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UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

RIVERSIDE DIVISION

In re FLEETWOOD ENTERPRISES, INC., et al., Debtors.	Case No. 09-14254-MJ Chapter 11 [Jointly Administered] **MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF THE THIRD AMENDED JOINT PLAN OF LIQUIDATION OF FLEETWOOD ENTERPRISES, INC. AND ITS AFFILIATED DEBTORS AND THE OFFICIAL COMMITTEE OF CREDITORS HOLDING UNSECURED CLAIMS DATED JULY 22, 2010** Judge: Honorable Meredith A. Jury Hearing Date: July 29, 2010 Time: 1:30 p.m. Pacific Courtroom: 3420 Twelfth St., Room 301 Riverside, CA 92501

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Fleetwood Enterprises, Inc., and its affiliated debtors (collectively, the "Debtors"), and the Official Committee of Creditors Holding Unsecured Claims (the "Committee") (together, the "Plan Proponents"), by and through their undersigned counsel, hereby state as follows:

I. PRELIMINARY STATEMENT

Pursuant to section 1129 of title 11 of the United States Code (the "Bankruptcy Code"), the Debtors and Committee hereby submit this memorandum of law (the "Memorandum") in support of confirmation of the Second Amended Joint Plan of Liquidation of Fleetwood Enterprises, Inc. and its Affiliated Debtors and the Official Committee of Creditors Holding Unsecured Claims dated April 21, 2010 [Docket No. 2087] as amended by the Third Amended Joint Plan of Liquidation of Fleetwood Enterprises, Inc. and its Affiliated Debtors and the Official Committee of Creditors Holding Unsecured Claims dated July 22, 2010 [Docket No. 2384] (as further amended or modified, the "Plan").[1]

The weak markets for both recreational vehicles and manufactured homes, compounded by the overall economic decline and the tightening of the credit markets generally, necessitated the filing of these Chapter 11 Cases. After exploring alternatives to bankruptcy, the Debtors, with the assistance of its legal counsel and financial advisors, determined that their options to continue as a going concern were running out and that it was in the best interests of creditors to file for Chapter 11 bankruptcy protection. The Plan provides for the winding-down of the Debtors' corporate affairs, the liquidation of all of the Debtors' assets, and for the distribution of proceeds to various classes of creditors.

The Plan establishes a liquidating trust to liquidate assets after the Effective Date of the Plan and to eventually make distributions to holders of allowed claims in certain classes. The Plan is the result of extensive negotiation between the Debtors, the Committee, and other key constituent groups. As discussed more fully below, all but two classes of creditors voted to accept the Plan. All objections filed against the Plan have been resolved. The Debtors and Committee submit that, for the reasons set forth in this Memorandum and at the hearing on confirmation of the Plan scheduled for July 29, 2010 (the "Confirmation Hearing") the Plan satisfies all

[1] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan.

requirements under the Bankruptcy Code and Bankruptcy Rules and should be confirmed.

II. BACKGROUND

In addition to the discussion that follows, a history of the Debtors and a summary of the Chapter 11 Cases are provided in the Debtors' Second Amended Disclosure Statement Describing Second Amended Joint Plan of Liquidation of Fleetwood Enterprises, Inc. and its Affiliated Debtors and the Official Committee of Creditors Holding Unsecured Claims dated April 21, 2010 (the "Disclosure Statement") [Docket No. 2088] approved by the Court in an order entered on April 27, 2010 (the "Disclosure Statement Order") [Docket Entry No. 2106].

A. History of Fleetwood

Fleetwood Enterprises, Inc. ("FEI") is a public company incorporated in Delaware. It was formerly traded on the New York Stock Exchange under the symbol "FLE." As of December 2008, however, FEI's common stock was quoted on the over-the-counter markets (OTC Bulletin Board and Pink Sheets) under the trading symbol "FLTW." FEI is the parent company of Debtors Fleetwood Holdings, Inc. ("FHI") and Fleetwood Retail Corp. ("FRC"), as well as other debtor and non-debtor companies.

The Debtors began as a California-based producer of manufactured housing in 1950. In 1964, the Debtors entered the recreational vehicle market with the purchase of a travel trailer manufacturer. Prior to March 10, 2009 (the "Petition Date"), the Debtors were one of the nation's leading producers of manufactured housing and recreational vehicles. On the Petition Date, the Debtors' manufactured homes and recreational vehicles were marketed through a network of more than 2,050 dealer locations in the United States and Canada. The Debtors supported their dealers through competitive warranties and superior warranty service. The Debtors also operated two supply companies (a fiberglass manufacturing operation and a lumber brokerage business) that provided components for the recreational vehicles and housing operations, while also generating outside sales.

The Debtors' business operations were comprised of three divisions, motor homes, housing, and travel trailers. Each division operated through separate subsidiaries, which employed the individuals who carried out those operations, from assembly line employees and

plant managers to sales professionals and technical staff. As of the Petition Date, the Debtors had approximately 3,700 employees located at 19 manufacturing facilities in 11 states, as well as at their corporate headquarters located in Riverside, California.

B. The Debtors' Debt and Equity Structure

Prior to the filing of the Chapter 11 petitions, FHI and the Operating Subsidiaries[2] (collectively, the "Borrowers") were parties to a secured credit facility (the "Prepetition Secured Credit Facility"). The borrowing capacity under the Prepetition Secured Credit Facility was governed by a borrowing base derived from the Borrower's inventory and accounts receivable, as well as a real estate sub-facility. As of March 9, 2009, the maximum availability under the Prepetition Secured Credit Facility was approximately $135 million, of which approximately $61.7 million was outstanding. The Prepetition Secured Credit Facility was guaranteed by FEI, Fleetwood Canada Ltd., and Fleetwood International, Inc. and secured by a pledge of the majority of the assets of each of the Debtors, including accounts receivable, cash, inventory, and certain real property owned by certain of the operating subsidiaries. All of the Debtors' obligations under the Prepetition Secured Credit Facility were rolled up in the secured credit facility (the "Secured Credit Facility") pursuant to the terms of the interim order approving debtor-in-possession financing (the "Interim DIP Order") [Docket No. 183] and the final order approving the use of cash collateral (the "Cash Collateral Order") [Docket No. 1255].

In addition to the Prepetition Secured Credit Facility, the Debtors were financed through the issuance of certain notes and an additional loan as follows:

- In 1998, FEI issued to Debtor Fleetwood Capital Trust ("FCT") $296.4 million in FEI's 6% Convertible Subordinated Debentures due 2028 (the "6% Notes"). As of the Petition Date, approximately $151.25 million in aggregate principal amount of FEI's 6% Notes remained outstanding. The 6% Notes are unsecured.

- In December 2003, FEI issued $100 million in aggregate principal amount of its 5% Convertible Senior Subordinated Debentures due 2023 (the "5% Notes"). Holders of the 5% Notes have certain put rights, including the right to require FEI to repurchase their 5% Notes, in whole or in part, at 100% of the principal amount plus accrued and unpaid interest, on December 15, 2008 (the "2008 Put Right"). Immediately prior to the Petition

[2] The Operating Subsidiaries are comprised of the direct subsidiaries of FHI, other than Hauser Lake Lumber, along with Continental Lumber Products, a subsidiary of FEI. A list of the Operating Subsidiaries is set forth in Exhibit A to Appendix A to the Disclosure Statement.

Date, approximately $1.069 million in aggregate principal amount of the 5% Notes remained outstanding. The 5% Notes are unsecured.

- In August 2008, Debtors Fleetwood Motor Homes of California, Inc. ("FMHCa") and Fleetwood Homes of California, Inc. ("FHCa") received a loan in the original principal amount of $27.25 million from Isis Lending, LLC (the "ISIS Loan"). The ISIS Loan is secured by a pledge of real property and certain personal property owned by FMHCa and FHCa. Upon the sale of the real property and personal property securing the ISIS Loan, the Debtors, with Court approval, provided ISIS with replacement liens on certain real property and cash collateral [Docket Nos. 852 and 1056].

- In December 2008, FEI issued (a) approximately $81.4 million in aggregate principal amount of new 14% senior secured notes due 2011 (the "14% Secured Notes") and (b) approximately 11.1 million shares of its common stock, both in connection with the 2008 Put Right. FEI had the option to pay the repurchase price for the 2008 Put Right in cash, its common stock, or with a combination of cash and common stock. Because FEI lacked the liquidity to satisfy the 2008 Put Right if all 5% Noteholders exercised the Put Right, FEI commenced an exchange offer, whereby FEI offered to exchange the outstanding 5% Notes for 14% Senior Secured Notes. FEI also commenced a repurchase offer, whereby FEI repurchased the 5% Notes with common stock. The 14% Notes are secured by a pledge of certain real property owned by the Operating Subsidiaries (the "14% Note Liens").

As of the April 21, 2010, the approximate aggregate non-contingent obligations of the Debtors were: (i) $2,656,366 in outstanding letters of credit, plus certain fees and expenses and contingent indemnification claims under the Secured Credit Facility; (ii) $151.25 million in 6% Notes; (iii) $1.069 million in 5% Notes; (iv) $17.8 million under the ISIS Loan; and (v) $84.3 million in 14% Secured Notes. The Debtors also have trade debt owing to various service and goods providers.

FEI has authorized 300,000,000 shares of stock. As of the Petition Date, FEI had issued and outstanding 209,229,954 shares of common stock and no shares of preferred stock. FHI has authorized 250 shares of common stock, all of which is held by FEI.

C. The Chapter 11 Cases

Despite their best efforts to cut costs, restructure business operations, and improve liquidity, the Debtors reported a net loss in every year since 2001. Because of the weak markets for both recreational vehicles and manufactured homes, compounded with the overall economic decline and the tightening of the credit markets generally, the Debtors grew increasingly concerned that they might breach one or more loan covenants under the Prepetition Secured

Credit Facility, resulting in a default of the Prepetition Secured Credit Facility and a cross default of the 14% Notes and certain capital lease obligations. After exploring alternatives to bankruptcy, the Debtors, with the assistance of their legal counsel and financial advisors, determined that their options to continue as a going concern were running out and that it was in the best interests of creditors to file for Chapter 11 bankruptcy protection.

On the Petition Date and subsequent dates thereafter, a total of 50 affiliated entities filed Chapter 11 bankruptcy petitions. The cases are being jointly administered pursuant to an order entered on March 11, 2009 [Docket No. 19]. On March 19, 2009, the U.S. Trustee appointed the Committee in the Chapter 11 Cases [Docket No. 73]. Since the Petition Date, the Debtors have remained in possession of their property and operated their businesses as debtors in possession.

During the Chapter 11 Cases, the Debtors successfully divested the majority of their assets and defended against numerous creditor actions for relief from the automatic stay, which, together, maximized the value of the assets available for distribution under the Plan. The significant asset groups sold by the Debtors include, but are not limited to, military housing assets, RV assets, housing assets, travel trailer inventory, travel trailer trademarks, Mexicali assets, and various manufacturing plants. The aggregate purchase price for all the asset groups sold was $91.7 million, which included assumed liabilities and other purchase price adjustments. The Debtors are currently holding approximately $26.3 million in cash from, among other things, the sale of these asset groups.

The Debtors have also made significant progress in resolving certain prepetition claims against the Debtors. The Debtors faced two claims, the Riverside County DA claim and the South Coast Air Quality Management District claim, for alleged violations of environmental regulations, both of which have been settled. The Debtors are also parties to a class action lawsuit for alleged deficiencies in the roof insulation in Fleetwood's manufactured homes (the "Browder Claims"). The Debtors have agreed to preserve and maintain all of the Debtors' books and records and to make such books and records available to the class action plaintiffs. If and when the Browder Claims become Allowed Claims, such Allowed Claims will be treated as Class 6 General Unsecured Claims to the extent not covered by insurance.

In addition to the prepetition claims, the Debtors have been involved in 19 adversary proceedings filed in connection with these Chapter 11 Cases. The adversary proceedings include avoidance actions, breach of contract actions, breach of warranty actions, injunction actions to extend the automatic stay, and Worker Adjustment and Retraining ("WARN") Act actions. Unfortunately, it appears that none of the claims for relief alleged against the Debtors in these adversary proceedings are covered by insurance policies of the Debtors, with the exception of certain product liability personal injury and related claims.

D. The Plan

On March 3, 2010, the Debtors and Committee filed their original Joint Plan of Liquidation [Docket No. 1867]. Also on March 3, 2010, the Debtors filed a Motion for Order (i) Approving Disclosure Statement; (ii) Approving Solicitation Procedures, Forms of Ballots, Manner of Notice, and Vote Tabulation Procedures; (iii) Establishing Voting Record Date and Deadline for Receipt of Ballots; and (iv) Fixing Date, Time, and Place for Confirmation Hearing and Deadline to File Objections to Confirmation (the "Disclosure Statement Motion") [Docket No. 1869]. After further negotiations among the Debtors, Committee, and key constituent groups, the Debtors filed the First Amended Joint Plan of Liquidation, along with a related proposed disclosure statement, on April 12, 2010 [Docket Nos. 2060 and 2061 respectively].

A hearing on the approval of the proposed disclosure statement was held on April 14, 2010. The hearing was continued, with the Court approving the proposed disclosure statement subject to further modification. The Second Amended Joint Plan of Liquidation was filed on April 21, 2010 [Docket No. 2087], along with a related proposed disclosure statement [Docket No. 2088]. On April 27, 2010, the Court entered an Order (i) Approving Second Amended Disclosure Statement; (ii) Approving Solicitation Procedures, Forms of Ballots, Manner of Notice, and Vote Tabulation Procedures; (iii) Establishing Voting Record Date and Deadline for Receipt of Ballots; and (iv) Fixing Date, Time, and Place for Confirmation Hearing and Deadline to File Objections to Confirmation (the "Disclosure Statement Order") [Docket No. 2106]. The Disclosure Statement Order set June 4, 2010 as the deadline to vote on the Plan and file objections to confirmation. On July 22, 2010 the Third Amended Joint Plan of Liquidation was filed

[Docket No. 2384]. The Plan Confirmation Hearing is scheduled for July 29, 2010.

The Plan provides for an orderly liquidation of the Debtors' remaining assets and a wind down of their business operations. Distributions will be made to creditors pursuant to the Plan. The Plan provides for payment of Administrative Claims and Priority Tax Claims in the manner required by the Bankruptcy Code. A summary of the proposed treatment of the various classes of creditors under the Plan follows. A detailed description of such treatment is contained in the Plan and Disclosure Statement.

- Class 1: Non-Tax Priority Claims shall be paid in full on the Distribution Date of the Plan or within 90 days after the date such claim is allowed. To the extent a Class 1 Allowed Claim exceeds the limits set forth in section 507 of the Bankruptcy Code for priority claims, such deficiency amount shall be treated as a Class 6 Allowed General Unsecured Claims. Class 1 is unimpaired under the Plan and is not entitled to vote.

- Class 2: Allowed Secured Credit Facility Claims shall receive payment in full of all Postpetition Obligations (as defined in the Interim DIP Order), other than certain disputed or future costs or indemnification claims, subject to resolution of the Turnover Motion.[3] Class 2 Claims shall also receive (a) cash in an amount equal to 105% of outstanding letters of credit as of the Effective Date, with this cash payment serving as collateral for the outstanding letters of credit; (b) cash in the amount of $100,000 to be held as collateral for any further costs, fees, or expenses of the Secured Parties; (c) cash in an amount equal to any disputed costs that have not been paid to the Secured Parties as of the Effective Date to be held as collateral for such disputed costs; and (d) cash in the amount of $2,500,000 to be held as collateral for any unliquidated, contingent, or post-Effective Date claims of the Secured Parties. Class 2 is Impaired under the Plan and is entitled to vote.

- Class 3: Allowed ISIS Claim shall receive the following payments: (a) all of ISIS's actual and documented out-of-pocket expenses incurred in connection with the Chapter 11 Cases since the Petition Date (estimated to be approximately $150,000); (b) $300,000 as payment on account of either compound interest and/or default interest; and (c) $3,550,500 on account of amounts owing under the ISIS Promissory Note. Class 3 is Impaired under the Plan and is entitled to vote.

- Class 4: Miscellaneous Secured Claims shall receive, at the election of the Liquidating Trustee, on the Distribution Date of the Plan or within 90 days after the date such claim is allowed (a) cash equal to the lesser of the unpaid portion of such Allowed Class 4 Claim and the value of the collateral securing the Class 4 Claim as required by section 506(b) of the Bankruptcy Code, and which, only as to secured tax Claims, shall include applicable interest as required under 11 U.S.C. section 511; (b) a return of the collateral securing the Class 4 Claim; or (c) such other treatment as agreed to in writing. To the extent a Class 4 secured tax Claim that accrues postpetition is not paid in full as provided under applicable non-bankruptcy law in the ordinary course of business and in a timely manner, then the

[3] An appeal of this Court's ruling is currently pending before the Bankruptcy Appellate Panel of the United States Court of Appeal for the Ninth Circuit.

Claimholder holding such postpetition secured tax Claim may assert an Administrative Claim as provided in this Plan, the Bankruptcy Code, and the Bankruptcy Rules. Class 4 is unimpaired under the Plan and is not entitled to vote.

- Class 5: 14% Notes Claims shall, on the Effective Date, be allowed as a Secured Claim in the amount of $84,256,664, and the 14% Note Liens held as of the Petition Date shall remain as valid liens for purposes of the Plan only. Class 5 Claims shall receive on the Distribution Date of the Plan or within 90 days after the date such claim is allowed their pro rata share of 43.5% of the Net Distributable Proceeds[4] less certain professional fees and expenses and any funds distributed to the Holders of the 5% Notes, in full and final satisfaction of their Secured Allowed Claim. In addition, Class 5 Claims shall not be subject to avoidance, disallowance, recharacterization, or subordination. On the Effective Date, if Class 5 votes to accept the Plan, the 14% Notes shall be deemed to assign certain intercreditor rights to the Liquidating Trustee and to release other intercreditor rights. Class 5 is Impaired and entitled to vote on the Plan.

- Class 6: General Unsecured Claims shall receive on the Distribution Date of the Plan or within 90 days after the date such claim is allowed their pro rata share of the Net Distributable Proceeds, not to exceed in the aggregate 56.5% of the total Net Distributable Proceeds. Class 6 is Impaired and entitled to vote on the Plan.

- Class 7: 6% Notes Claims shall receive $2 million from the 56.5% Net Distributable Proceeds allocable to the General Unsecured Claims, less the fees and expenses for the 6% Noteholders' trustee and the trustee's professionals. This amount shall be paid at the time Distributions are made to General Unsecured Creditors or such earlier time as the Liquidating Trustee shall determine. Class 7 is Impaired and entitled to vote on the Plan.

- Class 8: 5% Notes Claims shall receive, pursuant to the terms of a settlement agreement among the Committee and the holders of a majority of the 14% Notes, $75,000 from the 43.5% Net Distributable Proceeds allocable to the Allowed 14% Notes Claims, less the fees and expenses for the 5% Noteholders' Indenture Trustee, provided that Class 8 does not vote to reject the Plan and the 5% Indenture Trustee does not object to the Plan.[5] Class 8 is Impaired and entitled to vote on the Plan.

- Class 9: Convenience Claims shall receive on or as soon as practicable thereafter 25% of their allowed claims, for claims in an amount of $10,000 or less. A Holder with an Allowed Claim in excess of $10,000 may opt in to Class 9 by reducing the amount of the claim to $10,000. Total distributions to Class 9 shall be paid out of the 56.5% Net Distributable Proceeds allocable to the General Unsecured Claims and are anticipated to be less than $1.25 million. Class 9 is Impaired and entitled to vote on the Plan.

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[4] "Net Distributable Proceeds" are defined by Section II.B.133 of the Plan as "the Net Proceeds derived from the liquidation or monetization of any and all of the Assets of the Debtors to be vested in the Liquidating Trust (including all Cash of the Debtors wherever located, including, but not limited to, Cash presently held in any segregated accounts for the benefit of the 14% Notes Claims but excluding the BofA Cash Collateral Amount), after payment of, all Allowed Administrative claims, all Allowed Priority Claims, all Allowed Secured Credit Facility Claims, all Allowed Miscellaneous Secured Claims, Professional Fee Claims of the Debtors and Creditors' Committee, and all Liquidating Trust Expenses."

[5] Pursuant to the settlement, the treatment of Class 8 Claims was also contingent upon the 5% Noteholders' Indenture Trustee not objecting to the Disclosure Statement. No such objection was filed.

- Class 10: Product Liability PI Claims shall be required to participate in the product liability personal injury claim mediation process as described in Appendix E to the Disclosure Statement and shall receive, if and when such claims become Allowed Claims, a pro rata distribution of available insurance proceeds from policies issued by Gibraltar Insurance Co., Ltd., covering product liability personal injury claims. To the extent a Class 10 Claim is not paid in full with insurance proceeds, then the unpaid deficiency amount shall receive the treatment provided for under Class 6 Allowed General Unsecured Claims. Class 10 is Impaired and entitled to vote on the Plan.

- Class 11: WARN Act Class Claims and Severance Class Claims shall, if the Bankruptcy Court approves the WARN and Severance Class Settlement Agreement,[6] receive the treatment provided therein, unless a holder of such claim affirmatively elects to opt out, in which case, if and when such claim is allowed, it shall be afforded the treatment of a Non-Tax Priority Claim in Class 1 subject to the limitations of section 507 of the Bankruptcy Code, with any amount in excess of the section 507 statutory limits being treated as a Class 6 General Unsecured Claim. If the Bankruptcy Court does not approve the WARN and Severance Class Settlement Agreement, the WARN Class Claims and the Severance Class Claims shall continue to be litigated before the Bankruptcy Court. If and when such claims are allowed, they shall be afforded the treatment of a Non-Tax Priority Claim in Class 1 subject to the limitations of section 507 of the Bankruptcy Code, with any amount in excess of the section 507 statutory limits being treated as a Class 6 General Unsecured Claim. Class 11 is Impaired and entitled to vote on the Plan.

- Class 13 is subdivided into Classes 13A, 13B, 13C, 13D, 13E, 13F and 13G the treatment of which is described below. Each Claimant in Class 13 is or was the beneficiary of an LC issued by the Debtors' Secured Parties pursuant to the Secured Credit Facility and which comprises the Allowed Secured Credit Facility Claims. Each Claimant in Class 13 holds Collateral consisting of (a) its rights under an outstanding LC, (b) the proceeds of an LC, and/or (c) cash. Except for Class 13A (described below), upon a Claim in Class 13 becoming an Allowed Claim, the Holder of a Class 13 Claim shall be permitted to either: (i) to the extent the Allowed Claim is less than the amount of the Collateral held by the Holder, retain the Collateral up to the amount of such Allowed Claim and any excess shall be returned to the Liquidating Trustee; (ii) to the extent the Allowed Claim exceeds the amount of the Collateral held by Holder, retain the Collateral and the amount by which the Allowed Claim exceeds the amount of the Collateral shall be treated as a General Unsecured Claim in Class 6; or (iii) accept such other treatment as to which such Holder and the Debtors and/or Liquidating Trustee shall have agreed upon in writing.

    - Class 13A: Westchester Fire Insurance Company and Ace INA Insurance Company hold LC proceeds of $11,783,000 and shall continue to have whatever rights they had or now have under the Order entered by the Court herein on March 24, 2009 [Docket No. 103], which order shall not be affected by the Plan. The Class 13A Holder has an unliquidated Claim as set forth in Proofs of Claim filed by the Class 13A Holder and assigned number 7661 through 7678, inclusive, on the register maintained by the Debtors' claims agent, against which it is holding the Cash proceeds of Letter of Credit No. 3051853, drawn in full by ACE on December 29, 2009 and which, as of April 1,

[6] On May 25, 2010, the Court entered an order granting preliminary approval to the WARN Act Class Settlement [Docket No. 39 in Adv. No. 09-ap-01114-MJ]. Also on May 25, 2010, the Court entered a preliminary order granting preliminary approval to the Severance Class Settlement [Docket No. 15 in Adv. No. 09-ap-01421-MJ].

2010, totaled $11,783,000. ACE shall continue to have whatever rights it had or now has under the ACE Order [Docket No. 103], if any, and the Plan does not vacate, alter, rescind or modify the ACE Order nor does it provide ACE with any greater rights than ACE may have under the ACE Order and the agreements referenced therein. Class 13A is Impaired and entitled to vote on the Plan.

- Class 13B: Old Republic Insurance Company holds LC proceeds in the amount of $1.08 million. Class 13B is unimpaired and is not entitled to vote on the Plan.

- Class 13C: National Union Fire Insurance Company of Pittsburgh, PA, *et al.* holds LC proceeds in the amount of $4,302,210. Class 13C is unimpaired and is not entitled to vote on the Plan.

- Class 13D: Fidelity and Deposit Company of Maryland holds LC proceeds in the amount of $3,017,440. Class 13D is unimpaired and is not entitled to vote on the Plan.

- Class 13E: The North Carolina Self-Insurance Guaranty Association ("NCSIGA") is holding $636,000 in LC proceeds plus other cash on hand that NCSIGA shall be entitled to retain on the Effective Date. Class 13E is Impaired and entitled to vote on the Plan.

- Class 13F[7]: The Georgia Self Insurance Guaranty Trust Fund ("GSIGTF") is holding $1,230,000 in LC proceeds plus other cash on hand that GSIGTF shall be entitled to retain on the Effective Date. Class 13F is Impaired and entitled to vote on the Plan.

- Class 13G[8]: Lumbermen's Underwriting Alliance ("LUA") is or was the beneficiary of a letter of credit ("LC") issued by the Debtors' Secured Parties pursuant to the Secured Credit Facility and which comprises the Allowed Secured Credit Facility Claims. LUA is holding LC proceeds and cash deposits that total approximately $186,000 that LUA shall be entitled to retain on the Effective Date. Class 13G is Impaired and entitled to vote on the Plan.

- Class 14: Intercompany Claims shall be deemed eliminated, cancelled, and/or extinguished as a result of the substantive consolidation of the Debtors' Estates in these Chapter 11 Cases. Holders of Class 14 Claims shall not receive or retain any property on account of such claims. Class 14 is deemed to have rejected the Plan and is not entitled to vote to accept or reject the Plan.

- Class 15: Equity Interests shall be cancelled on the Effective Date, and each Holder of a Class 15 Equity Interest shall not receive or retain any property or interest in property on account of such Equity Interests. Class 15 is deemed to have rejected the Plan and is not entitled to vote to accept or reject the Plan.

E. Solicitation and Notice

Pursuant to the Disclosure Statement Order, April 14, 2010 (the "Voting Record Date") was established as the date at which the claims register maintained by the Debtors through

[7] Class 13F was formerly identified as Class 12B.
[8] Class 13G was formerly identified as Class 12A.

Kurtzman Carson Consultants, LLC ("KCC"), the Debtors' court-approved claims and noticing agent, shall be deemed closed for purposes of determining whether a holder of a claim is a record holder for purposes of voting on the Plan. The Disclosure Statement Order approved Grant Thorton LLP ("GT") as the Debtors' voting agent (the "Voting Agent") and KCC as the Debtors' securities voting agent (the "Securities Voting Agent").

On May 7, 2010, the Plan Proponents served a package (the "Solicitation Package") on all known holders of claims in the classes entitled to vote (the "Voting Classes"),[9] subject to certain restrictions in the Disclosure Statement Order. The Solicitation Package included the following: (i) Second Amended Plan, (ii) Second Amended Disclosure Statement, (iii) Disclosure Statement Order, (iv) Notice of Plan Confirmation Hearing and Related Deadlines (the "Confirmation Hearing Notice") [Docket No. 2132], (v) letter from the Debtors and Committee as proponents of the Plan, and (vi) an appropriate ballot or master ballot. *See* Proof of Service executed by Craig Osborne filed May 13, 2010 [Docket No. 2144]. Also on May 7, 2010, and in accordance with the Disclosure Statement Order, the Plan Proponents transmitted the Solicitation Package (without ballots) to counsel for the Committee, the Securities and Exchange Commission, counsel to the U.S. Trustee, and all parties requesting copies of the Solicitation Package; the Confirmation Hearing Notice and notice of nonvoting status (the "Informational Package") to all known holders of claims in the Unimpaired Nonvoting Classes[10]; and the Confirmation Hearing Notice and bar date orders [Docket Nos. 875 and 1633] to parties not otherwise receiving a Solicitation Package or any type of Information Package. *See* Proof of Service executed by Lincoln Sneed filed on May 13, 2010 [Docket No. 2142]; Proofs of Service executed by Craig Osborne filed May 13, 2010 [Docket Nos. 2143 and 2145]. Pursuant to the Disclosure Statement Order, the Plan Proponents sent a Confirmation Hearing Notice and notice of nonvoting status to all shareholders of record (Class 15). *See* Proof of Service executed by Craig Osborne filed May 13, 2010 [Docket Nos. 2143]. The Plan Proponents did not send a Solicitation Package, Information Package, Confirmation Hearing Notice nor any other notice to holders of Class 14 Claims. *See* Disclosure

[9] As discussed more fully above, Classes 2, 3, 5, 6, 7, 8, 9, 10, 11, 13A, 13E, 13F and 13G are Impaired and entitled to vote on the Plan.

[10] As discussed more fully above, Classes 1, 4, 13B, 13C, and 13D are unimpaired and not entitled to vote on the Plan.

Statement Order, paragraph 18.

F. Request for Approval of Request for Instruction to Holders of Trust Preferred Securities

Pursuant to paragraphs 13, 20, 24, and 26 of the Disclosure Statement Order, among other things, the Court approved certain solicitation procedures for delivering Solicitation Packages to holders of the 5% Notes, 6% Notes and 14% Notes.

Bank of New York Mellon, as indenture trustee for the holders of the 6% Notes ("6% Note Indenture Trustee"), is the sole holder of the 6% Notes. As such, in connection with the solicitation procedures, the 6% Note Indenture Trustee has received and submitted to KCC the ballots on account of the 6% Notes. The 6% Note Indenture Trustee holds the 6% Notes in trust on behalf of the Fleetwood Capital Trust dated as of February 10, 1998 ("Trust"), which has issued 6% Convertible Trust Preferred Securities due 2028 ("Trust Preferred Securities") in connection with the Amended and Restated Declaration of Trust dated as of February 10, 1998 ("Declaration"), which governs the Trust. While under the terms of the Declaration and in light of the time requirements for voting set forth by the Disclosure Statement Order the 6% Note Indenture Trustee believes it was authorized to return ballots to KCC on account of the 6% Notes, in an effort to provide information regarding the Plan to the holders of the Trust Preferred Securities ("Securityholders"), the 6% Note Indenture Trustee, through KCC, provided the following information to Securityholders: (1) a notice dated May 11, 2010, pursuant to the indenture for the 6% Notes, regarding disclosure statement approval and the plan confirmation process ("May 11 Notice"); (2) a letter to Securityholders dated May 17, 2010, and attached form to complete if Securityholders wished to instruct the 6% Note Indenture Trustee to not vote to accept the Plan, which required a response to the 6% Note Indenture Trustee by June 1, 2010 (collectively, the "Form Instruction"); (3) the Confirmation Hearing Notice; (4) the May 7, 2010, letter from the Committee to creditors and parties in interest; and (5) the CD containing the Plan, Disclosure Statement and Disclosure Statement Order (collectively, the "Securityholder Instruction Package"). True and correct copies of the May 11 Notice and the Form Instruction are appended as Exhibits "A" and "B," respectively, to the Proof of Service declaration of Matthew

R. Jenks with respect to service of the May 11 Notice and the Form Instruction filed on May 26, 2010 [Docket No. 2185].

The Securityholder Instruction Package was delivered on May 17, 2010, to the Depository Trust Company ("DTC") nominees and to Broadridge as agent for the nominees, for delivery to the Securityholders, concurrent with delivery of Solicitation Packages to the DTC nominees for the holders of the 5% Notes, the 6% Notes and the 14% Notes. As part of this supplemental service, KCC instructed Broadridge to eliminate the beneficial owner ballot created for the holders of the 6% Notes with their mailing and to include the May 11 Notice and Form Instruction in lieu of the ballot. Finally, KCC also followed up with all other nominees and the DTC to be sure that all know the correct procedures in connection with the form instruction by the Securityholders.

While the 6% Note Indenture Trustee asserts that it has the authority to vote in connection with the Plan as the sole holder of the 6% Notes, unless instructed otherwise by a majority of the Securityholders, to the extent the Securityholders could be deemed the underlying beneficial holders of the 6% Notes, as described above, the Securityholder Instruction Package, including the Plan, Disclosure Statement, Confirmation Notice and Form Instruction, was delivered to the DTC nominees and to agent for the DTC nominees concurrent with the delivery of the Solicitation Packages to the 5% Notes, the 6% Notes and the 14% Notes. As such, as part of the proposed order confirming the Plan, the Plan Proponents request a finding that the Form Instruction, as well as the delivery of the Securityholder Instruction Package in the manner described above, were reasonable and appropriate under the circumstances and moreover comply with Bankruptcy Rules 3017(d) and 3017(e).

G. Voting on the Plan

As set forth in the tabulation reports (the "Tallies") filed on July 22, 2010 pursuant to Local Bankruptcy Rule 3018-1 and the Disclosure Statement Order, creditors voted overwhelmingly in favor of the Plan, with the exception of Classes 2 and 13A, which voted to

reject the Plan.[11]

III. ARGUMENT

In order to confirm the Plan, the Court must find, by a preponderance of the evidence, that the Plan satisfies all the applicable plan confirmation provisions of the Bankruptcy Code. The proponents of the Plan have the burden of establishing by a preponderance of the evidence that all elements necessary for confirmation under section 1129 have been met. *See In re Arnold & Baker Farms*, 177 B.R. 648, 654 (B.A.P. 9th Cir. 1994) ("We find the preponderance of the evidence to be the correct burden of proof in the context of plan confirmation"); *In re Melcher*, 329 B.R. 865, 873 (Bankr. N.D. Cal. 2005) ("As the proponents of the Plan, Debtor and Committee bear the burden of establishing" the elements of section 1129 of the Code by a preponderance of the evidence); *In re Monarch*, 166 B.R. 428, 432 (Bankr. C.D. Cal. 1993) (finding that the appropriate standard of proof for plan confirmation is preponderance of the evidence). The Debtors and Committee submit that the Plan complies with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules and, in support thereof, address each requirement below.

A. The Plan Complies With All Applicable Provisions Of The Bankruptcy Code Pursuant To Section 1129(A)(1)

Section 1129(a)(1) of the Bankruptcy Code provides that a court may confirm a plan only if all requirements of section 1129 are met, including that "[t]he plan complies with the applicable provisions of this title." 11 U.S.C. § 1129(a)(1). The legislative history of section 1129(a)(1) explains that this provision incorporates the requirements of Bankruptcy Code sections 1122 and 1123, which govern classifications of claims and interests and the contents of a plan of reorganization. H.R. Rep. No. 95-595 95th Cong., 1st Sess. 412 (1977); S. Rep. No. 95-989, 95th Cong., 2d Sess. 126 (1978). *See In re Commercial W. Fin. Corp.,* 761 F.2d 1329, 1338 (9th Cir. 1985); *Kane v. Johns-Manville Corp.*, 843 F.2d 636, 648-59 (2d Cir. 1988); *In re Moorpark Adventure*, 161 B.R. 254, 256 (Bankr. C.D. Cal. 1993). The Debtors and Committee believe, based upon the discussion below, that the Plan complies with the requirements of both sections.

[11] The Tallies are accompanied by the Declarations of Alan Dalsass and David M. Sharp, which describe the tabulation of ballots and the results of the voting on the Plan.

1. Compliance with Section 1122 of the Bankruptcy Code

Section 1122 of the Bankruptcy Code establishes the standards for the classification of claims and interests in a Chapter 11 plan.

a. Section 1122(a) of the Bankruptcy Code

Section 1122(a) of the Bankruptcy Code states: "Except as provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class." 11 U.S.C. § 1122(a). Thus, a plan may establish multiple classes of claims or interests if the claims or interests within a class are substantially similar to the other claims or interests in that class. *See Barakat v. Life Ins. Co. of Va. (In re Barakat)*, 99 F.3d 1520, 1526 (9th Cir. 1996) (similar claims may be separately classified where there is a "legitimate business or economic justification"); *Class Five Nev. Claimants v. Dow Corning Corp. (In re Dow Corning Corp.)*, 280 F.3d 648, 661 (6th Cir. 2002) ("the bankruptcy court has substantial discretion to place similar claims in different classes"); *Montclair Retail Ctr. L.P. v. Bank of the West (In re Montclair Retail Ctr.)*, 177 B.R. 663, 665-66 (B.A.P. 9th Cir. 1995) ("There must be a reasonable, nondiscriminatory reason for the separate classification"). In *Barakat*, the Ninth Circuit adopted the "one clear rule," whereby a debtor cannot "classify similar claims differently in order to gerrymander an affirmative vote on a reorganization plan." *Barakat,* 99 F.3d at 1526.

Here, the Plan satisfies *Barakat*'s "one clear rule." In accordance with section 1122(a) of the Bankruptcy Code, Article III of the Plan designates fourteen classes of claims (including one with seven subclasses) and one class of interests based upon the differing legal nature and/or priority of such claims and interests, all of which are set forth more fully above. Although the Plan does separately classify certain general types of claims, the different classification is based upon the varying legal nature of such claims. For example, Classes 2, 3, and 4 each involve secured claims. In Classes 2 and 3, the secured claim is governed by a loan agreement with distinct terms, remedies, and consequences. The individual characteristics of these two secured claims necessitated their separate classification. Class 4 is comprised of miscellaneous secured claims. Although the Class 4 claims are similar to the Class 2 and Class 3 claims in that they are

secured, they are not bound by the same loan agreements and are thus more properly grouped together in a separate class. Similarly, Classes 5, 7, and 8 involve notes with varying rates of interest. The 14% Notes in Class 5 are secured for purposes of the Plan. Although the 6% Notes in Class 7 and the 5% Notes in Class 8 are both unsecured, the 6% Notes and the 5% Notes each have different legal characteristics, such as the put rights associated with the 5% Notes. The 5% Notes and the 6% Notes are thus properly identified in the Plan as separate classes. Finally, Class 13 and its subclasses involve Claims based upon letters of credit. Holders of Class 13 Claims are holding collateral with a value that may exceed the amount of the claim. Importantly, despite their similarities, each of Class 13's subclasses (*i.e.*, 13A-13G) is treated as a separate and distinct class for voting purposes because each holds a different letter of credit. Again, as with the secured claims and the Notes claims, the separate classification of the letter of credit claims is justified by the specific legal characteristics of each class of claims. Accordingly, the Plan satisfies *Barakat*'s "one clear rule" and the requirements of section 1122(a) of the Bankruptcy Code.

b. Section 1122(b) of the Bankruptcy Code

Section 1122(b) of the Bankruptcy Code provides: "A plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience." 11 U.S.C. § 1122(b). As provided in Article III of the Plan, the Plan Proponents have designated a "convenience class" consisting of general unsecured claims in an amount of $10,000 or less (or a claim in excess of $10,000 if the holder agrees to reduce the amount of the claim to $10,000), pursuant to section 1122(b). The Plan Proponents created this class in order to streamline the claims distribution process. Over 18,000 general unsecured claims were filed in these Chapter 11 Cases, and approximately 3,550 of such general unsecured creditors are classified in the Class 9 Convenience Class.

Pursuant to the distribution scheme for Class 6 General Unsecured Claims, the Liquidating Trust will make pro rata distributions to Holders of Allowed Class 6 Claims of the Net Distributable Proceeds, not to exceed in the aggregate 56.5% of the total Net Distributable

Proceeds, on the initial Distribution Date and each subsequent Distribution Date. Based on the number of Class 6 General Unsecured Claims filed, the Convenience Class will enable the Plan Proponents to streamline the distribution process and relieve at least some of the administrative burden of the Liquidating Trust. The Plan Proponents estimate that 3,500 Class 6 General Unsecured Claims are $10,000 or less and will thus be designated as Class 9 Convenience Claims. In addition, the Plan Proponents believe that many other Class 6 Claimholders will opt to reduce the amount of their claim to $10,000 in order to be included in the Class 9 Convenience Class. Each Class 9 Convenience Class Claim will receive only one distribution in the total amount of 25% of the allowed amount of claims less than or reduced to $10,000. The Liquidating Trust will not have to issue additional distribution checks or keep on-going detailed financial records in order to make subsequent pro rata distributions to such allowed claims. By placing these claims in a Convenience Class, the Plan Proponents will streamline and increase efficiencies in the distribution process, as well as maximize limited resources (human and otherwise). For these reasons, the Class 9 Convenience Claims class is reasonable and necessary and thus proper pursuant to section 1122(b).

2. Compliance with Section 1123 of the Bankruptcy Code

Section 1123 of the Bankruptcy Code sets forth eight elements that a Chapter 11 plan must contain. As discussed below, the Plan contains each of the seven elements applicable to corporate debtors.[12]

a. Designate Classes of Claims and Interests (Section 1123(a)(1))

Section 1123(a)(1) of the Bankruptcy Code requires that a plan designate classes of claims and interests. As discussed above regarding section 1122 of the Bankruptcy Code, Article III of the Plan properly designates fourteen classes of claims and one class of equity interests. The Plan therefore satisfies the requirements of section 1123(a)(1) of the Bankruptcy Code.

[12] One of the elements of section 1123 of the Bankruptcy Code is not applicable to corporate debtors. Section 1123(a)(8) specifies that if the debtor is an individual, the plan must provide for payment to creditors of all or a portion of earnings from personal services performed by the debtor after commencement of the case or other future income from the debtor necessary for the execution of the plan. This provision is not applicable to the Debtors because none of them is an individual.

b. Specify Unimpaired Classes (Section 1123(a)(2))

Section 1123(a)(2) of the Bankruptcy Code requires a plan to specify classes of claims or interests that are not impaired under the Plan. Article V.C of the Plan specifies that Classes 1, 4, 13B, 13C, and 13D are unimpaired by the Plan because any Allowed Claim in such Classes should be paid in full (*i.e.*, as for these Class 13 claimants, the Debtors believe they are over secured). The Plan thus satisfies the requirements of section 1123(a)(2) of the Bankruptcy Code.

c. Specify Treatment of Impaired Classes (Section 1123(a)(3))

Section 1123(a)(3) of the Bankruptcy Code requires a plan to "specify the treatment of any class of claims or interests that is impaired under the plan." Article IV.B of the Plan indicates that Classes 2, 3, 5, 6, 7, 8, 9, 10, 11, 13A, 13E, 13F and 13G are impaired and will be treated as described therein. Because the Plan specifies the treatment of impaired classes, the Plan complies with section 1123(a)(3) of the Bankruptcy Code.

d. Provide Equal Treatment within Classes (Section 1123(a)(4))

Section 1123(a)(4) of the Bankruptcy Code requires the Plan to "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest." Article IV of the Plan provides for the same treatment for each Allowed Claim or Equity Interest in each respective Class, unless the Holder of the Claim or Interest has agreed to less favorable treatment. Therefore, the Plan satisfies the requirements of section 1123(a)(4) of the Bankruptcy Code.

e. Provide Means for Implementation (Section 1123(a)(5))

Section 1123(a)(5) of the Bankruptcy Code requires the Plan to provide "adequate means" for its implementation. Article VI of the Plan provides the means by which the Plan will be implemented. Article VI, among other things, provides for the:

(a) substantive consolidation of the Debtors' Estates;

(b) resignation of the Debtors' directors and officers and dissolution of the Debtors;

(c) surrender and cancellation of existing securities and agreements;

(d) sources for plan distributions;

(e) payment of claims; and

(f) establishment and operation of the Liquidating Trust.

Accordingly, the Plan complies with the requirements of section 1123(a)(5) of the Bankruptcy Code.

f. Prohibit Issuance of Non-Voting Securities (Section 1123(a)(6))

Section 1123(a)(6) of the Bankruptcy Code requires that a debtor's corporate charter or other organizational documents prohibit the issuance of non-voting equity securities. Because the Debtors will be dissolved on the Effective Date as stated in Article VI.B.2 of the Plan, the issuance of non-voting equity securities by the reorganized Debtors is not an issue in these cases, and the requirements of section 1123(a)(6) of the Bankruptcy Code do not apply.

g. Selection of Officers and Directors (Section 1123(a)(7))

Section 1123(a)(7) of the Bankruptcy Code requires that a plan's provisions regarding the manner of selection of any director, officer or trustee, or any other successor thereto, be "consistent with the interests of creditors and equity Securityholders and with public policy." Because the Plan calls for liquidation there will be no officers or directors of the reorganized Debtors. Further, in accordance with section 1123(a)(7) of the Bankruptcy Code, the appointment of the Liquidating Trustee as the representative of the Liquidating Trust to be created pursuant to the Plan is supported by the Plan Proponents and is consistent with the interests of creditors and with public policy.

B. The Plan Satisfies All Other Requirements Of Section 1129(A) Of The Bankruptcy Code

1. Compliance with Section 1129(a)(2)

Section 1129(a)(2) requires the proponent of a plan to comply "with the applicable provisions of this title." 11 U.S.C. § 1129(a)(2). Whereas section 1129(a)(1) of the Bankruptcy Code focuses on the form and content of a plan itself, the principal purpose of section 1129(a)(2) is to assure that the plan proponent has complied with the requirements of sections 1125 and 1126 in the disclosure and solicitation of acceptances to the plan. *See Andrew v. Coopersmith (In re Downtown Inv. Club III),* 89 B.R. 59, 65 (B.A.P. 9th Cir. 1988) (finding that the debtor did not

comply with section 1125 as required by section 1129(a)(2)); *In re Trans Max Technologies, Inc.,* 349 B.R. 80, 86 (Bankr. D. Nev. 2006) (Section 1129(a)(2) "elevates Section 1125(b)'s prohibition" on solicitation of acceptances of a plan "into a confirmation requirement"); *In re Johns-Manville Corp.,* 68 B.R. 618, 630 (Bankr. S.D.N.Y. 1986) ("objections to confirmation raised under section 1129(a)(2) generally involve the alleged failure of the plan proponent to comply with section 1125 and section 1126 of the Code"). *See also* S. Rep. No. 95-989, 95th Cong. 2d Sess. 126 (1978) (section 1129(a)(2) "requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure"); H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 412 (1977) (same).

a. Compliance with Section 1125 of the Bankruptcy Code

In relevant part, section 1125 of the Bankruptcy Code provides:

> (b) An acceptance or rejection of a plan may not be solicited after the commencement of the case under...[the Bankruptcy Code] from a holder of a claim or interest with respect to such claim or interest, unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary or the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information. . . .
>
> (c) The same disclosure statement shall be transmitted to each holder of a claim or interest of a particular class, but there may be transmitted different disclosure statements, differing in amount, detail, or kind of information, as between classes.

11 U.S.C. § 1125(b)-(c).

In paragraph (e) of the Disclosure Statement Order, the Court approved the Disclosure Statement as containing "adequate information" as that term is defined by section 1125 of the Bankruptcy Code.

The Plan Proponents did not solicit acceptances or rejections of the Plan before (i) the Court approved the Disclosure Statement as containing adequate information and (ii) notice of the Plan and Disclosure Statement was served on creditors and parties in interest. The Proofs of Service executed by Craig Osborne and filed on May 13, 2010 [Docket Nos. 2143, 2144 and 2145] document the mailing of the solicitation materials and show that the solicitation materials were distributed on May 7, 2010 in conformity with the Disclosure Statement Order. Thus, the

Plan Proponents have complied with the notice and solicitation requirements of section 1125 of the Bankruptcy Code.

b. Compliance with Section 1126 of the Bankruptcy Code

Under section 1126 of the Bankruptcy Code, only holders of allowed claims and allowed interests in impaired classes of claims or interests that will receive or retain property under a plan may vote to accept or reject such plan. Section 1126 of the Bankruptcy Code states in relevant part:

> (f) Notwithstanding any other provision of this section, a class that is not impaired under a plan, and each holder of a claim or interest of such class, are conclusively presumed to have accepted the plan, and solicitation of acceptances with respect to such class from the holders of claims or interests of such class is not required.
>
> (g) Notwithstanding any other provision of this section, a class is deemed not to have accepted a plan if such plan provides that the claims or interests of such class do not entitle the holders of such claims or interests to receive or retain any property under the plan on account of such claims or interests.

11 U.S.C. § 1126(f)-(g).

In accordance with section 1126 of the Bankruptcy Code, the Plan Proponents only solicited acceptances or rejections from the Holders of Allowed Claims in the Voting Classes (Classes 2, 3, 5, 6, 7, 8, 9, 10, 11, 13A, 13E, 13F and 13G). The Voting Classes are Impaired but will receive distributions under the Plan. Moreover, the Debtors entered into Court-ordered stipulations with claimants in Classes 13E, 13F, and 13G who approved the Plan therein.

Classes 1, 4, 13B, 13C and 13D are unimpaired. As a result, pursuant to section 1126(f) of the Bankruptcy Code, Holders of Claims in these Classes are conclusively presumed to have accepted the Plan and their votes were not solicited.

In contrast, the Holders of Claims and Interests in Classes 14 and 15 are Impaired but will not receive or retain any distribution or property under the Plan. They are therefore deemed to have voted to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code, and their votes were not solicited.

Sections 1126(c) and 1126(d) of the Bankruptcy Code specify the requirements for

acceptance of a plan by an impaired class of claims or interests as follows:

> (c) A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected the plan.
>
> (d) A class of interests has accepted the plan if such plan has been accepted by holders of such interests, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount of the allowed interests of such class held by holders of such interests, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

11 U.S.C. § 1126(c)-(d).

The results of voting on the Plan are set forth in the Tallies attached as Exhibits to the Declarations of Alan Dalsass and David M. Sharp. Based upon the voting results in the Tallies and the evidence that will be presented at the Confirmation Hearing, the Plan Proponents submit that the Plan satisfies the requirements of section 1129(a)(2) of the Bankruptcy Code.

2. <u>The Plan Has Been Proposed in Good Faith and Not by Any Means Forbidden by Law</u>

Section 1129(a)(3) requires that a plan be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). "In order to satisfy the statutory requirement of good faith, a plan must be intended to achieve a result consistent with the objectives of the Bankruptcy Code." *Platinum Capital, Inc. v. Sylmar Plaza, L.P. (In re Sylmar Plaza, L.P.)*, 314 F.3d 1070, 1074 (9th Cir. 2002); *Ryan v. Loui (In re Corey)*, 892 F.2d 829, 835 (9th Cir. 1989); *In re General Teamsters, Warehousemen & Helpers Union Local 890*, 225 B.R. 719, 728 (Bankr. N.D. Cal. 1998); see, *also In re Madison Hotel Assocs.*, 749 F.2d 410, 425 (7th Cir. 1984) (holding that "the important point of inquiry is the plan itself and whether such plan will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code"). The overarching purpose of the Bankruptcy Code is to provide the debtor with a fresh start while "preserving going concerns and maximizing property available to satisfy creditors." *Bank of America Nat'l Trust &*

Sav. Ass'n v. 203 N. LaSalle St. P'ship, 526 U.S. 434, 453 (1999).

The Ninth Circuit has explained that, in determining whether a plan has been proposed in good faith, courts should avoid applying any hard and inflexible rules, but should instead evaluate each case on its own merits and examine the "totality of the circumstances." *Sylmar Plaza*, 314 F.3d at 1074; *Settling States v. Carolina Tobacco Co. (In re Carolina Tobacco Co.*), 360 B.R. 702, 718 Bankr. C.D. Cal. 2007); *In re Jorgensen,* 66 B.R. 104, 108-09 (B.A.P. 9th Cir. 1986) ("Good faith is assessed by the bankruptcy judge and is viewed under the totality of the circumstances"). Good faith under section 1129(a)(3) also requires "a fundamental fairness in dealing with one's creditors." *In re Stolrow's, Inc.,* 84 B.R. 167, 172 (B.A.P. 9th Cir. 1988); *In re Marshall,* 298 B.R. 670, 676 (Bankr. C.D. Cal. 2003); *In re WCI Cable, Inc.,* 282 B.R. 457, 484 (Bankr. D. Ore. 2002).

The Plan is entirely consistent with the objectives and purposes of the Bankruptcy Code. The Plan is the product of extensive negotiations among the Debtors, the Committee, and other key constituent groups. The Plan allows the Debtors to maximize funds available for distribution through an orderly liquidation of the Debtors' remaining assets and provides for distribution of those funds to holders of Allowed Claims. Administrative Claims, Priority Tax Claims, and Non-Priority Tax Claims will be paid in full, and secured claims are projected to be paid in full. Nearly all objections to the Plan have been resolved, and those Claimholders entitled to vote on the Plan voted overwhelmingly to accept it, with the exception of Classes 2 and 13A, which voted to reject the Plan as discussed elsewhere in this Memorandum. Thus, based on the totality of the circumstances in this particular case, the Plan has been proposed in good faith to maximize the distribution to creditors and thus satisfies the requirements of section 1129(a)(3) of the Bankruptcy Code.

3. The Plan Provides that Payments Made by the Debtors for Services or Costs and Expenses in Connection with the Cases Are Subject to Court Approval

Section 1129(a)(4) of the Bankruptcy Code requires that certain professional fees and expenses paid by the plan proponent, by the debtor, or by a person receiving distributions of property under the Plan, be subject to approval by the Court as reasonable. Specifically, section 1129(a)(4) requires that:

> Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to approval of, the court as reasonable.

11 U.S.C. § 1129(a)(4).

This subsection requires that any and all postpetition fees promised or received in the bankruptcy case be disclosed and subject to the court's review. *In re W. Asbestos Co.*, 313 B.R. 832, 848 (Bankr. N.D. Cal. 2003) ("Section 1129(a)(4) requires the Court to find that any payment made or to be made by the Plan Proponents for costs or services in connection with the bankruptcy cases or the Plan has been approved or is subject to approval by the court as reasonable"); *In re Beyond.com Corp.,* 289 B.R. 138, 144 (Bankr. N.D. Cal. 2003) ("The requirements under section 1129(a)(4) are two-fold. First, there must be disclosure. Second, the court must approve the reasonableness of the payments"). The Plan complies with the requirements of section 1129(a)(4) of the Bankruptcy Code because it provides, in Article X.A, that any payments made or promised to be made by the Debtors to professionals for services or for costs and expenses in, or in connection with, the Chapter 11 Cases are subject to approval by the Bankruptcy Court.

4. The Debtors Do Not Need to Disclose Information Regarding Directors, Officers and Insiders

The proponent of a plan must disclose the identity and affiliations of the proposed officers and directors of the reorganized debtor; and the appointment or continuance of such officers and directors must be consistent with the interests of creditors and equity Securityholders and with

public policy pursuant to section 1129(a)(5)(A) of the Bankruptcy Code. Further, section 1129(a)(5)(B) requires that the proponent of the plan disclose the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

The Plan Proponents have complied with section 1129(a)(5) of the Bankruptcy Code. The Plan contemplates that no officers, directors or other insiders of the Debtors will serve after the Effective Date. The Plan will be administered from and after the Effective Date by the Liquidating Trustee as the representative of the Liquidating Trust. The appointment of the Liquidating Trustee is supported by the Debtors, the Committee and other key creditors, and is consistent with the interests of creditors and with public policy pursuant to Article VI.F.5, the Plan Proponents seek payment of $18,000 to the Liquidating Trustee. Article VI.F of the Plan describes the establishment and operations of the Liquidating Trust. The Plan sets forth the powers, authority and duties of the Liquidating Trustee, subject to the terms of the Liquidating Trust Agreement, attached as Exhibit B to the Plan. Article VI.F.5(d) provides that the Liquidating Trustee shall, after the Effective Date, be entitled to payment at a rate of $25,000 for the first six months, $20,000 for the next twelve months, and $10,000 per month thereafter. Based on the foregoing, the Plan clearly complies with the requirements of section 1129(a)(5).

5. The Plan Does Not Contain Any Rate Changes Subject to the Jurisdiction of Any Governmental Regulatory Commission

Section 1129(a)(6) of the Bankruptcy Code requires that any regulatory commission having jurisdiction over the rates charged by a reorganized debtor in the operation of its business approve any rate change provided for in its plan. As noted above, pursuant to Article VI.B.2 of the Plan, the Debtors shall be deemed dissolved as of the Effective Date. Section 1129(a)(6) is thus inapplicable.

6. The Plan Is in the Best Interests of the Debtors' Creditors and Interest Holders

The "best interests" test for confirmation of a plan is set forth in section 1129(a)(7) of the Bankruptcy Code, which states in relevant part:

> With respect to each impaired class of claims or interests –
>
> (A) each holder of a claim or interest of such class –
>
> (i) has accepted the plan; or
>
> (ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date . . .

11 U.S.C. § 1129(a)(7).

Section 1129(a)(7) is commonly referred to as the "best interests" test, and focuses on individual dissenting creditors rather than on classes of claims. *See Bank of America Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship,* 526 U.S. 434, 441 (1999); *Everrett v. Perez (In re Perez),* 30 F.3d 1209, 1213, FN 3 (9th Cir. 1994) ("While every Chapter 11 reorganization plan must meet [the best interests] standard (whether or not there's a cram-down), this is sufficient only where an individual creditor – rather than an entire class of creditors – objects to the plan"); *In re Sierra Cal,* 210 B.R. 168, 171-72 (Bankr. E.D. Cal. 1997) (The best interests test "stands as an 'individual guaranty to each creditor or interest holder that it will receive at least as much in reorganization as it would in liquidation'").

In order for a plan to be deemed "in the best interests of creditors," the court must find that each dissenting creditor or equity Securityholder will receive or retain value under the plan that is not less than the amount such holder would receive if the debtor was liquidated in a Chapter 7 case. *See Liberty Nat'l Enters. v. Ambanc La Mesa Ltd. P'ship. (In re Ambanc La Mesa Ltd. P'ship),* 115 F.3d 650, 657 (9th Cir. 1997) ("under the best interests test, where not all creditors support the Plan, the debtor must prove that the creditors would receive as much under the Plan as they would receive in a liquidation under Chapter 7"); *In re Roman Catholic Archbishop,* 339 B.R. 215, 227 (Bankr. D. Ore. 2006) ("Confirmation issues such as the best interests test require a determination of the value of property of the estate and of the claims against the estate"); *In re Melcher,* 329 B.R. 865 at 878 ("[a] Chapter 11 plan must propose to pay creditors holding impaired claims who do not vote to accept the plan at least as much as the creditor would receive in liquidation under Chapter 7").

As section 1129(a)(7) makes clear, the best interests analysis applies only to non-accepting impaired claims or equity interests. Here, all Impaired Classes of Claims entitled to vote on the

Plan voted overwhelmingly in favor of the Plan, except for Class 2 (Secured Credit Facility Claim) and Class 13A (Westchester Fire Insurance Company and ACE INA Insurance), which voted to reject the Plan. The Plan Proponents attached a liquidation analysis (the "Liquidation Analysis") to the Disclosure Statement as Appendix C. The Plan Proponents acknowledge that the Liquidation Analysis is inherently speculative because it necessarily relies on estimates of the net proceeds that will be available after a Chapter 7 liquidation and wind down. Nonetheless, the Plan Proponents believe that the Liquidation Analysis provides a useful comparison for creditors in determining whether to vote to accept or reject the Plan. The Liquidation Analysis clearly demonstrates that Allowed Claimholders in Impaired Classes will receive a greater distribution under the Plan than they otherwise would receive in a Chapter 7 liquidation. The Plan is thus in the best interests of creditors and satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code.

7. Each Class under the Plan Has Voted to Accept the Plan or Is Unimpaired

Section 1129(a)(8) of the Bankruptcy Code requires, absent compliance with the "cramdown" provisions of section 1129(b), that each class of impaired claims or interests accept the Plan. Section 1129(a)(8) provides as follows:

> With respect to each class of claims or interests -
>
> (A) such class has accepted the plan; or
>
> (B) such class is not impaired under the plan.

11 U.S.C. § 1129(a)(8).

Classes 1, 4, 13B, 13C and 13D are not Impaired under the Plan and are deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Classes 2, 3, 5, 6, 7, 8, 9, 10, 11, 13A, 13 E, 13F and 13G are Impaired and entitled to vote on the Plan. Pursuant to section 1126(d) of the Bankruptcy Code, a class of claims accepts a plan if creditors holding at least two-thirds in amount and more than one-half in number of claims in the class have voted to accept the plan. Here, each of the Impaired Classes (with the exception of Classes 2 and 13A, which voted to reject) has accepted the Plan, voting in favor of the Plan well in excess of the minimum thresholds required by section 1126(b) of the Bankruptcy Code.

Classes 14 and 15 will not receive any distributions under the Plan and are therefore deemed to have rejected the Plan. Although the requirements of section 1129(a)(8) of the Bankruptcy Code have not been met because not all Impaired Classes have accepted the Plan (or are deemed to have accepted the Plan), the Plan may nevertheless be confirmed because it satisfies section 1129(b) of the Bankruptcy Code with respect to the rejecting classes, as discussed below.

a. The Plan Provides for Payment in Full of Priority Claims

Section 1129(a)(9) of the Bankruptcy Code requires that the holder of a claim entitled to priority under section 507(a) of the Bankruptcy Code receive certain specified treatment unless the holder has agreed to different treatment. The provisions of the Plan for treatment of Administrative Claims, Priority Tax Claims, and Class 1 Non-Tax Priority Claims are consistent with section 507(a) and, accordingly, the Plan complies with the requirements of section 1129(a)(9) of the Bankruptcy Code.

b. At Least One Impaired Class Has Accepted the Plan

Section 1129(a)(10) of the Bankruptcy Code requires the affirmative acceptance of the Plan by at least one class of impaired claims. As demonstrated by the Tallies, Classes 3, 5, 6, 7, 8, 9, 10, and 11, all of which are Impaired, voted overwhelmingly to accept the Plan. Thus, the Plan satisfies this requirement.

c. The Plan Is Feasible

Section 1129(a)(11) provides that a plan of reorganization may be confirmed only if "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." 11 U.S.C. § 1129(a)(11). Here, the Plan provides for the liquidation of the Debtors' assets and the distribution of the proceeds to Holders of Allowed Claims. Based on the Plan Proponents' estimates, the Plan Proponents believe that the cash on hand and the proceeds from the liquidation of assets will be sufficient to pay all Allowed Administrative and Priority Claims and effectuate the terms of the Plan. Accordingly, the Plan

Proponents believe that the Plan is feasible.

d. All United States Trustee Fees Have Been or Will Be Paid

Section 1129(a)(12) of the Bankruptcy Code requires the payment of "[a]ll fees payable under section 1930 [of title 28 of the United States Code], as determined by the court at the hearing on confirmation of the plan." 11 U.S.C. § 1129(a)(12). Article XIII.D of the Plan provides that all such fees will be paid by the Liquidating Trust when such fees are due and owing until the Chapter 11 Cases are closed or converted and/or the entry of final decrees. As indicated in the Debtors' Monthly Operating Report for the Reporting Period of April 1-30, 2010, the Debtors have paid all United States Trustee fees through the first quarter of 2010. Thus, the Plan complies with section 1129(a)(12) of the Bankruptcy Code.

e. Sections 1129(a)(13) through 1129(a)(16) Are Not Applicable

The remaining provisions of section 1129 of the Bankruptcy Code are not applicable to the Debtors. Section 1129(a)(13) requires a plan to provide for retiree benefits at levels established pursuant to section 1114 of the Bankruptcy Code. The Debtors do not have any retiree benefit programs within the meaning of section 1114 of the Bankruptcy Code and therefore this provision is not applicable. Sections 1129(a)(14) and 1129(a)(15) apply only to individual debtors and therefore do not apply to the Debtors. Lastly, section 1129(a)(16) is inapplicable because the Debtors are not non-profit organizations.

C. Section 1129(D)—Principal Purpose Of Plan

The principal purpose of the Plan is orderly liquidation and wind down of the Debtors in order to maximize funds available for distribution to creditors and the distribution of such funds to holders of Allowed Claims in accordance with the applicable provisions of Chapter 11 of the Bankruptcy Code. The principle purpose of the Plan is not the avoidance of either taxes or application of section 5 of the Securities Act of 1933, as amended. Accordingly no basis exists and no request has been made for the Court to deny confirmation of the Plan under section 1129(d) of the Bankruptcy Code.

D. The Plan Complies With Bankruptcy Rule 3016

Bankruptcy Rule 3016 sets forth certain additional technical requirements pertaining to the Plan, all of which have been satisfied. As required by Rule 3016(a), the Plan is dated and identifies the Debtors and the Committee as the proponents of the Plan. The release provisions in Article XI.D.1 and XI.D.2 of the Plan, the injunction provisions in Article XI.F of the Plan, and the exculpation and limitation of liability provisions in Article XI.H of the Plan are highlighted in conspicuous bold typeface and thus, to the extent Rule 3016(c) is applicable, the Plan complies with Rule 3016(c).

E. The Plan Satisfies The Requirements Of Section 1129(B) Of The Bankruptcy Code

Section 1129(b) of the Bankruptcy Code provides a mechanism for confirmation of a plan in circumstances where the plan is not accepted by all impaired classes of claims and interests. As discussed above, Classes 2 and 13A has voted to reject the Plan, and Class 14 Claims and Class 15 Interests are deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code.

Section 1129(b) provides that if all other applicable requirements of section 1129(a) are met, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of section 1129(a)(8) if the plan does not discriminate unfairly and is fair and equitable with respect to each class of claims or interests that is impaired and has not accepted the plan. Thus, under section 1129(b), the Court may confirm the Plan despite the rejection by Classes 2 and 13A and the deemed rejection by Impaired Classes 14 and 15 so long as the Plan does not "discriminate unfairly" and is "fair and equitable" with respect to such classes. The Plan, as described in more detail below, satisfies both standards.

1. The Plan Does Not Discriminate Unfairly

Although section 1129(b)(1) of the Bankruptcy Code prohibits unfair discrimination, it is well settled that a plan may discriminate between classes. *In re Sentry Operating Co. of Tex. Inc.,* 264 B.R. 850, 863 (Bankr. S.D. Tex. 2001); *In re Eitemiller,* 149 B.R. 626, 630 (Bankr. D. Idaho 1993) ("The issue is not whether the plan discriminates, but whether on the facts of the case that discrimination is unfair"). In determining whether such discrimination is unfair, the Courts have considered the following factors: (i) whether there is a reasonable basis for discrimination;

(ii) whether the discrimination is necessary for the plan; (iii) whether the discrimination is proposed in good faith; and (iv) whether the discrimination is in proportion to its rationale. *Ambanc La Mesa,* 115 F.3d 650, 656 (citing *In re Wolff,* 22 B.R. 510, 511-12 (B.A.P. 9th Cir. 1982)); *see also In re Genesis Health Ventures, Inc.,* 266 B.R. 591, 611 (Bankr. D. Del. 2001); *In re Buttonwood Partners Ltd.,* 111 B.R. 57, 63 (Bankr. S.D.N.Y. 1990).

Class 2 (Secured Credit Facility Claim) voted to reject the Plan. As described above, the Plan provides for treatment of the Class 2 Claim in a manner that will assure that such Claim will be fully collateralized and paid in full to the extent it is an Allowed Claim. Such treatment does not "unfairly discriminate" against Class 2.

Class 13A (Westchester Fire Insurance Company and ACE INA Insurance) voted to reject the Plan. As discussed above, the Plan proposes to leave ACE's rights unaltered under the Plan. The Plan Proponents believe that the Class 13A Claimholder, as well as all Class 13 claimholders, is oversecured. As provided in paragraph 6 of the ACE Order, in the event that any payment made by ACE under the New Bond is not reimbursed in whole or in part by a draw under the Letter of Credit, then ACE's claim for reimbursement of any such unpaid amount from the Debtors shall be entitled to super-priority administrative expense status pursuant to section 364(c)(1) of the Bankruptcy Code. Such treatment in no way "unfairly discriminates" against Class 13A.

Classes 14 and 15 are deemed to reject the Plan. Class 14 consists of Intercompany Claims by and between the Debtors. Article II.B.109 of the Plan defines "Intercompany Claim" as "any Claim held by a Debtor against another Debtor, including, without limitation: (a) any account reflecting intercompany book entries by a Debtor with respect to another Debtor, (b) any Claim not reflected in such book entries that is held by a Debtor against another Debtor, and (c) any derivative Claim asserted by or on behalf of one Debtor against another Debtor." Class 14 Claims therefore consist only of claims held by one Debtor against another Debtor. As such, Class 14 Claims are fundamentally different than the other classes of claims, because it is the only class of claims held by one Debtor entity against another Debtor entity. A reasonable basis thus exists for the discrimination. Additionally, the discrimination is necessary for the Plan and

proposed in good faith. As discussed more fully below, the Plan contemplates substantive consolidation of the Debtors' Estates in order to maximize distributions to all creditor classes. Substantive consolidation requires that the claims of one debtor against another debtor be eliminated, cancelled, and/or extinguished. Based on the foregoing, any discrimination against Class 14 Intercompany Claims is not unfair and comports with the overall goals of the Plan.

Similarly, Class 15 consists of Equity Interests. Pursuant to Article II.B.82, Equity Interests are "legal, equitable, contractual, and other rights of any Person with respect to any capital stock or other ownership interest in any Debtor …." Equity Interests are unlike creditor claims in the other classes, and, as such, disparate treatment is not unfair. Additionally, no class is receiving more than it is entitled to for its claims or interests. Therefore, the Plan does not "unfairly discriminate" and satisfies section 1129(b)(1) of the Bankruptcy Code.

2. The Plan Is Fair and Equitable

Section 1129(b)(2) of the Bankruptcy Code sets forth the applicable "fair and equitable" test for cramdown purposes. 11 U.S.C. § 1129(b)(2). This section codifies the absolute priority rule. *Bonner Mall Partnership v. U.S. Bancorp Mortgage Co. (In re Bonner Mall Partnership),* 2 F.3d 899, 906 (9th Cir. 1993), cert. granted, 114 S. Ct. 681 (1994), dismissed as moot, 115 S. Ct. 386 (1994). The rule requires that "a dissenting class of unsecured creditors must be provided for in full before any junior class can receive or retain any property [under a reorganization] plan." *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 202 (1988); *In re Elmwood, Inc.,* 182 B.R. 845, 852 (D. Nev. 1995); *In re Casey,* 198 B.R. 910, 915 (Bankr. S.D. Cal. 1996).

The Plan Proponents submit that the requisite tests have been met and that the Plan may be confirmed on a nonconsensual basis despite the fact that the Holders of the Class 2 Claim, Class 13A Claim, Class 14 Claims and Class 15 Interests have voted to reject or are deemed to have rejected the Plan.

Class 2 consists of the Secured Credit Facility Claim. The Plan provides for treatment of the Class 2 Claim which will assure that such Claim will be fully collateralized and paid in full to the extent it is an Allowed Claim. Accordingly, the Plan satisfies the requirements of section 1129(b)(2)(A).

Class 13A consists of an oversecured claim which will be paid in full from letter of credit proceeds or, in the event of a deficiency, on a superpriority basis. No class of claims or interests junior to Class 13A will receive a greater distribution under the Plan on account of such claim or interest. Therefore, section 1129(b)(2)(B)(ii) is satisfied with respect to Class 13A. As to Class 13G, because Lumbermen's will retain the LC proceeds and Cash in its possession until it is determined whether such collateral exceeds its claims, the fair and equitable requirement is satisfied under section 1129(b)(2)(A)(i). If Lumbermen's claims exceed its collateral, it may recover its deficiency claim as a General Unsecured Claim under Class 6. Because Class 6 Claims are the most junior Class that retains any property under the Plan, the fair and equitable requirement is satisfied under section 1129(b)(2)(B)(ii).

With respect to Class 14, a class of unsecured claims, the holder of the only class of claims or interests junior to Class 14 is Class 15, which is not receiving or retaining under the Plan any property on account of such junior claim or interest. *See* Article IV.B of the Plan. Therefore, section 1129(b)(2)(B)(ii) is satisfied with respect to Class 14. Similarly, with respect to Class 15, a class of interests, there is no junior interest holder receiving or retaining under the Plan any property on account of such junior interest. Therefore, section 1129(b)(2)(C)(ii) is satisfied with respect to Class 15.

Accordingly, based on the foregoing, the Plan complies with the "fair and equitable" requirements of section 1129(b)(2) of the Bankruptcy Code.

F. Substantive Consolidation For Purposes Of Distribution Under The Plan Is Appropriate And Should Be Approved

The Plan is predicated upon substantive consolidation of the Chapter 11 Cases of the Debtors for purposes of the Plan and the distributions thereunder. Substantive consolidation is the merger of the estates of related debtors into a single estate of assets and liabilities, and the combination of creditors into a single group of creditors. *See In re Drexel Burnham Lambert Group, Inc.,*
138 B.R. 723 (Bankr. S.D.N.Y. 1992). The doctrine of substantive consolidation is premised on ensuring the equitable treatment of all creditors. *See Eastgroup Properties v. Southern Motel*

Assoc., Ltd., 935 F.2d 245, 248 (11th Cir. 1991); *In re Augie/Restivo Baking Co., Ltd.,* 860 F.2d 515 (2d Cir. 1988). The Ninth Circuit Court of Appeals has determined that substantive consolidation is appropriate when either: (i) creditors dealt with the entities as a single economic unit and did not rely on their separate identities when extending credit (the "Single Entity Test") or (ii) the affairs of the Debtors are so hopelessly entangled that consolidation will benefit all creditors (the "Hopeless Entanglement Test"). *Alexander v. Bonham (In re Bonham),* 229 F.3d 750, 766 (9th Cir. 2000).

The Plan Proponents submit that both the Single Entity Test and the Hopeless Entanglement Test have been satisfied in this case. First, the Debtors satisfy the Single Entity Test because creditors relied upon the combined creditworthiness of the Debtors in extending loans, and the various Debtor entities provided cross-guarantees and cross-collateralization of assets for security. For example, FHI and the Operating Subsidiaries are the combined Borrowers under the Secured Credit Facility, which is secured by a pledge of the majority of assets, including real property, of FHI and the Operating Subsidiaries. FEI guaranteed FHI's and the Operating Subsidiaries' obligations under the Secured Credit Facility. Similarly, with respect to the 14% Notes, FHI and the Operating Subsidiaries guaranteed FEI's obligations thereunder. The 14% Notes are also secured by the assets of FHI and the Operating Subsidiaries. Because the foregoing shows a single "operating" enterprise funded by loans secured by cross-collateralization, the Plan Proponents submit that creditors relied upon the creditworthiness of all the Debtors in making loans to the operating enterprise. As such, the Debtors' Estates should be consolidated under the Single Entity Test.

The Plan Proponents also submit that the Debtors also satisfy the Hopeless Entanglement Test. The Debtors repeatedly engaged in intercompany lending, shared raw materials, shared personnel, entered into cross-guaranties, and participated in cross-collateralization of their assets. Despite the fact that each of the Debtors are independent legal entities with their own facilities, employees, and local management, the Debtors generally operated as a single enterprise with a central payment system and a central cash management system. Under this central payment system, FHI paid trade payable balances on behalf of the Operating Subsidiaries. Rather than

have each Operating Subsidiary remit multiple payments for amounts owed to the same vendor, the Debtors' central payment system consolidated amounts owed across the Operating Subsidiaries to the same vendor into a single payment made to that vendor from FHI. Consolidating payments through FHI allowed the Debtors to exercise greater centralized control over disbursements.

In addition to the central payment system, the Debtors also utilized a central cash management system. On the operations level, the system was designed to centralize cash flow from FEI's intake account to FHI's main account, which in turn funded the Operating Subsidiaries' activities through 40 individual disbursement accounts. FHI's main account is physically linked to both FEI's main account and the accounts of the Operating Subsidiaries and provides them with the funds needed to continue operations.

As further evidence of the Debtors' entanglement, FEI files consolidated financial with the SEC in which it lists its Debtor subsidiaries as "the RV Group" and the "Housing Group," thereby implying that these "groups" are captive divisions of FEI, rather than independent entities. FEI and its subsidiaries also share overhead, management, accounting, and other related expenses. FEI owns (either directly or indirectly) all or a majority of the stock of each of the Debtors, and the Debtors share common directors and officers. Based on the foregoing, the Debtors operated as a consolidated enterprise, and their creditors regarded them as such. Disentangling the financial affairs of the Debtors, if possible at all, would be time-consuming and cost-prohibitive. Accordingly, substantive consolidation of the Debtors' Estates is proper under the Hopeless Entanglement Test.

Based on the foregoing, the Plan Proponents submit that substantive consolidation is appropriate in this case, as the evidence demonstrates that the Debtors satisfy both the Single Entity Test and the Hopeless Entanglement Test.

G. All Objections to Confirmation of the Plan Have Been Resolved

In the Disclosure Statement Order, the Court established June 4, 2010 as the deadline for filing and serving objections to confirmation of the Plan. Twelve formal and informal objections

to confirmation were timely filed, nine of which have been resolved.[13] A brief discussion of each of the resolved objections follows.

- Riverside County Objection. The County of Riverside, California ("Riverside County") filed an objection to the Plan [Docket No. 2157], whereby Riverside County objected to the inclusion of its claims for unpaid real property taxes in Class 4 Miscellaneous Secured Claims and the ambiguity of the Plan language with respect to payment of such claims in cash (rather than the return of the collateral), the payment of costs, fees, charges, and interest pursuant to section 506(b) of the Bankruptcy Code, and the treatment of new taxes as administrative expenses of the estate. The Riverside County Objection was resolved by an order entered on June 4, 2010 [Docket No. 2218].
- Pima County Objection. Pima County, Arizona ("Pima County"), filed a response to the Plan [Docket No. 2181], whereby Pima County asserted that it had no objection to the inclusion of its two claims for tax liens against real property in Class 4 so long as the claims may accrue interest at the rate of 16% per annum, assuming the claims are allowed and found to be oversecured under section 506(b) of the Bankruptcy Code. The Pima County Objection was resolved by an order entered on June 4, 2010 [Docket No. 2218].
- Encore Objection. Encore Partners LLC ("Encore") filed an objection to the Plan [Docket No. 2184], whereby Encore objected to the third party releases contained in Article XI.E as overly broad and prejudicial. The Encore Objection was resolved by stipulation of the parties filed July 22, 2010 [Docket Entry No. 2376].
- NCSISA Objection. The North Carolina Self-Insurance Association ("NCSISA") raised an informal objection to the Plan, whereby NCSISA objected to the classification of its claim as a Class 6 General Unsecured Claim and sought the treatment afforded in the Plan to insurance companies that are counterparties to reinsurance agreements with Gibraltar.

[13] On June 29, 2010, Vincent Rhynes filed a Response to Confirmation of Second Amended Joint Plan of Liquidation (the "Response") [Docket No. 2311]. The Response cites to the Interim Order (1) Authorizing Debtors to Obtain Postpetition Secured Financing, (2) Authorizing the Use of Cash Collateral, (3) Granting Liens and Superpriority Claims, (4) Modifying the Automatic Stay and (5) Setting the Final Hearing, and requests "termination of rights." The Response does not state a valid basis for objecting to confirmation of the Plan and, to the extent it is considered an objection, should be overruled.

The NCSISA Objection was resolved by an order entered on June 4, 2010 [Docket No. 2216].

- NHTSA Objection. The United States on behalf of the National Highway Traffic Safety Administration ("NHTSA") raised an informal objection to the Plan, whereby NHTSA sought to preserve its rights to seek clarification of orders entered by the Bankruptcy Court approving the sale of RV Assets and to enforce NHTSA's laws against non-Debtors. The NHTSA Objection was resolved by an order entered on June 7, 2010 [Docket No. 2235].
- GSIGTF Objection. The Georgia Self Insurers Guaranty Trust Fund ("GSIGTF") raised an informal objection to the Plan, whereby GSIGTF objected to the classification and treatment of its claim and sought temporary allowance of its claim for voting purposes. The GSIGTF Objection was resolved by an order entered June 11, 2010 [Docket No. 2252].
- Texas Tax Authorities' Objection. Certain Texas County Taxing Authorities (the "Texas Tax Authorities") raised an informal objection to the Plan, whereby the Texas Tax Authorities objected to the proposed treatment of secured tax creditors in Class 4 of the Plan. The Texas Tax Objection was resolved by an order entered on June 11, 2010 [Docket No. 2254].
- Texas Comptroller Objection. The Texas Comptroller of Public Accounts (the "Texas Comptroller") filed an objection to the Plan [Docket No. 2202], whereby the Texas Comptroller objected to the treatment of priority tax claims in the Plan and requested clarification that the Plan will not affect the Texas Comptroller's setoff rights. The Texas Comptroller Objection was resolved by an order entered on June 15, 2010 [Docket No. 2269].
- Browder Plaintiffs' Objection. Jesse Browder, Mary White, Otha Townsend, Vera and Robert Burns, Tamicca Stantley, and Mary Goodwin (collectively, the "Browder Plaintiffs") filed an objection to the Plan [Docket No. 2203], whereby the Browder Plaintiffs objected to the release and injunction provisions as overly broad and improper. The Browder Plaintiffs' Objection was resolved by a stipulation between the parties filed

on July 8, 2010 [Docket No. 2335].

The following objections remain unresolved as of the date of filing this Memorandum.

- First American Objection. First American Trust Company ("First American") filed an objection to the Plan [Docket No. 2204], whereby First American objected to the classification of its claim as a Class 6 General Unsecured Claim and the failure of the Plan to address First American's constructive trust remedy. First American further alleged that the Plan had not been proposed in good faith. On August 26, 2009, First American filed an adversary proceeding against the Debtors (Adv. No. 6:09-ap-01415-MJ), which is still pending. The First American Objection remains unresolved as of the filing of this Memorandum.
- ACE Objection. Westchester Fire Insurance Company and ACE INA Insurance Company (together, "ACE") filed an objection to the Plan [Docket No. 2210], whereby ACE objected to the treatment of its Class 13A Claim. As discussed elsewhere, Class 13A is the only class which did not vote in favor of the Plan. The ACE Objection remains unresolved as of the filing of this Memorandum.
- BofA Objection. Bank of America ("BofA") filed an objection to the Plan [Docket No. 2370], whereby BofA objected to the proposed treatment of the Secured Parties under the Plan and asserting that (i) the Secured Parties would receive less under the Plan than they would in a Chapter 7 liquidation (in part due to projected recoveries to First American in the adversary proceeding) and (ii) the Plan is not fair and equitable. The BofA Objection was just filed on July 20, 2010, and remains unresolved as of the filing of this Memorandum.

As discussed above, the majority of the objections to the Plan have been resolved by mutual agreement of the parties. Of the three unresolved objections, the ACE Objection is without merit, as the Plan does not purport to alter any of ACE's rights as set forth in the ACE Order. The First American Objection is intertwined with the ongoing adversary proceeding, which may take a significant amount of time to come to full and final resolution, especially if either party pursues an appeal. For that reason, the First American Objection should not serve to delay Plan confirmation

and distributions under the Plan. Finally, the BofA Objection raises issues related to the resolution of the First American adversary proceeding. As with the First American Objection, the BofA Objection should not hold Plan confirmation and distributions thereunder hostage until the adversary proceeding is resolved.

Based on the foregoing, the Plan Proponents submit that any unresolved objections should be overruled and the Plan should be confirmed.

IV. CONCLUSION

For the reasons set forth herein, and as will be further demonstrated at the Confirmation Hearing, the Debtors submit that the Plan satisfies all of the applicable requirements of the Bankruptcy Code and Bankruptcy Rules and that all Objections to the Plan have been resolved. Accordingly, the Plan should be confirmed.

Dated: July 22, 2010. GIBSON , DUNN & CRUTCHER, LLP

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In re: FLEETWOOD ENTERPRISES, INC. Debtor(s).	CHAPTER 11 CASE NUMBER 09-bk-14254-MJ

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 2049 Century Park East, Suite 2100, Los Angeles, CA 90067

A true and correct copy of the foregoing document described as

MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF THE THIRD AMENDED JOINT PLAN OF LIQUIDATION OF FLEETWOOD ENTERPRISES, INC. AND ITS AFFILIATED DEBTORS AND THE OFFICIAL COMMITTEE OF CREDITORS HOLDING UNSECURED CLAIMS DATED JULY 22, 2010

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner indicated below:

I. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On July 22, 2010 I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

☒ Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL(indicate method for each person or entity served)**:**

On July 22, 2010 I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

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III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on July 22, 2010 I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

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

July 22, 2010	Bambi Clark	/s/ Bambi Clark
Date	*Type Name*	*Signature*

In re: FLEETWOOD ENTERPRISES, INC. Debtor(s).	CHAPTER 11 CASE NUMBER 09-bk-14254-MJ

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In re: FLEETWOOD ENTERPRISES, INC. Debtor(s).	CHAPTER 11 CASE NUMBER 09-bk-14254-MJ

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In re: FLEETWOOD ENTERPRISES, INC. Debtor(s).	CHAPTER 11 CASE NUMBER 09-bk-14254-MJ

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