets became over-saturated. Yet, by misleadingly aggregating data and utilizing accounting gimmicks, Sterling and the Insiders were able to positively spin reckless growth—that was slowly killing the business—as a positive.

14. Sterling and the Insiders compounded the business's problems by forcing the Adeptus Enterprise into purported joint ventures with non-profit hospital

systems in which it supposedly contributed dozens of freestanding emergency room facilities to these joint venture entities. In reality, however, the Adeptus Enterprise operated these facilities just as before, using the same personnel, the same FCER bank accounts, and even the same accounting software. But through accounting smoke and mirrors, the joint ventures enabled Adeptus to report earnings—during the time period of the Offerings—hundreds of millions of dollars higher than if its financial statements had reflected reality.

15. In the short-term, Sterling and the Insiders were able to spin their reckless facility expansion and joint venture initiatives with great success, as Adeptus's stock price rocketed 500% higher than the IPO price barely a year after the IPO. Sterling timed the Offerings to coincide with joint venture announcements and misleading earnings releases in order to maximize its self-enrichment. Sterling and the Insiders' greed was palpable. For example, in the lead-up to the May 2015 Offering, Rosenberg wrote in an e-mail to Hall: "Only question is if you want red stripes or blue and yellow on your plane." In discussing the July 2015 Offering, Hall wrote in an e-mail to Rosenberg: "I still haven't received my G200?????"

16. In the long-run, however, the initiatives that helped Sterling and Insiders cash out with windfall returns ultimately killed the Adeptus Enterprise. Reckless growth-for-growth's sake in building new facilities resulted in declining same store patient volumes and declining profitability. At the same time, those

efforts burdened the Adeptus Enterprise with onerous lease obligations that ballooned from $109 million to $832 million in just two years. These lease obligations were kept off-balance sheet through reverse engineered documentation, which Fielding referred to as "an integral component of our strategy." The joint ventures made matters even worse as the Adeptus Enterprise burned cash on money pit hospitals and opened its doors to low-paying—and non-paying—patients without commercial health insurance. Eventually and predictably, these initiatives proved fatal to the company.

17. In late 2016, Adeptus finally disclosed (at least in part) that the reckless growth initiatives that it had pursued were tanking the business. Its stock price plummeted 71% from the October 31, 2016 close to the November 2, 2016 close of $8.60 per share. Subsequent disclosures of joint venture related problems drove the stock price down 57.5% in one day, resulting in a March 2, 2017 closing price of $2.79. Shortly thereafter, Adeptus and Adeptus LLC filed for bankruptcy in April 2017. Adeptus stock and the LLC Units that Adeptus had purchased from Sterling and other insiders at a weighted average price of $78.07 per unit were worthless.

18. In this action, the Trust, as successor-in-interest in Adeptus and Adeptus LLC seeks to hold Sterling and the Insiders accountable for breaching their fiduciary duties of loyalty in operating Adeptus and Adeptus LLC as self-enrichment vehicles for themselves.

JURISDICTION AND VENUE

19. The Trust owns causes of action belonging to: (a) Adeptus, a Delaware corporation, and (b) Adeptus LLC, a Delaware limited liability company. The Trust asserts claims for breach of fiduciary duty of loyalty and for unjust enrichment, and it seeks equitable relief. Thus, this matter falls within the jurisdiction of the Court of Chancery.

20. Article XIII of Adeptus's Amended and Restated Certificate of Incorporation, in effect at the time of the transactions at issue, provides:

> [T]he Court of Chancery of the State of Delaware shall be the sole and exclusive forum for … (b) any action asserting a claim of breach of a fiduciary duty owed by any Director, officer, other employee or agent of the Corporation to the Corporation or the Corporation's stockholders… or (d) any action asserting a claim governed by the internal affairs doctrine.

Article VII of Adeptus's Amended and Restated By-Laws, in effect at the time of the transactions at issue, provides the same.

21. The Court has personal jurisdiction over the Insiders because each of those individuals was a director and/or officer of Adeptus.

22. The Court has personal jurisdiction over Sterling and each of the Sterling-related Defendant entities because each such entity is a Delaware entity.

23. The Court has personal jurisdiction over the Sterling Principals because each of those individuals are managers of Defendant Sterling Capital Partners III, LLC (a Delaware entity) and thus were in a position of control over Adeptus. The

Sterling Principals purposely availed themselves to the State of Delaware with respect to the Offerings and related LLC Unit purchases, as Sterling exercised control over Adeptus and was a controlling stockholder with respect to those transactions. The Sterling Principals were human controllers of Sterling entities (each a Delaware entity) that were controlling stockholders over Adeptus (a Delaware corporation) with respect to those transactions, which form the basis of the claims against the Sterling Principals.

PARTIES

A. PLAINTIFF LITIGATION TRUST

24. The Trustee is a New York limited liability company. The Trustee has standing to pursue this action on behalf of the Trust, which was created pursuant to the bankruptcy court's order confirming the plan of reorganization (the "Plan") in the jointly administered bankruptcy proceeding, *In re ADPT DFW Holdings LLC, et al.*, Case No. 17-31432-SGJ (Bankr. N.D. Tex.) (the "Bankruptcy Case"). Pursuant to the Plan and order confirming the plan,[1] all causes of action that Adeptus, Adeptus LLC, and each of their affiliated debtors held against their former officers, directors,

[1] The Plan and confirmation order are, respectively, Docket Nos. 719 and 821 in the Bankruptcy Case.

and other fiduciaries vested in the Trust. The Trustee was appointed pursuant to the court-approved Litigation Trust Agreement[2] and unanimously confirmed by the Trust's Litigation Oversight Board in February 2018.

25. The Trust owns pre-petition causes of action belonging to Adeptus Health Inc., a Delaware corporation, and to Adeptus Health LLC, a Delaware limited liability company.

B. DEFENDANTS AND OTHER RELEVANT ENTITIES

26. Defendant Thomas S. Hall served as the Adeptus Enterprise's Chief Executive Officer (CEO) from March 2012 until resigning in November 2016. He was also a member of Adeptus's board of directors throughout his tenure at the company.

27. Defendant Timothy L. Fielding served as the Adeptus Enterprise's Chief Financial Officer (CFO) and as its principal accounting officer from January 2013 until announcing his resignation in late July 2016, which became effective in September 2016.

28. Defendant Graham B. Cherrington served as the Adeptus Enterprise's Chief Operating Officer (COO) from May 2012 until December 2016. Cherrington

[2] The court-approved Litigation Trust Agreement is Docket No. 822-1 in the Bankruptcy Case.

also served as the Adeptus Enterprise's President from February 2015 until December 2016.

29. Defendant Daniel W. Rosenberg served as a member of the board of directors of Adeptus and the Adeptus Enterprise from 2011 until the Adeptus Enterprise's bankruptcy filing. Rosenberg served as a Managing Director of Sterling from 2006 throughout the relevant period. At the time of Adeptus's IPO, Rosenberg was also a member of Sterling's Investment Committee and co-headed the firm's healthcare practice. Throughout his tenure as an Adeptus director, Rosenberg was a dual-fiduciary, owing fiduciary duties both to Adeptus and to Sterling.

30. Defendant Daniel J. Hosler served as a member of the board of directors of Adeptus and the Adeptus Enterprise from 2011 until May 29, 2015. Hosler served on Adeptus's audit committee of the board. Hosler also served as a Principal of Sterling from 2011 throughout the relevant period. Previously, Hosler was a Vice President of Sterling from 2006 to 2011. Throughout his tenure as an Adeptus director, Hosler was a dual-fiduciary, owing fiduciary duties both to Adeptus and to Sterling.

31. Sterling Partners is a private equity firm. The following funds and entities which had dealings with the Adeptus Enterprise are affiliated with Sterling Partners (collectively, "Sterling"):

- Sterling Fund Management, LLC;

- Sterling Fund Management Holdings, L.P.;
- Sterling Fund Management Holdings GP, LLC;
- First Choice AIV Holding LLC;
- SCP III AIV THREE-FCER, L.P.;
- SCP III AIV THREE-FCER Blocker, Inc.;
- SCP III AIV THREE-FCER Conduit, L.P.;
- SC Partners III, L.P; and
- Sterling Capital Partners III, LLC.

32. Defendant SCP III AIV THREE-FCER Conduit, L.P. ("Sterling AIV Conduit") is a Delaware limited partnership. Sterling AIV Conduit sold Class A Shares of Adeptus stock in the public offerings described herein.

33. Defendant SCP III AIV THREE-FCER, L.P. ("Sterling AIV") is a Delaware limited partnership. Sterling AIV held Class B shares of Adeptus stock and a corresponding number of LLC Units in Adeptus LLC. Sterling AIV sold LLC Units to Adeptus in connection with the Offerings.

34. Defendant Sterling Capital Partners III, LLC is a Delaware limited liability company, and is the general partner of SC Partners III, L.P.

35. Defendant SC Partners III, L.P. is a Delaware limited partnership, and is the general partner of each of Sterling AIV and Sterling AIV Conduit.

36. Defendant Sterling Fund Management, LLC ("SFM") is a Delaware limited liability company. SFM entered into an Advisory Services Agreement with FCER on or about September 30, 2011. SFM was one of the entities through which Sterling and the Sterling Principals exercised control over FCER and the Adeptus Enterprise in the lead-up to Adeptus's IPO in June 2014. Sterling's Form 4 filings with the SEC acknowledged that SFM "acts as an advisor to [Sterling AIV] and [Sterling AIV Conduit]." Sterling's Form 4 filings also represented that restricted Class A Shares conferred to Rosenberg and Hosler as Adeptus directors were held "for and on behalf of" SFM.

37. Defendant Steven M. Taslitz ("Taslitz") is a manager of Sterling Capital Partners III, LLC. He is a co-founder of Sterling Partners and is its Chairman.

38. Defendant Merrick M. Elfman ("Elfman") is a manager of Sterling Capital Partners III, LLC. He is a Managing Director of Sterling Partners.

39. Defendant Douglas L. Becker ("Douglas Becker") is a manager of Sterling Capital Partners III, LLC. He is a co-founder of Sterling Partners.

40. Defendant Eric D. Becker ("Eric Becker") is a manager of Sterling Capital Partners III, LLC. He is a co-founder of Sterling Partners.

41. Defendant R. Christopher Hoehn-Saric ("Hoehn-Saric") is a manager of Sterling Capital Partners III, LLC. He is a co-founder of Sterling Partners and is a Managing Director.

42. Defendants Taslitz, Elfman, Douglas Becker, Eric Becker, and Hoehn-Saric (together, the "Sterling Principals") are all managers of Sterling Capital Partners III, LLC. Sterling Capital Partners III, LLC is the general partner of SC Partners III, L.P., which is the general partner of the Sterling-affiliated funds that held investments in Adeptus (Sterling AIV and Sterling AIV Conduit). As managers of Capital Partners III, LLC, the Sterling Principals exercised control over Sterling AIV and Sterling AIV Conduit.

43. The Sterling Principals were also managers of Sterling Fund Management Holdings GP, LLC, which was the general partner of Sterling Fund Management Holdings, L.P. SFM is a wholly-owned subsidiary of Sterling Fund Management Holdings, L.P. By virtue of managing Sterling Fund Management Holdings GP, LLC, therefore, the Sterling Principals effectively controlled SFM. Through their control over SFM, the Sterling Principals exercised further influence and control over Adeptus and the Adeptus Enterprise.

44. The Sterling Principals were the ultimate human controllers of Sterling, which was a controlling stockholder of Adeptus with respect to the Offerings and related LLC Unit purchases. Adeptus's registration statement expressly

acknowledged that the Sterling Principals "exercise voting and investment power over shares held by the funds affiliated with Sterling."

FACTUAL BACKGROUND

A. THE ADEPTUS ENTERPRISE'S ORIGINS

1. First Choice Emergency Rooms Develops a Network of Free-Standing Emergency Rooms.

45. First Choice ER, LLC ("FCER") was founded in 2002. FCER operated freestanding emergency rooms in Texas, operating 12 such facilities by the beginning of the next decade.

46. FCER touted its freestanding emergency rooms as a solution to the problems of availability of access and wait times at conventional hospital emergency room (ER) departments. FCER's freestanding emergency rooms were designed to serve as a substitute for hospital ER departments in the supply of emergency care. Specifically, FCER's freestanding emergency room facilities were:

- Staffed and open 24 hours a day, seven days a week with on-site emergency staff, including a physician, at all times;
- Staffed with board-certified physicians;
- Capable of providing rapid radiological services, with in-house diagnostic imaging technology including CT scanners, and ultrasounds; and
- Capable of providing on-site laboratory testing services certified by Clinical Laboratory Improvements Amendments (CLLA) and accredited by the Commission on Office Laboratories Accreditation (COLA).

These features distinguished FCER's freestanding emergency rooms from retail clinics, urgent care centers, and primary care physician's offices normally associated with treatment of patients with low acuity needs (*e.g.,* "common cold," fevers, setting sprains, stitches, etc.).

47. The high-level care provided in FCER's free-standing emergency room facilities came at a correspondingly high cost. Unlike a typical urgent care center, these facilities possessed radiological equipment. FCER's facilities were staffed with board certified E.R. doctors, not physician's assistants. The facilities had capital costs associated with the physical building and procuring real estate in upper middleclass areas of major cities (were large numbers of patients with high-paying commercial health insurance resided). And because FCER's free-standing emergency room facilities were designed to serve as a substitute for hospital emergency rooms, the facilities were staffed 24/7, with corresponding salary costs. Each of these costs were fixed costs that did not depend on the number of patients treated.

48. In contrast, FCER's revenues were prone to fluctuations, and depended on the following variables:

- The number of patients treated, commonly referred to as patient "volume;"
- The severity of the injury for the patient treated, commonly referred to as "acuity," as emergency care is billed at higher rates

for high acuity levels (*e.g.,* head injuries, heart attacks, pulmonary embolism, etc.);

- The source of payment and reimbursement (commercial insurance, self-pay by patients, or reimbursement by a governmental payment program such as Medicare and Medicaid), commonly referred to as "payer mix;" and
- Ability to collect amounts billed to third-party payers and/or patients.

49. Given that its costs were largely fixed, FCER's overall profitability was driven primarily by variables on the revenue side of the ledger. The "patient volume" was the most important predictor of profitability, at least assuming relatively constant acuity levels and payer mixes. To the extent that acuity levels and payer mixes remained constant, declining patient volumes meant declining revenues. And declining revenues necessarily meant sharp declines in profitability because costs did not proportionally drop as the number of patients treated declined.

2. Sterling Obtains Control over FCER.

50. In 2011, certain funds affiliated with Sterling acquired a 75% share in FCER. Sterling's initial capital contribution associated with its interest in FCER was approximately $57 million.

51. Upon Sterling's investment in FCER in 2011, FCER's operating agreement was amended (the "<u>FCER 2011 LLCA</u>"). The FCER 2011 LLCA vested control of the company in its board of directors. Because Sterling held a majority interest in FCER, Sterling was entitled to elect the majority of FCER's directors

under the FCER 2011 LLCA. Rosenberg and Hosler, two Sterling principals, were among the board majority initially selected by Sterling. The directors that Sterling selected served at its discretion, as Sterling, as majority member, had the right under section 5.1(g) of the FCER 2011 LLCA to remove any of the directors it elected "at any time." By virtue of its 75% ownership interest and its ability to designate and remove a majority of directors, Sterling controlled FCER's board and the company.

52. Soon after Sterling seized control of FCER, Sterling brought in new senior officers to further its planned growth initiatives, including Hall as CEO (who Sterling also elected as a director). Sterling brought in Cherrington as FCER's COO in 2012 (and later President) and Fielding as CFO in 2013. Thus, FCER's CEO, COO, and CFO were all individuals with prior connections to Sterling who had been installed by Sterling.

53. Through its majority ownership position, control over the board, and appointment of officers who owed their positions to Sterling, Sterling completely dominated and controlled FCER as its private equity "sponsor." Sterling played an active role in steering the direction of the company, both directly, through FCER's board, and through senior management who were Sterling loyalists (Hall, Fielding, and Cherrington). Sterling was directly involved in preparing financial models for the company, and thus developed a clear understanding on how the key data inputs—

patient volumes, fees per patient/payer mix, and collectability of fees—drove FCER's profitability or lack thereof.

3. Sterling Initiates a Reckless Growth Strategy.

54. Sterling's exit strategy for its investment in FCER was to set FCER on a rapid growth plan, and FCER grew rapidly from 2012 onward to that end. FCER grew from 14 facilities as of the end of 2012, to 26 facilities by the end of 2013, and to 32 facilities by March 31, 2014.

55. Although FCER's rapid growth provided a narrative that Sterling could spin to potential buyers, it proved disastrous for the business itself. The Adeptus Enterprise's profitability plummeted from \$3.2 million of net income in 2012, to \$3.0 million of net <u>loss</u> in 2013, to \$17.3 million of net <u>loss</u> in 2014. Similarly, the Adeptus Enterprise's operating cash flows dropped from \$11.4 million in 2012, to \$6.9 million in 2013, to nearly \$24.7 million in <u>negative</u> operating cash flows (*i.e.*, using cash in operations) in 2014.

56. The Adeptus Enterprise's deepening losses were a function of both: (a) the fixed cost nature of the Adeptus Enterprise's business; and (b) supply and demand market forces. Because of the high fixed costs associated with each free-standing emergency room facility, each facility needed to treat approximately 9-10 patients per day with an average fee of approximately \$1,300 - \$1,500 per patient in order to break even. Even in cities, there is a finite number of people who need

emergency room level treatment, who are willing to opt for a free-standing facility instead of a hospital, and who are able to pay the stiff fees that the Adeptus Enterprise charged (through commercial health insurance or otherwise). The finite number of potential patients was spread more thinly as the Adeptus Enterprise built more facilities (as supply increased), and pre-existing facilities saw declining same store patient volumes. In essence, building new facilities "cannibalized" patient visits from pre-existing facilities as the Adeptus Enterprise over-saturated its market through reckless expansion.

B. THE INITIAL PUBLIC OFFERING OF ADEPTUS STOCK

1. Sterling Pursues an "Up-C" IPO for the Adeptus Enterprise.

57. By late 2013, Sterling and the Insiders knew that cracks were appearing in FCER's business. FCER's legacy facilities were experiencing stagnant or even declining patient volumes (and hence profitability), and ramp-up at newly constructed facilities was not going as well as forecasted. Those problems would have been apparent to a potential buyer through due diligence efforts into facility-by-facility performance data, had Sterling decided to sell its interest in a private transaction to a third-party strategic or institutional investor. Moreover, in any private transaction, a sophisticated buyer would have applied significant liquidity and marketability discounts in valuing Sterling's interest in FCER.

58. In short, Sterling held an illiquid interest in a company experiencing financial problems. By taking FCER public, however, Sterling could overcome the obstacles to profitably exiting its investment. First, Sterling could better control information flow to potential buyers of its interest, *i.e.,* public investors, because investors would only be entitled to information provided in public filings and would not be able to ask for facility-by-facility performance data. Sterling and the Insiders could gloss over many of FCER's problems by aggregating data and spinning an aggressive growth narrative (described below).

59. Second, Sterling could significantly improve the liquidity of its position by tapping into the public markets. The liquidity associated with publicly traded stock and the potential for subsequent follow-on offerings was likely to result in a much higher price for Sterling's interest in FCER than would any private sale of all or part of Sterling's interest.

60. Accordingly, Sterling decided in late 2013 to take FCER's business public in order to facilitate a profitable exit of its investment in the troubled company. In the initial lead-up to a potential initial public offering (IPO) in 2013, Sterling and the Insiders created Adeptus LLC to serve as a holding company to own and operate FCER and its network of freestanding emergency rooms.

61. In February 2014, Sterling and the Insiders began exploring the possibility of structuring the IPO as an "Up-C" offering. Unlike in a conventional

partnership or LLC public offering, an Up-C involves the creation of a new corporation, or "PubCo," to serve as the vehicle for the public offering. Upon raising proceeds through the IPO, the PubCo then contributes those proceeds to obtain membership units in the limited liability company that is the holding company for all operating subsidiaries. The number of shares of stock issued by the PubCo and the number of units in the LLC holding company are kept the same, resulting in theoretical parity of ownership percentages.

62. This transaction structure often gives rise to potential tax savings for the enterprise going public. PubCo's purchase of membership units in the LLC potentially results in a step-up in tax basis of the LLC's assets. That step-up in basis might allow for higher deductions to be taken on amortization of intangible assets such as goodwill. In turn, the enterprise's tax burden could be reduced.

63. The tax benefits obtained as a result of pursuing an Up-C structure are sometimes shared with former owners through a Tax Receivable Agreement (TRA), under which PubCo agrees to make distributions to the former owners in accordance with the TRA in the future as tax benefits are realized. Future taxation issues and TRAs are poorly understood by the investing public, and thus the combination of an Up-C structure coupled with a TRA provides an avenue for private equity funds such as Sterling to extract additional value when taking a company public. Although an Up-C structure for an IPO can be pursued without any TRA, private equity firms

sometimes usurp future tax benefits for themselves by causing the company going public to enter into a TRA in conjunction with the Up-C IPO.

64. Although an Up-C IPO may benefit the company going public, an Up-C IPO when combined with an onerous TRA often does not. Rather, an Up-C coupled with a TRA—depending on the specific terms of the TRA—may be utilized as a means for sophisticated private equity firms like Sterling to utilize information asymmetry to take advantage of public investors that do not understand the arcane tax issues and complicated transaction structures involved.

65. Depending on the circumstances, an Up-C IPO coupled with a TRA operates as a sophisticated scam, albeit a legal one under securities laws if adequately disclosed in PubCo's public filings. For that reason, Up-C structures coupled with TRAs have been widely criticized. For example, a March 13, 2013 *New York Times* article titled "Squeezing Out Cash Long After the I.P.O." noted that:

- An Up-C coupled with the TRA is an "obscure tax strategy [that] is the latest technique that private equity firms are using to extract money from their companies, in this case long after the initial public offering;"
- "[T]he strategy, referred to as a supercharged I.P.O., has proved to be controversial. To some tax experts, the technique amounts to financial engineering, depriving the companies of cash;"
- "Private equity firms view the deals as the 'pearl in the oyster shell,' because the strategy generates valuable tax assets that did not exist or were not usable and converts them into cash;" and

- "[S]ophisticated investors do not necessarily understand the deals," and "the companies are generally on the hook for the cash payments, even if their profits deteriorate."

66. Sterling and the Insiders were aware that the combination of an Up-C structure and a TRA might enable them to extract additional value out of FCER and the Adeptus Enterprise without reducing amounts they received through the IPO.

67. On February 22, 2014, Rosenberg forwarded an internal Sterling e-mail to Hall regarding Up-C structures and tax receivable agreements TRAs. This internal Sterling e-mail addressed stock analyst treatment of a TRA between another company and one of its investors. The e-mail noted that "analyst research reports spent little time or detail discussing the TRAs." The e-mail also included an article on TRAs prepared by lawyers at Wachtell, Lipton, Rosen & Katz ("Wachtell"), and noted: "Per the article, TRAs do not appear to impact valuation at IPO." The upshot of Sterling's analysis was that Sterling could enter into a TRA with Adeptus to extract future payments without public investors comprehending the structure (and lowering the IPO price).

68. The attached Wachtell article—forwarded from Rosenberg to Hall—provided in part:

- "In the IPO market, TRAs do not appear to impact the valuation of a corporation in its IPO, despite shifting value from the corporation to its historic equity owners;"
- "[P]ublic stockholders apparently do not discount the value of a corporation to account fully for future payments to be made

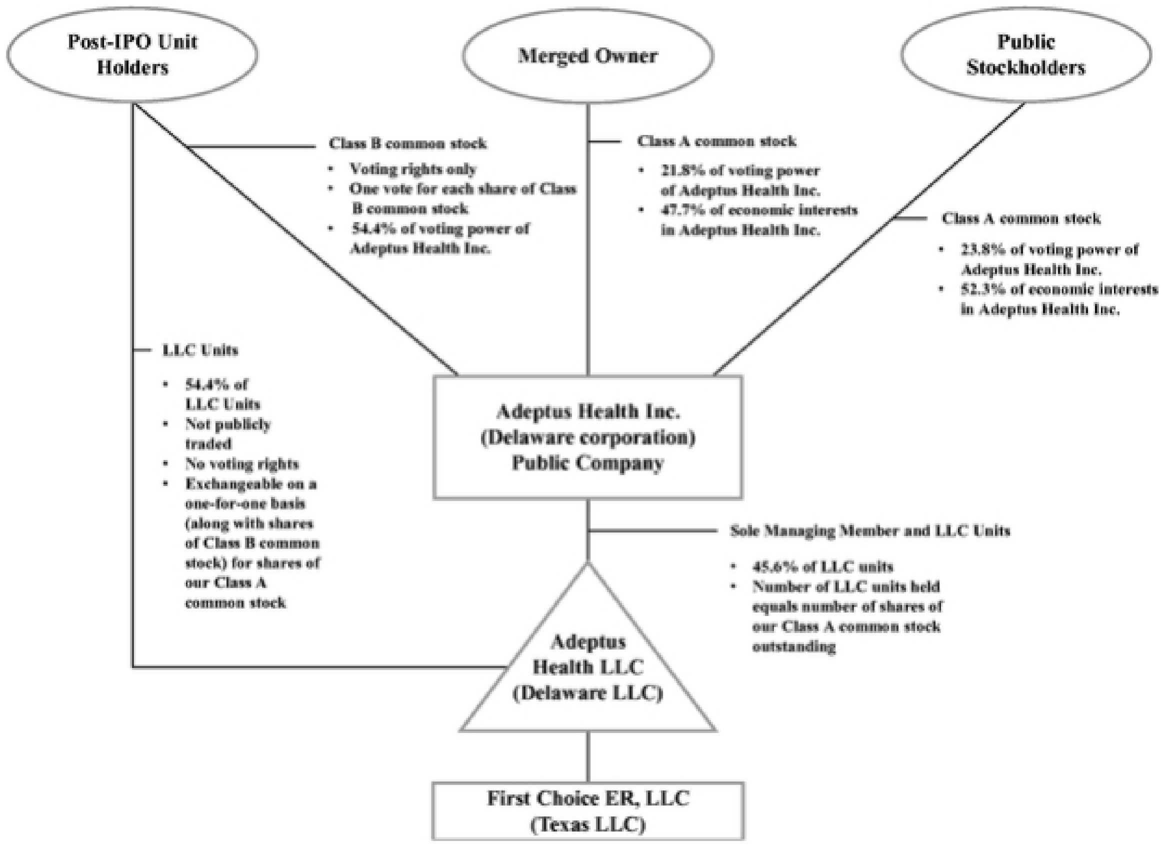
under a TRA," and presumably because "tax attributes, and especially the terms of TRAs, are not fully understood by public stockholders, even though these agreements are publicly disclosed;" and

- "Another reason may be that tax attributes are difficult to value accurately, because any valuation would rely on income projections and other assumptions about the corporation's ability to use the tax attributes in the future."

By February 2014, therefore, Sterling knew that it could potentially extract value from the Adeptus Enterprise through an Up-C coupled with a TRA without investors fully grasping what was happening.

69. On March 7, 2014, Adeptus was incorporated as a Delaware corporation in anticipation of an IPO structured as an "Up-C" transaction. Just four days later, Hall and Rosenberg joked that an Up-C structure was akin to a money laundering scheme. In a March 11, 2014 e-mail to Hall, Rosenberg explained that in the television series *Breaking Bad*, the "Protagonist and his wife bought a car wash as a cover business to launder their methamphetamine cash." Hall responded: "Nice!!!!," to which Rosenberg responded: "Almost as effective as an Up-C structure☺."

70. Ultimately, Sterling caused the Adeptus Enterprise to complete an Up-C IPO coupled with a TRA by entering into a series of interrelated transactions on or about June 24, 2014. Following the IPO and related transactions, the organizational structure of the Adeptus Enterprise was as follows:



Adeptus issued Class A shares of its common stock (the "Class A Shares") in the IPO. Adeptus, Sterling, and other members of Adeptus LLC received membership units in Adeptus LLC, *i.e.* the LLC Units. All operations were conducted through various subsidiaries of FCER, which was still 100% owned by Adeptus LLC.

71. In connection with the Up-C IPO, the limited liability company operating agreement of Adeptus LLC was amended and restated on June 24, 2014 (the "Amended Adeptus LLCA"). The Amended Adeptus LLCA made Adeptus the sole managing member of Adeptus LLC.

72. On June 30, 2014, Adeptus completed its IPO at a price of $22.00 per share and received net proceeds of approximately $108.9 million. Adeptus used the net proceeds from the IPO to make a capital contribution to Adeptus LLC in exchange for newly issued LLC Units, and to purchase pre-existing LLC Units from Sterling, the Insiders, and other members of Adeptus LLC. At the same time, Sterling sold 313,586 Class A Shares for $6.4 million in net proceeds.

2. Sterling's Continued Control Over Adeptus and the Adeptus Enterprise Following the IPO

73. Following the IPO, Sterling held substantial ownership interests in Adeptus, Adeptus LLC, and the Adeptus Enterprise through: (a) Sterling AIV, which held LLC Units in Adeptus LLC and a corresponding number of Class B voting shares of Adeptus stock; and (b) Sterling AIV Conduit, which held Class A Shares. Combined, Sterling's total voting interest in Adeptus after the IPO was approximately 47.0%. Although Sterling's voting interest dropped below 50% following the IPO, its domination and control over Adeptus and the Adeptus Enterprise continued.

74. Adeptus's officers and directors consisted of persons that were Sterling principals and/or had previously been installed by Sterling. Adeptus's and the Adeptus Enterprise's CEO (Hall), CFO (Fielding), and COO (Cherrington) were all individuals that Sterling had previously installed in those positions.

75. Similarly, with one exception, each of Adeptus's directors had been previously elected by Sterling as a FCER director or Adeptus LLC director. At the time Adeptus went public in June 2014, its board consisted of eight directors: Hall, L. Richard Covert, Rosenberg, Gregory W. Scott, Ronald L. Taylor, Jeffery S. Vender, Hosler, and Steven V. Napolitano. Sterling had previously elected six of those individuals as FCER directors:

- Rosenberg and Hosler were Sterling principals, which Sterling designated as FCER directors at the time of Sterling's investment in 2011;
- Sterling elected Vendor as a FCER director in 2011;
- Sterling elected Hall as a FCER director in 2012;
- Sterling elected Taylor as a FCER director in 2012; and
- Sterling elected Scott as a FCER director in 2013.

Sterling also elected those six individuals as Adeptus LLC directors upon finalization of Adeptus LLC's operating agreement dated March 1, 2014 which, like the FCER 2011 LLCA, effectively gave Sterling the power to elect and remove those directors at any time. In April 2014, Sterling elected Napolitano as an Adeptus LLC director. Thus, seven of Adeptus's eight directors were individuals that had been previously elected by Sterling, and which Sterling had the ability to remove at any time prior to the IPO.

76. At the time of the IPO, all of Adeptus's senior officers and seven of its eight directors owed their positions to Sterling. Each adhered to Sterling's directions during the years before the IPO. Those human beings did not fundamentally alter their behavior following the IPO just because Sterling's interest dipped slight below 50%. Rather, Adeptus's officers and directors continued to bend to Sterling's will.

77. Moreover, Sterling exercised control through several special rights over Adeptus that Sterling had obtained in connection with the IPO through a Stockholders Agreement dated June 25, 2014 (the "Stockholders Agreement"). The Stockholders Agreement provided Sterling with express consent rights over:

- The hiring or firing of the CEO;
- Any change of control transaction;
- Any acquisition or divesture of assets for consideration over $50 million; and
- And any "issuance of equity securities by the Company…for an aggregate consideration in excess of $50 million."

In addition, the Stockholders Agreement conferred Sterling with certain board designation rights, proportional to Sterling's remaining beneficial interest (and the right to designate an additional observer if Sterling's designation rights ever fell to just one director).

78. The Stockholders Agreement also conferred Sterling with inside access to Adeptus's books and records and required Adeptus's officers and directors to consult with Sterling over financial and operational matters. Specifically,

- Sterling was entitled to "to review the books and records of the Company or any of such Subsidiaries and to discuss the affairs, finances and condition of the Company or any of such Subsidiaries with the officers of the Company or any such Subsidiary;"

- Adeptus and the Adeptus Enterprise were required to "provide the Sterling Entities, in addition to other information that might be reasonably requested by the Sterling Entities from time to time, (i) direct access to the Company's auditors and officers, (ii) the ability to link Sterling Partners' systems into the Company's general ledger and other systems in order to enable the Sterling Entities to retrieve data on a "real-time" basis, (iii) quarter-end reports, in a format to be prescribed by the Sterling Entities, to be provided within 30 days after the end of each quarter, (iv) copies of all materials provided to the Board (or equivalent governing body) at the same time as provided to the Directors (or their equivalent), (v) access to appropriate officers and Directors of the Company at such times as may be requested by the Sterling Entities, as the case may be, for consultation with each of the Sterling Entities with respect to matters relating to the business and affairs of the Company and its Subsidiaries, (vi) information in advance with respect to any significant corporate actions, including, without limitation, extraordinary dividends, mergers, acquisitions or dispositions of assets, issuances of significant amounts of debt or equity and material amendments to the certificate of incorporation or bylaws of the Company or any of its Subsidiaries, and to provide the Sterling Entities, with the right to consult with the Company and its Subsidiaries with respect to such actions, (vii) flash data, in a format to be prescribed by the Sterling Entities, to be provided within ten days after the end of each quarter and (viii) to the extent otherwise prepared by the Company, operating and capital expenditure budgets and periodic information packages relating to the operations and cash flows of the Company and its Subsidiaries;" and

- Adeptus was required "to consider, in good faith, the recommendations of the Sterling Entities in connection with the matters on which the Company is consulted as described above."

79. Adeptus's public filings acknowledged Sterling's significant control over Adeptus and the Adeptus Enterprise. For example, Adeptus's Form 10-K annual report for the year ended December 31, 2014 included the following disclosures regarding Sterling, described as Adeptus's "Sponsor":

- "As a result of our Sponsor's ownership, our Sponsor may have, through our board of directors, the ability to control decision-making with respect to our business direction and policies;"

- "We have in recent years depended on our relationship with our Sponsor to help guide our business plan. In addition, our Sponsor has the right to designate certain of the members of our board of directors, as well as members of our nominating and corporate governance committee and compensation committee;" and

- "Our Sponsor also has consent rights with respect to certain significant corporate actions, including the hiring and firing of our chief executive officer, any change in control and any significant acquisitions, divestitures and equity issuances. As a result, our Sponsor potentially has the ability to influence or effectively control our decisions to enter into any corporate transaction (and the terms thereof) and the ability to prevent any change in the composition of our board of directors and certain transactions that require stockholder approval regardless of whether others believe that such change or transaction is in our best interests."

(emphasis added). Adeptus's other securities filings contain substantively similar disclosures.

C. THE FOLLOW-ON OFFERINGS OF ADEPTUS STOCK

1. Sterling and Adeptus Insiders Reap More than $630 Million from Offerings and Related Self-Dealing LLC Unit Purchases Over a 13-Month Period.

80. Following the successful IPO, Sterling accelerated its efforts to exit its investment in the Adeptus Enterprise. Within two years of the IPO, Sterling caused Adeptus to pursue three follow-on public offerings of Class A Shares solely in order to have Adeptus use the proceeds from those offerings to purchase LLC Units held by Sterling and Adeptus insiders, including officers and directors.

81. First, on May 11, 2015, Adeptus completed a public offering of 1,572,296 Class A Shares at a price to the public of $63.75 per share (the "May 2015 Offering") and received net proceeds of approximately $94.47 million. Adeptus used all net proceeds from the offering to purchase 1,572,296 LLC Units from Sterling and Adeptus insiders. In addition to the Class A Shares sold by Adeptus, Sterling AIV Conduit sold 842,704 Class A Shares in the May 2015 Offering.

82. Second, on July 29, 2015, Adeptus completed a public offering of 2,645,277 Class A Shares at a price to the public of $105.00 per share (the "July 2015 Offering") and received net proceeds of approximately $265.95 million. Adeptus used all net proceeds from the offering to purchase 2,645,277 LLC Units from Sterling and Adeptus insiders. In addition to the Class A Shares sold by

Adeptus, Sterling AIV Conduit sold 1,264,723 Class A Shares in the July 2015 Offering.

83. Third, on June 8, 2016, Adeptus completed a public offering of 1,774,219 Class A Shares at a price to the public of $62.00 per share (the "June 2016 Offering") and received net proceeds of approximately $107.4 million. Adeptus used all net proceeds from the offering to purchase 1,774,219 LLC Units from Sterling and Adeptus insiders. In addition to the Class A Shares sold by Adeptus, Sterling AIV Conduit sold 1,043,281 Class A Shares in the June 2016 Offering.

84. The Offerings involved self-dealing transactions in which Adeptus fiduciaries (officers, directors, and Sterling as a controlling stockholder) sold LLC Units to Adeptus, which Adeptus acquired with net proceeds obtained through selling stock to public investors. The Adeptus board of directors approved each of these self-dealing transactions through a Unanimous Written Consent of Directors in Lieu of a Meeting, as follows:

- The May 2015 Offering and related LLC Unit purchases were authorized through a written consent dated April 24, 2015 (the "April 2015 Written Consent");
- The July 2015 Offering and related LLC Unit purchases were authorized through a written consent dated July 22, 2015 (the "July 2015 Written Consent"); and
- The June 2016 Offering and related LLC Unit purchases were authorized through a written consent dated May 27, 2016 (the "May 2016 Written Consent").

(collectively, the "Written Consents").

85. The Written Consents were materially the same for each of the Offerings, and contained resolutions authorizing the issuance of shares and authorizing transactions ancillary to the Offerings. Each of the Written Consents also authorized Adeptus's purchase of LLC Units from Sterling and the Insiders through the following, one-sentence resolution:

> **RESOLVED**, that the company is authorized to purchase limited liability company units of Adeptus Health LLC (the "LLC Units"), a Delaware limited liability company, including from an affiliate of Sterling Partners and the Company's directors and officers, in each case as described in the Registration Statement.

On their face, therefore, the Written Consents expressly contemplated self-dealing transactions in which Adeptus would purchase LLC Units from Sterling and Adeptus's directors and officers.

86. Despite the clear self-dealing involved, no disinterested majority of the Adeptus Board approved any of the Offerings and related LLC Unit purchases.

87. At the time of the May 2015 Offering, Adeptus's Board consisted of Hall, Covert, Rosenberg, Scott, Taylor, Vender, Hosler, and Napolitano. Seven of those eight directors were interested in the May 2015 Offering and related LLC Unit purchases. Specifically:

- Hall sold 114,000 LLC Units to Adeptus for approximately $6.8 million in connection with the May 2015 Offering;

- Covert sold 100,000 LLC Units to Adeptus for approximately $6.0 million in connection with the May 2015 Offering;

- Rosenberg was a dual-fiduciary as both an Adeptus director and a principal of Sterling. Sterling sold 1,132,475 LLC Units to Adeptus for approximately $68.0 million in connection with the May 2015 Offering;

- Scott sold 2,500 LLC Units to Adeptus for more than $150,000 in connection with the May 2015 Offering;

- Taylor sold 12,000 LLC Units to Adeptus for more than $721,000 in connection with the May 2015 Offering;

- Vender sold 10,224 LLC Units to Adeptus for more than $614,000 in connection with the May 2015 Offering; and

- Hosler was a dual-fiduciary as both an Adeptus director and a principal of Sterling. Sterling sold 1,132,475 LLC Units to Adeptus for approximately $68.0 million in connection with the May 2015 Offering.

Five of Adeptus's eight directors (Hall, Covert, Scott, Taylor, and Vender) directly stood on both sides of the transactions and obtained substantial sums in selling LLC Units to Adeptus in connection with the May 2015 Offering. And two additional directors (Hosler and Rosenberg) were dual-fiduciaries for Sterling, which received over $68.0 million in selling LLC Units to Adeptus in connection with May 2015 Offering. The remaining director, Napolitano, was not entirely independent as his firm, DLA Piper, earned fees as a result of Adeptus's pursuit of the May 2015 Offering.

88. Not long after the May 2015 Offering, Hosler resigned on May 29, 2015, and was replaced by Stephen M. Mengert on June 15, 2015. At the time of

the July 2015 Offering, Adeptus's board consisted of Hall, Covert, Rosenberg, Scott, Taylor, Vender, Mengert, and Napolitano. Six of those eight directors were interested in the July 2015 Offering and related LLC Unit purchases. Specifically:

- Hall sold 268,116 LLC Units to Adeptus for nearly $27.0 million in connection with the July 2015 Offering;
- Covert sold 200,000 LLC Units to Adeptus for more than $20.1 million in connection with the July 2015 Offering;
- Rosenberg was a dual-fiduciary as both an Adeptus director and a principal of Sterling. Sterling sold 1,711,651 LLC Units to Adeptus for more than $172.0 million in connection with the July 2015 Offering;
- Scott sold 11,566 LLC Units to Adeptus for nearly $1.2 million in connection with the July 2015 Offering;
- Taylor sold 17,000 LLC Units to Adeptus for more than $1.7 million in connection with the July 2015 Offering; and
- Vender sold 18,610 LLC Units to Adeptus for nearly $1.9 million in connection with the July 2015 Offering.

Five of Adeptus's eight directors (Hall, Covert, Scott, Taylor, and Vender) directly stood on both sides of the transaction and received millions of dollars in selling LLC Units to Adeptus in connection with the July 2015 Offering. Rosenberg was a dual-fiduciary for Sterling, which received over $172.0 million in selling LLC Units to Adeptus in connection with July 2015 Offering. Of the remaining two directors, Napolitano was not entirely independent because his firm, DLA Piper, earned fees in connection with the July 2015 Offering.

89. At the time of the June 2016 Offering, Adeptus's board consisted of Hall, Covert, Rosenberg, Scott, Taylor, Vender, Mengert, and Napolitano. Five of those eight directors were interested in the June 2016 Offering and related LLC Unit purchases at the time of the May 2016 Written Consent authorizing those transactions. Specifically, four directors (Hall, Covert, Taylor, and Vender) planned to sell in the offering according to a prospectus filed June 1, 2016, and a fifth director, Rosenberg, remained a dual-fiduciary as both an Adeptus director and Sterling principal. Ultimately, four of Adeptus's eight directors were interested in the transactions that closed in connection with the June 2016 Offering. Specifically:

- Hall sold 209,092 LLC Units to Adeptus for more than $12.6 million in connection with the June 2016 Offering;
- Rosenberg was a dual-fiduciary as both an Adeptus director and a principal of Sterling. Sterling sold 1,411,955 LLC Units to Adeptus for nearly $85.5 million in connection with the June 2016 Offering;
- Taylor sold 18,918 LLC Units to Adeptus for more than $1.1 million in connection with the June 2016 Offering; and
- Vender sold 5,000 LLC Units to Adeptus for more than $300,000 in connection with the June 2016 Offering.

Three directors (Hall, Taylor, and Vender) directly stood on both sides of the transaction by selling LLC Units to Adeptus for substantial sums in connection with the June 2016 Offering. Rosenberg was a dual-fiduciary for Sterling, which received nearly $85.5 million in selling LLC Units to Adeptus in connection with June 2016

Offering. Of the remaining directors, Napolitano was not entirely independent because his firm, DLA Piper, earned fees in connection with the June 2016 Offering.

90. Accordingly, each of the Offerings and related LLC Unit purchases involved self-dealing transactions that were approved by less than a majority of independent, non-interested directors. Moreover, each of those transactions involved self-dealing transactions with a controlling stockholder, Sterling.

91. These self-dealing transactions served no purpose other than to line Sterling's pockets and those of the selling Adeptus insiders. In the aggregate, Adeptus received total net proceeds of approximately $467.8 million from the Offerings, as follows:

	Shares	**Price**	**Net Proceeds**
May 2015 Offering	1,572,296	$63.75	$94.47 million
July 2015 Offering	2,645,277	$105.00	$265.95 million
June 2016 Offering	1,774,219	$62.00	$107.39 million
			$467.81 million

Adeptus did not keep one cent of those net proceeds, instead using all proceeds to purchase the LLC Units of Sterling and the other selling fiduciaries, including Hall, Fielding, and Cherrington. Hall, Fielding, and Cherrington received the following amounts from Adeptus in exchange for their LLC Units:

	Hall	**Fielding**	**Cherrington**
May 2015 Offering	$6.85 million	$1.08 million	$1.20 million
July 2015 Offering	$26.96 million	$4.23 million	$6.68 million

June 2016 Offering	$12.66 million	$1.42 million	$2.86 million
TOTALS	**$46.46 million**	**$6.73 million**	**$10.74 million**

92. Sterling similarly received a massive windfall. Adeptus transferred over $325 million of the net proceeds that Adeptus received in connection with the Offerings to Sterling in exchange for Sterling's LLC Units, as follows:

	LLC Units	**Net Proceeds**
May 2015 Offering	1,132,475	$68.04 million
July 2015 Offering	1,711,651	$172.09 million
June 2016 Offering	1,411,955	$85.46 million
TOTALS	4,256,082	**$325.59 million**

In addition, Sterling AIV Conduit received the following proceeds in connection with its direct sales of Class A Shares through the Offerings:

	Shares	**Price**	**Net Proceeds**
May 2015 Offering	842,704	$63.75	$50.63 million
July 2015 Offering	1,264,723	$105.00	$127.15 million
June 2016 Offering	1,043,281	$62.00	$63.15 million
			$240.93 million

In total, Sterling received over $566.5 million. Sterling unloaded over 75.9% of its post-IPO holdings through those transactions, which occurred during a 13-month stretch less than two years before Adeptus's bankruptcy filing.

93. Sterling's receipt of $566.5 million through the Offerings represented a windfall of nearly 10 times its initial equity investment of only $57 million. Moreover, Sterling had previously received: (a) more than $15 million in net proceeds in connection with the IPO; and (b) a purported "dividend" in the amount

of $60 million (made on June 24, 2014 with proceeds borrowed on June 11, 2014). In the aggregate, Sterling extracted over $641.5 million from a business that lost money and that Sterling and the Insiders steered into bankruptcy.

2. Sterling Exercises Control Over Adeptus and the Adeptus Board With Respect to the Offerings and LLC Unit Purchases.

94. Sterling was able to reap a half-billion-dollar windfall by exercising control over Adeptus and its Board with respect to the Offerings and related LLC Unit Purchases. Although Sterling held less than a 50% interest in Adeptus, Sterling exercised actual control over both Adeptus and the Board with respect to those transactions and was thus a controlling stockholder.

95. Sterling enjoyed pervasive influence over Adeptus and the Board as a result of Sterling's historical role as private equity "sponsor" from 2011 onward. Prior to Adeptus's IPO in June 2014, Sterling had been a 75% owner that had installed key Adeptus management (Hall as CEO, Fielding as CFO, and Cherrington as COO/President). Before the IPO, Sterling also held two board seats (occupied by Rosenberg and Hosler), and had selected most of Adeptus's other directors, as alleged above. Prior to the IPO, therefore, Sterling dominated and controlled the Adeptus Enterprise. And Sterling drove the decision to pursue an Up-C structure for Adeptus's IPO in the first place.

96. Although Sterling's interest in the company effectively dropped to 47.0% following the IPO, Sterling continued to occupy the same position of *de facto*

control over Adeptus as it had before as a dominant, private equity "sponsor." Sterling still held sizeable combined voting power interests of 47.0%, 37.5%, and 22.9% as of the May 2015 Offering, July 2015 Offering, and June 2016 Offering, respectively. Sterling retained special control rights over Adeptus that gave it further outsized influence, as described above. Moreover, the human relationships between Sterling personnel and Adeptus's management and Board did not change following the IPO, and the Board and senior officers continued to defer to Sterling. The Board willfully deferred to Sterling's wishes with respect to the Offerings and related LLC Unit purchase, offering no resistance. Indeed, the Board merely rubber-stamped the Written Consents and subsequent pricing resolutions placed before them with minimal notice.

97. Sterling's ability to control and dominate all material aspects of the Offerings was enhanced by its erroneous assertion of rights under a Registration Rights Agreement dated June 25, 2014 (the "Registration Rights Agreement") entered into in connection with the IPO. Under the Registration Rights Agreement, Sterling had certain rights to request that Adeptus register Adeptus Class A Shares held by Sterling for *sale by Sterling* in a conventional secondary offering. But the Registration Rights Agreement did not give Sterling any right to demand that Adeptus issue Class A Shares in follow-on offerings and then use the proceeds to purchase LLC Units from Sterling.

98. Even though Sterling had no contractual rights under the Registration Rights Agreement (or otherwise) to demand that Adeptus pursue the Offerings in order to obtain proceeds to purchase Sterling's LLC Units, Sterling acted as if it did. Adeptus's compliant management and Board, chalk full of Sterling loyalists, then yielded to Sterling's wishes without realizing or stopping to consider that Sterling had no right to dictate the transactions that Adeptus pursued.

99. In particular, Sterling decided the timing of each Offering with no prior Board discussion or authorization. The Board was not even informed of the Offerings until Rosenberg personally discussed the Offerings with individual directors and/or Sterling instructed Adeptus's in-house general counsel, Tim Mueller, to transmit written consents authorizing the transactions for Board approval. Indeed, the timeline for each of the Offerings reveals that Sterling controlled Adeptus's general counsel and information flow to the Board.

100. On April 16, 2015, Rosenberg e-mailed Sterling's general counsel (Avi Epstein), Fielding, and Hall to arrange an organizational call the next day with lawyers, investment bankers, accountants, and others in order to discuss an offering. Epstein replied, indicating that he had already "called Joe [Kaufman] at Simpson [Thacher] so they are aware and ready." The call proceeded on April 17, 2015, without the prior knowledge or approval of the Board.

101. On April 22, 2015, Adeptus's in-house counsel, Tim Mueller, e-mailed Rosenberg, indicating that Adeptus needed to have "Board resolutions in hand" by Friday, April 24, 2015 if the May 2015 Offering was to proceed on Sterling's desired schedule. Mueller noted that Adeptus vice chairman of the Board "Rick [Covert] is not yet aware of the secondary," and asked Rosenberg: "How would you like us to proceed with regard to distributing documents for signature tomorrow – in particular to Rick?" In other words, Rosenberg and Sterling were driving the process to such an extent that Adeptus's vice chairman of the Board was not even aware of the transactions, and Adeptus's general counsel asked Rosenberg and Sterling for their instruction on when to circulate the written consent authorizing the transactions to the Board.

102. In response to Mueller's e-mail, Rosenberg replied: "I will reach out to him…Please confirm with me that I have reached him before you send this out." Mueller adhered to Rosenberg's instructions and did not transmit the written consent to the Board, awaiting the go ahead from Rosenberg.

103. The next day, April 23, 2015, Rosenberg e-mailed Mueller, writing: "I connected with Rick [Covert] last night, so I have now spoken with all board members about the secondary." Rosenberg similarly e-mailed Hall, writing: "I connection with Rick [Covert] last night and told him about the offering as he needs to sign the board consent."

104. After Rosenberg and Sterling gave permission, Mueller finally transmitted the written consent for the May 2015 Offering to the Board on April 23, 2015. In his cover e-mail, Mueller wrote: "We will need these signatures by tomorrow." The April 2015 Written Consent authorizing the Offering and LLC Unit purchases was dated the very next day, April 24, 2015. The Board signed the April 2015 Written Consent on short notice and with no substantive discussion.

105. The same scenario occurred in connection with the July 2015 Offering. In early July 2015, Adeptus was in the process of preparing a shelf registration statement that would cover any Class A Shares obtained by certain of Adeptus LLC's members through exchanges of a member's LLC Units (and Class B shares) for Class A Shares. Nevertheless, Sterling decided to push for another Adeptus follow-on offering in which Adeptus would obtain proceeds to purchase Sterling's LLC Units directly from Sterling.

106. On July 2, 2015, Sterling—namely, Steven Taslitz and Rosenberg—privately met with Adeptus's lead investment banker, Goldman Sachs, to address sizing and timing of another offering. Goldman Sachs subsequently informed Hall to bring him up to speed on the Sterling-driven discussions for the next offering.

107. On July 15, 2015, Mueller e-mailed Rosenberg, indicating that Adeptus needed to obtained Board approval for both the contemplated offering and the shelf registration filing. Mueller proposed including resolutions for both registrations in

a combined written consent. Mueller's e-mail to Rosenberg also included the following draft e-mail to send to the Board:

> Directors,
>
> As you are aware, the company is preparing to file a shelf registration on July 20th as required by the Registration Rights Agreement. In addition to the planned shelf registration filing, the company is now in receipt of a Demand Notice from Sterling Partners relating to another secondary offering with a target pricing date of July 30th. Attached for your review is the current draft of the Board consent approving both the shelf registration and the secondary offering, as well as a separate .pdf document that consolidates the signature pages for the Board consent and the secondary offering. Please execute the combined signature page attachment and return it to my attention in electronic form. We will need these signature by Friday, July 17th in order to stay on the planned filing schedule.

Mueller asked Rosenberg to: "please confirm that my draft email to the directors … is acceptable…If you approve I will send out the email later today." Once again, therefore, Adeptus's general counsel deferred to Sterling on when to even inform the Board of a transaction in which Adeptus was to offer its own shares to purchase LLC Units from Sterling (not a conventional secondary offering).

108. Later that day, Rosenberg responded to Mueller's e-mail, writing "I would prefer to separate the resolutions, seeking board approval for the [shelf] registration now, but waiting on the resolution for the secondary until it is more imminent." Mueller replied: "Understood. I'll revise the document accordingly." Mueller then obeyed Rosenberg's instructions, modifying the written consent to address only the shelf registration and transmitting the modified written consent to

the Board the next day, July 16, 2015. The July 2015 Written Consent was not finalized until nearly a week later, and it was dated July 22, 2015.

109. Sterling dictated the timing and information flow to the Board yet again in connection with the June 2016 Offering. On April 24, 2016, Rosenberg e-mailed Hall, writing: "Starting to pull together the timeline for the secondary…do you know when the 10Q will be filed[?]…[W]e should decide when to let Rick [Covert] and the board know about the secondary. Let's put together the timeline first and then you and I can decide when and how to best communicate with everyone." The next day, Sterling's general counsel (Avi Epstein) e-mailed Hall, Cherrington, Rosenberg, and Simpson Thacher to "schedule a call to discuss a prospective sale of [A] shares of existing ADPT shareholders…there are a couple of items that may drive both timing and what must be disclosed as part of that process." Yet again, Sterling and Simpson Thacher proceeded forward to prepare for an offering involving Adeptus's issuance of shares without the Board's prior knowledge or approval.

110. On May 26, 2016, Mueller provided Rosenberg with a list of documents that "will ultimately need to be signed by the directors in relation to the offering," including a written consent of the Board to authorize the June 2016 Offering and LLC Unit purchases. The next day, Mueller followed up with Rosenberg, writing: "I'm checking to see if you have spoken with the Directors about the offering. I'm

working with Simpson to pull the necessary documents together, but we should have everything ready to go out by midday. Let me know when I have the green light." Yet again, Adeptus's general counsel deferred to Sterling before sending documents authorizing the offering to the Board.

111. Rosenberg responded on May 27, 2016, indicating that he would send an e-mail to the Board instead. Later that date, Rosenberg e-mailed the Board, writing:

> Wanted to give everyone a heads up that we (Sterling) have exercised one of our rights to conduct a secondary offering as we continue to seek liquidity from our investment. The company is planning to announce the offering on Tuesday after the close of trading… As in the two previous secondary offerings, you are all more than welcome to participate in the offering, and to [] that end, please let [Hall], Tim Mueller and me know your level of interest. [Mueller] will also be circulating some documents for Board approval and signature.

Thus, Sterling acted as if it had a right to dictate the June 2016 Offering, even though it had no right whatsoever to demand that Adeptus issue stock in order to purchase LLC Units from Sterling.

112. Later that day, a Friday before Memorial Day, Mueller e-mailed the Board to transmit the May 2016 Written Consent. Mueller instructed the Board "to execute the signature page and return an electronic copy to my attention as soon as possible, but no later than Monday." The May 2016 Written Consent authorizing the June 2016 Offering and LLC Unit purchases was dated that same day, and the Board signed that written consent with no discussion or deliberation.

113. Thus, for each of the Offerings, Sterling determined both the timing of the Offerings and when the Board was to even learn about the Offerings in the first place. Adeptus's in-house counsel, Tim Mueller, did not even transmit the Written Consents to the Board until Sterling gave the green light for him to do so. And each of those Written Consents were provided to the Board with minimal advance notice, leading to Board rubber-stamping and no substantive Board discussion.

114. Sterling couched its control over Adeptus with respect to the Offerings and LLC Unit purchases as if Sterling had some authority under the Registration Rights Agreement to demand the transactions. But Sterling had no right under the Registration Rights Agreement to demand that Adeptus pursue Offerings in which Adeptus would issue Class A Shares in order to purchase LLC Units from Sterling. Rather, Sterling's rights were limited to demands that Adeptus register Class A Shares held by Sterling for *sale by Sterling*.

115. Moreover, Sterling did not even have a right to demand registration of Class A Shares held by Sterling for sale by Sterling in connection with the July 2015 Offering. Specifically, Sterling's demand registration rights were set forth in section 2(a) of the Registration Rights Agreement. But section 2(a) also expressly provided that Adeptus "shall not be obligated to effect more than one such Demand Registration in any 180-day period," absent Board consent. Because the July 2015 Offering was within 180 days of the May 2015 Offering, Sterling had no absolute

right to even have Class A Shares held by Sterling registered for sale by Sterling in the July 2015 Offering. Yet Sterling and Adeptus's general counsel acted as if the Board had no choice, asking the Board to merely rubber stamp the written consent authorizing the transactions even though: (a) Sterling had no right to demand that Adeptus issue shares to purchase LLC Units; and (b) Sterling could not even require Adeptus to register Class A Shares held by Sterling for sale by Sterling.

116. Sterling's complete control over Adeptus and the Board with respect to each of the Offerings and related LLC Unit purchases was also evident in other respects.

117. First, Sterling dictated the timing of the Offerings and LLC Unit Purchases in order to maximize its windfall. The Offerings were timed to correspond to Adeptus's announcements of entries into joint ventures and misleading earnings reports, both of which drove the price higher. Specifically:

- The written consent authorizing the May 2015 Offering was dated April 24, 2015. Adeptus: (a) announced entry into a new joint venture in Colorado on April 21, 2015; and (b) reported earnings and raised guidance on April 23, 2015;
- The written consent authorizing the July 2015 Offering was dated July 22, 2015. Adeptus reported earnings and raised guidance on July 23, 2015; and
- The written consent authorizing the June 2016 Offering was dated May 27, 2016. Adeptus: (a) announced entry into a new joint venture in Texas on May 11, 2016; and (b) raised full year guidance on June 1, 2016.

As described below, (a) the hospital initiatives and related joint ventures were disastrous for Adeptus; and (b) and Adeptus's earnings reports and guidance were fundamentally misleading and artificially inflated Adeptus's stock price in the short term. The inflated price for the Offerings did not benefit Adeptus, but only Sterling and Adeptus insiders because *all* net proceeds Adeptus received were used to purchase their LLC Units.

118. Sterling and Hall were well aware of the windfalls that they would receive by timing the Offerings to maximize their enrichment. Indeed, Sterling and Hall joked about private jets in the midst of the Offerings. For example:

- On May 3, 2015, Hall and Rosenberg exchanged e-mails in advance of an investor road show for the May 2015 Offering, with Rosenberg writing: "No doubt in my mind that it will be a successful trip. Only question is if you want red stripes or blue and yellow on your plane."

- Hall and Steven Taslitz exchanged e-mails on May 6, 2015 over an internal Sterling bet regarding the May 2015 Offering. Hall wrote: "[W]e busted some serious ass on the road this week but unfortunately came up a little short. As I tell my guys all the time 'It's all About the numbers'." Taslitz responded that losing the bet is "going to cause me to cut back on the quality of the champa[gne] we serve on the plane. A hardship that will take time for us all to come to grips with…[L]et[']s net 80 on the next secondary;" and

- In the lead-up to the July 2015 Offering, Rosenberg and Hall exchange e-mails about keeping Adeptus's stock price over $100, with Hall writing in a July 13, 2015 e-mail: "I still haven't received my G200?????"

Sterling and Hall were preoccupied with maximizing their returns, paying no attention to the fiduciary duties they owed Adeptus and to whether the Offerings and LLC Unit purchases were in Adeptus's best interests.

119. Second, Sterling directly and indirectly—through Adeptus officers under its influence—drove Adeptus's third-party professionals in connection with the Offerings and LLC Unit purchases. For each of the Offerings, Adeptus's primary investment banker was Goldman Sachs and its securities counsel was Simpson Thacher. Yet Goldman Sachs and Simpson Thacher did not communicate with the Board regarding the Offerings during the relevant time periods, April 2015 – July 2015 and April 2016 – June 2016. Moreover, the Board had no involvement in directing Adeptus's professionals in connection with the Offerings and LLC Unit purchases. Rather, Adeptus's third-party professionals acted as if they were at the service of Sterling, not the Board. Rosenberg and Sterling obtained guidance from and provided direction to both Goldman Sachs and Simpson Thacher, with and without the involvement of Adeptus management personnel under Sterling's thumb.

120. Third, Sterling dictated the total overall size of each Offering and how any over-allotment associated with the exercise of underwrite options, *i.e.* the "green shoe" or "shoe," would be allocated. Sterling (and Hall) discussed optimal offering size with Goldman Sachs, seeking to maximize the amount of Sterling's interests in Adeptus and Adeptus LLC that Sterling could unload without triggering investor

concerns in the marketplace. As part of its determination of overall offering size, Sterling obtained Excel spreadsheets and analysis from Fielding. Fielding deferred to Sterling—through Rosenberg—to determine the overall share size and "give the green light" before other Adeptus insiders were given the opportunity to sell. Fielding also entirely deferred to Sterling to determine how the over-allotments were to be allocated between Sterling and other selling insiders in connection with each of the Offerings.

121. Fourth, Sterling, along with Hall, determined the price for each of the Offerings, based on their discussions with Goldman Sachs. Once the public offering price and net price (deducting underwriting discounts and other expenses) was set, Sterling then directed Mueller to circulate an additional written consent to the Board to authorize the price and to exempt the transactions under Rule 16b-3.

122. Like the Written Consents initially authorizing the Offerings and the LLC Unit purchases, the pricing and Rule 16b-3 resolutions were transmitted with little notice and minimal opportunity for Board discussion. Specifically:

- On May 3, 2015, Mueller transmitted resolutions authorizing the offering pricing and Rule 16b-3 exemptions to the Board, requesting that the signature pages be left undated. The Board written consent was dated May 5, 2015 (the "May 2015 Pricing Resolution");
- On July 28, 2015, Mueller transmitted resolutions authorizing the offering pricing and Rule 16b-3 exemptions to the Board. The Board written consent was dated July 29, 2015 (the "July 2015 Pricing Resolution"); and

- On June 2, 2016, Mueller transmitted resolutions authorizing the offering pricing and Rule 16b-3 exemptions to the Board, requesting that the Board "execute and return an electronic copy to my attention as soon as possible." The Board written consent was dated that same day, June 2, 2016 (the "June 2016 Pricing Resolution").

The May 2015 Pricing Resolution, the July 2015 Pricing Resolution, and the June 2016 Pricing Resolution (collectively, the "Pricing Resolutions") provided that "the Company's purchase of the LLC Units….shall be made…at a purchase price per LLC Unit…equal to the Net Per Share Price of Class A Stock sold" in the respective Offerings. Despite the lack of prior notice and the materiality of those resolutions, the Board rubber-stamped the Pricing Resolutions with no resistance and without engaging in any substantive discussion or deliberation whatsoever.

123. Fifth, Sterling dictated the terms of the lock-up agreements between Adeptus and its selling directors and officers surrounding the Offerings. For example, at Sterling's direction, on April 24, 2015, Mueller e-mailed the Board to transmit a signature page for the lock-up agreement, even though the agreement had not yet been finalized. Two days later, Mueller informed Rosenberg that there had been "some displeasure from the board with me asking them to provide a signature page to a document they had not yet seen," referring to the lock-up agreement. Rosenberg responded: "Understandable on their part…but unavoidable on our part. This whole thing has come together very quickly." The Board ultimately agreed to

the lock-up agreement terms dictated by Sterling in connection with the May 2015 Offering and the subsequent offerings as well.

124. In short, Sterling exercised complete domination and control over Adeptus and the Board with respect to all facets of the Offerings and LLC Unit purchases. The Board did nothing other than rubber stamp the Written Consents and Pricing Resolutions, on minimal notice and with no deliberation or substantive discussion. Indeed, the only input that any of Adeptus's directors—other than Hall, Rosenberg, and Hosler—had with respect to the Offerings and LLC Unit purchases was to indicate the number of LLC Units that those directors decided to sell themselves in connection with those self-dealing transactions.

3. The Process Surrounding the Offerings and LLC Unit Purchases was Unfair to Adeptus.

125. The Offerings and related LLC Unit purchases were self-dealing transactions in which Adeptus directors and Sterling as a controlling stockholder stood on both sides of the transactions. Nevertheless, the Board did not employ any procedural protections whatsoever to protect Adeptus and the public stockholders that existed as of the time of those transactions. No mechanisms were employed to provide the equivalent of arms-length bargaining; rather, the process behind the Offerings and LLC Unit purchases was grossly unfair.

126. <u>First</u>, the Board did not form an independent special committee to evaluate the Offerings and LLC Unit purchases or subject those transactions to a

stockholder vote. Nor did Adeptus's conflicted directors even recuse themselves. Rather, the entire Board—conflicted directors and all—authorized the Offerings and related LLC Unit purchases through unanimous written consents.

127. Second, the Board did not engage in substantive discussions or deliberations. Rather, as alleged above, the directors were provided with the Written Consents and Pricing Resolutions authorizing the Offerings and LLC Unit purchases with minimal notice. Sterling controlled Adeptus's in-house counsel, Mueller, and dictated the timing of when the Board was presented with the written consents authorizing the transactions.

128. Third, the Board did not obtain a fairness opinion or retain a financial advisor in connection with the Offerings and LLC Unit Purchases. Nor did the Board consider or evaluate the price that a third-party would pay for LLC Units in an arms-length transaction. Rather, the Board merely rubber stamped the Pricing Resolutions placed before it on short notice, with no substantive deliberation or discussion.

129. Fourth, the Board did not ensure that Adeptus was represented by fully independent securities counsel. Adeptus utilized Simpson Thacher as its counsel in the Offerings, at Sterling's recommendation. Simpson Thacher had a pre-existing relationship with Sterling, and Sterling's general counsel (Avi Epstein) initiated conversations with Simpson Thacher regarding the Offerings. Simpson Thacher was so beholden to Sterling that the Stockholders Agreement between Sterling and

Adeptus provided that a copy of any notice sent *to Sterling* under that agreement should also be sent to Simpson Thacher's New York office. A loyal board would have retained legal counsel with no relationship with Sterling, or at least established a special committee conferred with the authority to retain independent counsel of its choosing.

130. Fifth, Sterling initiated the Offerings and LLC Unit Purchases. In fact, the Board was not informed of the transactions until preparatory efforts were well underway, and the Board was not presented with the Written Consents authorizing the transactions until the last minute.

131. Sixth, Sterling dictated the timing of each of the Offerings and LLC Unit purchases. Sterling timed each of the Offerings to maximize the windfall that Sterling would receive through those transactions. Sterling timed the May 2015 Offering and June 2016 Offering to coincide with Adeptus's announcements of entry into joint ventures. And Sterling timed all of the Offerings and LLC Unit purchase transactions around misleading earnings releases (and prior to Adeptus's second quarter 2016 earnings report).

132. Seventh, as alleged in more detail below, all material facts regarding the Adeptus Enterprise's true financial condition were not disclosed to the Board. At the time of each of the Offerings, the Adeptus Enterprise was sustaining declining commercial patient volumes, meaning that the business was becoming increasingly

unprofitable. At the same time, the Adeptus Enterprise's fixed costs were rapidly increasing due to market over-saturation and off-balance sheet lease liabilities. But the Adeptus Enterprise's financial statements were materially misleading, and the Board was not made aware that Adeptus LLC and the Adeptus Enterprise faced financial problems at the time of each of the Offerings.

133. Eighth, the Board never considered whether pursing the Offerings for the purpose of purchasing LLC Units was in Adeptus's best interests. In particular, the Board never evaluated the merits of possible alternatives, and whether those alternatives would have been better for Adeptus and its public stockholders. Even assuming that it was in Adeptus's best interests to increase its stake in Adeptus LLC, Adeptus could have achieved that end without pursing Offerings for the purpose of purchasing LLC Units from Sterling and Adeptus insiders.

134. Specifically, Adeptus could have pursued the Offerings for the purpose of making capital contributions to Adeptus LLC in exchange for LLC Units to be newly issued by Adeptus LLC. Indeed, the default under the Amended Adeptus LLCA was for Adeptus to use any offering proceeds for that purpose. Section 3.1(c) of the Amended Adeptus LLCA provides:

> If at any time [Adeptus] issues a share of its Class A Stock…. (i) [Adeptus LLC] shall issue to [Adeptus] one Unit (if [Adeptus] issues a share of Class A Stock)…and (ii) the net proceeds received by [Adeptus] with respect to the corresponding share of Class A Stock…shall be concurrently transferred to [Adeptus LLC].

Although this provision also included an exception on the use of the proceeds if Adeptus offers shares instead for the purpose of purchasing pre-existing LLC Units from Sterling and others, the Board could have decided to pursue Offerings *for the purpose* of investing in the business in exchange for newly issued LLC Units. Adeptus would have been far better off had it invested the $467.8 million it received in the Offerings in the Adeptus Enterprise in exchange for newly issued LLC Units instead of using the offering proceeds to purchase LLC Units from Sterling and Adeptus insiders.

135. Alternatively, the Board could have tried to negotiate an alternative transaction with Sterling and Adeptus's insiders to obtain their LLC Units without pursing the Offerings. Section 7.3(a) of the Amended Adeptus LLCA expressly contemplates that Adeptus and an "exchanging Member" could agree to a transfer of that member's LLC Units to Adeptus "for other consideration at any time following the consummation of the IPO." Yet the Board never considered this possibility, or even tried to negotiate with Sterling to reduce the price paid for Sterling's LLC Units.

136. Ninth, the Offerings and related LLC Unit purchases were structured solely in order to enhance the liquidity of Sterling's interests and increase the amounts received by Sterling. If Sterling and Adeptus's other selling fiduciaries had tried to sell their LLC Units in a private transaction, a third-party would have applied

marketability, liquidity, and/or control discounts and reduced the price paid. The Board never considered the special liquidity benefits that the Offerings and LLC Unit purchases provided to Sterling and Adeptus's fiduciaries. Nor did the Board try to negotiate any concession from Sterling and the other sellers in exchange for the liquidity enhancement that Adeptus provided them.

137. Tenth, the Board never assessed or questioned whether Sterling actually had any right to demand that Adeptus pursue the Offerings in order to purchase LLC Units. Although Sterling acted as if it had such rights under the Registration Rights Agreement, it did not. At most, Sterling could request that Adeptus register Class A Shares held by Sterling for sale by Sterling. And Sterling did not even have a right to demand that for the July 2015 Offering (in light of the May 2015 Offering and 180-day limitation in the Registration Rights Agreement). Yet the Board subjugated itself to Sterling's assertion of non-existent contractual rights. And even if Sterling had applicable contractual rights (which it did not), the Board failed to consider whether breaching any contractual obligations owed to Sterling would have been in Adeptus's best interests.

138. In short, the Board stepped aside and allowed Adeptus to be abused by Sterling and self-dealing fiduciaries as a tool to enhance the liquidity of their LLC Units. The Board did nothing to protect Adeptus's interests in transactions that involved self-dealing, or to ensure that Adeptus's purchase of LLC Units from

Sterling and other self-dealing fiduciaries approximated arms-length transactions. Rather, the Board authorized Offerings and LLC Unit purchases that, from Adeptus's perspective, were the most expensive and least beneficial means by which Sterling and the selling fiduciaries could dispose of their LLC Units. Sterling and the selling insiders received massive windfalls, while Adeptus did not receive $0.01 of the proceeds, incurred substantial professional fees and other transaction costs, and hampered its ability to tap public markets in the future to raise money for Adeptus LLC and the Adeptus Enterprise.

4. Adeptus Did Not Pay a Fair Price in Exchange for the LLC Units it Obtained from Sterling and Adeptus Insiders

139. The grossly unfair process surrounding the Offerings and LLC Units resulted in an unfair price paid for the LLC Units. The Board never stopped to consider whether the price that Adeptus paid for the LLC Units was a fair price, to obtain a financial advisor to assess the fair price of the LLC Units, or to try to negotiate a discount. Instead, Adeptus merely transferred all the net proceeds it received through the Offerings to Sterling and other insiders in exchange for their LLC Units in accordance with the Pricing Resolutions. The price that Adeptus paid for the LLC Units vastly exceeded the value of those units and the price that would have been paid in an arms-length transaction with full disclosure of all material facts.

140. First, any arms-length purchaser of LLC Units would have applied a marketability and liquidity discount in valuing the LLC Units relative to Class A

Shares because LLC Units were inherently less liquid than Class A Shares. Publicly traded stock is inherently more liquid than membership units in a private limited liability company. That is especially true for limited liability companies with operating agreements that impose restrictions on transferability. The LLC Units were subject to restrictions on transferability, as section 7.3 of the Amended Adeptus LLCA imposed restrictions on transferability of LLC Units to ensure compliance with "the 100-partner limitation" under 26 CFR § 1.7704-1(h)(1)(ii).

141. Although LLC Units were theoretically exchangeable for Class A Shares under section 3.6 of the Amended Adeptus LLCA (subject to exceptions), this feature did not eliminate the inherent liquidity disconnect between the LLC Units and Class A Shares. An exchange of LLC Units for Class A Shares would have been a reportable event triggering Form 4 filing requirements and would have needed to be complete before any subsequent sale of Class A Shares. Moreover, based on SEC guidance at the time of the Offerings, any Class A Shares obtained through an exchange of LLC Units would have been subject to the requirements of Rule 144 (including holding period requirements and sales volume limitations). In turn, any Class A Shares obtained in exchange for LLC Units would be less liquid than Class A Shares purchased on the open market.

142. Conceivably, the liquidity hurdles that Rule 144 imposed on Class A Shares obtained through an exchange could be somewhat mitigated by registration

of those shares in a secondary offering. But the Registration Rights Agreement imposed two significant restrictions on a holder's ability to demand registration of such shares: (1) the minimum offering size for any such demand was $50 million; and (2) Adeptus was not required to effect more than one demand registration for a secondary offering in any 180-day period. Due to these limitations to end-running Rule 144, Class A Shares obtained through an exchange of LLC Units were inherently less liquid than Class A Shares issued by Adeptus through offerings or otherwise obtained on the open market.

143. The liquidity challenges associated with trying to unload Class A Shares obtained via exchange motivated the transactions structure selected for the Offerings in the first place. Adeptus's issuance of Class A Shares in the Offerings to obtain proceeds to purchase LLC Units enabled Sterling and Adeptus's insiders to sell their LLC Units without needing to first exchange those units for Class A Shares, and without facing any of the attendant liquidity problems. Thus, the selected transaction structure enabled Sterling and Adeptus insiders to sell their LLC Units more easily (and at a higher price) than if they were forced to unload their LLC Units through some other means. Adeptus, on the other hand, paid more for the LLC Units than what those units were worth by equating the price to Class A Shares that were freely tradeable.

144. Second, even assuming that there was some value linked to the exchangeability feature of LLC Units for Class A Shares, that aspect of the LLC Units was of much less benefit to LLC Units as *held by Adeptus*. Adeptus could issue its own Class A Shares to the extent it wanted to raise cash. And if it were in Adeptus's interest to increase its ownership percentage of Adeptus LLC, Adeptus would have been far better off had it transferred proceeds from the Offerings to Adeptus LLC as capital contributions in exchange for newly issued LLC Units.

145. Third, a third-party purchaser of Sterling's LLC Units in a private, arms-length transaction would have assigned a marketability discount given the large number of LLC Units transferred in connection with each Offering.

146. Fourth, an arms-length purchaser of LLC Units would have applied a minority interest/lack of control discount in determining a price to pay. The Amended Adeptus LLCA unambiguously vested Adeptus with complete control over Adeptus LLC. Specifically, section 5.1 of the Amended Adeptus LLCA provides:

> [Adeptus] shall be the sole managing Member of the Company. Except as otherwise required by Law, (i) the Managing Member shall have full and complete charge of all affairs of the Company, (ii) the management and control of the Company's business activities and operations shall rest exclusively with the Managing Member, and the Managing Member shall make all decisions regarding the business, activities and operations of the Company (including the incurrence of costs and expenses) in its sole discretion without the consent of any other Member, and (iii) the Members other than the managing Member (in their capacity as such) shall not participate in the control, management,

> direction or operation of the activities or affairs of the Company and shall have no power to act for or bind the Company.

Moreover, the operating agreement provided no mechanism for replacing Adeptus as sole managing member. And Adeptus could not be stripped of its exclusive control without its consent even by amending the operating agreement, as section 10.4 of the Amended Adeptus LLCA expressly requires Adeptus's written consent for any amendment. Given Adeptus's exclusive control, the LLC Units represented a minority interest with zero control rights over Adeptus LLC. In turn, a third-party purchaser of LLC Units in an arms-length, private transaction would have applied a control discount to the price paid for the LLC Units.

147. Fifth, Adeptus incurred significant transactional and opportunity costs in connection with pursuing the Offerings in order to purchase LLC Units from Sterling and Adeptus insiders. Given Adeptus's rapid growth and expansion from 2014 to 2016, it could and should have used the more than $467.8 million in net proceeds from the Offerings to make capital expenditures necessary for those expansion efforts or otherwise. Instead, Adeptus incurred crippling long-term obligations under facility leases, while keeping those liabilities off-balance sheet due to aggressive lease accounting policies, as described below. Had Defendants utilized even a portion of the more than $467.8 million in net proceeds from the Offerings to fund the Adeptus enterprise's expansion efforts and make other capital expenditures,

the Adeptus Enterprise would have saved millions of dollars in interest expense and financing costs under its dozens of operating leases.

148. Similarly, the Adeptus Enterprise could have avoided financing fees and expenses associated with other debt. Just months after raising $94.5 million in net proceeds from the May 2015 Offering and $265.9 million in net proceeds from the July 2015 Offering, the Adeptus Enterprise took on more debt. On October 6, 2015, the Adeptus Enterprise entered into a senior secured credit facility with Bank of America, N.A. as administrative agent for a $125.0 million term loan and a $50.0 million revolving facility. By its bankruptcy filing, the Adeptus Enterprise's secured obligations had ballooned to $227.8 million. In the fiscal years ended December 31, 2015 and December 31, 2014, respectively, the Adeptus Enterprise paid approximately $11.77 million and $9.29 million in interest. Much of that $20 million in interest would have been avoided had funds obtained through the Offerings been used to eliminate debt.

149. Adeptus received no compensation or offset for these opportunity costs in the price it paid to Sterling and selling insiders for the LLC Units.

150. Finally, the price that Adeptus paid for the LLC Units was far in excess of what those units were worth given the economic realities faced by the underlying business. In reality, the Adeptus Enterprise was a failing business that was losing money, and the business as a whole and LLC Units would have been worth very

little had all material facts been disclosed to any arms-length purchaser of LLC Units in a private transaction. Any discounted cash flow or other income valuation approach based on an accurate financial model would have reflected a near-zero value for LLC Units.

151. Although Adeptus's Class A Shares traded at a high price, those publicly traded shares were fundamentally different in character than LLC Units, and the LLC Units were inherently less valuable for the reasons alleged above. Moreover, the price of Adeptus's publicly traded stock was artificially inflated due to materially misleading accounting practices and non-disclosure of all material facts surrounding the business. Had the public been presented with all information known to Sterling and the Insiders, Adeptus stock would have traded at a much lower price.

152. For example, Adeptus's disclosure of the business's liquidity problems on November 1, 2016 resulted in a staggering 71% decline in stock price from the October 31, 2016 close to the November 2, 2016 close (from $30.12 to $8.60). A March 2, 2017 disclosure regarding joint venture related write-downs resulted in a 57.5% decline from the March 1, 2017 close to the March 2, 2017 close (from $3.76 to $2.79). Adeptus's stock would have traded in those ranges or even lower at the time of the Offerings had the underlying facts been disclosed then. Instead, due to stock manipulation initiatives described blow, the price of Adeptus stock offered to

the public was $63.75 in the May 2015 Offering, $105.00 in the July 2015 Offering, and $62.00 in the June 2016 Offering.

153. Because of Adeptus's inflated stock price, the Board's decision to pay all net proceeds in exchange for LLC Units, and the Board's utter failure to consider appropriate discounts for the value of LLC Units, Adeptus paid far more for the LLC Units than what they were actually worth. Adeptus paid $60.084376 per unit, $100.5375 per unit, and $60.5275 per unit in purchasing LLC Units in connection with the May 2015 Offering, July 2015 Offering, and June 2016 Offering, respectively. The prices that Adeptus paid were many times the near-zero intrinsic value of those LLC Units.

D. THE DEFENDANTS ARTIFICIALLY INFLATE ADEPTUS'S SHORT-TERM STOCK PRICE WHILE CRIPPLING THE ADEPTUS ENTERPRISE IN THE LONG-RUN.

154. Eight months after the June 2016 Offering, Adeptus, Adeptus LLC, and the Adeptus Enterprise filed for bankruptcy. Thus, the LLC Units that Adeptus obtained were revealed to be worthless just eight months after Adeptus had paid $60.5275 per unit, and within twenty-three months of when Adeptus had paid $100.5375 per unit in connection with the July 2015 Offering and $60.5275 per unit in connection with the May 2015 Offering.

155. In connection with the Offerings, Adeptus paid a weighted average price of $78.07 for LLC Units. Those units were demonstrably worthless a short

time later. The difference between what Adeptus paid and what the LLC Units were subsequently worth was not the result of decline in value due to some unforeseeable, changes in circumstances. Rather, the LLC Units were intrinsically worth very little at the time of the Offerings because the Adeptus Enterprise faced significant financial problems at the time of each of the Offerings.

156. Many of the Adeptus Enterprise's financial struggles stemmed from Sterling's and the Insiders' disloyalty and greed. Sterling and the Insiders caused the Adeptus Enterprise to pursue various initiatives to drive up the price of Class A Shares in the short-term (so that they could cash out), even though those initiatives would inevitably hurt profitability and have devastating long-term consequences for the business. The harmful financial effects of those initiatives were concealed from investors through accounting gimmicks and materially misleading statements and omissions.

157. First, Sterling and the Insiders put a positive spin on the Adeptus Enterprise's struggles by hard-selling a growth narrative, misleadingly aggregating data, and building facilities solely to push the growth narrative. Second, Sterling and the Insiders utilized lease accounting gimmicks to downplay the capital required for that growth, and to keep the massive bow wave of future liability associated with facility growth off-balance sheet. Finally, Sterling and the Insiders utilized a joint venture strategy to both further spin the growth narrative and conceal ongoing losses.

158. All three of these initiatives served the purpose of materially inflating Adeptus's stock price in the short-term, while turning the company's finances into a ticking time bomb. None of these actions were in the Adeptus Enterprise's best interests, but rather accelerated the Adeptus Enterprise's downward spiral to financial ruin while enabling Sterling and the Insiders to cash out quickly and profitably in the short-term.

1. Sterling and the Insiders Pursue Reckless Growth for Their Benefit and to the Adeptus Enterprise's Detriment

159. Sterling and the Insiders caused the Adeptus Enterprise to rapidly grow merely to develop a narrative to sell to investors and enable themselves to cash-out. The company's growth was a repeated point of emphasis in Adeptus's public filings, earnings reports, earnings calls, and elsewhere. Positioning Adeptus as a growth company led to stretched valuations for Adeptus's stock. In order to keep Adeptus's stock price elevated and enable themselves to cash out, Sterling and the Insiders continued to cause Adeptus to build new facilities far past market saturation. They did so even though they knew that patient volumes at pre-existing stores were already declining for that reason. Sterling and the Insiders were so determined to pursue growth at all costs that they almost never rejected proposed new facilities, and even conditioned management bonuses on arbitrary new facility opening targets.

a. Defendants Sell a Growth Narrative to the Market.

160. Even before the IPO, Sterling and the Insiders knew that the growth strategy that Sterling had pushed was not working for the Adeptus Enterprise. Legacy stores were experiencing poor results, and the ramp up at new facilities was not going as well as expected. For example, on December 6, 2013, Fielding forwarded the draft 2014 budget to Rosenberg, Hosler, and others at Sterling, informing them that projected adjusted EBITDA for 2014 was down over 25% relative to the projection made in August. Fielding noted that the lowered budget was due to "tempered…new facility expectations" given poor performance of recently opened facilities and the "continued sluggishness in the legacy facilities."

161. Despite knowing that the growth plan was not working, Sterling and the Insiders nevertheless continued to cause the Adeptus Enterprise to rapidly open new facilities. They did so solely in order to position Adeptus as a growth company, thereby having a positive narrative to sell to unsuspecting investors. This growth narrative was crafted in order to conceal the troubling performance at pre-existing facilities and fine-tuned based on discussions and meetings that Hall, Rosenberg, and Hosler had with the company's investment bankers in late 2013 and early 2014.

162. By causing the Adeptus Enterprise to open new facilities at a high rate, Sterling and the Insiders were able to inflate Adeptus's short-term stock price by pointing to significant top-line growth. Rapid facility growth enabled Adeptus to

report significant year-over-year or quarter-over-quarter growth in total gross revenues, even as the revenue and profitability on a facility-by-facility basis declined. Adeptus's reported top line growth rates drove its stock price higher, even though the source of that growth was reckless expansion that resulted in steepening losses and leveraging that would ultimately lead to bankruptcy.

163. The carefully crafted growth narrative was front and center in Adeptus's public filings from the time of Adeptus's IPO onward. In its Form S-1 Registration Statement filed on May 21, 2014 (the "Registration Statement"), the second sentence of the "company overview" emphasized that "We have experienced rapid growth in recent periods, growing from 14 facilities at the end of 2012 to 26 facilities at the end of 2013, and to 32 facilities as of March 31, 2014." This exact sentence was set forth nine times in the Registration Statement and nine times in the subsequently filed prospectus. The Registration Statement similarly noted: "We believe we have the opportunity to substantially grow our footprint to more than 70 facilities over the next two years in both existing and new markets. We have a robust pipeline of more than 50 sites under development in our existing and additional new markets." This messaging worked and the Adeptus IPO was a success.

164. Emboldened by the IPO, Sterling and the Insiders emphasized the growth narrative in earnings reports in ensuing periods.

165. In the first earnings release after the IPO (released on October 29, 2014), Adeptus reported year-over-year revenue growth of 143.7% and an increase of year-over-year patient volume of 134.4%, primarily due to an expansion from 19 to 51 facilities. Adeptus reported opening 13 new facilities during the quarter alone, a point that was re-emphasized in a quote attributed to Hall: "we achieved our expectations for the quarter while executing on our robust growth plan," and "we opened 13 new sites."

166. The market responded positively to the Adeptus Enterprise's rapid growth. An October 30, 2014 analyst report from Goldman Sachs in relation to third quarter 2014 results specifically emphasized facility growth as a positive:

> We view 3Q results positively and believe the company is well positioned to continue its robust expansion plans. <u>Of particular note is the stronger-than-expected quarter-end facility count</u>. Management remains confident in expansion plans and cites a strong site pipeline as continuing to spur growth.

(emphasis added). The 13 new facilities opened during the quarter had beaten the Goldman Sachs estimate by 4 facilities, leading Goldman to raise its price target for Adeptus. Hall forwarded the Goldman Sachs report to Rosenberg on October 31, 2014. Later that day, Rosenberg replied: "That's great. Everyone has raised guidance."

167. Just days later, Sterling began pushing for a follow-on offering. On November 4, 2014, Sterling's general counsel, Avi Epstein, e-mailed Hall (copying

Rosenberg), writing: "Caught up with [Rosenberg] earlier. I'm up to speed on [] the potential for a secondary offering that could start soon." Later that day, Rosenberg e-mailed Hall, writing: "it probably makes sense to try and execute a secondary ASAP." Rosenberg further noted:

> We will probably look at selling about 2M shares (roughly 20%) of our holdings. Assuming we all decide to move forward with it, then we should discuss who on the management team is interested in selling stock (and how much...with a discussion with the bankers to discuss the signaling if anyone is looking to sell too much of their holdings).

Over the course of the next two days, Rosenberg and Hall received discussion materials from Goldman Sachs and Deutsche Bank regarding the anticipated follow-on offering. Rosenberg and Hall drove that initiative with no substantive input from other board members.

168. Adeptus did not actually proceed with its follow-on offering until the following May. When it did, however, rapid facility growth remained a major selling point to investors. In its first quarter 2015 earnings report (filed April 23, 2015), Adeptus highlighted year-over-year quarterly revenue growth of 110.0% and that the company opened seven new facilities during the quarter. Those positive growth stats led to positive market reaction.

169. In a prospectus filed on May 7, 2015 in connection with the May 2015 Offering, the second sentence of the "Company Overview" section provided: "We have experienced rapid growth in recent periods, growing from 14 freestanding

facilities at the end of 2012 to 26 freestanding facilities at the end of 2013, and to 65 freestanding facilities as of May 1, 2015." This exact sentence was included four times in that filing. In addition, the prospectus emphasized that: "We have a robust pipeline under development designed to support the addition of approximately 14 facilities during the remainder of 2015."

170. Similarly, a prospectus filed in connection with the July 2015 Offering, the second sentence of the "Company Overview" provided: "We have experienced rapid growth in recent periods, growing from 14 freestanding facilities at the end of 2012 to 26 freestanding facilities at the end of 2013, and to 68 freestanding facilities as of June 30, 2015." This exact sentence was included five times in the filing. The filing also repeatedly emphasized: "We have a robust pipeline under development designed to support the addition of approximately 11 facilities during the remainder of 2015."

171. On July 23, 2015, Adeptus reported second quarter results and raised its full year guidance. The earnings released focused on a 136% year-over-year increase in quarterly revenue, and that the company opened 6 new freestanding facilities during the quarter. At the same time, Adeptus raised guidance based on its performance in the quarter and "continued full year growth plans including 24 freestanding facilities and two new hospitals."

172. The facility growth messaging in these prospectuses and the second quarter earnings report hit home in the market, enabling Sterling and the Insiders to achieve substantial returns. Sterling received a whopping $417.9 million through the May 2015 Offering and the July 2015 Offering. Hall, Fielding, and Cherrington collectively received almost $47 million from those offerings.

173. Sterling and the Insiders continued to push facility growth as a major selling point in public filings in the lead-up to Adeptus's final offering in June 2016. On February 24, 2016, Adeptus reported fourth quarter and year end results for 2015. The press release emphasized that during the year, the Adeptus Enterprise opened 28 new facilities. The Form 10-K annual report filed a few days later on February 29, 2016 similarly focused on growth; the second sentence in the business description provided: "We have experienced rapid growth in recent periods, growing from 14 freestanding facilities at the end of 2012 to 81 freestanding facilities and two fully licensed general hospitals as of December 31, 2015." This exact sentence was included six times in the 2015 Form 10-K.

174. On April 20, 2016, Adeptus reported first quarter earnings. Again, the press release emphasized a quarterly revenue increase of 67% year-over-year, and that the company had opened 7 new facilities during the quarter. The press release attributed the following to Hall: "We are pleased with our first quarter results, which were in line with our expectations and demonstrate continued progress in executing

on our growth plans. This quarter, we opened seven new facilities, bringing our total to 90, and achieved substantial growth in both revenue and patient volumes."

175. In the prospectus filed for the June 2016 Offering, the company overview section included the following as the second sentence: "We have experienced rapid growth in recent periods, growing from 14 freestanding facilities at the end of 2012 to 88 freestanding facilities and two fully licensed general hospitals at March 31, 2016."

176. In part due to the gloss provided by their growth narrative, Sterling and the Insiders were able to profit from the June 2016 Offering even though the business was in accelerating decline at that point. Sterling received over $148 million of the net proceeds from the June 2016 Offering. Hall, Fielding, and Cherrington collectively received nearly $17 million. Such windfall returns would not have been possible without Sterling's and the Insiders' success in utilizing facility growth as both a selling point to investors and as a means of glossing over the core problems facing the Adeptus Enterprise's business.

b. Defendants Cause the Adeptus Enterprise to Recklessly Build in order to Support their Growth Narrative.

177. In the short-term, the growth narrative sold to investors was key to pumping up the price of Adeptus stock. But in the long-term, growth-for-growth's sake had devastating consequences on the Adeptus Enterprise. The costs associated with each facility were largely fixed costs, meaning that a facility's cost structure

did not change even if not many patients were visiting that facility. This made the Adeptus Enterprise's business model particularly vulnerable to market over-saturation—establishing more facilities than a market would support was a surefire way of losing money, with no significant means of cost-cutting to adapt. By the time of Offerings, Adeptus's markets were already over-saturated. Yet Sterling and the Insiders continued to push growth to boost the short-term stock price, even though building more facilities—especially in sub-optimal locations—would inevitably steepen the Adeptus Enterprise's losses in the future.

178. Sterling and the Insiders were so focused in achieving facility growth solely for the sake of reporting facility growth that they implemented a perverse incentive structure for Adeptus Enterprise management. Rosenberg and Hall made sure that growth was a precondition to a significant portion of management compensation, thereby encouraging development of new even where adding such facilities was harmful to the company's bottom line.

179. For example, in a July 9, 2015 e-mail to Rosenberg, Hall wrote that his understanding from previous conversations with Rosenberg was that the management bonus criteria for 2015 included the following: "Minimum of 24 new free standing ERs and one hospital must be open or no bonuses are paid." Rosenberg confirmed this understanding in an e-mail to the Adeptus Enterprise human resources director, writing that the Compensation Committee—which Rosenberg

then chaired—had unanimously approved that "binary" objective related to new openings: "If opening do not hit those targets, then there are no bonuses." It was not in the Adeptus Enterprise's best interests to incentivize management to open an arbitrary number of new facilities in already over-saturated markets.

180. Nor was it in the Adeptus Enterprise's best interests to open new facilities in sub-optimal locations (in markets that were already over-saturated). Yet in order to make sure that arbitrary growth targets were achieved, Sterling and the Insiders did just that, approving almost every proposed facility site submitted for their approval.

181. The Adeptus Enterprise's freestanding facility growth strategy involved selecting locations and developing facilities from the ground up. Appropriate site selection was a critical component of the Adeptus Enterprise's long-term success.

182. In its public filings, Adeptus touted its site selection process as a major selling point for the business. The Registration Statement noted that one of the Adeptus Enterprise's purported "Competitive Strengths" was that its "Distinctive Real Estate Development Strategy Supports Attractive Unit Growth and Economics." The Registration Statement further provided:

> We have built an internal team with significant experience in multi-unit retail expansion strategy and execution. As a result, our approach to real estate planning is highly consumer-centric with a discipline traditionally utilized by sophisticated retail businesses. <u>Our proprietary</u>

> site selection model is a key to the success of our business, allowing us to identify and fill critical voids in community healthcare delivery systems. Our seasoned real estate planning and development team follows a proven and disciplined strategy that leverages advanced data analytics to identify opportunities to provide underserved communities with high-quality emergency care.

(emphasis added). The Registration Statement further indicated that the company's "sophisticated, proven site selection and development process" was a tool for growing its presence in existing markets. Similar representations were contained in Adeptus's Form 10-K annual reports for 2014 and 2015.

183. In reality, Adeptus's site selection process was far from "proven." New facility ramp-ups performed below expectations, and many of Adeptus's pre-existing facilities experienced same store patient volume declines, in part due to increased supply of services through competition and Adeptus's own market over-saturation.

184. In early 2015, Sterling and the Insiders did not even know whether the inputs and assumptions that went into their site selection efforts were reliably predictive. For example, in a January 19, 2015 e-mail, Rosenberg wrote:

> [A]s we look forward, would be interesting to see how the proposed facilities compare not only to the average FCER facility (as it relates to Excess demand, population, etc), would be to see how it compares to facilities in the same market, facilities of different tiers of performance, etc. Bottom line is that we have so many more facilities, that it would be really helpful to better understand your current thinking and the evolution of that thinking to help us better understand which of our assumptions are proving to be more accurate and predictive than others…

Covert replied to Rosenberg's e-mail (copying Hall and Hosler), writing: "It would be good to see regression analysis performed on many or all of the various demographic points comparing and contrasting the best performing facilities against the poorer performing facilities as well as against the average facility." Evidently, the company had been utilizing various data and assumptions to select sites and analyze market demand without subsequent statistical analysis to see if the company's hazard guesses were working. They weren't. Instead, site selections resulted in underperforming facilities that also dragged down patient volumes at pre-existing facilities due to cannibalizing patient supply.

185. Rosenberg and Hall personally approved each of the facility sites selected, as both Rosenberg and Hall served on the Real Estate Sub-Committee of the board of directors both before and after the IPO. Hosler also served as a member of the Real Estate Sub-Committee during his tenure on the Board. As members of the Real Estate Sub-Committee, Hall, Rosenberg, and Hosler approved almost all proposed facilities, even as patient volumes continued to decline in the face of over-saturated market conditions.

186. Hall and Rosenberg did not act in the Adeptus Enterprise's best interests in rubber stamping proposed new facilities. Rather, they did so to ensure that the Adeptus Enterprise would open as many new facilities as possible, regardless of its long-term best interests, so that Hall and Sterling could spin a

growth narrative to investors and cash out in the short-term. They did so even in the face of known risks posed by over-saturating the market, as acknowledged in Adeptus's public filings.

187. For example, the Form 10-K for the year ended December 31, 2014 expressly identified that "[o]pening new facilities in existing markets may negatively affect revenue at our existing facilities" as one of the disclosed "risk factors" facing Adeptus. This disclosure provided:

- "[T]he opening of a new facility in or near markets in which we already have facilities could adversely affect the revenues of those existing facilities;"
- "Existing facilities could also make it more difficult to build our patient base for a new facility in the same market;" and
- "<u>Revenue cannibalization between our facilities may become significant in the future</u> as we continue to expand our operations and could affect our revenue growth, which could, in turn, adversely affect our business, financial condition or results of operations."

(emphasis added). Hall, Rosenberg, and Hosler signed this filing. Adeptus's Form 10-K annual report for the year ended December 31, 2015 contained similar disclosures and was likewise signed by Hall and Rosenberg. The Registration Statement and prospectuses for the Offerings, reviewed and approved by Sterling and the Insiders, also contained similar disclosures. Accordingly, Sterling and the Insiders acted in the face of a known risk of market over-saturation when they selfinterestedly caused the Adeptus Enterprise to keep opening facilities just to be able to put a spin on the company's financial troubles.

188. Ultimately, over-saturation of facilities and the resulting poor patient volumes at each facility hurt the Adeptus Enterprise's profitability and was one of the factors contributing to the company's ultimate demise. The risk that over-saturation would harm the Adeptus Enterprise's financial condition was known to Sterling and the Insiders. Yet to boost the price of Adeptus stock and maximize the windfall to be received through the Offerings in the short-term, Sterling and the Insiders set Adeptus on a disastrous path of growth-for-growth's sake that was likely to—and did—materially harm the company in the long-term.

2. Lease Accounting Games Keep Crippling Obligations Associated with Rapid Expansion Off of the Balance Sheet

189. Due to the reckless growth strategy pushed by Sterling and the Insiders, the Adeptus Enterprise grew from 14 free-standing emergency room facilities as of the end of 2012 to 93 such facilities as of June 30, 2016. In addition, Adeptus developed two fully licensed general hospitals during that 42-month period. The acquisition of land and construction and development efforts associated with this exponential increase in medical facilities required significant outlays of capital.

190. The capital required endangered Sterling's self-enrichment scheme. Using the proceeds of public offerings to fund expansion would have necessarily meant that the Sterling and the Insiders could not funnel those proceeds entirely to

themselves by having Adeptus purchase their LLC Units. And funding expansion through debt financing would have similarly decreased their upside, given debt's negative effect on a company's balance sheet, debt-to-equity ratio, and stock price. Thus, Sterling needed a source of capital—other than the Offerings—that would not adversely affect the Adeptus Enterprise's balance sheet.

191. Sterling and the Insiders accomplished that self-serving end through: (a) funding the Adeptus Enterprise's expansion efforts through lease financing; and (b) using accounting tricks to keep lease obligations off of the balance sheet. At Rosenberg's suggestion, Adeptus then misleadingly spun this off-balance sheet accounting trick as a "capital light" business model.

192. Adeptus's expansion capital came primarily from Medical Properties Trust ("MPT"), which funded the construction of new facilities for Adeptus in exchange for leases requiring long-term, non-cancelable payment obligations. In June 2013, the Adeptus Enterprise entered into an initial MPT Agreement (the "Initial MPT Agreement") to provide for $100 million in funding for facility development and construction. In July 2014, the Adeptus Enterprise entered into an additional MPT Agreement (the "Additional MPT Agreement") to fund new freestanding emergency rooms and hospitals. The Additional MPT Agreement allowed maximum aggregate funding of $150.0 million. The Additional MPT Agreement was amended on April 20, 2015 to add additional aggregate funding to

$250.0 million, bringing the total maximum aggregate funding under the MPT agreements to $500.0 million.

193. Under the Initial MPT Agreement and the Additional MPT Agreement (collectively, the "MPT Agreements"), MPT was required to buy land, fund the ground-up construction of new freestanding emergency room facilities, and then lease the facilities to the Adeptus Enterprise upon completion of construction. MPT was also required to fund all hard and soft costs, including the project purchase price, closing costs and pursuit costs for the assets relating to the construction. All newly constructed facilities under the MPT Agreements had initial terms of 15 years, with three five-year renewal options.

194. To make sure that the Adeptus Enterprise's obligations under the MPT Agreements were not reflected as liabilities on the Adeptus balance sheet, the Insiders crafted those agreements and the documentation for related leases with MPT to ensure that new facility leases would be accounted for as operating leases instead of capital leases. To that end, the Insiders retained PricewaterhouseCoopers ("PWC") to consult on the terms of applicable leases, development agreements, and other transactional documents to help develop a standard set of documents for each facility lease that would qualify for operating lease treatment. In doing so, the Insiders were able to keep the increasing future payment obligations associated with the Adeptus Enterprise's rapid expansion efforts from showing up on the balance

sheet. Moreover, accounting for the leases as operating leases treatment rather than as capital leases provided a short-term boost in reported net income (by reducing the total reported expense in early years).

195. From the standpoint of the Adeptus Enterprise, how to classify the facility leases made little difference. The timing and amount of the Adeptus Enterprise's payment obligations would be the same, regardless of the accounting classification. The only reason that accounting treatment mattered was so that Sterling and the Insiders could extract as much value as possible through the Offerings and related LLC Unit purchases.

196. Had Adeptus instead accounted for its new facility leases as capital leases, both its income statement and the balance sheet would have been far less attractive in the short-term. First, the combined amortization and interest expense associated with capital lease treatment would have been higher than the rent expense associated with operating lease treatment in the early years of the lease. Second, classification as capital leases would have forced Adeptus to recognize a massive liability on its balance sheet in the amount of the present value of all future minimum lease payments. Although Adeptus would have also reported a corresponding capital lease asset, indicators of financial strength such as debt-to-equity ratio would have been much worse, reducing valuations and inviting probing questions as to why

hundreds of millions of dollars raised through Offerings were funneled into Sterling's and the Insiders' pockets rather than into the business.

197. The accounting games to keep lease obligations off-balance sheet was an integral component of the Insiders' strategy to extract as much as possible through financial statement engineering. Fielding expressly acknowledged that obtaining operating lease accounting treatment was a critical issue that drove strategic planning. In a December 13, 2013 e-mail, Fielding wrote that if an earnest money deposit for new developments was considered a hard cost requiring capital lease treatment, "it would taint all of our projects," and "this would be a critical issue." A few weeks later on January 8, 2014, Fielding e-mailed an internal Adeptus Enterprise accounting memo outlining its accounting treatment on this issue, writing:

> Please review and let me know if you have any questions. I also need to know as soon as possible any other issues in the lease documents that you feel need additional support. <u>As you know these operating leases are an integral component of our strategy</u> and I need to know if the accounting treatment is an issue so that we can remedy if necessary. Thanks.

(emphasis added).

198. Sterling and the Insiders utilized off-balance sheet lease financing to their advantage and the Adeptus Enterprise's detriment. Off-balance sheet treatment led to inflated stock valuations and few questions as Sterling caused Adeptus to pursue Offerings to purchase Sterling's and other insider's LLC Units rather than

invest in the business. Sterling and the Insiders were able to obtain over $630 million for themselves through the Offerings and/or LLC Unit Purchases.

199. The Adeptus Enterprise, meanwhile, was left with 93 freestanding emergency room facility leases by June 30, 2016. Every single facility lease was accounted for as an operating lease and kept off the balance sheet. Those leases gave-rise to crippling long-term payment obligations of $832 million.

200. The sharp increase in the Adeptus Enterprise's minimum lease payment obligations over a two-year period was staggering. In a footnote in its Form 10-Q for the quarter ended June 30, 2014, Adeptus reported the following future minimum lease payments for noncancelable operating leases:

Future Minimum Operating Lease Payments

Years ending December 31,		Payments *(in thousands)*
2014 (6 months)		$7,066
2015		$13,788
2016		$12,270
2017		$10,172
2018		$8,258
Thereafter		$57,437
	TOTAL	**$108,991**

201. Two years later, in a footnote in its Form 10-Q for the quarter ended June 30, 2016, Adeptus reported the following future minimum lease payments for its noncancelable operating leases:

Future Minimum Operating Lease Payments

Years ending December 31,	Payments *(in thousands)*
2016 (6 months)	$34,433
2017	$69,182
2018	$65,726
2019	$58,253
2020	$52,566
Thereafter	$552,218
TOTAL	**$832,378**

Thus, the Adeptus Enterprise's minimum future lease payment obligations on noncancelable operating leases rose over 750% in just two years. The Defendants caused Adeptus Enterprise to incur those crippling obligations while at the same time causing Adeptus to use all $467.8 million of net proceeds it raised through the Offerings to purchase LLC Units from Sterling and Adeptus insiders.

202. Sterling and the Insiders did not act in the Adeptus Enterprise's best interests in causing it to enter into lease transactions to enable them to extract millions in the short-term, while at the same time crippling the Adeptus Enterprise in the long-run through off-balance sheet lease obligations that ballooned from $109 million to more than $832 million in just a two-year period.

3. Sterling and the Insiders Pursue Joint Ventures to Bolster Their Growth Narrative and Conceal Financial Problems.

203. Sterling and the Insiders further bolstered their efforts to pump up Adeptus stock in the short-term—while crippling the Adeptus Enterprise's long-term future—by causing the Adeptus Enterprise to enter into joint venture

arrangements with non-profit hospital systems. These joint venture arrangements supported the growth narrative sold to investors to inflate the price of Adeptus stock, while at the same time providing an additional boost by concealing that Adeptus was hemorrhaging cash. Through a carefully crafted narrative sold to investors, aggregation of data for financial reporting, and shoddy accounting, the joint ventures further enabled Sterling and Insiders to cash-out in the short-term while further crippling the Adeptus Enterprise in the long run.

a. Defendants Cause the Adeptus Enterprise to Enter into Several Joint Ventures.

204. Sterling and the Insiders had begun exploring potential joint ventures even before the IPO as a means of boosting its stock price. For example, in an April 12, 2014 e-mail to Hall, Rosenberg asked Hall when the planned joint venture with Arizona nonprofit hospital system Dignity Health ("Dignity") would be approved, noting that it would be "[n]ice to be able to announce the JV with them contributing a hospital as we are getting ready to price."

205. The joint venture with Dignity, though, did not close until October 2014. This arrangement included Dignity Health Arizona General Hospital, a full-service hospital in Phoenix, Arizona, and several freestanding facilities. Adeptus also contributed $3 million in cash. The legal entity formed the joint venture was AGH Phoenix LLC (the "Arizona JV").

206. On or about April 21, 2015, the Adeptus Enterprise entered into a joint venture with University of Colorado Health, or UCHealth. The Adeptus Enterprise contributed 12 existing freestanding emergency rooms in Colorado to the venture, which were rebranded as UCHealth emergency rooms. The legal entity formed for the Colorado joint venture was UCHealth Partners LLC (the "Colorado JV").

207. On or about May 11, 2016, the Adeptus Enterprise entered into a joint venture with Texas Health Resources ("THR"), a nonprofit corporation operating a hospital system in Texas. The Adeptus Enterprise contributed 27 freestanding emergency room facilities and its First Texas Hospital in Carrollton, Texas to the joint venture. The legal entity formed for the joint venture with THR was FTH DFW Partners LLC (the "Texas JV").

208. The basic structures for the Arizona JV, the Colorado JV, and the Texas JV were all the same. The non-profit partner was given 50.1% ownership with the Adeptus Enterprise entity receiving 49.9% entity in the joint venture entity. The management structure and board voting rights in each joint venture entity was carefully structured such that the Adeptus Enterprise entity was not deemed to be in legal control. This ensured that Adeptus did not consolidate the Arizona JV, the Colorado JV, or the Texas JV for accounting purposes. By structuring the joint venture operating agreements to avoid consolidation, Sterling and the Insiders were

able to utilize accounting smoke and mirrors to conceal losses and make the Adeptus Enterprise appear much healthier than it really was.

b. Defendants Cause the Adeptus Enterprise to Employ Various Accounting Tricks Regarding the Joint Ventures.

209. Although Adeptus's public filings indicated that it did not control the joint ventures, in reality, the Adeptus Enterprise operated each of the facilities and the hospitals within the Arizona JV, the Colorado JV, or the Texas JV just as it had before. Adeptus Enterprise employees ran and staffed facilities and hospitals, and expenses were paid out of FCER bank accounts. The non-profit partners in those entities were largely passive, and all operational decisions with respect to each of facilities and hospitals under the joint ventures were still made by the same people as before within the Adeptus Enterprise. All that really changed was the sign out front and the accounting treatment for purposes of Adeptus's publicly reported financial statements.

210. By not consolidating the operations from the Arizona JV, the Colorado JV, and the Texas JV, Adeptus's balance sheet and income statement were much more favorable than would have been the case had the operations of those entities been consolidated for financial reporting purposes.

211. First, the Adeptus Enterprise's contribution of: (a) 12 existing facilities to the Colorado JV; and (b) 27 existing facilities and the First Texas Hospital to the Texas JV were deemed change of control events for accounting purposes. This

allowed the Adeptus Enterprise to record a $24.3 million gain related to the Colorado JV in April 2015, and a whopping $185.4 million gain related to the Texas JV in May 2016.

212. The gains recognized upon entry into the Colorado JV and the Texas JV had a material effect on Adeptus's reported quarterly earnings. Without the gain recognized for entry into the Texas JV, Adeptus would have reported an enterprise level <u>loss</u> of $37.1 million for the second quarter of 2016 (with a <u>loss</u> of $21.8 million attributed to Adeptus) rather than enterprise level net income of $148.2 million (with net income of $86.9 million attributable to Adeptus). The gain recognized upon entry into the Colorado JV increased Adeptus's reported net income for the second quarter of 2015 by 808% over what it otherwise would have been.

213. The gains that Adeptus recorded upon entry into the Colorado JV and the Texas JV also had a material effect on the balance sheet. As of June 30, 2016, the combined gain of $209.7 million was reflected as part of Adeptus's reported "investment in unconsolidated joint ventures." The $209.7 million component of that asset equated to 27.1% of Adeptus's total reported assets and 58.8% of its total reported equity as of that date at the enterprise level.

214. <u>Second</u>, not consolidating the joint venture entities for accounting purposes artificially bolstered Adeptus's financial statements by allowing Adeptus to book tens of millions of dollars in dubious fees and sublease rental income and

associated accounts receivable (A/R) from the joint venture entities, even though the joint venture entities never paid those amounts (and did not even have bank accounts). Adeptus booked revenue and associated A/R for various fees charged by consolidated Adeptus Enterprise subsidiaries to the joint ventures. Similarly, Adeptus booked rental income and associated A/R in connection with subleases of facility leases, ground leases, and equipment leases from consolidated Adeptus Enterprise entities to the joint ventures. Adeptus reported $10.8 million of such rental income in connection with subleases to the Arizona JV and the Colorado JV in 2015 alone. The fees and rental income that Adeptus booked as revenue and A/R were not paid by the joint venture entities and were eventually written off. But this practice inflated reported income in the interim—and at the time of the Offerings—because only 49.9% of the corresponding expenses at the joint venture level was carried through to Adeptus's income statement.

215. Finally, not consolidating the joint venture entities for accounting purposes further boosted Adeptus's financial statements by concealing that the Arizona JV and the Texas JV were bleeding cash. Had the operating results of the facilities operated by those joint ventures been consolidated, Adeptus would have accounted for all of the related cash expenditures made by facilities as expenses. By not consolidating those entities, however, the Adeptus Enterprise was able to advance funds on behalf of the facilities operated by the joint ventures and instead

book accounts receivable (A/R) from joint ventures. Although offsetting accounts payable and expenses were attributed to the joint venture entity, only 49.9% of such expenses were carried through and reflected in the joint venture-related accounting entries made in Adeptus's financial statements. Although these accounts receivable were subsequently written-off, these accounting practices resulted in a boost in earnings reported by Adeptus at the time of the Offerings.

216. The temporary boost in earnings from the accounting practices related to Adeptus's reported accounts receivable from joint ventures had a material effect on Adeptus's reported earnings at the time of the Offerings. The Adeptus Enterprise's A/R from the joint ventures was reflected in "other receivables" on Adeptus's balance sheet, an asset which steadily grew from $19.4 million as of June 30, 2015, to $31.5 million by December 31, 2015, and to nearly $57.4 million by June 30, 2016. As such, the A/R nearly tripled during the 13-month period in which Sterling and the Insiders pursued the Offerings. Much of that A/R was subsequently written off after the Adeptus Enterprise went bankrupt, but the temporary boost in earnings provided by dubious accounting in the interim helped Sterling and the Insiders increase the windfall they obtained through the Offerings.

c. Defendants Utilize the Joint Ventures to Bolster their Growth Narrative and Hype Adeptus's Stock Price Right Before the Offerings.

217. In the lead-up to the May 2015 Offering, Adeptus issued a press release on April 21, 2015 announcing entry into the Colorado JV. This press release quoted Hall as saying: "Partnerships with leading healthcare systems are a key element of our strategic growth plan." The press release had the desired effect, as Rosenberg wrote in an e-mail to Hall later that evening: "very nice reaction to the announcement."

218. Two days later on April 23, 2015, Adeptus reported its first quarter 2015 results. This press release emphasized continued facility growth and entry into joint ventures and attributed the following quote to Hall: "Our momentum continued to build during the first quarter. We opened seven new emergency rooms and received Medicare certification for Dignity Health Arizona General Hospital, our joint venture with Dignity Health in Phoenix. Earlier this week, we announced our newest joint venture with University of Colorado Health."

219. The first quarter 2015 earnings release also emphasized anticipated continued growth through 2015. The "Market Outlook" section emphasized:

> We continue to expand our freestanding emergency room network at an expected rate of opening 24 new sites per year. In addition, our second hospital, which will be located in Carrollton, Texas, a Dallas-Ft Worth suburb, is scheduled to open in late 2015. Earlier this week, we announced a partnership with University of Colorado Health

> (UCHealth) to improve access to high quality and convenient emergency medical care in Colorado.

The press release then pointed to the anticipated facility growth and entry into joint ventures with hospitals as a reason to raise guidance: "Based on our strong performance in the first quarter of 2015 and <u>full year growth plans which include 24 freestanding facilities and two new hospitals</u>, we are raising guidance." (emphasis added). Wall Street analysts responded positively to this earnings report and raised price targets, placing particular emphasis on the Adeptus Enterprise's entry into joint ventures with hospitals.

220. Just six days after announcing the Colorado JV and just four days after the first quarter earnings release that highlighted joint ventures as part of the Adeptus Enterprise's growth strategy, Adeptus filed a Form S-1 for the May 2015 Offering. The joint venture initiatives, billed as "building strategic alliances with leading health systems," were described as part of the overall growth narrative set forth in that document. The purported growth benefits of entry into joint ventures was also emphasized in investor roadshow presentations—approved by Sterling and given by Hall, Fielding, and Cherrington—surrounding that offering. On a slide titled "Key Highlights Since IPO," the bullet point "Continued expansion through JVs" was listed as the second of the "Highlights." The "Business Thesis" portion of that presentation and a slide titled "Investment Highlights" included the point: "Proven ability to partner with market leading hospital systems."

221. Sterling and the Insiders similarly utilized entry into joint ventures as a selling point in the interim period between the May 2015 Offering and the July 2015 Offering. The narrative gained traction with analysts, leading to significant increases in the price target for Adeptus stock.

222. For example, in May 23, 2015, RBC Capital Markets, LLC raised its ADPT price target from $45 to $69 per share. The rationale was that: "ADPT continues to meet its aggressive development targets, while also advancing its JV strategy." The "key takeaway" was that "ADPT continues to successfully execute on its strategy to build scale and strengthen its leading position in freestanding ERs, having added seven incremental facilities in 1Q15. In addition, Adeptus continues to move ahead with its JV strategy having recently announced a partnership with UCHealth to operate 12 existing facilities."

223. On June 23, 2015, BofA Merrill Lynch Global Research initiated coverage of Adeptus, with a buy rating and a price target of $105 (significantly higher than the then current price of $89). This opinion report noted:

> Our PO is based on 22.2x our 2016E EBITDAR, a significant premium to the average PO multiple we use for companies in our universe, but justified by the company's attractive growth and potential levers for upside. The growth is driven by the build-out of additional facilities in existing and new markets with the new JV strategy.

This report further noted: "ADPT trades at the highest valuation in our coverage, although we think it is justified given its growth." Similarly, on July 17, 2015, Goldman Sachs' equity research desk published a research note with the headline "Growth outlook aided by an attractive JV environment."

224. On July 23, 2015, Adeptus reported second quarter 2015 earnings. Taking cues from what analysts wanted to hear, the earning release once again highlighted entry into joint ventures (along with overall facility growth), and included the following:

- "So far this year, ADPT has opened 15 new facilities, including 12 freestanding emergency facilities in Texas and Colorado, and its first hospital and two freestanding emergency facilities in Arizona with partner, Dignity Health;"
- Hall was attributed with the following quote: "We are pleased with the second quarter results, which reflect our continued strong growth momentum. During the quarter, we opened six additional freestanding emergency rooms, entered into a new partnership with University of Colorado Health and grew our existing partnership with Dignity Health in Arizona;"
- "So far this year, ADPT has opened 15 new facilities, including 12 freestanding emergency facilities in Texas and Colorado, and its first hospital and two freestanding emergency facilities in Arizona with partner, Dignity Health. In July, as part of its partnership with University of Colorado Health, its 13 freestanding emergency rooms in Colorado were rebranded as UC Health Emergency Room and construction began on two hospitals;"
- "We are maintaining the growth of our freestanding emergency room network at an expected rate of opening 24 new sites per year, including both owned and joint venture facilities. Our second hospital, located in Carrollton, Texas, a Dallas-Ft Worth suburb, remains on schedule to open later this year;" and

- "Based on our strong performance in the second quarter of 2015 and continued full year growth plans including 24 freestanding facilities and two new hospitals, we are again raising guidance."

225. Wall Street analysts responded favorably to the narrative that entry into joint ventures would further bolster Adeptus's growth. On July 23, 2015, numerous analysts raised the price target for Adeptus, citing both facility growth and entry into joint ventures as reasons for optimism. For example:

- Stephens, Inc. raised its price target for ADPT to $120 from $71, noting "JV partnerships with establish healthcare systems and ADPT's own development should drive significant volume growth which has high incremental margins." Hall forwarded the research note to Rosenberg, who responded "Nice!!"
- Morgan Stanley raised the price target to $114. The report noted: "we expect the company will continue to outperform in the back half of the year as earnings growth will be supported by the expected launch of 11 new FSEDs and 1 hospital this year" and "facility ramps in AZ;"
- Piper Jaffrey & Co. raised its price target for Adeptus to $109, emphasizing the "Strong start for JVs;"
- Avondale raised its price target to $147, noting "[f]acility growth," "strong growth," and that "[n]ew JV relationships over time will provide a volume pick up further adding to profitability."

Hall, Rosenberg, and Fielding giddily circulated these reports amongst themselves via e-mail, proclaiming "Gotta love it!!" (Hall) and "Nothing not to love" (Rosenberg).

226. By the time of the July 2015 Offering, the positive analyst reaction to the joint venture narrative had driven the price of Adeptus stock over $100. The July 2015 Offering went to market at a price to the public of $105.00, up from the $63.75 price for the May 2015 Offering just two months earlier.

227. Based on that success, Sterling and Insiders again trotted out the joint venture playbook in advance of the June 2016 Offering. On May 10, 2016, BofA Merrill Lynch posted "quick takes" on Adeptus following a health care conference hosted by BofA Merrill Lynch. Some of the points raised in this bulletin included: "JV structure to be the driver of future growth;" and "Initial JVs are performing well."

228. The next morning (May 11, 2016), Adeptus announced the Texas JV. Analysts responded positively to the announcement. A week later, Sterling and the Insiders arranged for a May 19, 2016 call with Adeptus's investment bankers and securities counsel to address another offering. Sterling and the Insiders thus once again tried to utilize positive analyst coverage of a joint venture announcement to obtain a bump in the stock price prior to an offering, as they had done in May 2015 and July 2015 and had even wanted to do before the IPO.

229. At the same time, Hall was fully aware that the previous joint ventures—and especially the hospitals—had been a money pit. On May 13, 2016,

Hall received an e-mail providing an update on a new joint venture initiative in Florida, which noted as follows:

> <u>The plan has been to fund the working capital through a loan the way we are currently doing it everywhere else. The good news is there's no hospital, so the cash flow hole will be much much lower and shorter in duration</u>. The protection against the worst case scenario is two things - the likelihood that all the FSEDs in a market will suck is pretty remote so the good ones will subsidize the bad ones - and if for some crazy reason they all suck we plan to keep the loan amount very low so once the loan reaches x amount of dollars, the health system needs to make good on the loan.

(emphasis added). Hall responded: "Thanks. Ok to proceed." Hall was fully aware that the previous joint ventures had created a "cash flow hole" funded by the Adeptus Enterprise via a "loan" (misleadingly booked as accounts receivable).

230. As the June 2016 Offering date approached, Sterling and the Insiders, sensing softness in the numbers, decided to utilize joint ventures to help push the Offering across the finish line. In a May 30, 2016 e-mail, Rosenberg wrote: "Need to communicate that the expenditures in Q2 that are referenced (Dallas hospital and JV prep) are by design and will lead to outperformance in the latter part of year (and beyond)…hence the increase in full year guidance." On June 1, 2016, Adeptus increased guidance for the second half of 2016.

d. The Joint Ventures with Hospital's Were Not in the Adeptus Enterprise's Best Interest.

231. Sterling and the Insiders did not act in the best interests of Adeptus or the Adeptus Enterprise in causing the Adeptus Enterprise to enter into the Arizona

JV, the Colorado JV, and the Texas JV. Instead, the joint venture initiatives were pursued solely in order to boost the price of Adeptus stock in the short-term by bolstering the growth narrative and concealing the Adeptus Enterprise's downward financial spiral through dubious accounting practices.

232. The pursuit of a joint venture model, or "hub and spoke" model, proved disastrous for the Adeptus Enterprise. The two hospitals developed by Adeptus and operated under the Arizona JV and Texas JV that served as "hubs" in this model were money pits. The freestanding emergency room facility "spokes" were pulled down by those hospitals because affiliation with the hospitals meant a different payer mix that included significantly more Medicare and Medicaid patients.

233. Sterling and the Insiders knew that the "hub-and-spoke" model would drive down revenue-per-patient for at least two reasons. First, under the model, the Adeptus Enterprise began accepting more Medicare and Medicaid patients, which paid a small fraction of what the Adeptus Enterprise received from patients with commercial insurance such as Aetna or Blue Cross. Second, after the Adeptus Enterprise partnered with the hospitals, the revenue it received for commercial payers also declined.

234. To cover this loss in per-patient revenue, the Insiders knew that each facility had to achieve an aggressive growth in volume. The Insiders, however, had little basis on which to believe that the Adeptus Enterprise could make up the loss

in per patient revenue. As described above, by early 2016, the Insiders knew that the joint ventures, particularly the Arizona JV, were bleeding cash.

235. The Insiders also knew that the Adeptus Enterprise's facility in the Dallas-Fort Worth area (DFW) were struggling. The Insiders approved the Texas JV to try to reduce, or at least temporarily conceal, these losses. But the Insider knew that the Texas JV was going to put further downward pressure on pre-patient revenue. For instance, in early 2016, the Adeptus Enterprise obtained a "black box" study showing that Texas JV would reduce net revenue per commercial patient by approximately $330. This reduction in revenue would lead to a projected "negative budget impact" of around $15.8 million for 2016 alone.

236. To recoup this loss of revenue, the Adeptus Enterprise's free-standing emergency rooms in DFW would have to increase commercial patients visits per day from the current amount of approximately 8 per day to 12 per day—an increase of nearly 50%. The aggressive growth required to even breakeven on the Texas JV was not disclosed to the market prior to the final offering in June 2016.

237. In sum, although the JV model and entry into the Arizona JV and Texas JV proved disastrous for the Adeptus Enterprise in the long-run, pursuing those initiatives enabled Sterling and the Insiders to achieve their goal of a profitable exit before the truth came to light.

E. STERLING'S AND THE INSIDERS' KNOWLEDGE OF MAJOR PROBLEMS AT THE TIME OF THE OFFERINGS

238. That every major strategic initiative benefitted Sterling and the Insiders while not benefitting and/or affirmatively harming the Adeptus Enterprise was not a coincidence. From the lead-up to the IPO through the June 2016 Offering, Sterling and the Insiders consistently operated the business in a manner that would enable them to cash out as quickly and as profitably as possible, regardless of the long-term consequences for the Adeptus Enterprise and its stakeholders. They did so because it was evident even before the IPO that Adeptus Enterprise's core business model had major problems. Sterling and the Insiders were aware of many of those issues by virtue to inside information not available to public shareholders. Their knowledge of material, non-public information motivated them to both dump their holdings and to gloss over the Adeptus Enterprise's many problems through misleading aggregation of data and accounting gimmicks.

1. Sterling Has Access to Material Non-Public Information that Revealed the Adeptus Enterprise's Poor Financial Condition.

a. Sterling Obtains Information from Hall and Fielding

239. Throughout the relevant period, Sterling had an open line of communication through Rosenberg to obtain whatever information it wanted to know about the Adeptus Enterprise. Prior to the Adeptus Enterprise going public, Hall and Fielding routinely responded to Sterling's requests for information as might

be expected in a privately held company heavily influenced by its private equity "sponsor." But this dynamic did not change after the Adeptus Enterprise went public. Rather, Sterling maintained its direct and open line of communication (through Rosenberg) to Hall and Fielding. In turn, Rosenberg and Sterling were able to obtain material non-public information regarding the Adeptus Enterprise from Hall and Fielding.

240. First, Sterling was able to ask for and receive internal company projections and modeling, and even influence those efforts. For example, Rosenberg e-mailed Fielding on July 21, 2014 to ask about the "timing…for the longer-term projections you and I discussed last week." Upon receiving the projections, Rosenberg and Fielding engaged in back and forth discussions. Two days later, Rosenberg raised the question of "whether we should be modeling more than 25 new stores per year" given that "[a]s we enter more markets, I would assume we will ramp up the number of units we will be opening." In a follow-up e-mail, Rosenberg wrote: "if the model can easily be updated to account for more facility additions in out-years, that would be great." The next day, Fielding e-mailed Rosenberg with a tweaked model showing additional hospital and facility growth compared to the previous model.

241. Sterling, through Rosenberg, was also presented with the Adeptus Enterprise's non-public internal projections in the time periods leading up to the

Offerings. For example, on February 26, 2015, Rosenberg e-mailed Fielding to request the latest analyst projections and consensus numbers for Adeptus, noting that Sterling's "finance team is looking to update our financial models." Fielding forwarded a spreadsheet containing the requested information on March 6, 2015. Similarly, on May 20, 2015, the Adeptus Enterprise's treasurer transmitted Adeptus Enterprise's financial projections for 2015 to 2018 to a bank in connection with obtaining a credit facility. Fielding forwarded this e-mail, along with the attached projections, to Rosenberg later that day, writing: "Fyi – so you can see our model going out to the banks."

242. Second, Sterling was provided with advanced notice and insight into patient volumes and quarterly results. For example:

- In an August 7, 2014, Rosenberg e-mailed Fielding to ask if there were any "flash estimates for July yet." Fielding responded within just 13 minutes to provide figures for revenue, patient volumes, and revenue per patient, and indicated how performance compared to Wall Street forecasts;

- On January 2, 2015, Rosenberg e-mailed Fielding to ask if there were any "early guesses on how we shook out," and noting that per unit patient volumes "ended up remarkably close to budget in December." Fielding replied later that day, writing that Adeptus "will be short on revenue needed to hit the Q4 analysis consensus;" and

- On March 30, 2015, Fielding forwarded a report containing February 2015 reporting to Rosenberg. In the cover e-mail, Fielding noted that patient volume "of 14,155 was lower than budget by 2,526 patients," or an over 15% miss. Fielding's cover

> e-mail also noted that revenue and adjusted EBITDA were both below budget.

By obtaining such advance notice into patient volumes and operating results, Sterling and the Insiders knew what messaging (*e.g.,* facility growth, announcement of entry into a joint venture, etc.) and timing for the Offerings would maximize Sterling's windfalls.

243. Third, Sterling through Rosenberg was able to ask for and obtain non-public information regarding payer mix at the joint venture entities. For example, on December 22, 2014, Rosenberg asked about the payer mix at the Arizona: "Do we have a read yet on the percentage of the ER patients that are medicare/Medicaid vs. commercial?" Hall promptly responded later that day, noting: "[s]ignificant [M]edicaid early on with normal medicare percentage." (emphasis added).

244. In a follow-up also sent on December 22, 2014, Hall forwarded Rosenberg and Holser an e-mail that contained a table showing the payer mix at the Arizona General Hospital month-to-date in December 2014. The data reflected that a whopping 50.9% of the patients had Medicaid as the payer, while only 27.3% were commercial payers. That payer mix was likely to result in revenues per patient far below expectations, and thus Rosenberg and Sterling were on notice by December 2014 that the early payer mix at Arizona was a major "red flag."

245. In short, Sterling through Rosenberg was able to ask for and receive material non-public information from Hall and Fielding on demand regarding patient

volume trends, revenue and earnings relative to analyst estimates, financial projections, and payer mix at various facilities.

b. Sterling Receives Specific, Real-Time Reports on the State of Adeptus's Financial Condition.

246. Pursuant to agreements with the Adeptus Enterprise, including a June 25, 2014 stockholders' agreement, Sterling had direct access to the Adeptus Enterprise's books and records, including "copies of all materials provided to Board (or equivalent governing body) at the same time as provided to the Directors (or their equivalent)." In addition, Sterling had the "ability to link Sterling Partners' systems into the Company's general ledger and other systems in order to enable the Sterling Entities to retrieve data on a 'real-time' basis."

247. Sterling's broad and "real time" access to the Adeptus Enterprise's books and records provided Sterling with material information, including non-public information, concerning the true state of the Adeptus Enterprise's financial condition.

248. Sterling and Insiders also had access to such information through daily "Patient Volume Reports" circulated via e-mail within the Adeptus Enterprise. Each day, the Adeptus Enterprise's internal reporting staff compiled a daily Patient Volume Report, which was subsequently e-mailed to Hall, Fielding, Cherrington, Rosenberg, and Hosler, amongst other personnel within the Adeptus Enterprise.

Sterling and the Insiders routinely received these daily Patient Volume Reports through e-mail blasts.

249. In addition to the Patient Volume Reports, Sterling and the Insiders were provided with inside access into the company's performance through an application, iDashboards, that enabled them to track patient volumes and other data in real-time.

250. Through Rosenberg and Hosler, Sterling had access to this real-time data source even prior to the IPO. On December 5, 2013, Hall e-mailed the Adeptus Enterprise's IT person to give Rosenberg access to the "Ipad app that allows [the user] to see real time volumes by facility," as Rosenberg had asked for such access. Rosenberg was provided access to the real-time app shortly thereafter. Hosler also received access to the real-time patient volume dashboard around the same time.

251. Sterling, through Hosler and Rosenberg, maintained access to iDashboards throughout the relevant period. Indeed, Hosler and Rosenberg maintained access even as the Adeptus Enterprise limited access available to other personnel not long before the May 2015 Offering. On April 16, 2015, the Adeptus Enterprise's Chief Information Officer (CIO) e-mailed Hall to request Hall's approval "to make some permission changes on idashboards." The CIO explained:

> Currently everyone with permissions to it (about 27 people total) can see patient volume at any site. I would like to restrict that in certain circumstances, for example, the leaders in Arizona don't need to see patient volume in Texas and Colorado. Same for leaders based in

> Colorado, and to lesser degree, leaders in Houston don't need to see DFW and other states and vice-versa. So basically this is just a minor lockdown, so that <u>only Hos[ler]/[Rosenberg]/C-level Adeptus/marketing can see "everything"</u>, and regional leaders can only see their regions etc. Are you ok with that change?

(emphasis added). Hall promptly responded, writing: "I totally agree!!! Good recommendation."

252. Their iDashboards access allowed Sterling to monitor not only patient volumes in real-time, but also the "payer mix" at Adeptus facilities. The Insiders had told the market that building hospitals and creating entering joint ventures with non-profit hospital systems would increase overall traffic to Adeptus free-standing emergency rooms. While Adeptus understood that a significant portion of the increased traffic would come from government payers (*i.e.,* Medicare and Medicaid), the Insiders told analysts and investors that this hub-and-spoke model would bring in more commercial patients as well. This increased commercial traffic was supposed to more than offset the 90% drop in per-patient revenue that each Medicare or Medicaid patient represented (*i.e.,* Medicare and Medicare often paid only 10% of what commercial insurers paid for the same treatments).

253. Their iDashboards showed Sterling that this promised offset never occurred. For example, the iDashboards showed that although DFW experienced increased volume in the first quarter of 2015, commercial volume decreased by 4.1%, meaning that the uptick in volume actually had a negative effect on that

market's net income. Payer mixes were never disclosed to the market; only volume increases were, thereby misleading everyone who didn't have access to iDashboards

254. By early 2016, all of the Adeptus Enterprise was experiencing what Sterling and the Insiders referred to as an "erosion" in payer mix. Whereas commercial patients represented approximately 70% of total patient volume in November 2015, they represented only 60% of the total volume a few months later in April 2016 (a 15% drop). The Insiders, however, published only total patient volume to the market, leading to widespread misconception. There was no misconception with Sterling or the Insiders, though. They circulated iDashboards while noting that the declines in per-patient revenue that the company was experiencing were mostly because the organic growth in commercial patients that they promised was nowhere to be seen.

2. Sterling and the Insiders Know that Deterioration in Patient Volumes Is Far Worse than Represented to the Market

255. The Adeptus Enterprise's cost structure at each facility was largely fixed, meaning that its profitability was largely a function of the number of patients visits, referred to as patient volume. Adeptus's Form 10-K annual reports for both 2014 and 2015—signed by Hall, Fielding, and Rosenberg—expressly identified patient volume as one of the "key performance measures we use to evaluate our business," and noted that Adeptus "utilize[d] patient volume to forecast [its] expected net revenue." As such, knowledge of facility-by-facility and system wide

patient volume data and trends provided any indication of the company's profitability.

256. Sterling and Insiders had access to such information. The daily Patient Volume Reports included the following information on a facility-by-facility basis:

- Patient volume for the day (total patient volume);
- Monthly volume to date in patients per day (ppd), the budgeted monthly volume through that date (ppd), and the monthly volume through that date in the prior year (ppd);
- Quarterly volume to date (ppd), the budgeted quarterly volume through that date (ppd), and the quarterly volume through that date (ppd) in the prior year; and
- Yearly volume to date (ppd), the budgeted yearly volume through that date (ppd), and the yearly volume through that date in the prior year (ppd).

These data points were presented daily for every single facility and hospital in the entire Adeptus Enterprise system. In addition, the Patient Volume Reports provided each of these data points averaged: (a) for each of the Adeptus Enterprise's market areas (Dallas-Fort Worth, Houston, Austin, San Antonio, Colorado, and Arizona); (b) across the entire system as a whole; and (c) across all free-standing emergency room facilities.

257. The daily Patient Volume Reports also contained total volume figures and same store calculations. This component of the report included the following data points:

- Patient volume for the day (total patient volume);
- Monthly total patient volume to date, the budgeted monthly volume through that date, and the monthly volume through that date in the prior year;
- Quarterly volume to date, the budgeted quarterly volume through that date, and the quarterly volume through that date in the prior year; and
- Yearly volume to date, the budgeted yearly volume through that date, and the yearly volume through that date in the prior year.

These total volumes were also aggregated by each market, across the system as a whole, and across all freestanding emergency rooms.

258. Finally, the daily Patient Volume reports provided "same store volume" data across the system. Again, this data was compiled month to date, quarter to date, and year to date, comparing the current periods both against budget projections and same period data from the prior year. The Patient Volume Reports also set forth the percentage change in same store volume relative to the prior year on a month to date, quarter to date, and year to date basis.

259. Accordingly, the Patient Volume Reports provided material non-public information regarding monthly, quarterly, and annual performance and trends at a facility level, market area level, and system-wide level both compared to budget and year-over-year. Given the import of patient volume on profitability, daily transmission of the Patient Volume Reports provided Sterling and the Insiders with daily updates as to how the Adeptus Enterprise was performing.

260. Hall and Rosenberg actively monitored the Patient Volume Reports, and often e-mailed each other to exchange virtual high fives on days with heavy patient volumes. These celebratory e-mail exchanges regarding spikes in patient volumes reflected in the Patient Volume Reports often occurred around holiday periods. For example:

- In a December 22-23, 2013 e-mail chain with Hall, Rosenberg commented that the spike in volumes was a "[n]ice Christmas present;"
- On December 26, 2013, Hall e-mailed Rosenberg, writing: "[o]ur recent volumes have been a wonderful Christmas present." Later that day, Rosenberg forwarded the patient volume reports for December 23rd, Christmas Eve, and Christmas Day, writing: "Nice Christmas Present indeed!!"; and
- On an e-mail sent on Tuesday, May 26, 2015 (the day after Memorial Day), Rosenberg forwarded the Patient Volume Reports for Memorial Day weekend to Hall, writing: "Gotta love holiday weekends." Hall responded: "I agree."

By actively monitoring the Patient Volume Reports, Sterling—through Rosenberg and Hosler—and the Insiders were aware of trends within the company's business.

261. As a result of their receipt and active review of daily Patient Volume Reports, Sterling and the Insiders were aware that the Adeptus Enterprise was under-performing in the lead-up to the Offerings, unbeknownst to Adeptus's public investors. The negative trends known to Sterling and the Insiders were glossed over by the growth narrative and joint venture story sold to the public.

262. During the second quarter of 2015, the Adeptus Enterprise's already stagnant same store patient volumes fell progressively farther below budget. The Patient Volume Report for April 30, 2015 reflected that same store quarterly budget miss was 10.5%. By May 31, 2015, the same store quarterly budget miss had grown to 11.9%. The quarterly same store budget miss grew to 12.3% by the June 30, 2015 Patient Volume Report.

263. In addition, the Patient Volume Report for June 30, 2015 reflected that the Adeptus Enterprise's average patient volumes per facility in each of its markets (reported as patients-per-day) were significantly below budget and were down year-over-year:

	Quarter to Date (June 30, 2015)		
	2015	Budget	2014
Dallas - Ft. Worth	8.39	9.69	9.66
Houston	8.78	10.03	10.51
Austin	8.93	9.80	9.34
San Antonio	7.45	11.56	14.19
Colorado	8.74	11.69	12.66

Moreover, same store quarterly patient volumes were down 11.60% year-over-year, and same store year to date patient volumes were down 11.82% year-over-year.

264. Based on the wide-spread underperformance and declining patient volumes across all markets as reflected in the Patient Volume Reports, Sterling and the Insiders knew that their various growth-related initiatives were not working. Indeed, the dismal patient volume data was a glaring red flag that the Adeptus

Enterprise's profitability was tanking. Nevertheless, Sterling and the Insiders continued to push the growth narrative and related joint venture scheme on the unsuspecting public in the lead-up to the May 2015 Offering and July 2015 Offering. Sterling and the Insiders even doubled down on their growth narrative in the face of declining patient volumes, raising Adeptus's full-year guidance based on the premise of facility growth when reporting second quarter 2015 earnings in the lead-up to the July 2015 Offering.

265. Sterling and the Insiders similarly spun misleading growth narrative in the face of disappointing patient volume data in the lead-up to the June 2016 Offering. In an April 20, 2016 Adeptus press release, one of the reported first quarter 2016 "highlights" was that "same store volumes increased 15% versus prior year." The reported same store volume growth was a major catalyst for Adeptus stock. Numerous research reports, forwarded via e-mail to Sterling and the Insiders, reflected bullish sentiment surrounding the reported increase in same store volume. For example:

- A Bank of America/Merrill Lynch report included "Strong ss volumes confirm the strategy is working" as one of the "Key takeaways," further noting that the analysts "remain[ed] bullish on ADPT, as the company continues to execute on its strong growth;"
- A KeyBank Capital Markets report, titled "Strong SS Volumes Help Validate Model & Strategy," included "Strong SS Volume Growth Helps Validate LT Prospects" as one of the "Key

Investment Points." The report further noted that the same-store volume growth "bolsters management's market cluster strategy;"

- A Stephens research bulletin included "Organic growth continues to track in double digits" as on of the "Key Points;" and

- The "Key Takeaway" in a Jefferies research report was that: "ADPT delivered 15% SS volume growth in Q1, reinforcing our belief in the attractive of ADPT's value proposition to customers and in the growth opportunity available."

Each of these reports were forwarded via e-mail to Sterling and the Insiders on April 20, 2016.

266. But, at the same time, Sterling and the Insiders were provided with information in the Patient Volume Reports that painted a far less rosy picture.

267. First, the reported aggregate same store volume growth glossed over the fact that there was no improvement in 5 of the company's 6 markets, a fact known to Sterling and the Insiders through the Patient Volume Reports. For example, the daily Patient Volume Report as of March 31, 2016 reflected that:

- Same store volumes declined quarter-over-quarter in all of the Texas markets other than DFW (Houston, Austin, and San Antonio);

- Same store volumes declined quarter-over-quarter in the Colorado market;

- Arizona did not have any free-standing facilities open in time to make a quarter-over-quarter comparison from 2015 to 2016; and

- All of the reported same store growth came from older facilities in the DFW market (opened in September 2014 or much earlier).

In other words, the daily Patient Volume Report provided to Sterling and the Insiders reflected that Adeptus had same store declines or no growth in 5 of its 6 market areas, with only the DFW market manifesting any same store growth.

268. Second, information provided to Sterling and the Insiders through the Patient Volume Report indicated that the same store growth in the Dallas-Fort Worth market was not due to natural progression or organic growth of the company as a whole, but rather was highly concentrated in a limited number of legacy stores that had been laggards. Through the first 10 months of 2015, several of the facilities in the Dallas-Fort Worth market experienced plummeting patient volumes. Following the opening of the First Texas Hospital on November 3, 2015, however, these lagging facilities were able to accept lower-paying governmental patients. Purely as a result of this deleterious changing payer-mix, volumes at these previously struggling facilities sky-rocketed. But the increased volume was not likely to lead to profitability given that those increases were primarily governmental payers.

269. Through the Patient Volume Reports, Sterling and the Insiders were aware of the payer-mix induced volume surge at these laggard facilities. For example, the daily Patient Volume Report for March 31, 2016 reflected that:

- No Fo (opened June 26, 2009) increased from 856 patients in Q1 2015 to 1,340 patients in Q1 2016;
- Mesquite (opened November 15, 2013) nearly tripled from 1,010 patients in Q1 2015 to 2,943 patients in Q1 2016;

- Beach (opened October 11, 2013) more than doubled from 770 patients in Q1 2015 to 1,593 patients in Q1 2016;

- Watauga (opened November 30, 2012) increased from 705 patients in Q1 2015 to 1,279 patients in Q1 2016;

- Colleyville (opened September 27, 2013) increased from 887 patients in Q1 2015 to 1,296 patients in Q1 2016;

- Garland (opened October 25, 2013) increased from 495 patients in Q1 2015 to 700 patients in Q1 2016;

- Mansfield (opened November 8, 2013) increased from 587 patients in Q1 2015 to 890 patients in Q1 2016; and

- Little Elm (opened December 4, 2013) more than doubled from 558 patients in Q1 2015 to 1,329 patients in Q1 2016.

These eight facilities alone accounted for nearly half of the total DFW same store volume growth quarter over quarter.

270. Prior to that opening, each of the eight facilities had reported <u>declining</u> volumes year to date through October 31, 2015 relative to the same period in 2014, as reflected in earlier Patient Volume Reports transmitted to Sterling and the Insiders. In other words, those facilities had been trending downwards until the opening of First Texas Health fundamentally altered the payer mix and allowed acceptance of low-paying governmental payers.

271. When juxtaposed against year-to-date declines through October 31, 2015, the sharp uptick in same store volumes for the eight legacy stores addressed above is clear:

	Opened	Q1'16	Q1'15	% Change	YTD 10/31/15	YTD 10/31/14	% Change
No Fo	6/26/2009	1,340	856	56.5%	2,654	3,181	-16.6%
Watuaga	11/30/2012	1,279	705	81.4%	2,405	2,779	-13.5%
Colleyville	9/27/2013	1,296	887	46.1%	2,983	3,305	-9.7%
Beach	10/11/2013	1,593	770	106.9%	2,468	2,955	-16.5%
Garland	10/25/2013	700	495	41.4%	1,608	1,659	-3.1%
Mansfield	11/8/2013	890	587	51.6%	1,902	3,485	-45.4%
Mesquite	11/15/2013	2,943	1,010	191.4%	3,693	3,792	-2.6%
Little Elm	12/4/2013	1,329	558	138.2%	1,981	2,517	-21.3%
TOTAL		**11,370**	**5,868**	**93.8%**	**19,694**	**23,673**	**-16.8%**

The 93.8% same store volume growth quarter-over-quarter for the first quarter of 2016 was not the result of natural organic growth given that those same facilities had experienced same store volume declines of -16.8% in the months preceding the November 2015 hospital opening.

272. Accordingly, the Patient Volume Reports provided to Sterling and the Insider revealed that the Adeptus Enterprise had not somehow turned the quarter during the first quarter of 2016. To the contrary, Patient Volume Reports revealed same store volumes had either declined or were flat in 5 of the Adeptus Enterprise's 6 markets. Moreover, the data reflected in Patient Volume Reports reveals that almost all of the same store growth in Dallas-Fort Worth area was associated with a handful of legacy stores that had been laggards and had experienced sharp upticks in volume solely due to a harmful shift in payer-mix. But by misleadingly aggregating same store growth data in the earnings report, Sterling and the Insiders were able to obtain glowing analyst coverage and significant boost the price of Adeptus stock, thereby setting the table for another potential offering.

273. Just four days after the April 20, 2016 press release touting same store growth trends that were misleading for all of the foregoing reasons, Rosenberg e-mailed Hall on April 24, 2016 to address putting together "the timeline for the secondary" offering.

3. Sterling and the Insiders Know, or Consciously Avoid Learning, That Increases in Patient Volume Are Driven by Low-Paying Patients with Government Insurance.

274. Part of the Adeptus Enterprise's growth strategy was, as described above, to partner with hospitals to increase overall traffic in the free-standing emergency rooms. While Adeptus understood that a significant portion of increased traffic would come from government payers (*i.e.,* Medicare and Medicaid), Adeptus touted to the market that the joint-venture and hub-and-spoke model would bring in more commercial patients as well. But, by May 2016, Sterling and the Insiders must have realized that the increase in commercial patients was not materializing.

275. As described above, despite the joint-venture partnerships in Arizona and Colorado and the hub-and-spoke model in Texas, patient volume per facility was not growing in a number of markets. More importantly, in many cases, patient volume year-over-year only grew because facilities had started accepting patients with government insurance. Sterling and the Insiders knew that Medicare and Medicare often paid only 10% of what commercial insurers paid for the same treatments. Accordingly, as Sterling and the Insiders knew, a general growth in

overall volume provided no information by itself as to the profitability of the Adeptus Enterprise. A facility could experience a growth in overall patient volume, but if that facility also experienced a significant enough decline in commercial-patient volume, the facility's overall revenue could still decline.

276. Although scant, if any details, were shared with the market, the Adeptus Enterprise internally documented the rapid change in "payor mix" that was leading to an erosion of revenue per patient. As reflected in monthly "dashboards" in early 2016, commercial patients were representing less and less of the overall patient volume at the free-standing emergency rooms. In fact, internal documents showed commercial patients comprised approximately 70% of total volume in November 2015 but only 60% of the total volume a few months later in April 2016.

277. The Insiders and Sterling were aware of what they called the "erosion" in the payor mix. In April 2016, Fielding, for instance, reviewed a spreadsheet showing same-store, year-over-year volume for DFW. The data demonstrated that although DFW had an overall uptick in volume from the first quarter of 2015, commercial volume *declined* by 4.1%, meaning that the overall increase in volume came from low-paying patients.

278. Hall also received and reviewed similar data. For instance, in May 2016, Adeptus's Vice President of Strategy emailed Hall the April "dashboard" and stated: "DFW payor mix erosion – Commercial patients volume decline outpaced

government patients in DFW, resulting in an erosion in the payor mix (and a subsequent decline in net revenue per patient)."

279. This material information was not disclosed to the market until after Sterling received an additional $148.5 million and the Insiders collectively pocketed another $16.8 million through the June 2016 Offering.

FIRST CAUSE OF ACTION

(Against All Defendants for Breach of Fiduciary Duty of Loyalty in Connection With the Offerings and LLC Unit Purchases)

280. The Trust repeats and realleges each and every allegation contained above as if fully set forth herein.

281. Hall and Rosenberg were directors of Adeptus throughout the relevant period, including at the time of the Offerings. Hosler was a director of Adeptus from the time of its IPO until May 29, 2015 and was a director at the time of the May 2015 Offering. As Adeptus directors, Hall, Rosenberg, and Hosler owed fiduciary duties of loyalty to Adeptus.

282. Hall was CEO of Adeptus and the Adeptus Enterprise, Fielding was CFO of Adeptus and the Adeptus Enterprise, and Cherrington was COO of Adeptus and the Adeptus Enterprise at the time of the Offerings and related LLC Unit purchases. As officers of Adeptus and the Adeptus Enterprise, Hall, Fielding, and Cherrington owed fiduciary duties of loyalty to Adeptus.

283. Sterling was a controlling stockholder of Adeptus with respect to the Offerings and the LLC Unit purchases. Sterling exercised pervasive control over the business and affairs of Adeptus as the company's private equity "sponsor." Sterling had designated board members (Rosenberg and Hosler), had contractual rights of control under a shareholder's agreement, exerted significant influence through officers installed by Sterling (Hall, Fielding, and Cherrington), and exercised *de facto* control, generally. Sterling exercised pervasive control over all substantive aspects of the Offerings and related LLC Unit purchases. As a controlling stockholder over Adeptus and the Board with respect to the Offerings and LLC Unit Purchases, Sterling owed fiduciary duties of loyalty to Adeptus with respect to those transactions.

284. At the time of the Offerings and LLC Unit purchases, the Sterling Principals were managers of Sterling Capital Partners III, LLC. Sterling Capital Partners III, LLC was the general partner of SC Partners III, L.P., which was the general partner of Sterling AIV and Sterling AIV Conduit, the Sterling special purpose entities that held investments in Adeptus and Adeptus LLC and profited through the Offerings and LLC Unit purchases. As managers of Sterling Capital Partners III, LLC, therefore, the Sterling Principals were human controllers over Sterling and the Sterling entities that were controlling stockholders of Adeptus. In particular, the Sterling Principals exercised voting and investment power over

Sterling. As the individuals with ultimate control over Sterling, and, therefore, Adeptus, the Sterling Principals owed fiduciary duties of loyalty to Adeptus.

285. The Insiders, Sterling, and the Sterling Principals breached their fiduciary duties of loyalty to by engaging in self-dealing transactions in which Adeptus pursued the Offerings in order to purchase LLC Units held by Sterling and Adeptus directors and officers. The Insiders and Sterling stood on both sides of these transactions. The Offerings and related LLC Unit purchases were not approved by a disinterested majority of the Board, were not the result of a fair process, and did not involve a fair price paid by Adeptus in exchange for the LLC Units. Rather, Adeptus's purchases of LLC Units conferred an obscene windfall.

286. Adeptus paid $325.6 million to Sterling in exchange for its LLC Units. Hall received $46.5 million, Fielding received $6.7 million, and Cherrington received $10.6 million from Adeptus in exchange for their LLC Units. Those amounts significantly exceeded the price that any third-party would have paid for the LLC Units in an arms-length sale and with complete and accurate disclosure of all material facts. Had it not been for their self-dealing in causing Adeptus to purchase the LLC Units at an inflated price, Sterling and the Insiders would have obtained nothing for their LLC Units upon the bankruptcy filing that occurred just eight months after the last of the Offerings.

<u>SECOND CAUSE OF ACTION</u>

(Against Sterling, Rosenberg, and Hosler for Breach of Fiduciary Duty of Loyalty Associated with Insider Trading under *Brophy*[3])

287. The Trust repeats and realleges each and every allegation contained above as if fully set forth herein.

288. Rosenberg was an Adeptus director from the time of the IPO through the time of the Offerings. Hosler was a director of Adeptus from the time of the IPO until May 29, 2015 and was a director at the time of the May 2015 Offering. As Adeptus directors, Rosenberg and Hosler owed fiduciary duties of loyalty to Adeptus. Rosenberg and Hosler were also principals and agents of Sterling and acted in Sterling's interests with respect to Adeptus (to Adeptus's detriment).

289. Sterling was a controlling stockholder of Adeptus with respect to the Offerings. Sterling exercised pervasive control over the business and affairs of Adpetus as the company's private equity "sponsor." Sterling had designated board members (Rosenberg and Hosler), had contractual rights of control under the shareholder's agreement, exerted significant influence through officers installed by Sterling (Hall, Fielding, and Cherrington), and exercised *de facto* control, generally. Sterling exercised pervasive control over all substantive aspects of the Offerings. As

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[3] *See Brophy v. Cities Serv. Co.*, 70 A.2d 5, 8 (1949) ("When . . . a person in a confidential or fiduciary position, in breach of his duty, uses his knowledge to make a profit for himself, he is accountable for such profit.") (internal quotations omitted).

a controlling stockholder over Adeptus and the Board with respect to the Offerings, Sterling owed fiduciary duties of loyalty to Adeptus with respect to the Offerings.

290. Sterling, through Sterling AIV Conduit, sold Class A Shares alongside Adeptus in each of the Offerings and received $240.9 million in net proceeds from those of Adeptus sales. The public offering prices per share were $63.75 in the May 2015 Offering, $105.00 in the July 2015 Offering, and $62.00 in the June 2016 Offering. Had all material facts regarding the Adeptus Enterprise's financial condition been disclosed, Adeptus's stock price would have traded in the low single digits at the time of the Offerings. Thus, most of the $240.9 million in net proceeds received by Sterling AIV Conduit constituted a windfall.

291. Rosenberg, Hosler, and Sterling breached their fiduciary duties of loyalty to Adeptus when Sterling AIV Conduit sold alongside Adeptus in the Offerings while in possession of material, nonpublic information. Rosenberg and Hosler, Sterling's agents, possessed material, nonpublic information about the Adeptus Enterprise. Sterling was motivated, in whole or in part, by the substance of that information in directing and selling alongside Adeptus in the Offerings.

292. Specifically, through daily "Patient Volume Reports," real-time access to patient volume data through the iDashboard application, and non-public financial projections, Sterling was aware of material problems with the Adeptus Enterprise's business model and financial condition. Sterling was motivated by that information

to rapidly exit its position in Adeptus. Indeed, Sterling and the Insiders made sure that the Adeptus Enterprise's problems were glossed over through the misleading aggregation of data presented to the market. Sterling exploited the information asymmetry between Sterling and public investors, and took advantage of the misleading growth narrative and associated accounting tricks to dump Class A Shares before the Adeptus Enterprise's financial problems were exposed.

293. As a result of Rosenberg, Hosler, and Sterling breaching their fiduciary duties of loyalty in connection with the Offerings, and trading on material, nonpublic information, Sterling AIV Conduit received over two hundred millions of dollars of profit in selling Class A Shares at a grossly inflated price.

THIRD CAUSE OF ACTION
(Against All Defendants for Unjust Enrichment)

294. The Trust repeats and realleges each and every allegation contained above as if fully set forth herein.

295. Adeptus's pursuit of the Offerings and related LLC Unit purchases from Sterling and the Insiders constituted self-dealing transactions. In connection with those transactions, (a) the Insiders breached fiduciary duties of loyalty owed to Adeptus as Adeptus directors and/or officers; (b) Sterling and the Sterling Principals breached fiduciary duties of loyalty owed to Adeptus as controlling stockholders and/or the controllers thereof. Specifically, it was a breach of fiduciary duty of

loyalty to cause Adeptus to pursue the Offerings *for the purpose of* purchasing LLC Units from Sterling and the Insiders.

296. Each of the Defendants benefitted from the duty of loyalty breaches associated with Adeptus electing to pursue the Offerings for the purpose of purchasing LLC Units from Sterling and Adeptus insiders. Defendants Hall, Cherrington, and Fielding and Sterling AIV received payments directly from Adeptus for LLC Units. The amounts paid exceeded what those LLC Units were really worth, and those Defendants thus received a direct windfall. As a result of the substantial profits received by Sterling AIV, Rosenberg, other Sterling entities, and the Sterling Principals received additional income that they would not have received had Adeptus not paid more for the LLC Units than what those units were worth (or foregone the Offerings and LLC Unit purchases altogether).

297. Adeptus conferred benefits on Defendants by pursuing the Offerings for the purpose of purchasing LLC Units at inflated prices from Sterling and Adeptus insiders. Moreover, Adeptus suffered harm as a result of pursuing the Offerings in order to purchase LLC Units from Sterling and Adeptus insiders. Specifically, Adeptus could have pursued the Offerings in order to obtain proceeds to invest in the Adeptus Enterprise in exchange for newly issued LLC Units. Had it done so, Adeptus would have been far better off. The Defendants enrichment came at

Adeptus's expense as Adeptus overpaid for the LLC Units, and Defendants received a windfall while Adeptus was left with LLC Units in an enterprise doomed to fail.

298. It would be unjust to permit Defendants to keep the benefits they received as a result of fiduciary duty breaches in Adeptus's pursuit of Offerings to purchase LLC Units.

299. Pleading in the alternative to the extent that it is unable to recover the profits unjustly received by Defendants through other claims, the Trust is without adequate remedy at law.

FOURTH CAUSE OF ACTION

(Against Sterling for Aiding and Abetting Breaches of Fiduciary Duty)

300. The Trust repeats and realleges each and every allegation contained above as if fully set forth herein.

301. Pleading solely in the alternative in the event that the Court deems that Sterling AIV, Sterling AIV Conduit, and/or any of the other Sterling entity Defendants did not owe fiduciary duties to Adeptus, such Defendant(s) (the "Sterling Defendant Aider and Abettors") aided and abetted breaches of fiduciary duty owed by Hall, Rosenberg, Hosler, and other members of the Board that sold LLC Units to Adeptus in connection with the Offerings.

302. Hall, Rosenberg, Hosler, and other members of the Board owed fiduciary duties to Adeptus as directors.

303. Hall, Rosenberg, Hosler, and Board members that sold LLC Units to Adeptus breached their fiduciary duties of loyalty in connection with Adeptus pursuing the Offerings in order to purchase LLC Units from Sterling and other selling directors. Those transactions constituted self-dealing transactions that were not entirely fair to Adeptus.

304. The Sterling Defendant Aider and Abettors knowingly participated in the breaches of fiduciary duty by Hall, Rosenberg, Hosler, and selling Board members. The Offerings and related LLC Unit purchases were self-dealing transactions on their face, and thus the Sterling Defendant Aider and Abettors knew that Board members selling LLC Units to Adeptus breached their fiduciary duty of loyalty in approving those transactions. The Sterling Defendant Aider and Abettors similarly knew that its agents, Rosenberg and Hosler, were breaching their fiduciary duties to Adeptus by favoring Sterling's interests over Adeptus's interests in connection with the Offerings and LLC Unit purchases.

305. The Sterling Defendant Aider and Abettors participated in and/or provided substantial assistance to the Board's breaches of fiduciary duty in approving the Offerings and related LLC Unit purchases. First, Sterling purposely induced the Board to approve the Offerings and related LLC Unit purchases. Sterling controlled information flow to the Board ensuring minimal time for Board review, and misleadingly and erroneously represented that Sterling had a right to

demand that Adeptus pursue the Offerings in order to purchase LLC Units. Second, Sterling drove the timing of the Offerings and LLC Unit purchases and all other material terms of those transactions, demanding that the Board approve those transactions with no substantive input. Third, Sterling invited Board members to participate in selling LLC Units in connection with the Offerings, both directly (through Rosenberg) and indirectly (by instructing Fielding and Mueller to invite Board members to participate). Finally, the Offerings and related LLC Unit purchases from Board members and other selling fiduciaries never would have occurred absent Sterling's heavy hand and influence over those transactions.

306. Adeptus suffered damages in an amount to be proven at trial as a result of the fiduciary duty breaches knowingly facilitated by the Sterling Defendant Aider and Abettors. First, Adeptus paid far more for the LLC Units than what those units were really worth. Second, Adeptus incurred professional fees and other transaction costs associated with the Offerings. Third, Adeptus incurred significant opportunity costs in pursing Offerings to purchase LLC Units from Sterling and selling Adeptus fiduciaries instead of either: (a) pursuing the Offerings for the purpose of making a capital contribution to Adeptus LLC in exchange for newly issued LLC Units; or (b) foregoing the Offerings all together. Adeptus's position in Adeptus LLC would have been more valuable had Adeptus provided Adeptus LLC with additional capital, thereby reducing the onerous lease obligations and other financial burdens incurred

by the Adeptus Enterprise. Adeptus could have better capitalized Adeptus LLC and the Adeptus Enterprise had it either used the net proceeds from the Offerings for that purpose, or if Adeptus had eschewed the Offerings and been in a better position to raise capital through an alternative follow-on offering later in 2016 or thereafter.

FIFTH CAUSE OF ACTION

(Against the Insiders for Breaching Fiduciary Duties of Loyalty and Good Faith Owed to Adeptus LLC)

307. The Trust repeats and realleges each and every allegation contained above as if fully set forth herein.

308. Hall and Rosenberg were directors of Adeptus and the Adeptus Enterprise throughout the relevant period. Hosler was a director of Adeptus and the Adeptus Enterprise from 2011 until May 29, 2015. As Adeptus directors, Hall, Rosenberg, and Hosler owed fiduciary duties of loyalty to Adeptus. As Adeptus directors, Hall, Rosenberg, and Hosler also owed fiduciary duties of loyalty and good faith to Adeptus LLC. Adeptus was sole managing member of Adeptus LLC under the Amended Adeptus LLCA, and Adeptus's board of director controlled Adeptus LLC and the entirety of the Adeptus Enterprise.

309. Hall was CEO of Adeptus and the Adeptus Enterprise, Fielding was CFO of Adeptus and the Adeptus Enterprise, and Cherrington was COO of Adeptus and the Adeptus Enterprise. As officers of Adeptus and the Adeptus Enterprise,

Hall, Fielding, and Cherrington owed fiduciary duties of loyalty and good faith to Adeptus, to Adeptus LLC, and to the Adeptus Enterprise as a whole.

310. The Insiders breached their fiduciary duties of loyalty and good faith to Adeptus LLC by causing the Adeptus Enterprise to pursue initiatives that were not in the company's long-term best interests solely in order to inflate the price of Adeptus stock in the short term. Specifically, the Insiders caused the Adeptus Enterprise to build additional facilities in poor locations, even though they knew that patient volumes were already declining at pre-existing facilities due to market over-saturation. They then utilized accounting smoke and mirrors to keep the costs of those initiatives from negatively impacting Adeptus's financial statements. In essence, the Insiders caused the Adeptus Enterprise to pursue growth-for-growth's sake in order to develop a narrative to sell to investors, even though those initiatives were not in the Adeptus Enterprise's long-term best interests. The Insiders did so in order to maximize the windfall that they and Sterling received in cashing out through the Offerings and associated LLC Unit purchases.

311. In breaching their respective fiduciary duties of loyalty and good faith, the Insiders caused damage to Adeptus LLC in an amount to be determined at trial. Adeptus LLC and the Adeptus Enterprise as a whole suffered millions of dollars of damages in incurring costs associated with excess facilities and hospitals that never would have been pursued if not for the stock-inflating efforts of Sterling and the

Insiders. The Insiders' reckless expansion initiatives over-leveraged the company, leading to needless interest and other financing costs and fees and ultimately leading to bankruptcy.

TOLLING OF LIMITATIONS

312. All statutes of limitation applicable to the Trust's claims have been tolled since the filing of the Bankruptcy Case on April 19, 2017, pursuant to 11 U.S.C. § 108 and pursuant to a Tolling Agreement between the Trust and all Defendants, effective from February 18, 2019 through May 17, 2019.

PRAYER FOR RELIEF

WHEREFORE, the Trust prays for relief and judgment as follows:

a. entering judgment against Defendants for breaching their respective fiduciary duties of loyalty as directors, officers, controlling stockholder entities, and/or human controllers of controlling stockholder entities;

b. awarding rescissory damages, measured at the time of trial, for Adeptus's purchase of LLC Units;

c. ordering all Defendants to repay to the Trust the amount of each Defendant's respective unjust enrichment in restitution;

d. to the extent that any of the Sterling entities are not deemed controlling stockholders with fiduciary duties, entering judgment against such entities for aiding and abetting breaches of fiduciary duty in connection with the Offerings and LLC Unit purchases and awarding damages;

e. ordering Sterling and its affiliated funds, including but not limited to Sterling AIV and Sterling AIV Conduit, to disgorge all profits received by such entities in connection with the Offerings and LLC Unit purchases;

f. ordering Hall to disgorge all profits received in connection with the Offerings and LLC Unit purchases;

g. ordering Fielding to disgorge all profits received in connection with the Offerings and LLC Unit purchases;

h. ordering Cherrington to disgorge all profits received in connection with the Offerings and LLC Unit purchases;

i. awarding damages against the Insiders for breaching their fiduciary duties of loyalty and good faith to Adeptus LLC in connection with causing the Adeptus Enterprise to pursue expansion that was against its best interests;

j. awarding pre-judgment and post-judgment interest at the maximum rate permitted by law or equity;

k. awarding reasonable attorney's fees and expenses, together with all costs of court, in connection with this action; and

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l. awarding such other and further relief as the Court deems just.

Dated: May 17, 2019

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Bradford J. Sandler

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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

Drivetrain, LLC, as Litigation Trustee of the Adeptus Litigation Trust, Plaintiff, v. THOMAS S. HALL, TIMOTHY L. FIELDING, GRAHAM B. CHERRINGTON, DANIEL W. ROSENBERG, DANIEL J. HOSLER, STEVEN M. TASLITZ; MERRICK M. ELFMAN; DOUGLAS L. BECKER; ERIC D. BECKER; CHRISTOPHER HOEHN-SARIC; SCP AIV THREE-FCER CONDUIT, L.P.; SCP AIV THREE-FCER, L.P.; SC PARTNERS III, L.P.; STERLING FUND MANAGEMENT, LLC and STERLING CAPITAL PARTNERS III, LLC, Defendants.	C.A. No. 2019-____________

<u>VERIFICATION OF ALAN CARR IN SUPPORT OF COMPLAINT</u>

STATE OF: NEW YORK)
): SS
COUNTY OF: NEW YORK)

I, ALAN CARR being duly sworn dispose and state that:

1. I am the Chief Executive Officer of Drivetrain, LLC, which is the Litigation Trustee of the Adeptus Litigation Trust and the plaintiff in the above-captioned action.

2. I have reviewed the foregoing Verified Complaint in this action.

3. To the extent the Verified Complaint in this action concerns acts or matters of which I have direct personal knowledge, I know those allegations to be true and correct.

4. To extent the Verified Complaint in this action concerns matters of which I do not have direct personal knowledge, I believe those allegations to be true and correct.

Dated: May 16, 2019

Alan Carr
Chief Executive Officer, Drivetrain, LLC

SWORN TO AND SUBSCRIBED before me, a Notary Public in the State and County aforesaid, this 16th day of May, 2019.

Notary Public
My Commission Expires: July 31st, 2021

RHEA S CHELTENHAM
Notary Public, State of New York
No. 01CH6362260
Qualified in Kings County
My Commission Expires July 31, 2021

SUPPLEMENTAL INFORMATION PURSUANT TO RULE 3(A)
OF THE RULES OF THE COURT OF CHANCERY

The information contained herein is for the use by the Court for statistical and administrative purposes only. Nothing stated herein shall be deemed an admission by or binding upon any party.

1. Caption of Case: Drivetrain, LLC, as Litigation Trustee of the Adeptus Litigation Trust, Plaintiff vs. Thomas S. Hall, Timothy L. Fielding, Graham B. Cherrington, Daniel W. Rosenberg, Daniel J. Hosler, Steven M. Taslitz; Merrick M. Elfman; Douglas L. Becker; Eric D. Becker; Christopher Hoehn-Saric; SCP III AIV THREE-FCER Conduit, L.P.; SCP III AIV THREE-FCER, L.P.; SC Partners III, L.P.; Sterling Fund Management, LLC and Sterling Capital Partners III, LLC

2. Date Filed: May 17, 2019

3. Name and address of counsel for plaintiff:

Bradford J. Sandler
Pachulski Stang Ziehl & Jones, LLP
919 North Market Street, 17th Floor
Wilmington, Delaware 19801

4. Short statement and nature of claim asserted: Insider trading and breach of fiduciary duties

5. Substantive field of law involved (check one):

____Administrative law	____Labor law	____Trusts, Wills and Estates
____Commercial law	____Real Property	____Consent trust petitions
____Constitutional law	____348 Deed Restriction	____Partition
XX__Corporation law	____Zoning	____Rapid Arbitration (Rules 96,97)
____ Trade secrets/trade mark/or other intellectual property		____ Other

6. Related case(s), including any Register of Wills matters (this requires copies of all documents in this matter to be filed with the Register of Wills): N/A

7. Basis of court's jurisdiction (including the citation of any statute(s) conferring jurisdiction):
10 Del. C. §§ 341, 3111, 3114; 8 Del. C. § 111

8. If the complaint seeks preliminary equitable relief, state the specific preliminary relief sought.

9. If the complaint seeks a TRO, summary proceedings, a Preliminary Injunction, or Expedited Proceedings, check here ____ (If #9 is checked, Motion to Expedite must accompany)

10. If the complaint is one that in the opinion of counsel should not be assigned to a Master in the first instance, check here and attach a statement of good cause. ____

/s/ Bradford J. Sandler (DE No. 4142)
Signature of Attorney of Record and Bar ID